



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, March 14, 2013

9:30 A. M.

LOCATION:

Fresno County Farm Bureau  
Conference Room  
1274 W. Hedges Ave.  
Fresno, CA 93728

Wednesday, February 13, 2013

## 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.

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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 (Gonzalez)**

**II. Pledge of Allegiance**

**III. Roll Call and Declaration of a Quorum**

The meeting was called to order at 10:00 A. M. by Chairman Gonzalez, with Members Baca, Barry, Gavric, Lane and Reding present, and Member Wyatt absent, and a quorum was declared.

**IV. Director's Report (Nechodom, Department of Conservation) [Information]**

On behalf of Director of the Department of Conservation, Dr. Mark Nechodom, Chief Deputy Director Jason Marshall reported on the following:

- Summarized select budget considerations and proposed legislation of general interest
- Recognized the last meeting for board members Baca, Lane and Wyatt, and expressed the DOC's appreciation of their service.
- Acknowledged the re-appointment of Member Lane and appointment of two new SMGB members: Negar Noushkam and George Kenline.

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

No report provided

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

Acting Assistant Director of the Office of Mine Reclamation (OMR), Ken Trott, reported on the following:

- Remarkd on upcoming inspection workshop and a task force to be assembled to address SMARA lead agency matters.
- Efforts to amend a Memorandum of Understanding between the Bureau of Land Management, United States Forest Service, Department of Conservation and SMGB continues.
- Enforcement action, notably, issuance of administrative penalties to the operator of the Red Ink Maid Mine, is being considered and may be before the SMGB in the near future.
- Summarized Abandoned Mine Land Unit current inventory efforts and a move toward remediation.



- Discussed considerations in modernizing OMR's SMARA database.

**V. Chairman's Report (Gonzalez) [Information]**

No report provided.

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

Executive Officer Testa reported on the following:

- Status of rulemakings in progress was provided. Preparation of rulemaking packets for Palm Springs and San Gabriel Production-Consumption Regions continues. A public hearing to receive comment on the proposed designation and termination of designation within the Stockton-Lodi P-C Region will be scheduled in April or May.
- A summary of proposed legislation of interest to the SMGB was provided. Any comments SMGB members may have can be provided directly to the Executive Officer, and such comments will be forwarded to the DOC.
- Executive Officer Testa held meetings with the Counties of Mendocino and Del Norte to discuss specific issues related to the 45-Day Notice to Correct Deficiencies previously issued, and made visits to select surface mining operations.
- Executive Officer Testa made site visits to RiverPark B and Best Rock at Grimes Canyon, both located in the County of Ventura, in preparation of items that may be before the SMGB.
- A meeting is to be scheduled with the DOC to discuss SMGB budget issues.
- Scheduled professional activities of the Executive Officer were summarized.

**VII. 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.]

- Chairman Gonzales remarked that operator John Kolsh wanted to discuss OMR's Lead Agency Review Team process. No significant discussion was held.

**VIII. 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 Good of the Meeting information was presented.

**IX. 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, February 13, 2013 Regular Business Meeting.

Board Member Lane moved to conditionally approve the minutes, with revision. Board Member Barry seconded and the motion carried with a unanimous voice vote, with Member Wyatt abstaining.

**X. Continued Business [Action]**

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



2. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the City of Taft Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).

Executive Officer Testa noted that at its October 11, 2012 regular business meeting, the SMGB, based on the October 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on the City of Taft (City), moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the City pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on October 16, 2012. The City has one surface mining operation (GPSI Taft Plant; CA Mine ID #91-15-0074) within its jurisdiction. The primary commodity is sand and gravel, and the current status is deemed active. From a review of the City in its administration of SMARA, several deficiencies were noted and included, but are not limited to, failure to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations, and failure to take appropriate enforcement actions. At its February 13, 2013 regular business meeting, the SMGB reviewed and discussed the response provided by the City of Taft, and continued the matter since the City did not have a representative present.

- Derek Cole, legal counsel representing the City, addressed the current status, and the efforts being implemented by the City and operator.

Board Member Gavric moved to note that the City has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and can address remaining deficiencies to the satisfaction of the SMGB by working with the Executive Officer and that the Executive Officer bring this matter back to the SMGB should any issues remain unresolved. Board Member Barry seconded and the motion carried with a unanimous voice vote.

3. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mariposa Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).

Executive Officer Testa noted that at its June 14, 2012 regular business meeting, the SMGB, based on the May 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on Mariposa County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County of Mariposa (County) pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on June 21, 2012, and a response from the County was received on August 23, 2012. At its September 13, 2012 regular business meeting, and based on review of the County's response to the Notice, the SMGB moved to continue this matter to March 2013. The SMGB also directed the County to be prepared to address the status of its SMARA program, the County's efforts to incorporate a funding mechanism into its ordinance to support such program, and for the County to forward copies of the next round of inspection reports to the SMGB for review by the Executive Officer.

- Sarah Williams, Planning Director for Mariposa County, summarized the efforts being taken by the County to date.

Board Member Gavric moved to note that the County has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and can address remaining deficiencies to the satisfaction of the SMGB by working with the Executive Officer and that the Executive Officer bring this matter back to the SMGB should any issues remain unresolved. Board Member Lane seconded and the motion carried with a unanimous voice vote.



**XI. New Business [Action]**

4. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the City of Bakersfield Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code Section 2774.4(a).

Executive Officer Testa noted that at its regular business meeting held on December 13, 2012, the SMGB received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated November 21, 2012, on the overall status and performance of the City of Bakersfield (City) in implementing its Surface Mining and Reclamation Act (SMARA) program. One surface mining operation is reported to exist within the jurisdiction of the City. The operation, referred to as The Sand Pit (CA Mine ID 91-15-0101), is an abandoned sand and gravel mine. Based on deficiencies identified in the LART report, the SMGB at its December 13, 2012 regular business meeting decided to issue a 45-Day Notice to Correct Deficiencies (Notice) to the City. The Notice was issued on December 20, 2012. The review of the City's SMARA program was performed in 2011, with the LART report completed and forwarded to the City on May 21, 2012. The City responded to the LART report on June 18, 2012. In correspondence dated February 12, 2013, the City informed OMR that based on an inspection conducted on January 25, 2013, the site has been reclaimed in accordance with the approved reclamation plan. There is no financial assurance in place, thus, request for release of a financial assurance mechanism is no longer germane to the site closure request.

Board Member Baca moved to continue this matter for 30 days. Board Member Lane seconded and the motion carried with a unanimous voice vote.

5. Discussion of Compliance Status with the Surface Mining and Reclamation Act (SMARA) Pertaining to the Princeton Pit (CA Mine ID #91-24-0037), Chuck Falkenstein (Agent), Central Valley Concrete, Inc. (Operator), County of Merced.

Executive Officer Testa noted that the SMGB and Office of Mine Reclamation (OMR) on November 15, 2012, received correspondence from the Merced County Farm Bureau (Bureau) expressing concerns pertaining to reclamation efforts for the Princeton Pit (CA Mine ID #91-24-0037), located in the County of Merced (County). The Princeton Pit incorporates 38 acres and is characterized as a streambed or gravel bar skimming and pitting operation. The primary product is material for fill. The reclamation plan for the subject site was approved on August 12, 1998, and the site is currently closed with no intent to resume. The end use is described as "*viable agriculture*." As of the end of 2011, one acre remained disturbed. A financial assurance amount of \$12,500 existed as of July 21, 2000. The financial assurance cost estimate was last reviewed on November 15, 2012, and based on review of OMR's SMARA database, the financial assurance was noted to expire as of July 21, 2011. Pursuant to the SMGB's Administrative Procedure PP96-02, in situations where a lead agency does not act to insure SMARA compliance, and where irreparable environmental damage or substantial endangerment to the public health is not imminent, the SMGB will meet in open session at a regular business meeting to decide upon a course of action. The SMGB's initial actions may consider 1) request a technical review by the DOC, 2) designate the Executive Officer to monitor and investigate the situation, or 3) request, by resolution, that the Attorney General or the Director of the DOC take appropriate legal action. The SMGB will consider possible action in accordance with the SMGB's Administrative Procedure PP96-02.

- Jason Holley, property owner
- Chuck Falkenstein, General Manager of Central Valley Concrete



Board Member Baca moved to continue this matter for 60 days and direct the Executive Officer to investigate, conduct a site visit and report back to the SMGB. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

6. **Public Hearing:** Appeal to the State Mining and Geology Board Regarding Approval by the County of Fresno of the Carmelita Mine and Reclamation Project (Colony Land Company, LP, Operator), County of Fresno, Pursuant to Public Resources Code Section 2775.

**(Public hearing will begin at 1:30 p.m.)**

Executive Officer Testa noted that on October 12, 2012, Petitioner Friends of the Kings River (Friends) filed with the SMGB an Intent to Appeal a decision by the County of Fresno (County) to approve a reclamation plan and Conditional Use Permit for the Carmelita Mine and Reclamation Project (Project) on land designated by the SMGB to contain regionally significant mineral resources on the grounds that the permit and reclamation plan for the Project were not in compliance with the Surface Mining and Reclamation Act (SMARA) and the County's Zoning Ordinance 858. Friends have petitioned the SMGB to take jurisdiction for the appeal pursuant to SMARA, and specifically, PRC Section 2775(a). Pursuant to PRC Section 2775(c), the SMGB shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the County is supported by substantial evidence in the light of the whole record. If the SMGB determines the decision of the County was not supported by substantial evidence in the light of the whole record it shall remand the appeal to the County and the County shall schedule a public hearing to reconsider its action.

- Marsha Burke, legal counsel for Friends, presented on behalf of the Petitioner.
- Zachary Redmond, Senior Deputy County Counsel; Will Kettler, Division Manager of the Development Services Division; and Augustine Ramirez, Senior Engineer, presented on behalf of the County.
- Patrick Mitchell, legal counsel, and Dave Brown, consultant, presented on behalf of the operator.
- Public members presenting included David Cehrs, Hydrologist; Radley Reep, Steve McDonald, Michelle McDonald, and Michael Weinberg.

Board Member Baca moved to close the public hearing. Board Member Lane seconded and the motion carried with a unanimous voice vote.

Board Member Baca moved to grant the appeal, deny the County's approval of the reclamation plan on procedural grounds, and remanded the reclamation plan back to the County for approval consideration upon completion of the reclamation plan. Board Member Lane seconded and the motion carried with a unanimous voice vote.

7. Approval of the State Mining and Geology Board's Annual Report for 2011-2012. Executive Officer Testa noted that existing law requires various written reports to be prepared and submitted by State and local agencies to the Legislature and the Governor. The SMGB is legislatively mandated to prepare annual reports to the Legislature pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). The Surface Mining and Reclamation Act of 1975 (SMARA), Public Resources Code (PRC) , Division 2, Chapter 9, Section 2710 et seq. requires the SMGB to provide an annual report on actions taken pursuant to SMARA, and specifically, PRC Section 2717(a) states "*The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall*



*include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.”* Executive Officer Testa provided a progress report.

No action taken.

**XII. Special Reports and Department Presentations [Possible Action]**

[Based on these Reports, the Chair may instruct SMGB staff to initiate administrative actions.

8. Acceptance of Inspection Reports Pursuant to PRC Section 2774(b) for the Following Surface Mining Operations as Being in Accordance with the SMGB's Requirements:
  - Richmond (Chevron) Quarry (CA Mine ID #91-07-0006), City of Richmond.
  - Weber Creek Quarry (CA Mine ID #91-09-0002), County of El Dorado.
  - Diamond Quarry (CA Mine ID #91-09-0003), County of El Dorado.
  - Somerset Sand Mine (CA Mine ID #91-09-0009), County of El Dorado.
  - Lawyer Pit (CA Mine ID #91-09-0010), County of El Dorado.
  - Lapis Sand Plant (CA Mine ID #91-27-0006), City of Marina.
  - Big Gun Quarry (CA Mine ID #91-31-0013), City of Rocklin.

Board Member Gavric moved to accept the inspection reports. Board Member Baca seconded and the motion carried with a unanimous voice vote.

**XIII. SMGB Committee Reports [Information and Possible Action]**

- Geohazards Committee (Chairperson Lane)
  - Alquist-Priolo Technical Advisory Committee (Executive Officer Testa)
- Minerals and Geologic Resources Committee (Chairperson Wyatt)
- Policy and Legislation Committee (Chairperson Baca)
  - Considered proposed regulatory language for mandatory notification and re-certification of amended mining ordinances.
  - Considered proposed changes to inspection form MRRC-1.
- Surface Mining and Standards Committee (Chairperson Lane)
  - Considered proposed amended reclamation plan for the Super Creek Quarry adequate for purpose of conducting the environmental study.

**XIV. 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 continuing business was discussed.

**XV. 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 new business was offered.

**XVI. 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. Pending Litigation to which the SMGB is a party:
  - 1. Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.
  - 2. A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
  - 3. William Calvert, Elfriede Calvert and the Yuba Goldfields Access Coalition v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000530, Sacramento County Superior Court.
- B. Possible Litigation involving the SMGB.
- C. Staff Budget

**Re-open Regular Business Session, Announce Results of Executive Session**

No Executive Session held.

**XVII. Announcements of Future Meetings**

April 11, 2013, was announced as the date of the next meeting, and within the County of San Luis Obispo as the location.

**XVIII. Adjournment**

The meeting was adjourned at 3:30 P.M.

**APPROVED**



Ignacio Gonzalez, Chairman



Stephen M. Testa, Executive Officer

