



**SMGB Information Report 2012-08**

# **STATE MINING AND GEOLOGY BOARD**

## **Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act**



**Department of Conservation  
Resources Agency**

**March 2012**

**This Information Report No. 2012-08  
of the State Mining and Geology Board was presented, in part,  
at the SMGB's Policy and Legislation Committee meetings  
held on October 14 and November 10, 2010.**

**This report does not set forth policy, but rather presents information  
that the SMGB relies on in considering policy.**



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# **A Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act**

Stephen M. Testa<sup>1</sup>

## **ABSTRACT**

The Surface Mining and Reclamation Act (SMARA; Public Resources Code Sections 2710 et seq.) provides a comprehensive surface mining and reclamation policy for the regulation of surface mining operations. SMARA encourages the production, conservation, and protection of the State's mineral resources, and assures that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. In evaluating ways the SMGB and Department of Conservation can better assist lead agencies affected by SMARA, the SMGB conducted a survey of affected lead agencies between December 2010 and February 2011. A ten-question questionnaire was forwarded to all 115 lead agencies. Slightly over two-thirds of the Counties, and less than one-quarter of the Cities responded to the questionnaire. Results received were compiled and tabulated.

Based on responses received, lead agencies affected by SMARA could be well-served by enhancing and expanding outreach efforts toward those lead agencies affected by SMARA, commencing efforts to streamline SMARA and minimize the amount of duplicity in the SMARA program, continuing efforts implemented by OMR to tailor workshops to the specific needs of its stakeholders, encourage lead agencies that do not have sufficient resources to oversee their respective SMARA program to forfeit SMARA responsibilities and obligations to the SMGB for a minimum of three years, and explore funding sources at the State and Federal levels for outreach and education to lead agencies and the public to fulfill the intent of State policy pertaining to SMARA.

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# **Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act**

## **INTRODUCTION**

The State Mining and Geology Board (SMGB) is authorized to represent the State's interests in the development, utilization and conservation of mineral resources, and reclamation of mined lands. The Surface Mining and Reclamation Act of 1975 (SMARA, PRC Sections 2710 et seq.) provides a comprehensive surface mining and reclamation policy for the regulation of surface mining operations. SMARA encourages the production, conservation, and protection of the State's mineral resources, and assures that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. In addition, PRC Section 2207 also provides annual reporting requirements for all mines in the State, under which the SMGB also is granted authority and obligations. The SMGB is currently reviewing and considering changes to the SMARA program to assist its stakeholders and streamline processes, where applicable. In consideration of these objectives, the SMGB conducted a survey of affected lead agencies between December 2010 and February 2011. A ten-question questionnaire was forward to all 115 SMARA lead agencies. The responses received were compiled and tabulated.

## **CALIFORNIA SURFACE MINING AND RECLAMATION ACT (SMARA)**

SMARA provides a comprehensive surface mining and reclamation policy for the regulation of surface mining operations. SMARA encourages the production, conservation, and protection of the State's mineral resources, and assures that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. In addition, PRC Section 2207 also provides annual reporting requirements for all mines in the State, under which the SMGB also is granted authority and obligations.

## **RESPONSIBILITIES FOR IMPLEMENTATION OF THE SURFACE MINING AND RECLAMATION ACT**

Responsibility for implementation of SMARA is shared between the Department of Conservation (DOC) which includes the California Geological Survey and the Office of Mine Reclamation, the lead agencies (counties and cities), and the SMGB (Figure 1). This three-tiered approach reflects several concepts in the implementation of SMARA, whereas, administration and enforcement is best accomplished locally, with program and regulatory oversight at the state level. The primary entity responsible for the SMARA's enforcement is the local "lead agency" - that is, the city or county in which a surface mine operates. The lead agency is responsible for assuring that all surface mine operations within its jurisdiction are in full compliance with SMARA. SMARA prescribes specific responsibilities and powers to the lead agency.

Should a lead agency fail to bring, or become incapable of bringing one or more surface mining operations into compliance, statute allows for the Director of the DOC to enforce SMARA and bring about compliance at individual sites. SMARA prescribes specific responsibilities and powers to the Director. The DOC is also responsible for providing technical reviews of reclamation plans and financial assurances to lead agencies to ensure



## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

that the requirements of SMARA have been addressed in the reclamation plans prior to their formal approval by the lead agency. California is the only State that regulates mine reclamation by means of local lead agencies. All other States regulate mine reclamation through a single State office (SMGB Information Report 2007-04).

The third tier of enforcement lies with the SMGB. Under SMARA, the SMGB is provided authority to hear appeals of enforcement actions taken by the Director against surface mine operators, as well as appeals of certain decisions regarding reclamation plans and financial assurances taken by a lead agency. In addition, the SMGB may assume a lead agency's SMARA authority when a lead agency's actions are in violation of the statute, or if it defaults on its SMARA responsibilities and obligations. The SMGB may also exempt from the requirements of SMARA specific surface mining operations that are of limited scope and duration, and cause little land disturbance.

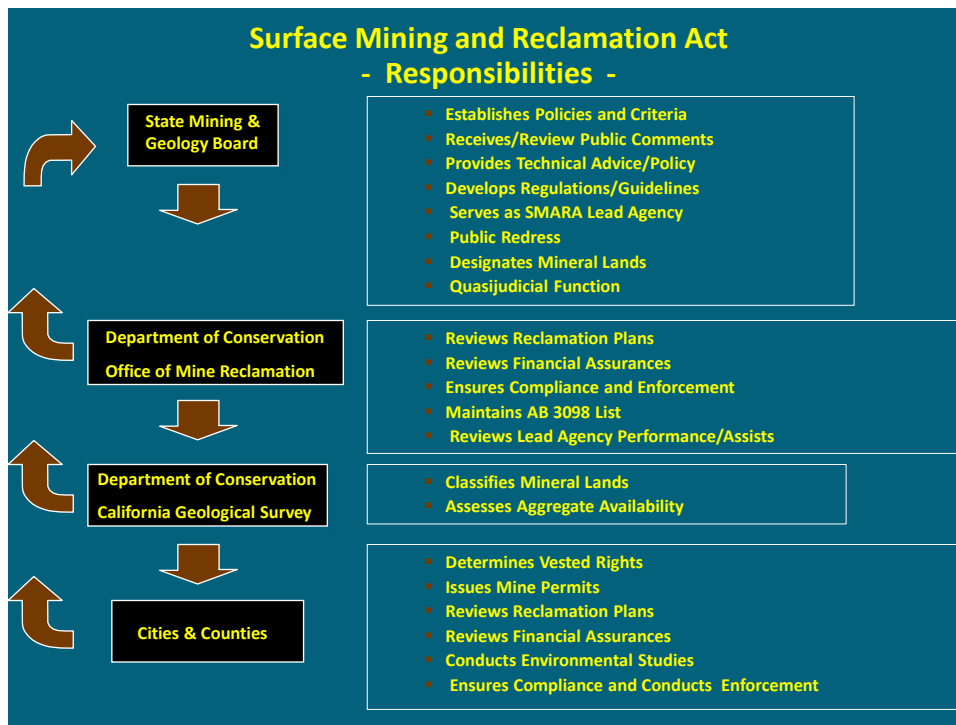


Figure 1: Illustration showing responsibilities and roles of those entities responsible for implementation of SMARA.

Report on Survey of Lead Agencies Affected  
by the Surface Mining and Reclamation Act

**REVIEW OF LEAD AGENCIES AFFECTED BY THE  
SURFACE MINING AND RECLAMATION ACT**

SMARA affects 115 jurisdictions throughout California comprised of 61 Cities and 54 Counties (Table 1), excluding the SMGB. A 10-question survey was mailed to each of these lead agencies in December 2010 (Appendix A).

Table 1			
Lead Agencies Affected by the Surface Mining and Reclamation Act			
County	County	City	City
Alameda	Orange	Amador City	Needles
Amador	Placer	Anaheim	Oakland
Butte	Plumas	Apple Valley	Oceanside
Calaveras	Riverside	Atascadero	Oroville
Colusa	Sacramento	Azusa	Oxnard
Contra Costa	San Benito	Bakersfield	Pacifica
Del Norte	San Bernardino	Banning	Palmdale
Fresno	San Diego	Barstow	Paso Robles
Glenn	San Joaquin	Chula Vista	Perris
Humboldt	San Luis	Claremont	Poway
Imperial	Obispo San	Colton	Rancho Cordova
Inyo	Mateo	Corona	Redding
Kern	Santa Barbara	Fontana	Redlands
Kings	Santa Clara	Fremont	Rialto
Lake	Santa Cruz	Fresno	Riverside
Lassen	Shasta	Grass Valley	Sacramento
Los Angeles	Sierra	Hayward	Saint Helena
Madera	Siskiyou	Healdsburg	San Bernardino
Marin	Solano	Highland	San Diego
Mariposa	Sonoma	Ione	San Jacinto
Mendocino	Stanislaus	Irwindale	San Marcos
Merced	Sutter	Jackson	Santa Maria
Modoc	Tehama	Lake Elsinore	Santa Rosa
Mono	Trinity	Lake Forest	Santee
Monterey	Tulare	Lathrop	Taft
Napa	Tuolumne	Lompoc	Tracy
Nevada	Ventura	Los Angeles	Truckee
	Yolo	Mammoth	Twenty Nine
		Lakes	Palms
		Monrovia	Upland
		Montague	Yreka
		Mount Shasta	

**Report on Survey of Lead Agencies Affected  
by the Surface Mining and Reclamation Act**

<b>Table 2 Summary of Survey Results (Percent Responding)</b>							
<b>No.</b>	<b>Question</b>		<b>Strongly Disagree (1)</b>	<b>Disagree (2)</b>	<b>No Opinion (3)</b>	<b>Agree (4)</b>	<b>Strongly Agree (5)</b>
1.	Is your agency familiar with both the statutory and regulatory aspects of SMARA?	Counties				52	48
		Cities		9	9	55	27
2.	Does your agency have dedicated expertise (i.e., geologist or engineer on staff) and resources (budgeted staff positions) to implement SMARA?	Counties	5	10	5	58	22
		Cities	37	18		18	27
3.	Does your agency charge operators an administrative fee as a SMARA lead agency?	Counties	10	10	3	50	27
		Cities		27	27	18	28
4.	Are you aware that your agency can contract with the SMGB or California Geological Survey in regards to certain SMARA mineral program elements (i.e. assistance with implementation of lead agency responsibilities and obligations such as inspections, mineral resource conservation program, development of MRMP, etc.)?	Counties	2	27	10	41	20
		Cities		50	10	20	20
5.	In regards to permitting: 5a. Has your agency processed permit applications for new or expanded mining projects in the last 5 years?	Counties		5		37	58
		Cities		25		25	50
	5b. Does the average processing time from application completeness to decision for a typical Reclamation Plan application exceed one year?	Counties	7	26	24	26	17
		Cities		18	27	37	18
6.	Has your agency had difficulty in assuring operator compliance with the requirements of approved reclamation plans?	Counties		3	7	52	38
		Cities			27	46	27
7.	Does your agency have Mineral Resources Management Policies (MRMP) that has been recognized by the SMGB?	Counties	6	10	22	31	31
		Cities	18	18	18	18	28
	7a. Does your agency have classified land that is incorporated in your MRMP?	Counties	8	15	27	25	25
		Cities	18	18	18	18	28
	7b. Does your agency have mineral lands that have been designated by the SMGB?	Counties	7	15	27	24	27
		Cities	18	18	18	18	28
8.	Has your SMARA program been adversely affected by staff turnover or staff reductions?	Counties	12	36	19	17	16
		Cities	9	46	27	9	9
9.	Would your agency be more in favor of more state involvement or assistance in certain aspects of SMARA?						
	Permitting	Counties	35	39	7	14	5
		Cities	10	30	10	40	10
	Inspections	Counties	23	42	16	14	5
		Cities	10	30	10	40	10
	Reclamation plans	Counties	24	33	14	19	10
		Cities	10	30	20	30	10
	Financial assurances	Counties	24	38	7	26	5
		Cities		33	11	45	11
	Mineral conservation	Counties	19	27	12	37	5
		Cities		40	20	30	10
10.	Would your agency be more in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections), while retaining local land use (permitting) authority?	Counties	50	31		14	5
		Cities	30	10	10	30	20

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

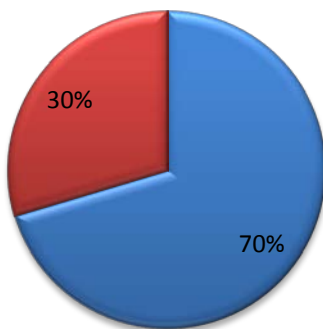
A 10-question survey was developed and sent to the 115 lead agencies (54 counties and 61 cities) affected by SMARA, excluding the SMGB when serving in such capacity (Table 2). The survey was designed to evaluate how SMARA is administered by local lead agencies, and what lead agencies may require in regards to assistance. In addition, through this survey, changes to SMARA were identified in order to provide assistance to lead agencies where necessary, and also to consider areas and processes within SMARA that could be potentially streamlined.

### SURVEY RESULTS

SMARA affects 115 jurisdictions comprised of 54 Counties and 61 Cities, excluding the SMGB. Slightly over two-thirds (70%) of the Counties, and less than one-quarter (16%) of the Cities responded to the questionnaire. This may infer that about one-third of the Counties and about three-quarters of the Cities have a lack of knowledge of their responsibilities under SMARA, or are poorly implementing SMARA (Figure 2).

#### Counties Responding

■ Responses ■ No Responses



#### Cities Responding

■ Responses ■ No Responses

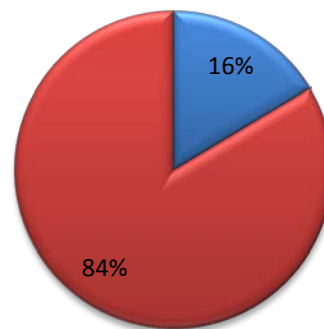


Figure 2: Pie graphs showing the number of Counties and Cities responding to the survey questionnaire.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

**Question No. 1 – Is your agency familiar with both the statutory and regulatory aspects of SMARA?** All (100%) of the responding Counties, and slightly over three-quarters (82%) of the responding Cities strongly agree or agree that their respective lead agency is familiar with both the statutory and regulatory aspects of SMARA (Figure 3). This may infer that about one-quarter of the Cities responding to the questionnaire are not familiar with SMARA.

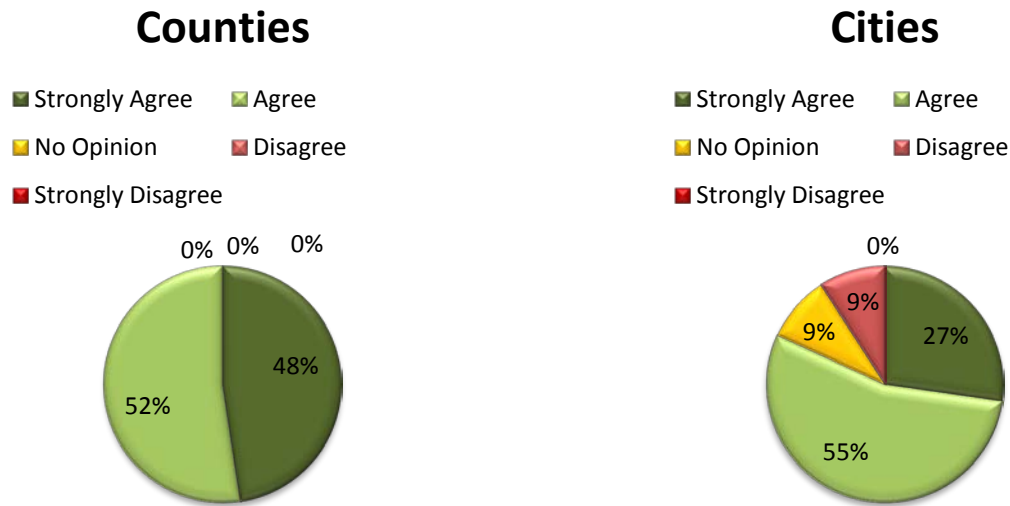


Figure 3. Pie graphs showing the percentage of Counties and Cities that responded to the questionnaire noting familiarity with SMARA.

**Question No. 2 – Does your agency have dedicated expertise (i.e., geologist or engineer on staff) and resources (budgeted staff positions) to adequately implement SMARA?** Eighty percent (80%) of the responding Counties, and slightly less than one-half (45%) of the Cities strongly agree or agree that their respective lead agency have dedicated expertise and resources to implement SMARA (Figure 4). At minimum about one-fifth (20%) of the responding Counties and over half (55%) of the responding Cities do not have adequate expertise and resources. In general, dedicated staff is a rarity, and some agencies do subcontract for outside services and assistance.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

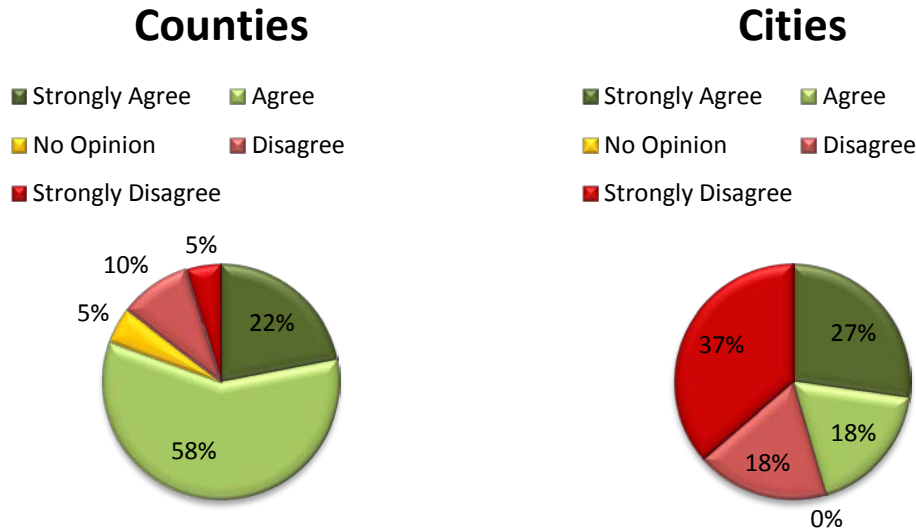


Figure 4: Pie graphs showing the percentage of Counties and Cities having dedicated expertise (i.e., geologist or engineer on staff) and resources (budgeted staff positions) to adequately implement SMARA.

**Question No. 3 – Does your agency charge each mine operator an annual administrative fee as a SMARA lead agency?** Just over three-quarters (77%) of the responding Counties, and slightly under one-half (46%) of the responding Cities strongly agree or agree that their respective lead agency charge each mine operator an annual administrative fee (Figure 5). At minimum, about one-quarter (22%) of the Counties and over half of the Cities (54%) do not charge a SMARA lead agency administrative fee. Such fee arrangements included inspection fees only (i.e., \$66.00 per hour), hourly based deposit fee assessed for inspection and review of financial assurances, a percentage of the annual inspection and financial assurance, and for review of engineering documents and plans. In some cases costs, incurred for all lead agency staff responsibilities including permitting, inspection, enforcement, technical expertise, financial assurances and reclamation plan reviews, were being billed to the mine operator. One County adopted a Gravel Mining Fee ordinance that establishes an aggregate mining fee that includes an Off Channel Mining Plan Administrative Fee of \$0.08 per ton of aggregate material sold for participating aggregate producers in the Cache Creek Area Plan. One County indicated annual review of financial assurances for idle or low production mines were not necessary, reflecting the financial burden on small operators.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

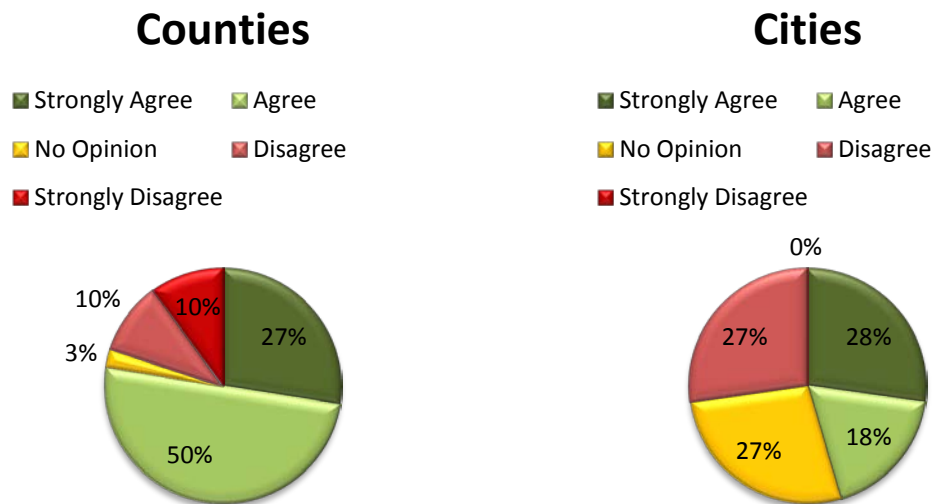


Figure 5. Pie graphs showing the percentage of Counties and Cities that charge each mine operator an annual administrative fee as a SMARA lead agency.

**Question No. 4 – Is your agency aware that it can contract with the SMGB or California Geological Survey to implement certain SMARA program elements (e.g., inspection, mineral resource conservation program, development of MRMP, etc.)?** Slightly less than two-thirds (61%) of the responding Counties, and less than one-half (40%) of the responding Cities strongly agree or agree that their respective lead agency can contract with CGS or SMGB (Figure 6). Almost half (39%) of the responding Counties and over half of the responding Cities (60%) are not aware that they can contract with the SMGB or CGS for certain services associated with mineral conservation.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

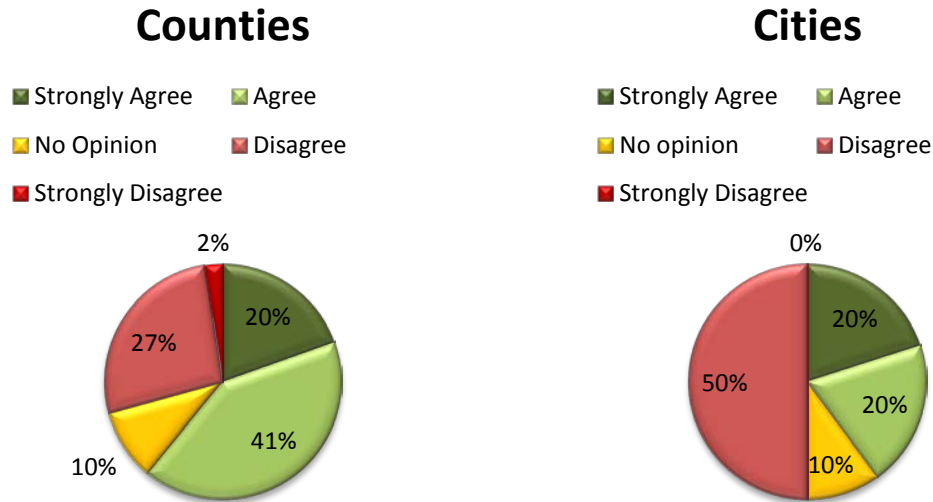


Figure 6: Pie graphs showing the percentage of Counties and Cities that are aware that it can contract with the SMGB or California Geological Survey to implement certain SMARA program elements (e.g., inspection, mineral resource conservation program, development of MRMP, etc.).

**Question No. 5a – In regards to permitting: Has your agency processed permit applications for new or expanded mining projects in the last 5 years?** Nearly all (95%) of the responding Counties, and three-quarters (75%) of the responding Cities have processed permit applications for new or expanded mining projects in the last five years (Figure 7). Notably, one-quarter (25%) of the responding Cities have not processed any permit applications in the last five years.

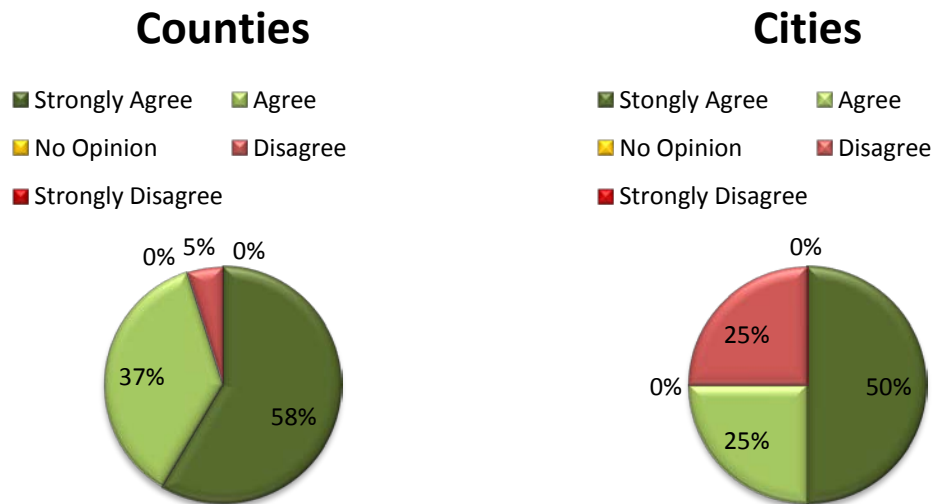


Figure 7: Pie graphs showing the percentage of Counties and Cities have processed permit applications for new or expanded mining projects in the last 5 years.



## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

### Question No. 5b – In regards to permitting: On average, does your agency take more than one year to process a typical Reclamation Plan application?

Less than half (43%) of the responding Counties, and slightly more than one-half (55%) of the responding Cities strongly agree or agree that their respective lead agency takes more than a year to process a typical reclamation plan application (Figure 8). Processing of a reclamation plan commonly extends beyond one year reflecting that surface mining operations having multiple issues, are controversial nature, response times by the operator vary in addressing issues and questions set forth by the lead agency or OMR, and multiple reviews are commonly required by OMR. One County noted that OMR's permitting and regulatory processes for local lead agencies require attention to facilitate and streamline approval of new permit applications.

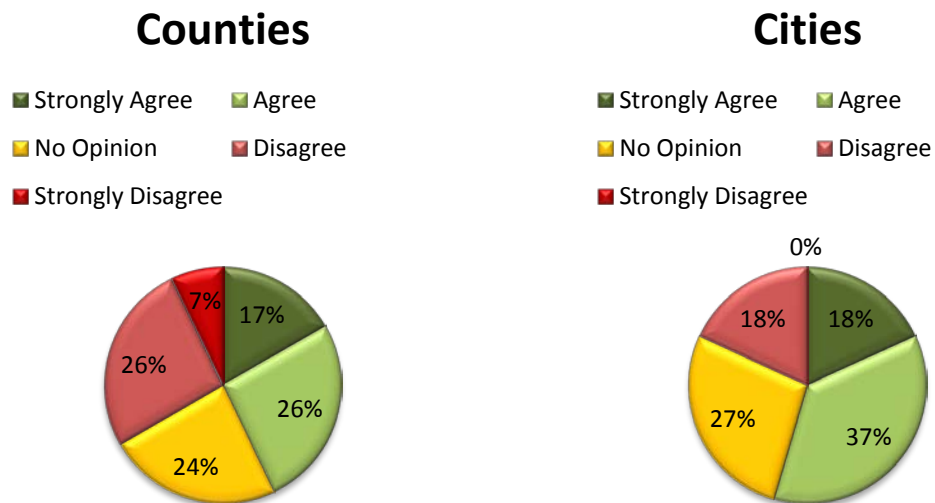


Figure 8: Pie graphs showing the percentage of Counties and Cities that take more than one year to process a typical Reclamation Plan application.

**Question No. 6 – Has oversight by your agency resulted in operator compliance with the requirement of each approved Reclamation Plan?** Most (90%) of the responding Counties, and about three-quarters (73%) of the responding Cities strongly agree or agree that their respective lead agency oversight resulted in operator compliance with the requirement of each approved Reclamation Plan (Figure 9).

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

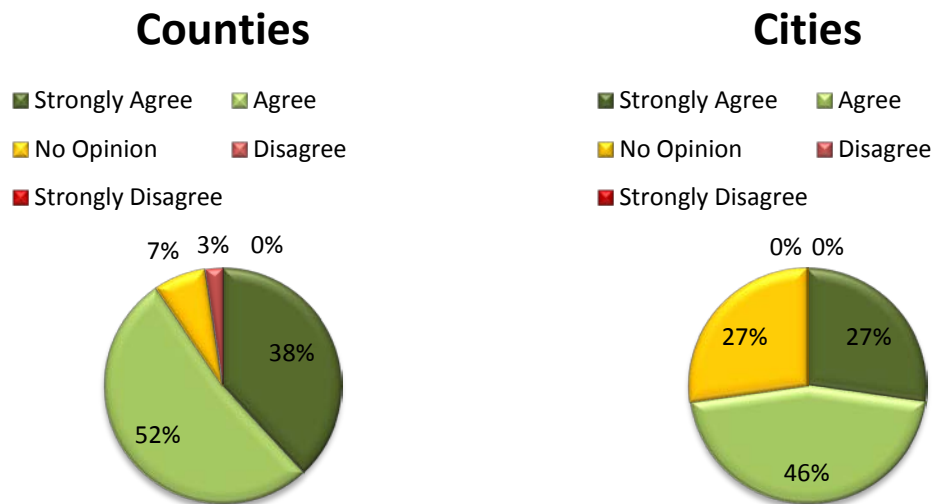


Figure 9: Pie graphs showing the percentage of Counties and Cities that strongly agree or agree that their respective lead agency oversight resulted in operator compliance with the requirement of each approved Reclamation Plan.

**Question No. 7 – Has your agency adopted Mineral Resources Management Policies (MRMP) recognized by the SMGB?** Almost two-thirds (62%) of the responding Counties, and just less than one-half (46%) of the responding Cities strongly agree or agree that their respective agency has adopted MRMP that have subsequently been recognized by the SMGB (Figure 10). The number of lead agencies where MRMP apply is currently unknown (SMGB, 2007), but it is estimated to lie between 109 and 536, albeit effectively the number of lead agencies affected by MRMP is equal to the number of SMARA lead agencies (115 SMARA lead agencies). This response from both responding Counties and responding Cities is not consistent with SMGB records that show only about 28 SMARA lead agencies have MRMP that have been recognized by the SMGB, although a significant number of SMARA lead agencies likely have MRMP that have not been recognized by the SMGB.

# Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

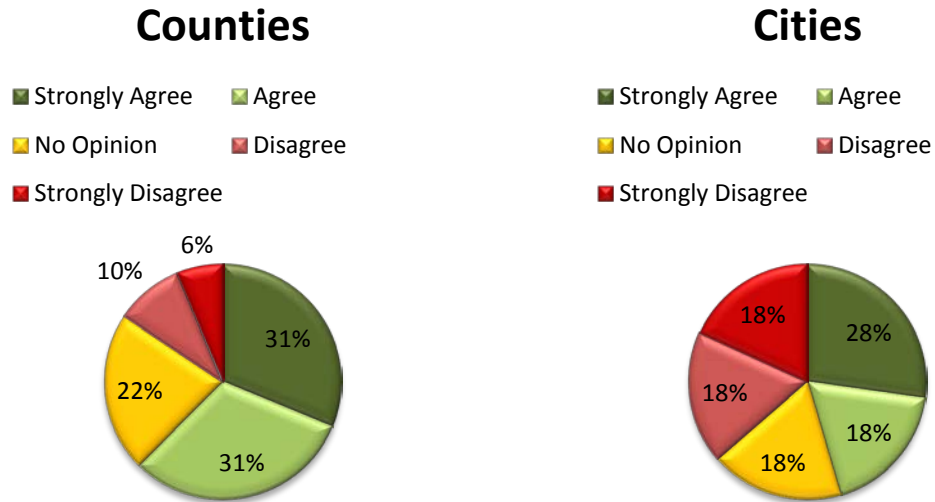


Figure 10: Pie graphs showing the percentage of Counties and Cities that have adopted Mineral Resources Management Policies (MRMP) recognized by the SMGB.

**Question No. 7a. – Mineral lands classified by the State Geologist are addressed in your MRMP?** Half (50%) of the responding Counties, and less than one-half (46%) of the responding Cities strongly agree or agree that their respective lead agency have mineral lands classified by the State Geologist that have been addressed in their respective MRMP (Figure 11).

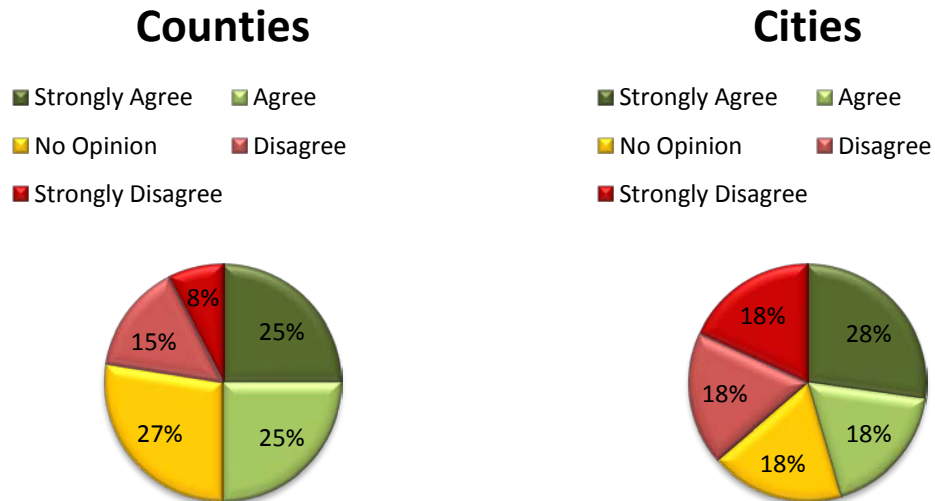


Figure 11: Pie graphs showing the percentage of Counties and Cities that have mineral lands classified by the State Geologist and that are addressed in their respective MRMP.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

**Question No. 7b. – Mineral lands designated by the SMBG are addressed in your MRMP?** About half (51%) of the responding Counties, and slightly less than one-half (46%) of the responding Cities strongly agree or agree that their respective lead agency have mineral lands designated by the SMBG that are addressed in their respective MRMP (Figure 12).

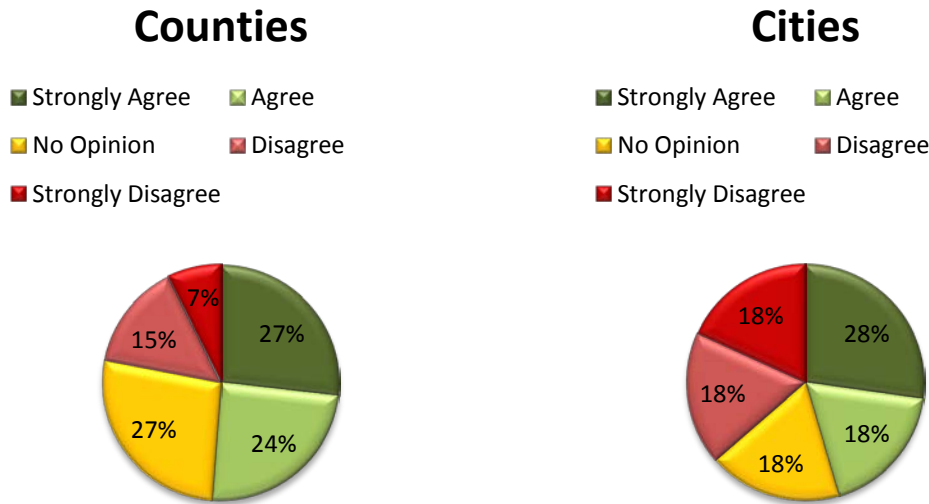


Figure 12: Pie graphs showing the percentage of Counties and Cities have mineral lands designated by the SMBG that are addressed in their respective MRMP.

**Question No. 8 – Has your SMARA program been adversely affected by staff turnover and/or staff reductions?** One-third (33%) of the responding Counties, and about one-fifth (18%) of the responding Cities strongly agree or agree that their respective SMARA program has been adversely affected by staff turnover and/or staff reductions (Figure 13).

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

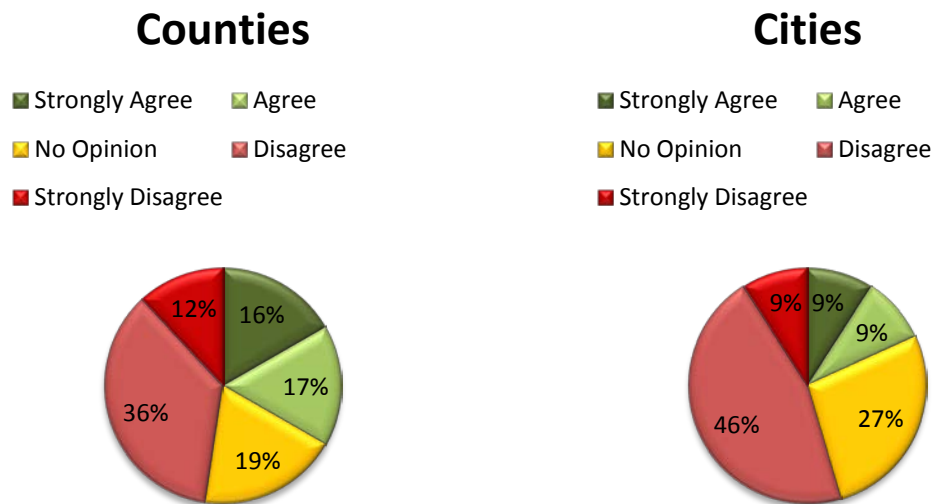


Figure 13: Pie graphs showing the percentage of Counties and Cities that have SMARA programs that have been adversely affected by staff turnover and/or staff reductions.

### **Question No. 9 – Is your agency in favor of more State involvement or assistance in the implementation of SMARA in the following issue areas?**

Some SMARA lead agencies would support more State assistance related to the review of reclamation plans, financial assurances and mineral conservation. In addition, assistance in regards to enforcement and determination of vested rights, determination of instream vested rights and associated expiration dates, would be beneficial. Specifically, the following:

**9a. Permitting:** About one-fifth (19%) of the responding Counties, and half (50%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in permitting (Figure 14).

# Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

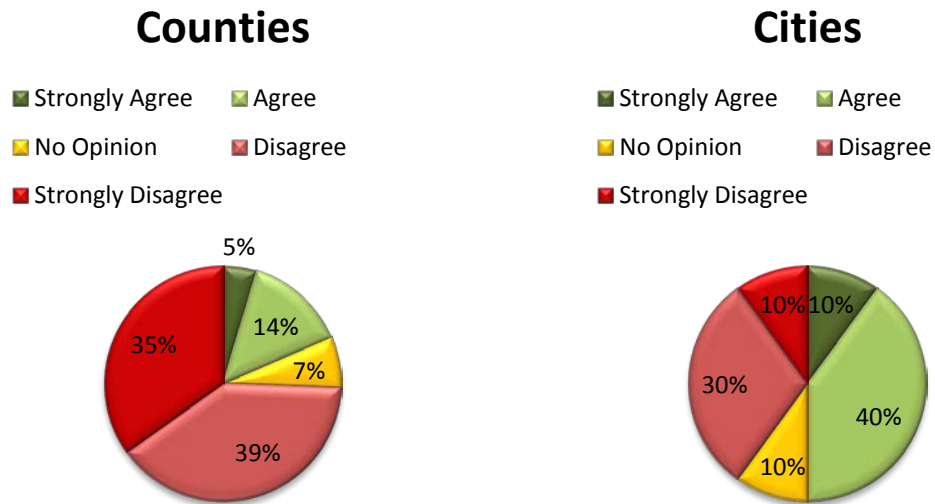


Figure 14: Pie graphs showing the percentage of Counties and Cities in favor of more State involvement or assistance in the implementation of SMARA in permitting.

**9b. Inspections:** About one-fifth (19%) of the responding Counties, and half (50%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in inspections (Figure 15).

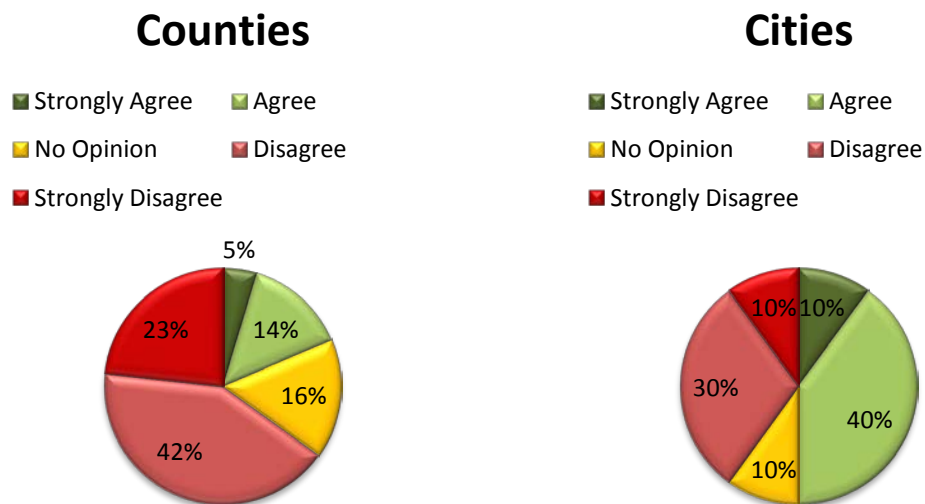


Figure 15: Pie graphs showing the percentage of Counties and Cities that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in inspections.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

**9c. Reclamation plans:** Almost one-third (29%) of the responding Counties, and less than half (40%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in reclamation plans (Figure 16).

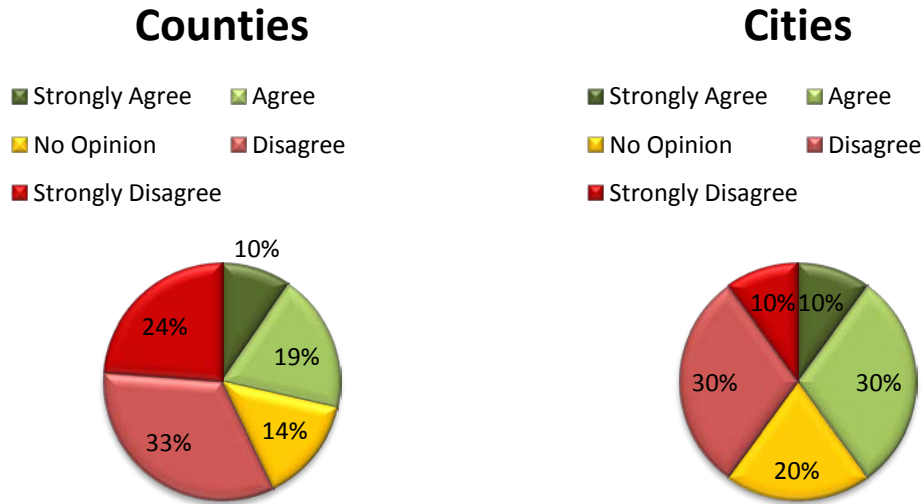


Figure 16: Pie graphs showing the percentage of Counties and Cities that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in reclamation plans.

**9d. Financial assurances:** Almost one-third (31%) of the responding Counties, and slightly more than half (56%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in financial assurances (Figure 17).

# Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

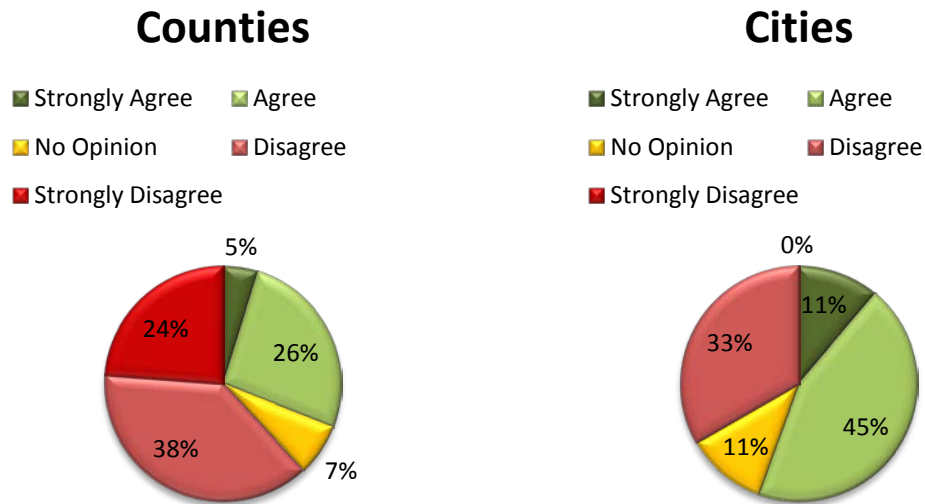


Figure 17: Pie graphs showing the percentage of Counties and Cities that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in financial assurances.

**9e. Mineral conservation:** Less than half (42%) of the responding Counties, and less than half (40%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in mineral conservation (Figure 18).

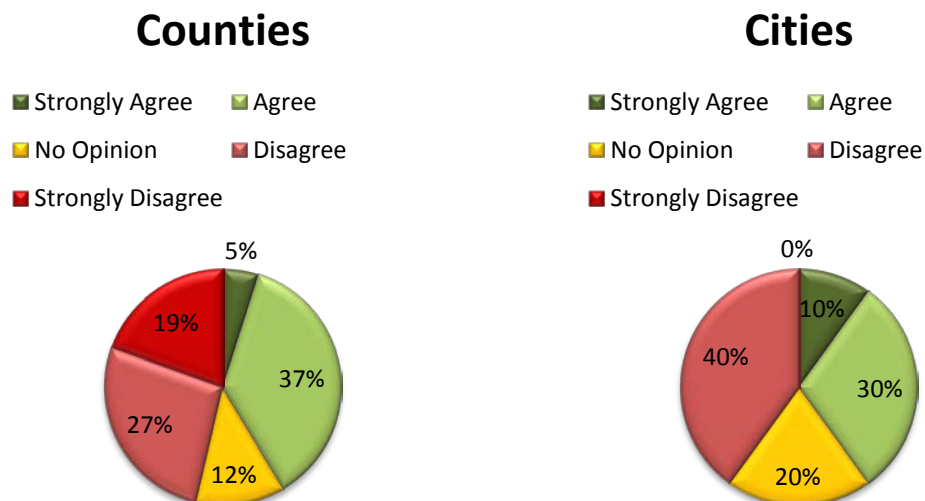


Figure 18: Pie graphs showing the percentage of Counties and Cities that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in mineral conservation.



## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

**Questions No. 10 – Is your agency in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections) while retaining local land use (permitting) authority?** About one-fifth (19%) of the responding Counties, and half (50%) of the responding Cities strongly agree or agree that their respective lead agency would be in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections) while retaining local land use (permitting) authority (Figure 19). Some lead agencies recognize the duplicity in the review of reclamation plans and financial assurances at both the State and local lead agency level, and would be in favor of streamlining, with a preference for local lead agency control. Others that may be in favor of State control, would still desire to maintain input regarding mine permits and reclamation of lands within their respective jurisdictions.

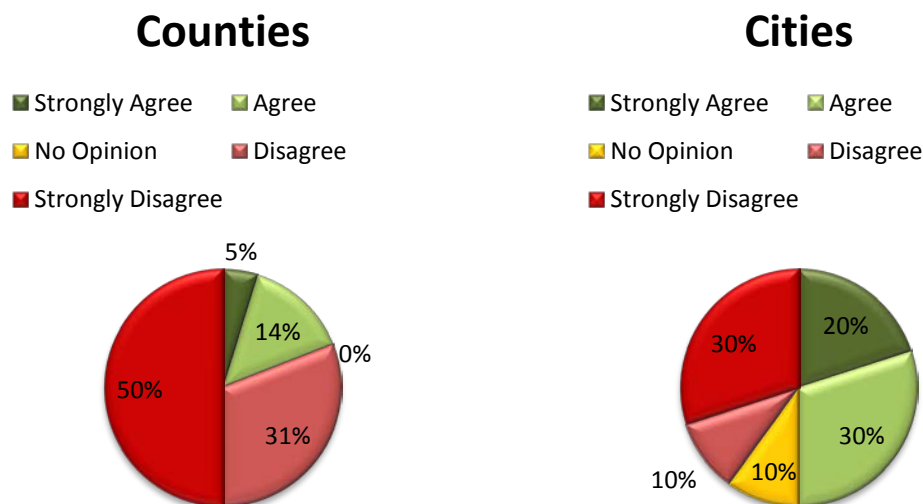


Figure 19: Pie graphs showing the percentage of Counties and Cities that are in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections) while retaining local land use (permitting) authority.

### CONCLUSIONS AND RECOMMENDATIONS

Based on the survey's results summarized above, and based on those lead agencies affected by SMARA and that responded to the survey, the following conclusions are offered:

- All (100%) of the Counties, and slightly over three-quarters (82%) of the Cities strongly agree or agree that their respective lead agency is familiar with both the statutory and regulatory aspects of SMARA (Figure 2). This may infer that about one-quarter of the Cities responding to the questionnaire are not familiar with SMARA.

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

- Eighty percent (80%) of the Counties, and slightly less than one-half (45%) of the Cities strongly agree or agree that their respective lead agency have dedicated expertise and resources to implement SMARA.
- Three-quarters (77%) of the Counties, and slightly under one-half (46%) of the Cities strongly agree or agree that their respective lead agencies charge each mine operator an annual administrative fee.
- Just under two-thirds (61%) of the Counties, and less than one-half (40%) of the Cities are aware that their respective lead agency can contract with CGS.
- Most (95%) of the Counties, and three-quarters (75%) of the Cities have processed permit applications for new or expanded mining projects in the last five years (Figure 6). Notably, one-quarter (25%) of the cities have not processed any permit applications in the last five years. Less than half (43%) of the Counties, and slightly more than one-half (55%) of the Cities strongly agree or agree that their respective lead agency takes more than a year to process a typical reclamation plan application.
- Most (90%) of the Counties, and about three-quarters (73%) of the Cities strongly agree or agree that their respective lead agency oversight resulted in operator compliance with the requirements of each approved Reclamation Plan.
- Half (50%) of the Counties, and less than one-half (46%) of the Cities strongly agree or agree that their respective lead agencies have mineral lands classified by the State Geologist that have been addressed in their respective MRMP. About half (51%) of the Counties, and slightly less than one-half (46%) of the Cities strongly agree or agree that their respective lead agency has mineral lands designated by the SMBG that are addressed in their respective MRMP.
- One-third (33%) of the Counties, and about one-fifth (18%) of the Cities strongly agree or agree that their respective SMARA programs have been adversely affected by staff turnover and/or staff reductions.
- About one-fifth (19%) of the Counties, and half (50%) of the Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in permitting. About one-fifth (19%) of the Counties, and half (50%) of the Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in inspections. Almost one-third (29%) of the Counties, and less than half (40%) of the Cities strongly agree or agree that their respective

## Report on Survey of Lead Agencies Affected by the Surface Mining and Reclamation Act

lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in reclamation plans. Almost one-third (31%) of the Counties, and slightly more than half (56%) of the Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in financial assurances. Less than half (42%) of the Counties, and less than half (40%) of the Cities strongly agree or agree that their respective lead agency would be in favor of more State involvement or assistance in the implementation of SMARA in mineral conservation.

- About one-fifth (19%) of the Counties, and half (50%) of the Cities strongly agree or agree that their respective lead agency would be in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections) while retaining local land use (permitting) authority.

Based on the survey's results summarized above, the following recommendations directed toward lead agencies affected by SMARA are offered:

- Enhance and expand outreach efforts toward those lead agencies affected by SMARA, especially those that were non-responsive, or where there are indications that such lead agencies are poorly implementing SMARA. These efforts could, for example, take the form of regional workshops, additional Lead Agency Review Team (LART) involvement, etc.
- Commence efforts to streamline SMARA and minimize the amount of duplicity in the SMARA program (i.e., duplicity exist in the review of amended and new reclamation plans, review of adjusted and new financial assurance cost estimates, conduct of site inspections, etc.).
- Continue efforts implemented by OMR to tailor workshops to the specific needs of its stakeholders (i.e., inspections, and special needs of lead agencies and operators, etc.).
- Encourage lead agencies with limited or no SMARA resources to forfeit SMARA responsibilities and obligations to the SMGB for a minimum of three years, with the exception of permitting. Such efforts could take the form of the Memorandum of Understanding (MOU) established between the County of Alpine and the SMGB (Appendix C).
- Explore funding sources at the State and Federal levels (i.e., grants, etc.) for outreach and education to lead agencies and the public to fulfill the intent of of State policy pertaining to SMARA.

**Report on Survey of Lead Agencies Affected  
by the Surface Mining and Reclamation Act**

**REFERENCES**

California State Mining and Geology Board Information Report No. 2007-01,  
June 2007, Report on SMARA Lead Agency Performance Regarding Mine  
Reclamation: prepared by Stephen M. Testa and David J. Beeby.

California State Mining and Geology Board Information Report No. 2007-04,  
September 2007, A Comparison of Regulatory Surface Mining  
Programs in the Western United States: prepared by David J. Beeby.

**ACKNOWLEDGEMENT**

The SMGB would like to acknowledge the following individuals in the  
preparation of this information report: Will Arcand, Elizabeth Box, Nicole  
Bristow, and Jocelyn Fernandez.

## **APPENDICES**



## **APPENDIX A**

### **Survey Letter**







## STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: [conservation.ca.gov/smgb](http://conservation.ca.gov/smgb)

**Erin D. Garner, CHAIR**  
**BRIAN BACA, VICE CHAIR**

**JOHN LANE**

**ROBERT TEPEL**  
**CHARLIE WYATT**

December 30, 2010

**Re: Request for Lead Agency Assistance - State Mining and Geology Board  
Review of the Surface Mining and Reclamation Act (SMARA)**

Dear :

As you are probably aware, the State Mining and Geology Board (SMGB) is authorized to represent the State's interests in the development, utilization, and conservation of the State's mineral resources, the reclamation of mined lands, and federal matters pertaining to surface mining within the State. The extraction of minerals in a responsible manner is essential to the continued economic well-being of the State and to the needs of society, and the thoughtful reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

The SMGB, also, is authorized to annually report to the legislature, develop regulations, and provide policies and criteria to assist cities, counties and state agencies in the exercise of their responsibilities in the implementation of SMARA.

This Act went into effect on January 1, 1975. Since such time, it has been amended twenty-eight times. The SMGB is currently reviewing and considering legislative and regulatory changes to SMARA. To aid the SMGB in its assessment, we would appreciate your response to the attached questionnaire. Your response will be compiled along with others from lead agencies statewide, and used in the SMGB's deliberations.

We would appreciate receiving your response at the SMGB's office via mail or email ([smgb@consrv.ca.gov](mailto:smgb@consrv.ca.gov)) at your earliest convenience, but not later than January 31, 2011.

Thank you for your cooperation with this request. Please do not hesitate to contact us at (916) 322-1082 should you have any questions regarding this request.

Sincerely,

Stephen M. Testa  
Executive Officer

## Lead Agency Questionnaire

Q #	Questions		
1.	Our agency is familiar with both statutory and regulatory aspects of SMARA?		
2.	Our agency has dedicated expertise (i.e., geologist or engineer on staff) and resources (budgeted staff positions) to adequately implement SMARA?		
3.	Our agency charges each mine operator an annual administrative fee as a SMARA lead agency?		
4.	Our agency is aware that it can contract with the SMGB or California Geological Survey to implement certain SMARA program elements (e.g., inspections, mineral resource conservation program, development of MRMP, etc.)		
5.	In regards to permitting:		
	5a. Our agency has processed permit applications for new or expanded mining projects in the last 5 years.		
	5b. on average, our agency takes more than one year to process a typical Reclamation Plan application.		
6.	Oversight by our agency has resulted in operator compliance with the requirements of each approved reclamation plan.		
7.	Our agency has adopted Mineral Resources Management Policies (MRMP) recognized by the SMGB.		
	a. Mineral lands classified by the State Geologist are addressed in our MRMP.		
	b. Mineral lands designated by the SMGB are addressed in our MRMP.		
8.	Our SMARA program has been adversely affected by staff turnover and/or staff reductions.		
9.	Our agency is in favor of more State involvement or assistance in the implementation of SMARA in the following issue areas:		
	a. Permitting		
	b. Inspections		
	c. Reclamation plans		
	d. Financial assurances		
	e. Mineral conservation		
10.	Our agency is in favor of direct State implementation of SMARA (reclamation plan amendments and ongoing mine inspections) while retaining local land use (permitting) authority.		

Additional Comments:

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## **APPENDIX B**

### **Summary of Responses to Survey**



	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
County																		Comments
Alameda																		
Alpine																		
Amador	5	4		4	5	2	5	5	5	5	2	1	2	4	2	4	1	3) The only "administrative" fee Amador County currently receives is in the form of inspection fees which are billed at the Planning Department's hourly rate of \$66.00.
Butte	4	2	5	2	5	4	4	2	2	2	5	4	4	5	4	5	2	3) Hourly based deposit fee assessed for inspections, FACE review. 9a) Butte County wants to retain its sole discretionary authority with regard to permitting but would appreciate input from DOC about approaches to permitting, especially permits with a proposed long life (for example, greater than 20 years).
Calaveras	5	4	4	4	5	3	4	3	3	3	5	2	2	2	2	2	1	
Contra Costa	5	5	4	4		2	4		4	4	1	1	1	1	1	1	1	5a) No, we have not processed. 9) Appreciate the technical assistance received in the past.
Colusa																		
Del Norte																		
Fresno																		
Glenn																		
Humboldt																		
Imperial	4	4	4	2	5	2	4		3	3	2	1	1	1	1	2	1	
Inyo																		
a. Kern	4	1	4	4	5	5	4	3	3	3	4	1	1	1	1	1	1	OMR needs more staff in order to render prompt and accurate responses to lead agency SMARA questions. The Act needs to be cleaned up.
b. Kern	5	4	1	5	5	2	5	3	3	3	1	1	1	1	1	1	1	

	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
County																		Comments
c. Kern	5	4	4	3	5	2	4	4	4	4	3	2	2	3	3	3	1	The Fifth District Court of Appeal recently ruled against Kern County on a surface mining operation conducted on federally administered land. Kern County prepared an subsequently adopted a Mitigated negative Declaration in considering a reclamation only plan that addressed reclamation of the site in addition to day to day activities affecting reclamation, in accordance with the provisions of SMARA. The court ruled that as the CEQA Lead Agency, Kern County must not only consider activities and impacts related to reclamation within its purview, but now the actual mining operations previously approved by the BLM as well. Despite the MOUs signed with the BLM at the State and County levels, the NEPA documents prepared by the referenced federal agency were determined by the court to not be "functionally equivalent" to those required to satisfy CEQA. Consequently, Kern County is now forced to reject NEPA documents prepared separately from the County's CEQA process. As such, future mining operations on federally administered land will be subject to the preparation of joint environmental documents and simultaneous consideration by the BLM and County.
Kings	5	4	2	2	4	3	5	3	3	3	2	2	3	4	4	4	2	Office of Mine Reclamation is often at odds with projects involving Caltrans and local water and irrigation districts. As a result, they often miss the need and value of working in partnership with mutually beneficial projects that benefit not only responsible mineral resource protection, but also enhanced groundwater recharge, enhanced agriculture production, reduced air emissions with shorter truck trips and other mutually beneficial long range interests of not only local jurisdictions but also the State's long range interests. Implementation of SMARA at our local level must remain integrated with local representation to ensure beneficial projects are facilitated rather than hindered.

	Q1	Q2	Q3	Q4	Q5		Q6	Q7		Q8	Q9					Q10	
					a	b		a	b		a	b	c	d	e		
County																	Comments
Lake	4	4	3	3	5	5	4	5	3	3		2	2	2	2	2	1) The SMARA Regulations Document is 87 pages. What is important is an agency's ability to use this document as reference material in order to apply the rules and regulations to routine practices and specific unplanned circumstances. Current agency resource staff has the training and knowledge to perform the routine SMARA regulated activities. If required, resource staff has the necessary training to access the SMARA Regulations and is capable of developing a plan to fit any operator and/or staff problem or circumstance that has been encountered in order to remain in compliance with SMARA Regulations. 2) Our agency has resource staff positions that can adequately implement SMARA. The positions are not filled by a geologist or engineer. However, if staff believes a geologist or engineer's expertise is required, staff will contact a geologist or engineer at OMR, discuss the issues and if necessary arrange a convenient date and time to visit the site. Our agency has done this in the past and we feel we have an excellent working relationship with OMR field staff. 3) Our agency has a fee schedule. \$2530.00 per year for constructed gold mill or similar processing and \$634.00 per year for aggregate mines. 4) The agency knows it can contract with SMGB for certain SMARA program elements; however, Lake County does not contract out services at this time. 5a) We approved two new mining projects, renewed permits for four mining operations, approved an expanding operation, approved a permit for an RP amendment and currently scheduling a Planning Commission hearing for a new project. 5b) No, when the applicant submits a complete application package, the process would take less than a year. 6) Our agency has one mining operator that is not in compliance out of 12 mining operations, nine active, two reclamation and one idle. 7) Our agency follows the Lake County Aggregate Resource Management Plan that was adopted November 19, 1992, and Lake County Code, Chapter 24, Surface Mining and reclamation Ordinance. 8) Reductions to agency staff and resource staff have occurred, the SMARA program has been a responsibility for the Resource Planning staff of the Planning Division. Staff has kept up on all annual inspections, financial assurance/document reviews and has been given

	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
County																		Comments
																		the time necessary to complete the CEQA requirements for permit and reclamation plan approvals. 9) Our agency believes that the balance between State and agency involvement is balanced. State involvement for training programs are always a good idea and the fact that OMR is implementing a broader training spectrum for individual agencies is commendable. 9a) No. 9b) Some assistance may be required. 9c) OMR review procedures and their comments are appreciated. 9d) OMR review procedure and their comments are appreciated. 9e) No, the local agencies have the best view to decide their mineral conservation issues. 10) Our agency is not in favor of direct State implementation of SMARA even if the County can retain local permitting authority.
Lassen																		
Los Angeles	4	4	2	2	4	4	4	4	4	4	4	2	5	5	5	2	5	The Dept. of Regional Planning is the lead permitting agency in L.A. County. The Dept. of Public Works is the agency with primary responsibility for monitoring of conditions related to mining and reclamation. DPW charges fees for inspections and DPW has both engineers and geologists on staff. DPW only invoices each mine operator for charges related to inspection, review of financial assurances and review of engineering documents/plans.
Madera																		
Marin	4	2	4	4	2	3	4	4	4	4	2	4	4	4	4	4	4	
Mariposa																		
a. Mendocino	4	3	4	4	4	3	5		2	2	3	1	3	3	4	4	1	
b. Mendocino	4	3	2	4	5	3	3	5	3	3	5	1	3	3	4	4	1	



[illegible]

[illegible]

[illegible]

	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
County																		Comments
Sierra	5	2	1	4	4	4	4	4	1	1	4	2	2	2	2	2	1	7a) No classification by CGS in Sierra County. 7b) No classification by CGS in Sierra County. 10) Redundant or independent (state) review of (local) Lead Agency - Approved reclamation plans and amendments under SMARA amendments (such as SB 668) is frustratingly bureaucratic, time-consuming, expensive, and undermining (no pun intended). The legislative's finding ( PRC 2711(c)) that due to diverse conditions throughout the state, the principal responsibility for approving reclamation plans should be vested in lead agencies (PRC 2728). It should either be the responsibility of local agencies or state regulations; not both. Our jurisdiction prefers the former, just as the state legislature intended when SMARA was enacted in 1975.
a. Siskiyou	5	4	5	5	5	2	4	1	1	1	4	1	2	2	2	4	2	1) Code revision to address abandoned mine determination reflective to site conditions and operations, not tied to production amount. 2) Code revision to allow approval of idle mines under and approved IMP, to qualify for the Low Gross Exemption request. 3) Code revision to address means for determining when an operator should submit a FACE. Annual FACE reports for low volume mines or idle mines is not necessary and adds a cost burden to these operators. 4) Item # 15, (Commodities and Production), on the MRRC-2 report should change the word "produced" to "sold" so as to clear up the confusion operators have with regards to this reporting item.
b. Siskiyou	4	4	4	4	4	2	4	2	2	2	2	4	2	4	2	4	1	
Solano	4	4	4	4	4	2	4	5	5	5	3	3	3	3	4		2	
Sonoma	5	5	5	5	5	5	5		4	4	2	1	1	1	1	1	1	Item #9 is missing the issue of "enforcement." Lead agencies may need more back up of enforcement issues, not just in regard to the "3098 List". The state could provide more guidance on vested rights, specifically instream vested rights and their expiration issue. Monitoring is duplicative by having both state and lead agency oversight. The monitoring should be done by the permitting agency with less oversight by the state.

[illegible]

	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
County																		Comments
Yolo	4	4	2	4	4	2	4	5	5	5	2	2	2	2	2	2	2	3) Yolo County does not charge an "annual administrative fee as a SMARA lead agency" per se. The County adopted a Gravel Mining Fee ordinance that established aggregate mining fees that include the Off Channel Mining Plan (OCMP) Administrative Fee of \$0.08 per ton of aggregate material sold for participating aggregate producers in the Cache Creek Area Plan. The ordinance specifically states that the purpose of the OCMP Administrative Fee is to implement the OCMP; administer long-term mining permits; administer development agreements; and, inspect mining and reclamation operations. 9) Yolo County appreciates the resources and assistance provided by Department of Conservation staff and will continue to collaborate with the Department to resolve pertinent issues. However, Yolo County staff is confident in our ability to implement SMARA and the CCAP without additional state involvement or oversight.

[illegible]

[illegible]

	Q1	Q2	Q3	Q4	Q5		Q6	Q7			Q8	Q9					Q10	
					a	b			a	b		a	b	c	d	e		
<b>City</b>																		<b>Comments</b>
Oceanside																		
Oroville																		
Pacifica																		
Palmdale																		
Rancho Cordova																		
Paso Robles																		
Poway																		
Redding																		
Redlands																		
Rialto																		
Sacramento																		
San Bernardino																		
San Diego																		
San Marcos																		
Santa Maria																		
Santee																		
Taft																		
Tracy																		
Truckee																		
Twenty Nine Palms																		
Upland																		

Note: Responses received may not necessarily reflect that of the Board of Supervisors, Planning Commission, or other lead agency jurisdictional body.



## **APPENDIX C**

### **Memorandum of Understanding Between County of Alpine and SMGB**



**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE COUNTY OF ALPINE**  
**AND THE CALIFORNIA STATE MINING AND GEOLOGY BOARD**  
**REGARDING LEAD AGENCY RESPONSIBILITY PURSUANT TO THE CALIFORNIA**  
**SURFACE MINING AND RECLAMATION ACT OF 1975**

**THIS Memorandum of Understanding** is entered into by and between the California State Mining and Geology Board through its Chairman (referred to herein as "SMGB"); and the County of Alpine (referred to herein as "County"), through its County Board of Supervisors, for the purposes of:

- (1) Assuring that the adverse environmental effects of mining are minimized or eliminated and that surface mining operations throughout the County are reclaimed to a beneficial end use;
- (2) Ensuring that effective administration of surface mining and reclamation requirements for surface mining operations within the jurisdiction of the County to which both federal rules and California's Surface Mining and Reclamation Act (Public Resources Code section 2710 et seq., hereinafter referred to as SMARA) will continue within the County;
- (3) Achieving coordination between the County and the SMGB in administering rules governing surface mining, surface mine inspections, financial assurances, and reclamation; and
- (4) Eliminating unnecessary duplication, wherever possible, between the County and the SMGB in implementing state and federal requirements.
- (5) Avoiding the necessity of administrative proceedings that otherwise might be required pursuant to Public Resources Code section 2774.4(a) to provide for SMGB's assumption of lead agency authority in the County.

**WHEREAS**, pursuant to SMARA, local government agencies are tasked with primary legal responsibility for regulating surface mining and reclamation.

**WHEREAS**, pursuant to Public Resources Code section 2774.4 SMGB may assume lead agency powers when a local agency has failed to carry out certain duties under SMARA.

**WHEREAS**, given certain budgetary circumstances pertinent to the County, the parties recognize that the effective administration of SMARA in that jurisdiction would be best served by an assumption of SMARA lead agency authority, from the County by the SMGB for all surface mining operations within the jurisdiction of the County

notwithstanding the lack of any finding that County has failed to carry out its duties under SMARA.

**NOW, THEREFORE BE IT RESOLVED** that the parties to this memorandum hereby agree that in regulation of surface mining operations on lands within the jurisdiction of the County:

- (1) The SMGB will assume and carry out the duties of the County as SMARA lead agency from and after the effective date of this agreement at no cost to County.
- (2) The SMGB will work cooperatively with the County to ensure that conditions required of surface mine operators (as defined by federal law, by SMARA, and any other relevant regulations and ordinances) are met, in order to minimize adverse environmental impacts and achieve mine reclamation in accordance with law.
- (3) The SMGB will ensure preparation of environmental documents that conform with the National Environmental Protection Act and California Environmental Quality Act, as appropriate, when such documents are needed for the approval of federally mandated Plans of Operation and state mandated SMARA reclamation plans.
- (4) The SMGB will ensure preparation of a single reclamation plan per surface mining operation, or amendment thereof, that conforms to federal, state and County requirements.
- (5) The SMGB will approve financial assurances, and any adjustments thereto, for reclamation in an amount that conforms to state and county requirements. Financial assurances will be payable to the SMGB and the Department of Conservation.
- (6) The SMGB will conduct and coordinate enforcement and monitoring responsibilities, to ensure the correction and abatement of any violation of applicable mining law within the County. An inspection of each of the County's mining operations will be carried out not less than once annually using the State-approved inspection report form pursuant to SMARA 2774(b). The SMGB will also coordinate with the County during such inspections.
- (7) The SMGB will administer the release of financial assurances to ensure that reclamation of the particular mining operation has been completed in accordance with the approved reclamation plan. A joint final inspection between the SMGB and the County will be conducted prior to any final release of financial assurances for any mining operation. Written authorization will be obtained from each payee prior to the release of the financial assurance obligation.
- (8) No sooner than three years after the SMGB has assumed the County's SMARA lead agency responsibilities and obligations per this MOU, and if the SMGB finds, after a public hearing, that the County wishes to and evidences its capability to



resume its SMARA lead agency role, the SMGB shall restore to the County its powers assumed by the SMGB through this MOU, pursuant to Public Resources Code Section 2774.4(b)

**Effective Date of this Agreement:**

This agreement shall become binding upon each party by authorized signature of each party.

**Modification of this Agreement:**

This agreement may be modified upon the initiative of any of the parties for the purpose of ensuring consistency with state or federal statutes or regulations, or for any other purpose mutually agreed upon. In order to be effective, any such modification must be in writing, subject to thirty (30) days' notice, and must be signed by all of the designated parties.

**Termination of this Agreement:**

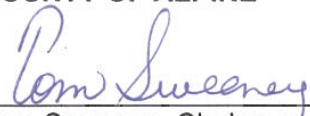
This agreement shall continue in force until terminated when the SMGB restores the County to lead agency status under SMARA as set forth herein.

**STATE OF CALIFORNIA**

  
\_\_\_\_\_  
Erin Garner, Chairman  
State Mining and Geology Board

Date: 6/30/2011

**COUNTY OF ALPINE**

  
\_\_\_\_\_  
Tom Sweeney, Chairman  
Board of Supervisors

Date: 6/7/2011

**APPROVED AS TO FORM**

By:   
\_\_\_\_\_  
Martin Fine, County Counsel