



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

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CONFORMED MINUTES

THE POLICY AND LEGISLATION COMMITTEE (Brian Baca, Committee Chair; Erin Garner; Benjamin Licari) OF THE STATE MINING AND GEOLOGY BOARD

Conducted a Meeting on:

Thursday, June 9, 2011

9:00 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.

[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 Members Garner and Licari present, and Member Lund absent, 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, March 10, 2011, Committee Meeting.

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

IV. Continued Business [Action]

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

2. 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 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. 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 modified (referred to as Revision 1.0). Request from various stakeholders have been received for this matter with a request for proposed draft language to be forwarded to a workshop venue prior to coming back before this committee. No new language has been set forth.



- Barry Chang, and John Lee, Rhoda Fry, and Linda Sell, all residents of Santa Clara County, spoke of non-compliance issues and unfair competition environmental by Lehigh Hansen surface mining operation continuing to remain on the AB 3098 List.
- Stuart Flashman (attorney) spoke on unfair competition and playing field, and unfair advantage, by Lehigh Hansen surface mining operation continuing to remain on the AB 3098 List.
- Gary Latshaw (Volunteer Conservation Committee representing the Sierra Club) spoke of lack of compliance and environmental concerns associated with the Lehigh Hansen surface mining operation.
- Mark Harrison, attorney for Lehigh Hanson, spoke to Lehigh Hansen commitment to the community and the need for regulations for a due process when a surface mining operation is being considered for removal from the AB 3098 List.
- Marvin Howell, representing the Lehigh Hansen surface mining operation clarified as to what the company has done and currently doing.

The Committee took no action but did request revised language to be available at the Committee's next scheduled meeting, which in turn would be directed to a workshop venue.

3. 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 annually, the SMGB reviews the Fee Schedule, which is set in statute under PRC 2207, and calculated in a manner consistent with the SMGB's regulations CCR Sections 3698 and 3699. The annual Fee for 2010, as calculated, increased, and the base fees that are mentioned in statute were adjusted using a Consumer Price Index (Cost of Living Adjustment; COLA) for 2009 which was about 1.3%. The new mine fees for 2010 increased to \$4,173,824, representing an increase of \$53,564 relative to the amount requested for Calendar Reporting Year 2009. At its March 10, 2011, regular business meeting, the SMGB accepted the 2010 Annual Mine Fees.

Most importantly, 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).

- Jim Pompy, Assistant Director and Chief of the Office of Mine Reclamation, offered to provide some options and scenarios for consideration at the Committee's next scheduled meeting.



Committee Chairman Baca directed this agenda item to be continued.

V. New Business [Action]

No new business was discussed.

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 discussion was offered.

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.]

Committee Chairman Baca requested that issues pertaining to the need of State Highways as part of the local permitting process be discussed at a future Committee meeting.

IX. Announcements of Future Meetings

The next meeting of the Policy and Legislation Committee was scheduled to be held in Sacramento on July 14, 2011.

X. Adjournment

The Committee meeting was adjourned at 10:05 A.M.

APPROVED

Brian Baca, Committee Chairman

Stephen M. Testa, Executive Officer

