



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, September 11, 2008

**DRAFT**

9:00 A. M.

(or immediately following the Minerals & Geologic Resources Committee Meeting)

Assembly Hearing Room #444  
State Capitol  
Sacramento, California 95814

## AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

Individuals are responsible for presenting their own projects at the meeting.

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[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting.]

**I. Call to Order (Jones)**

**II. Roll Call and Declaration of a Quorum**

The meeting was called to order at 8:45 A. M. by Chairman Jones, with all members present, with exception of Members Garner and Member Hoose, and a quorum was declared. Member Garner arrived at 9:00 A. M.

**III. Director's Report (Luther, Department of Conservation) [Information]**

On behalf of the Director, Deputy Director Jason Marshall reported on the following:

- There is no pending legislation that affects the SMGB.
- Ms. Carolyn Baker moved on from the DOC's Department of Governmental and Environmental Affairs to the Department of Public Health.
- The formulation of a budget for next year, 2009-2010, has not commenced.
- A tape of Mr. McDonough's September 15<sup>th</sup> presentation, given at the Sacramento Convention Center as a guest of DOC will be made available, as requested.

**Office of Mine Reclamation Report (O'Bryant) [Information]**

Mr. Dennis O'Bryant, Assistant Director with OMR, reported on the following:

- OMR would be providing an overview and update on activities of the Abandoned Mine Lands Unit (AMLU) program later today, and a larger report at a later date.
- The annual reporting process and entry of data is slowing due to the loss of student assistants.
- A reclamation plan was received for the Golden Queen project located in Kern County. This reclamation plan under review includes elements associated with the SMGB's backfilling regulations.
- Efforts to provide training for lead agencies and operators continue, with workshops for Siskiyou County in September and in Riverside County in October.
- Filling of positions for the Lead Agency Review Unit is underway.
- A telecast of "Dirty Jobs", showcasing the Abandoned Mines Land Unit, is going to be airing on September 30<sup>th</sup>.

**State Geologist's Report (Parrish) [Information]**

Dr. John Parrish, State Geologist and Director of the California Geological Survey (CGS), provided the following report:

- A synopsis of fire conditions in California was presented, noting that about 1¼ million acres have been burned, and currently there are about 6 active fires. About 505 injuries have been reported, mainly fire personnel, and 12 fatalities, and numerous residences.
- A California Shakeout scenario is being planned by the United States Geological Survey and CGS, and matters related to emergency preparedness were discussed.
- The budget was passed, lifting the hiring freeze.



#### **IV. Chairman's Report (Jones) [Information]**

No report provided.

#### **V. Executive Officer's Report (Testa) [Information]**

Executive Officer Stephen Testa summarized the following recent and upcoming activities of the SMGB:

- A one-time SMARA exemption request was received for the Hanson Aggregates' Hester's Granite surface mining operation located in the unincorporated area of Rancho San Diego. A letter of support from the County of San Diego for the exemption was also received. This request is under review and the SMGB may hear this matter at its upcoming October meeting.
- A classification petition was received from Terra Mines, Inc. for the Day Street Project, City of Perris, Riverside County. The proposed area encompasses about 500 acres. The petition was forwarded to CGS for evaluation and a preliminary review.
- Two complaints pertaining to SMARA lead agency performance were received: one for Sierra County and the other for Butte County. Preliminary review is being performed by OMR and SMGB staff, and the SMGB can anticipate hearing a preliminary report for both counties at its upcoming October or November meeting. The City of Lake Elsinore will also be discussed at the SMGB's upcoming October meeting.
- The rulemaking packet for the SMGB's adopted regulations for conduct of a vested rights determination upon request from an operator when the Board is serving as a lead agency under SMARA was approved by the Office of Administrative Law (OAL), and will be formerly enacted on September 13, 2008. The SMGB has two pending petitions before it to consider in the upcoming months: one for Western Aggregates located in Yuba County, and the other for the Big Cut Mine located in El Dorado County.
- A draft EIR was received for the proposed Ostrom Road Quarry project located in Yuba County. The County serves as the CEQA lead agency for this project. The SMGB serving as a Responsible Agency under CEQA and will eventually rely on this document when considering approving the reclamation plan some time in the future. The DEIR was reviewed and comments were provided to the County.
- The Executive Officer provided an update of the SMGB's activities and a presentation on the geology of the White Mountain area, at the quarterly Sierra Club Desert Committee meeting which was held on August 8-9, 2008.
- The Executive Officer will be speaking at the upcoming CalCIMA conference scheduled for next week as part of a panel discussion on "Land Use & Resources", and providing a presentation titled "Critical Factors in Successful Mine Inspections"
- The Executive Officer was requested to provide a presentation at the University of Riverside on "*The Future of the Geosciences Workforce - Planning a Career in the Geosciences*"



- Several SMARA Low Gross Exemption requests have been received and are under review.

**VI. Ex-Parte Communication Disclosure [Information]**

[Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.]

- Member Bly-Chester indicated she was a speaker at a CEQA hearing held in San Francisco.

**VII. Good of the Meeting [Information]**

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the SMGB should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman.]

- Mr. Gary Hambly, President and Chief Executive Officer for the California Industrial Materials Association (CalCIMA), introduced himself. Mr. Hambly stated that permitting aggregate mines is a losing battle, and recognizing the role the SMGB plays in identification of resources, classification and designation, local jurisdictions are allowing other land uses. Distance matters and the California Environmental Quality Act (CEQA) are being used as a weapon, not the intended purpose of identifying issues of environmental importance. Maybe the State should consider using the Williamson Act as a model, and also consider new legislative and regulatory policies.
  - Chairman Jones noted the high interest of this board regarding this matter, and expressed the desire for the SMGB to work closely with CalCIMA.
  - Member Lund expressed the need to work more closely with local government.

**VIII. Consent Items [Action]**

[All the items appearing under this section will be acted upon by the SMGB by one motion and without discussion; however, any Board member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business.]

1. Approval of Minutes, July 10, 2008, Regular Business Meeting.

Board Member Isham moved to approve the minutes. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

**IX. Continued Business [Action]**

[These business items have been continued from a previous meeting/hearing.]

No continued action items were presented.



**X. New Business [Action]**

2. Recognition Consideration of Revised Mineral Resources Management Policies for the County of Sacramento, Pursuant to Public Resources Code Section 2762.

Executive Officer Testa provided background information stating that every lead agency is required to establish MRMPs within one year of receiving mineral information classified by the State Geologist, or designation of an area of statewide or regional significance within its jurisdiction. Pursuant to Title 14 CCR, Article 6, Sections 3675 and 3676, interpretation of the regulations governing MRMPs, certain information must be included such as 1) information provided by the classification and designation reports, or incorporated by reference, 2) reference in the General Plan, and 3) maps, identification by reference, or conditions imposed on identified mineral deposits. Review has deemed the MRMP to be in compliance with the requirements of SMARA, and the SMGB's regulations.

Board Member Garner moved to recognize the MRMP. Member Lund seconded and the motion carried.

3. Adoption of Resolution 2008-05, Certifying the County of Sacramento's Surface Mining and Reclamation Ordinance No. SCC-1391, Adding Surface Mining Ordinance No. SZC-2008-0019 to the Zoning Code, as Being in Accordance with the Surface Mining and Reclamation Act (SMARA; Public Resources Code Section 2710 et seq.).

Executive Officer Testa provided background information stating that the SMGB reviews lead agency ordinances, which establishes permit and reclamation procedures to determine whether the ordinance is in accordance with state policy, and certifies the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the CA surface mining and reclamation policies and procedures. The SMGB re-certified the County's ordinance in March 1994. Before the SMGB is the surface mining and reclamation ordinance for the County of Sacramento. Originally received in March 2008, upon review, the surface mining and reclamation ordinance is deemed to be in compliance with the requirements of SMARA, and the Board's regulations.

Board Member Tepel moved to adopt the ordinance. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

4. Adoption of California Geological Survey Special Publication SP-117.

Executive Officer Testa provided background information indicating that the Seismic Hazards Mapping Act was enacted on April 1, 1991, for the purpose of protecting public safety from the effects of strong ground shaking, liquefaction, landslides, or other ground failures. In 2003, the SMGB recognized that grading codes and standards have been an integral and vital element of local building codes in CA for many decades. With the elimination of grading standards from the latest versions of the International Building Codes



and the National Fire Protection Association Code adopted for CA, CGS embarked on revising SP 117 "*Guidelines for Evaluating and Mitigating Seismic Hazards in California*" to include a section on mitigation by grading. A Grading Standards Technical Advisory Committee was established in 2004, and completed its work in July 2006. The final version before the SMGB today includes:

- New ground motion procedures which are consistent with current code,
- Elimination of the "*Chinese Criteria*" for liquefaction in recognition of observed failure of sediments containing a significant amount of fines in recent foreign earthquakes, and
- New improved models for estimating seismically-induced landslide displacements. In addition, many new references have been added in order to improve the "standard-of-practice".

The SMGB is considering adopting SP 117 "*Guidelines for Evaluating and Mitigating Seismic Hazards in California*", and request that CGS finalize the document for publication.

- Mr. Chuck Real with CGS stated that the document has undergone extensive review, and all comments received have been considered and incorporated, as appropriate.
- Chairman Jones inquired as to how the information is distributed and made known to its intended stakeholders. Mr. Real stated that wide distribution is planned since this document reflects the standard of practice in California. Jones also recognized Member Tepel in his efforts to make this a superior document.

Board Member Tepel moved to adopt the guidelines. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

5. Issuance of an Order to Comply to Painted Hills Mine (aka Super Creek Mine), (CA Mine ID # 91-33-0003), Whitewater Rock & Supply Company (Operator), Al Bankus (Agent), City of Desert Hot Springs, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.) and the Approved Reclamation Plan.

Executive Officer Testa provided background information stating that the SMGB is the SMARA lead agency for the Super Creek Quarry located in the City of Desert Hot Springs. As a result of past inspections, several violations have been reported for this operation related to encroachment into a natural drainage, inadequate soil erosion control measures for sidecasted tailings, inadequate revegetation measures and potentially unstable slopes (relatively recent earthquake hazards studies have predicted higher earthquake ground motion values than those utilized by the site in the past). At the SMGB's December 2007, regular business meeting, the SMGB was very clear in requesting that the operator provide an adequate amended reclamation plan within 60 days. At this time, an adequate amended reclamation plan was not received. Such document was received on September 8, 2008, but has not yet been reviewed by SMGB and OMR staff for adequacy.



Board Member Isham moved to issue the Order to Comply. Board Member Lund seconded and the motion carried with a unanimous voice vote.

6. Approval of Adjusted Financial Assurance Cost Estimate for the Garnet Pit (CA Mine ID #91-33-0031), Granite Construction Company (Operator), Ms. Catherine Vos (Agent), City of North Palm Springs.

Executive Officer Testa provided background information stated that the SMGB serves as the Lead Agency under SMARA for the City of North Palm Springs. The site encompasses about 146 disturbed acres out of a total of 147 approved acres. Based on the most recent inspection performed in 2007, the FACE was adjusted from \$1,270,937 to \$1,615,000. The FACE has been reviewed by OMR and SMGB staff, and deemed adequate for the purpose of reclaiming the site in a manner consistent with the approved reclamation plan.

Board Member Isham moved to approve the adjusted financial assurance cost estimate. Board Member Garner seconded and the motion carried with a unanimous voice vote.

7. Approval of Adjusted Financial Assurance Cost Estimate for the Parks Bar Quarry (CA Mine ID #91-58-0013), Nordic Industries, Inc. (Operator), Mr. Jens Karlshoej (Agent), Yuba County.

Executive Officer Testa provided background information stated that the SMGB serves as the Lead Agency under SMARA for Yuba County. The site encompasses about 31 disturbed acres out of a total of 145 approved acres. The SMGB recently approved an amended reclamation plan at its July 2008, regular business meeting. Based on the most recent 2007 inspection, the FACE was adjusted from \$435,261 to \$575,339. The FACE has been reviewed by OMR and SMGB staff, and deemed adequate for the purpose of reclaiming the site in a manner consistent with the approved reclamation plan.

Board Member Isham moved to approve the adjusted financial assurance cost estimate. Board Member Garner seconded and the motion carried with a unanimous voice vote.

8. Approval of Adjusted Financial Assurance Cost Estimate for the Teichert Aggregates Marysville Facility (CA Mine ID #91-58-0019), Teichert Aggregates (Operator), Ms. Lillie Noble (Agent), Yuba County.

Executive Officer Testa provided background information indicating that the SMGB serves as the Lead Agency under SMARA for Yuba County. The site encompasses about 590 acres divided into six phases of operations over time. Surface mining operations commenced in November 2002, thus, the financial assurance cost estimate (FACE) has been anticipated to steadily increase over the initial years as more land is disturbed. Based on the most recent inspection, the FACE was adjusted from \$958,522 to \$1,077,360. The FACE has been reviewed by OMR and SMGB staff, and deemed adequate for the purpose of reclaiming the site in a manner consistent with the approved reclamation plan. The SMGB is considering approval of the adjusted FACE.



Board Member Tepel moved to approve the adjusted financial assurance cost estimate. Board Member Lund seconded and the motion carried with a unanimous voice vote.

9. Consideration to Amend the Vested Rights Determination Procedures when the SMGB is serving as a Lead Agency under SMARA Pursuant to the California Code of Regulations Section 3959(b)(4).

Executive Officer Testa stated that the SMGB's new regulations that provide an administrative process for conducting a vested rights determination when serving as a lead agency under SMARA will be formally enacted on September 13, 2008. Section 3959 of the Board's regulations describes:

- The notice the SMGB will prepare, mail and post and matter under consideration
- Hearing date and time
- Invitation to make statements
- Request concerning delivery or submission of additional written materials and any responsive materials (Section 3959(b)(4))

Based on review comments by the Office of Administrative Law (OAL), Section 3959(b)(4) can be interpreted in different ways, and for clarity, the proposed language provides modification to the regulation that reflects the SMGB's intent. Two options are before the SMGB for consideration: Leave as is, although this could prove unwieldy, or amend.

- Chairman Jones stated the amended language is consistent with the SMGB's intent.
- Mr. Kerry Shapiro expressed his support of the amendment and that it was consistent with his understanding of the SMGB's intent.
- Chairman Jones inquired as to whether the amendment would adversely impact the overall schedule to proceed with commencement of the vested rights proceedings once a petition and administrative record is received. Executive Officer Testa stated that the schedule would not be adversely impacted.
- Chairman Jones requested that Executive Officer Testa work with legal counsel in consideration of a policy or guideline in the event the SMGB does not respond in a timely manner when acknowledging receipt and consideration of a petition for a vested rights determination.

Board Member Tepel moved to amend the regulatory language for clarification. Board Member Lund seconded and the motion carried with a unanimous voice vote.

Board Member Tepel moved to commence the rulemaking process. Board Member Garner seconded and the motion carried with a unanimous voice vote.



**XI. Special Reports and Department Presentations [Possible Action]**

[Based on these Reports, the Chair may instruct the SMGB staff to initiate administrative actions.]

**10. Report from the Board for Geologists and Geophysicists (BGG).**

Executive Officer Testa informed the SMGB that the BGG recently amended their regulations (CCR Section 3065). Mr. Rick Remple, Executive Officer for the BGG, and Mr. George Dunfield, summarized the recent amendment to their regulations, and their respective impact on professional practice.

- Member Garner expressed appreciation of the new amendments and that additional authority has been incorporated into regulation that allows for more accountability.
- Member Tepel stated that there was a need to ensure that all professionals must be licensed.
- Member Isham noted that there are many state employees that are practicing but are not licensed.

**11. Report from the Bureau of Land Management (BLM).**

Executive Officer Testa noted during the SMGB's public hearing to receive comments on Mining Reform in March of this year, that about 45% of the State's total land surface is federally managed land. The SMGB may recall that there is an existing MOU between BLM, Forest Service, the DOC and the SMGB. Originally signed in 1979, it was updated and re-signed in 1992. Mr. Richard Grabowski, Deputy State Director, and Steve Kupferman, Geologist with the Energy and Minerals Division of BLM, are here today to provide an information report to the SMGB, and address certain programs of mutual interest.

- Mr. Grabowski and Mr. Kupferman summarized BLM's programs and activities, stating that BLM administers over 15 million acres and 44 million acres of subsurface minerals in California, and over 23,000 mining claims in California. Opportunities of mutual interest include 1) updating the SMARA Memorandum of Understanding (MOU), 2) establishment of a California BLM Solid Minerals Working group with Federal, State, and Industry Involvement, and 3) increase sharing of mineral resources/Geographical Information System (GIS) data.
- Chairman Jones encouraged updating the MOU.
- Member Bly-Chester indicated her support of exploring the merits of a personnel exchange program.
- Member Tepel encouraged continued contact with BLM.
- Member Isham expressed strong support for the sharing of information and data.



12. Report on Abandoned Mines Land Unit Program (OMR).

Executive Officer Testa indicated that the SMGB will hear from Mr. Cy Oggins, manager of the AMLU, on a summary of their current programs, and prospective future activities.

- Mr. Oggins summarized the AMLU programs and programs including 1) staffing, 2) inventory, 3) remediation, 4) recent accomplishments, and 5) key challenges for the future.

13. Inspection reports pursuant to PRC Section 2772(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:

- Wheatland Clay Pit (CA Mine ID #91-58-0007), Yuba County.
- Dantoni Quarry (CA Mine ID #91-58-0011), Yuba County.
- Blue Point Clark Rock Quarry (CA Mine ID #91-58-0015), Yuba County.
- Teichert Marysville Facility (CA Mine ID #91-58-0019), Yuba County.
- Blue Point Mine (CA Mine ID #91-58-0021), Yuba County.
- Simpson Lane Project (CA Mine ID #91-58-0025), Yuba County.

Board Member Garner moved to accept the inspection reports. Board Member Lund seconded and the motion carried with a unanimous voice vote.

## **XII. SMGB Committee Reports [Information and Possible Action]**

- Geohazards Committee (Chairman Tepel)
  - Alquist-Priolo Technical Advisory Committee (Chairman Tepel)

Committee Chairman Tepel stated that the Geohazards Committee continues to work on the technically challenging situations at the Richmond Quarry, and that the Alquist-Priolo Technical Advisory Committee is scheduled to meet in Sacramento on October 1, 2008.

- Surface Mining and Standards Committee (Chairman Isham)

A reclamation plan form is being prepared by staff, and reviewed by OMR.

- Minerals and Geologic Resources Committee (Chairman Garner)

Public hearings pertaining to the designation and termination of designation in the Palm Springs and Claremont-Upland Production Regions are tentatively scheduled for December 2008.

- Policy and Legislation Committee (Chairman Jones)

No Committee report provided.

## **XIII. Continuing Business [Information]**

[This item is provided as an opportunity for any SMGB member to receive information on or any items of continuing interest to the SMGB.]



**XIV. New Business [Information]**

[This item is provided as an opportunity for any SMGB member to bring any item of new business to the SMGB's attention for further discussion and further action.] Items to be discussed:

**XV. Executive Session (Closed to the Public) [Possible Action]**

[The SMGB will discuss information from its legal counsel on pending litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.] Items to be discussed:

- a). Brunius vs. SMGB, Case # PC 20010449, El Dorado County Superior Court.
- b). Kibbe Area Planning and Protection Association; Forest Tull vs. SMGB; A. Teichert & Sons, Inc.; and DOES 1010, Case No. 34-2007-00882657-CU-WM-GOS, Sacramento County Superior Court.
- c). An un-named case where there is potentially significant exposure to litigation against the Board.

**Re-open Regular Business Session, Announce Results of Executive Session**

SMGB's Legal Counsel, Deborah Wordham, Deputy Attorney General, announced that the SMGB met in closed session to discuss pending litigation but took no actions.

**XVI. Announcements of Future Meetings**

October 9, 2008, was announced as the next meeting, and the City of Irwindale as the location.

**XVII. Adjournment**

The meeting was adjourned at 2:15 P.M.

