



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



For Meeting Date: February 5, 2009

Agenda Item No. 9: Consideration for Conduct of a Vested Rights Determination for Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC, (Operator), Yuba County.

BACKGROUND: The State Mining and Geology Board (SMGB) serves as a Lead Agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in Yuba County. In a recent ruling, the California Court of Appeal, Third Appellate District, held that a proper notice and hearing was required for any vested rights determination, and suggested that when the SMGB is acting as the SMARA Lead Agency, the SMGB has the responsibility to conduct the public hearing and make the vested rights determination. On August 14, 2008, the Office of Administrative Law approved the proposed regulations, and such regulations were enacted on September 13, 2008. The SMGB is deciding who will serve as the hearing officer during conduct of a public hearing for a vested right determination in the matter of Western Aggregates, LLC, surface mining operation located in Yuba County.

REGULATORY AUTHORITY AND CONSIDERATIONS: As part of the administrative procedures for conduct of a vested rights determination when the SMGB serves as a lead agency pursuant to SMARA, certain considerations need to be made by the SMGB upon receipt of a request by the claimant. Article 15 California Code of Regulations (CCR) Section 3957 provides considerations for selection of the hearing officer, and states:

"The Board may delegate conduct of a vested rights public hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Board may also delegate conduct of a vested rights public hearing to an administrative hearing officer or special master.

As soon as practicable after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952, and in no event more than 45 business days from such conclusion, the Board, or a designee of the Board shall decide whether a vested rights public hearing will be conducted by the Board, a committee of the Board, an administrative hearing officer selected by the Board, or a special master selected by the Board."

BACKGROUND: Western Aggregates, LLC, filed a vested right Request for Determination on November 5, 2008. The filing included an Administrative Record, affidavit, and



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processing fee. Pursuant to the SMGB's regulations, Article 15 CCR Section 3954, a determination of jurisdiction was considered by the Chairman. A determination that the request was within the jurisdiction of the SMGB was made by the Chairman on December 1, 2008. A mailing of the Notice of Pending Determination, pursuant to Article 15 CCR Section 3955, was published on January 6, 2009, and amended on January 12, 2009. An estimated cost for determination of findings, costs anticipated to be incurred for the SMGB's legal counsel, and expenses anticipated to be incurred by the SMGB, were provided to the claimant representative on January 27, 2009. CGS plans to commence review of the Administrative Record, and make a determination of findings upon receipt of funds from the claimant.

OPTIONS FOR THE SMGB'S CONSIDERATION: Several options are available to the SMGB when serving as a lead agency pursuant to SMARA and when conducting a vested rights determination. The SMGB can decide to have the public hearing conducted by the SMGB, at least two members of the SMGB as appointed by the Chairman, an administrative hearing officer selected by the SMGB, or a special master selected by the SMGB.

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer recommends that the SMGB decide to serve as the hearing officer when conducting a vested rights public hearing when serving as the lead agency pursuant to SMARA."

SUGGESTED MOTION LANGUAGE: The Executive Officer offers the following motion for the SMGB's consideration:

Motion for the SMGB to serve as hearing officer:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board serve as the hearing officer when conducting the public hearing for a vested rights determination for Western Aggregates, LLC. surface mining operation located in Yuba County.

Respectfully submitted:

Stephen M. Testa
Executive Office