



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

Policy and Legislation Committee

Brian Baca, Chair; Erin Garner; Kathy Lund

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CONFORMED MINUTES

THE POLICY AND LEGISLATION COMMITTEE

(Brian Baca, Committee Chair; Erin Garner)

OF THE

STATE MINING AND GEOLOGY BOARD

Conducted a Meeting on:

Tuesday, September 8, 2011

9:00 A. M.

Assembly Hearing Room #444

State Capitol

Sacramento, CA 95814

Draft

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 requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 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.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's

report, at the time of the public hearing. Such two-page summaries would be included as part of the administrative record before the SMGB. This policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

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

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

I. Call to Order (Baca)

The meeting was called to order at 9:15 A M. by Committee Chairman Baca, with Member Garner and Member Lund present, and a quorum was declared.

II. Roll Call and Declaration of a Quorum

III. Consent Items [Action]

[All the items appearing under this section will be acted upon by the committee by one motion and without discussion; however, any committee 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 26, 2011, Committee Meeting.

Continued.

IV. Continued Business [Action]

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

2. Discussion of Annual Fee Schedule for Mines Subject to the Surface Mining and Reclamation Act (SMARA; Public Resources Code Sections 2710 et seq. and 2207). Executive Officer Testa stated that PRC Section 2207(d)(2)(A) requires fees to be calculated on an equitable basis reflecting the size and type of the operation, the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan. Currently, most surface mining operations fall into two categories and small operators commonly pay as much as large ones. All industrial mineral sites (i.e., aggregate sites) are now at the maximum fee amount with exception to those surface mining operations producing 100 tons or less, all gold and silver producers are at the maximum fee amount with exception to those producing 10 ounces or less, and all base and other metals producers are at the maximum fee amount with exception to those producing 10 pounds or less. Several options are available to make the fee schedule more equitable and include 1) a legislative change to increase the current ceiling amount of \$4,173,834; 2) provide for a different formula in calculating the annual mine fees with a legislative change in the ceiling amount; 3) provide for a different formula in calculating the annual mine fees with no change in the ceiling amount; and 4) formulate another approach in determining annual mine fees (i.e., fixed amount per disturbed or land or acreage approved in the reclamation plan). The Office of Mine Reclamation (OMR) previously provided some options and scenarios and has since refined its evaluation.



- Jim Pompy, Assistant Director and Chief of the Office of Mine Reclamation, and Melody Williamson with OMR's Reporting and Compliance Unit, provided options and scenarios for consideration by the Committee.
- Comments were provided by Adam Harper representing the California Construction and Industrial Materials Association (CalCIMA), and Julie Mann, President of Brubaker-Mann.

Committee Member Tepel moved to continue discussion on this matter at the Committee's next scheduled meeting. Committee Chairman Baca seconded and the motion was unanimously approved.

3. Discussion of Proposed Regulatory Language for Due Process for the Placement of Mining Operations on, or Removal from, the AB 3098 List.

Executive Officer Testa noted that OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under California's PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation, that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies. Although what is required to be on the list is clearly spelled out, procedures for removal or subsequent reinstatement to the list are less clearly defined. Since July 2010, the Committee has been discussing the need for a due process for placement, removal, and reinstatement of operators on the AB 3098 List. Preliminary regulatory language has been prepared. This language was first made available to this Committee for review and discussion, and to hear comment from stakeholders, at its February 10, 2011, meeting. Based on preliminary comments received to date, the language was subsequently modified (referred to as Revision 2.0). Additional comments have since been received.

- Comment was provided Jim Good, attorney, who stated that removal from the list was the main focus, and not a need for public hearings and the inappropriate mechanism that allows the public to come forward and petition for an operator's removal from the AB 3098 List.
- John Hecht, consultant with Sespe Consultants, expressed support of Jim Good's comments. This should not be a discretionary process but a ministerial process, but rather you either are on the list or not, depending on whether certain criteria are met (i.e., annual financial assurances are adjusted or not).
- Chairman Baca stated for discussion purposes that the SMGB is mandated to serve as a forum for public redress and all members of the SMGB serves the public interest, thus, what harm would there be if the Chairman of the SMGB determines whether substantive evidence exist with a set of standards or criteria to make such determination, in review of a public complaint or petition? Something has to be done in regards to this process. In many cases even ministerial act by a decision-making body can be appealed. There needs to be some opportunity for the public to have some input. This is not a new discretionary process or an opportunity for the public to simply oppose a surface mining operation. Written commentary was encouraged, including any proposed preferred language changes, from Committee Chairman Baca

Committee Chairman Baca directed the Executive Officer to continue this matter and put this matter on the November agenda in the appropriate form.



V. New Business [Action]

4. Discussion of Potential Limits on the on the Use of State Highways for the Transport of Mineral Materials as Part of the Local Agency Permitting Process.

Executive Officer Testa made reference to the Executive Officer's report which stated that under the Surface Mining and Reclamation Act (SMARA), Public Resources Code (PRC) Section 2764(a), the importance of "*access routes serving*" surface mining operations is recognized. As part of the permitting process for new or expanded mining facilities, local land use agencies (cities and counties) must conduct environmental review in accordance with the California Environmental Quality Act (CEQA). As part of this review, the impacts of new traffic generated by the surface mining facility must be identified and disclosed. It is common that the conditions of approval (or CEQA mitigation measures) include limits (e.g. truck trips per day) on the use of a State highway to transport mineral materials. Where there are identified congestion issues but no specific public safety hazard, a limitation imposed by a local agency on the commercial use of the State highway may be inappropriate.

- Committee Member Baca stated that it is apparent in several jurisdictions that lead agencies (i.e., counties) as part of their environmental analysis under the California Environmental Quality Act (CEQA) analyze for truck trips and congestion, but in some cases they may inappropriately limit trucks on state highways, notwithstanding hazards and safety related concerns. Only talking specifically the limiting use of commerce arteries to mineral materials trucking on state highways which may be beyond the local agency authority.
- Rick Thalhammer, Deputy Attorney General and legal counsel for the SMGB, discussed implications under the CEQA and clarification of the term regulation as it applies environmental impacts in regards to traffic impacts. A legislative change would be required.

Following discussion, Committee Chairman Baca requested that this matter be directed to the whole SMGB and invited commentary.

VI. 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 Committee 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 Good of the Meeting information were discussed.

VII. Continuing Business [Information]

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

No continued business was discussed.

VIII. New Business [Information]

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

No new business was offered.



IX. Announcements of Future Meetings

The next meeting of the Policy and Legislation Committee was scheduled to be held in Lake Elsinore on November 10, 2011.

X. Adjournment

The Committee meeting was adjourned at 10:30 P.M.

APPROVED

Brian Baca, Committee Chairman

Stephen M. Testa, Executive Officer

