



# 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; Benjamin Licari; Kathy Lund*

[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)

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## CONFORMED MINUTES

### THE POLICY AND LEGISLATION COMMITTEE

(Brian Baca, Committee Chair; Erin Garner; Benjamin Licari; Kathy Lund)

OF THE

### STATE MINING AND GEOLOGY BOARD

# Draft

Will Conduct a Meeting on:

Thursday, February 10, 2011

8:30 A. M.

Assembly Hearing Room #444

State Capitol

Sacramento, CA 95814

## 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 (Baca)**

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

The meeting was called to order at 8:30 A. M. by Committee Chairman Baca, with Members Garner and Lund absent, and a quorum was not declared. Member Lund was informed by the Governor's Appointment Unit that her term on the SMGB and its Committee was terminated.

**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, January 13, 2011, Committee Meeting.

This matter was deferred and no action was taken.

**IV. Continued Business [Action]**

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

2. Language for Regulatory 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 Public Resources Code, 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. Since July 2010, this 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 for review and discussion, and to hear comment from stakeholders.

- Dennis O'Bryant, Assistant Director of OMR, stated that he did not have an opportunity to meet SMGB staff to discuss the proposed regulations or review it in any detail, or any revisions, but that the regulations were unnecessarily burdensome and expensive on OMR, industry and government.
- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), is reviewing the proposed regulations and requesting this matter be directed to a meeting between industry, the DOC and the SMGB, in order to discuss specific concepts.



- Member Licari expressed the need to discuss this matter further, and supports a workshop venue.
- Chairman Baca supported staff getting together with stakeholders, but reiterated that some form of a regulatory due process is needed regardless. Proposed language changes were invited.

No action was taken.

3. Discussion of Proposed Legislative Language on the Definition of Idle Mines.

Executive Officer Testa stated that at its January 13, 2011, meeting, the Committee, accepted the SMGB's Information Report 2010-07 titled "*A Review of Issues Pertaining to Idle Mines under the Surface Mining and Reclamation Act*" for publication. Concurrent with discussions held during the Committee's December 9, 2011, meeting, draft legislative language was presented to the Committee for general discussion, and at its January 13, 2011, meeting, the Committee received copies of proposed Senate Bill 108 which proposes to amend Public Resources Code (PRC) Section 2727.1 and 2770 of the Surface Mining and Reclamation Act (SMARA). Proposed legislative language has been introduced by Senator Rubio on January 13, 2011. The bill pertains to a new definition for idle mines, certain conditions for approval of an interim management plan and renewal of interim management plans. The information being provided is for the Committee's information and discussion. The Committee may, however, wish to offer recommendations for the whole SMGB's consideration, which could subsequently be forwarded to the DOC.

- Dennis O'Bryant, Assistant Director, stated that OMR can not comment on any proposed bill without going through the Governor's office.
- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), was available for comment.
- Chairman Baca commented on the need for clarification as to in what forum and by who is required, and previously set forth language for a due process, i.e., a determination by a SMARA lead agency must be done in a public hearing subject to an appeal to the SMGB. Whenever a determination is being made, it is important to identify by who and where.
- Kerry Shapiro, attorney, commented on his involvement in the bill's language, and thought the procedural clarification was sound and he did not have a problem with the clarification for due process, and thought it was a good suggestion.
- Chairman Baca requested this item be brought back to the Committee with bill text showing strikeouts and additions.

No action was taken.

4. Discussion of Statutory Language to Clarify Public Resources Code Section 2774(c) pertaining to Lead Agency Certification of Reclamation Plans pursuant to the Surface Mining and Reclamation Act.

Executive Officer Testa noted that under SMARA, PRC Section 2774(c) requires that a lead agency certify to the Director of the Department of Conservation (DOC) and also submit to the director for use in reviewing the reclamation plan or plan amendments 1) information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information, and 2) a reclamation plan is in compliance with the applicable requirements of Article 1 of the SMGB, regulations, commencing with CCR Section 3500. Specifically, the issue is that staff of the local agency cannot make a conclusionary determination



that a reclamation plan is complete and in compliance with SMARA. Only the decision-makers can make such a conclusionary determination. Regulations may need to be considered that interpret this requirement to mean that the Planning Director of an agency makes a preliminary determination subject to later consideration by the decision-makers in a public hearing.

- Dennis O'Bryant, Assistant Director of OMR, stated that he was surprised and that this seems to be a solution looking for a problem, and see no need for such a change.
- Chairman Baca summarized his background with lead agencies and indicated that lead agency staff can not make such determinations, and the fix is a simply one.
- Member Licari expressed concerns in regards to application completeness.
- Chairman Baca indicated that what is being considered has nothing to do with application completeness. All that needs to be noted is that the determination by lead agency staff is a preliminary one and staff does not certify, and it does not preclude any later action by the Board of Supervisors.
- SMGB Committee legal counsel Rick Thalhammer summarized that the staff certification is not final, since such action can only be taken by the Board of Supervisors. Staff can only take a preliminary action, and lead agency only means staff of the lead agency. Clarification is being sought.
- Chairman Baca recommended, based on Thalhammer' comments, suggested language"staff of the lead agency", or "designated authority of the lead agency", and that is all that seems to be needed.

No action was taken.

**V. New Business [Action]**

No new business was discussed.

**VI. Good of the Meeting [Information]**

No Good of the Meeting discussion was offered.

[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]

**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 continuing 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 discussed.

**IX. Announcements of Future Meetings**

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



**X. Adjournment**

The Committee meeting was adjourned at 9:05 A.M.

**APPROVED**

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Brian Baca, Committee Chairman

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Stephen M. Testa, Executive Officer

