



# 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, July 11, 2013**

**10:00 A.M.**

**LOCATION:**

**Assembly Hearing Room #444**

**State Capitol**

**Sacramento, CA 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 (Gonzalez)**

**II. Pledge of Allegiance**

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

The meeting was called to order at 10:05 A. M. by Chairman Gonzalez, with Members Barry, Gavric, Kenline and Lane present, and Members Noushkam and Reding absent, and a quorum was declared.

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

Director of the Department of Conservation, Dr. Mark Nechodom, reported on the following:

- State Geologist Dr. John Parrish has been assigned to also serve as Acting Assistant Director of the Office of Mine Reclamation (OMR). Changes being considered included development of a process to convert the office to a formal Division of the DOC, and will be conducting a top-to-bottom internal review of OMR's processes, structure, function, roles and responsibilities, and in relation to the SMGB. An external panel will be formulated to perform this review. The panel will have approximately 120 days to complete its review and offer recommendations to the Director. The Director expressed his desire to have its house in order as the SMARA program undergoes review over the next two years in terms of potential legislative changes.

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

Dr. John Parrish, State Geologist, reported on the following:

- Discussed CGS's advisory role in development of an earthquake early warning system.
- Provided a brief report on the recent Greenville earthquake noting there was no reported structural damage.

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

Acting Assistant Director of the Office of Mine Reclamation (OMR), Dr. John Parrish, reported on the following:

- Discussed OMR issues in relation to his current emphasis over the next several months while at OMR, SB 108 program and process.
- Reported on the departure from OMR of Ben Shelton (manager of the LART program) and Kevin Doherty from OMR to CGS, and other vacancies.



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

Chairman Gonzalez read into the record SMGB Resolution No. 2013-02 in recognition of distinguished service for William A. Bryant with the California Geological Survey noting:

- The SMGB recognizes the long and distinguished career, and the many significant contributions made to the State of California by William A. Bryant (Bill) during his tenure with the California Geological Survey from August 1977 to June 2013. Mr. Bryant has served with distinction with the California Geological Survey
  - Starting his career in the position of Assistant Editor for the survey's magazine California Geology under Editor-in-Chief Mary Wood; and,
  - In July 1979, started what would turn out to be his professional life's work for Geologist Earl Hart on the Alquist-Priolo Fault Evaluation and Zoning Program (currently known as the Alquist-Priolo Earthquake Fault Zoning Act), where Bill would serve the survey and the people of California in this program for the next 34 years; and
  - Mapped surface ruptures following earthquake events including the Coyote Lake (1979), Mammoth Lake sequence (1980), Coalinga (1983), Tres Pinos (1986), Chalfant Valley (1986), Loma Prieta (1989), Lee Vining (1990), Landers (1992), Northridge (1994), Hector Mine (1999), Castro Valley (2002), and Parkfield (2004) and contributed to the Geologic Map of California and Fault Activity Map of California; and
  - Prepared 61 Fault Evaluation Reports, authored 6 Open-File Maps, and worked with the United States Geological Survey on the California portion of the National Seismic Hazards Map and National Quaternary Fault and Fold Database and received sustained Superior Accomplishment Awards for work on the Alquist-Priolo Earthquake Fault Zoning Act.
- Therefore, be it resolved that the SMGB gratefully acknowledges William A. Bryant's dedicated service to the California Geological Survey, the Board, and to the People of the State of California, and commends him for an exemplary job well done.

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

Executive Officer Testa reported on the following:

- Amended surface mining ordinances for the County of Orange and Santa Clara were being reviewed, and the SMGB can anticipate consideration for certification upon adoption by the respective County.
- The SMGB is the SMARA lead agency for the City of Desert Hot Springs. Following receipt of a complaint regarding an alleged unpermitted surface mining operation within the jurisdiction of the City, Mr. Arcand, the SMGB's inspector, conducted a site visit and a Notice of Violation was subsequently issued by the Executive Officer.
- The SMGB can anticipate LART reports at its upcoming September meeting for the Counties of Contra Costa, Sacramento, San Joaquin, Sierra and Siskiyou.
- The SMGB can anticipate an overview of the Abandoned Mines Land Unit program at its upcoming October regular business meeting.

**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 Barry noted discussions with members of the Association of Environmental and Engineering Geologists regarding the upcoming Surface Fault Rupture Workshop being held in October 2013.

**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.]

No Good of the Meeting information provided.

**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, June 13, 2013 Regular Business Meeting.

Board Member Barry moved to conditionally approve the minutes, with revision. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

2. Approval of a Revised Financial Assurance Cost Estimate, Diamond Quarry (CA Mine ID No. 91-09-0003), Sierra Rock (Operator), Mr. Loring Brunius (Agent), County of El Dorado.

Board Member Barry moved to approve the revised Financial Assurance Cost Estimate. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

3. Approval of a Revised Financial Assurance Cost Estimate, Lawyer Pit (CA Mine ID No. 91-09-0010), Archie's Trucking and Backhoe (Operator), Mr. Archie Lawyer (Agent), County of El Dorado.

Board Member Barry moved to approve the revised Financial Assurance Cost Estimate. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

4. Approval of a Revised Financial Assurance Cost Estimate, Atkinson Pit (CA Mine ID No. 91-19-0004), Atkinson Brick Company (Operator), Mr. Tobin Campbell (Agent), City of Compton.

Board Member Barry moved to approve the revised Financial Assurance Cost Estimate. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

5. Approval of a Revised Financial Assurance Cost Estimate, Wheatland Clay Pit (CA Mine ID No. 91-58-0007), Gladding, McBean (Operator), Mr. Richard Hutchens (Agent), County of Yuba.



Board Member Barry moved to approve the revised Financial Assurance Cost Estimate. Board Member Gavric seconded and the motion carried with a unanimous voice vote.

6. Approval of a Revised Financial Assurance Cost Estimate, Dantoni Pit (CA Mine ID No. 91-58-0011), Kino Aggregates Inc. (Operator), Mr. Noble (Bud) Plant (Agent), County of Yuba.

Board Member Barry moved to approve the revised Financial Assurance Cost Estimate. Board Member Gavric 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.]

7. 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 Special Report 215, a classification report on Portland cement concrete-grade (PCC) aggregate in the San Luis Obispo-Santa Barbara Production-Consumption (P-C) Region. This report updated information previously published by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 162 – *Mineral Land Classification: Portland Cement Concrete Aggregate and Active Mines of All Other Mineral Commodities in the San Luis Obispo-Santa Barbara Production-Consumption Region*. At its March 8, 2012 regular business meeting, the SMGB accepted the State Geologist's recommendations for designation of select mineral resource lands in the San Luis Obispo-Santa Barbara Production-Consumption P-C Region. The SMGB subsequently directed its Executive Officer to notice a public hearing to receive comments on the proposed regulatory action. The 60-day public comment period commenced on June 7, 2012, and ended on July 31, 2012. A public hearing was held in the County of Santa Barbara to receive comment on July 11, 2012. At its April 11, 2013, regular business meeting, held within the jurisdiction of the County of San Luis Obispo, the SMGB received further comments regarding the proposed designations. The SMGB at such time deferred action for 60 days allowing sufficient time for all public comments received to be reviewed and considered. The SMGB will consider approval of the proposed regulations. With approval, the proposed regulations will be published in the California Registrar which would allow additional opportunity for public comment.

- The SMGB heard comment from Roy Reeves representing Margarita Proud, and Charles Kleemann, in opposition to certain sectors being considered for designation. Discussion as to whether designation is a project under the California Environmental Quality Act (CEQA) was discussed.

Board Member Lane moved to continue this matter to the September 2013 scheduled regular business meeting, with a report from legal counsel pertaining to whether designation can be deemed a project as defined by CEQA. Board Member Barry seconded and the motion carried with a voice vote, with Members Gavric and Kenline opposed.

8. **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 noted that Petitioner RiverPark B, LLC, (RiverPark), on September 10, 2012, filed with the SMGB an Intent to Appeal stating that the City of Oxnard (City) failed to approve and timely act upon an adjusted financial assurance for the RiverPark Mine. RiverPark has petitioned the SMGB to take jurisdiction of the appeal pursuant to the SMARA, notably, PRC Section 2770(e)(3). The current approved financial assurance amount is \$16,648,526. Although a significant amount of reclamation related work has been completed, no adjustment of the financial assurance amount has been made to date. As of April 23, 2011, the estimated amount of reclamation costs remaining was calculated to be on the order to \$2,843,723. Recent submittal of adjusted financial assurance cost estimates were provided by RiverPark in correspondence dated January 25, 2013; the two scenarios reflecting reclamation activities remaining to be completed were of the amount of \$1,586,390 and \$1,982,068, respectively. The financial assurance cost estimate for the subject site has been subsequently revised by RiverPark to \$2,023,598. This estimate reflects the use of rip rap for slope protection between elevations 40 and 55 feet, and to elevation 60 feet (relative to mean sea level) for select portions of the Brigham-Vickers pit (i.e., notably northeast and southwest portions coincident with prevailing wind directions), and northerly portion of the Large Woolsey pit. The City's consultant has forwarded a revised financial assurance cost estimate of \$5,016,175. This estimate reflects slope protection via use of rip rap or similar alternatives (i.e., Flexamat; a proprietary tied concrete black mat) from elevation 36 to 60 feet, regrading of slope faces that exceed 2:1 (horizontal to vertical), and drainage devices along the top of slopes to prevent surface runoff. As of April 2013, the parties requested a 60 day continuance and the parties are currently requesting another 60 day continuance.

- John Hecht, representing Sespe Consulting, requested this matter be continued.

Board Member Lane moved to continue this matter for 90 day, with receipt of resolution or status within 45 days. Board Member Barry seconded and the motion carried with a unanimous voice vote.

9. Approval of the State Mining and Geology Board's Strategic Plan.

Executive Officer Testa stated that its Strategic Plan was last updated in November 2010. The SMGB has before it a revised and updated Plan and to consider adoption.

Board Member Lane moved to approve the Strategic Plan with revision. Board Member Barry seconded and the motion carried with a unanimous voice vote.

**XI. New Business [Action]**

10. 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 Mendocino, 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 noted that thirty-six (36) surface mining operations are reported to exist within the jurisdiction of the County. Twenty-four (24) are characterized as active, eight are newly permitted, and three are closed and certified complete. Commodities produced include primarily sand and gravel, with subordinate amounts of rock and silica. At its regular business meeting held on October 11, 2012, the SMGB received a report from the OMR LART dated July 19, 2012, on the overall status and performance of the surface mining program pursuant to the SMARA. Deficiencies pursuant to PRC Section 2774.4(a) were reported. In review of the LART report for the, several deficiencies are reported. Notably, such deficiencies were reported to include failure to review and adjust financial assurances cost estimates, failure to inspect mines at least once each calendar year,



preparation of inadequate inspection reports, failure to commence reclamation following site abandonment and absence of Interim Management Plans (IMPs), and failure to enforce SMARA. The SMGB's moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on December 21, 2012. The County responded in correspondence dated February 26, 2013. Although the County has adequately addressed Deficiency Nos. 1 and 4, adequacy of the inspection reports remains an issue. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take appropriate action in accordance with PRC Section 2774.4(a).

- John Speka, Planner, presented an overview of the County's SMARA program, and addressed some of the issues raised in the LART report prepared by OMR.

Board Member Gavric determined that the County adequately responded to the Notice but requested that the County provide its Executive Officer a copy of the 2013 inspection reports for all surface mining operations within the County's jurisdiction, for review and comment, and for the Executive Officer to bring this matter back to the SMGB at such time should any outstanding issues remain. Board Member Kenline seconded and the motion carried with a unanimous voice vote.

11. 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 San Mateo, 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 four surface mining operations are located within the jurisdiction of the County. Three are characterized as active and one closed with no intent to resume mining. The primary commodity is sand and gravel, with a subordinate amount of stone. At its regular business meeting held on October 11, 2012, the SMGB received a report from OMR (LART dated October 3, 2012, on the overall status and performance of the County surface mining program pursuant to the SMARA. Deficiencies pursuant to PRC Section 2774.4(a) were reported which included, but not limited to, 1) failure to approve a financial assurance mechanism for the Pescadores Quarry (CA Mine ID #91-41-0004; Deficiency No. 1), and 2) failure to conduct adequate surface mine inspections (Deficiency No. 2). In addition, the County is the owner and operator of the Pescadero Quarry (CA Mine ID #91-41-0004) and thus a financial conflict of interest exists. As such, the County may not inspect the Pescadero Quarry under the provisions of CCR Section 3504.5(c). In these instances, the SMGB inspects such sites and invoices the SMARA lead agency for costs incurred. Based on the SMGB's review of the LART report, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on October 16, 2012. The County responded in correspondence dated January 18, 2013. Although the County has adequately addressed Def No 1, adequacy of the inspection reports remains an issue. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take appropriate action in accordance with PRC Section 2774.4(a).

Board Member Lane determined that the County adequately responded to the Notice, but requested that the County provide its Executive Officer a copy of the 2013 inspection reports for all surface mining operations within the County's jurisdiction, for review and comment, and for the Executive Officer to bring this matter back to the SMGB at such time should any outstanding issues remain. Board Member Gavric seconded and the motion carried with a unanimous voice vote.



12. Approval Consideration of Inspection Form MRRC-1 (4/97) Pursuant to Title 14, Division 2, Chapter 8, Subchapter 1, California Code of Regulations, Article 1, Section 3504.5.

Executive Officer Testa noted that inspection of a surface mining operation is required not less than once each calendar year to determine if the operation is in compliance with the requirements of Public Resources Code Chapter 9, commencing with Section 2710. Inspection form MRRC-1, as referred to in California Code of Regulations Section 3504.5(g), was last revised in April 1997. It is uniformly agreed that the quality and adequacy of inspections can be significantly improved upon statewide. Efforts to revise Inspection Form MRRC-1 have been initiated by OMR with collaboration from the SMGB staff. Numerous comments have been received and such comments have been addressed by OMR and are included as part of the SMGB's packet. The SMGB will be considering a recommendation of approval of the revised form.

- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), noted the proposed revised form would be more effective and it will be clearer as to what was observed at each site inspected, albeit the form will be more difficult to work with initially.

Board Member Lane moved to approve the form. Board Member Barry 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 SMGB staff to initiate administrative actions.]

13. Report on Department of Conservation, Office of Mine Reclamation, Lead Agency Review Team Process. [Information]
- Deputy Director Jason Marshall and Ken Trott, provided an overview of the current LART process.

No action taken.

## **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 Kenline)
- Policy and Legislation Committee (Chairperson Kenline)
  - Chairperson Kenline summarized the actions of the Committee, notably, recommending to the whole SMGB approval of the revised Inspection Form MRRC-1, and the Committee's acceptance of the SMGB's Information Report 2013-10.
- Surface Mining and Standards Committee (Chairperson Barry)

## **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**

September 12, 2013 was announced as the date of the next meeting, with Sacramento as the location.

**XVIII. Adjournment**

The meeting was adjourned at 1:00 P.M.

**APPROVED**

  
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Ignacio Gonzalez, Chairman

  
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Stephen M. Testa, Executive Officer

