

AMENDED IN ASSEMBLY APRIL 23, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2509

Introduced by Assembly Member Nielsen

February 24, 2012

An act to amend Section 2714 of the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

AB 2509, as amended, Nielsen. Surface mining and reclamation plans: exempted activities.

Existing law, the Surface Mining and Reclamation Act of 1975, prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency, as defined, for the operation. Existing law excepts from those requirements certain activities including, among other things, excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.

This bill would exempt instead the excavations or grading of lands ~~affected by a flood or natural disaster for the purpose instead of restoring those lands to their prior condition within 20 years of when the lands were affected~~ *conducted for either farming or the restoration of lands affected by a flood or natural disaster to their prior condition, as prescribed. The bill would permit a person to sell any amount of overburden or mineral product produced from restoration activities if the proceeds from that sale are only used to offset the costs of*

excavation, grading, or otherwise returning the land to the condition it was in prior to the flood or natural disaster.

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

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

1 SECTION 1. Section 2714 of the Public Resources Code is
2 amended to read:

3 2714. This chapter does not apply to any of the following
4 activities:

5 ~~(a) Excavations or grading conducted for farming or the~~
6 ~~excavation or grading of lands affected by a flood or natural~~
7 ~~disaster for the purpose of restoring those lands to their prior~~
8 ~~condition within 20 years of when the lands were affected.~~

9 (a) *Excavations or grading of lands conducted for either of the*
10 *following activities:*

11 (1) *Farming.*

12 (2) (A) *The restoration of lands affected by a flood or natural*
13 *disaster to their prior condition.*

14 (B) *A person may sell any amount of overburden or mineral*
15 *product produced from restoration activities if the proceeds from*
16 *that sale are only used to offset the costs of excavating, grading,*
17 *or otherwise returning the land to the condition it was in prior to*
18 *the flood or natural disaster. All records regarding the sale of*
19 *overburden or mineral product shall be maintained for at least*
20 *five years after the date of the sale by the person conducting the*
21 *restoration, and shall be made available to any public agency that*
22 *requests those records.*

23 (C) *The excavation or grading for the restoration may only*
24 *occur within a reasonable time, considering the circumstances,*
25 *after the flood or natural disaster has occurred.*

26 (b) *Onsite excavation and onsite earthmoving activities that are*
27 *an integral and necessary part of a construction project and that*
28 *are undertaken to prepare a site for construction of structures,*
29 *landscaping, or other land improvements associated with those*
30 *structures, including the related excavation, grading, compaction,*
31 *or the creation of fills, road cuts, and embankments, whether or*
32 *not surplus materials are exported from the site, subject to all of*
33 *the following conditions:*

1 (1) All required permits for the construction, landscaping, or
2 related land improvements have been approved by a public agency
3 in accordance with applicable provisions of state law and locally
4 adopted plans and ordinances, including, but not limited to,
5 Division 13 (commencing with Section 21000).

6 (2) The lead agency's approval of the construction project
7 included consideration of the onsite excavation and onsite
8 earthmoving activities pursuant to Division 13 (commencing with
9 Section 21000).

10 (3) The approved construction project is consistent with the
11 general plan or zoning of the site.

12 (4) Surplus materials shall not be exported from the site unless
13 and until actual construction work has commenced and shall cease
14 if it is determined that construction activities have terminated, have
15 been indefinitely suspended, or are no longer being actively
16 pursued.

17 (c) Operation of a plant site used for mineral processing,
18 including associated onsite structures, equipment, machines, tools,
19 or other materials, including the onsite stockpiling and onsite
20 recovery of mined materials, subject to all of the following
21 conditions:

22 (1) The plant site is located on lands designated for industrial
23 or commercial uses in the applicable county or city general plan.

24 (2) The plant site is located on lands zoned industrial or
25 commercial, or are contained within a zoning category intended
26 exclusively for industrial activities by the applicable city or county.

27 (3) None of the minerals being processed are being extracted
28 onsite.

29 (4) All reclamation work has been completed pursuant to the
30 approved reclamation plan for any mineral extraction activities
31 that occurred onsite after January 1, 1976.

32 (d) Prospecting for, or the extraction of, minerals for commercial
33 purposes where the removal of overburden or mineral product
34 totals less than 1,000 cubic yards in any one location, and the total
35 surface area disturbed is less than one acre.

36 (e) Surface mining operations that are required by federal law
37 in order to protect a mining claim, if those operations are conducted
38 solely for that purpose.

1 (f) Any other surface mining operations that the board, as
2 defined by Section 2001, determines to be of an infrequent nature
3 and which involve only minor surface disturbances.

4 (g) The solar evaporation of sea water or bay water for the
5 production of salt and related minerals.

6 (h) Emergency excavations or grading conducted by the
7 Department of Water Resources or the Reclamation Board for the
8 purpose of averting, alleviating, repairing, or restoring damage to
9 property due to imminent or recent floods, disasters, or other
10 emergencies.

11 (i) (1) Surface mining operations conducted on lands owned
12 or leased, or upon which easements or rights-of-way have been
13 obtained, by the Department of Water Resources for the purpose
14 of the State Water Resources Development System or flood control,
15 and surface mining operations on lands owned or leased, or upon
16 which easements or rights-of-way have been obtained, by the
17 Reclamation Board for the purpose of flood control, if the
18 Department of Water Resources adopts, after submission to and
19 consultation with, the Department of Conservation, a reclamation
20 plan for lands affected by these activities, and those lands are
21 reclaimed in conformance with the standards specified in
22 regulations of the board adopted pursuant to this chapter. The
23 Department of Water Resources shall provide an annual report to
24 the Department of Conservation by the date specified by the
25 Department of Conservation on these mining activities.

26 (2) Nothing in this subdivision shall require the Department of
27 Water Resources or the Reclamation Board to obtain a permit or
28 secure approval of a reclamation plan from any city or county in
29 order to conduct surface mining operations specified in paragraph
30 (1). Nothing in this subdivision shall preclude the bringing of an
31 enforcement action pursuant to Section 2774.1, if it is determined
32 that a surface mine operator, acting under contract with the
33 Department of Water Resources or the Reclamation Board on lands
34 other than those owned or leased, or upon which easements or
35 rights-of-way have been obtained, by the Department of Water
36 Resources or the Reclamation Board, is otherwise not in
37 compliance with this chapter.

38 (j) (1) Excavations or grading for the exclusive purpose of
39 obtaining materials for roadbed construction and maintenance
40 conducted in connection with timber operations or forest

1 management on land owned by the same person or entity. This
2 exemption is limited to excavation and grading that is conducted
3 adjacent to timber operation or forest management roads and shall
4 not apply to onsite excavation or grading that occurs within 100
5 feet of a Class One watercourse or 75 feet of a Class Two
6 watercourse, or to excavation for materials that are, or have been,
7 sold for commercial purposes.

8 (2) This exemption shall be available only if slope stability and
9 erosion are controlled in accordance with subdivision (f) of Section
10 3704 and subdivision (d) of Section 3706 of Title 14 of the
11 California Code of Regulations and, upon closure of the site, the
12 person closing the site implements, where necessary, revegetation
13 measures and postclosure uses in consultation with the Department
14 of Forestry and Fire Protection.

15 (k) Excavations, grading, or other earthmoving activities in an
16 oil or gas field that are integral to, and necessary for, ongoing
17 operations for the extraction of oil or gas that comply with all of
18 the following conditions:

19 (1) The operations are being conducted in accordance with
20 Division 3 (commencing with Section 3000).

21 (2) The operations are consistent with any general plan or zoning
22 applicable to the site.

23 (3) The earthmoving activities are within oil or gas field
24 properties under a common owner or operator.

25 (4) No excavated materials are sold for commercial purposes.

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