

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

WEDNESDAY, JANUARY 8, 2003

STATE OFFICE BUILDING
PORTLAND, OREGON

(1) Call to Order

Chair Don Christensen called the meeting to order at 8:40 a.m.

(2) Introductions

Christensen introduced Board members Don Haagensen, Vera Simonton, and Barbara Seymour, legal counsel Larry Knudsen, Portland staff John Beaulieu, Vicki McConnell, and Kate Halstead, and Gary Lynch from the Albany office. Present in the audience were:

Larry Tuttle, Center for Environmental Equity
Karen Tarnow, Dept. of Environmental Quality
Rich Angstrom, Oregon Concrete and Aggregate Producers Assoc., (OCAPA)
Bob Short, Glacier NW/OCAPA Legislative Chairman
Barry Norris, Oregon Water Resources
Dorian Kuper, Kuper Consulting
James Bela, Oregon Earthquake Awareness

(3) Approval of minutes of Governing Board teleconference meeting in Portland on November 22, 2002.

MOTION: Simonton moved and Seymour seconded that the minutes be approved as written.

Motion passed unanimously.

(4) Regulatory Issues

a. Adoption on rule writing for MLRR rules. Lynch discussed HB 3634 rule writing, which requires closure plans at limited exempt (LE) sites, and gave a brief history of the issue. All input from staff is ready to go out for technical review, and he expects to have rules for Board review in February. He discussed the issue of non-payment of an LE fee, saying that the aforementioned rules will address this by stating that if the fee has not been received 30 days after the anniversary date, the permittee will lose the LE status. This would result in the need to amend the operating permit to include the LE area.

Beaulieu added that there can be no more LEs because of prior law changes, and this fee payment stipulation would enforce up-to-date fee payment on penalty of losing permitted operating status. Currently, there are about 250 LEs. A discussion followed regarding charging of a late fee, which Lynch feels might be a good idea, if it would pay to go out and collect it. Enactment of such a fee will be researched with Larry Knudsen.

b. Suspended status for USGS geothermal wells. Lynch said that the two small-diameter research holes were permitted in February of 1997 for 5-5½ years. Their expiration date came up September 30, 2002. The Board did not have time at previous meetings to extend suspended status for them. MLRR staff recommended that the Board extend suspended status on these two permits (wells 101 and 102) until July 25, 2003 to provide ample time for compliance issues prior to the arrival of early winter snowfall.

MOTION: Haagensen moved and Simonton seconded that the suspended status on USGS geothermal prospect permits 101 and 102 be extended for one year, through July 25, 2003.

Motion passed unanimously.

c. SB 12 update and efforts towards permanent rules. McConnell discussed the agency testimony presented December 10th to the Joint Interim Committee on Natural Resources, and gave background information. The agency will not release the IMS 22 map as part of any SB 12 requirement; words previously in the text tying it to SB 12 have been deleted. She stated the map would be released hopefully by the end of January as a stand-alone map.

She said DOGAMI will closely watch the evolution of any reworking of SB 12 in the legislature. McConnell said Senator Ted Ferrioli, who was involved with the original task force on SB 12, and Representative Susan Morgan are very interested in what happens with the bill. Ferrioli has said the bill will absolutely be revisited. The agency has a mandate to work with cities, counties and other state agencies, particularly the Oregon Dept. of Forestry.

The rules triggered by SB 12, as they currently stand, have been sent to the Secretary of State's office and should be in the next Oregon Bulletin. Originally the second *temporary* rule (rescinding the permanent rule) was written to actually start December 31, 2002. The permanent rule would have started January 1, 2003. McConnell said the Secretary of State's office did not like that wording, so the agency made a time change so the two rules essentially start at exactly the same time. Lynn Perry of the Attorney General's office, who worked on these changes, will be the agency's new backup AG.

Beaulieu explained that the intent was that the legislation be revisited once the new session begins, with input from local government as to what didn't work in the bill. He anticipates that changes to SB 12 will come up in a new committee and that a legislator or committee can develop legislation.

If the legislature wants to move ahead on something, Beaulieu said DOGAMI would want to track with that in the development of permanent rules. If not, there will have to be a date at which the agency decides to move forward with rule language to ensure there is something in

place by June 30th; otherwise, the temporary rule goes away at that time and the first one comes back. In this scenario the moratorium would possibly kick in. Discussion followed about timing so as not to miss deadlines. Beaulieu said once the split Senate has committees, roles will be determined and things can move forward. He added that at the last meeting the Board gave the agency authority to begin rule writing. He feels this is on track and will work.

Lynch commented on the great success of the Rogue River Project, in which industry, locals, and agencies all worked together to make something happen. It created a lot of good feelings in the area, and is one of the most successful joint projects of its kind Lynch has ever seen. Frank Schnitzer coordinated the project for DOGAMI and deserves a great deal of credit. Beaulieu added that having experts in the field to work on a very difficult problem made a huge difference. Through agency policy option packages, he wants to get more of this kind of work done throughout the state.

(5) Policy concerns of the Aggregate Industry relative to the Endangered Species Act.

Rich Angstrom of OCAPA stated in general that he would like to see the state do work towards the creation of a NOAA Fisheries exemption relative to floodplain mining in the rules for the Endangered Species Act. The exemption would state, for example, that if the aggregate industry mines in a certain location and a certain way, then there is no jeopardy. The exemption would recognize that by following prior agreed to practices the impact of mining on endangered species had been minimized and that one could operate without doing anything further.

In order to make this enforceable, rules from DOGAMI are needed that would constrain one or require one to operate in those ways. Angstrom said stakeholders have made sure the Governor's office, NMFS, DOGAMI, and ODF&W all have either written or stated they want to move forward on this concept.

Lynch added that legislative authority is not needed to go ahead with this process at this time. Knudsen said for some of the rules that NMFS may eventually require in such an effort that DOGAMI might not have present statutory authority to do so. Beaulieu cautioned that the agency could enter into some kind of rule writing on this and along the way get boxed in, because provisions required by the federal agency conflicted with whatever agency statute says at the present time.

Rich Angstrom, OCAPA President, requested the Board to grant authority to John Beaulieu to start Agency rule writing on certain Endangered Species Act (ESA) issues. He stated it would be a very involved process that would require stakeholders and others to work through all of the issues, with possibly some statutory changes needed. The proposed changes would be additions to DOGAMI's MLRR program.

Angstrom said that he thinks the framework is in place for the agency to take on the rule writing. He envisaged the agency starting the rulemaking process, assembling a stakeholder group, starting working on a series of rules, and ultimately having it presented to the Governing Board for approval and forwarding to NMFS.

In terms of procedures for such a request, Knudsen noted that there is a provision in the APA for a formal petition for rulemaking. If one of those is filed with the Board, then the Board has to take steps within a certain period of time, allowing or denying the petition in writing. If the Board fails to do that, then it triggers a process where the agency has to start rulemaking. What he sees on this issue before the Board at this time is an informal track along the same lines.

Beaulieu said he had some difficulties in terms of specifics in introducing unknowns that the agency hasn't worked on. He said he is more comfortable being asked to look into this than he is to immediately starting rule writing.

Haagensen requested that OCAPA put a conceptual document together describing their process so far, detailing the problem, what it means to the industry, what support they have, and what the proposed solution is. OCAPA should get this to DOGAMI before the next Board meeting so agency staff can see how the proposal would affect the department. He suggested that a report from the department could be composed covering what the administrative and financial implications might be.

Finally, Angstrom spoke about OCAPA's legislative agenda, with one issue being which state agency has jurisdiction over dewatering activity at mine sites. The other issue involves possibly drafting a comprehensive mine bill now or later that brings in all mine activity under one roof. He said that bill will have a significant change of responsibility for DOGAMI, picking up aspects currently under the purview of DEQ, Fish & Wildlife, mining, water issues, etc. He said the aggregate industry feels there could be significant savings and efficiencies to the state in consolidating all those functions, and that there is a lot of discussion among legislators this session about consolidating agencies.

(6) Report of the State Geologist.

a. Legislative insights. Beaulieu said that a major positive after five difficult special sessions is that the new legislators are more attuned to issues than they would be otherwise. DOGAMI will track key legislation affecting the agency on a priority basis, and agency response to legislation will be tiered according to priorities.

Lynch commented on legislation affecting the MLRR program, including fee bills, contracting changes affecting the bidding process, and enforcement actions of having site boundaries be surveyed in. Beaulieu added that in the last legislative session, the surveying community came in with an attempt to regulate global positioning system (GPS) use. They do not want the technology to transplant surveying where surveying is required. That legislative concept (by the surveyors) failed. He said it is important when staff uses GPS, and in testimony, that they be sensitive to that fact so as not to overstate what they wish the legislation to accomplish.

b. General budget comments. Beaulieu commented that this has probably been the most difficult budget period in over 50 years. In year 2 of the biennium, there have been cuts of about 30% to the agency through the five special legislative sessions. Instructions have changed 11 times in contradiction; for example temporary cuts have been converted to permanent. Also the last things to be cut in session 5 were then viewed as the first things to be cut in 2003-2005. Going forward, Beaulieu sees fund shifts, vacancies maintained, and lots of juggling as best one can. He hopes that the projection in which quarter two of 2003 sees the economy begin getting up steam again is real.

c. Paper on economic values of Department activities. Beaulieu addressed a paper being drafted to summarize the economic benefits of DOGAMI for the legislators. He noted that in the evolution of state geology departments, the pattern begins with mining. Through time the real value of such entities evolves to provide geologic information, with the mining part becoming more regulatory. Oregon has a broad array of geologic hazards, resource issues, environmental problems, etc., so there is a broad base in which to base a niche, which is well defined in the Strategic Plan. Haagensen suggested adding a paragraph with a specific, concrete example (such as the Rogue River project) to highlight each economic value point in the paper.

d. Status of items on Emergency Board request. Beaulieu outlined E-Board requests, saying the agency has to go to the E-Board to get permission to spend more Other Funds dollars. The agency did this in September and got permission to spend some money on the Rogue project,

but not enough. Letters to the E-Board (there were 2 from DOGAMI) are forwarded to the Legislature by the Department of Administrative Services (DAS).

Lynch discussed the procedures DOGAMI has had to follow to get grant money. The industry does not fully pay for the MLRR program. To make ends meet, MLRR staff competitively go after grants. He listed several grant areas which look promising. He continued, saying in February they will be applying for Phase Three of the Rogue project, which will be another \$295,000 grant, plus an additional \$200,000 contribution from ODOT. The agency is going to the E-Board on January 9th requesting to raise the limitation, so if they get the grants, they can then do the work.

(7) Setting of Time and Place of the next Board Meeting. The next Board meeting will be at 9 a.m. in Portland on Wednesday, March 5, 2003.

(8) Additional Public Comment. Larry Tuttle discussed a lawsuit his organization is pursuing against the U.S. Forest Service for two mine sites allegedly discharging directly to surface waters of the state. He feels federal agencies should not be let off the hook for carrying out their responsibilities under the Clean Water Act, thereby leaving the state to pick up the cost. He said DEQ has spent about \$1,000,000 from its orphan site fund for remedial action at one of these sites. He questioned whether state general obligation bond funds should be spent to clean up mine sites on federal public lands.

James Bela commented on his concern for delay of implementing SB 12 and the threat to public safety resulting from debris flows triggered by rainfall. He requested that the Board write the Building Codes Division asking for their reasons for addressing certain land areas of high earthquake zones as they did. He also asked for a Board letter requesting that the Governor's declaration of Oregon as a Showcase State be rescinded, and ended by stating his opposition to the way the new Building Codes administrator was chosen.

Meeting was adjourned at 11:50 a.m.