



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

www.conservation.ca.gov/smgb

smgb@conservation.ca.gov

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CONFORMED MINUTES

THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, April 15, 2010

MORNING SESSION: 9:30 A. M.

(or immediately following the Policy and Legislation Committee Meeting)

AFTERNOON SESSION: 1:30 P. M.**

The afternoon session began with

Agenda Item XI – 10 Special Public Hearing: Request for Determination for Vested Rights, Big Cut Mine (CA Mine ID #91-09-00XX), Diane Anderson (Agent), Rick Churches (Operator and Claimant), County of El Dorado.

LOCATION:

**Board of Supervisor's Hearing Room
County Government Center, Building A
330 Fair Lane
Placerville, CA 95667**

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,

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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)

II. Pledge of Allegiance

III. Roll Call and Declaration of a Quorum

The meeting was called to order at 9:50 A. M. by Chairman Garner, with all members present, and a quorum was declared.

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

Director Bridgett Luther reported on the following:

- Need for all SMGB members to complete Form 700.
- The legislature is involved in budget hearings.
- The SMGB's agenda includes an Order to Comply issued by the Director, and significant effort went into formulating this Order in order to get it before the SMGB.

- 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 for about four million dollars from BLM for the closure of abandoned lands features on federal land, and another \$809,000 for California's National Parks. Also, Cy Oggins, manager of the AMLU, will be moving to the State Lands Commission.
- A two-day SMARA workshop will be held in Visalia next week.
- The Lead Agency Review Team (LART) has completed its first reviews, with presentations to the SMGB anticipated in the near future. The next Counties to be reviewed are Lake and Amador.
- The Executive Officer has requested OMR to review SMARA issues for the City of Lake Elsinore. Several deficiencies were noted, and 15-Day Notices were forwarded to the City. Affected surface mine sites have been removed from the AB 3098 list.
- The first Order to comply in several years, issued by the Director, for the New Era Mine, Butte County, is on the SMGB's agenda today.

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

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

- Airports throughout Europe have been closed due to Iceland's recent volcanic eruption along the Mid-Atlantic spreading ridge, with ash moving eastward toward Europe.



- CGS has a volcano alert system, monitored by USGS. Mount Lassen, in the northern California, is still deemed active after erupting in 1913.
- On April 4th, 2010, at 3:40 P. M., a 7.2 magnitude earthquake occurred about 40 miles south of the California-Mexico border. The earthquake was characterized as very shallow, and was felt throughout California. Very little damage was experienced on the California side of the border; whereas, considerably more damage was observed to the south, reflecting less adequate building codes and standards. CGS geologists, in concert with the United States Geological Survey (USGS), observed the damage in the field. CGS's Strong Motion Instrumentation Program maintains 337 instruments at various locations, all operating successfully. As aftershocks continue to occur and propagate northward, the region is being monitored closely.
- CGS is celebrating its 150th anniversary, with April 21st as its official anniversary date. Several events are planned throughout the year in celebration, including issuance of two new wall-size state maps, one geologic and the other a fault map.

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

No information report was provided.

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

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

- A written Executive Officer's report was provided; no oral report presented.

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.]

- Member Licari indicated he contacted Member Lund regarding scheduling a Surface Mining Standards Committee meeting in the near future.
- Member Tepel indicated he was engaged by a public member regarding the hearing scheduled for later today.
- Member Baca indicated he had a conversation with consultant Warren Coalson regarding items on the Policy and Legislation Committee agenda.

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.]

- Art Marinaccio, consultant, remarked on mining issues in El Dorado County, with statewide implications.



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, March 11, 2010, Regular Business Meeting.

This matter was deferred.

2. Approval of an Adjusted Financial Assurance Cost Estimate, Garnet Pit (CA Mine ID #91-33-0031), Catherine Vos (Agent), Granite Construction Company (Operator), City of Palm Springs.

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

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

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

4. Approval of an Adjusted Financial Assurance Cost Estimate, Parks Bar (CA Mine ID #91-58-0013), Jens Karlshøj (Agent), Nordic Industries, Inc. (Operator), County of Yuba.

Board Member Lund moved to approve the adjusted financial assurance cost estimate. Board Member Tepel 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.]

5. Acceptance of Inspection Report for the Richmond (Chevron) Quarry (CA Mine ID #91-07-0006), Mr. Brian Peer (Agent), Dutra Materials (Operator), City of Richmond.

Executive Officer Testa stated that comments brought forth by the operator's consultant were reviewed, and addressed appropriately.

- The operator's consultant, Mignone Wood with LSA, brought forth additional comments.

Board Member Baca moved to continue this matter. Board Member Licari seconded and the motion carried with a unanimous voice vote.

XI. New Business [Action]

6. Acceptance of the Annual Fee Schedule for Mines Subject to the Surface Mining and Reclamation Act (SMARA; Public Resources Code Sections 2710 et seq. and 2207).

Executive Officer Testa stated that annually, the SMGB reviews the Fee Schedule, which is set in statute under PRC 2207, and calculated in a manner consistent with the SMGB's regulations (CCR Sections 3698 and 3699). The annual Fee for 2009 as calculated will slightly decrease, and the base fees that are mentioned in statute will be adjusted using a Consumer Price Index (Cost of Living Adjustment; COLA) for 2008 which was about 0.31%. The tables provided in the Executive



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Officer's report are the new fees figures that are established pursuant to PRC 2207. In review of the 2009 calculations and summary tables, fees are decreasing to \$4,120,270, representing a decrease of \$12,398 relative to the amount requested for Calendar Reporting Year 2008. The SMGB is being asked to accept that the fees have been calculated in accordance with PRC 2208 and the SMGB's regulations.

- Chairman Garner directed the Policy and Legislation Committee to review the current fee structure, and have the Executive Officer work with the Department in considering a more equitable formula.

Board Member Lund moved to accept the 2009 annual mine schedule. Board Member Baca seconded and the motion carried with a unanimous voice vote.

7. 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 M&T Ranch, Proposed Surface Mining Operation, County of Butte.

Executive Officer Testa stated that SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the Board find that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances – pursuant to PRC 2714(f). On March 4, 2010, representatives for M & T Ranch, requested a one-time exemption from SMARA for a one time removal of 150,000 tons of gravel from an existing stockpile to make room for more material which needs to be excavated as soon as possible to protect a water intake and existing fish screens. In 2001 and 2007, 200,000 and 100,000 tons of materials, respectively, were removed from a migrating gravel bar which was encroaching upon the M&T/Llano Seco water intake and fish screens. The 300,000 tons of material is owned by the State of California and stored on M&T Ranch, and will eventually be removed and sold via competitive bidding under a SMARA lead agency approved reclamation plan. OMR, in a letter dated October 15, 2001, commented that the project as described in 2001, met the criteria for exemption under PRC Section 2714(b), predicated on the fact that the gravel and sand was being removed from the Sacramento River, and would be used only for river habitat and flood channel restoration activities, within the Sacramento River Conservation Area. The SMGB is considering granting a one-time exemption for this phase of the project.

- Les Heringer, Farm Manager representing M & T Ranch, and Jim Well, Director of Conservation Programs for Ducks Unlimited, Western Regional Office, presented a synopsis of the proposed project, and the merits for an exemption consideration.

Board Member Baca moved to grant the exemption. Board Member Lund seconded and the motion carried with a unanimous voice vote.

8. 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 Ford Construction, Proposed Surface Mining Operation, County of Tehama.

Executive Officer Testa stated that SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the SMGB finds that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances pursuant to PRC 2714(f).

Ford Construction proposes to move approximately 4,600 cubic yards of material from one property, and use such material located on a PG&E easement situated on another property. The materials to be excavated from the cut area are proposed to be placed as fill on the adjacent parcel. The



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material will not be hauled on any public right-of-way. All material will be trucked to the adjacent parcel. The longest haul from cut to fill will be less than 2,000 linear feet. Mr. Shaw will be monetarily compensated for the material cut from his property. Mr. Crawford will receive no compensation for the material being placed on his property. The SMGB is considering granting a one-time exemption for this phase of the project.

Board Member Baca moved to grant the exemption. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

9. **Public Hearing:** Consideration of Order to Comply, New Era Mine (CA Mine ID #91-04-0031), David Everrett (Agent), North Continent Land & Timber (Operator), County of Butte.

Executive Officer Testa stated that in March, the Director, through the OMR, issued an OTC to the operator of the New Era Mine, a surface mining operation located in Butte County. The operation is alleged not to have a SMARA lead agency approved Reclamation plan and adequate financial assurance. An OTC issued by the Director is subject to an automatic hearing before the SMGB prior to the order becoming effective (PRC Section 2774.1(b)). The SMGB is considering whether the Director had sufficient evidence to support the order at the time it was issued. Should such evidence support issuance of the OTC and any effective date in the order, the OTC shall be upheld.

- Comments were provided by Greg Tenorio, legal counsel for the Department of Conservation.
- Comments were provided by Ron Logan, owner of the New Era Mine, and legal counsel Robert Kilroy.
- Comments were provided by Tim Snelling and Chris Thomas, Director and Senior Planner, respectively, Butte County; Richard Meyers representing the Dry Creek Coalition; and Keith Wagner, legal counsel representing the Dry Creek Coalition.

Board Member Baca moved to uphold the Director's Order to Comply. Board Member Lund seconded and the motion carried with a unanimous voice vote.

10. **Special Public Hearing:** Request for Determination for Vested Rights, Big Cut Mine (CA Mine ID #91-09-00XX), Diane Anderson (Agent), Rick Churches (Operator and Claimant), County of El Dorado.

[A transcript of this agenda item is available upon request.]

Executive Officer Testa stated that the SMGB serves as the SMARA lead agency in the implementation of the Surface Mining and Reclamation Act of 1975 (SMARA) in El Dorado County. On March 13, 2009, the SMGB received a Request for Determination for vested rights for the proposed Big Cut Mine (BCM), located in El Dorado County. At its May 14, 2009, regular business meeting, the SMGB moved to serve as the hearing officer during conduct of a public hearing for a vested right determination. At its September 11, 2009, regular business meeting, this matter was scheduled to be heard by the SMGB. A presentation of the administrative record before the SMGB, and findings, were presented by the Executive Officer.

- The SMGB heard from Ms. Diane Anderson and Mr. Kerry Shapiro, legal counsel for Joseph Hardesty (claimant), Chuck Kull, geologist and engineer representing claimant; Joseph Hardesty, claimant and owner representing Hardesty Sand and Gravel; Rick Churches, operator and claimant; and Dan Tenkersley, partner with Hardesty.
- James Mizell, legal counsel representing Teichert Aggregates; Jerry Charlberg, Urs Schuler, Lana Lentz, Brad White, Sean Frame, Mary and Harris Nugent, Gate Taxera, Barry



Wiedemann, Robert Putham, Robert Carter, Gene Gallentine, Deborah Kal and Mark Kal, all representing the general public; and Art Marinaccio, general public, all provided comment.

Board Member Baca moved to accept the findings set forth by the Executive Officer. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

Board Member Baca moved to find that the petitioner's claim of vested rights is not supported by a preponderance of the evidence. Board Member Lund 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.

11. 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), County of El Dorado
- Diamond Quarry (CA Mine ID #91-09-0003), County of El Dorado
- Chile Bar Slate Mine (CA Mine ID #91-09-0004), County of El Dorado
- Lawyer Pit (CA Mine ID #91-09-0010), County of El Dorado

Executive Officer Testa noted that the SMGB is the SMARA lead agency for El Dorado County, and the above referenced mine inspection reports are for the SMGB's acceptance consideration. Presentation summarizing the results of the inspections will be provided at the next scheduled meeting.

Board Member Licari moved to accept the mine inspection reports, but defer presentation of the reports. Board Member Wyatt 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)

XIV. 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.]

XV. 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:



XVI. 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.
- d). 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 no action was taken, merely a discussion was held reflecting a threat of litigation from Mr. Kilroy regarding New Era Mine (Agenda Item No. 9). The submitted items in question were accepted as an offer, and Mr. Thalhammer asked that Mr. Kilroy explain why the submittal came on the day of the meeting and the relevancy of each of the items on the list.

XVII. Announcements of Future Meetings

May 13, 2010, was announced as the next meeting, and the City of Sacramento as the location.

XVIII. Adjournment

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

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

