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.

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

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

4) **Board Business:** (Governing Board)
   a. **Recruitment for open Board position: Update Item**
      McConnell and Haagensen have interviewed 2 candidates: Lisa Phipps and Lucie LaBonte. Haagensen listed their accomplishments and activities. McConnell will compose a letter of recommendation for Lisa Phipps first and Lucie LaBonte second and send it to Mike Carrier. His office will pass it along to the Governor’s Office and the final decision will be made by them. We hope to have a new Board member by next meeting, at which time we will also discuss getting some nominations for the next recruitment.

5) **Agency Financial, Budget, and Legislation Report:** (Vicki McConnell, State Geologist)
   a. **2007-2009 Ending Balance Report and GF Disappropriation:**
      McConnell briefed the Board on the status of the current budget and the ending balance submitted to the LFO in advance of the General Fund Disappropriation. The total amount disappropriated was $112,623. At this point
we have a small cushion and are fine for this biennium, although this may change when the May forecast comes out. The agency is fine for now, but as we move into the 09-11 biennium, we will be expected to take a certain amount of cuts. For the 07-09 biennium, all management are on a salary freeze, the additional salary step has been rolled back, and there will be furlough days for management. Givens commended McConnell and staff for the difficult work they did on this issue.

b. 2009-2011 GRB Status: Update Item

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

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

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

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

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

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

Givens expressed his concern that hazard mitigation may be eliminated or overlooked in some of these scenarios, and that the safety of citizens could be compromised.
McConnell will be meeting with Subcommittee Co-Chairs and the Governor’s Natural Resource Office to discuss these scenarios. She said that she is already hearing about 30% cuts, and we will need to be very flexible. Givens and Haagensen both said they were willing to make themselves available for meetings to help advocate for the agency in any situation where we think it could make a difference.

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

c. SB 190 & SB 191 Status: Update Item

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

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

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

Haagensen expressed his concern that there may be operators that are under our rules that would be doing something different. Knudsen said that there is no uniformity under the MLRR program, because operators come on at different times, and are “frozen in time” as the rules change. Columbia County operators have been complying with the rules that were in place, and because the County wants to change, the policy is that they should not be treated as new operators. Lynch said that we are familiar with their permits, and he doesn’t foresee problems. There may be a couple of operators who are slightly out of compliance with our rules, and we need to work to make that as seamless a transition as possible.
There has been a lot of progress on SB 190, the geothermal bill, though the hearing was a little acrimonious. Senator Prozanski told us we need to streamline the permits involved. Lynch met with Water Resources, DEQ, and Industry and believes we have come to a compromise, but the bill will have to be amended. We will not remove the 250 degree temperature line of demarcation, although it seems to be a moot point in Oregon, since most of the geothermal sites that would be used for power generation are above 250 degrees.

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

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

d. Other legislation of interest: Information Item

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

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

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

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

6) Break

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lewis gave an example of one of the challenges we face. Our smallest partners contributed roughly $1000 for a couple of square miles of data acquisition. Anyone else at some point will be able to purchase 50 square miles of data for $200, where we asked them to pay us $1000 for 2 square miles. So we need to make them some maps and do some analysis for them that will ensure they are getting their money’s worth.
Knudsen said that ordinarily when agencies get data, it is public data available at the cost to provide it to whoever wants it, under the public records laws. DOGAMI has some special provisions dating back to their role as map makers. Haagensen quoted the statute that said we can charge a reasonable charge to cover cost. Lewis said we could look at the total investment in hardware and software to hold, host and distribute the data, and then add an example of the labor to produce it.

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

b. Environmental Justice Report submitted to Legislature: 
   Information Item
   McConnell briefly outlined the report.

c. 2009-2015 FINAL Agency Strategic Plan: Action Item
   McConnell asked the Board to approve the final Agency Strategic Plan. She extended her kudos to the entire work group that worked on the plan. Haagensen requested some spelling and grammatical changes to make the Plan more consistent and concise.
   Motion: Givens moved to approve the 2009-2015 Agency Strategic Plan with the revisions discussed. Macnab seconded. Motion carried.

8) Regulatory Issues: (Gary Lynch, Mineral Lands Regulation and Reclamation Program)
   a. Status of rulemaking for surface mining and oil and gas statutes:
      Update Item
      Lynch handed out a schedule of the SB 149 rule writing final phase and briefed the Board on upcoming actions, including the public hearing date of April 23rd. We will close comments April 26. The Board set a tentative date for a teleconference to adopt the rules for Monday, May 4, 2009. We will send the Board copies of the draft rules prior the rules. Knudsen noted that we cannot take public comment on the rules at the meeting, because the comment period at that time will be closed.
      The oil & gas rules (HB 3188) have just been started, but we expect to 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
report back to the Board on this at the June meeting. Haagensen said it would be nice to have the oil & gas rules done by the end of the legislative session so they are out of the way.

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

b. Summary of operational and enforcement activities for surface mining, oil and gas and geothermal regulatory programs: Update

Item

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

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

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

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

McConnell said that based on what US Geothermal sent to the BLM, they are asking for voluntary unitization, so we are hoping we will see a letter to us asking the same thing. Knudsen said we aren’t trying to be overly technical, but we do need that request in order to proceed. Lynch said we should have it this week. McConnell said that if we don’t get it, we may need to Board initiate the process to protect the resource. We just want to make sure this gets done carefully, deliberately and correctly. The process will be work intensive and confusing because of the bill. Knudsen said there is not a lot of clarity between the up-front fees and the permanent fees. McConnell said we should first sit down with BLM, then with US Geothermal and explaining what the process will be and what the costs will be. We do not have the resources to do this without help, and it will take time to make sure it’s done right.
Haagensen said that brings up the receipts authority issue, because if we need to get this done in six months and we don’t have the staff to do it, we should have the receipts authority to go out and hire someone, oversee them and meet the schedule. Lynch said that receipts authority will be a difficult issue this time. McConnell said with all the other amendments already in the bill, it could be a deal killer if we add receipts authority. Lynch said we clearly have some kind of fee authority to charge for the work to be done, but we don’t have any models to ascertain whether that will go or not. Knudsen said that receipts authority provision should go in ORS 516.

9) **Setting of time and place of next Board meeting:** (Board)
The next meeting will be a possible teleconference to adopt SB 149 rules on Monday, May 4, 2009 at 11:00am. The next full Board meeting will be Friday, June 19, 2009 in Portland.

11) **Adjourn**
Meeting was adjourned at 12:00 pm.

**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