



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

## *Policy and Legislation Committee*

*Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund*

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## **CONFORMED MINUTES**

### **THE POLICY AND LEGISLATION COMMITTEE (Brian Baca, Committee Chair; Erin Garner; Benjamin Licari) OF THE STATE MINING AND GEOLOGY BOARD**

**Conducted a Meeting on:**

**Thursday, March 10, 2011**

**9:00 A. M.**

**Assembly Hearing Room #444  
State Capitol  
Sacramento, CA 95814**

**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 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.

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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 (Baca)**

The meeting was called to order at 9:05 A. M. by Committee Chairman Baca, with Members Garner and Licari present, and Member Lund absent, and a quorum was declared.

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

**III. Consent Items [Action]**

[All the items appearing under this section will be acted upon by the committee by one motion and without discussion; however, any committee 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 13, 2011, Committee Meeting.

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

2. Approval of Minutes, February 10, 2011, Committee Meeting.

Committee Member Licari moved to approve the minutes. Committee Member Garner seconded and the motion carried with a unanimous voice vote.

**IV. Continued Business [Action]**

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

3. Language for Regulatory Due Process for the Placement of Mining Operations on, or Removal from, the AB 3098 List.

Executive Officer Testa noted that OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under California's Public Resources Code, Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation, that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies. Although what is required to be on the list is clearly spelled out, procedures for removal or subsequent reinstatement to the list are less clearly defined. Since July 2010, this Committee has been discussing the need for a due process for placement, removal, and reinstatement of operators on the AB 3098 List. Preliminary regulatory language has been prepared. This language was first made available to this Committee for review and discussion, and to hear comment from stakeholders, at its Feb 10, 2011, meeting. Based on preliminary comments received



to date, the language was modified (referred to as Revision 1.0). Request from various stakeholders have been received for this matter with a request for proposed draft language to be forwarded to a workshop venue prior to coming back before this committee.

- John Hecht, representing Sespe Consulting, and reiterated that after this issue was raised in 2010, there remains no venue for operators to go when there is a dispute over facts, and was in support of a workshop venue to discuss the proposed regulatory language.
- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA) expressed support for a workshop venue to discuss elements of the proposed language and intent.
- Member Licari concurred with support for a workshop venue.
- Committee Chair Baca noted that OMR and SMGB staff has not reached a consensus and more internal discussion is warranted.
- SMGB legal counsel Deputy Attorney General Rick Thalhammer agreed to work with DOC OMR's and SMGB staff to address their specific concerns.

4. Discussion of Statutory Language to Clarify Public Resources Code Section 2774(c) pertaining to Lead Agency Certification of Reclamation Plans pursuant to the Surface Mining and Reclamation Act.

Executive Officer Testa stated that SMARA, PRC Section 2774(c) requires that a lead agency certify to the Director of the Department of Conservation (DOC) and also submit to the director for use in reviewing the reclamation plan or plan amendments 1) information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information, and 2) a reclamation plan is in compliance with the applicable requirements of Article 1 of the SMGB, regulations, commencing with CCR Section 3500.

Specifically, the issue is that staff of the local agency cannot make a conclusionary determination that a reclamation plan is complete and in compliance with SMARA. Only the decision-makers can make such a conclusionary determination. Thus, an amendment to this statute may need to be considered that will interpret this requirement to mean that the Planning Director of an agency makes a preliminary determination subject to later consideration by the decision-makers in a public hearing. Request from various stakeholders have been received for this matter to be forwarded to a workshop venue prior to coming back before this committee.

- Committee Chairman Baca proposed draft amended language, and reiterated that such proposed amended change was to clean up a procedural error in existing statute.
- Mark Harrison, attorney with Diepenbrock-Harrison, stated that he was in favor of the proposed change.
- Following discussion among Committee members, the following amended language for PRC Section 2774(c), with strikeouts and italicized additions, was proposed.

“Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing



with Section 21000), and shall submit any other pertinent information. ~~The lead agency~~ *An authorized representative of the lead agency shall certify, on a preliminary basis, to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review."*

Committee Member Garner moved for the proposed amended language to be forwarded to the whole SMGB for approval consideration. Committee Member Licari seconded and the motion carried with a unanimous voice vote.

5. Discussion of 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. You have an EO's report on this matter. The annual Fee for 2010, as calculated, will increase, and the base fees that are mentioned in statute will be adjusted using a Consumer Price Index (Cost of Living Adjustment; COLA) for 2009 which was about 1.3%. The tables provided in the staff report are the new fees figures that are established pursuant to PRC 2207. You can see in review of the 2010 calculations and summary tables, fees are increasing to \$4,173,824, representing an increase of \$53,564 relative to the amount requested for Calendar Reporting Year 2009. Most importantly, PRC Section 2207(d)(2)(A) requires fees to be calculated on an equitable basis reflecting the size and type of the operation, the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan. At its March 10, 2011, regular business meeting, the SMGB will be considering accepting the 2010 Annual Mine Fees. Currently, most surface mining operations fall into two categories and small operators commonly pay as much as large ones. All industrial mineral sites (i.e., aggregate sites) are now at the maximum fee amount with exception to those surface mining operations producing 100 tons or less, all gold and silver producers are at the maximum fee amount with exception to those producing 10 ounces or less, and all base and other metals producers are at the maximum fee amount with exception to those producing 10 pounds or less. Several options are available to make the fee schedule more equitable and include 1) a legislative change to increase the current ceiling amount of \$4,173,834; 2) provide for a different formula in calculating the annual mine fees with a legislative change in the ceiling amount; 3) provide for a different formula in calculating the annual mine fees with no change in the ceiling amount; and 4) formulate another approach in determining annual mine fees (i.e., fixed amount per disturbed or land or acreage approved in the reclamation plan).

- Deputy Assistant Director of OMR, Dennis O'Bryant, summarized how the annual mine fees are currently evaluated based on the SMGB's formula in regulation, and that they are assessed solely on a mineral production basis. With the existing cap, there is not much measureable effect, and not equitable.
- Member Licari was not in favor of increasing the cap without extensive discussion.
- Committee Chairman Baca requested that staff provide the Committee with several scenarios for consideration including scenarios that call for an increase in the cap (which would call for a legislative change), fees based on disturbed or approved acreage in a reclamation plan, alternate calculation methodology, etc.



Committee Member Garner moved for staff to report back to the Committee with various alternate scenarios for consideration and further discussion. Committee Member Licari seconded and the motion carried with a unanimous voice vote.

**V. New Business [Action]**

No new business was discussed.

**VI. 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 Committee 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 discussion was offered.

**VII. Continuing Business [Information]**

[This item is provided as an opportunity for any SMGB Committee member to receive information on or any items of continuing interest to the SMGB.]

No continuing business was discussed.

**VIII. New Business [Information]**

[This item is provided as an opportunity for any SMGB Committee member to bring any item of new business to the Committee's attention for further discussion and further action.]

No new business was discussed.

**IX. Announcements of Future Meetings**

The next meeting of the Policy and Legislation Committee was scheduled to be held in Sacramento on April 14, 2011.

**X. Adjournment**

The Committee meeting was adjourned at 10:00 A.M.

**APPROVED**

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Brian Baca, Committee Chairman

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Stephen M. Testa, Executive Officer

