

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

Tuesday, July 28, 2020

8:30 a.m.

Virtual Public Meeting

1) Call to Order: (Laura Maffei, Board Chair)

Chair Laura Maffei called the meeting to order at 8:38 a.m.

2) Introductions: (Laura Maffei, Board Chair and Staff)

Chair Maffei, Vice-Chair Katie Jeremiah, and Board Members and Linda Kozlowski were all in attendance via Zoom video/phone. Board members Scott Ashford and Diane Teeman were not in attendance.

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)

Sarah Lewis, MLRR Program Manager

Cari Buchner, Mining Compliance Specialist

Bob Houston, Interim GS&S Program Manager and Legislative Coordinator

Steve Dahlberg, Fiscal Analyst

Others in attendance:

John Terpening, Legislative Fiscal Office (LFO)

Renee Klein, DAS Office of the Chief Financial Officer

Diane Lloyd, Department of Justice (DOJ)

Guido Paparoni – Public Citizen

Kale Williams – Reporter, The Oregonian

1) 3) Review 2021-23 Agency Request Budget (ARB):

2) Dania Ballard, Chief Financial Officer, reviewed the un-audited 2021-23 Agency Request Budget (ARB) for DOGAMI with the Board.

3) Ballard said the Agency is currently awaiting the final SABRS audit of the AY 2021-23 Agency Request budget. At the Board meeting 2 weeks ago, DAS was going through the audit process. Due to DOGAMI having a split budget, it caused some issues. The second-year budget was increased to reflect true budgetary needs. The AY23 ask has been well vetted and is materially correct. Part of the ARB has a historic component that needs to be input into the system, because of the split-year effect, that portion is still being reviewed in the audit process. It is expected to be completed on Thursday or Friday.

4) Ballard stated the changes are reflective of the graphics and summary information in the ARB. The first graphic is the Expenditure Estimates by Section for AY23. Due to Year 2 being the basis going

15 forward, there were changes. The MLRR budget was \$4.5 million, but is now \$5.2 million due to
16 Professional Services related to the Calico Project, step increases, and inflation. The changes for
17 GS&S were due to Lidar and Administrative & Technical Services being lumped into the one category
18 of Shared Services. Administrative & Technical Services is the bulk of DOGAMI's scientific staff.
19 Jeremiah asked if the increase from Calico for MLRR expenditures are cost recoverable. Ballard
20 answered yes.

21
22 Ballard stated on the Distribution by Fund Type graph, there is an error for Other Funds. It shows
23 \$9,098,510 but it should be \$8,114,548. The difference is due to MLRR revenue and the Year 2 effect
24 moving forward.

25
26 Ballard said the Program Prioritization section in the Agency Request Budget is between Lidar, GS&S,
27 and MLRR. She noted Lidar and GS&S have been split apart and redistributed. The MLRR change is
28 for the Year 2 effect and ePermitting anticipated charges for the Policy Option Package (POP). There
29 will be reductions to the budget if the POP does not go through.

30
31 Ballard said the Revenue Forecast is consistent compared to what the Agency had before and has not
32 changed except for a couple small exceptions due to inflation.

33
34 Ballard stated the GS&S Program Funding & Request is based off the anticipated ask with the
35 presumed inflation. There was a minor change in the funding ask, which is now \$15,789,233 as
36 opposed to \$15,704,492. This was also changed in the Program Unit Narrative.

37
38 Ballard said for the Comparison to Funding, there is difference from the AY 2019-21 biennium to now
39 of \$1,972,055, which is a significant change from one biennium to the next. This is due to the POPs
40 for grant development/matching and IT related equipment, personnel related changes (program
41 manager addition and inflation), truing up rent, and corrected DAS assessments.

42
43 Ballard said the MLRR Funding Request was \$4,497,689 but now is \$5,216,421, which is related to
44 Year 2, Professional Services for the Calico project, and inflation for Personnel Services. This was also
45 changed in the Program Unit Narrative.

46
47 Ballard said for the Comparison for Funding for MLRR, there is a difference of \$1,445,948 between
48 the previous biennium. The primary differences are the Professional Services change, inflation and
49 step increases, and the \$1 million for the ePermitting process.

50
51 Ballard reviewed the ARB 10% reduction list. As a refresher, the reductions for AY21: are the loss of
52 the CIO position; the offices in Baker City and Newport; Services and Supplies for travel, training and
53 the commuter pass program; and the half-time Public Affairs Specialist/Publications Coordinator.
54 The CIO position and office closures are permanent losses. What the Agency learned is, the funding
55 loss for the other items was only for the second year and has been added back in for the AY23
56 biennium. The reductions were adjusted to have these added back in based on the way they were
57 listed before. Going forward, the audited reports are anticipated to be back by Thursday with the
58 finished ARB due on Friday, July 31, 2020.

59
60 Chair Maffei thanked Ballard, Avy and the team for all the hard work getting this information
61 completed. There were a lot of late nights to get this done.

62

63 Board Action: **Jeremiah moved to approve the DOGAMI Governing Board authorizes Chair Maffei**
64 **to sign and certify the DOGAMI 2021-2023 Agency Request Budget on behalf of the Governing**
65 **Board. Kozlowski seconded. Motion carried.**
66

67 **4) Civil Penalties:**

68 Sarah Lewis, MLRR Program Manager, reviewed the Morgan Creek (10-0223) case with the Board for
69 Civil Penalties.
70

71 Lewis said at the last Board meeting they presented MLRR's framework for Civil Penalties for the
72 violation of Mining Without a Permit (MWOP) and had shared specifics about the particular case of
73 Morgan Creek. The Board supported moving forward and requested MLRR follow up with a proposal
74 for a specific penalty amount for Morgan Creek and additional detail about what happens after a Civil
75 Penalties package is issued.
76

77 Lewis reviewed the document "Steps for Proceeding with Civil Penalties", which is to demonstrate
78 MLRR's process. Over a year ago, staff developed an Internal Management Directive (IMD), with all
79 the supporting documents required to see the process from start to finish.
80

81 Lewis introduced Cari Buchner, Mining Compliance Specialist, to discuss the Civil Penalties being
82 brought to the Board for approval to proceed.
83

84 Buchner reviewed the Notice of Civil Penalty being drafted and what happens next. If the Board
85 approves the penalty, MLRR will issue the Notice of Civil Penalty, the respondents have 20 days to
86 respond and request a hearing. If a hearing is not requested, the Notice becomes a Final Order by
87 default and the penalty is due in 10 days. If they request a hearing, MLRR provides a copy of the
88 notice to DOJ, then DOJ facilitates referral to the Office of Administrative Hearings (OAH). There are
89 opportunities to resolve informally and potentially reduce the penalty throughout the process. If
90 they do not pay, a lien can be placed on the respondents' real property; the past-due Civil Penalties
91 can be referred to the Department of Revenue or a private collections agency. If any portion of the
92 Civil Penalty is not paid, 9% interest will accrue per year. Lloyd said the Agency has put together a
93 great summary and did not have anything to add.
94

95 Buchner said the specific case being reviewed is Morgan Creek (10-0223), located in Douglas County.
96 The violations are: Exceeding 5 acres of disturbance without a Mining Permit; Mining Without a
97 Permit; and Violating Suspension Order. She stated other violations have occurred and the water
98 quality violations have been referred to DEQ, who may also assess Civil Penalties.
99

100 Buchner said the first step in determining the Civil Penalties is classifying the violations. She
101 explained a Class 1 violation is the least severe and a Class 4 violation is the most severe. She
102 discussed the classified violations.

- 103 • Exceeding 5 acres of disturbance without an Operating Permit – Class 4: this is environmental
104 harm. The respondents exceeded the 5 acres by disturbing 10 acres, which requires an
105 Operating Permit. The denial of the Exclusion Certificate (EC) was clearly and repeatedly
106 communicated. There is one count of this violation because once you exceed 5 acres you
107 cannot exceed it again.

- 108 • Engaging in and allowing MWOP – Class 4: this is environment harm by the excavation,
109 stockpiling, and hauling of materials without a permit. There are multiple documented
110 violations.
- 111 • Violating Suspension Order – Class 1: there are multiple documented violations by excavation,
112 stockpiling, and hauling of materials without a permit. The environmental harm is covered by
113 the MWOP violation.
- 114 • MLRR is requesting to assess both the operator and the landowner. The operator for engaging
115 in MWOP, and the landowner who is in violation for allowing this operation to continue on his
116 property without a permit. Buchner said both have accompanied her on site visits.

117
118 Buchner stated they have determined the violation classifications. Now they can look at the
119 magnitude of the penalty to assess. She explained the basis for a Civil Penalty is a median penalty
120 with mitigating factors present that are able to lower the penalty. There are also aggravating factors
121 that can increase the amount of the penalty up to the maximum. She stated the Expedited
122 Enforcement Offer (EEO) is a reduced amount, but the respondent cannot contest the charges.
123 Buchner said in this case, there are multiple aggravating factors for the number of violations,
124 previous similar violations, and pattern of conduct. Chair Maffei asked how many times MLRR has
125 asked them for a permit. Buchner said approximately five times.

126
127 Buchner reviewed the documented occurrences of the violations and the proposed penalty with the
128 Board. She said MLRR is proposing, for the trail camera photos, to assess a penalty per each day that
129 photos are available; \$10,000 for MWOP and \$1,000 for violating the Suspension Order. Jeremiah
130 asked if the violations for the trail camera photo occurrences were after Agency notified the operator
131 of their Mining Without a Permit and Suspension Order. Buchner said yes, the Suspension Order has
132 been in place since 2017 and they have been reminded repeatedly. She stated MLRR is only
133 considering violations that have occurred since July 1, 2019 when the Agency began implementing
134 Civil Penalties, so these do not include any violations prior to that date.

135
136 Buchner reviewed the potential economic benefit and industry context, stating the numbers are
137 rough and are not actual calculations. This site exceeded 5 acres of disturbance between 2012 and
138 2014 based on aerial imagery. Had they applied for the permit in 2013 as required, the regulatory
139 fees avoided since 2013 are about \$16,115. It is not possible for MLRR to calculate their profit from
140 the site, but they estimate if they excavated the lowest level of an Operating Permit of 5,000 cubic
141 yards (CY) per year for 7 years, that would be about 35,000 CY. She reviewed what is necessary for
142 them to come into compliance, which the cost is approximately \$51,500. The breakdown is: DOGAMI
143 and DEQ Permit fees (\$6,500); Consultants for Stormwater plan and implementation (\$5,000-
144 \$15,000); Permit Boundary Survey Map (\$5,000-\$15,000); and Geotechnical study and report
145 (\$5,000-\$15,000). Buchner said there may also be Civil Penalties from DEQ. Maffei asked for
146 clarification that these numbers are context only. Buchner answered yes, the numbers were actually
147 put together after they calculated the penalty.

148
149 Buchner said the MLRR program is recommending Civil Penalties calculated based on violations since
150 July 1, 2019 at the maximum penalty amount for each classification, which is \$98,000 to each the
151 operator and landowner; they are proposing the Civil Penalties do not go below the EEO of \$29,000
152 each. Chair Maffei asked if there are costs to MLRR if the Civil Penalties are challenged; how much to
153 defend the penalty? Lloyd said there are potential costs, since MLRR would refer it to the Office of

154 Administrative Hearings. There have been four or five matters referred to OAH, but none have had a
155 hearing. With facts that are irrefutable, they are unlikely to go through the hearing process. She
156 thinks there is the added benefit of deterring others in the future. Maffei agreed that this should be
157 pursued.

158
159 Jeremiah said the operator has completely disregarded the Suspension Order and asked what is next
160 if they do not pay the fine. Given the state of affairs in the world and the lens that people have for
161 the due process considerations right now, she wants to make sure there are no concerns of violation
162 of due process with all the evidence DOGAMI has gathered. Buchner said all the information was
163 gathered from site visits, they had approval from both owner and operator to conduct those visits,
164 and they accompanied them. The pictures of the access road are from cameras setup by another
165 property owner that put them up on their own property (they share the road). Buchner said if they
166 do not pay the penalty: a lien can be put on their own personal property within Douglas County;
167 MLRR can refer them to the Department of Revenue or a private collections agency for collections;
168 and the penalty will collect 9% interest per year. Lloyd added they can seek a civil temporary
169 restraining order and seek criminal penalties (ORS 517.990), and there could be environmental
170 criminal charges. Jeremiah said she appreciated the concise presentation of facts. The Board wants
171 to hear all sides of the story, but it is clear the respondents have been given notice, due process, and
172 they continue to disregard the law designed to protect the State and mining in general. The industry
173 is looking to DOGAMI to use their enforcement powers. Chair Maffei said it is unfair to those mining
174 and paying the fees. Kozlowski complemented the team for the information put together and said
175 this was an egregious violation that totally supports the conclusion staff have come to, especially the
176 environmental damage.

177
178 Chair Maffei asked when the Notice of Civil Penalty will go out. Buchner responded the next week or
179 two.

180
181 Board Action: Jeremiah moved to allow MLRR staff to move forward with Civil Penalties on the
182 presented case. Kozlowski seconded. Motion carried.

183
184 **5) Public Comment:**

185 Only written comments received prior to or by 10:30 a.m. on the day of the meeting will be accepted.
186 Chair Maffei asked for any written public comments. No public comments.

187
188 **6) Board Adjourn:**

189 At the conclusion of the public comment period, Chair Maffei adjourned the meeting at 9:39 a.m.

190
191 APPROVED

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194 _____
195 Laura Maffei, Chair
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