

APPENDIX B Regulatory Framework – State of California

The following environmental laws are applicable to the proposed project: the California Environmental Quality Act (CEQA, 1970), Surface Mining and Reclamation Act (SMARA, 1975), Clean Water Act (CWA, 1972), and Clean Air Act (CAA, 1972). These laws and their respective purposes are described below; their application to the proposed project is described in Section 3.

a) CEQA

The CEQA is regarded as the foundation of environmental law and policy in California and it was fashioned after the National Environmental Policy Act (NEPA); both became law in 1970. CEQA applies to all discretionary activities proposed to be carried out or approved by California public agencies, including state, regional, county and local agencies, unless an exemption applies. CEQA applies to private activities that require discretionary governmental approvals. The objectives of CEQA are to:

- Disclose to decision makers and the public the significant environmental effects of a proposed development;
- Identify ways to avoid or reduce environmental damage;
- Prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures;
- Disclose to the public the reasons for agency approval of projects with significant environmental effects;
- Promote interagency coordination in the review of proposed developments; and
- Enhance public participation in the planning process.

In addition to encouraging the protection of the environment, CEQA also encourages agencies to implement CEQA in an efficient and streamlined manner through policies that require them, among others, to:

- Integrate CEQA with other planning and environmental laws to encourage concurrent review and processing;
- Organize and write environmental documents to make them useful to decision makers and the public;
- Omit unnecessary project descriptions and emphasize feasible alternatives and mitigation measures; and
- Make decisions that are informed and balanced and not use CEQA as an instrument for the oppression and delay of social, economic, or recreational development or advancement.

CEQA also authorizes regulatory agencies to:

- Require changes in a project to lessen or avoid significant effects, when feasible;
- Disapprove a project to avoid significant effects;
- Approve a project with significant effects if there is no feasible way to lessen or avoid the significant effects and the project's benefits outweigh these effects; and
- Impose fees on project applicants for CEQA implementation.

There are procedural and substantive requirements set forth in CEQA. The principal premise on which CEQA is based on that environmental protection can be achieved through compliance with rigorous and action-forcing procedures. Those procedures are implemented through the application of specific timing requirements and are summarized in Section 5. For regulatory agencies to comply with the substantive requirements they must take actions that result in avoided or minimized environmental damage when feasible (CEQA Deskbook, 2000).

Many agencies and groups may be involved in the CEQA process, including those listed below:

- Lead Agency: the governmental agency that has the principal responsibility for carrying out or approving the project;
- Responsible Agency: an agency other than the lead agency that has a legal responsibility for also carrying out or approving a project;
- Trustee Agencies: an agency that has jurisdiction over certain resources held in trust for the people of California but do not have legal authority for carrying out the project (e.g., California Department of Fish and Game);
- Agencies with Jurisdiction by Law: a jurisdictional agency such as a city or county that borders on that within which the project is located;
- Concerned Citizens and Organizations;
- Project Applicants;
- Environmental Consultants; and
- Courts.

Although the number of people and agencies involved in a project may appear large, advance project scoping and planning with these stakeholders are the keys to a project's success under CEQA.

Typically, when a Lead Agency is notified of a project, either by becoming involved at the outset of its planning with the developer or receipt of a development or "use" permit application, the CEQA process is initiated with consideration of the proposed project's environmental characteristics. Such consideration typically results in the project being assigned to one of three CEQA paths: Categorical Exemption, Initial Study/Negative Declaration or Initial Study/EIR. Because the proposed EMGOLD project involves reopening a mine that has been inactive for approximately 50 years for which minimal reclamation, if any, has been performed, an EIR will most likely be required under CEQA.

b) SMARA

The SMARA was enacted in 1975 to respond to the need for a continuing supply of mineral resources, while preventing damage from mining activities to public health, property and the environment. The California Department of Conservation's Office of Mine Reclamation (OMR) and the State Mining and Geology Board (SMGB) are jointly responsible for ensuring the administration of SMARA. In the CEQA process, the OMR and SMGB are Responsible Agencies and would collaborate with the Lead Agency to address environmental aspects of the proposed project. The SMGB may promulgate regulations to clarify and interpret SMARA provisions and also serves as a policy and appeals board. The OMR provides: ongoing technical assistance for lead agencies and

mine operators, maintains a database of mine locations and operational information statewide, and is responsible for compliance-related matters.

Anyone, including government agencies, engaged in any of the following activities are subject to SMARA: prospecting and exploratory activities, dredging and quarrying, streambed skimming, borrow pitting, and stockpiling of mined materials. Typically, there are two exemptions to SMARA: surface mining that is less than 1000 yd³ and/or involves less than 1 acre of land.

The key to SMARA implementation is local (e.g., city or county) control whereby a municipal government may become a lead agency in SMARA administration by adopting a zoning ordinance that provides a SMARA-consistent regulatory framework within which mining and reclamation activities are performed. The local ordinances are then certified by the SMGB as meeting the minimum state requirements for mining activities, however, a lead agency may adopt additional, more restrictive requirements when deemed necessary to ensure effective reclamation that addresses local conditions. There are approximately 125 such “lead agencies” in California. In the absence of a certified lead agency, the SMGB may review and approve reclamation plans.

Mining may begin after the lead agency approves the mining permit and a plan for returning the land to a usable condition; this plan is referred to as a reclamation plan and is required for surface and subsurface mining operations. In addition, a prerequisite to mining activities commencing is the applicant’s acquisition of financial assurances to guarantee costs of reclamation (e.g., surety bonds, irrevocable letters of credit or trust funds). Annual reporting to both the State and the lead agency on the status of mining and reclamation activities, annual updates of financial assurances and annual inspections are required. Upon completion of mining activities, in accordance with the approved reclamation plan and relevant permit conditions, mining operators return lands to a second productive use such as: open space, wildlife habitat, or preparing the land for industrial or commercial uses. (Mining in California, An Introduction to the Reclamation Provisions of the Surface Mining and Reclamation Act, 2002).

Because the proposed EMGOLD project involves reopening a mine that has been inactive for approximately 50 years for which minimal reclamation, if any, has been performed, a reclamation plan will need to be prepared for the project in accordance with SMARA. In addition, plans to perform exploratory surface or subsurface mining and stockpiling that involve greater than 1000 yd³ of material and/or involves more than 1 acre of land will need to be prepared. These mine and reclamation plans to be prepared in accordance with SMARA will become integral to the CEQA process.

c) CWA

The 1972 Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), was enacted to restore and maintain the quality of the nation’s waterways. In 1987, the Water Quality Act was promulgated and added provisions to the CWA that allowed the U.S. Environmental Protection Agency (EPA) to govern storm water discharges from construction sites. In 1998, the EPA published the final notice for National Pollution Discharge Elimination System (NPDES) General Permits for Storm Water Discharges from Construction Activities Disturbing 5 acres or Greater (Federal Register 7898, February 14, 1998).

The General Permit includes provisions for development of a Storm Water Pollution Prevention Plan (SWPPP) to maximize the potential benefits of pollution prevention and sediment and erosion control measures at construction sites. The General Permits for such activities are known as Phase I Construction Permits, since the adoption of the Phase II Final Rule in October, 1999 that created the Phase II permits. The Phase II Final Rule establishes General Permit requirements and best management practices for projects where between one and five acres of land area is affected by construction activities that will become effective in March 10, 2003, three months after the General Permit is expected to be approved by the California State Water Resources Control Board (SWRCB), the local administering agency of the CWA.

The Central Valley Regional Water Quality Control Board (CVRWQCB) would become a Responsible Agency and collaborate with the Lead Agency on matters related to NPDES, SWPPP and mine dewatering/other water quality issues associated with the proposed project. The planned surface activities (exploratory mining and stockpiling) for areas greater than 1 acre will be subject to the NPDES and SWPPP processes to ensure that they are performed in a manner that is protective of Wolf Creek. The City of Grass Valley and/or the County of Nevada would become the Responsible Agency for the NPDES and SWPPP and may be overseen by the (CVRWQCB) for enforcement.

d) CAA

The Federal Clean Air Act (CAA) was first passed in 1970 to improve the air quality in the United States and has been amended in 1990 and 1997 to set limits on the discharges of certain pollutants. Although the EPA is responsible for administering the CAA, the law recognizes that its implementation is best accomplished at the state and local levels. Each state is required to develop State Implementation Plans (SIPs) for EPA approval that set forth how the CAA provisions will be enforced in a manner that addresses the requirements of local industries, geography, housing patterns, etc. The EPA can take over the enforcement of the CAA should an SIP be found to be unacceptable.

One of the changes in the 1990 CAA amendments was the establishment of a permit program for larger stationary or non-point sources that release pollutants into the air. These can include cars, trucks, other motor vehicles, consumer products and machines used in industry. Approximately 35 states have permit programs for air pollution; California is among them. A permit application includes information about the pollutants that will be released (e.g., dust, volatile organic compounds, etc.), how much of a pollutant may be released, and what kinds mitigation the project proponent will take to reduce the pollutants to be emitted, and plans to monitor the emissions. The administering agency for the CAA compliance process for the proposed project is the Northern Sierra Air Quality Management District (NSAQMD) located in Grass Valley, California. The NSAQMD would be a Responsible Agency and collaborate with the Lead Agency on matters related to emissions that may be generated from mining operations.

d) Summary

CEQA and SMARA processes are pivotal to the permit process. As there are exploratory activities and stockpiling of mined materials envisioned for the project, these activities and the necessity to plan for the mine's reclamation require that SMARA be addressed

in the permitting and CEQA processes. The CWA, CAA issues can be fully addressed in the context of the CEQA analysis but may require that individual permits for certain mine operations be obtained from the Administering Agency. The General Plan and Zoning Designation Amendments can also be addressed in the Land Use section of the CEQA document although may require a separate administrative process to complete the permit process. The CEQA document can serve as the project description for the General Plan Amendment, Zoning Designation Amendment, as well as the LAFCo process. However, the LAFCo process is the last step in the permit process cycle and will occur after the CEQA process is completed.