

Staff Report 87

PROPOSED ACTION:

Consider sponsoring legislation to amend several solid mineral permitting and leasing statutes to remove or modernize outdated provisions and to ensure that the Commission has the discretion to determine whether individual applications for solid mineral leasing are in the best interest of the state.

BACKGROUND AND PURPOSE:

The statutes governing solid mineral¹ extraction on lands and resources under the Commission's jurisdiction originated before the nineteen-forties, during an era when mineral exploration was widespread and environmental protections were scant. In the past few years, staff has reviewed these statutes and identified important updates that will modernize the statutory framework, address shortcomings, and ensure that if a solid mineral lease is issued, the process is transparent, the rigorous requirements of CEQA are applied, Tribal Governments and communities are consulted with, environmental justice is considered, and that the Commission can meaningfully engage with the public.

Existing law authorizes the Commission to issue a prospecting permit that allows an applicant to explore lands with no record or evidence of commercially valuable mineral deposits. The prospecting permit allows an applicant to explore and prove that mineral exist in commercial quantities. While issuance of a prospecting permit is a discretionary act of the Commission, it historically has been the primary entitlement to allow exploratory work.

The problem with existing law is that it grants prospecting permittees a preferential right to a mineral extraction lease. Staff has long interpreted the "preferential lease right" as a temporal right, giving the permittee a right to have its lease application considered before other potential applicants, yet preserving the Commission's discretion to deny the application, subject to CEQA and other requirements of law.

¹ Examples of solid minerals include precious metals, borax, sand, and gravel. The Public Resources Code establishes unique leasing rules for Oil & Gas (Cal. Pub. Resources Code sec. 6801 et seq.), Solid Minerals (Cal. Pub. Resources Code sec. 6890 et seq.), and Geothermal Resources (Cal. Pub. Resources Code sec. 6901 et seq.).

Staff are concerned, however, that current statutes can be interpreted as an absolute right of a permittee to a lease after proving the existence of commercially valuable deposits, making the issuance of a mineral extraction lease a ministerial (or non-discretionary) action by the Commission. This would, in effect, eviscerate Tribal consultation, public participation, and environmental review. If the preferential lease requirement is not removed from current law, the Commission may be unable to consider, in a transparent process with public participation, whether a mineral extraction lease is in the best interest of the state. The purpose of this legislation is to address this ambiguity and preserve the Commission's discretion to consider solid mineral leases based on what is in the best interest of the state.

The proposed legislation is coming at an opportune moment for California, as interest in ways to achieve our climate and clean energy goals is surging. Electric vehicle sales are expected to accelerate in the coming years. Lithium-ion batteries are the dominant type of rechargeable batteries that are used in electric vehicles. Most electric vehicle battery production occurs outside of the United States. California's Lithium Valley Commission found that there will be a lithium deficit in California beginning in 2022 unless more lithium production does not come online. The interest in procuring lithium and other minerals to meet California's clean energy goals is likely to result in more prospecting permit applications that could trigger the preferential lease entitlement.

The legislation will modernize the statutory framework and align it with the recently enacted seabed mining ban (AB 1832, L. Rivas, 2022). The legislation would also remove a requirement that the Attorney General find that a proposed lease or permit complies with existing law. Repealing this requirement will eliminate an unnecessary burden on the Commission and Attorney General and will preserve the integrity of the attorney-client relationship between the Attorney General and the Commission. The other changes include creating a new geological or geophysical permit category for low intensity activities ((i.e., hand sampling or hand auguring), instituting a lease prioritization in lieu of the preferential right to a lease, and requiring that the state is adequately compensated and receives fair market value for use of its lands and resources. Staff also proposes several clean up provisions. The most notable element of the bill, however, is to remove the preferential right to a lease and replace it with a lease prioritization.

Below is a more detailed section by section explanation of the legislation.

Amendments to Public Resources Code Section 6890

The amendment to subdivision (a) would repeal a requirement that any permit or lease be approved by the "Attorney General as to compliance with the applicable law and rules and regulations." Staff believes this is a historic provision added to

provide an additional layer of approval to demonstrate the integrity of the process (i.e., compliance with minimum royalty and maximum lease area requirements). Repealing this requirement will reduce unnecessary delay and burden on the Commission and Attorney General in having to review lease provisions before Commission consideration. In practice, the Attorney General relies on the Commission for subject matter expertise, especially regarding compliance with requirements that the Commission implements. Moreover, this requirement complicates the attorney-client relationship between the Attorney General and the Commission. Because the Attorney General actively serves as the legal representative of the Commission, any approval or disapproval from the Attorney General will appear result oriented. For example, the Attorney General's approval of a proposed lease would appear to be mere support of its client, to whom the Attorney General has a fiduciary duty. Thus, the requirement does not improve the appearance of impartiality in the state's approval process.

Instead, California's modern review process suffices to secure public confidence that the Attorney General approval requirement was meant to secure. In addition to a permit or lease from the Commission, a mining project would need many other entitlements from public agencies. For most proposed mining projects, other likely reviewing public agencies include the Department of Conservation, Geologic Energy Management Division; Department of Fish and Wildlife; State Water Resources Control Board; and local governments. This robust review process ensures that various agencies with subject matter expertise consider a proposed project's impacts before authorizing it. Therefore, repealing the requirement for the Attorney General's approval would not weaken the state's review process.

The amendments also clarify that this section is consistent with the recently enacted seabed mining ban ([AB 1832, Luz Rivas](#)). The Commission, to the best of staffs' knowledge, has never issued a solid mineral prospecting permit or lease for tide and submerged lands. This amendment harmonizes this statute with the seabed mining ban statute.

The amendment to subdivision (b) would create a new permit type. The exploration permits would be nonexclusive, allowing the Commission to authorize multiple parties to conduct low-impact exploration such as hand collection of rocks for sampling. This approach would allow permittees to perform initial exploration to understand the geologic nature of California's lands and narrow locations for more extensive exploration under a later considered prospecting permit.

Amendments to Public Resources Code Section 6895

Because Section 6895 is a large block of text, staff recommends reshaping this section by dividing it into three subdivisions to improve readability. Subdivision (a)

would apply to preferential rights and lease space; Subdivision (b) would apply to compensation; and Subdivision (c) would apply to tide and submerged lands and harmonize the statute with the seabed mining ban (AB 1832, L. Rivas) passed last year.

Public Resources Code section 6895, Subdivision (a) currently entitles prospectors to a lease if the Commission verifies the discovery of commercially valuable deposits of minerals. Staff believes that the Legislature created this lease entitlement to incentivize miners to prospect for and ultimately extract valuable minerals. Although many minerals are essential to technological development and manufacturing, mineral extraction can cause significant environmental effects. The Legislature understands these impacts better today than it did at the time it created the lease-entitlement incentive (nearly a century ago). Subsequent legal requirements, like CEQA, were not contemplated when the previous statute was developed and create confusion on implementation. To avoid the ministerial issuance of a mining lease and to ensure greater harmony with current legal frameworks, staff recommends amending Section 6895 so that the Commission retains discretion on whether to issue a lease.

By granting priority to successful prospectors, mining competitors would be unable to seize an unfair advantage, using the fruits of a prospector's labor. Concurrently, the Commission could deny applications for destructive mining projects. Thus, the proposed amendment would allow the Commission to incentivize exploration for valuable minerals that could help meet California's clean energy goals and when it is in the best interests of the state, yet eliminate the risk of a ministerial, destructive mining lease.

Existing law limits any mining leases to a maximum of 960 acres. Staff believes that the Legislature established this limitation to prevent lessees from land banking (leasing more land than needed to prevent other mining projects). Modern mining projects may require lease space greater than 960 acres. Land banking, however, remains a valid concern. To reconcile these interests, this amendment would repeal the reference to 960 acres and, instead, add the following sentence: "Mineral leases shall be limited to the minimum area required for mining." This will require the Commission to evaluate the applied-for lease space and confirm that it is necessary for the proposed mining project. If the applied-for lease space is in excess, the Commission could deny the application or offer a lease that better reflects the space needs of the proposed project.

Existing law requires that the "area selected by the permittee shall be in compact form." Staff does not know what "compact form" means but speculates that the Legislature enacted this requirement so that lease areas would be limited to the space necessary for a mining project. In any case, the Legislature should repeal this

requirement for two reasons. First, consistent with the other proposed amendments, the permittees would no longer *select* lands for leases. Instead, they would apply for them, which would give discretion to the Commission over the applied-for lease area. Second, requiring that these leases be limited to the minimum area required for mining is clearer and better ensures compliance.

Existing law includes a requirement that applicants survey lands intended for prospecting. Staff believes that the Legislature included this surveying requirement to ensure that leased lands would be adequately described in legal descriptions. When the lands are unsurveyed, the Legislature intended that the applicant, not the state, would pay for the survey. This is the standard practice of the Commission today. All leased lands are identified in legal descriptions, with applicants reimbursing the Commission for any needed surveying. Consequently, the Legislature should repeal this requirement to simplify the statute. Although the current language causes it no harm, it likely adds needless confusion to lay members of the public who read the statute.

Staff also recommends adding language to Public Resources Code section 6895, Subdivision (a) to expressly affirm that the Commission has discretion over mineral leases. This addition would clearly confirm the Legislature's intent to modify the type of preferential right for prospectors and to reassure the public that any mineral leases would be the product of the Commission's normal public review process, not a ministerial action or vested legal right.

Decades ago, the Legislature established a minimum rent of \$1 per acre. In 2023, this amount is far below market value of any state lands. Setting a specific minimum rent amount creates challenges because state lands vary greatly in value and because values change over time. Instead of establishing a specific minimum, this amendment would require that minimum rent be the fair rental value of the lands. This approach would better ensure that the state is adequately compensated while maintaining applicability to any parcel at any time.

Amendments to Public Resources Code Sections 6896 and 6898

The amendments to these sections are technical and clarifying. They make the language gender neutral and remove superfluous language regarding the lease preference language.

OTHER PERTINENT INFORMATION:

1. AB 1832 (L. Rivas, Chapter 433, Statutes of 2022), prohibits the State Lands Commission and local trustees of granted Public Trust lands from granting leases or issuing permits to extract or remove hard minerals, as defined, from state

waters subject to tidal influence, save for scientific research or collections conducted by, or on behalf of, an educational, scientific, or research institution or a governmental agency. The Commission adopted a [support position](#) on AB 1832 last Spring.

EXHIBIT:

A. AB 706 (Luz Rivas)

RECOMMENDED ACTION:

It is recommended that the Commission:

Sponsor legislation to amend several solid mineral permitting and leasing statutes to remove or modernize outdated provisions and to ensure that the Commission has the discretion to determine whether individual applications for solid mineral leasing are in the best interest of the state.

Exhibit A

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 706

Introduced by Assembly Member Luz Rivas

February 13, 2023

An act to amend Sections 6890, 6895, 6896, and 6898 of the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 706, as introduced, Luz Rivas. Leasing of public lands: minerals other than oil and gas.

Existing law authorizes the State Lands Commission to issue prospecting permits and leases for the extraction and removal of minerals, other than oil and gas or other hydrocarbon substances, from specified lands. Existing law prohibits the commission from issuing a permit or lease until it has been submitted to, and approved by, the Attorney General, as specified.

This bill would delete the provision relating to Attorney General approval and would authorize the commission to grant nonexclusive geological or geophysical exploration permits for minerals upon those terms and conditions as the commission may prescribe, without giving the permittee any preferential treatment.

Existing law grants a permittee entitlement to a lease for not more than 960 acres of land included in a prospecting permit if the presence of commercially valuable deposits of minerals has been discovered to the satisfaction of the commission. Existing law requires the permittee to pay an annual rental of not less than \$1 per acre.

This bill would delete that entitlement and instead grant the permittee priority over other applicants for 365 days, unless the permittee submits a complete lease application, in which case the priority will expire upon

the commission’s consideration or applicant’s withdrawal of the application. The bill would also instead require the permittee to pay an annual rental of not less than fair market value.

Existing law requires a permittee to pay the state 20% of the gross value of the minerals the permittee secures from the land included in the permit until the permittee applies for a lease for the same land.

This bill would instead require the permittee to pay the state 20% of the gross value of all minerals secured from the land included in the permit until the permittee applies for a lease for the same land.

Existing law limits the term for a lease to 20 years or less and grants the lessee preferential right to renew the lease for successive periods not to exceed 10 years each.

This bill would delete that preferential right to renew the lease.

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

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

1 SECTION 1. Section 6890 of the Public Resources Code is
2 amended to read:

3 6890. (a) Prospecting permits and leases for the extraction and
4 removal of minerals, other than oil and gas or other hydrocarbon
5 substances, from lands, ~~including tide and submerged lands~~
6 ~~belonging to the state,~~ *consistent with Section 6900*, may be issued
7 as provided in this article and in this chapter insofar as not in
8 conflict with this article. ~~The commission shall not issue any permit~~
9 ~~or lease under this section until it has been submitted to the~~
10 ~~Attorney General and has been approved by the Attorney General~~
11 ~~as to compliance with the applicable law and rules and regulations~~
12 ~~of the commission.~~ No lease or permit shall be issued ~~which~~ *that*
13 results in any net adverse impact to wetlands or riparian habitat.

14 (b) Where lands, other than tide and submerged lands, belonging
15 to the state have been dedicated to a public use, the commission
16 may issue permits and leases for the exploration, extraction, and
17 removal of minerals, other than oil and gas or other hydrocarbon
18 substances and geothermal resources, in accordance with this
19 article. Where the lands have been acquired for the use of a specific
20 state agency, the state agency, ~~prior to~~ *before* issuance, shall
21 approve the work to be performed under the authority of the permit
22 or lease and the state agency shall specify terms and conditions

1 required to ensure that the work shall be performed in a manner
2 ~~which~~ *that* is not inconsistent with the purposes for which the land
3 is owned or operated.

4 (c) If the property is a wildlife management area acquired
5 pursuant to Section 1525 of the Fish and Game Code, the
6 commission shall not issue any permit or lease under this section
7 unless the Department of Fish and Game determines, and reports
8 in writing to the commission, that the proposed activity will not
9 cause a net loss of wildlife habitat value or acreage in that area
10 because privately owned land of greater total wildlife habitat value
11 and acreage, which has habitat values similar in type to the area
12 to be permitted or leased, will be acquired and dedicated to the
13 state to replace the land of that wildlife management area. The
14 replacement land shall be located within 10 miles of the wildlife
15 management area where the lease or permit is to be issued.

16 (d) The commission shall not issue a permit or lease under this
17 section for any land under the jurisdiction of the Department of
18 Parks and Recreation, for any refuge or other protected area, as
19 described in Division 7 (commencing with Section 10500) of the
20 Fish and Game Code, or for any ecological reserve, as described
21 in Article 4 (commencing with Section 1580) of Chapter 5 of
22 Division 2 of the Fish and Game Code.

23 (e) Notwithstanding Section 6217, as of June 30 of each year,
24 a sum equal to 50 percent of the revenue received by the state for
25 the fiscal year ending on June 30 pursuant to permits and leases
26 for the development of minerals, other than oil, gas, or other
27 hydrocarbon substances and geothermal resources, on lands ~~which~~
28 *that* have been dedicated to a public use and are administered by
29 a state agency other than the commission shall be available for
30 appropriation by the Legislature for the support of, and
31 apportionment and transfer by the Controller to, that state agency.

32 (f) If the state agency receives a majority of its funding from a
33 special fund established for the general support of the agency, the
34 revenue made available by subdivision (e) shall be deposited in
35 that fund and shall be available, when appropriated, for the general
36 purposes of the agency.

37 (g) Any person issued a permit or lease under subdivision (a)
38 shall comply with all existing federal, state, and local government
39 laws.

1 (h) *The commission may grant nonexclusive geological or*
2 *geophysical exploration permits for minerals, pursuant to this*
3 *section, upon those terms and conditions as the commission may*
4 *prescribe. A permit granted under this subdivision shall not give*
5 *the permittee any preferential treatment.*

6 SEC. 2. Section 6895 of the Public Resources Code is amended
7 to read:

8 6895. (a) Upon establishing to the satisfaction of the
9 commission that commercially valuable deposits of minerals have
10 been discovered within the limits of any permit, the permittee shall
11 ~~be entitled to receive priority for a mining lease over any other~~
12 ~~applicant seeking a lease for not more than 960 acres of the land~~
13 ~~included in the prospecting permit, if there is that number of acres~~
14 ~~within the permit. The area selected by the permittee shall be in~~
15 ~~compact form and, if surveyed, shall be described by the legal~~
16 ~~subdivisions of the public lands surveys; if unsurveyed, the area~~
17 ~~shall be surveyed by the commission at the expense of the applicant~~
18 ~~for the lease, in accordance with rules and regulations prescribed~~
19 ~~by the commission, and the lands leased shall be conformed to,~~
20 ~~and taken in accordance with, the legal subdivisions of the surveys.~~
21 *This priority shall expire after 365 days unless the permittee*
22 *submits a complete lease application to mine the discovered*
23 *minerals, in which case the priority shall expire upon the*
24 *commission's consideration or applicant's withdrawal of the*
25 *application. Mineral leases shall be limited to the minimum area*
26 *required for mining. Nothing in this section shall be construed to*
27 *require the commission to issue a mineral lease.*

28 (b) *The lease shall provide for the payment of an annual rental*
29 *of not less than one dollar (\$1) per acre, fair market value, as*
30 *determined by the commission. The lease shall also provide for*
31 *payment, which may be taken in kind, of either a royalty, to be*
32 *taken in money or in kind, at the option of the commission, of not*
33 *less than 10 percent of the gross value of all mineral production*
34 *from the leased lands, less any charges approved by the*
35 *commission that were made or incurred with respect to transporting*
36 *or processing the state's royalty share of production, or a*
37 *percentage, to be determined by the commission, of the net profits*
38 *derived from mineral extraction operations under the lease.*
39 *Payment as a royalty or as a percentage of net profits shall be*

1 specified in the permit. Notwithstanding the 960-acre limitation
2 of this section, whenever permit or lease.

3 (c) If the lands for which a lease is sought are tide and
4 submerged lands, the ~~commission~~ *commission, in accordance with*
5 *Section 6900*, may divide the lands into the size and number of
6 parcels as the commission determines will not substantially impair
7 the public rights to navigation and fishing or interfere with the
8 trust upon which the lands are held.

9 SEC. 3. Section 6896 of the Public Resources Code is amended
10 to read:

11 6896. Until the permittee applies for a lease as to that portion
12 of the area described in the permit herein provided, ~~he~~ *the permittee*
13 shall pay to the ~~State~~ *state* ~~20-per-cent~~ *percent* of the gross value
14 of the minerals secured ~~by him~~ from the lands embraced within
15 ~~his~~ *the* permit and sold or otherwise disposed of or held ~~by him~~
16 for sale or other ~~dispostion~~ *disposition*.

17 SEC. 4. Section 6898 of the Public Resources Code is amended
18 to read:

19 6898. Leases under this article shall be for terms not to exceed
20 ~~20 years with the preferential right in the lessee to renew the lease~~
21 ~~for successive periods not to exceed 10 years each, upon such~~
22 ~~reasonable terms and conditions as may be prescribed by the~~
23 ~~commission.~~ *years.*