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AB-442 Surface Mining and Reclamation Act of 1975: exemption: Metropolitan Water District of Southern California: master reclamation plan. (2021-2022)

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Assembly Bill No. 442

CHAPTER 166

An act to amend Section 2714 of, and to add and repeal Section 2715.6 of, the Public Resources Code, relating to surface mining.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 442, Mayes. Surface Mining and Reclamation Act of 1975: exemption: Metropolitan Water District of Southern California: master reclamation plan.

(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. The act exempts certain activities from the provisions of the act, including, among others, emergency excavations or grading conducted by the Department of Water Resources or the Central Valley Flood Protection Board for the specified purposes; surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control; and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Central Valley Flood Protection Board for the purpose of flood control.

This bill would additionally exempt from the provisions of the act emergency excavations or grading conducted by the Metropolitan Water District of Southern California (MWD) for its own operations and infrastructure for specified purposes.

This bill would authorize MWD to prepare a master reclamation plan, as provided, that identifies each individual surface mining operation in specified counties and satisfies all reclamation plan requirements for each individual surface mining site. The bill would require the State Mining and Geology Board to act as the lead agency for surface mining operations conducted by the MWD and would authorize the board to conduct an inspection of an individual surface mining operation once every 2 calendar years during a period when that individual surface mining operation is idle or the site has no mineral production. The bill would require MWD to be the lead agency for any environmental review of the master reclamation plan. The bill would exempt MWD from having to secure approval of a reclamation plan or obtain a use permit from any city or county under the act to conduct these operations. The bill would require MWD to provide an annual report to the board that separately subreports required information for each surface mining operation, would require MWD to pay a specified annual reporting fee, and would authorize the board, in its role as the lead agency, to collect reasonable inspection costs and to impose an administration fee on MWD in an amount not to exceed the board's reasonable costs in carrying out its duties. To the extent this bill adds to the duties of local governments acting as a lead agency for environmental review of the master reclamation plan, the bill would impose a state-mandated local

program. The bill would repeal the provisions authorizing the preparation and approval of the master reclamation plan for MWD on January 1, 2026.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for the Metropolitan Water District of Southern California.

(3) 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(a) Excavations or grading of lands conducted for farming.

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

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

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

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

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

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

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

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

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

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

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

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

(f) Any other surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances.

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

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Central Valley Flood Protection Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Central Valley Flood Protection Board for the purpose of flood control, if the Department of Water Resources adopts, after submission to and consultation with, the Division of Mine Reclamation, a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The Department of Water Resources shall provide an annual report to the department by the date specified by the department on these surface mining operations.

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

(j) Emergency excavations or grading conducted by the Metropolitan Water District of Southern California for its own operations and infrastructure for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(k) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

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

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

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

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

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

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

(m) (1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

SEC. 2. Section 2715.6 is added to the Public Resources Code, to read:

2715.6. (a) For purposes of this section, the following definitions apply:

(1) "Metropolitan Water District" means the Metropolitan Water District of Southern California.

(2) "Metropolitan Reclamation Plan" means a master reclamation plan that may be approved pursuant to this section for all surface mining operations conducted by the Metropolitan Water District within the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. The master reclamation plan shall identify each individual surface mining operation and satisfy all reclamation plan requirements for each individual surface mining site.

(b) Unless otherwise provided in this section, the requirements of this chapter, Section 2207, and Chapter 8 (commencing with Section 3500) of Division 2 of Title 14 of the California Code of Regulations shall apply to surface mining operations conducted by the Metropolitan Water District within the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura.

(c) The board shall act as the lead agency pursuant to this chapter and Section 2207 for surface mining operations conducted by the Metropolitan Water District.

(d) In addition to any other requirements in statute or regulation, the Metropolitan Reclamation Plan shall include both of the following:

(1) A map that identifies the location of each individual surface mining operation conducted on lands Metropolitan Water District owns or leases, or upon which easements or rights-of-way have been granted to the Metropolitan Water District.

(2) Maintenance measures that become effective when any individual surface mining operation is idle or the site has no mineral production. Maintenance measures shall maintain the site in compliance with this chapter while the surface mining operation is idle or the site has no mineral production.

(e) The Metropolitan Reclamation Plan is exempt from the requirements of subdivision (h) of Section 2770, except that financial assurances required by Section 2773.1 shall remain in effect during any idle period.

(f) Notwithstanding subdivision (b) of Section 2774, the board may conduct an inspection of an individual surface mining operation once every two calendar years during a period when that individual surface mining operation is idle or the site has no mineral production.

(g) (1) In the annual report required pursuant to Section 2207, the Metropolitan Water District shall provide a separate subreport for each individual surface mining operation that provides the information and documentation required in that section.

(2) The Metropolitan Water District shall pay an annual reporting fee pursuant to subdivision (d) of Section 2207.

(3) The board, in its role as the lead agency, may collect reasonable inspection costs pursuant to subdivision (f) of this section, and paragraph (1) of subdivision (b) of Section 2774 and, excluding Section 3696.5 of Title 14 of the California Code of Regulations, may impose an administration fee pursuant to subdivision (e) of Section 2207 in an amount not to exceed the board's reasonable costs in carrying out this chapter.

(h) Notwithstanding any other law, the Metropolitan Water District shall not be required to secure approval of a reclamation plan from any city or county or obtain a use permit from any city or county under this chapter to conduct the operations under the approved Metropolitan Reclamation Plan.

(i) The Metropolitan Water District shall not sell or allow any materials produced by its surface mining operations from lands it owns, leases, or upon which easements or rights-of-way have been granted to be sold or used for the benefit of any other person.

(j) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Metropolitan Water District shall be the lead agency for any environmental review of the Metropolitan Reclamation Plan.

(k) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because the service area of the Metropolitan Water District of Southern California covers six counties, providing water to 26 member agencies that serve approximately 19,000,000 people across the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura; the district's Colorado River Aqueduct and other critical drinking water infrastructure are unique in that it crosses multiple counties and it is essential to the district's mission to provide its service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way; it is necessary for the district to use stone, gravel, and sand to operate and maintain its critical infrastructure, including the use of materials to repair storm and flood damage, and repairs to the rights-of-way and appurtenant facilities necessary to ensure the safe operation of its critical drinking water infrastructure and, thus, ensure delivery of water to approximately 19,000,000 people in southern California; the implementation of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) by multiple counties as to the district may lead to the conflicting application of the law to a single special district; and the implementation of the Surface Mining and Reclamation Act of 1975 by the district with the oversight of the Department of Conservation will ensure more uniform and efficient application of the law.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.