



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814



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August 25, 2009

## FURTHER NOTICE OF PENDING DETERMINATION

### State Mining and Geology Board's Notice of Vested Rights Determination Western Aggregates LLC Surface Mining Operation Yuba County, California

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) proposes to continue its public hearing on September 11, 2009, to consider whether the Western Aggregates, LLC, surface mining operation, located in Yuba County, has vested rights in accordance with the Surface Mining and Reclamation Act of 1975 (SMARA), pursuant to Public Resources Code Division 2, Chapter 9, Article 5, Section 2776.

#### PENDING ADMINISTRATIVE ACTION

In a January 2007 ruling, the California Court of Appeal, Third Appellate District, held that a proper notice and hearing was required for vested rights determinations, and directed that when the SMGB is acting as the SMARA lead agency, the SMGB at the request of the operator, has the responsibility to conduct a public hearing and make a vested rights determination (*Calvert v. County of Yuba*, (2007) 145 Cal. App. 4th 613). Western Aggregates, LLC. submitted a request for determination, and the administrative record, to the SMGB on November 5, 2008. The Chairman of the SMGB determined that the request was within the SMGB's jurisdiction, and a Notice of Pending Vested Rights Determination was mailed on January 6, 2009, and amended on January 12, 2009.

The SMGB administers certain lead agency responsibilities and obligations pursuant to SMARA (Public Resources Code Section 2710 et seq.) for Yuba County, and will be conducting a vested rights determination (CCR Section 3950 et seq.) for the surface mining operation known as Western Aggregates, LLC. (California Mine Identification No. 91-58-0001), located in Yuba County.

## **CLAIMANT CONTACT**

The Western Aggregates, LLC. claimant's contact information and surface mining operation business address are:

### CONTACT PERSON/AGENT:

Kerry Shapiro, Esq.  
Jeffer, Mangels, Butler & Marmaro LLP  
Two Embarcadero Center, 5th Floor  
San Francisco, CA 94111  
Phone: (415) 984-9612  
Fax (877) 746-5619  
e-mail: kshapiro@jmbm.com

### BUSINESS ADDRESS:

Mr. Lloyd Burns  
Western Aggregates LLC  
P. O. Box 821  
Marysville, California 95901  
Phone: (530) 754-6525

## **SPECIFIC PROPERTY DESCRIPTION**

The specific property for which a vested rights determination has been requested from the SMGB is depicted in Map 13-3 (attached; map can also be found in Volume III of the Western Aggregates Request For Determination, submitted to the SMGB in October 2008). The subject area incorporates approximately 4,125 acres currently owned by Western Aggregates, LLC, and is situated in a roughly 10,000-acre area within what is known as the Yuba Goldfields, as shown on Map 13-3, and as described with more particularity in the "Legal Description" section of Volume I of the Western Aggregates' Request for Determination. The subject area consists of portions of the following sections:

Sections 1, 2, 11 & 12 in Township 15 North, Range 4 East, M.D.M.,  
Sections 4, 5 & 6 in Township 15 North, Range 5 East, M.D.M.,  
Sections 25, 26, 27, 32, 33 & 34 in Township 16 North, Range 5 East, M.D.M.,  
Section 30 in Township 16 North, Range 6 East, M.D.M.

## **PUBLIC HEARINGS AND WRITTEN COMMENTS**

The SMGB scheduled a public hearing for the determination of vested rights for August 6, 2009. At that time, the SMGB received extensive public comment, and subsequently moved to continue the Public Hearing to September 11, 2009. The Public Hearing will commence at 8:30 a.m. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act.

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. Representatives for the Claimant, Yuba County and the general public, are invited to make statements at the hearing regarding the vested rights asserted. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

The public hearing will be held at:

The Yuba County Government Center  
915 8<sup>th</sup> Street, Suite 109  
Marysville, CA 95901

## **ADMINISTRATIVE RECORD AVAILABILITY**

The administrative record received on November 5, 2008, is comprised of three volumes (Volumes I, II and III-A, III-B and III-C), and 20 volumes of historical record containing over 12,000 pages. The administrative record is accessible for review at:

State Mining and Geology Board Office  
801 K Street, 20<sup>th</sup> Floor, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082

OR

Yuba County Planning Department  
915 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
Phone: (530) 749-5470

**CONTACT PERSON**

Inquiries concerning the substance of this Further Notice of Pending Determination should be directed to:

Mr. Stephen M. Testa, Executive Officer  
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