



# 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

Will Conduct a Regular Business Meeting on:

Thursday, March 11, 2010

9:00 A. M.

(Or immediately following the Policy and Legislation 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 (Garner)**

The meeting was called to order at 9:40 A. M. by Chairman Garner, with all members present, with exception to Member Wyatt, and a quorum was declared.

**II. Pledge of Allegiance**

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

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

On behalf of Director Bridgett Luther, Chief Deputy Director Derek Chernow, reported on the following:

- Congratulations to the appointment of Barbara Lundburg to the SMGB.
- The Department will be testifying at two information hearings. Of special note is CGS testifying in regards to seismic safety issues related to hospitals.
- Director Bridgett Luther will also be testifying at a budget hearing scheduled for next week.
- The Governor's office is instituting audits of all out-of state travel to assure such travel is mission critical.

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

Dennis O'Bryant, Assistant Director, Office of Mine Reclamation (OMR), reported on the following activities:

- The Abandoned Mines Land Unit (AMLU) continues in its inventory efforts, and received a grant from BLM for the closure of abandoned lands features on federal land.
- 2009 mine fee schedules are being calculated, and fees are anticipated to decrease.

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

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

- CGS will be celebrating its 150<sup>th</sup> anniversary in 2010, with events scheduled for later this year. CGS plans to publish a pair of statewide maps, a new fault map, and various events throughout the year.
- A brief overview and comments regarding the latest series of earthquakes in Chile was provided.
- CGS should be filling two Engineering Geologist positions for their Menlo Park office.
- The upcoming meeting of the American Association of State Geologists (AASG) will be held in Washington, DC., and will include meetings with USGS, NOAA and NASA, among other activities.
- Member Tepel inquired as to whether CGS could provide a summary information report on the latest thinking pertaining to tsunami hazards in California. State Geologist Parrish indicated that a presentation could be made, and that CGS in cooperation with the California Emergency Management Agency is in the process of publishing its second generation of tsunami hazards maps.



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

Chairman Garner expressed appreciation of the efforts of Executive Officer Testa in keeping the SMGB on track with its administrative obligations and other items as noted in the SMGB packet, and his continued review of codes and policies, and his work on the annual report.

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

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

- While CGS will be celebrating its 150th anniversary, year 2010 is also the SMGB's 125<sup>th</sup> anniversary, and is working closely with CGS. In concert with CGS, a special symposium celebrating CGS's 150<sup>th</sup> anniversary is being held at the joint GSA Cordilleran Section-AAPG Pacific Section annual meeting in Anaheim in late May.
- A consideration of vested rights for the Big Cut Mine, located in El Dorado County, will commence in April 15, 2010. The special public hearing will take place in the City of Placerville.
- In concert with the California Construction and Industrial Minerals Association (CalCIMA), a 13-member China delegation from the province of Guizhou, was received on May 10. A presentation on mine safety was provided by CalCIMA; whereas, a presentation on mineral resource conservation was presented by the Executive Officer.
- SB 178 (Steinberg and Kuehl) was passed late last year and contains language that includes a role for the SMGB; whereas, if the Department of Water Resources determines that monitoring wells identified within certain groundwater basins provide insufficient information to demonstrate seasonal and long-term trends in groundwater elevations, and the SMGB concurs with that determination, the department shall perform certain groundwater monitoring functions. When this bill was first introduced, it was our understanding that the mention of the SMGB was inaccurate, but such language made it into the final version of the bill. The Executive Officer is following up on this matter.
- Several designation matters will be followed up and scheduled, later this spring following completion of vested rights related matters pertaining to Western Aggregates and the Big Cut Mine.
- The Executive Officer was invited to speak to the significance of mineral resources classification and the State's interest at a public hearing/meeting of the Local Agency Formation Commission for San Bernardino County (LAFCO). Such meeting will take place in Victorville later this spring.

**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 offered.

**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 information was 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, January 14, 2010, Regular Business Meeting.

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

2. Approval of Minutes, February 11, 2010, Regular Business Meeting.

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

3. Acceptance of California Geological Survey's Special Report 214 on Classification of Mineral Lands, Wilson Ranch-Walltown Quarry Project, Sacramento County, California.

Board Member Tepel moved to accept CGS Special Report 214. Board Member Lane 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.]

4. Adoption of State Mining and Geology Board's Final Decision on Vested Rights Pertaining to Western Aggregates, LLC (CA Mine ID #91-58-0001), Kerry Shapiro (Agent), Western Aggregates, LLC (Operator), Yuba County.

Executive Officer Testa stated that the SMGB, in September 2009, determined that Western Aggregates, LLC had a vested right for all identified Sections, with exception to Sections 25 and 30, and the southwest corner of Section 34, within the Yuba Goldfields, and at its February 11, 2010, public hearing, the SMGB decided not to impose limitations or restrictions on the annual production associated with such determination. Pursuant to CCR Article 15, Section 3964, upon making a determination based on a preponderance of the evidence, the SMGB is required to adopt the decision, and direct the EO to provide, via regular mail, notice to all persons who have requested such, of the final determination, and post the determination on the SMGB's website.

The SMGB is considering adopting its final determination.

- Jeffrey Dorso, with the law firm Taylor and Wiley, made note of items that may have been omitted from the administrative record.
- Kerry Shapiro, legal counsel for Western Aggregates, LLC, requested time for review of a late submittal by the law firm Taylor and Wiley, and noted issues raised in regards to findings, volume calculation and correlation to peak production and demand. All items previously addressed by the SMGB, and there is nothing new in such correspondence that should cause the SMGB not to take action and adopt its determination.

Board Member Baca moved to adopt its findings herein and Resolution 2010-04, and amended such motion to include any inadvertent omissions of documents as noted in the Executive Officer's report. Board Member Tepel seconded and the motion carried with a unanimous voice vote.



**XI. New Business [Action]**

5. Approval 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 California Vision, Inc., Proposed Surface Mining Operation, County of Kern.

Executive Officer Testa informed the SMGB that a one-time exemption from SMARA for certain surface mining operations is permissible should the SMGB finds that the proposed operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances – pursuant to PRC 2714(f). On January 25, 2010, CA Vision, Inc., requested a one-time exemption from SMARA for sampling and testing of representative materials, as part of their proposed "Fuller Earth" (an amorphous silica/clay like material with high absorptive qualities) associated with a prospective surface mining operation, Kern County. The project entails the trenching at five sites (four being former drill sites), and retrieval of representative samples for testing. Surface disturbance is anticipated to be on the order of 4.48 acres (0.22 acres per location). Total volume to be trenched, and subsequently replaced in a timely manner, is on the order of 108,833 cubic yards. This phase of operation would be performed under a Plan of Operations administered by the BLM. Should the testing program prove favorable, then a reclamation plan, financial assurance and environmental studies are anticipated to commence, as appropriate, and pursuant to SMARA. The SMGB is considering granting a one-time exemption for this phase of the project.

- Member Baca clarified that the trench was also for the purpose of obtaining a 3-dimensional perspective of the subsurface, and confirmed that a reclamation plan and bonding requirement through the County would be required.
- Gina Austin with California Vision, Inc. provided an overview of the proposed project and why an exemption is being requested.
- Member Tepel inquired to a previously disturbed area, and inquired whether this was simply a lead agency and Bureau of Land Management matter.
- Executive Officer Testa indicated that the SMGB, should this exemption be granted, would not have any further role, although the County and OMR would.
- Dennis O'Bryant, Assistant Director with OMR, recommended that that the exemption not be granted, and that all mineral exploration activities are deemed by OMR as surface mining and a reclamation plan and financial assurance is required. Many if not most such activities are on federal land. If granted, this would be a conflict with SMARA. OMR is not opposed to this project, simply opposed to the granting of an exemption.
- Member Baca clarified that exploration greater than 1 acre or 1,000 cubic yards always required a reclamation plan, but PRC Section 2714(f) is in SMARA allows a board like this one to balance such policy and grant an exemption of a one-time, infrequent nature.
- Rick Thalhammer, legal counsel for the SMGB, noted that the SMGB does have such discretion and authority to grant an exemption of an infrequent nature, and that Member Baca accurately characterized SMARA's intent. The notion of exemption is an exception to other requirements, and the SMGB has an opportunity or option to exercise its discretion.
- Chairman Garner stated that California Vision, Inc., has done their homework very well, and has the appropriate support and basis for such an exemption.
- Member Lund concurred.



Board Member Baca moved to grant the exemption, and that this exemption becomes effective with the posting of a bond. Board Member Lund seconded and the motion carried with a unanimous voice vote.

6. Approval of an Interim Financial Assurance for Richmond (Chevron) Quarry (California Mine ID # 91-07-0006), Dutra Materials (Operator), Mr. Brian Peer (Agent), City of Richmond

Executive Officer Testa stated that at its February 11, 2010, regular business meeting, the SMGB requested that Dutra Materials, operator of the Richmond Quarry, located in the City of Richmond, submit to the SMGB an adequate amended reclamation plan that is consistent with SMARA and the SMGB's regulations. In review of the existing approved financial assurance cost estimate (FACE), in the amount of \$1,700,000, such amount is deemed inadequate, and a revised financial assurance amount has been estimated. The estimated financial assurance based on estimated dollar amounts provided by the operator, and adjusted to reflect reclamation of the current approved reclamation plan, has been developed. Approval of an Interim FACE of \$3,758,950 is being considered by the SMGB. Upon receipt of an adequate amended reclamation plan, such amount would be adjusted, as appropriate. The SMGB is considering approval of an Interim FACE of \$3,758,950, to be provided to the SMGB by April 12, 2010.

- A brief overview was provided by Will Arcand, SMGB mine inspector.
- Chris Locke, legal counsel for Dutra Materials, discussed various issues related with the request for an amended interim financial assurance cost estimate.

Board Member Baca moved to defer action for 90 days, with an interim financial assurance cost estimate to be submitted to the SMGB's office within 60 days. Board Member Licari seconded and the motion carried with a unanimous voice vote, with Lundburg abstaining.

7. Review and Establishment of the State Mining and Geology Board Committees Pursuant to the Board's Bylaws (III Organization).

Executive Officer Testa stated that the SMGB, in accordance with its Bylaws, appoints committees to assist in its work. The existing four committees approved back in January were the Geohazards, Minerals & Geologic Resources, Policy & Legislation, and Surface Mining Standard Committees. The above committees present no conflicts with statute or the SMGB's bylaws, and in the view of the Executive Officer, remain valid. The review and establishment of SMGB committees are discretionary acts by the SMGB and its Chairman.

- Chairman Garner noted that Member Lundburg would be placed on the Geohazards Committee, Member Lane would serve as chair, and Chairman Garner removed himself from this Committee. Member Lund was also placed on the Surface Mining Standards Committee. No changes were made to the Mineral and Geologic Resources Committee and Policy and Legislation Committee.

8. Approval of Updated By-laws of the State Mining and Geology Board.

Executive Officer Testa stated that the existing SMGB's Bylaws were adopted in January 1993, and last revised in March 1998. Revisions offered reflect updating the name of the geological survey, inclusion of term limits for Vice Chair, and source of legal counsel for the SMGB. The SMGB is considering approving its updated Bylaws.

Board Member Lund moved to approve the SMGB's updated By-laws. Board Member Tepel seconded and the motion carried with a unanimous voice vote.



9. Approval of the State Mining and Geology Board's Annual Report for 2008-2009. 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. The draft 2008-2009 annual report summarizes pertinent activities and actions by the SMGB since July 2000. The SMGB is considering approving the final draft of its 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.

- Chairman Garner commended the excellent effort it took to produce this comprehensive document.
- Adam Harper, representing CalCIMA, stated that the Executive Officer did a very good job reflecting this decade of activity, and offered comments.
- Member Tepel indicated that the Executive Officer can make the recommended change, and inquired from legal counsel the policy for finalization of the annual report.
- Rick Thalhammer, legal counsel for the SMGB, indicated that some boards are established by statute, and others are established by an institution. Essentially, in the first instance, comity and corporation is what is typically pursued. The obligation is to forward the report to the governor's office for review, prior to finalization. Based on comments received, the SMGB can then decide how best to pursue finalization.
- Member Baca clarified as to whether the final approval is with the SMGB. Legal counsel Rick Thalhammer concurred.

Board Member Garner moved to accept the SMGB's draft 2008-2009 annual report, and direct the Executive Officer to forward the draft to the Governor's Office for approval, prior to finalization and distribution, pursuant to PRC Section 2717(a). Board Member Tepel seconded and the motion carried with a unanimous voice vote.

## **XII. Special Reports and Department Presentations [Possible Action]**

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

10. 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:

- Richmond (Chevron) Quarry (CA Mine ID #91-07-0006), City of Richmond.
- Pt. Richmond (Canal) Quarry (CA Mine ID #91-07-0007), City of Richmond.
- Lapis Sand Mine (CA Mine ID #91-27-0006), City of Marina.
- Big Gun Quarry (CA Mine ID #91-31-0013), City of Rocklin.
- Western Aggregates (CA Mine ID #91-58-0001), County of Yuba.
- Cal Sierra Development (CA Mine ID #91-58-0003), County of Yuba.
- Sperbeck Quarry (CA Mine ID #91-58-0004), County of Yuba.
- Teichert Hallwood (CA Mine ID #91-58-0006), County of Yuba.
- Dantoni Pit (CA Mine ID #91-58-0011), County of Yuba.
- Teichert Marysville (CA Mine ID #91-58-0019), County of Yuba.
- Ella and Platter Borrow Sites (CA Mine ID #91-58-0026), County of Yuba.

Executive Officer Testa stated that the SMGB is the SMARA lead agency for eleven surface mine inspections reports being presented for the SMGB's acceptance consideration. The SMGB is considering accepting all eleven reports and acknowledging that they have been prepared in



accordance with the regulatory requirements of SMARA and the Board's guidelines. The SMGB is not necessarily accepting the reports conclusions.

- Mignone Wood, consultant with LSA and representing the operator, commented on the inspection report for the Richmond Quarry, and requested that such report be amended to reflect alleged inaccuracies. Acceptance of such report was deferred to allow time for SMGB staff to review the comments, and address such comments, as appropriate.

Board Member Baca moved to accept the inspection reports, with exception to the Richmond Quarry. Board Member Lund 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 Tepel)
- Policy and Legislation Committee (Chairperson Baca)

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



**XVI. Announcements of Future Meetings**

April 15, 2010, was announced as the next meeting, and the City of Placerville as the location.

**XVII. Adjournment**

The meeting was adjourned at 1:00 P.M.

**APPROVED**

\_\_\_\_\_  
Erin Garner, Chairman

\_\_\_\_\_  
Stephen M. Testa, Executive Officer

