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STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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FINAL 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. Fee Schedule

UPDATE OF INITIAL STATEMENT OF REASONS

Following the 45-day formal public comment period the State Mining and Geology Board (SMGB) chose to revert certain portions of the proposed amended regulatory text in California Code of Regulations (CCR), sections 3697, 3698, and 3699 to the original regulatory text. Reverting these portions of regulatory text will allow the SMGB to dedicate additional time and resources to research, analyze, and provide opportunities for public comment should it choose to make substantial changes to regulatory text regarding the fees structure in Article 8, of Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR, in the future. The changes to CCR sections 3697, 3698, and 3699 will now clean-up regulatory language based on revisions to statute caused by SB 209 (Pavley), reset and adjust the low gross exemption maximum income limit and associated fee based on the cost of living as measured by the California Consumer Price Index (CPI), and clarify language for consistency throughout the regulatory sections. No other substantial changes are made to address the overall effectiveness of the fees structure for mining operations other than the removal of “Formula 2,” in CCR 3698.

Various components of the original Initial Statement of Reasons have been updated below for clarity, spelling and grammatical errors, to address the specific sections of the reverted text, to address additional revisions to regulatory text, and address revisions to the Economic Impact Statement.

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

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 clarify and make consistent the regulatory language with that of PRC section 2207 (f). This change is necessary to remove “active” as part of the qualifying criteria required to meet the definition of a “multisite mining operation” in order to now be inclusive of “Idle” mines. Idle mines are currently excluded from being listed as and included in a multiple site operation.

Section 3697 (c)(2) is reverted to its original regulatory text. The SMGB has chosen not to move forward with the amendments to this sub-section.

Section 3697 (c)(3) is amended to address the removal of “active” as mentioned above, but also, replacing it with more accurate 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 as “multisite mining operations,” and the corresponding multisite fee.

Section 3698 (a) is reverted to its original regulatory text. The SMGB has chosen not to move forward with the amendments to this sub-section.

Section 3698 (c)(1), (c)(2), and (c)(3) are amended to add “mining” when addressing operations, as well as “an annual reporting” when addressing the fee in the regulatory language. The 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 assed is **an annual reporting** fee for a **mining** operation and to make the regulatory language consistent with that of statute.

A portion of **Sections 3698 (c)(1), (c)(2), (c)(3)** are reverted to its original regulatory text. Specifically, the SMGB has chosen not to move forward with amending the annual reporting fee table of production categories from a six-tier system to five-tier system.

Section 3699 is amended throughout to change all instances of the phrase “calendar reporting year” to “reporting calendar year”. This change is necessary to make the regulatory language consistent throughout the entire section and consistent with Section 3696 and Section 3698.

Section 3699 (a) is amended to change “Office of Mine Reclamation” to “**Division** of Mine Reclamation.” The purpose of this change is to clarify and make specific PRC section 607 (d). The change is necessary to address the revisions to statute caused by SB 209 (Pavley).

This sub-section is also amended to add “postmarked or,” “on or before,” and “in order to be considered” to the requirements for low gross exemptions. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These changes are 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. Additionally, “mining” was added when referencing “operation”. The purpose of this change is to

clarify and make specific PRC section 2207(f). This change is necessary to make the regulatory language consistent with that of statute.

Section 3699 (a)(3) is amended to replace “operator” with “single operator or mining company’s.” 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 the regulatory language consistent throughout the section as section 3699 (a) refers to “a single operator or mining company that may file” the low gross exemption.

This sub-section is also amended to reset and adjust the maximum gross income limit in the qualifying criteria for the low gross exemption to $128,900. The limit will be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, and annually thereafter. 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 $100,000 in gross income is worth much less in 2017 dollars compared to when the low gross exemption income limit was established in regulation. By increasing the maximum gross income limit on an annual basis, a single mining operator or company’s qualifications remains consistent as the value of the dollar increases. CCR section 3699 was last amended and made operative in 2004, with only a change to the fee for the low gross exemption. This fee was to be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter. The $100,000 maximum gross income limit was not altered or adjusted based on the CPI when the regulation was amended in 2004. The $128,900 maximum gross income limit amount is adjusted from $100,000 and based on the CPI for all urban consumers, calendar year averages, using the percentage change of 28.9% from August 2005 to June 2017. August 2005 was chosen as it was the first statistical data in the CPI available in the 2005-2006 fiscal year, when the 2004 regulatory language took effect. The SMGB also makes this change in response to comments received during both the pre-rulemaking and 45-day formal public comment periods.

The $182,900 maximum gross income limit amount, originally noticed in the 45-day formal public comment period, was adjusted from $100,000 and based on the CPI for all urban consumers, calendar year averages, using the percentage change of 82.9% from January 1992 to June 2017. January of 1992 was chosen as it was when CCR section 3699 was first made operative. In response to comments regarding the low gross exemption maximum income limit and the associated low gross exemption fee, the SMGB changed the low gross exemption maximum income limit to $128,900 as mentioned above. This modification is necessary to keep the CPI percentage change of 28.9% the same for both the maximum gross income limit amount and the associated low gross exemption fee. See also **Section 3699 (a)(4)** below.

Additionally, this section is amended to include “an enrolled agent listed on the active roster maintained by the Federal Internal Revenue Service” as an additional means to verify the single operator or mining company’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 as it allows mining operations to utilize an additional means for income verification if a certified public accountant’s services are too expensive or unavailable. The Federal Internal Revenue

Service (IRS) has statutory authority under 31 United States Code section 330, to prescribe the qualifications of those people that can become an enrolled agent and allows the enrolled agent to represent people before the IRS. Under the Federal Code of Regulations, in Subpart E of section 10.90, a "roster" is described as the list prepared by the IRS for all active enrolled agents. Reference to the "active roster maintained by the IRS" makes it clear that an enrolled agent has been approved by the IRS and must be "active," and it provides the Department the ability to confirm the status of any person purporting to be an enrolled agent by submitting a request to the IRS on its website.

Section 3699 (a)(4) is amended to replace "operator" with "single operator or mining company's." 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 the regulatory language consistent throughout the section as section 3699 (a) refers to "a single operator or mining company that may file" the low gross exemption.

This sub-section is also amended to reset and adjust the annual reporting fee to five hundred fifteen dollars ($515) for those single operator or mining companies that 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). CCR section 3699 was last amended and made operative in 2004, with only the fee for the low gross exemption changed to four hundred dollars ($400). The fee was to be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter. This change is necessary to modify the proposed amended regulatory text in response to comments received. The SMGB reset and adjusted the low gross exemption fee to five hundred fifteen dollars ($515) based on the CPI for all urban consumers, calendar year averages, using the percentage change of 28.9% from August 2005 to June 2017. August 2005 was chosen as it was the first statistical data in the CPI available in the 2005-2006 fiscal year, when the 2004 regulatory language took effect. The percentage change of 28.9% is the same for both the low gross exemption fee and the low gross exemption maximum income limit amount mentioned in **Section 3699 (a)(3)** above. It should also be noted that the change to this fee is simply an update to the printed text in the CCR as this fee amount has been adjusting from the original amount of $400 on its own every year since the 2005-2006 fiscal year, pursuant to CCR section 3698.

Additionally, this sub-section 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).

A portion of the text in this sub-section is reverted to its original regulatory text. Specifically, "and annually thereafter" referring to the low gross exemption fee to be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year.

Section 3699 (b) is amended to add "postmarked or" to the requirements for low gross exemptions. The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These changes are 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. Additionally, these changes are necessary to make the regulatory language consistent throughout the entire section.

This sub-section is amended add “of Conservation” when referring to the “Department.” The purpose of this change is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These changes are necessary to make the regulatory language consistent throughout the entire section.

Section 3699 (c) is amended to add “single” and “or mining company” to the criteria for an appeal of the low gross exemption determination. The purpose of these additions is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These additions are necessary to make the regulatory language consistent throughout the entire section.

Additionally, it 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 the regulatory language consistent throughout the entire section.

This sub-section is also amended to add “of Conservation” when referring to the “Department” and add “following the calendar reporting year” to the criteria for an appeal of the low gross exemption. The purpose of these additions is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These additions are necessary to make the regulatory language consistent throughout the entire section.

Furthermore, this sub-section is amended to change “Chairman” to “Chairperson” and change “his” to “their” when referring to the Chairperson of the Board. The purpose of these changes is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These changes are necessary to make the regulatory language gender neutral.

Section 3699 (c)(1) is amended to remove the phrase “in a timely fashion” and replace it with “and postmarked or received by the Department of Conservation on or before July 1 following the reporting calendar year” in regards to criteria for the SMGB to have jurisdiction for the low gross exemption appeal. The purpose of this changes is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). This change is necessary because the current regulation’s phrase of “in a timely fashion” is vague and creates ambiguity. Additionally, this change is necessary to make the regulatory text consistent throughout the entire section.

Section 3699 (d) is amended to add “of Conservation” when referring to the “Department” and add “single” and “or mining company” to the criteria of an appeal of a low gross exemption. The purpose of these additions is to clarify and make specific PRC sections 2207(d)(1) and (d)(2)(A). These additions are necessary to make the regulatory language consistent throughout the entire section.

This sub-section is also 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 single operator or mining company 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 single operator or mining company 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 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, for adjustments to CCR section 3699. The documents previously relied upon for changes to the text made available in the Notice for the 45-day formal comment period no longer apply. The SMGB chose to revert those portions of regulatory text to its original status.

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

Revisions to PRC section 2207(d)(1) caused by SB 209 (Pavley) set a maximum fee of $10,000 per mining operation with an adjustment for the cost of living as measured by the 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 regulatory language intends to clean-up regulatory language based on revisions to statute caused by SB 209 (Pavley), address issues with the fees calculation formula, reset and adjust the low gross exemption maximum income limit and associated fee based on the cost of living as measured by the CPI, and clarify regulatory language for consistency throughout the sections.

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 consistency, clarity, and proper reporting. The multiple site fee recognizes that the income of an owner or operator with several sites may be low based on a small amount of production from all their sites. This change affords the owner or operator the option of paying a lower single fee as opposed to paying a fee for each site. The intent of the multiple site fee is to consider all production from the multiple operations regardless of whether one operation is considered idle. Mining operations that operate as idle may still have small amounts of production that should be included in determining whether a multiple site owner or operator qualifies for the multiple site fee. Under the current regulation, if an owner or operator has two sites and one is idle, but the combined production would qualify for the multiple site fee, he/she is unable to take advantage of the multiple site fee and must pay two separate fees. This is also true if the operator

has three mining operations where two of the operations are consistently active and the third is consistently idle, but the total combined production remains below the qualifying limits of the multiple site fee. Under the proposed amended regulatory language, the owner or operator can now include all of his/her operations in the multiple site method of fee assessment and pay one fee. Owners and operators of multiple mining operations continue to have the choice of which method of fee assessment is best suited for their situation; one fee for all sites or the total of individual fees for each operation, including idle sites, as long as they qualify for the multiple site fee.

CCR section 3698 is amended to delete existing specific references to the former maximum reporting fee of $4,000 for the largest producers, and replace them with a general reference to the maximum reporting fee set in PRC section 2207. The SMGB does this to circumvent the need to update the maximum reporting fee in the regulation caused by future revisions to statute. The largest producers have been subject to the maximum reporting fee outlined in PRC section 2207 since the regulation's inception in 1991. Thus, it is the SMGB's position that amending CCR section 3698 to include the general reference to the maximum reporting fee set in PRC section 2207 is caused by the revisions to statute as a result of SB 209 (Pavley).

CCR section 3699 is amended to reset and adjust the annual reporting fee to five hundred fifteen dollars ($515) for those single operator or mining companies that qualify for the low gross exemption. CCR section 3699 was last amended and made operative in 2004, with only the fee for the low gross exemption set to four hundred dollars ($400). The fee was to be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter. The five hundred fifteen dollars ($515) annual reporting fee was selected based on the CPI for all urban consumers, calendar year averages, using the percentage change of 28.9% from August 2005 to June 2017. August 2005 was chosen as it was the first statistical data in the CPI available in the 2005-2006 fiscal year, when the 2004 regulatory language took effect. It should also be noted that this change is simply an update to the printed text in the CCR as this fee amount has been adjusting from the original $400 amount on its own every year since the 2005-2006 fiscal year, pursuant to CCR section 3698.

This sub-section is also amended to reset and adjust the maximum gross income limit in the qualifying criteria for the low gross exemption. The limit will now adjust for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, and annually thereafter. As mentioned above, CCR section 3699 was last amended and made operative in 2004, with a change to only the fee for the low gross exemption. Again, this fee was to be adjusted for the cost of living, based on the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter. The $100,000 maximum gross income limit was not altered or adjusted based on the CPI when the regulation was amended in 2004. The $128,900 maximum gross income limit amount is adjusted from $100,000 based on the CPI for all urban consumers, calendar year averages, using the percentage change of 28.9% from August 2005 to June 2017. August 2005 was chosen as it was the first statistical data in the CPI available in the 2005-2006 fiscal year, when the 2004 regulatory language took effect. The SMGB chose

this time frame to keep the CPI percentage change of 28.9% the same for both the maximum gross income limit amount and the associated low gross exemption fee.

The SMGB anticipates more operators may likely take advantage of the low gross exemption with the reset and adjustment of the maximum income limit as well as encourage more operators to pay a fee they see as more reasonable based on their income level. 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.

SIGNIFICANT ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS
Not taking an action of resetting and adjusting the maximum gross income limit causes significant adverse economic impacts for those small businesses who may be on the cusp of qualifying for the low gross exemption fee. The proposed amended regulatory language provides opportunities for more single operators or mining companies to qualify for the low gross exemption and ensures consistent application of its intended benefits. Furthermore, not amending CCR section 3698 to address the mathematical error in “Formula 2” creates adverse economic impacts directly affecting businesses. Calculating the reporting fees by means of existing formulas currently required in 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. Additionally, the proposed amended regulatory language does not impose higher fees, specifically in regards to the maximum fee. The maximum fee rises because of change in statute as a result of SB 209 (Pavley). See ECONOMIC IMPACT ANALYSIS above. The proposal cleans-up regulatory language based on revisions to statute caused by SB 209 (Pavley), resets and adjusts the maximum gross income limit and associated fee based on the cost of living as measured by the CPI, and clarifies language for consistency throughout the regulatory sections.

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 other alternatives in adjusting the tiers for CCR section 3698 (c)(1), (2), and (3) that involved keeping the 6-tier system. One alternative changed only the production category tiers for CCR section 3698 (c)(1) and (c)(3) by making them based on a factor of 10. It made no change to the production category tiers for CCR section 3698 (c)(2). Another alternative was similar to the one mentioned above however, the only difference was that it included making the production category tiers for CCR section 3698 (c)(2) based on a factor of 10 as well. The SMGB chose not to pursue them because the schedule of fees is intended to cover the costs of the Department to implement SMARA, and the two alternatives did not.

DETERMINATION OF LOCAL MANDATE

The SMGB has determined that the proposed amended regulatory language does not impose a mandate on local agencies. Additionally, Section 7 of SB 209 (Gray) states, “No reimbursement is required by this act pursuant to Section 6 of Article XIIB of the California Constitution because a local agency or school district has the authority to levy service charge, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.”

STATEMENT OF ALTERNATIVES CONSIDERED

An additional alternative was included in the proposed amended regulatory language that was originally noticed for the 45-day formal public comment period. In this alternative, the tiers in CCR section 3698 (c)(1), (2), and (3) were amended to change the annual reporting fee table of production categories from a six-tier system to five-tier system. This was done to make the production rates for the individual tiers based on a factor of 10. Following the 45-day formal public comment period the SMGB chose to revert portions of the proposed amended regulatory text in California CCR sections 3697, 3698, and 3699 to the original regulatory text. Reverting these portions of regulatory text will allow the SMGB to dedicate additional time and resources to research, analyze, and provide opportunities for public comment should it choose to make substantial changes to regulatory text regarding the fees structure in Article 8, of Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR, in the future.

The SMGB determined that no reasonable alternative it considered or that had otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed. In addition, the SMGB determined that no alternative would be as effective as and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 of Conservation, and the SMGB, SMARA and its implementing regulations and federal law are coordinated.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 29, 2017 THROUGH NOVEMBER 13, 2017.

Commenter 1 –David R. Butler, Owner, Mariposa Yosemite Slate Quarry

Comment 1A: The amended proposed changes to the fee calculation spelled out in Article 8, Section 3698, the modifications to the fee structure are still grossly out of balance and not equitable. Further, while staff’s the [*sic*] intent might have been to spread fees out over the larger population of quarries in the state, the proposed changes fail to meet that objective. Additionally,

the proposed fees do nothing to provide relief for smaller operations due to the proportional imbalance of product generated.

Response to Comment 1A: Accept in part and reject in part. Following the 45-day formal comment period, the SMGB chose to revert certain portions of the proposed amended regulatory language in CCR sections 3697, 3698, and 3699 back to original text. The SMGB concludes substantial changes to the regulatory text regarding the fees structure in Article 8, of Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR, including section 3698, requires more extensive research. Reverting portions of the regulatory text back to its original status will allow the SMGB to dedicate additional time and resources should it choose to modify any portions of Article 8 in the future. Going forward, the changes to CCR sections 3697, 3698, and 3699 will now only focus on clean-up of regulatory language based on revisions to statute caused by SB 209 (Pavley), resetting of the low gross exemption income limit and associated fee, and clarification of the regulatory language for consistency. No other substantial changes are made to address the overall effectiveness of the fees structure for mining operations other than the removal of "Formula 2," in CCR section 3698. See Initial Statement of Reasons for **Section 3698 (c).**

Furthermore, the current fee structure in Article 8 is already designed to provide equitable relief for mining operations, including those smaller operations. Current CCR section 3697 (c) allows for operators to be qualified as a "Multiple Site Operation" by meeting certain criteria. This gives the operator the choice to pay fees on each individual operation or pay one multiple site fee for all. Additionally, current 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, providing a mechanism of relief for those smaller operations. The proposed changes to CCR section 3699 provide additional relief for those smaller operations by resetting the maximum gross income limit and low gross exemption fee to adjust for inflation since the last time the fee was adjusted in 2004.

Comment 1B: PRC Section 2207(d)-2 specifically states that "the fees shall be calculated on an equitable basis reflecting size and type of operation. The Board shall also consider the total assess [*sic*] value of the mining operation, acreage disturbed by mining activities and acreage subject to the reclamation plan.

In reviewing the history of the fees from 2003 to present, the fee changes that were ultimately implemented in 2003 and the amendments to the fee schedules between then and now have never met the spirit or intent of the PRC Section 2207(d)-2 section. Further, the fee structure proposed for 2017-2018 and 2018-2019 also fail to meet the letter or intent of the language of PRC Section 2207(d)-2. It appears that there is not public evidence or information in the public record that demonstrates how staff's recommendations or the Board's final action and implementation of the fees every [*sic*] contemplated, or created a nexus in order to meet the required equity provision. After exhaustive research into public documents, there appears to be not [*sic*] public information that specifically addresses how the fees were established to carry out the required monitoring and oversight of mining operations by the Board. Most of the actual work relative to the reclamation plans are born by the lead agency who does not receive any reimbursement from the State for those activities. From a layman's perspective, it appears that staff's recommendation to the board was a simple math equation where the financial needs of the

Department were identified and then the fees were calculated by dividing those costs by the number of active mines, regardless of size to back into a set of annual fees.

Response to Comment 1B: Accept in part and reject in part. As mentioned above, the SMGB chose to revert certain portions of the proposed amended regulatory language in CCR sections 3697, 3698, and 3699 back to original text. The commenter's mention of "the fee structure proposed for 2017-2018 and 2018-2019…" is part of the reverted text. Additionally, see **Response to Comment 1A.**

The fees calculation set forth in the current regulation, CCR section 3698, adheres to the requirements of PRC section 2207 (d)(2)(A). Size and type are addressed in three fee tables in CCR section 3698 (c)(1) – (3) with production amount in tons (size) for aggregate products or industrial minerals (type), production amount in ounces (size) for gold, silver, or precious metals (type), and production amount in pounds (size) for base metals or other metals (type). Likewise, CCR section 3698 adheres to PRC section 2207(d)(2)(A) where it states, "The board shall also consider the total assessed value of the mining operation, the acreage disturbed by the mining activities, and the acreage subject to the reclamation plan." Prior to the adoption of CCR section 3698, the SMGB did consider "the total assessed value of the mining operation, the acreage disturbed by the mining activities, and the acreage subject to the reclamation plan" in the calculation of fees, but after said consideration ultimately chose not to include them in the regulation at that time.

The commenter mentions lack of public evidence of "how the fees were established to carry out the required monitoring and oversight of mining operations by the Board." There is no relation between the fee structure in current CCR sections 3697, 3698, and 3699 and the fee established to carry out the required monitoring and oversight of mining operations by the SMGB. PRC section 2207 (e) grants the SMGB authority to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing Chapter 2 and Chapter 9 (commencing with section 2710) when it acts as the lead agency. CCR section 3696.5 establishes the annual administration fee of $14 per day for each day of the previous calendar year that the surface mine operation was under the SMGB's jurisdiction as lead agency pursuant to Chapter 9 of the PRC.

Furthermore, PRC section 2207 (e) grants authority to the lead agency to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing Chapter 2 and Chapter 9 (commencing with section 2710). No reimbursement by the State is required by Chapter 2 and Chapter 9 (commencing with section 2710) pursuant to Section 6 of Article XIIB of the California Constitution because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by SMARA, within the meaning of Government Code section 17556. The Division of Mine Reclamation (DMR) provides a measure of oversight, for more than just reclamation plans, for lead agencies within their respective jurisdictions as they administer Chapter 2 and Chapter 9 (commencing with section 2710) of the PRC. DMR may provide feedback to lead agencies about a mining operation's reclamation plan and financial assurance, may appeal inadequate financial assurances to the SMGB, and may initiate enforcement actions to encourage compliance with Chapter 2 and Chapter 9 (commencing with section 2710) of the PRC.

The commenter's "layman's perspective" that "the financial needs of the Department were identified and then the fees were calculated by dividing those costs by the number of active mines., regardless of size…" is partially correct. PRC section 2207 (d)(2)(A) grants the SMGB authority to adopt, by regulation, a schedule of fees to cover the Department's cost in carrying out Chapter 2 and Chapter 9. The SMGB promulgated Article 8 in Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR pertaining to mining operation fees. Additionally, see **Response to Comment 1A.**

Comment 1C: Since the number of active mines remains constant and the lead agency still assumes responsibility for inspection and reclamation plan review, it is confusing to understand why the staff is seeking authorization to take the Department's budget up to $8 million annually. As a mining operator, I find this massive budget increase both alarming as well as a major concern. While staff has suggested in the pre-rule making period, that they have not covered their costs and undercharged fees that did not fully recover costs, the Department's budget has gone from $1 million to now $4 million. Why? What has changed? Why do they anticipate a need to double the Department's current budget and raise it to a possible $8 million annually?

Response to Comment 1C: Reject. Staff, nor the SMGB, is seeking authorization to take the Department's budget up to $8 million annually. PRC section 2207 (d)(3) specifically states, "the total revenue generated by the reporting fees ***may not exceed, and may be less than***, the amount of eight million dollars ($8,000,000) …" [emphasis added]. The proposed amended regulatory language does not attempt to increase fees in order to raise the Department's budget. As mentioned above, the SMGB chose to revert certain portions of the proposed amended regulatory language in CCR sections 3697, 3698, and 3699 back to original text. Additionally, see **Response to Comment 1A.**

In regards to Fees Collections and Schedule, the number of reporting mines vary from year to year. While all active mines are required to report, active mines are not the only type of reporting mines. The number of reporting mines does not remain constant as there are possibilities for newly permitted mines, closure of mines, and idle mines in any given year. "Production History 2011-2015" provided as a document relied upon with the Initial Statement of Reasons (ISOR), reflects how the total number of reporting mines varies from year to year as follows: **2011** = 1,133, **2012** = 1,107, **2013** = 1,072, **2014** = 1,040, and **2015** = 1,000. These numbers also do not take into account the number of mines reporting pursuant to CCR section 3698 (b), (d), and (e). The number of mines reporting pursuant to these sub-sections were not included with the ISOR as these fee amounts were not amended for the initial 45-day Notice period.

Furthermore, not all mining operations submit annual reports and/or pay their respective reporting fees. Pursuant to PRC section 2207 (d)(3), if the Director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the SMGB shall adjust the fees to compensate for the overcollection or under collection of revenues. Those mining operations that do not submit their annual reports and/or pay their annual reporting fees are the primary reasons for the Director to account for the under collection of revenue needed to operate the program.

Comment 1D: Again, the issue of the inequity remains my largest concern. To illustrate the inequity, I offer the following matrix which shows the proposed fee on a cost per ton basis for aggregate production. This matrix, for illustration purposes, assumes the formula amount of $6,000 annual fee. In essence, the largest increases are going to be borne by the smaller mine operators on a proportionate basis.

Small Quarries	Mid size quarries	Large Quarries
0-50,000 tons annually	50,001- 500,000 tons annually	500,001- above
6,000/ 50,000= 12 cents per ton	$6,000/500,000= .012 cents per ton	$6,000/ 5,000,000= .0012 cents

Response to Comment 1D: Reject. See **Response to Comment 1A.**

Comment 1E: The mining of dimension stone is a completely different kind of operation than the production of aggregate materials. However, the fee structure does not recognize the differences and therefore creates an inequity on how the proposed fees are applied. Assuming the $6,000 annual fee for dimension stone. I offer additional evidence of the inequity using a cost per ton comparison.

Small Quarries	Mid size quarries	Large quarries
0-2,000 tons annually	2,001-10,000 tons annually	10,001 -50,000 tons annually
$6,000/2000= $3.00 per ton	$6,000/10,000= 60 cents per ton	$6,000/50,000= 1.2 cents per ton

When this proposed fee structure for 2017-2018, and beyond, is then applied to my dimension stone quarry and its annual production below 500 tons, the cost of production just to cover the proposed fees equates to $12.00 per ton. This financial burden is neither equitable nor fair compared to the significantly larger operations who produce an aggregate product. I am confused as to how staff can make this recommendation when they fully understand the equity requirements of PRC Section 2207(d)-2.

Response to Comment 1E: Reject. See **Response to Comment 1A.**

Comment 1F: Further, the intent of these comments is to also provide recommended language changes and new strategies with regard to meeting the Divisions requirements of monitoring and oversight. It is also my intent to provide recommended changes and calculating regard to meeting the provisions of the PRC 2207 (d)-2 regarding equity. With that, I offer the following recommended change to the proposed fee structure:

1. The ceiling on the exemption cited in section 3699, should be raised from $100,000 to $300,000 with an annual reporting fee of $100, if the Board should still consider using a dollar volume measure.
2. The definitions of size of quarries be clarified to reflect more real life scenarios of the almost 1,300 reporting quarries in the state.
3. That a legitimate and documentable nexus must be established between the size and production output of quarries and the annual fees charged which should be proportional to the required monitoring and oversight.

Quarries are proposed to be defined as follows with proposed fee structure (predicated on a fee nexus study):

Small Quarry	Medium sized Quarry	Large Quarry
25,000 to 49,999 ton annually	50,000 to 499,999 tons annually	More than 500,000 tons annually
Not to exceed $1,000	Not to Exceed $5,000	Base fee of $10,000 plus a fee

Response to Comment 1F: Accept in part and reject in part. In response to the commenter's proposed change to the income limit for the Low Gross Exemption in CCR section 3699, the SMGB has reset the maximum gross income limit to $128,900 and reset the associated annual reporting fee to five hundred fifteen dollars ($515). See "Update of the Initial Statement of Reasons" in the Final Statement of Reasons for justification of said changes.

In response to the commenter's suggested proposed change to the definition of size of quarries to reflect more real life scenarios of the almost 1,300 reporting quarries in the state, see **Responses to Comment 1A, Comment 1B, and Comment 1C.**

In response to the commenters suggested proposed "legitimate and documentable nexus between the size and production output of quarries and the annual fees charged which should be proportional to the required monitoring and oversight," see **Responses to Comment 1A, Comment 1B, and Comment 1C.**

In response to the suggested "proposed definitions of quarries and proposed fee structure" in the matrix presented by the commenter, see **Response to Comment 1A.** Additionally, PRC section 2207 (d)(1) limits the maximum fee for any single mining operation to $10,000 annually, 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 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. Proposing a "base fee of $10,000 plus a fee" for a "Large Quarry" producing "More than 500,00 tons annually" would be in direct conflict with statute because of the maximum fee limit.

Commenter 2 – Mary Pitto, Regulatory Affairs Advocate, Rural County Representatives of California (RCRC).

Comment 2A: RCRC previously submitted comments on the proposal brought to the Board for approval to initiate the formal rulemaking process in September. Since the proposed rulemaking package has no changes from the previous draft version, our comments still stand and I will reiterate them here.

Response to Comment 2A: Accepted. The previously submitted comments mentioned above were received during a pre-rulemaking period and in response to the proposed agenda item for the SMGB's September Regular Business Meeting. Staff was seeking approval to begin the formal rulemaking process. The comments were provided to the SMGB and were considered. Staff recommended that the comments should not hinder the SMGB from directing staff to initiate the formal rulemaking process and proceed with the 45-day formal comment period, as the goal was to encourage additional public input. With a unanimous roll call vote, a motion was passed to approve the proposed amended regulatory package and direct staff to initiate the rulemaking process.

Comment 2B: PRC Section 2207(d) (2) (A) states "In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan."

The proposed fee schedule breaks up the three mineral categories into five ranges each, based upon the weight of the materials produced. The proposed regulations indicate that each tier will be assigned a different fee, but do not identify what those fees will be, nor the basis for the fee assigned to each range. (Section 3698(c) sets forth the formula for annual CPI adjustments, but no formula is provided for the initial base fee.) If the initial fees for the five ranges are based on the prior (2016) fees for the equivalent production amounts, this would simply perpetuate the inequities in the current fee structure. When reviewing the amounts charged for the 2016 annual fee schedule, there are only three levels of fees with the four highest ranges all paying the same amount. Basically, this seems to indicate that there is no more time and effort spent by DMR for reviewing an operation that is producing 1,000 tons of aggregate than one that produces more than 100,000 tons. This is plainly concerning, and should not be carried over into the new regulations.

Response to Comment 2B: Accept in part and reject in part. See **Responses to Comment 1A, Comment 1B,** and **Comment 1C.**

Comment 2C: Alternatively, the economic impact analysis in the ISOR (p. 13) suggests that the board will establish entirely new base fees for each tier, but it is not clear that the amounts in the ISOR will be the actual fees ultimately imposed (since they are not included in the regulation) – and more importantly, the basis for these new amounts is not explained or justified. (Does a mine with an annual production of 10,001 tons really take only 10% less effort than a mine of 200,000 tons? How is that determination made?)

Response to Comment 2C: Accept in part and reject in part. See **Responses to Comment 1A.**

Comment 2D: In the Notice of Pre-Rulemaking dated June 7, 2017, proposed Section 3698, subdivision (c) included new language that gave the board discretionary authority to "adjust the fee schedule so that the difference between the Fee . . . for any subsequent production category . . . is at least twenty percent (20%)." We appreciated the indication that there was recognition of the inequity in the current fee structure. However, future discretionary alteration of the fee schedule, without any indication of whether and when this will occur, and without explicit and public consideration of the factors set forth in the Public Resources Code, was not an appropriate substitute for redesigning the formula that produced the current inequitable fees in the first place. But in the version before you, even this language has been deleted.

Response to Comment 2D: Accept in part and reject in part. See **Responses to Comment 1A** and **Comment 1B.**

Comment 2E: When reviewing the 2017, 2018 Suggested Fees Comparison with 5 Tiers provided in the Economic Analysis, it does demonstrate that the fees get reduced each year for the lower categories and therefore appears more equitable. But presumably, the staff workload for reviewing is not changing each year for the same operations. So, there does not seem to be a nexus for what the operator is charged and the amount of effort put forth from DMR. Rather, it appears the DMR is making the increase in the maximum fee work for their proposed budget, when actually the insufficient funding should be made up with General Fund money.

Response to Comment 2E: Accept in part and reject in part. See **Responses to Comment 1A, Comment 1B,** and **Comment 1C.**

Additionally, statue does not give the SMGB or the Division of Mine Reclamation the authority to use General Fund money to make up for insufficient funding needed to implement SMARA. The commenters understanding and suggestion that “the insufficient funding should be made up with General Fund money” is in direct conflict with statute. PRC section 2207 (d)(3) clearly states, “If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection [*sic*] of revenues.” Furthermore, PRC section 2207 (d)(4)(A) states, “The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.”

Comment 2F: RCRC respectfully asks that you consider reevaluating the formula used to calculate the initial base fees on an equitable basis reflecting the size and type of operation, and acreage subject to the reclamation plan, and that the basis for that new formula and the resulting amounts be clearly included in the adopted regulation.

Response to Comment 2F: Accept in part and reject in part. See **Response to Comment 1A.**

Comment 2G: RCRC appreciates that in Section 3699 for Low Gross Exemptions that the amount of the operator's gross income from the mining operation was increased from $100,000 to $182,900 based upon the adjusted cost of living increase from 1992 when it was first enacted. However, the fee was increased from $400 to $1,000 in that same time period. If you use the same cost of living adjustment that amount should increase to $732.

Response to Comment 2G: Accept in part and reject in part. See **Response to Comment 1F** regarding CCR section 3699, Low Gross Exemption**.**

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOVEMBER 16, 2017 THROUGH DECEMBER 1, 2017 PERIOD THE MODIFIED TEXT WAS AVAILABLE.

No comments received.