

A Resolution of The State Mining & Geology Board

THE STATE MINING &
GEOLOGY BOARD
Sacramento, California

ALLEN M. JONES, CHAIRMAN
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Resolution Number 2007-04

Defining the State Mining and Geology Board's Authority as a SMARA Lead Agency to Conduct Vested Rights Determinations



Whereas: Pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA), Public Resources Code Section 2770(a), a mining operator must have a permit, approved reclamation plan and approved financial assurance before being allowed to conduct surface mining operations; and

Whereas: Pursuant to Public Resources Code, Section 2774.4(a), any person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, is not required to secure a permit to mine; and

Whereas: Pursuant to Public Resources Code Section 2774.4(a), "If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority."; and

Whereas: The Board has determined that the determination of vested rights is not part of the permitting process, and that vested rights is a deterministic issue separate from that of permitting; and

Whereas: The Board as of February 2002 is the Lead Agency under SMARA for Yuba County; and

Whereas: In *Calvert v. County of Yuba* (2007) 145 Cal.App.4th 613, the Third District Court of Appeal determined that the Board's authority as Lead Agency under SAMRA includes the authority to conduct a vested rights determination; and

Whereas: The Board considers vesting determination as a separate process from permitting itself that is necessary to determine whether a permit is required; and

Therefore, be it resolved that: The State Mining and Geology Board as the local SMARA Lead Agency, has determined that determination of vesting is not part of the permitting process, and has the power and authority to make vested rights determinations.



Adopted: February 8, 2007

Allen M. Jones, Chairman