



Publication Date: Friday, October 4th, 2024

# OFFICIAL NOTICE OF PUBLIC MEETING

## THE STATE MINING AND GEOLOGY BOARD

**Will Conduct a Regular Business Meeting on:**

**Thursday, October 17, 2024, at 10:00 a.m.**

**California Natural Resources Headquarters  
715 P Street, Second Floor Conference RM 2-301  
Sacramento, California 95814**

**This meeting will be held in-person and  
via video conference and will be recorded.**

To avoid any background noises while the meeting is in session, we ask that you mute your device. To join the meeting, please download the latest version of MS Teams by visiting their website at <https://aka.ms/getteams> or install the MS Teams app on your phone. After installing MS Teams on your device click on the [Microsoft Teams Meeting](#) link to join the meeting **Meeting ID: 278 000 776 612** and **Passcode: PLdc8r**. You may also join us by phone by dialing (916) 318-8892 and entering the **Phone Conference ID: 986 917 243#**

For questions or comments regarding this Agenda, please contact the Board by email at [smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov). This Notice, the agenda, and all associated staff reports can be accessed at the SMGB's website at: <https://www.conservation.ca.gov/smgb>.



## **PUBLIC MEETING AGENDA**

1. **Call to Order (Sheingold)**
2. **Pledge of Allegiance**
3. **Roll Call and Declaration of a Quorum**
4. **Review of the Agenda (Sheingold)**
5. **Department Reports**
  - A. Department of Conservation Report (Tiffany)
  - B. Division of Mine Reclamation Report (Whalin)
  - C. California Geological Survey Report (Lancaster)
6. **Chair Report (Sheingold)**
7. **Executive Officer Report (Schmidt)**
8. **Geologist Report (Fry, Jones)**
9. **Ex-Parte Communication Disclosure**

Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.
10. **Public Comment Period**

This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. Speaker testimony is limited to three minutes except by special consent of the Chair.
11. **Consent Items**

All the items appearing under this section will be acted upon by the Board by one motion and without discussion; however, any Board member wishing to discuss any item may request the Chair to remove the item from the consent calendar and consider it separately.

  - A. Consideration and approval of minutes for the Regular Business Meeting held on:  
August 15, 2024
12. **Regular Business Items**
  - A. Consideration and approval of preliminary regulatory language and associated rulemaking package describing the Board's administrative procedures for determining an exemption from the Surface Mining and Reclamation Act of 1975 pursuant to Public Resource Code Section 2714(f).
13. **Presentations, Reports, and Informational Items**
  - A. *Mining Ordinance Update* (SMGB staff)
  - B. *Department of Conservation Panel Discussion* – Members of the Department of Conservation will discuss their roles and relationship with the Board (Department of Conservation - Gabe Tiffany, Acting Director and Elizabeth Betancourt, Natural and Working Lands Policy Advisor, California Geological Survey - Jeremy Lancaster, State Geologist, Public Affairs Office - Jacob Roper, Assistant Director, Office of Legislative and

Regulatory Affairs - Katherine Litzky, Assistant Director, Legal - Greg Tenorio, and Division of Mine Reclamation – speaker yet to be determined)

**14. Executive Session (Closed to the Public)**

The Board will discuss information from its legal counsel on potential litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.

**15. Announcements and Future Meetings**

**16. Adjournment**

# THE STATE MINING AND GEOLOGY BOARD

## **THE BOARD**

The State Mining and Geology Board (Board) serves as a regulatory, policy, and appeals body representing the State's interests in the reclamation of mined lands, geology, geologic and seismologic hazards, and the conservation of mineral resources.

The Board was established in 1885 as the Board of Trustees to oversee the activities of the State Mineralogist and the California Division of Mines and Geology (now the California Geological Survey). It is second oldest Board in California. Today's Board has nine members appointed by the Governor and confirmed by the State Senate, for four-year terms. By statute, Board members must have specific professional backgrounds in geology, mining engineering, environmental protection, groundwater hydrology and rock chemistry, urban planning, landscape architecture, mineral resource conservation, and seismology, with one member representing the general public.

## **Mission Statement**

The mission of the Board is to provide professional expertise and guidance, and to represent the State's interest in the development, utilization, and conservation of mineral resources, the reclamation of mined lands and the development and dissemination of geologic and seismic hazard information to protect the health and welfare of the people of California.

## **STATUTORY AND REGULATORY AUTHORITY**

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### **Surface Mining and Reclamation Act of 1975**

Under this Act, Public Resources Code Sections 2710 et seq. and its regulations at 14 California Code of Regulations Section 3500 et seq., the Board provides a comprehensive surface mining and reclamation policy to assure that adverse environmental impacts are minimized, and mined lands are reclaimed. SMARA also encourages the production, conservation, and protection of the State's mineral resources.

### **Alquist-Priolo Earthquake Fault Zoning Act**

Under this Act, Public Resources Code Section 2621 through Section 2630, and its regulations at 14 California Code Regulations Section 3600 et seq., the Board is authorized to represent the State's interests in establishing guidelines and standards for geological and geophysical investigations and reports produced by the California Geological Survey, public sector agencies, and private practitioners. The Board is also authorized to develop specific criteria through regulations to be used by Lead Agencies in complying with the provisions of the Act to protect the health, safety, and welfare of the public.

### **Seismic Hazards Mapping Act**

Under this Act, Public Resources Code Section 2690 through Section 2699.6 and its regulations at 14 California Code of Regulations Section 3720 et seq. the Board is authorized to provide policy and guidance through regulations for a statewide seismic hazard mapping and technical advisory program to assist cities, counties, and State agencies in fulfilling their responsibilities for protecting the public health and safety from the effects of strong ground shaking, liquefaction or other ground failure, landslides and other seismic hazards caused by earthquakes, including tsunami and seiche threats.

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- 5) Make all testimony, files, and documents part of the administrative record

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The Board encourages the submittal of comments, written material, or technical reports thirty days prior to the applicable Board meeting. All such material concerning any matters on the agenda can be submitted to: [smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov) or addressed to:

**State Mining and Geology Board  
715 P Street, MS 1909  
Sacramento, CA 95814**



Agenda Item No. 11A

October 17, 2024

## Consideration and Approval of Minutes for the August 15, 2024, Regular Business Meeting

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### **INTRODUCTION:**

Approve the Conformed Minutes for the State Mining and Geology Board's August 15, 2024, Regular Business Meeting.

### **SUGGESTED MOTION:**

*Board Chair and Members, in light of the information before the State Mining and Geology Board today, I move that the Board approve the Conformed Minutes for the August 15th, Regular Business Meeting.*

Respectfully submitted:

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Jeffrey Schmidt,  
Executive Officer



# **\*\*\*DRAFT\*\*\***

# **CONFORMED MINUTES**

## **THE STATE MINING AND GEOLOGY BOARD**

**Will Conduct a Regular Business Meeting on:**

**Thursday, August 15, 2024, at 10:00 a.m.**

**California Natural Resources Headquarters  
715 P Street, First Floor Auditorium RM 1-302  
Sacramento, California 95814**

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via video conference and will be recorded.**

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## **PUBLIC MEETING AGENDA**

**1. Call to Order (Sheingold)**

Meeting was called to order by Chair Sheingold at 10:05 A.M.

**2. Pledge of Allegiance**

Executive Officer Jeffrey Schmidt led the Pledge of Allegiance.

**3. Roll Call and Declaration of a Quorum**

Regulatory Analyst, Natalie Decio, called roll with Members Jung, Kenline, Los Huertos, Zafir, and Chair Sheingold present, and a Quorum was declared. Member Holst arrived at 10:17 A.M. and roll was taken again to include him. Member Kappmeyer and Vice Chair Landregan were not in attendance.

**4. Review of the Agenda (Sheingold)**

Chair Sheingold reviewed the agenda and noted that agenda item 14D, Ex Parte Communication and Bagley-Keene Open Meeting Act presentation, would be postponed to the following meeting at the request of one of the absent board members.

**5. Department Reports**

**A. Department of Conservation Report (Shabazian)**

Director David Shabazian delivered some parting words as he announced that he will be retiring from his position as Director. He thanked the Board, the California Geologic Survey (CGS), and the Division of Mine Reclamation (DMR) for all their good work addressing critical issues during his five-year tenure at the Department of Conservation (DOC). He noted his appreciation for seeing the divisions and the Board sync up together and how DOC has been made more effective by presenting a holistic approach through all the divisions. Shabazian emphasized how grateful he was for his time as Director and is amazed at all that he has learned over the last five years. Although he is retiring, he hopes to find opportunities to work together in the future.

**B. Department of Conservation Report (Betancourt)**

Natural and Working Lands Policy Advisor Elizabeth Betancourt reported on the increased communication and coordination between DOC and DMR, CGS, and the SMGB through the working group. Three actions that have already yielded results are the adoption of the Mining Ordinance Guidance Document, the increased public usability of the Mines Online tool, and the eight mineral designation packages in progress. Looking towards the future, four items to be worked on are identifying potential updates to the annual reporting form, offering opportunities to lead agencies to engage in peer learning, raising the profile of the AB 3098 list, and increasing the flow of information from DMR to the SMGB regarding SMARA compliance statuses.

**C. Division of Mine Reclamation Report (Whalin)**

Division Supervisor Lindsay Whalin began her report by detailing the developments within the Abandoned Mine Lands Unit (AMLU). While working with the Bureau of Land Management, the National Park Service, and the US Forest Service, the AMLU have completed 46 remediation projects since January. Additionally, the AMLU have been conducting wildlife surveys and actively working on establishing partnerships with agencies. On the SMARA side of DMR, there are two upcoming Mine Inspection Workshops, one on September 10<sup>th</sup> and the other on November 5<sup>th</sup>. The SMARA Technical Unit continues to engage with lead agencies and operators on compliance with a focus on financial

assurance cost estimates (FACE). In the Reporting Unit the focus is currently on annual report non-filers and sending out notices of failure to file to lead agencies while also looking at the issuance of administrative penalties in the near future if the situation is not rectified.

- D. California Geological Survey Report (Lancaster)  
The CGS report was deferred until Agenda Item 14A as State Geologist Jeremy Lancaster incorporated it into his 14A presentation.

**6. Chair Report (Sheingold)**

Chair Sheingold reported that he continues to speak with Board and department staff, and he has continued to work in both the working group and the compliance subcommittee. Additionally, on August 3<sup>rd</sup> the Board received a letter from five groups asking for reconsideration of the June meeting's decision to grant a 2714(f) exemption to the Gold Discovery Group. He explained that statutes and regulations create no right or process for reconsideration of 2714(f) exemptions, and the Board's legal counsel, Nicole Rinke, will confirm that. Therefore, a letter will be sent to those five groups.

**7. Executive Officer Report (Schmidt)**

Executive Officer Jeffrey Schmidt reported on rulemaking in front of the Board including PRC 2714(f) which would create a procedure to request an exemption from SMARA, and PRC 2790 which is the mineral designation process for the Greater Sacramento Area Production Consumption region. Also currently being worked on is PRC 2207 which establishes annual reporting fees for lithium brine operations as well as seven other mineral designations currently in process. Schmidt also noted the working group efforts as well as the public meeting held by Board staff and CGS on July 31, 2024 to accept comments on the new proposed Alquist-Priolo earthquake fault zone maps.

**8. Geologist Report (Fry, Jones)**

In addition to the updates Executive Officer Schmidt noted, Geologist Mallory Jones reported that Board staff have responded to several Public Record Act requests that are in the process of being completed, and a curriculum for the lead agency mining ordinance workshops have been developed. PowerPoint presentations are also currently being worked on for those workshops to assist in the rollout. Additionally, Board staff attended the Sand Studies Commissioner Working Group that was hosted by the San Francisco Bay Conservation and Development Commission, and staff recently sent out a Notice of Violation for the Pyrite Quarry and are working with the operator to start a Stipulated Order to Comply. Finally, all the inspections for the 2024 cycle have been scheduled, and those inspections will commence in September.

**9. Board Committee Reports**

- A. Policy and Administration (Chair Landregan)  
Nothing to report.
- B. Geohazards (Chair Zafir)  
Nothing to report.
- C. Mineral Conservation (Chair Kappmeyer)  
Nothing to report.
- D. SMARA Compliance (Chair Kenline)  
Nothing to report.

**10. Ex-Parte Communication Disclosure**

Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.

Nothing to report.

**11. Public Comment Period**

There were no public comments during this period. However, prior to the meeting, via mail and email, comments and signatures were collected and submitted by the Center for Biological Diversity. These comments comprised of concerns and suggestions regarding the preliminary regulatory language and associated rulemaking package for Agenda Item 13A, determining an exemption from SMARA pursuant to PRC Section 2714(f).

**12. Consent Items**

All the items appearing under this section will be acted upon by the Board by one motion and without discussion; however, any Board member wishing to discuss any item may request the Chair to remove the item from the consent calendar and consider it separately.

A. Consideration and approval of minutes for the Regular Business Meeting held on:  
June 20th, 2024

The June 20<sup>th</sup>, 2024 Conformed Minutes were approved with all present members voting yes except for Member Los Huertos who abstained from voting as he was not present at the June Regular Business Meeting.

**13. Regular Business Items**

A. Consideration and approval of preliminary regulatory language and associated rulemaking package describing the Board's administrative procedures for determining an exemption from the Surface Mining and Reclamation Act of 1975 pursuant to Public Resource Code Section 2714(f).

Senior Geologist Paul Fry began by explaining that the intent of this rulemaking was to standardize the exemption application process under PRC 2714(f) by clearly stating the procedures required for each exemption and to ensure each request receives the same evaluation by the Board. Fry then detailed the issues that arise due to the lack of procedures and instructions for an exemption request. Those issues include: a longer process, reduced transparency, a lack of communication between local agencies and the Board, potentially disparate exemption outcomes or decisions, and an overall lack of fairness, perceived or otherwise. Fry continued by giving an overview of the pre-rulemaking and outreach conducted which began in 2021 and included two rulemaking workshops in 2022. Additionally, Fry went over historical data on exemption requests submitted to the Board and outlined the 10 sections of the preliminary regulatory language for exemption procedures. After the presentation, comments were heard by Board members who offered a few minor changes and suggestions to be considered by Board staff. Members of the public made comments as well, and they raised their concerns with the preliminary regulatory language. Edits to the language were suggested and included: defining "infrequent nature" and "minor surface disturbances," holding all hearings on an exemption application in the county where the project is located, providing notice to local communities and tribes, making a finding that a project complies with CEQA/NEPA, and providing a written finding regarding the basis for determination. Following the comments, a motion was made to send the preliminary regulatory language back to Board staff to revise with the provisions made by Member Kenline and Chair Sheingold and to further review the comments received by members of the public. The motion passed unanimously, and the revised rulemaking package will be brought before the Board for approval at the next Regular Business Meeting.

- B. Consideration and approval of preliminary regulatory language and associated rulemaking package for the Board's designation of mineral lands in the greater Sacramento area production-consumption region.

Senior Geologist Paul Fry explained that the intent of this rulemaking was for the Board to designate certain mineral resources as regionally significant within the Greater Sacramento Area Production-Consumption Region. Fry began by reviewing the classification and designation process as well as lead agency responsibilities. Fry then proceeded to discuss classification reports for the Greater Sacramento Area including Special Reports 245 and 255. There were 84 areas identified to be of regional significance and recommended to be designated by the Board. Fry concluded his presentation by reviewing each of the sector maps and outlined the consequences if these areas were not designated. Without designation, regionally significant mineral lands may be developed in ways that are incompatible with mining, and construction aggregate would likely have to be transported into the region from longer distances. Additional consequences would include a rise in traffic congestion and more wear and tear of roads and highways in the region. After discussion with members of the Board as well as the public, Board member Kenline motioned to approve the preliminary regulatory language and associated rulemaking package and directed Board staff to proceed with the rulemaking process. Member Jung seconded the motion, and it passed unanimously.

- C. Election of the Board's Vice-Chair

Members Jung and Kenline nominated themselves as candidates for the position of Vice-Chair of the Board. They each gave a statement as to why they believed they were the right person for the position and then left the room to allow the rest of the board members to discuss and vote. The Board voted unanimously in favor of Member Jung while Chair Sheingold abstained. Member Jung was elected as the new Vice-Chair of the Board.

#### **14. Presentations, Reports, and Informational Items**

- A. *An Overview of Programs and Products of the California Geological Survey* (Jeremy Lancaster, State Geologist)

State Geologist Jeremy Lancaster presented on some of the products and services that the CGS prepares that are regulatory in nature and where there's collaboration with the board staff. Lancaster began with giving an overview of the six technical programs within the CGS: the Strong Motion Instrumentation Program, the Seismic Hazards Program, the Mineral Resources Program, the Regional Geologic and Landslides Mapping Program, the Forest Watershed Geology Program, and the Burned Watershed Geologic Hazards Program. Lancaster then detailed the two programs that work alongside the Board. Firstly, the Board collaborates with the Seismic Hazards Program after earthquake fault zones and seismic hazard zones are designated. The program develops preliminary draft maps to be published for public review. The Board communicates the 90-day comment period to the public, and for Alquist-Priolo Earthquake Fault Zone maps, the Board hosts a public meeting for comments on those zones. The other program that collaborates with the Board is the Mineral Resources Program that prepares mineral land classifications reports for construction grade aggregate. The Board then goes through the regulatory designation process based on the program's classification reports and conveys those reports to the lead agencies for the designated sectors to be incorporated in their respective mineral resource management policies. The designation and conservation of resources helps meet the State's needs, lowers the cost of construction, and shortens the travel distance for aggregate resources which also aids in the goal of lower greenhouse gas emissions.

- B. *Mines Online Document Storage (MODS) Update* (April Balestreri, DMR)

DMR's Reporting Unit Manager, April Balestreri, explained that Public Resources Code 2774.2.5 requires lead agencies to upload certain documents to DMR. There are approximately 14 different documents that they are required to submit, and MODS is an online system that was created for lead agencies to upload those documents. MODS integrates into the Mines Online mapping website, and it also allows for documents to be more accessible to the public. As of August 15, 2024, MODS is active for lead agencies to register and use, and it can be accessed from DMR's website. It was emphasized that MODS is for the submission of approved documents only and that draft documents are still to be submitted via email to [DMR-Submittals@conservation.ca.gov](mailto:DMR-Submittals@conservation.ca.gov).

C. *SMGB Mine Inspection Update* (Paul Fry and Mallory Jones, SMGB)

Senior Geologist Paul Fry and Geologist Mallory Jones detailed board staff's annual inspection procedures and the activities that follow those inspections each annual cycle. Jones began by explaining the pre-inspection process: scheduling of the upcoming inspections for the 49 mining operations, reviewing previous annual inspections, approved reclamation plans, aerial photos, and planning out the routes for each inspection. During the inspections, staff measure, document, and photograph all the areas and have discussions with the operators to address any compliance issues found. Within the post-inspection part of the cycle, the inspection reports and the Notice of Completion of Inspection are filled out and submitted to DMR. Additionally, any compliance actions are pursued for issues that remain unresolved. Following the inspection, operators must submit a FACE within 30 days to account for the cost of reclamation of the mined lands. This FACE is then submitted to DMR for review, and any comments are addressed. After going over the inspection process, Board staff discussed common issues that arise during the FACE process and provided examples and pictures of mines under SMGB lead agency authority. Finally, staff explained how enforcement is pursued by staff. It was emphasized that informal enforcement is the preferred route for achieving compliance. Working with operators, collaborating with other regulatory agencies, and engaging qualified subject matter experts is important. If informal enforcement is unsuccessful, the Board will proceed with formal enforcement including but not limited to issuing Notices of Violation, Orders to Comply, and Administrative Penalties. Staff ended their presentation by going over several case studies involving staff's previous enforcement efforts.

D. *Ex-Parte Communication Disclosure Requirements and Bagley-Keene Open Meeting Act* (Nicole Rinke, Esq., DAG, Attorney General's Office)

Chair Sheingold postponed SMGB legal counsel's presentation to the next Regular Business Meeting in September.

**15. Executive Session (Closed to the Public)**

The Board will discuss information from its legal counsel on potential litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.

No executive session was held.

**16. Announcements and Future Meetings**

The next Regular Business Meeting is scheduled for September 19, 2024.

**17. Adjournment**

Newly elected Vice Chair Jung motioned to adjourn, and Member Los Huertos seconded the motion. The August State Mining and Geology Board's Regular Business Meeting was adjourned by Chair Sheingold at 1:51 P.M.

# THE STATE MINING AND GEOLOGY BOARD

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**State Mining and Geology Board  
715 P Street, MS 1909  
Sacramento, CA 95814**





Agenda Item No. 12A

October 17, 2024

**Consideration and approval of updated preliminary regulatory language and associated rulemaking package describing the Board's administrative procedures for determining an exemption from the Surface Mining and Reclamation Act of 1975 pursuant to Public Resource Code Section 2714(f).**

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**INTRODUCTION:**

The proposed regulations detail the procedures needed to apply for an exemption for surface mining operations of infrequent nature that involve minor surface disturbances. These proposed regulations also detail the administrative record, public hearing procedures, and effect of exemption determination.

**STATUTORY AND REGULATORY AUTHORITY:**

Under the authority of PRC section 2755, the Board is proposing to adopt sections 4050-4059 of Article 17, Title 14, Division 2, Chapter 8, Subchapter 1 of the California Code of Regulations. The proposed regulation implements, interprets, and makes specific section 2714(f) of the Public Resources Code.

**BACKGROUND AND DISCUSSION:**

The Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC) § 2710 et seq., "SMARA") was enacted into law to create and maintain an effective and comprehensive surface mining and reclamation policy in California. SMARA lead agencies, comprised of cities, counties, the San Francisco Bay Conservation and Development Commission, and the Board, have the principal responsibility to implement and administer SMARA within their respective jurisdictions.

SMARA provides that Surface Mining Operations shall not be conducted "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" (PRC section 2770(a)). SMARA requires at least one public hearing for the approval of a mining permit, pursuant to PRC section 2774(a). Prior to or at the time of approval, the lead agency must also comply with the California Environmental Quality Act (CEQA). Lead agencies often combine the approval of a mining permit and applicable CEQA documents with the approval of a Reclamation Plan and/or related approvals.

The exemption process provides an opportunity to perform "surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances" without having to meet these SMARA requirements (PRC section 2714(f)). SMARA exempts other activities from its purview—most of which describe projects or activities that include what may appear to be mining or earth moving activities that are a component of a larger permitted project. For example, one exemption applies to excavations or, grading associated with farming (PRC § 2714(a)). Another exempts excavations or grading to obtain materials for roadbed construction and maintenance for certain timber operations (PRC § 2714(k)(1)). Others outright exempt traditional surface mining operations under a certain size (PRC § 2714(d)) or the mining of a particular mineral such as salt or other minerals from sea or bay water (PRC § 2714(g)).

As extensive as the list of exemptions under PRC section 2714 might be, generating a list of every situation involving surface mining operations that might best be exempt from SMARA is problematic. In those cases, including where surface mining operations are conducted as a component of an activity, like restoration projects not covered by any exemption, the PRC 2714(f) exemption allows the Board to fill the gap and exempt “any other surface mining operations that the Board determines to be of an infrequent nature and that involve only minor surface disturbances”. A review of exemption requests submitted to the Board since 2008 demonstrates the range of projects without an express exemption that included surface mining as a component of the activity. PRC section 2714(f) provides the Board the authority to exempt the mining component of the project or activity, especially in cases where the primary or underlying purpose of the project is not a traditional commercial surface mining operation.

Currently, no statutory or regulatory process for seeking an exemption from the Board under PRC section 2714(f) exists. This leaves an applicant with little choice but to contact Board staff to determine what the exemption process entails. Board staff must decide on a case-by-case basis, the content of the application including the amount and type of information required, the time it will take for Board staff to process the application, if and when a hearing is required and how the hearing will be conducted, and when the applicant can expect to receive a decision from the Board.

The lack of procedures and instructions describing the exemption request process results in, among other things, a longer process, increased costs to the applicant, a lack of transparency for applicants and the public, increased Board staff resources, potentially disparate exemption outcomes or decisions, potential reduced protections to the environment, and an overall lack of fairness, perceived or otherwise. The intent of this rulemaking is to standardize the exemption application process by clearly stating the procedures required for each request for exemption and ensuring that each request receives the same diligent and comprehensive evaluation by the Board before the determination of exemption is made.

Extensive public outreach has been conducted regarding the proposed regulations. The Board conducted pre-rulemaking workshops on March 24, 2022 and August 18, 2022, to discuss the purpose of the proposed regulatory action and concepts for draft regulatory language. Over 80 persons participated in the workshops including SMARA lead agency staff, mine operators, mining industry consultants and association representatives, other state government staff, and members of the public. Additional comments from Board members and the public were received during information updates at Board meetings dating back to December 2021 and at the Board’s regular business meetings on March 23, 2023, and April 20, 2023, the preliminary draft regulatory language was reviewed and subsequently approved by the Board. On August 8 and 9, 2024, Board staff received written comments from the Center for Biological Diversity (CBD) regarding this proposed rulemaking. The comments are attached for the Board’s consideration.

During the August 15<sup>th</sup> Regular Business Meeting, comments were received by Board members and the public. Board staff updated the preliminary language and is now bringing the rulemaking package before the Board for re-consideration and approval.

Board staff prepared the proposed regulatory language and associated rulemaking package in consultation with the Department of Conservation. The rulemaking package consists of the proposed regulatory language for new CCR sections 4050-4059 and several documents required per the Administrative Procedure Act.

Please see the attached documents and links for your review:

1. Proposed regulatory language for new CCR sections 4050-4059,
2. Notice of Proposed Regulatory Action,
3. Initial Statement of Reasons,
4. Economic Impact Analysis,
5. Table of Past 2714(f) Exemption Determinations,
6. Graph of Past 2714(f) Exemption Determinations,
7. [Public Comments](#)
8. [Strikethrough Documents](#)

**EXECUTIVE OFFICER RECOMMENDATION:**

Approve the proposed regulatory language and associated rulemaking package and direct Board staff to proceed with the formal rulemaking process.

**SUGGESTED MOTION:**

*Board Chair and Members, in light of the information before the Board today, I move that the Board approve the preliminary regulatory language and associated rulemaking package pursuant to Public Resource Code Section 2714(f), and direct Board staff to proceed with the rulemaking process through the Office of Administrative Law.*

Respectfully submitted:



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Jeffrey Schmidt

Executive Officer

Attachments and links:

1. Proposed Regulatory Language for CCR sections 4050-4059
2. Notice of Proposed Regulatory Action
3. Initial Statement of Reasons
4. Economic Impact Analysis
5. Table of Past 2714(f) Exemption Determinations
6. Graph of Past 2714(f) Exemption Determinations
7. [Public Comments](#)
8. [Strikethrough Documents](#)

Agenda Item 12A: Consideration and approval of updated preliminary regulatory language and associated rulemaking package describing the Board's administrative procedures for determining an exemption from the Surface Mining and Reclamation Act of 1975 pursuant to Public Resource Code Section 2714(f).

**PROPOSED REGULATIONS**

**PUBLIC RESOURCES CODE SECTION 2714(f) EXEMPTION REGULATIONS**

**Title 14. Natural Resources**

**Division 2. Department of Conservation**

**Chapter 8. Mining and Geology**

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

**Article 17. Surface Mining Operations of Infrequent Nature That Involve Minor Surface Disturbances**

**14 CCR § 4050**

**§ 4050 Purpose of Regulations.** The regulations contained in this article set forth the procedures that the State Mining and Geology Board (Board) shall use for the determination of exemptions pursuant to Public Resources Code (PRC) section 2714(f).

**§ 4051 Pre-submittal Consultation.** The project proponent shall request a pre-submittal consultation prior to submitting the exemption application. The Board's Executive Officer shall consult with the project proponent, the Surface Mining and Reclamation Act (SMARA) lead agency, and the land use agency with jurisdiction while considering an exemption requested under PRC section 2714(f). Topics of discussion will include the following:

- a) The scope, nature, and intent of the proposed surface mining operation.
- b) The amount and type of mineral commodity or materials that will be produced as well as the proposed method of production or exploration.
- c) The project's environmental review under California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) as part of the lead agency permitting process.
- d) The condition in which the site will be left that minimizes adverse effects on the environment, protects public health and safety, and that is readily adaptable to the designed use or readily adaptable to alternative land uses.

**§ 4052 Eligibility for Exemption.** Only a surface mining operation that the Board determines to be of an infrequent nature and that involves only minor surface disturbances shall be eligible for the exemption.

**§ 4053 Filing a Request for a Determination of Exemption.** A request for exemption under PRC section 2714(f) shall be initiated by filing a request for determination of exemption with the Board. The request for determination of exemption shall include the following information:

- a. Name, address, telephone number, and email address of the applicant and any agent for contact of service;
- b. Name, address, telephone number, and email address of the subject property owner(s);
- c. Name, address, telephone number, and email address of the mineral rights owner(s);
- d. Name, address, telephone number, and email address of any lessee or lien holder to the surface mining operation;
- e. Name, address, telephone number, and email address for the land use agency with jurisdiction;
- f. Name, address, telephone number, and email address for the SMARA lead agency with jurisdiction;
- g. Name, address, telephone number, email address, and California mine identification number for each mining operation located within 60 miles of the proposed surface mining operation;

PRC § 2714(f)  
Proposed Regulatory Language

- h. Name, address, telephone number, and email address of the owners of properties contiguous to the surface mining operation;
- i. A map, prepared by an appropriately qualified professional, indicating the location, the latitude and longitude, and the boundaries and the limits of the surface mining operation and acreage;
- j. A legal description of such property comprising the surface mining operation, such as township and range, metes and bounds, parcel numbers, or other descriptive methods to specifically identify such property;
- k. The land use agency permit documents for the surface mining operation, including, to the extent applicable, CEQA and/or NEPA review documentation prepared for the project, or any other evidence of the right to operate such as by specific zoning or ordinance;
- l. Copies of any other public agency permits associated with the surface mining operations and a statement regarding the current status of required permits which have not yet been obtained;
- m. Lead agency staff reports concerning the approval or impacts of the surface mining operation and meeting minutes of any public hearings related to the lead agency's consideration or approval of the permit to conduct the surface mining operation;
- n. The time frame planned for the proposed surface mining operations, including the start date and the estimated schedule of completion, and whether period of inactivity would occur;
- o. Approximate volume and type of material to be removed from the surface mining operation;
- p. Approximate volume of the topsoil proposed to be disturbed or salvaged by the surface mining operation and final disposition;
- q. Approximate volume of the overburden proposed to be disturbed or salvaged by the surface mining operation and final disposition;
- r. Approximate volume of residual mining waste and final disposition following the surface mining operation;
- s. Grading plans showing current topography and proposed final elevations of mined lands; and
- t. A declaration or affidavit attesting to the true and accurate nature of the materials and information provided pursuant to this section.

**§ 4054 Initial Review of a Request for a Determination of Exemption.** The Board's Executive Officer shall initially evaluate whether the request for determination of exemption contains the minimum applicable information specified in section 4053 of this article and shall also determine if the request for exemption is complete within thirty days of receipt of the filing. If the Board's Executive Officer determines that the request for exemption does not contain sufficient information to meet the requirements of section 4053, the request shall be rejected and the deficiencies in the request shall be identified by the Board's Executive Officer in written correspondence to the applicant. The applicant may address the deficiencies and may resubmit the request for a determination of exemption.

**§ 4055 Administrative Record.** The administrative record before the Board shall consist of the applicable documents specified in section 4053, Board staff reports, related materials other persons may have submitted to the Board during its consideration of the request for exemption, and any other materials the staff of the Board considered in reviewing the request.

**§ 4056 Public Hearing.** No determination of exemption shall be made by the Board without a public hearing and an opportunity for the applicant, the lead agency, any interested persons, and the public to comment. Notice of the public hearing will be provided to those identified in 4053(g) and (h) and posted upon the Board's website. The public hearing shall be held by the Board within ninety days of the Executive Officer's determination that the request is complete and, at its discretion, within the county where the exemption is claimed or within the county of the Board's offices (County of Sacramento).

**§ 4057 Hearing Procedures.**

(a) The public hearing should proceed in the following manner:

- (1) Review of the Executive Officer's informational report and the administrative record;
- (2) Statements on behalf of the applicant;
- (3) Statements on behalf of the land use and SMARA lead agency;
- (4) Statements on behalf of the public;
- (5) Rebuttal on behalf of the applicant;
- (6) Rebuttal on behalf of the land use and SMARA lead agency;
- (7) Rebuttal on behalf of the public;
- (8) The Board may ask questions of Board staff, the applicant, the land use and SMARA lead agency and members of the public as part of its deliberations. The Board shall, upon a motion, determine by a vote whether the surface mining operation is exempt from SMARA pursuant to PRC section 2714(f). The determination shall identify the specific facts that support or deny the exemption. The Board may also, within its discretion, choose to continue the request to a future Board meeting; and
- (9) Motion to close the public hearing.

(b) Notwithstanding the above, the Chair of the Board may, in the exercise of their discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.

(c) The Chair of the Board may impose reasonable time limits upon statements and presentations.

**§ 4058 Notification of Board Determination.** Notification of the Board's determination shall be made by certified mail to the lead agency and the project proponent within 15 days following the public hearing at which the decision is made and shall be posted upon the Board's website.

**§ 4059 Effect of a Determination of Exemption.** Under PRC section 2714(f), a determination of exemption by the Board exempts the surface mining operation from the requirements of SMARA (PRC sections 2710 et. Seq.), only to the extent it is operated consistent with the request for exemption, the Board's approval of the exemption, and all applicable public agency permits. The applicant shall notify the Board within thirty days of any future modification to the surface mining operation. The Board may conduct periodic inspections of the surface mining operation. The Board shall notify the operator and the lead agency at least five days prior to conducting an inspection of the surface mining operation. If surface mining operations are modified or conducted inconsistent with the submitted documents under California Code of Regulations, Title 14, Section 4053, the Board may, within its discretion, require the steps outlined in this Article to be repeated, including resubmittal of documentation and a public hearing to reconsider its prior determination of exemption.

*Authority: Section 2755, Public Resources Code. Reference: Section 2714(f), Public Resources Code.*



## **DRAFT**

# **NOTICE OF PROPOSED RULEMAKING ACTION**

### **PROPOSED REGULATIONS**

### **PUBLIC RESOURCES CODE SECTION 2714(f) EXEMPTION**

#### **TITLE 14. NATURAL RESOURCES**

#### **Division 2. Department of Conservation**

#### **Chapter 8. Mining and Geology**

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

#### **Article 17. Surface Mining Operations of Infrequent Nature that Involve Minor Surface Disturbances**

Notice Published: \_\_\_\_\_

Office of Administrative Law Notice File Number: **Z2024-XXXX-XX**

**NOTICE IS HEREBY GIVEN** the State Mining and Geology Board (Board) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

### **PROPOSED REGULATORY ACTION**

The Board proposes to adopt California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 17 criteria (sections 4050-4059) for exemptions from the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq., SMARA) under Public Records Code (PRC) section 2714(f) which pertains to: "...mining operations that the Board determines to be of an infrequent nature and that involve only minor surface disturbances." The proposed regulations detail the procedures needed to apply for an exemption for surface mining operations of infrequent nature that involve minor surface disturbances. These proposed regulations also detail the administrative record, public hearing procedures, and effect of exemption determination.

## WRITTEN COMMENT PERIOD AND PUBLIC HEARING

Any Person, or his or her authorized representative, may submit written statements, arguments, or comments related to the proposed regulatory action to the Board.

Comments may be submitted by email [smgbregulations@conservation.ca.gov](mailto:smgbregulations@conservation.ca.gov) or by mail to:

State Mining and Geology Board  
ATTN: 2714 (f) Exemption  
715 P Street, MS 19-09  
Sacramento, CA 95814

**The written comment period closes at \_\_\_\_\_ on \_\_\_\_\_.** The Board will only consider comments received at the Board office by that time.

The Board will hold a hearing if it receives a written request for a public hearing from any interested Person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

### Accessibility

If you have a disability and require a reasonable accommodation to fully participate in this event, please contact Sarah Rubin, Outreach and Engagement Coordinator as soon as possible to discuss your accessibility needs.

Email: [Sarah.Rubin@conservation.ca.gov](mailto:Sarah.Rubin@conservation.ca.gov) | PH: (916) 214-5731

### [English]

Translation and interpretation services may be provided upon request. To ensure availability of these services, please make your request no later than ten working days prior to the workshop by contacting Sarah Rubin, Outreach and Engagement Coordinator. Email: [Sarah.Rubin@conservation.ca.gov](mailto:Sarah.Rubin@conservation.ca.gov) | PH: (916) 214-5731

### [Spanish]

Se podrán proporcionar servicios de traducción e interpretación a petición previa. Para poder garantizar la disponibilidad de estos servicios, asegúrese de realizar su solicitud a más tardar diez días hábiles antes de la reunión comunitaria comunicándose con Sarah Rubin, Coordinadora de Alcance y Participación. Correo electrónico: [Sarah.Rubin@conservation.ca.gov](mailto:Sarah.Rubin@conservation.ca.gov) | Tel: (916) 214-5731



## **AUTHORITY AND REFERENCE**

Under the authority of PRC section 2755, the Board is proposing to adopt sections 4050-4059 of Article 17, Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR. The proposed regulation implements, interprets, and makes specific section 2714(f) of the PRC.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

SMARA was enacted to ensure that any significant adverse impacts of mining to the environment are prevented or mitigated, and public health and safety is protected. SMARA, at PRC section 2770, requires surface mining operations obtain a local government approved permit or other authority to mine, an approved reclamation plan, and approved financial assurances to cover reclamation costs should the operator become financially incapable of reclamation, or they abandon the operation.

PRC section 2714 provides a list of exemptions from SMARA's requirements. Subdivision (f) of PRC section 2714 provides the Board with the authority to exempt “Any other surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances.”

### **Proposed Regulation**

The purpose of Article 17, Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR sections 4050-4059 is to govern procedures the Board will use to determine if a proposed surface mining operation is of an infrequent nature and will only involve a minor surface disturbance and should therefore not be subject to SMARA pursuant to PRC section 2714(f).

The proposed regulations address and detail:

- The purpose of the proposed regulations
- Requirement for a consultation before submittal of a request for a determination of exemption
- Information required to be included in a request for a determination of exemption

- The administrative record requirements
- The public hearing requirements and procedure
- Effects of the determination of exemption

### **Anticipated Benefits of the Proposed Regulations**

The statute imbuing the Board with the exemption authority does not include the process for filing for an exemption under PRC section 2714(f). Applicants seeking an exemption have little to no guidance on the scope and contents of an application, how the Board conducts the public hearing, or even when or how a decision is issued by the Board, following a public hearing. The proposed regulations will specify and standardize the procedure to submit the request for exemption to the Board. The jurisdiction determination procedures are also outlined and detailed. Proposed CCR sections 4050-4059 specify and define the requirements for the administrative record, development of that record, and the requirements for public hearings and communication associated with the submitted request for exemption.

The specific benefits anticipated from the regulation include the Board's receipt of defined application contents, and coordination of environmental review with the lead agency. This allows the Board to make an informed decision following a required public hearing. This will ensure the continued protection of the environment and public health and safety, promote fairness to all applicants, ensure social equity, and increase openness and transparency of the Board's exemption application and hearing process.

### **Consistency with Federal Statute and Regulation**

The proposed regulations do not duplicate nor conflict with existing federal statutes or regulations.

### **Consistency with Existing State Regulation**

The proposed regulations are not inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that relate to or would affect the Board's exemption determination, the Board has concluded that these are the only regulations concerning the Board's exemption determination procedures.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations, based in part on the Economic Impact Analysis prepared for this proposed rulemaking:

**Mandate on local agencies and school districts:** The rulemaking would require the Executive Officer to consult with the SMARA lead agency and the land use lead agency with jurisdiction. Participation in this consultation by these lead agencies is voluntary on their part. If the project proponent subsequently decides to request a determination of exemption, the SMARA lead agencies may attend the hearing to provide statements and/or rebuttal and may be asked questions by the Board during the deliberative phase. However, under PRC section 2207(e) local lead agencies may impose a fee on mining operations to cover the costs of SMARA administration, thus there is no unfunded local mandate.

**Costs or savings to any state agency:** There could conceivably be a modest savings to state agencies due to the elimination of superfluous steps by outlining the determination of exemption process.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630:** The Board staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

**Other nondiscretionary costs or savings imposed upon local agencies:** The Board staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

**Cost or savings in federal funding to the state:** The Board staff determined that there are no costs or savings in Federal funding to the State.

**Significant effect on housing costs:** The Board staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other**

**states:** The Board staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language. The proposed regulations will have no cost impact on businesses beyond the cost associated with the request for exemption, and no existing businesses in California will be expanded or eliminated.

**Creation or elimination of jobs within California:** The Board does not anticipate the proposed regulations would create or eliminate jobs within California.

**Creation of new businesses or the elimination of existing businesses within California:** The Board does not anticipate the proposed regulations would create new businesses or eliminate existing businesses.

**Expansion of businesses currently doing business within California:** The Board does not anticipate the proposed regulations would lead to the expansion of businesses currently doing business within California.

**Benefits to the health and welfare of California residents, worker safety, and the state’s environment:** The Board does not anticipate the proposed regulations would negatively impact the health and welfare of California residents, worker safety, and the state’s environment. A structured procedure for a determination of exemption will ensure the Board gives due diligence to every request for a determination of exemption and will sufficiently evaluate each request to ensure an exemption is appropriate and the surface mining operation will not have a negative impact to the health and welfare of California residents, worker safety, and the state’s environment.

**Costs impacts on a representative private Person or business:** The cost of a request for a determination of exemption for the requestor is somewhere between \$71,600 and \$172,800. However, the proposed regulations do not add any requirements to the current determination of exemption procedure; instead, they specifically outline the procedure, which could conceivably result in a modest cost savings to requestors due to the elimination of superfluous steps.

**Effects on small businesses:** The proposed regulations will only affect small businesses which request a determination of exemption and would conceivably

result in modest cost savings to those who file a request due to the elimination of superfluous steps by outlining the determination of exemption process.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board or identified and brought to the Board's attention would be more effective in carrying out the rulemaking's purpose, equally effective and less burdensome to affected private Persons, or more cost-effective to affected private Persons and equally effective in implementing PRC section 2714(f).

The Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the public comment period or at any scheduled hearing.

### **CONTACT PERSONS**

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Paul Fry, Senior Geologist  
State Mining and Geology Board  
715 P Street, MS 1909  
Sacramento, CA 95814  
Phone: (916) 324-0681  
Fax: (916) 322-4862  
[Paul.Fry@conservation.ca.gov](mailto:Paul.Fry@conservation.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of this regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which this rulemaking is based to Paul Fry at the above address.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, and a standard form 399.

Copies of these documents may be obtained by contacting Paul Fry at the address and phone number listed above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the written comment period and any hearing that may be conducted by the Board to accept comments and evidence regarding the adoption of the proposed regulation, the Board will consider all timely and relevant comments received. Thereafter, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Paul Fry at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Paul Fry at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the proposed amended text of the regulation can be accessed through our webpage at:

<https://www.conservation.ca.gov/smgb/Pages/Rulemaking/index.aspx>



# **DRAFT INITIAL STATEMENT OF REASONS**

## **PROPOSED REGULATIONS PUBLIC RESOURCES CODE SECTION 2714(F) EXEMPTION**

### **TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 17. Surface Mining Operations of Infrequent Nature That Involve Minor Disturbances**

The State Mining and Geology Board (Board), proposes to adopt article 17, sections 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4057, 4058, and 4059 of the California Code of Regulations (CCR), title 14, division 2, chapter 8, subchapter 1.

Unless otherwise specified, references in this document to a "section" are references to a section of CCR title 14, as it would be added by this rulemaking.

## **INTRODUCTION AND BACKGROUND**

Established in 1885, the Board serves as a regulatory, policy, and hearing body representing the state's interests in the development, utilization, and conservation of mineral resources, the reclamation of mined lands, and the development and dissemination of geologic and seismic hazard information to protect the health and welfare of the people of California.

The Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC) § 2710 et seq., "SMARA") was enacted into law to create and maintain an effective and comprehensive surface mining and reclamation policy in California. SMARA

lead agencies, comprised of cities, counties, the San Francisco Bay Conservation and Development Commission, and the Board, have the principal responsibility to implement and administer SMARA within their respective jurisdictions.

SMARA provides that surface mining operations shall not be conducted “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” (PRC section 2770(a)). The exemption process provides an opportunity to perform “surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances” without having to meet these SMARA requirements.

SMARA requires at least one public hearing for the approval of a mining permit, pursuant to PRC section 2774(a). Prior to or at the time of approval, the lead agency must also comply with the California Environmental Quality Act (CEQA). Lead agencies often combine the approval of a mining permit and applicable CEQA documents with the approval of a Reclamation Plan and/or related approvals.

The subsections of PRC section 2714 list activities that are considered exempt from the requirements of SMARA. Most of the listed exemptions under PRC section 2714 describe projects or activities that include mining as a component of the activity or project. For example, some exemptions identify certain excavations, grading, or other earthmoving activities that might appear to be mining, such as excavations or grading associated with farming (PRC § 2714(a)) or excavations or grading to obtain materials for roadbed construction and maintenance for timber operations (PRC § 2714(k)(1)). Others outright exempt traditional surface mining operations under a certain size (PRC § 2714(d)) or the mining of a particular mineral such as salt or other minerals from sea or bay water (PRC § 2714(g)).

As extensive as the list of exemptions under PRC section 2714 might be, generating a list of every situation involving surface mining operations that might best be exempt from SMARA is problematic. In those cases, including where surface mining operations are conducted as a component of an activity, like construction or restoration projects not covered by any exemption, the PRC 2714(f) exemption allows the Board to fill the gap and exempt “any other surface mining operations that the Board determines to be of an infrequent nature and that involve only minor surface disturbances”. A survey of every exemption request submitted to the Board since 2008 demonstrates the range of projects without an express exemption that



included surface mining as a component of the activity. PRC section 2714(f) provides the Board the authority to exempt the mining component of the project or activity, especially in cases where the primary or underlying purpose of the project is not a traditional commercial surface mining operation.

Currently, no statutory or regulatory process for seeking an exemption from the Board under PRC section 2714(f) exists. This leaves an applicant with little choice but to contact Board staff to determine what the exemption process entails. Board staff must decide on a case-by-case basis, the content of the application including the amount and type of information required, the time it will take for Board staff to process the application, if and when a hearing is required and how the hearing will be conducted, and when the applicant can expect to receive a decision from the Board.

The lack of procedures and instructions describing the exemption request process results in, among other things, a longer process, increased costs to the applicant, uncertainties with environmental review under CEQA and/or NEPA, a lack of transparency for applicants and the public, increased Board staff resources, potentially disparate exemption outcomes or decisions, potential reduced protections to the environment, and an overall lack of fairness, perceived or otherwise. The intent of this rulemaking is to standardize the exemption application process by clearly stating the procedure required for each request for exemption and ensuring that each request receives a diligent and comprehensive evaluation and appropriate environmental review by the Board before the determination of exemption is made.

#### Public Input Efforts Preceding this Rulemaking

Extensive public outreach has been conducted regarding the regulations. The Board conducted pre-rulemaking workshops on March 24, 2022, and August 18, 2022, to discuss the purpose of the proposed regulatory action and concepts for draft regulatory language. Over 80 persons participated in the workshops including SMARA lead agency staff, mine operators, mining industry consultants and association representatives, other state government staff, and members of the public. Additional comments from Board members and the public were received during information updates at Board meetings dating back to December 2021 and at the Board's regular business meetings on March 23, 2023, and April 20, 2023, the preliminary draft regulatory language was reviewed and subsequently approved by the Board. During the Board's Regular Business Meeting in August 2024, public

comments were submitted for consideration concerning the preliminary rulemaking package.

### **SPECIFIC PURPOSE, RATIONALE, AND BENEFITS OF EACH REGULATION**

The purpose, rationale, and anticipated benefits of each proposed section are discussed specifically below:

**Section 4050** requires that the regulations in article 17 be the procedures the Board uses for determination of exemptions. Requiring a standardized process in the determination of exemption will increase clarity for the entities involved in the process by clearly defining the responsibilities of the project proponent, lead agencies, and the Board. This will result in a more streamlined, efficient, and transparent process.

**Section 4051** requires the Board's Executive Officer to consult with the project proponent and both the SMARA Lead Agency and land use agency with jurisdiction before submission of a request for exemption. Coordination between all parties before submission will help ensure a more complete application for exemption upon submission, clarify responsibilities for appropriate environmental review under CEQA and/or NEPA, and foster a concerted effort that will likely be more efficient. It will also act as a filter to rule out any projects that are not surface mining operations before project proponents spend time and resources creating their application and will ensure National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) agencies are aware of the request for exemption at an early stage.

**Section 4052** stipulates that only surface mining operations determined by the Board to be of an infrequent nature and involving only minor surface disturbances shall be eligible for an exemption. This is necessary to ensure alignment with statute.

**Section 4053** stipulates that a request for exemption shall be initiated by filing a request for determination of exemption with the Board. Each subsection includes an item of information that will be used when determining if an exemption will be granted:

**Subsections (a) through (h)** are contact information for all pertinent parties and each is necessary to ensure that a contact can be sent relevant documents or

reached for inquiry or notification related to the surface mining operation.

**Subsections (i) and (j)** are a map and legal description of the property comprising the surface mining operation and are necessary to specifically identify the geographical location of the operation. The permits and lead agency reports included in **subsections (k) through (m)** are necessary because they are records of conditions of approval for the surface mining operation or the underlying project or activity that includes mining as a component of the project or activity. **Subsections (n) through (r)** are proposed parameters for the surface mining operation and are necessary to determine eligibility for an exemption under PRC section 2714(f).

**Subsection (s)** is grading plans showing topography of the land before and after mining and is necessary to ensure restoration of the mined land. **Subsection (t)** is an attestation that all material and information provided in the request for exemption is true and accurate and is necessary to ensure diligence and accountability by the applicant.

The inclusion of each subsection of section 4053 contributes to a diligent and thorough investigation of an application for exemption before a Board determination is made and will ultimately help minimize or prevent adverse effects on the environment and the protection of public health and safety.

**Section 4054** designates the Board's Executive Officer to verify that a request for determination of exemption contains each of the items listed in section 4053 and is fully completed. If a request is not complete, the Executive Officer shall reject the request and identify the deficiencies in written correspondence to the applicant. The requirement to identify and communicate any deficiencies to an applicant will make the process more objective and transparent and will help foster a concerted effort that will likely be more efficient.

**Section 4055** stipulates the items that make up the administrative record before the Board. This section will increase transparency and ensure that a comprehensive record of documents is kept in the event that an appeal or legal challenge arises, and the determination of exemption must be defended.

**Section 4056** requires that a public hearing be held within 90 days of the Executive Officer's determination that a request for exemption is complete within the county where the exemption is requested or the county of the Board's offices (Sacramento County). Public outreach and analysis of the resulting feedback is crucial in ensuring that any concerns or questions from interested parties are considered, addressed, and answered. A robust and responsive outreach effort helps to cultivate public

trust and a diverse respondent demographic can identify issues that may have been overlooked or unintended.

**Section 4057(a)** outlines how a public hearing procedure regarding an application for exemption under PRC section 2714(f) should proceed:

**Subsection (a)(1)** is necessary to ensure that the proposed surface mining operation meets the prescribed standards for exemption before testimony by interested parties occurs. **Subsections (a)(2) through (a)(7)** are necessary to ensure each party with an interest in the application for exemption has an opportunity to both state their argument for or against the exemption and rebut arguments contrary to their position. **Subsection (a)(8)** is necessary to allow the Board to make a determination of exemption at the conclusion of the hearing or to postpone the determination in order to further consider relevant information. **Subsection (a)(9)** is necessary to verify that the hearing can be formally concluded.

**Section 4057(b)** allows for the Chair of the Board to determine an alternate order of hearing proceedings or allow for additional testimony or rebuttal, at their discretion. This is necessary to ensure that due diligence is performed in a determination of exemption if extenuating circumstances exist.

**Section 4057(c)** allows for the Chair of the Board to impose reasonable time limits upon testimonies and rebuttals during the hearing. This is necessary to prevent an interested party from presenting for a disproportionate amount of time during the hearing and promotes fairness to all parties involved.

The inclusion of each subsection of section 4057 will ensure a diligent and thorough investigation of an application for exemption before a Board determination is made and will ultimately help minimize or prevent adverse effects on the environment and the protection of public health and safety.

**Section 4058** requires the Board's Executive Officer to notify the applicant and lead agency or agencies by certified mail of the determination of exemption no more than ten days following the public hearing. This section also requires the determination to be posted on the Board's website. The requirements of this section ensure that applicants receive a timely determination of exemption from the Board and that the determination is publicly available to all interested parties. An expeditious response by the Board serves to foster a positive working relationship

with applicants and prevents determinations from dragging out over long periods of time. Posting each determination on the Board's website increases transparency.

**Section 4059** requires an applicant to notify the Board within 30 days of any future modification to the surface mining operation. This section also requires the Board to notify a mine operator at least five days prior to conducting an inspection. Operators may make modifications that render a previously exempted operation ineligible for exemption and the Board may decide to hold a public hearing to determine if the previous exemption is still valid considering any modifications made by the operator.

### **ALTERNATIVES CONSIDERED**

The Board must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private Persons than the proposed action. The Board's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

- An alternative the Board considered was the Board taking no action to address the unprescribed nature of section 2714(f). By taking no action, the Board would continue to address the exemption process the way it has in the past, leaving the unprescribed nature of the exemption process intact, allowing for variation in the exemption determination and resulting in an ambiguous process that could be perceived as inequitable.
- An alternative the Board considered, but rejected, was to impose a fee for the processing of the exemption application. It was determined that the Board does not have the authority under SMARA to charge a fee for this process.
- An alternative the Board considered, but rejected, was providing definitions for "infrequent nature" and "only minor surface disturbances". It was determined that leaving these terms flexible would allow the board discretion to consider these projects in context rather than being limited to defined quantities. The Legislature included this exemption language in SMARA when it was initially drafted in 1975 with the intention of providing the Board with the discretion to determine on a case-by-case basis what type of operation is "infrequent" and "minor." While conducting pre-rulemaking workshops and

public outreach, some interested parties requested that the proposed regulations further clarify and specify “infrequent” and “minor.” The Board considered those comments but wanted to maintain its discretionary authority, as described in the statutory language, and therefore directed staff not to further define those terms in the proposed regulatory language.

- An alternative the Board considered, but rejected, was requiring the project proponent provide information about how the project was funded. It was determined that this information was out of scope for projects which received exemption from PRC section 2714(f).

The Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the public comment period or at any scheduled hearing.

### **CEQA COMPLIANCE**

The Board has determined that this rulemaking process is either not a project under Title 14, CCR section 15378 of the CEQA Guidelines, or is exempt under the common sense exemption under Title 14, CCR section 15061(b)(3) of the CEQA Guidelines, because there is no possibility that the development and approval of these regulations will have a direct or indirect significant effect on the environment. The proposed regulations would merely establish a procedure to implement an existing statutory provision that allows the Board to exempt surface mining operations that it determines are of an infrequent nature and that involve only minor surface disturbances.

### **CONSISTENCY WITH COMPARABLE FEDERAL REGULATION OR STATUTE**

The proposed regulations do not duplicate nor conflict with existing Federal statutes or regulations.

### **CONSISTENCY WITH STATE REGULATIONS**

The proposed regulations are not inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that relate to or would affect the Board’s exemption determination, the Board has concluded that these are the only regulations concerning the Board’s exemption determination procedures.

## **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The rulemaking would require the Executive Officer to consult with the SMARA lead agency and the land use lead agency with jurisdiction. Participation in this consultation by these lead agencies is voluntary on their part. If the project proponent subsequently decides to request a determination of exemption, the SMARA lead agencies may attend the hearing to provide statements and/or rebuttal and may be asked questions by the Board during the deliberative phase. However, under PRC section 2207(e) local lead agencies may impose a fee on mining operations to cover the costs of SMARA administration, thus there is no unfunded local mandate. School districts are not affected by the regulation.

## **ECONOMIC IMPACTS**

The Board has made the following determinations, based in part on the Economic Impact Analysis prepared for this proposed rulemaking, which is included as a separate document in the rulemaking package and incorporated here by reference.

**Costs impacts on a representative private Person or business:** The cost of a request for a determination of exemption for the requestor is somewhere between \$71,600 and \$172,800. However, the proposed regulations do not add any requirements to the current determination of exemption procedure; instead, they specifically outline the procedure, which could conceivably result in a modest cost savings to requestors due to the elimination of superfluous steps.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** The Board staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language. The proposed regulations will have no cost impact on businesses beyond the cost associated with the request for exemption, and no existing businesses in California will be expanded or eliminated.

**Significant effect on housing costs:** The Board staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Effects on small businesses:** The proposed regulations will only affect small businesses which request a determination of exemption and would conceivably result in modest cost savings to those who file a request due to the elimination of superfluous steps by outlining the determination of exemption process.

**Creation or elimination of jobs within California:** The Board does not anticipate the proposed regulations would create or eliminate jobs within California.

**Creation of new businesses or the elimination of existing businesses within California:** The Board does not anticipate the proposed regulations would create new businesses or eliminate existing businesses.

**Expansion of businesses currently doing business within California:** The Board does not anticipate the proposed regulations would lead to the expansion of businesses currently doing business within California.

**Ability of businesses to compete with businesses in other states.** The Board does not anticipate the proposed regulations would affect the ability of businesses in California to compete with businesses in other states.

**Benefits to the health and welfare of California residents, worker safety, and the state's environment:** The Board does not anticipate the proposed regulations would negatively impact the health and welfare of California residents, worker safety, and the state's environment. A structured procedure for a determination of exemption will ensure the Board gives due diligence to every request for a determination of exemption and will sufficiently evaluate each request to ensure an exemption is appropriate and the surface mining operation will not have a negative impact to the health and welfare of California residents, worker safety, and the state's environment.

### **DOCUMENTS RELIED UPON**

The Board relied upon the following documents in proposing this rulemaking:

- The Economic Impact Analysis and STD 399 for the proposed regulations.
- Benchmark Resources. (2023). *PRC § 2714(f) Potential Applicant Costs*.
- Department of Conservation. (2023). *CalGEM Fiscal Worksheet 2324\_2714(f)*.
- State Mining and Geology Board (2021, December 16). *15.B. Historical Board Information for PRC 2714(f)*. Department of Conservation.
- State Mining and Geology Board (2022, August 18). *Pre-Rulemaking Workshop Proposed Regulatory Text for PRC 2714(f)*. Department of Conservation.
- State Mining and Geology Board (1996). *Mining Ordinance Guidance Document*. [\[Link\]](#)
- State of California – CalHR. (2023, November 7). *Civil Service Pay Scale*. [https://www.calhr.ca.gov/Pay%20Scales%20Library/PS\\_Sec\\_15.pdf](https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf) [\[Link\]](#)



- State of California – CalHR. (2023, March 3). *Exempt Pay Scale*. <https://www.calhr.ca.gov/Documents/exempt-pay-scale.pdf> [\[Link\]](#)
- State of California – CalHR. (2023, December 11). *Travel Reimbursements*. <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx> [\[Link\]](#)
- U.S. Bureau of Labor Statistics. (2022, May). *Occupational Employment and Wage Statistics - Urban and Regional Planners*. <https://www.bls.gov/oes/current/oes193051.htm#ind> [\[Link\]](#)
- U.S. General Services Administration. (2023, January 1). *Privately Owned Vehicle (POV) Mileage Reimbursement Rates*. [https://www.gsa.gov/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement?gsaredirect=pov&gclid=EAlalQobChMI8ea2q8KhgwMVOWytBh0K\\_wj4EAAYASAAEgLZMPD\\_BwE](https://www.gsa.gov/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement?gsaredirect=pov&gclid=EAlalQobChMI8ea2q8KhgwMVOWytBh0K_wj4EAAYASAAEgLZMPD_BwE) [\[Link\]](#)

## **Public Resources Code Section 2714(f) Exemption Regulations**

### **Economic Impact Assessment**

#### **1. Summary of Economic Impact Assessment**

The Public Resources Code 2714(f) Exemption draft regulations would have a negligible economic impact on California's mining industry and no noticeable consequences to the state economy. The economic impact is summarized as follows:

- Total direct costs to project proponents would be an estimated range of \$71,600 to \$172,800 in both the first year after the proposed regulations were effective ("Year 1") and in the second year ("Year 2"). This analysis is explained in Section 3.
- Total fiscal costs to California would be \$19,443 in both Years 1 and 2. This analysis is explained in Section 4.
- Total costs aggregating both direct and fiscal costs would be an estimated range from \$91,043 to \$192,243 in both Years 1 and 2. Given California's Gross State Product (GSP) of over \$3 trillion, this impact is negligible to California's economy.<sup>1</sup>
- There would be virtually no impact on the creation or elimination of jobs within California, no impact on the expansion of businesses within the state, no impact on the creation of new businesses or the elimination of existing businesses within the state, and no impact on the ability of businesses within the state to compete with businesses in other states.
- Although not quantified in this analysis, the proposed regulations could increase efficiency of the exemption process which would lead to reduced costs to project proponents, lead agencies, and the State Mining and Geology Board (Board).
- The proposed regulations would not have significant economic impacts on individuals, businesses, or the government.

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<sup>1</sup> State of California Department of Finance, "Gross State Product,"

<https://dof.ca.gov/forecasting/economics/economic-indicators/gross-state-product/>

## **2. 2714(f) Exemption in California**

Established in 1885, the Board serves as a regulatory, policy, and hearing body representing the state's interests in the development, utilization, and conservation of mineral resources, the reclamation of mined lands, and the development and dissemination of geologic and seismic hazard information to protect the health and welfare of the people of California.

The Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC) section 2710 et seq., (SMARA)) was enacted into law to create and maintain an effective and comprehensive surface mining and reclamation policy in California. SMARA Lead Agencies, comprised of cities, counties, the San Francisco Bay Conservation and Development Commission, and the Board, have the principal responsibility to implement and administer SMARA within their respective jurisdictions.

SMARA provides that Surface Mining Operations shall not be conducted “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” (PRC section 2770(a)).

SMARA requires at least one public hearing for the approval of a mining permit, Reclamation Plan, and financial assurances pursuant to PRC section 2774(a). Prior to or at the time of approval, the lead agency must also comply with the California Environmental Quality Act (CEQA). Lead agencies often combine the approval of a mining permit and applicable CEQA documents with the approval of a Reclamation Plan and/or related approvals.

The subsections of PRC section 2714 list activities that are considered exempt from the requirements of SMARA. The majority of the listed exemptions under PRC section 2714 describe projects or activities that include mining as a component of the activity or project. For example, some exemptions identify certain excavations, grading, or other earthmoving activities that might appear to be mining, such as excavations or grading associated with farming (PRC § 2714(a)) or excavations or grading to obtain materials for roadbed construction and maintenance for timber operations (PRC § 2714(k)(1)). Others outright exempt traditional surface mining operations under a certain size (PRC §

2714(d)) or the mining of a particular mineral such as salt or other minerals from sea or bay water (PRC § 2714(g)).

As extensive as the list of exemptions under PRC section 2714 might be, generating a list of every situation involving surface mining operations that might best be exempt from SMARA is problematic. In those cases, including where surface mining operations are conducted as a component of an activity, like construction or restoration projects not covered by any exemption, the PRC 2714(f) exemption allows the Board to fill the gap and exempt "any other Surface Mining Operations that the Board determines to be of an infrequent nature and that involve only minor surface disturbances". A survey of every exemption request submitted to the Board since 2008 demonstrates the range of projects without an express exemption that included surface mining as a component of the activity. PRC section 2714(f) provides the Board the authority to exempt the mining component of the project or activity, especially in cases where the primary or underlying purpose of the project is not a traditional commercial surface mining operation.

Currently, no statutory or regulatory process for seeking an exemption from the Board under PRC section 2714(f) exists. This leaves an applicant with little choice but to contact Board staff to determine what the exemption process entails. Board staff must decide on a case-by-case basis, the content of the application including the amount and type of information required, the time it will take for Board staff to process the application, if and when a hearing is required and how the hearing will be conducted, and when the applicant can expect to receive a decision from the Board.

The lack of procedures and instructions describing the exemption request process results in, among other things; (1) a longer process, (2) increased costs to the applicant, (3) a lack of transparency for applicants and the public, (4) increased Board staff resources, (5) potentially disparate exemption outcomes or decisions, (6) potential reduced protections to the environment, (7) and an overall lack of fairness, perceived or otherwise.

The process for application for exemption from SMARA under PRC section 2714(f) is currently unstandardized, which can create confusion for operators and lead agencies about what is needed for the Board to make a

determination of exemption, thereby lengthening the process. The intent of this rulemaking is to standardize the exemption application process by clearly stating the criteria required for each request for exemption and ensuring that each request receives a diligent, objective, and comprehensive evaluation by the Board before the determination of exemption is made.

### **3. Direct Costs of Proposed Regulations for Project Proponents**

The standardization of the exemption application process has various economic costs, both directly to the project proponents and fiscally. The analysis has segmented the total costs into two sections indicating how they will be distributed; Section 3 will cover costs pertaining to project proponents and Section 4 will cover fiscal costs to lead agencies and the state. The analysis calculated costs with the assumption that an exemption application will occur once a year. This assumption is conservative because since 2014, exemptions have occurred less than annually.<sup>2</sup> Since exemptions have been granted in the past, it is plausible that project proponents already abide by some of the requirements outlined in the regulations. However, the analysis has proceeded with the assumption that the standardization of exemptions has created a formal list of action steps that all project proponents must adhere to going forward. Therefore, the analysis acknowledges that estimates may be inflated depending upon the information previously prepared by project proponents.

The analysis has identified five regulation sections as being economically significant for project proponents and estimated the total direct costs for each section in Table 1. These sections detail the requirements that will be imposed by the regulations and the costs associated with each element. It is worth noting that costs in Years 1 and 2 are identical. Therefore, it is implied that any costs referenced in this document apply to both years. Lastly, the total direct costs are displayed in a range of a lower and upper bound format. The analysis proceeded with this methodology to mitigate the uncertainty of particular cost elements.

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<sup>2</sup> Data about the frequency of exemptions were obtained from Board professional staff.

**Table 1- Total Direct Costs by Proposed Regulation Section**

<b>Section</b>		<b>Year 1</b>	<b>Year 2</b>
4051	Pre-submittal Consultation.	\$1,000-\$2,000	\$1,000-\$2,000
4053	Filing a Request for a Determination of Exemption.	\$22,400-\$66,000	\$22,400-\$66,000
4054	Response to Initial Review of a Request for a Determination of Exemption.	\$2,000-\$4,000	\$2,000-\$4,000
4056	Public Hearing.	\$10,400-\$14,400	\$10,400-\$14,400
4059	Future Modification to the Surface Mining Operation.	\$35,800-\$86,400	\$35,800-\$86,400
<b>Total</b>		<b>\$71,600-172800</b>	<b>\$71,600-172,800</b>

### **3.1. Pre-submittal Consultation, Proposed Section 4051.**

Proposed section 4051 requires the project proponent to participate in a pre-submittal consultation prior to submitting the exemption application. The pre-submittal consultation consists of three components. The first would be the Board professional staff time needed to prepare for the consultation. The second component would be the staff time for the lead agency to coordinate with the Board. The first and second cost components are fiscal costs and will be discussed in Section 4. Lastly, the third component would be the submission of the request which would take approximately four to eight hours by the project manager. Direct costs to the project proponents for section 4051 therefore amount to \$1,000 and \$2,000 for lower and upper bound estimates.

### **3.2. Filing a Request for a Determination of Exemption, Proposed Section 4053.**

Proposed section 4053 requires the project proponent to submit information to the Board in order to be considered for an exemption. The collection, aggregation, and verification of this information has various associated economic costs.

The analysis uses estimations from multiple consultants within the industry to calculate the direct costs for the project proponent. The consultants identified several professions within the organization that would be responsible for obtaining the necessary information; the hourly wage rate for each of these professions was estimated by the consultants and will be used throughout Section 3.

Administrative staff for the project proponent would spend six hours collecting the name, address, telephone number, and email address of the applicant, property owner, mineral rights owner, lessee, and SMARA lead agency with jurisdiction. Administrative staff would then spend two hours compiling legal descriptions of such property comprising the Surface Mining Operation-which would require a Title Report from a Title Company ranging from \$500 to \$2,500. Lastly, the administrative staff would spend two hours documenting the time frame planned for the proposed Surface Mining Operations and attesting to the true and accurate nature of the materials and information required by this proposed regulation section. Therefore, accounting for the title report and an estimated hourly wage for administrative staff of \$125, the lower bound estimate is \$1,750 and the upper bound estimate is \$3,750.<sup>3</sup>

Proposed regulation section 4053 would also likely require services from a project manager. The project manager would spend an hour on a map indicating the location and boundary limits of the Surface Mining Operation. The project manager would also spend eight hours assisting with the engineered grading plans. With an hourly wage of \$250, the direct costs for the project manager relating to proposed section 4053 would be \$2,250 for both the lower and upper bound estimate.<sup>4</sup>

The graphics information system (GIS) department of the project proponent would be responsible for several tasks related to section 4053. For example, GIS staff would spend two to four hours on three separate items of information: collecting identification information for each mining operation within 60 miles of the proposed operation, collecting identification information of the owner of properties contiguous to the surface mining operation, and work on a map indicating the boundaries and limits of the operation. In addition to spending two to four hours on each of those tasks, GIS staff would spend 40 hours on the engineered grading plans. With an hourly wage of \$150, the direct costs associated with GIS staff would be a lower bound estimate of \$6,900 and upper bound estimate of \$7,800.

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<sup>3</sup> The number of hours worked by the administrative staff member is 10 for both the lower and upper bound estimates.

<sup>4</sup> The number of hours worked by the project manager is 9 for both the lower and upper bound estimates.

A planner would be required to work on three cost elements associated with proposed section 4053. Each of these cost elements would take the planner two to four hours to complete. The first would be to review the documentation prepared for the Surface Mining Operation. Secondly, the planner would prepare a statement regarding the current status of the permits associated with the Surface Mining Operations. Lastly, the planner would gather and provide the lead agency staff reports concerning the approval or impacts of the Surface Mining Operation. With an hourly wage of \$200, the direct costs associated with a planner would be a lower bound estimate of \$1,200 and upper bound estimate of \$2,400.

Proposed regulation section 4053 would require work from engineers. Grading plans showing the current topography and proposed final elevations of mined lands would require 24 hours of a Mine Engineer with an hourly wage of \$200. An estimated \$5,000 would be required for an engineer to review and stamp the grading plans. So, the total estimated costs associated with engineers for proposed section 4053 would be \$9,800.

Proposed section 4053 requires the project proponent to approximate the volume of four quantifiable amounts of material pertaining to the Surface Mining Operation. Given the uncertainty of the materials for each potential surface mining project, the analysis provides an estimated range of \$125 to \$10,000 for each of the four cost elements. For these calculations, the project proponent would need to approximate the volume and the nature and type of material to be removed, the volume of the topsoil proposed to be disturbed, the volume of the overburden proposed to be disturbed, and the volume of residual mining waste proposed to remain onsite. Aggregating these costs of approximations for the four cost elements would amount to a lower bound estimate of \$500 and an upper bound estimate of \$40,000. The analysis determined it was necessary to have such a large discrepancy in the range of estimates to account for the uncertainty of the details of such approximations.

Therefore, the sum of all lower and upper bound direct cost estimates associated with proposed section 4053 is \$22,400 and \$66,000 respectively.



### **3.3. Response to Initial Review of a Request for a Determination of Exemption, Proposed Section 4054.**

Proposed section 4054 outlines the requirements for the Board and the project proponent to initially review an exemption request which requires costs for the project proponent and fiscal costs that will be discussed in Section 4. The project proponent will respond to the Board's initial review after the determination has been made. It is estimated that the project manager would spend 8 to 16 hours to respond. As previously mentioned, their hourly wage is \$250. Therefore, the economic costs associated with section 4054 for project proponents are a lower bound of \$2,000 and an upper bound of \$4,000.

### **3.4. Public Hearing, Proposed Section 4056.**

For any exemption to be determined, proposed regulation section 4056 would require a public hearing be held by the Board within 90 days of the Executive Officer's determination that the Surface Mining Operation is eligible for exemption under the regulatory scheme and SMARA. Public hearing costs would be incurred once per exemption. As a request for a determination of exemption is only expected to occur once per year, the public hearing costs would be incurred once in Year 1 and once in Year 2. These hearings would be held in the Board's offices in the County of Sacramento.

Project proponents would incur various costs as a result of the public hearing. For example, it is estimated that a project manager would spend anywhere from 24 to 40 hours preparing for the public hearing, attending it, and then following up. It is assumed that travel expenses such as transportation, lodging, and food would be included in the lower and upper bound estimates of \$6,000 and \$10,000 respectively. GIS and administrative staff would also contribute 16 hours each for the public hearing. With their hourly wage of \$150 for GIS staff and \$125 for administrative staff, direct costs from these components would be \$2,400 and \$2,000. Therefore, adding up the costs from the project manager, GIS staff, and administrative staff, the lower bound estimate is \$10,400 and the upper bound estimate is \$14,400.

### **3.5. Future Modification to the Surface Mining Operation, Proposed Section 4059.**

Proposed section 4059 states the process an applicant must abide by if there is any future modification to the Surface Mining Operation after the initial exemption has been approved. This is the most expensive section because it requires project proponents to resubmit all of their documentation updated for the modifications, incurring the costs a second time. Although unlikely, it is possible that the Board may determine that the modifications are inconsistent with the exemption as approved and require the project proponent to resubmit for the exemption. Board staff determined that there is a five percent chance of this occurring and if it does, the applicant must restart the application process. This analysis takes a conservative approach and uses the sum of all other proposed regulation sections for project proponents of \$35,800 for the lower bound estimate and \$86,400 for the upper bound estimate.<sup>5</sup> The analysis acknowledges that this estimate may be overinflating the costs to project proponents because it is assuming a full cost of an element that only has a five percent chance of occurring. However, this assumption was determined to best account for the uncertainty of driving factors that may result in higher costs.

Therefore, the sum of all lower bound estimates in Section 3 is \$71,600 and the sum of all upper bound estimates is \$172,800.

## **4. Fiscal impact of proposed regulations**

The following sections highlight the fiscal impact of the proposed regulations. Of the estimated range of \$91,043 to \$192,243 total of the entire regulations, \$19,443 is associated with fiscal costs. The breakdown of fiscal costs for each regulation section can be seen in Table 2.

### **Table 2- Total Fiscal Costs by Proposed Regulation Section**

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<sup>5</sup> The \$35,800 and \$86,400 figures come from the aggregated lower and upper bound estimates from sections 4053, 4056, 4054, and 4051. These numbers can be seen in Table 1.

Section		YEAR 1	YEAR 2
4051	Pre-submittal Consultation.	\$1,704	\$1,704
4054	Initial Review of a Request for a Determination of Exemption.	\$2,123	\$2,123
4055	Administrative Record.	\$3,277	\$3,277
4058	Following the Public Hearing.	\$1,373	\$1,373
4059	Future Modification to the Surface Mining Operation.	\$10,966	\$10,966
<b>Total</b>		<b>\$19,443</b>	<b>\$19,443</b>

#### **4.1. Pre-submittal Consultation, Proposed Section 4051.**

Direct costs to project proponents were discussed in Section 3. However, there are fiscal costs associated with proposed section 4051. For example, the Board would need to prepare for the consultation on an exemption. This would take four hours of scheduling and meeting by the Board Executive Officer, Senior Engineering Geologist, and Engineering Geologist. Considering the hourly wages of each of these positions, fiscal costs amount to \$1,319. Also, proposed section 4051 would require four hours of consulting with the Board for a lead agency planner and a staff planner. The analysis estimates the hourly wage to be \$58 and \$38 for a lead agency planner and staff planner respectively.<sup>6</sup> Therefore, total fiscal costs for section 4051 amount to \$1,704.

#### **4.2. Initial Review of a Request for a Determination of Exemption, Proposed Section 4054.**

Proposed section 4054 requires the Board to determine if the exemption request is complete within 30 days of receipt of the filing. The Board's determination would take eight hours of review by the Senior Engineering Geologist and Engineering Geologist, and four hours by the Executive Officer. Multiplying the number of hours of review by each of the position's hourly rate, the costs of the determination are \$2,123.

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<sup>6</sup> Hourly wage estimates for the lead agency planner and the staff planner are from Occupational Employment and Wage Statistics (OEWS). <https://www.bls.gov/oes/current/oes193051.htm>. There was no distinction between the lead agency planner and staff planner by the OEWS, so the analysis uses the median hourly wage rates for the staff planner and the hourly wage rate in the 90<sup>th</sup> percentile for the lead agency planner.

### **4.3. Administrative Record, Proposed Section 4055.**

Proposed section 4055 specifies the documentation, known as the Administrative Record, that must be created and maintained by the Board to document the exemption request and processing of the exemption. One of these specifications would require the Board to prepare a staff report for each exemption processed. The staff report would take eight hours of work by the Senior Engineering Geologist and the Engineering Geologist, one hour of review by the Executive Officer, and four hours of review by the Board's attorney.<sup>7</sup> In addition to the preparation of the staff report, the Board staff would hold an exemption request hearing which would take two hours for the Senior Engineering Geologist, Engineering Geologist, and Executive Officer. Hourly wage rates for Board staff were determined by the State of California's Civil Service and Exempt Pay Scales.<sup>8</sup> The analysis calculated a midpoint between the minimum and maximum values for each position and accounted for wages, employee benefits, and other operating expenses in order to determine the hourly wage; these estimates will be utilized throughout the document.

The estimated hourly wage is \$128 for the Executive Officer, \$115 for the Senior Engineering Geologist, \$87 for the Engineering Geologist, and \$220 for the attorney.<sup>9</sup> Therefore, after multiplying the hourly wage rate for each position by the number of hours required to review the staff report, the total fiscal costs associated with section 4055 are \$3,277.

### **4.4. Following the Public Hearing, Proposed Section 4058.**

Proposed section 4058 requires the Board's Executive Officer to notify the applicant and the lead agency by certified mail of the determination regarding the exemption request within 10 days of the public hearing. The preparation to inform the applicant and the lead agency would take the Executive Officer one hour, the Senior Engineering Geologist and Engineering Geologist four hours of

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<sup>7</sup> All estimates about hours of work dedicated to each regulation section throughout the fiscal cost section have been determined by Board professional staff.

<sup>8</sup> <https://www.calhr.ca.gov/Documents/exempt-pay-scale.pdf>  
[https://www.calhr.ca.gov/Pay%20Scales%20Library/PS\\_Sec\\_15.pdf](https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf)

<sup>9</sup> The hourly wage rate of the attorney is an estimate by Board professional staff based on data from a previous project.

work each, and an attorney two hours. Therefore, with an estimated hourly wage of \$128 for the Executive Officer, \$115 for the Senior Engineering Geologist, \$87 for the Engineering Geologist, and \$220 for the attorney, the total costs for this regulation section are \$1,373. The sum of all estimates in Section 4 is \$19,443.

#### **4.5. Future Modification to the Surface Mining Operation, Proposed Section 4059.**

Proposed section 4059 states the process an applicant must follow if there is any future modification to the surface mining operation. The Board may also conduct an inspection of the Surface Mining Operations and must notify the operator and the lead agency at least five days prior. The event of an inspection is unlikely, and the Board determined that there is a 10 percent chance of it occurring. Similar to the cost calculation in Section 3.1, the analysis acknowledges the 10 percent likelihood but proceeds assuming the full cost will be absorbed.

If the Board conducts an inspection, it will require eight hours to inspect the site by both the Senior Engineering Geologist and Engineering Geologist. In addition to wages, the cost of travel from Sacramento must be accounted for. Because the Board may travel to anywhere in the state, the analysis used a methodology of identifying three major airports in California in terms of passenger traffic<sup>10</sup>: San Francisco (SFO), Los Angeles (LAX), and San Diego (SAN). While this approach acknowledges that the Board would not be traveling to these airports, it serves as an appropriate proxy to cover California's vast distances. This approach is conservative from an economic perspective as LAX and SAN are significant geographic distances from Sacramento. However, this method was determined to best mitigate the uncertainty of the locations that the Board would travel to. The travel costs are displayed in Table 3.

#### **Table 3 – Estimated Travel Costs for Surface Mining Inspection under Proposed Section 4059**

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<sup>10</sup> "Visit California" provides data on the busiest airports in California in terms of Airport Passenger Traffic. <https://industry.visitcalifornia.com/research/passenger-traffic?a1=LAX&a2=SAN>. Accessed 8/18/23.

	<b>Round Trip Vehicle (Miles)<sup>11</sup></b>	<b>Private Car Costs (\$0.66 per mile)</b>
<b>SMF-SFO</b>	206	\$135
<b>SMF-LAX</b>	798	\$523
<b>SMF-SAN</b>	1,030	\$627

Another assumption that the analysis uses is that a privately owned automobile is authorized which has a cost rate of \$0.66 per mile.<sup>12</sup> Calculating the average of the potential distances traveled, the analysis estimated the travel costs to be \$444. Also, lodging costs would be necessary for the two Board staff members. For this estimate, the analysis uses the median figure of \$125 which incorporates the reimbursement rates for all counties in California.<sup>13</sup> The analysis uses maximum reimbursement allowance figures per day provided by CalHR to quantify the meals and incidental expenses-this figure is \$46. Therefore, considering the two-day trip, the sum of all costs associated with the inspection would be \$2,488.

As mentioned in Section 3, there is a five percent chance that the Board may determine that the modifications are inconsistent with the submitted documents under California Code of Regulations-this would prompt the project proponent to apply again. The analysis utilizes the same approach as in Section 3.1 and uses the sum of all previous fiscal costs of \$8,478<sup>14</sup>.

Therefore, the aggregated total fiscal costs for proposed section 4059 are \$10,966.

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<sup>11</sup> Driving distances were estimated from [airmilescalculator.com](https://www.airmilescalculator.com), <https://www.airmilescalculator.com>. Accessed 8/18/23.

<sup>12</sup> According to the GSA as of January 1<sup>st</sup> 2023, cost rates per mile for a privately owned automobile is \$0.66. <https://www.gsa.gov/plan-book/transportation-airfare-pov-etc/private-owned-vehicle-pov-mileage-reimbursement>

<sup>13</sup> <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>

<sup>14</sup> The \$8,748 figure comes from the aggregated fiscal totals from sections 4051, 4054, 4055, and 4058. These numbers can be seen in Table 2.

## **5. Benefits of the Proposed Regulations**

Although the quantification of benefits associated with the proposed regulations is beyond the scope of this Economic Impact Assessment, there are many qualitative benefits. The standardization of the exemption process addresses issues of inconsistency which fosters a fair and impartial procedure for all future applicants. Also, because of the pre-submittal process, the Board is able to ensure that they are only reviewing Surface Mining Operations that would need an exemption under SMARA. Currently, the Board occasionally receives exemption requests for construction or agricultural projects that may have components that appear to be mining, but do not meet the definition of Surface Mining Operations under SMARA Section 2735. The pre-submittal process allows the Board to effectively screen out projects that are not Surface Mining Operations which conserves resources for both the Board and the agencies of these various industries seeking an exemption unnecessarily.

Additionally, the proposed regulations could, in theory, lead to reduced costs to operators, lead agencies, and the Board, as they would prevent superfluous actions, prevent unnecessary documents from being printed and/or submitted, and reduce the amount of correspondence needed between the Board and an applicant. Because of the unstandardized nature of the current exemption process, it is difficult to explicitly measure the potential reduced costs, but a standardized procedure that is publicly available should result in a more efficient process.

The thoroughness of the standardization would also provide the Board with better data and information to improve decision making. Lastly, the Public Hearing formally provides the public with an opportunity to voice their opinions in the exemption process. This could have many benefits for the communities in which the exemptions are taking place and also it could be beneficial for the Board's decision making to hear from multiple perspectives. The Public Hearing also provides the Board with a formal platform to ask the applicant questions which could potentially enlighten the decision-making process for an exemption.

## **6. Cost Impact in California**

The Board estimates that the overall impact of the proposed regulations on California's economy would be negligible. The total direct and fiscal costs associated with the proposed regulations are a lower bound estimate of \$91,043 and upper bound of \$192,243. Therefore, the Board does not foresee the regulations significantly affecting the economy on either a macro or micro scale.

The Board projects that all additional work created by the regulations would be absorbed by positions already employed. So, it is assumed that no new jobs will be created or eliminated within the State of California as a result of the regulations. Similarly, the regulations would not expand businesses, create new businesses or eliminate existing businesses within California. Although the State and local agencies would bear the burden of costs ranging from \$91,043 to \$192,243, the standardization of the exemption process is expected to provide many benefits as discussed in the previous section.

## **7. Conclusion**

The standardization of the exemption process would have a miniscule impact on California's economy of \$91,043 to \$192,243. Given this range of estimates, the Board forecasts that the proposed regulations would not have significant fiscal impacts on individuals, businesses, or the government. The proposed regulations promote a more efficient method for the Board to grant applicant exemptions and provide various other benefits to the State of California.

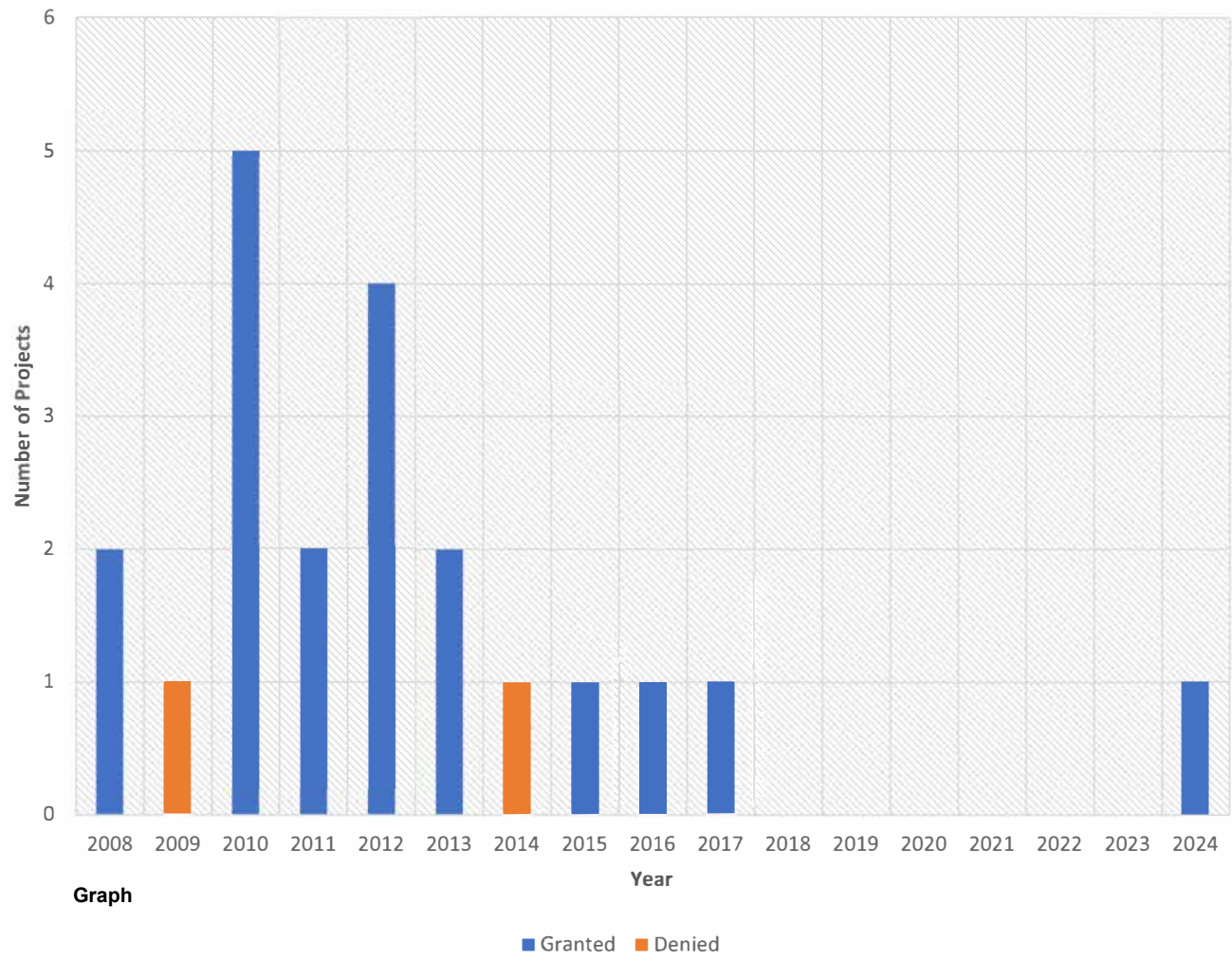


# Historical Data on PRC 2714(f)

Table

Date	Project Name	General Activity Type	General Scope	General Location	Board Determination
2008	Willeys Bypass	Highway construction	1,000,000 yds of fill, 27 acres	Mendicino County	Granted
2008	Willow Glen Drive	Road construction, rockfall protection	100,000 yds of fill, 3.9 acres	San Diego County	Granted
2009	Natomas Urban	Levee and canal improvements	85,000 yds of fill, 20 acres	Sacramento County	Denied
2010	California Vision	Site characterization for potential mine	4.48 acres	Kern County	Conditionally Granted
2010	M&T Ranch	Water intake and fish screen maintenance	150,000 tons of gravel	Butte County	Conditionally Granted
2010	Ford Construction	PG&E Easement construction	4,600 yds of fill	Tehema County	Granted
2010	Black Rock Project	California Energy Commision facility	300,000 yds of fill, 34 acres	Imperial County	Conditionally Granted
2010	Broome Ranch Project	Gravel removal following flood	100,000 yds of gravel	Ventura County	Granted
2011	Ojai Oil Company	Agricultural Mining	5,000 tons of boulders, 7 acres	Ventura County	Conditionally Granted
2011	Regional Beach Sand Project	Beach improvement	undetermined	City of San Diego	Granted
2012	Spanish Creek, Meadow Valley	River restoration	8,500 yds of gravel, 4.4 acres	Plumas County	Conditionally Granted
2012	WSID Main Canal	Renovation	5,000 yds of fill	Stanislaus County	Conditionally Granted
2012	Sand Creek	Flood management	30,000 of fill	Colusa County	Conditionally Granted
2012	East Area Project	Construction project	up to 340,000 tons of fill, 150 acres	City of Santa Paula	Conditionally Granted
2013	San Cayatano Orchard	Agricultural Mining	40,000 yds, 11 acres	Ventura County	Granted
2013	Mendicino Forest Products	Highway construction	800,000 yds, 22 acres	Mendicino County	Granted
2014	Barn Project	Highway construction	902,000 yds, 21.8 acres	Mendicino County	Denied
2015	Lower Clear Creek	River restoration	330,500 yds of sand, 43.5 acres	Shasta County	Granted
2016	Sycamore Road	Agricultural Mining	10 acres	Ventura County	Granted
2017	Hallwood Side Channel	Flood management and river restoration	3,200,000 yds of gravel	Yuba County	Conditionally Granted
2024	Gold Discover Group Atolia Project	Site characterization for potential mine	5.37 acres and 4yds	Kern County	Granted

# Historical Data on PRC 2714(f)





Agenda Item No. 13A

October 17, 2024

**Presentation: *Mining Ordinance Update***  
by: SMGB Staff

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**INFORMATION:**

The State Mining and Geology Board staff members will conduct a presentation with updates on the Mining Ordinance Update project and its' rollout progress.



Agenda Item No. 13B

October 17, 2024

**Presentation: *Department of Conservation (DOC) Panel Discussion***

by: Gabe Tiffany, Acting Director, DOC,  
Elizabeth Betancourt, Natural and Working Lands Policy Advisor, DOC,  
Jeremy Lancaster, State Geologist, CGS,  
Jacob Roper, Assistant Director, PAO,  
Katherine Litzky, Assistant Director, OLRA,  
Greg Tenorio, Attorney, Legal,  
To Be Determined, DMR

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**INFORMATION:**

Members of the DOC will discuss their roles and relationship with the Board.