



Publication Date: Friday, June 7th, 2024

OFFICIAL NOTICE OF PUBLIC MEETING

THE STATE MINING AND GEOLOGY BOARD

Will Conduct a Regular Business Meeting on:

Thursday, June 20th, 2024, at 10:00 a.m.

**California Natural Resources Headquarters
715 P Street, Conference Rooms 2-221C
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:** 235 596 568 567 and **Passcode:** whGJ4a. You may also join us by phone by dialing (916) 318-8892 and entering the **Phone Conference ID:** 878 095 25#

For questions or comments regarding this Agenda, please contact the Board by email at 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. Board Committee Reports**
 - A. Policy and Administration (Chair Landregan)
 - B. Geohazards (Chair Zafir)
 - C. Mineral Conservation (Vacant)
 - D. SMARA Compliance (Chair Kenline)
- 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.
- 11. 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.
- 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:
April 18th, 2024
- 13. Regular Business Items**
 - A. Consideration of a request for an exemption to the Surface Mining and Reclamation Act pursuant to Public Resources Code 2714(f) for the Gold Discovery Group for an exploratory drilling project located in Kern County.
 - B. Consideration and Approval of the New Board Committees Roster.
- 14. Presentations, Reports, and Informational Items**

- A. *Emergency Construction Operations and Critical Infrastructure Support* (Emelia Michel, Environmental Engineer, Granite Construction)
 - B. *SMGB Mine Inspection Update* (Paul Fry and Mallory Jones, SMGB)
 - C. *Ex-Parte Communication Disclosure Requirements* (Nicole Rinke, Esq., DAG, Attorney General's Office)
- 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.
- 16. Announcements and Future Meetings**
- 17. 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

The Board is an independent entity within the Department of Conservation under the Natural Resources Agency and is granted responsibilities and obligations under the following acts:

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.

GENERAL PROCEDURAL INFORMATION ABOUT BOARD MEETINGS

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- (4) Call a closed session by the Chair to discuss litigation and other matters
- (5) Make all testimony, files, and documents part of the administrative record

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



Agenda Item No. 12A

June 20th, 2024

Consideration and Approval of Minutes for the April 18, 2024, Regular Business Meeting

INTRODUCTION:

Approve the Conformed Minutes for the State Mining and Geology Board's April 18, 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 April 18th, Regular Business Meeting.

Respectfully submitted:

Jeffrey Schmidt,
Executive Officer



*****DRAFT*****

CONFORMED MINUTES

THE STATE MINING AND GEOLOGY BOARD

Will Conduct a Regular Business Meeting on:

Thursday, April 18th, 2024, at 10:00 a.m.

**California Natural Resources Headquarters
715 P Street, Conference Rooms 2-221A
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 10:10 a.m.

2. Pledge of Allegiance

Executive Officer Jeffrey Schmidt led the Pledge of Allegiance.

3. Roll Call and Declaration of a Quorum

Geologist Mallory Jones called roll with Members Holst, Kappmeyer, Kenline, Los Huertos, Vice Chair Landregan, and Chair Sheingold present and Quorum was declared. Member Jung joined virtually via MS Teams.

4. Review of the Agenda (Sheingold)

Chair Sheingold introduced new Board members and congratulated Member Kappmeyer on her recent retirement. Chair Sheingold mentioned changes of committees will commence during the next Board meeting. There was no executive session planned for this meeting.

5. Department Reports

A. Department of Conservation Report (Tiffany)

Deputy Director, Gabe Tiffany gave an overview of the Department for new Board members with a brief background about himself. He also gave an update on the State budget detailing a \$30-70 billion deficit. He discussed how the budget cuts have effectively ended forest biomass research, but the Department was applying for Federal funding to allow the research to continue. Travel and purchasing are continuing to be restricted. Director Tiffany also discussed the working group that includes DOC, SMGB, and DMR staff and the responsibilities and goals for the group.

B. Division of Mine Reclamation Report (Balestreri)

Division of Mine Reclamation Reporting Unit Supervisor, April Balestreri updated the Board on the 2023 annual reporting year. Courtesy emails are planned to be sent following the fee schedule approval taking place at the current Board meeting. Ms. Balestreri also reported on now DMR Supervisor Lindsay Whalin's previous position as Abandoned Land Mine Supervisor was open and closing soon. The mine inspector's workshop was also discussed and is planned to be held May 16, 2024.

C. California Geological Survey Report (Guis)

Supervising Geologist of California Geological Survey's Mineral Resources Program, Fred Guis presented on behalf of the State Geologist, Jeremy Lancaster. Fred Guis gave a brief background on CGS and specifically the Mineral Resources Program. Fred also gave an update on the different programs within CGS. New Seismic and Mineral Hazards maps with radon hazards were near competition and should be in front of the Board soon.

6. Chair Report (Sheingold)

Chair Sheingold reported that he communicates frequently with board staff, and he has meetings over the phone and virtually with DOC staff. Additionally, he continues to participate in the interdepartmental working group, and recently participated in drafting the Mt. Gaines low gross exemption appeal letter.

7. Executive Officer Report (Schmidt)

Executive Officer Jeffrey Schmidt updated the Board on the rulemakings for 2714(f), 2207 Lithium Fee and Reporting, Rule 100 Regulation changes, and Mineral Designations. Executive Officer Schmidt also updated the Board on recent and future workshops as well as the status of mining ordinances under review by Board staff.

8. Geologist Report (Fry, Jones)

Geologist Mallory Jones updated the Board on progress on the current year's inspection cycle and associated FACE reviews and submissions to DMR. Geologist Jones also updated the Board on staff's work on rulemaking packages and completed and current Lead Agency Mining Ordinance reviews. Geologist Jones also updated the Board on upcoming work and projects including the development and rollout of Mining Ordinance Workshops that will be geared toward Lead Agencies to help with the development of their updated ordinances.

9. Board Committee Reports

- A. Policy and Administration (Chair Landregan)
Nothing to Report
- B. Geohazards (Chair Zafir (Absent))
Nothing to Report
- C. Mineral Conservation (Vacant)
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

Several public comments were received pertaining to concerns regarding the Board's consideration of a 2714(f) exemption request from Gold Discovery Group for a project in Kern County.

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:
December 20th, 2023

A vote to approve the minutes from the December 20, 2023 Regular Business Meeting was taken, and it was approved with all present members voting yes except for Member Holst and Jung who abstained from voting as they were not present at the December Regular Business Meeting.

13. Regular Business Items

- A. Consideration and adoption of the 2023 Annual Mine Fee Schedule pursuant to Public Resources Code section 2207.

Senior Geologist Fry presented on and discussed the proposed 2023 annual reporting fee schedule. Department of Conservation Assistant Director of the Division of Administration, Clayton Haas discussed the Mine Reclamation Account and the State budget. Deputy Director Haas answered a number of questions from the Board regarding details of the Mine Reclamation Account.

A vote was taken and all members able to participate in the vote, voted yes. The motion for the annual fee approval passed.

- B. Consideration and adoption of non-substantive regulatory changes to various sections of the California Code of Regulations that meet the requirements of Section 100 of Title 1 for changes that are exempt from the rulemaking procedure specified in Article 5 of the Administrative Procedure Act.

Senior Geologist Paul Fry presented on the consideration of approving non-substantive changes of the California Code of Regulations under requirements of Section 100 of Title 1. Senior Geologist Fry detailed how these changes were developed in consultation with the Department of Conservation. Senior Geologist Fry discussed how Senate Bill 209 (SB 209) and Assembly Bill 1142 (AB 1142) created the Division of Mine Reclamation (DMR), headed by a Supervisor of Mine Reclamation (Supervisor), replaced the Office of Mine Reclamation (OMR), headed by the Director (Director) of the Department of Conservation (Department). While the Board has incorporated this change in previous rulemaking packages, it is necessary to fully incorporate SB 209's structural changes throughout SMARA's associated regulations through non-substantive rulemaking under Section 100 of Title 1 of the California Code of Regulations. Senior Geologist Fry also discussed how the proposed rulemaking makes conforming changes to reflect the renumbering of these statutory sections as a result of SB 209 and AB 1142.

Finally, Senior Geologist Fry detailed how this non-substantive rulemaking package is intended to correct spelling and grammatical issues, as well as to reflect a change of address of the Department, DMR, and the SMGB, when collectively the Department relocated its official address from 801 K Street in Sacramento to the new Natural Resource Agency building on 715 P Street in Sacramento. A vote was taken and all members able to participate in the vote, voted yes. The motion for the approval of the non-substantive regulatory changes passed.

14. Presentations, Reports, and Informational Items

- A. *Mining Ordinance Workshop*: Informational update on Lead Agency Mining Ordinance Workshop rollout (Board Staff)
Senior Geologist Paul Fry presented on the SMGB staff and DOC's work previously done on the Mining Ordinance Guidance Document as well as the process for lead agency mining ordinance submission, review, and certification. Senior Geologist Fry also detailed work currently being performed and future plans for a mining ordinance workshop that will be geared toward lead agencies to aid in the updating of their mining ordinances.
- B. *Our Future in Action; Implementing Cemex's Global Focus for Net Zero in California* (Kori Andrews, Director of Sustainability and Social Impact, CEMEX)
CEMEX's Director of Sustainability and Social Impact, Kori Andrews began her presentation with giving a brief background of CEMEX and their assets in the United

States. She then focused the discussion on the CEMEX sustainability model and how CEMEX plans to achieve their goal of a net-zero CO2 impact by 2050 across the company.

15. Executive Session (Closed to the Public)

No executive session was held.

16. Announcements and Future Meetings

The next Regular Board Meeting will be held on June 20, 2024.

17. Adjournment

The April State Mining and Geology Board Regular Board Meeting was adjourned by Chair Sheingold at 12:15 PM.

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



Agenda Item No. 13A.

June 20th, 2024

Consideration of a request for an exemption to the Surface Mining and Reclamation Act pursuant to Public Resources Code 2714(f) for the Gold Discovery Group for an exploratory drilling project.

INTRODUCTION:

The Surface Mining and Reclamation Act of 1975 (SMARA) exempts certain specified activities from its requirements. SMARA also allows for exemption from its requirements any other surface mining operations that the State Mining and Geology Board (SMGB) determines to be of an infrequent nature and that involve only minor surface disturbances.

On October 31, 2022, SMGB staff were contacted by Mr. Sean Tucker with Gold Discovery Group (GDG), LLC. Mr. Tucker requested an exemption from SMARA, under Public Resources Code (PRC) Section 2714(f), for their exploratory drilling and sampling project near Atolia, California. The proposed project area is located on 32 unpatented mining claims on federally managed lands in both San Bernardino and Kern counties. (See Google Maps link: <https://maps.app.goo.gl/fQHjZRBs9MJ5Mf758>)

Documents related to Agenda Item No. 13A can be viewed and downloaded from this link: <https://doc.box.com/s/afrsfr20m8mp4y2bfp1dehxdjxp8az7>

On December 20, 2023, during the SMGB's regular business meeting, Mr. Tucker presented information about the GDG exploratory project. At the meeting and after discussing the item, the SMGB decided to continue consideration of the project until the next scheduled business meeting. The Staff report and supporting documentation for the December 2023 Regular Business Meeting can be accessed here: <https://doc.box.com/s/109zflueeznx0rb315eqqj1o1md9utjw>

STATUTORY AND REGULATORY AUTHORITY:

SMARA requires that persons conducting surface mining operations obtain a permit, approval of a reclamation plan and financial assurances from the SMARA lead agency before conducting surface mining operations. (PRC Sections 2770). Public Resource Code (PRC) Section 2735 defines surface mining operations and states:

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

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

PRC Section 2714(d) exempts the following activity from SMARA:

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

Additional specific exemptions are provided for, among other things, certain farming and agricultural activities, construction of structures, operation of mineral processing plants, and emergency excavations or grading conducted by certain agencies in order to repair property affected by natural disasters. SMARA also provides for an exemption from its requirements when the SMGB determines that a surface mining operation is infrequent and involves only minor surface disturbance. PRC Section 2714(f) specifically states:

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

An exemption under PRC Section 2714(f) relieves the operator from obtaining an approved reclamation plan and financial assurances from the SMARA lead agency.

ADDITIONAL BACKGROUND:

- A Memorandum of Understanding, dated October 1992, exists between the United States Department of the Interior, Bureau of Land Management (BLM); the United States Department of Agriculture, Forest Service; the California Department of Conservation; and the SMGB.
- A Memorandum of Understanding, dated June 1994, exists between the BLM and Kern County.
- *Nelson v. Kern*, 190 Cal. App. 4th 252 (2010), a published Opinion from the Court of Appeal of the State of California, Fifth Appellate District, dated November 19, 2010, regarding the California Environmental Quality Act and the application of state and federal mining law. *Nelson v. Kern* addressed a different project in Kern County. As relevant here, however, the court of appeal held that review of a project under the National Environmental Policy Act (NEPA) does not substitute for review of a project pursuant to the California Environmental Quality Act—regardless of review under NEPA, lead agencies must still insure that CEQA is complied with.
- A letter from GDG's attorney to the SMGB's executive officer, dated February 5, 2024, regarding the project.
- Gold Discovery Group 2714(f) Exemption Presentation

Copies of all documents can be viewed and downloaded from this link:

<https://doc.box.com/s/afrsfr20m8mp4y2bfp1dehxdjxp8az7>

CONSIDERATIONS:

The SMGB typically considers the four criteria while determining an exemption from SMARA under PRC Section 2714(f):

Criteria 1 - Compliance with the California Environmental Quality Act (CEQA):

Pursuant to PRC Section 2712(a), has an environmental review been completed for the proposed activity either separately or as part of a larger project? PRC Section 2712(a) states *"It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses."*

Criteria 2 - Local authority:

Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency? PRC Section 2715 states *"No provision of this chapter or any ruling, requirement, or policy of*

the board is a limitation on any of the following:

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

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

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

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

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

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

PRC Section 2770(a) states "Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article."

Criteria 3 - End use of the mined lands:

Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity is proposed to occur defined? PRC Section 2711(b) states "The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land."

PRC Section 2712 states "It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

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

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

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

Criteria 4 - Impacts of the operation on commercial activities:

Pursuant to PRC Section 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered? PRC Section 2714(b) states "Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

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

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

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

(4) Surplus materials shall not be exported from the site unless and until actual construction work has

commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued."

DISCUSSION:

Not all surface mining operations are an efficient "fit" under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of "an infrequent nature" and involves only "minor surface disturbance."

According to GDG, approximately 5.37-acres would be disturbed and roughly 4 cubic yards of material will be removed as a result of the exploratory and sampling activities. GDG indicated that they will be drilling 293 exploratory borings, with each boring taking approximately one day to complete.

GDG's Plan of Operation indicates that:

"Boreholes are to be drilled with a hollow stem auger drill rig. The topsoil of 2"-4" will be carefully salvaged when prepping the drill hole to reclaim the seed bank that is present prior to drilling operations commencing each day and will be kept separate from any other soil brought to the surface and then used to reclaim the borehole after drilling each borehole. This rig type does not need water or air to drill. No clearing of tracks or pads are needed. No sumps are needed. Drilling will be to bedrock in some instances, with a maximum depth of 24ft. The expected material is unconsolidated sediment. No hammer, or percussion drilling will be undertaken. All material from the drilling will be sampled, bagged, and removed from site. On completion of the boreholes being drilled, the top of the hole will be filled with the disturbed sediments from the surface and leveled off. The maximum amount of excess sediment from the drill hole after filling the drill hole in with the cuttings is not more than two 5-gallon buckets of material, if we in fact drilled to the maximum of 24 feet. We simply spread the material around the drill hole area, as to return the area to the same contour as it was prior to drilling.... Drill sites will be rehabilitated on completion or abandonment of the hole. Therefore, at any one time, no un-reclaimed/un-rehabilitated sites will exist. In any instance, only a single active site will exist..."

Surface mining operations that are larger than 1-acre or disturb more than 1,000 cubic yards are subject to SMARA. (PRC Section 2714(d)). The SMGB also has the discretion to exempt other surface mining operations that it determines are of an infrequent nature and that involve only minor surface disturbances. (PRC Section 2714(f)). In the case of this project, GDG is drilling a single soil boring at one location at one time, then immediately abandoning the hole, raking the area, and leaving minimal disturbance before moving to the next location. Cumulatively the drill rig and supporting equipment are indicated to disturb more than five acres; however, this disturbance is limited to a small drill area that is immediately reclaimed and travelling between drill locations. GDG indicated that they are minimizing travel off already existing roads. Board staff would consider this activity to be "minor surface disturbance" and of "infrequent nature."

Criteria No. 1: Pursuant to PRC Section 2712(a), has an environmental review been completed on the proposed activity either separately or as part of a larger project?

The BLM completed environmental review of the project under the National Environmental Policy Act and found that this project has no significant impact even though the project is located within the boundaries of critical tortoise habitat, overlaps the Fremont-Kramer Area of Critical environmental Concern and the Mohave Ground Squirrel Conservation Area as identified by the West Mojave Management Plan. In BLMs environmental analysis, they determined that "the proposed action is not a major federal action and does not significantly affect the quality of the human environment. Therefore, an environmental impact statement (EIS) [pursuant to NEPA] is

not required and will not be prepared.” In addition, “The proposal would be expected to only result in short-term impacts through drilling of 8” diameter holes and limited overland (cross-country) travel to access some of the drill sites. No blading or other road-building would be performed. The proponent would rake out their vehicle tracks upon exiting each site.... Potential short-term impacts include tire tracks and limited crushing of vegetation from overland (cross-country) driving by the mobile drill rig and support vehicle. All boreholes will be refilled upon completion and all tracks will be raked upon exiting the pertinent site(s). None of these impacts would be significant at the local scale or cumulatively because of the small scale of the project.”

GDG did not provide documentation of environmental analysis for this project under CEQA from Kern County. Typically, the lead agency would be responsible for complying with CEQA. While analysis under NEPA is not necessarily a substitute for analysis of a project under CEQA, the BLM's analysis of the proposed project suggests that the project will not have a significant effect on the environment. For purposes of Criteria No.1, which is aimed at ensuring the exempted project will not have environmental impacts, the NEPA analysis that the BLM completed suggests that the proposed exploration activities are either not a project under CEQA or exempt pursuant to CEQA's common sense exemption because they will not have the potential to cause environmental impacts (14 CCR section 1506(b)(3)).

Criteria No. 2: Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency?

GDG has obtained authorization from the BLM to “enter and gather samples of material from 32 unpatented placer mining claims, driving a rubber-tired drill rig along certain routes to and within those claims, drilling a series of 293 sample holes up to 30 feet deep and 8-inches diameter, refilling and plugging the same holes with the excess material, and raking any tire tracks upon exiting each drill location.” (BLM Record of Decision, dated August 21, 2023). The BLM approved Plan of Operations also requires GDG to maintain a \$3,000 financial assurance for the entire duration of the project. A detailed project description can be reviewed at BLM's website: <https://eplanning.blm.gov/eplanning-ui/project/2023447/510>

GDG provided a letter from Kern County, dated January 11, 2022, indicating that the project was subject to SMARA as it exceeded the one-acre SMARA threshold and that the BLM authorizations were not sufficient to conduct the exploratory activities. Kern County also advised GDG that the SMGB could potentially determine that the project is exempt from SMARA under PRC section 2714(f)

Criteria No. 3: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the proposed activity is to occur defined?

The end use of the area on which the activity is proposed will remain as open space.

Criteria No. 4: Pursuant to PRC Sections 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered?

The materials to be excavated from the mining operation are proposed to be used solely for the extraction of representative materials for geologic sampling and bulk testing. Since the activity being performed is related to site specific testing, no impact on commercial interests or competitive advantage exists.

SUGGESTED SMGB MOTION:

To grant the request for a one-time exemption:

Board Chair, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by Gold Discovery Group LLC, and as described in this report and its attachments, is not subject to the requirements of SMARA, and that the SMGB grant a one-time exemption for this project from SMARA under its authority provided by Public Resources Code Section 2714(f).

OR

To deny the request for a one-time exemption:

Board Chair, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by Gold Discovery Group LLC, and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).

Respectfully submitted:



Jeffrey Schmidt,
Executive Officer



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

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June 17, 2024

State Mining and Geology Board
Via email

**RE: June 20, 2024 Agenda Item 13A:
Gold Discovery Group's request for a PRC 2714(f) Exemption**

Dear Board members,

Staff has provided you with a staff report for agenda item 13.A that presents two alternate motions—to either approve or deny the requested Public Resources Code (PRC) 2714(f) exemption for the proposed exploration activities in Kern County. The requester and his counsel have asserted that consideration of the exemption is not subject to CEQA; commenters at your prior meeting suggested otherwise. Given these opposing comments, this memo is intended to provide you with CEQA's applicable legal framework for the exemption decision now before you.

I. Is the approval of a 2714(f) exemption a “project”?

To determine whether CEQA applies to your decision, the first question is whether or not the decision is a “project.” CEQA defines a “project” as

an activity which may cause either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other form of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Cal. Pub. Res. Code § 21065). CEQA's implementing regulations similarly provide, in relevant part, that "[p]rivate activities which require approval from a government agency" are subject to CEQA. (Cal. Code Regs., tit. 14, § (14 CCR) 15002(b)(3)). CEQA does not apply to private actions "unless the action involves governmental participation, financing or approval." (14 CCR 15002(c)).

Here, you are asked to request approval of an exemption to SMARA. You could take the position that a determination that the activity is exempt does not involve the issuance of an entitlement or other approval and is, therefore, exempt from CEQA. On the other hand, it could be construed to call on governmental participation and to, therefore, require CEQA compliance. How CEQA applies to PRC 2714(f) exemption determinations has not, to my knowledge, been judicially determined. Generally speaking, courts interpret CEQA's requirements broadly to afford the fullest protection to the environment, but they do so only within the reasonable scope of the statutory language. (See *Sunset Sky Ranch Pilots Association v. County of Sacramento*, 47 Cal. 4th 902, 907 (2009)).

The second question to determine whether an action is a project within the scope of CEQA is whether the decision "may cause" a direct or reasonably foreseeable indirect change in the environment. (PRC 21065; 14 CCR 15060(c)). Here, the Bureau of Land Management (BLM) has conducted environmental review and determined, with the inclusion of mitigation measures, that for NEPA purposes the project will not have significant environmental impact.¹ Note, however, that the standards for finding no significant impact and the process for arriving at that conclusion are different under NEPA than under CEQA. (See section III below for more discussion).

The third question for determining whether an activity is a project for CEQA purposes, is whether the Agency's decision is discretionary versus ministerial; only discretionary actions are considered projects. (PRC 21080(b)(1); 14 CCR § 15268.) GDG asserts that the Board's determination of whether Section 2714(f) applies is a ministerial decision that simply involves determining whether GDG's proposed activity is "infrequent in nature" and involves "only minor surface disturbances." (See Kerry Shapiro February 5, 2024 letter to Jeffrey Schmidt). An action is generally only ministerial if the agency's decision involves little or no judgment and merely determines whether the project conforms to fixed, objective standards. (14 CCR 15369). Here, PRC 2714(f) requires the SMGB to exercise its judgment in determining whether the activity is of an 'infrequent nature' and involves 'only minor surface disturbances'—neither the statute or

¹ Gold Discovery Group Exploratory Drilling Project Environmental Assessment (see https://eplanning.blm.gov/public_projects/2023447/200546100/20084389/250090571/2023-0007-EA_GoldDiscoveryGroup_Drilling_EA_20230821_final.pdf); Finding of No Significant Impact (see https://eplanning.blm.gov/public_projects/2023447/200546100/20084378/250090560/SIGNED%20FO_NSI_GDG%20Drilling_20230821.pdf).

SMGB's regulations include fixed, objective standards for these criteria. Further, according to the CEQA Guidelines, when a project involves an approval process with elements of both ministerial and discretionary action, it will be deemed discretionary and subject to CEQA. (14 CCR § 15268(d).)

II. Is the approval of a 2714(f) exemption exempt from CEQA review?

If you determine the approval of a 2714(f) exemption is a project, the next question is to consider whether the approval is exempt from CEQA's review requirements. A project can be exempt pursuant to a statutory exemption, a categorical exemption, or the common sense exemption. The only exemption at issue here is the common sense exemption.

The "common sense exemption" applies "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (14 CCR 15061(b)(3).) GDG argues this exemption applies to its request for a 2714(f) exemption. "The 'common sense' exemption is reserved for those obviously exempt projects. Where reasonable questions can be raised about whether the project *might* have a significant impact, the agency cannot find with certainty the project is exempt. (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal. App. 4th 173.)

The activity in question here is the Board's determination that the Section 2714(f) exemption applies to GDG's proposed exploratory activities on federal lands managed by the BLM. The BLM evaluated these same activities under the National Environmental Policy Act (NEPA). Notably, BLM did not find GDG's proposed activities qualified for a categorical exclusion under NEPA (a categorical exclusion would typically apply to activities that do not normally have a significant impact on the environment (40 Code of Federal Regulations 1508.1(d)), similar to the categorical exemptions spelled out in CEQA). Rather, BLM prepared an Environmental Assessment (EA) to determine whether GDG's proposed activities would cause any significant effects. BLM relied on the factual evidence in the EA to issue a "Finding of No Significant Impact" (FONSI) under NEPA and concluded a full environmental impact statement (EIS) would not be prepared. The BLM's EA found that GDG's proposed activities had the potential to cause environmental effects on various resource areas, including vegetation and wildlife habitat. It also concluded that implementation of project design features would be expected to mitigate potential impacts. While the BLM's analysis led it to a conclusion of no significant impact, the fact that the BLM prepared an EA in the first place to evaluate potential impacts likely belies GDG's assertion that the "common sense" exemption applies to negate CEQA's requirement for analysis. That is, the evidence in the record before the Board likely does not support the finding that "with *certainty* that there is no possibility that the activity in question may have a significant effect on the environment."

III. Can the EA and FONSI substitute for any applicable requirements for analysis pursuant to CEQA?

You may logically now be wondering whether the BLM's EA and finding of no significant impact for NEPA purposes can suffice for any CEQA requirements that may apply to the Board's 2714(f) determination. An analysis under NEPA may be used for compliance with CEQA, if it complies with CEQA's procedural and substantive requirements. (14 CCR 15221; see also *Nelson v. County of Kern*, 190 Cal.App.4th 252, 279 (2010).) For example, "Because NEPA does not require a separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before" the NEPA analysis can be used as a substitute for CEQA. (14 CCR 15221(b)). In addition, from a procedural standpoint, a lead agency should provide notice that it intends to rely on an EA in place of a negative or mitigated negative declaration and provide that notice as if it were issuing the notice under CEQA. (14 CCR 15225(a); 15087; 14 CCR 15072(b)). It is not clear if these requirements have been met.

Sincerely,

Nicole U. Rinke

NICOLE U. RINKE
Deputy Attorney General

For ROB BONTA
Attorney General

NUR:kd

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GDG Board letter re CEQA and 2714(f).docx



Agenda Item No. 13B

June 20th, 2024

New Board committees roster and tasks and goals

DISCUSSION

STANDING COMMITTEES AND ASSIGNMENTS

The Board continues with four separate committees to help complete specific tasks. Each committee will offer a heightened focus on one of the Board's four primary issue areas.

COMMITTEE	MEMBERS
Policy and Administration	Stephanie Landregan, Chair
	Janet Kappmeyer, Vice Chair
	George Kenline
Geohazards	Zia Zafir, Chair
	Marc Los Huertos, Vice Chair
	Stephanie Landregan
Mineral Conservation	Janet Kappmeyer, Chair
	Eric Holst, Vice Chair
	Zia Zafir
SMARA Compliance	George Kenline, Chair
	Fred Jung, Vice Chair
	Marc Los Huertos

Larry Sheingold, Board Chair, will serve as an ex-officio member on each committee

Policy and Administration Committee

As the committee primarily responsible for reviewing and improving Board management, Policy & Administration will work with staff to catalog, prioritize, and discuss ways to improve all Board functions. The result will form the basis for the Board's current and future agendas.

- Review the SMGB annual report, to be approved by the Board and sent to the Legislature and the Governor
- Improve the Board's communication with local lead agencies and operators and increase awareness of the Board's mission, activities, and services
- Evaluate the Executive Officer's performance

Geohazards

This committee addresses issues pertaining to earthquakes and other geological hazards from the Alquist-Priolo Earthquake Fault Zoning Act and the Seismic Hazards Mapping Act.

- Focus on Alquist-Priolo and Seismic Mapping rulemaking, including tsunami mapping, inundation zones, and the earthquake early warning system
- Seek to increase involvement with the California Geological Survey on programs relating to seismic hazards mapping, earthquake fault zoning, landslide and liquefaction mapping, and tsunami threats

Mineral Conservation

This committee will focus on issues related to the development, use and conservation of mineral resources as well as the reclamation of lands affected by surface mining.

- Promote mineral resource conservation and reclamation performance standards
- Work with Board staff to develop a mineral resource management policy
- Promote agency outreach regarding Mineral Resource Conservation Plans

SMARA Compliance

This committee will focus on SMARA compliance and enforcement procedures to ensure that lead agencies and mining operators adhere to the law and that violations are addressed. SMARA Compliance will also focus on assuring that the forty-nine surface mining operations under SMGB jurisdiction comply with the new and existing mandates.

- Ensure that fees are paid by all mine operators within the Board's jurisdiction, are adequate to cover administrative costs, and are paid within the SMARA specified deadlines
- Develop a strategy to improve lead agency performance and compliance
- Evaluate the Board's performance as a lead agency
- Consider SMARA amendments related to the Board's lead agency functions

EXECUTIVE OFFICER RECOMMENDATION:

Adopt the proposed new Board committees roster and tasks and goals.

SUGGESTED MOTION:

Board Chair and Members, considering the information before the State Mining and Geology Board, I move that the Board adopt the proposed new Board committees roster and tasks and goals as discussed and presented today.

Respectfully submitted:

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Jeffrey Schmidt

Executive Officer



Agenda Item No. 14A

June 20, 2024

Presentation: *Emergency Construction Operations and Critical Infrastructure Support*
by: Emelia Michel, Environmental Engineer, Granite Construction

INFORMATION:

The construction materials industry supports critical infrastructure by providing solutions during emergencies. During this presentation Environmental Engineer, Emelia Michel, of Granite Construction will present some case studies and highlight how mineral resources and mining operations make our society resilient.



Agenda Item No. 14B

June 20, 2024

Presentation: *SMGB Mine Inspections Update*

by: Paul Fry, Senior Geologist, Board Staff
and
Mallory Jones, Geologist, Board Staff

INFORMATION:

Board staff members, Paul Fry, Senior Geologist and Mallory Jones, Geologist will conduct a presentation with updates on annual inspections. The presentation will provide overviews of the annual inspection and FACE processes as well as an overview of the mines under SMGB lead agency authority. Additionally, staff will detail informal and formal enforcement as well as case studies.



Agenda Item No. 14C

June 20, 2024

Presentation: *Ex-Parte Communication Disclosure Requirements*
by: Nicole Rinke, Esq., DAG, Attorney General's Office

INFORMATION:

The legal counsel for the State Mining and Geology Board (SMGB), Deputy Attorney General, Nicole Rinke, will provide a legal overview regarding Board Member ex-parte communication disclosure requirements.