

**GOVERNING BOARD MEETING MINUTES
OREGON DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES**

Monday, December 28, 2015

8:30 a.m.

Portland, Oregon

1) Call to Order: (Larry Givens, Board Chair)

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

2) Introductions: (Larry Givens, Board Chair and staff)

Chair Givens, Vice Chair Lisa Phipps, and Board Members Scott Ashford, Dennis Luke (via phone) and Laura Maffei (via phone) were in attendance.

Department of Geology and Mineral Industries (DOGAMI) Staff in attendance:

Brad Avy, Director/State Geologist

Richard Riggs, Assistant Director of Mineral Land Regulation and Reclamation (MLRR)

Holly Mercer, Assistant Director of Geological Survey and Services (GS&S)

Kim Riddell, Chief Financial Officer (CFO)

Alyssa Pratt, Office Specialist

Others in attendance:

Rich Angstrom, Oregon Concrete & Aggregate Producers Assn (OCAPA) & Oregon Mining Assn

Larry Knudsen, Department of Justice (DOJ)

Lauri Aunan, Governor's Office

Traci Cooper, Department of Administrative Services (DAS) Transition Team

John Terpening, Legislative Fiscal Office (LFO)

3) Review Minutes of August 21, 2015, September 24, 2015, and October 30, 2015:

Phipps asked if the Agency would like to receive feedback in advance about typographical errors.

Mercer stated that if the error is not substantive the agency could make changes without a revision at the board meeting, but if the error is substantive the minutes will need to be revised at the board meeting.

Board Action: **Phipps moved to approve the minutes of August 21, 2015, September 24, 2015, and October 30, 2015. Ashford seconded. Motion carried.**

4) Election of Chair and Vice-Chair for 2016:

Givens indicated that with his new role as Association of Counties President and upcoming end of his second term on the Board, he would like to step down as Chair. Givens opened the floor for nominations for Chair and Vice Chair.

Board action: Givens moved to nominate Phipps as Chair. Luke seconded. Motion carried with Phipps abstaining.

Board action: Phipps moved to nominate Maffei as Vice-Chair. Luke seconded. Motion carried with Maffei abstaining.

5) Approval of 2016 Meeting Schedule:

Luke suggested that the Board consider meeting prior to April 4, 2016 in the event the Agency needed Board guidance during the legislative session. He suggested that during the January 11, 2016 conference call, the Board could determine if a meeting would be necessary during session. A tentative date was suggested for February 12, 2016. Phipps suggested moving the April 4, 2016 meeting to April 8, 2016. Ashford inquired as to whether all the meetings are in Portland. Givens responded that the Board has had meetings in other locations but there was no further discussion about holding the meetings at a different location in 2016.

The proposed meeting dates and times are:

January 11, 2016 teleconference at 8:30 a.m.

TENTATIVE February 12, 2016, teleconference at 8:30 a.m.

April 8, 2016 at 8:30 a.m.

June 10, 2016 at 8:30 a.m.

September 19, 2016 at 8:30 a.m.

December 9, 2016 at 8:30 a.m.

Board action: Ashford moved to accept the proposed dates and times. Phipps seconded. Motion carried.

6) Approval of Board Delegation Documents:

Mercer proposed revisions to the Approval of Delegation document. The revised language provides the Board with more flexibility in the event an Acting State Geologist takes the place of the State Geologist. With Brad Avy being hired as the new State Geologist, the document needed to be updated and revised.

Phipps asked whether the delegation should be on a case-by-case basis. Larry Knudsen explained that the purpose of the document was to provide authority to the State Geologist or Acting State Geologist to carry out ministerial functions and provide legal authority to do so. If, however, the Board wanted to reject the delegation, the Board had the authority to do so.

Avy inquired about the process of delegating to an Acting State Geologist. Knudson said an email indicating the delegation would be appropriate so that there is a record of the delegation. Ashford inquired as to whether the State Geologist has authority to delegate or name an Acting State Geologist, and Knudsen stated that the State Geologist had that authority.

Board action: Ashford moved to approve the document. Maffei seconded. Motion carried.

7) Receive legal guidance regarding MLRR rules relating to HB 3563:

Riggs previously asked for approval and received approval from the Board for rulemaking due to passage of HB 3563. The proposed rule was published in the Oregon Bulletin, but due to an error in the notice process, legislative members were not given notice. Permanent rulemaking will be recommenced after the February legislative session.

Riggs stated that the temporary rule language is similar to the proposed permanent rules except for the staggering of registrations with aggregate miners in the first phase and placer miners in the second phase. Riggs further explained that the staggering registrations was done for the following reasons: 1) there is legislation which may be brought forward by Senator Bates regarding placer miners that could impact this rule so they wanted to give some time for the legislation to go through and see what form that would actually take; 2) staff will have time to adopt the rule and get the aggregate miners registered; 3) if staff need to register placer miners, they will have worked out the "bugs" in the registration process. Riggs indicated that the temporary rule is in effect for six months.

Knudsen explained that the agency is asking for two procedural steps. First authorize the department to re-notice with the revised rule language and, second, to adopt the temporary rule at the January board meeting. Luke wanted to know what determines the initial fee of up to \$400. Riggs said the board determines the fee. People registering for the first time would pay up to a \$400 fee and those renewing in subsequent years would pay \$150. Knudsen said the fee statute is set up differently for MLRR, because it established a maximum fee and allows the board to set a lesser fee.

Angstrom asked to provide public comment on this issue. Knudsen said that the Oregon administrative rules have a provision that prohibits late comments on a rule after the comment period has closed and the comment period on the rules has closed. If the Board opens the rules, then public comment may be received.

Board action: Luke moved to authorize the revision of the proposed rule to set a staggered application schedule and to renote the rule. Phipps seconded. Motion carried.

Board action: Luke moved to schedule a telephonic meeting on January 11, 2016 to consider the adoption of the temporary rule that establishes a staggered schedule for filing the exclusion certificate applications time to be set for 8:30 a.m. and begin the public hearing at 9:00 a.m. Phipps seconded. Motion carried.

Luke inquired as to whether there was much negative comment on this rule. Riggs said there has been conversation with Angstrom, but Angstrom is the only person to come forward.

Angstrom provided public comment stating that OCAPA ran the fee bill to get DOGAMI back on financial footing. He further stated that industry believes there are a number of operators that are operating above the regulatory threshold but not paying DOGAMI fees, placing other operators at a competitive disadvantage. Angstrom explained that the reason OCAPA put forward the amendment was to try and capture operators that aren't playing by the same rules. Angstrom further stated that OCAPA believes the department should separate out aggregate producers from placer miners in discussions over exemption certificate. Angstrom stated that the placer miners have never been

regulated and are always under the threshold. Angstrom explained that during discussions surrounding HB 3563 there was never an intent to include the placer miners and OCAPA took full responsibility for the placer miners being inadvertently swept under the exclusion certificate requirements. Angstrom pointed out that the federal government, Department of Environmental Quality (DEQ), and Department of State Lands (DSL) regulate the placer miner community so there was no intent to include the placer miners in HB 3563. The primary reason for the legislation was to capture the evasion of regulation by the aggregate operators.

Angstrom stated that he has received feedback from the industry and he may have objections to proposed changes to section 4 of OAR 632-030-0017. He also provided a brief history of historic mining and grandfathered sites. Angstrom indicated that he would continue his conversations with industry and provide additional feedback to Riggs. Angstrom also expressed that he believed the rule should be a permanent rule rather than a temporary rule.

Givens indicated that he had concerns about potential conflicts with land use laws. He wanted to ensure that the rules did not conflict with county planning efforts. Knudsen indicated that land use planning is supposed to be coordinated but it is not always perfect. He explained that some of the issues relate to pre-existing non-conforming use. Knudsen stated that in terms of metal placer mining, he believed that the main land use issue that is outstanding is that most of the metal placer mining is occurring on federal land and the relationship between state land use planning and regulation on federal land is often an issue. Knudsen further explained that although land use planning was codified in the early 1970s, not all issues were resolved.

Phipps asked for clarification of the issues. Riggs stated that typically placer miners are under DOGAMI'S thresholds but may be subject to DEQ or DSL permits. Phipps stated the same situation applies to aggregate miners under a certain threshold; the agency doesn't exert any authority over them but will exert authority over them once they pass the threshold. Riggs indicated that there are 1500 placer miners that have DEQ permits that could potentially pay for the exclusion certificate and approximately 200 aggregate operators that are registered with the agency under a grant of total exemption.

Knudsen stated DOGAMI'S regulatory authority should be clarified and the term placer mining should be explained. Placer mining could be metal mining, but placer mining could also be aggregate mining. Knudsen suggested that the agency should be using the terms metal placer mining and aggregate mining. He explained that the line above the ordinary high water mark down is DSL's regulation and below the high water mark with discharged waters then DEQ would regulate the discharge; above the high water mark DSL only has authority on state lands. Neither DEQ nor DSL regulate mining.

Angstrom pointed out that there may be some legislation to regulate the placer mining community. Riggs indicated that those discussions are ongoing with Senator Bates. Givens stated that he believed legislators would be reluctant to include recreational miners in the regulatory scheme. Ashford inquired about the impact of the fees. Knudsen stated that there are two issues: one is the impact of the fee on the mining operations and the other is the cost to DOGAMI to issue the certificate. Knudsen also offered to provide the Board a primer on the various regulatory systems if the Board so desired.

154 **8) Review Draft Budget Note Response:**

155 Mercer provided the Progress Report 2015 and the Progress Highlights. She explained that the
156 management team had been meeting every other week with Budget and Management (BAM) and
157 Legislative Fiscal Office (LFO) to keep them updated. The budget note response was initially drafted
158 in October 2015 and has been revised multiple times. Feedback from the Governor's office, BAM,
159 and LFO, was to be very realistic about DOGAM's accomplishment and goals. Mercer indicated that
160 they would continue to receive feedback, but she believed there would be very few substantive
161 changes from the current draft.

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163 Givens and Phipps recognized the staff for their efforts. Phipps also stated that she appreciated that
164 the Governor's office, BAM, and LFO have been intimately involved in the process. Mercer also
165 stated that the IT Assessment portion of the budget note is being drafted by the State Chief
166 Information Officer's office.

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168 Luke inquired about the Chief Financial Officer (CFO) position. Mercer explained that Kim Riddell was
169 hired as the CFO and Department of Administrative Services (DAS) will be doing a large component of
170 the financial operations through DAS Shared Services. Luke also inquired as to whether the Agency
171 would move the financial operations back into the agency. Mercer replied that at some point the
172 Agency would do a cost-benefit analysis regarding DAS Shared Financial Services. Avy commented
173 that it was his observation that staff had worked really hard during this interim period and they
174 should be commended.

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176 Mercer requested that the Board members provide additional feedback to her with a copy to Ali Ryan
177 Hansen prior to January 11, 2016. Phipps expressed concern that the agency ensure that the
178 improvement in business practices and diligence around the finances be kept at a high priority level.
179 Mercer assured her that the Agency will not relax and will stay diligent in their efforts to improve
180 practices. Luke commented that when he first joined the Board, the Board received a very complex
181 financial report on the day of the board meetings and it was very difficult to understand the finances.
182 Luke indicated that he felt the current financial report was much easier to understand.

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184 Briefing: **No Board Action Required.**

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187 **Break**

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190 **9) Review Annual Performance Progress Report (APPR) and Key Performance Measures (KPM) update:**

191 Mercer discussed the APPR summary and the need for deletion and revision and KPMs. Mercer
192 asked for feedback from the Board regarding KPM 11. She indicated that the KPM would indicate
193 that the Director's performance was not completed during the past fiscal year. Mercer asked if the
194 Board agreed that the KPM should indicate "no" on the component regarding accounting rules and
195 other relevant financial controls and whether the Board reviewed management practices to ensure
196 best practices are utilized. The Board indicated that they agreed with answering no on those
197 particular components of KPM 11.
198

Luke asked about KPM 4 and Mercer indicated that there was no KPM 4. Luke also inquired about KPM 5 regarding the total number of mining acres that have been reclaimed and returned to beneficial use. Riggs indicated that it is very difficult to provide that number due to prelaw sites and small sites not under DOGAMI's jurisdiction. Luke specifically mentioned a mine at Terrebonne and noted that neither DEQ nor DOGAMI have regulatory authority over the site. Riggs indicated that for KPM 5 and KPM 8, the issue is that DOGAMI has very little control over the outcomes. He will be providing revised language for KPMs affecting MLRR during the budget process.

Phipps inquired about the KPM 11 and the governance criteria. Mercer explained that the governance criteria are established for boards and commissions. DOGAMI would not be suggesting any revisions for KPM 11 relating to governance and KPM 10 relating to customer service since those are mandated KPMs.

Board Action: **Phipps moved that the APPR report be approved. Maffei seconded. Motion carried with Ashford abstaining.**

10) Review Financial Report:

Riddell referred to the financial report provided to the Board. She thanked Traci Cooper for the work on the financial report. Riddell went over the categories listed on the financial report. Ashford had several questions about the report, particularly around ending balance and the appropriate amount of ending balance. Riddell explained that the agency should have an ending balance of at least three months of operating funds. She also explained that with the fee increase for MLRR in January, the agency anticipated increased revenue for the MLRR program. Ashford inquired about how other funds and federal funds are generated. Riddell explained that other funds come primarily from other state or local entities and federal funds primarily come through grants. Luke pointed out federal funds are not paid in advance and the agency must incur the expenditure and then seek reimbursement.

Phipps inquired about why the agency was five months late in paying our rent. Riddell explained that due to some miscommunication issues, the rent was not paid timely. The agency plans to address the issue by establishing an accounts payable email address that will be received by the finance department. Luke inquired about the Albany lease and Riggs replied that they are renegotiating the Albany lease with plans to stay in Albany. Mercer also indicated that the Newport lease has not been signed due some title issues with the landlord. Phipps asked about how the projects are accounted for in the spreadsheet. Riddell replied that they are accounted for throughout the spreadsheet, but the lidar program, for example, would not show up specifically in the spreadsheet as a separate project. Riddell asked for additional feedback on the format of the financial report. Maffei indicated that she would like more time to review the spreadsheet since she just received it on the day of the board meeting.

Phipps asked about the federal fund negative balance. Riddell explained that the funding type may stay in the negative until revenue is generated and then on the accounting side the revenue result in a positive balance. Luke asked about what is included in the GS&S component. Riddell explained that GS&S are all non-MLRR accounts including all the lidar projects. Luke pointed out that the email the Board received had other spreadsheets with projects. Traci Cooper explained that the spreadsheet in the email had additional information to assist in completing the financial report, but

the financial report was the only document in front of the Board. Givens suggested that going forward, the Board may want to consider an action item to accept the financial reports.

Briefing: **No Board Action Required.**

11) Project Approval Process:

Mercer presented two documents related to the project approval process. The documents were a sample form for presenting a project to the leadership team and the procedure related to federal grant approvals by the legislature. Mercer explained that there were instances in the past that the project teams negotiated a project but the business office was not fully kept in the "loop." The procedure better defines the process and will required discipline by the agency to ensure that the process is followed. Mercer stated that the leadership team would like the Board's feedback and support for the procedure.

Avy added that the underlying principle is that no part of the Agency operates in isolation and there is a collective "buy-off." Avy continued that even early in his position he has come across instances where there is an expectation by stakeholders that we quickly agree to support a project and parts of the Agency are not brought in early enough. This process will help ensure that all parts of the Agency are included.

Ashford asked about whether the legislative approvals would be timely for the competitive grant process. Mercer replied that it is a concern and the Agency may have to ask for retrospective approval on occasion. Luke suggested that the process include notification to the Board so that the Board members are not surprised if stakeholders in their communities ask about a particular grant. Mercer indicated that she would amend the procedure to include notice to the Board members.

Phipps inquired about how the funding sources are captured in the project data sheet. Mercer explained that even though there may be multiple funding partners on the project, the data sheet is trying to capture the primary funder to DOGAMI, particularly whether it is through a competitive grant which requires legislative approval. Ashford asked whether the project budgets are reviewed by someone in the agency other than the principal investigator. Mercer replied that the project budgets are reviewed by the CFO. Ashford sought additional clarification about how the principal investigators put the budget and staffing together for the proposal. Mercer clarified that it is a joint discussion with the CFO, Chief Scientist and Mercer.

Ashford also sought clarification as to what happens if the project performance period has ended and the agency continues to work on the deliverables. Mercer replied that the time expended would then be coded to general fund. Mercer further explained that if the funder is receptive to an amendment to extend the contract, either because the Agency has not expended all the funds or the deliverables are not complete, the Agency could ask for an amendment. Avy stated that this is basic project management and the Agency, over time, will improve its processes.

Briefing: **No Board Action Required.**

12) Update on SB 379 Tsunami Inundation Line:

Ali Ryan Hansen, Earth Science Information Officer, recapped the public involvement plan adopted by the Board in August, which aims to inform stakeholders and the public about the potential change and provide opportunities for feedback and discussion prior to the Board taking any rulemaking action. The plan includes convening an advisory committee to guide the public involvement process and to assist in considering feedback.

The timeline calls for the process to start in March, with the creation of the advisory group, and go throughout with spring and early summer with a recommendation for rulemaking before the board in the summer. We are on track with that timeline, Hansen said. Staff will soon begin to lay the groundwork for the process by reaching out to stakeholders and local communities to identify advisory group participants, as well as having conversations to get initial feedback that will help guide the work of the advisory committee, as well as inform development of communication tools like a website and FAQ.

Givens asked if any dates have been identified. Hansen said no, the advisory group will convene in March. Next step after that is direct outreach to stakeholders such as state agencies, coastal counties and cities, critical and essential building owners, the building industry, owners of property in the expanded area to get their feedback. Their feedback will be considered with the advisory group. Timeline for that is March and April. Public informational meetings will happen in May. Locations for those meetings have not yet been identified, Hansen said, but the conversations staff has with stakeholders will guide us in determining locations.

Ashford asked if Hansen would expect elected officials to be surprised by the potential change. Hansen said some will and some will not. We don't yet know how aware elected officials and others are, how interested they will be and what their concerns will be. More time is built into the process in the beginning to consider initial feedback, and work through those concerns and questions. Givens said when the Senate Bill was passed business and coastal communities were aware, but not all elected officials were in office when that happened. Ashford asked if new elected officials are briefed by DOGAMI. Hansen said no, which is part of why we want to be thorough with the public involvement process, because awareness of the tsunami regulatory line varies. Givens noted that the Association of Oregon Counties and the League of Oregon Cities do orientations for newly elected officials, but information about this upcoming process would not be included. Phipps said the coastal caucus will need to be involved sooner rather than later. She also noted she would be happy to help with logistics when the time comes.

13) Director's Report:

Avy reported that the staff has been very helpful in introducing him to both the strengths and weaknesses of the Agency. He indicated that of particular concern is the balance between the need for some process and procedure but without becoming overly bureaucratic. He hopes the Agency can find that balance and hold itself accountable and not lose sight of why we are doing the work. Avy specifically mentioned the landslide sustainability map and the need for further collaboration with other agencies about potential intersections with their work. Avy reiterated the need for internal collaboration prior to proceeding with projects so that the projects better align with the strategic framework. Avy indicated that he looked forward to working with the Board.

Givens noted that a staff member joined the meeting and asked her to introduce herself. Yumei Wang introduced herself and stated that she has been with the agency twenty years. Givens welcomed Wang.

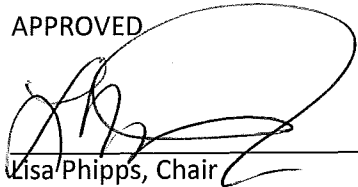
Public Comment

Luke asked if he could make a comment and Givens replied yes. Luke suggested to Avy that perhaps the Agency could consider a field trip during one of the Board meetings. Avy replied that was a great idea. He mentioned that when he visited the Albany office the staff was anxious to get him out in the field so that they can show him the type of work they do. Givens indicated that the Board may consider attending some community meetings in the coastal communities regarding Senate Bill 379. Givens also mentioned the geothermal project in Malheur County. Luke indicated that he thought the joint meeting with DLCD was very beneficial. Ashford mentioned that the Board may be interested in a field trip to the tsunami lab at Oregon State University. The Board indicated that they would consider a field trip and board meeting at a location other than Portland.

Adjourn

At the conclusion of the public comment period, Chair Givens adjourned the meeting at 11:52 a.m.

APPROVED

 4-8-16

Lisa Phipps, Chair Date