



# 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 12, 2015

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 (Kracov)**

**II. Pledge of Allegiance**

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

The meeting was called to order at 10:35 A. M. by Chairman Kracov, with Members Anderson, Gavric, Kenline, Kracov, Landregan, Mendez, Noushkam, and Potter present, and Member Lane absent, and a quorum was declared.

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

Director Mark Nechodom, provided the following:

- Acknowledged former Chairman Gonzalez's service to the SMGB and his contribution to addressing budgetary issues.
- The Lead Agency Review Team (LART) is now called the Lead Agency Review and Assistance (LARA) and a full briefing will be given at the upcoming March meeting.
- Expressed a desire for the SMGB, OMR, and CGS work together on a way of thinking that goes beyond reclamation to restoration, especially along the Russian River.
- Reminded board members of the availability of a DOC email address if desired which may require completion of an IT security training class.

Member Noushkam inquired whether the information on the LARA briefing would be provided with enough time for review prior to the March meeting.

Deputy Director, Jason Marshall provided the following:

- Last year the Senate Governance and Finance Committee (Committee) asked the DOC to look into the Alquist-Priolo Act (A-P) and other seismic hazard identification programs to make them more integrated. The DOC advised the Committee of the SMGB's A-P Technical Advisory Committee (TAC) and recommended their findings be used to guide a more focused review of geologic and seismic hazard identification and mitigation policies.

Member Gavric requested copies of communications between Legislature and DOC regarding A-P TAC.



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

State Geologist, John Parrish reported on the following:

- CGS is prepared to commence the implementation plan for the CA Earthquake Early Warning System, and expect to work on it for the next six months; beginning early 2016 and will start the build out in a sector of the state. The prototype has been operating for the last two years and CGS is putting the final patches on the model design. A slide presentation is available for the SMGB if they are interested.
- The State Geologist will be giving a presentation to the American Association for the Advancement of Science on reduced seismicity in California; a slide presentation is available for the SMGB if they are interested.

Member Noushkam requested the presentation of the Earthquake Early Warning System be included in the March or April meeting.

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

Assistant Director of OMR, Pat Perez, reported on the following:

- OMR is preparing to start interviewing for the position of Senior Engineering Geologist Supervisor, and have completed interviews for Environmental Scientist.
- Information was provided to Chairman Kracov regarding abandoned mines, their history, and OMR's abandoned mines program.
- The Lead Agency Review of Riverside County has been completed. The County has made substantial improvements in implementation of the SMARA program and is encouraged to maintain its current efforts to improve compliance. The only outstanding finding is the Levi Carbonate Quarry, a private operation on BLM land, for which OMR feels the County should have lead agency responsibility.
- OMR will be holding a SMARA lead agency workshop on February 25-26 in San Bernardino County, and have a record number of participants pre-registered for the workshop. Topics will include and overview of SMARA, annual reports, inspection reports, and reclamation plans.
- Considering a meeting with the SMGB to discuss how to better accommodate the SMGB's participation in future workshops, as well as any specialized training the SMGB may want, and how to expand the workshops to better serve their mutual needs.
- OMR staff is currently working on the 2014 Annual Reporting Fee Schedule.

Member Anderson commended Mr. Perez for advancing the public workshops, and inquired about the mix of participants who had registered. Mr. Perez stated the participants were a mix of lead agencies, consultants, and operators.

Member Noushkam inquired about a hard copy, or a synopsis, of the abandoned mines information Mr. Perez mentioned at the beginning of his presentation, and requested a future presentation on the status of the abandoned mines program.

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

- Chairman Kracov expressed his excitement for being in this role, and for having the Governor's support in having a full SMGB. He emphasized the importance of getting the strategic plan approved and implemented, and also the importance of good working relationships and communication between the SMGB, stakeholders, and DOC.



- New SMGB Members Stephanie Landregan and Sandra Potter were introduced, and general introductions were provided.

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

Executive Officer Testa reported on the following:

- An update of the status of various designation rulemakings was provided noting that the San Luis Obispo-Santa Barbara P-C Region designations packet was completed pending receipt of final designation maps from CGS, and would likely be submitted to the Office of Administrative Law within a few days, and the Stockton-Lodi P-C Region rulemaking was near completion.
- The County of San Diego forwarded a Notice of Public Review - Statement of Reasons to permit proposed use and extinguish access to mineral resources of statewide significance dated December 18, 2014, on December 22 and is under review. A response was prepared and forwarded to the County for consideration.
- The Lead Agency Review Team (LART) report pertaining to the County of Siskiyou is under review. A report to the SMGB is anticipated in early 2015, in addition to re-certification consideration of the County's amended mining ordinance.
- A 2013-2014 set of inspection reports for the Counties of Del Norte, Madera, Mariposa, Marin, San Mateo, Mendocino and Monterey, have been received and are under review. A summary of such review will be provided to the SMGB, in addition to identification of any significant outstanding issues for the SMGB's consideration.

#### **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.]

No Ex-Parte communications reported.

#### **VIII. Public Comment Period [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.]

- Derek Cole, Legal counsel for the County of Riverside, provided an update on the 45-day notice that was issued to the County in December. He stated the County takes the notice very seriously and is working diligently to correct the issues noted.
- Ken Johnston, representing Las Pilitas Resources, requested the Executive Officer prepare a letter to be forwarded to San Luis Obispo County officials regarding regional designation.
- Sophie Treder, attorney with Treder Land Law, requested that the Executive Officer formally request an expedited review of the rulemaking by the Office of Administrative Law, and also requested the Executive Officer to prepare a letter to be forwarded to San Luis Obispo County Officials regarding designation.

#### **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 13, 2014, Regular Business Meeting.

Member Mendez moved to approve the minutes with the noted correction. Board Member Kenline seconded and the motion carried unanimously.

2. Approval of Minutes, January 8, 2015, Regular Business Meeting.

Vice Chair Gavric moved to approve the minutes with the addition of the committee appointments. Board Member Anderson seconded and the motion carried unanimously.

#### **X. Continued Business [Action]**

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

No continued business was discussed.

#### **XI. New Business [Action]**

3. Restoration of Lead Agency Powers Assumed by the State Mining and Geology Board for the County of Alpine Pursuant to Public Resources Code Section 2774.4(b).

Executive Officer Testa noted that in 2007, the OMR established the Lead Agency Review Team (LART). The LART completed its Lead Agency Review Report for the County of Alpine (County), and provided a summary to the SMGB of its audit of the County's Surface Mining and Reclamation Act (SMARA) program to the SMGB at its December 9, 2010, regular business meeting. The SMGB upon receiving the LART report directed the Executive Officer to prepare a 45-Day Notice to Correct Deficiencies for the SMGB's consideration at its next scheduled meeting. The County indicated that it would forfeit its SMARA lead agency responsibilities and obligations to the SMGB, with exception to permitting, assuming that an agreement could be reached to allow a mechanism for the transfer of their SMARA lead agency role. By reaching an agreement for a voluntary assumption of lead agency authority by the SMGB, the parties will save considerable time and money which otherwise would be necessary if the administrative takeover process had to be followed. On March 10, 2011, the SMGB considered a Memorandum of Understanding (MOU) agreement between the County and SMGB; whereas, the SMGB would assume the County's lead agency responsibilities, with exception of permitting, for a minimum period of three years. The MOU was signed on June 7, 2011. In correspondence dated January 12, 2015, the County stated that it is in a position to assume its SMARA lead agency role and requested that the SMGB restore to the County its lead agency authority. The SMGB is considering restoring SMARA lead agency authority to the County of Alpine.

- Brian Peters representing Alpine County stated that budget considerations were the reason behind the County relinquishing lead agency status, as the operators were not reimbursing the County for the cost of administering the program. Over the last year the County has gotten the operators to agree to do so, and will use consultants for the technical aspects of inspections and reporting.
- Vice Chair Gavric noted that the table provided appeared to be out of date, as it shows that three out of four mines were in violation. Mr. Arcand agreed that the table may be out of date, and that the Fredericksburg Pit was in compliance.
- Member Noushkam inquired whether Mr. Arcand was aware of any possible contamination in the ponds associated with the former asphalt plant. Mr. Arcand stated that he was unaware of any contamination, and there was no mention of it in any of the records available.



- Member Landregan inquired about the County's letter stating operators have agreed to cover the County's costs, and whether written agreements were in place? If not, how can the County be sure the operators are willing to pay this time?
- Brian Peters stated that the previous issue was not that the operators were not willing to pay, but that they were not required to pay.

Vice Chair Gavric moved to restore the Lead Agency authority. Board Member Kenline seconded and the motion carried with Member Noushkam opposed.

4. Acceptance of the State Mining and Geology Board's Designation Report No. 13 titled "*Update of Mineral Land Designation for Portland Cement Concrete-Grade Aggregate in the Palm Springs Production-Consumption Region.*"

Executive Officer Testa noted that designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. On April 1, 2014, regulations set forth by SMGB for the designation of regionally significant aggregate resources in the Palm Springs Production-Consumption (P-C) Region, Riverside County, were enacted. This action followed the SMGB acceptance at its December 13, 2007, regular business meeting of California Geological Survey (CGS) Special Report 198 titled "*Update of Mineral Land Classification for Portland Cement Concrete-Grade Aggregate in the Palm Springs Production Consumption Region, Riverside County, California*". This report updated information on Portland cement concrete (PCC) aggregate in the original classification study published in 1985. Upon such regulations becoming effective, the SMGB's Report No. 13 titled "*The Designation of Regionally Significant Aggregate Resources in the Palm Springs Production-Consumption Region, Riverside County*" was prepared.

- Adam Harper, representing the California Construction and Industrial Materials Association (CalCIMA), stated the appendix needs to be updated with the current statute, and suggested that information explaining why designation and mineral resources are important might be useful for lead agencies.

Member Anderson moved to accept the report subject to CGS comments. Board Member Noushkam seconded and the motion carried with a unanimous voice vote.

5. Discussion and Possible Action Regarding Conflict of Interest Pursuant to Public Resources Code Section 2774(b) and California Code of Regulations Section 3504.5(c).

Executive Officer Testa noted that pursuant to SMARA, all surface mining operations must be inspected by their respective lead agency. The SMGB currently serves as the lead agency under SMARA for forty-six (46) individual surface mining operations, including operations located in three counties (Alpine County, El Dorado County and Yuba County), eight (8) San Francisco Bay marine dredging operations, and eight (8) cities that do not have mining ordinances. In review of the SMARA database, potential conflicts of interest have been identified which contradicts Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5(c) of the California Code of Regulations (CCR). A review of all surface mining operations statewide commenced in 2011. To date, a total of 93 surface mining operations within 19 counties have been identified where the SMARA lead agency has a potential financial interest (i.e., either as an operator or property owner). SMGB staff has initiated conduct of annual inspections at three of the surface mining operations where a financial interest has been confirmed. Under these circumstances, inspections are performed by SMGB staff and upon acceptance as complete by the SMGB, such inspection reports are forwarded to the respective SMARA lead agency. The operator is invoiced appropriately and is responsible for the cost of conducting such inspections. The local lead agency, however, maintains its overall role



pursuant to SMARA, and thus is responsible for subsequent compliance and enforcement actions, as deemed necessary and appropriate. The problem in part appears to be a need for clarity in the legislative language, albeit there may be other approaches to address this matter.

- Mary Pitto representing Regional Council of Rural Counties (RCRC) supports the recommendation that there is clarification on this issue. If a conflict of interest is determined, it could affect other state programs.
- Member Noushkam stated that she would like to know more about the particular conflicts of interest on a case-by-case basis.
- Member Potter agreed with Member Noushkam and would also like to know more about the level of compliance.

Vice Chair Gavric moved to refer the matter to Surface Mining and Standards Committee. Board Member Noushkam seconded and the motion carried with a unanimous roll call vote.

6. Election of Vice Chair of the State Mining and Geology Board Pursuant to Public Resources Code Section 669.

Executive Officer Testa noted that the SMGB annually elects from its membership, an individual to serve as Vice Chairperson of the SMGB. The Vice Chairperson performs the duties of the Chairman in his or her absence or upon request of the Chairman when possible conflicts of interest may occur. Nominations for this office are made by SMGB members. The selection of the SMGB's Vice Chairperson is for the SMGB's current consideration, and is solely at the SMGB's discretion. The Executive Officer makes no recommendation.

Member Mendez nominated Member Anderson for Vice Chair. Member Noushkam seconded and Member Anderson was elected Vice Chair with a unanimous roll call vote.

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

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

7. Briefing by Counsel Regarding Whether Designation is a Project under the California Environmental Quality Act (CEQA).

Deferred.

8. Acceptance of Inspection Reports as Performed and Completed Pursuant to PRC Section 2774(b) for the following Surface Mining Operations:

- Weber Creek Quarry (CA Mine ID No. 91-09-0002), County of El Dorado
- Chile Bar Slate Mine (CA Mine ID No. 91-09-0004), County of El Dorado
- Cool Cave Quarry (CA Mine ID No. 91-09-0005), County of El Dorado
- Knife River Hallwood Plant (CA Mine ID No. 91-58-0002), County of Yuba
- Cal Sierra Development (CA Mine ID No. 91-58-0003), County of Yuba
- Teichert Hallwood (CA Mine ID No. 91-58-0006), County of Yuba
- Teichert Marysville (CA Mine ID No. 91-58-0019), County of Yuba
- Blue Point Mine (CA Mine ID No. 91-58-0021), County of Yuba
- Simpson Lane (CA Mine ID No. 91-58-0025), County of Yuba

Member Kenline moved to accept the inspection reports. Board Member Mendez 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 Anderson)
- Policy and Legislation Committee (Chairperson Kracov)
- Surface Mining and Standards Committee (Chairperson Kenline)

**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:

- Member Mendez requested a general briefing on the A-P Technical Advisory Committee.

**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:

- i. 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.
  4. Joe & Yvette Hardesty v. SMGB, & DOES 1-100 Inclusive, Case No. 34-2010-80000594, Sacramento County Superior Court.
  5. Discussion of Superior Court cases, A. Teichert & Son, Inc. v. California State Mining and Geology Board, no. 34-80000528 and Calvert, et al. v. California State Mining and Geology Board, no. 34-2010-80000530.

**Note:** In addition, the Board may consider matters which fall under Government Code Sections 11126(e)(2)(B) and 11126(e)(2)(C).

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

No Executive Session held.

**XVII. Announcements of Future Meetings**

March 12 was announced as the date of the next scheduled meeting, with Sacramento as the location.

**XVIII. Adjournment**

The meeting was adjourned at 2:30 p.m.



**APPROVED**



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Gideon Kracov, Chairman



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Stephen M. Testa, Executive Officer

