



# 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, February 11, 2010

8:30 A. M.

The Yuba County Government Center  
Board of Supervisor's Hearing Room  
915 8<sup>th</sup> Street  
Marysville, CA 95901

## 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 (Garner)**

The meeting was called to order at 8:45 A. M. by Chairman Garner, with all members present, with exception to Member Lane, and a quorum was declared. Member Lund departed at 1:15 P.M.; whereas, Chairman Garner departed at 3:30 P.M.; a quorum was maintained.

**II. Pledge of Allegiance**

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

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

On behalf of Director Bridgett Luther, Chief Deputy Director Derek Chernow, reported on the following:

- Barbara Lundburg was recently appointed to the SMGB, and will be filling the specialty position of landscape architect.
- The Department of Conservation's (Department) new Wildly Important Goals (WIG's) for 2010 were recently established.
- The Department is undergoing several drills set forth by the administration and the Natural Resources Agency.

- Office of Mine Reclamation Report (O'Bryant) [Information]

Dennis O'Bryant, Assistant Director, Office of Mine Reclamation (OMR), reported on the following activities:

- The Abandoned Mines Land Unit (AMLU) continues in its inventory efforts, and received a grant from BLM for the closure of abandoned lands features on federal land.
- OMR continues in its compliance and enforcement efforts for the New Era Mine located in Butte County.
- Compliance and enforcement efforts are also being implemented for Inyo, Sacramento and Ventura Counties.
- OMR's Lead Agency Review Team (LART) continues in its efforts to review certain SMARA lead agencies, and addressing the Executive Officers comments previously provided for Sutter County.

Member Tepel inquired as to the status of OMR's investigation pertaining to the City of Lake Elsinore which was raised at the SMGB's January 14, 2010, regular business meeting by certain members of the public. O'Bryant stated that a site visit will be performed this month.

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

Dr. John Parrish, State Geologist and Director of the California Geological Survey, reported on the following activities:

- CGS has been responding to debris flows which have occurred on federal lands, but impacting homes located on state lands. About 86 homes have been severely damaged.
- CGS, along with the United States Geological Survey, among others, is involved in a new drill or shakeout, in preparation for a 1000 year storm.
- CGS office space in Sacramento has been consolidated.
- CGS will be celebrating its 150<sup>th</sup> anniversary in 2010, with events scheduled for later this year. CGS plans to publish a pair of statewide maps, a new fault map, and will be holding a special symposium at the upcoming joint meeting of the Geological Society of America Cordilleran-American Association of Petroleum Geologists Pacific Section later this spring.



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

- Recognition of Distinguished Service for Susan Kohler (California Geological Survey)  
Chairman Garner recognized the distinguished service of Susan Kohler with the California Geological Survey.

- Recognition of Distinguished Service for Cheryl Bly-Chester (SMGB)  
Chairman Garner recognized the distinguished service of former SMGB Member and Vice Chair Cheryl Bly-Chester.

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

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

- While CGS will be celebrating its 150th anniversary, year 2010 is also the SMGB's 125<sup>th</sup> anniversary, and is working closely with CGS.
- A consideration of vested rights for the Big Cut Mine, located in El Dorado County, will commence in April 2010. The special public hearing will take place in the City of Placerville.
- All 2009 surface mine inspections have been completed.
- The SMGB's annual report for 2008-2009, covering the period from July 2000-June 2009, has been completed and under review, for adoption consideration at the SMGB's March 11, 2010, regular business meeting.
- An orientation for new SMGB Member Lundberg is being scheduled. Member Lundberg will be participating in the SMGB's, March 11, 2010, regular business meeting.

#### **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 Licari stated that he was contacted by the law firm of Taylor and Wiley alleging a conflict of interest in the matter of the SMGB's consideration of vested rights for Western Aggregates, LLC, surface mining operation in the Yuba Goldfields, County of Yuba.
- Member Lund stated that she was contacted by the law firm of Taylor and Wiley alleging a conflict of interest in the matter of the SMGB's consideration of vested rights for Western Aggregates, LLC, surface mining operation in the Yuba Goldfields, County of Yuba.
- Rick Thalhammer, Deputy Attorney General and legal counsel for the SMGB, addressed the SMGB of such allegations, and that both Member Licari and Lund could participate in the matter before the SMGB pertaining to Western Aggregates vested rights, if so desired.

#### **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 Good of the Meeting information was provided.



**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, January 14, 2010, Regular Business Meeting.

Board Member Bly-Chester moved to approve the minutes. Board Member Wyatt seconded and the motion carried with a unanimous voice vote.

**IX. Continued Business [Action]**

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

2. **Public Hearing:** Consideration of Limitations on Vested Rights Pertaining to Annual Production, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.

Executive Officer Testa stated that 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, including its current surface mining operations, located in the Yuba Goldfields, County of Yuba. At its September 11, 2009, special public hearing, the SMGB determined that a preponderance of evidence existed that demonstrated Western's vested rights for all Sections, with exception to Section 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 the SMGB's determination of vested rights. Two options are before the SMGB: either imposing a limitation or restriction on annual production associated with Western's vested rights, or not.

- Kerry Shapiro, legal counsel for Western, made a presentation to the SMGB outlining the pros and cons of imposing a limitation on annual production.
- Don Laurius, representing Western, spoke on behalf of Western.
- Robert Otis, mechanic for Western, spoke on behalf of Western.
- Ted Franklin, legal counsel for Calvert and the Yuba Goldfields Access Coalition, spoke in opposition of the recognition of a vested rights for Western.
- Mary Griego, Yuba County Board of Supervisor Member, spoke as an individual in regards to the SMGB's pending consideration.

Board Member Baca moved to not impose a limitation or restriction on annual production for Western's vested surface mining operations in the Yuba Goldfields. Board Member Lane seconded and the motion carried with a unanimous voice vote.

**X. New Business [Action]**

3. Approval of Amendment to Administrative Procedures for Submittal of Documents to the State Mining and Geology Board.

Executive Officer Testa stated that at its November 12, 2009, Policy and Legislation Committee, revisions to the SMGB's policy for the submittal of documents for items coming before the SMGB or its Committees were discussed. Based on those discussions, draft language was proposed and later revised at the SMGB's January 14, 2010, regular business meeting. Revised language is being considered by the SMGB.



- Adam Harper, Director of Policy Analysis for the California Construction and Industrial Materials Association (CalCIMA) expressed considerations and concerns, and the need for some due process.
- Mark Harrison, attorney, also expressed considerations the SMGB should consider prior to finalizing its policy.

Board Member Baca moved to defer approval, and have this matter returned to the Policy and Legislation Committee for further consideration. Board Member Lund seconded and the motion carried with a unanimous voice vote.

4. Issuance of an Order to Comply to Lawyer Pit (CA Mine ID #91-09-0010), Archie's Trucking and Backhoe (Operator), Archie Lawyer (Agent), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

Executive Officer Testa stated that the SMGB was the SMARA lead agency for El Dorado County. In May 2009, the SMGB approved an adjusted financial assurance cost estimate in the amount of \$54,842. A Notice of Violation was issued and subsequently received by the operator on November 4, 2009. No estimate has been received to date. The SMGB is considering issuance of an Order to Comply, and directing the Executive Officer to schedule a public hearing pursuant to PRC Section 2774.1(b).

Board Member Licari moved to issue the Order to Comply and schedule a public hearing. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

5. Considerations Following Review of an Amended Reclamation Plan for Richmond (Chevron) Quarry (California Mine ID # 91-07-0006), Dutra Materials (Operator), Mr. Brian Peer (Agent), City of Richmond.

Executive Officer Testa summarized current issues associated with the operator's submittal of an amended reclamation plan. At its July 9, 2009, regular business meeting, the SMGB moved to accept the operators proposed setback, monitoring and maintenance slope reclamation alternative (Alternative 5), and directed the operator to prepare an amended reclamation plan describing how the existing cut slope will be reclaimed to a stable condition with a factor of safety appropriate for the proposed end use, and to adjust the financial assurance, as appropriate. An amended reclamation plan, dated November 6, 2009, has been submitted and subsequently reviewed by Department of Conservation (DOC) Office of Mine Reclamation (OMR) and SMGB staff. The strategy for reclamation remains inconsistent with SMARA or the SMGB's regulations.

- Will Arcand, Senior Engineering Geologist for the SMGB, provided a synopsis of site conditions.
- Jim Pompy, Manager of the Reclamation Unit for the OMR, provided a review of the SMGB's performance standards requirements.
- Chris Locke, legal counsel for Dutra Materials, spoke on behalf of Dutra Materials.
- Mark Harrison, legal counsel for Chevron, spoke on behalf of Chevron.
- Mignone Wood, consultant with LSA representing Dutra Materials, was also available for questions

Board Member Baca moved to reject the proposed reclamation plan and directed the operator to prepare an amended reclamation plan for the site, and adjust the financial assurance as appropriate. Board Member Tepel seconded and the motion carried, with Member Licari opposed.



**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 AB 3098 Program (OMR). [Information]

Executive Officer Testa stated that OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to 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. The SMGB is considering whether, based on the information it has before it, direct this matter to the Policy and Legislation Committee for further discussion, and consideration of a regulatory amendment, to address due-process related concerns.

- Dennis O'Bryant, Deputy Director for the Department of Conservation, Office of Mine Reclamation (OMR) summarized the procedures undertaken by OMR when considering which sites should be on the AB 3098 List, and which ones should be removed or reinstated.
- Adam Harper, Director of Policy Analysis for the California Construction and Industrial Materials Association (CalCIMA) expressed the need for due process considerations.
- Tom Henry, attorney for Pacific Rock, also expressed the need for due process and timeliness when a site is being removed and being considered for reinstatement.

7. Report on Legislative Process (DOC). [Information]

Executive Officer Testa introduced Marni Weber, Legislative Director with the Department of Conservation, who presented a synopsis of the state's legislative process.

No action was consideration by the SMGB.

8. 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:

- Western Aggregates (CA Mine ID #91-58-0001), County of Yuba.
- Cal Sierra Development (CA Mine ID #91-58-0003), County of Yuba.
- Sperbeck Quarry (CA Mine ID #91-58-0004), County of Yuba.
- Teichert Hallwood (CA Mine ID #91-58-0006), County of Yuba.
- Dantoni Pit (CA Mine ID #91-58-0011), County of Yuba.
- Teichert Marysville (CA Mine ID #91-58-0019), County of Yuba.
- Ella and Platter Borrow Sites (CA Mine ID #91-58-0026), County of Yuba.

Board Member Baca moved to defer this matter to the March 11, 2010, regular business meeting. The other Board members agreed and the item was deferred.



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

- Geohazards Committee (Chairperson Bly-Chester)
  - Alquist-Priolo Technical Advisory Committee (Chairperson Tepel)
- Surface Mining and Standards Committee (Chairperson Lund)
- Minerals and Geologic Resources Committee (Chairperson Tepel)
- Policy and Legislation Committee (Chairperson Baca)

No committee reports 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.]

No continuing business discussed.

**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:

No new business 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**

SMGB's Legal Counsel, Mr. Richard Thalhammer, Deputy Attorney General, announced that the SMGB met in closed session, where he advised several Board members regarding allegations of conflict of interest in the Western Aggregates determination. He stated that there was no legal basis for those challenges and the board members were not legally required to recuse themselves. In addition, he announced that Member Tepel had disclosed that he had received a check from a person that was a witness in the Western Aggregates Determination proceedings, that was intended for a scholarship foundation for which he is chairperson.



**XVI. Announcements of Future Meetings**

March 11, 2010, was announced as the next meeting, and Sacramento as the location.

**XVII. Adjournment**

The meeting was adjourned at 4:00 P.M.

**APPROVED**

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Erin Garner, Chairman

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Stephen M. Testa, Executive Officer

