

**GOVERNING BOARD MEETING
OREGON DEPARTMENT OF GEOLOGY & MINERAL INDUSTRIES**

Friday, January 15, 2010
Portland, Oregon

1) Call to Order:

Chair Larry Givens called the meeting to order at 8:35 am.

2) Introductions:

Board Chair Larry Givens, , and Board Members Donald Haagensen, Charles Vars, and Lisa Phipps were present. Vice Chair Steve Macnab attended via teleconference.

DOGAMI Staff in attendance:

State Geologist Vicki McConnell

Assistant Director Gary Lynch

Assistant Attorney General Larry Knudsen

Chief Scientist Ian Madin

Administrative Assistant Carol DuVernois

In the audience:

Larry Tuttle, Center for Environmental Equity

Ron Helinski, New West Technologies, working with DOE for the geothermal program

Douglas MacDougal, Schwabe, Williams and Wyatt, prospective Governing Board member

Kahlid Wahab, Kaiser Permanente, Environmental Justice Task Force

Jonathan Oster, Environmental Justice Task Force

John Petersen, Tide Creek Rock Company

Agnes Petersen, Tide Creek Rock Company

David B. Williamson, Attorney for Agnes and John Petersen

Geoff Garcia, Geologist

1 **3) Approval of Minutes of September 28, 2009 Cannon Beach Meeting**

2 **Motion:** Charles Vars moved to approve minutes as written. Don

3 Haagensen seconded the motion. Motion carried.

4
5 **4) Environmental Justice Task Force Briefing:** (Gary Lynch and EJTF
6 members)

7 **a. Representative members of the Environmental Justice Task**
8 **Force, Kahlid Wahab and Jonathan Oster, briefed the Board on EJTF**
9 **activities:** *Information Item. Board considered this agenda item training.*

10 Wahab and Oster outlined the purpose and goals of the Task Force.

11 Environmental Justice is defined as the fair treatment of all people

12 regardless of race, class, or ethnicity in the areas of environmental benefits

13 and burdens, as well as access to the processes that affect decisions
14 regarding environmental justice. The Task Force realized the need to break
15 the Task Force into subgroups and brief each agency independently, in a
16 more customized approach. They said that DOGAMI's role would most
17 likely revolve around information sharing and interagency collaboration.
18 They also mentioned the possibility of including environmental justice
19 language in position descriptions and performance evaluations for
20 managers. Haagensen suggested using environmental justice language in
21 the Key Performance Measures as a top-down approach. Wahab
22 emphasized that the Task Force should be viewed as a resource and
23 collaborative connection rather than an imposing entity.
24

25 **5) Board Business:**

26 **a. Update on Board recruitment: *Update Item***

27 Don Haagensen and Charles Vars' terms were up at the end of December
28 and Vars agreed to another term if confirmed. Mr. Douglas MacDougal is
29 the nominee for Don Haagensen's seat, pending Senate confirmation.
30 MacDougal made a brief statement of his interest to the Board.

31 **b. Briefing on Travel Reimbursement Policy for Board members:**
32 *Update Item*

33 McConnell outlined the policies for the Board and went over the
34 reimbursement form.

35 **c. Farewell to Don Haagensen, Long time Board member: *Update***
36 *Item*

37 Staff and Board members thanked Don Haagensen for 17 years of service
38 to the Governing Board.
39

40 **6) Break**

41
42 **7) State of the Agency: (Vicki S. McConnell, State Geologist)**

43 **a. Agency activities update: *Update Item***

44 McConnell briefed the Board on recent grants and contracts, publications
45 and outreach efforts, recent meetings and conferences, ongoing
46 Congressional legislation and upcoming state legislation.

47 **b. Review of Key Performance Measure Report: *Update Item***

48 McConnell noted that we have 11 Key Performance Measures and are
49 making progress on all of them. We have a new Key Performance Measure
50 12 and are phasing out KPM 4 – the hazard awareness measure, since we
51 could not figure out a way to measure such a subjective issue. She pointed
52 out that although these KPMs do a pretty good job of what we are doing,
53 they do not cover all the programs and projects we have. For example, we
54 do not have a lidar program KPM, even though we've had the program for 4
55 years now, so there is no way to measure successes and failures on that.
56 Neither is there a flood mapping KPM, nor restoration KPM, nor KPMs for
57 Oil & Gas or Geothermal. So not only can we not measure our progress on
58 these projects, there is no official way to advertise these projects to either

59 the Governor's Office or the Legislature. McConnell also notified the Board
60 that the whole KPM office has been eliminated by the legislature and the
61 duties have been absorbed by DAS BAM and LFO.

62 **c. Request to initiate a review of Agency Business Plan: Action**
63 *Item*

64 McConnell briefed the Board on the original business plan of the agency
65 73 years ago, when the state paid the agency 100% of its budget, and what
66 the reality is today. She noted that we will be facing another round of
67 budget cuts in a month or so, and up until this point we have dealt with the
68 cuts by fund-shifting of staff away from General Funds. She would like to
69 come to the Board in March with an objective plan of different models of
70 what the agency can do. The state used to pay for the agency 100%,
71 therefore they had a right to everything first hand. Now they do not pay for
72 100% of everything, and we are still based on the outdated business plan
73 from 73 years ago. She would like to bring forward the ability to get receipts
74 authority. McConnell asked for permission to go forward with developing a
75 process of reviewing the agency business plan.

76 **Motion:** Vars moved to direct staff to evaluate an alternate business plan
77 for funding for the agency. Phipps seconded the motion. Motion carried.
78

79 **8) Regulatory Issues:** (Gary Lynch, Mineral Lands Regulation and
80 Reclamation Program)

81 **a. Status of rulemaking for aggregate, oil and gas, geothermal**
82 **laws: Update/Action Item**

83 Lynch and AAG Knudsen briefed the Board on review of necessary
84 geothermal program rules and asked for authority to write said rules.

85 **Motion:** Haagensen moved to authorize the department to begin Phase 1
86 of rulemaking for implementation of Senate Bill 190 for the rules related to
87 geothermal development in the state, and that because of an urgency to
88 provide protection for the resource and for the natural resources and
89 environment of Oregon and to implement the provisions as early as
90 possible, and also because the changes are of a housekeeping nature or of
91 an uncontroversial nature or of a nature that would not involve a significant
92 policy discussion, that we do not use an advisory committee.

93 Vars seconded the motion. Motion carried.

94 **b. Status of transfer of reclamation bonds and permit**
95 **applications in Columbia County: Update Item**

96 Lynch notified the Board that the transfer is now complete, with few
97 issues. McConnell wanted to recognize the efforts of MLRR and Larry
98 Knudsen in making this as smooth and positive a transition as possible.

99 **c. Summary of operational and enforcement activities for surface**
100 **mining and oil and gas and geothermal regulatory programs: Update**
101 *Item*

102 Lynch discussed recent meetings and the possibility of having a workshop
103 in the summer to inform the public about geothermal energy activity in the

104 state. He mentioned a storm water violation, which is the first enforcement
105 issue with this program shared with the DEQ.

106
107 **9) Middle Columbia Steelhead Conservation and Recovery Plan:** (Suzanne
108 Knapp, Natural Resources Policy Advisor, Governor's Natural Resource
109 Office)

110 **a. Informational briefing on the plan and its implementation:**
111 *Information Item. Board considered this agenda item as training.*

112 Suzanne Knapp gave a presentation to the Board outlining the
113 conservation and recovery plan's history, the threats the fish face and next
114 steps for the plan.

115
116 **10) Set Time and Date for next meeting:** (Board)

117 The next meeting will be on Friday, March 26, 2010 in the Portland office.

118
119 **11) Additional Public Comment:** (three minutes limit per person unless
120 otherwise specified at the meeting by the Chair)

121 Geoff Garcia commented on the presentation by Suzanne Knapp,
122 suggesting that the recovery plan implementation include some geologists.

123
124 **12) Break for Lunch**

125
126 **13) Consideration of Request for Declaratory Ruling by Board**

127 **a. Tide Creek Rock, Columbia County, has filed a Request for**
128 **Declaratory Ruling with the Board in the case of their proposed**
129 **reclamation bond with DOGAMI for their aggregate operation.**

130 AAG Knudsen briefed the Board on the background and process involved
131 with the Consideration of Request for Declaratory Ruling. He outlined the
132 types of bonds the state will accept, which are a Performance Bond and an
133 Irrevocable Letter of Credit. Tide Creek Rock would like to use a Property
134 Bond. Knudsen discussed the issues involved with the acceptance of a
135 Property Bond, which include that it goes against agency rules, and that the
136 nature and form of the bond do not have the same level of assurance as a
137 Performance Bond. This was the basis for the agency to decide not to
138 accept the documents proffered by Tide Creek Rock, which were not issued
139 by a licensed security insurer based in Oregon as the rules require and
140 were deemed by the department as not secure. Knudsen noted that the
141 agency is bound to follow the rules unless they are amended.

142 Attorney David Williamson, speaking on behalf of the petitioners, argued
143 that the issues are "Can you do it?" and "Should you do it?" He cited ORS
144 517.810(3), which distinguishes between operators and landowners, in
145 which it says that the department may accept a similar security from the
146 landowner equal to the estimated cost of the reclamation as determined by
147 the department in consultation with the operator in lieu of the bond or other
148 security required of the applicant. He believes the Property Bond submitted
149 is preferable to the Performance Bond. He said the Petersens are land rich

150 and cash poor, and could not qualify for a security bond or an Irrevocable
151 Letter of Credit.

152 John and Agnes Petersen briefed the Board on their backgrounds and
153 summarized why they thought they should be allowed to proceed with the
154 Declaratory Ruling, because though unusual, their request is not against the
155 rules. They detailed their repeated attempts to secure a Performance Bond
156 and explained that with the economic situation it is nearly impossible to get.

157 Knudsen clarified that the Board needed to decide whether or not to
158 approve the request for a Declaratory Ruling. He also said they could
159 request that staff look at other options in more detail or propose a new rule.

160 **Motion:** Vars moved to deny the petition for Declaratory Ruling.
161 Haagensen seconded.

162 **Discussion:** Haagensen noted that his second was reluctant, because he
163 did not want to put people in a position where it's difficult for them to perform
164 a legitimate business. However, with the present statute and rules, he
165 doesn't see how he could approve the request, because the statutes and
166 rules need to apply equally to everyone.

167 **Motion carried.** 4 ayes, 1 no.

168

169 **14) Adjourn**

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171 **Action Items:**

172 Lynch will update the Board after visiting Tide Creek Rock.

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174 APPROVED:

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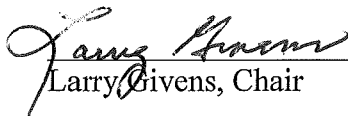
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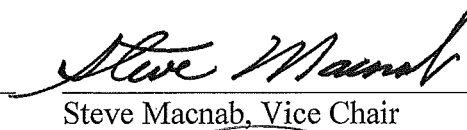
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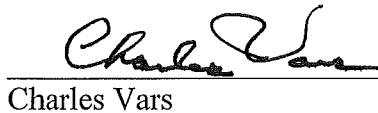
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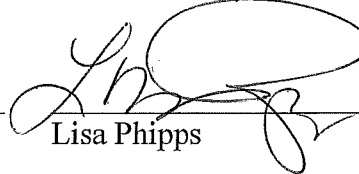
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Larry Givens, Chair


Steve Macnab, Vice Chair


Charles Vars


Lisa Phipps


Douglas MacDougal