

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1142

Introduced by Assembly Member Gray

February 27, 2015

An act to amend Sections 2207, 2715.5, 2733, 2770, 2772, 2773.1, 2774, ~~and 2774.2~~ 2774.1, 2774.2, *and 2774.4* of, ~~and~~ to add Sections 2736, 2772.1, and 2773.4 to, *and to add and repeal Section 2207.2 of*, the Public Resources Code, relating to mining and geology.

LEGISLATIVE COUNSEL'S DIGEST

AB 1142, as amended, Gray. Mining and geology: surface mining.

(1) The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit is obtained from, a specified reclamation plan is submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation of the surface mining operation.

This bill would revise and recast provisions of the act related to the approval of reclamation plans and, among other things, would require a reclamation plan filed by an operator of a surface mining operation

with a lead agency to include specified reclamation maps; require a lead agency, when submitting a proposed reclamation plan to the Director of Conservation, to incorporate specified items of information and documents in the submitted reclamation plan within certain timeframes; ~~and, and~~ require the director to take certain actions upon receiving a proposed reclamation plan. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill would revise and recast provisions of the act related to financial assurances and, among other things, would ~~require financial assurance cost estimates to be submitted for review and include estimates of the time needed to complete reclamation of the mine~~; require an operator to replace an approved financial assurance only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance; require a lead agency to submit a surface mining operation's proposed financial assurance cost estimate to the director for review, as specified; and require the director to take certain actions upon receiving a financial assurance cost estimate from a lead agency. By adding to the duties of a local government acting as a lead agency under the act, this bill would impose a state-mandated local program.

This bill also would require a lead agency or the State Mining and Geology Board to conduct a specified public hearing if the lead agency has evidence that an operator may be financially incapable of performing reclamation in accordance with its approved reclamation plan or that the operator has abandoned a surface mining operation without completing reclamation and to take appropriate actions to forfeit the operator's financial assurances if warranted following that hearing.

This bill would require the director, no later than December 31, 2021, to submit a specified report to the Legislature on the expenditure of moneys in the Mine Reclamation Account.

(2) The act requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides, among other things, proof of annual inspection by the lead agency. The act also requires every lead agency to adopt ordinances that establish procedures for the review and approval of reclamation plans, and, before approving a reclamation plan, to submit the plan to the director. The act requires a lead agency to inspect a surface mining operation within 6 months of receiving a specified report and to conduct an inspection no less than once every calendar year. The act authorizes a lead agency to cause an inspection to be conducted by a state-licensed

geologist, state-licensed civil engineer, state-licensed landscape architect, or state-licensed forester, as specified.

This bill would revise and recast those provisions and, among other things, would require the owner or operator to provide a copy of the previously completed annual inspection form and a requested date *within 12 months of the prior inspection date* for the next annual inspection by the lead agency; authorize a lead agency to cause an inspection to be conducted by an unlicensed employee of the lead agency who meets specified criteria and who, after January 1, ~~2018~~ 2019, has completed an inspection workshop, as provided; impose new requirements on the lead agency related to the timing of inspections; impose timelines on a lead agency related to the submission of an application for a permit to conduct a surface mining operation; and require the director to provide ~~an inspection workshop and update workshop~~ *a training program* for lead agency employees who inspect surface mining operations after January 1, ~~2018~~ 2019. By adding to the duties of a local government acting as a lead agency, this bill would impose a state-mandated local program.

(3) The act requires that the lead agency have primary responsibility in enforcing the act. The act authorizes, in cases where the board is not the lead agency, the director to initiate enforcement actions if the lead agency has been notified by the director, for at least ~~45~~ 30 days, of a violation and has not taken appropriate enforcement action, or the director determines there is a violation that presents an imminent and substantial endangerment to the public health or safety or the environment. The act establishes procedures and timelines for an operator to have an order setting administrative penalties reviewed by a legislative body of a lead agency, the board, or a superior court.

This bill *would revise and recast those provisions and, among other things, would revise the timelines and actions related to the issuance of an order to comply and*, after the expiration of a specified review period, ~~would~~ authorize the director or the board when it acts as a lead agency to apply to the small claims court or the superior court, as appropriate, for a judgment to collect an unpaid administrative penalty.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) *This bill would make its operation contingent on the enactment and operation of Senate Bill 209 of the 2015–16 Regular Session.*

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

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

- 1 SECTION 1. Section 2207 of the Public Resources Code is
2 amended to read:
3 2207. (a) The owner or the operator of a mining operation
4 within the state shall forward to the director annually, not later
5 than a date established by the director, upon forms approved by
6 the board from time to time, a report that identifies and contains
7 all of the following:
8 (1) The name, address, and telephone number of the person,
9 company, or other owner of the mining operation.
10 (2) The name, address, and telephone number of a designated
11 agent who resides in this state, and who will receive and accept
12 service of all orders, notices, and processes of the lead agency,
13 board, director, or court.
14 (3) The location of the mining operation, its name, its mine
15 number as issued by the Office of Mine Reclamation or the
16 director, its section, township, range, latitude, longitude, and
17 approximate boundaries of the mining operation marked on a
18 United States Geological Survey 7½-minute or 15-minute
19 quadrangle map.
20 (4) The lead agency.
21 (5) The approval date of the mining operation's reclamation
22 plan.
23 (6) The mining operation's status as active, idle, reclaimed, or
24 in the process of being reclaimed.
25 (7) The commodities produced by the mine and the type of
26 mining operation.
27 (8) A copy of the previously completed annual inspection form
28 and a requested ~~date~~ *date, within 12 months of the prior inspection*
29 *date*, for the next annual inspection by the lead agency.
30 (9) Proof of financial assurances.
31 (10) Ownership of the property, including government agencies,
32 if applicable, by the assessor's parcel number, and total assessed
33 value of the mining operation.

1 (11) The approximate permitted size of the mining operation
2 subject to Chapter 9 (commencing with Section 2710), in acres.

3 (12) The approximate total acreage of land newly disturbed by
4 the mining operation during the previous calendar year.

5 (13) The approximate total of disturbed acreage reclaimed during
6 the previous calendar year.

7 (14) The approximate total unreclaimed disturbed acreage
8 remaining as of the end of the calendar year.

9 (15) The total production for each mineral commodity produced
10 during the previous year.

11 (16) A copy of any approved reclamation plan and any
12 amendments or conditions of approval to any existing reclamation
13 plan approved by the lead agency.

14 (b) (1) Every year, not later than the date established by the
15 director, the person submitting the report pursuant to subdivision
16 (a) shall forward to the lead agency, upon forms furnished by the
17 board, a report that provides all of the information specified in
18 subdivision (a).

19 (2) The owner or operator of a mining operation shall allow
20 access to the property to any governmental agency or the agent of
21 any company providing financial assurances in connection with
22 the reclamation plan in order that the reclamation can be carried
23 out by the entity or company, in accordance with the provisions
24 of the reclamation plan.

25 (c) Subsequent reports shall include only changes in the
26 information submitted for the items described in subdivision (a),
27 except that, instead of the approved reclamation plan, the reports
28 shall include any reclamation plan amendments approved during
29 the previous year. The reports shall state whether review of a
30 reclamation plan, financial assurances, or an interim management
31 plan is pending under subdivision ~~(b), (c), (d)~~; (b) or (h) of Section
32 2770, or whether an appeal before the board or lead agency
33 governing body is pending under subdivision (e) or (h) of Section
34 2770. The director shall notify the person submitting the report
35 and the owner's designated agent in writing that the report and the
36 fee required pursuant to subdivision (d) have been received, specify
37 the mining operation's mine number if one has not been issued by
38 the Office of Mine Reclamation, and notify the person and agent
39 of any deficiencies in the report within 90 days of receipt. That
40 person or agent shall have 30 days from receipt of the notification

1 to correct the noted deficiencies and forward the revised report to
2 the director and the lead agency. Any person who fails to comply
3 with this section, or knowingly provides incorrect or false
4 information in reports required by this section, may be subject to
5 an administrative penalty as provided in subdivision (c) of Section
6 2774.1.

7 (d) (1) The board shall impose, by regulation, pursuant to
8 paragraph (2), an annual reporting fee on, and method for collecting
9 annual fees from, each active or idle mining operation. The
10 maximum fee for any single mining operation may not exceed four
11 thousand dollars (\$4,000) annually and may not be less than one
12 hundred dollars (\$100) annually, as adjusted for the cost of living
13 as measured by the California Consumer Price Index for all urban
14 consumers, calendar year averages, using the percentage change
15 in the previous year, beginning with the 2005–06 fiscal year and
16 annually thereafter.

17 (2) (A) The board shall adopt, by regulation, a schedule of fees
18 authorized under paragraph (1) to cover the department's cost in
19 carrying out this section and Chapter 9 (commencing with Section
20 2710), as reflected in the Governor's proposed Budget, and may
21 adopt those regulations as emergency regulations. In establishing
22 the schedule of fees to be paid by each active and idle mining
23 operation, the fees shall be calculated on an equitable basis
24 reflecting the size and type of operation. The board shall also
25 consider the total assessed value of the mining operation, the
26 acreage disturbed by mining activities, and the acreage subject to
27 the reclamation plan.

28 (B) Regulations adopted pursuant to this subdivision shall be
29 adopted by the board in accordance with the Administrative
30 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
31 Part 1 of Division 3 of Title 2 of the Government Code). The
32 adoption of any emergency regulations pursuant to this subdivision
33 shall be considered necessary to address an emergency and shall
34 be considered by the Office of Administrative Law to be necessary
35 for the immediate preservation of the public peace, health, safety,
36 and general welfare.

37 (3) The total revenue generated by the reporting fees may not
38 exceed, and may be less than, the amount of three million five
39 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
40 living as measured by the California Consumer Price Index for all

1 urban consumers, calendar year averages, using the percentage
2 change in the previous year, beginning with the 2005–06 fiscal
3 year and annually thereafter. If the director determines that the
4 revenue collected during the preceding fiscal year was greater or
5 less than the cost to operate the program, the board shall adjust
6 the fees to compensate for the overcollection or undercollection
7 of revenues.

8 (4) (A) The reporting fees established pursuant to this
9 subdivision shall be deposited in the Mine Reclamation Account,
10 which is hereby created. Any fees, penalties, interest, fines, or
11 charges collected by the director or board pursuant to this chapter
12 or Chapter 9 (commencing with Section 2710) shall be deposited
13 in the Mine Reclamation Account. The money in the account shall
14 be available to the department and board, upon appropriation by
15 the Legislature, for the purpose of carrying out this section and
16 complying with Chapter 9 (commencing with Section 2710), which
17 includes, but is not limited to, classification and designation of
18 areas with mineral resources of statewide or regional significance,
19 reclamation plan and financial assurance review, mine inspection,
20 and enforcement.

21 (B) (i) In addition to reporting fees, the board shall collect five
22 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
23 silver mined within the state and shall deposit the fees collected
24 in the Abandoned Mine Reclamation and Minerals Fund
25 Subaccount, which is hereby created in the Mine Reclamation
26 Account. The department may expend the moneys in the
27 subaccount, upon appropriation by the Legislature, for only the
28 purposes of Section 2796.5 and as authorized herein for the
29 remediation of abandoned mines.

30 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
31 collected pursuant to clause (i) may also be used to remediate
32 features of historic abandoned mines and lands that they impact.
33 For the purposes of this section, historic abandoned mines are
34 mines for which operations have been conducted before January
35 1, 1976, and include, but are not limited to, historic gold and silver
36 mines.

37 (5) In case of late payment of the reporting fee, a penalty of not
38 less than one hundred dollars (\$100) or 10 percent of the amount
39 due, whichever is greater, plus interest at the rate of 1 ½ percent
40 per month, computed from the delinquent date of the assessment

1 until and including the date of payment, shall be assessed. New
2 mining operations that have not submitted a report shall submit a
3 report prior to commencement of operations. The new operation
4 shall submit its fee according to the reasonable fee schedule
5 adopted by the board, and the month that the report is received
6 shall become that operation's anniversary month.

7 (e) The lead agency, or the board when acting as the lead agency,
8 may impose a fee upon each mining operation to cover the
9 reasonable costs incurred in implementing this chapter and Chapter
10 9 (commencing with Section 2710).

11 (f) For purposes of this section, "mining operation" means a
12 mining operation of any kind or character whatever in this state,
13 including, but not limited to, a mining operation that is classified
14 as a "surface mining operation" as defined in Section 2735, unless
15 excepted by Section 2714. For the purposes of fee collections only,
16 "mining operation" may include one or more mines operated by
17 a single operator or mining company on one or more sites, if the
18 total annual combined mineral production for all sites is less than
19 100 troy ounces for precious metals, if precious metals are the
20 primary mineral commodity produced, or less than 100,000 short
21 tons if the primary mineral commodity produced is not precious
22 metals.

23 (g) Any information in reports submitted pursuant to subdivision
24 (a) that includes or otherwise indicates the total mineral production,
25 reserves, or rate of depletion of any mining operation may not be
26 disclosed to any member of the public, as defined in subdivision
27 (b) of Section 6252 of the Government Code. Other portions of
28 the reports are public records unless excepted by statute. Statistical
29 bulletins based on these reports and published under Section 2205
30 shall be compiled to show, for the state as a whole and separately
31 for each lead agency, the total of each mineral produced therein.
32 In order not to disclose the production, reserves, or rate of depletion
33 from any identifiable mining operation, no production figure shall
34 be published or otherwise disclosed unless that figure is the
35 aggregated production of not less than three mining operations. If
36 the production figure for any lead agency would disclose the
37 production, reserves, or rate of depletion of less than three mining
38 operations or otherwise permit the reasonable inference of the
39 production, reserves, or rate of depletion of any identifiable mining
40 operation, that figure shall be combined with the same figure of

1 not less than two other lead agencies without regard to the location
2 of the lead agencies. The bulletin shall be published annually by
3 June 30 or as soon thereafter as practicable.

4 (h) The approval of a form by the board pursuant to this section
5 is not the adoption of a regulation for purposes of the
6 Administrative Procedure Act (Chapter 3.5 (commencing with
7 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
8 Code) and is not subject to that act.

9 *SEC. 2. Section 2207.2 is added to the Public Resources Code,*
10 *to read:*

11 *2207.2. (a) No later than December 31, 2021, the director*
12 *shall report to the Legislature on the expenditure of moneys in the*
13 *Mine Reclamation Account, created pursuant to Section 2207. The*
14 *report shall include all of the following:*

15 *(1) An overview of how the moneys expended over the prior five*
16 *years have been allocated between classification and designation*
17 *of areas with mineral resources of statewide or regional*
18 *significance, reclamation plan and financial assurance review,*
19 *mine inspection, enforcement, and any other activities that*
20 *constituted more than 5 percent of expenditures.*

21 *(2) Information on the portion of the fees that have been*
22 *collected from small construction aggregate providers with under*
23 *50,000 tons of production.*

24 *(3) Information on the percentage of the fees that have been*
25 *paid by metallic mineral operations.*

26 *(b) This section shall remain in effect only until January 1, 2026,*
27 *and as of that date is repealed, unless a later enacted statute, that*
28 *is enacted before January 1, 2026, deletes or extends that date.*

29 ~~SEC. 2.~~

30 *SEC. 3. Section 2715.5 of the Public Resources Code is*
31 *amended to read:*

32 *2715.5. (a) The Cache Creek Resource Management Plan, in*
33 *conjunction with a site specific plan deemed consistent by the lead*
34 *agency with the Cache Creek Resource Management Plan, until*
35 *December 31, 2017, shall be considered to be a functional*
36 *equivalent of a reclamation plan for the purposes of this chapter.*
37 *No other reclamation plan shall be required to be reviewed and*
38 *approved for any excavation project subject to the Cache Creek*
39 *Resource Management Plan that is conducted in conformance with*
40 *an approved site specific plan that is consistent with the Cache*

1 Creek Resource Management Plan and the standards specified in
2 that plan governing erosion control, channel stabilization, habitat
3 restoration, flood control, or infrastructure maintenance, if that
4 plan is reviewed and approved by a lead agency pursuant to this
5 chapter.

6 (b) For the purposes of this section, the board of supervisors of
7 the county in which the Cache Creek Resource Management Plan
8 is to be implemented shall prepare and file the annual report
9 required to be prepared pursuant to Section 2207.

10 (c) Nothing in this section precludes an enforcement action by
11 the board or the department brought pursuant to this chapter or
12 Section 2207 if the lead agency or the director determines that a
13 surface mining operator, acting under the authority of the Cache
14 Creek Resource Management Plan, is not in compliance with the
15 requirements of this chapter or Section 2207.

16 (d) For purposes of this section, “site specific plan” means an
17 individual project plan approved by the lead agency that is
18 consistent with the Cache Creek Resource Management Plan. Site
19 specific plans prepared in conformance with the Cache Creek
20 Resource Management Plan shall include, at a minimum, the
21 information required pursuant to subdivision (c) of Section 2772,
22 shall comply with the requirements of Article 9 (commencing with
23 Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title
24 14 of the California Code of Regulations, and shall be provided
25 along with a financial assurance estimate to the department for
26 review and comment pursuant to Section 2772.1 or 2773.4, as
27 applicable. Notwithstanding the number of days authorized by
28 subdivision (b) of Section 2772.1 or subdivision (c) of Section
29 2773.4, the department shall review the site specific plan and the
30 financial assurance estimate and prepare any written comments
31 within 15 days from the date of receipt of the plan and the estimate.

32 (e) Prior to engaging in an excavation activity in conformance
33 with the Cache Creek Resource Management Plan, a surface mining
34 operation shall be required to obtain financial assurances that meet
35 the requirements of Section 2773.1.

36 (f) This section shall remain in effect only until December 31,
37 2017, and as of that date is repealed, unless a later enacted statute
38 that is enacted before December 31, 2017, deletes or extends that
39 date.

~~SEC. 3.~~

SEC. 4. Section 2733 of the Public Resources Code is amended to read:

2733. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition that is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, slope stabilization, or other measures.

~~SEC. 4.~~

SEC. 5. Section 2736 is added to the Public Resources Code, to read:

2736. "Financial assurances" means a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.

~~SEC. 5.~~

SEC. 6. Section 2770 of the Public Resources Code is amended to read:

2770. (a) Except as provided in this section, a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation pursuant to this article.

(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For the purposes of this subdivision, a reclamation plan existing prior to January 1, 2016, may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773

1 and the lead agency surface mining ordinance adopted pursuant
2 to subdivision (a) of Section 2774, provided that all documents,
3 which together were proposed to serve as the reclamation plan,
4 are submitted for approval to the lead agency in accordance with
5 this chapter.

6 ~~(e) The review of financial assurances shall not be considered~~
7 ~~a project for purposes of the California Environmental Quality Act~~
8 ~~(Division 13 (commencing with Section 21000)):~~

9 ~~(d) The lead agency's review of a reclamation plan submitted~~
10 ~~pursuant to subdivision (b) or of financial assurances pursuant to~~
11 ~~subdivision (e) is limited to whether the plan or the financial~~
12 ~~assurances substantially meet the applicable requirements of~~
13 ~~Sections 2772, 2773, 2773.1, and 2773.3 and the lead agency~~
14 ~~surface mining ordinance adopted pursuant to subdivision (a) of~~
15 ~~Section 2774, but, in any event, the lead agency shall require that~~
16 ~~financial assurances for reclamation be sufficient to perform~~
17 ~~reclamation of lands remaining disturbed. Reclamation plans or~~
18 ~~financial assurances determined to substantially meet these~~
19 ~~requirements shall be approved by the lead agency for purposes~~
20 ~~of this chapter. Reclamation plans or financial assurances~~
21 ~~determined not to substantially meet these requirements shall be~~
22 ~~returned to the operator within 60 days. The operator has 60 days~~
23 ~~to revise the plan or financial assurances to address identified~~
24 ~~deficiencies, at which time the revised plan or financial assurances~~
25 ~~shall be returned to the lead agency for review and approval. Except~~
26 ~~as specified in subdivision (e) or (i), unless the operator has filed~~
27 ~~on or before July 1, 1990, an appeal pursuant to subdivision (e)~~
28 ~~with regard to nonapproval of the reclamation plan, or has filed~~
29 ~~on or before January 1, 1994, an appeal pursuant to subdivision~~
30 ~~(e) with regard to nonapproval of financial assurances, and that~~
31 ~~appeal is pending before the board, the continuation of the surface~~
32 ~~mining operation is prohibited until a reclamation plan and~~
33 ~~financial assurances for reclamation are approved by the lead~~
34 ~~agency.~~

35 ~~(c) [Reserved]~~

36 ~~(d) [Reserved]~~

37 ~~(e) (1) A person who can substantiate, based on the evidence~~
38 ~~of the record, that a lead agency has either (1) failed to act~~
39 ~~according to due process or has relied on considerations not related~~
40 ~~to the specific applicable requirements of Sections 2772, 2772.1,~~

1 2773, 2773.1, ~~and 2773.3~~ 2773.3, and 2773.4 and the lead agency
2 surface mining ordinance adopted pursuant to subdivision (a) of
3 ~~Section 2774~~, 2774 in reaching a decision to deny approval of a
4 reclamation plan or financial assurances for reclamation, or (2)
5 failed to act within a reasonable time of receipt of a completed
6 application, or (3) failed to review and approve reclamation plans
7 or financial assurances as required by subdivision (d) or Sections
8 2772.1 and 2773.4, application may appeal that action or inaction
9 to the board. ~~If the director has commented pursuant to Section~~
10 ~~2773.4 that a financial assurance cost estimate is inadequate, the~~
11 ~~director may appeal the lead agency's approval of a financial~~
12 ~~assurance cost estimate on any of the grounds identified in this~~
13 ~~subdivision that were included in the director's comments pursuant~~
14 ~~to Article 7 (commencing with Section 3680) of Subchapter 1 of~~
15 ~~Chapter 8 of Division 2 of Title 14 of the California Code of~~
16 ~~Regulations.~~

17 (2) *The director may appeal a lead agency's approval of a*
18 *financial assurance cost estimate to the board if the director has*
19 *commented pursuant to Section 2773.4 that the financial assurance*
20 *cost estimate is inadequate based on consideration of the following:*

21 (A) *Section 2773.1.*

22 (B) *Article 11 (commencing with Section 3800) of Title 14 of*
23 *the California Code of Regulations.*

24 (C) *The board's financial assurance guidelines adopted*
25 *pursuant to subdivision (f) of Section 2773.1*

26 (3) *If the approved financial assurance cost estimate applies to*
27 *a reclamation plan approved for a new surface mining operation,*
28 *an expanded surface mining operation, or an interim financial*
29 *assurance due to an order to comply, stipulated or otherwise, the*
30 *operator shall provide a financial assurance mechanism pursuant*
31 *to subdivision (e) of Section 2773.4 in the amount of the approved*
32 *financial assurance cost estimate, notwithstanding an appeal filed*
33 *pursuant to this subdivision and subject to modification pending*
34 *the outcome of the appeal.*

35 (4) *If the approved financial assurance cost estimate is an*
36 *update to an existing approved financial assurance cost estimate,*
37 *the existing financial assurance mechanism shall remain in place*
38 *and shall not be adjusted until a final determination by the board*
39 *on the appeal filed pursuant to this subdivision.*

1 (f) (1) The board may decline to hear an appeal if it determines
2 that the appeal raises no substantial issues related to the lead
3 agency's review pursuant to this section. *decision to deny the*
4 *approval of a reclamation plan or financial assurance, on the*
5 *timeliness in reviewing a completed application, or on the approval*
6 *of a financial assurance cost estimate that the director has*
7 *commented is inadequate.*

8 (2) *If the board takes up an appeal, the appeal shall be*
9 *scheduled and heard at a public hearing within 45 days of the*
10 *filing of the appeal. If the appeal is filed by the director, a longer*
11 *period may be mutually agreed upon by the board, the appellant,*
12 *the director, and the operator, as applicable.*

13 ~~(g) Appeals that the board does not decline to hear shall be~~
14 ~~scheduled and heard at a public hearing within 45 days of the filing~~
15 ~~of the appeal or a longer period as may be mutually agreed upon~~
16 ~~by the board and the person filing the appeal. In hearing an appeal,~~
17 ~~the board shall only determine whether the reclamation plan or the~~
18 ~~financial assurances substantially meet the applicable requirements~~
19 ~~of Sections 2772, 2773, 2773.1, and 2773.3 and the lead agency~~
20 ~~surface mining ordinance adopted pursuant to subdivision (a) of~~
21 ~~Section 2774. A reclamation plan or financial assurances~~
22 ~~determined to meet these requirements shall be approved or upheld.~~
23 ~~A reclamation plan or financial assurances determined not to meet~~
24 ~~these requirements shall be returned with a notice of deficiencies,~~
25 ~~to the operator, who shall be granted, once only, a period of 30~~
26 ~~days, or a longer period mutually agreed upon by the operator and~~
27 ~~the board, to correct the noted deficiencies and submit the revised~~
28 ~~reclamation plan or the revised financial assurances to the lead~~
29 ~~agency for review and approval.~~

30 (g) (1) (A) *When hearing an appeal filed pursuant to*
31 *subdivision (e), the board shall determine whether the reclamation*
32 *plan or the financial assurance cost estimate substantially meets*
33 *the applicable requirements of Sections 2772, 2772.1, 2773,*
34 *2773.1, 2773.3, and 2773.4 and the lead agency's surface mining*
35 *ordinance adopted pursuant to subdivision (a) of Section 2774.*
36 *The board shall approve or uphold a reclamation plan or financial*
37 *assurance cost estimate determined to meet those applicable*
38 *requirements.*

1 (B) For purposes of this subdivision, “substantially” means
2 actual compliance in respect to the substance and form
3 requirements essential to the objectives of this chapter.

4 (2) (A) A reclamation plan determined not to meet the
5 applicable requirements of Sections 2772, 2772.1, 2773, 2773.1,
6 2773.3, and 2773.4 and the lead agency’s surface mining ordinance
7 adopted pursuant to subdivision (a) of Section 2774 shall be
8 returned to the operator with a notice of deficiencies. The operator
9 shall be granted, once only, a period of 30 days or a longer period
10 mutually agreed upon by the operator and the board to do both of
11 the following:

12 (i) Correct the noted deficiencies.

13 (ii) Submit the revised reclamation plan to the lead agency for
14 review and approval.

15 (B) Within 10 days of the hearing, the board shall provide notice
16 via certified mail to the lead agency, the operator, and the
17 department of the board’s determination. The notice shall include
18 instructions to the operator to submit to the lead agency for
19 approval a revised reclamation plan consistent with the board’s
20 determination.

21 (3) (A) If the board determines the lead agency’s approved
22 financial assurance cost estimate does not meet the requirements
23 of Sections 2773.1, 2773.4, Article 11 (commencing with Section
24 3800) of Chapter 8 of Division 2 of Title 14 of the California Code
25 of Regulations, and the board’s financial assurance guidelines
26 adopted pursuant to subdivision (f) of Section 2773.1, the board
27 shall note the deficiencies, and based on the record, include
28 adequate cost estimates for each noted deficiency.

29 (B) Within 10 days of the hearing, the board shall provide notice
30 via certified mail to the lead agency, the operator, and the
31 department of the board’s determination with instructions to the
32 operator to submit to the lead agency for approval a revised
33 financial assurance cost estimate consistent with the board’s
34 determination.

35 (C) The lead agency shall approve the revised financial
36 assurance cost estimate. That approval shall supersede and void
37 the prior approved financial assurance cost estimate.

38 (D) A financial assurance mechanism shall be established by
39 the operator pursuant to subdivision (e) of Section 2773.4 following
40 the approval of the financial assurance cost estimate.

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

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

(A) Renew the interim management plan for an additional period not to exceed five years, which may be renewed for one additional five-year renewal period at the expiration of the first five-year renewal period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

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

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

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

(5) The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the

1 lead agency denies approval of the revised interim management
2 plan, the operator may appeal that action to the lead agency's
3 governing body, which shall schedule a public hearing within 45
4 days of the filing of the appeal or a longer period mutually agreed
5 upon by the operator and the governing body.

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

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

21 ~~SEC. 6.~~

22 *SEC. 7.* Section 2772 of the Public Resources Code is amended
23 to read:

24 2772. (a) The reclamation plan shall be filed with the lead
25 agency, on a form provided by the lead agency, by any person who
26 owns, leases, or otherwise controls or operates on all or any portion
27 of any mined lands and who plans to conduct surface mining
28 operations on the lands.

29 (b) The reclamation plan shall include a chart identifying the
30 page number, chapter, appendix, or other specific location in the
31 reclamation plan where content meeting the requirements, as
32 applicable, of Sections 2772, 2773, and 2773.3 *and Article 1*
33 *(commencing with Section 3500) and Article 9 (commencing with*
34 *Section 3700) of Chapter 8 of Division 2 of Title 14 of the*
35 *California Code of Regulations*, is located.

36 (c) The reclamation plan shall include all of the following
37 information and documents:

38 (1) The name and address of the operator and the names and
39 addresses of any persons designated by the operator as an agent
40 for the service of process.

1 (2) The anticipated quantity and type of minerals for which the
2 surface mining operation is to be conducted.

3 (3) The proposed dates for the initiation and ~~completion~~
4 ~~termination of reclamation activities~~ for the surface mining
5 operation.

6 (4) The maximum anticipated depth of the surface mining
7 operation.

8 (5) A reclamation plan map or maps that shall include all of the
9 following:

10 (A) Size and legal description of the lands that will be affected
11 by the surface mining operation and the names and addresses of
12 the owners of all surface interests and mineral interests in the lands.

13 (B) Clearly defined and accurately drawn property lines,
14 setbacks, and the reclamation plan boundary.

15 (C) Existing topography and final topography depicted with
16 contour lines drawn at appropriate intervals for the site's
17 conditions.

18 (D) Detailed geologic description of the area of the surface
19 mining operation.

20 (E) Location of railroads, utility facilities, access roads,
21 temporary roads to be reclaimed, and any roads remaining for the
22 approved end use.

23 (F) All maps, diagrams, or calculations that require preparation
24 in accordance with the Professional Engineers Act (Chapter 7
25 (commencing with Section 6700) of Division 3 of the Business
26 and Professions Code), the Geologist and Geophysicist Act
27 (Chapter 12.5 (commencing with Section 7800) of Division 3 of
28 the Business and Professions Code), or the Professional Land
29 Surveyors' Act (Chapter 15 (commencing with Section 8700) of
30 Division 3 of the Business and Professions Code) shall be prepared
31 by a California-licensed professional, shall include his or her
32 license number and name, and shall bear the signature and seal of
33 the licensee.

34 (6) A description of and a plan for the type of surface mining
35 to be employed and a time schedule that will provide for the
36 completion of surface mining on each segment of the mined lands
37 so that reclamation can be initiated at the earliest possible time on
38 those portions of the mined lands that will not be subject to further
39 disturbance by the surface mining operation.

1 (7) A description of the proposed use or potential uses of the
2 mined lands after reclamation and evidence that all owners of a
3 possessory interest in the land have been notified of the proposed
4 use or potential uses.

5 (8) A description of the manner in which reclamation, adequate
6 for the proposed use or potential uses, will be accomplished,
7 including both of the following:

8 (A) A description of the manner in which known contaminants
9 will be controlled and mining waste will be disposed.

10 (B) A description of the manner in which affected streambed
11 channels and streambanks will be rehabilitated to a condition that
12 minimizes erosion and sedimentation.

13 (9) An assessment of the effect of implementation of the
14 reclamation plan on future mining in the area.

15 (10) A statement that the person submitting the reclamation
16 plan accepts responsibility for reclaiming the mined lands in
17 accordance with the reclamation plan.

18 (11) Any other information that the lead agency may require
19 by ordinance.

20 (d) An item of information or a document required pursuant to
21 subdivision (c) that has already been prepared as part of a permit
22 application for the surface mining operation, or as part of an
23 environmental document prepared for the project pursuant to the
24 California Environmental Quality Act (Division 13 (commencing
25 with Section 21000)) may be included in the reclamation plan by
26 reference, if that item of information or that document is attached
27 to the reclamation plan when the lead agency submits the
28 reclamation plan to the director for review. To the extent the
29 information, document, or component of a document referenced
30 in the reclamation plan is used to meet the requirements of
31 subdivision (c) or Section 2773 or 2773.3, the information,
32 document, or component of a document shall become part of the
33 reclamation plan and shall be subject to all other requirements of
34 this article.

35 (e) Nothing in this section is intended to limit or expand the
36 department's authority or responsibility to review a document in
37 accordance with the California Environmental Quality Act
38 (Division 13 (commencing with Section 21000)).

1 ~~SEC. 7.~~

2 SEC. 8. Section 2772.1 is added to the Public Resources Code,
3 to read:

4 2772.1. (a) (1) Prior to approving a surface mining operation's
5 reclamation plan or plan amendment, the lead agency shall submit
6 the reclamation plan or plan amendment to the director for review.
7 The reclamation plan or plan amendment shall be submitted to the
8 director as early as practicable in order to facilitate the *lead*
9 *agency's* review of the reclamation plan pursuant to the California
10 Environmental Quality Act (Division 13 (commencing with Section
11 21000)). All documentation for the submission shall be submitted
12 to the director at one time.

13 (2) An item of information, document, or component of a
14 document that has been prepared as part of a permit application
15 for the surface mining operation or as part of an environmental
16 document prepared for the project pursuant to the California
17 Environmental Quality Act (Division 13 (commencing with Section
18 21000)) shall be incorporated into the reclamation plan or plan
19 amendment if it is used to satisfy the requirements of subdivision
20 (c) of Section ~~2772~~ and 2772, Sections 2773 and 2773.3, ~~if and~~
21 *Article 1 (commencing with Section 3500) and Article 9*
22 *(commencing with Section 3700) of Chapter 8 of Division 2 of*
23 *Title 14 of the California Code of Regulations, as applicable.* If
24 an item of information, document, or component of a document
25 is incorporated, reference to the item shall be added to the chart
26 required pursuant to subdivision (b) of Section 2772 and shall be
27 properly indexed with the corresponding appendix reference and
28 page numbers, if applicable. The item shall be included in an
29 appendix to and shall become part of the reclamation plan or plan
30 amendment. ~~A technical report created by a California-licensed~~
31 ~~professional to support variations to the reclamation standards~~
32 ~~adopted by the board pursuant to Section 2773 shall be included~~
33 ~~in an appendix to the reclamation plan or plan amendment bearing~~
34 ~~the California-licensed professional's stamp or seal, as applicable.~~

35 (3) The lead agency shall certify to the director that the
36 reclamation plan or plan amendment is a complete submission and
37 is in compliance with all of the following:

38 (A) The applicable requirements of this chapter.

39 (B) *Article 1 (commencing with Section 3500) and Article 9*
40 *(commencing with Section 3700) of Chapter 8 of Division 2 of*

1 Title 14 of the California Code of ~~Regulations~~ *Regulations*, as
2 *applicable*.

3 (C) The lead agency's surface mining ordinance in effect at the
4 time that the reclamation plan or plan amendment is submitted to
5 the director for ~~review~~ *review, except if the board is the lead*
6 *agency*.

7 (b) (1) The director shall have ~~15~~ 30 days from the receipt of
8 a reclamation plan or plan amendment to notify the lead agency
9 and operator if the submission is incomplete. An incomplete
10 submission is one that does not meet the content requirements of
11 ~~subdivision (a) of this section and subdivisions (c) and (d) of~~
12 ~~Section 2772. 2772, Sections 2773 and 2773.3, and Article 1~~
13 ~~(commencing with Section 3500) and Article 9 (commencing with~~
14 ~~Section 3700) of Chapter 8 of Division 2 of Title 14 of the~~
15 ~~California Code of Regulations, as applicable.~~ The director's
16 notice shall specifically identify all aspects of the submission that
17 are incomplete. ~~If the submission is incomplete due to the failure~~
18 ~~to include a professionally stamped copy of a technical report,~~
19 ~~map, or diagram that is required to be prepared by a~~
20 ~~California-licensed professional pursuant to subdivision (c) of~~
21 ~~Section 2772, the director shall request a stamped copy of the~~
22 ~~technical report, map, or diagram only, instead of a full~~
23 ~~resubmission of the reclamation plan or plan amendment. The~~
24 ~~review time required pursuant to paragraph (2) shall begin when~~
25 ~~the stamped copy of the technical report, map, or diagram is~~
26 ~~received by the director. The director's time to review the~~
27 ~~reclamation plan or plan amendment shall commence upon the~~
28 ~~receipt of a submission that contains the item or items identified~~
29 ~~in the director's notice to the lead agency.~~

30 (2) The director shall have ~~45~~ 30 days ~~from the receipt of a~~
31 ~~complete reclamation plan or plan amendment~~ *after the date the*
32 *director is required to notify the lead agency if the submission is*
33 *incomplete to prepare written comments on the reclamation plan*
34 *or plan amendment if the director chooses.* ~~The~~

35 (3) *If the director has issued a notice of incomplete submission*
36 *pursuant to paragraph (1), the director's time to prepare written*
37 *comments on the reclamation plan or plan amendment shall not*
38 *commence until the director receives each item identified in the*
39 *notice. The director's time shall include any remaining time*

1 *pursuant to paragraph (1) and the time allowed pursuant to*
2 *paragraph (2).*

3 (4) The lead agency shall review and evaluate written comments
4 received from the director relating to the reclamation plan or plan
5 amendment within a reasonable amount of time.

6 ~~(3)~~

7 (5) (A) The lead agency shall prepare a written response to the
8 director's comments received pursuant to paragraph (2) describing
9 the disposition of the major issues raised by the comments. The
10 lead agency shall submit its response to the director at least 30
11 days prior to the intended approval of the reclamation plan or plan
12 amendment. The lead agency's response shall include either of the
13 following:

14 (i) A description of how the lead agency proposes to adopt the
15 director's comments to the reclamation plan or plan amendment.

16 (ii) A detailed description of the reasons why the lead agency
17 proposes not to adopt the director's comments.

18 (B) Copies of any written comments received and responses
19 prepared by the lead agency pursuant to subparagraph (A) shall
20 be forwarded to the operator.

21 ~~(4)~~

22 (6) (A) The lead agency shall give the director at least 30 days'
23 notice of the time, place, and date of the hearing at which the
24 reclamation plan or plan amendment is scheduled to be approved
25 by the lead agency.

26 (B) If no hearing is required by this chapter, the local ordinance,
27 or other state law, the lead agency shall provide 30 days' notice
28 to the director that the lead agency intends to approve the
29 reclamation plan or plan amendment.

30 ~~(5) (A) Within 60 days following approval of the reclamation~~
31 ~~plan or plan amendment, the lead agency shall provide the director~~
32 ~~its final response to the director's written comments and the final~~
33 ~~approved copies of those documents. During that time, the~~
34 ~~department retains all of its powers, duties, and authorities pursuant~~
35 ~~to this chapter.~~

36 ~~(B) The lead agency's final response shall include an index~~
37 ~~showing permit conditions of approval and binding mitigation~~
38 ~~measures adopted or certified pursuant to the California~~
39 ~~Environmental Quality Act (Division 13 (commencing with Section~~
40 ~~21000)) that are necessary to meet the requirements of subdivision~~

~~(c) of Section 2772 and Sections 2773 and 2773.3. Those conditions of approval and mitigation measures shall be included in an appendix to the reclamation plan or plan amendment and shall be considered part of the reclamation compliance requirements and subject to the annual inspection requirements. To the extent those conditions of approval and mitigation measures are not subject to separate lead agency or other state or federal agency bonding or performance requirements, those conditions and measures shall be subject to the financial assurances requirements of this article.~~

~~(6) No later than 60 days after the approval of the reclamation plan or plan amendment, the lead agency shall provide an official copy of the approved reclamation plan or plan amendment incorporating all approved modifications to the reclamation plan or plan amendment to the director.~~

(7) (A) Within 30 days following the approval of the reclamation plan or plan amendment, the lead agency shall provide the director notice of the approval. During that period, the department retains all powers, duties, and authorities of this chapter. The lead agency shall provide, as soon as practicable but no later than 60 days after approval of the reclamation plan or plan amendment, certified copies of all maps, diagrams, or calculations, signed and sealed.

(B) No later than 60 days after the approval of the reclamation plan or plan amendment, the lead agency shall provide to the director an official copy of the approved reclamation plan or plan amendment. The official copy shall incorporate all approved modifications to the reclamation plan or plan amendment and shall include an index showing any permit conditions of approval or binding mitigation measures adopted or certified pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) that are necessary to meet the requirements of subdivision (c) of Section 2772, Sections 2773 and 2773.3, and Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable. Those conditions of approval and mitigation measures shall be included in an appendix to the reclamation plan or plan amendment and shall be considered part of the reclamation compliance requirements and subject to the annual inspection requirements.

(c) To the extent there is a conflict between the comments of a trustee agency or a responsible agency that are based on that agency's statutory or regulatory authority and the comments of other commenting agencies that are received by the lead agency pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(d) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

~~SEC. 8.~~

SEC. 9. Section 2773.1 of the Public Resources Code is amended to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) A financial assurance mechanism may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e) that the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

(3) The amount of financial assurances required of a surface mining operation for any one year shall be reviewed and, if necessary, adjusted once each calendar year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. An operator shall be required to replace an approved financial assurance mechanism to bond for the reclamation of the surface mining operation only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance mechanism.

1 ~~(4) Financial assurance cost estimates shall be submitted to the~~
2 ~~lead agency for review on the form adopted by the board by~~
3 ~~regulation pursuant to subdivision (f). The estimates shall include~~
4 ~~estimates of the time needed to complete reclamation of the mine~~
5 ~~in accordance with the approved reclamation plan, including, but~~
6 ~~not limited to, any monitoring studies required by the reclamation~~
7 ~~plan.~~

8 ~~(5)~~

9 (4) Each financial assurance mechanism shall be made payable
10 to the lead agency and the department. A financial assurance
11 mechanism shall not be released without the consent of the lead
12 agency and the department. A financial assurance mechanism that
13 was approved by the lead agency prior to January 1, 1993, and
14 was made payable to the State Geologist shall be considered
15 payable to the department for purposes of this chapter. However,
16 if a surface mining operation has received approval of its financial
17 assurances from a public agency other than the lead agency, the
18 lead agency shall deem those financial assurances adequate for
19 purposes of this section, or shall credit them toward fulfillment of
20 the financial assurances required by this section, if they are made
21 payable to the public agency, the lead agency, and the department
22 and otherwise meet the requirements of this section. In any event,
23 if a lead agency and one or more public agencies exercise
24 jurisdiction over a surface mining operation, the total amount of
25 financial assurances required by the lead agency and the public
26 agencies for any one year shall not exceed that amount that is
27 necessary to perform reclamation of lands remaining disturbed.
28 For purposes of this paragraph, a "public agency" may include a
29 federal agency.

30 (b) (1) If the lead agency, or the board when acting as a lead
31 agency, has evidence that an operator may be financially incapable
32 of completing reclamation in accordance with its approved
33 reclamation plan or that the operator may have abandoned the
34 surface mining operation without completing reclamation, the lead
35 agency or ~~board~~ *the board, when acting as a lead agency*, shall
36 conduct a public hearing to determine whether the operator is
37 financially capable of completing reclamation in accordance with
38 the approved reclamation plan or has abandoned the surface mining
39 operation. The hearing shall be noticed to the operator and the
40 director at least 30 days prior to the hearing.

(2) If the lead agency or the board, following the public hearing conducted pursuant to paragraph (1), determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation, either the lead agency or the director shall do all of the following:

(A) Notify the operator by personal service or certified mail that the lead agency or the director intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

(B) Proceed to take appropriate action to require forfeiture of the financial assurances.

(C) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. If the surface mining operation cannot be reclaimed in accordance with its approved reclamation plan, or the financial assurances are inadequate to reclaim in accordance with its approved reclamation plan, the lead agency or director may use forfeited financial assurances to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the lead agency and the director. The financial assurances shall not be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan or a remediation plan developed pursuant to this section as determined appropriate by both the lead agency and the director that are in excess of the proceeds from the forfeited financial assurances.

(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon the written concurrence of the lead agency and the director, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism, that reclamation has been completed in accordance with the approved reclamation plan. If a surface mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency and the director until new financial assurances are secured from the new owner and have been approved by the lead agency in accordance with Sections 2770, 2773.1, and 2773.4. Within 90 days of the sale or transfer of the a surface mining operation, the new operator shall

~~establish or maintain~~ submit an appropriate financial assurance mechanism ~~and mechanism~~, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's default, that is subject to review by the lead agency and the director pursuant to subdivision (e) of Section 2773.4. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility in accordance with paragraph (10) of subdivision (c) of Section 2772.

(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites pursuant to subdivision (b). However, if the board is not the lead agency pursuant to Section 2774.4, the director may act to seek forfeiture of financial assurances and reclaim mine sites pursuant to subdivision (b) only if both of the following occurs:

(1) The financial incapability of the operator or the abandonment of the surface mining operation has come to the attention of the director.

(2) The lead agency has been notified in writing by the director of the financial incapability of the operator or the abandonment of the surface mining operation for at least 15 days, the lead agency has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site, and one of the following has occurred:

(A) The lead agency has been notified in writing by the director that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under Section 2774.4.

(B) The director determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.

(C) The lead agency notifies the director in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.

The director shall comply with subdivision (b) in seeking forfeiture of financial assurances and reclaiming mine sites.

(e) The board may adopt regulations specifying financial assurance mechanisms other than surety bonds, irrevocable letters of credit, and trust funds, which the board determines are reasonably available and adequate to ensure reclamation pursuant

1 to this chapter, but these mechanisms shall not include financial
2 tests or surety bonds executed by one or more personal sureties.
3 These mechanisms may include reclamation bond pool programs.

4 (f) The board shall adopt or revise guidelines to implement this
5 section as necessary. The guidelines are exempt from the
6 requirements of the Administrative Procedure Act (Chapter 3.5
7 (commencing with Section 11340) of Part 1 of Division 3 of Title
8 2 of the Government Code), and are not subject to review by the
9 Office of Administrative Law.

10 ~~SEC. 9.~~

11 *SEC. 10.* Section 2773.4 is added to the Public Resources Code,
12 to read:

13 2773.4. (a) (1) Prior to approving the financial assurances for
14 a new reclamation plan or adjustments to financial assurances
15 based on an amendment to a reclamation plan, the lead agency
16 shall submit the financial assurance cost estimate to the director
17 for review.

18 (2) The lead agency shall provide the director with a preliminary
19 determination of whether ~~that~~ the financial assurance cost estimate
20 submitted pursuant to paragraph (1) is adequate, complete, and
21 consistent with Section ~~2773.4~~. *2773.1, Article 11 (commencing*
22 *with Section 3800) of Chapter 8 of Division 2 of Title 14 of the*
23 *California Code of Regulations, and the board's financial*
24 *assurance guidelines adopted pursuant to subdivision (f) of Section*
25 *2773.1.*

26 (3) All documentation submitted to the director pursuant to this
27 subdivision shall be submitted at one time.

28 (b) No later than ~~—~~ 15 days after receiving a financial
29 assurance cost estimate, the director shall notify the lead agency
30 and the operator if the submission is incomplete. An incomplete
31 submission is one that does not meet the content requirements of
32 Section ~~2773.4~~. *2773.1, Article 11 (commencing with Section 3800)*
33 *of Chapter 8 of Division 2 of Title 14 of the California Code of*
34 *Regulations, and the board's financial assurance guidelines*
35 *adopted pursuant to subdivision (f) of Section 2773.1.* The
36 director's notice shall specifically identify all aspects of the
37 submission that are incomplete. The director's time to review the
38 financial assurance cost estimate shall commence upon the receipt
39 of a submission that contains the aspects identified in the director's
40 notice to the lead agency.

1 (c) (1) The director shall have ~~_____~~ 45 days from the date of
2 receipt of a complete financial assurance cost estimate to prepare
3 written comments if the director chooses.

4 (2) The lead agency shall evaluate written comments received
5 from the director relating to the financial ~~assurances~~ *assurance*
6 *cost estimate* within a reasonable amount of time. The lead agency
7 shall prepare a written response to the director's comments
8 describing the disposition of the major issues raised by the
9 director's comments.

10 (3) The lead agency shall submit its proposed response to the
11 director at least ~~_____~~ 30 days prior to approval of the financial
12 assurance cost estimate. The lead agency's response shall include
13 either of the following:

14 (A) A description of how the lead agency proposes to adopt the
15 director's comments to the financial assurance cost estimate.

16 (B) A detailed description of the reasons why the lead agency
17 proposes to ~~reject~~ *not adopt* the director's comments.

18 (4) Copies of any written comments received and responses
19 prepared by the lead agency shall be forwarded to the operator.

20 (5) (A) *If the lead agency, in its written response to the*
21 *director's comments, proposes to not adopt the director's*
22 *comments relating to the financial assurance cost estimate, the*
23 *director, within 15 days of receipt of the lead agency's written*
24 *response, may request in writing a consultation with the lead*
25 *agency to discuss the director's comments and the lead agency's*
26 *response. The request shall include an invitation to the operator*
27 *to participate in the consultation. The consultation may be*
28 *conducted in person, electronically, telephonically, or by any*
29 *means convenient to the parties.*

30 (B) *If the director requests a consultation pursuant to this*
31 *subdivision, the lead agency shall not approve the financial*
32 *assurance cost estimate until after consulting with the director.*
33 *The consultation shall occur not later than 30 days after the*
34 *director's request unless an alternate timeframe is mutually agreed*
35 *upon by the director, lead agency, and operator.*

36 ~~(5)~~

37 (6) (A) The lead agency shall give the director at least ~~_____~~ 30
38 days' notice of the time, place, and date of the hearing at which
39 the financial assurance cost estimate is scheduled to be approved
40 by the lead agency. If no hearing is required by this chapter, local

1 ordinance, or other state law, then the lead agency shall provide
2 ~~30~~ 30 days' notice to the director that it intends to approve the
3 financial assurance cost estimate.

4 (B) The lead agency shall send to the director its final response
5 to the director's comments within ~~30~~ 30 days following its
6 approval of the financial assurance cost estimate, during which
7 time the department retains all of its powers, duties, and authority
8 pursuant to this chapter.

9 (d) (1) (A) Within ~~30~~ 30 days of an annual inspection being
10 conducted pursuant to Section 2774, an operator shall provide an
11 annual financial assurance cost estimate to the lead agency for
12 review.

13 (B) *If the lead agency fails to cause the inspection of the surface*
14 *mining operation on the date requested by the operator pursuant*
15 *to Section 2207 or on an alternate date set by the lead agency*
16 *pursuant to subdivision (c) of Section 2774, the operator shall*
17 *provide an annual financial assurance cost estimate to the lead*
18 *agency for review within 30 days of the missed inspection date,*
19 *unless the lead agency causes the inspection to occur within that*
20 *time period, in which case the operator shall provide an annual*
21 *financial assurance cost estimate to the lead agency within 30*
22 *days of the date of the inspection.*

23 (2) (A) Within ~~60~~ 60 days of receiving an operator's annual
24 financial assurance cost estimate, the lead agency shall do ~~both of~~
25 *one of the following:*

26 ~~(A) Review the annual financial assurance cost estimate for~~
27 ~~adequacy and completeness consistent with Section 2773.1.~~

28 ~~(B) Submit the annual financial assurance cost estimate to the~~
29 ~~director for review.~~

30 *(i) Deny the financial assurance cost estimate pursuant to*
31 *paragraph (6).*

32 *(ii) Submit the financial assurance cost estimate to the director*
33 *for review.*

34 (B) *The lead agency shall provide the director with a*
35 *determination that the annual financial assurance cost estimate*
36 *submitted is adequate, complete, and consistent with Section*
37 *2773.1, Article 11 (commencing with Section 3800) of Chapter 8*
38 *of Division 2 of Title 14 of the California Code of Regulations,*
39 *and the board's financial assurance guidelines adopted pursuant*
40 *to subdivision (f) of Section 2773.1.*

1 (3) All documentation submitted to the director pursuant to this
2 subdivision shall be submitted at one time.

3 ~~(4) The lead agency shall provide the director with a preliminary~~
4 ~~determination of whether the annual financial assurance cost~~
5 ~~estimate submitted pursuant to this subdivision is adequate,~~
6 ~~complete, and consistent with Section 2773.1.~~

7 ~~(5)~~

8 (4) Within 15 days of receiving an annual financial
9 assurance cost estimate, the director shall notify the lead agency
10 and the operator if the submission is incomplete. An incomplete
11 submission is one that does not meet the content requirements of
12 ~~Section 2773.1. 2773.1, Article 11 (commencing with Section 3800)~~
13 ~~of Chapter 8 of Division 2 of Title 14 of the California Code of~~
14 ~~Regulations, and the board's financial assurance guidelines~~
15 ~~adopted pursuant to subdivision (f) of Section 2773.1.~~ The
16 director's notice shall specifically identify all aspects of the
17 submission that are incomplete. The director's time to review the
18 annual financial assurance cost estimate shall commence upon the
19 receipt of a submission that contains the aspects identified in the
20 director's notice to the lead agency.

21 ~~(6)~~

22 (5) (A) Within 45 days of receiving an operator's complete
23 annual financial assurance cost estimate from the lead agency, the
24 director shall prepare written comments on the operator's *annual*
25 ~~financial assurance's assurance cost estimate~~ and provide the
26 comments to the lead agency and the operator if the director so
27 chooses.

28 (B) (i) Within 30 days from receiving the director's written
29 comments pursuant to this subdivision, the lead agency shall
30 evaluate the written comments and provide the director and
31 operator its proposed response to the director.

32 (ii) *The lead agency shall submit its proposed response to the*
33 *director at least 30 days prior to approving the annual financial*
34 *assurance cost estimate. The lead agency's response shall include*
35 *either of the following:*

36 (I) *A description of how the lead agency proposes to adopt the*
37 *director's comments to the annual financial assurance cost*
38 *estimate.*

39 (II) *A detailed description of the reasons why the lead agency*
40 *proposes not to adopt the director's comments.*

1 (iii) Copies of any written comments received and responses
2 prepared by the lead agency pursuant to this subparagraph shall
3 be provided to the operator.

4 (C) (i) If the lead agency, in its written response to the
5 director's comments, proposes to not adopt the director's
6 comments concerning the annual financial assurance cost estimate,
7 the director, within 15 days of receipt of the lead agency's written
8 response, may request in writing a consultation with the lead
9 agency to discuss the director's comments and the lead agency's
10 response. The request shall include an invitation to the operator
11 to participate in the consultation. The consultation may be
12 conducted in person, electronically, telephonically, or by any
13 means convenient to the parties.

14 (ii) If the director requests a consultation pursuant to this
15 subparagraph, the lead agency shall not approve the annual
16 financial assurance cost estimate until after consulting with the
17 director. The consultation shall occur not later than 30 days after
18 the director's request unless an alternate timeframe is mutually
19 agreed upon by the director, lead agency, and operator.

20 (C)

21 (D) (i) Within ~~60~~ days of receiving the director's written
22 comments, or of a consultation pursuant to this subdivision,
23 whichever is later or the due date of the director's written
24 comments if they are not none are received, the lead agency shall
25 ~~accept or reject~~ approve or deny an operator's annual financial
26 assurance cost estimate. ~~In approving a financial assurance cost~~
27 ~~estimate, the lead agency, with the concurrence of the operator,~~
28 ~~may modify the financial assurance cost estimate as necessary to~~
29 ~~correct deficiencies identified by the director or lead agency.~~

30 (ii) The lead agency shall give the director at least 30 days'
31 notice of the time, place, and date of the hearing at which the
32 annual financial assurance cost estimate is scheduled to be
33 approved by the lead agency.

34 (iii) If no hearing is required by this chapter, local ordinance,
35 or other state law, the lead agency shall provide 30 days' notice
36 to the director that it intends to approve the annual financial
37 assurance cost estimate.

38 (D)

1 (E) Within ~~_____~~ 30 days of the lead agency's ~~acceptance approval~~
2 of the annual financial assurance cost estimate, the lead agency
3 shall send the director its final response to the director's comments.

4 ~~(7)~~

5 (6) If the lead agency determines an operator's annual financial
6 assurance cost estimate is inadequate, the lead agency shall specify
7 the reasons for that determination. The operator shall have ~~_____~~ 30
8 days to appeal that denial pursuant to subdivision (e) of Section
9 2770 or provide a revised financial assurance cost estimate
10 incorporating the suggested changes to the ~~director and the lead~~
11 agency for approval by the lead agency *pursuant to this section*.

12 (e) (1) Within ~~_____~~ 30 days of the lead agency's approval of a
13 financial assurance cost estimate pursuant to this section, the
14 operator shall provide the lead agency and the director an
15 appropriate financial assurance mechanism. ~~The operator shall~~
16 ~~provide this financial assurance mechanism even if the director~~
17 ~~has appealed the approval pursuant to subdivision (e) of Section~~
18 ~~2770.~~

19 (2) (A) Within ~~_____~~ 15 days of receiving a financial assurance
20 mechanism pursuant to this subdivision, *or subdivision (c) of*
21 *Section 2773.1* the lead agency and the director shall review the
22 financial assurance mechanism to determine if the type of
23 mechanism, including the release instructions, meets the
24 requirements of this chapter.

25 ~~(3) A financial assurance mechanism utilizing any of the forms~~
26 ~~provided as Appendix D, Appendix E-1, Appendix E-2, Appendix~~
27 ~~E-3, and Appendix F to the guidelines adopted by the board~~
28 ~~pursuant to subdivision (f) of section 2773.1 shall be deemed to~~
29 ~~meet the requirements of this chapter. A financial assurance~~
30 ~~mechanism considered by the lead agency or the director to not~~
31 ~~meet the requirements of this chapter shall be returned to the~~
32 ~~operator with correction instructions as to the type and release~~
33 ~~language of the financial assurance mechanism.~~

34 (B) *Financial assurance mechanisms determined to be*
35 *noncompliant with this chapter shall be returned to the operator*
36 *with instructions on how to correct the type or release instructions*
37 *of the financial assurance mechanism.*

38 (3) *By July 1, 2017, the board shall adopt forms to implement*
39 *this subdivision as necessary. The forms shall be subject to the*
40 *requirements of the Administrative Procedure Act (Chapter 3.5*

1 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 2 of the Government Code).

3 (f) The review and approval of financial assurances pursuant
4 to this chapter shall not be considered a project for the purposes
5 of the California Environmental Quality Act (Division 13
6 (commencing with Section 21000)).

7 ~~SEC. 10.~~

8 SEC. 11. Section 2774 of the Public Resources Code is
9 amended to read:

10 2774. (a) Every lead agency shall adopt ordinances in
11 accordance with state policy that establish procedures for the
12 review and approval of reclamation plans and financial assurances
13 and the issuance of a permit to conduct surface mining operations,
14 except that any lead agency without an active surface mining
15 operation in its jurisdiction may defer adopting an implementing
16 ordinance until the filing of a permit application. The ordinances
17 shall establish procedures requiring at least one public hearing and
18 shall be periodically reviewed by the lead agency and revised, as
19 necessary, to ensure that the ordinances continue to be in
20 accordance with state policy.

21 (b) ~~Surface~~ (1) The lead agency shall cause surface mining
22 operations ~~shall to be inspected annually, in intervals of no more~~
23 ~~than 12 months~~, solely to determine whether the surface mining
24 operation is in compliance with this chapter. The lead agency shall
25 cause an inspection to be conducted by a state-licensed geologist,
26 state-licensed civil engineer, state-licensed landscape architect,
27 state-licensed forester, or a lead agency employee who is *qualified*
28 *and* experienced in land reclamation and who has not been
29 employed by the surface mining operation being inspected in any
30 capacity during the previous 12 months, except that a *qualified*
31 lead agency employee may inspect surface mining operations
32 conducted by another department within the local agency. All
33 inspections shall be conducted using a form developed by the
34 department and approved by the board that includes the
35 professional licensing and disciplinary information of the person
36 who conducted the inspection. The operator shall be solely
37 responsible for the reasonable cost of the inspection. The lead
38 agency shall provide a notice of completion of inspection to the
39 director within 90 days of conducting the inspection. The notice
40 shall contain a statement regarding the surface mining operation's

1 compliance with its approved reclamation plan, as described in
2 this chapter, chapter and a copy of the completed inspection form,
3 and which aspects of the surface mining operations, if any, are
4 inconsistent with its approved reclamation plan, as described in
5 this chapter, and any corrective measures recommended by the
6 inspector. It shall specify, as applicable, all of the following:

7 (A) Aspects of the surface mining operation, if any, that were
8 found to be inconsistent with this chapter but were corrected before
9 the submission of the inspection form to the director.

10 (B) Aspects of the surface mining operation, if any, that were
11 found to be inconsistent with this chapter but were not corrected
12 before the submission of the inspection form to the director.

13 (C) A statement describing the lead agency's intended response
14 to any aspects of the surface mining operation found to be
15 inconsistent with this chapter but were not corrected before the
16 submission of the inspection form to the director.

17 (2) If the surface mining operation has a review of its
18 reclamation plan, financial assurances, or an interim management
19 plan pending under subdivision (b), (c), (d), (b) or (h) of Section
20 2770, or an appeal pending before the board or lead agency
21 governing body under subdivision (e) or (h) of Section 2770, the
22 notice shall so indicate. The lead agency shall forward to the
23 operator a copy of the notice, a copy of the completed inspection
24 form, and any supporting documentation, including, but not limited
25 to, any inspection report prepared by the geologist, civil engineer,
26 landscape architect, forester, or *qualified* lead agency employee
27 who conducted the inspection.

28 (c) If an operator does not request an inspection date on the
29 annual report filed pursuant to Section 2207 or if the lead agency
30 is unable to cause the inspection of a given surface mining
31 operation on the date requested by the operator, the lead agency
32 shall provide the operator with a minimum of five days' written
33 notice of a pending inspection or a lesser time period if agreed to
34 by the operator.

35 (d) (1) No later than April July 1 of each year, the lead agency
36 shall submit to the director shall provide each lead agency with a
37 notice listing for each active or idle surface mining operation within
38 the lead agency's jurisdiction. For each surface mining operation,
39 the director shall request and the lead agency shall provide to the

1 director, on a form provided by the director, no later than July 1
2 of each year the following information:

3 (A)

4 (1) A copy of any permit or reclamation plan amendments, as
5 applicable.

6 (B)

7 (2) A statement that there have been no changes during the
8 previous year, as applicable.

9 (C)

10 (3) The date of each surface mining operation's last inspection.

11 (D)

12 (4) The date of each surface mining operation's last financial
13 assurance review pursuant to Section 2773.1 for each operation
14 listed.

15 ~~(2) The director shall request similar information on any new~~
16 ~~or omitted operations, to be provided to the director no later than~~
17 ~~July 1 of each year.~~

18 ~~(e) (1) After January 1, 2018, a lead agency employee who is~~
19 ~~not a state-licensed geologist, state-licensed civil engineer,~~
20 ~~state-licensed landscape architect, or a state-licensed forester and~~
21 ~~who inspects surface mining operations under this chapter shall~~
22 ~~have completed an inspection workshop or an update workshop~~
23 ~~provided by the director. The director shall provide an adequate~~
24 ~~transition time period for lead agency inspectors to complete the~~
25 ~~update workshop if it becomes necessary.~~

26 ~~(2) Nothing in this subdivision shall be construed to affect or~~
27 ~~impose qualifications or standards on employees designated by a~~
28 ~~local, state, or federal agency to perform inspections of real~~
29 ~~property under separate provisions of local, state, or federal law,~~
30 ~~including, but not limited to, the Porter-Cologne Water Quality~~
31 ~~Control Act (Division 7 (commencing with Section 13000) of the~~
32 ~~Water Code), the federal Clean Water Act (33 U.S.C. Sec. 1251~~
33 ~~et seq.), and the Fish and Game Code, notwithstanding the fact~~
34 ~~that that informational addenda are submitted to lead agencies~~
35 ~~pursuant to this chapter in addition to reclamation plans, including~~
36 ~~materials submitted pursuant to subdivision (d) of Section 2772.~~

37 ~~(e) (1) No later than December 31, 2016, the department shall~~
38 ~~establish a training program for all surface mine inspectors. The~~
39 ~~program shall be designed to include a guidance document,~~
40 ~~developed by the department, in consultation with the board and~~

1 *stakeholders, to provide instruction and recommendations to*
2 *surface mine inspectors performing inspections pursuant to*
3 *subdivision (b).*

4 *(2) The training program shall include inspections workshops*
5 *offered by the department in different regions of the state to provide*
6 *practical application of the guidance document material.*

7 *(3) On and after July 1, 2019, all inspectors shall have on file*
8 *with the lead agency and the department a certificate of completion*
9 *of an inspection workshop. An inspector shall attend a workshop*
10 *no later than five years after the date of his or her most recent*
11 *certificate.*

12 *(4) The adoption of the guidance document by the department*
13 *pursuant to this subdivision shall be subject to the requirements*
14 *of the Administrative Procedure Act (Chapter 3.5 (commencing*
15 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
16 *Government Code).*

17 *SEC. 12. Section 2774.1 of the Public Resources Code is*
18 *amended to read:*

19 *2774.1. (a) (1) Except as provided in subdivision (i) of Section*
20 *2770, if the lead agency or the director determines, based upon an*
21 *annual inspection pursuant to Section 2774, or otherwise confirmed*
22 *by an inspection of the surface mining operation, that a surface*
23 *mining operation is not in compliance with this chapter, the lead*
24 *agency or the director may ~~notify~~ issue a notice of that violation*
25 *to the operator of that violation by personal service or certified*
26 *mail. ~~If the violation extends beyond 30 days after the date of the~~*
27 *~~lead agency's or the director's notification,~~ If the lead agency*
28 *issues the notice, the lead agency shall send a copy of the notice*
29 *to the director. The notice shall include both of the following:*

30 *(A) A description of the violation.*

31 *(B) Actions the operator shall take to correct the violation.*

32 *(2) (A) If a lead agency or the director determines that the time*
33 *to correct the noticed violation will exceed 30 days, the lead agency*
34 *and the operator may enter into a stipulated order to comply, with*
35 *notice sent to the director. If the director initiated the enforcement*
36 *action, the director, after consulting with the lead agency, may*
37 *enter into a stipulated order to comply with the operator. The lead*
38 *agency may, but need not, join the stipulated order with the*
39 *director.*

1 (B) A stipulated order to comply shall include a schedule and
2 time for compliance that the lead agency or the director, as
3 applicable, determines is reasonable after taking into account the
4 actions and legal processes required to correct the violation.

5 (3) (A) If the operator does not comply with a notice issued
6 pursuant to paragraph (1) within 30 days of being served the notice
7 or commit to enter into a stipulated order to comply pursuant to
8 paragraph (2) within 30 days of being served the notice, the lead
9 agency or the director may issue an order to comply by personal
10 service or certified mail requiring the operator to comply with this
11 chapter or, if the operator does not have an approved reclamation
12 plan or financial assurances, cease all further surface mining
13 activities.

14 ~~(b)~~

15 (B) An order to comply issued ~~under subdivision (a)~~ pursuant
16 to this paragraph shall ~~not take effect until the operator has been~~
17 ~~provided 30 days following the service of the order to comply~~
18 ~~unless within those 30 days the operator appeals the order to~~
19 ~~comply and requests a hearing before the lead agency for orders~~
20 ~~issued by the lead agency, or, board for orders issued by the~~
21 ~~director or the board, depending on who issued the order to comply~~
22 ~~concerning the alleged violation. An order to comply issued under~~
23 ~~subdivision (a) pursuant to this paragraph shall specify which~~
24 ~~aspects of the surface mine's activities or operations are~~
25 ~~inconsistent with this chapter, shall specify a time for compliance~~
26 ~~that the lead agency or director determines is reasonable, taking~~
27 ~~into account the seriousness of the violation and any good faith~~
28 ~~efforts to comply with applicable requirements, and shall set a date~~
29 ~~for the hearing, which shall not be sooner than 30 days after the~~
30 ~~date of the order. all of the following:~~

31 (i) Which aspects of the surface mining operation are
32 inconsistent with this chapter.

33 (ii) A time for compliance that the lead agency or director
34 determines is reasonable, taking into account the seriousness of
35 the alleged violation and any good faith efforts to comply with
36 applicable requirements.

37 (iii) The actions and legal processes required to correct the
38 alleged violation.

39 (C) An appeal filed pursuant to subparagraph (B) shall be
40 noticed and heard at a public hearing within 45 days of the filing

1 *of the appeal or a longer period as may be mutually agreed upon*
2 *by the operator and the lead agency or the operator and the*
3 *director, depending on who issued the order to comply.*

4 *(b) [Reserved]*

5 *(c) An operator who violates or fails to comply with an order*
6 *to comply issued under subdivision (a) after the order's effective*
7 *date, as provided in subdivision (b), date or who fails to submit a*
8 *report or pay annual fees to the director or lead agency as required*
9 *by Section 2207, shall be subject to an order by the lead agency*
10 *or the director imposing an administrative penalty of not more*
11 *than five thousand dollars (\$5,000) per day, assessed from the*
12 *original date of noncompliance with this ~~chapter~~ or chapter;*
13 *including Section ~~2207~~. 2207, or from the date of the inspection*
14 *when the violation was identified, at the discretion of the issuer*
15 *of the notice of that violation. The penalty may be imposed*
16 *administratively by the lead agency or the director. In determining*
17 *the amount of the administrative penalty, the lead agency or the*
18 *director shall take into consideration the nature, circumstances,*
19 *extent, and gravity of the violation or violations, any prior history*
20 *of violations, the degree of culpability, economic savings, if any,*
21 *resulting from the violation, and any other matters justice may*
22 *require. Orders setting administrative penalties shall become*
23 *effective upon issuance of the ~~order~~ assessment and payment shall*
24 *be made to the lead agency or the director within 30 days, unless*
25 *the operator petitions the legislative body of the lead agency, the*
26 *board, or the superior court for review as provided in Section*
27 *2774.2. An order shall be served by personal service or by certified*
28 *mail upon the operator. Penalties collected by the director shall*
29 *not be used for purposes other than to cover the reasonable costs*
30 *incurred by the director in implementing this chapter or Section*
31 *2207.*

32 *(d) (1) An operator who violates or fails to comply with an*
33 *order to comply issued pursuant to paragraph (3) of subdivision*
34 *(a) or a stipulated order to comply entered into pursuant to*
35 *paragraph (2) of subdivision (a) after the order's effective date*
36 *shall be removed from the list published by the department*
37 *pursuant to subdivision (b) of Section 2717.*

38 *(2) If after a public hearing the board or lead agency denies an*
39 *appeal by the operator pursuant to subdivision (b), the operator*
40 *shall be removed 10 working days following the denial of the*

1 *appeal from the list published by the department pursuant to*
2 *subdivision (b) of Section 2717.*

3 *(3) If the operator enters into a stipulated order to comply*
4 *between the operator and the lead agency or the operator and the*
5 *director within 10 working days of the denial of the appeal and*
6 *the stipulated order to comply is consistent with the order to*
7 *comply upheld by the board or lead agency and includes a*
8 *stipulated schedule for compliance, the operator shall remain on*
9 *the list published by the department pursuant to subdivision (b)*
10 *of Section 2717.*

11 *(4) Issuance of a notice pursuant to paragraph (1) of subdivision*
12 *(a) or an order to comply or stipulated order to comply pursuant*
13 *to paragraph (2) or (3) of subdivision (a) shall not disqualify an*
14 *operator from eligibility for placement on the list published by the*
15 *department pursuant to subdivision (b) of Section 2717.*

16 ~~(d)~~

17 *(e) If the lead agency or the director determines that the surface*
18 *mine is not in compliance with this chapter, so that the surface*
19 *mine presents an imminent and substantial endangerment to the*
20 *public health or the environment, the lead agency or the Attorney*
21 *General, on behalf of the director, may seek an order from a court*
22 *of competent jurisdiction enjoining that operation.*

23 ~~(e)~~

24 *(f) Upon a complaint by the director, the department, or the*
25 *board, the Attorney General may bring an action to recover*
26 *administrative penalties under this section, and penalties under*
27 *Section 2207, in any court of competent jurisdiction in this state*
28 *against any person violating any provision of this chapter or Section*
29 *2207, or any regulation adopted pursuant to this chapter or Section*
30 *2207. The Attorney General may bring this action on his or her*
31 *own initiative if, after examining the complaint and the evidence,*
32 *he or she believes a violation has occurred. The Attorney General*
33 *may also seek an order from a court of competent jurisdiction*
34 *compelling the operator to comply with this chapter and Section*
35 *2207.*

36 ~~(f)~~

37 *(g) (1) The lead agency has primary responsibility for enforcing*
38 *this chapter and Section 2207. In cases where the board is not the*
39 *lead agency pursuant to Section 2774.4, enforcement actions may*
40 *be initiated by the director pursuant to this section only after the*

1 violation has come to the attention of the director and either of the
2 following occurs:

3 (A) The lead agency has been notified by the director in writing
4 of the violation for at least 30 days, and has not taken appropriate
5 enforcement action, which may include failing to issue an order
6 to comply within a reasonable time after issuing a notice of
7 violation.

8 (B) The director determines that there is a violation that amounts
9 to an imminent and substantial endangerment to the public health
10 or safety, or to the environment.

11 (2) The director shall comply with this section in initiating
12 enforcement actions.

13 ~~(g)~~

14 (h) Remedies under this section are in addition to, and do not
15 supersede or limit, any and all other remedies, civil or criminal.

16 ~~SEC. 11.~~

17 *SEC. 13.* Section 2774.2 of the Public Resources Code is
18 amended to read:

19 2774.2. (a) Within 30 days of the issuance of an order setting
20 administrative penalties under subdivision (c) of Section 2774.1,
21 the operator may petition the legislative body of the lead agency,
22 if the lead agency has issued the order, or the board for orders
23 issued by the director, for review of the order. If the operator does
24 not petition for review within the time limits set by this subdivision,
25 the order setting administrative penalties shall not be subject to
26 review by any court or agency.

27 (b) The legislative body of the lead agency or the board shall
28 notify the operator by personal service or certified mail whether
29 it will review the order setting administrative penalties. In
30 reviewing an order pursuant to this section, the record shall consist
31 of the record before the lead agency or the director and any other
32 relevant evidence which, in the judgment of the legislative body
33 or the board, should be considered to effectuate and implement
34 the policies of this chapter.

35 (c) The legislative body or the board may affirm, modify, or set
36 aside, in whole or in part, by its own order an order of the lead
37 agency or the director setting administrative penalties reviewed
38 by the legislative body or the board pursuant to this section.

39 (d) An order of the legislative body or the board issued under
40 subdivision (c) shall become effective upon its issuance unless the

1 operator petitions the superior court for review as provided in
2 subdivision (e). An order shall be served by personal service or
3 by certified mail upon the operator. Payment of an administrative
4 penalty that is specified in an order issued pursuant to subdivision
5 (c) shall be made to the lead agency or the director within 30 days
6 of service of the order. However, the payment shall be held in an
7 interest bearing impound account pending the resolution of a
8 petition for review filed pursuant to subdivision (e).

9 (e) An operator aggrieved by an order of the legislative body
10 or the board issued pursuant to subdivision (c) may obtain review
11 of the order by filing in the superior court a petition for writ of
12 mandate within 30 days following the issuance of the order. An
13 operator aggrieved by an order of a lead agency or the director
14 setting administrative penalties pursuant to subdivision (c) of
15 Section 2774.1, for which the legislative body or board denies
16 review, may obtain review of the order in the superior court by
17 filing in the court a petition for writ of mandate within 30 days
18 following the denial of review. The provisions of Section 1094.5
19 of the Code of Civil Procedure shall govern judicial proceedings
20 pursuant to this subdivision, except that in every case the court
21 shall exercise its independent judgment. If the operator does not
22 petition for a writ of mandate within the time limits set by this
23 subdivision, an order of the board or the legislative body shall not
24 be subject to review by any court or agency.

25 (f) (1) After the expiration of the time to petition for review
26 pursuant to subdivision (a) or (e), the director or the board acting
27 as the lead agency may apply to the small claims court or the
28 superior court, depending on the jurisdictional amount, in the
29 county where the administrative penalty was imposed for a
30 judgment to collect the unpaid administrative penalty imposed
31 pursuant to subdivision (c) of Section 2774.1. The application shall
32 include all of the following:

33 (A) The order setting the administrative penalty pursuant to
34 subdivision (c) of Section 2774.1.

35 (B) A notice to the operator of the right to petition for review
36 of the order.

37 (C) Either of the following:

38 (i) A declaration from the board that no petition was made or
39 that the board declined to review the petition.

40 (ii) A copy of the final order of the board.

1 (2) An application submitted pursuant to this subdivision shall
2 constitute a sufficient showing to warrant the issuance of the
3 judgment. The court clerk shall enter the judgment immediately
4 in conformity with the application.

5 (3) The judgment entered pursuant to this subdivision shall have
6 the same force and effect as, and shall be subject to all the
7 provisions of law relating to, a judgment in a civil action and may
8 be enforced in the same manner as any other judgment of the court.
9 The court shall make enforcement of the judgment a priority.

10 *SEC. 14. Section 2774.4 of the Public Resources Code is*
11 *amended to read:*

12 ~~2774.4. (a) If the board finds that a lead agency either has (1)~~
13 ~~approved reclamation plans or financial assurances which are not~~
14 ~~consistent with this chapter, (2) failed to inspect or cause the~~
15 ~~inspection of surface mining operations as required by this chapter,~~
16 ~~(3) failed to seek forfeiture of financial assurances and to carry~~
17 ~~out reclamation of surface mining operations as required by this~~
18 ~~chapter, (4) failed to take appropriate enforcement actions as~~
19 ~~required by this chapter, (5) intentionally misrepresented the results~~
20 ~~of inspections required under this chapter, or (6) failed to submit~~
21 ~~information to the department as required by this chapter, the board~~
22 ~~shall exercise any of the powers of that lead agency under this~~
23 ~~chapter, except for permitting authority.~~

24 *2774.4. (a) The board shall exercise some or all of a lead*
25 *agency's powers under this chapter pursuant to subdivision (c),*
26 *except for permitting authority and vested rights determinations,*
27 *if the board finds that a lead agency has done any of the following:*

28 *(1) Approved reclamation plans or financial assurances that*
29 *are not consistent with this chapter.*

30 *(2) Failed to inspect or cause the inspection of surface mining*
31 *operations as required by this chapter.*

32 *(3) Failed to seek forfeiture of financial assurances and to carry*
33 *out reclamation of surface mining operations as required by this*
34 *chapter.*

35 *(4) Failed to take appropriate enforcement actions as required*
36 *by this chapter.*

37 *(5) Intentionally misrepresented the results of inspections*
38 *required under this chapter.*

39 *(6) Failed to submit information to the department as required*
40 *by this chapter.*

(b) ~~If, The board shall conduct a public hearing no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that (a) to determine if a lead agency has corrected its deficiencies in implementing and enforcing this chapter, chapter and the rules and regulations adopted pursuant to this chapter, chapter. If the board finds the lead agency has corrected some or all of its deficiencies in implementing and enforcing this chapter, the board shall restore to the lead agency some or all of the powers assumed by the board pursuant to subdivision (a).~~

~~(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, 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 surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.~~

(c) (1) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies and allow the lead agency 45 days to provide a response to the board on the identified deficiencies. The board may review the lead agency's response at a regularly scheduled meeting.

(2) (A) If the board is not satisfied with the lead agency's response, 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.

(B) At the hearing, the board shall determine if the lead agency has engaged in the conduct described in subdivision (a). If the board finds that the lead agency has engaged in conduct described in subdivision (a), the board shall do either of the following:

1 (i) *Require the lead agency to develop a remedial plan to correct*
2 *the noted deficiencies. The remedial plan shall describe specific*
3 *objectives and corresponding processes designed to address, at a*
4 *minimum, the noted deficiencies and a time that the remedial plan*
5 *will be fully implemented. The board shall set a hearing to review*
6 *the completion of the remedial plan consistent with paragraph (2)*
7 *and subdivisions (d) and (e).*

8 (ii) *Take immediate action pursuant to subdivision (a).*

9 (d) ~~Affected surface mining operators and interested persons~~
10 ~~have the right, right at the public hearing, hearing to present oral~~
11 ~~and written evidence on the matter being considered. The At the~~
12 ~~public hearing, the board may, at the public hearing, place~~
13 ~~reasonable limits on the right of affected surface mining operators~~
14 ~~and interested persons to question and solicit testimony.~~

15 (e) ~~If, after conducting the public hearing required by~~
16 ~~subdivision (e), (1) If the board decides to take action pursuant to~~
17 ~~subdivision (a), (a) and exercise some or all of a lead agency's~~
18 ~~powers under this chapter, except for permitting authority and~~
19 ~~vested rights determinations, the board shall, based on the record~~
20 ~~of the public hearing, board, based on the record of the public~~
21 ~~hearing, shall adopt written findings which that explain all of the~~
22 ~~following:~~

23 ~~(1)~~
24 (A) The action to be taken by the board.

25 ~~(2)~~
26 (B) Why the board decided to take the action.

27 ~~(3)~~
28 (C) Why the action is authorized ~~by~~, by and meets the
29 requirements ~~of~~, of subdivision (a).

30 (2) In addition, the *board's* findings shall address the significant
31 issues raised, or written evidence presented, by affected ~~surface~~
32 ~~mining~~ operators, interested persons, ~~or the lead agency. agency,~~
33 ~~or the department.~~ The transcript of testimony and exhibits,
34 together with all papers and requests filed in the proceedings, shall
35 constitute the exclusive record for decision by the board.

36 (f) *If the board finds at the hearing held pursuant to paragraph*
37 *(2) of subdivision (c) that the lead agency has not completed the*
38 *remedial plan prepared pursuant to clause (i) of subparagraph*
39 *(B) of paragraph (2) of subdivision (c) to the board's satisfaction,*
40 *the board shall follow the procedures set forth in paragraph (2)*

1 of subdivision (c) and subdivisions (d) and (e). If the board finds
2 at the hearing held pursuant to paragraph (2) of subdivision (c)
3 that the lead agency has completed the remedial plan prepared
4 pursuant to clause (i) of subparagraph (B) of paragraph (2) of
5 subdivision (c) to the board's satisfaction, the board shall conclude
6 the action it has taken pursuant to this section.

7 (f)

8 (g) The lead agency, any affected ~~surface-mining~~ operator, or
9 any interested person who has presented oral or written evidence
10 at the public hearing before the board pursuant to subdivision (d)
11 may obtain review of the board's action taken pursuant to
12 subdivision (a) by filing in the superior court a petition for writ of
13 mandate within 30 days following the issuance of the board's
14 decision. Section 1094.5 of the Code of Civil Procedure governs
15 judicial proceedings pursuant to this subdivision, except that in
16 every case the court shall exercise its independent judgment. If a
17 petition for a writ of mandate is not filed within the time limits set
18 by this subdivision, the board's action under subdivision (a) shall
19 not be subject to review by any court or agency.

20 ~~SEC. 12.~~

21 *SEC. 15.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 a local agency or school district has the authority to levy service
24 charges, fees, or assessments sufficient to pay for the program or
25 level of service mandated by this act, within the meaning of Section
26 17556 of the Government Code.

27 *SEC. 16.* *This act shall become operative only if both this bill*
28 *and Senate Bill 209 of the 2015–16 Regular Session are enacted*
29 *and become operative.*