



# 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*

[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)

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## CONFORMED MINUTES

### THE POLICY AND LEGISLATION COMMITTEE

(Brian Baca, Committee Chair; Erin Garner, Kathy Lund)

### OF THE

### STATE MINING AND GEOLOGY BOARD

**Draft**

Conducted a Meeting on:

Thursday, March 8, 2012

9:00 A.M.

LOCATION:

Assembly Hearing Room #444

State Capitol

Sacramento, California 95814

## AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB 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 9:10 A.M. by Committee Chairman Baca, with Member Garner and Member Lund present, 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 12, 2012, Committee Meeting.

Committee Member Garner moved to approve the minutes. Committee Chairman Baca seconded and the motion was unanimously approved.

**IV. Continued Business [Action]**

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

2. Discussion of Proposed Regulatory Language Regarding the 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 PRC 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, the 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, and work on the current version continues; however, the Executive Officer request that the Committee considers deferring the regulatory effort at this time, while the Department of Conservation pursues a legislative alternative.

- Jim Pompy, Assistant Director and Chief of OMR, concurred with Executive Officer Testa recommendation to defer further discussion of the Committee's draft regulations.
- Committee Chairman Baca agreed to continue this matter for 90 days, and requested that the Department of Conservation provide a status report to the Committee as to the legislative



progress being made, and that the SMGB's Executive Officer be involved in the legislative progress has this matter moves forward.

3. Consideration of Changes to the Annual Mining Operation Report Form MRRC-2. Executive Officer Testa stated that all unreclaimed mine operations are required to file a Mine Operation Annual Report (MRRC-2) for each reporting (calendar) year. The reports provide information to the Department of Conservation that includes, but is not limited to, identifying the responsible parties operating mine sites, the operation's production and reclamation status, status of mine inspections, commodities produced, production amounts of reported commodities, and remaining disturbed acreage. Each MRRC-2 form is to be accompanied by an annual reporting fee and is to be filed no later than July 1 of each year for the preceding report year. The MRRC-2 report and related Low Gross Exemption Fee Request (MRRC-4L) form must be approved by the Board. These forms are before the Committee at this time for consideration and approval of proposed revisions. The revisions are intended to ease the completion of the forms by mine operators and to facilitate the department's interpretation of information on completed forms. The Committee is being requested to consider recommending to the whole SMGB approval of the proposed revisions.

- A summary of the ministerial changes to the form was provided by Ken Trott and Kit Gonzales with the Office of Mine Reclamation.
- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), commented on select proposed changes to the form.

4. Report of the State Mining and Geology Board's Annual Mine Fees Survey under the Surface Mining and Reclamation Act (SMARA).

Executive Officer Testa stated that the SMGB is currently considering the equity of the current reporting fee schedule. In considering changes to the SMGB's regulations, the SMGB conducted a survey of affected mining operations. An eight-question survey was conducted of all 1,355 mining operations during the period of December 2011 and February 2012. Results were compiled and tabulated. The Executive Officer is requesting that such information be summarized and presented in the form of an Information Report. The report will include conclusions and recommendations.

- Melody Williamson with the Office of Mine Reclamation Compliance and Reporting Unit provided a summary of the results of the survey.
- Committee Chairman Baca complimented all on an excellent survey report and presentation.

5. Consideration of Proposed Revision to 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. 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 questions have been raised in regards to whether the mine fees are equitable. The Cap for a single mining operation is \$4,000 (PRC Section 2207(d)(1)). The Cap for revenues generated is \$3,500,000 adjusted for cost of living to \$4,173,834. Two questions require consideration:



- Is the method for calculating mine fees equitable but the cap makes the method inequitable?
- Is the method for calculating mine fees inequitable, and the caps are fine?

Several scenarios and options have previously been discussed by this Committee back in June and October 2011. Based on responses as to whether the annual mine fees are deemed equitable or not, it is being recommended that a survey be forwarded to all active surface mine operators. The EO is requesting authorization from the Committee to forward the questionnaire to all active surface mine operators, and report back to the Committee in early 2012.

- Committee Chairman Baca complimented all in an excellent survey report, and stated that the only way to mathematically make the fees equitable is to raise the \$4,000 cap under PRC Section 2207, and that OMR consider some recommendations that the Committee could consider.
- Jim Pompy also noted a preference for production as the basis for calculating annual mine fees, which all agreed at this time.
- Following discussion, an inquiry as to whether OMR could work with the Executive Officer to evaluate varying cap scenarios, and upon completion, report back to the Committee. This was agreed upon.

6. Report of the State Mining and Geology Board's Lead Agency Survey under the Surface Mining and Reclamation Act (SMARA).

Executive Officer Testa stated that SMARA provides a comprehensive surface mining and reclamation policy for the regulation of surface mining operations. SMARA encourages the production, conservation, and protection of the State's mineral resources, and assures that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. In evaluating ways the SMGB and Department of Conservation can better assist lead agencies affected by SMARA, and considering ways of streamlining the Act and /or SMGB's regulations, the SMGB conducted a survey of affected lead agencies between December 2010 and February 2011. A ten-question questionnaire was forwarded to all 115 lead agencies. Results received were compiled and tabulated. Results and recommendations for policy considerations were incorporated in the Information Report. The Executive Officer is requesting that upon acceptance by the Committee, such report can be finalized and published on the board's website. A formal presentation before the whole board can also be considered.

- Committee Member and SMGB Chairman Garner noted that reviewing responses from lead agency staff may not necessarily reflect on how the lead agency (i.e., Board of Supervisors) may actually respond being a political body, and that this aspect of the survey should be addressed in the report if possible.

**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 information were discussed.



**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 continued 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.]

Executive Officer Testa raised two items that could be considered in the future which were requested for consideration by previous SMGB members: criteria for evaluation of administrative penalties as requested by former Member Hoose, and the consideration for the SMGB to serve as a SMARA lead agency when a surface mining operation overlaps two lead agency jurisdictions requested by former SMGB Member Tepel.

**IX. Announcements of Future Meetings**

The next meeting of the Policy and Legislation Committee was scheduled to be held in Sacramento in April or May, 2012.

**X. Adjournment**

The Committee meeting was adjourned at 9:50 A.M.

**APPROVED**

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Brian Baca, Committee Chairman

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Stephen M. Testa, Executive Officer

