



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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CONFORMED MINUTES

THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Wednesday, November 10, 2010

10:00 A. M.

Assembly Hearing Room #447

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 requires that all lengthy comments be submitted in writing in advance of the meeting date where this matter is to be decided. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office located at 801 K Street, Sacramento, CA, 95814, no later than 5:00 P.M., 15 calendar days prior to the scheduled meeting date, and must identify the Agenda Item to which it relates. For written materials in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 15 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.

New submittals received after 15 calendar days prior to the scheduled meeting date will be marked as late, and the SMGB will decide whether new submittals will be considered or not during the public hearing. Late submittals, received by the SMGB at least 48 hours prior to the scheduled meeting, will be included in a late document submittal listing. Late submittals, received after 48 hours prior to the scheduled meeting, will not be included on the late document submittal list. The SMGB would accept a two-page written summary of testimony, or final comments based on, and limited to, review of the SMGB's packet and/or Executive Officer's report, at the time of the public hearing. Such two-page summaries would be included as part of the administrative record before the SMGB. This

policy does not apply to quasijudicial proceedings (i.e., appeals, petitions, etc.) where administrative procedures for the submittal of documents are set forth in statute and regulation.

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 10:15 A. M. by Chairman Garner, with Member Lund absent, and a quorum was declared.

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

Acting Director Derek Chernow reported on the following:

- With the elections over, the DOC is preparing for the transition to the Brown Administration, and updated the Director Briefing Binder, including a section on the SMGB with assistance from the SMGB's Executive Officer. Although Governor Brown will assume office the first week of January, the DOC is preparing to address any questions or needs from his transition team.
- DOC is examining potential legislative proposals for the 2011-12 Legislative session. New members will take office on December 6, 2010, and the session will begin in January 2011.
- The DOC is in the midst of a search for a Chief Counsel. Greg Tenorio is serving as DOC's Interim Chief Counsel.
- Marni Weber, DOC's Office of Governmental and Environmental Relations, provided a brief discussion the current legislative review of SMARA in preparation for the next Legislative cycle.
- Initiated a legislative review of SMARA lead by Marni Weber. The first workshop of stakeholders was held a week ago with select representatives of the mining industry. Future meetings will be with representatives of local government, lead agencies, and environmental groups. The goal is to develop potential solutions and build consensus regarding changes to SMARA.
 - Member Baca indicated that the items discussed during the Policy and Legislation Committee are also being discussed during these workshops. Chernow indicated that they were.
 - Member Wyatt inquired as to whether the Executive Officer is involved as part of the workshops/stakeholder meetings. Chernow indicated that he was.
 - Member Tepel inquired as to whether the DOC views the SMGB as a cooperative partner in this effort or does the DOC see it as competing interest. Chernow indicated that the workshops are more fact finding oriented.
 - Member Licari expressed the need for openness, and that the SMGB provides policy and the more the DOC keeps the SMGB informed the better.



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

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

- Attended a 2-day meeting with other organizations associated with response to seismic events to discuss coordination of activities in light of differing objectives and lines of communications between the various organizations.
- Attended seismic earthquake advisory committee meeting to discuss an earthquake on the Cascadia subduction zone, early warning systems among other topics.
- Monitoring federal budget cuts and their impact on the USGS and CGS since it operates under a number of grants with USGS.
- USGS now undergoing major changes with a focused on hazards in lieu of geologic hazards, and for the first time in its history there is not a geologic section within the USGS. Geologic mapping is a core theme.
- CGS used a model developed by USGS to predict the number of debris flows depending on weather conditions. Twenty-seven out of 28 debris flows actually occurred, thus, statistically, the modeling effort was very successful.

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

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

- Enforcement actions are being initiated by OMR for a tungsten mine located in Los Angeles National Forest. A 15-Day Notice was forwarded to the County of Los Angeles. A site visit was performed and about 30 acres were found to be disturbed. The operator had no federal Plan of Operations, or financial assurance. Operations go back to about 1989.
- The County of Sacramento issued a Cease-and-Desist Order to the Hardesty Mine, and will be performing an inspection under a search warrant in the near future.
- Staff recently participated in a conference on abandoned mines in Nevada County.
- An abandoned mine mitigation effort took place in the City of San Andreas. A 200-foot air shaft was found to exist in the City's Little League playing field, and was subsequently plugged.

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

No Chairman report was provided.

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

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

- Additional slope stability analysis is being performed by the consultant for the Super Creek Quarry located in the City of Desert Hot Springs.
- The amended reclamation plan for the Western Aggregates surface mining operation, located in the County of Yuba, has been reviewed by both OMR and SMGB staff, and comments were forwarded to the operator to be addressed.
- Several designation rulemaking efforts are in progress, including rulemakings for the Bakersfield and Palm Springs Production Consumption Regions.
- The SMGB's 2009-2010 Annual Report is being prepared, and should be before the SMGB at its next scheduled regular business meeting.
- Other reports being prepared by the Executive Officer include the Alquist-Priolo Technical Advisory Committee report and several Information Reports.



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 Lane indicated that he served as a facilitator at the Sierra Fund conference recently held in Nevada City. On his panel were Jim Pompy (OMR), Adam Harper (CalCIMA), Mike Miller (operator) and Becky Woods (Teichert).

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.]

- Jay Schneider expressed displeasure with enforcement actions being taken by OMR in regards to issues pertaining to the Sneider Historic Mine located in Sacramento County. Schneider also inquired as to whether the SMGB's Executive Officer could participate by observing the upcoming inspection being performed by the County of Sacramento.
- Rick Churches also offered displeasure in regards to certain actions of OMR and SMGB staff pertaining to the Schneider Historic Mine, among other issues.

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, October 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, with Member Wyatt abstaining.

X. Continued Business [Action]

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

2. Status Report on the City of Lake Elsinore Lead Agency Program Pursuant to the Surface Mining and Reclamation Act (SMARA). (OMR)

Executive Officer Testa stated that in November 2009, the SMGB received a public complaint pertaining to certain surface mining operations located within the jurisdiction of the City of Lake Elsinore (City). The complaints were forwarded to the OMR. OMR performed a site visit in March 2010, and presented a summary of its site visit at the SMGB's July 10, 2010, regular business meeting. At such meeting, the SMGB expressed concern based on information provided by OMR, and requested that OMR provide more in-depth information, including the inspection reports that the city had been filing during the time houses were being built within the boundaries of the mining footprint, and photographs taken during inspections and site visits performed by OMR, and OMR's commentary on such reports.



The City of Lake Elsinore has provided some preliminary information for the SMGB's review and consideration.

Board Member Tepel moved to direct the Executive Officer to consider issuance of a 45-Day Notice to Correct Deficiencies for the SMGB's next regular business meeting. Board Member Baca seconded and the motion carried with a unanimous voice vote.

XI. New Business [Action]

3. Issuance of an Order to Comply to Big Cut Mine (formerly Donovan Ranch), (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operator), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

Executive Officer Testa stated that the SMGB serves as the SMARA lead agency for all surface mining operations in the County of El Dorado. On April 1, 2010, SMGB staff inspected the Big Cut Mine site and observed evidence of unpermitted surface mining activities. Such operations included recent dewatering of underground tunnels and discharge of such flows into surface impoundments, and use and storage of mining equipment, among other activities which entailed surface disturbance exceeding one acre. In addition, physical evidence of slope instability and/or subsidence was also observed, which may prove hazardous should underground mining activities persist. A Notice of Violation was issued by the Executive Officer on September 3, 2010, and was subsequently received by the Operator on September 7, 2010.

Board Member Baca moved to issue the Order to Comply by December 10, 2010, and schedule a public hearing for February 10, 2011, should the violations not be corrected. Board Member Tepel seconded and the motion carried with a unanimous voice vote, with exception to Member Licari who opposed.

4. Consideration of Regulatory Language to Amend Form MRRC-4L to Include Idle Mines in Consideration of a Low Gross Exemption Pursuant to California Code of Regulations Section 3360(a).

At the October 14, 2010, meeting of the Policy and Legislation Committee (Committee), the Committee, after hearing from stakeholders, discussed the need to amend Form MRRC-4L to include idle mines when the Department of Conservation Office of Mine Reclamation (OMR) is considering granting of a Low Gross Exemption. Form MRRC-4L has been amended to include idle mines. The Policy & Legislation Committee met this morning and discussed this matter, and is recommending approval of the amended regulation. The SMGB is considering approval of the amended form which is referenced in California Code of Regulations (CCR) Section 3699(a), and directing the Executive Officer to commence the rulemaking process.

Board Member Baca moved to 1) accept the proposed regulatory language, 2) approve revision to the form, and 3) direct the Executive Officer to commence rulemaking. Board Member Tepel seconded and the motions carried with a unanimous roll call voice vote.



5. Consideration for Issuance of a 45-Day Notice of Deficiencies to the County of Tuolumne.

Executive Officer Testa noted that the County of Tuolumne maintains a financial interest in two surface mining operations within the County's jurisdiction, and that the County, pursuant to the SMGB's regulations, could not perform mine inspections for these two sites. Thus, the SMGB would be performing the mine inspection. The County initially refused the SMGB access to these sites, although recent discussions between the County, and SMGB staff and legal counsel, suggest that the County will allow access, and thus, requested that this matter be deferred.

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

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

At its October 8, 2009, regular business meeting, the State Mining and Geology Board (SMGB) approved an updated Strategic Plan (Plan). Chairman Garner at this meeting also requested that the SMGB's strategic Plan be reviewed annually. The SMGB has before it a revised Strategic Plan reflecting a few minor edits and changes, including updating of graphs provided in Section 4.0 – Budget and Staffing

- Member Baca stated that the Strategic Plan depicts the SMGB's goals and objections, and that the SMGB is actually performing many of the goals and objectives set forth in the plan.
- Member Tepel commented on the plan and its relationship to the annual report, and inquired how the information in these documents gets conveyed to the legislature and Governor's office. He stated that these documents provide the rationale for why this board exists and demonstrates it is fulfilling its mission. Executive Officer Testa indicated that such documents are made available on the SMGB's website, in digital form, and distribute hard copies directly to the legislature.
- Chairman Garner suggested that the Executive Officer look into the best vehicle for distribution upon approval.

Board Member Baca moved to approve the updated Strategic Plan. Board Member Licari seconded and the motion carried with a unanimous voice vote.

7. Consideration of the State Mining and Geology Board's 2009-2010 Annual Report.

Executive Officer Testa introduced a draft of the SMGB's 2009-2010 annual report, and requested that all comments upon review be forwarded to his attention.

Board Member Baca moved to defer this matter. Board Member Wyatt 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.

8. Inspection reports pursuant to PRC Section 2774(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:

- Bear Creek Aggregates (CA Mine ID #91-09-0001), County of El Dorado.
- Cool Cave Quarry (CA Mine ID #91-09-0005), County of El Dorado.
- Parks Bar Quarry (CA Mine ID #91-58-0013), County of Yuba.
- Blue Point Clark Quarry (CA Mine ID #91-58-0015), County of Yuba.
- Blue Point Sand & Gravel (CA Mine ID #91-58-0021), County of Yuba.

Will Arcand, Senior Engineering Geologist and inspector for the SMGB, presented a summary of each inspection report outlined above.

Board Member Tepel moved to accept the inspection reports. Board Member Baca 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)
 - Chairperson Baca summarized discussions and actions taken by the Committee during its October 10, 2010, meeting.

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.]

No continuing business information was discussed.

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.]

The following topics were to be scheduled:

- Review of the administrative process pertaining to issuance of a 15-Day Notice by OMR to a lead agency for failure to enforce SMARA.



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). Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.
- d). A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
- e). William Calvert, Elfriede Calvert and the Yuba Goldfields Access Coalition v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000530, Sacramento County Superior Court.
- f). North Continent Land and Timber, Inc. vs. SMGB, Department of Conservation, Office of Mine Reclamation, County of Butte Board of Supervisors, Case No. 34-2010-800000542, Sacramento County Superior Court.
- g). An un-named case where there is potentially significant exposure to litigation against the SMGB.

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

SMGB's Legal Counsel, Deputy Attorney General Rick Thalhammer, announced that the SMGB met in Executive Session and no action was taken.

XVII. Announcements of Future Meetings

December 9, 2010, was announced as the next meeting, and the City of Palm Springs as the location.

XVIII. Adjournment

The meeting was adjourned at 3:20 P.M.

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

