



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, January 12, 2012

DRAFT

LOCATION:

Lake Elsinore Cultural Arts Center
183 North Main Street
Lake Elsinore, California 92530

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 10:15 A. M. by Chairman Garner, and a quorum was declared.

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

Jim Pompy reported on behalf of the new Director of the Department of Conservation, Dr. Mark Nechodom, and reported on the following:

- Dr. Nechodom will be sworn in on January 17, 2012.
- Mr. Jason Marshall was appointed as Chief Deputy Director of the Department of Conservation.
- The legislature is back in session and the Governor's budget includes the elimination of the SMGB, and the Department of Conservation has been directed to work with statutory language to support the Governor's proposal, but it will be an open process and will be looking forward to having everyone's input, with open discussion as to how SMARA would work with a SMGB and without a SMGB.

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

Executive Officer Testa on behalf of State Geologist and Director of the California Geological Survey (CGS), Dr. John Parrish, provided the following report:

- CGS, as science advisor to the California Public Utilities Commission on the relicensing of PG&E's Diablo Canyon Nuclear Power Plant, will attend two meetings with the State Lands Commission and the CPUC regarding the design of the 3D Offshore Seismic Survey proposed by PG&E.
- CGS staff will participate in the Northern California Earthquake Hazards Workshop in Menlo Park – sponsored by the U. S. G. S. The Workshop focuses on the latest developments in understanding fault movements and propagations.
- State Geologist, John Parrish, will participate on the Executive Committee of the American Geosciences Institute (AGI) in Alexandria, VA. Parrish is a National Representative At-Large for AGI.
- CGS Strong Motion Instrumentation Program staff will conduct an Advisory Committee meeting to discuss the status or proposed instrumentation work. The Advisory Committee is a committee of the Seismic Safety Commission, with whom CGS-SMIP consults on major work proposals.
- On December 31, 2011, Sr. Engineering Geologist Thomas E. Spittler retired from CGS after 31 years of service. Tom was with the Forestry and Watershed Geology



Unit at CGS, stationed at the joint CGS-Forestry Department office in Santa Rosa. Tom was unsurpassed in his skills performing Timber Harvest Reviews for the Forestry Department, in evaluating post-forest fire hazards, and in analyzing the effects of timber harvesting activities on the local geology and watershed. Tom designed an environmentally friendly, and stable, timber road culvert for stream crossings now employed by the industry, and required by the Forestry Department, known as the "Spittler Crossing."

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

Jim Pompy, Assistant Director and Chief of OMR, reported on the following:

- A survey and questionnaire pertaining to the annual mine fees was mailed to about 1200 surface mining operations on December 29, 2011. About 203 responses have been received to date. Data will be compiled and forwarded back to the SMGB Executive Officer.
- SB 108 which also became effective January 1, 2012, and provides 18 months to surface mining operators to correct previously submitted annual reports pertaining to overall mine status.
- SB 110 became effective on January 1, 2012, and requires disclosure of surface mining operations within a certain distance from the mine site during property transactions. In response, OMR has initiated on their website "*Mines –on-Line.*" John Wesling, OMR Senior Engineering Geologist, provided a demonstration. Although basic data is provided at this time, the type and amount of data to be provided in the future will be expanded upon, and the website should prove a useful tool and resource.

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

Chairman Garner reported on the following:

- Recognition of Distinguished Service for Robert Tepel (SMGB)

Chairman Garner recognized the distinguished service of Member Tepel, and summarized the many significant contributions made to the State of California during his tenure on the SMGB from March 2001 to March 2012, being reappointed in 2004 and 2008. Member Tepel was appointed to the SMGB by Governor Gray Davis, and served under Governor Arnold Schwarzenegger and Governor Edmund G. Brown, Jr. Member Tepel served with distinction on the SMGB fulfilling the position of Registered Geologist representing background and experience in seismology. Prior to retiring, Member Tepel served as an Engineering Geologist from the Santa Clara Valley Water District, and previously served as an Engineering Geologist at W. A. Wahler & Associates. He is a former President of the Association of Engineering Geologists, as well as a California Registered Geologist and Certified Engineering Geologist.

Vice Chairman's Report (Baca) [Information]

- Recognition of Distinguished Service for Erin Garner (SMGB)

Vice-Chairman Baca recognized the distinguished service of Chairman Garner, and summarized the many significant contributions made to the State of California during his tenure on the Board from April 2005 to March 2011. Chairman Garner was appointed to the SMGB by Governor Arnold Schwarzenegger, and also served under Governor Edmund G. Brown, Jr. Chairman Garner served with distinction on the SMGB fulfilling the position representing groundwater hydrology, water quality



and rock chemistry. A licensed Professional Geologist and Certified Hydrogeologist and consultant, Chairman Garner personally led the investigation and cleanup of hundreds of contaminated sites, and is widely recognized for his knowledge of contaminant transport and affect in groundwater, surface water, soil, and indoor and outdoor air in a wide variety of ecological environments. Being very active in local and State politics, he has helped develop progressive environmental legislation and policy. He has served as two-term Mayor for the City of Monte Sereno, as Director for the Bay Area Air Quality Management District (BAAQMD), Commissioner for the Santa Clara Valley Water District, Association of Bay Area Governments Hazardous Waste Allocation Member, Policy Advisor for the Valley Transit Authority, Public Safety Commissioner, and several other official roles. Chairman Garner has served as Chairman of the Board's Geohazards Committee and Geologic Resources Committee, and served on the Policy and Legislation Committee.

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

Executive Officer Testa reported on the following:

- SMGB staff in its capacity as a SMARA lead agency has inspected 37 out of 45 surface mining operations. Those operations within the jurisdiction of the Bay Conservation and Development Commission (BCDC) remain to be completed.
- Thirty-four sites out of 45 counties have been identified where a financial interest conflict exists and thus, such SMARA lead agencies are not permitted to inspect their own sites. Thirteen counties still require evaluation, along with a number of cities.
- Three regulatory packages are in preparation. These rulemaking packets pertain to the designation, and termination of designation, of certain sectors within the San Bernardino, Palm Springs and San Gabriel Production-Consumption Regions.
- A revised slope stability analysis for the Super Creek Quarry, City of Desert of Hot Springs, was received in mid-February. 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.
- Several reports remain to be completed including review of the Alquist-Priolo Earthquake Fault Zoning Act by the Technical Advisory Committee which operates under the SMGB Geohazards Committee, the SMGB 2010-2011 Annual Report, and several SMGB Information Reports pertaining to a survey of lead agencies affected by SMARA, and a survey regarding annual mine fees.
- On December 13, a talk on "*The Challenge of Balancing Mineral Conservation and Reclamation under the Surface Mining and Reclamation Act (SMARA)*" was presented 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.]

- Member Tepel talked with certain public members regarding the issue before the SMGB today pertaining to Lake Elsinore prior to commencement of today's hearing.



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.]

- Paulie Tehrani, Sharon Gallina and Ida Martin, residents of the City of Lake Elsinore, spoke on concerns pertaining to SMARA compliance and enforcement. Ms. Martin specifically commented on two surface mining operations located in Riverside County, west of the City of Temecula, which were alleged to be out of compliance with SMARA. The Department of Fish and Game and California Regional Water Quality Control Board are involved.

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, October 13, 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, December 8, 2011, Regular Business Meeting.

Deferred.

3. Approval of a Revised Financial Assurance Cost Estimate, CEMEX Lapis Mine (CA Mine ID No. 91-27-0006), CEMEX (Operator), Ron Wilson (Agent), City of Marina

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.

X. Continued Business [Action]

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

4. **Public Hearing:** Consideration of Order to Comply, Brighton Alberhill Clay Mine (CA Mine ID #91-33-0022), Chad Warren (Agent), Pacific Clay Products, Inc. (Operator), City of Lake Elsinore.

Executive Officer Testa stated that on April 11, 2011, the Director of the Department of Conservation, Office of Mine Reclamation (OMR), issued an Order to Comply to Pacific Clay Pits (CA Mine ID #91-33-0022), operator Pacific Clay Products, Inc. The Notice and Order addressed the operator's alleged violations of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.), specifically Public Resources Code Section 2770. An Order issued by the Director is subject to an automatic hearing (appeal) before the State Mining and Geology Board (SMGB) prior the order becoming effective (reference PRC Section 2774.1[b]). This matter was continued at the SMGB's September 23, 2011, regular business meeting. Typically, the SMGB considers whether the Director had sufficient evidence to support the order at the time it was



issued, and if such evidence supports issuance of the OTC and any effective date in the order, the OTC shall be upheld. OMR is requesting this matter be continued, but is prepared to provide a status report.

- Jim Pompy with OMR requested that the matter be continued.
- Interested parties who commented included Tom Tomlines, Paulie Tehrani and Sharon Gallina (residents of the City of Lake Elsinore), and Colin Kelly (Staff Attorney representing the Inland Empire Water Keeper).
- Chad Warren, representative and authorized to sign on behalf of for Pacific Clay, also commented.

Board Member Baca moved to uphold the Order to Comply with the Order to be replaced by a Stipulated Order within 90 days of this date with no accrual of administrative penalties during the 90 day period. Board Member Lane seconded and the motion carried with a unanimous voice vote.

5. **Public Hearing:** Assumption Consideration Following Issuance of a 45-Day Notice to Correct Deficiencies to the City of Lake Elsinore Pursuant to the Surface Mining and Reclamation Act (SMARA).

- Executive Officer Testa stated at its May 12, 2011, the SMGB held a hearing to consider assumption of the SMARA program for all surface mining operations within the jurisdiction of the City of Lake Elsinore (City). At such hearing, the SMGB moved to continue monitoring the City's efforts, and for the City to report back in the fall of 2011. Due to quorum issues, among other considerations, the SMGB was not able to meet. The SMGB in May 2011 also requested that the City adhere to certain performance standards that were set forth in the Executive Officer's report. The updated response from the City to the 45-Day Notice to Correct Deficiencies dated December 23, 2011. A SMARA lead agency need only fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a) for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority. The City has clearly met these criteria. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to make its case that it is committed to maintaining an effective SMARA program, and fulfilling its obligations and responsibilities as a lead agency in accordance with SMARA and the SMGB's regulations. Thus, the question is whether the City is prepared to fulfill its role as a SMARA lead agency based on 1) review of the City's response to the 45-Day Notice to Correct Deficiencies, 2) review of the City's response to OMR's 15-Day Notice, 3) the City's understanding of SMARA administrative and enforcement processes, and 4) willingness to dedicate the necessary resources required for an effective SMARA program. With OMR's assistance and initiation of enforcement actions, the path toward full compliance for all surface mining operations within the jurisdiction of the City has been mapped through a stipulated Order to Comply. The SMGB is considering whether the City's SMARA lead agency responsibilities, with exception to permitting, be assumed.
- On behalf of the OMR, Jim Pompy, Assistant Director and Chief of OMR, and staff geologist Kevin Doherty, presented a status report on mining within the City's jurisdiction.
- On behalf of the City, the SMGB heard from Mayor Brian Tisckile, City Manager Bob Brady, City Manager, City of Lake Elsinore, Director of Public Works and City Engineer Ken Seumalo, City Attorney Barbara Leibold, and Special Mining Counsel Mark Harrison.



- On behalf of industry, the SMGB heard from Pacific Aggregates Sales Manager Larry Smith, and consultants for Pacific Aggregates John Hecht with Sespe Consultants.
- Colin Kelly, Staff Attorney, representing the Inland Empire Water Keeper, expressed concerns and requested that the SMGB continue monitoring the City's SMARA program.
- Pam Nelson, Conservation Chair of Sierra Club, Sierra Club Margarita Group also expressed concerns.
- On behalf of the public, the SMGB heard from Ed Constante, Sharron Gallina, Lois Hoyt, Chris Hyland, Linda Ridenour and Paulie Tehrani.

Board Member Baca moved to accept the findings of the Executive Officer as set forth in the May 12, 2011, Executive Officer's Report. Board Member Wyatt seconded and the motion carried with a unanimous voice vote.

Board Member Baca moved to find that the City of Lake Elsinore has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the deficiencies previously noted have been adequately corrected to the satisfaction of the SMGB, and that no further action is required. Board Member Wyatt seconded and the motion carried with a unanimous voice vote.

6. **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.

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, Rick Churches, and Dan Tankersley (Agents), 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 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. An Order to Comply was issued by the SMGB on December 10, 2010, and upheld by the SMGB on February 10, 2011. Following issuance of a \$100,000 Administrative Penalty on



March 10, 2011, a Notice of Violation was issued by the SMGB on June 9, 2011, and Order to Comply issued and subsequently upheld on November 10 and December 8, respectively, for expansion of surface mining operations. 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. The recommendation being provided for the SMGB's is consistent with a previous recommendation provided in March 2011.

Board Member Baca moved to approve issuance of an administrative penalty of \$750,000. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

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 Goose Club Farms North Project, County of Sutter.

Executive Officer Testa stated that 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). The Goose Club Farms North on December 20, 2011, has submitted a request for a one-time exemption from SMARA to remove silt, sand and debris derived from over flow and flooding from the Feather River onto GCFN's agricultural property located in the County of Sutter. The proposed project 1) is anticipated to exceed SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes. It is my understanding that the amount of land disturbed or anticipated to be disturbed is on the order of 300 acres. Although an environmental study and applicable permits have not all been attained they are in process. Furthermore, this exemption is being supported by the Central Valley Flood Protection Board, Department of Water Resources, County of Sutter and Assembly Member Jim Neilson. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions. The SMGB is considering granting a one-time exemption for this project.

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

9. Annual Discussion of the State Mining and Geology Board's Strategic Plan.

Deferred.

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

Deferred.



XI. New Business [Action]

11. Finalization of a Letter to the Governor's Office Regarding the Continued Service of the State Mining and Geology Board to the People of California.

Executive Officer Testa presented the final draft of the letter prepared on behalf of the SMGB and to be forwarded to the Governor's office and made available on the SMGB's website, in consideration of the Governor's efforts to address budgetary matters and streamline state government.

Board Member Baca moved to direct Executive Officer Testa to forward the letter to the Governor's Office, and post such letter on the SMGB's website. Board Member Lane 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.

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:

- a. Atkinson Pit (91-19-0004), City of Compton
- b. Super Creek Quarry (91-33-0003), City of Desert Hot Springs
- c. Garnet Pit (91-33-0031), City of Palm Springs
- d. Santa Paula Materials (91-56-00XX), City of Santa Paula
- e. Knife River Hallwood (91-58-0002), County of Yuba
- f. Sperbeck Quarry (91-58-0004), County of Yuba
- g. Wheatland Clay Mine (91-58-0007), County of Yuba
- h. SRI Stringer Pit I (91-58-0022), County of Yuba
- i. SRI Stringer Pit II (91-58-0023), County of Yuba

Board Member Baca moved to accept the inspection reports, excluding the report for Santa Paula Materials. 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 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:

No new business was discussed.

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). 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

March 8, 2012, was announced as the next meeting, and the City of Sacramento as the location.

XVIII. Adjournment

The meeting was adjourned at 3:00 P.M.

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

