

Pre-Rulemaking Workshop

August 18, 2022

Draft Regulatory Language and Discussion of Proposed Rulemaking for PRC 2174(f)

BACKGROUND:

The State Mining and Geology Board (Board) represents the State's interest in the development, utilization, and conservation of the mineral resources of the State and the reclamation of mined lands. The Board determines, establishes, and maintains an adequate surface mining and reclamation policy for the State.

The "(f) exemption" allows the State Mining and Geology Board (Board) to exempt certain surface mining operations from the Surface Mining and Reclamation Act that are of an "infrequent nature" and "involve only minor surface disturbances."

STATUTORY AND REGULATORY AUTHORITY:

PRC Section 672: The board shall represent the state's interest in the development, utilization, and conservation of the mineral resources of the state and the reclamation of mined lands, as provided by law, and federal matters pertaining to mining, and shall determine, establish, and maintain an adequate surface mining and reclamation policy.

PRC Section 2714(f): This chapter does not apply to any...other surface mining operation that the board determines to be of an infrequent nature and that involve only minor surface disturbances.

PRC Section 2755: The board shall adopt regulations that establish state policy for the reclamation of mined lands in accordance with Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

PRC Section 2758(c): Such policy shall include objectives and criteria for...determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

PRC Section 2759: The state policy shall be continuously reviewed and may be revised. During the formulation or revision of the policy, the board shall consult with, and carefully evaluate the recommendations of, the supervisor, any district technical advisory committees, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

DISCUSSION:

SMARA includes several exemptions for construction, farming, timber, and flood control purposes, amongst others. One of the exemptions in SMARA allows the Board to exempt certain surface mining operations that are of an infrequent nature and that involve only minor surface disturbances.

The Board's authority to determine this exemption has been in the SMARA statutes since it was initially enacted in 1975. Staff file review indicates the Board has granted 29 projects an (f) exemption and denied 9 others since 2000. Currently, the Board is limited with useful guidance criteria for the (f) exemption process.

Regulations exist for the Board when hearing appeals for the approval of reclamation plans, financial assurances, mineral designations, and enforcement actions, etc.

The Board previously conducted a Pre-Rulemaking Workshop on March 24, 2022. Over 40 persons participated in the Workshop including, Local Lead Agency staff, mine operators, mining industry consultants and association representatives, other State Agency staff, and members of the public. Generalized feedback from the workshop included: refrain from defining “infrequent nature” and “minor surface disturbance,” ensure Lead Agencies are notified of an operator request for an exemption, regulations should ensure the Board maintains discretion while determining a potential exemption, and the Board must not levy a “fee” to review a potential exemption request.

Please see attached proposed regulatory language for review. Board staff intend to engage workshop participants by discussing the regulatory language and obtain feedback and comments.

Attachments:

1 –Proposed Regulatory Language for PRC section 2714(f)