



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, March 8, 2012

DRAFT

LOCATION:

Assembly Hearing Room #444

State Capitol

Sacramento, California 95814

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, with all members present and a quorum was declared.

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

Director of the Department of Conservation, Mark Nechodom, reported on the following:

- New Department Director Mark Nechodom introduced himself and gave a brief overview of his background and priorities.
- State Geologist's Report (Parrish) [Information]

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

- The Association of American Association of State Geologists (AASG) selected State Senator Diane Feinstein to receive their annual Pick and Gavel award. CGS is planning on making the presentation of behalf of AASG in Washington, DC.
- March 11, 2012, represents the one year anniversary of the Tahoku earthquake and tsunami. Several events will be taking place in honor of this anniversary. Also, March 26, 2012, begins tsunami awareness week.
- From April 9-11 is the National Earthquake Conference on behalf of Western States Seismic Policy Council (WSSPC).
- CGS has issued thirteen preliminary Alquist-Priolo Earthquake Fault Zoning maps, seven of which are revised, 6 are new. Another half dozen preliminary maps should be coming out for public comment over the next few months.
- Office of Mine Reclamation Report (Pompy) [Information]

Assistant Director and Chief of the Office of Mine Reclamation (OMR), Jim Pompy, reported on the following:

- The Abandoned Mines Land Unit (AMLU) has hired three student employees to assist with the inventory work with the National Park Service.
- OMR, in conjunction with Teichert hosted a small contingent from Mongolia regarding mining reclamation in California.
- An Inspection Workshop on January 25-26, in San Diego, was very well attended. OMR is holding another workshop on Introduction to SMARA, in Atwater on March 27-28, and a new workshop for mining operators to provide assistance with



compliance and forms. Another Inspection Workshop is scheduled for May 29-30 in Napa.

- OMR will be sharing a booth with CGS at The Sierra Fund's Reclaiming the Sierra Annual Meeting in Nevada City.
- OMR has a committee working on some potential changes to the inspection form.

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

Chairman Garner reported on the following:

- A resolution was read into the record, recognizing former SMGB Member Kathy Lund's distinguished service.
- An introductory meeting was held with Director Mark Nechodom.

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

Executive Officer Testa reported on the following:

- Certain SMARA lead agencies statewide have been identified to have a financial conflict of interest noting that 34 sites out of 45 counties have been identified, and certain counties have contested the SMGB's right to conduct inspections on these sites. This item is slated for further discussion in Executive Session.
- The Executive Officer received public complaints pertaining to SMARA lead agency performance complaints: County of Siskiyou and County of Santa Clara.
- Four regulatory packages are in process, all related to designation or termination of designation of mineral lands.
- The Alquist-Priolo Technical Advisory Committee report is currently in process.
- On February 7, 2012, the Executive Officer made a presentation to Board of Professional Engineers, Land Surveyors, and Geologists (BPELS) Geologist and Geophysicists Technical Advisory Committee regarding updating guidelines and policies on professional standards in the practice in geology.

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 provided.

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 reports were 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, December 8, 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, January 12, 2012, Regular Business Meeting.

Board Member Baca moved to approve the minutes. 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.]

3. **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.).

Item Deferred.

4. Acceptance of Recommendations of the State Geologist for Designation of Mineral Lands within the San Luis Obispo-Santa Barbara Production-Consumption Region, California.

Executive Officer Testa noted that at its December 8, 2011, regular business meeting, the State Mining and Geology Board (SMGB) accepted California Geological Survey (CGS) Special Report 215, a classification report on Portland cement concrete-grade (PCC) aggregate in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region. This report updated information previously published by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 162– *Mineral Land Classification: Portland Cement Concrete Aggregate and Active Mines of All Other Mineral Commodities in the San Luis Obispo-Santa Barbara Production-Consumption Region*. Special Reports 215 updated the classification portion of the two-step *Classification-Designation process* mandated by the Surface Mining and Reclamation Act (SMARA). The second part of that process, designation, is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance needed to meet the demands of the future. Aggregate resources in the San Luis Obispo-Santa Barbara P-C Region were not designated subsequent to the publication of Special Report 162 in 1989; therefore, the information on concrete-grade construction aggregate resources identified in Special Report 215 should be used as a basis for consideration of potential designation actions by the SMGB. The State Geologist has recommended designation of select mineral resource lands in the San Luis Obispo-Santa



Barbara Production-Consumption P-C Region. Upon acceptance of the State Geologist's recommendations, the Executive Officer can be directed to hold a public hearing to receive comments on the proposed action.

Board Member Baca moved to accept the recommendations of the State Geologist. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

XI. New Business [Action]

5. **Public Hearing:** Consideration of an Order to Comply Issued by the Department of Conservation to the Red Ink Maid Mine, Placer County, (CA ID #91-31-0020), Mr. Richard Sykora (Owner and Operator), 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 on January 9, 2012, the Director of the Department of Conservation, Office of Mine Reclamation (OMR), issued an Order to Comply to Red Ink Maid Mine, Placer County, (CA ID #91-31-0020), Mr. Richard Sykora (Owner and Operator). The Notice and Order addressed the operator's alleged violations of SMARA, specifically PRC Section 2770. The violations contained in the Order addressed the operator's alleged failure of the operator to 1) implement adequate revegetation efforts (PRC Section 2772(c) and CCR Sections 3710 and 3712); submit a financial assurance cost estimate to the SMARA lead agency (PRC Section 2770(a); to update and adjust the financial assurance mechanism since 2006 (PRC Section 2773.1); to submit its annual reporting fees for the years 2007-2010 (PRC Section 2207); and comply with its waste discharge reporting requirements, and comply with its reclamation plan and applicable performance standards (CCR Section 3710(a). An order issued by the Director is subject to an automatic hearing (appeal) before the SMGB prior the order becoming effective. The SMGB is considering 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.

- Jim Pompy, Assistant Director and Chief of the OMR, requested that this matter be continued.
- Senator Gaines provided testimony on behalf of Richard Sykora, the operator of the Red Ink Mine.
- Ross Branch, Field Representative for Congressman McClintock, along with Norman Gonzales, Community Outreach Director, Congressman Tom McClintock, provided testimony.
- Greg Tenorio, legal counsel for OMR, commented on the OMR's position in regards to the Memorandum of Understanding (MOU) between the U.S. Forest Service, Bureau of Land Management and the Department of Conservation, and the SMGB.
- Richard Sykora also clarified past and current actions.

Board Member Baca moved to uphold the Order to Comply with changes, and agreed to add forty-five (45) days to each remedial measure and condition contained within the Order. As a result of the SMGB's determination, the Department's Order is effective on March 8, 2012. Each remedial and corrective action contained within the Order compliance schedule is extended by forty-five (45) days. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

6. 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 Spanish Creek in Meadow Valley Restoration Project, County of Plumas.

Executive Officer Testa stated that SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the Board finds that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances pursuant to PRC 2714(f). On January 19, 2012, Terry Benoit on behalf of the Feather River Coordinated Resource Management Group (FRCRM) submitted a request for a one-time exemption from SMARA for the Spanish Creek in Meadow Valley Restoration Project, located in Plumas County (County). The non-profit FRCRM was established in 1985 to protect, maintain and enhance ecosystems and community stability in the Feather River Watershed through collaborative landowner participation. The FRCRM group is a partnership of 24 public and private sector groups who formed in 1985 to collectively improve watershed health in the upper Feather River Watershed. The proposed project incorporates plans to commence efforts to reduce the excessive sediment load to Spanish Creek, by implementing certain projects in Meadow Valley, upstream of the American Valley, resulting in a reduction in sediment sources within the entrenchment, stabilization of entrenchment banks, relief of constrictions, and provide for long-term recruitment and removal of excess gravel. The entire project area incorporates approximately 72 acres in four distinct, but connected, project reaches. Approximately 4.4 acres are planned to be disturbed within the downstream project reach, with an estimated 4,600 cubic yards of material relocated within the project reach and an additional 3,900 cubic yard excavated and removed from the project site. 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.

- Terry Benoit, Resource Biologist representing the Feather River Coordinated Group, provided an overview of the proposed project, and the rationale for making a request for a one-time exemption from SMARA.

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

7. 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 M&T Chico Ranch, County of Butte.

Deferred.

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 West Stanislaus Irrigation District (WSID) Main Canal Renovation Project, County of Stanislaus.

Executive Officer Testa stated that SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the Board finds that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances pursuant to PRC 2714(f). A request for a one-time exemption from SMARA for the West Stanislaus Irrigation District (WSID) Main Canal Renovation Project, County of Stanislaus was received on February 14, 2012. The project includes the removal of approximately 5,000 cubic yards to material to be used for foundation and pipe fill for the pumping station situated approximately two miles from the project site. 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.



- Gary Rogers, West Stanislaus Irrigation District, provided an overview of the proposed project, and the rationale for making a request for a one-time exemption from SMARA.

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

9. Acceptance of the 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 indicated 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 amount requested by the Department of Conservation for Calendar Reporting Year 2011 is \$4,284,416; this amount represents an increase of \$110,582 over the amount requested for Calendar Reporting Year 2010. The annual Fee for 2011 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 2011 which was about 2.6%. The tables provided in the staff report are the new fees figures that are established pursuant to PRC 2207. Estimating the funds to be collected in Calendar Year 2010 from set fees described in CCR Sections 3698 and 3699 to be \$3,384,561, the amount of fees to be collected for the 2011 Calendar Reporting Year is \$3,474,403. The SMGB is being asked to accept that the fees have been calculated in accordance with PRC 2208 and the SMGB's regulations.

Board Member Tepel moved to accept the annual mine fee schedule. Board Member Baca seconded and the motion carried with a unanimous voice vote.

10. Consideration of Changes to the Annual Mining Operation Report Form MRRC-2.

Executive Officer Testa stated that all unreclaimed mine operations are required to file a Mine Operation Annual Report (MRRC-2) for each reporting (calendar) year. The reports provide information to the Department of Conservation that includes, but is not limited to, identifying the responsible parties operating mine sites, the operation's production and reclamation status, status of mine inspections, commodities produced, production amounts of reported commodities, and remaining disturbed acreage. Each MRRC-2 form is to be accompanied by an annual reporting fee and is to be filed no later than July 1 of each year for the preceding report year. The MRRC-2 report and related Low Gross Exemption Fee Request (MRRC-4L) form must be approved by the SMGB. These forms are before the SMGB at this time for consideration and approval of proposed revisions. The revisions are intended to ease the completion of the forms by mine operators and to facilitate the department's interpretation of information on completed forms. The SMGB is being requested to consider the recommendations set forth by the Policy and Legislation Committee and approve.

- Vice Chair Brian Baca summarized the actions of the Policy and Legislation Committee from its earlier meeting pertaining to editorial and clarifying, non substantial, changes to the form.
- Jim Pompy, and Bret Koehler, with OMR provided a summary of the proposed changes to the form.
- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA) also provided comment.



Board Member Tepel moved to accept the changes with modifications. Board Member Lane 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. Executive Officer Testa stated that PRC Section 2717(a) requires the SMGB to submit annually an annual report. Such annual reports were deferred after June 2000 due to budget constraints, and preparation of such reports resumed in 2009. The SMGB is considering approving the final draft of its 2010-2011 annual report, and directing the Executive Officer to forward the draft to the Governor's office for approval consideration, prior to finalization and distribution, as appropriate.

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

12. 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.

XII. Special Reports and Department Presentations [Possible Action]

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

13. Office of Mine Reclamation, Lead Agency Review Team (LART) Reports for:

- a. County of Nevada
- b. County of San Diego
- c. City of Chula Vista
- d. City of Oceanside

Board Member Baca moved to direct the Executive Officer to work with OMR and report back to the SMGB as to whether a 45-Day Notice to Correct Deficiencies to the County of Nevada and City of Oceanside is warranted.

14. Acceptance of Inspection reports pursuant to PRC Section 2774(b) for the following surface mining operations as being in accordance with the SMGB's requirements:

- Hanson Alcatraz, Presidio, Point Knox (CA Mine ID #91-38-0001), BCDC.
- Hanson Point Knox South (CA Mine ID #91-38-0002), BCDC.
- Hanson Point Knox Shoal (CA Mine ID #91-38-0003), BCDC.
- Hanson Alcatraz South Shoal (CA Mine ID #91-38-0004), BCDC.
- Hanson Suisun Bay (CA Mine ID #91-38-0005), BCDC.
- Hanson Suisun Bay Middleground (CA Mine ID #91-38-0006), BCDC.
- Jerico Suisun Bay Middleground (CA Mine ID #91-38-0007), BCDC.
- Morris Tug & Barge Marine Oyster Shell Mining (CA Mine ID #91-38-00011), BCDC.



- San Francisco Marina Dredging Operation (CA Mine ID #91-38-0012), BCDC.
- Parks Bar Quarry (CA Mine ID #91-58-0013), County of Yuba.
- Blue Point Clark Quarry (CA Mine ID #91-58-0015), County of Yuba.
- Blue Point Mine (CA Mine ID #91-58-0021), County of Yuba.

Board Member Lane 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 Lane)
- Policy and Legislation Committee (Chairperson Baca)
 - Chairman Baca deferred for 90 days additional consideration of proposed regulations pertaining to AB 3098, reviewed proposed changes to MRRC-4L form, and changes as to how annual mine fees are calculated.

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 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. 34-2010-80000542, 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

Deputy Attorney Rick Thalhammer announced that the SMGB met in Executive session and took no action.

XVII. Announcements of Future Meetings

April 12, 2012, was announced as the next meeting, assuming a quorum is confirmed, and the City of Sacramento as the location.

XVIII. Adjournment

The meeting was adjourned at 5:15 P.M.

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

