



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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Publication Date: October 8, 2009

## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, September 11, 2009

9:00 A. M.

The Yuba County Government Center  
Board of Supervisor's Hearing Room  
915 8<sup>th</sup> Street  
Marysville, CA 95901

**Draft**

## 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 (Chairman Garner)**

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

The meeting was called to order at 9:00 A. M. by Chairman Garner, with all members present with exception to Member Tepel, and a quorum was declared.

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

No report provided.

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

No report provided.

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

Chairman Garner requested that the SMGB's strategic plan be agendaized for the upcoming October, regular business meeting of the SMGB.

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

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

- Will Arcand, Senior Engineering Geologist with the SMGB, has commenced the 2009 mine inspections.
- Several Low Gross Exemption Appeals have been received and currently under review to determine jurisdiction.
- Rulemaking preparation for termination of designation for the Claremont-Upland Production-Consumption Region is in progress. 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 considered. Based on the SMGB's determination at its July 9, 2009, regular business meeting for recommended designations for the San Bernardino Production-Consumption Region, a public hearing of the Mineral and Geologic Resources Committee will be scheduled this upcoming fall.
- Submittal of an amended reclamation plan for the Richmond Quarry, located in the City of Richmond, was requested for no later than the end of October. Upon receipt, such plan will be reviewed by SMGB and OMR staff for compliance with SMARA and the SMGB's regulations, prior to the SMGB considering approval of the plan.
- The Executive Officer will be chairing a symposium on Engineering and Environmental Issues associated with mining at the upcoming 2009 annual national meeting of the Association of Engineering and Environmental Geologists. The meeting will be held in South Lake Tahoe in late September 2009.

**V. 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 Bly-Chester and Member Lund commented on professional functions attended and inquiries made of the Executive Officer, respectively.



**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 provided.

**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, July 9, 2009, Regular Business Meeting, was deferred.
2. Approval of Revised Financial Assurance Cost Estimate for the Timm Mine (CA Mine ID #91-09-0006), Maybelle Timm Eley (Operator), Maybelle Timm Eley (Agent), El Dorado County.
3. Approval of Revised Financial Assurance Cost Estimate for Sperbeck Quarry (CA Mine ID #91-58-0004), Carl J. Woods Construction Company (Operator), W. A. Woods (Agent), Yuba County.
4. Approval of Revised Financial Assurance Cost Estimate for Dantoni Pit (CA Mine ID #91-58-0011), Noble and Eleanor Plant (Operator), Noble Plant (Agent), Yuba County.
5. Approval of Revised Financial Assurance Cost Estimate for Stringer Pit #1 (CA Mine ID #91-58-0022), Silica Resources, Inc. (Operator), Nicole Lindbom (Agent), Yuba County.
6. Approval of Revised Financial Assurance Cost Estimate for Stringer Pit #2 (CA Mine ID #91-58-0023), Silica Resources, Inc. (Operator), Nicole Lindbom (Agent), Yuba County.
7. Acceptance of California Geological Survey Report 213 for Mineral Land Classification of the White Rock Road Properties - Mangini Property, Sacramento County, for Construction Aggregate.
8. Acceptance of California Geological Survey Special Report 212/Revised Mineral Land Classification of the First Industrial Realty Trust Day Street Site, Riverside County, California for Portland Cement Concrete-Grade Aggregate.

Board Member Lund moved to approve the minutes and Consent Item Nos. 2 through 8. 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]**

1. Pre-Hearing Conference in the Matter of the Request for Determination for Vested Rights, Big Cut Mine (CA Mine ID #91-09-00XX), Diane Anderson (Agent), Richard Churches (Operator and Claimant), El Dorado County.

Executive Officer Testa stated that the SMGB is the SMARA lead agency for El Dorado County, and on March 13, 2009, received the filing of a request for petition 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 the SMGB's regulations (Article 15, CCR 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 April 3, 2008. A mailing of the Notice of Pending Determination was published on May 15, 2009. At its May 14, 2009, regular business meeting, and 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 reaffirmed that it would serve as the hearing officer. The purpose of this pre-conference is for the SMGB to schedule the hearing. The Executive Officer recommends November 12, 2009, as the hearing date and El Dorado County as the location.

- Ms. Diane Anderson, legal counsel for the claimant, introduced herself and stated she was present to address any questions the SMGB may have.

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

2. **Special Public Hearing (Continued):** Request for Determination for Vested Rights, Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), County of Yuba.

On August 6, 2009, the SMGB commenced the special public hearing to determine whether Western Aggregates had vested rights for 4,125 acres, including its current surface mining operations, located in the Yuba Goldfields. Upon identification of the Administrative Record, and hearing from the California Geological Survey, legal counsel representatives for Western, Calvert (Yuba Goldfields Access Coalition), and Teichert Aggregates, and the County of Yuba, among others, the receipt of public comments was continued in order for Western and Calvert to have the opportunity to respond to a legal issue that was raised. That being, did the 1977 use permit, that permitted aggregate removal and processing on their entire property, granted by the County of Yuba to Yuba Consolidated, extinguish their vested rights that may have been in existence prior to such date. The SMGB has received responses from Western and Calvert. In addition, a rebuttal to Western's response which was embedded in Franklin's material, and provided after the deadline for receipt of responses imposed by the SMGB. Comment was also been provided by Teichert's legal counsel, the law firm of Taylor and Wiley, and the County of Yuba. Lastly, a rebuttal from Calvert's expert in response to comments made by Western's expert, Mr. Pope, was also received after the SMGB packet was forwarded.

Furthermore, two other inquiries or requests were made by the SMGB during the August 6, 2009, public hearing. First, a request for the number of vested surface mining operations in the County that also have use permits was made. There are 14 surface mining operations within the County, of which 9 are situated within or immediately adjacent to the Yuba Goldfields. Seven of these have



been determined by the County to be vested, and 6 of these have been issued conditional use permits. Second, a request for CGS to provide regional aggregate production figures was made.

The consideration before the SMGB is whether WA has demonstrated, through the evidence provided, that WA has a recognized vested right for 4,125 acres of land in the Yuba Goldfields. To accomplish this objective, three primary considerations are before the SMGB:

1. Whether the SMGB will accept the findings of CGS;
  2. Whether a preponderance of the evidence exist for recognizing a vested right for 15 specific areas or Sections as of 1976 and thereafter; and
  3. Should a vested rights be recognized or not, issuance of a directive to WA to provide an amended reclamation plan for their current surface mining operations and reflective of the determination made by this SMGB.
- Ms. Susan Kohler, on behalf of CGS, provided a summary of regional production levels for the County of Yuba and surrounding vicinity.
  - Kerry Shapiro, legal counsel with Jeffer, Mangels, Butler & Marmaro, LLP. and representing Western Aggregates, presented his response to the SMGB's inquiries.
  - Mr. Theodore Franklin, legal counsel with Weinberg, Roger & Rosenfeld and representing Calvert and the Yuba Goldfields Access Coalition, and his assistant Manuel Biogues, provided a response to the SMGB's inquiries.
  - Mathew Keasling, legal counsel with Taylor and Wiley and representing Teichert Aggregates, commented on certain issues under consideration.
  - Comments were also provided by David Greenblatt, Senior Vice President for Western Aggregates, John Williams representing the Yuba Goldfields Access Coalition and LASER, Freda Calvert, Edward Ritchie and David Slock, also provided comment.

Board Member Licari moved to 1) accept the findings of the California Geological Survey (CGS), 2) determine that a preponderance of evidence exists that demonstrated Western has vested rights for all Sections with exception to Sections 25 and 30, and the southwest corner of Section 34, 3) and consideration of limitations associated with this determination of vested rights to be discussed at the SMGB's January 2010 regular business meeting to be held in the City of Marysville, California, and 4) have Western Aggregates submit an amended reclamation plan for all of Western's surface mining operations within 90 days upon a determination of such limitations. Board Member Lund seconded and the motion carried with a voice vote, with Members Baca and Lane opposed.

**[NOTE:** This item was recorded by a certified court reporter. The transcript is available for review at the SMGB's office during normal business hours.]



**XI. Special Reports and Department Presentations [Possible Action]**

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

9. 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:

- Wheatland Clay Mine (CA Mine ID #91-58-0007), Yuba County.
- Blue Point Clark Rock Quarry (CA Mine ID #91-58-0015), Yuba County.
- Blue Point Mine (CA Mine ID #91-58-0021), Yuba County.
- Simpson Lane (CA Mine ID #91-58-0025), Yuba County.

Agenda Item No. 9 was deferred.

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

- Geohazards Committee (Chairperson Bly-Chester)
  - Alquist-Priolo Technical Advisory Committee (Chairperson Tepel)
    - No report provided.
- Surface Mining and Standards Committee (Chairperson Lund)
  - No report provided.
- Minerals and Geologic Resources Committee (Chairperson Tepel)
  - No report provided.
- Policy and Legislation Committee (Chairperson 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 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**

No Executive Session conducted.

**XVI. Announcements of Future Meetings**

October 8, 2009, was announced as the next meeting, and the City of Bakersfield as the location.

**XVII. Adjournment**

The meeting was adjourned at 5:00 P.M.

**APPROVED**

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Erin Garner, Chairman

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Stephen M. Testa, Executive Officer

