

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

Friday, March 6, 2009
Salem, Oregon

1) Call to Order:

Chair Donald Haagensen called the meeting to order at 8:30 am.

2) Introductions:

Board Chair Donald Haagensen and Board Member Larry Givens were present. Vice Chair Steve Macnab attended via teleconference.

DOGAMI Staff in attendance:

State Geologist Vicki McConnell
Assistant Director Don Lewis
Assistant Director Gary Lynch
Carol DuVernois
James Roddey

Assistant Attorney General Larry Knudsen was in attendance.

Larry Tuttle, Center for Environmental Equity, was in the audience.

1 **3) Approval of Governing Board Minutes of December 12, 2008 Meeting:**

2 (Board)

3 **Larry Givens moved to approve minutes as written. Seconded by Steve**
4 **Macnab. Motion Carried.**

5

6 **4) Board Business:** (Governing Board)

7 **a. Recruitment for open Board position: *Update Item***

8 McConnell and Haagensen have interviewed 2 candidates: Lisa Phipps
9 and Lucie LaBonte. Haagensen listed their accomplishments and activities.
10 McConnell will compose a letter of recommendation for Lisa Phipps first and
11 Lucie LaBonte second and send it to Mike Carrier. His office will pass it along to
12 the Governor's Office and the final decision will be made by them. We hope to
13 have a new Board member by next meeting, at which time we will also discuss
14 getting some nominations for the next recruitment.

15

16 **5) Agency Financial, Budget, and Legislation Report:** (Vicki McConnell,
17 State Geologist)

18 **a. 2007-2009 Ending Balance Report and GF Disappropriation:**
19 ***Update Item***

20 McConnell briefed the Board on the status of the current budget and the
21 ending balance submitted to the LFO in advance of the General Fund
22 Disappropriation. The total amount disappropriated was \$112, 623. At this point

23 we have a small cushion and are fine for this biennium, although this may
24 change when the May forecast comes out. The agency is fine for now, but as we
25 move into the 09-11 biennium, we will be expected to take a certain amount of
26 cuts. For the 07-09 biennium, all management are on a salary freeze, the
27 additional salary step has been rolled back, and there will be furlough days for
28 management. Givens commended McConnell and staff for the difficult work they
29 did on this issue.

30

31 **b. 2009-2011 GRB Status: Update Item**

32 We had our budget presentation and public hearing in front of the Ways &
33 Means Natural Resource Subcommittee, but don't know when our Work Session
34 will be scheduled. The Subcommittee asked for 5%, 10%, 15% and 20% cut
35 scenarios to our Essential Base Level budget. The Subcommittee was receptive
36 to our presentation and sympathetic toward the agency. Charles Vars, Board
37 member, and Rich Angstrom from OCAPA, both testified in support of the
38 agency, and we had numerous letters of support to include with our presentation.

39 McConnell briefly discussed the Policy Option Packages we included in
40 the Governor's Recommended Budget. She then walked the Board through the
41 various cut scenarios and fund-shift strategies to retain positions.

42 Macnab asked about Program 2's indirect costs. McConnell explained
43 that Program 2 pays indirect full costs to the fiscal office in Program 1, to cover
44 the oil & gas and the geothermal programs. Program 2 also pays Program 1 a
45 fixed fee for the aggregate program, an agreement made four biennia ago. If we
46 go to a 10% cut we may have to charge the aggregate program a full indirect
47 cost percentage.

48 Cuts that go higher than 10% will require major changes to the agency.
49 This could mean essentially moving everything except MLRR into the main
50 Portland office, including the field offices and the Nature of the Northwest, and
51 also doing major fund-shifting. We can make it through the next biennium if we
52 do all this, but will not be able to keep a viable agency. We need to focus on
53 what is required to do the work we are supposed to do for the state.

54 Macnab asked what role the Board would play in some of the decision
55 making in this process. McConnell asked the Board to help with advocacy and
56 ideas.

57 She said her one goal for 2009-2011 is to still have a geologic survey.
58 What is it, she asked, that we can continue to do that is realistic? One scenario
59 is to become a "just in time" agency, where there is only a skeleton administrative
60 group, a grant writer and a chief scientist, for example, and as issues arise, then
61 the agency would contract the work, and find experts to do the work, without
62 maintaining a professional staff. This still gives the service to the state, but there
63 would be major cuts to what we would be doing. Other scenarios are being
64 tossed around, such as eliminating fiscal offices and using DAS Client Services.
65 Agency combining is also a possibility, as is moving Programs to other agencies.

66 Givens expressed his concern that hazard mitigation may be eliminated or
67 overlooked in some of these scenarios, and that the safety of citizens could be
68 compromised.

69 McConnell will be meeting with Subcommittee Co-Chairs and the
70 Governor's Natural Resource Office to discuss these scenarios. She said that
71 she is already hearing about 30% cuts, and we will need to be very flexible.
72 Givens and Haagensen both said they were willing to make themselves available
73 for meetings to help advocate for the agency in any situation where we think it
74 could make a difference.

75 The bigger concern is that these budget problems continue to occur.
76 Twice in one decade we have had to deal with this enormous budget crunch, and
77 the crucial discussion should be about state government in general and how it
78 operates.

79
80 **c. SB 190 & SB 191 Status: Update Item**

81 Both Senate Bills were heard in the Senate Committee on Water and
82 Natural Resources on February 17th. Senator Dingfelder asked some very
83 specific questions about SB 190, the geothermal bill, regarding the fee structure
84 and what other states around us are doing, which we were happy to address.
85 Lynch said that SB 191, the Columbia County bill is in good shape. We expect to
86 have a hearing scheduled within the next couple of weeks. We have agreement
87 in the County, we had no opposition at the hearing, there is agreement among
88 industry, and with a time limit amendment, we expect it to go through. We have
89 asked staff to get the necessary forms ready.

90 The amendment addresses the time frames under which we would accept
91 limited exemptions. The problem is that the bill says we have six months to do it.
92 Knudsen said the county and the operators are concerned with a set time period
93 in which they would have to get approval of the transfers of the limited
94 exemptions from the county system into the state system. They fear that the
95 transfers would not be processed in a timely manner and someone would get left
96 out.

97 Haagensen asked about when an operator's Columbia County permit
98 transfers to the state and the existing provisions of the permit don't fit hand-in-
99 glove with our existing rules. Knudsen said the operator would be able to
100 continue with the existing permit as long as it would over-all be okay for public
101 health, welfare, and the environment. If we think there would be a real problem,
102 we wouldn't allow it. This would be semi-permanent. There is broader authority
103 to unilaterally modify a permit if new information surfaces that shows there is a
104 significant problem.

105 Haagensen expressed his concern that there may be operators that are
106 under our rules that would be doing something different. Knudsen said that there
107 is no uniformity under the MLRR program, because operators come on at
108 different times, and are "frozen in time" as the rules change. Columbia County
109 operators have been complying with the rules that were in place, and because
110 the County wants to change, the policy is that they should not be treated as new
111 operators. Lynch said that we are familiar with their permits, and he doesn't
112 foresee problems. There may be a couple of operators who are slightly out of
113 compliance with our rules, and we need to work to make that as seamless a
114 transition as possible.

115 There has been a lot of progress on SB 190, the geothermal bill, though
116 the hearing was a little acrimonious. Senator Prozanski told us we need to
117 streamline the permits involved. Lynch met with Water Resources, DEQ, and
118 Industry and believes we have come to a compromise, but the bill will have to be
119 amended. We will not remove the 250 degree temperature line of demarcation,
120 although it seems to be a moot point in Oregon, since most of the geothermal
121 sites that would be used for power generation are above 250 degrees.

122 DEQ administers the Underground Injection Control program, and needed
123 to ensure that they didn't lose any jurisdiction that they have. We wanted to be
124 sure that DOGAMI has all the authority it needs so that, to the extent possible, it
125 would be the delegating authority to the other agencies so we could have one
126 consistent permit, or have DOGAMI administer all the permits in a consistent
127 fashion should we end up doing things that way. This seems okay with DEQ, but
128 Water Resources has not yet gotten on board, although that might not be that big
129 of a deal.

130 Haagensen asked that if there were a resource that could generate
131 electricity that came in at under 250 degrees, would we have the statutory
132 authority for DOGAMI to do an MOU with Water Resources and let DOGAMI run
133 it. Knudsen said we could do an MOU of limited scope. Water Resources has
134 the final decision because it has been delegated to them by statute. We would
135 like to get to the point where the DOGAMI permit has everything it needs and
136 then the other agencies' permits can just piggyback on that. We are sort of doing
137 that with DEQ now where we administer their storm water permits. The idea
138 should be to consolidate it as much as possible. Other agencies are always
139 going to have some policy involvement, but what you don't want to have is 3
140 different looking permits with the potential for inconsistent conditions. Water
141 Resources, the agency most scolded at the hearing for not trying to find ways to
142 streamline, met with Senator Prozanski and sorted things out. McConnell said
143 we are getting considerable push-back from Water Resources and we must
144 accommodate them as best we can to keep things moving forward.

145

146 **d. Other legislation of interest: *Information Item***

147 McConnell reviewed the latest legislative tracking sheet. March 2nd was
148 the cut-off date for legislators to submit bills, but there is still a big backlog.

149 Lynch discussed SB 599, which is related to surface mining. He said that
150 in SB 149 (2007), we ended up with language that would have required us to
151 issue ODOT a permit when they were working within their own right-of-way
152 moving material. SB 599 has language to correct that issue. The concern with
153 the bill is the very broad relating clause. As long as everybody plays fair, there
154 shouldn't be any problems, but we should keep an eye on that.

155 HB 2098 which would appropriate funds to DOGAMI to administer a
156 territorial sea mapping project at OSU has been heard and will be in Work
157 Session on March 10th. The bill will be amended from General Fund, we will be
158 taken out and Department of State Lands will be put in as the administrative
159 agency, and the funds will be named the New Carissa Funds. The dismantling of
160 the New Carissa came in under budget and some of the leftover funds will go to

161 DSL for the mapping project. We will simply be giving information and
162 advocating for the project.

163 SB 274 relates to administrative law judges and would essentially make
164 the judge's order final on behalf of the agency. Now, if we use an administrative
165 law judge for a hearing, they make a recommendation to the Board or
166 Commission for final resolution. This bill would take final authority away from the
167 Board. Knudsen said that some proposal like this has been introduced during
168 every session for at least the last ten years.

169

170 **6) Break**

171

172 **10) Additional Public Comment:** (Taken out of the order from the agenda)

173 Mr. Larry Tuttle, Director of the Center for Environmental Equity
174 addressed the Board. His organization focuses on mining and cleaning up
175 abandoned or inactive mines or pressing responsible parties to do that.

176 Mr. Tuttle presented his idea of a "bad-actor" provision that grew out of the
177 Formosa Mine issue. In other words, operators like those of the Formosa Mine
178 can be shown to not be in compliance with state law, have their permits revoked,
179 and cost the state a lot of money, but there is nothing in our rules that will allow
180 you to disqualify that operator from future permits. Mr. Tuttle recently discovered
181 that the holding company for Formosa Exploration Incorporated is also receiving
182 a \$20M tax credit for building a biofuel plant in Lakeview. He believes there are
183 some disconnects that need to be addressed.

184 Mr. Tuttle is not intending to make anything very public for a while, but he
185 wanted our agency to be aware that in the future he will be talking about this
186 publicly and would be using the Formosa Mine as an example.

187 Knudsen said there was a statutory change that allows DOGAMI to refuse
188 to issue a permit to an operator that has been in violation. It is not nearly as
189 broad to include a parent corporation, like in Tuttle's example. Haagensen said
190 the dilemma would be where you had two separate corporations. Knudsen said
191 a pure subsidiary-parent relationship, our rules might apply, but we've not yet
192 come across that.

193 McConnell said that Mr. Tuttle seems to be talking about a statewide bad-
194 actor list to enable state agencies to identify problem companies. Tuttle agreed
195 and said the most efficient means would be a database accessible to all
196 agencies to see if there is anything they need to be aware of with any applicant.
197 As it is now, he said, you can get a tax credit from the state Department of
198 Energy while you still owe the state taxes.

199 Haagensen noted that the legislation Knudsen referred to is SB 149
200 (2007). The rule writing is still in progress, and we will add Mr. Tuttle to the
201 mailing list to give him an opportunity to comment on them. This would give the
202 agency the ability to revoke or terminate an operating permit for things that the
203 operator has done and for environmental conditions.

204

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

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

207 Projects and Programs are going well. The agency has been releasing a
208 variety of publications. McConnell told the Board that the 6-year digital geologic
209 database compilation project is now complete. Kudos to all the staff for all the
210 hard work they did on the project. We are now starting to get grants and projects
211 that will use derivative information. The first project is a grant we just received
212 from ODOT to develop a digital layer that will identify areas where there are
213 naturally occurring hazardous minerals and materials.

214 Haagensen said we should make sure there is media coverage when the
215 compilation is rolled out. James Roddey said that there was interest in the past
216 when earlier versions were released, and he imagines it won't be difficult to
217 generate interest.

218 McConnell noted that the lidar program is going well. We filled the limited
219 duration fiscal analyst position. Seay Johnson is now helping the fiscal office
220 track the many projects and partners in that program.

221 Lewis listed some new projects with Washington County, the City of
222 Astoria, and the City of Silverton, using lidar to make landslide susceptibility
223 maps. Roddey said that there was media interest and interest from other
224 communities that would like to get this kind of information.

225 The FEMA flood map re-delineation project in Coos County is underway.
226 FEMA is very excited about the results so far and will be using us as the poster
227 child for other projects around the country.

228 We have finished the seismic rehabilitation project with the Oregon
229 University System. We do not anticipate bringing more of that type of project on,
230 but we did recently write a proposal for the Community College of Astoria, which
231 has a major rehab project underway. We are making good progress with our
232 current projects and generating interest in future projects.

233 McConnell discussed the economic stimulus package. We are seeing a
234 couple of opportunities, one being lidar. There may be some opportunities for
235 restoration work through some of the funds that trickle down through other
236 agencies. We are keeping our eyes and ears open for funding opportunities.

237 The first lidar publications are in process, and will have the data by the
238 quadrangle available on DVD. We are still discussing what to charge for these
239 DVDs. We asked for some general guidance from the Board on what to charge
240 for the publication. We are in the process of collecting about 200 quadrangles of
241 data. Each quadrangle is essentially \$27,500 worth of data, which is just the
242 acquisition price for the data. We are discussing a \$200 price tag, which is about
243 .1% of the cost, but we are not sure what to charge. The partners will not pay for
244 the data. The federal partners will be giving the data away for free, but only over
245 the internet. They are looking to us to distribute it on DVD. Cities and counties
246 can sell the data on DVD if they'd like, but our price will certainly be lower.

247 Lewis gave an example of one of the challenges we face. Our smallest
248 partners contributed roughly \$1000 for a couple of square miles of data
249 acquisition. Anyone else at some point will be able to purchase 50 square miles
250 of data for \$200, where we asked them to pay us \$1000 for 2 square miles. So
251 we need to make them some maps and do some analysis for them that will
252 ensure they are getting their money's worth.

253 Knudsen said that ordinarily when agencies get data, it is public data
254 available at the cost to provide it to whoever wants it, under the public records
255 laws. DOGAMI has some special provisions dating back to their role as map
256 makers. Haagensen quoted the statute that said we can charge a reasonable
257 charge to cover cost. Lewis said we could look at the total investment in
258 hardware and software to hold, host and distribute the data, and then add an
259 example of the labor to produce it.

260 McConnell said that right now we are a public entity and everything we
261 develop is supposed to be publicly accessible. A different model for doing this is
262 one that the British Geologic Survey has adopted. They are completely
263 commercial and license all their data. Haagensen noted that as a public agency,
264 the information must be available to the public, but the agency has the ability to
265 charge what it cost to develop and produce the data on the DVD, and not just a
266 nominal fee. Lewis noted that we want to find that perfect price to discourage the
267 general public from buying the DVD, because unless you have specialty software
268 to handle the data, you will not be able to use the DVD. McConnell said that at
269 some point we will have developed a web site that the public could access and
270 understand.

271

272 **b. Environmental Justice Report submitted to Legislature:**
273 *Information Item*

274 McConnell briefly outlined the report.

275

276 **c. 2009-2015 FINAL Agency Strategic Plan: Action Item**

277 McConnell asked the Board to approve the final Agency Strategic Plan.
278 She extended her kudos to the entire work group that worked on the plan.
279 Haagensen requested some spelling and grammatical changes to make the Plan
280 more consistent and concise.

281

282 **Motion: Givens moved to approve the 2009-2015 Agency**
283 **Strategic Plan with the revisions discussed. Macnab seconded. Motion**
284 **carried.**

284

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

287

288 **a. Status of rulemaking for surface mining and oil and gas statutes:**

289

290 *Update Item*
291 Lynch handed out a schedule of the SB 149 rule writing final phase and
292 briefed the Board on upcoming actions, including the public hearing date of April
293 23rd. We will close comments April 26. The Board set a tentative date for a
294 teleconference to adopt the rules for Monday, May 4, 2009. We will send the
295 Board copies of the draft rules prior the rules. Knudsen noted that we cannot
296 take public comment on the rules at the meeting, because the comment period at
297 that time will be closed.

296

297 The oil & gas rules (HB 3188) have just been started, but we expect to
298 have a draft by April 30th, and Lynch believes the rule writing will be much
quicker, since it is far less complex than the SB 149 rules have been. We will

299 report back to the Board on this at the June meeting. Haagensen said it would
300 be nice to have the oil & gas rules done by the end of the legislative session so
301 they are out of the way.

302 Knudsen said that we should get some temporary rules ready for
303 Columbia County and should get authorization from the Board to adopt them.

304 **b. Summary of operational and enforcement activities for surface**
305 **mining, oil and gas and geothermal regulatory programs:** Update
306 Item

307 There seem to be more new permits than normal. There have been good
308 inspections and minimum enforcement actions. There were a couple of landslide
309 issues this past year, but are being resolved.

310 Larry Givens said that as Umatilla County Commissioner he received
311 some calls about one of the mine pits in his county regarding material within 100
312 feet of a creek. Lynch said he would look into it and get back to him.

313 Haagensen asked Lynch about a list of consultants. McConnell said we
314 had a complaint that some staff were giving advice regarding what consulting
315 agency to use. We had a list, but it can be considered giving unfair advantage,
316 so we have done away with the list.

317 Lynch handed out a flow chart of where we are and what we need to do
318 for unitization. US Geothermal made a request from the BLM for unitization, but
319 not to us yet. They made a verbal request, but have not received a written
320 request. We have contacted Eric Hoffman at BLM but have not yet heard back
321 from him. Not all of the activity is proposed for federal land. Knudsen said that
322 BLM has regulations which establish a comprehensive process for establishing
323 boundaries, an operator, and rules, as does DOGAMI. US Geothermal's project
324 has a substantial percentage in private land and a substantial percentage in
325 federal land, so it makes no sense and would not operate if those two plans,
326 operator, and rules are not in sync. So someone must go first, and someone
327 must cooperate. Given the federal process, it might make sense for the feds to
328 take the lead, working with us to make sure there isn't anything that will be
329 unacceptable to DOGAMI. The Board will have to either adopt a rule or use a
330 rule-like process, so we want to make sure that the rule we go after will be
331 consistent with what BLM is using. The rule will cover the boundary, the rules for
332 operating, and who the operator is, specific to that location and operator.

333 McConnell said that based on what US Geothermal sent to the BLM, they
334 are asking for voluntary unitization, so we are hoping we will see a letter to us
335 asking the same thing. Knudsen said we aren't trying to be overly technical, but
336 we do need that request in order to proceed. Lynch said we should have it this
337 week. McConnell said that if we don't get it, we may need to Board initiate the
338 process to protect the resource. We just want to make sure this gets done
339 carefully, deliberately and correctly. The process will be work intensive and
340 confusing because of the bill. Knudsen said there is not a lot of clarity between
341 the up-front fees and the permanent fees. McConnell said we should first sit
342 down with BLM, then with US Geothermal and explaining what the process will
343 be and what the costs will be. We do not have the resources to do this without
344 help, and it will take time to make sure it's done right.

345 Haagensen said that brings up the receipts authority issue, because if we
346 need to get this done in six months and we don't have the staff to do it, we
347 should have the receipts authority to go out and hire someone, oversee them and
348 meet the schedule. Lynch said that receipts authority will be a difficult issue this
349 time. McConnell said with all the other amendments already in the bill, it could
350 be a deal killer if we add receipts authority. Lynch said we clearly have some
351 kind of fee authority to charge for the work to be done, but we don't have any
352 models to ascertain whether that will go or not. Knudsen said that receipts
353 authority provision should go in ORS 516.

354 **9) Setting of time and place of next Board meeting: (Board)**

355 The next meeting will be a possible teleconference to adopt SB 149 rules
356 on Monday, May 4, 2009 at 11:00am. The next full Board meeting will be Friday,
357 June 19, 2009 in Portland.

358

359 **11) Adjourn**

360 Meeting was adjourned at 12:00 pm.

361

362 **Action List: (in no order of priority)**

1. McConnell will send a recommendation letter to Mike Carrier's office recommending Lisa Phipps as the Board's first choice for membership and Lucie LaBonte as second choice. Complete
2. Larry Tuttle will be added to the mailing list for the SB 149 rule writing. Complete
3. Begin Temporary Rule Writing for Columbia County (SB 191).
4. Investigate the operation in Umatilla County and follow up with Larry Givens.

APPROVED:

Don Haagensen, Chair

Steve Macnab, Vice Chair

Larry Givens

Charles Vars