

Article 11. Financial Assurance Mechanisms

§ 3802. Definitions. The following definitions shall govern the interpretation of this article:

(a) "Budget Set Aside" means a financial assurance mechanism, meeting the requirements of Section 3806.2 of this article, by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

(b) "Financial Assurance ~~Amount-Cost Estimate~~" means ~~that the~~ amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with section 3804, and shall constitute an obligation to pay by the operator.

(c) "Financial Assurance Mechanism" means an instrument, fund or other form of Financial Assurance as provided in Section 2773.1 ~~(a) and (e)~~ of the Public Resources Code and this Article.

(d) "Pledge of Revenue" means a financial assurance mechanism meeting the requirements of Section 3806.1, of this Article, by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-~~2734~~2736, Public Resources Code.

§ 3803. Financial Assurance Mechanisms. ~~As outlined by this article, financial assurances~~ Financial Assurance Mechanisms may take the form of any one or a combination of the following: ~~which the lead agency, upon review by the Department of Conservation, reasonably determines are adequate to perform reclamation in accordance with the approved reclamation plan.~~

(a) For non-governmental entity operators:

- (1) Surety bonds;
- (2) Irrevocable letters of credit; and
- (3) Trust funds;

(b) For governmental entity operators:

- (1) Surety bonds;
- (2) Irrevocable letters of credit;
- (3) Trust funds;
- (4) Pledges of Revenue; or
- (5) Budget Set Aside.

NOTE

Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

Adopt new § 3803.1. Surety Bonds

Surety bonds submitted as a Financial Assurance Mechanism shall be provided on an approved form set forth in California Code of Regulations, Title 11, Division 1, Chapter ~~1~~, Subchapter 2, Article 53. Copies of approved surety bond forms may be obtained by contacting the board.

NOTE

Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Sections 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.

Adopt new § 3803.2. Irrevocable Letters of Credit

Irrevocable Letters of Credit submitted as a Financial Assurance Mechanism shall be provided only from a ~~bank~~ financial institution authorized to do business in the State of California. The Irrevocable Letter of

Credit shall be on, or attached to, the bank's financial institution's letterhead and include the text on form ILoC-1 (1/18), which is hereby incorporated by reference. Non-substantial changes to the text of form ILoC-1 (1/18) may be made to accommodate the bank's financial institution's business practices with respect to Irrevocable Letters of Credit, but shall not conflict with or materially alter form ILoC-1 (1/18) subject to the procedures set forth in Public Resources Code section 2773.4, subdivisions (e)(2)(A) and (B).

NOTE

Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Sections 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.

Adopt new § 3803.3. Trust Funds

Trust funds in the form of Certificate of Deposits or other cash financial instruments submitted as Financial Assurance Mechanisms shall be on, or attached to, the bank's financial institution's letterhead and include the text on form CD-1 (1/18), which is hereby incorporated by reference. Non-substantial changes to the text of form CD-1 (1/18) may be made to accommodate the bank's financial institution's business practices with respect to the specific type of trust fund, but shall not conflict with or materially alter form CD-1 (1/18) subject to the procedures set forth in Public Resources Code section 2773.4, subdivisions (e)(2)(A) and (B). Certificate of Deposits or other cash financial instruments shall be provided only from federally insured depository institutions authorized to do business in the State of California using federally insured accounts.

NOTE

Authority cited: Sections 2755, 2773.1, and 2773.4, Public Resources Code. Reference: Section 2773.1 (a)(1) and 2773.4 (e)(3) Public Resources Code.

CERTIFICATE OF DEPOSIT/CASH ACCOUNT

Account or Deposit No. _____

Amount: _____

Issued Date: _____

CA Mine Name/ID No. #: _____

Permit No. #: _____

Reclamation Plan Name/ No. #: _____

This certificate of deposit or cash account (CD) (account or deposit number) is issued on behalf of _____ and may only be released or encashed through the following _____ (APPLICANT) procedures:

_____ (FINANCIAL INSTITUTION), organized and existing under the laws of the _____ State of _____, and licensed a federally insured depository institution authorized to do business in the State of California using federally insured accounts, issues this CD (account or deposit number), in the amount of \$ _____, which shall automatically renew each year, unless released or encashed according to the terms and conditions set forth below.

This CD is for the benefit of payees _____ and the Department of Conservation, Division of Mine Reclamation. _____ (LEAD AGENCY) hereby consents to the provision by _____ (APPLICANT) to the _____ (FINANCIAL INSTITUTION) and the _____ (LEAD AGENCY) Department of Conservation, Division of Mine Reclamation of such information concerning the CD as the _____ (LEAD AGENCY) and the Department of Conservation, Division of Mine Reclamation may request in writing information regarding the status of the CD, including but not limited to the amount, the account number, the maturity date, and the rate of interest.

_____ (FINANCIAL INSTITUTION) shall be authorized to encash the CD at any time at the request of either the _____ (LEAD AGENCY) or the Department of Conservation, Division of Mine Reclamation, and to deliver such funds to the _____ (LEAD AGENCY) or the Department of Conservation, Division of Mine Reclamation but only upon written consent for the encashment and certification from both the _____ (LEAD AGENCY) and the Department of Conservation, Division of Mine Reclamation that _____ (APPLICANT) has been determined to be financially incapable of reclamation or has abandoned the mining operation following a noticed public hearing, all in accordance with the provisions of Public Resources Code Section 2773.1(b).

_____ (FINANCIAL INSTITUTION) shall be authorized to encash the CD at the instance and request of _____ (APPLICANT), and to deliver such funds to _____ (APPLICANT)

_____, only upon receipt of a written release from both the
(APPLICANT)

_____, and the Department of Conservation, Division of Mine Reclamation
(LEAD AGENCY)
relinquishing their claim and interest to this CD.

~~Interest earned under this CD is not subject to the terms and conditions above, and may be paid to~~
~~_____ at any time. Any interest paid to the applicant in accordance with the~~
(APPLICANT)
~~financial institution's practices may not reduce the initial principal amount of this CD. Where an applicant elects~~
~~to have earned interest subject to the terms and conditions above, they shall do so by indicating here~~
~~_____ at the time this CD is issued.~~
(APPLICANT INITIALS)

The individuals signing below certify they agree to the terms mentioned above and that the signatories are authorized to sign this agreement on behalf of their respective entity.

(APPLICANT)

(LEAD AGENCY)

Date: _____

Date: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

(FINANCIAL INSTITUTION)

Date: _____

By: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

[SEAL]

IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit No. Number

Amount:

Expiration Date:

CA Mine ID No. #:

Permit No. #:

Reclamation Plan Name/ No. #:

Beneficiary(ies): 1) _____
(LEAD AGENCY)

Address: _____

(2) California Department of Conservation,
Division of Mine Reclamation
801 K Street, MS 09-06
Sacramento, California 95814-3529

The amount of \$ _____ will be paid to the Beneficiary(ies) upon the
authorization and direction of a duly authorized representative of the
_____ or the Department of Conservation, Division of Mine
(LEAD AGENCY)

Reclamation when accompanied by the documents hereafter described and subject to the following
conditions.

(1) The _____ may draw hereunder by means of its draft(s),
(LEAD AGENCY)
accompanied by this original Letter of Credit, a statement authorizing the release to the
_____ signed by a duly authorized representative of the Department
(LEAD AGENCY)
of Conservation, Division of Mine Reclamation, and the following signed and dated statement,
appropriately completed:

The amount of our accompanying draft \$ _____ represents a
sum due to the _____ pursuant to Public Resources Code
(LEAD AGENCY)
Section 2773.1(b). The _____ has determined, following a
(LEAD AGENCY)
noticed public hearing, that _____ is financially incapable of
(APPLICANT)
performing reclamation in accordance with its approved reclamation plan, or has abandoned
its surface mining operation without completing reclamation. The individual signing below

certifies that the foregoing statements are true and correct and that the signatory is authorized to sign and deliver this statement on behalf of the _____, and
(LEAD AGENCY)

that a copy of this statement has been forwarded by certified mail or courier service to the Department of Conservation, Division of Mine Reclamation.

(LEAD AGENCY)
By: _____
Date: _____
Name: _____
Title: _____
Phone: _____
Email: _____

(2) The Department of Conservation, Division of Mine Reclamation may draw hereunder by means of its draft(s) and the following signed and dated statement appropriately completed (the original Letter of Credit need not accompany the draft(s)):

The amount of our accompanying draft \$ _____ is due to the Department of Conservation, Division of Mine Reclamation pursuant to Public Resources Code Section 2773.1(b). The State Mining and Geology Board, or the _____, has determined, following a public hearing, that
(LEAD AGENCY)

_____ is financially incapable of performing
(APPLICANT)
reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without completing reclamation. The individual signing below certifies that the foregoing statements are true and correct and that the signatory is authorized to sign and deliver this statement on behalf of the Department of Conservation, Division of Mine Reclamation and that a copy of this statement has been forwarded by certified mail or courier service to the _____.
(LEAD AGENCY)

California Department of Conservation,
Division of Mine Reclamation
By: _____
Date: _____
Name: _____
Phone: _____
Email: _____

In no event shall the aggregate amount drawn hereunder by either or both of the Beneficiaries exceed the amount of this Letter of Credit first set forth above.

This Letter of Credit shall be in full force and effect until the earliest of the following events:

1) receipt of a written statement by a duly authorized representative of both the _____ and the Department of Conservation, Division of Mine _____
(LEAD AGENCY)

Reclamation that all of the obligations secured hereby have been performed;

2) until disbursement of the full amount of this Letter of Credit pursuant to the preceding paragraphs;
3) until the Expiration Date hereunder.

The Letter of Credit shall expire on _____, ~~or any extended~~
(Expiration Date)
date as hereinafter provided, at the counters of _____

(FINANCIAL INSTITUTION AND ADDRESS)
a financial institution authorized to do business in the State of California, ~~or any extended date as~~
hereinafter provided. It is a condition of this Letter of Credit that it shall be automatically extended
upon the Expiration Date or extended Expiration Date for additional periods, each of one year, unless
at least one hundred twenty (120) days prior to the then relevant expiration date

_____ has advised the
(FINANCIAL INSTITUTION)

_____ and the Department of Conservation, Division of
(LEAD AGENCY)
Mine Reclamation by registered or certified mail that _____ elects not

to extend. In that event, either the _____ or the Department of
(FINANCIAL INSTITUTION)
(LEAD AGENCY)

Conservation, Division of Mine Reclamation may draw hereunder on or prior to the then relevant
expiration date upon written concurrence of the other entity, up to the full amount available
hereunder, against the sight draft(s) on _____, bearing the number of
(FINANCIAL INSTITUTION)
this Letter of Credit.

The amount of this Letter of Credit may be reduced in accordance to conditions set forth in the
Reclamation Plan, provided that any such reduction shall be made only with the written approval of a
duly authorized representative of both the _____ and the Department

_____ shall not be
(LEAD AGENCY)
(FINANCIAL INSTITUTION)
required to determine the satisfaction of conditions set forth in the Reclamation Plan.

This agreement shall be governed by and construed in accordance with the laws of the State
of California. This credit shall be subject to the Uniform Customs and Practice for Documentary
Credits (2007 Revision), International Chamber of Commerce Publication Number 600
notwithstanding Article 36 of said publication. If this Letter of Credit expires during an interruption of
business as described in Article 36, _____ is hereby specifically
(FINANCIAL INSTITUTION)
authorized and agrees to effect payment if the letter is drawn within thirty (30) days after the
resumption of business.

This shall constitute an irrevocable commitment of funds which shall not be subject to recall by
before the Expiration Date hereunder.

(FINANCIAL INSTITUTION)

[SEAL]

(FINANCIAL INSTITUTION)

By:

Date:

Name:

Title:

Phone:

Email:

DRAFT