



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



For Meeting Date: January 14, 2010

**Agenda Item No. 3: Public Hearing (Continued): Consideration to Defer Determination of Limitation of Vested Rights, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.**

**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 determine that a preponderance of evidence existed that demonstrated Western has vested rights for all Sections with exception to Sections 25 and 30, and the southwest corner of Section 34. The SMGB also noted that it would consider limitations in terms of annual production associated with this determination of vested rights to be discussed at the SMGB's January 2010 regular business meeting to be held in the City of Marysville, California, and that Western would submit an amended reclamation plan for all of their surface mining operations within 90 days upon a determination of such limitations.

**REGULATORY AUTHORITY:** California Code of Regulations (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 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*



*Executive Officer's Report*

*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 3565, 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."*

**CONSIDERATION BEFORE THE SMGB:** Since the SMGB is meeting in Southern California in January 2010, the SMGB is being requested to defer the consideration of limitations in terms of annual production associated with the granting of vested rights until its regular business meeting to be held on February 11, 2010, in the City of Marysville, California.



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

*Motion: To defer public hearing:*

*Mr. Chairman, in light of the information before the SMGB today, I move that the Board defer the consideration of limitations in terms of annual production associated with the granting of vested rights to Western Aggregates, until its regular business meeting, to be held on February 11, 2010, in the City of Marysville, California.*

Respectfully submitted:

---

Stephen M. Testa  
Executive Officer