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.


§ 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.


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.

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

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
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 procedures:

__________________________________________, organized and existing under the laws of the 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 Conservation, Division of Mine Reclamation, hereby consents to the provision by ______________________________ to the ______________________________ and the ______________________________, and the Department of Conservation, Division of Mine Reclamation of such information concerning the CD as the ______________________________ 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 of either the ______________________________ or the Department of Conservation, Division of Mine Reclamation, and to deliver such funds to the ______________________________ or the Department of 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 Reclamation that ______________________________ 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).

shall be authorized to encash the CD at the instance and request of ______________________________, and to deliver such funds to ______________________________, only upon receipt of a written release from both the ______________________________.
and the Department of Conservation, Division of Mine Reclamation
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.

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: __________________________
Name: __________________________
Title: __________________________

[SEAL]
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
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 (LEAD AGENCY)
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: ____________________________
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 ______________________________ is financially incapable of performing _______________________________ 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)

______________________________
(APPLICANT)

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 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 __________________________, __________________________, 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 __________________________ and the Department of Conservation, Division of Mine Reclamation by registered or certified mail that __________________________ elects not to extend. In that event, either the __________________________ or the Department of 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 __________________________ 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 of Conservation, Division of Mine Reclamation. __________________________ shall not be 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 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]

By: ________________________________
Name: _______________________________
Title: _______________________________