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OPINION	:	No. 14-1206
of	:	December 30, 2016
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THE HONORABLE STACEY SIMON, MONO COUNTY COUNSEL, has requested an opinion on the following question:

Must the California Department of Transportation pay fees to cover Mono County's costs for (1) inspecting, and preparing a report on, the Department's surface mining operations as required by the Surface Mining and Reclamation Act, and (2) performing other duties under the Act?

CONCLUSION

The California Department of Transportation (1) must pay fees to cover Mono County's costs for inspecting, and preparing a report on, the Department's surface mining operations as required by the Surface Mining and Reclamation Act, but (2) is exempt from paying fees for the other duties Mono County is required to perform under the Act.

## ANALYSIS

The Surface Mining and Reclamation Act (SMARA) establishes state policy for regulating surface mining operations.<sup>1</sup> SMARA requires every surface mining operation to undergo an annual inspection and to have a permit, a reclamation plan, and financial assurances to effectuate the reclamation plan.<sup>2</sup> The primary responsibility for implementing these requirements lies with “lead agencies,” which are usually cities or counties.<sup>3</sup> To cover its reasonable costs incurred in implementing the Act, a lead agency “may impose a fee upon each mining operation.”<sup>4</sup>

Mono County is a lead agency under SMARA, and it charges fees to mining operators to recover its implementation costs. One such operator is the California Department of Transportation (Caltrans), which operates gravel pits from which aggregate is mined for highway construction and maintenance projects. The question presented for our analysis is whether Caltrans, as a public agency, is exempt from paying SMARA fees to Mono County.

### **Public Agency Exemption from Public Fees Generally**

Government Code section 6103 exempts public agencies from paying fees for official services performed by another public agency unless a statute “specifically provides otherwise.”<sup>5</sup>

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<sup>1</sup> Pub. Resources Code, § 2710 et seq.; *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 984 (*El Dorado*).

A surface mining operation is “all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine.” (Pub. Resources Code, § 2735.)

<sup>2</sup> Pub. Resources Code, §§ 2770, subd. (a), 2774, subd. (b); *El Dorado, supra*, 36 Cal.4th at p. 984.

<sup>3</sup> Pub. Resources Code, §§ 2200.5, 2728; *El Dorado, supra*, 36 Cal.4th at p. 984.

<sup>4</sup> Pub. Resources Code, § 2207, subd. (e).

<sup>5</sup> Government Code section 6103 states:

Neither the state nor any county, city, district, or other political subdivision, nor any public officer or body, acting in his or her official capacity on behalf of the state, or any county, city, district, or other political subdivision, shall pay or deposit any fee for . . . the performance of any official service . . . . This

We have previously determined that the term “official service” refers to the performance by a public agency of a duty imposed by law.<sup>6</sup> Thus the duties required of a lead agency under SMARA constitute “official services,” and section 6103 exempts Caltrans from paying fees to Mono County for those services unless some provision in SMARA’s statutory scheme specifically provides otherwise.<sup>7</sup>

In examining SMARA to determine whether it creates an exception to section 6103, we use settled principles of statutory construction. “[The] first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.”<sup>8</sup> “If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.”<sup>9</sup>

### **Fees for Inspecting and Reporting on a Public Agency’s Mining Operation**

With respect to fees charged by a lead agency to inspect and prepare a report on a public agency’s mining operation, we find that the plain language of SMARA creates an exception to section 6103’s general exemption—which means that Caltrans is obligated to pay fees to the county for performing these responsibilities.

Under Public Resources Code section 2774, subdivision (b), a lead agency must cause each surface mining operation in its jurisdiction to be inspected annually for the purpose of determining whether the operation is in compliance with SMARA; the lead

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section does not apply . . . where it is specifically provided otherwise.

<sup>6</sup> 53 Ops.Cal.Atty.Gen. 322, 323 (1970); see also 98 Ops.Cal.Atty.Gen. 49, 50 (2015); 62 Ops.Cal.Atty.Gen. 609, 610 (1979); *City of Pasadena v. Fox* (1936) 16 Cal.App.2d 584, 586.

<sup>7</sup> *Anaheim City School Dist. v. Co. of Orange* (1985) 164 Cal.App.3d 697, 702 (*Anaheim*) (finding statutory exception); see 98 Ops.Cal.Atty.Gen., *supra*, at p. 50.

<sup>8</sup> *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 (*Dyna-Med, Inc.*), citations omitted.

<sup>9</sup> *People v. Snook* (1997) 16 Cal.4th 1210, 1215.

agency must then report to the California Department of Conservation on the state of compliance.<sup>10</sup> On the subject of cost, this statute provides that the “operator shall be solely responsible for the reasonable cost of the inspection.”<sup>11</sup> “Operator” is defined as “any person who is engaged in surface mining operations,”<sup>12</sup> and “person” is defined as “any individual . . . or any city, county, district, or the state or any department or agency thereof.”<sup>13</sup> In turn, Public Resources Code section 2207, subdivision (e), authorizes a lead agency to impose a fee on each mining operation to cover its reasonable costs in implementing SMARA. Read together, these provisions clearly express an exception to section 6103 by requiring each operator—which includes public agencies, such as Caltrans—to reimburse the lead agency for its reasonable costs of inspection and reporting.<sup>14</sup>

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<sup>10</sup> Effective January 1, 2017, Public Resources Code section 2774, subdivision (b), states:

The lead agency shall cause surface mining operations to be inspected in intervals of no more than 12 months, solely to determine whether the surface mining operation is in compliance with this chapter. The lead agency shall cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified lead agency employee who has not been employed by the surface mining operation being inspected in any capacity during the previous 12 months, except that a qualified lead agency employee may inspect surface mining operations conducted by the local agency. All inspections shall be conducted using a form developed by the [Department of Conservation] and approved by the [State Mining and Geology Board] that includes the professional licensing and disciplinary information of the person who conducted the inspection. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall provide a notice of completion of inspection to the director [of the Department of Conservation] within 90 days of conducting the inspection. The notice shall contain a statement regarding the surface mining operation’s compliance with this chapter and a copy of the completed inspection form, and shall specify [which aspects of the surface mining operation, if any, are inconsistent with SMARA and the status of any corrections].

(Stats. 2016, ch. 8 (Sen. Bill No. 209); Stats. 2016, ch. 7 (Assem. Bill No. 1142).)

<sup>11</sup> *Ibid.*, emphasis added; see also Cal. Code Regs., tit. 14, § 3504.5.

<sup>12</sup> Pub. Resources Code, § 2731, emphasis added.

<sup>13</sup> Pub. Resources Code, § 2004, emphasis added.

<sup>14</sup> 92 Ops.Cal.Atty.Gen. 51, 52, 54 & fn. 11 (2009) (Caltrans is not exempt under Gov. Code, § 6103 from paying certain local government fees); *Anaheim*, *supra*, 164

Therefore, we conclude that Caltrans is not exempt under section 6103 from paying reasonable fees imposed by Mono County to inspect and prepare a report on Caltrans's surface mining operations.

### **Fees for Performing Other Duties**

With respect to other duties that SMARA requires a lead agency to perform, we conclude that SMARA does not create an exception to section 6103.

In addition to performing annual inspections and preparing reports, SMARA requires lead agencies to (among other things) review permit requests, reclamation plans, and financial assurances.<sup>15</sup> But, in contrast to the inspection-cost statute requiring operators to bear the cost of annual inspections and reports,<sup>16</sup> SMARA contains no provision requiring operators to pay for these other functions. Instead, there is only a general fee statute—Public Resources Code section 2207—which authorizes a lead agency to impose a fee on “each mining operation.”<sup>17</sup>

Upon close reading, we conclude that SMARA's general fee statute, by itself, does not create an exception to section 6103. Specifically, for the limited purposes of SMARA's cost and fee statutes, we find significance in the difference between the terms “operator,” as used in the inspection-cost statute, and “mining operation,” as used in the general fee statute. As our Supreme Court has instructed, we must presume that different words are used for different purposes in a statute, unless examination of the whole statutory scheme shows otherwise.<sup>18</sup>

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Cal.App.3d at p. 702 (Gov. Code, § 25823 provides an exception to Gov. Code, § 6103). Moreover, section 6103 was enacted in 1943 (Stats. 1943, ch. 134, p. 990), while SMARA's definitional provisions were enacted in 1975 (Stats. 1975, ch. 1131, §§ 3, 11, pp. 2792-2793), and its fee and inspection-cost provisions were enacted in 1990 (Stats. 1990, ch. 1097, §§ 2, 13, pp. 4574-4577, 4586, and Stats. 1990, ch. 1101, §§ 1, 2, pp. 4598-4599, 4600). Since these provisions were enacted later and are more specific, they take precedence over section 6103, a general statute. (*Anaheim, supra*, 164 Cal.App.3d at p. 702; see also *El Dorado, supra*, 36 Cal.4th at p. 994 [“The Legislature is deemed to have been aware of [existing laws] and to have enacted SMARA in light of them.”].)

<sup>15</sup> Pub. Resources Code, §§ 2770, 2773.1, 2774.

<sup>16</sup> Pub. Resources Code, § 2774, subd. (d).

<sup>17</sup> Pub. Resources Code, § 2207, subd. (e).

<sup>18</sup> *Metropolitan Water Dist. of Southern California v. Superior Court* (2004) 32 Cal.4th 491, 502.

Examining SMARA as a whole, including its legislative history,<sup>19</sup> we conclude that the Legislature’s use of the different terms “operator” and “mining operation” in SMARA’s inspection-cost and general fee provisions was deliberate. Public Resources Code section 2207, the general fee statute, was enacted in 1990, and authorizes two sets of fees. Subdivision (d) provides for state fees, to offset the costs of the Department of Conservation’s role in implementing SMARA,<sup>20</sup> and subdivision (e) provides for lead agency fees.<sup>21</sup> Subdivisions (d) and (e) both impose fees on the *mining operation* rather than the *operator*. The first version of the 1990 bill that added section 2207 imposed only one fee, which was to be submitted by the “person in charge” of the mine and divided equally between the state and the lead agency.<sup>22</sup> After several amendments, the bill’s final language imposed two sets of fees on “each mining operation.”<sup>23</sup> The same bill also amended section 2774 of the Public Resources Code to require a lead agency to perform annual inspections of each mining operation, and to make the “operator” responsible for the reasonable cost of inspections.<sup>24</sup> The language requiring the operator to bear the inspection cost has never been amended.

Based on this history, and as discussed above, we believe the Legislature’s use of the term “operator” in the inspection-cost statute shows an intent to create an exception to section 6103’s general rule exempting public agencies from having to pay fees for official services performed by another public agency. In contrast, we believe the

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<sup>19</sup> Where helpful, “[b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.” (*Dyna-Med, Inc.*, *supra*, 43 Cal.3d at p. 1387.)

<sup>20</sup> “(1) The [State Mining and Geology Board] shall impose . . . an annual reporting fee *on . . . each active or idle mining operation*. [¶] (2)(A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the [Department of Conservation’s] cost in carrying out this section and [SMARA] . . . .” (Pub. Resources Code, § 2207, subd. (d), emphasis added.)

<sup>21</sup> “The lead agency . . . may impose a fee *upon each mining operation* to cover the reasonable costs incurred in implementing this chapter and [SMARA].” (Pub. Resources Code, § 2207, subd. (e), emphasis added.)

<sup>22</sup> Assem. Amend. to Assem. Bill No. 3551 (1989-1990 Reg. Sess.) Feb. 28, 1990, § 3, pp. 10-12.

<sup>23</sup> Sen. Amend. to Assem. Bill No. 3551 (1989-1990 Reg. Sess.) July 27, 1990, § 3, pp. 10-16; Stats. 1990, ch. 1097, § 2, pp. 4576-4577; Stats. 1990, ch. 1101, § 1, pp. 4598-4599.

<sup>24</sup> Assem. Amend. to Assem. Bill No. 3551 (1989-1990 Reg. Sess.) Feb. 28, 1990, § 18, pp. 24-25; Stats. 1990, ch. 1097, § 13, p. 4586; Stats. 1990, ch. 1101, § 2, p. 4600.

Legislature’s use of the different term “mining operation” in the general fee statute shows the opposite intent, that is, not to create an exception to section 6103.

Our interpretation gains support from the 1992 enactment of Public Resources Code section 2719, which creates an express exception to section 6103 for the *state fee*: “Notwithstanding any other provision of law, neither the state nor any county, city, district, or other political subdivision shall be exempt from any fee imposed upon a mining operation pursuant to subdivision (d) of Section 2207.”<sup>25</sup> Had the Legislature intended the term “mining operation,” as used in the general fee statute, to create an exception to section 6103, then it would have been unnecessary and superfluous for the Legislature to enact Public Resources Code section 2719 to create a specific exception for the state fee. “We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous.”<sup>26</sup> Thus, the enactment of Public Resources Code section 2719 persuades us that SMARA’s general fee statute does not create an exception to section 6103.

Therefore, we conclude that Caltrans is exempt under section 6103 from paying fees to Mono County for responsibilities performed under SMARA, other than for the reasonable costs of annual inspections and reports.

### **Conclusion**

We conclude that the California Department of Transportation (1) must pay fees to cover Mono County’s costs for inspecting, and preparing a report, on the Department’s surface mining operations as required by the Surface Mining and Reclamation Act, but (2) is exempt from paying fees for the other duties Mono County is required to perform under the Act.

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<sup>25</sup> Pub. Resources Code, § 2719.

<sup>26</sup> *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22; see also *Dyna-Med, Inc.*, *supra*, 43 Cal.3d at p. 1387 (“A construction making some words surplusage is to be avoided.”).