

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: Section 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 2773.1 and 2773.4, Public Resources Code. Reference: Sections 2773.1 and 2773.4 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 authorized to do business in the State of California. The Irrevocable Letter of Credit shall be on, or attached to, the bank'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 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 2773.1 and 2773.4, Public Resources Code. Reference: Sections 2773.1 and 2773.4 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 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 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: Section 2773.1 and 2773.4, Public Resources Code. Reference: Section 2773.1 and 2773.4 Public Resources Code.

CERTIFICATE OF DEPOSIT/CASH ACCOUNT

CA Mine Name/ID #: _____

Permit #: _____

Reclamation Plan Name/#: _____

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:

_____, organized and existing under the laws of the

(FINANCIAL INSTITUTION)
State of _____, and licensed to do business in the State of California, 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

(LEAD AGENCY)
Conservation, Division of Mine Reclamation. _____ hereby consents to the

provision by _____ to the _____ and the

(FINANCIAL INSTITUTION) (LEAD AGENCY)

Department of Conservation, Division of Mine Reclamation of such information concerning the CD as the
_____ and the Department of Conservation, Division of Mine Reclamation

(LEAD AGENCY)
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.

_____ shall be authorized to encash the CD at any time at the request

(FINANCIAL INSTITUTION)
of either the _____ or the Department of Conservation, Division of Mine

(LEAD AGENCY)
Reclamation, and to deliver such funds to the _____ or the Department of

(LEAD AGENCY)

Conservation, Division of Mine Reclamation but only upon written consent for the encashment and certification
from both the _____ and the Department of Conservation, Division of Mine

(LEAD AGENCY)
Reclamation that _____ has been determined to be financially incapable

(APPLICANT)

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).

_____ shall be authorized to encash the CD at the instance and

(FINANCIAL INSTITUTION)
request of _____, 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.
(APPLICANT)

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)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

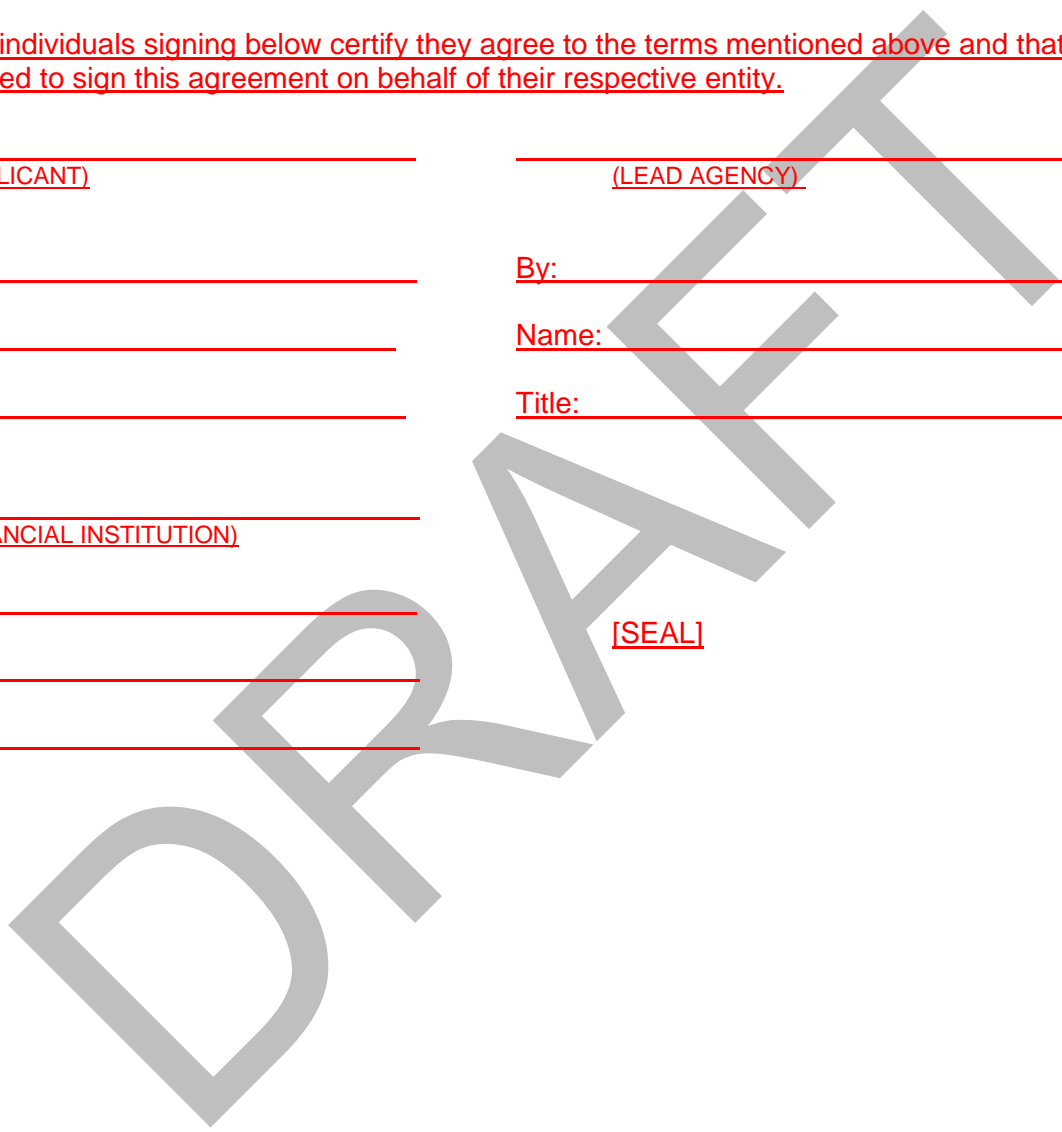
(FINANCIAL INSTITUTION)

By: _____

[SEAL]

Name: _____

Title: _____



IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit Number _____

Amount: _____

Expiration Date: _____

CA Mine ID #: _____

Permit #: _____

Reclamation Plan Name/#: _____

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 _____ (LEAD AGENCY) may draw hereunder by means of its draft(s),
_____ 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 _____ (LEAD AGENCY) has determined, following a
noticed public hearing, that _____ (APPLICANT) is financially incapable of

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: _____
Name: _____
Title: _____

(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: _____
Name: _____
Title: _____

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 _____ at the counters of _____
(Expiration Date)

(FINANCIAL INSTITUTION AND ADDRESS)

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 Mine

(LEAD AGENCY)

Reclamation by registered or certified mail that _____ elects not

(FINANCIAL INSTITUTION)

to extend. In that event, either the _____ or the Department of

(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

(LEAD AGENCY)

of Conservation, Division of Mine Reclamation. _____ shall not be

(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)

(FINANCIAL INSTITUTION)

[SEAL]

By: _____

Name: _____

Title: _____