



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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INITIAL STATEMENT OF REASONS

PROPOSED AMENDED REGULATIONS

DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 8. Fees Schedule

PROBLEM STATEMENT

The State Mining and Geology Board (SMGB) sets forth below the reasons for the proposed amended regulatory language for California Code of Regulations (CCR) sections 3697, 3698, and 3699. Public Resources Code (PRC) section 2207(d) provides that the SMGB shall impose by regulation an annual reporting fee on each mining operation. Prior to January 1, 2017, PRC section 2207(d)(1) stated the following:

“The board shall impose, by regulation... an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed four thousand dollars (\$4,000) annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter.”

As required by PRC section 2207(d)(1), the SMGB promulgates Article 8 in Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR pertaining to mining operation fees. Specifically, CCR section 3697 sets forth requirements for when annual reporting fees are due and delinquent. It provides that mining operations are individual discrete operations per each reclamation plan required until entitled to be qualified as a “Multiple Site Operation” by meeting certain criteria. The operator then has the choice to pay fees on each individual operation or pay one multiple

The Mission of the State Mining and Geology Board is to Represent the State’s Interest in the Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Participation.

site fee for all. CCR section 3698 establishes a formula to calculate annual mining fees. It provides a range of applicable fees based on type of product and sets a maximum fee cap at \$4,000. The section also establishes a formula and two “Factors” used to determine year-to-year adjustments. CCR section 3699 sets forth the criteria for a mining operation to request a low gross exemption from the method of fee assessment provided in CCR section 3698.

On April 18, 2016, Governor Brown signed Senate Bill 209 (Pavley) into law and thereby enacted significant reform to PRC section 2207. Effective January 1, 2017, PRC Section 2207(d)(1) states the following:

*“The board shall impose, by regulation... an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed **ten thousand dollars (\$10,000)** annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, **except that the maximum fee for any single mining operation shall not exceed six thousand dollars (\$6,000) in the 2017-18 fiscal year and eight thousand dollars (\$8,000) in the 2018-19 fiscal year.**”*

In anticipation of the effect SB 209 (Pavley) would have on the mining operation annual report fee schedules and due to issues identified in calculating projected fees for the coming years, the Department and SMGB staff determined the established fee calculation formulas needed to be changed. Calculating the reporting fees by means of existing formulas currently required under CCR section 3698 results in a continued increasing fee trend for mining operators, without accounting for a decrease in the reporting fees where appropriate to help maintain a more equitable fee schedule for relatively smaller operations. In order to enact the revisions to PRC section 2207, address the fees calculation formula, and maintain a more equitable fee schedule for relatively smaller operations, the SMGB must amend CCR sections 3697, 3698, and 3699.

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

These changes are necessary to implement the statutory goals of establishing equitable fees for mining operations and ensuring that the SMGB and the Department of Conservation (Department) are able to carry out provisions of the Surface Mining and Reclamation Act (SMARA, PRC section 2710 et seq.) which include protection and utilization of key mineral resources and reclamation of mined lands.

Sections 3697, 3698, and 3699 are amended to remove “surface” in every instance “surface mining operation” is mentioned. The purpose of this change is to clarify and make consistent the regulatory language with that of PRC section 2207 (f). This change is necessary as leaving “surface” in the language would limit the type of operation that should be addressed in the regulation and could be interpreted as direct conflict with statute. PRC section 2207 (f) states, “for purposes of this section, “mining operation” means a mining operation of any kind or character whatever in this state, **including, but not limited to**, a mining operation that is classified as a “surface mining operation” as defined by Section 2735...”

Section 3697 (c), (c)(3), and (c)(4) are amended to remove “active” in every instance “active surface mining operation” is mentioned. The purpose of this change is to remove “active” as part of the qualifying criteria required to meet the definition of a “multisite mining operation.” This is necessary to now be inclusive of “Idle” mines. Operators can now decide which of the two fee options is less: individual fees for each mine or one multiple site fee for all. A mining operation is considered “Idle” when the operator has curtailed production, with the intent to resume full production at a future date, for a period of one year or more by more than 90 percent of its maximum annual production within any of the last five years during which an interim management plan has not been approved (PRC section 2727.1). Idle mines are currently excluded from being listed as and included in a multiple site operation.

Section 3697 (c)(2) is amended to include all of the commodity descriptions in the qualifying criteria for a “multisite mining operation.” The purpose of this change is to clarify and make specific PRC section 2207 (f). This is necessary to be inclusive of the base metals/other metals commodity as well as address the low weight measurement in pounds.

Section 3697 (c)(3) is amended to address the removal of “active” as mentioned above, but also replaced with new qualifying criteria for a “multisite mining operation.” The purpose of this change is to clarify and make specific PRC section 2207 (f). It is necessary to ensure those mining operations utilizing other methods of fee assessment applicable in CCR section 3698 do not qualify to be deemed as “multisite mining operations.” See **Economic Impact Analysis** below for additional purpose and rationale.

Section 3698 is amended to remove references to annual cost of living adjustments beginning in the 2005-2006 fiscal year. The purpose of this change is to clarify PRC section 2207 (d)(1). This change is necessary to keep the annual cost of living adjustments in line with the revisions to PRC section 2207 caused by SB 209 (Pavley).

Additionally, the section is amended to delete existing specific references to the maximum reporting fee of \$4,000, and replace them with a general reference to the maximum fee outlined in PRC section 2207. The purpose of this change is to clarify and make specific PRC section 2207 as a result of revisions caused by SB 209 (Pavley). This change is necessary to address the increase of the maximum fee in the following fiscal years pursuant to statute, to eliminate any potential for confusion when calculating annual fees, and to ensure that the formula used to calculate the annual reporting fees is consistent with existing law.

Section 3698 (a) is amended to use the existing formula, for fee calculation, for those mining operations deemed as “multisite mining operations.” The purpose of this change is to clarify, interpret, and make specific PRC section 2207(d)(1) and (d)(2)(A). This change is necessary in order to provide an equitable basis reflecting the size and type of the operation. The fee will now be calculated using the formula in newly amended CCR section 3698 (c) and be based on the total amount of primary commodity produced reported on the required MRRC-4M multiple site form. The fee will no longer be the maximum fee as provided by PRC section 2207, as it was previously.

Section 3698 (c) is amended to completely remove “Formula 2” as well as all references to “Formula 2” within the section. The purpose of this change is to clarify, interpret, and make specific PRC section 2207. In anticipation of the SMARA reform legislation increasing the

maximum fee, a projected fee schedule for the coming years was calculated. The calculations required use of Formula 2. However, it was recognized that Formula 2 will not allow for a reduction of fees due to its mathematical structure. Specifically, because CCR section 3698 does not indicate that the absolute value of the calculated Factor should be utilized, when Formula 2 is applied the resulting annual fee multiplier is positive and the resulting annual fee increases when it should decrease for certain production categories. Use of a single Formula, which is identical in mathematical structure to the existing Formula 1, will result in appropriate adjustments to annual fees imposed on mining operations. This change is necessary to achieve greater flexibility with fee adjustments and to streamline the mathematical formulas utilized to calculate annual reporting fees for mining operations.

Section 3698 (c)(1), (2), and (3) are amended to add “mining” when addressing operations, as well as “an annual reporting” when addressing the fee in the regulatory language. This purpose of these changes is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These changes are necessary to ensure the fee assessed is **an annual reporting** fee for a **mining** operation.

Section 3698 (c)(1) is amended to change the annual reporting fee table of production categories from a six-tier system to five-tier system. The fourth production tier and the fifth production tier have been combined to be the new fourth production tier labeled “>10,000 – 100,000 tons.” The sixth production tier now becomes the fifth production tier labeled “> 100,000 tons.” The purpose of this change is to clarify and make specific PRC section 2207 (d)(2)(A). The change is necessary in order to make the production rates for the individual tiers based on a logical factor of 10. Moving from six production tiers to five will decrease the number of overall tiers subject to the maximum fee and allow for the fees of all the tiers to be calculated on a more equitable basis. See **Economic Impact Analysis** below for additional purpose and rationale.

Section 3698 (c)(2) is amended to change the annual reporting fee table of production categories from a six-tier system to five-tier system. The fourth production tier and the fifth production tier have been combined to be the new fourth production tier labeled “>100 – 1,000 ounces.” The sixth production tier now becomes the fifth production tier labeled “> 1,000 ounces.” The purpose of this change is to clarify and make specific PRC section 2207 (d)(2)(A). The change is necessary in order to make the production rates for the individual tiers based on a logical factor of 10. Moving from six production tiers to five will decrease the number of overall tiers subject to the maximum fee and allow for the fees of all the tiers to be calculated on a more equitable basis. See **Economic Impact Analysis** below for additional purpose and rationale.

Section 3698 (c)(3) is amended to change the annual reporting fee table of production categories from a six-tier system to five-tier system. The fourth production tier and the fifth production tier have been combined to be the new fourth production tier labeled “>1,000 – 10,000 pounds.” The sixth production tier now becomes the fifth production tier labeled “> 10,000 pounds.” The purpose of this change is to clarify and make specific PRC section 2207 (d)(2)(A). The change is necessary in order to make the production rates for the individual tiers based on a logical factor of 10. Moving from six production tiers to five will decrease the number of overall tiers subject to the maximum fee and allow for the fees of all the tiers to be calculated on a more equitable basis. See **Economic Impact Analysis** below for additional purpose and rationale.

Section 3698 (e) is amended to add “and disturbed the land” to the requirements for an annual reporting fee for a newly permitted mining operation. The purpose of this change is to clarify, interpret, and make specific PRC section 2207(d)(5). This change is necessary to ensure that if a newly permitted mining operation has yet to begin operations but has in fact disturbed the land, the mining operation is not entitled to this particular method of fee assessment.

Section 3699 (a) and (b) are amended to add “postmarked or” to the requirements for low gross exemptions. The purpose of this change is to clarify and make specific sections PRC 2207(d)(1) and (d)(2)(A). This change is necessary to take into account processing time for the Department when it receives the low gross exemption request. This will provide operators peace of mind knowing their request does not have to be received by the Department during normal business office hours on the day of the deadline.

Section 3699 (a)(3) is amended to adjust for the cost of living the amount of the operator’s gross income, based on the California Consumer Price Index (CPI) for all urban consumers, calendar year averages, using the percentage change in the previous year. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary to address the issue of inflation as CCR section 3699, Low Gross Exemption, was originally introduced in 1992. The \$100,000 maximum income threshold is now much higher in 2017 dollars. The SMGB also make this change to address comments received during its pre-rulemaking comment periods to solicit input from stakeholders. See **Economic Impact Analysis** below for additional purpose and rationale.

Additionally, this section is amended to include an “enrolled agent” as an additional means to verify the operator’s gross income from the mining operation. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This is necessary because it will allow mining operations to utilize an additional means for income verification if a certified public accountant’s services are too expensive or unavailable.

Section 3699 (a)(4) is amended to adjust the annual reporting fees associated with those operators who qualify for the low gross exemption. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary to conform with the revisions to PRC section 2207 cause by SB 209. Since its inception in 1992 and for those who qualify, the low gross exemption fee is 10% of the maximum fee pursuant to statute.

Section 3699 (c) is amended to add “for any request postmarked or received by the Department on or before July 1” to the criteria for an operator to appeal a low gross exemption determination by the Department to the SMGB. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary to make it clear that the SMGB will only hear an appeal of a low gross determination by the Department if the operator has followed the proper protocol in submitting the low gross request by the deadline laid out in the regulation.

Section 3699 (c)(1) is amended to remove “in a timely fashion” and replaced with “pursuant to subsections (a) and (b) of this section” in the criteria section for determining the SMGB’s jurisdiction of the appeal. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary because “in a timely fashion” is vague and

creates ambiguity. Referencing subsections (a) and (b) of CCR section 3699 clearly state the timing requirements for an appeal of the low gross exemption.

Section 3699 (d)(1) is amended to make clear the consequence an operator or owner will face if they do not submit the annual reporting fee, resulting from an appeal, in a specified timeframe. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary because the previous wording implies, and can be interpreted, that the operator or owner will be assessed a penalty for paying the annual reporting fee. This change will make it clear the penalty will only be assessed when the owner or operator fails to submit the full annual reporting fee within 30 days of the notification by the Department or the SMGB.

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

The SMGB and the Department took into consideration multiple variables associated with annual mining operation fees and made several assumptions and projections. The documents below listing the fees comparisons and alternatives **do not contain and are not** a representation of what the actual fees will be in those reporting years. The suggested fees in the documents listed included numerous assumptions and projections of the abundant number of variables needed in calculating the fees. The following additional documents are provided at the end of this document:

- *Production History 2011 thru 2015*
- *2016, 2017, 2018 Suggested Fees Comparison - 6 Tiers*
- *2017, 2018 Suggested Fees Comparison - 5 Tiers*
- *California Consumer Price Index Calculation, January 1992 - June 2017*
- *Suggested Alternatives 1 and 2 - 6 Tiers*

CEQA COMPLIANCE

The SMGB has determined that this rule making action is not a project as defined in Title 14, CCR, Section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

ECONOMIC IMPACT ANALYSIS

Currently, annual mining operation fees are established under PRC section 2207(d)(1) and are set at a maximum of \$10,000 per mining operation with an adjustment for the cost of living as measured by the California CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, except that the maximum fee for any single mining operation shall not exceed \$6,000 in the 2017-18 fiscal year and \$8,000 in the 2018-19 fiscal year. The proposed amended regulations satisfy the SMGB's statutory mandate to impose annual fees upon mining operators, and to establish a fee schedule on an equitable basis reflecting the size and type of the operation. Further, imposition of equitable annual mine fees ensures that the Department and SMGB are able to carry out the provisions of SMARA which include identification, protection, and utilization of key mineral resources and reclamation of mined lands. The proposed amended regulations meet the statutory goals of SB 209 (Pavley) by allowing for increased maximum annual fees for larger operations, streamlining and

simplifying fees calculation, and potentially lowering annual fees for smaller operations by ensuring the equitable assessment of mining operation fees.

The Department's cost to administer SMARA, and the determination of annual mine fees, are based on a number of variable factors including, but not limited to: number of mines reporting production, amount collected from operators in the previous reporting year, the projected amount to be collected from those operations subject to a fixed fee method of fee assessment (i.e. newly permitted, closed no intent to resume, closed reclamation complete, initial reports), amount collected through low gross exemptions, amount collected from multiple site operations, and projected amounts from mine operations subject to the maximum fee. In taking into consideration these multiple variables associated with annual mining operations fees, the SMGB and the Department found it necessary to make several assumptions and projections in determining the rationale for amending the various sections of CCR sections 3697, 3698, and 3699.

In regards to CCR section 3697, the SMGB anticipates that the removal of "active," as a qualification to utilize the multiple site method of fee assessment and thus include "idle" mines, will provide relief under two specific scenarios. The first is when a mining operation has an anomaly in production in a given year. As noted above, an idle mine is defined by PRC section 2727.1 as an operation that has curtailed production at the mining operation, with the intent to resume at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years. For example, if an operator has two sites and one is idle, he/she is unable to take advantage of the multiple site fee and must pay two different fees. This one anomaly year can prevent the operator from utilizing the multiple site method of fee assessment for years to come should they continue to have the one idle mine. This causes an unfair increase in fees paid. The second scenario is a case when an operator has multiple mines. In this example the operator has three surface mining operations. Two of the operations are consistently active and the third is consistently idle. The operator can now include all of his/her operations in the multiple site method of fee assessment and pay one fee. Additionally, it will allow the operator to make the choice of which method of fee assessment is best suitable and least expensive; one fee for all sites or the total of individual fees for each operation.

In regards to CCR section 3698, the SMGB, with the assistance of the Department, analyzed the average number of mines in each reporting tier (six-tier system) for the reporting years 2011 to 2015. Based on this analysis, the SMGB made several assumptions and projections and applied them to both the current six-tier system and the new five-tier system. Both tier systems result in a consistent decrease in fees for the lowest production tier in 2017 and 2018 reporting years. The five-tier system would result in a decrease in fees in 2017 for the low- to mid-producing operators, followed by a fee increase in fees in 2018. However, when utilizing the five-tier system in the 2018 reporting year, more equitable relief is moderately provided across all the tiers once the \$10,000 maximum fee is established. When looking at percentage of reporting mines paying the maximum fee, considering only producers of aggregate products and industrial minerals from CCR section 3698 (c)(1) and using the average number of reporting mines for reporting years 2011 to 2015, approximately 70% of reporting mines are paying the maximum fee of \$6,000 under the current six-tier system. The SMGB projects that approximately 58% of reporting mines will pay the maximum fee of \$8,000 in 2017, and approximately 41% of reporting mines will pay the maximum fee in 2018, under the current six-

tier system. By way of comparison and taking into account the same considerations above, the SMGB projects that approximately 58% of the reporting mines will also pay the maximum fee of \$8,000 in 2017, but only approximately 32% of reporting mines will pay the maximum fee in 2018, under the five-tier system. The maximum fee only affects those operations that have the highest production amounts of over 100,000 tons under the five-tier system for the 2018 reporting year.

As a result of this analyses the SMGB anticipates the reduction of production tiers from a six-tier system to a five-tier system will provide significant long term financial relief to more mining operations with lesser production rates, as they are the ones making up the difference in revenue once the maximum fee is applied to those mining operations with the highest production rates. Additionally, the SMGB anticipates the move from a six-tier system to a five-tier system will prevent the maximum fee from being applied to multiple tiers as is the case for the 2016 six-tier reporting fees, and lower the percentage of reporting mining operations subject to the maximum fee. See 1) *Production History 2011 thru 2015*, 2) *2016, 2017, 2018 Fees Comparison - 6 Tiers*, and 3) *2017, 2018 Fees Comparison - 5 Tiers* provided in documents relied upon section.

In regards to CCR section 3699, the SMGB anticipates more operators will likely take advantage of the Low Gross Exemption when the maximum income threshold is increased by adjusting it yearly for the cost of living as measured by the California CPI for all urban consumers, calendar year averages, using the percentage change in the previous year. The change provides relief from the normal method of fee assessment to those operators who previously could not qualify for the Low Gross Exemption because their income level was too high. The new maximum income threshold accounts for a 25-year adjustment and will now be \$182,900. The income level has not been adjusted since the regulation was originally introduced in 1992. The SMGB relied upon the CPI calculator (1989 – 2017) made available on the State of California's Department of Industrial Relations website, <http://www.dir.ca.gov/OPRL/capriceindex.htm>. The percent of change is 82.9% and is calculated from January 1992, the year and month CCR section 3699 was made operative, and June 2017, the most recent statistical data available. See *California Consumer Price Index Calculation* provided in the documents relied upon section.

The SMGB acknowledges the amendment to CCR section 3699 may affect the fees of those associated with the method of fee assessment in CCR 3698 (c)(1), (2), and (3) as more operators will qualify for the lower fee. However, in the overall scheme the SMGB anticipates the change will encourage more operators to pay their fees no matter the cost of the fee, as there are currently a number of operators that do not pay their fees at all. The SMGB views this as a benefit because the annual fees are directly affected by the amount of the fees collected in the previous reporting year. The SMGB cannot quantify the number of operators that may take advantage of the new higher income threshold as it only has access to income levels of those operators who have previously filed for the Low Gross Exemption. The fees associated with methods of fee assessment in CCR 3698 (c)(1), (2), and (3) are all based on production.

Based on the multitude of variables that go into the determination of annual mining operation fees and the analysis above, in accordance with Government Code Section 11346.3(b) the SMGB has made the following assessments regarding the proposed amended regulations:

The SMGB anticipates the proposed amended regulations may have an impact on the creation of new, or the elimination of existing, jobs within California.

The SMGB anticipates the proposed amended regulation may have an impact on the creation, expansion, or elimination of new or existing business within California.

The SMGB anticipates that the proposed regulatory amendments will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government, and the prevention of discrimination, the promotion of fairness or social equity by:

- Ensuring the public will have sufficient and reliable private funding for State oversight of local implementation of surface mining law.
- Ensuring operators are complying with requirements of SMARA.
- Adjusting for the cost of living as measured by the California CPI for all urban consumers, calendar year averages, using the percentage change in the previous year.

SIGNIFICANT ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The SMGB concludes that the proposed amended regulatory language may directly affect business statewide, including small businesses. The proposed regulation is not imposing higher fees. The fees rise because of change in statute. The proposal aims to fulfill the statutory revisions to PRC 2207, the statutory requirement of ensuring the equitable assessment of mining operation fees by distributing the cost to administer SMARA in an equitable fashion, and address the comments received regarding relief for small mining operations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE SMGB REASONS FOR REJECTING THOSE ALTERNATIVES

A proposed alternative of taking no action would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication.

The SMGB considered two other alternatives in the changing of the tiers as mentioned above for CCR section 3698 (c)(1), (2), and (3). Both involved keeping the 6-tier system. The first alternative changed only the production category tiers for CCR section 3698 (c)(1) and (3) by making them based on a logical factor of 10. It made no change to the production category tiers for CCR section 3698 (c)(2). The second alternative was similar to the first alternative. The only difference is that it included making the production category tiers for CCR section 3698 (c)(2) based on a logical factor of 10 as well. The SMGB developed these 2 alternatives after pre-rulemaking comment period ended on July 7, 2017, however chose not to pursue them because the schedule of fees is intended to cover the costs of the Department to facilitate SMARA. The 2 alternatives did not. See *Alternatives 1 and 2 - 6 Tiers* provided in the documents relied upon section.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department, and the SMGB, SMARA and its implementing regulations and federal law are coordinated to eliminate duplication.