

California

# Department of Conservation

Mine Reclamation

## STATUTES & REGULATIONS

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# TABLE OF CONTENTS

<b>CALIFORNIA STATUTES</b> .....	<b>1</b>
<b>PUBLIC CONTRACT CODE</b> .....	<b>1</b>
DIVISION 2. GENERAL PROVISIONS.....	1
PART 2. CONTRACTING BY STATE AGENCIES.....	1
CHAPTER 2. State Acquisition of Goods and Services.....	1
Article 2. Approval of Contracts .....	1
§ 10295.5.....	1
PART 3. CONTRACTING BY LOCAL AGENCIES .....	2
CHAPTER 1. Local Agency Public Construction Act .....	2
Article 42. Public Entities-Public Work and Public Purchases .....	2
§ 20676.....	2
<b>PUBLIC RESOURCES CODE</b> .....	<b>2</b>
DIVISION 1. ADMINISTRATION .....	2
CHAPTER 2. Department of Conservation.....	2
Article 1. Organization and General Powers .....	2
§ 607.....	2
DIVISION 2. GEOLOGY, MINES AND MINING.....	2
CHAPTER 1. Definitions .....	2
§ 2001.....	2
§ 2002.....	3
§ 2002.5.....	3
§ 2003.....	3
§ 2004.....	3
§ 2005.....	3
§ 2006.....	3
§ 2006.5.....	3
§ 2007.....	3
§ 2008.....	3
CHAPTER 2. The California Geological Survey .....	3
§ 2207.....	4
§ 2207.2.....	7
CHAPTER 9. Surface Mining and Reclamation Act of 1975.....	7
Article 1. General Provisions .....	7

§ 2710.....	7
§ 2711.....	8
§ 2712.....	8
§ 2713.....	8
§ 2714.....	8
§ 2715.....	11
§ 2715.5.....	11
§ 2716.....	12
§ 2717.....	12
§ 2718.....	13
§ 2719.....	13
Article 2. Definitions.....	13
§ 2725.....	13
§ 2726.....	14
§ 2727.....	14
§ 2727.1.....	14
§ 2728.....	14
§ 2729.....	14
§ 2730.....	14
§ 2731.....	14
§ 2732.....	15
§ 2732.5.....	15
§ 2733.....	15
§ 2734.....	15
§ 2735.....	15
§ 2736.....	15
Article 3. District Committees.....	15
§ 2740.....	15
§ 2741.....	16
Article 4. State Policy for the Reclamation of Mined Lands.....	16
§ 2755.....	16
§ 2756.....	16
§ 2757.....	16
§ 2758.....	16
§ 2759.....	17
§ 2760.....	17

§ 2761.....	17
§ 2762.....	18
§ 2763.....	19
§ 2764.....	19
Article 5. Reclamation Plans and the Conduct of Surface Mining Operations .....	20
§ 2770.....	20
§ 2770.1.....	24
§ 2770.5.....	24
§ 2770.6.....	25
§ 2771.....	25
§ 2772.....	26
§ 2772.1.....	27
§ 2772.5.....	30
§ 2772.6.....	30
§ 2772.7.....	30
§ 2773.....	30
§ 2773.1.....	31
§ 2773.1.5.....	34
§ 2773.15.....	34
§ 2773.2.....	35
§ 2773.3.....	35
§ 2773.4.....	35
§ 2773.5.....	39
§ 2774.....	39
§ 2774.1.....	41
§ 2774.2.....	43
§ 2774.2.5.....	45
§ 2774.3.....	46
§ 2774.4.....	46
§ 2774.5.....	48
§ 2775.....	48
§ 2776.....	49
§ 2777.....	49
§ 2777.3.....	49
§ 2777.5.....	50
§ 2778.....	51

§ 2779.....	52
Article 6. Areas of Statewide or Regional Significance.....	52
§ 2790.....	52
§ 2791.....	52
§ 2792.....	52
§ 2793.....	53
Article 7. Fiscal Provisions.....	53
§ 2795.....	53
§ 2796.5.....	53
<b>WATER CODE .....</b>	<b>55</b>
DIVISION 7. WATER QUALITY.....	55
CHAPTER 5.7. Drainage from Abandoned Mines.....	55
§ 13397.....	55
§ 13397.5.....	56
§ 13398.....	57
§ 13398.3.....	58
§ 13398.5.....	59
§ 13398.7.....	59
§ 13398.9.....	60
<b>CALIFORNIA CODE OF REGULATIONS .....</b>	<b>61</b>
TITLE 14. NATURAL RESOURCES.....	61
DIVISION 2. DEPARTMENT OF CONSERVATION.....	61
CHAPTER 8. Mining and Geology.....	61
Subchapter 1.State Mining and Geology Board.....	61
Article 1. Surface Mining and Reclamation Practice.....	61
§ 3500. Purpose.....	61
§ 3501. Definitions.....	61
§ 3502. The Reclamation Plan.....	62
§ 3503. Surface Mining and Reclamation Practice.....	65
§ 3504. Administration by Lead Agency.....	66
§ 3504.5. Conduct of Mine Inspections.....	66
§ 3504.6. Guidance Document for Surface Mine Inspectors (GDSMI).....	67
§ 3505. Special Provisions.....	67
Article 2. Areas Designated to be of Regional Significance.....	68
§ 3550. Introduction.....	68
§ 3550.1. Tujunga and Pacoima Wash Areas of the San Fernando Valley Region, Los Angeles County.....	68

§ 3550.2.	Santa Clara River Valley Area of the Western Ventura County Region, Ventura County .....	69
§ 3550.3.	Simi Valley Area of the Simi Region, Ventura County .....	70
§ 3550.4.	Santa Ana River, Santiago Creek Arroyo Trabuco, San Juan Creek, and Temescal Valley Areas of the Orange County-Temescal Valley Region, Orange, Riverside, and San Bernardino Counties .....	70
§ 3550.5.	San Gabriel River, Eaton Wash, Devils Gate, and Palos Verdes Areas of the San Gabriel Valley Region, Los Angeles County .....	71
§ 3550.6.....	Construction Aggregate Resources, Western San Diego County Region .....	73
§ 3550.7.	Construction Aggregate Resources, Claremont – Upland Region .....	74
§ 3550.8.	Constructive Aggregate Resources, San Bernardino Region.....	75
§ 3550.9..	Construction Aggregate Resources, Saugus-Newhall and Palmdale Regions .....	79
§ 3550.10.	Construction Aggregate Resources, South San Francisco Bay Region ..	79
§ 3550.11.	Construction Aggregate Resources, North San Francisco Bay Region...	81
§ 3550.12.	Construction Aggregate Resources, Monterey Bay Region .....	84
§ 3550.13.....	Construction Aggregate Resources, Fresno Production-Consumption Region .....	85
§ 3550.14.	Construction Aggregate Resources, Stockton-Lodi Production-Consumption Region .....	85
§ 3550.15.	Construction Aggregate Resources, Palm Springs Production-Consumption Region .....	86
§ 3550.16.	Construction Aggregates Resources, Bakersfield Production-Consumption Region .....	89
§ 3550.17.	Construction Aggregate Resources, San Luis Obispo-Santa Barbara Production-Consumption Region .....	94
Article 4.	Designation Appeal Procedures .....	101
§ 3625.	Purpose of Regulations .....	101
§3626.	Filing of Intent to Appeal.....	101
§ 3627.	Determination of Jurisdiction .....	102
§ 3628.	Administrative Record .....	102
§ 3629.	Hearing Procedures-Scheduling.....	103
§ 3630.	Hearing Procedures-Authority for Delegation .....	103
§ 3631.	Hearing Procedures-Notice .....	103
§ 3632.	Hearing Procedures-Record.....	104
§ 3633.	Hearing Procedures-Sequence .....	104
§ 3634.	Hearing Procedures - Determination .....	105
Article 5.	Reclamation Plan Appeals .....	105
§ 3650.	Filing of Intent to Appeal.....	105

§ 3651.	Determination of Jurisdiction .....	106
§ 3652.	Administrative Record .....	106
§ 3653.	Technical Review for Adequacy of Reclamation Plan .....	107
§ 3654.	Hearing Procedures - Scheduling .....	108
§ 3655.	Hearing Procedures - Authority for Delegation .....	108
§ 3656.	Hearing Procedures - Notice .....	108
§ 3657.	Hearing Procedures - Record .....	109
§ 3658.	Hearing Procedures - Sequence .....	109
§ 3659.	Hearing Procedures - Determination .....	109
Article 6.	Mineral Resource Management Policies .....	110
§ 3675.	Definitions .....	110
§ 3676.	Mineral Resource Management Policies.....	110
Article 7.	Financial Assurances Cost Estimate Appeal Procedures .....	112
§ 3680.	Purpose of Regulations .....	112
§ 3681.	Filing of Intent to Appeal.....	112
§ 3682.	Determination of Jurisdiction .....	112
§ 3683.	Limit on Number of Filings of Appeal .....	113
§ 3684.	Administrative Record .....	113
§ 3685.	Hearing Procedures - Scheduling .....	114
§ 3686.	Hearing Procedures - Authority for Delegation .....	114
§ 3687.	Hearing Procedures - Notice .....	114
§ 3688.	Hearing Procedures - Record .....	115
§ 3689.	Hearing Procedures – Sequence.....	115
§ 3690.	Hearing Procedures - Determination .....	116
§ 3691.1	Purpose of Regulations .....	116
§ 3691.2	Filing of Intent to Appeal.....	116
§ 3691.3	Determination of Jurisdiction .....	117
§ 3691.4	Administrative Record .....	117
§ 3691.5	Hearing Procedures – Scheduling .....	118
§ 3691.6	Hearing Procedures – Authority for Delegation.....	119
§ 3691.7	Hearing Procedures – Notice.....	119
§ 3691.8	Hearing Procedures – Record .....	120
§ 3691.9	Hearing Procedures – Sequence.....	120
§ 3691.10	Hearing Procedures – Determination.....	120
Article 8.	Fees Schedule.....	121
§ 3695.	Definitions .....	121

§ 3696.	Operations Subject to Fees .....	122
§ 3696.5.	Board Administration Fee .....	123
§ 3697.	Fees Due and Delinquent.....	123
§ 3698.	Fees Calculation.....	124
§ 3699.	Low Gross Exemptions.....	125
Article 9.	Reclamation Standards.....	127
§ 3700.	Applicability .....	127
§ 3701.	Definitions .....	127
§ 3702.	Financial Assurances .....	128
§ 3703.	Performance Standards for Wildlife Habitat .....	128
§ 3704.	Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring .....	129
§ 3704.1.	Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals .....	130
§ 3705.	Performance Standards for Revegetation.....	131
§ 3706.	Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control .....	133
§ 3707.	Performance Standards for Prime Agricultural Land Reclamation .....	134
§ 3708.	Performance Standards for Other Agricultural Land .....	134
§ 3709.	.....Performance Standards for Building, Structure, and Equipment Removal .....	135
§ 3710.	..... Performance Standards for Stream Protection, Including Surface and Groundwater .....	135
§ 3711.	Performance Standards for Topsoil Salvage, Maintenance, and Redistribution.....	135
§ 3712.	Performance Standards for Tailing and Mine Waste Management .....	136
§ 3713.	Performance Standards for Closure of Surface Openings .....	136
Article 10.5.	Selection of Professional Service Firms .....	137
§ 3726.	Selection of Professional Service Firms .....	137
§ 3727.	Definitions, as Used in These Regulations .....	137
§ 3728.	Establishment of Criteria .....	138
§ 3729.	Estimate of Value of Services.....	138
§ 3730.	Request for Proposals .....	138
§ 3731.	Selection of Firm .....	139
§ 3732.	Negotiation .....	139
§ 3733.	Amendments .....	139
§ 3734.	Contracting in Phases .....	139
§ 3735.	Department's Power to Require Bids .....	140



§ 3736.	Exclusions .....	140
Article 11.	Financial Assurance Mechanisms .....	140
§ 3800.	Purpose.....	140
§ 3801.	Authority .....	140
§ 3802.	Definitions .....	140
§ 3803.	Financial Assurance Mechanisms .....	141
§ 3803.1	Surety Bonds.....	141
§ 3803.2	Irrevocable Letters of Credit .....	142
§ 3803.3	Trust Funds .....	142
§ 3804.	Calculation of Financial Assurance Amount.....	142
§ 3805.	Review by the Department of Conservation.....	143
§ 3805.1	Financial Assurance Cost Estimate (FACE) Form .....	143
§ 3805.5.	Modification or Release of Financial Assurance .....	143
§ 3806.	Surface Mining Operations Owned and Operated by State or Local Governmental Entities.....	144
§ 3806.1.	Pledge of Revenue.....	145
§ 3806.2.	Budget Set Aside.....	145
§ 3806.3.	Acceptance of Liability.....	146
§ 3806.5.	Surface Mining Operations Owned and Operated by a Federal Entity on State Owned Land .....	146
Article 11.5.	Forfeiture of Financial Assurance .....	146
§ 3810.	Purpose.....	147
§ 3811.	Circumstances Leading to a Hearing.....	147
§ 3812.	Public Hearing.....	147
§ 3813.	Hearing Procedure – Notice .....	148
§ 3814.	Administrative Record .....	148
§ 3815.	Criteria for Determining Financial Capability.....	149
§ 3816.	Hearing Procedures – Sequence.....	149
§ 3817.	Hearing Procedures – Determination.....	150
Article 12.	Administrative Penalty Petition Procedures .....	150
§ 3900.	Purpose of Regulations .....	150
§ 3901.	Filing of Petition / Notice of Defense.....	150
§ 3902.	Determination of Jurisdiction .....	151
§ 3903.	Administrative Record .....	151
§ 3904.	Hearing Procedures – Scheduling .....	151
§3905.	Hearing Procedures - Authority for Delegation.....	151
§ 3906.	Hearing Procedures - Notice .....	152

§ 3907.	Hearing Procedures – Record .....	152
§ 3908.	Hearing Procedures - Recording and Transcription .....	152
§ 3909.	Hearing Procedures - Use of Informal Hearing Procedure and Sequence .....	152
§ 3910.	Hearing Procedures – Determination.....	153
§ 3911.	Petition / Notice of Defense Form .....	154
Article 13.	Selection of Professional Service Firms .....	154
§ 3920.	Selection of Professional Service Firms .....	154
§ 3921.	Definitions, as Used in These Regulations .....	154
§ 3922.	Establishment of Criteria .....	154
§ 3923.	Estimate of Value of Services.....	155
§ 3924.	Request for Proposals .....	155
§ 3925.	Selection of Firm .....	156
§ 3926.	Negotiation .....	156
§ 3927.	Amendments .....	156
§ 3928.	Contracting in Phases .....	156
§ 3929.	Board's Power to Require Bids.....	157
§ 3930.	Exclusions .....	157
Article 14.	Appeals of Orders to Comply with the Surface Mining and Reclamation Act of 1975 .....	157
§ 3940.	Purpose of Regulations .....	157
§ 3941.	Determination of Jurisdiction .....	157
§ 3942.	Administrative Record .....	158
§ 3943.	Hearing Procedures – Scheduling .....	158
§ 3944.	Hearing Procedures – Authority for Delegation.....	158
§ 3945.	Hearing Procedures – Notice.....	159
§ 3946.	Hearing Procedures – Record .....	159
§ 3947.	Hearing Procedures – Sequence.....	159
§ 3948.	Hearing Procedures – Determination.....	160
Article 15.	Vested Rights Determination.....	160
§ 3950.	Purpose of Regulations .....	160
Article 16.	Mining Ordinances .....	160
§ 4000.	Certification and Recertification of Mining Ordinances.....	160

# CALIFORNIA STATUTES

*Note: Parenthetical notes that follow each code section are incomplete code history and should not be relied upon.*

## PUBLIC CONTRACT CODE

### DIVISION 2. GENERAL PROVISIONS

#### PART 2. CONTRACTING BY STATE AGENCIES

##### CHAPTER 2. State Acquisition of Goods and Services

###### Article 2. Approval of Contracts

**§ 10295.5.** (a) Notwithstanding any other law, a state agency shall not acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

(b) Notwithstanding any other law, a state agency shall not contract with a person who is not a surface mining operator, but who is supplying or utilizing sand, gravel, aggregates, or other minerals, to perform work for, or supply materials to, a state agency, unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

*(Amended by Stats. 2013, Ch. 417, Sec. 1. Effective January 1, 2014.)*

## **PART 3. CONTRACTING BY LOCAL AGENCIES**

### **CHAPTER 1. Local Agency Public Construction Act**

#### **Article 42. Public Entities-Public Work and Public Purchases**

**§ 20676.** A contractor or a mining operator shall not sell any sand, gravel, or other minerals, as defined in subdivision (c) of Section 10295.5, to a local agency, unless the operation is not subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), or unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code.

*(Repealed and added by Stats. 2006, Ch. 869, Sec. 7. Effective January 1, 2007.)*

## **PUBLIC RESOURCES CODE**

### **DIVISION 1. ADMINISTRATION**

#### **CHAPTER 2. Department of Conservation**

##### **Article 1. Organization and General Powers**

**§ 607.** The work of the department shall be divided into at least the following:

(a) California Geological Survey

(b) (1) Geologic Energy Management Division

(2) Any reference in the law or regulation to the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation is deemed to, instead, refer to the Geologic Energy Management Division.

(c) Division of Land Resource Protection

(d) Division of Mine Reclamation

*(Amended by Stats. 2019, Ch. 771, Sec. 6. (AB 1057) Effective January 1, 2020.)*

### **DIVISION 2. GEOLOGY, MINES AND MINING**

#### **CHAPTER 1. Definitions**

**§ 2001.** Unless the context otherwise requires, the definitions hereinafter set forth shall govern the construction of Division II of this code.

*(Enacted by Stats. 1939, Ch. 93.)*

**§ 2002.** “Department,” in reference to the government of this state, means the Department of Conservation.

*(Amended by Stats. 1965, Ch. 1144.)*

**§ 2002.5.** “Director” means the Director of Conservation.

*(Added by Stats. 1992, Ch. 1019, Sec. 1. Effective January 1, 1993.)*

**§ 2003.** “Survey,” in reference to the government of this state, means the California Geological Survey in the Department of Conservation.

*(Amended by Stats. 2017, Ch. 521, Sec. 12. (SB 809) Effective January 1, 2018.)*

**§ 2004.** “Person” includes any individual, firm, association, corporation, organization, limited liability company, or partnership, or any city, county, district, or the state or any department or agency thereof.

*(Amended by Stats. 1994, Ch. 1010, Sec. 203. Effective January 1, 1995.)*

**§ 2005.** “Minerals” means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2006.** “State Geologist” means the individual holding the office created by Section 677.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2006.5.** “Supervisor of Mine Reclamation” or “supervisor” means the individual directing the Division of Mine Reclamation established pursuant to subdivision (d) of Section 607.

*(Amended by Stats. 2017, Ch. 521, Sec. 13. Effective January 1, 2018.)*

**§ 2007.** “Exploration” or “prospecting” means the search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent, or quantity of minerals present.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2008.** “Board” means the State Mining and Geology Board.

*(Added by Stats. 1975, Ch. 1131.)*

## **CHAPTER 2. The California Geological Survey**

**§ 2207.** (a) The owner or the operator of a mining operation within the state shall forward to the supervisor annually, not later than a date established by the supervisor, upon forms approved by the board from time to time, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, supervisor, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Division of Mine Reclamation, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7 1/2-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) A copy of the previously completed annual inspection form and a requested date, within 12 months of the prior inspection date, for the next annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) (1) Every year, not later than the date established by the supervisor, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in subdivision (a).

(2) The owner or operator of a mining operation shall allow access to the property to any governmental agency or the agent of any company providing financial assurance mechanisms in connection with the reclamation plan in order that the reclamation can be carried out by the entity or company, in accordance with the provisions of the reclamation plan.

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports

shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The supervisor shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Division of Mine Reclamation, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised report to the supervisor and the lead agency. A person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed ten thousand dollars (\$10,000) annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, except that the maximum fee for any single mining operation shall not exceed six thousand dollars (\$6,000) in the 2017–18 fiscal year and eight thousand dollars (\$8,000) in the 2018–19 fiscal year.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's proposed Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of eight million dollars (\$8,000,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2017–18 fiscal year and annually thereafter. If the supervisor determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the supervisor or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, the classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) (i) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Section 2796.5 and as authorized herein for the remediation of abandoned mines.

(ii) Notwithstanding subdivision (j) of Section 2796.5, fees collected pursuant to clause (i) may also be used to remediate features of historic abandoned mines and lands that they impact. For the purposes of this section, historic abandoned mines are mines for which operations have been conducted before January 1, 1976, and include, but are not limited to, historic gold and silver mines.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 11/2 percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless



excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

(h) The approval of a form by the board pursuant to this section is not the adoption of a regulation for purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and is not subject to that act.

*(Amended by Stats. 2017, Ch. 521, Sec. 20. Effective January 1, 2018.)*

**§ 2207.2.** (a) No later than December 31, 2021, the supervisor shall report to the Legislature on the expenditure of moneys in the Mine Reclamation Account, created pursuant to Section 2207. The report shall include all of the following:

(1) An overview of how the moneys expended over the prior five fiscal years have been allocated between classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, lead agency support and assistance, annual report processing, support for the board, enforcement, and any other activities that constituted more than 5 percent of expenditures.

(2) Information on the portion of the fees that have been collected from small construction aggregate providers with under 50,000 tons of production.

(3) Information on the percentage of the fees that have been paid by metallic mineral operations.

(b) This section shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

*(Amended by Stats. 2017, Ch. 521, Sec. 21. Effective January 1, 2018.)*

## **CHAPTER 9. Surface Mining and Reclamation Act of 1975**

### **Article 1. General Provisions**

**§ 2710.** This chapter shall be known and may be cited as the Surface Mining and Reclamation Act of 1975.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2711.** (a) The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.

(b) The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.

(c) The Legislature further finds that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefor may vary accordingly.

(d) The Legislature further finds that the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state's infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state.

(e) The Legislature further finds and recognizes the need of the state to provide local governments, metropolitan planning organizations, and other relevant planning agencies with the information necessary to identify and protect mineral resources within general plans.

(f) The Legislature further finds that the state's mineral resources are vital, finite, and important natural resources and the responsible protection and development of these mineral resources is vital to a sustainable California.

*(Amended by Stats. 2011, Ch. 218, Sec. 1. Effective January 1, 2012.)*

**§ 2712.** It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2713.** It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2714.** This chapter does not apply to any of the following activities:

(a) Excavations or grading of lands conducted for farming.

(b) Onsite excavation and onsite earthmoving activities that are integral and necessary for the construction of structures and that are undertaken to prepare a site for the construction of

those structures, including landscaping or other land improvements associated with those structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction and any associated landscaping or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned as industrial or commercial or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for or the extraction of minerals for commercial purposes where the removal of overburden or mineral product totals less than 1,000 cubic yards in any one location and the total surface area disturbed is less than one acre.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Central Valley Flood Protection Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface

mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Central Valley Flood Protection Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Division of Mine Reclamation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the department by the date specified by the department on these mining activities.

(2) Nothing in this subdivision shall require the Department of Water Resources or the Central Valley Flood Protection Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the Department of Water Resources or the Central Valley Flood Protection Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources or the Central Valley Flood Protection Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to and necessary for ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

(l) (1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

*(Amended by Stats. 2017, Ch. 521, Sec. 28. Effective January 1, 2018.)*

**§ 2715.** No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

*(Amended by Stats. 1980, Ch. 800, Sec. 1. Effective July 28, 1980.)*

**§ 2715.5.** (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan and the standards specified in that plan governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For the purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file an annual report required to be prepared pursuant to Section 2207, indicating the quantity of minerals produced. The board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall be exempt from the payment of annual reporting fees imposed pursuant to paragraph (1) of subdivision (d) of Section 2207. An operator, acting under the authority of the Cache Creek Resource Management Plan, shall include in the operator's annual report required pursuant to Section 2207 the quantity of materials produced and shall be responsible for payment of annual fees associated with the quantity of minerals produced.

(c) Nothing in this section precludes an enforcement action by the board or the Division of Mine Reclamation brought pursuant to this chapter or Section 2207 if the lead agency or the supervisor determines that an operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) For purposes of this section, "site specific plan" means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall include, at a minimum, the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and shall be provided along with a financial assurance cost estimate to the Division of Mine Reclamation for review and comment pursuant to Section 2772.1 or 2773.4, as applicable. Notwithstanding the number of days authorized by subdivision (b) of Section 2772.1 or subdivision (c) of Section 2773.4, the Division of Mine Reclamation shall review the site specific plan and the financial assurance cost estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1. Release of financial assurances shall comply with Section 2773.1 and the provisions of Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.  
*(Amended by Stats. 2017, Ch. 521, Sec. 29. Effective January 1, 2018.)*

**§ 2716.** (a) Any interested person may commence an action on his or her own behalf against the board, the lead agency, the State Geologist, the supervisor, or the supervisor for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board, the State Geologist, the supervisor, or the director to carry out any duty imposed upon them pursuant to this chapter.

(b) For purposes of this section, "person" means an individual, firm, association, corporation, organization, or partnership, or a city, county, district, or the state or any department or agency of the state.

*(Amended by Stats. 2017, Ch. 521, Sec. 30. Effective January 1, 2018.)*

**§ 2717.** (a) Notwithstanding Section 10231.5 of the Government Code, the board shall submit to the Legislature on December 1 of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.

(b) For purposes of ensuring compliance with Sections 10295.5 and 20676 of the Public Contract Code, the Division of Mine Reclamation shall, at a minimum, quarterly publish in the California Regulatory Notice Register, or otherwise make available upon request to the Department of General Services or any other state or local agency, a list identifying all surface

mining operations subject to this chapter and Section 2207 that are reporting as newly permitted, active, or idle, for which all of the following apply:

(1) A reclamation plan has been approved.

(2) A financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate, as described in Section 2736, has been approved.

(3) A financial assurance cost estimate required under Section 2773.4 has been submitted, as indicated on a notice of completion of inspection submitted by the lead agency pursuant to subdivision (b) of Section 2774. Operators may also confirm submission of their annual financial assurance cost estimate as required by subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 2773.4 by providing a copy of the first page of the financial assurance cost estimate (FACE-1) form to the supervisor.

(4) The annual report required under Section 2207 has been submitted.

(5) All fees required under Section 2207, including all past-due fees, administrative penalties, and interest have been paid.

(6) The operation is not out of compliance with an order to comply or stipulated order to comply.

(c) Notwithstanding paragraphs (1) and (2) of subdivision (b), surface mining operations for which an appeal is pending before the board pursuant to subdivision (e) of Section 2770, if the appeal was not pending before the board for more than 180 days, shall be included on the list published pursuant to subdivision (b).

(d) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

*(Amended by Stats. 2019, Ch. 497, Sec. 214. (AB 991) Effective January 1, 2020.)*

**§ 2718.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2719.** Notwithstanding any other provision of law, neither the state nor any county, city, district, or other political subdivision shall be exempt from any fee imposed upon a mining operation pursuant to subdivision (d) of Section 2207.

*(Added by Stats. 1992, Ch. 1066, Sec. 1. Effective January 1, 1993.)*

## **Article 2. Definitions**

**§ 2725.** Unless the context otherwise requires, the definitions set forth in this article shall govern the construction of this chapter.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2726.** “Area of regional significance” means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2727.** “Area of statewide significance” means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2727.1.** “Idle” means that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years during which an interim management plan has not been approved.

*(Amended by Stats. 2011, Ch. 491, Sec. 1. Effective January 1, 2012.)*

**§ 2728.** “Lead agency” means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a reclamation plan pursuant to this chapter.

*(Amended by Stats. 2006, Ch. 869, Sec. 18. Effective January 1, 2007.)*

**§ 2729.** “Mined lands” includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2730.** “Mining waste” includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2731.** “Operator” means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.



*(Added by Stats. 1975, Ch. 1131.)*

**§ 2732.** “Overburden” means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2732.5.** “Permit” means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2733.** “Reclamation” means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, slope stabilization, or other measures.

*(Amended by Stats. 2016, Ch. 7, Sec. 3. Effective January 1, 2017.)*

**§ 2734.** “State policy” means the regulations adopted by the board pursuant to Section 2755.

*(Amended by Stats. 1980, Ch. 800, Sec. 2.2. Effective July 28, 1980.)*

**§ 2735.** “Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.
- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2736.** “Financial assurances” means a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.

*(Added by Stats. 2016, Ch. 7, Sec. 4. Effective January 1, 2017.)*

### **Article 3. District Committees**

**§ 2740.** In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board. In establishing

districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committees shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economics, or the reclamation of mined lands.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2741.** The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.

*(Added by Stats. 1975, Ch. 1131.)*

#### **Article 4. State Policy for the Reclamation of Mined Lands**

**§ 2755.** The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Amended by Stats. 2004, Ch. 183, Sec. 285. Effective January 1, 2005.)*

**§ 2756.** State policy shall apply to the conduct of surface mining operations and shall include, but shall not be limited to, measures to be employed by lead agencies in specifying grading, backfilling, resoiling, revegetation, soil compaction, and other reclamation requirements, and for soil erosion control, water quality and watershed control, waste disposal, and flood control.

*(Amended by Stats. 1980, Ch. 800, Sec. 3. Effective July 28, 1980.)*

**§ 2757.** The state policy adopted by the board shall be based upon a study of the factors that significantly affect the present and future condition of mined lands, and shall be used as standards by lead agencies in preparing specific and general plans, including the conservation and land use elements of the general plan and zoning ordinances. The state policy shall not include aspects of regulating surface mining operations which are solely of local concern, and not of statewide or regional concern, as determined by the board, such as, but not limited to, hours of operation, noise, dust, fencing, and purely aesthetic considerations.

*(Amended by Stats. 1980, Ch. 800, Sec. 4. Effective July 28, 1980.)*

**§ 2758.** Such policy shall include objectives and criteria for all of the following:

(a) Determining the lead agency pursuant to the provisions of Section 2771.

(b) The orderly evaluation of reclamation plans.

(c) Determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2759.** The state policy shall be continuously reviewed and may be revised. During the formulation or revision of the policy, the board shall consult with, and carefully evaluate the recommendations of, the supervisor, any district technical advisory committees, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

*(Amended by Stats. 2017, Ch. 521, Sec. 33. Effective January 1, 2018.)*

**§ 2760.** The board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

*(Amended by Stats. 1981, Ch. 714, Sec. 344.)*

**§ 2761.** (a) On or before January 1, 1977, and, at a minimum, after the completion of each decennial census, the Office of Planning and Research shall identify portions of the following areas within the state that are urbanized or are subject to urban expansion or other irreversible land uses that would preclude mineral extraction:

(1) Standard metropolitan statistical areas and other areas for which information is readily available.

(2) Other areas as may be requested by the board.

(b) In accordance with a time schedule, and based upon guidelines adopted by the board, the State Geologist shall classify, on the basis solely of geologic factors, and without regard to existing land use and land ownership, the areas identified by the Office of Planning and Research, any area for which classification has been requested by a petition that has been accepted by the board, or any other areas as may be specified by the board, as one of the following:

(1) An area that contains mineral deposits and is not of regional or statewide significance.

(2) An area that contains mineral deposits and is of regional or statewide significance.

(3) An area that contains mineral deposits, the significance of which requires further evaluation.

(c) The State Geologist shall require the petitioner to pay the reasonable costs of classifying an area for which classification has been requested by the petitioner.

(d) The State Geologist shall transmit the information to the board for incorporation into the state policy and for transmittal to lead agencies.

(e) The board shall transmit mineral resource information on areas classified by the State Geologist pursuant to paragraph (2) of subdivision (b), or on applicable areas designated by the board pursuant to Section 2790, or both, to a lead agency or a metropolitan planning organization within 30 days of receiving a request for the mineral resource information identified within the jurisdiction of the lead agency or the metropolitan planning organization.

*(Amended by Stats. 2011, Ch. 218, Sec. 2. Effective January 1, 2012.)*

**§ 2762.** (a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, a lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan that will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the board.

(2) Assist in the management of land use that affects access to areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) A lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) A subsequent amendment of the mineral resource management policy previously reviewed by the board shall also require review and comment by the board.

(d) (1) If an area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761 and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use that would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing, if required, an environmental document required by Division 13 (commencing with Section 21000), a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

(2) If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(A) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed use.

(B) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment roll.

(3) The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, if the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use that would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located in the area. The results of the evaluation shall be transmitted to the State Geologist and the board.

*(Amended by Stats. 2012, Ch. 162, Sec. 142. Effective January 1, 2013.)*

**§ 2763.** (a) If an area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If an area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of Section 2762, or otherwise has not yet acted pursuant to subdivision (a) of Section 2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of Section 2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

*(Amended by Stats. 1990, Ch. 1097, Sec. 6.)*

**§ 2764.** (a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with Section 2790) if mineral resource

management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with Section 2755).

*(Added by Stats. 1986, Ch. 82, Sec. 1.)*

## **Article 5. Reclamation Plans and the Conduct of Surface Mining Operations**

**§ 2770.** (a) Except as provided in this section, a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation pursuant to this article.

(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For the purposes of this subdivision, a reclamation plan existing prior to January 1, 2017, may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents, which together were proposed to serve as the reclamation plan, are submitted for approval to the lead agency in accordance with this chapter.

(c) [Reserved]

(d) [Reserved]

(e) (1) A person who can substantiate, based on the evidence of the record, that a lead agency has either (A) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, or (B) failed to act within a reasonable time of receipt of a completed application may appeal that action or inaction to the board.

(2) The supervisor may appeal a lead agency's approval of a financial assurance cost estimate to the board if the supervisor has commented pursuant to Section 2773.4 that the financial assurance cost estimate is inadequate based on consideration of the following:

(A) Section 2773.1.

(B) Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.

(C) The board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1

(3) If the approved financial assurance cost estimate applies to a reclamation plan approved for a new surface mining operation, an expanded surface mining operation, or an interim financial assurance cost estimate due to an order to comply, stipulated or otherwise, the

operator shall provide a financial assurance mechanism pursuant to subdivision (e) of Section 2773.4 in the amount of the approved financial assurance cost estimate, notwithstanding an appeal filed pursuant to this subdivision and subject to modification pending the outcome of the appeal.

(4) If the approved financial assurance cost estimate is an update to an existing approved financial assurance cost estimate, the existing financial assurance mechanism shall remain in place and shall not be adjusted until a final determination by the board on the appeal filed pursuant to this subdivision.

(f) (1) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's decision to deny the approval of a reclamation plan or financial assurance, or the timeliness in reviewing a completed application. Appeals filed by the supervisor shall be heard by the board.

(2) If the board takes up an appeal, the appeal shall be scheduled and heard at a public hearing within 45 days of the board's receipt of a complete administrative record, or a longer period as may be mutually agreed to by the board, the appellant, and the operator, or, if the appeal is filed by the supervisor, by the board, the supervisor, and the operator.

(g) (1) (A) When hearing an appeal filed pursuant to paragraph (1) or (2) of subdivision (e), the board shall determine whether the reclamation plan or the financial assurance cost estimate substantially meets the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. The board shall approve or uphold a reclamation plan or financial assurance cost estimate determined to meet those applicable requirements. In any event, financial assurances for reclamation shall be sufficient to perform reclamation of lands remaining disturbed.

(B) For purposes of this subdivision, "substantially" means actual compliance in respect to the substance and form requirements essential to the objectives of this chapter.

(2) (A) A reclamation plan determined not to meet the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator with a notice of deficiencies. The operator shall be granted, once only, a period of 30 days or a longer period mutually agreed upon by the operator and the board to do both of the following:

- (i) Correct the noted deficiencies.
- (ii) Submit the revised reclamation plan to the lead agency for review and approval.

(B) Within 10 days of the hearing, the board shall provide notice via certified mail to the lead agency, the operator, and the Division of Mine Reclamation of the board's

determination. The notice shall include instructions to the operator to submit to the lead agency for approval a revised reclamation plan consistent with the board's determination.

(3) (A) If the board determines the lead agency's approved financial assurance cost estimate does not meet the requirements of Sections 2773.1 and 2773.4, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1, the board shall note the deficiencies and, based on the record, include adequate cost estimates for each noted deficiency.

(B) Within 10 days of the hearing, the board shall provide notice via certified mail to the lead agency, the operator, and the Division of Mine Reclamation of the board's determination with instructions to the operator to submit to the lead agency for approval a revised financial assurance cost estimate consistent with the board's determination. The instructions shall include a reasonable submission deadline of not less than 30 days.

(C) The lead agency shall approve the revised financial assurance cost estimate. That approval shall supersede and void the prior approved financial assurance cost estimate.

(D) A financial assurance mechanism shall be established by the operator pursuant to subdivision (e) of Section 2773.4 following the approval of the financial assurance cost estimate.

(E) The failure of the operator to submit to the lead agency a revised financial assurance cost estimate consistent with the board's determination and deadline may be grounds for the issuance of an order to comply pursuant to subdivision (a) of Section 2774.1.

(h) (1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit an interim management plan to the lead agency for review. The review and approval of an interim management plan shall not be considered a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan for purposes of this chapter. The interim management plan shall only provide for necessary measures the operator will implement during its idle status to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

(2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for an additional period not to exceed five years, which may be renewed for one additional five-year renewal period at the expiration of the first five-year renewal period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the operator shall commence reclamation in accordance with its approved reclamation plan.



(4) (A) Within 45 days of the receipt of the interim management plan, the lead agency shall review the interim management plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, and if the interim management plan satisfies the requirements of this section, forward the plan to the supervisor for comment. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the interim management plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised interim management plan.

(B) The lead agency shall submit the interim management plan, including a revised interim management plan, to the supervisor for review and certify to the supervisor that the interim management plan is a complete submission and complies with all of the following requirements:

(i) The applicable requirements of this chapter.

(ii) Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable.

(iii) The lead agency's surface mining ordinance in effect at the time that the interim management plan is submitted to the supervisor for review, except if the board is the lead agency.

(C) After receipt of the certified complete interim management plan, the supervisor shall have 30 days to prepare written comments on the interim management plan, if he or she elects to do so.

(D) The lead agency shall review and evaluate written comments received from the supervisor relating to the interim management plan within a reasonable amount of time.

(E) The lead agency shall prepare a written response to the supervisor's comments received pursuant to subparagraph (C) describing the disposition of the major issues raised by the comments. The lead agency shall submit its response to the supervisor and the operator at least 30 days prior to the intended approval of the interim management plan. The lead agency's response shall include either of the following:

(i) A description of how the lead agency proposes to adopt the supervisor's comments to the interim management plan.

(ii) A detailed description of the reasons why the lead agency proposes not to adopt the supervisor's comments.

(F) Where the supervisor has commented, the lead agency shall give the supervisor at least 30 days' written notice of the time, place, and date of the hearing at which the interim management plan is scheduled to be approved by the lead agency, or, if no hearing is required by this chapter, the local ordinance, or other law, the lead agency shall provide 30 days' written notice to the supervisor that the lead agency intends to approve the new interim management plan.

(G) Within 30 days following the approval of the interim management plan, the lead agency shall provide the supervisor notice of the approval and a copy of the approved interim management plan.

(5) The lead agency shall approve or deny approval of the interim management plan within 60 days of receipt of the supervisor's comments or within 90 days of submitting the interim management plan to the supervisor if no comments are received from the supervisor. If the lead agency denies approval of the interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal or a longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency or an appeal is pending before the lead agency's governing body, a surface mining operation that remains idle for over one year after becoming idle, as defined in Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) An enforcement action that may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan shall be held in abeyance pending review pursuant to subdivision (b) or (h), or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

*(Amended by Stats. 2017, Ch. 521, Sec. 34. Effective January 1, 2018.)*

**§ 2770.1.** For the purposes of a borrow pit surface mining operation that is owned or operated by a lead agency solely for use by that lead agency, all of the following shall apply:

(a) (1) In addition to the requirements of Sections 2772 and 2773, the lead agency shall include in its reclamation plan maintenance measures that become effective when the borrow pit surface mining operation is idle. The maintenance measures shall maintain the site in compliance with this chapter while the borrow pit surface mining operation is idle.

(2) Notwithstanding paragraph (1), a lead agency may obtain an interim management plan pursuant to subdivision (h) of Section 2770.

(3) A lead agency that complies with this subdivision shall be exempt from the requirements of paragraph (6) of subdivision (h) of Section 2770.

(b) Notwithstanding paragraph (2) of subdivision (h) of Section 2770, an interim management plan for a borrow pit surface mining operation may remain in effect until reclamation of the borrow pit surface mining operation is completed in accordance with the approved reclamation plan.

(c) Notwithstanding subdivision (b) of Section 2774, a lead agency may conduct an inspection of a borrow pit surface mining operation once every two calendar years during a period when the borrow pit surface mining operation is idle.

*(Added by Stats. 2016, Ch. 8, Sec. 5. Effective January 1, 2017.)*

**§ 2770.5.** Whenever surface mining operations are proposed in the 100-year flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state

highway bridge, the lead agency receiving the application for the issuance or renewal of a permit to conduct the surface mining operations shall notify the Department of Transportation that the application has been received. The Department of Transportation shall have a period of not more than 45 days to review and comment on the proposed surface mining operations with respect to any potential damage to the state highway bridge from the proposed surface mining operations. The lead agency shall not issue or renew the permit until the Department of Transportation has submitted its comments or until 45 days from the date the application for the permit was submitted, whichever occurs first.

*(Added by Stats. 1984, Ch. 254, Sec. 1.)*

**§ 2770.6.** (a) Whenever surface mining operations are proposed within the boundaries of the San Gabriel Basin Water Quality Authority that may penetrate the groundwater, and whenever proposed reclamation activities may impact groundwater quality, the lead agency reviewing an application to conduct surface mining operations, or reviewing an application for the approval of a reclamation plan, shall notify and provide copies of the subject application to the appropriate California regional water quality control board, and any watermaster for the groundwater recharge basin. Notwithstanding any other provision of law, the appropriate California regional water quality control board may impose an administrative fee on the applicant to cover its costs associated with the review of, and preparation of, comments on the subject application, as required pursuant to this section.

(b) Each agency shall have 60 days to review and comment on the proposed surface mining operation described in subdivision (a) and the adoption of any reclamation plan therefor. Each agency shall comment on the existing groundwater quality and the potential impacts to water quality that may result from the mining operations and the proposed reclamation plan, and shall recommend methods and procedures to protect groundwater quality and prevent groundwater degradation. Each agency shall also comment on the proposed mining activities, including the conduct of excavation and backfilling operations in contact with groundwater, and the impact of any proposed alternative land uses on groundwater quality. When the proposed surface mining operations or reclamation plan will impact the groundwater, the lead agency shall not approve the reclamation plan without requiring actions to ensure the reasonable protection of the beneficial uses of groundwater and the prevention of nuisance. Each agency shall have 60 days to review and comment or until 60 days from the date of application, whichever occurs first.

(c) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*(Added by Stats. 2000, Ch. 515, Sec. 1. Effective January 1, 2001.)*

**§ 2771.** Whenever a proposed or existing surface mining operation is within the jurisdiction of two or more public agencies, is a permitted use within the agencies, and is not separated by a natural or manmade barrier coinciding with the boundary of the agencies, the evaluation of the proposed or existing operation shall be made by the lead agency in accordance with the procedures adopted by the lead agency pursuant to Section 2774. If a question arises as to

which public agency is the lead agency, any affected public agency, or the affected operator, may submit the matter to the board. The board shall notify in writing all affected public agencies and operators that the matter has been submitted, specifying a date for a public hearing. The board shall designate the public agency which shall serve as the lead agency, giving due consideration to the capability of the agency to fulfill adequately the requirements of this chapter and to an examination of which of the public agencies has principal permit responsibility. *(Repealed and added by Stats. 1990, Ch. 1097, Sec. 10.)*

**§ 2772.** (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all or any portion of any mined lands and who plans to conduct surface mining operations on the lands.

(b) The reclamation plan shall include a chart identifying the page number, chapter, appendix, or other specific location in the reclamation plan where content meeting the requirements, as applicable, of Sections 2772, 2773, and 2773.3 and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, is located.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of the surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) A reclamation plan map or maps that shall include all of the following:

(A) Size and legal description of the lands that will be affected by the surface mining operation and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(B) Clearly defined and accurately drawn property lines, setbacks, and the reclamation plan boundary.

(C) Existing topography and final topography depicted with contour lines drawn at appropriate intervals for the site's conditions.

(D) Detailed geologic description of the area of the surface mining operation.

(E) Location of railroads, utility facilities, access roads, temporary roads to be reclaimed, and any roads remaining for the approved end use.

(F) All maps, diagrams, or calculations that require preparation in accordance with the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code), the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code), or the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) shall be prepared by a California-licensed professional, shall include his or her license number and name, and shall bear the signature and seal of the licensee.

(6) A description of and a plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.

(8) A description of the manner in which reclamation, adequate for the proposed use or potential uses, will be accomplished, including both of the following:

(A) A description of the manner in which known contaminants will be controlled and mining waste will be disposed.

(B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition that minimizes erosion and sedimentation.

(9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) Any other information that the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to subdivision (c) that has already been prepared as part of a permit application for the surface mining operation or as part of an environmental document prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the supervisor for review. To the extent the information, document, or component of a document referenced in the reclamation plan is used to meet the requirements of subdivision (c) or Section 2773 or 2773.3, the information, document, or component of a document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the Division of Mine Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

*(Amended by Stats. 2017, Ch. 521, Sec. 35. Effective January 1, 2018.)*

**§ 2772.1.** (a) (1) Prior to approving a surface mining operation's reclamation plan or plan amendment, the lead agency shall submit the reclamation plan or plan amendment to the supervisor for review. The reclamation plan or plan amendment shall be submitted to the supervisor as early as practicable in order to facilitate the lead agency's review of the reclamation plan pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)). All documentation for the submission shall be submitted to the supervisor at one time.

(2) An item of information, document, or component of a document that has been prepared as part of a permit application for the surface mining operation or as part of an

environmental document prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) shall be incorporated into the reclamation plan or plan amendment if it is used to satisfy the requirements of subdivision (c) of Section 2772, Sections 2773 and 2773.3, and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable. If an item of information, document, or component of a document is incorporated, reference to the item shall be added to the chart required pursuant to subdivision (b) of Section 2772 and shall be properly indexed with the corresponding appendix reference and page numbers, if applicable. The item shall be included in an appendix to and shall become part of the reclamation plan or plan amendment.

(3) The lead agency shall certify to the supervisor that the reclamation plan or plan amendment is a complete submission and is in compliance with all of the following:

(A) The applicable requirements of this chapter.

(B) Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable.

(C) The lead agency's surface mining ordinance in effect at the time that the reclamation plan or plan amendment is submitted to the supervisor for review, except if the board is the lead agency.

(b) (1) The supervisor shall have 30 days from the receipt of a reclamation plan or plan amendment to notify the lead agency and operator if the submission is incomplete. An incomplete submission is one that does not meet the content requirements of Sections 2772, 2773, and 2773.3 and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable. The supervisor's notice shall specifically identify all aspects of the submission that are incomplete.

(2) The supervisor shall have 30 days after the date the supervisor is required to notify the lead agency if the submission is incomplete to prepare written comments on the reclamation plan or plan amendment if the supervisor chooses.

(3) If the supervisor has issued a notice of incomplete submission pursuant to paragraph (1), the supervisor's time to prepare written comments on the reclamation plan or plan amendment shall not commence until the supervisor receives each item identified in the notice. The supervisor's time shall include any remaining time pursuant to paragraph (1) and the time allowed pursuant to paragraph (2).

(4) The lead agency shall review and evaluate written comments received from the supervisor relating to the reclamation plan or plan amendment within a reasonable amount of time.

(5) (A) The lead agency shall prepare a written response to the supervisor's comments received pursuant to paragraph (2) describing the disposition of the major issues raised by the comments. The lead agency shall submit its response to the supervisor at least 30 days prior to the intended approval of the reclamation plan or plan amendment. The lead agency's response shall include either of the following:

(i) A description of how the lead agency proposes to adopt the supervisor's comments to the reclamation plan or plan amendment.

(ii) A detailed description of the reasons why the lead agency proposes not to adopt the supervisor's comments.

(B) Copies of any written comments received and responses prepared by the lead agency pursuant to subparagraph (A) shall be forwarded to the operator.

(6) (A) The lead agency shall give the supervisor at least 30 days' notice of the time, place, and date of the hearing at which the reclamation plan or plan amendment is scheduled to be approved by the lead agency.

(B) If no hearing is required by this chapter, the local ordinance, or other state law, the lead agency shall provide 30 days' notice to the supervisor that the lead agency intends to approve the reclamation plan or plan amendment.

(7) (A) Within 30 days following the approval of the reclamation plan or plan amendment, the lead agency shall provide the supervisor notice of the approval. During that period, the Division of Mine Reclamation retains all powers, duties, and authorities of this chapter. The lead agency shall provide, as soon as practicable but no later than 60 days after approval of the reclamation plan or plan amendment, certified copies of all maps, diagrams, or calculations, signed and sealed.

(B) No later than 60 days after the approval of the reclamation plan or plan amendment, the lead agency shall provide to the supervisor an official copy of the approved reclamation plan or plan amendment. The official copy shall incorporate all approved modifications to the reclamation plan or plan amendment and shall include an index showing any permit conditions of approval or binding mitigation measures adopted or certified pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) that are necessary to meet the requirements of subdivision (c) of Section 2772, Sections 2773 and 2773.3, and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable. Those conditions of approval and mitigation measures shall be included in an appendix to the reclamation plan or plan amendment and shall be considered part of the reclamation compliance requirements and subject to the annual inspection requirements.

(c) To the extent there is a conflict between the comments of a trustee agency or a responsible agency that are based on that agency's statutory or regulatory authority and the comments of other commenting agencies that are received by the lead agency pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(d) Nothing in this section is intended to limit or expand the Division of Mine Reclamation's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

*(Amended by Stats. 2017, Ch. 521, Sec. 36. Effective January 1, 2018.)*

**§ 2772.5.** (a) A reclamation plan by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands within the boundaries of the San Gabriel Basin Water Quality Authority, and who plans to conduct surface mining operations on those lands, in addition to the information required pursuant to subdivision (c) of Section 2772, shall include a description of any programs necessary to monitor the effects of mining and reclamation operations on air, water, and soil quality, on the surrounding area, backfill characteristics, geologic conditions, and slope stability, similar to the California Environmental Quality Act document for the reclamation project.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*(Added by Stats. 2000, Ch. 515, Sec. 2. Effective January 1, 2001.)*

**§ 2772.6.** (a) In addition to meeting the requirements of Section 2773.1, the financial assurance cost estimate required of a surface mining operation within the boundaries of the San Gabriel Basin Water Quality Authority for any one year shall be in an amount not less than that required to ensure reclamation of the disturbed areas is completed in accordance with the approved reclamation plan.

(b) This section applies to activities otherwise subject to this chapter conducted within the boundaries of the San Gabriel Basin Water Quality Authority. To the extent of any conflict between this section and any other provision of this chapter, this section shall prevail.

*(Amended by Stats. 2017, Ch. 521, Sec. 37. Effective January 1, 2018.)*

**§ 2772.7.** (a) A lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the county recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the \_\_\_\_ (lead agency), a copy of which is on file with the \_\_\_\_."

(b) In addition to the information required by subdivision (a), the notice shall also include the name of the owner of record of the mine operation, the name of the lead agency, and the acknowledged signature of the lead agency representative.

*(Amended by Stats. 2009, Ch. 208, Sec. 3. Effective January 1, 2010.)*

**§ 2773.** (a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control.

(b) By January 1, 1992, the board shall adopt regulations specifying minimum, verifiable statewide reclamation standards. Subjects for which standards shall be set include, but shall not be limited to, the following:



- (1) Wildlife habitat.
- (2) Backfilling, regrading, slope stability, and recontouring.
- (3) Revegetation.
- (4) Drainage, diversion structures, waterways, and erosion control.
- (5) Prime and other agricultural land reclamation.
- (6) Building, structure, and equipment removal.
- (7) Stream protection.
- (8) Topsoil salvage, maintenance, and redistribution.
- (9) Tailing and mine waste management.

These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site.

*(Amended by Stats. 1990, Ch. 1097, Sec. 11.)*

**§ 2773.1.** (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) A financial assurance mechanism may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurance mechanisms specified by the board pursuant to subdivision (e) that the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) Financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of the financial assurance cost estimate required of a surface mining operation for any one year shall be reviewed and, if necessary, adjusted once each calendar year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. An operator shall be required to replace an approved financial assurance mechanism to bond for the reclamation of the surface mining operation only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance mechanism.

(4) Financial assurance cost estimates shall be submitted to the lead agency for review on a form developed by the supervisor and approved by the board. The form shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(5) Each financial assurance mechanism shall be made payable to the lead agency and the department. A financial assurance mechanism shall not be released without the consent of the lead agency and the department. A financial assurance mechanism that was approved by the lead agency prior to January 1, 1993, and was made payable to the State Geologist shall be considered payable to the department for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurance cost estimate from a public agency other than the lead agency, the lead agency shall deem those financial cost estimates adequate

for purposes of this section, or shall credit them toward fulfillment of the financial cost estimate required by this section, if they are made payable to the public agency, the lead agency, and the department and otherwise meet the requirements of this section. In any event, if a lead agency and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the lead agency and the public agencies for any one year shall not exceed that amount that is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a “public agency” may include a federal agency.

(b) (1) If the lead agency, or the board when acting as a lead agency, has evidence that an operator may be financially incapable of completing reclamation in accordance with its approved reclamation plan or that the operator may have abandoned the surface mining operation without completing reclamation, the lead agency or the board, when acting as a lead agency, shall conduct a public hearing to determine whether the operator is financially capable of completing reclamation in accordance with the approved reclamation plan or has abandoned the surface mining operation. The hearing shall be noticed to the operator and the supervisor at least 30 days prior to the hearing.

(2) If the lead agency or the board, following the public hearing conducted pursuant to paragraph (1), determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation, either the lead agency or the supervisor shall do all of the following:

(A) Notify the operator by personal service or certified mail that the lead agency or the supervisor intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(B) Proceed to take appropriate action to require forfeiture of the financial assurance mechanisms.

(C) Use the proceeds from the forfeited financial assurance mechanisms to conduct and complete reclamation in accordance with the approved reclamation plan. If the surface mining operation cannot be reclaimed in accordance with its approved reclamation plan, or the financial assurance mechanisms are inadequate to reclaim in accordance with its approved reclamation plan, the lead agency or supervisor may use forfeited financial assurance mechanisms to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the lead agency and the supervisor. The financial assurance mechanisms shall not be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan or a remediation plan developed pursuant to this section as determined appropriate by both the lead agency and the supervisor that are in excess of the proceeds from the forfeited financial assurance mechanisms.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon the written concurrence of the lead agency and the supervisor, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism, that reclamation has been completed in accordance with the approved reclamation plan. If a surface mining operation is sold or ownership is transferred to another person, the

existing financial assurance mechanisms shall remain in force and shall not be released by the lead agency and the supervisor until new financial assurance mechanisms are secured from the new owner and have been approved by the lead agency in accordance with Sections 2770, 2773.1, and 2773.4. Within 90 days of the sale or transfer of a surface mining operation, the new operator shall submit an appropriate financial assurance mechanism, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's financial incapability or abandonment of the surface mining operation, that is subject to review by the lead agency and the supervisor pursuant to subdivision (e) of Section 2773.4. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility in accordance with paragraph (10) of subdivision (c) of Section 2772.

(d) The lead agency shall have primary responsibility to seek forfeiture of the financial assurance mechanisms and to reclaim mine sites pursuant to subdivision (b). However, if the board is not the lead agency pursuant to Section 2774.4, the supervisor may act to seek forfeiture of the financial assurance mechanisms and reclaim the mine sites pursuant to subdivision (b) only if both of the following occur:

(1) The financial incapability of the operator or the abandonment of the surface mining operation has come to the attention of the supervisor.

(2) The lead agency has been notified in writing by the supervisor of the financial incapability of the operator or the abandonment of the surface mining operation for at least 15 days, the lead agency has not taken appropriate measures to seek forfeiture of the financial assurance mechanisms and reclaim the mine site, and one of the following has occurred:

(A) The lead agency has been notified in writing by the supervisor that failure to take appropriate measures to seek forfeiture of the financial assurance mechanisms or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The supervisor determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the supervisor in writing that its good faith attempts to seek forfeiture of the financial assurance mechanisms have not been successful.

The supervisor shall comply with subdivision (b) in seeking the forfeiture of financial assurance mechanisms and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant to this chapter, but these mechanisms shall not include financial tests or surety bonds executed by one or more personal sureties. These mechanisms may include reclamation bond pool programs.

(f) The board shall adopt or revise guidelines to implement this section as necessary. The guidelines are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), and are not subject to review by the Office of Administrative Law.

*(Amended by Stats. 2017, Ch. 521, Sec. 38. Effective January 1, 2018.)*

**§ 2773.1.5.** (a) Notwithstanding subdivision (e) of Section 2773.1, a financial assurance mechanism may include corporate financial tests combined with surety bonds, irrevocable letters of credit, or trust funds, as described in this section, that together ensure the completion of reclamation in accordance with the approved reclamation plan.

(b) (1) Corporate financial tests shall only be allowed after the board adopts a regulation that establishes a comprehensive analysis and test of a corporation's financial status that includes, but is not limited to, all of the following:

(A) A minimum financial net worth of at least thirty-five million dollars (\$35,000,000), adjusted annually to reflect changes in the Consumer Price Index, as calculated by the United States Bureau of Labor Statistics.

(B) Income.

(C) Liabilities, including other environmental assurances.

(D) Assets located within the United States.

(2) The regulation also shall include, but need not be limited to, all of the following:

(A) Additional measures to provide the lead agency or the supervisor with the recovery of costs associated with the full collection and satisfaction of the financial assurance mechanisms.

(B) Requirements for corporate financial tests that include, but are not limited to, all of the following:

(i) Provide for no more than 75 percent of the financial assurance cost estimate approved within the last year.

(ii) Be annually approved by both the lead agency and the supervisor.

(iii) Be able to be disallowed by either the lead agency or the supervisor.

(iv) Include an assessment from an independent certified public accountant using generally accepted accounting principles in the United States.

(c) Each surface mining operation shall have at least 25 percent of the financial assurance cost estimate in an acceptable financial assurance mechanism other than a corporate financial test if a qualifying corporation operates multiple surface mining operations.

(d) Subject to the requirements of this subdivision, an operator of multiple surface mining operations may use a corporate financial test that combines the financial assurance cost estimates of each surface mining operation.

*(Amended by Stats. 2017, Ch. 521, Sec. 39. Effective January 1, 2018.)*

**§ 2773.15.** Notwithstanding Section 2773.1, a surety bond that was executed by any personal surety that was approved by the lead agency prior to February 13, 1998, to ensure that reclamation is performed in accordance with a reclamation plan approved by a lead agency prior to that date, may be utilized to satisfy the requirements of this chapter, if the amount of the financial assurance required to perform the approved reclamation plan, as amended or updated from time to time, does not change from the amount approved prior to February 13, 1998.

*(Added by Stats. 1998, Ch. 643, Sec. 2. Effective January 1, 1999.)*

**§ 2773.2.** The mineral owner and owner of the surface estate, if legally entitled to do so, shall allow access to the property on which the mining operation is located to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan and expending those financial assurances for reclamation, in order that reclamation may be carried out by the governmental agency or company, in accordance with the reclamation plan.

*(Added by Stats. 2006, Ch. 869, Sec. 22. Effective January 1, 2007.)*

**§ 2773.3.** (a) In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

(1) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:

(A) Achieve the approximate original contours of the mined lands prior to mining.

(B) Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.

(2) The financial assurance cost estimates are sufficient in amount to provide for the backfilling and grading required by paragraph (1).

(b) For purposes of this section, the following terms have the following meanings:

(1) "Native American sacred site" means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.

(2) "Area of special concern" means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.

*(Amended by Stats. 2017, Ch. 521, Sec. 40. Effective January 1, 2018.)*

**§ 2773.4.** (a) (1) Prior to approving the financial assurance cost estimate for a new reclamation plan or adjustments to the financial assurance cost estimate based on an amendment to a reclamation plan, the lead agency shall submit the financial assurance cost estimate to the supervisor for review.

(2) The lead agency shall provide the supervisor with a determination that the financial assurance cost estimate submitted pursuant to paragraph (1) is adequate, complete, and consistent with Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1.

(3) All documentation submitted to the supervisor pursuant to this subdivision shall be submitted at one time.

(b) No later than 15 days after receiving a financial assurance cost estimate, the supervisor shall notify the lead agency and the operator if the submission is incomplete. An incomplete submission is one that does not meet the content requirements of Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1. The supervisor's notice shall specifically identify all aspects of the submission that are incomplete. The supervisor's time to review the financial assurance cost estimate shall commence upon the receipt of a submission that contains the aspects identified in the supervisor's notice to the lead agency.

(c) (1) The supervisor shall have 45 days from the date of receipt of a complete financial assurance cost estimate to prepare written comments if the supervisor chooses.

(2) The lead agency shall evaluate written comments received from the supervisor relating to the financial assurance cost estimate within a reasonable amount of time. The lead agency shall prepare a written response to the supervisor's comments describing the disposition of the major issues raised by the supervisor's comments.

(3) The lead agency shall submit its proposed response to the supervisor at least 30 days prior to approval of the financial assurance cost estimate. The lead agency's response shall include either of the following:

(A) A description of how the lead agency proposes to adopt the supervisor's comments to the financial assurance cost estimate.

(B) A detailed description of the reasons why the lead agency proposes to not adopt the supervisor's comments.

(4) Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(5) (A) If the lead agency, in its written response to the supervisor's comments, proposes to not adopt the supervisor's comments relating to the financial assurance cost estimate, the supervisor, within 15 days of receipt of the lead agency's written response, may request in writing a consultation with the lead agency to discuss the supervisor's comments and the lead agency's response. The request shall include an invitation to the operator to participate in the consultation. The consultation may be conducted in person, electronically, telephonically, or by any means convenient to the parties.

(B) If the supervisor requests a consultation pursuant to this subdivision, the lead agency shall not approve the financial assurance cost estimate until after consulting with the supervisor. The consultation shall occur not later than 30 days after the supervisor's request

unless an alternate timeframe is mutually agreed upon by the supervisor, lead agency, and operator.

(6) (A) The lead agency shall give the supervisor at least 30 days' notice of the time, place, and date of the hearing at which the financial assurance cost estimate is scheduled to be approved by the lead agency. If no hearing is required by this chapter, local ordinance, or other state law, then the lead agency shall provide 30 days' notice to the supervisor that it intends to approve the financial assurance cost estimate.

(B) The lead agency shall send to the supervisor its final response to the supervisor's comments within 30 days following its approval of the financial assurance cost estimate, during which time the Division of Mine Reclamation retains all of its powers, duties, and authority pursuant to this chapter.

(d) (1) (A) Within 30 days of an annual inspection being conducted pursuant to Section 2774, an operator shall provide an annual financial assurance cost estimate to the lead agency for review.

(B) If the lead agency fails to cause the inspection of the surface mining operation on the date requested by the operator pursuant to Section 2207 or on the date set by the lead agency pursuant to subdivision (c) of Section 2774, the operator shall provide an annual financial assurance cost estimate to the lead agency for review within 30 days of the applicable inspection date, unless the lead agency causes the inspection to occur within that time period, in which case the operator shall provide an annual financial assurance cost estimate to the lead agency within 30 days of the date of the inspection.

(2) (A) Within 60 days of receiving an operator's annual financial assurance cost estimate, the lead agency shall do one of the following:

(i) Deny the financial assurance cost estimate pursuant to paragraph (6).

(ii) Submit the financial assurance cost estimate to the supervisor for review.

(B) The lead agency shall provide the supervisor with a determination that the annual financial assurance cost estimate submitted is adequate, complete, and consistent with Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1.

(3) All documentation submitted to the supervisor pursuant to this subdivision shall be submitted at one time.

(4) Within 15 days of receiving an annual financial assurance cost estimate, the supervisor shall notify the lead agency and the operator if the submission is incomplete. An incomplete submission is one that does not meet the content requirements of Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1. The supervisor's notice shall specifically identify all aspects of the submission that are incomplete. The supervisor's time to review the annual financial assurance cost estimate shall commence upon the receipt of a submission that contains the aspects identified in the supervisor's notice to the lead agency.

(5) (A) Within 45 days of receiving an operator's complete annual financial assurance cost estimate from the lead agency, the supervisor shall prepare written comments on the operator's annual financial assurance cost estimate and provide the comments to the lead agency and the operator if the supervisor so chooses.

(B) (i) Within 30 days from receiving the supervisor's written comments pursuant to this subdivision, the lead agency shall evaluate the written comments and provide the supervisor and operator its proposed response to the supervisor.

(ii) The lead agency shall submit its proposed response to the supervisor at least 30 days prior to approving the annual financial assurance cost estimate. The lead agency's response shall include either of the following:

(I) A description of how the lead agency proposes to adopt the supervisor's comments to the annual financial assurance cost estimate.

(II) A detailed description of the reasons why the lead agency proposes not to adopt the supervisor's comments.

(iii) Copies of any written comments received and responses prepared by the lead agency pursuant to this subparagraph shall be provided to the operator.

(C) (i) If the lead agency, in its written response to the supervisor's comments, proposes to not adopt the supervisor's comments concerning the annual financial assurance cost estimate, the supervisor, within 15 days of receipt of the lead agency's written response, may request in writing a consultation with the lead agency to discuss the supervisor's comments and the lead agency's response. The request shall include an invitation to the operator to participate in the consultation. The consultation may be conducted in person, electronically, telephonically, or by any means convenient to the parties.

(ii) If the supervisor requests a consultation pursuant to this subparagraph, the lead agency shall not approve the annual financial assurance cost estimate until after consulting with the supervisor. The consultation shall occur not later than 30 days after the supervisor's request unless an alternate timeframe is mutually agreed upon by the supervisor, lead agency, and operator.

(D) (i) Within 60 days of receiving the supervisor's written comments, or of a consultation pursuant to this subdivision, whichever is later or the due date of the supervisor's written comments if none are received, the lead agency shall approve or deny an operator's annual financial assurance cost estimate.

(ii) The lead agency shall give the supervisor at least 30 days' notice of the time, place, and date of the hearing at which the annual financial assurance cost estimate is scheduled to be approved by the lead agency.

(iii) If no hearing is required by this chapter, local ordinance, or other state law, the lead agency shall provide 30 days' notice to the supervisor that it intends to approve the annual financial assurance cost estimate.

(E) Within 30 days of the lead agency's approval of the annual financial assurance cost estimate, the lead agency shall send the supervisor its final response to the supervisor's comments.



(6) If the lead agency determines an operator's annual financial assurance cost estimate is inadequate, the lead agency shall specify the reasons for that determination. The operator shall have 30 days to appeal that denial pursuant to subdivision (e) of Section 2770 or provide a revised financial assurance cost estimate incorporating the suggested changes to the lead agency for approval by the lead agency pursuant to this section.

(e) (1) Within 30 days of the lead agency's approval of a financial assurance cost estimate pursuant to this section, the operator shall provide the lead agency and the supervisor an appropriate financial assurance mechanism.

(2) (A) Within 15 days of receiving a financial assurance mechanism pursuant to this subdivision, or subdivision (c) of Section 2773.1 the lead agency and the supervisor shall review the financial assurance mechanism to determine if the type of mechanism, including the release instructions, meets the requirements of this chapter.

(B) Financial assurance mechanisms determined to be noncompliant with this chapter shall be returned to the operator with instructions on how to correct the type or release instructions of the financial assurance mechanism.

(3) By July 1, 2018, the board shall adopt forms to implement this subdivision as necessary. The forms shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(f) The review and approval of financial assurances pursuant to this chapter shall not be considered a project for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

*(Amended by Stats. 2017, Ch. 521, Sec. 41. Effective January 1, 2018.)*

**§ 2773.5.** Section 2773.3 does not apply to either of the following:

(a) Any surface mining operation in existence on January 1, 2003, for which the lead agency has issued final approval of a reclamation plan and the financial assurances prior to September 1, 2002.

(b) Any amended reclamation plan or financial assurances that are necessary for the continued operation or expansion of a surface mining operation in existence on January 1, 2003, that otherwise satisfies the requirements of subdivision (a).

*(Added by Stats. 2002, Ch. 1154, Sec. 2. Effective January 1, 2003. Operative April 7, 2003, pursuant to Stats. 2003, Ch. 3, Secs. 2 and 3.)*

**§ 2774.** (a) Every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) (1) The lead agency shall cause surface mining operations to be inspected in intervals of no more than 12 months, solely to determine whether the surface mining operation is in compliance with this chapter. The lead agency shall cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified lead agency employee who has not been employed by the surface mining operation being inspected in any capacity during the previous 12 months, except that a qualified lead agency employee may inspect surface mining operations conducted by the local agency. All inspections shall be conducted using a form developed by the Division of Mine Reclamation and approved by the board that includes the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall provide a notice of completion of inspection to the supervisor within 90 days of conducting the inspection. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter and a copy of the completed inspection form, and shall specify, as applicable, all of the following:

(A) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were corrected before the submission of the inspection form to the supervisor.

(B) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor.

(C) A statement describing the lead agency's intended response to any aspects of the surface mining operation found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the supervisor.

(D) A statement as to whether the surface mining operation is out of compliance with an order to comply or stipulated order to comply issued by the lead agency.

(2) If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b) or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, forester, or qualified lead agency employee who conducted the inspection.

(c) If an operator does not request an inspection date on the annual report filed pursuant to Section 2207 or if the lead agency is unable to cause the inspection of a given surface mining operation on the date requested by the operator, the lead agency shall provide the operator with a minimum of five days' written notice of a pending inspection or a lesser time period if agreed to by the operator.

(d) (1) No later than December 31, 2017, the Division of Mine Reclamation shall establish a training program for all surface mine inspectors. The program shall be designed to include a guidance document, developed by the Division of Mine Reclamation, in consultation with the

board and stakeholders, to provide instruction and recommendations to surface mine inspectors performing inspections pursuant to subdivision (b).

(2) The training program shall include inspection workshops offered by the Division of Mine Reclamation in different regions of the state to provide practical application of the guidance document material.

(3) On and after July 1, 2020, all inspectors shall have on file with the lead agency and the Division of Mine Reclamation a certificate of completion of an inspection workshop. An inspector shall attend a workshop no later than five years after the date of his or her most recent certificate.

(4) The adoption of the guidance document by the Division of Mine Reclamation pursuant to this subdivision shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

*(Amended Stats. 2018, Ch. 51, Sec. 16. (SB 854) Effective June 27, 2018.)*

**§ 2774.1.** (a) (1) Except as provided in subdivision (i) of Section 2770, if the lead agency or the supervisor determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the surface mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the supervisor may issue a notice of that violation to the operator by personal service or certified mail. If the lead agency issues the notice, the lead agency shall send a copy of the notice to the supervisor. The notice shall include both of the following:

(A) A description of the violation.

(B) Actions the operator shall take to correct the violation.

(2) (A) If a lead agency or the supervisor determines that the time to correct the noticed violation will exceed 30 days, the lead agency and the operator may enter into a stipulated order to comply, with notice sent to the supervisor. If the supervisor initiated the enforcement action, the supervisor, after consulting with the lead agency, may enter into a stipulated order to comply with the operator. The lead agency may, but need not, join the stipulated order with the supervisor.

(B) A stipulated order to comply shall include a schedule and time for compliance that the lead agency or the supervisor, as applicable, determines is reasonable after taking into account the actions and legal processes required to correct the violation.

(3) (A) If the operator does not comply with a notice issued pursuant to paragraph (1) within 30 days of being served the notice or commit to enter into a stipulated order to comply pursuant to paragraph (2) within 30 days of being served the notice, the lead agency or the supervisor may issue an order to comply by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further surface mining activities. A lead agency shall, at the time of issuing an order to comply, provide a copy to the supervisor.

(B) An order to comply issued pursuant to this paragraph shall take effect 30 days following the service of the order to comply unless within those 30 days the operator appeals

the order to comply and requests a hearing before the lead agency, if the lead agency issued the order, or the board, if the supervisor issued the order. An order to comply issued pursuant to this paragraph shall specify all of the following:

(i) Which aspects of the surface mining operation are inconsistent with this chapter.

(ii) A time for compliance that the lead agency or supervisor determines is reasonable, taking into account the seriousness of the alleged violation and any good faith efforts to comply with applicable requirements.

(iii) The actions and legal processes required to correct the alleged violation.

(C) An appeal filed pursuant to subparagraph (B) shall be noticed and heard at a public hearing within 45 days of the filing of the appeal or a longer period as may be mutually agreed upon by the operator and the lead agency, if the lead agency issued the order, or the operator and the supervisor, if the supervisor issued the order.

(b) [Reserved]

(c) An operator who violates or fails to comply with an order to comply issued under subdivision (a) after the order's effective date or who fails to submit a report or pay annual fees to the supervisor or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the supervisor imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter, including Section 2207, or from the date of the inspection when the violation was identified, at the discretion of the issuer of the notice of that violation. The penalty may be imposed administratively by the lead agency or the supervisor. In determining the amount of the administrative penalty, the lead agency or the supervisor shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance of the assessment and payment shall be made to the lead agency or the supervisor within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. An order shall be served by personal service or by certified mail upon the operator. Penalties collected by the supervisor shall not be used for purposes other than to cover the reasonable costs incurred by the department in implementing this chapter or Section 2207.

(d) (1) An operator who violates or fails to comply with an order to comply issued pursuant to paragraph (3) of subdivision (a) or a stipulated order to comply entered into pursuant to paragraph (2) of subdivision (a) after the order's effective date shall be removed from the list published by the Division of Mine Reclamation pursuant to subdivision (b) of Section 2717.

(2) If after a public hearing the board or lead agency denies an appeal by the operator pursuant to subparagraph (C) of paragraph (3) of subdivision (a), the operator shall be removed 10 working days following the denial of the appeal from the list published by the Division of Mine Reclamation pursuant to subdivision (b) of Section 2717.

(3) If the operator enters into a stipulated order to comply between the operator and the lead agency, if the lead agency issued the order, or the operator and the supervisor, if the

supervisor issued the order, within 10 working days of the denial of the appeal and the stipulated order to comply is consistent with the order to comply upheld by the board or lead agency and includes a stipulated schedule for compliance, the operator shall remain on the list published by the Division of Mine Reclamation pursuant to subdivision (b) of Section 2717.

(4) Issuance of a notice pursuant to paragraph (1) of subdivision (a) or an order to comply or stipulated order to comply pursuant to paragraph (2) or (3) of subdivision (a) shall not disqualify an operator from eligibility for placement on the list published by the Division of Mine Reclamation pursuant to subdivision (b) of Section 2717, except in cases where an operator has failed to submit a financial assurance cost estimate to the lead agency or a financial assurance mechanism to the lead agency and supervisor in, accordance with Section 2773.4.

(e) If the lead agency or the supervisor determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the supervisor, may seek an order from a court of competent jurisdiction enjoining that operation.

(f) Upon a complaint by the supervisor, the department, or the board, the Attorney General may bring an action to recover administrative penalties under this section, and penalties under Section 2207, in any court of competent jurisdiction in this state against any person violating any provision of this chapter or Section 2207, or any regulation adopted pursuant to this chapter or Section 2207. The Attorney General may bring this action on his or her own initiative if, after examining the complaint and the evidence, he or she believes a violation has occurred. The Attorney General may also seek an order from a court of competent jurisdiction compelling the operator to comply with this chapter and Section 2207.

(g) (1) The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the supervisor pursuant to this section only after the violation has come to the attention of the supervisor and either of the following occurs:

(A) The lead agency has been notified by the supervisor in writing of the violation for at least 30 days, and has not taken appropriate enforcement action, which may include failing to issue an order to comply within a reasonable time after issuing a notice of violation.

(B) The supervisor determines that there is a violation that amounts to an imminent and substantial endangerment to the public health or safety, or to the environment.

(2) The supervisor shall comply with this section in initiating enforcement actions.

(h) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

*(Amended by Stats. 2017, Ch. 521, Sec. 43. Effective January 1, 2018.)*

**§ 2774.2.** (a) Within 30 days of the issuance of an order setting administrative penalties under subdivision (c) of Section 2774.1, the operator may petition the legislative body of the lead agency, if the lead agency has issued the order, or the board for orders issued by the supervisor, for review of the order. If the operator does not petition for review within the time

limits set by this subdivision, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The legislative body of the lead agency or the board shall notify the operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the lead agency or the supervisor and any other relevant evidence which, in the judgment of the legislative body or the board, should be considered to effectuate and implement the policies of this chapter.

(c) The legislative body or the board may affirm, modify, or set aside, in whole or in part, by its own order, an order of the lead agency or the supervisor setting administrative penalties reviewed by the legislative body or the board pursuant to this section.

(d) An order of the legislative body or the board issued under subdivision (c) shall become effective upon its issuance unless the operator petitions the superior court for review as provided in subdivision (e). An order shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty that is specified in an order issued pursuant to subdivision (c) shall be made to the lead agency or the supervisor within 30 days of service of the order. However, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e).

(e) An operator aggrieved by an order of the legislative body or the board issued pursuant to subdivision (c) may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the order. An operator aggrieved by an order of a lead agency or the supervisor setting administrative penalties pursuant to subdivision (c) of Section 2774.1, for which the legislative body or board denies review, may obtain review of the order in the superior court by filing in the court a petition for writ of mandate within 30 days following the denial of review. The provisions of Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If the operator does not petition for a writ of mandate within the time limits set by this subdivision, an order of the board or the legislative body shall not be subject to review by any court or agency.

(f) (1) After the expiration of the time to petition for review pursuant to subdivision (a) or (e), the supervisor or the board acting as the lead agency may apply to the small claims court or the superior court, depending on the jurisdictional amount, in the county where the administrative penalty was imposed for a judgment to collect the unpaid administrative penalty imposed pursuant to subdivision (c) of Section 2774.1. The application shall include all of the following:

(A) The order setting the administrative penalty pursuant to subdivision (c) of Section 2774.1.

(B) A notice to the operator of the right to petition for review of the order.

(C) Either of the following:

(i) A declaration from the board that no petition was made or that the board declined to review the petition.

(ii) A copy of the final order of the board.

(2) An application submitted pursuant to this subdivision shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application.

(3) The judgment entered pursuant to this subdivision shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court. The court shall make enforcement of the judgment a priority.

*(Amended by Stats. 2017, Ch. 521, Sec. 44. Effective January 1, 2018.)*

**§ 2774.2.5** (a) A lead agency shall submit to the supervisor, in an electronic format determined by the Division of Mine Reclamation, official copies of all of the following:

(1) Approved reclamation plans or plan amendments within 60 days of their approval in accordance with subparagraph (B) of paragraph (7) of subdivision (b) of Section 2772.1, including reclamation plans approved or upheld by the board or lead agency following an appeal pursuant to subdivision (e) of Section 2770.

(2) Interim management plans at the time of approval pursuant to subdivision (h) of Section 2770.

(3) Financial assurance cost estimates within 30 days of their approval pursuant to the procedures set forth in Section 2773.4, including financial assurance cost estimates approved or upheld by the board or lead agency following an appeal pursuant to subdivision (e) of Section 2770.

(4) Financial assurance mechanisms at the time of approval pursuant to subdivision (e) of Section 2773.4.

(5) Notices of violation at the time of issuance pursuant to paragraph (1) of subdivision (a) of Section 2774.1.

(6) Orders to comply at the time of issuance pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 2774.1.

(7) Notices of violations at the time of issuance pursuant to the surface mining ordinances of the lead agency.

(8) Stipulated orders to comply at the time of issuance pursuant to subparagraph (A) of paragraph (2) of subdivision (a) of Section 2774.1.

(9) Orders imposing an administrative penalty at the time of issuance pursuant to subdivision (c) of Section 2774.1.

(10) Administrative decisions at the time of issuance following an appeal of an order to comply issued pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 2774.1 or decisions following an appeal of an order imposing an administrative penalty at the time of issuance pursuant to subdivision (c) of Section 2774.1.

(11) Notices to an operator of a violation or failure to comply with an order to comply or stipulated order to comply at the time of issuance pursuant to subdivision (d) of Section 2774.1.

(12) Notices of completion of inspection, including the completed inspection form, at the time of issuance pursuant to subdivision (b) of Section 2774.

(13) Permits at the time of approval to conduct surface mining operations pursuant to Section 2770.

(14) Vested rights determinations pursuant to Section 2776.

(b) No later than January 1, 2022, the Division of Mine Reclamation shall post on its Internet Web site the documents and information listed in subdivision (a) in a database and in a geographic information system interface.

(c) If a member of the public seeks access to the information that lead agencies are required to submit to the supervisor pursuant to subdivision (a) and the lead agency has failed to submit the requested documents or information, the Division of Mine Reclamation shall make this disclosure: "This data has not been provided by the lead agency responsible for regulating this mine."

(d) The Division of Mine Reclamation may promulgate regulations implementing this section. *(Added Stats. 2018, Ch. 51, Sec. 17. (SB 854) Effective June 27, 2018.)*

**§ 2774.3.** The board shall review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy, and shall certify the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the board pursuant to this chapter.

*(Amended by Stats. 1987, Ch. 975, Sec. 3.)*

**§ 2774.4.** (a) The board shall exercise some or all of a lead agency's powers under this chapter pursuant to subdivision (c), except for permitting authority and vested rights determinations, if the board finds that a lead agency has done any of the following:

(1) Approved reclamation plans or financial assurance mechanisms that are not consistent with this chapter.

(2) Failed to inspect or cause the inspection of surface mining operations as required by this chapter.

(3) Failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter.

(4) Failed to take appropriate enforcement actions as required by this chapter.

(5) Intentionally misrepresented the results of inspections required under this chapter.

(6) Failed to submit information to the Division of Mine Reclamation as required by this chapter.

(b) The board shall conduct a public hearing no sooner than three years after the board has taken action pursuant to subdivision (a) to determine if a lead agency has corrected its deficiencies in implementing and enforcing this chapter and the rules and regulations adopted pursuant to this chapter. If the board finds the lead agency has corrected some or all of its deficiencies in implementing and enforcing this chapter, the board shall restore to the lead agency some or all of the powers assumed by the board pursuant to subdivision (a).

(c) (1) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies and allow the lead agency 45 days to provide a



response to the board on the identified deficiencies. The board may review the lead agency's response at a regularly scheduled meeting.

(2) (A) If the board is not satisfied with the lead agency's response, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county and directly mailed to the lead agency and to all operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(B) At the hearing, the board shall determine if the lead agency has engaged in the conduct described in subdivision (a). If the board finds that the lead agency has engaged in conduct described in subdivision (a), the board shall do either of the following:

(i) Require the lead agency to develop a remedial plan to correct the noted deficiencies. The remedial plan shall describe specific objectives and corresponding processes designed to address, at a minimum, the noted deficiencies and a time that the remedial plan will be fully implemented. The board shall set a hearing to review the completion of the remedial plan consistent with paragraph (2) and subdivisions (d) and (e).

(ii) Take immediate action pursuant to subdivision (a).

(d) Affected operators and interested persons have the right at the public hearing to present oral and written evidence on the matter being considered. At the public hearing, the board may place reasonable limits on the right of affected operators and interested persons to question and solicit testimony.

(e) (1) If the board decides to take action pursuant to subdivision (a) and exercise some or all of a lead agency's powers under this chapter, except for permitting authority and vested rights determinations, the board, based on the record of the public hearing, shall adopt written findings that explain all of the following:

(A) The action to be taken by the board.

(B) Why the board decided to take the action.

(C) Why the action is authorized by and meets the requirements of subdivision (a).

(2) In addition, the board's findings shall address the significant issues raised, or written evidence presented, by affected operators, interested persons, the lead agency, or the Division of Mine Reclamation. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) If the board finds at the hearing held pursuant to paragraph (2) of subdivision (c) that the lead agency has not completed the remedial plan prepared pursuant to clause (i) of subparagraph (B) of paragraph (2) of subdivision (c) to the board's satisfaction, the board shall follow the procedures set forth in paragraph (2) of subdivision (c) and subdivisions (d) and (e). If the board finds at the hearing held pursuant to paragraph (2) of subdivision (c) that the lead agency has completed the remedial plan prepared pursuant to clause (i) of subparagraph (B) of paragraph (2) of subdivision (c) to the board's satisfaction, the board shall conclude the action it has taken pursuant to this section.

(g) The lead agency, any affected operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior

court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

*(Amended by Stats. 2017, Ch. 521, Sec. 45. Effective January 1, 2018.)*

**§ 2774.5.** (a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy.

(d) Reclamation plans approved by the board pursuant to this section shall not be subject to modification by the lead agency at a future date but may be amended by the board. Reclamation plans approved by the board shall be remanded to the lead agency upon certification of the lead agency's ordinance, and the lead agency shall approve the reclamation plan as approved by the board, except that a subsequent amendment as may be agreed upon between the operator and the lead agency may be made according to this chapter. No additional public hearing shall be required prior to the lead agency's approval. Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations.

*(Amended by Stats. 1987, Ch. 975, Sec. 4.)*

**§ 2775.** (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, or any person who

is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance, may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2776.** (a) No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. A person shall be deemed to have vested rights if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

(b) The reclamation plan required to be filed under subdivision (b) of Section 2770, shall apply to operations conducted after January 1, 1976, or to be conducted.

(c) Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were conducted prior to January 1, 1976.

*(Amended by Stats. 2006, Ch. 538, Sec. 560. Effective January 1, 2007.)*

**§ 2777.** Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with, and approved by, the lead agency.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2777.3** (a) The construction and operation of a renewable energy generation facility on disturbed mined lands, including all foundations and other installations, facilities, buildings, accessory structures, and other improvements to the land that are related to the generation of

energy, shall be considered an interim use for the purposes of this chapter and shall not require an amendment to an approved reclamation plan if all of the following criteria are met:

(1) The renewable energy generation facility will not adversely affect the completion of reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The permit conditions of the renewable energy generation facility address and eliminate any potentially adverse impacts on the surface mining operation.

(3) The operating permit for the renewable energy generation facility includes both of the following:

(A) An approved closure and decommissioning plan that will not affect the manner in which reclamation will be achieved pursuant to this chapter.

(B) A separate financial assurance mechanism that the lead agency determines to be sufficient to perform the removal of the renewable energy generation facility.

(4) The closure and decommissioning of the renewable energy generation facility will occur prior to the later of the following:

(A) The expiration of the use permit for the surface mining operation.

(B) The completion of reclamation in accordance with the surface mining operation's approved reclamation plan.

(5) All required permits for the construction and related land improvements have been approved by a public agency in accordance with the applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(b) (1) Prior to approving an operating permit for a renewable energy generation facility subject to this section, the lead agency shall submit the operating permit application with all the associated maps and plans to the supervisor for review.

(2) The supervisor shall have 30 days from the receipt of the application with associated documents to prepare written comments if the supervisor chooses.

(3) The supervisor may provide comments relating to whether the renewable energy generation facility meets the criteria set forth in paragraphs (1) to (4), inclusive, of subdivision (a).

(4) The lead agency shall prepare a written response to the supervisor's comments and submit its response to the supervisor at least 30 days prior to the approval of the operating permit for the renewable energy generation facility.

(c) Copies of all approved permits and associated documents shall be submitted to the lead agency and the supervisor as an addendum to the approved reclamation plan no less than 30 days prior to the commencement of land improvements associated with the renewable energy generation facility.

(d) For purposes of this section, "renewable energy generation facility" means a solar photovoltaic, solar thermal under 50 megawatts, or wind energy generation facility.

*(Amended by Stats. 2017, Ch. 521, Sec. 46. Effective January 1, 2018.)*

**§ 2777.5.** (a) An operator who has failed to properly report a mine's mineral production or mine status in any previous year, pursuant to the annual reporting requirement in Section 2207, prior

to January 1, 2012, may attach corrected annual reports to the 2012 annual report so long as the corrected annual reports are submitted on or before July 1, 2013, and if the lead agency confirms in writing to the department all of the following:

(1) The operator has provided written notification to the lead agency and the supervisor of their intention to continue surface mining operations.

(2) The operator has an existing, valid permit or a vested right to conduct surface mining operations pursuant to Section 2776.

(3) (A) The operator's reclamation plan has been approved and is in compliance with this chapter, the surface mining operation is in compliance with the approved reclamation plan or applicable compliance order issued pursuant to this chapter, the surface mining operation has an approved financial assurance in place that the lead agency determines is adequate for reclamation pursuant to the approved reclamation plan, and the surface mining operation has been inspected by the lead agency as provided by Section 2774.

(B) The Division of Mine Reclamation may enter any mine site for which an operator has requested a correction of mine status or a return to idle status pursuant to this section in order to conduct an inspection.

(4) The operator has demonstrated that there are commercially useful mineral reserves remaining at the surface mining operation.

(5) Unpaid fees for years during which the operation's status was not properly reported have been paid to the department.

(6) The operator provides evidence to support any modified production reported on corrected annual reports.

(b) A mining operation that became idle, as defined in Section 2727.1, that failed to prepare and have approved an interim management plan and was thus considered abandoned pursuant to paragraph (6) of subdivision (h) of Section 2770 prior to January 1, 2013, may, without prejudice, be returned to idle status at the request of the operator if an interim management plan is approved by July 1, 2013, and upon lead agency verification of compliance with subdivision (a).

(c) The mine operator shall be responsible for the reasonable costs of an inspection conducted by the Division of Mine Reclamation pursuant to subparagraph (B) of paragraph (3) of subdivision (a).

*(Amended by Stats. 2017, Ch. 521, Sec. 47. Effective January 1, 2018.)*

**§ 2778.** (a) Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless it can be demonstrated to the satisfaction of the lead agency that the release of that information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The lead agency shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the supervisor and to persons authorized in writing by the operator and by the owner.

(b) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the supervisor by lead agencies on request.

*(Amended by Stats. 2017, Ch. 521, Sec. 48. Effective January 1, 2018.)*

**§ 2779.** Whenever one operator succeeds to the interest of another in any incompleting surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.

*(Added by Stats. 1975, Ch. 1131.)*

## **Article 6. Areas of Statewide or Regional Significance**

**§ 2790.** After receipt of mineral information from the State Geologist pursuant to subdivision (d) of Section 2761, the board may, by regulation adopted after a public hearing, designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries of the geographic areas. The designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.

*(Amended by Stats. 2013, Ch. 472, Sec. 5. Effective January 1, 2014.)*

**§ 2791.** The board shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2792.** Neither the designation of an area of regional or statewide significance nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or by a building permit or other authorization to commence development, upon which such person relies and has changed his position to his substantial detriment, and, which permit or authorization was issued prior to the designation of such area pursuant to Section 2790. If a developer has by his actions taken in reliance upon prior regulations obtained vested or other legal rights that in law would have prevented a local public agency from changing such regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

*(Added by Stats. 1975, Ch. 1131.)*

**§ 2793.** The board may, by regulation adopted after a public hearing, terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

*(Added by Stats. 1975, Ch. 1131.)*

## **Article 7. Fiscal Provisions**

**§ 2795.** (a) Notwithstanding any other law, moneys from mining activities on federal lands disbursed by the United States each fiscal year to this state pursuant to Section 35 of the Mineral Lands Leasing Act, as amended (30 U.S.C. Sec. 191) shall be deposited in the Surface Mining and Reclamation Account in the General Fund, which account is hereby created, in an amount equal to the appropriation for this chapter contained in the annual Budget Act for that fiscal year, plus any statewide general administrative costs assessed to the account for that fiscal year, and may be expended, upon that appropriation by the Legislature, for the purposes of this chapter.

(b) Proposed expenditures from the account shall be included in a separate item in the Budget Act for each fiscal year for consideration by the Legislature. Each appropriation from the account shall be subject to all of the limitations contained in the Budget Act and to all other fiscal procedures prescribed by law with respect to the expenditure of state funds.

*(Amended by Stats. 2019, Ch. 31.)*

**§ 2796.5.** (a) The supervisor, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the supervisor shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The supervisor may also consider the potential liability to the state in deciding whether to act under this section. Neither the supervisor, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be

liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d) (1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the supervisor's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The supervisor may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the supervisor may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(4) The supervisor shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, the supervisor may enter the property without consent or the issuance of a warrant.

(e) For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the supervisor to the extent of the supervisor's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

(f) (1) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

(2) Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were



reasonable and necessary. The lien may be foreclosed by an action brought by the supervisor, for a money judgment. Money recovered by a judgment in favor of the supervisor shall be used for the purposes of this chapter.

(g) If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of preventing the supervisor from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.

(h) "Remediate," for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

(i) "Threaten," for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(j) This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

(k) The supervisor may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

(l) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

*(Amended by Stats. 2017, Ch. 521, Sec. 49. Effective January 1, 2018.)*

## WATER CODE

### DIVISION 7. WATER QUALITY

#### CHAPTER 5.7. Drainage from Abandoned Mines

**§ 13397.** (a) The Legislature finds and declares all of the following:

(1) Thousands of abandoned mines have been identified in this state. Waste, including acid rock drainage from abandoned mines, has a devastating effect on aquatic life and has degraded some major water bodies in the state. Abandoned mines are the overwhelming source of copper loading to the Sacramento River and the San Francisco Bay/Sacramento-San Joaquin Delta. In some instances, waste from abandoned mines can cause public health and safety problems.

(2) The formation of acid rock drainage is a process that can continue for centuries after the abandonment of a mine and is difficult to control. The complete elimination of acid rock drainage is not possible at this time.

(3) Unless action is taken either by public agencies or private parties, who are not responsible for creating the waste, abandoned mines will continue to discharge waste indefinitely. The cleanup of this waste for the protection of the public and the waterways of the state should be facilitated by limiting the financial responsibility for that cleanup.

(4) Public agencies and private parties, who are not otherwise legally responsible for the abandoned mined land, are reluctant to remediate abandoned mined lands unless they are assured that they will be held responsible for completing only the remedial work that they undertake. The public agencies and private parties may be willing to implement partial remediation but they do not have sufficient resources to pay the cost of meeting all applicable regulatory standards.

(b) The Legislature further finds and declares that it is the policy of the state to establish a program that permits public agencies and cooperating private parties to reduce the threat to water quality caused by abandoned mined lands without becoming responsible for completely remediating abandoned mine waste to a point that meets water quality objectives and related regulatory requirements. This program should provide a streamlined process for the purpose of approving an abandoned mine remediation plan in lieu of certain state permits and requirements. The implementation of this program will foster projects to improve water quality while ensuring that the taxpayers are not unfairly burdened.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

**§ 13397.5.** Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Abandoned mine waste" means the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property on, or discharging from, abandoned mined lands, directly resulting from, or displaced by, surface mining operations.

(b) "Abandoned mined lands" has the same meaning as "abandoned surface mined area," as defined in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) of Section 2796 of the Public Resources Code.

(c) "Acid rock drainage" means acid waste discharge that results from the oxidation of metal sulfide in minerals associated with mined lands.

(d) "Mined lands" has the same meaning as set forth in Section 2729 of the Public Resources Code.

(e) "Oversight agency" means either the state board or a regional board. If the remediating agency is a regional board, the state board shall be the oversight agency. If the remediating agency is the state board, the oversight agency shall be the Site Designation Committee established pursuant to Section 25261 of the Health and Safety Code. The committee shall have the powers and functions specified in Chapter 6.65 (commencing with Section 25260) of Division 20 of the Health and Safety Code, except that neither the chairperson of the state board, nor any designee, shall participate in the actions of the committee relating to the state board as a remediating agency.

(f) "Remediating agency" or "agency" means any public agency, or any private individual or entity acting under a cooperative agreement with a public agency, that prepares and submits a

remediation plan in accordance with this chapter. "Remediating agency" includes, but is not limited to, a public agency that holds title to abandoned mined lands for the purpose of remediating those lands or that is engaging in remediation activities that are incidental to the ownership of the lands for other than mining purposes. "Remediating agency" does not include any person or entity that is not a public agency, that, before implementing an approved remediation plan, owns or has owned a property interest, other than a security interest, in the abandoned mined lands being remediated, or is or has been legally responsible for, or had a direct financial interest in, or participated in, any mining operation, including exploration, associated with the abandoned mined lands being remediated.

(g) "Remediation plan" means a plan to improve the quality of the waters of the state that have been directly and adversely impacted by abandoned mine waste.

*(Amended by Stats. 2000, Ch. 727, Sec. 5. Effective January 1, 2001.)*

**§ 13398.** (a) Notwithstanding any other provision of law, a remediating agency that has implemented an approved remediation plan, or a public agency that is effecting reclamation of a mine site pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be the owner or operator of the abandoned mined lands, or any structure, improvement, waste management unit, or facility on the abandoned mined lands, and shall not be deemed, based on the actions taken to implement the remediation plan or the reclamation, to be responsible for any discharge, or the results of any discharge, of abandoned mine waste on or from any abandoned mined lands, including discharges which have been affected by the activities of the remediating agency or the public agency effecting reclamation of a mine site.

(b) Except as provided in paragraph (c), Chapter 5.5 (commencing with Section 13370), and Section 13398.9, the responsibilities of a remediating agency are limited to the following:

(1) Submitting a remediation plan to the oversight agency for approval in accordance with Section 13398.3. A remediation plan may be submitted in connection with a remediation project that was commenced or completed prior to January 1, 1996.

(2) Implementing a remediation plan that has been approved by the oversight agency.

(3) If required by a remediation plan approved by the oversight agency, maintaining any structure, waste management unit, improvement, or other facility constructed, improved, or placed on the abandoned mined lands.

(4) Periodically monitoring and reporting as required by the oversight agency.

(5) (A) Determining if the remediation plan implemented by the remediating agency has been effective to provide a substantial improvement in water quality affected by abandoned mine waste.

(B) If the remediating agency determines that the remediation plan implemented by the agency is not effective, the remediating agency shall promptly report that determination to the oversight agency. If the remediating agency or the oversight agency determines that the remediation plan implemented by the remediating agency is not effective, the remediating agency shall submit a modified remediation plan to the oversight agency which includes a

proposal to improve the plan to make it effective, or a proposal to cease remedial activities on the abandoned mined lands and return those lands, including the water quality on those lands, to a condition that approximates the quality that existed prior to commencing remedial activities. The remediating agency shall implement the modified remediation plan as approved by the oversight agency.

(6) Notwithstanding any other provision of law, except as provided in Chapter 5.5 (commencing with Section 13370), if the remediating agency implements or has implemented the approved remediation plan and any modifications to the plan approved by the oversight agency, the remediating agency, with regard to any discharge of abandoned mine waste that is the subject of the plan, shall not be required to achieve water quality objectives or to comply with other requirements of this division or other laws that are administered by the state board or the regional boards, and shall not be subject to any enforcement actions pursuant to state law based on actions taken to implement the approved remediation plan, except for violations involving gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the remediating agency.

(c) The responsibilities of a remediating agency that engages in surface mining operations, as defined in Section 2735 of the Public Resources Code, in conjunction with the remediation or reclamation of abandoned mine waste or that performs reclamation of a surface mining operation pursuant to Section 2773.1 or 2796 of the Public Resources Code, include performing the applicable requirements of Section 2207 of the Public Resources Code and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code). The State Mining and Geology Board may grant an exemption from the requirements of Section 2207 of the Public Resources Code or from the Surface Mining and Reclamation Act of 1975 to a remediating agency and its contractors solely for the purpose of removing abandoned mine waste in connection with the implementation of an approved remediation plan.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

**§ 13398.3.** The remediation plan to be submitted by a remediating agency to the oversight agency shall include all of the following:

(a) Identification of the remediating agency, and a certification that the remediating agency is a remediating agency as defined in this chapter.

(b) Identification of the abandoned mined lands that are the subject of the plan.

(c) Identification of the waters of the state, if any, that are affected by the abandoned mined lands.

(d) A description of the physical conditions at the abandoned mined lands that are causing or have caused adverse water quality impacts.

(e) A description of the practices, including system design and construction plans, and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing those practices. If the plan is prepared for an existing remediation project, the remediation plan shall include a description of

practices that have been implemented and the practices that are proposed to improve the existing project, if any.

(f) An analysis demonstrating that the implementation of the practices described in the plan have caused, or are expected to cause, a substantial improvement in water quality for the identified waters.

(g) A description of monitoring or other assessment activities to be undertaken to evaluate the success of the implemented practices during and after implementation, including an assessment of baseline conditions.

(h) A budget and identified funding to pay for the implementation of the plan.

(i) Remediation goals and objectives.

(j) Contingency plans.

(k) A description of the remediating agency's legal right to enter and conduct remedial activities.

(l) The signature of an authorized representative of the remediating agency.

(m) Identification of the pollutants to be addressed by the plan.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

**§ 13398.5.** The oversight agency shall do all of the following:

(a) Comply with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) in connection with the review of any remediation plan.

(b) Provide an opportunity for public review of, and comment with regard to, the remediation plan.

(c) Disapprove, approve, or modify and approve a remediation plan at a public meeting.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

**§ 13398.7.** (a) The oversight agency may approve the remediation plan if the oversight agency finds that there is substantial evidence in the record that the plan will substantially improve water quality affected by abandoned mine waste.

(b) The oversight agency may approve a remediation plan for a project that the remediating agency implemented prior to January 1, 1996, if that oversight agency finds that there is substantial evidence in the record that the project has substantially improved water quality adversely impacted by mining activities on the abandoned mined lands undertaken before the project was implemented.

(c) The remediating agency is not required to include in the remediation plan a plan to achieve water quality objectives, with regard to any discharge of abandoned mine waste that is the subject of the plan, to comply with other requirements of this division, except for Chapter 5.5 (commencing with Section 13370), or to comply with any other law that is administered by the state board or the regional boards, with regard to that discharge.

(d) The oversight agency may approve a modification of an approved remediation plan to permit additional time for completing the remediation project or to otherwise modify the plan, after an opportunity for public comment.

(e) If the oversight agency determines that a remediating agency is not implementing the approved remediation plan in substantial compliance with its terms, that oversight agency shall notify the remediating agency of its determination, including the specific causes for that determination.

(f) If the oversight agency determines that the specific causes for the determination are not adequately addressed pursuant to subdivision (e), or if a compliance plan is not submitted to, and approved by, the oversight agency within 180 days from the date of the notification pursuant to subdivision (e), the oversight agency may determine that the remediating agency is in violation of this chapter. A remediating agency that is in violation of this chapter is not protected by the limitations on responsibility for remediation of abandoned mined lands provided by this chapter and may be subject to any enforcement action authorized by law.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

**§ 13398.9.** (a) This chapter has no effect on the tort liability of a remediating agency for personal injury or wrongful death.

(b) This chapter has no effect on the liability of a remediating agency based upon activities other than those undertaken in connection with the implementation of an approved remediation plan.

(c) This chapter has no effect on the liability of a remediating agency if that agency, following implementation of an approved remediation plan, benefits from, or participates in, any mining operation, including exploration, associated with the abandoned mined lands subject to the approved remediation plan.

(d) For the purposes of this chapter, the remediation plan for the Penn Mine property located in Calaveras County shall, if a memorandum of understanding is entered into by the state and other appropriate parties, include the terms and conditions set forth in that memorandum of understanding.

*(Added by Stats. 1995, Ch. 878, Sec. 1. Effective January 1, 1996.)*

# CALIFORNIA CODE OF REGULATIONS

## TITLE 14. NATURAL RESOURCES

### DIVISION 2. DEPARTMENT OF CONSERVATION

#### CHAPTER 8. Mining and Geology

##### Subchapter 1.State Mining and Geology Board

##### Article 1. Surface Mining and Reclamation Practice

###### § 3500. Purpose

It is the purpose of this subchapter to establish state policy for the reclamation of mined lands and the conduct of surface mining operations in accord with the general provisions set forth in Public Resources Code, Division 2, Chapter 9, Section 2710 et seq. (Surface Mining and Reclamation Act of 1975, as amended by Statutes of 1980).

*Authority: Section 2755, Public Resources Code. Reference: Sections 2710-2795, Public Resources Code.*

###### § 3501. Definitions

The following definitions as used herein shall govern the interpretation of these regulations:

**Agricultural Activity.** The cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.

**Angle of Repose.** The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material.

**Backfill.** Earth, overburden, mine waste or imported material used to replace material removed during mining.

**Borrow Pits.** Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

**Critical Gradient.** The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

**Excavations for On-Site Construction.** Earth material moving activities that are required to prepare a site for construction of structures, landscaping, or other land improvements (such as excavation, grading, compaction, and the creation of fills and embankments), or that in and of themselves constitute engineered works (such as dams, road cuts, fills, and catchment basins).

**Grading.** To bring an existing surface to a designed form by cutting, filling, and/or smoothing operations.

**Minerals.** Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

**Person.** Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

**Reclamation Plan.** The applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after January 1, 1976, as called for in Section 2772 of the Act.

**Resoiling.** The process of artificially building or reconstructing a soil profile.

**Stream Bed Skimming.** Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

**Surface Mining Operations.** In addition to the provisions of Section 2735 of the Act, borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations.

**Topsoil.** The upper part of the soil profile that is relatively rich in humus, which is technically known as the A-horizon of the soil profile.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2726-2735, Public Resources Code.*

### **§ 3502. The Reclamation Plan**

(a) Objectives. Reclamation plans shall be developed to attain the objectives of Public Resources Code Section 2712(a)-(c).

(b) Reclamation Plan Elements. In addition to the information required by Public Resources Code Section 2772, the following elements shall be included in the reclamation plan:



(1) The environmental setting of the site of operations and the effect that possible alternate reclaimed site conditions may have upon the existing and future uses of surrounding lands.

(2) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site.

(3) The designed steepness and proposed treatment of the mined lands' final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other factors. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. Whenever final slopes approach the critical gradient for the type of material involved, regulatory agencies shall require an engineering analysis of the slope stability. Special emphasis on slope stability and design shall be necessary when public safety or adjacent property may be affected.

(4) Areas mined to produce additional materials for backfilling and grading, as well as settlement of filled areas, shall be considered in the reclamation plan. Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice.

(5) Disposition of old equipment.

(6) Temporary stream or watershed diversions.

(c) Adequacy. In judging the adequacy of a particular reclamation plan in meeting the requirements described herein and within the Act, the lead agency shall consider the physical and land-use characteristics of the mined lands and their surrounding area pursuant to Public Resources Code Section 2773.

(d) Each surface mining operation as defined in Public Resources Code Section 2735 and Title 14 California Code of Regulations Section 3501, shall have no more than one approved reclamation plan applicable to that operation except as described in subsection (i) to this section. An amended reclamation plan shall be approved by the lead agency prior to the commencement of activities determined to be a substantial deviation from the approved plan. For purposes of the Surface Mining and Reclamation Act of 1975 and regulations adopted pursuant thereto, a substantial deviation shall be defined as a change or expansion to a surface mining operation that substantially affects the completion of the previously approved reclamation plan, or that changes the end use of the approved plan to the extent that the scope of the reclamation required for the surface mining operation is substantially changed. In determining whether a change or expansion constitutes a substantial deviation, the lead agency shall take into consideration the following factors:

(1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining;

(2) A substantial extension of the termination date of the mining operation as set out in the approved reclamation plan;

(3) Changes that would substantially affect the approved end use of the site as established in the reclamation plan;

(4) The consistency of any proposed change to the operation with the previously adopted environmental determinations.

(5) Any other changes that the lead agency deems substantial deviations as defined in this subsection.

(e) An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California Code of Regulations commencing with Section 3700.

(f) In the event that a proposed change is determined not to be a substantial deviation from an approved reclamation plan, then current reclamation standards need only apply to the amended portion of the plan. An amendment to the originally approved reclamation plan that includes an expanded operating area shall be approved by the lead agency prior to implementation of the activities in the expansion area.

(g) Should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The amended reclamation plan shall incorporate current reclamation standards for the entire area governed by the plan that is impacted by the deviation. If reclamation has been substantially initiated at the time that a lead agency determines that an amended reclamation plan is required, the operator may complete reclamation of those areas according to the previously approved reclamation plan, except for those areas that are or will be affected by the proposed expanded mining activities which shall be subject to the requirements of the amended reclamation plan.

(h) Where a surface mining operation has in effect an approved reclamation plan and approved financial assurance covering a surface mining operation, and the mining operator proposes to utilize a new surface area, not included within the approved reclamation plan, for purposes of creating a new and separate pit, quarry, or other excavation, the operator may, at the option of the operator do one of two things:

(1) Amend the existing reclamation plan to encompass the new area designated for use as a pit, quarry, or excavation, together with any other changes necessary to make the reclamation plan, as amended, conform to the Act and these regulations. If such an amended plan is proposed, the amended plan must conform to the current reclamation standards required by the Act and the regulations, as to the new area(s) designated as a quarry, pit or excavation, and any processing facilities, roads, sumps, drainage systems or storage or processing areas, which that new area will utilize within the previously approved reclamation plan area or within the new area. Concurrently with the approval of the amended reclamation plan to encompass the new area operations, unless such a provision already is in the existing reclamation plan, the lead agency may require an amendment to the existing reclamation plan to provide for the immediate commencement of the reclamation of any mined lands which no longer are required for mining operations.

(2) Obtain approval of a new reclamation plan covering the new area and any facilities, roads, sumps, drainage systems, or storage or processing areas, utilized in connection with operations in the new area. Any areas encompassed within such plan shall conform to the reclamation standards of the Act and these regulations that are in effect at the time the reclamation plan is approved.

(i) The following exemptions to this section shall apply:

(1) Where a single surface mining operation has separate facilities located within different lead agency jurisdictions, and where these facilities are separated by a distinct and significant physical boundary such as a major highway, stream channel, or the like, the operator may obtain separate reclamation plans and financial assurances for the facilities from the lead agencies in which those facilities are located.

(2) Those surface mining operations that have more than one reclamation plan approved on or before October 1, 2002 shall not be subject to the requirements for a single reclamation plan as described in subsection (d) of this section unless new mining operations or substantial deviations to the operation are proposed after that date that require one of the plans to be amended.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2712(a)-(c), 2756-2757, 2770 and 2772-2773, Public Resources Code.*

### **§ 3503. Surface Mining and Reclamation Practice**

The following are minimum acceptable practices to be followed in surface mining operations:

(a) Soil Erosion Control.

(1) The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.

(2) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.

(3) Erosion control facilities such as retarding basins, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(b) Water Quality and Watershed Control.

(1) Settling ponds or basins shall be constructed to prevent potential sedimentation of streams at operations where they will provide a significant benefit to water quality.

(2) Operations shall be conducted to substantially prevent siltation of ground-water recharge areas.

(c) Protection of Fish and Wildlife Habitat. All reasonable measures shall be taken to protect the habitat of fish and wildlife.

(d) Disposal of Mine Waste Rock and Overburden. Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.

(e) Erosion and Drainage. Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent erosion of spillways when these basins have outlet to lower ground.

(f) Resoiling. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

(g) Revegetation. When the reclamation plan calls for revegetation the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the mined areas shall be used.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2756 and 2757, Public Resources Code.*

#### **§ 3504. Administration by Lead Agency**

(a) Record Keeping. The lead agency shall establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. The lead agency shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the director of the Department of Conservation.

(b) Financial Assurances. The lead agency shall ensure that the objectives of the reclamation plan will be attained. This may include provisions for surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances adopted by the board in accordance with PRC § 2773.1(e), to guarantee the reclamation in accordance with the approved reclamation plan.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2757, 2758(b), 2774(a) and 2778, Public Resources Code.*

#### **§ 3504.5. Conduct of Mine Inspections**

(a) The inspection form, as referenced in Public Resources Code Section 2774(b)(1), is the Surface Mining Inspection Report, form MRRC-1 (2019), which is hereby incorporated by reference. The Notice of Completion of Inspection, as referenced in Public Resources Code Section 2774 (b)(1), shall be submitted on form NOCI-1 (2019), which is hereby incorporated by reference.

(b) Mine inspections shall be performed by a qualified lead agency employee who in the determination of the lead agency has demonstrated competence in performing inspections of surface mining operations, or a California state-licensed person as specified in Public Resources Code Section 2774(b)(1). A qualified lead agency employee may include contractors and contract employees. Any person engaged in the practice of geology, engineering, landscape architecture, forestry, or land surveying, in the course of evaluating any aspect or condition of the surface mining operation shall be duly licensed in that practice as required by the Business and Professions Code, Division 3, Chapters 3.5, 7, 12.5, 15 and Public Resources Code, Division 1, Chapter 2.5, Article 3. The mine inspector shall indicate on the Surface Mining

Inspection Report, those aspects or conditions that may require evaluation by California state-licensed persons.

(c) Mine inspections shall not be performed by any person who holds a financial interest in or has been employed by the operator of the surface mining operation being inspected in any capacity, including as a consultant, contractor, or contract employee, during the 12 months preceding the mine inspection. A qualified lead agency employee may inspect surface mining operations owned and operated by the lead agency.

(d) Inspectors shall keep on file a current certificate of completion of an inspection workshop beginning July 1, 2020 pursuant to Public Resources Code Section 2774 (d)(3). California state-licensed persons who only provide an evaluation of a particular aspect or condition of a surface mining operation requiring licensure may, but are not required to, obtain a certificate of completion of an inspection workshop conducted by the Division of Mine Reclamation.

(e) The Surface Mining Inspection Report may include any other reports or prepared documents by the person conducting the inspection and when necessary any reports or documents prepared by California state-licensed persons or specialists. A copy of the Surface Mining Inspection Report, any other reports or documents, and the Notice of Completion of Inspection shall be forwarded to the Division of Mine Reclamation and the mine operator within 90 days of the date of the inspection. If required, a copy of the Surface Mining Inspection Report and the Notice of Completion of Inspection shall be forwarded to the appropriate Federal entity within 90-days of conduct of the inspection.

*Authority: Sections 2755 and 2759, Public Resources Code Reference: Section 2774, Public Resources Code.*

#### **§ 3504.6. Guidance Document for Surface Mine Inspectors (GDSMI).**

The guidance document required for the department's inspection training program under subdivision (e) of Public Resources Code section 2774, shall consist of the "Guidance Document for Surface Mine Inspectors," dated January 1, 2018, which is hereby incorporated by reference.

*Authority cited: Section 2774, Public Resources Code. Reference: Section 2774, Public Resources Code.*

#### **§ 3505. Special Provisions**

(a) Exemptions.

(1) In addition to the provisions of Public Resources Code Section 2714(a), (c) and (d), any surface mining operation that does not involve either the removal of a total of more than 1000 cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location, shall be exempt from the provisions of the Act.

(2) The purpose of this subdivision is to define the criteria of a "flood control facility," the clean-out of which is exempt from the requirements of the Surface Mining and Reclamation Act of 1975 under PRC Section 2714(a) and (b). It is intended that cleaning out of a previously engineered, constructed facility for which approved design plans exist is an activity to restore the usefulness of that flood control facility to its original design purpose. It is not the intent of this subsection to exempt the removal of materials from natural channels.

The removal of post-construction accumulated materials from a responsible public agency-approved, managed, engineered, constructed facility intended for the purpose of water retention or detention, debris retention, or from a flood water conveyance, where the post-extraction condition, capacity or grade of the facility or conveyance does not exceed the as-built approved design specification contained in the approved documents for the facility or conveyance, shall be exempt from the provisions of the Act.

(3) The excavation, grading, or transportation of mineral materials, including overburden, exclusive of commercial surface mining activities as defined in Public Resources Code Section 2714(d), that is wholly integral and necessary to the conduct of agricultural activities either on-site or on non-contiguous parcels, shall meet the requirements of Public Resources Code Section 2714(a) for farming excavations or grading. This exemption does not apply to the exportation of mineral materials, including overburden, from the property that is in excess of 1,000 cubic yards for commercial purposes.

(b) Vested Rights. The permit and reclamation plan requirements for persons with vested rights are stated in Public Resources Code Section 2776.

Where a person with vested rights continues surface mining in the same area subsequent to January 1, 1976, he shall obtain an approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2714, 2758(c) and 2776, Public Resources Code; and 78 Ops.Cal.Atty.Gen. 343 (1995).*

## **Article 2. Areas Designated to be of Regional Significance**

### **§ 3550. Introduction**

Pursuant to Section 2790 of the Surface Mining and Reclamation Act, the Mining and Geology Board designates certain mineral resource sectors within the following geographical areas to be of regional significance.

*Authority and reference: Section 2790, Public Resources Code.*

#### **§ 3550.1. Tujunga and Pacoima Wash Areas of the San Fernando Valley Region, Los Angeles County**

On January 7, 1981, following a December 11, 1980, public hearing, the Mining and Geology Board designated Sectors A, B, C, and D of the Tujunga and Pacoima Wash areas to be of regional significance. In general, these sectors are described as follows:

- (1) Sector A -Tujunga Valley east of the Hansen Dam flood control basin, west of the 210 freeway and excluding identified archaeological sites;
- (2) Sector B -the Hansen Dam Area;
- (3) Sector C -an area southwest of Hansen Dam; and
- (4) Sector D -Pacoima Wash north of Lopez Dam.

These sectors contain sand and gravel deposits which provide a source of construction aggregate for the region's future need.

Designation Map #81-1 and a report summarizing the designation findings of the State Mining and Geology Board are on file at the Board's office in Sacramento.

*Authority and reference: Section 2790, Public Resources Code.*

### **§ 3550.2. Santa Clara River Valley Area of the Western Ventura County Region, Ventura County**

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, C, D, E, F, G, H, I, and J, on Designation Map #82-1, in the Santa Clara River Valley to be of regional significance. In general, these sectors are described as follows:

(1) Sector A -Instream deposits of the Santa Clara River near the community of El Rio beginning approximately one mile downstream of the U.S. Highway 101 bridge and extending to a point approximately two miles upstream of the Los Angeles Avenue bridge.

(2) Sector B -Offstream deposits located adjacent to Vineyard Avenue in the community of El Rio.

(3) Sector C -Offstream deposits located in and adjacent to the community of El Rio.

(4) Sector D -Offstream deposits located east of Los Angeles Avenue and south of the Santa Clara River.

(5) Sector E -Instream deposits of the Santa Clara River beginning at the eastern boundary of Sector A and extending upstream to the confluence of Santa Paula Creek.

(6) Sector F -Instream deposits extending from the eastern boundary of Sector E upstream to the confluence of Sespe Creek.

(7) Sector G -Instream deposits extending from the eastern boundary of Sector F upstream to Cavin Road.

(8) Sector H -Instream deposits extending from the eastern boundary of Sector G upstream to Piru.

(9) Sector I -Instream deposits extending from the eastern boundary of Sector H upstream for approximately three miles.

(10) Sector J -Instream deposits extending from the eastern boundary of Sector I upstream to the Ventura County line.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future need.

Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption Regions -March 1982," are on file at the Board's office in Sacramento.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

**§ 3550.3. Simi Valley Area of the Simi Region, Ventura County**

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, and C, on Designation Map 82-1, in the Simi Valley area to be of regional significance. In general, these sectors are described as follows:

- (1) Sector A -Hillside deposits located on Oak Ridge and the Simi Hills.
- (2) Sector B -Hillside deposits located along a portion of Oak Ridge extending from Long Canyon eastward to the Ventura County line.
- (3) Sector C -Hillside deposits located above Meir and Runkle Canyons in the Simi Hills.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future needs.

Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption regions -March 1982," are on file at the Board's office in Sacramento.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

**§ 3550.4. Santa Ana River, Santiago Creek Arroyo Trabuco, San Juan Creek, and Temescal Valley Areas of the Orange County-Temescal Valley Region, Orange, Riverside, and San Bernardino Counties**

A set of maps identifying the exact locations of the designated areas, entitled "Regionally Significant Construction Aggregate Resource Areas in the Orange County-Temescal Valley and San Gabriel Valley Production-Consumption Regions," is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A -Instream deposits of the Santa Ana River beginning at Prado Dam and extending downstream for one and one-half miles.

Sector B -Instream deposits along the north side of the Santa Ana River beginning near Coal Canyon and extending downstream for approximately three miles.

Sector C -Instream deposits along the south side of the Santa Ana River from Horseshoe Bend downstream to the Weir Canyon Bridge.

Sector D -Offstream deposits located between Orangethorpe Avenue and La Palma Avenue in the northeastern part of Anaheim.



Sector E -Offstream deposits located near the intersection of Fee Ana Street and La Palma Avenue in Anaheim.

Sector F -Offstream deposits in the Warner Basin located near Jefferson Street and the Riverside Freeway in Anaheim.

Sector G -Offstream deposit located on the south side of the Santa Ana River near Lincoln Avenue in Anaheim.

Sector H -Hillside deposit located immediately east of Prado Dam in the Chino Hills.

Sector I -Hillside deposit located east of Gypsum Canyon in the Santa Ana Mountains.

Sector J -Instream deposit of Santiago Creek beginning near Villa Park Dam and extending downstream to approximately the Newport Freeway.

Sector K -A conglomerate deposit in upper Blind Canyon east of Villa Park Dam.

Sector L -Instream deposit located on Santiago Creek between Santiago Dam and Irvine Park.

Sector M -Instream deposit located under the Santiago Reservoir on Santiago Creek.

Sector N -Instream deposits of Santiago Creek beginning near Santiago Reservoir and extending upstream to the confluence of Williams Canyon, including a portion of Silverado Canyon.

Sector O -Offstream deposit located on the southeast side of Cota Street in Corona.

Sector P -Offstream deposits of Temescal Wash near the intersection of the Riverside Freeway and Interstate 15 near Corona.

Sector Q -Instream deposits located in Temescal Wash beginning near Magnolia Avenue and extending upstream to Cajalco Road.

Sector R -Instream deposits located in Temescal Wash beginning near the Olsen Canyon confluence and extending upstream to Lee Lake.

Sector S -Offstream deposits of the Coldwater Mayhew Fan near Glen Ivy Hot Springs.

Sector T -Instream deposits of San Juan Creek beginning near Casper Regional Park and extending downstream to approximately Ganado Road in San Juan Capistrano.

Sector U -Instream deposits of Arroyo Trabuco beginning one-half mile above Interstate 5 and extending approximately five miles upstream.

Sector V -Instream deposits of Arroyo Trabuco beginning at the Live Oak Canyon Road crossing and extending upstream for approximately two miles.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.*

#### **§ 3550.5. San Gabriel River, Eaton Wash, Devils Gate, and Palos Verdes Areas of the San Gabriel Valley Region, Los Angeles County**

A set of maps identifying the exact locations of the designated areas, entitled “Updated Designation of Regionally Significant Construction Resources in the Northern San Gabriel Production-Consumption Regions, Los Angeles County, California, 2013” and “Updated Designation of Regionally Significant Construction Aggregate Resources in the Eaton Wash, Devils Gate Reservoir, and Palos Verdes Areas, San Gabriel Production-Consumption Region, Los Angeles County, California, 2013” is incorporated by reference into this regulation. The

areas for designation or termination of designation are shown on the two Plates. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A -Offstream and instream deposits of the San Gabriel River below Morris Dam near Azusa.

Sector B -Instream deposit consisting of the flood control channel of the San Gabriel River upstream of Foothill Boulevard near Azusa.

Sector C -Instream deposits in a portion of the Santa Fe Flood Control Basin and spillway channel near Irwindale.

Sector D -Offstream and instream deposits in the western portion of the San Gabriel River Fan near Baldwin Park and Arcadia.

Sector E -Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector F -Instream deposits of Eaton Wash located in the Eaton Wash Flood Control Basin.

Sector H -Instream deposits of Arroyo Seco in the Devils Gate Reservoir area.

Sector I -Hillside deposit in the Palos Verdes Hills on Narbonne Avenue in Bent Springs Canyon.

Sector J - Hard rock deposits in the San Gabriel Mountains northeast of San Gabriel Creek in the City of Azusa.

Sector K - Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector L - Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector M - Offstream and instream deposits in the western portion of the San Gabriel River Fan near Baldwin Park and Arcadia.

Six Sectors are identified for termination of designation status because of high-value incompatible land use developments.

Sector A (263 acres): There are six separate areas that are now incompatible with mining. Forty-three million tons of resources in these areas have been lost because of urbanization and 24 million tons of resources have been lost because of landfill operations.

Sector B (12 acres): There is one area that has become incompatible with mining. Eight million tons of resources have been lost to urbanization.

Sector C (42 acres): There are two areas that have become incompatible with mining. Thirty-six million tons of resources have been lost to urbanization.

Sector D (391 acres): There are eleven areas that are now incompatible with mining. Fifty-two million tons of resources have been lost to urbanization and 64 million tons of resources have been lost because of landfill operations.

Sector E (422 acres): There are six areas that have become incompatible with mining. Fourteen million tons of resources have been lost to urbanization, and 179 million tons of resources have been lost to landfill operations.

Sector I (104 acres): There are two areas that have become incompatible with mining. Fifteen million tons of resources have been lost to landfill operations.

*Authority: Sections 2790 and 2793, Public Resources Code. Reference: Sections 2726, 2761-2763, 2790-2791 and 2793, Public Resources Code.*

### **§ 3550.6. Construction Aggregate Resources, Western San Diego County Region**

A set of maps identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Western San Diego County Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A -A granitic rock deposit located in eastern Oceanside, southwest of the intersection of Highway 78 and College Boulevard, near Buena Vista Creek Canyon.

Sector B -Channel and flood-plain deposits of the San Luis Rey River beginning near North River Road in Oceanside and extending upstream for approximately six miles.

Sector C -Channel and flood-plain deposits of the San Luis Rey River from near the Highway 78 bridge upstream to approximately the Interstate 15 bridge.

Sector D -Alluvial deposits of the upper San Luis Rey River, extending discontinuously from the Interstate 15 bridge upstream to the community of Rincon in Pauma Valley.

Sector E -A hillside alluvial fan deposit located northeast of the San Luis Rey River, extending from the community of Pala to Pauma Valley.

Sector F -An alluvial fan deposit located in upper Pauma Valley near the community of Rincon.

Sector H -A granitic rock deposit located in Twin Oaks Valley approximately three miles east of the City of Vista.

Sector I -An alluvial fan deposit extending eastward from Lake Hodges on the San Dieguito River to the upper end of San Pasqual Valley.

Sector J -A mesa-top conglomerate deposit consisting of 4 areas located in or near the communities of Rancho Bernardo, Rancho Penasquitos, Poway Mira Mesa, Tierra Santa, and Santee, and on the Miramar Naval Air Station.

Sector K -A metavolcanic rock deposit located in Mission Gorge on the San Diego River.

Sector M -Channel and flood-plain deposits of the upper San Diego River from Magnolia Avenue in the City of Santee to within one mile of El Capitan Dam.

Sector N -A channel deposit of the lower Sweetwater River located near the community of Sunnyside.

Sector O -A channel deposit of the Sweetwater River located at the upper end of Sweetwater Reservoir.

Sector P -A channel deposit of the Sweetwater River located in upper Jamacha Valley.

Sector Q -A channel deposit of the Sweetwater River that extends from near the Singing Hills Golf Course upstream for a distance of approximately four miles.

Sector R -Channel and adjacent mesa deposits of the Otay River extending from near Interstate 805 upstream to approximately the head of Otay Valley.

Sector S -A metavolcanic rock deposit on Rock Mountain located on the north side of upper Otay Valley.

Sector U -Flood-plain deposits of the Tijuana River extending from the international boundary downstream for a distance of approximately four miles.

Sector V -Conglomerate deposits located on the Border Highlands immediately south of the Tijuana River.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

### **§ 3550.7. Construction Aggregate Resources, Claremont – Upland Region**

A set of maps identifying the exact locations of the designated resources areas entitled “Regionally Significant Construction Aggregate Resources Areas in Claremont-Upland Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-The annual recharge area upstream from the San Antonio Creek Flood Control Dam.

Sector B-Eight parcels south of San Antonio Creek Flood Control Dam in the unurbanized areas of the San Antonio Creek Fan, northeast of the City of Claremont. Sector B is roughly bounded by Foothill Boulevard on the south, San Antonio Avenue on the east, and Thompson Creek on the west.

Sector C-Four parcels in the proximal part of the Cucamonga Creek Fan, north of the City of Upland. The area is generally north of 19th Street, west of Carmelian Avenue, east of Euclid Avenue, and south of the San Bernadino National Forest.

Sector D-Three parcels covering parts of the Day Creek and Deer Creek Fans between the Cities of Cucamonga and Fontana. It is bounded by the San Gabriel Mountains on the north and Highland Avenue on the south.

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\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

**§ 3550.8. Constructive Aggregate Resources, San Bernardino Region**

The areas for designation and termination of designation are shown on two plates entitled "Updated Designation in the Northern San Bernardino Production-Consumption (P-C) Region, San Bernardino and Riverside Counties, California (2013) Plate 1, Updated Designation in the Southern San Bernardino Production-Consumption (P-C) Region, San Bernardino and Riverside Counties, (2013) Plate 2, and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

**Sector A:** This Sector includes nineteen subsectors on the Lytle Creek Fan in and around the City of Fontana. Includes subsectors A-4-a, A-4-b, A-4-c, A-7-a, A-7-b, A-7-c, A-8-a, A-8-b, A-9-a, A-9-b, A-13-a, A-14, A-16-a, A-16-b, A-17-a, A-19-a, and A-19-b. The larger subsectors are north of Fontana; several smaller subsectors are scattered to the east and south of Fontana to the Santa Ana River.

**Sector B:** This Sector includes twelve subsectors covering the unurbanized portions of Lytle Creek Wash from north of Freeway 15, west to the downtown area of the City of San Bernardino. Includes subsectors B-1-a, B-1-b, B-5-a, B-5-b, B-5-c, B-6-a, B-7-a, B-8, B-9, B-10, B-14, and B-15.

**Sector C:** This Sector includes fourteen subsectors along the Cajon Creek Wash from the bend in the wash south of Lost Lake, southward to the confluence of Cajon Creek and Lytle Creek. Includes subsectors C-1-a, C-1-b, C-3-a, C-4-a, C-5-a, C-5-b, C-5-c, C-6-a, C-6-b, C-6-c, C-6-d, C-6-e, C-8, and C-10-a.

**Sector E:** This Sector includes fifteen subsectors in and along the Santa Ana River from Freeway 395, south and west to the town of Rubidoux. Includes subsectors E-1, E-2-a, E-5-a, E-9, E-10-a, E-10-b, E-13-a, E-13-b, E-14-a, E-17-a, E-19, E-20, E-22, E-23, and E-24-a

**Sector F:** This Sector includes eighteen subsectors along the upper Santa Ana River and Santa Ana Wash and areas along smaller drainages merging with the Santa Ana Wash, including Warm Creek, City Creek, and Mill Creek. Includes subsectors F-2-a, F-3-a, F-6-a, F-6-b, F-9, F-14-a, F-14-b, F-15-a, F-15-b, F-15-c, F-16-a, F-17-a, F-18, F-20-a, F-23-a, F-23-b, F-32-a, and F-33.

**Subsector G-1:** This Sector includes subsectors G-1-a, G-1-b and G-1-c. These subsectors cover parts of the San Gorgonio River alluvial fan, east of the City of Banning, and extends from the mouth of Banning Canyon.

**Subsector G-2:** This Sector includes subsectors G-2-a, G-2-b, and G-2-c. These subsectors cover parts of the San Gorgonio River alluvial fan, west and south of the community of Cabazon.

**Subsector J-1:** This subsector is bounded to the southeast by the 15 Freeway and on the northwest by Lytle Creek Road. It is adjacent to Sector B-2 on the northeast.

**Subsector J-2:** This subsector is northeast of the 15 Freeway.

**Subsector J-3:** This subsector is bounded on the northwest by the 15 Freeway, on the east by Citrus Avenue, and on the south by Duncan Canyon Road.

Subsector J-4: This subsector is bounded on the southeast by a transmission line, on the northwest by the 15 Freeway, and on the west by Citrus Avenue.

Subsector J-5: This subsector is bounded on the south by a utility corridor, on the west by a transmission line, and on the northwest by the 15 Freeway.

Subsector J-6: This subsector is bounded on the north by a transmission line and utility corridor, on the west by Citrus Avenue, on the east by Sierra Avenue, and on the south by Highland Avenue.

Subsector J-7: This subsector is bounded on the south by a utility corridor, on the north by Duncan Canyon Road, on the east by Sierra Avenue, and on the west by Lytle Creek Road.

Subsector J-8: This subsector is bounded on the north by a utility corridor, on the south by a transmission line, on the west by Lytle Creek Road, and on the east by Sierra Avenue.

Subsector J-9: This subsector is bounded on the north by Summit Avenue, on the east by Citrus Avenue, and on the south by La Sierra Drive.

Subsector J-10: This subsector is bounded by Sierra Avenue on the west, by Windflower Avenue on the south, and by Mango Avenue on the east.

Subsector J-11: This subsector is bounded on the east by Alder Avenue, on the north by Summit Avenue.

Subsector J-12: This subsector is bounded on the east by Alder Avenue. The Mid-Valley Landfill Pit operated by Robertson's Ready Mix Concrete Company is in this Sector.

Subsector J-13: This subsector is bounded on west by Ayala Drive and on the south by Jerry Eaves Park.

Sector K: This Sector is north of Lake Elsinore, on the northeast corner of the Corona Freeway and Nichols Road. The area is the site of an active crushed-stone quarry operated by the Pacific Aggregates, Inc.

#### AREAS FOR TERMINATION OF DESIGNATION:

The following Sectors are identified by the State Geologist for termination of designation status due to high-value incompatible land use developments. These areas are shown on the accompanying Plates.

Subsector A-4: This Sector includes subsectors A-4-d, A-4-e, A-4-f, A-4-g and A-4-h which are now covered by housing developments, freeway and freeway interchange.

Subsector A-6: This Sector is north of Highland Avenue and is now covered by the State Route 210 Freeway.

Subsector A-7: Includes subsector A-7-d, which is now covered by housing developments, urbanization and freeway.

Subsector A-8-c: Most of this subsector is covered by housing development.

Subsector A-9: Includes subsector A-9-c, which is now covered by housing development.

Subsector A-13: Includes subsector A-13-b, which is covered by housing development.

Subsector A-15: This subsector is in an area south of Foothill Boulevard, east of Beech Avenue, north of Arrow Route, and west of Lime Avenue, and is covered by industrial development.

Subsector A-16-c: This subsector is now mainly covered by industrial development.

Subsector A-17: Includes subsectors A-17-b and A-17-c, which are now covered by Industrial development.

Subsector A-18: This subsector is south of Arrow Boulevard and north of the Burlington Northern-Southern Pacific Railway Line, between Beech and Lime Avenues. Industrial development now covers this Sector.

Subsector A-19-c: This subsector, on the northwestern corner of Citrus Avenue and the Burlington Northern-Southern Pacific Railway Line, is now covered by industrial development.

Subsector A-23: This subsector is south of Freeway 10, north of Slover Avenue and east of Sierra Avenue. Urban and industrial development now covers this Sector.

Subsector A-24: This subsector is south of Slover Avenue and north of Santa Ana Avenue, between Spruce and Cactus avenues. Housing development now covers the Sector.

Subsector A-27: This subsector is south of Santa Ana Avenue and north of Jurupa Avenue, between Lilac and Cactus avenues. Housing and industrial development now covers this Sector.

Subsector A-28: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.

Subsector A-29-b: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.

Subsector A-30: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.

Subsector B-2: The northern and northeastern part of the subsector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.

Subsector B-5: Includes subsectors B-5-d, B-5-e, B-5-f, B-f-g, B-5-h and B-5-i: The northern and northeastern part of the Sector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.

Subsector B-6-b: The northern and northeastern part of the subsector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.

Subsector B-7-b: The northern edge of the subsector is now covered by the State Route 210 Freeway.

Subsector B-12: This subsector is now covered by industrial development.

Subsector B-16: This subsector is now covered by industrial development.

Subsector B-17: This subsector is now covered by industrial development.

Subsector C-3-b: The subsector east of Little League Drive is now covered by urban development.

Subsector C-4-b: The subsector east of Little League Drive is now covered by urban development.

Subsector C-10-b: The subsector east of Cable Creek is now covered by housing development.

Subsector D-2: This subsector is now covered by industrial development.

Subsector D-3: This subsector is now covered by industrial development.

Subsector D-4: This subsector is now covered by industrial development.

Subsectors D-5: This subsector is now covered by industrial development.

Subsector D-6: This subsector is comprised of two subsectors, D-6-a and D-6-b, which are now covered by industrial development.

Subsector E-2-b: This subsector is now covered by industrial development.

Subsector E-4: This subsector is now covered by industrial development.

Subsectors E-5: This subsector is comprised of two subsectors, E-5-b and E-10-c, which are now covered by industrial development.

Subsectors E-10: This subsector includes three subsectors, E-10-c, E-10-d and E-10-e, just east of South Riverside Avenue and north of the Santa Ana River which are now covered by industrial development.

Subsector E-13-c: The subsector along the south side of Pellisier Road is now covered by industrial development.

Subsector E-14-b: The subsector along the south side of Pellisier Road is now covered by industrial development.

Subsector E-17-b: This subsector in and along the Santa Ana River from Freeway 395, south and west to the town of Rubidoux, is now covered by industrial development.

Subsector E-24-c: This subsector, along Crestmore Road, is now covered by housing development.

Subsector F-1: This subsector is mostly covered by urban development.

Subsector F-2-b: This subsector is now covered by housing development.

Subsector F-3-b: This subsector is now covered by housing development.

Subsectors F-4-a, F-4-b, F-4-c, and F-14-d: These subsectors are now covered by housing development.

Subsector F-5: This subsector is now covered by housing development.

Subsector F-6: This subsector includes subsectors F-6-c, F-6-d and F-6-e which are now covered by industrial development.

Subsector F-12: This subsector is now covered by industrial development.

Subsectors F-14-c and F-14-d: Parts of these subsectors are now covered by housing development.

Subsector F-15: This Sector includes subsectors F-15-d, F-15-e, F-15-f, F-15-g and F-15-h, which are now covered by housing and other urban development.

Subsector F-16-b: This subsector is now covered by industrial development.

Subsector F-17-b: This subsector is now covered by industrial development.

Subsector F-20-b: This subsector is now covered by industrial development.

Sector F-23: This subsector includes subsectors F-23-c and F-23-d, which are now covered by industrial development and a bridge.

Sector F-32-b: This subsector is now covered by industrial development and a bridge.

Sector G: This Sector includes three subsectors, G-1-d, G-1-e and G-1-f, covering parts of the San Gorgonio River alluvial fan, northeast of the City of Banning, and extends from the mouth of Banning Canyon. These subsectors are now covered by housing and other urban development.

Sector H: This Sector is now depleted.



Sector I: This subsector is now covered by housing and other urban development.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

**§ 3550.9. Construction Aggregate Resources, Saugus-Newhall and Palmdale Regions**

A set of maps identifying the exact locations of the designated resources areas entitled “Regionally Significant Construction Aggregate Resources Areas in Saugus-Newhall and Palmdale Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-Portions of the Santa Clara River and its immediate flood plain extending from the Los Angeles County Line to Bee Canyon, parts of Castiac Creek, and Oak Spring Canyon.

Sector B-An area bounded by Bee Canyon on the northwest, the Santa Clara River to the south, and extending approximately one mile east of the Agua Dulce Canyon; and a triangle-shaped area with a boundary extending from the mouth of Pole Canyon west along an old railroad grade, south to Oak Spring Canyon then northeast back to the mouth of Pole Canyon.

Sector C-A triangular area beginning at the mouth of Pole Canyon, running southeast along the canyon to Oak Spring Canyon then southwest to Coyote Canyon, turning northeast to close the triangle back at the mouth of Pole Canyon.

Sector D-An area north of the California Aqueduct whose eastern boundary is along Little Rock Wash then turns west approximately one mile north of Boundary Avenue. The western boundary runs south near 47th Street and Fort-Tejon Road.

Sector E-An area of the Big Rock Wash bounded by the aqueduct on the south, North 165th Street on the east, Palmdale Boulevard on the north, and 116th Street on the west.

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\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

**§ 3550.10. Construction Aggregate Resources, South San Francisco Bay Region**

A set of maps identifying the exact locations of the designated resources areas entitled “Regionally Significant Construction Aggregate Resources Areas in South San Francisco Bay Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

Sector A-Aggregate deposit located in Amador Valley and Livermore Valley areas in the Cities of Pleasanton and Livermore in Alameda County.

Sector B-Alluvial deposit consisting of six parcels along Arroyo del Valle on the southwestern edge of Livermore in Alameda County.

Sector C-Alluvial deposit consisting of six parcels located along Arroyo Mucho on the eastern edge of Livermore in Alameda County.

Sector D-Greenstone deposit located on Apperson Ridge east of Sunol Valley in Alameda County.

Sector E-Alluvial deposit consisting of five parcels in Sunol Valley in southern Alameda County.

Sector H-Elongated sandstone deposit located on the foothills of the Cities of Fremont and Union City.

Sector I-Elongated series of parcels consisting of a sandstone deposit along the foothills east of the Cities of Fremont and Milpitas.

Sector J-Alluvial deposit located near Mowry Landing on the southern edge of Fremont in Alameda County.

Sector K-Alluvial deposit located west of Highway 17 on the southern edge of Fremont in Alameda County.

Sector L-Alluvial deposit consisting of three parcels located between the Nimitz Freeway, Alameda Creek, the Coyote Hills, and Jarvis Avenue in the northwestern portion of the City of Fremont in Alameda County.

Sector M-Located at the southern end of the Coyote Hills on the west side of Fremont in Alameda County.

Sector N-Greenstone deposit in the foothills east of the City of Hayward in Alameda County.

Sector O-Consists of greenstone and rhyolite located in the Berkeley Hills west of Lake Chabot in Alameda County.

Sector P-Consists of rhyolite located north of the Oak Knoll Naval Hospital in the Berkeley Hills.

Sector S-Mount Zion and a smaller adjacent hill in central Contra Costa County.

Sector T-Consists of basalt and andesite located at the south end of Gudde Ridge in the City of Moraga in southwestern Contra Costa County.

Sector U-Consists of basalt and andesite located on a small ridge southwest of the City of Orinda in Contra Costa County.

Sector V-Consists of basalt and andesite located on a small ridge southwest of the city of Orinda in Contra Costa County.

Sector W-Sandstone and shale deposit consisting of three parcels located on the west side of the City of Richmond in Contra Costa County.

Sector X-The Guadalupe Quarry property on the north side of Mount San Bruno adjacent to the City of Brisbane in San Mateo County.

Sector Y-Limestone and greenstone deposits located west of Pacifica near Rockway Beach in northern San Mateo County.

Sector Z-Greenstone deposit located in the Los Altos Hills in northwestern Santa Clara County.

Sector BB-Limestone deposit located west of the City of Cupertino on upper Permanente Creek in Santa Clara County.

Sector CC-Greenstone deposit located northwest of Stevens Creek Reservoir on the western edge of the City of Cupertino in Santa Clara County.

Sector DD-Conglomerate deposit located northwest of Stevens Creek Reservoir west of the City of Cupertino in Santa Clara County.

Sector EE-Located immediately northwest of the intersection of Capitol Expressway and Monterey Road (highway 82) on the City of San Jose in Santa Clara County.

Sector GG-Sandstone deposit located approximately four miles south of Brentwood in eastern Contra Costa County.

Sector HH-Granitic rock deposit located northwest of the City of Half Moon Bay in western San Mateo County.

Sector II-Sandstone and siltstone deposit located in Limekiln Canyon east of Lexington Reservoir in southwestern Santa Clara County.

Sector LL-Sandstone deposit located in the foothills east of the City of Fremont in Alameda County.

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\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

### **§ 3550.11. Construction Aggregate Resources, North San Francisco Bay Region**

The areas for changes in designation, and termination of designation, are shown on three plates: Plate 1 (July 2015), Updated Designation in the North San Francisco Bay Production-Consumption Region, Marin, Napa, Sonoma and Southwestern Solano Counties, California - Northern Part; Plate 2 (July 2015), Updated Designation in the North San Francisco Bay Production-Consumption Region, Marin, Napa, Sonoma and Southwestern Solano Counties, California - Central Part; and Plate 3 (July 2015), Updated Designation in the North San Francisco Bay Production-Consumption Region, Marin, Napa, Sonoma and Southwestern Solano Counties, California - Northwestern and Southeastern Part.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A - Channel and floodplain alluvium deposits located in Alexander Valley of Sonoma County; extends from approximately the City of Cloverdale downstream to a point 3.25 miles southeast of the community of Jimtown.

Sector B except for the subsectors referenced below that have had their designation terminated - Alluvial deposits of the middle reach of the Russian River and a small portion of Dry Creek 0.5 miles west of Healdsburg. The sector extends from the City of Healdsburg down the Russian River to a point near the Wohler Road Bridge.

Sectors D-1 and D-2a - Consists of Novato Conglomerate deposits located near Black Point in eastern Marin County.

Sector F - A small aggregate deposit located west of the City of Cotati on Stony Point Road in Sonoma County.

Sector G - Three contiguous parcels consisting of metamorphosed graywacke and greenstone deposits located east of the City of Vallejo at the southern end of Sulphur Springs Mountain.

Sector H - Aggregate deposit located southeast of the City of Napa in Napa County.

Sector I - Metamorphosed sandstone deposit located on Point San Pedro in eastern Marin County.

Sector K-1 - Area east of Dunbar Union School and northeast of the community of Glen Ellen in Sonoma County.

Sector K-2 - Area east of Dunbar Union School and northeast of the community of Glen Ellen in Sonoma County.

Sector L - Small greenstone and pillow lavas deposits located in Millerton Gulch approximately 3.5 miles north of the community of Point Reyes Station in Marin County.

Sector M - A small serpentinite deposit located in upper Bowman Canyon on Burdell Mountain approximately three miles northwest of Novato in Marin County.

Section N - A small siltstone deposit located approximately one mile west of the community of Forestville and south of Highway 116.

Sector O - A small siltstone deposit located approximately one mile west of the community of Forestville and north of Highway 116.

Sector P - Located along the west side of Green Valley approximately three miles southwest of Forestville in Sonoma County.

Sector R - Located approximately 2.5 miles southeast of the City of Petaluma in Sonoma County.

Sector S - Located approximately five miles west of Petaluma on Petaluma Creek Road in Sonoma County.

Sector T - Sandstone deposits located 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector U - Located at the confluence of the South Fork and Wheatfield Fork of the Gualala River in northwestern Sonoma County.

Sector V-1a - Consists of andesite located on Burdell Mountain approximately two miles north of the City of Novato in Marin County.

Sector W - Located on Porter Creek Road approximately four miles east of the community of Mark West Springs in eastern Sonoma County.

Sector X-1a - Consists of sandstone and andesite located along Highway 121 approximately 2.5 miles north of Sears Point in southeastern Sonoma County.

Sector Y - Shale deposit located approximately 2.5 miles west of Healdsburg in Sonoma County.

Sector AA - Includes subsectors AA-1, AA-2, and AA-3, and comprised of alluvial deposits along the Gualala River in northwestern Sonoma County.

Sector DD - Includes subsectors DD-1 and DD-2, and is located on Porter Creek Road approximately four miles east of the community of Mark West Springs in Sonoma County.

Sector EE - Located approximately one mile west of the community of Forestville and south of Highway 16.

Sector FF - Located approximately one mile west of the community of Forestville and north of Highway 16.

Sector GG - Located approximately 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector HH - Located approximately 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector II - Located approximately 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector JJ - Located west of the City of Cotati on Stony Point Road in Sonoma County.

Sector KK - An area south of Roblar Road approximately five and a quarter miles west of the City of Cotati in Sonoma County.

Sector LL - An area south of Roblar Road approximately four and a half miles west of the City of Cotati in Sonoma County.

Sector MM - Located southeast of the City of Napa in Napa County.

The following areas have had their designation terminated:

Sector B incorporating parts of Sectors B-2a, B-2b, B-2c, B-2d, B-4d and B-4e - Located along the Middle Reach of the Russian River from Healdsburg south to its confluence with Mark West Creek: There are five areas terminated in Sector B-2a; two areas terminated in Sector B-2b; four areas terminated in Sector B-2c; two areas terminated in Sector B-2d; three areas terminated in Sector B-4d; and one area terminated in Sector B-4e. Also, including surrounding areas to all portions of both Sectors B-2 and B-4e, south of Dry Creek and west of the Russian River, corresponding to a conservation easement area.

Sectors C-2a and C-3 - Sector C-2a along Sonoma Creek, north of the City of Sonoma and Sector C-3 on the northwestern edge of the City of Sonoma. These two areas have been terminated.

Sector D-2b - This sector at the southern end of a prominent ridge in the easternmost part of the City of Novato has been terminated.

Sector E - This Sector is at the northern end of Petaluma Hill and is mostly within the City of Petaluma. Sector E has been terminated.

Sector J - This Sector is at the eastern end of Burdell Mountain. This Sector has been terminated.

Sector Q - This Sector is north of Highway 1, about 2.5 miles east of the community of Bodega Bay. The Sector has been terminated.

Sector V (partial) - This Sector (V-1b) is on Burdell Mountain. Six acres of the Sector have been terminated.

Sector X (partial) - This Sector (X-1b) is on the east side of Highway 121, about seven miles south of Sonoma. The northern portion of the Sector has been terminated.

*Note: Authority cited: Sections 2790 and 2793, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

**§ 3550.12. Construction Aggregate Resources, Monterey Bay Region**

A set of maps identifying the exact locations of the designated resources areas entitled “Regionally Significant Construction Aggregate Resources Areas in Monterey Bay Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.\*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-Consists of quartz diorite located on Ben Lomond Mountain southwest of Felton in Santa Cruz County.

Sector B-Consists of sandstone deposit divided into three large non-contiguous parcels located east of Felton in Santa Cruz County.

Sector C-Sandstone deposit located near Wilder Ranch west of the City of Santa Cruz.

Sector D-Alluvial deposit located in a portion of Uvas Creek located west of Gilroy in southern Santa Clara County.

Sector E-Channel and floodplain deposits located in a long portion of the San Benito River extending from lower Tres Pinos Creek west to State Highway 101 in central San Benito County.

Sector F-Two elongated deposits located near the community of Aromas in western San Benito County, extending from State Highway 101 northwesterly to Pajaro Gap on Highway 129, a distance of approximately five miles.

Sector G-The Natividad Quarry located northeast of Salinas in Monterey County.

Sector H-Sand deposits in two separate but adjacent parcels located along the southern portion of Monterey Bay, north of the City of Marina.

Sector I-A large sand dune area located on the northern edge of the City of Marina in Monterey County.

Sector J-Quartz diorite located on Huckleberry Hill on the east side of the community of Pebble Beach in Monterey County.

Sector K-Stream channel and floodplain deposits consisting of a one mile long portion of the lower Carmel River in the Carmel Valley of Monterey County.

Sector L-Consists of quartz diorite and siltstone located on upper Soquel Creek on the east side of Sugarloaf Mountain in Santa Cruz County.

Sector M-Fluvial sand and gravel deposit located on Freedom Boulevard approximately seven miles northwest of Watsonville in southern Santa Cruz County.

Sector N-Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield, northeast of the Southern Pacific Railroad tracks.

Sector O-Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield.

Sector P-Stream channel and floodplain deposits of San Lorenzo Creek located in the foothills of the Gabilan Range in southern Monterey County, approximately six miles northwest of King City.

Sector U-Stream channel and floodplain deposits of Upper Pacheco Creek located near Bells Station in southeastern Santa Clara County.

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\*Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

### **§ 3550.13. Construction Aggregate Resources, Fresno Production-Consumption Region**

A set of maps identifying the exact locations of the designated resource areas entitled "Regionally Significant Construction Aggregate Resource Areas in the Fresno Production-Consumption Region," February 2000, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector K -Alluvial deposits of the Kings River between Avocado Lake on the northeast and the Southern Pacific Railroad tracks on the southwest.

Sector S -Portions of the San Joaquin River floodplain between Friant Dam and Highway 99.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.*

### **§ 3550.14. Construction Aggregate Resources, Stockton-Lodi Production-Consumption Region**

The designated resource areas, and resource areas being terminated, is shown on Plate 1, Updated Mineral Land Classification Map for Portland Cement Concrete-Grade Aggregate in the Stockton-Lodi Production Consumption (P-C) Region, San Joaquin and Stanislaus Counties, California (2015), and is incorporated by reference into this regulation. This map is available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-Aggregate deposits on the alluvial fan created by Corral Hollow Creek, situated south of the City of Tracy.

Sector B-Aggregate deposit on the alluvial fan created by Lone Tree Creek. Deposit extends from just west of Interstate 580 near the base of the Coast Range hills northwest to the alignment of Interstate 5.

Sector C-Aggregate deposit that consists of the alluvial fan formed by Hospital Creek. Deposit extends from west of Interstate 580 within the foothills of the Coast Range and east into the San Joaquin Valley.

Sector D-Sand deposit centered on the San Joaquin River near the intersection of Highway 120 and Interstate 5 west of the City of Manteca.

Candidate Sector E (Subsectors E-1 through E-10) - This Sector is located southwest of the town of Vernalis, to the west of Welty road and east of Interstate 580. It is adjacent to Sector B on the northwest and Sector C to the south. A portion of Subsector E-10 extends into Stanislaus County.

Candidate Sector F (Subsectors F-1 through F-10) - This Sector is located west of the town of Vernalis and is traversed by Bird Road, Highway 132 and Interstate 580. It is adjacent to Sector B on the east. Subsectors F-1 through F-10 total 927 acres and cover an area west of the Lone Tree Creek Alluvial Fan.

Candidate Sectors G (Subsectors G-1 and G-2) - This Sector is located southwest of the City of Lathrop and is southeast of Interstate 205/5 and northeast of Paradise Cut. It is adjacent to Sector D to the northeast.

All or parts of eight Sectors are identified for termination of designation status because of depletion due to mining or development of incompatible land uses. These areas are indicated on the accompanying Plate, and as follows:

Sector A-1: There are twelve subsectors totaling 462 acres that have been depleted by mining (A-1b, A-1c, A-1d, A-1f, A-1h, A-1i, A-1j, A-1k, A-1n, A-1o, A-1p and A-1q).

Sector A-2: There are seventeen subsectors totaling 1,424 acres that have been depleted partially or completely by mining or now have land uses incompatible with mining. Subsectors A-2a, A-2b, A-2c, A-2h, and A-2i covering 677 acres containing 132,579,000 tons of PCC-grade aggregate resources have been lost to urbanization. Subsectors A-2i, A-2n, A-2p, A-2q, A-2r, A-2s, A-2t, A-2u, A-2v, A-2w, A-2y, and A-2z covering 747 acres have been depleted by mining.

Sector A-3: There are three subsectors totaling 140 acres that have been depleted by mining (A-3a, A-3b, and A-3c).

Sector A-4: There are two subsectors totaling 55 acres that have been depleted by mining (A-4a and A-4b).

Sector D-9: 197 acres of Sector D-9 have been depleted by mining.

Sector D-10: 9 acres of Sector D-10 have been depleted by mining.

Sector D-11: 51 acres of Sector D-11 have been depleted by mining.

Sector D-12: 10 acres of Sector D-12 have been depleted by mining.

*Note: Authority cited: Sections 2790 and 2793, Public Resources Code. Reference: Sections 2761, 2762, 2763, 2790, 2791 and 2792, Public Resources Code.*

### **§ 3550.15. Construction Aggregate Resources, Palm Springs Production-Consumption Region**

The areas for designation are shown on two plates: Updated Regionally Significant Construction Aggregate Resources Areas in the Palm Springs Production-Consumption Region, Riverside



County, California (Western Area) - SMARA Designation Report Number 13 - Plate 1 - March 2013, and Updated Regionally Significant Construction Aggregate Resources Areas in the Palm Springs Production-Consumption Region, Riverside County, California (Eastern Area) - SMARA Designation Report Number 13 - Plate 2 - March 2013, and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-1 - Aggregate deposits located adjacent to the southeast border of the community of Cabezon at the base of the San Jacinto Mountains.

Sector A-2 - Aggregate deposits located between the Colorado River Aqueduct and the Morongo Indian Reservation.

Sector B-1 - Aggregate deposit located at the mouth of the Whitewater Canyon north of Interstate 10.

Sector B-2-b - Aggregate deposit located immediately south of Interstate 10 at the intersection of Highway 62.

Sector B-3a - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-3-c - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-3-e - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-4 - Aggregate deposit located east of Indian Avenue and south of Garnet Hill.

Sector B-5-a - Aggregate deposit located south of Interstate 10.

Sector B-5-c - Aggregate deposit located adjacent to the northern border of Sector B-3 and the southern border of Interstate 10 near Garnet Hill.

Sector C-1 - Aggregate deposit located in the Little Morongo Canyon approximately one mile north of the City of Desert Hot Springs.

Sector D - Aggregate deposit located in a small unnamed wash in the foothills of the community of Thousand Palms (Plate 2, Inset Map B).

Sector E-1 - Aggregate deposit located northeast of Dillon Road, approximately six miles northeast of the City of Indio.

Sector E-2 - Aggregate deposit located approximately six miles northeast of the City of Indio.

Sector F - Aggregate deposit located approximately four miles northeast of the City of Indio.

Sector G-1 - Aggregate deposit located approximately three miles north of the City of Indio.

Sector G-2 - Aggregate deposit located approximately three miles north of the City of Indio

Sector G-3 - Aggregate deposit located approximately three miles north of the City of Indio

Sector H-1 - Aggregate deposit located approximately four miles east of the community of Thermal.

Sector H-2 - Aggregate deposit located northeast of the Coachella Canal approximately three and a half miles east of the community of Thermal.

Sector H-3 - Aggregate deposit located southwest of the Coachella Canal approximately three miles east of the community of Thermal.

Sector I - Aggregate deposits comprising part of Thermal Canyon wash, south of Interstate Highway 10, east of the Coachella Canal, and four miles northeast of the community of Thermal. Sector I is approximately one mile north of the previously designated Sectors H-1, H-2, and H-3 (Plate 2, Inset Map A).

Sector J - Aggregate deposits located near the community of Indio Hills that formed as a series of coalescing alluvial fans deposited from material discharged from canyons cut northward into the Little San Bernardino Mountains.

Sector J-4 - Aggregate deposits located north and east of the community of Indio Hills in Sections 1, 2, 11, and 12, T4S, R7E, SBBM. It is separated from Sector J-5 to the southeast by a public road and residential development in the community of Indio Hills.

Sector J-5 - Aggregate deposits located east of the community of Indio Hills in Sections 13, and 24, T4S, R7E; and Section 19, T4S, R8E, SBBM. It is separated from Sector J-4 to the northwest by a public road and urbanization in the community of Indio Hills, and from Sector J-6 to the south by Dillon Road and a utility easement. Sector J-5 is contiguous with Sector E-1, to the southeast.

Sector J-6 - Aggregate deposits located southeast of the community of Indio Hills in Sections 13 and 24, T4S, R7E, SBBM. It is separated from Sector J-5 to the north by Dillon Road and a utility easement. Sector J-6 is contiguous with Sector E-2, to the southeast.

Sector K-1 - Aggregate deposits located in Section 33, T4S, R7E, SBBM. It is bounded to the north by the Mission Creek Branch of the San Andreas Fault near the base of the south flank of the Indio Hills. It is adjacent to the original Sector G on the east. On the south it is bounded by a utility corridor, which separates it from Sector K-2.

Sector K-2 - Aggregate deposits located in Section 33, T4S, R7E, SBBM. It is bounded to the north by a utility corridor, which separates it from Sector K-1. On the south, it is bounded by a second utility corridor separating it from Sector K-3.

Sector K-3 - Aggregate deposits located in Section 33, T4S, R7E; and Section 3, T5S, R7E, SBBM. It is adjacent to the original Sector G on the east. It is bounded to the north by a utility corridor, which separates it from Sector K-2. On the south, it is bounded by agricultural land of the Coachella Valley.

Sector K-4 - Aggregate deposits located in Section 34, T4S, R7E, SBBM. It is bounded on the south by the Mission Creek Branch of the San Andreas Fault.

Sector K-5 - Aggregate deposits located in Sections 33, 34, and 35, T4S, R7E, SBBM. It is adjacent to the original Sector G on the south. On the north, it is bounded by the Mission Creek Branch of the San Andreas Fault, which separates it from Sector K-4.

Sector K-6 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, east of the original Sector G. It is bounded by the Mission Creek Branch of the San Andreas Fault on the north and a utility corridor to the south. Sector K-6 has less than the threshold amount of material within it; however, it could be mined in conjunction with Sector G.

Sector K-7 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, southeast of the original Sector G. Utility corridors separate it from Sector K-6 to the north and Sector K-8 to the west.

Sector K-8 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, southeast of the original Sector G. A utility corridor separates it from Sector K-7 to the east.

The construction aggregate deposits in the following areas are designated for termination of designation status due to high-value incompatible land use developments:

Sector A-3 - Aggregate deposits located directly south of Interstate 10 two miles east of the community of Cabazon.

Sector B-2-a - Aggregate deposit located immediately south of Interstate 10.

Sector B-3-b - Aggregate deposit located immediately south of Interstate 10 and north of the main line of the Southern Pacific Railroad.

Sector B-3-d - Aggregate deposit located immediately south of Interstate 10 and north of the main line of the Southern Pacific Railroad.

Sector B-5-b - Aggregate deposit located south of Interstate 10.

Sector C-2 - Aggregate deposit located in the Little Morongo Canyon approximately one mile north of the City of Desert Hot Springs.

*Authority: Section 2790 and 2793, Public Resources Code. Reference: Sections 2761-2763 and 2790-2792, Public Resources Code.*

### **§ 3550.16. Construction Aggregates Resources, Bakersfield Production-Consumption Region**

The areas for designation are shown on two plates: Plate 1, Candidate Areas for Designation in the Bakersfield Production-Consumption (P-C) Region, Kern County California, Northern Area (2009), and Plate 2, Candidate Areas for Designation in the Bakersfield Production-Consumption (P-C) Region, Kern County California, Southern Area (2009), and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following area are designated as being of regional significance:

Candidate Sector A - Deposits of the James Road Resource Area, five miles north of Bakersfield and southwest of the intersection of James Road and State Highway 65, are in a small alluvial fan composed of reworked sediments derived from older alluvial fan deposits and the Kern River Formation. (Plate 1)

Candidate Sector A (247 acres) is in Sections 28 and 29, T28S, R27E, MDBM, five miles north of Bakersfield, west of State Route 65 and southwest of the intersection of James Road and State Route 65.

Candidate Sector Group B - Deposits of the Kern River floodplain and alluvial fan, north of State Route 58 (Rosedale Highway) and west of Highway 99. Sector B is divided into five

subsectors identified as B-1 through B-5. The combined area of the subsectors of Sector B is 231 acres. (Plate 1)

Candidate Sector B-1 (108 acres) is in Sections 14 and 15, T29S, R27E, MDBM, northwest of Bakersfield, north of State Route 58 and west of Highway 99.

Candidate Sector B-2 (70 acres) is in Section 15, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-3 (24 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-4 (14 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-5 (15 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector Group C - Deposits of the Kern River floodplain along the main course of the Kern River from Coffee Road east to Rio Bravo Ranch. Sector C is divided into 21 subsectors identified as C-1 through C-21. The combined area of Group C subsectors is 1,418 acres. (Plate 1)

Candidate Sector C-1 (20 acres) is in Section 33, T29S, R27E, MDBM, north of Kern River, west of Highway 99 and south of State Route 58.

Candidate Sector C-2 (149 acres) is in Sections 27, 33 and 34, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.

Candidate Sector C-3 (8 acres) is in Section 27, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.

Candidate Sector C-4 (51 acre) is in Sections 26 and 27, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.

Candidate Sector C-5 (36 acres) is in Sections 23, 24 and 26, T29S, R27E, MDBM, east of Highway 99 and west of State Route 204.

Candidate Sector C-6 (18 acres) is in Section 24, T29S, R27E, MDBM, east of Highway 99 and west of State Route 204.

Candidate Sector C-7 (14 acres) is in Sections 13 and 24, T29S, R27E, MDBM, east of State Route 204 and west of Chester Ave.

Candidate Sector C-8 (46 acres) is in Section 13, T29S, R27E, MDBM, and Section 18, T29S, R28E, MDBM, east of State Route 204 and west of Chester Ave.

Candidate Sector C-9 (85 acres) is in Section 18, T29S, R28E, MDBM, east of Chester Avenue and west of Manor St.

Candidate Sector C-10 (15 acres) is in Section 18, T29S, R28E MDBM, east of Chester Avenue and west of Manor St.

Candidate Sector C-11 (124 acres) is in Sections 8, 17 and 18, T29S, R28E, MDBM, east of Manor St.

Candidate Sector C-12 (104 acres) is in Sections 7 and 8, T29S, R28E, MDBM, north of Kern River and East of Manor St.

Candidate Sector C-13 (26 acres) is in Section 8, T29S, R28E, MDBM, north of Kern River, east of Manor Street.

Candidate Sector C-14 (163 acres) is in Sections 8, 9, 16 and 17, T29S, R28E, MDBM. Kern River, east of Manor St.

Candidate Sector C-15 (32 acres) is in Section 9, T29S, R28E, MDBM. Kern River, east of Manor St.

Candidate Sector C-16 (12 acres) is in Section 9, T29S, R28E, MDBM. Kern River, west of China Grade Bridge.

Candidate Sector C-17 (101 acres) is in Section 10, T29S, R28E, MDBM, south of Kern River and north of Alfred Harrell Highway.

Candidate Sector C-18 (70 acres) is in Sections 2, 3 and 10, T29S, R28E, MDBM. Kern River, south of Round Mountain Rd.

Candidate Sector C-19 (80 acres) is in Section 36, T28S, R28E, MDBM, Section 31, T28S, R29E, MDBM, and Section 6, T29S, R29E, MDBM, northeast of Kern River and east of Hart Memorial Park.

Candidate Sector C-20 (11 acres) is in Section 5, T29S, R29E, MDBM, south of Kern River and north of Alfred Harrell Highway.

Candidate Sector C-21 (253 acres) is in Sections 33 and 34, T28S, R29E, MDBM, and Sections 2, 3, 10 and 11, T29S, R29E, MDBM, north of Kern River and east of Kern River Golf Course.

Candidate Sector Group D - Deposits of the floodplain and alluvial fan of Cottonwood Creek, ten miles east of Bakersfield, south of State Highway 178. Sector D is divided into four subsectors identified as D-1 through D-4. The combined area of the subsectors is 356 acres. (Plate 1)

Candidate Sector D-1 (105 acres) is in Sections 19 and 20, T29S, R30E, MDBM. Cottonwood Creek, south of Breckenridge Road.

Candidate Sector D-2 (19 acres) is in Section 24, T29S, R29E, MDBM. Cottonwood Creek, south of Breckenridge Road.

Candidate Sector D-3 (101 acres) is in Sections 12, 13 and 24, T29S, R29E, MDBM. Cottonwood Creek, south of State Route 178.

Candidate Sector D-4 (131 acres) is in Sections 1, 11 and 12, T29S, R29E, MDBM. Cottonwood Creek, south of State Route 178 and north of Breckenridge Road.

Candidate Sector Group E - Deposits of the floodplain of Caliente Creek, 15 to 20 miles east of Bakersfield, north of State Highway 58. Sector E is divided into 10 subsectors identified as E-1 through E-10. The combined area of the subsectors is 2,685 acres. (Plate 1)

Candidate Sector E-1 (572 acres) is in Sections 17, 18, 19 and 20, T30S, R30E, MDBM. Caliente Creek, south of State Route 58.

Candidate Sector E-2 (1,330 acres) is in Sections 9, 10, 14, 15, 16, 17, 20 and 21, T30S, R30E, MDBM (Rancho El Tejon). Caliente Creek, north of State Route 58.

Candidate Sectors E-3 (357 acres) is in Sections 9, 10, 11, 12, 13 and 14, T30S, R30E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.

Candidate Sector E-4 (171 acres) is in Sections 13 and 24, T30S, R30E, MDBM, and Sections 18, 19 and 20, T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.

Candidate Sector E-5 (18 acres) is in Sections 13, T30S, R30E, MDBM, and Section 18 T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.

Candidate Sector E-6 (8 acres) is in Section 19, T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, south of Bena Road.

Candidate Sector E-7 (11 acres) is in Section 27, T30S, R31E, MDBM. Caliente Creek, west of Caliente.

Candidate Sector E-8 (45 acres) is in Section 27, T30S, R31E, MDBM. Caliente Creek, west of Caliente.

Candidate Sector E-9 (24 acres) is in Section 26, T30S, R31E, MDBM. Caliente Creek, south of Caliente.

Candidate Sector E-10 (149 acres) is in Sections 24, 25 and 26, T30S, R31E, MDBM, and Section 19, T30S, R32E, MDBM. Caliente Creek, east of Caliente.

Candidate Sector Group F - Deposits of the alluvial fan of San Emigdio Creek, 25 miles southwest of Bakersfield, north and south of State Highway 166. Sector F is divided into eleven subsectors identified as F-1 through F-11. The combined area of the subsectors is 11,271 acres. (Plate 2)

Candidate Sector F-1 (289 acres) is in Sections 34, 35, and 36, T12N, R22W, MDBM, and Sections 1, 2 and 3, T11N, R22W, SBBM. San Emigdio Creek, north of the California Aqueduct.

Candidate Sector F-2 (44 acres) is in Section 36, T12N, R22W, SBBM, Section 6, T11N, R21W, SBBM, and Section 1 T11N, R22W, SBBM. San Emigdio Creek, north of the California Aqueduct.

Candidate Sector F-3 (782 acres) is in Sections 1, 2 and 3, T11N, R22W, SBBM, and Sections 5 and 6, T11N, R21W, SBBM. San Emigdio Creek, south of the California Aqueduct and north of State Route 166.

Candidate Sector F-4 (142 acres) is in Section 1 T11N, R22W, SBBM, and Sections 5 and 6, T11N, R21W, SBBM. San Emigdio Creek, south of the California Aqueduct and north of State Route 166.

Candidate Sector F-5 (1,468 acres) is in Sections 1, 2, 3, 10, 11, and 12, T11N, R22W, SBBM, and Sections 5, 6, 7 and 8, T11N, R21W, SBBM. San Emigdio Creek south of the California Aqueduct and north of State Route 166.

Candidate Sector F-6 (347 acres) is in Sections 10, 11 and 12, T11N, R22W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector F-7 (183 acres) is in Sections 7 and 8, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector F-8 (2,254 acres) is in Sections 10, 11, 12, 13, 14 and 15, T11N, R22W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector F-9 (1,566 acres) is in Sections 7, 8, 17 and 18, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector F-10 (3,356 acres) is in Sections 22, 23, 24, 25, 26, 35 and 36, T11N, R22W, SBBM, Sections 30 and 31, T11N, R21W, and Sections 1 and 2, T10N, R22W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector F-11 (840 acres) is in Sections 19, 20, 29 and 30, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.

Candidate Sector G - Deposits of Wheeler Ridge, 25 miles south of Bakersfield, west of Interstate Highway 5, and south of State Highway 166. The deposits are in an uplifted ridge of Pleistocene sand and gravel of the Tulare Formation. The area of Sector G is 882 acres. (Plate 2)

Candidate Sector G (882 acres) is in Sections 25, 35, and 36, T11N, R20W, SBBM and Sections 30 and 31, T11N, R19W, SBBM, at Wheeler Ridge, west of Highways I-5 and 99.

Candidate Sector Group H - Deposits of the alluvial fan of Pastoria Creek, 30 miles southeast of Bakersfield, and north of Edmonston Pumping Plant Road. Sector H is divided into five subsectors identified as H-1 through H-5. The combined area of the subsectors is 467 acres. (Plate 2)

Candidate Sector H-1 (35 acres) is in Sections 18 and 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.

Candidate Sector H-2 (48 acres) is in Section 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.

Candidate Sector H-3 (47 acres) is in Sections 18 and 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.

Candidate Sector H-4 (108 acres) is in Sections 12 and 13, T10N, R19W, SBBM, and Section 18 T10N, R18W, SBBM, (projected - Rancho El Tejon). Pastoria Creek, north of the California Aqueduct and Edmonston Pumping Plant Road.

Candidate Sector H-5 (409 acres) is in Sections 12 and 13, T10N, R19W, SBBM, and Sections 7 and 18, T10N, R18W, SBBM (projected - in Rancho El Tejon). Pastoria Creek, north of the California Aqueduct and Edmonston Pumping Plant Road.

Candidate Sector I - Deposits of the alluvial fan of El Paso Creek, 25 miles southeast of Bakersfield, east of Rancho Road and south of Sebastian Road. The area of Sector I is 2,151 acres. (Plate 2)

Candidate Sector I (2,151 acres) is in Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, T11N, R18W, SBBM. El Paso Creek east of Rancho Drive and south of Sebastian Road.

Candidate Sector Group J - Deposits of the floodplain of Cuddy Creek located 40 miles south of Bakersfield, along Frazier Mountain Park Road, two miles west of Interstate Highway 5. Sector J is divided into two subsectors identified as J-1 and J-2. The combined area of the subsectors is 180 acres. (Plate 2)

Candidate Sector J-1 (35 acres) is in Sections 31 and 32, T9N, R19W, SBBM. Cuddy Creek, east of Frazier Park, south of Frazier Mountain Park Road.

Candidate Sector J-2 (145 acres) is in Sections 32 and 33, T9N, R19W, SBBM. Cuddy Creek, east of Frazier Park, south of Frazier Mountain Park Road.

Candidate Sector K - Basement outcrops and the alluvial fan and floodplain of Little Sycamore Creek (La Liebre Ranch area), 40 miles southeast of Bakersfield, east of Interstate Highway 5 and north of State Highway 138. The area of Sector K is 125 acres. (Plate 2)

Candidate Sector K (125 acres) is in Sections 29 and 32, T9N, R17W, SBBM, (projected - in Rancho La Liebre), Little Sycamore Canyon.

*Authority: Section 2790, Public Resources Code. Reference: Sections 2207, 2726, 2761-2763 and 2790-2791, Public Resources Code.*

### **§ 3550.17. Construction Aggregate Resources, San Luis Obispo-Santa Barbara Production-Consumption Region**

The areas for designation are shown on four Plates: Plate 1, Designation in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region, California - Northern Part (2015); Plate 2, Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California - Middle Part (2015); Plate 3, Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California - Southern Part (2015); and Plate 4, Designation in the San Luis Obispo-Santa Barbara Production-Consumption Region, California - Cuyama Valley (2015). These Plates are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A - Deposits of the Salinas River Resource Area: Deposits in the recent river channel and adjacent floodplain along about fourteen miles of the Salinas River, from the southeastern city limits of Atascadero north (downstream) to the Niblick Road Bridge in the city of Paso Robles. Sector A has been subdivided into five subsectors identified as A-1a, A-1b, A-2a, A-2b, and A-3 (Plate 1). Portions of this Sector are under the land use jurisdiction of the County of San Luis Obispo, City of Paso Robles, and City of Atascadero.

Subsector A-1a: Section 4, T27S, R12E, MDBM, (projected), and in the flood plain of the Salinas River east of US Highway 101, south of Niblick Road, and north of an unnamed pipeline.

Subsector A-1b: Sections 4, 9, 16, 20, 21, 28, 29, and 32, T27S, R12E, MDBM, (projected), and in the flood plain of the Salinas River east of US Highway 101, south of an unnamed pipeline, and north of Templeton Road.

Subsector A-2a: Sections 32, 33, T27S, R12E; 3, 4, 5, and 10, T28S, R12E, MDBM, (projected), and in the flood plain of the Salinas River east of US Highway 101, south of Templeton Road, and north of State Highway 41.

Subsector A-2b: Sections 10, 11, 14, and 15, T28S, R12E, MDBM, (projected), and in the flood plain of the Salinas River east of US Highway 101 and Sycamore Road, south of State Highway 41, west of Templeton Road, and north of unnamed pipelines.

Subsector A-3: Sections 13, 14, 23, 24, and 25, T28S, R12E, MDBM, (projected), and in the flood plain of the Salinas River east of US Highway 101, south of unnamed pipelines, and west of Rocky Canyon Road.



Sector B - Deposits of the Navajo Creek Resource Area: Deposits of the active channel and floodplain of Navajo Creek, from one-and-a-half miles upstream of the Highway 58 crossing to about three miles upstream of the crossing (Plate 1). This Sector is under the land use jurisdiction of the County of San Luis Obispo.

Sector B: Sections 15 and 16, T29S, R16E, MDBM, and is in the flood plain of Navajo Creek south of State Highway 58, and east of USFS Road 29S15.

Sector C - Deposits of the La Panza Granitics Resource Area: The La Panza Granitics outcrop southeast of the City of Atascadero. Sector C is divided into four subsectors identified as C-1a, C-1b, C-2, and C-3 (Plate 1). This Sector is under the land use jurisdiction of the County of San Luis Obispo.

Subsector C-1a: Sections 19, 20, 27, 28, 29, 30, 32, 33, 34, 35, T28S, R13E; 2, 3, 4, 5, 9, 10, and 11, T29S, R13E, MDBM, and is in the La Panza Granitics south of State Highway 41, east of the Salinas River, north of State Highway 58, and west of State Highway 229.

Subsector C-1b: Sections 35, 36, T28S, R13E; 1, 2, and 11, T29S, R13E, MDBM, and is in the La Panza Granitics north of State Highway 58, and east of State Highway 229.

Subsector C-2: Sections 1, 2, 10, 11, 12, 13, 14, T29S, R13E; 7, 8, 17, 18 and 19, T29S, R14E, MDBM, and is in the La Panza Granitics south of State Highway 58, north and east of Parkhill Road.

Subsector C-3: Sections 10, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, 36, T29S, R13E; 18, and 19, T29S, R14E, MDBM, and is in the La Panza Granitics east of West Pozo Road, south of State Highway 58 and Parkhill Road, and north of Las Pilitas Road.

Sector D - Deposits of the Santa Maria River Resource Area: Alluvial deposits of the active river channel and adjacent floodplain of the Santa Maria River. This Sector includes land in both San Luis Obispo and Santa Barbara counties and is divided into 41 subsectors identified as D-1 through D-11, and D-13 through D-37 (Plate 2). Portions of this Sector are under the land use jurisdiction of the County of San Luis Obispo, County of Santa Barbara, and City of Santa Maria.

Subsector D-1: Sections 22, 23, 25, 26, 27, T11N, R35W; and 30, T11N, R34W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of Nipomo Mesa, north of Division Street and Oso Flaco Lake Road, east of State Highway 1 (Guadalupe Road), and west of US Highway 101.

Subsector D-2: Sections 28, 29, 30, 31, 32, 33, T11N, R34W; 25, and 36, T11N, R35W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of Nipomo Mesa, Division Street and Riverside Road; east of Bonita School Road; north of the Santa Maria River flood control channel; and west of US Highway 101.

Subsector D-3: Sections 26, 27, 34, and 35, T11N, R35W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of Oso Flaco Lake Road, north of Division Street, and east of State Highway 1 (Guadalupe Road).

Subsector D-4: Sections 25, 26, 34, 35, and 36, T11N, R35W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of Division Street, west of Bonita School Road, north of the Santa Maria River flood control channel, and east of State Highway 1 (Guadalupe Road).

Sector D-5: Sections 35, 36, T11N, R35W; 1, and 2, T10N, R35W, SBBM, (projected), and is in the flood control channel of the Santa Maria River south of Division Street, west of Bonita School Road, north of State Highway (West Main Street), and east of State Highway 1 (Guadalupe Road).

Subsector D-6: Sections 36, T11N, R35W; 1, T10N, R35W; 31, 32, 33, T11N, R34W; and 6, T10N, R34W, SBBM, (projected), and is in the flood control channel of the Santa Maria River south of Division Street, east of Bonita School Road, north of State Highway 166 (West Main Street), and west of an unnamed utility corridor and US Highway 101.

Subsector D-7: Sections 32, 33, and 34, T11N, R34W, SBBM, (projected), and is in the flood control channel of the Santa Maria River south of Nippon Mesa, east of an unnamed utility corridor, west of US Highway 101, and north of Atlantic Place and the City of Santa Maria.

Subsector D-8: Sections 34 and 35, T11N, R34W, SBBM, (projected), and is in the flood control channel of the Santa Maria River east of an unnamed utility corridor, west of US Highway 101, and north of Atlantic Place and the City of Santa Maria.

Sector D-9: Sections 1 and 2, T10N, R35W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of the Santa Maria River flood control channel, west of Bonita School Road, and north of State Highway 166 (West Main Street).

Subsector D-10: Sections 1, T10N, R35W; 31, 32, T11N, R34W; 5, 6, and 7, T10N, R34W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of the Santa Maria River flood control channel, east of Bonita School Road, north of State Highway 166 (West Main Street), and west of an unnamed utility corridor.

Subsector D-11: Sections 32, 33, T11N, R34W; 4, and 5, T10N, R34W, SBBM, (projected), and is in the flood plain of the Santa Maria River south of the Santa Maria River flood control channel, east of an unnamed utility corridor, north of West Donovan Road, and west of North Blosser Road and the City of Santa Maria.

NOTE: There is no Subsector D-12

Subsector D-13a: Sections 35, T11N, R34W; 1, and 2, T10N, R34E, SBBM, and is in the flood control channel of the Santa Maria River east of US Highway 101, north of Seaward Drive, and west of Bull Canyon Road.

Subsector D-13b: Sections 1, 12, T10N, R34E; 6, 7, 8, 15, 16, 17, 21, 22, 23, 26, 27, 35, and 36, T10N, R33W, SBBM, (projected), and is in the flood control channel of the Santa Maria River east of Bull Canyon Road, north and east of East Main Street and Foxen Canyon Road, and north of the Santa Maria Mesa Road river crossing.

Subsector D-14: Sections 35, T11N, R34W; and 2, T10N, R34E, SBBM, and is in the flood plain of the Santa Maria River south of the flood control channel, east of US Highway 101, and west of Mariah Drive.

Subsector D-15: Sections 5, 6, 7, and 8, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River north of State Highway 166, east of Bonita Lateral Road, and west of the City of Santa Maria.

Subsector D-16: Sections 8 and 9, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River north of State Highway 166, south of West Donovan Road, and west of North Blosser Road and the City of Santa Maria.

Subsector D-17: Section 9, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River north of State Highway 166, south of West Donovan Road, and west of North Blosser Road and the City of Santa Maria.

Subsector D-18: Sections 12, T10N, R34W; and 7, T10N, R33W, SBBM, (projected), and is on the Santa Maria River plain south of the Santa Maria River channel, east of Panther Drive, and north of East Main Street.

Subsector D-19: Sections 7 and 18, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of State Highway 166, east of Ray Road, and west of Black Road.

Subsector D-20a: Sections 8, 16, and 17, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of State Highway 166, north of West Stowell Road, west of Hanson Way, and east of Black Road.

Subsector D-20b: Section 16, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of State Highway 166, north of West Stowell Road, west of North Blosser Road, and east of Hansen Way.

Subsector D-21: Sections 13, T10N, R34W; 17, and 18, T10N, R33W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River north of East Jones Street, south of East Main Street, and east of US Highway 101 and Suey Road.

Subsector D-22: Section 18, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of State Highway 166, east of Ray Road, and west of Black Road.

Subsector D-23: Section 13, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Jones Street, north of East Stowell Road, east of US Highway 101, and west of Rosemary Road.

Subsector D-24a: Section 17 and 18, T10N, R33W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Jones Street, north of East Stowell Road, east of Rosemary Road, and west of Philbric Road.

Subsector D-24b: Sections 16, 17, 20, and 21, T10N, R33W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River east of Philbric Road, west of Andrew Avenue, and north of Foxen Canyon Road.

Subsector D-25: Sections 16, 17, and 21, T10N, R33W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River east of Philbric Road, west of Andrew Avenue, and south of Sugar Street.

Subsector D-26: Section 20, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of West Stowell Road, and east of Black Road.

Subsector D-27: Sections 20 and 21, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of West Stowell Road, and east of South East Street.

Subsector D-28a: Sections 20 and 21, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of West Stowell Road, east of Black Road, and west of A Street.

Subsector D-28b: Section 21, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of West Stowell Road, north of Battles Street, and west of South Blosser Road.

Subsector D-29: Section 22, T10N, R34W, SBBM, (projected), and is in the ancestral flood plain of the Santa Maria River south of West Stowell Road, north of Battles Street, east of South Blosser Road, and west of South Depot Street.

Subsector D-30a: Section 23, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Battles Road, north of East Betteravia Road, west of South College Drive, and east of Newlove Drive.

Subsector D-30b: Section 23, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Battles Road, north of East Betteravia Road, east of South College Drive, and west of US Highway 101.

Subsector D-31: Section 24, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Stowell Road, north of East Battles Road, east of US Highway 101, and west of Rosemary Road.

Subsector D-32: Sections 19 and 20, T10N, R33W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Stowell Road, north of East Betteravia Road, east of Rosemary Road and US Highway 101, and west of Philbric Road.

Subsector D-33: Section 24, T10N, R34W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of East Battles Road, north of East Betteravia Road, east of US Highway 101, and west of Rosemary Road.

Subsector D-34: Sections 28 and 29, T10N, R33W, SBBM, and is in the ancestral flood plain of the Santa Maria River south of Foxen Canyon Road, and east of Telephone Road.

Subsector D-35: Section 28, T10N, R33W, SBBM, and is in the ancestral flood plain of the Santa Maria River south and west of Foxen Canyon Road.

Subsector D-36: Sections 16, 21, 22, 26, 27, 28, and 35, T10N, R33W, SBBM (projected), and is in the flood plain of the Santa Maria River east of Andrew Avenue, north and east of Foxen Canyon Road.

Subsector D-37: Sections 34, and 35, T10N, R33W, SBBM, and is in the flood plain of the Santa Maria River south of Foxen Canyon Road.

Sector E - Deposits of the Sisquoc River Resource Area: Alluvial deposits of the active river channel and adjacent floodplain of the Sisquoc River. The Sector extends along the river from about seven miles east of the community of Sisquoc, downstream to the confluence with the Cuyama River. Sector E is divided into five subsectors identified as E-1 through E-4 (with subsector E-3 split into "a" and "b;" See Plate 2). This Sector is under the land use jurisdiction of the County of Santa Barbara.

Subsector E-1: Sections 1, 2, 12, T9N, R33W; 7, 8, and 17, T9N, R32W, SBBM, and is in the flood plain of the Sisquoc River north of Foxen Canyon Road, south of Santa Maria Mesa Road, and west of Tepusquet Road.

Subsector E-2: Section 18, T9N, R32W, SBBM, and is in the flood plain of the Sisquoc River south of Foxen Canyon Road, and east of the community of Sisquoc.

Subsector E-3a: Sections 16 and 17, T9N, R32W, SBBM, and is in the flood plain of the Sisquoc River north of Foxen Canyon Road, south of Santa Maria Mesa Road, and west of Tepusquet Road.

Subsector E-3b: Sections 14, 15, 16, 21, 22, and 23, T9N, R32W, SBBM, (projected), and is in the flood plain of the Sisquoc River east of Tepusquet Road, north of Foxen Canyon Road and USFS Route 10N06/Rancho Sisquoc Road.

Subsector E-4: Sections 13, 14, 23, 24, T9N, R32W; 19, 20, 29, and 30, T9N, R31W, SBBM, (projected), and is in the flood plain of the Sisquoc River in Rancho Sisquoc, east of Tepusquet Road, north of Foxen Canyon Road, and east of USFS Route 10N06.

Sector F - Deposits of Santa Ynez River Resource Area: Alluvial deposits of the active river channel and adjacent floodplain of the Santa Ynez River. The Sector extends from just downstream of Cachuma Dam to about eight miles west (downstream) of the Highway 101 Bridge. Sector F is divided into seven subsectors identified as F-1 through F-7 (Plate 3). Portions of this Sector are under the land use jurisdiction of the County of Santa Barbara, City of Buellton, and City of Solvang.

Subsector F-1: Sections 12, 13, T6N, R33W; 3, 7, 8, 9, 10, 11, 12, and 13, T6N, R32W, SBBM, (projected), and is in the flood plain of the Santa Ynez River west of US Highway 101 and Avenue of the Flags, north of Santa Rosa Road, and south of State Highway 246 and Mail Road.

Subsector F-2: Sections 12, T6N, R32W; 7, and 18, T6N, R31W, SBBM, (projected), and is in the flood plain of the Santa Ynez River west of US Highway 101, east of Avenue of the Flags, and north of Santa Rosa Road.

Subsector F-3: Sections 7, 16, 17, 18, 20, and 21, T6N, R31W, SBBM, (projected), and is in the flood plain of the Santa Ynez River east of US Highway 101, south of State Highway 246/Mission Avenue, and west of Alisal Road.

Subsector F-4: Sections 7, 8, 17, and 18, T6N, R31W, SBBM, (projected), and is in the ancestral flood plain of the Santa Ynez River east of US Highway 101 and Ballard Canyon Road, and north of State Highway 246/Mission Avenue.

Subsector F-5: Sections 21, 22, 23, and 24, T6N, R31W, SBBM, and is in the flood plain of the Santa Ynez River east of Alisal Road, north of Three Springs Road, south of Mesa Verde Road, and west of Refugio Road.

Subsector F-6: Sections 24, T6N, R31W; 19, 20, 21, 22, 29, and 30, T6N, R30W, SBBM (projected), and is in the flood plain of the Santa Ynez River east of Refugio Road, north of Old Santa Rosa Road, and west of State Highway 154/San Marcos Pass Road.

Subsector F-7: Sections 13, 14, 15, 22, 23, and 24, T6N, R30W, SBBM, (projected), and is in the flood plain of the Santa Ynez River east and north of State Highway 154/San Marcos Pass Road, and west of Cachuma Reservoir Dam.

Sector G - Deposits of the Upper Cuyama River Resource Area: Alluvial deposits of the Cuyama River, in the Cuyama Valley from the Highway 166 bridge, south (upstream) to the Ventura County line - a distance of about 24 miles. Sector G is divided into four subsectors

identified as G-1 through G-4 (Plate 4). This deposit is under the land use jurisdiction of San Luis Obispo and Santa Barbara Counties, but currently serves the western Kern County market. Portions of this Sector are under the land use jurisdiction of the County of San Luis Obispo and County of Santa Barbara.

Subsector G-1: Sections 19, 20, 28, 29, 30, 33, and 34, T10N, R25W, SBBM, and is in the flood Plain of the Cuyama River south of State Highway 166, west of State Highway 33, east of Kirschenmann Road, and north of Foothill Road.

Subsector G-2: Sections 2, 3, 11, and 12, T9N, R25W, SBBM, and is in the flood Plain of the Cuyama River south of Foothill Road, west of State Highway 33, and north of USFS Route 9N11/Big Pine Road.

Subsector G-3: Sections 12, 13, 24, T9N, R25W; 18, 19, 30, and 31, T9N, R24W, SBBM, and is in the flood Plain of the Cuyama River south of USFS Route 9N11/Big Pine Road, west of State Highway 33, and north of unnamed pipeline.

Subsector G-4: Sections 31, 32, T9N, R24W; 1, T8N, R25W; 6, 7, 8, 17, and 18, T8N, R24W, SBBM, and is in the flood Plain of the Cuyama River south of an unnamed pipeline, and west of State Highway 33 and the Ventura County Line.

Sector H - Deposits of the Bee Rock Resource Area: Limestone deposits on the south side of Bee Rock in the Santa Ynez Mountains approximately two miles south of Cachuma Dam (Plate 3). This Sector is under the land use jurisdiction of the County of Santa Barbara.

Sector H: Section 31, T6N, R29W, SBBM, (projected), and is the Bee Rock Limestone Deposit in the Santa Ynez Mountains south of State Highway 154/San Marcos Pass Road and Cachuma Reservoir Dam.

Sector I - Deposits of the Huerhuero Creek Resource Area: Alluvial deposits in the active channel of the Main Branch, Middle Branch and East Branch of Huerhuero Creek, from 1.1 mile north of the intersection of State Highway 58 and O'Donovan Road, north (downstream) to approximately 0.25 mile north of the Creston Road crossing over Huerhuero Creek three miles north of State Highway 4 - a linear distance (in two segments) of about 10 miles. Sector I is divided into 11 subsectors identified as I-1 through I-11 (Plate 1). From north to south, Sectors I-1 through I-8 are in the Main and Middle Branches of Huerhuero Creek. Sectors I-9 through I-11 are in the East Branch of Huerhuero Creek. This Sector is under the land use jurisdiction of the County of San Luis Obispo.

Subsector I-1: Sections 14 and 23, T27S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek north of Creston Road, and east of Geneseo Road.

Subsector I-2: Section 23, T27S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek south and west of Creston Road, and north of unnamed pipeline.

Subsector I-3: Sections 23 and 26, T27S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek west of Creston Road, south of unnamed pipeline, and north of another unnamed pipeline.

Subsector I-4: Sections 25, 26, and 36, T27S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek north of State Highway 41, west of Creston Road, and south of an unnamed pipeline.

Subsector I-5: Sections 36, T27S, R13E; and 1, T28S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek south of State Highway 41, east of State Highway 229/Webster Road, west of La Panza Road, and north of an unnamed pipeline.

Subsector I-6: Section 1, T28S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek south of unnamed pipeline, east of State Highway 229/Webster Road and the community of Creston, and north of O'Donovan Road.

Subsector I-7: Sections 1 and 12, T28S, R13E, MDBM, (projected), and is in the active channel of Huerhuero Creek south of the community of Creston, east of State Highway 229/Webster Road, and north of Reeves Pheasant Way.

Subsector I-8: Sections 1 and 12, T28S, R13E, MDBM, (projected), and in the active channel of Huerhuero Creek south of Reeves Pheasant Way, and east of State Highway 229/Webster Road.

Subsector I-9: Section 7, T28S, R14E, MDBM, (projected), and in the active channel of Huerhuero Creek east of O'Donovan Road, and north of Lady Amherst Way.

Subsector I-10: Sections 18 and 19, T28S, R14E, MDBM, (projected), and in the active channel of Huerhuero Creek west of O'Donovan Road, and south of Lady Amherst Way.

Subsector I-11: Sections 19, 20, and 29, T28S, R14E, MDBM, (projected), and in the active channel of Huerhuero Creek east of O'Donovan Road.

*Note: Authority cited: Section 2790, Public Resources Code. Reference: Sections 2761 and 2790, Public Resources Code.*

#### **Article 4. Designation Appeal Procedures**

##### **§ 3625. Purpose of Regulations**

The regulations contained in this article govern procedures affecting appeals to the Board on the approval or denial of a permit to conduct surface mining operations by a city or county, hereinafter referred to as the "lead agency," in an area designated as containing mineral deposits of statewide or regional significance pursuant to the provisions of Section 2775, Public Resources Code (PRC 2775).

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

##### **§3626. Filing of Intent to Appeal**

(a) Any person filing an appeal to the Board pursuant to PRC 2775 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the Board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(1) A map indicating the exact location of the disputed area, including township and range, and corresponding to the designation map prepared for the region;

(2) Written statements with supporting documentation indicating the basis for the appellant's challenge to the decision by the lead agency either to approve or deny a permit to mine in an area designated as being of statewide or regional significance.

(3) Copy of notice to the lead agency that the appellant has filed an intent to appeal to the Board.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

### **§ 3627. Determination of Jurisdiction**

The Chairman of the Mining and Geology Board, or the Chairman's designee, based upon the information submitted pursuant Section 3626 of this article, shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues with respect to the action taken to approve or deny the permit to conduct surface mining operations by the lead agency. The Chairman of the Board, or the Chairman's designee, shall make such determination within 15 days of receipt of the information required by Section 3626 of this article, and shall notify the appellant and the lead agency of the determination by certified mail.

If the Chairman finds, based upon the criteria stated in (a), (b) or (c) below, that the appeal raises no substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations in a designated area, he or she shall refuse to grant a hearing on an appeal. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of the Public Resources Code and the rules of the Board; and

(b) Whether the appeal specifically relates to the approval or denial of a permit to conduct surface mining operations in an area designated by the Board as being of statewide or regional significance.

(c) Whether the appeal is that of a lead agency's reconsideration of an appeal previously remanded by the board to that lead agency, and the appellant's challenge raises no new substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

### **§ 3628. Administrative Record**

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the board within 30 days of receipt of notification three certified copies for the complete administrative record, which shall include, but not be limited to, all of the following information.



(1) Project application and complete, detailed description of the proposed project, including conditions added for mitigation of environmental impacts;

(2) Location and site description maps submitted to the lead agency as part of the application process;

(3) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the project; and

(4) Written transcripts of all public hearings related to the decision of the lead agency.

(b) In cases where the appellant is faced with more than 30 days delay in gathering the administrative record because of internal procedures of the lead agency, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(c) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be deemed grounds to remand the appeal to the lead agency for reconsideration.

*Authority: Section 2772, 2773, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **§ 3629. Hearing Procedures-Scheduling**

The Board shall schedule and hold a public hearing on an appeal no later than 30 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. In no case shall the hearing be scheduled beyond 180 days of the receipt of the complete administrative record without the concurrence of the Board, the appellant, and the project proponent (when not the same person as the appellant). The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **§ 3630. Hearing Procedures-Authority for Delegation**

The Board may delegate conduct of the hearing to a committee of at least two members to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3634 of these regulations.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **§ 3631. Hearing Procedures-Notice**

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency, the appellant, and the project proponent (when not the same person as the appellant);
  - (2) Mailing the notice to any person who requests notice of the appeal or hearing;
  - (3) Mailing the notice to the Board's regular mailing list; and
  - (4) Posting of the notice in a place where notices are customarily posted in the city or county jurisdiction within which the proposed surface mining operations are to take place.
- (b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) Identification of the proposed surface mining operation, a brief description of the location of the operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
- (3) A statement that the appellant has appealed the lead agency's decision to approve or deny the project and has requested the Board hear the appeal;
- (4) A statement inviting the appellant, the lead agency, the project proponent (when not the same person as the appellant), and the public to make statements at the hearing regarding the decision of the lead agency; and
- (5) The time, date, and location of the public hearing.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

### **§ 3632. Hearing Procedures-Record**

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3626 and 3628 of this article.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

### **§ 3633. Hearing Procedures-Sequence**

- (a) The public hearing should normally proceed in the following manner:
- (1) Identification of the record;
  - (2) Statements on behalf of the appellant;
  - (3) Statements on behalf of the lead agency;
  - (4) Statements on behalf of the project proponent (when not the same person as the appellant);
  - (5) Statements on behalf of the public;
  - (6) Rebuttal on behalf of the appellant; and
  - (7) Motion to close the public hearing.
- (b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.
- (c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded either electronically or by other convenient means.  
*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

#### **§ 3634. Hearing Procedures - Determination**

Following the public hearing, the Board shall determine whether, upon the record before it, the lead agency decision was made based on substantial evidence in light of the whole record.

Notification of the Board's determination shall be made by certified mail to the appellant, the lead agency, and the project proponent (when not the same person as the appellant) within 15 days following the regular business meeting of the Board at which the decision is made.

*Authority: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.*

### **Article 5. Reclamation Plan Appeals**

#### **§ 3650. Filing of Intent to Appeal**

Any person filing an appeal to the Board pursuant to PRC 2770 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(a) A map indicating the exact location of the surface mining operation, including township and range.

(b) A copy of all documents which together were proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770.

(c) Written statements with supporting documentation indicating the basis for the appellant's challenge of:

(1) the lead agency's action to deny approval of the reclamation plan submitted pursuant to PRC 2770; or

(2) the lead agency's failure to act according to due process; or

(3) the lead agency's failure to act within a reasonable period of time of submittal of a completed application.

(A) failure to act means a lead agency's inaction in processing the reclamation plan through its successive steps as provided for in the lead agency's surface mining and reclamation ordinance adopted pursuant to PRC Section 2774, and as provided for in PRC Section 2774(c).

(B) reasonable time means the time period specified in the lead agency's surface mining and reclamation ordinance, or that which is mutually agreed upon by the applicant and the lead agency. Where no times are specified in the lead agency's ordinance, then the interval between successive review steps shall not exceed 60 days.

(d) Copy of notice to the lead agency that the appellant intends to file an appeal to the Board.

*Authority: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.*

**§ 3651. Determination of Jurisdiction**

The Chairman of the Mining and Geology Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues related to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770. If the Chairman finds, based upon the criteria stated in (a) plus (b) below, that the appeal raises no substantial issues with respect to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770, he or she shall refuse to grant a hearing on the appeal. In making these determinations, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which can legally be addressed by the Board within the limits of PRC 2770(e) and the rules of the Board; and

(b) Whether the appeal specifically relates to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770.

*Authority: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.*

**§ 3652. Administrative Record**

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the board within 30 days of receipt of notification three certified copies of the complete administrative record, which shall include, but not be limited to, all of the following information:

(1) All documents which together are proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770;

(2) Location and site description maps submitted to the lead agency as part of the reclamation plan application;

(3) Environmental documentation prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., including conditions added for mitigation of environmental impacts, if any;

(4) A copy of the lead agency surface mining and reclamation ordinance under which the reclamation plan may have been judged pursuant to PRC 2770;

(5) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the proposed reclamation plan; and

(6) Written transcripts of all public hearings related to the lead agency review for approval of the reclamation plan pursuant to PRC Section 2770.

(b) Should the lead agency choose not to complete an environmental review of the project pursuant to the provisions of CEQA, or should the Board deem such review inadequate under the provisions of CEQA, the record will not be considered complete until an adequate CEQA review is completed.

(1) In those instances in which the Board is the CEQA lead agency, the Board shall be responsible for the preparation of new or supplemental environmental documents.

(2) Pursuant to PRC Section 15045, the project proponent shall bear any costs relating to preparation and completion of any required environmental documents.

(c) Failure of the appellant to request in writing the administrative record from the lead agency within 10 days of receiving notification of the Board's acceptance of the appeal may be deemed grounds for dismissal of the appeal.

(d) If the appellant is unable to obtain the administrative record from the lead agency within 15 days, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(e) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be deemed grounds for Board action based on information provided solely by the appellant.

(f) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 10 days may be deemed grounds for dismissal of the appeal.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 21000 et seq., Public Resources Code; and Section 15000 et seq., California Code of Regulations.*

### **§ 3653. Technical Review for Adequacy of Reclamation Plan**

(a) The Board may consult with the technical staff of the Department of Conservation for determination of the adequacy of reclamation plans prepared for surface mining operations that are appealed to the Board. Preliminary determination of technical adequacy shall be based on, but shall not be limited to, the following:

(1) Substantial compliance with the requirements of PRC Sections 2772 and 2773;

(2) Substantial compliance with the requirements of Board rules and regulations (14 CCR Sections 3500 et seq. and Sections 3700 et seq.);

(3) Substantial compliance with the reclamation provisions of the lead agency surface mining and reclamation ordinance as certified by the Board pursuant to the provisions of PRC 2774; and

(4) Whether the proposed reclamation plan is technically feasible given the scope of the mining operations.

(b) The determination of whether substantial compliance with PRC Sections 2772 and 2773, 14 CCR Sections 3500 et seq. and Sections 3700 et seq., and the Board-certified lead agency surface mining and reclamation ordinance have been met shall be based on whether all elements of these provisions that are necessary to ensure viable, planned reclamation of a particular site are included and are technically feasible so as to satisfy the objectives of the Surface Mining and Reclamation Act. For example, a description of revegetation efforts might not be necessary for a pit to be used as a landfill, just as a description of final slope angles may not be necessary for a gravel bar skimming operation. In other sites, however, such information

may be critical. In all cases, a site visit by the technical staff of the Department of Conservation shall be made before substantial compliance is determined.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.*

#### **§ 3654. Hearing Procedures - Scheduling**

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in the jurisdiction from which the appeal originated, but may otherwise schedule such appeals to be heard in Sacramento.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

#### **§ 3655. Hearing Procedures - Authority for Delegation**

The Board may delegate conduct of the hearing to a committee of at least two members of the Board to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3659 of these regulations.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

#### **§ 3656. Hearing Procedures - Notice**

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency and to the appellant;
- (2) Mailing the notice to any person who requests notice of the appeal or hearing;
- (3) Mailing the notice to the Board's regular mailing list; and
- (4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) Identification of the proposed reclamation plan, a brief description of the location of the surface mining operation for which the reclamation plan was prepared by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to deny approval of the reclamation plan, or that the lead agency is being challenged based on failure to act according to due process, or that the lead agency is being challenged based on failure to act within a reasonable period of time;

(4) A statement explaining that the Board may approve or deny approval of the reclamation plan, and that if the reclamation plan is denied approval, it shall be returned to the operator who then must revise it and resubmit the revised plan to the lead agency within 30 days of receipt from the Board;

(5) A statement inviting the appellant, the lead agency, and the public to make statements at the hearing regarding the action (or inaction) of the lead agency; and

(6) The time, date, and location of the public hearing.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

### **§ 3657. Hearing Procedures - Record**

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3650 and 3652 of this article, together with any findings from the technical review pursuant to Section 3653 of this article, and any CEQA documents prepared pursuant to Section 3652 of this article.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.*

### **§ 3658. Hearing Procedures - Sequence**

(a) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the appellant;
- (3) Statements on behalf of the lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the appellant; and
- (6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.*

### **§ 3659. Hearing Procedures - Determination**

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed reclamation plan substantially meets the requirements of PRC 2772 and 2773 and the lead agency surface mining and reclamation ordinance, and the provisions of Section 3654 of this article. Notification of the Board's determination shall be made by certified mail to the

appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision is made. In cases where the reclamation plan is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision, and the operator shall be put on notice that deficiencies must be corrected and a revised reclamation plan filed with the lead agency within 30 days.

*Authority: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), 2772, 2773 and 2774, Public Resources Code.*

## **Article 6. Mineral Resource Management Policies**

### **§ 3675. Definitions**

The following definitions as used herein shall govern the interpretation of these regulations:

**Compatible Land Use.** Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

**Incompatible Land Use.** Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2761-2762, Public Resources Code.*

### **§ 3676. Mineral Resource Management Policies**

Lead agency mineral resource management policies adopted pursuant to the provisions of PRC Section 2762 shall include but not be limited to, the following:

(a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of the identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the Board.

(b) Statements of policy in accordance with the provisions of PRC Section 2762(a).

(c) Implementation measures that shall include:

(1) Reference in the general plan of the location of identified mineral deposits, and a discussion of those areas targeted for conservation and possible future extraction by the lead agency.



(2) Use of overlay maps or inclusion of information on any appropriate planning maps to clearly delineate identified mineral deposits and those areas targeted by the lead agency for conservation and possible future extraction.

(3) At least one of the following:

(A) Use of special purpose overlay zones, mineral resource/open space zoning, or any other appropriate zoning that identifies the presence of identified mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.

(B) Record, on property titles in the affected mineral resource areas, a notice identifying the presence of identified mineral deposits.

(C) Impose conditions upon incompatible land uses in and surrounding areas containing identified mineral deposits for the purpose of mitigating the significant land use conflicts prior to approving a use that would otherwise be incompatible with mineral extraction.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2757 and 2761-63, Public Resources Code.*

## **Article 7. Financial Assurances Cost Estimate Appeal Procedures**

### **§ 3680. Purpose of Regulations**

The regulations contained in sections 3681 - 3690 govern procedures for appeals to the State Mining and Geology Board (“the Board”) filed by any person other than the Division concerning lead agency denial of or inaction upon financial assurance cost estimates for reclamation of surface mining operations under section 2770 of the Public Resources Code.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3681. Filing of Intent to Appeal**

(a) A person filing an appeal to the Board pursuant to section 2770 of the Public Resources Code concerning financial assurance cost estimates for reclamation shall, within 15 days of exhausting the right to appeal in accordance with the procedures of the lead agency, file a notice of intent to appeal by submitting the following information:

(1) A map indicating the exact location of the surface mining operation, including township and range.

(2) A copy of all documents that constitute the financial assurance cost estimate for reclamation intending to be appealed.

(3) Written statements, with supporting documentation, indicating the basis for the appellant's challenge of the action or inaction by the lead agency concerning the financial assurance cost estimate for reclamation.

(b) The appellant shall serve a copy of the notice of intent to appeal to the lead agency and the Division at the time of filing the notice of intent.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3682. Determination of Jurisdiction**

(a) The Chair of the Board, or the Chair's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises any substantial issues related to the review by the lead agency of the financial assurance cost estimate for reclamation for surface mining operations pursuant to Public Resources Code section 2770. If the Chair finds, based on the criteria stated in (a) through (c) below, that the appeal raises no substantial issues with respect to the review by the lead agency of the financial assurance cost estimate for surface mining operations under Public Resources Code section 2770, the Chair shall refuse to grant a hearing on the appeal. In making this determination, the Chair shall consider the following:

(1) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of Public Resources Code section 2770 and the rules of the Board;

(2) Whether the appeal specifically relates to the lead agency's review of the financial assurance cost estimate submitted for surface mining operations pursuant to the provisions of Public Resources Code section 2770; and

(3) Whether the appellant has exhausted all appeal remedies before the lead agency.

(b) The Board shall notify the lead agency of the determination of jurisdiction by the Chair or the Chair's designee.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3683. Limit on Number of Filings of Appeal**

Upon a finding by the Chair, or the Chair's designee (Board Member), that the appeal is not within the jurisdiction of the Board, the appellant may refile the notice of intent to appeal, once only, with the identified information needed to complete the appeal, within 21 days of receipt of the letter of denial of the original notice of intent to appeal.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3684. Administrative Record**

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit 3 copies of the complete administrative record which the lead agency shall certify as being a complete record of the documents and information submitted to, and in the case of denial, considered by the lead agency regarding the appellant's financial assurance cost estimate. The certified administrative record shall include, but shall not be limited to, all of the following information:

(1) A copy of the approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurances for reclamation are proposed;

(2) A copy of the documents comprising the financial assurance cost estimate or the proposed financial assurance cost estimate for reclamation which were submitted to the lead agency for review and approval pursuant to Public Resources Code section 2770;

(3) Location and site description maps submitted to the lead agency as part of the reclamation plan;

(4) A detailed estimate of the cost of the reclamation, in accordance with the approved reclamation plan, of the lands remaining disturbed and/or to be disturbed by the surface mining operation in the applicable 12 month period, together with a map clearly delineating the boundaries of those lands;

(5) All reports, findings, communications, correspondence and statements in the file of the lead agency relating to the financial assurance cost estimate for reclamation in question;

(6) Written transcripts of all public hearings related to the lead agency's review of the financial assurance cost estimate.

(b) Failure of the appellant to request the certified administrative record from the lead agency within 15 days of receiving the notice stating the Board's acceptance of the appeal, shall be grounds for dismissal of the appeal. Where the appellant received the certified administrative record prior to receipt of the Board's acceptance of the appeal, the appellant shall submit the certified administrative record within 10 days of receipt of the determination of jurisdiction. Where the appellant receives the certified administrative record within 15 working days after requesting it or other agreed upon date with the lead agency, the appellant shall submit the certified administrative record to the Board within 10 days of receipt. In any case, the appellant

shall advise the Board of the date upon which the certified administrative record was requested from the lead agency.

(c) If the appellant is unable to obtain the certified administrative record from the lead agency within 10 working days after submission of the request for the record, the appellant shall so notify the Board in writing. The Board shall then require the lead agency to submit 3 certified copies of the administrative record to the Board within 30 days.

(d) Failure of the lead agency to produce the certified administrative record upon request of the Board within 30 days shall be grounds for Board action based on information provided solely by the appellant.

(e) Following production of the certified administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 15 days shall be grounds for dismissal of the appeal.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3685. Hearing Procedures - Scheduling**

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete certified administrative record, or at such time as may be mutually agreed upon by the Board, the appellant, and the lead agency. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

*Authority: Sections 2755, 2759 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3686. Hearing Procedures - Authority for Delegation**

The Board may delegate conduct of the hearing to a committee of at least 2 Board members to be appointed for that hearing by the Chair of the Board. The Chair of the Board or the Chair's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3690 of these regulations.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3687. Hearing Procedures - Notice**

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency and to the appellant;
- (2) Mailing the notice to any person who requests notice of the appeal or hearing;
- (3) Mailing the notice to the Board's regular mailing list, and posting the notice on the Board's website; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) The name of the appellant;
- (2) A summary of the financial assurance cost estimate for reclamation, that was denied or not acted upon by the lead agency, identification of the surface mining operation for which the

financial assurance cost estimate for reclamation was provided, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement of the grounds for the appeal;

(4) A statement that the Board may approve or deny approval of the financial assurance cost estimate for reclamation;

(5) A statement that if the Board denies approval of the financial assurance cost estimate, the appellant shall be granted, time to correct the noted deficiencies as provided for in California Code of Regulations section 3690(b);

(6) A statement inviting the appellant, the lead agency, and the public to provide testimony and evidence at the hearing regarding the action or inaction of the lead agency; and

(7) The time, date, and location of the public hearing.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3688. Hearing Procedures - Record**

The record before the Board at the public hearing shall consist of the notice of intent submitted to the Board pursuant to 3681 and the certified administrative record from the lead agency pursuant to 3684(a), unless section 3684(d) is applicable.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.*

### **§ 3689. Hearing Procedures – Sequence**

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the Division of Mine Reclamation and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the appellant; and

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chair or the Chair's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chair or the Chair's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least 15 days prior to the hearing.

(d) The public hearing shall be recorded.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**§ 3690. Hearing Procedures - Determination**

(a) Following the public hearing, the Board shall determine whether, based on the record before it, the proposed or existing financial assurance cost estimate for reclamation is sufficient to complete reclamation in accordance with the approved reclamation plan and/or plan amendment pursuant to the applicable requirements of Public Resources Code sections 2770, 2773.1, 2773.4, Article 11 (commencing with section 3800) of this subchapter, the Board's financial assurance guidelines, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. Financial assurance cost estimates determined to meet these requirements shall be approved by the Board. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 10 days following the regular business meeting of the Board at which the decision was made. Notification of the Board's determination shall also be made by regular mail or electronic mail to the Division and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, within 10 days following the regular business meeting of the Board at which the decision was made.

(b) In a case where the financial assurance cost estimate for reclamation is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision. The appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the appellant and the Board, to correct the noted deficiencies and submit the revised financial assurance cost estimate for reclamation to the lead agency for review and approval. The lead agency shall provide notice to the Division of the approved revised financial assurance cost estimate within 5 days of approval.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.*

**§ 3691.1 Purpose of Regulations**

The regulations contained in sections 3691.2-3691.10 govern procedures for appeals to the State Mining and Geology Board ("the Board") filed by the Division of Mine Reclamation ("the Division"), concerning lead agency approved financial assurance cost estimates for reclamation of surface mining operations under section 2770 of the Public Resources Code.

*Authority: Section 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**§ 3691.2 Filing of Intent to Appeal**

(a) The Division may file an appeal to the Board pursuant to section 2770 of the Public Resources Code concerning a financial assurance cost estimate, within 15 days of receiving a lead agency's final response to comments pursuant to Public Resources Code section 2773.4(c)(6)(B) or 2773.4(d)(5)(E) or, if the lead agency fails to provide a final response to comments, 45 days after approval of the financial assurance cost estimate. The notice of intent to appeal submitted by the Division shall include the following information:

(1) A copy of the financial assurance cost estimate and all supporting documents which the lead agency submitted to the Division for comment pursuant to Public Resources Code section 2773.4.

(2) A copy of the Division's comments submitted pursuant to Public Resources Code section 2773.4(c)(6)(B) or 2773.4(d)(6), and a written statement indicating the basis for the Division's challenge of the approval by the lead agency concerning the financial assurance cost estimate for reclamation.

(b) The Division shall serve a copy of the notice of intent to appeal to the lead agency at the time of the filing of the notice of intent.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3691.3 Determination of Jurisdiction**

(a) The Chair of the Board, or the Chair's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal. Where the Chair or the Chair's designee finds that the Division provided comments to the lead agency pursuant to Public Resources Code section 2773.4, the Chair or the Chair's designee shall grant a hearing on the appeal.

(b) The Board shall notify the Division and the lead agency of the determination of jurisdiction by the Chair or the Chair's designee.

*Authority: Section 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3691.4 Administrative Record**

(a) Once the Division has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the Division shall submit 3 copies of the administrative record which the lead agency shall certify as being a complete record of the documents and information submitted to and considered by the lead agency regarding the approval of the financial assurance cost estimate. The certified administrative record shall include, but shall not be limited to, all of the following information:

(1) A copy of the lead agency approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurance cost estimate for reclamation is proposed;

(2) Written transcripts of all public hearings related to the lead agency's approval of the financial assurance cost estimate.

(3) The financial assurance cost estimate and all supporting documents which the lead agency submitted to the Division for comment pursuant to Public Resources Code section 2773.4, along with comments submitted to the lead agency by the Division, and any supporting documentation.

(4) Any documents or information exchanged during a consultation requested by the Division pursuant to Public Resources Code 2773.4, subdivisions (c)(5)(A) or (d)(5)(C)(i).

(b) Failure of the Division to request the certified administrative record from the lead agency within 15 days of receiving the notice stating the Board's acceptance of the appeal, shall be grounds for dismissal of the appeal. Where the Division received the certified administrative record prior to receipt of the Board's acceptance of the appeal, the Division shall submit the

certified administrative record within 10 days of receipt of the determination of jurisdiction. Where the Division receives the certified administrative record within 15 working days after requesting it or other agreed upon date with the lead agency, the Division shall submit the certified administrative record to the Board within 10 days of receipt. In any case, the Division shall advise the Board of the date upon which the certified administrative record was requested from the lead agency.

(c) If the Division is unable to obtain the certified administrative record from the lead agency within 15 working days after submission of the request for the record, or by a date agreed to by the Division and lead agency, whichever is later, the Division shall notify the Board in writing.

(d) Where the Division notifies the Board pursuant to subdivision (c) of this section, the Board shall then require the lead agency to submit 3 certified copies of the administrative record to the Board within 30 days.

(e) Failure of the lead agency to produce the certified administrative record upon request of the Board within 30 days shall be grounds for Board action based on information provided only by the Division and the operator.

(f) Where the lead agency has failed to produce the certified administrative record pursuant to subdivision (e) upon request of the Board, the administrative record shall be considered complete for purposes of scheduling the hearing pursuant to Public Resources Code section 2770(f)(2).

(g) Along with the submission of the certified administrative record to the Board, the Division shall also provide copies of any estimates developed by the Division for the cost of reclamation for any specific aspect of reclamation in accordance with the approved reclamation plan and/or statements with any supporting documents challenging the basis for any specific aspect of reclamation in accordance with the approved reclamation plan.

(h) Costs associated with the preparation of the administrative record are included within those costs incurred by lead agencies under Public Resources Code section 2207, subdivision (e).

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3691.5 Hearing Procedures – Scheduling**

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete certified administrative record, or at such time as may be mutually agreed upon by the Board, the Division, the operator and the lead agency. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*



**§ 3691.6 Hearing Procedures – Authority for Delegation**

The Board may delegate conduct of the hearing to a committee of at least 2 Board members to be appointed for that hearing by the Chair. The Chair or the Chair's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3691.10 of these regulations.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

**§ 3691.7 Hearing Procedures – Notice**

(a) At least 15 working days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency, the Division, and the operator;
- (2) Mailing the notice to any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;
- (3) Mailing the notice to any person who requests notice of the appeal or hearing;
- (4) Mailing the notice to the Board's regular mailing list; and
- (5) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) Identification of the surface mining operation along with a summary of the financial assurance cost estimate for reclamation that was approved by the lead agency, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
- (2) A summary statement of the Division's grounds for the appeal of the lead agency approved financial assurance cost estimate;
- (3) A statement that the Board may uphold the lead agency's approval of the financial assurance cost estimate or deny approval of the financial assurance cost estimate for reclamation;
- (4) A statement that if the Board denies approval of the financial assurance cost estimate, the disapproved financial assurance cost estimate shall be returned to the mine operator who shall be granted, once only, a period of 30 days, or a longer reasonable period mutually agreed upon by the operator, Division, and the Board, to correct the noted deficiencies consistent with the Board's determination and submit the revised financial assurance cost estimate to the lead agency for approval, and to the Division, the Board, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, for review;
- (5) A statement inviting the Division, the lead agency, any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, the operator,

and the public to provide testimony and evidence at the hearing regarding the lead agency's approval of the financial assurance cost estimate; and

(6) The time, date, and location of the public hearing.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770, Public Resources Code.*

### **§ 3691.8 Hearing Procedures – Record**

The record before the Board at the public hearing shall consist of the notice of intent submitted to the Board pursuant to 3691.2, the certified administrative record from the lead agency pursuant to 3691.4(a) unless section 3691.4(e) is applicable, and any documents submitted pursuant to 3691.4(g) of this article.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770 and 2774, Public Resources Code.*

### **§ 3691.9 Hearing Procedures – Sequence**

(a) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the Division;
- (3) Statements on behalf of any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;
- (4) Statements on behalf of the lead agency;
- (5) Statements on behalf of the operator;
- (6) Statements on behalf of the public;
- (7) Rebuttal on behalf of the Division; and
- (8) Motion to close the public hearing.

(b) Notwithstanding the above, the Chair or the Chair's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chair or the Chair's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least 15 days prior to the hearing.

(d) The public hearing shall be recorded.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.*

### **§ 3691.10 Hearing Procedures – Determination**

(a) Following the public hearing, the Board shall determine whether, based on the record before it, the lead agency approved financial assurance cost estimate for reclamation is sufficient to complete reclamation in accordance with the approved reclamation plan and/or plan amendments pursuant to the applicable requirements of Public Resources Code sections 2770, 2773.1, 2773.4, Article 11 (commencing with section 3800) of this subchapter, the Board's

financial assurance guidelines, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. A lead agency approved financial assurance cost estimates determined to meet these requirements shall be upheld by the Board. Notification of the Board's determination shall be made by certified mail to the Division, the operator, the lead agency, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, within 10 days following the regular business meeting of the Board at which the decision was made.

(b) In cases where the lead agency approved financial assurance cost estimate for reclamation is found to be insufficient to complete reclamation, deficiencies, including any adequate cost estimates for each noted deficiency, shall be noted in the correspondence notifying the lead agency, any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, the Division, and the operator of the Board's determination. The operator shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator, the Division, and the Board, to correct the noted deficiencies and submit the revised financial assurance cost estimate to the lead agency for approval, and to the Division, the Board, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, for review. Prior to lead agency approval of the revised financial assurance cost estimate, the Chair of the Board, or the Chair's designee (Board Member or Executive Officer) shall have a period of 15 days following receipt to review the revised financial assurance cost estimate for confirmation that the corrections are consistent with the Board's determination. Only after the Board has provided notice to the lead agency confirming the corrections are consistent with the Board's determination may the lead agency approve the revised financial assurance cost estimate. The lead agency shall provide notice to the Division and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, of the approved revised financial assurance cost estimate within 5 days of approval.

*Authority: Sections 2755, 2759, and 2770, Public Resources Code. Reference; Sections 2770 and 2774, Public Resources Code.*

## **Article 8. Fees Schedule**

### **§ 3695. Definitions**

The following definitions shall govern the interpretation of these regulations:

"Produced Minerals" means minerals extracted at the site of the mining operation, and either:

(a) sold, given or otherwise moved off the site of the operation, as defined in the approved reclamation plan, or;

(b) used on-site for production of completed products (e.g. cement, bricks, asphaltic concrete, etc.). Stockpiles of mineral products that remain on the site, as defined in the lead agency approved reclamation plan, are not produced minerals for purposes of these regulations.

“Primary Mineral Commodity Produced” means the produced mineral that provides the highest dollar values sales for the operation.

“Board” means State Mining and Geology Board.

As used in Section 3697 and 3699 “Mining Company” means any entity, corporation, partnership, parent or holding company. Any subsidiaries of the above are deemed to be part of the mining company.

As used in section 3699, “Gross Income” means all income from whatever source derived as defined by, and determined in accordance with, Section 61 of the Internal Revenue Code, Title 26, U.S.C.S.

“Aggregate Products” means decomposed granite, sand and gravel, slag, or stone.

“Industrial Minerals” means borates, cinders, clay, diatomite, dolomite, gypsum, iron ore, lime, limestone, perlite, pumice, rare earth elements, saline compounds, salt, shale, silica, specialty sand, abrasives, asbestos, barite, bituminous rock, decorative rock, dimension stone, feldspar, fluorite, gemstones, graphite, kyanite, lignite, lithium, magnesite, mica, olivine, peat, phosphate, potash, pyrophyllite, quartz crystal, sea shells, sericite, sulfur, talc, vermiculite, wollastonite, zeolites, and zircon.

“Gold, Silver, and Precious Metals” means gold (lode), gold (placer), platinum group metals, and silver.

“Base Metals and Other Metals” means antimony, arsenic, chromite, copper, lead, manganese, mercury, molybdenum, nickel, pyrite, tin, titanium, tungsten, uranium, vanadium, and zinc.

*Authority: Sections 2207(d)(1)-(2), Public Resources Code. Reference: Sections 2207(d)(1)-(2) and 2207(f), Public Resources Code.*

### **§ 3696. Operations Subject to Fees**

(a) Each surface mining operation, as defined in Public Resources Code Sections 2719, 2727.1, 2735, and California Code of Regulations, Title 14, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed an annual reporting fee according to the schedule established pursuant to in Section 3698 each May 1 following the reporting calendar year.

(b) In addition to the annual reporting fee, each surface mining operation that is newly permitted shall be assessed an initial reporting fee according to the schedule in Section 3698 of this article.

*Authority: Section 2207, Public Resources Code. Reference: Sections 2207 and 2719, Public Resources Code.*

**§ 3696.5. Board Administration Fee**

Each surface mining operation, as defined in Public Resources Code sections 2719, 2727.1, and 2735, and, Title 14 California Code of Regulations, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed each January 31 an annual administration fee of \$14 (fourteen dollars) per day for each day of the previous calendar year that the surface mine operation was under the board's jurisdiction as lead agency pursuant to Chapter 9, commencing with Section 2710. The administration fee is due and payable to the State Mining and Geology Board not later than April 1 each year by the surface mine's owner or operator of record on the preceding December 31.

*Authority: Sections 2207 and 2755, Public Resources Code. Reference: Section 2207, Public Resources Code.*

**§ 3697. Fees Due and Delinquent**

(a) The annual reporting fee and Mining Operation Annual Report (MRRC-2) are due and payable to the Department of Conservation not later than July 1 for the prior reporting year, by the owner or operator of record on the preceding December 31. The initial reporting fee for a new mining operation, together with an initial report, are due and payable to the Department of Conservation not later than thirty (30) days after permit approval. An owner or operator of a mining operation submitting an annual reporting fee or annual report after July 1, or more than thirty (30) days after permit approval, shall be assessed a penalty fee and interest as provided in Public Resources Code Section 2207(c) and (d)(5).

(b) Except as otherwise provided in (c), for the purposes of this article, mining operations are deemed to be discrete operations per each reclamation plan required.

(c) Multiple site mining operations are deemed to be those mining operations which meet all of the following criteria:

(1) one or more mining operations are operated on one or more sites by a single operator or mining company;

(2) the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity product is not precious metals;

(3) no sites are reporting fee assessments set forth in Section 3698, subsections (b), (d), or (e);

(4) all of the operator or company's entire mining operations located in the State of California are tied to, or located on, the listed sites; and

(d) In addition to the criteria provided in (c), multiple site mining operator's submittal of the annual report form (Mining Operation Annual Report, Form MRRC-2) shall be accompanied by a multiple site form (Multiple Site Single Fee Request, Form MRRC-4M) supplied by the Department of Conservation.

*Note: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

**§ 3698. Fees Calculation**

Annual reporting fees cited in sections 3698 and 3699 shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year and annually thereafter.

(a) The annual reporting fee for a multiple site mining operation shall be four thousand dollars (\$4,000).

(b) The annual reporting fee for mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) which did not complete reclamation during the reporting calendar year shall be \$100; or

(2) which completed reclamation during the reporting calendar year shall be \$100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

$$[(AT RY) - (AT PY)] / (AT PY) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR §3698(a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount in Public Resources Code Section 2207;

Where: ATRY is the Adjusted Total for the current "Reporting Year"

Where: ATPY is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than \$100 or more than the maximum fee in Public Resources Code Section 2207, and may be rounded to the nearest \$1 (one dollar)):

Formula: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor)

(1) Mining operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed an annual reporting fee as follows:

**Tons Fee in Dollars**

0 - 100 Formula (not less than \$100)

>100 - 1,000 Formula

>1,000 - 10,000 Formula

>10,000 - 50,000 Formula

>50,000 - 100,000 Formula

>100,000 Maximum fee per Public Resources Code Section 2207

(2) Mining operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed an annual reporting fee as follows:

**Ounces Fee in Dollars**

0 - 1 Formula (not less than \$100)

>1 - 10 Formula

>10 - 50 Formula

>50 - 150 Formula

>150 - 300 Formula

>300 Maximum fee per Public Resources Code Section 2207

(3) Mining operations where the primary mineral commodity produced is base metals or other metals shall be assessed an annual reporting fee as follows:

**Pounds Fee in Dollars**

0 - 10 Formula (not less than \$100)

>10 - 100 Formula

>100 - 1,000 Formula

>1,000 - 10,000 Formula

>10,000 - 20,000 Formula

>20,000 Maximum fee per Public Resources Code Section 2207

(d) The initial reporting fee for mining operations shall be five hundred dollars (\$500).

(e) The annual reporting fee for newly permitted mining operations which have not yet begun operations and disturbed the land shall be one hundred dollars (\$100).

(f) In addition to the annual reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$.10) per ounce of silver based on the amount of product mined within the state during the reporting year.

*Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

**§ 3699. Low Gross Exemptions**

(a) For the reporting calendar year, a single operator or mining company may file with the Division of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and postmarked or received by the Department of Conservation on or before July 1 following the reporting calendar year in order to be considered. The Department of Conservation shall grant the exemption if

information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the mining operation meets the following criteria:

(1) material is extracted from one mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the single operator or mining company's gross income from the mining operation for the reporting calendar year was less than \$128,900, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year and annually thereafter, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a complete and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant or an enrolled agent listed on the active roster maintained by the Federal Internal Revenue Service; and

(4) the single operator or mining company has submitted an annual reporting fee of five hundred fifteen dollars (\$515) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, and annually thereafter.

(b) For any request postmarked or received on or before July 1 following the reporting calendar year the Department of Conservation may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the single operator or mining company may appeal that determination to the Board for any request postmarked or received by the Department of Conservation on or before July 1 following the reporting calendar year. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairperson of the Board or their designee (Board Member), shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed and postmarked or received by the Department of Conservation on or before July 1 following the reporting calendar year;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department of Conservation's decision or grant the exemption. If the single operator or mining company does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department of Conservation's decision, the single operator or mining company shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. A single operator or mining company who fails to submit the full annual reporting fee within thirty (30) days after notification



shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

*Note: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.*

## **Article 9. Reclamation Standards**

### **§ 3700. Applicability**

Reclamation of mined lands shall be implemented in conformance with the standards in this Article.

(a) The standards shall apply to each surface mining operation to the extent that:

(1) they are consistent with required mitigation identified in conformance with the California Environmental Quality Act, provided that such mitigation is at least as stringent as the standards; and

(2) they are consistent with the planned or actual subsequent use or uses of the mining site.

(b) Where an applicant demonstrates to the satisfaction of the lead agency that an exception to the standards specified in this article is necessary based upon the approved end use, the lead agency may approve a different standard for inclusion in the approved reclamation plan. Where the lead agency allows such an exception, the approved reclamation plan shall specify verifiable, site-specific standards for reclamation. The lead agency may set standards which are more stringent than the standards set forth in this Article; however, in no case may the lead agency approve a reclamation plan which sets any standard which is less stringent than the comparable standard specified in this Article.

(c) When substantial amendments are proposed to reclamation plans which were approved prior to January 15, 1993, the standards set forth in this Article shall be applied by the lead agency in approving or denying approval of the amended reclamation plan.

(d) The standards in this Article shall not apply to mining operations:

(1) which completed reclamation prior to January 15, 1993, in conformance with an approved reclamation plan; or

(2) for which a reclamation plan has been approved prior to January 15, 1993.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3701. Definitions**

The following definitions shall govern the interpretation of these regulations:

“Arid” means landscapes with an average annual precipitation of five inches or less.

“Contamination” means an impairment of the quality of the waters of the state to a degree which creates a hazard to the public health through poisoning or through the spread of disease.

“Highwall” means the unexcavated face of exposed overburden and ore in a surface mine.

“Indigenous Plants” means plants occurring naturally in an area, not introduced.

“Native Species” means plant species indigenous to California, using pre-European as the historic time reference.

“Noxious Weeds” means any species of plant that is or is likely to become destructive or difficult to control or eradicate, and is termed to be so by the Director of the Department of Food and Agriculture in section 4500, Title 3 of the California Code of Regulations, pursuant to the Food and Agriculture Code section 5004 et seq.

“Vegetative Cover” means the vertical projection of the crown or shoot area of a species to the ground surface expressed as a percentage of the reference area (percentage can be greater than 100 percent).

“Vegetative Density” means the number of individuals or stems of each species rooted within the given reference area.

“Vegetative Species-richness” means the number of different plant species within the given reference area.

“Wetlands” for the purposes of these regulations, the definition of wetlands shall be the same as defined in the California Fish and Game Code, section 2785, subdivision (g).

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3702. Financial Assurances**

Lead agencies shall require financial assurances for reclamation in accordance with Public Resources Code section 2773.1 to ensure that reclamation is performed in accordance with the approved reclamation plan and with this article.

*Authority: Sections 2755, 2773 and 2773.1, Public Resources Code. Reference: Sections 2773 and 2773.1, Public Resources Code.*

### **§ 3703. Performance Standards for Wildlife Habitat**

Wildlife and wildlife habitat shall be protected in accordance with the following standards:

(a) Rare, threatened or endangered species as listed by the California Department of Fish and Game, (California Code of Regulations, Title 14, sections 670.2 - 670.5) or the U.S. Fish and Wildlife Service, (50 CFR 17.11 and 17.12) or species of special concern as listed by the California Department of Fish and Game in the Special Animals List, Natural Diversity Data Base, and their respective habitat, shall be conserved as prescribed by the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq., and the California Endangered Species

Act, Fish and Game Code section 2050 et seq. If avoidance cannot be achieved through the available alternatives, mitigation shall be proposed in accordance with the provisions of the California Endangered Species Act, Fish and Game Code section 2050 et seq., and the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq.

(b) Wildlife habitat shall be established on disturbed land in a condition at least as good as that which existed before the lands were disturbed by surface mining operations, unless the proposed end use precludes its use as wildlife habitat or the approved reclamation plan establishes a different habitat type than that which existed prior to mining.

(c) Wetland habitat shall be avoided. Any wetland habitat impacted as a consequence of surface mining operations shall be mitigated at a minimum of one to one ratio for wetland habitat acreage and wetland habitat value.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

#### **§ 3704. Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring**

Backfilling, regrading, slope stabilization, and recontouring shall conform with the following standards:

(a) Where backfilling is proposed for urban uses (e.g., roads, building sites, or other improvements sensitive to settlement), the fill material shall be compacted in accordance with the Uniform Building Code, published by the International Conference of Building Officials and as adopted by the lead agency, the local grading ordinance, or other methods approved by the lead agency as appropriate for the approved end use.

(b) Where backfilling is required for resource conservation purposes (e.g., agriculture, fish and wildlife habitat, and wildland conservation), fill material shall be backfilled to the standards required for the resource conservation use involved.

(c) Piles or dumps of mining waste shall be stockpiled in such a manner as to facilitate phased reclamation. They shall be segregated from topsoil and topsoil substitutes or growth media salvaged for use in reclamation.

(d) Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed 2:1 (horizontal:vertical), except when site-specific geologic and engineering analysis demonstrate that the proposed final slope will have a minimum slope stability factor of safety that is suitable for the proposed end use, and when the proposed final slope can be successfully revegetated.

(e) At closure, all fill slopes, including permanent piles or dumps of mine waste and overburden, shall conform with the surrounding topography and/or approved end use.

(f) Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use and conform with the surrounding topography and/or approved end use.

(g) Permanent placement of piles or dumps of mining waste and overburden shall not occur within wetlands unless mitigation acceptable to the regulatory agencies with jurisdiction over

wetlands, which may include the lead agency, has been proposed to offset wetland impacts and/or losses.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**§ 3704.1. Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals**

Notwithstanding the provisions of Section 3700(b) of this Article, no reclamation plan, including any reclamation plan in which the end use is for wildlife habitat, wildland conservation, or open space, or financial assurance for a surface mining operation subject to the provisions of this section, shall be approved by a lead agency unless the reclamation plan meets the provisions of this section. Financial assurances must be maintained in an amount sufficient to provide for the backfilling and contour grading of the mined lands as required in this section.

(a) An open pit excavation created by surface mining activities for the production of metallic minerals shall be backfilled to achieve not less than the original surface elevation, unless the circumstances under subsection (h) are determined by the lead agency to exist.

(b) Backfilling shall be engineered, and backfilled materials shall be treated, if necessary, to meet all of the provisions of Title 27, California Code of Regulations, Division 2, Chapter 7, Subchapter 1, Mining Waste Management, commencing with Section 22470, and the applicable Regional Water Quality Control Board's Water Quality Control Plan.

(c) Excavated materials remaining in overburden piles, waste rock piles, and processed or leached ore piles not used in the backfilling process and remaining on the mine site shall be graded and contoured to create a final surface that is consistent with the original topography of the area. Care shall be taken to avoid the creation of un-natural topographic features, impediments to natural drainage, or conditions hazardous to human life and wildlife.

(d) Backfilling, recontouring, and revegetation activities shall be performed in clearly defined phases to the engineering and geologic standards required for the end use of the site as stipulated in the approved reclamation plan. All fills and fill slopes shall be designed to protect groundwater quality, to prevent surface water ponding, to facilitate revegetation, to convey runoff in a non-erosive manner, and to account for long term settlement.

(e) The requirements of subsections (a), (b), (c), and (d) notwithstanding, no final reclaimed fill slopes shall exceed 2:1 (horizontal:vertical), nor shall the resultant topography exceed in height the pre-mining surface contour elevations by more than 25 feet. Final fill slopes shall have static and dynamic factors of safety, as determined by an engineer licensed in California, that are suitable for the proposed end use of the site and meet or exceed the requirements of applicable building or grading codes, ordinances, statutes, and regulations. Final slopes must be capable of being revegetated, and shall blend visually with the local topography. Surface soil shall be salvaged, stored, and reapplied to facilitate revegetation of recontoured material in accordance with the requirements of Section 3711 of this Article.

(f) For the purposes of this section, a metallic mine is defined as one where more than ten percent of the mining operation's gross annual revenues as averaged over the last five years

are derived from the production of, or any combination of, the following metallic minerals by the open pit extraction method: Precious metals (gold, silver, platinum);

Iron;

Nickel;

Copper;

Lead;

Tin;

Ferro-alloy metals (tungsten, chromium, manganese);

Mercury;

Uranium and thorium;

Minor metals including rubidium, strontium, and cesium;

Niobium and tantalum;

(g) For the purposes of this regulation, an open pit mine is the same as an open pit quarry, opencast mine, or opencut mine, and is defined as a mine working or excavation that is open to the surface and in which the opening is approximately the full size of the excavation.

(h) The requirement to backfill an open pit excavation to the surface pursuant to this section using materials mined on site shall not apply if there remains on the mined lands at the conclusion of mining activities, in the form of overburden piles, waste rock piles, and processed or leached ore piles, an insufficient volume of materials to completely backfill the open pit excavation to the surface, and where, in addition, none of the mined materials has been removed from the mined lands in violation of the approved reclamation plan. In such case, the open pit excavation shall be backfilled in accordance with subsections (b) and (d) to an elevation that utilizes all of the available material remaining as overburden, waste rock, and processed or leached ore.

(i) This regulation does not apply to any surface mining operation as defined in Public Resources Code Section 2735(a) and (b) for which the lead agency has issued final approval of a reclamation plan and a financial assurance prior to December 18, 2002.

*Authority: Sections 2755 and 2756, Public Resources Code; Reference: Sections 2733, 2772 and 2773, Public Resources Code.*

### **§ 3705. Performance Standards for Revegetation**

Revegetation shall be part of the approved plan, unless it is not consistent with the approved end use.

(a) A vegetative cover suitable for the proposed end use and capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer shall be established on disturbed land unless an artificially maintained landscape is consistent with the approved reclamation plan. Vegetative cover or density, and species-richness shall be, where appropriate, sufficient to stabilize the surface against effects of long-term erosion and shall be similar to naturally occurring habitats in the surrounding area. The vegetative density, cover and species richness of naturally occurring habitats shall be documented in baseline studies carried out prior to the initiation of mining activities. However, for areas that will not be reclaimed to prior conditions, the use of data from reference areas in lieu of baseline site data is permissible.

(b) Test plots conducted simultaneously with mining shall be required to determine the most appropriate planting procedures to be followed to ensure successful implementation of the proposed revegetation plan. The lead agency may waive the requirement to conduct test plots when the success of the proposed revegetation plan can be documented from experience with similar species and conditions or by relying on competent professional advice based on experience with the species to be planted.

(c) Where surface mining activities result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to eliminate compaction and to establish a suitable root zone in preparation for planting.

(d) Prior to closure, all access roads, haul roads, and other traffic routes to be reclaimed shall be stripped of any remaining roadbase materials, prepared in accordance with subsection 3705(g), covered with suitable growth media or topsoil, and revegetated. When it is not necessary to remove roadbase materials for revegetative purposes, lead agencies may set a different standard as specified in section 3700(b) of this Article.

(e) Soil analysis shall be required to determine the presence or absence of elements essential for plant growth and to determine those soluble elements that may be toxic to plants, if the soil has been chemically altered or if the growth media consists of other than the native topsoil. If soil analysis suggests that fertility levels or soil constituents are inadequate to successfully implement the revegetative program, fertilizer or other soil amendments may be incorporated into the soil. When native plant materials are used, preference shall be given to slow-release fertilizers, including mineral and organic materials that mimic natural sources, and shall be added in amounts similar to those found in reference soils under natural vegetation of the type being reclaimed.

(f) Temporary access for exploration or other short-term uses on arid lands shall not disrupt the soil surface except where necessary to gain safe access. Barriers shall be installed when necessary to gain safe access. Barriers shall be installed when necessary to prevent unauthorized vehicular traffic from interfering with the reclamation of temporary access routes.

(g) Native plant species shall be used for revegetation, except when introduced species are necessary to meet the end uses specified in the approved reclamation plan. Areas to be developed for industrial, commercial, or residential use shall be revegetated for the interim period, as necessary, to control erosion. In this circumstance, non-native plant species may be used if they are not noxious weeds and if they are species known not to displace native species in the area.

(h) Planting shall be conducted during the most favorable period of the year for plant establishment.

(i) Soil stabilizing practices shall be used where necessary to control erosion and for successful plant establishment. Irrigation may be used when necessary to establish vegetation.

(j) If irrigation is used, the operator must demonstrate that the vegetation has been self-sustaining without irrigation for a minimum of two years prior to release of the financial assurances by the lead agency, unless an artificially maintained landscape is consistent with the approved end use.

(k) Noxious weeds shall be managed: (1) when they threaten the success of the proposed revegetation; (2) to prevent spreading to nearby areas; and (3) to eliminate fire hazard.

(l) Protection measures, such as fencing of revegetated areas and/or the placement of cages over individual plants, shall be used in areas where grazing, trampling, herbivory, or other causes threaten the success of the proposed revegetation. Fencing shall be maintained until revegetation efforts are successfully completed and the lead agency authorizes removal.

(m) Success of revegetation shall be judged based upon the effectiveness of the vegetation for the approved end use, and by comparing the quantified measures of vegetative cover, density, and species-richness of the reclaimed mined-lands to similar parameters of naturally occurring vegetation in the area. Either baseline data or data from nearby reference areas may be used as the standard for comparison. Quantitative standards for success and the location(s) of the reference area(s) shall be set forth in the approved reclamation plan. Comparisons shall be made until performance standards are met provided that, during the last two years, there has been no human intervention, including, for example, irrigation, fertilization, or weeding. Standards for success shall be based on expected local recovery rates. Valid sampling techniques for measuring success shall be specified in the approved reclamation plan. Sample sizes must be sufficient to produce at least an 80 percent confidence level. There are standard statistical methods in commonly available literature for determining an 80 percent confidence level on a site-by-site basis. Examples of such literature include, but are not limited to, D. Mueller-Dombois and H. Ellenberg, 1974, "Aims and Methods of Vegetation Ecology", John Wiley and Sons, Inc., or C. D. Bonham, 1988, "Measurements for Terrestrial Vegetation", John Wiley and Sons, Inc., and are available at many university libraries. The texts are also available at some local libraries through the Inter-Library Loan Program.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3706. Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control**

(a) Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

(b) The quality of water, recharge potential, and storage capacity of ground water aquifers which are the source of water for domestic, agricultural, or other uses dependent on the water, shall not be diminished, except as allowed in the approved reclamation plan.

(c) Erosion and sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.

(d) Surface runoff and drainage from surface mining activities shall be controlled by berms, silt fences, sediment ponds, revegetation, hay bales, or other erosion control measures, to ensure that surrounding land and water resources are protected from erosion, gullyng,

sedimentation and contamination. Erosion control methods shall be designed to handle runoff from not less than the 20 year/1 hour intensity storm event.

(e) Where natural drainages are covered, restricted, rerouted, or otherwise impacted by surface mining activities, mitigating alternatives shall be proposed and specifically approved in the reclamation plan to assure that runoff shall not cause increased erosion or sedimentation.

(f) When stream diversions are required, they shall be constructed in accordance with:

(1) the stream and lake alteration agreement between the operator and the Department of Fish and Game; and

(2) the requirements of the Federal Clean Water Act, Sections 301 (33 U.S.C. 1311) and Section 404 (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(g) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land reclaimed.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3707. Performance Standards for Prime Agricultural Land Reclamation**

In addition to the standards for topsoil salvage, maintenance, and redistribution, the following standards shall apply to mining operations on prime agricultural lands where the approved end use is agriculture:

(a) Mining operations which will operate on prime agricultural lands, as defined by the U.S. Soil Conservation Service, shall return all disturbed areas to a fertility level as specified in the approved reclamation plan.

(b) When distinct soil horizons are present, topsoil shall be salvaged and segregated by defined A, B, and C soil horizons. Upon reconstruction of the soil, the sequence of horizons shall have the A atop the B, the B atop the C, and the C atop graded overburden.

(c) Reclamation shall be deemed complete when productive capability of the affected land is equivalent to or exceeds, for two consecutive crop years, that of the premining condition or similar crop production in the area. Productivity rates, based on reference areas described in the approved reclamation plan, shall be specified in the approved reclamation plan.

(d) Use of fertilizers or other soil amendments shall not cause contamination of surface or ground water.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3708. Performance Standards for Other Agricultural Land**

The following standards shall apply to agricultural lands, other than prime agricultural lands, when the approved end use is agriculture.

In addition to the standards for topsoil salvage, maintenance, and redistribution, non-prime agricultural lands shall be reclaimed so as to be capable of sustaining economically viable production of crops commonly grown in the surrounding areas.



*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**§ 3709. Performance Standards for Building, Structure, and Equipment Removal**

(a) All equipment, supplies and other materials shall be stored in designated areas (as shown in the approved reclamation plan). All waste shall be disposed of in accordance with state and local health and safety ordinances.

(b) All buildings, structures, and equipment shall be dismantled and removed prior to final mine closure except those buildings, structures, and equipment approved in the reclamation plan as necessary for the end use.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**§ 3710. Performance Standards for Stream Protection, Including Surface and Groundwater**

(a) Surface and groundwater shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter-Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.

(b) In-stream surface mining operations shall be conducted in compliance with Section 16000 et seq. of the California Fish and Game Code, section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(c) Extraction of sand and gravel from river channels shall be regulated to control channel degradation in order to prevent undermining of bridge supports, exposure of pipelines or other structures buried within the channel, loss of spawning habitat, lowering of ground water levels, destruction of riparian vegetation, and increased stream bank erosion (exceptions may be specified in the approved reclamation plan). Changes in channel elevations and bank erosion shall be evaluated annually using records of annual extraction quantities and benchmarked annual cross sections and/or sequential aerial photographs to determine appropriate extraction locations and rates.

(d) In accordance with requirements of the California Fish and Game Code section 1600 et seq., in-stream mining activities shall not cause fish to become entrapped in pools or in off-channel pits, nor shall they restrict spawning or migratory activities.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

**§ 3711. Performance Standards for Topsoil Salvage, Maintenance, and Redistribution**

When the approved reclamation plan calls for revegetation or cultivation of disturbed lands, the following performance standards shall apply to topsoil salvage, maintenance, and redistribution activities:

(a) All salvageable topsoil suitable for revegetation shall be removed as a separate layer from areas to be disturbed by mining operations. Topsoil and vegetation removal shall not precede surface mining activities by more than one year, unless a longer time period is approved by the lead agency.

(b) Topsoil resources shall be mapped prior to stripping and the location of topsoil stockpiles shall be shown on a map in the reclamation plan. If the amount of topsoil needed to cover all surfaces to be revegetated is not available on site, other suitable material capable of sustaining vegetation (such as subsoil) shall be removed as a separate layer for use as a suitable growth media. Topsoil and suitable growth media shall be maintained in separate stockpiles. Test plots may be required to determine the suitability of growth media for revegetation purposes.

(c) Soil salvage operations and phases of reclamation shall be carried out in accordance with a schedule that: (1) is set forth in the approved reclamation plan; (2) minimizes the area disturbed; and (3) is designed to achieve maximum revegetation success allowable under the mining plan.

(d) Topsoil and suitable growth media shall be used to phase reclamation as soon as can be accommodated by the mining schedule presented in the approved reclamation plan following the mining of an area. Topsoil and suitable growth media that cannot be utilized immediately for reclamation shall be stockpiled in an area where it will not be disturbed until needed for reclamation. Topsoil and suitable growth media stockpiles shall be clearly identified to distinguish them from mine waste dumps. Topsoil and suitable growth media stockpiles shall be planted with a vegetative cover or shall be protected by other equally effective measures to prevent water and wind erosion and to discourage weeds. Relocation of topsoil or suitable growth media stockpiles for purposes other than reclamation shall require prior written approval from the lead agency.

(e) Topsoil and suitable growth media shall be redistributed in a manner that results in a stable, uniform thickness consistent with the approved end use, site configuration, and drainage patterns.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3712. Performance Standards for Tailing and Mine Waste Management**

State Water Resources Control Board mine waste disposal regulations in Article 1, Subchapter 1, Chapter 7 of Title 27, California Code of Regulations, shall govern mine waste and tailings, and mine waste disposal units shall be reclaimed in conformance with this article.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

### **§ 3713. Performance Standards for Closure of Surface Openings**

(a) Except those used solely for blasting or those that will be mined through within one year, all drill holes, water wells, and monitoring wells shall be completed or abandoned in accordance with each of the following:

- (1) Water Code sections 13700, et seq. and 13800, et seq.;

(2) the applicable local ordinance adopted pursuant to Water Code section 13803;  
(3) the applicable Department of Water Resources report issued pursuant to Water Code section 13800; and

(4) Subdivisions (1) and (2) of section 2511(g) of Chapter 15 of Title 23 regarding discharge of waste to land.

(b) Prior to closure, all portals, shafts, tunnels, or other surface openings to underground workings shall be gated or otherwise protected from public entry in order to eliminate any threat to public safety and to preserve access for wildlife habitat.

*Authority: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.*

## **Article 10.5. Selection of Professional Service Firms**

### **§ 3726. Selection of Professional Service Firms**

(a) The purpose of these regulations is to establish those procedures authorized and required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. These regulations are specific to the Seismic Hazards Mapping Act (PRC Section 2690 et. seq.).

(b) Selection by the department for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

*Authority: Section 2695, Public Resources Code; and Section 4526, Government Code.  
Reference: Sections 4525-4529.5, Government Code.*

### **§ 3727. Definitions, as Used in These Regulations**

(a) "Small business" shall mean a small business firm as defined by the Director of General Services (section 1896 of Title 2 of the California Code of Regulations) pursuant to section 14837 of the Government Code.

(b) "Architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services" are those services to be procured outside State of California Civil Service procedures and of a character necessarily rendered by an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor but may include ancillary services logically or justifiably performed in connection therewith.

(c) "Project" means a project as defined in Section 10105 of the Public Contract Code, or as defined in the Public Resources Code Section 21065.

*Authority: Section 4526, Government Code. Reference: Sections 4525 and 14837, Government Code; Section 10105, Public Contract Code; and Section 21065, Public Resources Code.*

**§ 3728. Establishment of Criteria**

(a) The department shall establish criteria, on a case by case instance, which will comprise the basis for selection for each project. The criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighted by the department according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

(b) In no event shall the criteria include practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. Department employees with a relationship to a person or business entity seeking a contract under this section are prohibited from participating in the selection process if the employees would be subject to the prohibition of Section 87100 of the Government Code.

*Authority: Section 4526, Government Code. Reference: Sections 4526 and 87100, Government Code.*

**§ 3729. Estimate of Value of Services**

Before any discussion with any firm concerning fees, the department may cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the department determines the estimates to be unrealistic because of rising costs, special conditions, or for other relevant considerations, the estimate may be reevaluated and modified if necessary.

*Authority: Section 4526, Government Code. Reference: Section 4528, Government Code.*

**§ 3730. Request for Proposals**

(a) Where a project requires architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, the department shall make an announcement through a publication of the respective professional society, if any exist, in a construction trade journal or, if none exist, in other appropriate publications that are published within a reasonable time frame such that a lengthy publication delay does not adversely affect the project.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The department shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the department concludes that small business firms could be especially qualified. A failure of the department to send a copy of an announcement to any firm shall not operate to preclude any contract.

*Authority: Section 4526, Government Code. Reference: Section 4527, Government Code.*

**§ 3731. Selection of Firm**

After expiration of the period stated in the publications or other public announcements, the department shall evaluate statements of qualifications and performance data which have been submitted to the department. Discussions shall be conducted with no less than three firms regarding the required service. Where three firms cannot be found which could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit proposals must be entered in the files. From the firms with which discussions are held, the department shall select no less than three, provided at least three firms submit proposals, in order of preference, based upon the established criteria, which are deemed to be the most highly qualified to provide the services required.

*Authority: Section 4526, Government Code. Reference: Sections 4526-4527, Government Code.*

**§ 3732. Negotiation**

The department shall attempt to negotiate a contract with the most highly qualified firm. When the department is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions, as determined by the procedure set forth in Section 3729 if those procedures were used, negotiations shall be terminated. The department shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The department shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the department be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed in this article and the negotiation procedure continued.

*Authority: Section 4526, Government Code. Reference: Section 4528, Government Code.*

**§ 3733. Amendments**

In instances where the department effects a necessary change in the project during the course of performance of the contract, the firm's compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

**§ 3734. Contracting in Phases**

Should the department determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions in the initial instance, provided that the department shall have determined that the firm is best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the department, at its option, may utilize the firm

for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

### **§ 3735. Department's Power to Require Bids**

Where the department determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of bids rather than by following the foregoing procedures for requesting proposals and negotiation.

*Authority: Section 4526, Government Code. Reference: Section 4529, Government Code.*

### **§ 3736. Exclusions**

The provisions of this article shall not apply to service agreements for an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor, engaged to provide consulting services on specific problems on projects where the architectural, landscape architectural, engineering, environmental, land surveying, or construction project management work is being performed by State of California Civil Service employees.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

## **Article 11. Financial Assurance Mechanisms**

### **§ 3800. Purpose**

It is the purpose of this article to specify additional financial assurance mechanisms to assure reclamation pursuant to Public Resources Code Section 2710 et seq. (Surface Mining and Reclamation Act, as amended).

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

### **§ 3801. Authority**

Review, approval, adjustment, enforcement, notification, forfeiture and all other responsibilities of the lead agency, operator and Department of Conservation with respect to financial assurances shall be conducted as prescribed in Public Resources Code Section 2710 et seq. unless expressly outlined in this article.

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

### **§ 3802. Definitions**

Definitions. The following definitions shall govern the interpretation of this article:

(a) "Budget Set Aside" means a financial assurance mechanism, meeting the requirements of Section 3806.2 of this article, by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

(b) "Financial Assurance Cost Estimate" means the amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with section 3804, and shall constitute an obligation to pay by the operator.

(c) "Financial Assurance Mechanism" means an instrument, fund or other form of Financial Assurance as provided in Section 2773.1 of the Public Resources Code and this Article.

(d) "Pledge of Revenue" means a financial assurance mechanism meeting the requirements of Section 3806.1, of this Article, by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2736, Public Resources Code.*

### **§ 3803. Financial Assurance Mechanisms**

Financial Assurance Mechanisms may take the form of any one or a combination of the following:

(a) For non-governmental entity operators:

- (1) Surety bonds;
- (2) Irrevocable letters of credit; and
- (3) Trust funds;

(b) For governmental entity operators:

- (1) Surety bonds;
- (2) Irrevocable letters of credit;
- (3) Trust funds;
- (4) Pledges of Revenue; or
- (5) Budget Set Aside.

*Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

#### **§ 3803.1 Surety Bonds**

Surety bonds submitted as a Financial Assurance Mechanism shall be provided on an approved form set forth in California Code of Regulations, Title 11, Division 1, Chapter 2, Article 53. Copies of approved surety bond forms may be obtained by contacting the board.

*Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Sections 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.*

**§ 3803.2 Irrevocable Letters of Credit**

Irrevocable Letters of Credit submitted as a Financial Assurance Mechanism shall be provided only from a financial institution authorized to do business in the State of California. The Irrevocable Letter of Credit shall be on, or attached to, the financial institution's letterhead and include the text on form ILoC-1 (1/18), which is hereby incorporated by reference. Non-substantial changes to the text of form ILoC-1 (1/18) may be made to accommodate the financial institution's business practices with respect to Irrevocable Letters of Credit, but shall not conflict with or materially alter form ILoC-1 (1/18) subject to the procedures set forth in Public Resources Code section 2773.4, subdivisions (e)(2)(A) and (B).

*Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Sections 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.*

**§ 3803.3 Trust Funds**

Trust funds in the form of Certificate of Deposits or other cash financial instruments submitted as Financial Assurance Mechanisms shall be on, or attached to, the financial institution's letterhead and include the text on form CD-1 (4/18), which is hereby incorporated by reference. Non-substantial changes to the text of form CD-1 (4/18) may be made to accommodate the financial institution's business practices with respect to the specific type of trust fund, but shall not conflict with or materially alter form CD-1 (4/18) subject to the procedures set forth in Public Resources Code section 2773.4, subdivisions (e)(2)(A) and (B). Certificate of Deposits or other cash financial instruments shall be provided only from federally insured depository institutions authorized to do business in the State of California using federally insured accounts.

*Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Section 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.*

**§ 3804. Calculation of Financial Assurance Amount**

(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:

- (1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;
- (2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;
- (3) the number of units of each of these activities, if applicable;
- (4) a contingency amount not to exceed 10% of the reclamation costs.

(b) The calculated amount should not include the cost of completing mining of the site.

(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*



**§ 3805. Review by the Department of Conservation**

Pursuant to Section 2774(c), Public Resources Code, the lead agency shall submit a copy of the proposed Financial Assurance and the Calculation of Financial Assurance Amount submitted by the operator pursuant to Section 3804 to the Director of the Department of Conservation for review. With this submittal the lead agency shall include the information and documentation relied upon in calculating the amount of the proposed Financial Assurance and indicate to the Director that the Financial Assurance Amount is adequate for the lead agency or the Department of Conservation to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan. The Director shall have 45 days, upon receipt, to prepare written comments regarding the proposed Financial Assurance, if he/she so chooses.

*Authority: Section 2774, Public Resources Code. Reference: Section 2774(c), (d), Public Resources Code.*

**§ 3805.1 Financial Assurance Cost Estimate (FACE) Form**

The Financial Assurance Cost Estimate shall consist of form FACE-1 (6/18), which is hereby incorporated by reference.

*Authority cited: Section 2755, Public Resources Code. Reference: Sections 2770, 2773.1(a)(1)-(a)(4), and 2773.4.*

**§ 3805.5. Modification or Release of Financial Assurance**

(a) Prior to the modification of a financial assurance amount, or to the release of the financial assurance instrument to which both the lead agency and the Department of Conservation are co-beneficiaries under Public Resources Code section 2773.1, the lead agency shall provide to the director of the department the following documents at one time:

(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code section 2774, indicating that there are aspects of the surface mining operation that require modification of the existing financial assurance amount, or stating that the mined land has been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operation that are inconsistent with the meaning of reclamation as defined in Public Resources Code section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code section 2773.1, with supporting documentation, indicating the specific cost changes to the existing financial assurance amount, or indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined land remains subject to a financial assurance as modified, or that the mined land has been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and recommending to the director that the financial assurance be released.

(b) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code section 2774, and to conduct the director's own inspection of the surface mining operation if the director determines it necessary under Public Resources Code section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that the modified financial assurance amount is adequate, or that there are no outstanding reclamation liabilities on the mined land and that the original financial assurance should be released pursuant to Public Resources Code section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operation that require additional modifications to the financial assurance amount, or aspects that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975; or,

(3) Commence the financial assurance forfeiture process under Public Resources Code section 2773.1.

(c) If a violation by the surface mining operation is confirmed by an inspection either by the lead agency or by the director, then the lead agency, or the director, may take actions under Public Resources Code section 2774.1 to ensure that the violation is corrected. In any event, the financial assurance shall not be released until the violation is corrected.

(d) Prior to sending written notification and release of financial assurances as provided under Public Resources Code section 2773.1, the lead agency shall obtain written concurrence of the director that the completion of reclamation of the mined land disturbed by the surface mining operation is in accordance with the requirements of the lead agency-approved reclamation plan.

(e) If a violation of the Surface Mining and Reclamation Act of 1975 or of the approved reclamation plan is confirmed by the inspection, and the lead agency does not take action under Public Resources Code section 2774.1 to ensure that the violation is corrected or take action under Public Resources Code section 2773.1 for forfeiture of the financial assurance, then the director may refer the matter to the board for further action under Public Resources Code section 2774.4.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2729, 2731, 2733, 2735, 2773.1, 2774 and 2774.1, Public Resources Code.*

### **§ 3806. Surface Mining Operations Owned and Operated by State or Local Governmental Entities**

In addition to the mechanisms provided in Public Resources Section 2773.1 and this article, a financial assurance mechanism for reclamation for a surface mining operation owned and operated by the state, county, city, district, or other political subdivision may be in the form of a:

- (a) Pledge of Revenue; or
- (b) Budget Set Aside.

These financial assurance mechanisms may only be used by the state, county, city, district, or other political subdivision.

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

### **§ 3806.1. Pledge of Revenue**

(a) A pledge of revenue shall consist of a resolution or other appropriate document from the governing body of the state, county, city, district, or other political subdivision responsible for reclamation of the mined lands pursuant to the approved reclamation plans. The resolution or document shall remain effective continuously throughout the period in which the pledge of revenue is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The pledge of revenue shall contain the following items:

- (1) The resolution or document establishing the pledge of revenue;
- (2) The types and sources of pledged revenue;
- (3) The period of time that each source of revenue is pledged to be available;
- (4) The calculation amount of the financial assurance prepared pursuant to Section

3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the proceeds of the pledge to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the pledge pursuant to Section 2773.1(b).

(c) The state, county, city, district, or other political subdivision may pledge any following types of revenue that it controls and that will be available in a timely manner to conduct and complete reclamation:

- (1) Fees, rents, or other charges;
- (2) Tax revenues within statutory limitations; and/or
- (3) Other guaranteed revenues that are acceptable to the lead agency and the Board.

(d) If the governmental entity ceases at any time to retain control of its ability to allocate any pledged revenue to conduct and complete reclamation, the entity shall notify the lead agency and the Department of Conservation and shall obtain alternative coverage within 60 days after control lapses.

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

### **§ 3806.2. Budget Set Aside**

(a) A Budget Set Aside shall consist of a specific fund or line item set aside by the state, county, city, district or other political subdivision responsible for reclamation of the mined lands. The Budget Set Aside shall remain effective continuously throughout the period in which the Budget Set Aside is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The set aside shall contain the following items:

- (1) A resolution or other appropriate document establishing the set aside or line item including proof of approval by the governing body or appropriate official of the state, county, city, district, or other political subdivision;
- (2) The types and sources of specific funds;

- (3) The period of time that each funding source is to be available:
- (4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and
- (5) The authorization for the lead agency or the Department of Conservation to use the funds to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the set aside pursuant to Section 2773.1(b).

*Authority: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.*

### **§ 3806.3. Acceptance of Liability**

(a) An Acceptance of Liability shall consist of a specific written statement by a Federal entity responsible for performing reclamation that obligates that Federal entity for all costs associated with the full reclamation of mined lands in accordance with the requirements of an approved reclamation plan.

(b) The Acceptance of Liability shall contain the following items:

- (1) a duly authorized resolution, statement, or other appropriate document that guarantees liability and obligates the Federal entity to reclaim the mine site; and,
- (2) a statement that if the Federal entity ceases at any time to retain control of the mine operation, that the Federal entity's Acceptance of Liability shall remain in effect until the succeeding mine operator provides a financial assurance mechanism provided for in Public Resources Code Section 2773.1 and this Article 11. In no event shall any succeeding mine operator commence surface mining operations until a financial assurance mechanism is accepted by the lead agency.

*Authority: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

### **§ 3806.5. Surface Mining Operations Owned and Operated by a Federal Entity on State Owned Land**

In addition to the financial assurance mechanisms provided in Public Resources Code Section 2773.1 and this Article 11, a financial assurance mechanism for reclamation for a surface mining operation owned and operated on State lands by a Federal entity may be in the form of a:

- (a) Pledge of Revenue
- (b) Budget Set Aside
- (c) Acceptance of Liability

*Authority: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

## **Article 11.5. Forfeiture of Financial Assurance**

**§ 3810. Purpose**

The purpose of this article is to define the procedures to be followed by the lead agency, or the board acting at the request of the director, or when the board is acting as lead agency pursuant to Public Resources Code Section 2774.4 or Section 2774.5, in determining whether a surface mine operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, and should therefore forfeit its financial assurance pursuant to Public Resources Code Section 2773.1(b).

*Authority: Section 2755, Public Resources Code. Reference: Sections 2773.1, 2774.4 and 2774.5, Public Resources Code.*

**§ 3811. Circumstances Leading to a Hearing**

A lead agency or the board may conduct a hearing to determine the forfeiture of financial assurances when any of the following circumstances has occurred:

(a) Unless an appeal of a financial assurance amount is pending before the board pursuant to Public Resources Code Section 2770, an operator has failed to provide an acceptable financial assurance mechanism within 30 days of notification by the lead agency of its approval of an adequate financial assurance amount. Acceptable financial assurance mechanisms are described in Title 14, California Code of Regulations Section 3803.

(b) The operator has failed to provide the lead agency with a revised financial assurance cost estimate as required by Public Resources Code Section 2773.1 that adequately addresses the criteria contained in Title 14, California Code of Regulations Section 3804 within 30 days of receipt of notification to provide a revised cost estimate.

(c) An acceptable financial assurance mechanism has lapsed and has not been renewed or replaced by another acceptable mechanism within 30 days and any remaining financial assurance coverage is not, according to the lead agency, adequate by itself to ensure the reclamation of the mine site according to the approved reclamation plan.

(d) The lead agency is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as defined in Public Resources Code Section 2727.1.

(e) The surface mining operation meets the criteria stated under Public Resources Code Section 2770(h)(6). Submitting of an interim management plan after the operator has been notified that his or her mine meets the criteria in Section 2770(h)(6) shall not prevent the lead agency or the board from proceeding with its hearing.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.*

**§ 3812. Public Hearing**

The determination by the lead agency or the board that a surface mine operator is financially incapable of reclaiming according to an approved reclamation plan, or that an operator has abandoned a mine site without commencing reclamation, shall be made during a public hearing. The hearing may be conducted as part of a regularly scheduled business meeting of the lead agency, or may be held during a special meeting. Where the board is the lead agency, the

board may delegate the hearing to a committee composed of not less than two board members selected by the board Chairman or the Chairman's designee. The determination of the board committee shall be reported to the full board for its action at its next meeting.

*Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

### **§ 3813. Hearing Procedure – Notice**

(a) The local lead agency shall give prior notice of the public hearing in accordance with the provisions of its local ordinances.

(b) Where the board is the lead agency, at least 10 days prior to the hearing date, public notice shall be given as follows:

- (1) Mailing the notice to the operator and to the director.
- (2) Mailing the notice to any person who requests notice of the hearing;
- (3) Mailing the notice to the board's regular mailing list; and,
- (4) Mailing the notice to the city or county jurisdiction within which the surface mining operation is located.

(c) The notice of hearing shall include the following:

- (1) The name of the surface mine operator or agent of record;
- (2) Identification of the surface mining operation, and a brief description of the location of the operation by reference to any commonly known landmarks in the area;
- (3) A statement that the purpose of the hearing is to determine the financial capability of the operator to reclaim his or her mining operation in accordance with the approved reclamation plan;
- (4) A statement inviting the operator, public agencies, and other interested persons to make statements at the hearing regarding the decision of the lead agency; and,
- (5) The time, date, and location of the public hearing.

*Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

### **§ 3814. Administrative Record**

The administrative record shall consist of, but not be limited to, the following:

- (a) The approved reclamation plan for the mining operation;
- (b) The currently approved financial assurance mechanism in an amount certain;
- (c) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;
- (d) A detailed cost estimate provided by the operator and supporting a financial assurance amount prepared by a qualified individual, such as a licensed grading contractor, licensed civil engineer, or a licensed geologist, who must be licensed in the state of California, and prepared not more than six months from the last annual inspection of the mine conducted by the lead agency;

(e) A copy of the last annual inspection report conducted by the lead agency pursuant to Public Resources Code Section 2774, or any other more recent inspection report conducted by the lead agency or the Department of Conservation.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2773.1 and 2774, Public Resources Code.*

### **§ 3815. Criteria for Determining Financial Capability**

The lead agency or the board shall use, but not be limited to, the following criteria when determining the financial capability of a mine operator to perform reclamation. It is the sole responsibility of the surface mine operator to provide the lead agency or the board with sufficient information to reasonably demonstrate his or her financial capability. An operator shall be found financially incapable if the lead agency or the board makes any of the following findings:

(a) The operator is incapable of providing, or refuses to provide, a financial assurance in an amount deemed adequate by the lead agency or the board; or,

(b) The operator is incapable of providing, or refuses to provide, a financial assurance mechanism approved by the board in Section 3803 of this subchapter; or,

(c) The lead agency, the board, or the director, is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as defined in Public Resources Code Section 2727.1; or,

(d) The mine operation meets the criteria stated in Public Resources Code Section 2770(h)(6).

*Authority: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.*

### **§ 3816. Hearing Procedures – Sequence**

(a) The public hearing conducted before the board shall normally proceed in the following manner; a local lead agency may conduct the hearing sequence according to its locally adopted procedures:

- (1) Identification of the record;
- (2) Statements on behalf of the lead agency;
- (3) Statements on behalf of the operator;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the lead agency
- (6) Rebuttal on behalf of the operator; and
- (7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman of the board or the Chairman's designee for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.

(d) The public hearing conducted before the board or a lead agency shall be recorded.

*Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

### **§ 3817. Hearing Procedures – Determination**

Following the public hearing, the lead agency or the board shall determine whether, based on the record before it and the criteria described in Section 3815 of this Article, the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation. If the operator is determined to be financially incapable of performing reclamation or to have abandoned the operation, then the following shall occur:

(a) The lead agency, or the director in cases where the Board is the lead agency, shall notify the operator within 10 days of the date of determination of its intent to take appropriate actions to cause forfeiture of the operator's financial assurances. Notification shall be made by personal service or certified mail.

(b) The lead agency, or the director, or the board in cases where the board is the lead agency, shall follow the procedures described in Public Resources Code Section 2773.1(b).

*Authority: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.*

## **Article 12. Administrative Penalty Petition Procedures**

### **§ 3900. Purpose of Regulations**

The regulations contained in this article govern procedures for petitions to the State Mining and Geology Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an Administrative Penalty by the Director of the Department of Conservation.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

### **§ 3901. Filing of Petition / Notice of Defense**

Any person filing a petition to the Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an administrative penalty by the Director of the Department of Conservation shall, within 30 days of the date of issuance of the order setting an administrative penalty, file a petition/notice of defense with the Board requesting a hearing. The petition/notice of defense shall be on the form set forth in Section 3911 of this article, or shall supply the following information to the Board. Failure to submit all the following documents within the 30 days filing period will result in an incomplete filing and an automatic rejection of the appeal.

(1) Written statements, with supporting documentation, indicating specifically the basis for the petitioner's challenge of the Director's order of administrative penalty;

(2) A written statement advising the Board of the name, address and telephone number of the petitioner's representative, if any;



*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

**§ 3902. Determination of Jurisdiction**

The Chairman of the Board, or the Chairman's designee who is a Board member, shall determine within 15 days of receipt of the information required by Section 3901 of this article, whether the petition is within the jurisdiction of the Board for the purpose of hearing the petition, and determine whether the petition's challenge raises substantial issues related to the validity of the allegations supporting the Director's order. If the Chairman finds, based upon the criteria stated in (a), (b), and (c) below, that the petition raises no substantial issues with respect to the Director's allegations contained in the order of administrative penalty, or has not been filed within statutory time limits, then the Chairman shall refuse to grant a hearing on the petition. In making these determinations, the Chairman shall consider the following:

(a) Whether the filing of the petition/notice of defense with the Board is within the time limits stipulated in Public Resources Code Section 2774.2;

(b) Whether the petition specifically relates to the allegations contained in the Director's notice and order of administrative penalty;

(c) Whether prima facie documentation supporting the petition's position is reasonably sufficient to substantiate the petition's challenge.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

**§ 3903. Administrative Record**

The Administrative Record shall consist of the record before the Director, evidence submitted on behalf of the petitioner, any other relevant evidence which, in the judgment of the Board, should be considered applicable, and evidence presented during the hearing on the petition.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

**§ 3904. Hearing Procedures – Scheduling**

The Board shall schedule and hold a public hearing on a petition no later than 60 days from the Chairman's acceptance of the petition, or at such time as may be mutually agreed upon by the Board and the petitioner. The hearing may be conducted as part of a regular business meeting of the Board, or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in or near the jurisdiction from which the petition originated, but may otherwise schedule such petitions to be heard in Sacramento.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

**§3905. Hearing Procedures - Authority for Delegation**

The Board may delegate conduct of the hearing to a committee composed of three members of the Board, who shall consist of either the Chairman or Vice Chairman of the Board, and two

other members of the Board selected by the Chairman. The Chairman or Vice Chairman shall conduct the hearing. The record of the hearing and the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3910 of this article.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

#### **§ 3906. Hearing Procedures - Notice**

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing or delivering by personal service the notice to the petitioner and to the petitioner's lead agency;

(2) Mailing or delivering by personal service the notice to the Director of the Department of Conservation.

(3) Mailing the notice to any person who requests notice of the petition or hearing; and,

(4) Mailing the notice to the Board's regular mailing list.

(b) The notice of hearing shall include the following:

(1) The name of the petitioner;

(2) A statement describing the basis for the action;

(3) The amount of the administrative penalty petitioned;

(4) The time, date, and location of the public hearing.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

#### **§ 3907. Hearing Procedures – Record**

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3901, 3902, and 3903 of this article.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

#### **§ 3908. Hearing Procedures - Recording and Transcription**

Hearings conducted under the procedures of this article shall be electronically recorded by the Board. Cost of transcription or reproduction of the electronic recording, if requested, shall be borne by the party making such request.

*Authority: Section 2755, Public Resources Code. Reference: Section 2755, Public Resources Code.*

#### **§ 3909. Hearing Procedures - Use of Informal Hearing Procedure and Sequence**

(a) The Board may conduct the petition hearing under this article pursuant to the informal hearing adjudicative proceedings described in the California Administrative Procedure Act. The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(b) The public hearing shall normally proceed in the following manner:

- (1) Identification of the record;
- (2) Statements on behalf of the petitioner;
- (3) Statements on behalf of the Director;
- (4) Statements on behalf of the lead agency;
- (5) Statements on behalf of the public;
- (6) Rebuttal on behalf of the petitioner;
- (7) Rebuttal on behalf of the Director;
- (8) Motion to close the public hearing.

(c) Notwithstanding the above, the Chairman or the Chairman's designee (Board member) for the purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(d) The Chairman or the Chairman's designee (Board member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Four copies of any written statements shall be submitted to the Board at least ten days prior to the hearing.

(e) Should the appellant, or his or her representative, fail to appear at the scheduled hearing, the board may make a determination upon the record otherwise before it, or, in the alternative, the board may consider the petition for hearing withdrawn.

(f) If the board determines that the petition for hearing has been withdrawn and more than 30 days has passed since the date of issuance of the order setting an administrative penalty, the order setting the administrative penalty shall not be subject to review by any court or agency.

(g) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

*Authority: Sections 2755 and 2774.2, Public Resources Code; and Article 10, Administrative Procedure Act. Reference: Section 2774.2, Public Resources Code; and Article 10, Administrative Procedure Act.*

### **§ 3910. Hearing Procedures – Determination**

(a) Following the public hearing, the Board shall determine: (1) whether the alleged violations cited in the Director's order are supported by substantial evidence in light of the whole record before it; and, (2) the action the Board should take to affirm, modify, or set aside, in whole or in part, the administrative penalty issued by the Director. The Board shall issue its own order upholding its determination.

(b) Modify means to change the administrative penalty from its original construction by the director. The board may modify the administrative penalty, in whole or in part, by such measures as it deems appropriate which include, but are not limited to, increasing or decreasing the penalty amount, establishing compliance deadlines, and structuring a method for payment of the penalty.

(c) Notification of the Board's determination shall be made by certified mail or personal service to the petitioner, the lead agency, and the Director within 15 days following the regular business meeting of the Board at which the decision is made.

*Authority: Sections 2755 and 2774.2, Public Resources Code. Reference: Section 2774.2, Public Resources Code.*

### **§ 3911. Petition / Notice of Defense Form**

*(Form available on department website by searching for form number or at:*

[https://www.conservation.ca.gov/smgb/Documents/Misc/CCR%203911\\_Petition-Notice%20of%20Defense%20Form.pdf](https://www.conservation.ca.gov/smgb/Documents/Misc/CCR%203911_Petition-Notice%20of%20Defense%20Form.pdf))

## **Article 13. Selection of Professional Service Firms**

### **§ 3920. Selection of Professional Service Firms**

(a) The purpose of these regulations is to establish those procedures authorized and required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. These regulations are specific to the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710, et seq.

(b) Selection by the board for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management, firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

*Authority: Sections 2755-2759, Public Resources Code; and Section 4526, Government Code. Reference: Sections 4525-4529.5, Government Code.*

### **§ 3921. Definitions, as Used in These Regulations**

(a) "Small business" shall mean a small business firm as defined by the Director of General Services (section 1896 of Title 2 of the California Code of Regulations) pursuant to section 14837 of the Government Code.

(b) "Architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services" are those services to be procured outside State of California Civil Service procedures and of a character necessarily rendered by an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor but may include ancillary services logically or justifiably performed in connection therewith.

(c) "Project" means a project as defined in Section 10105 of the Public Contract Code, or as defined in the Public Resources Code Section 21065.

*Authority: Section 4526, Government Code. Reference: Sections 4525 and 14837, Government Code; Section 10105, Public Contract Code; and Section 21065, Public Resources Code.*

### **§ 3922. Establishment of Criteria**

(a) The board shall establish criteria, on a case by case instance, which will comprise the basis for selection for each project. The criteria shall include such factors as professional

excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighted by the board according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

(b) In no event shall the criteria include practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. Board members with a relationship to a person or business entity seeking a contract under this section are prohibited from participating in the selection process if the board member would be subject to the prohibition of Section 87100 of the Government Code.

*Authority: Section 4526, Government Code. Reference: Sections 4526 and 87100, Government Code.*

### **§ 3923. Estimate of Value of Services**

Before any discussion with any firm concerning fees, the board may cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the board determines the estimates to be unrealistic because of rising costs, special conditions, or for other relevant considerations, the estimate may be reevaluated and modified if necessary.

*Authority: Section 4526, Government Code. Reference: Section 4528, Government Code.*

### **§ 3924. Request for Proposals**

(a) Where a project requires architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, the board shall make an announcement through a publication of the respective professional society, if any exist, in a construction trade journal or, if none exist, in other appropriate publications that are published within a reasonable time frame such that a lengthy publication delay does not adversely affect the project.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The board shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the board concludes that small business firms could be especially qualified. A failure of the board to send a copy of an announcement to any firm shall not operate to preclude any contract.

*Authority: Section 4526, Government Code. Reference: Section 4527, Government Code.*

**§ 3925. Selection of Firm**

After expiration of the period stated in the publications or other public announcements, the board shall evaluate statements of qualifications and performance data which have been submitted to the board. Discussions shall be conducted with no less than three firms regarding the required service. Where three firms cannot be found which could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit proposals must be entered in the files. From the firms with which discussions are held, the board shall select no less than three, provided at least three firms submit proposals, in order of preference, based upon the established criteria, which are deemed to be the most highly qualified to provide the services required.

*Authority: Section 4526, Government Code. Reference: Sections 4526-4527, Government Code.*

**§ 3926. Negotiation**

The board shall attempt to negotiate a contract with the most highly qualified firm. When the board is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions, as determined by the procedure set forth in Section 3923 if those procedures were used, negotiations shall be terminated. The board shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The board shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed in this article and the negotiation procedure continued.

*Authority: Section 4526, Government Code. Reference: Section 4528, Government Code.*

**§ 3927. Amendments**

In instances where the board effects a necessary change in the project during the course of performance of the contract, the firm's compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

**§ 3928. Contracting in Phases**

Should the board determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions in the initial instance, provided that the board shall have determined that the firm is best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the board, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and

reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

### **§ 3929. Board's Power to Require Bids**

Where the board determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of bids rather than by following the foregoing procedures for requesting proposals and negotiation.

*Authority: Section 4526, Government Code. Reference: Section 4529, Government Code.*

### **§ 3930. Exclusions**

The provisions of this article shall not apply to service agreements for an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor, engaged to provide consulting services on specific problems on projects where the architectural, landscape architectural, engineering, environmental, land surveying, or construction project management work is being performed by State of California Civil Service employees.

*Authority: Section 4526, Government Code. Reference: Section 4526, Government Code.*

## **Article 14. Appeals of Orders to Comply with the Surface Mining and Reclamation Act of 1975**

### **§ 3940. Purpose of Regulations**

The regulations contained in this article govern procedures affecting the review of orders to comply with the Surface Mining and Reclamation Act of 1975 (Act) issued by the director of the department, or by the board when acting in the capacity of lead agency pursuant to Public Resources Code Section 2774.4.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2774.1 and 2774.4, Public Resources Code.*

### **§ 3941. Determination of Jurisdiction**

(a) The Chairman of the board, or the Chairman's designee, shall determine whether the review of the order is within the jurisdiction of the board for the purposes of hearing the alleged violation. If the Chairman or the designee finds that the criteria listed in (1) and (2) below have been satisfied, then he or she shall schedule a hearing of the order before the board, otherwise he or she shall refuse to grant a hearing. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(1) Whether the order addresses violations related to the Act which have been confirmed by findings during an annual inspection or as the result of another physical site inspection of the mine;

(2) Whether the alleged violation has extended beyond 30 days from the date of receipt by the operator of notification from the director or the board.

(b) The Chairman of the board or designee shall make such a determination within 15 days of receipt of an order issued by the director. Where the board issues the order to comply pursuant to its lead agency authority under Public Resources Code Section 2774.4, no independent determination by the Chairman or the designee is required. The board shall notify the appellant and the director of its determination by certified mail or personal service.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

### **§ 3942. Administrative Record**

The administrative record shall consist of the information that was before the director for an order issued by the director, or before the board for an order issued by the board, at the time the order was issued and which comprised the basis for the order. The information before the director, or the board, shall consist of but may not be limited to the following:

(a) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;

(b) A general description of the surface mining operation;

(c) A description of the alleged violation specifying which aspects of the surface mine's activities or operations are inconsistent with the Act;

(d) A time for achieving compliance that the director, or the board, has determined to be reasonable.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

### **§ 3943. Hearing Procedures – Scheduling**

The board shall schedule and hold a public hearing on an order no sooner than 30 days from the date of issuance of the order. In no case shall the hearing be scheduled beyond 60 days after the issuance of the order. The hearing may be scheduled as part of a regular business meeting of the board or may be conducted by a committee of the board.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

### **§ 3944. Hearing Procedures – Authority for Delegation**

The board may delegate conduct of the hearing to a committee of at least two members of the board to be appointed for that hearing by the Chairman of the board. The Chairman of the board or the Chairman's designee shall conduct the hearing; the recommendations of the hearing committee shall be presented to a quorum of the board at its next regular business meeting for a decision of the full board consistent with the procedures set forth in Section 3948 of these regulations.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*



**§ 3945. Hearing Procedures – Notice**

- (a) At least 10 days prior to the hearing, the board shall give public notice as follows:
- (1) Mailing the notice to the lead agency (if the board is not the lead agency), the operator subject to the order to comply, and the director;
  - (2) Mailing the notice to any person who requests notice of the hearing;
- (b) The notice of hearing shall include the following:
- (1) The name of the operator subject to the order to comply;
  - (2) Identification of the proposed surface mining operation and a brief description of the location of the operation by reference to any commonly known landmarks in the area;
  - (3) A statement that the operator has been issued an order to comply with specific aspects of the Act;
  - (4) A statement inviting the operator, the lead agency, and the public to make statements at the hearing regarding the decision of board; and,
  - (5) The time, date, and location of the public hearing.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3946. Hearing Procedures – Record**

The record before the board at the public hearing shall be the administrative record submitted pursuant to Section 3942 of this article.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

**§ 3947. Hearing Procedures – Sequence**

- (a) The public hearing should normally proceed in the following manner:
- (1) Identification of the record;
  - (2) Statements on behalf of the operator subject to the order;
  - (3) Statements on behalf of the director, or the board if acting as the lead agency;
  - (4) Statements on behalf of the public;
  - (5) Rebuttal on behalf of the operator; and
  - (6) Rebuttal on behalf of the director, or the board if acting as the lead agency;
  - (7) Motion to close the public hearing.
- (b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.
- (c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.
- (d) The public hearing shall be recorded.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

### **§ 3948. Hearing Procedures – Determination**

Following the public hearing, the board shall determine whether, based on the record before it, the evidence before the director for orders issued by the director, or the board for orders issued by the board, substantially supports the basis for the order at the time the order was issued. If the board finds that the evidence in the record supports the issuance of the order, the board shall uphold the order and any effective date contained in the order. If no effective date is contained in the order, then the board shall set a date upon which the order takes effect. If the board finds that the evidence in the record does not substantially support the order, then the board shall not uphold the order and shall notify the director of the specific reasons for not upholding the director's order. Notification of the board's determination shall be made by certified mail or personal service to the operator and the director within 15 days following the regular business meeting of the board at which the determination is made.

*Authority: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.*

## **Article 15. Vested Rights Determination**

### **§ 3950. Purpose of Regulations**

Pursuant to Public Resources Code Sections 2774.4 or 2774.5, where the board exercises and/or assumes some or all of the lead agency's powers, the board shall not conduct vested rights determinations.

*Authority: Sections 2755, Public Resources Code. Reference: 2774.4 and 2774.5, Public Resources Code.*

## **Article 16. Mining Ordinances**

### **§ 4000. Certification and Recertification of Mining Ordinances**

(a) Upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, a lead agency shall, within 30 days of such action, provide written notice of the complete text of the resulting mining ordinance to the State Mining and Geology Board, to enable the Board to review the ordinance in accordance with Public Resources Code Sections 2774.3, 2774.5(a) and 2774.5(b).

(b) Where a lead agency has not provided the Board with timely notice of the complete text of its mining ordinance, consistent with subparagraph (a) herein, the mining ordinance shall not be considered to be in accordance with state policy until the mining ordinance is certified by the Board as being in accordance with state policy.

*Authority: Section 2755, Public Resources Code. Reference: Sections 2756, 2758, 2759, 2774.3, 2774.5(a), 2774.5(b) and 2774.5(c), Public Resources Code.*



**MINE RECLAMATION**

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