



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)

[smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov)



## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, February 5, 2008

9:30 A. M.

(Or immediately following the Geohazards Committee Meeting)

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/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 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.

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 (Jones)**

**II. Roll Call and Declaration of a Quorum**

The meeting was called to order at 9:45 A. M. by Chairman Jones, with all members present, and a quorum was declared.

**III. Director's Report (Luther, Department of Conservation) [Information]**

Director Bridgett Luther reported on the following:

- An overview of the budget status for the Department was provided. The California Geological Survey (CGS) is directly impacted by reductions in the State's General Fund on the order of \$500,000.
- Candidates being considered for appointment to the SMGB are on the Governor's desk, and once action is taken, the SMGB will be informed.
- Director Luther introduced Legislative Director Ms. Marni Webber, who was formerly with the Energy Commission. Ms. Webber summarized the status of AB 42, introduced by Assembly Member Sam Blakeslee. AB 42 would require the Pacific Gas and Electric Company (PG&E) to work with the California Energy Commission (CEC) to conduct a three-dimensional imaging survey of a fault line near the Diablo Canyon Nuclear Power Plant (DCNPP), and appropriate \$16,800,000 to conduct the survey. The money is currently authorized by the Public Utilities Commission (PUC) to pay for DCNPP re-licensing feasibility. This bill has not been assigned to a committee for hearing.

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

Mr. Dennis O'Bryant, Assistant Director with OMR, reported on the following:

- The Lead Agency Review Unit should be fully staffed by the time the SMGB meets again.
- The Bureau of Land Management and National Parks Service is working on contracting with OMR in pursuing funds for the abandoned mines program. The current stimulus bill includes monies for the Abandoned Mines Land Unit.
- A number of enforcement actions are being pursued by OMR, including major actions in the Counties of Butte, Sacramento, Madeira and Ventura.
- Lead agencies are being notified that they may have surface mine operations that no longer qualify to be on the AB 3098 list, and about twelve lead agencies have been notified that they may have sites on the list that no longer qualify, and have been given 60 days to review and correct the status of sites on the list. The response has been large.

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

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

- Have a full staff and doing well despite the budget constraints.



#### **IV. Chairman's Report (Jones) [Information]**

Chairman Jones made the following reports:

- Recognition of distinguished service in memory of Member Seena Hoose, who passed away last fall, via Resolution 2009-01. All SMGB Members commented and praised her as a professional and individual.

#### **V. Executive Officer's Report (Testa) [Information]**

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

- Two public hearings are scheduled for the Minerals and Geologic Resources Committee on the afternoon of Wednesday, March 11, in Palm Springs. A 30-day public notice for receipt of comments is available on the SMGB's website, and has been forwarded to interested parties, and will be published in local newspapers as of February 6. These two hearings will allow opportunity for comment for Termination of Designation for certain sectors in the Claremont-Upland Production-Consumption (P-C) Region, and Designation and Termination of Designation of certain sectors in the Palm-Springs P-C Region.
- All 2008 mine inspections have been completed, and the SMGB will consider acceptance of the final 2008 inspection reports at its upcoming March 12, regular business meeting.
- A Vested Rights Request for Determination for the Big Cut Mine located in El Dorado County is anticipated in the near future.
- The SMGB received a reclamation plan for the Feather River Levee Improvement Authority, Three River (operator) Levee Repair Project, Segment 2, located in Yuba County. Activities commenced in June 2008 and are anticipated to cease by November 15, 2008, but will resume operations in the spring of 2009. No approved reclamation plan and approved financial assurance exist. After review by OMR and SMGB staff, portions of the project were not exempt from SMARA. A Notice of Violation was issued on December 23, 2008, shortly following a site visit. The reclamation plan and associated CEQA documents have been reviewed by OMR and SMGB staff. There are four borrow pits: two considered part of the project, one as part of the project but requires a revegetation plan, and one clearly outside the project area. The SMGB can anticipate considering approval of a reclamation plan, financial assurance cost estimate in the form of a budget set-aside, and pertinent CEQA documents to rely upon, at its upcoming April 9, 2009, regular business meeting.
- A draft reclamation plan form is being developed and will eventually be used by the SMGB when serving as a SMARA lead agency. It has been reviewed by OMR staff, and will be before the Surface Mining and Standards Committee and then the SMGB for acceptance consideration, at the SMGB's upcoming April 2009, regular business meeting.



- The Executive Officer has been requested to chair a symposium on mine reclamation at the upcoming 2009 national annual meeting of the Association of Engineering and Environmental Geologists. The meeting will be held in South Lake Tahoe.

**VI. 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 Isham noted that he recently attended a Society of Mining Engineers meeting.
- Member Bly-Chester mentioned her involvement in a National Science Foundation grant study with the specific purpose of interacting with stakeholders in the delta area in regards to seismic risk.

**VII. 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.]

- Thomas Henry, legal counsel for the Feather River Levee Improvement Project, and representing the Three River Levee Improvement Authority, summarized the project and indicated that two borrow sites were apparently found not to be exempt from SMARA. An exemption request is anticipated. Member Bly-Chester indicated that she was familiar with the project and expressed concerns that the operator commenced surface mining activities without complying with SMARA.

**VIII. 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, December 11, 2008, Regular Business Meeting.

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

2. Approval of a Financial Assurance Cost Estimate for Snows Road Quarry, (CA Mine ID #91-09-0012), Lee Hall (Agent), Cobalt Crushing, Inc. (Operator), El Dorado County.

Board Member Lund moved to approve the financial assurance cost estimate. Board Member Tepel seconded and the motion carried with a unanimous voice vote.



3. Approval of a Financial Assurance Cost Estimate for Western Aggregates, LLC. (CA Mine ID #91-58-0001), Lloyd Burns (Agent), Western Aggregates, LLC. (Operator), Yuba County.

Board Member Lund moved to approve the financial assurance cost estimate. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

4. Approval of an Interim Financial Assurance Amount for the Richmond (Chevron) Quarry (CA Mine ID #91-07-0006), Dutra Materials (Operator), Harry Stewart (Agent), City of Richmond.

Following the movement of this agenda item to New Business, Executive Officer Testa noted that the SMGB is the SMARA lead agency for the City of Richmond. The site is characterized by an unstable cut slope that encompasses about 7 acres and is about 350 feet in height. The SMGB's regulations, notably, CCR Section 3704(f) requires that "*Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use, and conform with the surrounding topography and/or approved end use.*" In May 2008, the Geohazards Committee (Committee) determined that SMARA and the SMGB's regulations required that the cut slope be mitigated, and thus, an interim FACE needed to be provided which reflected a minimum, albeit reasonable, cost for mitigation of the cut slope. The current FA amount is at \$674,108. The Committee recommends that the financial assurance amount be adjusted to \$1,700,000 at this time.

Board Member Garner moved to approve the adjusted financial assurance cost estimate. Board Member Isham seconded and the motion carried with a unanimous voice vote.

5. Certification of Cache Creek Area Plan In-Channel Maintenance Mining Ordinance No. 1376, Repealing and Replacing Chapter 3 of Title 10 of the Yolo County Code, Yolo County.

Board Member Lund moved to certify the ordinance. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

#### **IX. Continued Business [Action]**

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

No continued action items were presented.



**X. New Business [Action]**

6. **Appeal Hearing:** Consideration of Low Gross Exemption, Gundlach Mine (CA Mine ID #91-47-0042), Greg Gundlach (Operator), Greg Gundlach (Agent), Siskiyou County.

Executive Officer Testa stated that a single operator or mining company may, by July 1, file for a Low Gross Exemption with the OMR. Should an exemption not be provided, the operator or mining company can appeal to the Board, providing the appeal is submitted in writing to the SMGB within 15 days of the denial of exemption from the Department. Certain criteria must be met before an exemption is granted pursuant to the SMGB's regulations (CCR Article 8, Section 3699). Pursuant to Section 3699(a)(1), one criteria is that "*Material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained...*" The Low Gross Exemption request was denied by the Department on the basis that "*The site does not have a SMARA Lead Agency approved financial assurance. Our files show that the Gundlach mining operation has not submitted an annual financial assurance cost estimate.*" The SMGB's Chairman determined that the Board had jurisdiction for the appeal request from Mr. Greg Gundlach, agent and operator of the Gundlach Mine, located in Siskiyou County. The SMGB is considering whether, based on evidence presented by the Petitioner and the Director, and any other interested parties, is the Director's determinations to deny the Low Gross Exemption substantially true and correct.

- Chairman Jones requested identification of the record, and DOC legal counsel, Greg Tenorio, identified the record.
- Mr. Greg Gundlach stated that he has had an approved financial assurance on file with the lead agency since 2002. Upon receiving notice of denial, he contacted the lead agency and now has a new financial assurance program approved by the county.
- Ms. Alicia Johnson, with the Office of Mine Reclamation, and legal counsel Greg Tenorio, presented a summary of the facts and the basis for the Department's denial of the exemption.
- Member Isham asked Mr. Tenorio for additional clarification on the amount of the financial assurance.
- Member Tepel requested clarification on whether Mr. Gundlach had received a low-gross exemption in the preceding years and whether or not it was the lead agency's responsibility to remind the operator or the operator's responsibility to supply the appropriate documentation.
- Chairman Jones asked Executive Officer Testa to clarify the requirements for submittal of financial assurance documents, which was provided. Testa indicated that the site had an approved financial assurance, and that the SMGB's regulations only require that the operator have an approved reclamation plan and financial assurance, not an adjusted financial assurance cost estimate, when considering a Low Gross Exemption request. At no time did the operator not have an approved financial assurance.





- Rick Churches, a mine operator, spoke on behalf of the operator, and stated that it was the lead agency's responsibility to assure that a financial assurance was adjusted, and not that of OMR.
- Member Lund asked for clarification from the Executive Officer regarding the adjustment of financial assurances. Testa provided the sequence of actions taken annually when considering adjusting a financial assurance, noting that an adjustment is only required by statute when new land has been disturbed, disturbed land has been reclaimed, or a cost of living adjustment is deemed necessary. Should these circumstances not occur or exist, then an adjustment is not required per statute.
- Member Bly-Chester noted that there was no mechanism for disapproval of an approved financial assurance, and there was no assumption for disapproval of an existing approved financial assurance. Consideration for rulemaking to address this issue maybe in order. Furthermore, the County serving in a lead agency capacity, shares some of the responsibility in this matter being before the SMGB.

Board Member Garner moved to uphold the Director's findings. Board Member Lund seconded and the motion ended in a tied vote, three votes to uphold the Director's findings (Garner, Lund, Tepel), and three votes to grant the appeal (Jones, Bly-Chester, Isham). The discussion was re-visited after a meeting break, and after some discussion of the procedures involved when there is a tied vote, as well as additional discussion of the matter at hand, a re-vote was taken, and the motion carried with a 4-2 vote.

7. **Appeal Hearing:** Consideration of Low Gross Exemption, McCulley Rock Quarry Mine (CA Mine ID #91-47-0062), Kenneth McCulley (Operator), Kenneth McCulley (Agent), Siskiyou County.

Executive Officer Testa stated that a single operator or mining company may, by July 1, file for a Low Gross Exemption with the OMR. Should an exemption not be provided, the operator or mining company can appeal to the Board, providing the appeal is submitted in writing to the SMGB within 15 days of the denial of exemption from the Department. Certain criteria must be met before an exemption is granted pursuant to the SMGB's regulations (CCR Article 8, Section 3699). Pursuant to Section 3699(a)(1), one criteria is that "*Material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained...*" The Low Gross Exemption request was denied by the Department on the basis that "*The site does not have a SMARA Lead Agency approved financial assurance. Our files show that the Jim Waddell/Kenny McCulley Rock Quarry mining operation has not submitted an annual financial assurance cost estimate since December 2004.*" The SMGB's Chairman determined that the SMGB had jurisdiction for the appeal request from Mr. Kenneth McCulley, agent and operator of the McCulley Rock Quarry Mine, located in Siskiyou County. The SMGB is considering whether, based on evidence presented by the Petitioner and the Director, and any other interested parties, is the Director's determinations to deny the Low Gross Exemption substantially true and correct.



- Chairman Jones requested identification of the record, and DOC legal counsel, Greg Tenorio, identified the record, and offered a brief summary of the issues and the basis of the Department's denial of the exemption
- Mr. Jim Waddell stated that he was the land and reclamation plan owner, but was not representing Mr. McCulley. He stated that he had not received any correspondence from the county since 2006. He expressed concern with the performance of Siskiyou County, and stated that they have had a bond on file since 2004.
- Chairman Jones asked if Mr. Waddell has received any correspondence from the county, or if it has gone to Mr. McCulley. Mr. Waddell stated that he had not received anything, except for a forwarded letter from Mr. McCulley.
- Greg Tenorio, legal counsel for the Department, stated that the land owner is not responsible for the fees or the filings.
- Ms. Terri Barber, with Siskiyou County, stated that the County has been working with Mr. McCulley on his financial assurance cost estimate, though he still does not have an approved amount.
- Rick Churches, a mine operator, spoke on behalf of the operator, and stated that it was the lead agencies responsibility to assure that a financial assurance was adjusted, and not that of OMR, and that if the operator has an approved financial assurance, they should not be removed from the AB 3098 list for not having an adjusted financial assurance cost estimate.

Board Member Tepel moved to uphold the Director's findings. Board Member Garner seconded and the motion carried with a 4-2 vote.

8. Adoption of Amendment to the State Mining and Geology Board's Regulations for Conducting a Vested Rights Determination when Serving as a Lead Agency under SMARA Pursuant to California Code of Regulations Section 3959(b)(4).

Executive Officer Testa stated that the SMGB's new regulations, which provide an administrative process for conducting a vested rights determination when serving as a lead agency under SMARA, were enacted on September 13, 2008. Section of the SMGB's regulations describes:

- The notice the SMGB will prepare, mail and post and matter under consideration
- Hearing date and time
- Invitation to make statements
- Request concerning delivery or submission of additional written materials and any responsive materials (Section 3959(b)(4))

Based on review comments by the Office of Administrative Law (OAL), Section 3959(b)(4) can be interpreted in different ways, and for clarity, the proposed language provided modification to the regulation that reflects the SMGB's intent. The two options available to the SMGB were either to leave the regulation as is, although this could prove unwieldy, or





amend. At the SMGB's September 11, 2007 meeting, it considered this amendment, and directed its Executive Officer to proceed with the Notice of Proposed Rulemaking. The Executive Officer proceeded with the 45-day notice to adopt an amendment to Section 3959(b)(4) of its regulations. The Notice of Proposed Rulemaking for this amendment was published in the California Regulatory Notice Register on October 31, 2008 (Notice File No. Z2008-1021-05). This action commenced the 45-day public comment period. The public comment period closed on December 15, 2008. No comments were received. The SMGB is considering whether it wishes to adopt the amendment to its regulation, notably, Section 3959(b)(4), and direct the Executive Officer to commence the rulemaking process with OAL.

Board Member Lund moved to adopt the amendment. Board Member Tepel seconded and the motion carried with a unanimous roll call voice vote.

9. Consideration for Conduct of a Vested Rights Determination for Western Aggregates, Inc., CA Mine ID #91-58-0001), Lloyd Burns (Agent), Western Aggregates, LLC. (Operator), Yuba County.

Executive Officer Testa stated that the SMGB is the lead agency for Yuba County, and on November 5 received the filing of the administrative record on November 5, 2008, for the conduct of a vested rights determination for Western Aggregates' surface mining operation located in Yuba County. The filing included an administrative record, affidavit and processing fee of \$5,000, pursuant to Article 15, Section 3954. The request for a vested rights determination was determined by the SMGB's Chairman to be within the jurisdiction of the SMGB on December 1, 2008. A mailing of the Notice of Pending Determination was published on January 6, 2009, and amended on January 12, 2009. The estimated cost for determination of findings, legal counsel, and out-of-pocket costs were provided to the claimant on January 27, 2009. Upon receipt of funds, CGS will proceed with the review and analysis of the Administrative record. Pursuant to Article 15, Section 3957 of the SMGB's regulations, upon determination of jurisdiction and not more than 45 business days from such conclusions, the SMGB is required to decide who will serve as the hearing officer during conduct of the public hearing. The SMGB is considering whether the SMGB will serve as the hearing officer when conducting the public hearing for a vested rights determination for Western Aggregates' surface mining operation located in Yuba County. Other options before the SMGB are a committee of the SMGB, an administrative hearing officer selected by the SMGB, or a special master selected by the SMGB.

- The legal counsel for the SMGB, Mr. Russell Hildreth, replaced Ms. Deborah Wordham for this matter before the SMGB.
- Mr. Theodore Franklin, legal counsel for the Yuba Goldfields Access Coalition, and Mr. Bill Calvert, stated that he recognizes the need to go forward and that a lot of work has gone into this process, and supports the decision of the SMGB noting that *"we were at the end of the beginning."*
- Mr. Shapiro, legal counsel for Western Aggregates, noted that he looked forward to the pre-hearing conference to further discuss the administrative procedures and scheduling.



Board Member Tepel moved to approve the SMGB to serve as the hearing officer. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

10. Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the County of Siskiyou.

Executive Officer Testa stated that in June 2007 the SMGB received a complaint from an adjacent land owner regarding the Timberhitch Pits located in Siskiyou County, and alleging that the operation has been in a state of non-compliance, and that the County has failed to adequately enforce SMARA and bring this site into compliance. A summary of the mining activity throughout the jurisdiction of the County was provided. Siskiyou County is one of the larger mining counties in the state, albeit, the majority of the surface mining operations are small to moderate in scale. Based on a review of OMR's SMARA data base, the County currently produces sand and gravel, rocks, cinders, bituminous rock, pumice, dimension stone and gold (placer and lode). The County has about 43 mines within its jurisdiction, of which 34 are currently active, 4 closed, and three noted as idle as of December 1, 2002. The SMGB last heard this matter in May 2008. The County at such time indicated that it planned to dedicate additional resources to its SMARA program, consider acquiring a consultant to assist with inspections, and proceed with enforcement actions, as deemed necessary, notably in the matter of Truck Village, Timberhitch Pit and Kidder Creek, among other actions. The County has made efforts to inspect all surface mining operations within its jurisdiction, and adjust financial assurances, as appropriate. Enforcement actions, notably in regards to Truck Village, has not progressed very far since the SMGB last heard this matter back in May. Constructive comments were provided as part of the Executive Officer's report, with plans to forward more comprehensive comments upon review of the most recent inspection reports.

- Ms. Terri Barber, Planning Director for the County of Siskiyou, summarized the progress the County has made since May 2008 when this matter was last before the SMGB. Topics covered included an historical oversight of Mining by the County, previous actions taken by the SMGB, the County's commitment to addressing concerns pertaining to its SMARA program, summary of recent actions taken by the County, summary of enforcement cases, and future steps to be taken.
- Chairman Jones complimented the County on its efforts to date to improve its overall SMARA program.
- Member Garner and Member Lund concurred.

Board Member Tepel moved to determine that the County has corrected the deficiencies to the satisfaction of the SMGB, and no further action is required. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

11. Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the County of Butte.

Executive Officer Testa stated that in August 2008 the SMGB received a complaint from Mr. Keith Wagner, legal counsel for the Dry Creek Coalition, pertaining to the New Era Mine, Located in Butte County. The Coalition alleged that this surface mining operation has been



in a state of non-compliance, and that the County has failed to adequately fulfill its obligations and responsibilities as a SMARA lead agency, and bring this site into compliance. A summary of the mining activity throughout the jurisdiction of the County was provided. Butte County is one of the larger mining counties in the state, albeit, the majority of the surface mining operations are small to moderate in scale. Based on a review of OMR's SMARA database, the County currently produces sand and gravel, rocks, dimension stone and gold (placer and lode). The County has about 26 mines within its jurisdiction, of which 18 are currently active, two newly permitted, and six noted as idle.

Historically, the County was not performing at an adequate level, but the County has made improvements to its SMARA program over the past several years; however, the integrity of the inspection reports, and actions taken by the Board of Supervisors in regards to the New Era Mine, raises issues. Some constructive comments were provided as part of the Executive Officer's report, with plans to forward more comprehensive comments upon review of the most recent inspection reports.

- Mr. Tom Snellings, Director of the Department of Development Services for Butte County, provided an overview of the County's SMARA program current status, and goals. The County includes 20 permitted mines, two operating vested mines, and one vested but not operating. Disturbed acreage cumulatively ranges from approximately 3 to 122 acres, with three permitted gold mines and 19 surface mines producing aggregate, sand or clay. Operationally, 16 are deemed active, three idle, one with reclamation in progress, one site that failed to reclaim, and one where surface mining activities have not commenced. Four sites are operated by local individuals, five by companies based in the County, and 12 by companies based outside the County. All sites have been annually inspected for the past three years. Twenty sites have 2007 approved financial assurance cost estimates; whereas, for 2008, three have been approved, 12 under review, and 5 to be completed by end of February 2009. Four Interim Management Plans (IMP) are under revision or in preparation. One Notice of Violation has been issued. A majority of permits and reclamation plans were approved 20 or more years ago, and many of them lacked specificity. Certain smaller operators are not experienced in preparing a detailed FACE or knowledgeable regarding issues associated with idle mines. Steps being taken by the County include improving the quality of inspections, adjusting and making current financial assurances, and implementing outreach efforts to inform operators of their obligations. Significant improvements in the County's overall SMARA program have been implemented for the past three years, and the County is and County staff is committed to developing a first-rate SMARA program.
- Mr. Bob Connelly, County Supervisor, expressed the County's interest in maintaining its SMARA program and local oversight, and addressing the concerns of the Office of Mine Reclamation and the SMGB.
- Michael Brady, legal counsel representing North Continent, spoke on behalf of the operator of the New Era Mine.
- Richard Myers, Chairperson for the Dry Creek Coalition, addressed the intent of the coalition and their dissatisfaction with actions taken by the operator and the lead agency.



- Keith Wagner, Attorney representing Dry Creek Coalition, addressed numerous issues associated with a surface mining operation referred to as the New Era Mine, and the County's overall lack of enforcement. Wagner characterized site conditions, and presented a demonstration of non-compliance and inappropriate actions taken by the County. Documentation presented included a notice of appeal to the SMGB, the original reclamation plan and permit, documentation on the operations non-production and inactivity, County Notice of Violation and inspection report, 2008 reclamation plan, draft and signed resolution from the Board of Supervisors, Mr. Jim Pompy's (OMR) testimony dated June 10, 2008, and OMR's mine inspection report.
- Mr. Dennis O'Bryant, Bret Koehler and Mike Luksic, on behalf of OMR, also expressed concerns and issues associated with the New Era Mine.

Board Member Tepel moved to determine that the County is making a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, but significant deficiencies may persist, and that the Executive Officer conduct a thorough review of mine inspection reports within the jurisdiction of Butte County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.



**XI. 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 2772(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:

- Weber Creek Quarry (CA Mine ID #91-09-0002), El Dorado County.
- Diamond Quarry (CA Mine ID #91-09-0003), El Dorado County.
- Timm Mine (CA Mine ID #91-09-0006), El Dorado County.
- Somerset Sand Mine (CA Mine ID #91-09-0009), El Dorado County.
- Snows Road Quarry (CA Mine ID #91-09-0012), El Dorado County.
- Big Gun Quarry (CA Mine ID #91-31-0013), City of Rocklin.
- Western Aggregates, Inc. (CA Mine ID #91-58-0001), Yuba County.
- Knife River (formerly Baldwin) Hallwood Plant (CA Mine ID #91-58-0002), Yuba County.
- Cal Sierra Development (CA Mine ID #91-58-0003), Yuba County.

Board Member Lund moved to accept the inspection reports. Board Member Garner seconded and the motion carried with a unanimous voice vote.

**XII. SMGB Committee Reports [Information and Possible Action]**

- Geohazards Committee (Chairman Tepel)
  - Alquist-Priolo Technical Advisory Committee (Chairman Tepel)

Committee Chairman Tepel stated that the Geohazards Committee continues to work on the technically challenging situations at the Richmond Quarry, and that the Technical Advisory Committee continues with its discussions pertaining to the Alquist-Priolo Earthquake Fault Zoning Act.

- Surface Mining and Standards Committee (Chairman Isham)

No Committee report provided.

- Minerals and Geologic Resources Committee (Chairman Garner)

No Committee report provided.

- Policy and Legislation Committee (Chairman Jones)

No Committee report provided.

**XIII. 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.]



**XIV. 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:

**XV. 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). An un-named case where there is potentially significant exposure to litigation against the Board.

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

SMGB's Legal Counsel, Ms. Deborah Wordham, Deputy Attorney General, announced that the SMGB met in closed session to discuss pending litigation but took no actions.

**XVI. Announcements of Future Meetings**

March 12, 2009, was announced as the next meeting, and the City of Sacramento as the location.

**XVII. Adjournment**

The meeting was adjourned at 4:20 P.M.

---

Allen M. Jones, Chairman

---

Stephen M. Testa, Executive Officer

