



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

**DRAFT**

Will Conduct a Regular Business Meeting on:

Thursday, April 10, 2008

10:00 A. M.

(Or immediately following the Surface Mining Standards Committee Meeting)

Balboa/Calaveras 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 10:00 A. M., with all members present, with exception of Members Hoose and Tepel, and a quorum was declared.

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

Director Bridgett Luther reported on the following:

- This is a difficult budget year, and the California Geological Survey (CGS) is directly impacted since most of its budget is from the general fund.
- The Assistant Director of the Office of Mine Reclamation (OMR), Mr. Douglas Craig, has moved to the Department of Conservation's Budget Office. Mr. Cy Oggins will be serving as Acting Assistant Director of OMR until a replacement is designated. Several positions are open within OMR at this time.
- She expressed appreciation for the SMGB's public hearing on mining reform.
- Ms. Wendy Harmon briefly summarized AB 1869, which would terminate 88 State Board's and Commissions, including the SMGB, as well as Senator Feinstein's SB 2750 on mining reform (referred to as the "Abandoned Mine Reclamation Act of 2008"). This bill would modify the requirements applicable to locatable minerals on public domain lands, among other purposes.

- Office of Mine Reclamation Report (Oggins) [Information]

Mr. Cy Oggins, Acting Assistant Director with the Office of Mine Reclamation, reported on the following:

- The OMR will provide an overview (as requested) of the Abandoned Mine Lands Unit (AMLU) program when the SMGB meets again in Sacramento.
- He stated that efforts are being made to fill the vacant positions within OMR.

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

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

- The Earthquake probability Working Group completed its work and its hazards forecast report will be issued jointly by the United States Geological Survey, CGS and the Southern California Earthquake Center. The results of this project will be incorporated into Building Codes.
- March 10, 2007, was the 75<sup>th</sup> anniversary of the 1933 Long Beach Earthquake. A commemorative poster is being distributed by CGS reflecting the enacting of the Field Act. The Field Act and its subsequent revisions authorized the Division of the State Architect (DSA) to review and approve all public school plans and specifications, and to furnish supervision of the construction work.
- A recent cluster of earthquakes on the Juan De Fuca Plate are of interest and being monitored and studied.
- Dr. Michael Reichle, Chief Seismologist for CGS, recently retired after 25 years of service.



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

No report provided.

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

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

- SMGB Information
  - Review of Sacramento County's proposed language amending the Sacramento County Code and Zoning Code is underway. Comments are due by April 18, and will be heard by the Sacramento County Board of Supervisors on April 23.
  - Yolo County plans to adopt a Negative Declaration and to take action on the proposed In-Channel Maintenance Mining Ordinance on May 8. The comment period runs from April 1 thru April 30. The Executive Officer has in the past worked closely with the county in developing the proposed ordinance.
  - Several CEQA related documents are currently under review and include those for the Counties of Riverside, Tuolumne, and Santa Cruz, and several cities (Temecula, Riverside, Claremont). In addition, there has been much interest expressed by industry for the SMGB to respond to Draft Environmental Impact Reports (DEIRs) when mineral lands that have been classified by CGS or designated by the SMGB are at risk.
  - The Executive Officer has recently responded in writing to the City of Temecula in regards to the proposed annexation by the City of about 7.8 square miles of what is referred to in large part as the Santa Margarita Area Annexation (Ecological Reserve). The SMGB accepted, at its March 8, 2007, regular business meeting, the classification report prepared by CGS titled "*Mineral Land Classification on the Granite Construction Company Liberty Quarry Site, Temecula, Riverside County*". The proposed quarry is located within the proposed annexation area. The DEIR notes "*no mitigative measures were identified that could reduce the impacts from the loss of mineral resources to below a level of significance*" and that there would be "*significant direct impacts*". It was recommended that the FEIR address the justification for the loss of this mineral resource as required pursuant to PRC Sections 2762 and 2763. The Executive Officer is also reviewing the County of San Diego's Notice on its Statement of Potential Reasons for the Elimination of Access to a State-Designated Area of Identified Mineral Resources Significance (MRZ-2). Comments are due by May 19.
- SMGB as a SMARA Lead Agency
  - The rulemaking packet for the SMGB's adopted regulations for conduct of a vested rights determination upon request from an operator when the SMGB is serving as a lead agency under SMARA was submitted to the Office of Administrative Law (OAL) on March 19. Assuming that OAL does not have



any significant issues with the submittal, the rulemaking packet would be forwarded to the Secretary of State for signature within 30 working days (May 1, 2008).

- All 2007 surface mine inspections have been completed and the remaining inspection reports which pertain to dredging operations with the jurisdiction of the Bay Conservation and Development Commission (BCDC) will be presented to the SMGB for acceptance consideration at its May meeting.
- Comments received during the hearing held by the SMGB at its February 2008 regular business meeting regarding Federal Mining Reform are being reviewed and this information will subsequently be forwarded to the Department of Conservation for review and consideration. Since the public hearing, the SMGB has received comment from the Executive Director of the Northwest Mining Association, Ms. Laura Skaer. The NMA is in favor of “surgical, common-sense” mining reform.
- The Executive Officer recently met with the United States Forest Service (USFS) regional representative, Michael Chaplin, and a meeting is being scheduled to discuss mining reform related matters, and the status of a revised draft MOU between the Department, the SMGB and the USFS. A MOU, signed in 1992, is currently in place between the respective parties.

**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 stated that she attended a meeting of Surveyors, Architects, Geologists and Engineers (SAGE) in El Dorado County, and requested information from SMGB staff about the Folsom bridge project.
- Members Isham, Hoose and Tepel recently attended a local Association of Engineering and Environmental Geologists (AEG) meeting.

**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]

No information by the public was presented.



**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, March 13, 2008, Regular Business Meeting.

Board Member Isham moved to approve the minutes. Board Member Lund seconded and the motion carried with a unanimous voice vote, with Member Garner abstaining.

**IX. Continued Business [Action]**

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

**X. New Business [Action]**

2. Approval of Adjusted Financial Assurance Cost Estimate for the Blue Point Clark Quarry (CA Mine ID # 91-58-0015), Brian Bisnett (Agent/Operator), Yuba County.

Executive Officer Testa stated that the subject surface mining operation is located in Yuba County and has been inspected by the SMGB's inspector since 2003. Following SMGB approval of a "Closure and Reclamation Plan" in 2004, the operator has since completed most of the reclamation obligations, outside of monitoring the revegetation efforts for an appropriate period of time. The financial assurance cost estimate (FACE) has been reviewed and adjusted from \$50,550 to \$7,270. This amount was deemed by OMR and SMGB staff as adequate to complete reclamation of the site.

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

3. Approval of Adjusted Financial Assurance Cost Estimate for the Blue Point Mine (CA Mine ID # 91-58-0021), Brian Bisnett (Agent/Operator), Yuba County.

Executive Officer Testa stated that the subject surface mining operation is located in Yuba County and has been inspected by the SMGB's inspector since 2003. Following SMGB approval of a "Closure and Reclamation Plan" in 2004, the operator has since completed most of the reclamation obligations, outside of monitoring the revegetation efforts for an appropriate period of time. The FACE has been reviewed and adjusted from \$207,189 to \$14,541. This amount was deemed by OMR and Board staff as adequate to complete reclamation of the site.

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



4. Consideration of Administrative Procedures for Conduct of a Vested Rights Determination by the State Mining and Geology Board when Serving as a Lead Agency under SMARA for Western Aggregates (CA Mine ID #91-58-0001), Alan Strong (Agent), Western Aggregates, Inc. (Operator), Yuba County.

Executive Officer Testa stated that at its February 14, 2008, regular business meeting, the SMGB adopted regulations which outlined the administrative procedure for the SMGB to conduct a vested rights determination when serving as a lead agency under SMARA. In preparation for conduct of such determinations, anticipated to commence later this year, several considerations will be before the SMGB with each petition for such determination. In the matter of Western Aggregates, Yuba Goldfields surface mining operation, the administrative record is anticipated to be voluminous and complicated. In response to Western Aggregate's request for a vested rights determination of February 8, 2007, the SMGB, at its March 13, 2008, regular business meeting, decided that the SMGB would serve as administrator of the upcoming hearing, and CGS staff would assist the SMGB in reviewing the Administrative record in concert with, or concurrent with, SMGB staff and a de facto Committee of the SMGB. The SMGB is considering accepting the overall qualifications and experience of certain individuals set forth by the State Geologist to assist the SMGB in the review of the administrative record, and determination of the findings of fact.

- Chairman Jones inquired from State Geologist Parrish as to how secure the proposed team was in regards to budget and availability. Dr. Parrish assured that the team had been consulted and had expressed interest in serving the SMGB in this capacity, and that costs incurred would be passed on to the operator as noted in the proposed SMGB regulations.
- Member Isham expressed his approval of the proposed individuals.
- Chairman Jones concurred that the proposed team is a strong one.

Board Member Isham moved to accept the recommendations set forth by the Executive Officer. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

5. Consideration of Administrative Procedures for Conduct of a Vested Rights Determination by the State Mining and Geology Board when Serving as a Lead Agency under SMARA for Big Cut Mine (CA Mine ID #91-09-00XX), Scott Morris (Agent), Rick Churches (Operator), El Dorado County.

Executive Officer Testa stated that at its February 14, 2008, regular business meeting, the SMGB adopted regulations which outlined the administrative procedure for the SMGB to conduct a vested rights determination when serving as a lead agency under SMARA. In preparation for conduct of such determinations, anticipated to commence later this year, several considerations will be before the SMGB with each petition for such determination. In the matter of the Big Cut Mine surface mining operation, located in El Dorado County, the administrative record is not anticipated to be voluminous and complicated. In response to the operator's request for a vested rights determination of May 25, 2007, the SMGB needs to consider 1) who will serve as administrator of the upcoming hearing: that being a delegated committee of the SMGB, the whole SMGB, an administrative hearing officer, or a



special master, and 2) who would actually review and analyze the official administrative record, and compile the findings of fact, for the SMGB's eventual consideration.

- Mr. Scott Morris, legal counsel for the operator and owner, expressed some concerns in regards to the proposed recommendations set forth in the Executive Officer's report and asked for a deferment until the SMGB's upcoming May 8, 2008, regular business meeting.

Board Member Garner moved to defer the SMGB's considerations until its upcoming May meeting. Board Member Bly-Chester 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]

##### **6. Report on the County of Siskiyou SMARA Program [Information].**

Executive Officer Testa stated that in June 2007, the SMGB received a complaint from an adjacent land owner regarding the Timberhitch Pits located in Siskiyou County, which alleged that the operation has been in a state of non-compliance, and that the County has failed to adequately enforce SMARA and bring this site into compliance. This complaint was subsequently forwarded to OMR, whose staff has been coordinating with the County in response to this complaint. Siskiyou County is one of the larger mining counties in the state, and based on a review of OMR's SMARA data base, the County currently produces sand and gravel, rocks, cinders, bituminous rock, pumice, dimension stone and gold (placer and lode). The County has about 59 mines within its jurisdiction, of which 33 are currently active, 3 closed, 17 reclaimed, and six noted as idle as of December 1, 2002. Mr. Testa indicated that a County representative was not available to address the SMGB on its SMARA program due to budget constraints.

- Member Garner expressed concern about the County's non-attendance, overall performance as a SMARA lead agency in regards to fulfilling their responsibilities in performing surface mine inspections, and financial assurance review and adjustments, and that a thorough review of the County's performance may be needed.
- Member Bly-Chester concurred with the concerns expressed by Member Garner, and explored the potential for a conference call or a written statement or report from the County.
- Chairman Jones deferred this item, since no County representative was available, and directed the Executive Officer to perform a review of the County's actions as a SMARA lead agency, and report back to the SMGB.



7. Report on Public Complaint Pertaining to the Timberhitch Pits (CA Mine ID #91-47-0055), Larry Manley (Agent), C. H. McMillan Sand and Gravel (Operator), Siskiyou County (OMR).

Executive Officer Testa stated that in June 2007, the SMGB received a complaint from an adjacent land owner regarding the Timberhitch Pits located in Siskiyou County, which alleged that the operation has been in a state of non-compliance, and that the County has failed to adequately enforce SMARA and bring this site into compliance. This complaint was forwarded to OMR, whose staff has been coordinating with the County in response to this complaint. Enforcement actions by the County commenced in August 2006. A chronology of enforcement actions taken to date was requested by the SMGB at its March 13, 2008, regular business meeting. Such chronology was provided by OMR and is summarized in the Executive Officer's report. This information was provided for the SMGB's information and no recommendations were offered.

- Mr. Clifton McMillan, operator and representing Butte Creek Minerals, Ltd., expressed his dissatisfaction with the County and it was his opinion that the validity of the complaints for this site and the motivation for the complaints were questionable.

No action was taken by the SMGB.

8. Report on Public Complaint Pertaining to the Pacific Aggregates Nichols Canyon Mine (CA Mine ID #91-33-0098), Dan Lincoln (Agent), Pacific Aggregates (Operator), City of Lake Elsinore, Riverside County (OMR).

Executive Officer Testa stated that in December 2007, the SMGB received a complaint from a surface mining operator within the jurisdiction of the City of Lake Elsinore, which serves as a SMARA lead agency. The complaint by Wyroc, Inc. (Wyroc) pertained to the appropriateness of an entitlement of another surface mining operation also located within the City's jurisdiction. The surface mining operator was not questioning the overall performance of the City as a SMARA lead agency, which has 5 surface mining operations within its jurisdiction and produces rock, sand and gravel, and clay. The SMGB subsequently sought assistance from OMR to review this particular aspect of the allegation. In summary, 1) OMR, in their review, accepted the City's determination that Pacific Clay Products, and its subsidiary, Pacific Aggregates, were not required to obtain a permit based on a vested right, to operate the Nichols Canyon Mine, and 2) the appropriate recourse for Wyroc in this matter, or for any interested individual, would be to 1) exhaust all administrative remedies with the City, and 2) seek redress through the courts, if appropriate. OMR continues to work with the City in regards to any outstanding issues associated with the 1978 Reclamation Plan for the Nichols Canyon Mine.

- Mr. Greg Tenorio, legal counsel for OMR, stated that the subject surface mining operation was a vested operation, although the current site status was uncertain.
- Russell Hildreth, legal counsel for the SMGB, stated that the SMGB could request from the City how its vested rights determination was made, and look at what the City relied on in making such determination.



- Chairman Jones expressed concern over a level playing field, and directed the Executive Officer to request that the City of Lake Elsinore identify the process it underwent, and all information and documents it relied upon, in considering and making a vested rights determination for this surface mining operation.
9. 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:
- CEMEX Lapis Sand Plant (CA Mine ID #91-27-0006), City of Marina.
  - Adobe Road Borrow Pit (CA Mine ID #91-52-0039), City of Red Bluff.
  - Western Aggregates (CA Mine ID #91-58-0001), Yuba County.
  - Cal Sierra Development (CA Mine ID #91-58-0003), Yuba County.
  - Blue Point Clark Quarry (CA Mine ID #91-58-0015), Yuba County.
  - Blue Point Mine (CA Mine ID #91-58-0021), Yuba County.

Executive Officer Testa stated that the SMGB is the SMARA lead agency for the Cities of Marina and Red Bluff, and the County of Yuba. Six SMARA mine inspection reports were being presented for the SMGB's acceptance consideration.

- Senior Engineering Geologist Will Arcand presented a synopsis of the inspection reports for each surface mining operation.
- Members Isham and Bly-Chester made note of the availability of sand in the area of the Cemex Lapis Sand Plant and the ability of sand to be replenished down current.
- Chairman Jones commented on the revegetation efforts for the Adobe Road Borrow Pit (i.e., planting of oak trees) and indicated that site closure could be considered in six months should acceptable survival rates be maintained.

Board Member Bly-Chester moved to accept the inspection reports. Board Member Garner 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)

Executive Officer Testa updated the SMGB on the status of staff review of the slope stability reports for the Richmond Quarry site located in the City of Richmond, and recent activities of the Alquist-Priolo Technical Advisory Committee. Member Isham stated that along with himself, Member Tepel, SMGB staff and site representatives, conducted a site visit to the Richmond (Chevron) Quarry.

- Surface Mining Standards Committee (Chairman Isham).

No report provided.



- Minerals and Geologic Resources Committee (Chairman Garner).

Chairman Garner reported that the Committee will be proceeding with designation and termination of designation of mineral lands in the Claremont-Upland and Palm Springs Production-Consumption Regions located in southern California later this year.

- Policy and Legislation Committee (Chairman Jones)

No 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**

No Executive Session was held since no new information on pending litigation required discussion.

### **XVI. Announcements of Future Meetings**

May 8, 2008, was announced as the next meeting and San Francisco as the location.

### **XVII. Adjournment**

The meeting was adjourned at 12:15 P.M.

**APPROVED**

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Allen M. Jones, Chairman

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Stephen M. Testa, Executive Officer

