



RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA

August 16, 2017

State Mining and Geology Board  
Attn: Vested Rights Determinations and Mining Ordinances  
801 K Street, MS 20-15  
Sacramento, CA 95814

Transmit Via E-Mail: [smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov)

**RE: Comments on Rulemaking Process - Vested Rights Determinations and Mining**

Dear Chair Kracov and Board Members:

On behalf of the Rural County Representatives of California (RCRC), I write to submit comments on the rulemaking process for the development and revision of regulation language in the California Code of Regulations (CCR) associated with vested rights determinations and mining.

RCRC is an association of thirty-five rural California counties, and the RCRC Board of Directors is comprised of an elected supervisor from each of those member counties. Members of Boards of Supervisors, in conjunction with the County staff, are responsible for the proper permitting, oversight, and monitoring of mining and reclamation activities conducted within the county in compliance with the Surface Mining and Reclamation Act.

RCRC concurs and supports the revisions proposed for Article 15, Vested Rights Determination, with the amendment to Section 3950 and the repeal of Sections 3951-3965. However, RCRC believes that the proposed revisions to Article 16, Mining Ordinances, grants authority to the Board not authorized by statute and circumvents the existing notice and hearing requirements for the Board to assume full authority as the lead agency. We understand that the Board no longer intends to pursue amendments to Article 16 in this Vested Rights rulemaking package; however, we are submitting the following comments for the benefit of the Board's consideration should similar proposals be advanced at any time in the future.

The proposed language in Section 4000(c) would grant full authority of *all* lead agency's powers under Public Resources Code (PRC) 2710-2796 when the Board finds that a lead agency's ordinance is not in accordance with state policy. Yet, PRC Section

1215 K Street, Suite 1650, Sacramento, CA 95814 | [www.rcrcnet.org](http://www.rcrcnet.org) | 916.447.4806 | Fax: 916.448.3154

State Mining and Geology Board  
Comments on Rulemaking Process - Vested Rights  
Determinations and Mining  
August 16, 2017  
Page 2

2774.5 states that the Board shall assume full authority *for reviewing and approving reclamation plans* submitted to the lead agency, not full authority for *all* lead agency powers.

Additionally, the proposed language in Section 4000(c) appears to circumvent the notice and public hearing requirements applicable in all other circumstances where the Board proposed to exercise some or all of a lead agency's powers. Those provisions (i.e., PRC 277474(c)) serve the important function of providing "due process" and opportunity for input by the lead agency, affected mining operators, and the general public, which is equally valuable here.

At the June 8, 2017 Board meeting, some Board Members inquired about the prospect of incorporating notice and hearing requirements, similar to those set forth in PRC 2774.4 into proposed Section 4000. The attached suggested amendments would achieve this objective.

RCRC appreciates this opportunity to comment on the proposal and hopes our proposed language will be considered. If you have any questions or wish to have further discussions, please contact me at [mpitto@rcrcnet.org](mailto:mpitto@rcrcnet.org) or (916) 447-4806.

Sincerely,

A handwritten signature in black ink that reads "Mary Pitto". The signature is written in a cursive, flowing style.

MARY PITTO  
Regulatory Affairs Advocate

cc: Pat Perez, Division Supervisor, Division of Mine Reclamation

Attachment: RCRC Proposed Amendments to Article 16 Mining Ordinances

## § 4000. Certification and Recertification of Mining Ordinances

(a) Upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, a lead agency shall, within 30 days of such action, provide written notice of the complete text of the resulting mining ordinance to the State Mining and Geology Board, to enable the Board to review the ordinance in accordance with Public Resources Code Sections 2774.3, 2774.5(a) and 2774.5(b).

(b) The Board may determine that a lead agency does not have a certified ordinance, as set forth in PRC Section 2774.3, in any of the following circumstances:

(1) Where the lead agency has failed to adopt an ordinance when required by PRC Section 2774(a);

(2) Where a lead agency has not provided the Board with timely notice of the complete text of its mining ordinance, consistent with subparagraph (a) herein; or

(3) Where the Board finds that the lead agency's ordinance is not in accordance with state policy pursuant to the process set forth in subdivisions (a) and (b) of PRC Section 2774.5.

~~, the mining ordinance shall not be considered to be in accordance with state policy until the mining ordinance is certified by the Board as being in accordance with state policy.~~

(c) (1) In any jurisdiction in which the lead agency does not have a certified ordinance, as set forth in subparagraph (b) herein, the board shall undertake proceedings to assume full authority for reviewing and approving reclamation plans in accordance with this subdivision.

(2) Proceedings under this subdivision may be commenced upon completion of the applicable review and revision periods set forth in PRC 2774.5(a) and (b), or at any time if the lead agency has failed to adopt an ordinance when required by PRC Section 2774(a).

(3) The board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county and directly mailed to the lead agency and to all operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.

(4) At the hearing, the board shall determine if the lead agency has adopted an ordinance in accordance with state policy. If the board finds that the lead agency has not adopted an ordinance in accordance with state policy, the Board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(5) Affected operators and interested persons have the right at the public hearing to present oral and written evidence on the matter being considered. At the public hearing, the board may place reasonable limits on the right of affected operators and interested persons to question and solicit testimony.

(6) (A) If the board decides to take action pursuant to this subdivision and assume full authority for reviewing and approving reclamation plans, the board, based on the record of the public hearing, shall adopt written findings that explain all of the following:

(i) The action to be taken by the board.

(ii) Why the board decided to take the action.

(iii) Why the action is authorized by and meets the requirements of this section and PRC 2774, 2774.5 and 2774.5, as applicable.

(B) In addition, the board's findings shall address the significant issues raised, or written evidence presented, by affected operators, interested persons, the lead agency, or the department. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(7) The lead agency, any affected operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (c)(5) may obtain review of the board's action taken pursuant to this subdivision by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision.

~~assumes full authority of all lead agency's powers under Public Resources Code Sections 2710-2796 and Public Resources Code Section 2207 for all surface mining operations until the time the board certifies a lead agency's mining ordinance.~~ (d) Nothing in this section shall be construed as authorizing the board to issue a permit for the conduct of mining operations or issue vested rights determinations.

~~(ed) Notwithstanding subsection (c) of this Article, I~~ Lead agencies with previously certified mining ordinances retain lead agency authority for reviewing and approving reclamation plans until completion of proceedings in accordance with subdivision (c).