



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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Publication Date: March 13, 2008

## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Will Conduct a Regular Business Meeting on:

**DRAFT**

Thursday, February 14, 2008

8:30 A. M.

Grenada/Hermosa Room  
Holiday Inn—Capitol Plaza  
300 J Street  
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 8:30 A. M., with all members present, with exception of Hoose, who arrived at 9:00 A. M., and a quorum was declared.

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

Director Bridgett Luther reported on the following:

- The reduction in the State's budget will reflect an \$85 million dollar cut for the Resources Agency, and \$500,000 cut for the California Geological Survey (CGS). Proposition 58 legislation allows for 45 days for budget legislation to be passed; February 24 is the deadline.
- Views on the administrative procedures for the SMGB to conduct a vested rights determination were expressed noting that the regulations should allow the SMGB to recover costs for administering this process, that the SMGB should only perform such a determination when serving as a lead agency and when requested to do so by the operator, and that vested rights remain a local land use responsibility.
- The DOC is in support of an accelerated designation program, and protecting mineral lands through the designation process.
- The DOC is interested in federal mining law reform, and for the SMGB to hold a hearing to receive comments, which could be considered in making recommendations to the governor's office.

**Office of Mine Reclamation Report (Craig) [Information]**

Mr. Douglas Craig, Assistant Director with the Office of Mine Reclamation, reported on the following:

- OMR continues to work with SMARA lead agencies, including working with the SMGB, in dealing with public complaints pertaining to lead agency performance. OMR is working closely with certain lead agencies on ways to improve their performance by assisting in drafting language for compliance and enforcement letters, etc.
- Annual mine reporting fees will be due in the upcoming weeks, and the SMGB can anticipate considering OMR's recommended fees.
- Mr. John Halligan has departed OMR and moved to the Department of Recycling; and Mr. Paul Marshall has departed OMR and accepted a position with the Energy Commission.
- OMR established a new storeroom for maintenance of mine files, and plans to have them digitized in the future.

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

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



- A recent trip to the United States Geological Survey's (USGS) office in Reston, Virginia, was made to review and assess House Bill 1571. This particular bill is important because it identifies the amount of federal funding for the geologic mapping program. Every state gets grant money from this program, which is re-authorized every three years.
- A 5.4 magnitude earthquake occurred about 22 miles south of Mexicali. The seismic event left 500 people without power. There have been more than 300 aftershocks, of which two of them were around magnitude 5. CGS is working closely with the USGS. The concern is that the energy released is translated to the San Andreas Fault system. A significant seismic event along the San Andreas Fault zone in the southernmost region of southern California is about 300 years overdue.
- A summary of the CGS matters to be discussed later in the meeting was provided.
- Chairman Jones inquired about funding issues. Dr. Parrish stated that the seismic network program would lose approximately \$150,000, which would not allow CGS to maintain older systems, and that the Seismic Monitoring Instrumentation Program would be adversely impacted.
- Member Garner expressed the SMGB's willingness to be of support where it can.

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

- Recognition of Distinguished Service for  
Deputy Attorney General William Cunningham.

Chairman Jones recognized the distinguished service of former Deputy Attorney General William Cunningham, stating, as Deputy Attorney General and legal counsel to the SMGB, he has performed with exceptional dedication and skill since 1981, while providing legal counsel, on occasion, to the Board of Forestry, Department of Forestry, the Fish and Game Commission, as well as the Reclamation Board. Cunningham represented the SMGB in litigation at trial court and appellate court, and at various administrative proceedings, and drafted numerous regulations and statutes on behalf of the SMGB, including work on the SMGB's backfill regulations, and more recently, the administrative procedures for the SMGB to perform vested rights determinations when serving as a lead agency under the Surface Mining and Reclamation Act of 1975 (SMARA).

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

Executive Officer Testa summarized the following recent and upcoming activities of the SMGB, when serving as a lead agency:

- The SMGB is now staffed by two individuals as a board, and two individuals as a lead agency under SMARA. The SMGB's budgets while operating as a board and a lead agency is \$369,635 and \$276,555, respectively. SMGB staff as a lead agency is represented by Mr. Will Arcand as a Senior Engineering Geologist, and Jocelyn Fernandez serving as an office technician.
- Public complaints to the SMGB in regards to lead agency performance, once received, are first forwarded to OMR for assessment of the facts, assuming an imminent danger to public health, safety and welfare has not been determined. The



results of OMR's efforts will be brought to the SMGB's attention in a timely manner. The SMGB will hear discussion of complaints received for Sacramento County later today, and in the near future, reports from OMR for Siskiyou County, and the City of Lake Elsinore. The SMGB's office is also in receipt of complaints concerning Imperial County and this matter will also be forwarded to OMR for assessment, as appropriate.

- A one-time exemption from SMARA was requested by Caltrans for their Willits Bypass project, located in Mendocino County, and the SMGB can anticipate hearing this matter at its March 13, 2008 Regular Business Meeting.

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

- All of the 2007 mine inspections have been completed, with reports to be presented to the SMGB for acceptance consideration at the upcoming March and April Regular Business Meetings.
- A request was made by the Mayor of the City of Pacifica to participate in an upcoming meeting to discuss reclamation options for the former Pacifica Quarry. The SMGB served as the lead agency for several years prior to the city acquiring a mining ordinance, which was certified by the SMGB.
- Several reclamation plans are being processed, including plans for Super Creek Quarry, located in the City of Desert Hot Springs, and the Big Cut Mine and Smith Flat Road Projects, located in the County of El Dorado.
- The Pew Charitable Trust contacted the SMGB for permission to use figures contained in the SMGB's Information Report 2007-02, pertaining to backfilling of metallic mines in California, and in relation to mining reform.
- In the near future, the Geohazards Committee can anticipate meeting to discuss slope stability issues for the Richmond (Dutra) Quarry, located in the City of Richmond, upon the completion of OMR and SMGB staff review of the slope stability report; the Surface Mining Standards Committee can anticipate having discussion on the administering of administrative penalties and the SMGB's reclamation plan form; and the Mineral and Geologic Resources Committee can anticipate hearing discussion and consideration of designation and de-designation for areas situated in southern California. The results of a survey of lead agencies affected by the Alquist-Priolo Earthquake Fault Zone Act has been compiled and assessed, and is anticipated to be a topic of discussion at the upcoming Geohazards Committee Technical Advisory Committee meeting.
- The Executive Officer accepted an invitation to speak at the Geology Department, at the University of California at Davis, on the topic of "*The Future of the Geoscience Workforce*" which took place on January 25, and on "*The History and Role of the SMGB*" and "*The History of Mining in California*" for the meeting of the Desert Committee of the Sierra Club, which was in the City of Shoshone on February 9 and 10.



**V. 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 stated that she attended a meeting of Surveyors, Architects, Geologists and Engineers (SAGE) in El Dorado County, and worked on a manual and served as a speaker.
- Member Tepel stated that he met with the Executive Officer of the Board for Geologists and Geophysicists to discuss issues of professional licenses and general disciplinary actions the board could take.

**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. Val Alexeeff, Director of the Planning Department for Santa Clara County, provided a brief summary of the progress the County is making in its Santa Clara County's response to the issuance of the new Notice of Deficiencies letter, dated October 2, 2007.
- Mr. Dan Jacobson, Legislative Director of Environment California, addressed the SMGB on matters related to mining law reform on federal lands in California. Other individuals that expressed similar concerns were Christopher Clair, Matt Conti, Kirk Smith and Mike Somers. Chairman Jones requested that this matter be put on the SMGB's March agenda, in order for the SMGB to receive public comments on mining law reform, and for the Executive Officer to coordinate with the DOC.

**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, December 13, 2007 Regular Business Meeting.

Board Member Hoose moved to approve the minutes. Board Member Lund 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]

**X. New Business [Action]**

2. Approval of a Negative Declaration, Reclamation Plan and Financial Assurance Cost Estimate for the Proposed San Francisco Marina West Dredge Program,



City and County of San Francisco Planning Department (Operator/Agent), Bay Conservation and Development Commission (BCDC).

Executive Officer Testa stated that the SMGB is the lead agency under SMARA for BCDC, and that the Planning Department for the City and County of San Francisco prepared a Negative Declaration (ND) in 1999, which was approved and subsequently amended in 2007. The amended ND reflected changes made to the reclamation plan at the request of BCDC. The proposed dredging operation is situated offshore from the outer tip of an existing jetty, and will incorporate about 156,964 square feet, and will continue for a period of 10 years. The financial assurance cost estimate, as with previous considerations by the SMGB for dredging operations in the Bay waters, is in the form of an insurance policy to recover a dredge in the unlikely event that it were to sink.

- Member Hoose, after inquiring about the nature of the financial assurance cost estimate, stated that it was acceptable.

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

Board Member Tepel moved to approve the reclamation plan. Board Member Hoose seconded and the motion carried with a unanimous voice vote.

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

3. **Public Hearing:** Adoption of Permanent Regulatory Language Adding Section 3506 to Title 14, Article 1, of the California Code of Regulations, for Administrative Procedures for the State Mining and Geology Board to Conduct Vested Rights Determination Hearings when serving as a Lead Agency under the Surface Mining and Reclamation Act of 1975.

Executive Officer Testa summarized the SMGB's activities to date, following the 3<sup>rd</sup> Appellate Court's decision published in December 2006, noting the recognition of the SMGB's authority via Resolution 2007-04, and the formal request from Western Aggregates, LLC, for the SMGB to conduct a vested rights determination for their surface mining operation located in Yuba County. Six parties provided comments on the SMGB's proposed regulations, with a total of 26 specific comments. Consideration of such comments was summarized in the Executive Officer's report. The SMGB is considering adoption of the proposed regulations.

- Mr. Adam Harper, Director of Policy Analysis for the California Construction and Industrial Minerals Association (CaCIMA), Mr. Theodore Franklin, the attorney representing William Calvert and the Yuba Goldfields Access Coalition, and Mr. Kerry Shapiro, the attorney representing Western Aggregates, LLC., made comments concerning the current version of the proposed regulations.
- Ms. Susan Mayville and Christina Karle, representing the group CEASE, expressed their concerns over the matter of Snows Road Quarry, and what procedural steps they need to take in order to have their concerns and issues regarding vested rights



and operational activities addressed. It was noted that the Executive Officer would provide administrative guidance to CEASE. Written statements were provided.

- Chairman Jones requested confirmation from legal counsel, Mr. William Cunningham, that all comments were received and considered.
- Mr. Cunningham addressed issues and questions related to legal standing for the SMGB to conduct a vested rights determination, noting that the SMGB's role is very limited in that it only has standing as a lead agency under SMARA.

Board Member Garner moved to adopt the proposed regulations with editorial and noted non-substantial changes. Board Member Hoose seconded and the motion carried with a unanimous voice vote.

4. Review of the Order of Administrative Penalties Assessed to the Following Mine Operators Pursuant to Public Resources Code Section 2774.2, and California Code of Regulations, Section 3900, et seq. [Note: Pursuant to PRC Section 2207(g) regarding the prohibition of public disclosure of proprietary information and the California appellate court decision in General American Transportation Corp v. State Board of Equalization, 193 Cal.App.3d 1175 (1987), the Board may conduct a closed hearing for the purposes of reviewing the following administrative penalties.]
  - **Public Hearing** of the Notice and Order of Administrative Penalty, River Ranch Aggregates (CA Mine ID #91-32-0001), Plumas County, Feather River Materials (Operator), Gary Dyrr (Agent), assessed pursuant to PRC Section 2774.1(c) for failure to submit a report to the Department of Conservation as required by PRC Section 2207.

Executive Officer Testa stated that the SMGB received one petition for appeal of an administrative penalty issued by OMR on behalf of the Director, and that during this public hearing the SMGB can either affirm, modify or set aside, whole or in part, the administrative penalty.

- Mr. Greg Tenorio, legal counsel for OMR, and Ms. Kit Gonzales with OMR, presented the DOC's case.

Board Member Garner moved to close the public hearing. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

Board Member Garner moved to uphold the Director's Order. Board Member Hoose seconded and the motion carried with a voice vote, and with Chairman Jones opposed and Member Bly-Chester abstaining.

5. Proposed Schedule for Designation of Mineral Lands.

Executive Officer Testa stated that SMARA provides for designation of mineral lands statewide, and that the last time the SMGB designated mineral lands was in 1990. Ten designations have been completed to date, with 14 Production-Consumption Regions remaining to be designated. CGS is prepared to discuss its proposed schedule for designation, and the SMGB will be considering 1) instructing the Minerals and Geologic



Resources Committee (Committee) to commence activities and public hearings leading to recommendations for mineral land designation by the SMGB, and 2) accepting the schedule for mineral lands designations as submitted by the State Geologist, and/or modified by the SMGB, and that this schedule be transmitted to the Committee for implementation.

- Supervising Engineering Geologist John Clinkenbeard, representing CGS, presented the proposed schedule and rationale for designation.
- Chairman Jones inquired as to how the rankings were established; and, Clinkenbeard noted that the schedule closely follows the schedule for classification, and considered, among other factors, which urban areas are being built up faster than others.
- State Geologist Parrish stated that the dollars for this program all come out of SMARA, and with budgetary issues, the SMGB is looking at an augmented program.
- Member Bly-Chester discussed issues concerning de-designation.
- Mr. Adam Harper, representing CalCIMA, thanked the SMGB and the State Geologist, for the efforts being made to revive the designation program.

Board Member Garner moved to have the Executive Officer, through the Minerals and Geologic Resources Committee, commence activities and public hearings leading to recommendations for Mineral Land Designations by the SMGB. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

Board Member Hoose moved to accept the schedule for Mineral Land Designations as submitted by the State Geologist, and instructed the Executive Officer to transmit the schedule to the Minerals and Geologic Resources Committee for implementation. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

#### 6. Approval of Draft Revised California Geological Survey Special Publication No. 117.

Executive Officer Testa summarized events and activities that have transpired in the development of a draft version of CGS Special Publication 117 (SP 117). Notably, the current version included 1) new ground motion procedures which were consistent with current code, 2) elimination of the "Chinese Criteria" for liquefaction in recognition of observed failure of sediments containing a significant amount of fines in recent foreign earthquakes, 3) new improved models for estimating seismically-induced landslide displacements, and 4) new references to improve the "standard-of-practice".

- CGS Supervising Engineering Geologist Chuck Real summarized the changes that have been made to the latest draft version of SP 117, and what changes are anticipated to be made prior to this document being finalized.
- Chairman Jones inquired as to what were the regulatory steps for distribution upon finalization.
- Mr. Real indicated that the document would automatically be used since there is a spontaneous need.



- State Geologist Dr. Parrish noted that the document serves as a guideline outlining acceptable practice and standard of care. The document is not mandated, but is used as a reference document.
- General comments were provided by Member Bly-Chester, Tepel, Garner and Hoose.
- Member Hoose expressed the need to accurately portray the type of failure mechanism, notably, free-faces not being a key factor in lateral spreading.
- Chairman Jones acknowledged the efforts of Member Tepel who had participated on the Technical Advisory Committee in developing this document.

Board Member Tepel moved to accept the changes. Board Member Garner seconded and the motion carried with a unanimous voice vote.

7. Election of Vice Chair of the Board Pursuant to Public Resources Code Section 669.

Executive Officer Testa stated that the SMGB selects annually an individual from its membership to serve as Vice Chair, and that the Vice Chair performs the duties of the Chairman in his or her absence, or upon request of the Chairman, when possible conflicts of interest may occur. Nominations to this role are made by the SMGB members.

- Member Garner nominated Member Tepel.
- Member Isham suggested that Member Bly-Chester continue as Vice Chair.
- Member Garner concurred with Member Isham's recommendation.

Board Member Tepel moved to approve Member Bly-Chester as Vice Chair. Board Member Isham seconded and the motion carried with a unanimous voice vote.

8. Review and Establishment of the Board's Committees Pursuant to the Board's Bylaws (III Organization).

Executive Officer Testa stated that the four existing committees were re-approved in January 2007; they remain valid, and do not conflict with statute or the SMGB's bylaws.

Board Member Bly-Chester moved to approve the current committees. Board Member Tepel 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]

9. Report on the County of Sacramento SMARA Program [Information].

Executive Officer Testa indicated that in October 2007, the SMGB received a public complaint from the Law Offices of M. Diane Anderson, pertaining to four alleged unpermitted surface mining operations located within the SMARA lead agency jurisdiction of Sacramento County.



- Mr. Michael Winters, Senior Planner for the Sacramento County, provided a synopsis of their SMARA program, and indicated that the County has recently added a new Aggregate Resources Management position. Teichert Aggregates, Granite Construction and Vulcan Materials were the larger aggregate producers within the County's jurisdiction; whereas, H. C. Muddox and Industrial Minerals Company were the major clay producers. Products produced include river aggregate, dredger tailings and hard rock activities mainly in the eastern portion of the County. The County is currently in the process of updating its General Plan Amendments, County Code Amendments and Zoning Code Amendments. Overall, the County is improving its performance in addressing SMARA compliance needs, and anticipates continued improvement in the future.
- Member Hoose inquired about compliance, in regards to financial assurances updates.
- Chairman Jones accepted the report and no action was taken.

10. Report on Complaints Pertaining to Four Surface Mining Operations in Sacramento County (OMR).

- Lonnie Stoval
- Creek Crushing/G. R. Trucking
- Steven Hardesty
- Jeanie Hanford and Curtis Hanford

Executive Officer Testa stated that OMR was prepared to provide a summary of their investigations pertaining to the four alleged unpermitted surface mining operations in Sacramento County.

- Mr. Michael Lucich, a geologist with the OMR Reporting and Compliance Unit, summarized the investigations performed by OMR staff, in coordination with the County. In summary, the Lonnie Stoval site was deemed exempt pursuant to the construction exemption under PRC Section 1714(b); G. R. Trucking was a recycling operation, and therefore, not subject to SMARA; Steven Hardesty was pending until a site inspection could be coordinated; and, Hanford Sand and Gravel was issued a Notice of Violation on January 31, 2008.
- Chairman Jones accepted the report and no action was taken.

11. 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:

- Bear Creek Aggregates (CA ID #91-09-0001), El Dorado County.
- Chile Bar Slate Mine (CA ID #91-09-0004), El Dorado County.
- Timm Mine (CA ID #91-09-0006), El Dorado County.
- Somerset Sand (CA ID #91-09-0009, El Dorado County.



- Lawyer Pit (CA ID #91-09-0010), El Dorado County.
  - Marin Quarry (CA ID #91-09-0015), El Dorado County.
  - Simpson Lane (CA ID #91-58-0025), Yuba County.
  - Bullards Bar Quarry (CA ID #91-09-00XX), Yuba County.
- Executive Officer Testa indicated that the inspection report for Bullards Bar Quarry would be deferred.

Board Member Hoose moved to accept the inspection reports. Board Member Isham 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)
  - No report was discussed.
- Surface Mining and Standards Committee (Chairman Isham).
  - No report was discussed.
- Minerals and Geologic Resources Committee (Chairman Garner).
  - No report was discussed.
- Policy and Legislation Committee (Chairman Jones)
  - No report was discussed.

## **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.]

No continued business was discussed.

## **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:

No continued business was 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**  
Board 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**

March 13, 2008, was announced as the next meeting and Sacramento as the location.

**XVII. Adjournment**

The meeting was adjourned at 4:10 P.M.

**APPROVED**

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Allen M. Jones, Chairman

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Stephen M. Testa, Executive Officer

