



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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PUBLIC NOTICE OF FINAL DETERMINATION OF VESTED RIGHTS

**Western Aggregates, LLC (CA Mine ID #91-8-0001),
Western Aggregates, LLC (Operator), Kerry Shapiro (Agent),**

Pursuant to California Code of Regulations (CCR) Sections 3964 and 3965

INTRODUCTION: The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act (SMARA) for the County of Yuba. On August 6, 2009, the SMGB commenced the special public hearing to determine whether Western Aggregates, LLC. (Western) had vested rights for 4,125 acres, which included its current surface mining operations, located in the Yuba Goldfields. At its public hearing held on September 11, 2009, the SMGB accepted the findings set forth by the California Geological Survey (CGS), and determined that a preponderance of evidence existed that demonstrated Western has vested rights for all Sections as to which vested rights were requested, with exception to Sections 25 and 30, and the southwest corner of Section 34. The SMGB at its February 14, 2010, regular business meeting considered limitations in terms of annual production associated with this determination of vested rights, and determined that no limitations or restrictions on annual production would be imposed. At its March 11, 2010, regular business meeting, the SMGB moved to adopt its determination pursuant to California Code of Regulations (CCR) Article 15, Section 3964.

REGULATORY AUTHORITY: CCR Article 15, Section 3964, states:

“Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to Public Resources Code Section 2776. The determination shall identify upon what specific property the vested rights are established and the scope and nature of surface mining operations included within the established vested right or rights. If the public hearing was conducted by a committee of the Board or an administrative

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hearing officer or special master designated by the Board, the findings and recommendation or proposed decision of the committee of the Board, administrative hearing officer, or special master shall be presented to a quorum of the Board at a regular business meeting, no later than 60 business days after completion of the vested rights public hearing, for consideration and adoption by the full Board. The Board may adopt the recommendation or proposed decision or reject the recommendation or proposed decision and direct the matter back to its delegee for further consideration in light of the discussion before the full Board. The Board may also modify the proposed decision based upon the record before it or make an alternative determination based upon the record or following receipt of additional evidence before the full Board. Following adoption of the Board's final determination notification shall be made by certified mail to the party claiming vested rights and to the local agency originally holding lead agency status. Notification of the final determination of the Board shall also be made by regular mail to any person who commented at, or participated in, the public hearing, any person who has requested such notice, and shall be immediately posted upon the Board's website."

CCR Section 3965 provides procedures once a vested rights determination has been made, and states:

"A final determination by the Board recognizing a claim of vested rights shall constitute acknowledgment that the specific surface mining operations as identified upon the specific property or properties does not require a permit under Public Resources Code Section 2770 provided that no substantial change may be made in such mining operations. If any vested rights identified pursuant to this article are waived or abandoned the surface mining operations identified shall become subject to the permit requirements of the Surface Mining and Reclamation Act."

BACKGROUND:

The Yuba Goldfields: The Western Aggregates surface mining operation is situated in what is referred to as the Yuba Goldfields. The Yuba Goldfields encompasses approximately 10,000 acres along about 11 miles of the Yuba River between Yuba City-Marysville and Smartsville. This unique area is dominated by dredger tailings reworked from hydraulic mine waste that was deposited between 1852 and 1893 when the Caminetti Act was passed, ending hydraulic mining upstream. The Yuba Goldfields were the poster child of the agricultural lobby who brought the historic suit to put an end to hydraulic mining. This may have been the first significant victory of the environmental community in California. The construction of Englebright Dam in 1941 finally stopped the downstream migration of the old hydraulic tailings. Dredging of gold from the hydraulic waste began in 1902 near the town of Hammonton and by 1910, 15 dredges were operating in the lower Yuba River. The area has been dredged and re-dredged intermittently to progressively greater depths until the present time.



Figure 1 – The Yuba Goldfields (Source: NASA Earth Observatory)

In 1988, the California Geological Survey classified the area Mineral Resource Zone MRZ-2 for construction aggregate and determined that almost 23 square miles of the goldfields, containing more than 2.25 billion tons of PCC-grade aggregate, were available. The area was never designated as a “regionally significant” mineral resource because the SMGB had put the designation process on hold in order to dedicate maximum funds to accelerate mineral land classification. Nonetheless, it is undoubtedly one of the most significant aggregate deposits in the entire state. At the time of the classification study, the entire area of the goldfields had been classified by Yuba County in their general plan as a mineral resource extraction land use area.

Determination of Vested Rights Regulation Development: In a January 2007 ruling, the California Court of Appeal, Third Appellate District, held that a proper public notice and hearing was required for any vested rights determination, and in the matter of Western stated that the County failed to provide a proper notice and hearing in its consideration of vested rights for this surface mining operation. The court ruling provided two options for Western’s consideration should Western want to continue its aggregate mining in the Yuba Goldfields: either 1) prove its claim of vested rights in a public adjudicatory hearing before the SMGB (to be conducted within the County’s area of jurisdiction), or 2) obtain a permit to conduct such surface mining based on a public adjudicatory hearing before the County.

The SMGB has assumed certain obligations and responsibilities of a SMARA lead agency in the implementation of SMARA in the County of Yuba. These responsibilities include approval of reclamation plans and financial assurances, conduct of site inspections, and determination of vested rights when petitioned by a claimant (operator) and such petition is determined to be within the jurisdiction of the SMGB. The SMGB recognized its authority to conduct a vested rights determination at its regular business meeting held on February 8, 2007, and adopted Resolution 2007-04 which defined the SMGB’s authority as a SMARA lead agency to conduct a vested rights determination.

Between March 8, 2007, and September 14, 2007, the SMGB conducted several public hearings to hear preliminary concerns and comments from various stakeholders. These

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preliminary concerns and comments were reviewed by the SMGB and were publicly discussed at the SMGB's Policy and Legislation Committee meetings held on March 8, April 12, May 10, June 14 and September 7, 2007, and by the whole SMGB during its regular business meeting held on September 13, 2007. The SMGB adopted the new regulations at its regular business meeting held on February 14, 2008. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008.

Submittal of Request for Determination: Western filed a vested right Request for Determination on November 5, 2008. A chronology of pertinent administrative procedural actions since receipt of Western's Request for Determination is summarized in Table 1.

The administrative record received on November 5, 2008, was comprised of three volumes (Volumes I, II and III-A, III-B and III-C), and 20 volumes of historical record containing over 12,000 pages. The Administrative Record, and all documents received during conduct of public hearings pertaining to this matter, have been, and continue to be made accessible for review at:

The Yuba County Government Center
915 8th Street, Suite 109
Marysville, CA 95901

And,

State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, CA 95814

TABLE 1 Chronology of Pertinent Administrative Procedural Actions Western Aggregates, LLC. Request for Vested Rights Determination	
Administrative Action	Date Exercised
Receipt of Request for Determination with Administrative Record	November 5, 2008
Determination of Jurisdiction	November 19, 2008
Mailing of Determination of Jurisdiction	December 1, 2008
Mailing of Notice of Pending Vested Rights Determination	January 6, 2009; amended January 12, 2009
Estimated Cost for Determination of Findings Provided to Claimant	January 27, 2009
Determination of Hearing Officer	February 5, 2009
Commencement of Review of Administrative Record by CGS	March 3, 2009
Determination of Schedule	April 9, 2009
Provision of Further Public Notice	May 8, 2009
Submission of Written Comments and Materials	June 1, 2009
Submission of Rebuttal Materials	June 23, 2009
Commencement of Public Hearing	August 6 and 7, 2009
Continuation of Public Hearing and Determination	September 11, 2009
Public Hearing to Schedule Consideration of Limitations of Vested Rights	January 14, 2010
Public Hearing to Consider Limitations of Vested Rights Pertaining to Annual Production	February 11, 2010
Adoption of Final Determination	March 11, 2010

EVIDENCE CONSIDERED: In making the Findings set forth herein, the SMGB analyzed and considered all of the following documents and testimony:

- Western’s RFD, including approximately 13,000 pages of text and mining reports, and 75 maps (August 6, 2009 SMGB Executive Officer’s Report, Agenda Item No. 1, p. 8; September 11, 2009 Executive Officer’s Report, Agenda Item No. 10, p. 11).
- Numerous other documents submitted into the record by Western, interested parties, and members of the public. Certain of these documents are listed in the three Executive Officer’s Reports prepared in advance of the August 6, 2009, September 11, 2009 and February 11, 2010 public hearings.

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- The analyses and findings of CGS set forth in its July 2009 Review of Evidence, Western Aggregates LLC, Vested Rights Determination, prepared pursuant to a request from the SMGB during its April 10, 2008 public meeting that CGS assist the SMGB and SMGB staff in its review and analysis of the administrative record, including evidence submitted by Western in connection with the RFD. The SMGB requested that CGS conduct a detailed review of the RFD. CGS considerations also included review of topographic maps and aerial photographs from 1973, and public comments received after issuance of its July 2009 analysis (September 11, 2009 hearing transcript, at 222:6-10)." CGS also undertook a one-day site visit to Western Aggregates' property in the Yuba Goldfields (August 6, 2009 Executive Officer's Report, Agenda Item No. 1, p. 8; September 11, 2009 Executive Officer's Report, Agenda Item No. 10, p. 11).
- The analyses and determinations of CGS set forth in its August 28, 2009 "*Report on Regional Aggregate Production for Use in the State Mining and Geology Board's Western Aggregates, LLC Vested Rights Determination*", which was prepared pursuant to the SMGB's supplemental request to CGS during the August 6, 2009 hearing (September 11, 2009 Executive Officer's Report, p. 10; August 28, 2009 CGS Report; September 11, 2009 hearing transcript, at 11:20-16:6).
- Oral testimony presented during the August 6, 2009, September 11, 2009, and February 11, 2010 SMGB hearings on Western's RFD.

In summary, the administrative record for this matter includes all written documents and oral testimony received and all statements made during the public hearings, as well as the transcripts from the SMGB's three public hearings.

Location and Ownership

Finding No. 1. Western's title to the lands for which vested rights were requested and determined by the SMGB (the "Vested Right Area") entitles Western to conduct surface mining activities on such lands (CGS July 2009 Report, pp. 11-15, and 44). The Vested Right Area is more particularly described in item 29, *infra*.

Finding No. 2. The chain of land ownership supports Western's claim of successor operator for surface mining activities. Western's predecessors-in-interest's title to the Vested Right Area as of April 13, 1971 and January 1, 1976, the dates that vested rights were established under Yuba County law and the Surface Mining and Reclamation Act, respectively, entitled such predecessor-in-interest to mine gold, precious metals, and aggregates, including but not limited to sand, gravel, rock and like materials, on the Vested Right Area (CGS July 2009 Report, pp. 13-15, and 44; Finding No. 18, September 11, 2001 EO Report p. 16).

Relevant Dates for Assessing Establishment of Vested Rights

Finding No. 3. The relevant dates for evaluating establishment of vested rights by Western's predecessor are April 13, 1971, the date that Ordinance No. 472, Yuba County's first restrictive mining ordinance became effective, and January 1, 1976, the effective date of Section 2776 of the Surface Mining and Reclamation Act (CGS July 2009 Report, pp. 16-17).

Evidence of Historic Ordinances or Regulations Governing Conduct of Mining Operations

Finding No. 4. Yuba County Ordinance No. 205 (1956) applied to all of the Vested Right Area (CGS July 2009 Report, p. 45). All sections in question were included under the 1956 county mining ordinance 205 (Finding No. 17, September 11, 2001 EO Report, p. 16).

Finding No. 5. Yuba County Ordinance No. 472 (1971) applied to all of the Vested Right Area (CGS July 2009 Report, p. 45). All the sections in question were included under the 1971 county mining ordinance 472 (Finding No. 16, September 11, 2001 EO Report, p. 16).

Finding No. 6. Yuba County Ordinance No. 472 was the first ordinance in Yuba County that required permits for new mining operations.

Evidence Establishing a Vested Right

Finding No. 7. Prior to April 13, 1971, Western's predecessor, referred to as Yuba Consolidated, conducted a single, large-scale mining operation on over 9,000 acres in the Yuba Goldfields that mined and produced a variety of products, including gold, sand, gravel, riprap, asphalt, and hardrock (CGS July 2009 Report, pp. 22, 31, 47 and 52).

Finding No. 8. In determining whether Western's predecessor established a vested right to mine and operate within the Vested Right Area, as well as the geographic scope of the vested right, the SMGB evaluated only mining and ancillary activities that occurred on the Vested Right Area. Mining activities that occurred outside of the Vested Right Area, but still

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within the lands owned by Western's predecessor as of 1971, were not considered by the SMGB in establishing the geographical scope of Western's vested right, but were considered by the SMGB in evaluating whether there has been a substantial change or impermissible intensification in Western's operations as compared to that of its predecessor.

Finding No. 9. Yuba Consolidated's business operation prior to April 13, 1971 employed a wide variety of methods to excavate gold, sand, rock, gravel and other aggregate materials, including dredges, dozers, front end loaders, drag scrapers, slackline cable excavators, and excavators (CGS July 2009 Report, pp. 17-18, 32-33, 47 and 52).

Finding No. 10. The following mining activities or mining-related features occurred prior to April 13, 1971 on the Vested Right Area (CGS July 2009 Report, pp. 22-29, and 47):

- a. Exploratory test holes, which served as a tool for determining where future gravel reserves would occur after gold dredging was completed, were drilled throughout Western's predecessor's lands--including substantially all of the Vested Right Area prior to April 13, 1971 (CGS July 2009 Report, pp. 19, 20, 46).
- b. Dredging activities utilizing bucket line dredges (CGS July 2009 Report, pp. 19, 46).
- c. Aggregate removal activities using a variety of equipment (CGS July 2009 Report, pp. 22-29, 47).

Finding No. 11. The following mining-related activities occurred in the Vested Right Area:

- a. The construction and operation of at least four (4) processing plants (CGS July 2009 Report, pp. 32, 48).
- b. The operation of at least two (2) truck scales (CGS July 2009 Report, pp. 32, and 48; Western Aggregates' January 2010 Proposal, pp. 21, and 23 – 24 and Exhibit D, pp. 24 – 26).
- c. The construction and use of haul roads to transport aggregates to the marketplace (CGS July 2009 Report, pp. 30, 47-48; Western Aggregates' January 2010 Proposal, pp. 19 - 24 and Exhibit D).

Finding No. 12. Western's predecessor demonstrated an objective manifestation of intent to mine all of the Vested Right Area. Evidence supporting this finding includes, but is not limited to:

- a. From 1937 to at least 1965, Gravel Reserves Maps were prepared by Western's predecessor to inventory its aggregate reserves (CGS July 2009 Report, pp. 34 and 48). Eleven (11) of the fourteen (14) Sections identified in the RFD had lands mapped as containing gravel reserves (CGS July 2009 Report, pp. 34, 48). That the Gravel Reserves Maps were

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prepared exclusively to inventory aggregate reserves and had no value in regard to gold production was established by live testimony before the SMGB (Testimony of J. Hodos, August 6, 2009, Transcript, at pp. 259 – 260) and by declaration (Declaration of E. Hodos accompanying Western's June 2009, Rebuttal to Public Comments, pp. 16 – 23, and Declaration of J. Hodos accompanying Western's June 2009, Rebuttal to Public Comments, pp. 12 – 14).

- b. Repeated studies conducted by Western's predecessor prior to 1974 to evaluate ways to market the vast aggregate resources contained on all of its lands, including studies in 1927, 1929, 1958 and 1974 (CGS July 2009 Report, pp. 33, and 48). All of these studies evaluated large-scale and long-range potential sales of aggregates, and each study examined the feasibility of transporting aggregates to the San Francisco Bay Area (CGS July 2009 Report, pp. 33-34, and 48).

Finding No. 13. Based on the foregoing, and other evidence contained in the record, Western's predecessor, acting in good faith and in reliance on the fact that no permit was then required by State or County law, diligently commenced surface mining operations prior to April 13, 1971 and incurred substantial liabilities for work and materials necessary therefore, and continued such operations, work and reliance through January 1, 1976.

Conclusions Concerning the Scope and Scale of Western's vested rights

The following findings were considered by the SMGB at its August 6 and September 11, 2009, public hearings, and accepted at its September 11, 2009, public hearing.

Finding No. 14 – T15N R4E Section 1: Within Section 1, 819 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 270 drill holes, dredge cut mapping, and presence of tailings and haul roads. Twelve mining operations and one plant site were documented. The deepest drilling log was to a depth of 252 feet below ground level.

Finding No. 15 - T15N R4E Section 2: Within Section 2, 233 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 47 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 121 feet below ground level.

Finding No. 16 - T15N R4E Section 11: Within Section 11, 159 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 30 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Seven mining operations, three plant sites and one scale site were documented. The deepest drilling log was to a depth of 118 feet below ground level.

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Finding No. 17 - T15N R4E Section 12: Within Section 12, 320 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 47 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Fourteen mining operations were documented. The deepest drilling log was to a depth of 111 feet below ground level.

Finding No. 18 - T15N R5E Section 4: Within Section 4, 860 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 59 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Four mining operations were documented. The deepest drilling log was to a depth of 41 feet below ground level.

Finding No. 19 - T15N R5E Section 5: Within Section 5, 750 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 59 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 121 feet below ground level.

Finding No. 20 - T15N R5E Section 6: Within Section 6, 535 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 138 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Eleven mining operations and one scale site were documented. The deepest drilling log was to a depth of 216 feet below ground level.

Finding No. 21 - T16N R5E Section 25: Within Section 25, 32 acres the sole evidence for mining included presence of haul roads. No other supportive evidence was found in the submittal.

Finding No. 22 - T16N R5E Section 26: Within Section 26, 74 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 5 drill holes, dredge cut mapping, and the presence of tailings and haul roads. One mining operation was documented. The deepest drilling log was to a depth of 86 feet below ground level.

Finding No. 23 - T16N R5E Section 27: Within Section 27, 8 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 7 drill holes, dredge cut mapping, and the presence of tailings and haul roads. The deepest drilling log was to a depth of 32 feet below ground level.

Finding No. 24 - T16N R6E Section 30: Within Section 30, 54 acres one mining operation was documented. No other supportive evidence was found in the submittal.

Finding No. 25 - T16N R5E Section 32: Within Section 32, 9 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included one drill hole, dredge cut mapping, and the presence of tailings and haul roads. The deepest drilling log was to a depth of 148 feet below ground level.

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Finding No. 26 - T16N R5E Section 33: Within Section 33, 151 acres are under consideration. There appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 26 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Four mining operations were documented. The deepest drilling log was to a depth of 156 feet below ground level.

Finding No. 27 - T16N R5E Section 34: Within Section 34, 9 acres there appears to be evidence to support findings of mining activities prior to 1976. Evidence for mining included 5 drill holes, dredge cut mapping, and the presence of tailings and haul roads. Two mining operations were documented. The deepest drilling log was to a depth of 41 feet below ground level.

Finding No. 28 - T16N R5E Section 34: Within Section 34, 157 acres evidence for mining included one suspect haul road. Two suspect mining operations that are likely located in Section 33 were documented. No other supportive evidence was found in the submittal.

Finding No. 29. In summary, based on the historic mining activities that occurred prior to April 13, 1971, the SMGB determined that Western possesses a vested right on the following Sections (September 11, 2009 hearing transcript, at 250:4-262:6, adopting Proposed Motions 1, 3-8, 10-11, 13-14, and 15; August 6, 2009 SMGB Executive Officer's Report, Agenda Item No. 1, Findings Nos. 1-7, 9-10, 12-13, and 14, pp. 11-13):

- Section 1, T15N, R4E
- Section 2, T15N, R4E
- Section 11, T15N, R4E
- Section 12, T15N, R4E
- Section 4, T15 N, R5E
- Section 5, T15 N, R5E
- Section 6, T15 N, R5E
- Section 26, T15 N, R5E
- Section 27, T15 N, R5E
- Section 32, T15 N, R5E
- Section 33, T15 N, R5E
- A portion of the NW 1/4 of Section 34, T15 N, R5E

Finding No. 29. Based on analysis of the historic mining activities conducted by Western's predecessor and the overall nature of its predecessor's business operation, Western's vested right to mine aggregates within the Vested Right Area is not limited to any particular equipment or mining method.

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Finding No. 30. Based on analysis of the historic mining activities conducted by Western's predecessor and the overall nature of its predecessor's business operation, Western's vested right includes the right to mine, process, otherwise produce, and market a variety of materials, including aggregate materials of all kinds, including but not limited to sand, gravel, rock, stone, cobbles, hardrock, decorative rock, silica, riprap and asphalt rock.

Finding No. 31. Based on analysis of the historic mining activities conducted by Western's predecessor and the overall nature of its predecessor's business operation, Western's vested right includes the right to mine, dig, drill, explore, excavate, wash, crush, sort, weigh, stockpile, transport, haul and otherwise process such aggregates by means of processing and other plants and equipment, including mobile equipment, as well as the right to transport such materials to market, and all other activities and equipment ancillary to the foregoing business operation.

Finding No. 32. Based on analysis of the historic mining activities conducted by Western's predecessor and the overall nature of its predecessor's business operation, there is no depth limitation on Western's vested right to exploit aggregates in the Vested Right Area.

Annual Production

Finding No. 33. To evaluate the overall scale of historic production conducted by Western's predecessor, the SMGB considered all historic aggregate removal activities that occurred on 9,000 acres of contiguous lands owned by Western's predecessor as of April 13, 1971, referenced in these proceedings as Yuba Consolidated's "Ownership Area", including lands north of the Vested Right Area. This was based on the following:

- a. Western's predecessor's overall business operation was a large-scale mining enterprise conducted as a single operation on the contiguous lands that comprised the Ownership Area. Haul roads within the Vested Right Area were used to transport aggregate from areas owned by the predecessor outside of the Vested Right Area, but still within the predecessor's Ownership Area, into and through the Vested Right Area for weighing, processing, and for transport to market.
- b. Prior to 1971 Western's predecessor had colorable title to its Ownership Area.
- c. All historic mining in the Ownership Area is relevant to assessing whether there has been a "substantial change" or "impermissible intensification" in the amount of production since the vested right was established.

Finding No. 34. Pre-1971 production and sales by Western's predecessor ranging from over 1.2 million tons in 1958 to 600,000 tons per year in 1974 (CGS July 2009 Report, p. 47).

Finding No. 35. The historical record of annual production is incomplete, and fails to quantify significant mining activities that were conducted prior to 1971 for the account of Western's

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predecessor by numerous third party contractors (August 2009 CGS Report, p. 2; Western Aggregates' January 2010 Proposal, pp. 30 - 35).

Finding No. 36. It is impossible to ascertain precisely where all of the historic aggregate extraction activities occurred prior to 1971 because much of the deposition testimony evidencing such mining failed to identify specific locations (September 11, 2009 hearing transcript, at 205:19-206:11).

Finding No. 37. As a consequence of such incomplete production records, it is appropriate to use the existing historic production records to establish Western's vested right because such incomplete record does not have the potential to exaggerate the scope of Western's predecessor's activities.

No Substantial Change in Operations

Finding No. 38. Following establishment of a vested right under Yuba County law on April 13, 1971, Western's predecessors (and subsequently Western) continued to engage in the same business operation on the Vested Right Area as was conducted prior to 1971 (CGS July 2009 Report, pp. 39-40, and 50). There has been no substantial change in the nature of such mining activities (CGS July 2009 Report, pp. 40 and 50).

Finding No. 39. There was testimony before the SMGB concerning whether the appropriate date for the establishment of Western's vested right should be April 13, 1971 or January 1, 1976. However, because Western's predecessor continued to engage in the same business operation, *i.e.*, the same mining activities, before 1971 up to and including January 1, 1976, Western is entitled to the same vested right regardless of such date.

Finding No. 40. Aggregate and gold mining operations have continued on the Vested Right Area until present day, with only a brief cessation of gold mining between 1967 and 1974 (CGS July 2009 Report, p. 40).

Finding No. 41. Other lands surrounding Western's Vested Right Area are subject to final determinations of mining vested rights, and the Vested Right Area itself is already subject to a final vested right determination for gold mining by a company other than Western; thus the activities allowed pursuant to Western's vested right are consistent with the uses of surrounding land (CGS July 2009 Report, p. 40).

Finding No. 42. The neighborhood surrounding the Yuba Goldfields--and Western's area of ownership--has remained essentially rural in nature, and thus there has been no change in the overall character of the neighborhood (CGS July 2009 Report, pp. 40 and 50).

No Impermissible Intensification in Operations

Finding No. 43. Production by Western's predecessor, and then Western, has generally accounted for roughly the same percentage of Yuba County aggregate production (CGS August 2009 Report, p. 2). Between 1957 and 1971, Western's predecessor supplied approximately 43% of overall Yuba County aggregate production. Between 1990 and 2008, Western produced approximately 50% of overall Yuba County aggregate production (CGS August 2009 Report, p. 2 and Table 5; 2009 Executive Officer's Report, p. 10). The pre-1971 43% market share is likely understated because of incomplete records of production

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by Western's predecessor (CGS August 2009 Report, p. 2; September 11, 2009 hearing transcript, at 18:17-19:5).

Finding No. 44. Historically, there has been little correlation between Yuba County aggregate production and Yuba County population (CGS August 2009 Report, pp. 1-2).

Finding No. 45. Historically, there has been strong correlation between Yuba County aggregate production and market demand in the multi-County region including, but not limited to, Yuba, Sacramento, Placer and Nevada Counties (CGS August 2009 Report, p. 1 and Figure 3 September 11; 2009 Executive Officer's Report, p. 10).

Finding No. 46. The historic annual production of Western's predecessors and Western through the date of these findings reflects natural market growth and are not the result of impermissible intensification by Western (February 11, 2010 hearing transcript at 72:22-73:22; CGS August 2009 Report, pp. 1-2).

No Abandonment or Waiver of Vested Rights

Abandonment of Vested Rights

Finding No. 47. The historical record pertaining to CUP 74-48 and its amendments shows no clear and knowing intent by Yuba Consolidated to waive, abandon, or otherwise forego its vested right.

Finding No. 48. The historical record pertaining to CUP 74-48 and its amendments does not contain evidence of an overt act coupled with a clear intent by Yuba Consolidated to waive, abandon, or otherwise forego its vested right, and, in fact, there is evidence in the record of one or more affirmative acts on the part of Western's predecessor reflecting the intent to maintain and assert continuing vested rights.

Finding No. 49. The historical record demonstrates that Western's predecessor repeatedly asserted continuing vested rights as reflected in the applications it submitted for multiple reclamation plans in 1979 through 1983 that contemplated continued mining of aggregates throughout Western's ownership area (Western Aggregates LLC's August 24, 2009 Response to Deputy Attorney General's Assertion that a 1977 CUP Amendment "Extinguished" Vested Rights, pp. 17 and Exhibit C). Other documents in the record also demonstrate that Yuba County and Western's predecessor acknowledged vested rights in the 1970s (*Id.*, pp. 16-17, and 21).

Finding No. 49. At least five other aggregate operators with vested rights in the Yuba Goldfields obtained CUPs after establishing their vested rights, without abandoning or waiving their vested rights (September 11, 2009 Executive Officer's Report, Agenda Item 10, pp. 9-11; Western Aggregates LLC's August 24, 2009 Response, pp. 15, and 23-25, and Exhibits A, D, E, F and H). Four of these vested operations derive their vested rights from the same predecessor as does Western (Yuba Consolidated); (Western Aggregates LLC's August 24, 2009 Response, p. 15 and Exhibit A).

Finding No. 50. Western continued to assert the vested rights attached to the Vested Right Area in its Department of Conservation Annual Reports, beginning in 1991, when such

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reports were first required to be filed (Western Aggregates LLC's August 24, 2009 Response, pp. 22-23; Western's RFD, Historical Record, Exhibit 18).

Finding No. 51. Based on the foregoing, Yuba Consolidated did not waive, abandon or extinguish its vested right, or intend to waive, abandon, or extinguish its vested right, as a result of applying for, or obtaining or accepting, the amendment to CUP 74-48 in 1976/1977.

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Waiver of Reclamation Plan RP 80-01

Finding No. 52. There was no intent by Western's predecessor to waive its vested rights based upon Reclamation Plan 80-01. RP 80-01 itself stated that aggregate mining activities in the predecessors ownership area but outside of the boundaries of RP 80-01 would continue to be an important land use (August 6, 2009 SMGB Executive Officer's Report, Agenda Item No. 1, p. 10; June 9, 2009 Western Aggregates' response to SMGB, p. 4). Western's predecessor continued to engage in such mining activities in 1980 and thereafter within lands owned by Western's predecessor outside the boundaries of RP 80-01. (*Id.*)

Finding No. 53. Between 1979 and 1987, Western Aggregates' predecessor entered into multiple joint ventures and leases, and filed reclamation plans for lands outside the boundaries of RP 80-01 that are inconsistent with any waiver of a vested right arising out of RP 80-01 (August 6, 2009 SMGB Executive Officer's Report, Agenda Item No. 1, p. 10; June 9, 2009 Western Aggregates' response to SMGB, pp. 5-10 and Exhibits 5, 6 and 8-22).

FINAL SMGB DETERMINATION: The SMGB at its March 11, 2010, regular business meeting adopted the Findings presented herein, and determinations and Resolution 2010-04, in recognition of the granting of vested rights to Western Aggregates, LLC, Yuba Goldfield surface mining operation.