



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

November 13, 2017

State Mining and Geology Board
Attn: Inspections
801 K Street, MS 20-15
Sacramento, CA 95814

Transmitted Via e-mail: smgb@conservation.ca.gov

RE: Comments on Rulemaking Package #1 – Fees Calculation and Schedule

Honorable Board Members:

On behalf of the Rural County Representatives of California (RCRC), I write again to submit comments on the proposed amended regulatory language for the Initial Rulemaking package #1, Fees Calculation and Schedule, in the California Code of Regulations that the State Mining and Geology Board (SMGB) has put forward. RCRC greatly appreciates and wishes to thank your Executive Officer and the Division Supervisor and staff from the Division of Mine Reclamation (DMR) that took the time to visit two quarries in Mariposa County as part of the pre-rulemaking.

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 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.

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.

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?)

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.

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.

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.

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.

RCRC looks forward to working with your staff during the formal regulatory process to address our concerns. If you have any questions or wish to have further discussions, please contact me at 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
RCRC Board of Directors