



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

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

[smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov)

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## CONFORMED MINUTES

### THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, April 11, 2013

9:00 A. M.

#### LOCATION:

Atascadero City Hall  
City Council Chambers  
6907 El Camino Real  
Atascadero, CA 93422

### 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 (Gonzalez)**

**II. Pledge of Allegiance**

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

The meeting was called to order at 9:05 A. M. by Chairman Gonzalez, with Members Barry, Gavric, Kenline, Lane and Noushkam present, and Member Reding absent, and a quorum was declared.

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

On behalf of Director of the Department of Conservation, Dr. Mark Nechodom, Acting Assistant Director Ken Trott reported on the following:

- The Director plans to initiate a SMARA lead agency task force.
- State Geologist's Report (Parrish) [Information]

No report provided

- Office of Mine Reclamation Report (Trott) [Information]

Acting Assistant Director of the Office of Mine Reclamation (OMR), Ken Trott, reported on the following:

- Remarkd on two staff promotions within OMR.
- Noted financial assurance cost estimates are performed by one individual reviewing about 1400 mines per year;
- The Abandoned Mines Land Unit (AMLU) program is winding down with one staff member being transferred to the LART, and another to the Compliance Unit. A new manger of the AMLU will be hired in 2-3 weeks.
- A 2-day SMARA inspection workshop was held on April 10 in the City of Marina, and a SMARA lead agency workshop will be held in May, with a focus on Planning Directors.
- LART will be expanded. SMGB Chairman Gonzalez requested that the LART report for the County of Siskiyou be provided at OMR's earliest convenience; Trott indicated that such report may be provided in May or June.

**V. Chairman's Report (Gonzalez) [Information]**

Chairman Gonzalez read the SMGB's Resolution No. 2013-1 in recognition of former SMGB Member Brian Baca's distinguished service to the SMGB. The resolution noted that the SMGB recognized the many significant contributions made to the State of California by Brian R. Baca



during his tenure on the Board from March 2001 to January 2005, and from January 2009 to March 2013; his willingness to give freely of his time, energy, and ideas had a marked, positive effect on the performance of the SMGB in its implementation of the SMARA, the Alquist-Priolo Earthquake Fault Zone Mapping Act, and the Seismic Hazards Mapping Act. Baca has served with distinction on the SMGB in the position of Registered Geologist with a background and experience in California mining, with recognized and appreciable expertise of the SMARA and the role of lead agencies; and he has previously served on the SMGB's Geohazards Committee, as Chairman of the Surface Mining Standards Committee, and as Chairman of the Board's Technical Advisory Committee on Forest Geology, and since 2009 served as Chairman of the Policy and Legislation Committee, member of the Mineral and Geologic Resources Committee, and Vice Chairman and Acting Chairman of the SMGB. The SMGB gratefully acknowledged Baca's dedicated service to the SMGB and to the People of the State of California, and commended him for an exemplary job well done.

Baca noted that his term on the SMGB was the highlight of his career, that the purpose of the members of the SMGB is fairly simply, to listen and uphold the law, and thanked the Executive Officer as a constant source for help and commended him for the work he gets done with little time and staff, and Member John Lane, Chairman Ignacio Gonzalez, and former Members Richard Ramirez, Erin Garner, Alan Jones, among others, and legal counsel Rick Thalhammer.

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

Executive Officer Testa reported on the following:

- Status of all rulemakings in progress was provided. Preparation of rulemaking packets for Palm Springs and San Gabriel Production-Consumption Regions continues. A public hearing to receive comment on the proposed designation and termination of designation within the Stockton-Lodi P-C Region will be scheduled in the near future.
- Status and summary of various lead agency issues and scheduling was provided.
- A request to the SMGB from the Bureau of Reclamation (BOR) was received for assistance and guidance in closing a site referred to as the Manchester Quarry, located in San Bernardino County. Information provided by the BOR is under review.
- Summary of the Executive Officer's recent outreach efforts was provided, including a presentation made on the history of oil and gas development in California, and current activities of the SMGB, to the San Joaquin Geological Society in Bakersfield on April 9.

**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 noted discussions with Director Nechodom and Executive Director Elizabeth Martin with The Sierra Fund in regards to his reappointment to the SMGB.
- Member Gavric noted a casual conversation with Director Nechodom regarding her current position on the SMGB.

**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.]

- Several individuals commented on designation and land use related matters including James Adrigoli, Darryl Nelson, Eric Greening, Paul Vibrong and Marie Tomason.



**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 14, 2013 Regular Business Meeting.

Board Member Gavric moved to conditionally approve the minutes, with revision. 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.]

2. **Public Hearing:** Financial Assurance Appeal for Failure of the City of Oxnard to Adjust a Financial Assurance for the RiverPark Mine (CA Mine ID #91-56-0007 and #91-56-0026), City of Oxnard, Pursuant to Public Resources Code Section 2770(e) and Title 14, Division 2, Chapter 8, Subchapter 1, California Code of Regulations, Article 7, Section 3680.

Executive Officer Testa stated that Petitioner RiverPark B, LLC, on September 10, 2012, filed with the SMGB an Intent to Appeal stating that the City of Oxnard failed to approve and timely act upon an adjusted financial assurance for the River Park Mine. At its February 13, 2013, regular business meeting, the SMGB continued this matter for 60 days to allow both the City and Operator to review and consider revising the financial assurance cost estimate to reflect outstanding reclamation activities to be performed. The subject site includes two large water storage basins: the Brigham-Vickers pit and the Large Woosley pit. The approved reclamation plan requires both pit walls to be graded at 2:1 (horizontal to vertical), and able to withstand predominant water elevation and seasonal fluctuations, and the influence of prevailing strong winds on erosion of the pit walls. Both parties are requesting this matter be continued for 60 days while adjustments to the reclamation approach and associated costs are further evaluated.

- John Hecht, President of Sespe Consulting and representing the operator, summarized the status of the operator's discussions with the City in regard to the appropriate amount of the proposed financial assurance cost estimate.

Board Member Gavric moved to continue this matter for days. Board Member Noushkam seconded and the motion carried with a unanimous voice vote.

3. Discussion of Compliance Status with the Surface Mining and Reclamation Act (SMARA) Pertaining to Best Rock at Grimes Canyon (CA Mine ID #91-56-0010), Montazeri (Agent), Best Rock Products (Operator), County of Ventura.

Deferred.

4. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the City of Bakersfield, Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).



Executive Officer Testa stated that at its regular business meeting held on December 13, 2012, the SMGB received a report from OMR LART dated November 21, 2012, on the overall status and performance of the City of Bakersfield in implementing its SMARA program. One surface mining operation was reported to exist within the jurisdiction of the City. The operation, referred to as The Sand Pit (CA Mine ID 91-15-0101), is an abandoned sand and gravel mine. Based on deficiencies identified in the LART report, the SMGB, at its December 13, 2012 regular business meeting, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the City. The Notice was issued on December 20, 2012. The City has responded and plans to closed the site; whereas, OMR plans to schedule a closure inspection. The SMGB is considering continuing this matter until OMR has an opportunity to conduct a site closure inspection.

- Ken Trott, Acting Assistant Director of OMR, indicated that a site closure inspection is scheduled to be conducted by OMR in a few weeks.

Board Member Noushkam moved to continue this matter for 60 days. Board Member Barry seconded and the motion carried with a unanimous voice vote.

5. Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Madera, Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).

Executive Officer Testa stated that in 2007, OMR LART completed its lead agency review report for the County of Madera in May 2012. Six surface mining operations are reported to exist within the jurisdiction of the County. Three are characterized as active, two idle, and one newly permitted. Commodities produced include fill dirt, decomposed granite, dimension stone and pumice. In review of the LART report for the County, several deficiencies were reported. Based on review of the LART report, the SMGB on October 11, 2012, moved to issue a 45-Day Notice to Correct Deficiencies to the County. The SMGB is considering continuing this matter until OMR has an opportunity to perform a closure inspect for two sites.

- Matt Treber, Senior Planner for the County of Madera, summarized the efforts and actions taken by the County to address all outstanding deficiencies identified.

Board Member Lane moved to conclude that the County has addressed the deficiencies to the satisfaction of the SMGB, directed the County to provide the Executive Officer a copy of all 2013 inspection reports once completed by the County for review, and directed the Executive Officer to bring this matter back to the SMGB, if appropriate. Board Member Noushkam seconded and the motion carried with a unanimous voice vote.

6. Approval of the State Mining and Geology Board's Annual Report for 2011-2012.

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, which requires the SMGB to provide an annual report on actions taken pursuant to SMARA. Specifically, PRC Section 2717(a) states "*The board shall submit to the Legislature on December 1st of each year a report on the actions taken pursuant to this chapter during the preceding fiscal year. The report shall include a statement of the actions, including legislative recommendations, that are necessary to carry out more completely the purposes and requirements of this chapter.*" Executive Officer Testa summarized the contents of the annual report.



Board Member Lane moved to approve the annual report for distribution. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

**XI. New Business [Action]**

7. Consideration of a One-Time Exemption from the Surface Mining and Reclamation Act (SMARA), Pursuant to Public Resources Code Section 2714(f), for the proposed San Cayatano Orchard Project (Operator, Teague Construction, Inc.), County of Ventura.

Executive Officer Testa stated that SMARA allows for a one-time exemption for certain surface mining operations should the SMGB determine the operation to be of an infrequent nature and involve only minor surface disturbances. On March 27, 2013, a request was received for the proposed San Cayatano Orchard Agricultural Mining project, located in the County of Ventura. Since the proposed project includes the transport of excavated materials offsite for commercial purposes, the proposed project is subject to SMARA. The SMGB is considering granting a one-time exemption.

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

8. Approval of Regulatory Language for Designation of Mineral Lands within the San Luis Obispo-Santa Barbara Production-Consumption Region, California.

Executive Officer Testa noted that at its December 8, 2011, regular business meeting the SMGB accepted CGS updated classification Special Report 215 for the San Luis Obispo-Santa Barbara Production Consumption Region, and at its March 8, 2012, regular business meeting accepted the State Geologist's recommendation for designation of select mineral lands of regional significance. In response to public comments received to date, some changes have been made. The SMGB is considering approval of the proposed regulatory language, and directing the Executive Officer to commence rulemaking.

- Lawrence Busch, Geologist with CGS, provided a summary of the proposed designated areas and changes that were made based on public comments received to date.
- The SMGB received public comment from Nick Forrester, Planner for the County of San Luis Obispo.
- Neal Bolton, Ken Johnston with Johnston Consulting, Don Ritter, Consultant with Las Pitas Resources, and Sophie Treder with Treder Land Law provided comments in favor of designation approval.
- Other individuals providing comment in opposition to proposed designation of certain sectors included Susan Hardy, President of North County Watch, Roy Reeves, Charlie Kleeman, Eric Guening, Marjorie Burkhart, and Michael Law, all provided comment opposed to certain sector(s) being designated or requiring a 1200 feet setback as in the case of Ms. Burkhart.
- Land use attorney Babak Naficy, opposed to designation of certain sector(s), and also provided comment.

Board Member Noushkam moved to continue this matter allowing for the Executive Officer to prepare a response to all comments received prior to the SMGB considering approval of the proposed designations. Member Barry seconded and the motion carried with a unanimous voice vote.



9. Approval of Proposed Regulatory Language for Review and Recertification of Mining Ordinances Pursuant to Division 2, Public Resources Code, Article 5, Section 2774 et seq.

Executive Officer Testa stated that pursuant to the SMARA, surface mining ordinances are adopted by the lead agency and subsequently certified by the SMGB. At its December 13, 2012 meeting of the Policy and Legislation Committee (Committee), the Committee directed the Executive Officer to work with the SMGB's legal counsel in developing regulatory language for consideration and further discussion by the Committee. At its February 13, 2013 meeting, the Committee reviewed draft language for mandatory notification of mining ordinances being amended by the local lead agency as defined under the SMARA, and mandatory review and recertification of amended mining ordinances by the SMGB. The Committee subsequently moved to recommend approval of the proposed regulatory language to the whole SMGB. The SMGB is considering approval of the proposed regulatory language for mandatory notification to the SMGB of amended mining ordinances, and recertification by the SMGB.

Board Member Noushkam moved to approve the proposed regulatory language. Member Kenline seconded and the motion carried with a unanimous voice vote.

10. Review and Establishment of the State Mining and Geology Board's Committees Pursuant to the Board's Bylaws (III Organization).

Executive Officer Testa stated that the SMGB appoints committees to assist in its work, and that committees are created by a majority vote of the total membership of the SMGB. The SMGB currently has four committees, and is close to completing the work of one Technical Advisory Committee. Committee members are appointed, and serve at the pleasure of the Chair. The Executive Officer makes no recommendations regarding appointments of SMGB members to committees.

SMGB Chairman Gonzalez appointed Members Gavric and Noushkam to the Policy and Legislation Committee with Member Kenline as Chair; Members Barry and Noushkam to the Geohazards Committee with Member Lane as Chair; Members Gavric and Lane to the Minerals and Geologic Resources Committee with Member Kenline as Chair; and Members Lane and Reding to the Surface Mining Standards Committee with Member Barry as Chair.

## **XII. Special Reports and Department Presentations [Possible Action]**

[Based on these Reports, the Chair may instruct SMGB staff to initiate administrative actions.]

11. Office of Mine Reclamation, Lead Agency Review Team (LART) Reports for:

- City of Fremont. Pursuant to the Surface Mining and Reclamation Act (SMARA), following review, the SMGB may take appropriate action in accordance with Public Resources Code section 2774.4(c).

Deferred.

- City of Tracy. Pursuant to the Surface Mining and Reclamation Act (SMARA), following review, the SMGB may take appropriate action in accordance with Public Resources Code section 2774.4(c).
  - Ken Trott, representing OMR and LART, provided a summary of the LART report for the City of Tracy.



Executive Officer Testa stated that the City of Tracy has one surface mining operation within its jurisdiction, and was characterized as idle. Although deficiencies were identified by LART, the City has made favorable effort in fulfilling its responsibilities and obligations as a SMARA lead agency in resolving such deficiencies. The discrepancy pertaining to disturbed acreage remained unresolved. The Executive Officer recommended that remaining issues be resolved between the City and OMR, and allow the Executive Officer to bring this matter back to the SMGB should outstanding issues persist.

Member Lane moved to have outstanding issues be resolved between the City and OMR, and direct the Executive Officer to bring this matter back to the SMGB should outstanding issues persist. Board Member Barry seconded and the motion carried with a unanimous voice vote.

12. Acceptance of Inspection Reports Pursuant to PRC Section 2774(b) for the Following Surface Mining Operations as Being in Accordance with the SMGB's Requirements:

- 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.
- Teichert Hallwood (CA Mine ID #91-58-0006), County of Yuba.
- Wheatland Clay Pit (CA Mine ID #91-58-0007), County of Yuba.
- Parks Bar Quarry (CA Mine ID #91-58-0013), County of Yuba.
- Teichert Marysville (CA Mine ID #91-58-0019), County of Yuba.
- Blue Point Mine (CA Mine ID #91-58-0021), County of Yuba.
- SRI Stringer Pit 1 (CA Mine ID #91-58-0022), County of Yuba.
- SRI Stringer Pit 2 (CA Mine ID #91-58-0023), County of Yuba.

Board Member Lane moved to accept the inspection reports. Board Member Barry seconded and the motion carried with a unanimous voice vote.

**XIII. SMGB Committee Reports [Information and Possible Action]**

- Geohazards Committee (Chairperson Lane)
  - Alquist-Priolo Technical Advisory Committee (Executive Officer Testa)
- Minerals and Geologic Resources Committee (Chairperson Wyatt)
- Policy and Legislation Committee (Chairperson Baca)
- Surface Mining and Standards Committee (Chairperson Lane)

**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 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 was 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. Pending Litigation to which the SMGB is a party:
  - 1. Dutra Materials vs. SMGB, Chevron Products Company Real Party in Interest, Case No. N10-0388, Contra Costa Superior Court.
  - 2. A. Teichert and Sons, Inc. v. SMGB, Western Aggregates, LLC. Real Party in Interest, Case No. 34-2010-80000528, Sacramento County Superior Court.
  - 3. 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.
- B. Possible Litigation involving the SMGB.
- C. Staff Budget

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

No Executive Session held.

**XVII. Announcements of Future Meetings**

May 9, 2013, was announced as the date of the next meeting, with the City of Ukiah, County of Mendocino, as the location.

**XVIII. Adjournment**

The meeting was adjourned at 12:30 P.M.

**APPROVED**

  
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Ignacio Gonzalez, Chairman

  
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Stephen M. Testa, Executive Officer

