Priorities for Implementing Changes to Mining Laws and Regulations in California

Reclaiming the Sierra 2017
California State University, Sacramento

Pat Perez – State Supervisor
Presentation Overview

- Catalyst for Changes to Mining Laws
- Prioritization of Rulemaking and Guidance Documents
- Rulemaking Preparation and Multiple Opportunities for Public and Stakeholder Input
- Purpose and Desired Outcomes
- Questions
Catalyst for 2016 SMARA Reform

• Governor Brown indicated “top to bottom” reforms were necessary after signing SB447 (Lara) during 2013/14 legislative session.

• A year-long stakeholder process was convened by the Governor’s office in 2015 to recommend substantive and procedural changes to the state’s mining laws.

• SB 209 by Senator Fran Pavley (D-Agoura Hills) and AB 1142 by Assembly member Adam Gray (D-Merced) were the result of stakeholder process.

• The Governor signed both bills on April 18, 2016.

• Bills are operative January 1, 2017.
Rulemaking Priorities

1. Fee Schedule
   – In progress
2. Financial Assurance Cost Estimate Form
   – Completed, Form effective July 1st, 2017
3. Annual Inspections/Inspector Guidance and Training Program
   – In progress, to be completed by December 31, 2017
4. Financial Assurance Mechanism Forms
   – To be completed by July 1, 2018
5. Vested Rights Determinations
7. Enforcement/Order to Comply Appeals
8. Revise Financial Assurance Forfeiture Process
9. Corporate Bonding/Financial Test
Public & Stakeholder Involvement

• Public and Stakeholder Participation:
  – Perform outreach to identify stakeholders
  – Include stakeholders throughout the rulemaking process
  – Pre, initial and final rulemakings

• Pre-Rulemaking Discussion Workshops:
  – Provide overview of new/amended sections of the Surface Mining and Reclamation Act (SMARA)
  – Listen to comments/concerns and suggestions from various stakeholders
Pre-Rulemaking Activities

• Pre-Rulemaking Workshops
  – Present overview of changes to mining laws
  – Discuss how stakeholders and public can provide input on regulations and guidance documents
Initial Rulemaking Package

- Text of Proposed Regulations
- Notice of Proposed Action (NOPA)
- Initial Statement of Reasons
- Economic and Fiscal Impact Analysis
Final Rulemaking Package

- Final Text of Regulations
- Final Statement of Reasons
- Public Comment Summary and Response
- Final Statement of Reasons (FSOR)

If approved, OAL files the regulations with Secretary of State and they go into effect at beginning of next quarter.
State Mining and Geology Board (SMGB) Rulemaking Packages Schedule

1. Fees Calculation (PRC §2207)
   - SMGB and DMR staff conducting necessary research to address various aspects of CCR 3697, 3698, & 3699.

2. Annual Inspections (PRC §2774(b)(c))
   - Currently in required 45-day comment period, ending June 12, 2017.

3. Reclamation Plan and Financial Cost Estimate (FACE) Appeals (PRC §2770(e) – (g))
   - Package placed on hold to conduct additional research.

4. Financial Assurance Mechanism (FAM) Forms (PRC §2773.4(e)(3))
   - Must be adopted by July 1, 2018
     • Currently anticipate the initial submittal package to be presented at the June SMGB meeting.

5. Vested Rights Determination (PRC §2774.4 (a))
   - Currently anticipate the initial submittal package to be presented at the June 8, 2017 SMGB meeting.
State Mining and Geology Board (SMGB) Rulemaking Packages Schedule

Cleanup Regulations I
(Proposed Timeline – Q3 2017)

6. Revise Enforcement Process and Order to Comply (OTC) Appeals Process (PRC §2774.1)
   – May skip NOV and issue OTC if the violation can’t be remedied within 30 days
   – Operator must appeal OTC within 30 days of issuance

7. Revise Financial Assurance Forfeiture Process (PRC §2773.1(b))
   – Evidence/Circumstances Leading to a Hearing Remediation vs Reclamation

8. Corporate Bonding/Financial Tests (PRC §2773.1.5)

Cleanup Regulations II
(Proposed Timeline – Q2 2018)
Purpose and Desired Outcomes With Changes to the Surface Mining and Reclamation Act (SMARA)

Senate Bill 209 (Pavley)

- Requires the mining industry, rather than the public, pays for the State’s regulatory costs by increasing annual mine operator reporting fees from $6,000 to $10,000 over 3 years.
- Grants lead agencies greater flexibility over the operation of borrow pits and reduces frequency of mine inspections and improves long-term management and reclamation.
- Provides flexibility for mine operators to use corporate financial test for a portion for covering financial assurance costs.
- Facilitates the review of the owner or operator’s annual report and ensures consistency for inspections.
Assembly Bill 1142 (Gray)

• Increases transparency on Department activities and expenditures related to SMARA by requiring Mine Reclamation Report to legislature in 2021.
• Requires financial assurance cost estimates cover the full cost of reclamation. Otherwise, the Department may appeal to SMGB.
• Requires mine operators provide consistent and complete reclamation plans, with streamlined review process, and provide comprehensive final approved reclamation plan
• Specifies the timeframe for the Department to fully review and provide feedback to lead agencies on a reclamation plan’s compliance with SMARA.
• Redefines financial assurance as a current approved financial assurance cost estimate \textit{and} a financial assurance mechanism that is at least equal to the current approved financial cost estimate.

Purpose and Desired Outcomes With Changes to the Surface Mining and Reclamation Act (SMARA)
Assembly Bill 1142 (Gray) Cont’d

- Ensure that financial assurances sufficient to cover reclamation remain in place until reclamation is complete.
- Specifies the time frames in which the operator must submit the financial assurance cost estimate to the lead agency, and the review process for this cost estimate.
- The lead agency must submit revised cost estimates to the Department that it plans to approve.
- Requires financial assurances remain in place until the operator reclaims the land as specified in SMARA and the reclamation plan.
- Revises the forfeiture process for commencing reclamation in the event a mine operator is financially incapable or has abandoned the mine site.
- Requires new owners or mine operators secure adequate financial assurances to complete reclamation within an appropriate time frame.
Assembly Bill 1142 (Gray) Cont’d

- Provides a consultation process between the Department, lead agencies and mine operators to address differences in the financial cost estimates for reclaiming mine sites.
- Requires the Department to establish an inspection training program that all inspectors must complete by July 1, 2020.
- Improves the quality and consistency of inspections
- Enables lead agencies to coordinate with operators to remedy minor violations prior to submittal.
- Requires lead agencies to include a description of intended enforcement actions in the notice and improve accountability.
- Streamlines lead agency reporting requirements and notification to Department on mine permit applications.
Assembly Bill 1142 (Gray) Cont’d

• Improves the Department and lead agencies ability to efficiently assess and collect administrative fees and penalties from mine operators who don’t pay their annual fees and submit annual reports through court judgements.

• Reaffirms vested rights determination is a local land use decision, and should therefore remain with the local government although a lead agency may be placed on probation to address deficiencies.

• Directs SMGB to work with lead agencies to improve compliance with SMARA, as an alternative to initiating takeover of lead agency responsibilities for mining.
Successful Reclamation

New Era Mine, Oroville
Successful Reclamation