



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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CONFORMED MINUTES

THE STATE MINING AND GEOLOGY BOARD

Will Conduct a Regular Business Meeting on:

Thursday, December 8, 2011

10:00 A.M.

DRAFT (for information only following the Policy and Legislation Committee Meeting)

LOCATION:

Board of Supervisor's Hearing Room
County Government Center, Building A
330 Fair Lane
Placerville, CA 95667

AMENDED 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 (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, and a quorum was declared.

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

Jason Marshall, Acting Deputy Director, reported on the following:

- Acting Deputy Marshall indicated his pleasure being back with the Department of Conservation, and working in a cooperative manner with the SMGB.
- State Geologist's Report (Parrish) [Information]

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

- An update on the recent progress for Earth sciences to qualify for University of California (UC) admission requirements. A new high school course entitled "Honors Earth Science", has been approved by the UC Academic Senate Board on Admissions and Relations with Schools (BOARS), and also by the UC Office of the President, as meeting the UC laboratory science "d" requirement for UC admissions. This course is intended for high school juniors and seniors, and widespread adoption of this course in CA high schools is anticipated significantly increase the awareness of the Earth sciences by CA high schools graduates, UC's entering students, and the public at large.
- An overview of CGS's programs was provided, noting that CGS employs 118 geologists, engineers, seismologists, GIS cartographic specialists, field technicians, support staff in seven offices statewide; operates 7 separate programs under 5 Legislative Acts; services over 40 active contracts from Federal, State, and local agencies under 60 PCA's; and provides more services and more products about more topics to more people than any other state geological survey.

- Office of Mine Reclamation Report (Pompy) [Information]

Chief of OMR, Jim Pompy, reported on the following:

- OMR is assisting the Executive Officer in implementing the survey to operators in regard to the annual mine fees.
- OMR will be conducting a SMARA Overview workshop at the BLM Field Office in Redding on October 25-26; about 30 individuals participated. Another inspection



workshop, the third, is being conducted in San Diego on January 25, 2012. These inspection workshops are intended to assist lead agencies and their contractors that perform such inspections.

- A letter was forwarded to stakeholders pertaining to recent new legislation pertaining to idle mines.
- A brief update on the Abandoned Mines Land Unit activities was also provided.

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

Chairman Garner reported on the following:

- The Chairman met with Secretary Laird and discussed the activities and role of the SMGB, the need for SMGB members with five vacancies in 2012, and potential consideration of elimination of the SMGB in the Governor's January 2012 budget.

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

Executive Officer Testa reported on the following:

- Thirty-two out of forty-five surface mining operations have been inspected, with inspection of all operations where the SMGB serves as a SMARA lead agency anticipated to be completed by end of year. In addition, thirty-four sites out of forty-five counties have been identified to date where a financial interest or conflict exist. Thirteen counties remain to be evaluated, along with a number of cities.
- Three regulatory packages are in preparation: These pertain to the designation and/or termination of designation of certain sectors within the San Bernardino, Palm Springs and San Gabriel Production-Consumption Regions.
- On March 11, 2010, the SMGB adopted its findings of fact and granting vested rights to Western Aggregates for 3,927-acres located in the Yuba Goldfields in Yuba County. The Amended Reclamation Plan for this surface mining operation is anticipated to be before the Surface Mining Standards Committee in January 2012 for consideration for approval to be recommended to the whole board, upon completion of the CEQA/Environmental study.
- A revised slope stability analysis for the Super Creek Quarry, City of Desert of Hot Springs, was received in mid-February 2011 and a preliminary review has been completed by OMR and SMGB staff, with such comments forwarded to the operator. A meeting with the operator and his representatives is being scheduled.
- The SMGB is lead agency for nine dredging operations within the local jurisdiction of the Bay Conservation and Development Commission (BCDC). SMGB staff is reviewing a revised draft EIR for the San Francisco Bay and Delta Sand Mining Project. Comments are due by December 15, 2011.
- Jim Pompy, Assistant Director and Chief of OMR and the SMGB's Executive Officer provided presentations at a SMARA Operator Workshop held in Ventura which was hosted by the Ventura County Planning Department.
- On December 13, the SMGB's Executive Officer will present a talk on "*The Challenge of Balancing Mineral Conservation and Reclamation Under the Surface Mining and Reclamation Act (SMARA)*" at the Northern California Section of the Society for Mining, Metallurgy, and Exploration.



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.]

- No Ex-Parte communications were noted.

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 provided.

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, Committee of the State Mining and Geology Board, September 23, 2011, 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 Minutes, October 13, 2011, Regular Business Meeting.

Deferred.

X. Continued Business [Action]

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

3. **Public Hearing:** Consideration of an Order to Comply Issued by the Department of Conservation to the Goose Club Farms (CA Mine ID #91-51-00XX), Sacramento Valley Sand Inc. (Operator), Dane Lowry (Agent), County of Sutter, for Failure to Correct Violations Pursuant to the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

Deferred.

4. **Public Hearing:** Consideration of an Order to Comply Issued by the Department of Conservation to the McLaughlin Mine (CA Mine ID #91-28-0003), Karl Burke (Agent), Homestake Mining Company (Operator), Counties of Lake and Napa, for Failure to Correct Violations Pursuant to the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

Deferred.



5. Imposition of an Administrative Penalty (AP #91-58-0015-09-AR) to the Blue Point Clark Mine (CA Mine ID #91-58-0015), Blue Point Partners, LLC (Operator), Brian Bisnett (Agent), County of Yuba.

Executive Officer Testa stated that the SMGB is the lead agency for Yuba County pursuant to the Surface Mining and Reclamation Act (SMARA). An administrative penalty was issued to the operator of the Blue Point Clark Mine pursuant to PRC Section 2774.1(c) for failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207. OMR presented the case on behalf of the SMGB.

Board Member Baca moved to uphold the administrative penalty for \$2,000, and allow 45 days for payment prior to adjusting the amount of the penalty at a rate of \$100 per day. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

6. Imposition of an Administrative Penalty (AP #91-58-0021-09-AR) to the Blue Point Mine (CA Mine ID #91-58-0021), Blue Point Partners, LLC (Operator), Brian Bisnett (Agent), County of Yuba.

Executive Officer Testa stated that the SMGB is the lead agency for Yuba County pursuant to the Surface Mining and Reclamation Act (SMARA). An administrative penalty was issued to the operator of the Blue Point Mine pursuant to PRC Section 2774.1(c) for failure to submit a 2009 Mining Operation Annual Report to the Department of Conservation as required by PRC Section 2207. OMR presented the case on behalf of the SMGB.

Board Member Baca moved to uphold the administrative penalty for \$2,000, and allow 45 days for payment prior to adjusting the amount of the penalty at a rate of \$100 per day. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

XI. New Business [Action]

7. **Public Hearing:** Consideration of an Order to Comply Issued by the SMGB 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 Correct Violations Pursuant to the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

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 (NOV) was issued by the EO on September 3, 2010, and again on January 21 and 28, 2011. This NOV eventually resulted in an administrative penalty being issued by the SMGB in the amount of \$100,000 in March 2011. On May 5, 2011, a NOV was issued to Big Cut Mine owners/operators for ongoing and expanded operation of the unpermitted surface mining activity as confirmed in April, and re-issued on June 9, 2011, via hand delivery to Dan Tankersley. A Cease and Desist, Order to



Comply, was issued by the SMGB on September 8, 2011. At the time this EO report was prepared, the site remains out of compliance with SMARA. The SMGB is holding this public hearing pursuant to PRC Section 2774.1(b) and should the SMGB uphold its Order, then the SMGB will be considering additional administrative penalties at its next scheduled regular business meeting.

- Will Arcand, SMGB Senior Engineering Geologist, provided a summary of previous observations and current site conditions, and compliance and enforcement actions taken by the SMGB and other pertinent agencies.
- William Brewer, attorney and legal counsel for Joe Hardesty and the Big Cut Mine, questioned as to why the site did not have a mine identification number, and that his client is trying to generate a tax base that benefits the community, and expressed questions concerning the status of the reclamation plan provided to the SMGB, the impact of the County of El Dorado County's Proposition A which in his view precludes mining, why the subject site could not be vested, and the nature of the water discharge related issues. Mr. Brewer stated he was retained by his client, he believed, back in April 2011, but also indicated that only as of the date of this hearing was notice given to the SMGB that he was the owner/operator's legal counsel. In response to a question from Member Lund in regards to the current condition of the site, Mr. Brewer stated that "*He's preparing roads. He's preparing a plant...*" and he disagrees that "*there has been what would be considered mining...Mr. Hardesty is certainly preparing the site in preparing roads.*"
- Member Baca asked Mr. Brewer if he was aware that preparing a site for mining operations is surface mining operations as defined under the law. Member Baca noted SMARA PRC Section 2770(a) that states "*Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency, for operations pursuant to this article.*" When asked of Mr. Brewer if the operator has a permit, and whether the operator has an approved reclamation plan, Mr. Brewer did not directly address the questions, although he noted a reclamation plan was submitted. Member Baca stated to Mr. Brewer that in order to conduct surface mining in the state of California, an operator needs a local land use permit to mine from its lead agency, and a reclamation plan and financial assurance which has been approved by its SMARA lead agency. The operator did not have any of these.
- Member Wyatt inquired as to the status of the reclamation plan.
- Member Baca concluded that what is occurring at the site is not a legitimate job-creating business, but a crime in progress.

Board Member Baca moved to uphold the Order to Comply. Board Member Lund seconded and the motion carried with a unanimous voice vote.

Board Member Baca moved to schedule a public hearing. Board Member Lane seconded and the motion carried with a unanimous voice vote.

8. Approval of Proposed Reclamation Plan, Financial Assurance and Final Environmental Impact Report for Santa Paula Materials, Inc. (CA Mine ID#91-56-00XX), Mile Grbic (Agent), Santa Paula Materials, Inc. (Operator), City of Santa Paula.

Executive officer Testa stated that the SMGB acts as the lead agency for the City of Santa Paula. Santa Paula Materials, Inc. currently owns and has been intermittently operating an aggregate processing facility that meets the definition of a surface mining operation within the City of Santa



Paula's jurisdiction. SMARA requires that all surface mining operations obtain a permit, and a SMARA lead agency approved reclamation plan and financial assurances. On November 7, 2011, the City of Santa Paula granted final approval of a Conditional Use Permit (CUP), and also certified a Final Environmental Impact Report (FEIR) for a large-scale processing facility at the Santa Paula Materials, Inc. site. The SMGB is considering approval of the proposed reclamation plan, financial assurance cost estimate and FEIR for the Santa Paula Materials, Inc. surface mining operation.

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

9. Acceptance of California Geological Survey Special Report 215, Update of Mineral Land Classification: Concrete Aggregate in the San Luis Obispo-Santa Barbara Production-Consumption Region, California.

Executive Officer Testa stated that CGS Special Report 215 on mineral land classification for classification of mineral lands in the San Luis Obispo-Santa Barbara P-C Region updates information previously published in 1989. The currently permitted 75 Million tons of currently permitted construction aggregate reserves are projected to last through the year 2006 – 16 years from present (2010). An additional 2,991 acres of land containing such reserves have been identified. An estimated 10,700 million tons of concrete aggregate resources have been identified within the San Luis Obispo-Santa Barbara P-C Region. The SMGB is considering accepting the CGS SP 215.

Board Member Baca moved to accept CGS Special Report 215. Board Member Lane seconded and the motion carried with a unanimous voice vote.

10. Acceptance of State Mining and Geology Board's Report on Designation of Regionally Significant Aggregate Resources in the Bakersfield Production-Consumption Region.

Executive Officer Testa stated that designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. The last designation report provided to the SMGB was in 1999 with the updated designation of the Fresno P-C Region. The SMGB at its October 8, 2009, regular business meeting accepted CGS Special Report 210 for *Update of Mineral Land Classification, Aggregate Materials in the Bakersfield Production-Consumption (P-C) Region*. On August 30, 2011, regulations set forth by the SMGB for the designation of regionally significant aggregate resources in the Bakersfield P-C Region in Kern County were enacted. Upon such regulations becoming effective, the SMGB's Report No. 11 titled "*The Designation of Regionally Significant Aggregate Resources in the Bakersfield Production-Consumption Region*" was prepared. The SMGB is considering acceptance of Designation Report No. 11 pertaining to the Bakersfield P-C Region.

Board Member Wyatt moved to accept the report. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

11. Approval of the State Mining and Geology Board's Annual Report for 2010-2011.

Deferred.

12. Adoption of 2012 Regular Business Meeting Calendar.

Executive Officer Testa stated that eleven meetings are proposed for 2012, with exception to the routinely scheduled August break. In April and November, the meetings are slated to take place on



the third Thursday of the month due to scheduling conflicts. None of the proposed scheduled meetings conflict with annual and sectional meetings for select professional organizations.

Board Member Baca moved to approve the 2012 calendar. Board Member Wyatt seconded and the motion carried with a unanimous voice vote.

13. Designation of a Committee of the Whole State Mining and Geology Board.

Deferred.

XII. Special Reports and Department Presentations [Possible Action]

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

14. Discussion of the Potential Limits on the Use of State Highways for the Transport of Mineral Materials as Part of the Local Agency Permitting Process.

Deferred.

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

Executive Officer Testa noted that in 2006, SMGB staff completed a review of lead agency performance under SMARA, and in 2007 published on its website Information Report IR 2006-07 titled "*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*" In 2007, DOC OMR established the LART. An overview of the LART program was previously presented to the SMGB in July 2009. OMR LART is prepared to provide an overview of the program, and a summary of its review of the County of Lake.

- Ben Shelton, manager of the LART, provided a summary of the report.

No action was taken by the SMGB.

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

Executive Officer Testa noted that in 2006, SMGB staff completed a review of lead agency performance under SMARA, and in 2007 published on its website Information Report IR 2006-07 titled "*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*" In 2007, DOC OMR established the LART. An overview of the LART program was previously presented to the SMGB in July 2009. OMR LART is prepared to provide an overview of the program, and a summary of its review of the County of Merced.

- Ben Shelton, manager of the LART, provided a summary of the report.

No action was taken by the SMGB.

17. 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:



- a. Merrill Borrow Pit (CA Mine ID# 91-02-0001), County of Alpine
- b. Gansberg Sand (CA Mine ID# 91-02-0002), County of Alpine
- c. Diamond Valley Borrow Site (CA Mine ID# 91-02-0004), County of Alpine
- d. Fredericksburg Gravel Pit (CA Mine ID# 91-02-0005), County of Alpine
- e. Weber Creek Quarry (CA Mine ID# 91-09-0002), County of El Dorado
- f. Diamond Quarry (CA Mine ID# 91-09-0003), County of El Dorado
- g. Chile Bar Slate Mine (CA Mine ID# 91-09-0004), County of El Dorado
- h. Cool Cave Quarry (CA Mine ID# 91-09-0005), County of El Dorado
- i. Lawyer Pit (CA Mine ID# 91-09-0010), County of El Dorado
- j. Snows Road Pit (CA Mine ID# 91-09-0012), County of El Dorado
- k. Big Gun Quarry (CA Mine ID# 91-31-0013), City of Rocklin

Will Arcand, Senior Engineering Geologist with the SMGB, presented two inspection reports for the SMGB's acceptance consideration; no other reports were heard.

Board Member Lane moved to approve the inspection reports for the Big Gun Quarry located in the City of Rocklin, and the Cool Cave Quarry located in the County of El Dorado. Board Member Baca 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 Lane)
- Policy and Legislation Committee (Chairperson Baca)

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 continued business 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:

- The SMGB requested that its overall role, past accomplishments and future considerations be discussed at its next scheduled regular business meeting.
- Member Tepel requested that the Policy and Legislation Committee consider future discussion of the SMGB serving as the SMARA lead agency when a surface mining operation encompasses two or more lead agency jurisdictions.

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. 34-2010-80000542, Sacramento County Superior Court.
- g). Joe & Yvette Hardesty v. SMGB, & DOES 1-100 Inclusive, Case No. 34-2010-80000594, Sacramento County Superior Court.
- h). 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 held.

XVII. Announcements of Future Meetings

January 12, 2012, was announced as the next meeting, and the City of Lake Elsinore as the location.

XVIII. Adjournment

The meeting was adjourned at 3:30 P.M.

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

