

ASSEMBLY BILL

No. 2742

Introduced by Assembly Member Blakeslee

February 19, 2010

An act to amend Section 2770 of the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as introduced, Blakeslee. Mining: surface mining operations.

Existing law prohibits a person, with exceptions, from conducting surface mining operations unless a permit is obtained from, a reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation.

This bill would make technical, nonsubstantive changes to that law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2770 of the Public Resources Code is
- 2 amended to read:
- 3 2770. (a) Except as provided in this section, ~~no~~ a person shall
- 4 *not* conduct surface mining operations unless a permit is obtained
- 5 from, a reclamation plan has been submitted to and approved by,
- 6 and financial assurances for reclamation have been approved by,
- 7 the lead agency for the operation pursuant to this article.

1 (b) ~~Any~~ A person with an existing surface mining operation who
2 has vested rights pursuant to Section 2776 and who does not have
3 an approved reclamation plan shall submit a reclamation plan to
4 the lead agency not later than March 31, 1988. If a reclamation
5 plan application is not on file by March 31, 1988, the continuation
6 of the surface mining operation is prohibited until a reclamation
7 plan is submitted to the lead agency. For purposes of this
8 subdivision, reclamation plans may consist of all or the appropriate
9 sections of ~~any the~~ plans or written agreements previously approved
10 by the lead agency or another agency, together with ~~any the~~
11 additional documents needed to substantially meet the requirements
12 of Sections 2772 and 2773 and the lead agency surface mining
13 ordinance adopted pursuant to subdivision (a) of Section 2774,
14 provided that all documents which together were proposed to serve
15 as the reclamation plan are submitted for approval to the lead
16 agency in accordance with this chapter.

17 (c) If a person with an existing surface mining operation has
18 received lead agency approval of its financial assurances for
19 reclamation prior to January 1, 1991, the lead agency shall
20 administratively review those existing financial assurances in
21 accordance with subdivision (d) prior to January 1, 1992. The
22 review of existing financial assurances shall not be considered a
23 project for purposes of Division 13 (commencing with Section
24 21000). ~~Any~~ A person with an existing surface mining operation
25 which does not have financial assurances that received lead agency
26 approval prior to January 1, 1991, shall submit financial assurances
27 for reclamation for review in accordance with subdivision (d).

28 (d) The lead agency's review of reclamation plans submitted
29 pursuant to subdivision (b) or of financial assurances pursuant to
30 subdivision (c) is limited to whether the plan or the financial
31 assurances substantially meet the applicable requirements of
32 Sections 2772, 2773, and 2773.1, and the lead agency surface
33 mining ordinance adopted pursuant to subdivision (a) of Section
34 2774, but, in any event, the lead agency shall require that financial
35 assurances for reclamation be sufficient to perform reclamation
36 of lands remaining disturbed. Reclamation plans or financial
37 assurances determined to substantially meet these requirements
38 shall be approved by the lead agency for purposes of this chapter.
39 Reclamation plans or financial assurances determined not to
40 substantially meet these requirements shall be returned to the

1 operator within 60 days. The operator has 60 days to revise the
2 plan or financial assurances to address identified deficiencies, at
3 which time the revised plan or financial assurances shall be
4 returned to the lead agency for review and approval. Except as
5 specified in subdivision (e) or (i), unless the operator has filed on
6 or before July 1, 1990, an appeal pursuant to subdivision (e) with
7 regard to nonapproval of the reclamation plan, or has filed on or
8 before January 1, 1994, an appeal pursuant to subdivision (e) with
9 regard to nonapproval of financial assurances, and that appeal is
10 pending before the board, the continuation of the surface mining
11 operation is prohibited until a reclamation plan and financial
12 assurances for reclamation are approved by the lead agency.

13 (e) ~~Any~~ A person who, based on the evidence of the record, can
14 substantiate that a lead agency has either (1) failed to act according
15 to due process or has relied on considerations not related to the
16 specific applicable requirements of Sections 2772, 2773, and
17 2773.1, and the lead agency surface mining ordinance adopted
18 pursuant to subdivision (a) of Section 2774, in reaching a decision
19 to deny approval of a reclamation plan or financial assurances for
20 reclamation, (2) failed to act within a reasonable time of receipt
21 of a completed application, or (3) failed to review and approve
22 reclamation plans or financial assurances as required by
23 subdivisions (c) and (d), may appeal that action or inaction to the
24 board.

25 (f) The board may decline to hear an appeal if it determines that
26 the appeal raises no substantial issues related to the lead agency's
27 review pursuant to this section.

28 (g) ~~Appeals~~ *An appeal* that the board does not decline to hear
29 shall be scheduled and heard at a public hearing within 45 days of
30 the filing of the appeal, or ~~any a longer period as may be~~ mutually
31 agreed upon by the board and the person filing the appeal. In
32 hearing an appeal, the board shall only determine whether the
33 reclamation plan or the financial assurances substantially meet the
34 applicable requirements of Sections 2772, 2773, 2773.1, and the
35 lead agency surface mining ordinance adopted pursuant to
36 subdivision (a) of Section 2774. A reclamation plan or financial
37 assurances determined to meet these requirements shall be
38 approved. A reclamation plan or financial assurances determined
39 not to meet these requirements shall be returned to the person filing
40 the appeal with a notice of deficiencies, ~~who~~ and the person shall

1 be granted, once only, a period of 30 days, or a longer period
2 mutually agreed upon by the operator and the board, to correct the
3 noted deficiencies and submit the revised reclamation plan or the
4 revised financial assurances to the lead agency for review and
5 approval.

6 (h) (1) Within 90 days of a surface mining operation becoming
7 idle, as defined in Section 2727.1, the operator shall submit to the
8 lead agency for review and approval, an interim management plan.
9 The review and approval of an interim management plan shall not
10 be considered a project for purposes of Division 13 (commencing
11 with Section 21000). The approved interim management plan shall
12 be considered an amendment to the surface mining operation's
13 approved reclamation plan, for purposes of this chapter. The
14 interim management plan shall provide measures the operator will
15 implement to maintain the site in compliance with this chapter,
16 including, but not limited to, all permit conditions.

17 (2) The interim management plan may remain in effect for a
18 period not to exceed five years, at which time the lead agency shall
19 do one of the following:

20 (A) Renew the interim management plan for another period not
21 to exceed five years, if the lead agency finds that the surface mining
22 operator has complied fully with the interim management plan.

23 (B) Require the surface mining operator to commence
24 reclamation in accordance with its approved reclamation plan.

25 (3) The financial assurances required by Section 2773.1 shall
26 remain in effect during the period that the surface mining operation
27 is idle. If the surface mining operation is still idle after the
28 expiration of its interim management plan, the surface mining
29 operation shall commence reclamation in accordance with its
30 approved reclamation plan.

31 (4) Within 60 days of the receipt of the interim management
32 plan, or a longer period mutually agreed upon by the lead agency
33 and the operator, the lead agency shall review and approve the
34 plan in accordance with its ordinance adopted pursuant to
35 subdivision (a) of Section 2774, so long as the plan satisfies the
36 requirements of this subdivision, and so notify the operator in
37 writing. Otherwise, the lead agency shall notify the operator in
38 writing of any deficiencies in the plan. The operator shall have 30
39 days, or a longer period mutually agreed upon by the operator and
40 the lead agency, to submit a revised plan.

1 (5) The lead agency shall approve or deny approval of the
2 revised interim management plan within 60 days of receipt. If the
3 lead agency denies approval of the revised interim management
4 plan, the operator may appeal that action to the lead agency's
5 governing body, which shall schedule a public hearing within 45
6 days of the filing of the appeal, or ~~any~~ a longer period mutually
7 agreed upon by the operator and the governing body.

8 (6) Unless review of an interim management plan is pending
9 before the lead agency, or an appeal is pending before the lead
10 agency's governing body, a surface mining operation ~~which~~ *that*
11 remains idle for over one year after becoming idle as defined in
12 Section 2727.1 without obtaining approval of an interim
13 management plan shall be considered abandoned and the operator
14 shall commence and complete reclamation in accordance with the
15 approved reclamation plan.

16 (i) ~~Any~~ *An* enforcement action ~~which~~ *that* may be brought
17 against a surface mining operation for operating without an
18 approved reclamation plan, financial assurance, or interim
19 management plan, shall be held in abeyance pending review
20 pursuant to subdivision (b), (c), (d), or (h) or the resolution of an
21 appeal filed with the board pursuant to subdivision (e), or *filed*
22 with a lead agency governing body pursuant to subdivision (h).