



# 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)



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

Publication Date: July 9, 2009

## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, May 14, 2009

**Draft**

9:00 A. M.

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.

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[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. Roll Call and Declaration of a Quorum**

The meeting was called to order at 10:05 A. M. by Chairman Garner, with all members present with exception to Member Lund, who arrived at 1:30 P. M., and a quorum was declared.

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

Mr. Jason Marshall, on behalf of Director Bridgett Luther, reported on the following:

- Director Bridgett Luther was in Anchorage, Alaska, attending the Oil and Gas Compact meeting.
- A revised budget is anticipated to be released by the Governor's office today, and the outlook anticipated to be bleak and based on the outcome upcoming election results.
- Assembly Bill (AB) AB 42 which requires Pacific Gas and Electric Company to use the California Energy Commission to conduct an imaging survey to map fault characteristics in the vicinity of the Diablo Canyon Nuclear Power Plant was noted.

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

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

- Major enforcement efforts are being undertaken in the Counties of Butte, Sierra and Ventura.
- The lead agency review of Sutter County has been completed, and anticipated to be presented to the SMGB at its next regular business meeting. The next two counties currently under review are Santa Cruz and Tuolumne.
- Pursuit of stimulus monies for the Abandoned Mine Land Unit program is underway.
- OMR continues in its workshop efforts. The next SMARA workshop is planned for Calaveras County in May.

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

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

- State Geologist Parrish provided a synopsis of the fires in the Santa Barbara area. The fires started about 10 days prior and has burned 8,700 acres and caused the evacuation of 9,700 residents, affected 3,600 parcels, and destroyed or damaged numerous structures.
- An Open-House hosted by the United States Geological Survey is planned for May 15, 16 and 17. The SMGB and general public are invited.
- Former State Geologist Jim Davis will be the recipient of the Distinguished Service Award by the American Association of State Geologists (AASG). Davis will receive this honor at the AASG meeting to be held in Park City, Utah, in mid-June.



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

Chairman Garner made the following reports:

- Recognition of distinguished service for past SMGB Chairman Member Allen M. Jones (Resolution 2009-04). The many contributions made to the State of California by Allen M. Jones during his tenure on the SMGB from May 2000 to March 2009 were noted. Jones was appointed to the SMGB by Governor Gray Davis, and reappointed by Governor Arnold Schwarzenegger. Jones was appointed as Chair of the SMGB by Governor Davis in March 2001, and reappointed as Chair by Governor Schwarzenegger in February 2003. Having expertise in Mineral Resource Conservation, Utilization and Development, and as of 2007 in the position having expertise in Environmental Protection, Jones' willingness to give freely of his time, energy, and ideas had a marked, positive effect on the performance of the SMGB in its implementation of the Surface Mining and Reclamation Act, the Alquist-Priolo Earthquake Fault Zone Mapping Act, and the Seismic Hazards Mapping Act. Notably, he was instrumental in exercising the SMGB's assumption authority over lead agencies under the SMARA and re-instituting the mineral resources designation program, and for developing regulations for the backfilling of open-pit metallic mines and determination of vested rights when the SMGB serves as a lead agency under SMARA. He has participated and contributed to all the SMGB's Committees, and served as Chair of the Policy and Legislation Committee. The SMGB gratefully acknowledges Allen M. Jones's dedicated service to the SMGB and to the People of the State of California, and commends him for an exemplary job as Chairman of the SMGB.

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

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

- A Request for Determination for the Big Cut Mine located in El Dorado County was received on March 13, 2009. A determination of jurisdiction was made by the Chairman and the claimant subsequently notified. An estimated cost for review of the Administrative Record is in progress, and anticipated to be provided to the claimant by end of April, with a Mailing of Notice of Pending Vested Rights Determination to be published by May 15, 2009. The determination of findings for the SMGB consideration during the public hearing will be performed by the Executive Officer.
- The SMGB has received several public complaints pursuant to PRC Section 2774.4 and pertaining to overall SMARA lead agency performance, notably, Sierra County, Ventura and Marin Counties. Sierra County is anticipated to be heard at the SMGB's upcoming June 11, 2009, regular business meeting.
- A response to the comments received regarding designation, and termination of designation, of certain sectors within the Palm Springs Production-Consumption Region, are being compiled and addressed. The SMGB can anticipate considering rulemaking in the near future.
- Legislatively mandated reports were deferred until January 1, 2008, as supported by Chapter 409 (AB 79) during the 2004 legislative session. Such reports are typically



due by December 1. The annual report of the SMGB for 2007-2008 is in preparation, and anticipated to be completed by July 1, 2009; no annual reports were prepared from 2001 to January 1, 2008. The cause for delay reflects inclusion of a summary of SMGB's actions and activities for the period from 2001-2007.

- An important project being implemented is a revision to the Inspection Form in order to make such form compatible with the SMGB's surface mine inspection guidelines, and fulfill the intent of SMARA and the SMGB's regulations. Upon completion of a draft version of the revised form, this matter will likely be forwarded to the Surface Mining Standards Committee for review and comment, and then to the SMGB for subsequent action, as appropriate.
- The draft reclamation plan form is being developed and will eventually be used by the SMGB when serving as a SMARA lead agency, 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 June or July, 2009, regular business meeting.
- On April 20, 2009, SMGB, CGS and CalCIMA staff received a delegation organized by the Wuhan Environmental Protection and Management of Mines, China. Wuhan is the capital of Hubei province, and is the most populous city in central People's Republic of China. It lies at the eastern edge of the Jiangnan Plain, at the intersection of the middle reaches of the Yangtze and Han Rivers. Known as the "*thoroughfare of nine provinces*"; Wuhan is a major transportation hub, with dozens of railways, roads and expressways passing through the city. Wuhan has a population of approximately nine million people, with about six million residents in its urban area. Wuhan is recognized as the political, economic, financial, cultural, educational, and transportation center of central China.

The delegation represented the institution and agencies involved in land use planning and permitting, mineral resources management, and housing and real estate management and administration. Presentations, through an interpreter, covering aggregate availability and the classification of mineral lands, surface mining and reclamation, and permitting, were made by John Clinkenbeard, Supervising Engineering Geologist and manager of the Minerals Resources Program with the California Geological Survey, Stephen Testa, Executive Officer of the SMGB, with assistance from Will Arcand, Senior Engineering Geologist with the SMGB, and Charlie Rea, Director of Communications and Policy with the California Construction & Industrial Materials Association (CalCIMA), respectively. The presentations were informative and well received, and generated numerous questions from the Wuhan delegation. It was clear that although their process is similar in some ways to ours, it is different in many others, notably in their combination of land use authority along with development of mineral resources. Although the concept of private land ownership was somewhat "foreign" to them, the need for conservation and responsible development of mineral resources was something we all could understand.



- The Executive Officer made an invited presentation to faculty and students within the renamed Stanford University Energy and Resources Engineering Department titled "*Development of Geological Thought during 19<sup>th</sup> Century California.*" The presentation was held on May 19, 2009.
- The Executive Officer will be chairing a symposium on Engineering and Environmental Issues Associated with Mining at the upcoming 2009 annual national fall 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.]

No Ex-Parte communications reported.

**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.]

No Good of the Meeting information was reported.

**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, April 9, 2009, Regular Business Meeting.

Board Member Licari moved to approve the minutes. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

2. Approval of an Adjusted Financial Assurance Cost Estimate for the Point Richmond (Canal) Quarry (CA Mine ID #91-07-0007), Bottoms Family Trust (Operator), Ms. Mignone Wood (Agent), City of Richmond.

Board Member Licari moved to approve the adjusted Financial Assurance Cost Estimate. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

3. Approval of an Adjusted Financial Assurance Cost Estimate for Lawyer Pit (CA Mine ID #91-09-0010), Archie's Trucking & Backhoe (Operator), Mr. Archie Lawyer (Agent), County of El Dorado.

Board Member Licari moved to approve the adjusted Financial Assurance Cost Estimate. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.





4. Approval of an Adjusted Financial Assurance Cost Estimate for Knife River (formerly Baldwin) Hallwood Plant (CA Mine ID #91-58-0002), Knife River Construction (Operator), Mr. Rene Vercruyssen (Agent), County of Yuba.

Board Member Licari moved to approve the adjusted Financial Assurance Cost Estimate. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

5. Approval of an Interim Financial Assurance Cost Estimate for the Feather River Levee Improvement Project (FRLIP) (CA Mine ID# 91-58-00XX), Three Rivers Levee Improvement Authority (TRLIA; Operator), County of Yuba.

Board Member Licari moved to approve the Interim Financial Cost Estimate. Board Member Bly-Chester 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.]

**X. New Business [Action]**

6. **Public Hearing:** Issuance of an Order to Comply to Super Creek Quarry (formerly Painted Hills Mine), (CA Mine ID #91-33-0003), Whitewater Rock & Supply Company (Operator), Mr. Alan Bankus (Agent), City of Desert Hot Springs, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.) and the Approved Reclamation Plan.

Executive Officer Testa stated that the SMGB was the SMARA lead agency for the Super Creek Quarry located in the City of Desert Hot Springs. As a result of past inspections, several violations have been reported for this operation related to encroachment into a natural drainage, inadequate soil erosion control measures for sidecasted tailings, inadequate revegetation measures and potentially unstable slopes (relatively recent earthquake hazards studies have predicted higher earthquake ground motion values than those utilized by the site in the past). At the SMGB's December 2007, regular business meeting, the SMGB requested that the operator provide an adequate amended reclamation plan within 60 days. The most recent version of such document was received on November 2008, and is currently under review by OMR and SMGB staff. The SMGB is considering upholding the Order to Comply.

- SMGB Senior Geologist, Will Arcand, provided an overview of the site based on previous site inspections performed.
- Mr. Jim Good, legal counsel representing Whitewater Rock and Supply, provided a synopsis of some of the issues and obstacles facing the operator in bringing this site into compliance.
- Member Lane inquired about the status of a Surface Water Prevention Plan.

Board Member Baca moved to defer consideration of the Order to Comply for 90 days, and forward this matter to the Geohazards Committee for discussion of feasible options and alternatives, and short-and long-term strategies, within 60 days. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.



7. Issuance of an Order to Comply to the Chili Bar Slate Mine (CA Mine ID #91-09-0004), for Failure to Provide an Adjusted Financial Assurance Cost Estimate, Placerville Industries, Inc. (Operator), Mr. Brett Davis (Agent), County of El Dorado.

Executive Officer Testa stated that the SMGB was the SMARA lead agency for the Chili Bar Slate Mine located in El Dorado County. The current approved financial assurance amount is \$200,389. As a result of the past inspection conducted in December 2008, an adjustment of the financial assurance cost estimate was deemed warranted to reflect existing site conditions and current equipment and labor rates. A Notice of Violation was issued on January 14, 2009. Following several conversations with the operator, the operator, on March 4, 2009, requested a one-month extension for submittal of the adjusted financial assurance cost estimate. As of this date, no adjusted financial assurance cost estimate has been received. The Executive Officer recommended that the SMGB issue a Order to Comply, and a public hearing be scheduled – should an adequate adjusted financial assurance cost estimate be received, then this matter would be considered closed, and the SMGB would be looking forward to considering approval of an adjusted financial assurance cost estimate.

- Member Lund inquired about any potential concerns along the South Fork of the American River. Executive Officer Testa indicated that a berm surrounds the northern perimeter of the site, and that no significant concerns or potential adverse impacts to the river have been identified during the several years the site has been inspected.

Board Member Tepel moved to issue the Order to Comply. Board Member Licari seconded and the motion carried with a unanimous voice vote.

8. Consideration of Amendment to Title 14 California Code of Regulations, Article 9, Section 3704 Pertaining to Slope Stability.

Executive Officer Testa noted that the SMGB's regulations, notably, CCR Sections 3704(d) and 3704(f) require reclamation of both cut slopes, including highwalls and quarry faces, and fill slopes exceeding 2:1, have a minimum factor of safety that conforms and is suitable for the proposed end use, and can be revegetated when required. In other words, reclamation pursuant to SMARA equates to stable slopes. CGS Special Publication SP 117A, *Guidelines for Evaluating and Mitigating Seismic Hazards in California*, dated 2008, offers three general treatments for earthquake-induced failures of natural slopes: avoidance, accommodation, and reduction of the hazard to an acceptable level (i.e., acceptable minimum factor of safety). Three case histories were presented: Point Richmond (Canal) Quarry and Richmond Quarry, both located in the City of Richmond, and the Super Creek Quarry located in the City of Desert Hot Springs. The SMGB is considering whether it wishes to consider hard avoidance or accommodation, in lieu of reclamation, when dealing with complex unstable slopes. Three examples were offered for discussion purposes. The SMGB is considering whether draft language to CCR Section 3704 should be considered. The Executive Officer offered no recommendations.



- Mr. Jim Good, legal counsel with Gresham Savage Nolan & Tilden and representing the operator of the Super Creek Quarry, summarized the operator's efforts to comply, and requested that this matter be deferred until, for, example, the SMGB has an opportunity to review the merits of the proposed reclamation plan.
- Mr. Mark Harrison, legal counsel with Diepenbrock – Harrison, and representing Dutra Materials Company (operator) and Chevron Products Company, expressed his strong objection the Executive Officer's report and summarized the content of his correspondence dated May 13, 2009.
- Member Bly-Chester inquired about whether this matter focused around the definition of end use and pseudo stability, and where avoidance would not be acceptable, possibly accommodation could.
- Member Baca stated that under SMARA surface mine sites must be reclaimed, and SMARA stands for the Surface Mining and Reclamation Act, not the Surface Mining and Monitoring Act. Deed restrictions and avoidance of the problem are not engineering solutions. The slope is clearly unstable, and the slope is unstable thus the operator's proposal is a Chernobyl - type strategy, that being on e of abandon land for all times, and it is this concept that caused SAMRA to be enacted in the first place. What is being requested is a strategy that undermines the law itself, and would require some act by the legislature or Governor.
- Member Lane inquired from Harrison confirmation that there was no numerical value for a factor of safety provided in SMARA.
- Dennis O'Bryant, Assistant Deputy Director for the Office of Mine Reclamation, stated that the Department would not entertain hazard mitigation, avoidance or accommodation, in lieu of reclamation. SMARA legislative intent requires residual hazards to the public health, are safety are eliminated, not reduced.
- Member Licari indicated that there are land uses that could be considered, which does not allow public access to the property.
- Member Lane stated that land use is not a permanent solution, land uses changes all the time, and it is public safety that is at issue.
- Member Tepel stated that more review is required.

Board Member Tepel moved to forward this matter to the Policy and Legislation Committee. Board Member Licari seconded and the motion carried with a unanimous voice vote.

9. Consideration for Conduct of a Vested Rights Determination for Big Cut Mine, CA Mine ID #91-09-00XX), Diane Anderson (Agent), Richard Churches (Operator), El Dorado County.

Executive Officer Testa stated that the SMGB is the lead agency for El Dorado County, and on March 13, 2009, received the filing of the administrative record for the conduct of a vested rights determination for the proposed Big Cut Mine surface mining operation located in El Dorado 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 Board's Chairman to be within the jurisdiction of the





SMGB on April 3, 2009. A mailing of the Notice of Pending Determination is anticipated to be published on May 15, 2009. The estimated cost for determination of findings, legal counsel, and out-of-pocket costs will be provided to the claimant within the next few days. Upon receipt of funds, the Executive Officer would 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 proposed Big Cut Mine surface mining operation located in El Dorado 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.

- Ms. Diane Anderson, legal counsel representing the Big Cut Mine, introduced herself and offered to answer any questions the SMGB may have.

Board Member Lund moved for the SMGB to serve as the administrative hearing officer. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

10. Election of Vice Chair of the State Mining and Geology Board Pursuant to Public Resources Code Section 669.

Executive Officer Testa informed the SMGB that it selects annually an individual from its membership to serve as Vice Chair. The Vice Chair performs the duties of the Chairman in his or her absence or upon request of the Chairman when possible conflicts of interest may occur. Nominations to this role are made by the SMGB members. The selection of the Vice Chair is solely at the discretion of the SMGB, and the Executive Officer makes no recommendation.

Board Member Tepel moved to select Member Bly-Chester as Vice Chair. Board Member Lund 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.

11. Discussion of State Mining and Geology Board's Strategic Plan.

Executive Officer Testa stated that the SMGB's Strategic Plan was initially adopted in March 1997, and updated/revised in November 2000, and most recently in March 2007. The SMGB has before it a copy of the plan and the SMGB's enablers, PRC Sections 660-678, which defines the general role and authority of the SMGB. This matter is before the SMGB to kick-off discussion of its Strategic Plan, and consider changes to the plan. No recommendations are offered at this time, and when the SMGB meets again on this subject, a status of current goals and objectives will be offered.

- Chairman Garner appreciated the tabulated summary format provide in reviewing the Strategic Plan and inquired asked for a summary of significant items the SMGB



needs to be aware of. Executive Officer Testa summarized some the significant areas for discussion, and the steady increase in work load over the past several years. Despite significant budgetary and staffing constraints and limitations, much progress has been made. In addition, following a brief discussion between the SMGB's legal counsel, Rick Thalhammer and Mr. Testa, and for the benefit of the new SMGB Members, intergovernmental relations, and relations between the Department of Conservation and the SMGB, should be discussed in the context of the SMGB's Strategic Plan.

- Mr. Adam Harper, Director of Policy Analysis on behalf of the California Construction and Industrial Materials Association (CalCIMA), appreciated the SMGB's efforts in reviewing its Strategic Plan considering the recent change in statute, notably, 2007-2008 SB 375, which impacts the planning community involvement in designated mineral resource lands. The SMGB is the repository of designated information. This bill requires each metropolitan planning organization to prepare a sustainable communities strategy which among other things incorporates and considers resource areas within their jurisdiction. With local jurisdictions taking more of an ownership role as part of their long term planning process when it comes to designation of mineral resource lands, the SMGB can anticipate receiving requests for designation and related information in the future.
- Member Tepel stated that review of the Strategic Plan is an opportunity to revisit the fundamental purpose of the SMGB, and what the SMGB could be doing to better serve the public, and offered considering a self-assessment of the SMGB's effectiveness.
- Member Lane remarked on the recent visit of the China delegation which was a good example of foreign outreach. Considering the role California plays in the development of earth science policy and its implementation, taking advantage of such opportunity brings more favorable attention to the work of the SMGB.
- Chairman Garner concurred that such efforts provide an opportunity to expand its understanding of its role and its impact and influence outside of California. Executive Officer Testa expanded on the various modes of outreach the SMGB staff has recently implemented including presentations at professional societies and earth science departments throughout the state on issues such as earth science education, geoscience workforce and implementation of earth science policy. Member Tepel added that the SMGB should consider more direct outreach to cities and counties in regards to SMARA and geologic hazards, and referred to Member Lund's support of more outreach to organizations such as the League of California Cities and the California State Association of Counties.
- Member Licari inquired as to SMGB Members ability to accept invitations to speak to various groups and stakeholders. Chairman Garner stated that Members need to be aware of issues that may come before the SMGB and the need to disclose. It would be prudent if SMGB Members inform the Executive Officer of such invitations. Executive Officer Testa indicated that maintenance of a list of invitations and presentations, among other outreach activities, would be very useful in demonstrating the SMGB's outreach efforts when annual reports are prepared.



- Member Baca commented on the local permitting and reclamation plan approval process and the need to pay attention to permitting concerns. There needs to be state standards and regulations on how local permitting occurs throughout the state, and how local jurisdictions review and approve permits and reclamation plans, and how findings are determined. Regionally significant designated lands should not be left to solely to the 58 Counties or 500 cities with no state input. Member Wyatt added the need for development of minimum requirements for local permitting consideration. Member Baca provided an example noting that the state is short of aggregates with surface mines are not being permitted, and the SMGB should adopt standards or findings that need to be considered by local government and made for approval of a mining operation. Existing regulations are already stringent and mines are not being permitted, yet we need mines. The SMGB should be the over-arching limit as to how stringent the regulations should be for mineral resources lands of regional significance. Typical Conditional Use Permits (CUP) are discretionary and cover many types of non-mining projects (i.e., weddings, golf courses, etc.); whereas, a means for a mine not to be permitted without specific findings being considered and justified. Member Lane concurred and also remarked that when a desperate need exist there should be a fast-track mechanism designed for evaluating a mining proposal. Member Bly-Chester stated that mineral access should be encouraged as much as possible, and a mechanism developed for situations where potentially productive mines left abandoned or closed should be able to come back into productive use in a timely manner. SMARA limits such consideration. Member Licari stated that the California Environmental Quality Act (CEQA) is used by some to stop a project, not encourage it to go forward. Member Baca concluded with the need for additional legislation and regulation to promote additional notification and justification by local planning departments, that the current system is totally inadequate, and there should be a special status for consideration for permitting of mineral resource lands of regional significance - statewide importance should supersede local issues. SMGB legal counsel Rick Thalhammer indicated that PRC Section 2715 specifically limits the SMGB's authority and that such provisions was initially to prevent the state from impeding development of mineral resources, albeit now, it appears that local jurisdictions are impeding development. Thalhammer suggested that the SMGB could work with the legislature to promote legislative change, or work more closely with such groups as the League of Cities and California State Association of Counties and have them promote a more effective model. Chairman Garner stated that this matter should be continued at the committee level.
- Member Tepel suggested that the SMGB's fee schedule and administering of penalties for small operators be re-visited.
- Member Bly-Chester suggested that one function of the SMGB is to resolve issues and avoid court action, and thus a review of certain administrative processes that may inadvertently generate an endless loop should be addressed.
- Member Bly-Chester expressed the need for more rigorous inspection reports and standards for such inspections and resultant reports. Chairman Garner expressed the need to, at minimum, be able to attest to whether surface mine operators are in



compliance with all permit conditions regardless of the agency involved, recognizing that other agencies, not the SMGB, may have the authority to insure compliance. Establishment of MO among between other agencies could be developed.

- Member Bly-Chester recommended that as the SMGB discusses its Strategic Plan, that such plan gets revised and put on the November agenda for adoption consideration.
- Chairman Garner recommended that the suggestions and recommendations discussed be outlined and scheduled for the appropriate committee or whole SMGB, as appropriate, and concurred with a revised Strategic Plan be prepared for SMGB adoption consideration this upcoming fall.

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

- Geohazards Committee (Chairman Bly-Chester)
  - No report provided.
    - Alquist-Priolo Technical Advisory Committee (Chairman Tepel)
      - Chairman Tepel stated that the TAC continues with its work and will likely meet sometime in late spring.
- Surface Mining and Standards Committee (Chairman Lund)
  - No report provided.
- Minerals and Geologic Resources Committee (Chairman Tepel)
  - No report provided.
- Policy and Legislation Committee (Chairman Baca)
  - No 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.]

No continued business items were discussed.

## **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:

No new business items were offered.

## **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, Mr. Rick Thalhammer, Deputy Attorney General, announced that the SMGB met in closed session to discuss pending litigation but took no actions.

**XVI. Announcements of Future Meetings**

June 11, 2009, was announced as the next meeting, and the City of Sacramento as the location.

**XVII. Adjournment**

The meeting was adjourned at 3:15 P.M.

**APPROVED**

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Erin Garner, Chairman

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Stephen M. Testa, Executive Officer

