



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:

Draft

Thursday, March 10, 2011

10:00 A. M.

Assembly Hearing Room #444
State Capitol
Sacramento, California 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/smqb/> (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 (Garner)

II. Pledge of Allegiance

III. Roll Call and Declaration of a Quorum

The meeting was called to order at 10:15 A. M. by Chairman Garner, and a quorum was declared. Members Lane and Lund were absent.

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

Acting Director Derek Chernow reported on the following:

- OMR has SMARA workshops planned and posted on their website. Executive Officer Testa has been asked to participate, and the SMGB is encouraged to attend.
- The Department is conducting the search for Dennis O'Bryant's replacement, and with both technical expertise and a track record of strong relationship building.
- The Governor has implemented a number of cost saving activities or "drills".
- Over the past couple of weeks, I served as a panelist at a community meeting related to oil and gas issues in Los Angeles. I also attended the annual conference of the California Council of Land Trusts, along with staff from our Division of Land Resource Protection. That Division works with land trusts throughout the state on conservation easements and farmland preservation.
- Tomorrow, I will be in San Francisco for a couple of meetings, and attend the National Science Teachers Association's annual convention. CGS and the Division of Oil, Gas and Geothermal Resources will have a booth at the event.
- With the deadline for introducing new bills having come and gone, there are a number that the Department will be analyzing and watching, and will continue to keep the SMGB updated.
- State Geologist's Report (Parrish) [Information]

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

- National Science Teachers Association Meeting commences today and runs through Saturday, March 12th, at the Mosconi Center in San Francisco. CGS and Division of Oil, Gas and Geothermal Resources have a large joint booth at this conference, and CGS will be giving away free educational materials to the teachers. Expected attendance is about 10,000 teachers from throughout the nation. On Friday, CGS staff will present an hour-long talk on earthquake forecasting, not to be confused with "predicting".
- In late December, 2010 CGS made available on its website 514 Alquist-Priolo Fault Zone Maps. These maps previously were available only in hard copy from a single



commercial vendor, from CGS, or from local county and city lead agencies' planning departments. This new webpage allows users to determine if they are within a mapped Fault Zone simply by entering the address of the location of interest – and pressing the Enter key. A map of the zone with an arrow pointing to their address will appear. The map uses Google's address location engine. The response from the public has been very enthusiastic and complementary.

- On March 8th and continuing through this morning, a M7.2 earthquake and in excess of 30 aftershocks in the M5.5+ range have occurred approximately 100 miles east of Honshu, Japan (at sea) at a depth of 8 miles. Displacement direction of the fault was vertical; however, no Tsunami alerts have been issued for the Pacific West Coast of North America. A small (2 ft. wave) was reported in Japan. CGS is continuing to watch this localized activity.

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

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

- A SMARA workshop is scheduled for March 22-23 in the City of San Jose, and a mine inspection workshop at the Whitewater Preserve in Desert Hot Springs on April 5-6, 2011.
- The DOC/OMR/Abandoned Mine Land Unit (AMLU) will be coordinating the National Association of Abandoned Mine Land Programs (NAAML) Annual Conference to be held on October 9-12, 2011, in Squaw Valley (Lake Tahoe).
- Enforcement actions continue for the Curtis Tungsten Mine located in Los Angeles County, for certain operations within the City of Lake Elsinore.

V. Chairman's Report (Baca) [Information]

- Recognition of Distinguished Service for Kathy Lund (SMGB)
 - Deferred.
- Recognition of Distinguished Service for Dennis O'Bryant (OMR)
 - Chairman Garner read resolution noting that Dennis O'Bryant faithfully and diligently has served the Department of Conservation for thirty years, including two years with CalFed and five months with the Air Resources Board; holds the distinction as the first Chief of the Office of Mine Reclamation, and for ten years provided dedicated and creative leadership in implementing the Surface Mining and Reclamation Act of 1975 (SMARA); devoted his career to protecting California's environment by advancing efforts dedicated to the preservation of farmlands and reclamation of mined lands; was directly involved in formulating and writing many of the critical amendments and foundation policy decisions related to the SMARA during his tenure with the Office of Mine Reclamation; over the years has exhibited the highest level of professionalism in working through difficult issues with the Mining Industry, the State Legislature, local lead agencies, and the State Mining and Geology Board; and, personal management style was one of empowering and trusting his staff to perform their jobs with skill and professionalism, thereby, earning the highest respect from the employees he supervised and managed. The SMGB extended its most enthusiastic and heartfelt thanks for his continuous and unswerving dedication to the People of the State of California, and wished him all the best for a prosperous and productive future.



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

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

- Public comment for rulemaking efforts in regards to form MRRC-4L and newly designated sectors or areas within the Bakersfield Production-Consumption Regions ends next week. No comments have been received to date, and final rulemaking packets will be prepared and submitted to the Office of Administrative Law. These regulations are anticipated to be enacted by mid-year.
- Two other regulatory packages are being prepared for public comment and pertain to designation and termination of designation of certain sectors within the San Bernardino and Palm Springs Production-Consumption Regions.
- A response to the 45-Day Notice of Deficiencies issued by the SMGB to the City of Lake Elsinore was received. A review and analysis is in progress, in preparation for the SMGB's consideration at its April 12, 2011, public hearing to be held in the City of Lake Elsinore. Should quorum issues develop, this matter will need to be deferred until the board's May 12th meeting.
- A revised slope stability analysis for the Super Creek Quarry, City of Desert of Hot Springs, was received in mid-February, and currently under review by SMGB staff and OMR.
- Preparation of the Alquist-Priolo Technical Advisory Committee report continues.

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.]

- Member Baca disclosed a discussion with Warren Coalson, consultant with EnviroMINE, who expressed his dissatisfaction with the proposed regulatory language pertaining to AB 3098. Member Baca stated to Mr. Coalson that the Policy and Legislation Committee is still accepting comment.

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 10, 2010, Regular Business Meeting.
This agenda item was continued.

2. Approval of a Revised Financial Assurance Cost Estimate for Diamond Quarry (CA Mine ID #91-09-0003), Loring Brunius (Agent), Sierra Rock (Operator), County of El Dorado.



Board Member Licari moved to approve the FACE. 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]

3. Proposed Designation and Termination of Designation of Mineral Resource Areas of Statewide or Regional Significance for the San Gabriel Valley Production-Consumption Region, Los Angeles County.

Executive Officer Testa stated that at its September 9, 2010, regular business meeting, the SMGB accepted CGS Special Report 209 which updated information previously presented in an earlier classification report first published in 1992. The State Geologist has recommended four new sectors for designation, and six sectors recommended for termination of designation. The SMGB is considering accepting the proposed regulatory language and direct the Executive Officer to hold a public hearing to receive comment on the proposed action.

Board Member Tepel moved to accept the proposed designation and termination of mineral resource areas. Board Member Baca seconded and the motion carried with a unanimous voice vote.

4. Discussion Regarding the State Mining and Geology Board's Decision in Designation of Lead Agency under the Surface Mining and Reclamation Act (SMARA) Pursuant to Public Resources Code Section 2771 for the McLaughlin Mine (CA Mine ID #91-28-0003), Karl Burke (Agent), Homestake Mining Company (Operator), Counties of Lake, Napa and Yolo.

Executive Officer Testa stated that OMR has raised the question and requested that the SMGB formally designate a lead agency for the McLaughlin Mine, located in Counties of Napa, Lake and Yolo. At its July 8, 2010, regular business meeting, the SMGB moved to not recognize a physical barrier between the Counties of Napa and Yolo, but recognized the existence of a physical barrier between Yolo and Lake Counties and between Lake and Napa Counties. The SMGB then moved to designate Napa County as the SMARA lead agency for that portion of the McLaughlin Mine that is situated within the jurisdiction of Yolo and Napa Counties, and to designate Lake County as the SMARA lead agency for that portion of the McLaughlin Mine that is situated within its jurisdiction. The decision to designate two SMARA lead agencies for the McLaughlin Mine was an administrative act, and in itself, would require that Napa County and Lake County provide an amended reclamation plan that simply reflects the SMGB's designation, a map showing the respective mine footprint for that portion of the mine site within each respective lead agency's jurisdiction, and adjustment of their respective financial assurances amount. The designations of two SMARA lead agencies for this mine would not be deemed a substantial deviation and/or require an amended reclamation plan. However, the designation of two SMARA lead agencies by the SMGB did not relieve the operator from fulfilling all other requirements of SMARA and the SMGB's regulations. At the request of Member Licari, OMR has prepared an information report summarizing outstanding SMARA issues OMR is currently engaged with, and the significant SMARA challenges that remain.

- Jim Pompy and Joshua Goodwin provided a power point presentation summarizing the non-compliance issues related to the subject site.



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- Wayne Whitlock, legal counsel representing Homestake Mine, presented on behalf of the operator.
- Karl Burke, Closure Manager for the Homestake Mine, presented on behalf of the operator.

The presentation of site conditions was for the SMGB's information, and no action was taken.

5. Acceptance of the 2010 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 will increase, and the base fees that are mentioned in statute will be adjusted using a Consumer Price Index (Cost of Living Adjustment; COLA) for 2009 which was about 1.3%. The tables provided in the staff report are the new mine fees figures that are established pursuant to PRC 2207. You can see in review of the 2010 calculations and summary tables, fees are increasing to \$4,173,824, representing an increase of \$53,564 relative to the amount requested for Calendar Reporting Year 2009.

Board Member Baca moved to accept the 2010 Annual Mine Fee Schedule. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

6. Approval of Draft Agreement between the State Mining and Geology Board and the County of Alpine Pertaining to Lead Agency Status Pursuant to the Surface Mining and Reclamation Act.

Executive Officer Testa stated that at its December 9, 2010, regular business meeting, the SMGB received a presentation from the LART unit of OMR covering its audit of Alpine County's SMARA program. The LART Unit recommended that the SMGB assume lead agency obligations and responsibilities based on the County's poor performance as a SMARA lead agency. The County would like to forego assumption process and simply forfeit its SMARA lead agency responsibilities, with exception to permitting, to the SMGB. In separate discussions with the SMGB's legal counsel and the County, it appears feasible that an agreement could be developed allowing the County to forfeit its SMARA responsibilities. A draft agreement has been prepared for review and discussion and acceptance consideration. The Executive Officer is recommending that upon acceptance the agreement be forwarded to the County of Alpine for review and acceptance consideration.

- Rick Thalhammer, SMGB legal counsel, clarified that the agreement would eliminate the need for the SMGB to go through an assumption process.

Board Member Baca moved to approve the draft agreement between the County of Alpine and the SMGB for the transfer of the County's SMARA lead agency role, direct the Executive Officer to work with the SMGB's legal counsel and the County in preparation of a final agreement with the intent to transfer the County SMARA lead agency obligations and responsibilities to the SMGB, and authorizes the Chairman of the SMGB to sign the agreement on behalf of the full SMGB. Board Member Wyatt seconded and the motion carried with a unanimous voice vote.



7. Issuance of an Administrative Penalty to the Big Cut Mine (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operator), Joseph and Yvette Hardesty and Rick Churches (Agent), County of El Dorado, for Failure to Comply with an Order to Comply Issued December 10, 2010, to Correct Violations of the Surface Mining and Reclamation Act.

Executive Officer Testa stated that the SMGB acts as the lead agency pursuant to SMARA for all surface mining operations in the County of El Dorado. On April 1, 2010, SMGB staff inspected the Big Cut Mine site and observed evidence of unpermitted surface mining operations. Such operations included recent dewatering of underground tunnels and discharge of such flows into surface impoundments, and use and storage of mining equipment, among other activities which entailed surface disturbance exceeding one acre. In addition, physical evidence of slope instability and/or subsidence was observed to the north of the Big Cut Mine site, which may prove hazardous should underground mining activities persist. A Notice of Violation was issued by the Executive Officer on September 3, 2010, and again on January 21 and 28, 2011, OTC issued on Dec 10, 2010, and upheld on February 10, 2011. At the time this report was prepared, the site remained out of compliance with SMARA. Pursuant to PRC Section 2774.1(c), in determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. The SMGB is considering issuance of an administrative penalty.

- Dan Tankersley, partner with the Big Cut Mine, and operator Rick Churches, opposed issuance of an administrative penalty.
- Ken Williamson, consultant for the operator, spoke on behalf of the operator.
- Rick Thalhammer, legal counsel for the SMGB, noted that issues related to violation of land use law versus SMARA were not before the SMGB.

Board Member Baca moved to issue an administrative penalty of \$100,000 to be paid within thirty days from the date of issuance, March 10, 2011. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

8. Consideration of the Adjustment of the Salary of the Executive Officer Position.

- Rick Churches, operator of the Big Cut Mine, expressed his dissatisfaction with the Executive Officer.

Board Member Licari moved to issue an administrative penalty of \$100,000 to be paid within thirty days from the date of issuance, March 10, 2011. 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.

9. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on the County of Alameda.



- Damien Gosseti, Assistant Deputy Director with the County of Alameda, stated that the County takes its SMARA lead agency role seriously, and although inspections have not been timely, the County is dealing with ordinance issues, and reviewing the LART report.

This agenda item was deferred.

10. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on the County of Mono.

This agenda item was deferred.

11. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on the City of Truckee.

This agenda item was deferred.

12. 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:

- Richmond (Chevron) Quarry (CA Mine ID #91-07-0006), City of Richmond.
- Pt. Richmond (Canal) Quarry (CA Mine ID #91-07-0007), 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.
- Chile Bar Slate Mine (CA Mine ID #91-09-0004), County of El Dorado.
- Timm Mine (CA Mine ID #91-09-0006), 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.
- 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.

Board Member Licari moved to accept the inspection reports. Board Member Tepel 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 March 10, 2011, meeting, including discussion of proposed regulations for due process pertaining to the AB 3098 List, and clarification and amendment to PRC 2774(c).

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). Joe & Yvette Hardesty v. SMGB, & DOES 1-100 Inclusive, Case No. 34-2010-80000594, Sacramento County Superior Court.
- h). Discussion of SMGB budget and staff issues.
- i). An un-named case where there is potentially significant exposure to litigation against the SMGB.
- j). Consideration of the adjustment of the salary of the Executive Officer position.

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

Deputy Attorney Rick Thalhammer announced that the SMGB moved to increase the Executive Officer's salary to be at the top of the salary range for his position, and for the Chairman to work with the Acting Director to get it accomplished.

XVII. Announcements of Future Meetings

April 14, 2011, was announced as the next meeting, and City of Lake Elsinore as the location.

XVIII. Adjournment

The meeting was adjourned at 4:40 P.M.

APPROVED

Brian Baca, Acting Chairman

Stephen M. Testa, Executive Officer

