



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:

Thursday, February 10, 2011

9:30 A. M.

Assembly Hearing Room #444
State Capitol
Sacramento, California 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.

[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 9:40 A. M. by Acting Chairman Baca, with Chairman Garner absent, and a quorum was declared. Member Wyatt arrived at 9:45 A. M. Member Lund was informed by the Governor's Appointment Unit that she could no longer serve on the SMGB.

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

Acting Director Derek Chernow reported on the following:

- The new Administration of Governor Brown is up and running. Former State Assemblymember John Laird has been named Secretary for the Natural Resources Agency.
- Secretary Laird was kind enough to visit with the Department's Executive Team last week for an informal briefing. Executive Officer Testa participated.
- A number of important bills have been introduced, and DOC's Office of Governmental and Environmental Relations has provided a spreadsheet outlining some of these bills, including two mining bills from Senator Rubio. The last day to introduce bills is February 18.
- Testimony was provided last week on behalf of the DOC at both an Assembly Budget Subcommittee and Senate Budget Committee hearings. The Legislature is working on an accelerated timeframe this year, and the hearings were held earlier than typical.
- DOC's Division of Land Resource Protection was awarded approximately \$9 Million in Watershed Coordinator grants last week. The grants are previously voter-approved bond measures and went to approximately 40 applicants throughout the state.
- For the first time in California's history, DOC will be hosting the National Association of Abandoned Mine Land Programs annual conference. This conference will be held October 9-12, 2011, in Squaw Valley. Additional details will be provided as they develop.
- State Geologist's Report (Parrish) [Information]

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

- February 9, 2011, was the 40th anniversary of Sylmar Earthquake (San Fernando Earthquake). This earthquake was of Magnitude 6.6, and resulted in 65 fatalities, 2,000 injured, and \$505 million (1971 dollars) in infrastructure damage. This earthquake resulted in passage of Alquist-



Priolo Act (1972) which prohibits the construction of structures for human habitation across the trace of an active fault; authorizes State Geologist to create mandatory zones of investigation around fault traces; as of today, CGS has produced 544 A-P maps, covering over 5,000 miles of active surface faults, affecting 36 counties and 100 communities. This earthquake also resulted in passage of the Strong Motion Instrumentation Act (1971) which resulted in the creation of the CGS Strong Motion Instrumentation Program which is authorized to establish an earthquake strong motion network to gather data, process and analyze that strong motion information, and provide that information for incorporation into California's Building Codes to make structures more earthquake resilient.

- Today, the CGS Strong Motion Network is the largest and most sophisticated seismic network in the Western Hemisphere with over 1,140 stations and 5,000 field instruments. It is the largest part of the California Integrated Seismic Network (along with partners Caltech, UC Berkley Seismological Lab; the USGS, and CalEMA), and jointly with the USGS operates the Center for Engineering Strong Motion Data – and international repository for strong motion earthquake data. Almost yearly, CGS staff is invited to travel internationally to educate other surveys and governments on the CGS network.
- March 10-11-12 is The National Science Teachers Association is holding its conference in San Francisco from March 10 through 12. CGS will have booth along with DOGGR, and anticipates 10,000 teachers.
- Retirement of George Saucedo – who headed CGS regional mapping program. Latest product is in tubes – 150th Anniversary Maps.
- Office of Mine Reclamation Report (O'Bryant) [Information]

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

- A mine inspection workshop will be held by OMR on April 5-6, 2011.
- Over 150 out of compliance letters have been forwarded to non-filers of annual reports.
- Enforcement actions have commenced for the Curtis Tungsten Mine located in Los Angeles County.
- The Lead Agency Review Team (LART) will be providing summaries of their review of Alameda and Mono Counties, and the City of Truckee.

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

- Recognition of Distinguish Service for George Saucedo (CGS)

Acting Chairman Baca read the Resolution No. 2011-01 noting that George Saucedo commenced his professional career with the California Geological Survey on February 18, 1977, and retired on December 30, 2010. From 1977 to 1981, George Saucedo served as a geologic aid, and from 1981 to 1984 was an Assistant Geologist performing such functions as coordinator of the Data Base Augmentation Program and Regional Geologic Mapping Project. Saucedo would continue his work on the Regional Geologic Mapping Project as an Associate Geologist from 1984 to 2004, as Senior



Geologist and Manager from 2004-2005, and Senior Geologist and Manager from 2005 to 2010. George Saucedo has been outstanding in the specialized area of geological mapping, and has been in charge of mapping projects at the California Geological Survey (CGS). Saucedo served as the principal coordinator between the CGS and the United States Geological Survey (USGS) StateMap federal grant program, which brings in about \$225,000 per year to CGS on a consistent basis. CGS is recognized by the USGS, in part through his efforts, as consistently producing the highest quality geological maps of any of the state geological surveys. Saucedo also played a large roll in the production of the 150th Anniversary Geologic Map of California. The SMGB extended to its most enthusiastic and heartfelt thanks for Saucedo's continuous and unswerving dedication to the People of the State of California, and wished him all the best for a prosperous and productive future.

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

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

- Public comment for rulemaking efforts in regards to Form MRRC-4L and newly designated sectors or areas within the Bakersfield Production-Consumption Regions ends next week. No comments have been received to date. Final rulemaking packets to be submitted to the Office of Administrative Law over the next few weeks are in preparation. These regulations are anticipated to be enacted by mid-year.
- Two other regulatory packages are in preparation for public comment. These pertain to the designation and termination of designation of certain sectors within the San Bernardino and Palm Springs Production-Consumption Regions.
- A visit to the surface mining operations within the jurisdiction of the City of Lake Elsinore was recently made. A response to the 45-Day Notice of Deficiencies issued by this board to the City of Lake Elsinore was received and under review for the SMGB's consideration at its April 12, 2011, public hearing to be held in the City of Lake Elsinore.
- A letter was previously forwarded to the County of Tuolumne indicating that the County serves as the SMARA lead agency for two sites located within the County's jurisdiction. A legal debate as to who is the operator and responsible for reclamation of the Jamestown Mine in being heard by the Superior Court for the County of Stanislaus. Access issues related to these two surfaces mine sites located in Tuolumne County has been deferred until a court ruling is issued which is anticipated to be in about a month.
- With work on the SMGB's 2009-2010 Annual Report competed, work the draft of the Alquist-Priolo Technical Advisory Committee report has resumed.
- A presentation to the California County Planning Directors Association in Sacramento is scheduled for February 11. The presentation will focus on the lead agency/planning department roles in regards to the three programs the SMGB interacts with lead agencies statewide: Surface Mining and Reclamation Act, Alquist-Priolo Earthquake Fault Zoning Act, and Seismic Hazards Mapping Act. The group is interested in 1) the status of the SMGB, 2) thoughts about how the local agencies are performing and about the often-raised notion of shifting SMARA responsibilities from the local jurisdictions to



the State, and 3) any legislative or regulatory changes anticipated over the next year or two.

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 stated that he had discussions with Gary Hambly, Executive Director of the California Construction and Industrial Materials Association (CalCIMA) pertaining to the AB 3098 List.
- Member Wyatt mentioned discussion he had with Rick Churches on non-SMGB issues.

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.]

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, November 10, 2010, Regular Business Meeting.

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

2. Approval of Minutes, December 9, 2010, Regular Business Meeting.

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

3. Acceptance of a Petition for Mineral Land Classification for the Proposed Riddle Surface Mine Property, Stanislaus County, California.

Board Member Licari moved to accept the minutes. 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.]

XI. New Business [Action]

4. Consideration of Designation Petition for the Wilson Ranch Property, County of Sacramento.

Executive Officer Testa stated that at its March 11, 2010, regular business meeting, the SMGB accepted California Geological Survey Special (CGS) Special Report 214 for the classification of



mineral resource land for Portland Cement Concrete (PCC) - grade aggregate for this project. The SMGB subsequently received a designation petition dated October 12, 2010, pertaining to the proposed Wilson Ranch-Walltown Quarry Project located in the County of Sacramento. Being the first designation petition received by the SMGB, discussion of the administrative process associated with such a petition request appears to be needed prior to the SMGB considering this type of petition request. The Executive Officer is recommending that this matter be deferred and that discussion of the administrative process and program elements associated with the SMGB consideration of a designation petition be directed to the SMGB's Mineral and Geologic Resources Committee at its next scheduled meeting.

- Kerry Shapiro, legal counsel on behalf of the petitioner, noted that the proposed project is now referred to as the Stoneridge Quarry, and concurred with the Executive Officer's recommendations.

Board Member Wyatt moved to schedule this matter for the SMGB's Mineral and Geologic Resources Committee for discussion and consideration of administrative procedures for a designation petition. Board Member Licari seconded and the motion carried with a unanimous voice vote

5. **Public Hearing:** Reclamation Plan Appeal for the Mosler Rock Quarry (CA Mine ID #91-56-0025), Ventura County, Pursuant to Title 14, Division 2, Chapter 8, Subchapter 1, California Code of Regulations, Article 5, Section 3655.

Executive Officer Testa stated that on August 26, 2010, the Chairman of the SMGB determined that the petition for a Reclamation Plan and Financial Assurance Appeal dated July 21, 2010, submitted on behalf of Mosler Rock Products (Mosler) for the Mosler Ojai Rock Quarry (CA Mine ID #91-56-0025), was within the jurisdiction of the SMGB and accepted the appeal. The basis for the appeal states that the County of Ventura (County) failed to approve and timely act upon an amended reclamation plan and financial assurance for the Ojai Quarry. Mosler has petitioned the SMGB to take jurisdiction of the appeal under three statutes within SMARA (PRC Section 2770(e), subdivisions (e)(1), (e)(2) and (e)(3)). Upon review of the administrative record, and a determination by the SMGB's Executive Officer that the record was complete, and this public hearing was scheduled. The Executive Officer's report reflects a review of the administrative record, and a site visit performed on February 27, 2011.

- Larry Mosler, owner and operator of Mosler Rock Products, presented testimony in regards to his efforts to comply and provide an amended reclamation plan which addresses the County's issues.
- Derek Cole, legal counsel for Mosler Rock Products, addressed the alleged County's failure to consider approval in a timely manner an amended reclamation plan and financial assurance.
- Ebony McGee, County of Ventura SMARA Program Coordinator, presented the County's case.
- Kimberly Prillhart, County of Ventura Planning Director, spoke on behalf of the County.
- Dan Klemann, County of Ventura Manager, Resources Management Agency, Planning Division, spoke on behalf of the County.

Board Member Tepel moved to deny approval of the amended reclamation plan dated August 2008 for the Mosler Rock Quarry (CA Mine ID #91-56-0025), located in the County of Ventura. Board Member Lundburg seconded and the motion carried with Member Licari opposed.



Board Member Tepel moved to direct the Executive Officer to notify the appellant and County of the Board's determination and list of deficiencies, put the operator on notice that deficiencies must be corrected, and a revised reclamation plan filed with the lead agency within 30 days. Board Member Wyatt seconded and the motion carried with a unanimous voice vote

6. **Public Hearing:** 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 acts as the lead agency pursuant to SMARA 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 operations. 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 observed to the north of the Big Cut Mine site, which may prove hazardous should underground mining activities persist. A Notice of Violation was issued by the EO on September 3, 2010, and again on January 21 and 28, 2011. At the time this report was prepared, the site remained out of compliance with SMARA. The SMGB is considering upholding its Order to Comply

- Dan Tankersley and Rick Churches expressed their intent in disregarding the SMGB's order to cease and desist surface mining operations.
- Ken Williams, Staff geologist with Holdrege and Kull and representing the operator, offered comments in support of the operator's actions and willingness to comply.

Board Member Lane moved to uphold the Order to Comply. Board Member Tepel seconded and the motion carried with a unanimous voice vote

7. Discussion and Possible Guidance from the State Mining and Geology Board Regarding the County of Alpine Performance as a Lead Agency Pursuant to the Surface Mining and Reclamation Act.

Executive Officer Testa stated that at its December 9, 2010, regular business meeting, the SMGB received a presentation from the LART unit of OMR covering its audit of Alpine County's SMARA program. The LART Unit recommended that the SMGB assume lead agency obligations and responsibilities based on the County's poor performance as a SMARA lead agency. The County would like to forego the assumption process and simply forfeit its SMARA lead agency responsibilities, with exception to permitting, to the SMGB. In separate discussions with the SMGB's legal counsel and the County, it appears feasible that an agreement could be developed allowing the County to forfeit its SMARA responsibilities. The Executive Officer is recommending that this matter be continued to the SMGB's March 2011 regular business meeting to consider a draft agreement between the County and the SMGB.

Board Member Tepel moved to develop an agreement between the County and SMGB to assume the County's SMARA lead agency responsibilities and obligations. Board Member Wyatt seconded and the motion carried with a unanimous voice vote



8. 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 the Ojai Oil Company Project, County of Ventura.

Executive Officer Testa stated that SMARA allows for a one-time exemption from SMARA for certain surface mining operations should the Board finds that the operation is 1) of an infrequent nature, and 2) involve only minor surface disturbances pursuant to PRC 2714(f). The Ojai Oil Company on November 24, 2010, has submitted a request for a one-time exemption from SMARA for the removal of approximately 5,000 tons of large boulders currently comprising 12 stockpiles from the 50.82 acre oil field site located in the County of Ventura. Ojai Oil Company maintains 13 operational oil wells on the site, and with the removal of the boulders, which is anticipated to take approximately one year, will allow for a 7.3 acre expansion of an existing olive grove. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions. The SMGB is considering granting a one-time exemption for this project.

- Ebony McGee, County of Ventura SMARA Program Coordinator, stated that the County has no issues with the exemption request.

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

9. Consideration of Regulatory Language Pertaining to Qualifications for Placement of Surface Mining Operations on the AB 3098 List.

This matter was deferred.

10. Approval of the State Mining and Geology Board's 2009-2010 Annual Report. Executive officer Testa stated that existing law requires various written reports to be prepared and submitted by State and local agencies to the Legislature and the Governor. The SMGB is legislatively mandated to prepare annual reports to the Legislature pursuant to SMARA. The Executive Officer has prepared the SMGB's Annual Report for 2009-2010. This report is being considered for approval by the SMGB, prior to being finalized and distributed, as appropriate.

Board Member Tepel moved to approve the SMGB's 2009-2010 annual report and for the Executive Officer to distribute the report, as appropriate. 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.

11. Information Report on the County of Santa Clara Surface Mining and Reclamation Act (SMARA) Program.
 - a. Report from the County of Santa Clara
 - b. Hansen Permanente Cement, Inc. (Operator), Scott Renfrew (Agent), County of Santa Clara
 - c. Report from the Office of Mine Reclamation

Executive Officer Testa stated that at its January 13, 2011, meeting, the SMGB Policy and Legislation Committee (Committee) received comments from the public pertaining to



compliance issues related to the Lehigh Southwest Cement Company surface mining operation (CA Mine ID #91-43-0004), located in the County of Santa Clara (County). The Committee after hearing comments from the public, County and operator, a request was made for a progress report on the County's overall Surface Mining and Reclamation Act (SMARA) program, the operator's efforts to comply with SMARA and the SMGB's regulations, and the Department of Conservation Office of Mine Reclamation (OMR) in regards to its oversight of the surface mining operation and any outstanding compliance issues related to the subject mining operation.

- SMGB Member Licari recued himself from this agenda item.
- Supervisor Liz Kniss, County of Santa Clara Board of Supervisor Member, offered her support of the surface mining operator, and the County's efforts. Other County representatives, including Sylvia Gallegos, County of Santa Clara Deputy County Executive, Lizanne Reynolds, County of Santa Clara County Council, and Jody Hall Esser, County of Santa Clara Director of Planning and Development, concurred with such efforts.
- Gary Rudholm, Senior Planner and SMARA Program Coordinator for the County of Santa Clara spoke to the County's specific process and efforts in addressing outstanding SMARA compliance and enforcement issues for all sites within the County's jurisdiction.
- Mark Harrison, legal counsel with Diepenbrock-Harrison, and representing the operator, expressed support for the operator's efforts to date and provided an historical perspective.
- Marvin Howell, Director of Land Use Planning and Permitting for Lehigh Hanson, responded to some of the issues set forth by the general public and concerned citizens.
- Comments were received from concerned citizens and the general public including Cathy Helgerson, environmentalist representing Citizens Against Pollution (CAP), Joyce Eden, Chair of West Valley Air Watch, Barry Chang, City of Cupertino City Council Member, Paula Wallis, and Richard Adler, representing No Toxic Air.
- Dennis O'Bryant stated that the operator has been out of compliance since at least 2002. Have not provided a reclamation plan that would bring them back into compliance. At one point OMR anticipated receipt of an amended reclamation plan, but the process has been delayed with the operator's decision to combine completion of an amended reclamation plan with expansion plans and CEQA process.
- Kevin Doherty, Staff Geologist with OMR, provided a summary of site conditions and SMARA compliance issues.
- Kevin Doherty
- Dennis O'Bryant concluded that OMR has the option to take independent enforcement action via a issuance of a 15-day notice to the County, but felt it would be in appropriate at this time while the reclamation plan and environmental studies is in progress – 15 day letter would allow OMR to take independent enforcement action
- Member Tepel inquired from O'Bryant as to whether the operator benefits from being on the AB 3098 List. O'Bryant stated that it would be difficult for him to address that question.



- Acting Chairman Baca inquired from the SMGB's legal counsel whether any operator can legally operate outside its reclamation plan and still remain on the AB 3098 List without an approved reclamation plan, or in other words, does an agreement between the County and the operator allow for the operator to operate outside its approved reclamation plan? The SMGB's legal counsel Rick Thalhammer stated no, and in regards to placement on the AB 3098 List, the operator must be in compliance with SMARA to be on or remain on the List. Authority was provided to OMR remove an operator that is not in compliance.
- Member Tepel expressed the need for a progress report from OMR to address the issues raised.

Acting Chairman Baca requested that OMR report back to the SMGB at its scheduled May 2011 regular business meeting, on the site status and planning progress being made, status in regards to the AB 3098 List as it applies to the Hansen Permanente Cement Quarry, and that the County and the operator are invited to provide an update at such time.

12. Office of Mine Reclamation, Lead Agency Review Team (LART) Report on Napa County.

Executive Officer Testa stated that in 2007, the Department of Conservation, Office of Mine Reclamation (OMR) established the Lead Agency Review Team (LART). An overview of the LART program was previously presented to the SMGB in July 2009. The LART has completed its Lead Agency Review Report for Napa County, and is presenting a synopsis of its review.

- Representing the County of Napa, comments on the LART report were provided by Hillary Gitleman, Planning Director for Napa County, and Donald Barrella, Planner III with Napa County.
- Wayne Whitlock, legal counsel for Homestake Mining Company, offered comment on the LART report as it pertained to the McLaughlin Mine.
- Rick Churches, interested party, also offered comment.

No action was taken by the SMGB.

13. Discussion of the Allocation of the SMARA Mine Reclamation Fund in the Implementation of the Surface Mining and Reclamation Act (SMARA). [DOC]

Executive Officer Testa summarized that at its November 10, 2010, regular business meeting, the SMGB approved its revised Strategic Plan. Administrative procedures for annual reporting requirements and reporting fees for operators of surface mining operations have been established. Such fees established are deposited in the Mine Reclamation Account and shall be made available to the DOC and the SMGB. In fulfilling its obligations and responsibilities pursuant to SMARA, the SMGB is reviewing the overall SMARA budgetary needs, and how such funds are dispersed among the various SMARA programs. The SMGB receives funding from two sources: the Mine Reclamation Account (CGS/OMR/SMGB) and the Renewable Resources Investment Fund (OMR/SMGB). The SMGB receives funding from two sources: the Mine Reclamation Account (California Geological Survey/Office of Mine Reclamation/SMGB) and the Renewable Resources Investment Fund (Office of Mine Reclamation/SMGB). Although the SMGB is appropriated funds on the order of \$1,411,000 million (10/11 FY), the SMGB is only authorized to spend \$460,000 as a board, and \$155,000 as a lead agency, totaling \$615,000. Although the SMGB is appropriated funds on the order of \$1,411,000 million (10/11 FY), the SMGB is only authorized to spend \$460,000 as a board, and \$155,000 as a lead agency, totaling \$615,000. The \$155,000 is problematic since it



includes both lead agency staff and legal counsel costs. Certain questions of budgetary interest to the SMGB has been prepared and forwarded to the DOC. The DOC has offered to provide some budgetary information to the SMGB.

- A presentation was provided by Acting Director Chernow and Ken Lehn. Prior to commencing with the presentation, Acting Director Chernow inquired as to whether the SMGB, or staff, or counsel communicated with any government entity about the SMGB or the Department budget? Acting Chairman Baca stated no on his behalf, but deferred comment to after the presentation.
- Acting Chairman Baca, following the presentation stated that there is the general fund, and then there are various special funds, does the general fund problem translate into the collection and use of special funds? That is, the legislature has made a determination that there can be a fee that can be charged for a certain service, is that money eligible to be absorbed into the general fund problem? Or does it have to remain, by legislation, for its specific purpose?
- Acting Director Chernow inquired as to whether it is meant that special funds can be “raided” to patch the general fund? The legislature has often moved money around as loans or what have you. It happened quite frequently with our Division of Recycling, where our fund would be moved over as a loan to be paid back, so that is the call of the legislature.
- Acting Chairman Baca noted that 1.9 million dollars that appears to be unspent, that would seem to be a target of some form.
- Ken Lehn stated that he did not think they are looking at that level yet. And if they were going to take it, they would take it via a loan, because I think that statutorily they can’t sweep that money and just take it for the general fund.
- Acting Director Chernow inquired again to his earlier question to the SMGB.
- Acting Chairman Baca inquired from the Executive Officer as to whether it was appropriate to address questions from individuals that come before a board, and left the matter up to individual board members should they wish to respond.
- Acting Director Chernow stated that it was his understanding that the SMGB’s legal counsel, Deputy Attorney General Rick Thalhammer has communicated with the Attorney General’s Office in December about our funding condition and what concerns me about, what my understanding is, is that Mr. Thalhammer has never come to me or my budget staff with questions regarding funding, yet a communication did take place with the Attorney General’s office, and I don’t have to form it in a question, but that’s what my understanding is, and that’s frankly quite disturbing.
- Deputy Attorney Thalhammer indicated that he would be willing to discuss this matter with the Acting Director in private.
- Member Wyatt stated that he would be concerned if the SMGB is being represented as having a discussion or asking questions if the SMGB has not brought those questions up. So, I don’t frankly want to be represented, if it is the individual, that is one thing, but if it is the SMGB being represented, that is a separate thing, and we have an obligation to talk about it here.
- Deputy Attorney Thalhammer stated that let me make clear that whatever communication occurred was not on behalf of the SMGB.

No action was taken by the SMGB.



14. 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:

- 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.
- 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.

Board Member Tepel moved to continued this agenda item. 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)
 - Chairperson Baca summarized discussions and actions taken by the Committee during its February 10, 2011, meeting, including review of draft legislative language on idle mines, discussion of proposed regulations for the AB 3098 List, and PRC 2774(c).

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.] Items to be discussed:

No new business offered.

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

Deputy Attorney Rick Thalhammer announced that the SMGB took an action to place on the March 2011 agenda both in the list of closed session items and on the regular SMGB's agenda, the consideration of the adjustment of the salary of the Executive Officer.

XVII. Announcements of Future Meetings

March 10, 2011, was announced as the next meeting, and Sacramento as the location.

XVIII. Adjournment

The meeting was adjourned at 6:30 P.M.

APPROVED

Brian Baca, Acting Chairman

Stephen M. Testa, Executive Officer

