



# 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, December 9, 2010

10:00 A. M.

City Council Chambers  
Palm Springs City Hall  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

## 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 (Garner)**

**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 Garner, with Member Lane absent, and a quorum was declared.

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

Acting Director Derek Chernow reported on the following:

- Numerous requests from the Natural Resources Agency have been received in regards to the transition to the new Administration. DOC has gone through "drills" related to legislation, staffing, and funding conditions.
- The DOC's Division of Land Resource Protection has been helping the Strategic Growth Council administer the Sustainable Planning Grants program. A total of 188 applications were received for roughly \$94 million in requests. We recommended awarding 44 applications for \$23 million.
- With the passage of Proposition 26, many departments, including DOC, is looking at the impact of a majority vote in the legislature for fee increases and new fees. It is still undetermined how that impacts some of our funding for the SMGB, OMR, CGS and Division of Oil, Gas and Geothermal Resources.
- Following Acting Director's Chernow's comments, Chairman Garner requested additional clarification pertaining to the Acting Director's request for Member Lund's resignation as summarized below under Ex Parte Communications.
- SMGB Legal Counsel Thalhammer inquired why the Acting Director did not go through the SMGB's Executive Officer.
- Acting Director Chernow stated the he was directed by the Governor's Appointment Office, Ms. Carly Barringer, to immediately request Member's Lund resignation and that he informed the Executive Officer prior to contacting Member Lund.

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

No information report from the State Geologist was provided.

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

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



- With federal stimulus monies from the Bureau of Land Management and National Park Services, the Abandoned Mine s Land Unit will be holding instruction for closures, and there are numerous local officials, contractors and other stakeholders showing interest in these workshops.
- A law suit with Pacific Rock Law located in Ventura County was recently settled.
- The County of Sacramento requested OMR staff participation on a mine inspection for the Historic Hardesty Mine, and OMR is awaiting the results of such inspection.
- Member Licari brought up the request from OMR to the Counties of Napa and Lake that new amended reclamation plans were required for the McLaughlin Mine. O'Bryant stated due to the SMGB actions, both agencies have to will have to have its own amended reclamation plan. Member Baca concurred with Member Licari in that the SMGB's decision did not change the substance of the actual reclamation plan and other performance standards need not be met based solely on the SMGB's decision. A revised financial assurance is required but the operation can proceed under its existing reclamation plan. The SMGB's legal counsel, Rick Thalhammer, suggested that a joint powers agreement could be considered. Chairman Garner stated that he would have appreciated more discussion of the ramifications of the SMGB's decision could have been offered by OMR at the time, and that this matter needs to come back to the SMGB for further discussion should OMR not be in a position to address this issue at the next available meeting date.

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

No report was provided.

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

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

- Four designation rulemakings are in progress including designation and termination of designated mineral lands, and revision of the form for granting of a Low Gross Exemption request which will include idle mines.
- A reclamation plan appeal to be considered by the SMGB for the Mosler Ojai Rock Quarry located in Ventura County was deferred until the SMGB meets in February.
- The Executive Officer is working with Tuolumne County which serves as a SMARA lead agency for two surface mining operations within its jurisdiction. It is anticipated that the SMGB will serve in a lead agency capacity for these two sites.
- The survey questionnaire to be forwarded to SMARA lead agencies regarding topics related to lead agency performance and status has been developed.
- Inspections being performed by SMGB staff for sites where the SMGB serves as a SMARA lead agency will be completed by end of year.
- SMGB minutes for the years 1951 through 1981 were located in a library in the City of Richmond, and a digital copy has been retrieved for the SMGB's files.

**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 Garner requested that Ex Parte communications be moved up on the agenda following the Pledge of Allegiance.

- Member Licari stated that he had received an e-mail from John Kolsky regarding the SMGB Strategic Plan, and they had a brief discussion on how that document was



created. He stated that he also received a phone call from Steve Bledsoe with CalCIMA regarding a request for Board Member Lund's resignation; he replied that he had no knowledge of it at that time. He stated CalCIMA had provided copies of letters from OMR to Napa and Lake Counties regarding a request for reclamation plans. Lastly, he commented that he had spoken with several county representatives regarding the receipt of the SMGB surveys.

- Member Wyatt received an e-mail from Warren Coalson requesting that he review an article but that his schedule precluded him from having the time to do so.
- Member Lund stated that Acting Director Chernow left a voice mail on her answering machine and then contacted her while she was engaged in a closed session of a City Counsel meeting. The message was noted as urgent. Acting Director Chernow indicated to her that because she did run for re-election, that a resignation from the SMGB letter was needed effective immediately, and such letter was to be provided directly to the Acting Director, and he would advise the Executive Officer that she would not be attending the December 9, 2010, regular business meeting. An email to that effect was provided. Member Lund also indicated that although her term would not terminate until December 14, 2010, during a special election on November 23, 2010, she was appointed to an active committee representing the Mayor of Rocklin. Member Lund indicated that the request from Acting Director Chernow was very strange.

**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.]

- Wayne Whitlock, legal counsel for the Homestake Mining Company, spoke regarding concerns with the previous lead agency determination for Homestake Mining Company and the corresponding reclamation plans, as well as the OMR LART Report for Napa County.

**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, November 10, 2010, Regular Business Meeting.

Board Member Baca moved to approve the minutes. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

2. Approval of a Revised Financial Assurance Cost Estimate for Atkinson Brick Pit I (CA Mine ID #91-19-0004), Tobin Campbell (Agent), Atkinson Brick Company (Operator), City of Compton.
3. Approval of a Revised Financial Assurance Cost Estimate for Western Aggregates (CA Mine ID #91-58-0001), Lloyd Burns (Agent), Western Aggregates, LLC (Operator), County of Yuba.



Board Member Baca moved to approve the revised financial assurance cost estimate. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

4. Acceptance of California Geological Survey's Special Report 218 on Mineral Lands Classification of the Power House Aggregate Project Site, Butte County, California, for Construction Aggregate.

Board Member Baca moved to approve CGS Special Report 218. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

**X. Continued Business [Action]**

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

**XI. New Business [Action]**

5. Acceptance of Regulatory Language for Designation of Mineral Resources Areas of Statewide or Regional Significance for the San Bernardino Production-Consumption Region, Riverside and San Bernardino Counties.

At its December 11, 2008, regular business meeting, the SMGB accepted CGS Special Report 206 which updated information previously presented in an earlier classification report. The SMGB, pursuant to PRC Section 2793, may also by regulation terminate, partially or wholly, the designation of any area on a finding that the direct involvement of the Board is no longer required. Based on recommendations from the State Geologist and public input, prioritizes areas to be classified and/or designated, the SMGB accepted the State Geologist recommendations in July 2009. There are 14 areas in 2 sectors being recommended for designation, and 57 areas in 8 sectors being recommended for termination of designation. The SMGB pursuant to PRC Section 2790 may by regulation adopted after a public hearing, designate specific geographical areas of statewide or regional significance and specify the boundaries thereof. A public hearing was held in Riverside on July 30, 2010. Two comments were received and addressed as noted in the Executive Officer's report. The SMGB is considering accepting the proposed regulatory language and direct the Executive Officer to commence the rulemaking process, and proceed with the 45-Day notice to adopt regulations for the designation of mineral lands of regional significance, notably, Sectors J and K (and their sub-sectors), and certain areas for termination of designation, within the San Bernardino Production-Consumption Region, San Bernardino and Riverside, California.

- Paulie Tehrani expressed concerns and public safety issues associated with the termination of designation of Section H its proximity to a school site, and supports its termination, and Sector K has been inactive and with the problems with the lead agency at this time Sector K should not be designated.
- Sharon Gallina concurred and expressed additional concerns and public safety issues associated with Sectors H and K.
- Russell Miller, Geologist with CGS, was available to address any questions from the SMGB.

Board Member Baca moved to accept the proposed regulatory language. Board Member Tepel seconded and the motion carried with a unanimous voice vote.



6. Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the City of Lake Elsinore Lead Agency Program Pursuant to the Surface Mining and Reclamation Act (SMARA).

Executive Officer Testa indicated that this matter has been before the SMGB on several occasions over the past year. In November 2009, the SMGB received a public complaint pertaining to certain surface mining operations located within the jurisdiction of the City of Lake Elsinore (City). The complaints were forwarded to the Department of Conservation, Office of Mine Reclamation (OMR). OMR performed a site visit in March 2010, and presented a summary of its site visit at the SMGB's July 10, 2010, regular business meeting, and revisited the site on November 17. OMR issued a 15-Day Notice to the City on September 16, 2010. The City initially requested in correspondence dated August 6, 2010, additional time for submittal of information. Information provided by the City is enclosed in the SMGB packet, and deemed upon review, inadequate and incomplete. Several issues have been identified that warrants issuance of a 45-Day Notice to Correct Deficiencies to the City. OMR is prepared to make a presentation summarizing the salient issues. The Executive Officer is recommending issuance to the City a 45-Day Notice to Correct Deficiencies.

- Kevin Doherty, staff geologist with OMR, provided a presentation summarizing the history of surface mining operations within the City's jurisdiction, and areas of non-compliance.
- Ken Semuelo, Director of Public Works with the City of Lake Elsinore, commented on the progress the City is making in addressing issues raised by OMR and in the Executive Officer's report.
- Warren Coalson, consultant with EnviroMINE and representing the City, commented on the City's efforts and past inspections of the surface mining operations within the City's jurisdiction.
- Barry Coley, Vice President of Pacific Aggregates, commented on efforts set forth for his surface mining operations.
- John Hecht, consultant with Sespe Consulting and representing Pacific Aggregates, commented on site specific conditions.
- Paulie Tehrani and Sharon Gallina expressed their concerns regarding public safety and a number of issues pertaining to the City of Lake Elsinore's abilities to administer SMARA.

Board Member Baca moved for the SMGB to issue the 45-Day Notice to Correct Deficiencies. Board Member Lund seconded and the motion carried with a unanimous voice vote.

7. Consideration of Regulatory Language Pertaining to Qualifications for Placement of Surface Mining Operations on the AB 3098 List.

This matter was deferred.

8. Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) for the Broome Ranch Project, County of Ventura.

Executive Officer Testa stated the SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the SMGB finds that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances – pursuant to PRC 2714(f). Sespe Consulting, Inc., on behalf of the California State University Channel Islands (CSUCI), has submitted a request for a one-time exemption from SMARA for the donation of approximately 100,000 cubic yards of riverbed



alluvial material that was previously derived from flooding of the Broome Ranch by the Calleguas Creek twenty-years ago and subsequently stockpiled on the ranch property. The owner of the Broome Ranch wishes to donate the material, with no financial compensation, to the California State University Channel Islands (CSUCI) for road construction purposes. The stock-piled material is located approximately three miles south of the location for a new entrance road for CSUCI, in the County of Ventura, and is characterized as a borrow pit under SMARA, thus, deemed a surface mining operation pursuant to SMARA. The SMGB is considering granting a one-time exemption for this project.

Board Member Licari moved to grant the one-time exemption. Board Member Lund seconded and the motion carried with a unanimous voice vote.

9. Delegation of a Committee for Conduct of a Public Hearing for a Reclamation Plan Appeal for the Mosler Rock Quarry (CA Mine ID #91-56-0025), Ventura County, Pursuant to Title 14, Division 2, Chapter 8, Subchapter 1, California Code of Regulations, Article 5, Section 3655.

Executive Officer Testa stated that on August 26, 2010, the Chairman of the SMGB determined that the petition for a Reclamation Plan and Financial Assurance Appeal dated July 21, 2010, submitted on behalf of Mosler Rock Products (Mosler) for the Ojai Quarry (CA Mine ID #91-56-0025), was within the jurisdiction of the SMGB and accepted the appeal. The basis for the appeal states that the County of Ventura (County) failed to approve and timely act upon an amended reclamation plan and financial assurance for the Ojai Quarry. Mosler has petitioned the SMGB to take jurisdiction of the appeal under three statutes within the SMARA (PRC Section 2770(e), subdivisions (e)(1), (e)(2) and (e)(3)). Upon review of the administrative record, and a determination by the SMGB's Executive Officer that the record is complete, a public hearing will be scheduled for the SMGB to hear this matter. Should the appellant not be in a position to wait until the SMGB's regular business meeting scheduled for February 10, 2011, which is preferred by the County, the SMGB may wish to consider delegating authority to hear this matter to a committee of at least two members of the SMGB to be appointed by the SMGB's Chairman. Recent discussions between legal counsel for Mosler Rock Quarry and the County, the SMGB will hear this matter at its scheduled regular business meeting on February 10, 2010.

10. Approval of the State Mining and Geology Board's 2009-2010 Annual Report. Executive Officer Testa stated that existing law requires various written reports to be prepared and submitted by State and local agencies to the Legislature and the Governor. The State Mining and Geology Board (SMGB) is legislatively mandated to prepare annual reports to the Legislature pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). The Executive Officer has prepared the SMGB's annual report for 2009-2010. This report is being considered for approval by the SMGB, prior to being finalized and distributed.

- Comments pertaining to the conclusions and recommendations section were offered by Adam Harper representing CalCIMA, attorney Brad Johnson with Diepenbrock Harrison and engineering geologist David Gaddie.

Board Member Baca moved to adopt its 2009-2010 annual report with minor revision, and distribute as appropriate. Board Member Lund seconded and the motion carried with a unanimous voice vote.



11. Election of Vice Chair of the State Mining and Geology Board Pursuant to Public Resources Code Section 669.

Executive Officer Testa stated that the SMGB annually elects an individual from its membership to serve as Vice Chair. The Vice Chair performs the duties of the Chairman in his or her absence or upon request of the Chairman when possible conflicts of interest may occur. After some discussion, Brian Baca was nominated and elected as Vice Chair.

12. Adoption of 2011 Regular Business Meeting Calendar.

Executive Officer Testa stated that PRC Section 668 requires the SMGB to hold its meetings at such times and at such places as it shall determine, and its Bylaws require a minimum of 6 meetings per year. The calendar before the SMGB for its adoption consideration reflects 11 meetings, with no meeting to be held during the month of August. Also, the SMGB at any time can adjust the schedule, assuming adequate public notice is given. The dates provided do not conflict with annual meetings scheduled by a variety professional organizations including AEG, AIPG, AAPG, ASMR, GSA and SEG. The SMGB is considering adoption of the 2011 regular business calendar.

Board Member Wyatt moved to adopt its 2011 regular business calendar. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

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

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

13. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on Alpine County.

Executive Officer Testa stated that in 2007, the LART was established within OMR. An overview of the LART program was previously presented to the SMGB in July 2009. The SMGB has since received reports on the audit of Santa Cruz County, Sutter County and Tuolumne County. OMR LART is prepared to provide an overview of the program, and a summary of its review of the County of Alpine. The summary being provided is for the SMGB's general information.

- Ben Shelton, Manager of the LART, presented an overview of their audit of the County of Alpine, and recommended that the SMGB consider assumption procedures.

Board Member Baca moved to schedule consideration of a 45-Day Notice to Correct Deficiencies to the County of Alpine at the SMGB's next scheduled regular business meeting. Board Member Licari seconded and the motion carried with a unanimous voice vote.

14. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on Napa County.

Executive Officer Testa indicated that this matter would be deferred at the request of the County of Napa until the SMGB meets in again in Sacramento. This matter will likely be heard at the SMGB's regular business meeting scheduled for February 10, 2011.

No action was taken.

15. Inspection reports pursuant to PRC Section 2774(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:





- Atkinson Pit I (CA Mine ID #91-19-0004), City of Compton.
- Super Creek Quarry (CA Mine ID #91-33-0003), City of Desert Hot Springs.
- Garnet Pit (CA Mine ID #91-33-0031), City of Palm Springs.

Will Arcand, Senior Engineering Geologist and inspector for the SMGB, presented a summary of each inspection report outlined above.

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

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

- Geohazards Committee
  - 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)
  - Chairperson Baca summarized discussions and actions taken by the Committee during its December 10, 2010, meeting, including review of draft language on idle mines offered by CalCIMA and discussion of proposed regulations for the AB 3098 List, and will discuss this matter further on January 13, 2011, along with issues related to idle mine related issues, and issuance of a 15-Day Notice by OMR to a lead agency.

### **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 information 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 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). 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). Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.



- d). A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
- e). 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.
- f). North Continent Land and Timber, Inc. vs. SMGB, Department of Conservation, Office of Mine Reclamation, County of Butte Board of Supervisors, Case No. 34-2010-800000542, Sacramento County Superior Court.
- g). An un-named case where there is potentially significant exposure to litigation against the SMGB.

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

No Executive Session was held.

**XVII. Announcements of Future Meetings**

February 10, 2011, was announced as the next meeting, and Sacramento as the location.

**XVIII. Adjournment**

The meeting was adjourned at 3:45 P.M.

**APPROVED**

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Erin Garner, Chairman

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Stephen M. Testa, Executive Officer

