1) **Call to Order:** (Laura Maffei, Board Chair)
Chair Laura Maffei called the meeting to order at 8:35 a.m.

2) **Introductions:** (Laura Maffei, Board Chair and staff)
Chair Laura Maffei, and Board Members Diane Teeman and Linda Kozlowski were in attendance in person and Vice-Chair Katie Jeremiah and Scott Ashford (via phone).

Department of Geology and Mineral Industries (DOGAMI) staff in attendance:
Brad Avy, Director/State Geologist
Lori Calarruda, Recording Secretary/Executive Assistant
Dania Ballard, Chief Financial Officer (CFO)
Bob Houston, Interim Legislative Coordinator
Sarah Lewis, MLRR Program Manager
Cari Buchner, Mining Compliance Specialist
Connor Anderson, Chief Information Officer (CIO)
Steve Dahlberg, Fiscal Analyst

Others in attendance:
Diane Lloyd, Department of Justice (DOJ)
Courtney Graham, SEIU 503
Renee Klein, DAS Office of the Chief Financial Officer (via phone)
Amira Streeter, Natural Resources Policy Advisor (via phone)

3) **Review Minutes of December 9, 2019 and January 10, 2020:**
Chair Maffei asked if there were any changes to the minutes as presented.

Ashford asked for page 8 line 315 to be corrected to, “Ashford said the Agency should not be in a position...”.

Board Action: **Teeman moved to approve the minutes of December 9, 2019 as corrected.**
**Kozlowski seconded. Motion carried.**

Board Action: **Teeman moved to approve the minutes of January 10, 2020 as submitted.** **Kozlowski seconded. Motion carried.**

4) **Rule Writing:**
Bob Houston, Rules Coordinator, discussed five separate rule writing requests, four active and one new:

1) Request approval of proposed Service Fees rule language for adoption
2) Update on Permit Boundary Survey Maps rulemaking
3) Update of HB 2202: High Value Soils rulemaking
4) Request approval of proposed Alternative Dispute Resolution Model rule language for adoption by reference
5) Request approval to initiate formal rulemaking to address the Oregon Sage Grouse Action Plan (Executive Order No. 15-18)

**Request 1 – Request Approval of Proposed Service Fees Rule Language for Adoption**

**Background:** The Oregon Department of Administrative Services has updated the Statewide Policy on Public Records Request Fees and Charges (107-001-030). At the July 9, 2019 Governing Board meeting, the Board authorized the Department to initiate rulemaking to amend OAR 632-001-0010 to comply with the statewide policy on Public Records Request Fees and Charges. The proposed draft amendments to OAR 632-001-0010 were approved at the September 9, 2019 Governing Board meeting.

**Staff Recommendation:** Authorize DOGAMI staff to proceed with the proposed language and submit final permanent rule language OAR 632-001-0010 to Archives Division, Secretary of State.

Bob Houston, Interim Legislative Coordinator, stated The Oregon Department of Administrative Services has updated the Statewide Policy on Public Records Request Fees and Charges (107-001-030). The updated policy has progressed through the rulemaking procedures and now needs to have the final draft language approved by the Board to submit to the Secretary of State’s Office and Legislative Counsel’s Office for final adoption. The effective date, pending Board approval, could be as early as March 11, 2020.

Chair Maffei asked to clarify if this request is to line up DOGAMI’s fees for Public Records with what DAS requires. Houston confirmed, stating it went through the public hearing process with no comments received.

**Board Action:** Kozlowski moved to authorize DOGAMI staff to proceed with the proposed language and submit final permanent rule language OAR 632-001-0010 to Archives Division, Secretary of State. Teeman seconded. Motion carried.

**Request 2 – Update on Permit Boundary Survey Maps Rulemaking**

**Background:** The Board authorized the Department to initiate rulemaking on OAR 632-030 at the September 9, 2019 Governing Board meeting to amend rule language relating to the submittal requirements of a permit boundary survey map.
Houston stated this request is on hold pending drafting of the language and working through other rulemaking efforts ahead of it.

Proposed Board Action: No Board Action Required.

Request 3 – Update of HB 2202 – High Value Soils Rulemaking

Background: The legislature passed HB 2202 (2013 Regular Session) involving aggregate mining on high value farmland in the Willamette Valley (ORS 517.825). The legislative intent was to make sure operators mined deep enough to remove all the aggregate and thereby limit impacts on high value soils. On September 9, 2019, the Board authorized the Department to initiate rulemaking on OAR 632-030 to implement provisions specified in HB 2202.

Houston said the Rules Advisory Committee (RAC) is currently being put together, which is comprised of a group representing the impacted community. The Department sent out invitations to participate on the RAC and it has four of the five needed. Once the group is complete/confirmed, meeting(s) will be scheduled; they will start working on the draft language and develop the Fiscal Impact Statement.

Kozlowski asked who makes up the RAC. Houston said they identified the impacted stakeholders as being: Oregon Concrete & Aggregate Producers Association (OCAPA), the Farm Bureau, Oregon Department of Agriculture (ODA), Department of Land Conservation and Development (DLCD), and Oregon Independent Aggregate Association (OIAA), who represent the smaller miners. This is a similar group that started in 2013-2014, when at the time the rules making on this ceased due to DOGAMI management transition at the MLRR office.

Maffei asked how long the RAC will meet and when the Board will start seeing anticipated rule language. Houston explained the RAC provides direction to the Department, and it will progress through the process until it reaches a consensus on the draft language. He is anticipating 4-6 months or longer to complete with two or three meetings to work through the language. Chair Maffei asked if it would be at least two board meetings before the Board would see this rulemaking request again. Houston confirmed.

Proposed Board Action: No Board Action Required.

Request 4 – Request approval of proposed Dispute Resolution model rule language for adoption by reference

Background: Under certain conditions the Department may modify an operating permit or reclamation plan without the consent of the operator (ORS 517.831). The Department must provide the operator with an opportunity for alternative dispute resolution in the manner provided in ORS 183.502. Currently, OAR 632-001 does not provide an alternative means of dispute resolution.

At the December 9, 2019 Board meeting, the Board authorized the Department to initiate formal rulemaking on OAR 632-001 to provide an alternative dispute resolution procedure.

Houston said the Agency is requesting approval of the proposed Dispute Resolution Model Rule language for adoption by reference. The Attorney General (AG) provides this language as a Model
Rule. Rulemaking for a Model Rule follows an abbreviated process. The Attorney General’s Collaborative Dispute Resolution Model Rule language is provided below for Board approval. The rule’s proposed effective date occurs after the rule is filed with the Secretary of State Archives Division.

Chair Maffei asked if it had gone out for comment. Houston explained that as part of the abbreviated process, it does not need to go through this step because it is a Model Rule that has already gone through the process and been approved for the AG.

Collaborative Dispute Resolution Model Rule language for review:
632-001-000X (Collaborative Dispute Resolution Model Rules)
The Attorney General’s Collaborative Dispute Resolution Model Rules, OAR 137, division 5, as in effect on December 9, 2019, are adopted and incorporated into this division.

Board Action: Teeman moved to authorize DOGAMI staff to proceed with the proposed language and adopt the Collaborative Dispute Resolution Model Rule language by reference. Kozlowski seconded. Motion carried.

Request 5 – Request approval to initiate formal rulemaking to address the Oregon Sage-Grouse Action Plan (Executive Order No. 15-18)

Background: Executive Order No. 15-18 related to the Oregon Sage-Grouse Action Plan was signed on September 16, 2015 (attached). The Order requires all state agencies that carry out permitting actions within sage-grouse habitat (including DOGAMI) to ensure that their permitting and/or regulatory programs are consistent with Oregon Land Conservation and Development Commission (LCDC) and Oregon Department of Fish and Wildlife (ODFW) rules as well as the Oregon Sage-Grouse Action Plan by July 1, 2016.

MLRR has not permitted any mine sites within sage-grouse habitat since July 1, 2016; however, DOGAMI has permitted four Exploration Permits in sage-grouse habitat in coordination with ODFW and we have one oil and gas permit application and two exploration applications for sites that may be in sage-grouse habitat.

To comply with the Executive Order, the Agency needs to initiate a comprehensive rule review and rule writing through the formal rulemaking process.

Houston stated the proposed action is to authorize the Department to initiate formal rulemaking on OAR 632 to implement the Executive Order No. 15-18.

Ashford asked for background on the timeline. Lewis, MLRR Program Manager, explained when she started at DOGAMI she went through the rule writing efforts, focusing on ones identified in the files, and this was not in there; it only came to her attention in the fall and she put it on the list to get done. She stated MLRR has not actually permitted any sites in sage-grouse habitat for operating permits since 2016. For the Exploration Permits they have worked closely with the Department of Fish and Wildlife (ODF&W) to make sure their concerns were met. Lewis said Division 37, the
chemical process mine, is covered by ODF&W under their own rules and is not part of this effort; the Agency will be looking at Division 37 rules to make sure they are in compliance with the Executive Order.

Lewis stated she has seen in the files that in past practice, it has been helpful to take some time to see how things play out before initiating rulemaking. The Department also went through a lot of changes during the time following the Executive Order. It did not rise to the top of the priority list, but this winter, ODF&W contacted DOGAMI to start the process.

Chair Maffei asked what the rulemaking effort looks like for Lewis and her staff going through all the rules to ensure they are consistent with what is in the Executive Order. Houston explained they will need to develop draft language, form a RAC, collect comments, and follow the similar processes for rule writing. Maffei reiterated it sounds like a lot of work based on the shortfall of funds for the MLRR program and asked how it would be addressed. Avy said ODF&W has offered to help with this endeavor and hoped DOGAMI would have it completed by the end of the year. Avy said he explained to ODF&W this required Board approval in March to proceed with rulemaking.

Kozlowski asked if there are any permits coming up that are implicated by this. Lewis answered none that she is aware of for Operating Permits, but there are one Oil and Gas Permit and two Exploration Applications for sites that may be in sage-grouse habit, but that is not known for certain. The staff currently works closely with ODF&W to ensure their concerns are addressed, so they are following the spirit of the Executive Order even if the rules are not in place yet.

Chair Maffei asked how this would be staffed without the fee bill. Lewis said it can be done with current staff and with it taking priority over other duties. The permit boundary survey map has been bumped for staff to focus on more of the legislatively required rulemaking and there is capacity to address these. She stated Vaughn Balzer, Flood Plain Mining Reclamationist, will be working as lead on both this rule and HB 2202 due to his application workload getting under control. The hope is there will not be layoffs. Maffei asked how that will impact the inspections. Avy said there will be an impact and it is based on triaging highest priority issues. He said the inspections will be lower priority and the Agency will not meet the KPM, but those inspections that are conducted are more targeted and fruitful; it is not just about total numbers.

Chair Maffei asked if it was a fair assessment to say that if the Board approves this rulemaking, it is also making a policy decision about what the priorities are for MLRR and they are saying that going forward with this rulemaking is more important than inspections. Avy said he agreed with her statement, but believes it is balanced by the multi-agency impact of the sage-grouse policy and Executive Order, and the interest in moving that forward. He thinks the Governor’s Office will be very supportive of the Board making this policy call in terms of priority. Maffei asked if the Agency is already implementing the Executive Order in spirit by consulting with ODF&W, why is there a priority for DOGAMI to change the rules now. Avy said the Agency is the last one to complete this and ODF&W wants to avoid the potential possibility of litigation that this rulemaking would avoid.

Ashford asked if the same staff doing the rulemaking is the same staff that do the inspections. Lewis said there is a small overlap but not necessarily the same staff; it is still staff time that is not core mission.

Chair Maffei said she would rather avoid litigation over implementation of the Executive Order.
Kozlowski stated the comments Chair Maffei made are the exact kind of comments the Board needs to think about as the Agency moves forward and thinks ultimately they need to support this for reasons outside of the Agency. But stressed, cautioned, and emphasized the Board needs to look at that carefully as we move forward.

Teeman said DOGAMI needs to move forward with the rulemaking, but in the Executive Order it does say under the second part (Directed and Ordered), “All state agencies shall carry out the actions described in the Oregon Sage-Grouse Action Plan to the full extent of their authorities and funding.” This appears to be an unfunded mandate and would not want it to jeopardize the inspections that are occurring.

Chair Maffei wanted to reflect the level of reluctance of the Board because it is very concerned about taking resources away from MLRR.

Board Action: Kozlowski moved to authorize DOGAMI staff to initiate formal rulemaking on OAR 632 to implement Executive Order No. 15-18 regarding the Oregon Sage-Grouse Action Plan. Teeman seconded. Motion carried.

5) Legislative Update:

Bob Houston, Interim Legislative Coordinator, provided a Legislative update for DOGAMI.

Houston stated the 2020 Short Session adjourned last Thursday. Both the DOGAMI budget and MLRR fee bill went as far as they could in the Legislature but did not receive a floor vote prior to the walkout. There is a potential Special Session that may be scheduled in mid-April. The other option is an anticipated May Emergency Board that could pass the DOGAMI budget, but would not be able to address the MLRR fee bill. The fee bill could be addressed in the upcoming 2021 Session. If the fee bill does not get passed, MLRR would have a shortfall, which could possibly be addressed by being given a one-time General Fund infusion to supplement the program until it made it to session to avoid layoffs and program disruption.

Kozlowski asked if the Agency is optimistic that the budget will be passed. Houston answered yes. Avy stated everything starts from scratch if it goes to another session and the fee bill would roll up into one bill instead of having the existing amendment. Houston said the Agency did meet with the representative of the aggregate industry, who supports the fee bill after they reached an agreement and consensus of the proposed fee increase. He confirmed it will be backed going into the session. This speaks highly of the aggregate industries’ continued support of the MLRR program.

Houston explained that late in the Subcommittee of the Ways and Means hearing, the mining industry tried to add several amendments to repeal the Exclusion Certificates (EC) provisions or set a lower threshold of when the EC is needed. The Agency did not have time to review the information or engage stakeholders since it was dropped one hour before the hearing. The amendment to modify the EC language was not successful and we are anticipating that it will likely come up again in the 2021 session. Maffei asked if the Agency anticipates this being added into a Special Session and if DOGAMI will be prepared to discuss it. Houston said yes, he does anticipate it and the Agency would be prepared to talk to it since DOGAMI was advocating for a similar concept in a prior session.
Ashford asked about the status of a House Bill related to the tsunami line and DOGAMI giving approval for certain structures in the tsunami zone. Houston answered it was HB 4119, which died on the floor. It was brought forth by Representative Gomberg, and was intended to direct the Building Codes division to adopt the ASCE 7-16 building codes and tsunami design zone line. It also called DOGAMI out to continue its consulting role with respect to providing information on the impact of the tsunami on a site being proposed prior to the developer submitting their plans to Building Codes. Houston stated there is a clear distinction between Building Codes and DOGAMI. Building Codes would have all land use decisions and DOGAMI would be in a consulting role with the developer to provide information on what the modeled tsunami inundation impact would be at a particular location.

Kozlowski asked why it did not go forward. Houston explained it reached a similar point as the fee bill. It made it to the floor but did not have enough quorum votes to progress. He said some concerns were raised by community members (push back) advocating for a land use model of avoidance instead of an engineering approach. It will more than likely be brought back. Houston clarified that DOGAMI’s role is based on its mission and providing science backed information. Kozlowski asked if the land avoidance issue goes back to the old 379 Line and what the driving force is. Houston said as he understood the comments voiced during the hearing, there was a reference to implementing land use decisions that would say no building could occur in the zone as an alternative solution being advocated.

Ashford asked if there was any conflict with ASCE 7 and the proposed legislation in DOGAMI’s line. Houston said some members of ASCE felt that DOGAMI should not be in the consultation role and the bill should not reference specifically the ASCE 7-16 language, but reference it generally so the legislation would not need to be updated each time it was changed by ASCE. DOGAMI staff provided alternative language to Representative Gomberg and his staff. This could come back to the 2021 Session for clarification on language.

Chair Maffei asked why they had a concern with DOGAMI being in a consultation role. Houston said it was based on DOGAMI providing earth science information, but not consultation on buildings, building location, or design due to HB 3309 that removed DOGAMI’s role. Maffei said it appears this is not entirely in conflict with DOGAMI’s view about consulting on these matters. Houston confirmed and said the Agency submitted language to address the issue.

Avy said if there is a Special Session, it may be limited to only bills that focus on urgent matters and not necessarily policy bills that can wait.

Briefing: No Board Action Required.

6) Financial Report:

Dania Ballard, Chief Financial Officer, presented the DOGAMI Fiscal Year (FY) and Biennium 2019 End and FY20 Budget Status Report as of December 31, 2019.

Ballard walked the Board through the memo in the Board Packet regarding Biennium and Fiscal Year 2019, which ended June 30, 2019. Due to the Agency’s financial issues last year, it was a slow close that ended December 31, 2019. DOGAMI ended with a General Fund balance of $4588, coming from a total of $5.4 million. Ballard said on behalf of DAS and the work they have been doing the last 6
months, it was incredible they made it that close. The ending balances for Other Funds ending was $302,000 and Federal Funds was negative (-) $18,313. The negative amount is attributed to the fact that DOGAMI is an agency that must do the work first, then bill for it later, but invoicing was not done so it will be collected this next biennium.

Ballard stated the ending balance for MLRR was $198,751. The Strong Motion Instrument Fund ending balance was $276,926 and the Reclamation Guarantee Fund ending balance was $613,637.

Chair Maffei asked about the security release and what it means. Ballard explained it has to do with a bond or deposit by an entity who is getting a permit that goes on record. The money goes into a bank account, and when all items are addressed, the bond or security is then released. Ballard asked Lewis to provide more details. Lewis explained that as security for the Operating Permits, the Agency requires a deposit to cover the cost of reclamation if the operator walked away at any moment. MLRR accepts several types of securities, including bonds held by a bank, or cash up to $50,000 per site for smaller sites. This fund represents that cash, which is kept separate from the operating funds, and is held while the Operating Permit is active. Lewis added if someone goes to close a site or if MLRR reevaluates the size of the operation and the security is changed, there may be a need to release the funds in order for them to either submit a different type of bond, or once the site is completely reclaimed and closed, the cash is given back. Maffei asked if the four that were released had to do with sites being closed. Lewis said she was not sure but could provide the information if needed. Maffei replied it was not necessary, she was just curious if sites were closing up.

Ashford asked when the budgets are rolled up to the Legislature, if the securities are separate or rolled up into the funds to make it appear the program is in better shape than it is. Ballard answered they are separate, but the Strong Motion Instrument Fund rolls up into the GS&S totals.

Ballard stated Fiscal Year 2020 numbers are through the month of December and General Fund is currently showing a negative (-) $3,227,978 million due to the Agency tracking to a 1-year budget and does not have the second-year funding. While expenditures are planned out, the revenue has not been dropped in to offset them. Other Funds have an ending balance of $110,962 and Federal Funds are a negative (-) $11,978, because there is a lag of invoicing and revenue collection.

Ballard said MLRR is projecting an ending balance of $195,542 at the biennium. She wanted to mention that while there is an ending cash balance, this is attributed to projected collections related to the Calico Project. Even though this is an end of the year balance, there is action in the springtime that shows very low numbers which will require the Agency to mitigate the cash flow in order to end the year off. Ballard said due to the concerns of the budget not being signed off by the Legislature, DOGAMI has been in contact with DAS to discuss how to keep the Agency afloat during this time.

Ballard stated as of December 31, 2019, the ending balance for the Strong Motion Instrument Fund is $326,136, and the Reclamation Guarantee Fund is $720,207.

Kozlowski stated she really likes the summary, it is very clear, and helps her understand the information and where the Agency is financially.

Ballard said all outstanding grant financial reporting has been completed for the quarter and is current to date. The Grant Budget Monitoring Tool has been released and will help manage grants. It is a monthly projection of all the hours and costs associated with grant tracking. Project managers
have been using it and identifying room for improvement. The next step is to add in actual hours to compare to what has been budgeted. It will help direct scheduling of projects, staffing of projects and better management to the grant itself. The grant financial reporting is happening on a monthly basis. Another tool that was created is Project Level Financials, which contains summary numbers and helps provide more detail for project managers to better align with projects.

Ballard said the Business Office positions have been filled and the activities have been moving over from DAS to the Agency. The backlog has been caught up and there are routine processes happening, including invoicing and revenue collection. Indirect Costs are being calculated and being booked on a monthly basis. She told the Board there will be higher numbers in the next set of financials due to the backlog activity that has been happening. More cleanup activities are being done to reclassify the project charges being moved from General Fund to actual projects. She is happy to report where the Agency is at as of today.

Kozlowski asked if the staff find the tools easy to use. Ballard said she cannot speak on behalf of the staff, but she can say that as they are being used, people are identifying information that is causing recognition of things that need to be fixed, which is a good sign. One example she gave is benefit costs and recognizing that in budgets it was not very transparent, but it is now. They know how to mitigate it, and this will help them plan better.

Teeman asked if the Grant Budget Monitoring Tool could be shown to the Board. Ballard said this could be done as a presentation to the Board at the next meeting.

Chair Maffei asked why the 19-21 spreadsheet shows at 53% use but only at 25% of time. Ballard said there is a higher General Fund spend because of projects that have not been reclassified yet. There are also some shortages for Services and Supplies in the first-year budget, but will be addressed in the second-year budget. Maffei asked why the reallocation/reclassification has been so high and if it is a one-time problem for the first 6 months of the biennium. Ballard explained it was because of the biennium close, there was no funding, and the bills had to be held. She stated invoicing and payables are being caught up. Maffei asked when this backlog is expected to be completely caught up. Ballard answered she thought it will be another 2 months. Ballard stated the next step is to get more finely tuned with the financials by looking at how the Agency is budgeting and being able to budget in a more refined articulate manner, not just for General Fund but Other Funds and Federal Funds as well.

Ashford said he is so happy to hear the positive news.

Board Action: Kozlowski moved to accept the Budget Status Report as presented. Teeman seconded. Motion carried.

7) Public Comment:

Chair Maffei asked for public comment. No public comments.

Break

8) Civil Penalties:
Sarah Lewis, MLRR Program Manager, introduced Cari Buchner, Mining Compliance Specialist, to discuss the Civil Penalties being brought to the Board for approval to proceed.

Lewis said a full Civil Penalties legal packet containing all the details for the penalty of late payment was presented at the last Board meeting and MLRR received the penalty payment in February. Lewis stated they will be tracking the incoming funds from Civil Penalties and the time spent on collection efforts made by Buchner to provide the Board with a balance sheet showing how the costs are or are not covered by those funds, based on the rules and statutes of how the funds are handled. Lewis explained instead of providing the legal packet for each Civil Penalty for Board approval, a summary table will be provided of all the non-payment of renewal fees that have been recorded since the implementation of Civil Penalties on July 1, 2019. A handout titled Non-Payment of Renewal Fees – Civil Penalty Fact Pattern Matrix was provided to the Board to review.

Buchner discussed the table, which records the steps in the process to determine whether and how much to propose for a Civil Penalty. She explained the ones that were waived and why, then reviewed the two currently proposed for Civil Penalties, including the City of Pendleton. She said they are requesting the Board’s guidance regarding the City of Pendleton on whether a reduced fee penalty should be assessed. Avy stated Pendleton had recently experienced a flood, they are struggling financially, and have not received emergency funds. He thinks this may be one that is not assessed a penalty. Chair Maffei asked questions about the letters sent to the permittees. Buchner explained in the case where they wanted to pursue the Civil Penalty, a Letter of Referral was sent informing them their case is being presented to the Governing Board for a Civil Penalty and the amount they may be charged. For violations not meeting the criteria to receive a Civil Penalty, no referral letter is sent and the permittee is contacted over the phone to resolve the situation. Buchner confirmed the two being discussed today have received the referral letter. Maffei said she feels penalties should be used as a deterrent and issued occasionally, but feels these two do not rise to the level of the one issued a Civil Penalty in November and the penalty fee should be waived.

Kozlowski said she is in agreement with Chair Maffei and feels a letter should be sent to both permittees saying the fee is being waived because they paid the renewal fee.

Ashford said he feels they should receive a letter stating the fee has been waived this time but will not be next time. He is looking at how short staff resources are and how much it costs to keep sending notices. Ashford also does not want to get into a habit of always waiving fees. He asked how much discretion the Agency has in waiving penalties. Chair Maffei asked Diane Lloyd (DOJ) for input on the Agency’s discretion. Lloyd answered there is authority in state statute and rules to issue Civil Penalties for late fees. The Agency does have discretion, but the staff is trying to be consistent. She feels as the process develops, DOGAMI will be interested in rulemaking for a more specific framework.

Kozlowski asked if the staff has a recommendation. Buchner stated when the Notices of Civil Penalty being assessed are sent out, there is an opportunity for the permittee to contest it. Buchner said another option is to adjust the wording to indicate the penalty has been calculated but state due to mitigating factors the penalty has been waived but the violation will still be recorded and considered in calculating Civil Penalties for future violations. Kozlowski said it makes sense and is consistent with what Ashford was thinking about. Lewis asked for input from the Board on what else to consider in the evaluation. Chair Maffei asked how much the permit renewal fee is compared to the penalty. Buchner answered renewal fees are $850 plus (+) fees for production, calculated at per ton rates. Maffei said the penalties seem to be working. Ashford asked when the Civil Penalties went into
effect. Buchner stated July 1, 2019. Ashford also thinks the Agency could be lenient the first year as an education process, with higher charges taking effect after the first year. Kozlowski likes the idea of noting the permittees are late, it is being documented, and considered in the future. Jeremiah said she wants to ensure that each permittee is treated equally, but does agree that leniency should be given if there are compelling factors presented.

Teeman wanted to clarify the decision for both cases presented is, the fee is waived but a Notice of Violation (NOV) will stay on their record and the next violation would be a fee of $500. Maffei answered yes. The letter would say the Board has determined that the penalty amount of $250 will be waived this time and they will have a Notice of Violation on file, so if they are late next year it is $500. Buchner said they will send a Civil Penalty packet to each one, with a penalty of $0 and a statement that the violation will be on the record.

Board Action: Kozlowski moved to allow staff to move forward with Civil Penalties amount of $0 and the Notice of Violation on the record for the presented cases as discussed. Teeman seconded. Motion carried.

9) **Grassy Mountain Update:**

Sarah Lewis, MLRR Program Manager, provided the Calico Update.

Lewis stated that at the last Board meeting the Agency was 2 weeks into the 90-day completeness review of the first ever Consolidated Permit Application for chemical processing mining in the State of Oregon. The Completeness Review was completed and submitted to the applicant on February 19, 2020, with a request for additional information. It was in the form of a 5-page letter with over 120 pages of comments. The comments were compiled from all of the cooperating and permitting agencies that will be reviewing and contributing to the drafting of permits. Lewis wanted to compliment and commend the DOGAMI staff who helped with a very short and intense effort to complete the review. The response from the applicant was generally very positive but overwhelmed; they recognized the comments had validity and are working to develop a plan to address the comments. Chair Maffei asked if there is an anticipated response time. Lewis stated she is having weekly check-ins with Nancy Wolveerson, Calico’s Project Manager, and they are expecting a minimum of 2-3 months for a response to the comments. Lewis will be meeting with them and their Chief Financial Officer (CFO) to continue conversations around how to keep the process moving forward.

Chair Maffei asked if more data needs to be collected. Lewis said she did not think there was any additional data collection needed, but there were concerns around the consistency within the data presented. MLRR had Cardno, a contractor, combine the comments into a single format with four categories of comments required by the completeness evaluation. The categories were: 1) if information is missing, baseline would not be complete; 2) conflicting information or difficult to understand; 3) nice to have, and will be needed later on, but not needed for completeness; and 4) could not find what they were looking for. Lewis said the organization of the report was a little lacking so they suggested some federal guidelines for indexing of reports and PDFs, making things accessible and available so the documents can be searched.

Chair Maffei asked what the next steps will be once the application is complete. Lewis discussed the Application Review Process Diagram presented at the last Board meeting, which is posted on the
Lewis said as part of the review, a public hearing was held in Ontario, OR in February with about 30-35 attendees; many State agencies participants called in. There were only two submitted written public comments on the completeness of the application. Lewis said the hearing did help her understand the concerns of the public.

Kozlowski told Lewis the work she is doing is impressive on such an overwhelming project. She complimented the staff and Lewis for her leadership role to keep it moving. Lewis stated she is having weekly conversations with Calico and she writes a meeting summary, Wolverson edits it, then it is turned into a PDF, and each keeps a copy in their file to document their discussion.

Lewis said one item not included in the Legislative Update, is the fee bill that moved forward did not include funding for the Limited Duration (LD) NRS 4 position requested to support the project management and technical oversight of the Chemical Process Mining Program. She will now be looking at options to move forward with staffing the project, which may include doing an RFP for a contractor or possibly have a rotation from another state to manage the project. Lewis is confident the staff pulled together to complete the first 90 days would be able to handle the second 90-day completeness review, but someone really needs to be in place moving forward. Kozlowski asked if there are consultants who do this work. Lewis said there are consultants who work on mining projects in other states and manage large projects that have federal-state coordination, so she does believe there are individuals qualified and capable to do the job. Chair Maffei asked if the position is just to see through when the permit is issued. Lewis responded yes.

Ashford asked if it would be a lump sum contract or time and materials, and would it be cost recovery by Calico. Lewis answered yes, it could be either, but she would work with procurement to determine the best option. Chair Maffei asked if Calico has a say in who is hired. Lloyd replied no.

Diane Teeman said she represents the Burns Tribe on this project, so she will abstain from any decision making and may need to recuse herself if necessary.

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

**MLRR Update:**

Sarah Lewis, MLRR Program Manager, provided an update on MLRR.

Lewis stated the packet contained the program update and included the ENGAGe Spring 2020 newsletter. [It can also be found online: https://www.oregongeology.org/mlrr/engage.htm]

**Permit Status Summary**

Lewis reviewed the detailed list of permits. She stated on Table 1 a new permit and exploration application has been received for the Frost resource, which is a Calico Resources application, and is proximal to Grassy Mountain. MLRR also received a gas well application from Trendwell. They closed out three wells and have put in a new one.

Lewis stated the average time to process a surface mining application is down to 6 months, which are ones that have no issues; they are also getting some older ones completed. This is due to staff efficiency, and balancing the number of applications and inspections or compliance issues they are dealing with. She said when staff do inspections, they often find compliance issues. Lewis is working
with staff to target the inspections to new sites, amendments, transfers, closures and complaints as priorities. She would eventually like to add big producers and ones not inspected in 5 years. There is a plan to increase site inspections in a responsible, sustainable manner, while ensuring paperwork is completed.

Lewis briefly discussed the Risk of Late Payment table in Figure 3. There is now 9 months of data. She reviewed the numbers, which included the two Civil Penalties discussed earlier. In January they issued one NOV and have been in communication with them. She explained it is an Exclusion Certificate, which the permittee is going to pay the renewal fee and close their site. Lewis said the threat of Civil Penalties is helping MLRR keep the permittees in compliance with payments. March is potentially a big month and she is curious to see how it plays out.

Lewis said for the Compliance Summary, Buchner has been uncovering the reasons for violations. The total number of compliance actions have gone from 60 to 99 because the specific category of mining outside the permit boundary, now included mining without a permit, has been added. Teeman asked if the mining without a permit are ones that have expired. Buchner answered the category includes ones that have never had a permit, sites that have closed but someone has started using the site again, and ones that are ongoing compliance actions where they have been told they need a permit but are dragging their feet.

Lewis stated the Spring newsletter discusses Grassy Mountain, compliance, and the change in the definition of surface mining that went into effect January 1, 2020, which basically removes construction projects from the definition as long as they are not selling the material from the site. Chair Maffei asked if there has been a reduction in the workload associated with those types of requests. Buchner said not yet.

Lewis stated MLRR will be using the newsletter as a form of outreach to provide information on the fee increase, if it is approved, and also looking at other ideas to roll out the information including webinars.

Briefing: No Board Action Required.

11) GS&S Update:

Bob Houston introduced himself as the new Interim GS&S Program Manager and gave the GS&S update on behalf of Bill Burns, Acting Earth Science & Remote Sensing Supervisor, and Laura Gabel, Acting Natural Hazards & GIS Supervisor. He thanked them for their efforts over the last 15 months. Houston has been with the Agency for 20 years and briefly discussed the different roles he has done with the Agency.

Houston provided a staffing update. The Agency is recruiting a Limited Duration (LD) NRS 1 position to be a landslide geologist. There were 127 applications received and Sarah Lewis will be lead for the hiring committee. There will be video and in-person interviews for seven candidates, with the anticipation to have someone starting in April to work on a BLM grant for landslides. The grant is intended for someone early in their career to gain experience. Kozlowski asked about the NRS 1 and where the work will be done. Houston answered in the Coos Bay region.
Houston stated there are four new projects, three new publications, and fourteen new proposals and potential projects.

Houston stated the Portland staff held a food drive selling baked potatoes and baked goods earning $500, which equates to 1500 meals. The team consisted of Lori Calarruda, Bill Burns, Nancy Calhoun, Christina Appleby, and Deb Schueller. Calarruda said this was for the annual Governor’s Food Drive and an additional $50 in tips was raised for the baked goods that were left over after the event.

Houston asked the Board for input on how they would like information conveyed to them. Kozlowski said it would be nice to have a summary for the GS&S projects, similar to what Ballard provides.

Briefing: **No Board Action Required.**

12) **Director’s Report:**

Directed Avy presented his Director’s Report on the following:

**Geological Survey & Services Program Manager**

The new budget proposal has only the PEM D position listed and said the two supervisor positions will be included as Policy Option Packages (POPs) in the next biennial cycle. Avy explained that as long as the Agency received its second-year budget by July 1, through a Special Session or other funding mechanism, it will leave at least a 4-month gap between the supervisor positions ending today and filling a permanent Program Manager position. Avy discussed the email that went out to staff regarding Bob Houston being named the Interim Program Manager. Work is currently being done on the position description, but the Agency will not be able to post the recruitment until the budget for the second year is approved. A candidate would not start until July 1.

Kozlowski asked Avy how optimistic he is regarding the availability of people with the competency for the position. Avy responded it will be a challenge finding someone with technical experience and a manager background, and even more challenging for one with a Registered Geologist license. He believes it is worth the pursuit and feels confident they can find someone to fill the position. Avy stated the Agency did not get the MLRR Chemical Mining Permit Lead position.

**Internal Communications Plan**

Avy discussed the Internal Communications Plan recommended in the Director’s Evaluation and stated it is progressing. A small group of staff developed an initial comprehensive list after which small staff groups helped inform the plan. The plan was presented to the Leadership Team, who has reviewed and discussed for improvements and will review it again after revision. It will go to the Board once it has been finalized.

Kozlowski asked what the components of the plan are. Avy said it will be a written document that contains expectations for different sections of the Agency; it will be a working document and updated as necessary. He hopes to have it completed in the next couple of weeks.

**Grants – Approval Pipeline/Sideboards**

Avy said the team has been coming up with a tool to make the grant selection process easier and ensure everything is covered with appropriate sideboards, and to determine what types of grants to
be pursued. A small group consisting of Bill Burns, Laura Gabel, Jason McClaughry, Dania Ballard and Director Avy discussed the way to formulate it, so it was informative to project managers, with a way for the Board to weigh in on and provide guidance on policy. It was sent to all the project managers for input and Deb Schueller put it into a web-based form that can auto-populate other documents, which makes it more useable and long-term workable. It will be brought to LTM to review and look to have a presentation to the Board at the next regular Board meeting. Chair Maffei asked if it was a policy document. Avy replied that it is a tool but has policy implications, due to the required criteria. He briefly discussed how the process is currently done. Avy said it will be a good indicator of which grants to go after and also a good tracking mechanism.

Kozlowski said it appears to be a good tool to determine which specific grants to focus on that will support the new direction for DOGAMI. Chair Maffei said it will be helpful to see the document/tool.

2021-23 Agency Request Budget & Legislative Concepts

Avy stated that although the Agency is under a 1-year budget and session just ended, the Agency also needs to ramp up for the next biennium’s Agency Request Budget (ARB). There is a meeting with DAS next week to review the timeline for the next ARB. Avy said for the Board to have time for input on the budget, including Policy Option Packages prior to the budget being submitted, special Board meetings will be needed prior to the July Board meeting. The Legislative Concepts (LCs) are due in April, which would include the MLRR fee increase. The ARB is typically due August 1, so Avy suggested holding dates in mid-May and mid-June for the Board to review information and provide direction so the ARB can be approved at the July meeting.

Strategic Planning 2022-2028

Avy said the Agency strategic planning is on a 6-year cycle and it should be reworked by 2022. Since the Agency does not have a PIO, it will probably want to look at a facilitator to work on this, which will be included in the 2021-23 budget. He stated another possible POP is having an outside management consultant help align the Agency with implementing its mission. Avy said the strategic plan needs to be a full plan with implementable tasks, not just a strategic framework. Kozlowski asked how much the Governor’s Office will be involved. Avy said that is still to be worked out and there may be a Budget Note to identify next steps for the Agency. Kozlowski said she felt Amira Streeter had some concrete ideas for the Agency with little input from the Board. Avy does not believe they are completely set in stone. Kozlowski said most of them seemed reasonable. Avy believes there will be an opportunity for more input from the Board.

Ashford stated participating by phone this time was a good experience and the information was very clear.

Briefing: No Board Action Required.

13) Confirm Time and Date for Next Meeting:

Chair Maffei stated the next DOGAMI Board is currently scheduled for Monday, July 13, 2020 at 8:30 a.m. in Portland. She confirmed this date is still acceptable for the Board.

Chair Maffei said currently 3 p.m. – 9 p.m. on Sunday, July 12, 2020 is being held for a potential Board Retreat. Maffei reminded members the Board Retreat is not to discuss business but strictly more of a
team building experience to help the group work together to guide the Agency. The Board discussed if this should still take place. Maffei said she feels the group works together well and does not feel it is a good use of time or money to have one at this time. Jeremiah agreed saying she would prefer to use the time and money for a public meeting. Ashford agreed, but feels it should be brought up again next year. It was decided not to hold a Board Retreat at this time. Maffei asked to have the next Board meeting planned as a working lunch with anticipation of a longer meeting to cover topics, including the Strategic Plan.

Chair Maffei discussed scheduling the Special Meetings, to be held via phone, to review additional financial requirements for the 2021-23 Agency Request Budget (ARB) and Legislative Concepts (LCs).

May 14 – call-in 9 a.m. – 11 a.m.
June 23 – call-in 9 a.m. – 11 a.m.

14) **Public Comment:**
Chair Maffei asked for public comment. No public comments.

15) **Board Adjourn:**
Chair Maffei adjourned the meeting at 12:03 p.m.

APPROVED

[Signature]

Laura Maffei, Chair