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

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

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.

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

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

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

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

Ballard stated the GS&S Program Funding & Request is based off the anticipated ask with the
presumed inflation. There was a minor change in the funding ask, which is now $15,789.233 as
opposed to $15,704,492. This was also changed in the Program Unit Narrative.

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

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

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

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

Chair Maffei thanked Ballard, Avy and the team for all the hard work getting this information
completed. There were a lot of late nights to get this done.
Board Action: Jeremiah moved to approve the DOGAMI Governing Board authorizes Chair Maffei to sign and certify the DOGAMI 2021-2023 Agency Request Budget on behalf of the Governing Board. Kozlowski seconded. Motion carried.

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

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

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

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

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

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

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

- Exceeding 5 acres of disturbance without an Operating Permit – Class 4: this is environmental harm. The respondents exceeded the 5 acres by disturbing 10 acres, which requires an Operating Permit. The denial of the Exclusion Certificate (EC) was clearly and repeatedly communicated. There is one count of this violation because once you exceed 5 acres you cannot exceed it again.
• Engaging in and allowing MWOP – Class 4: this is environment harm by the excavation, stockpiling, and hauling of materials without a permit. There are multiple documented violations.

• Violating Suspension Order – Class 1: there are multiple documented violations by excavation, stockpiling, and hauling of materials without a permit. The environmental harm is covered by the MWOP violation.

• MLRR is requesting to assess both the operator and the landowner. The operator for engaging in MWOP, and the landowner who is in violation for allowing this operation to continue on his property without a permit. Buchner said both have accompanied her on site visits.

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

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

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

Buchner said the MLRR program is recommending Civil Penalties calculated based on violations since July 1, 2019 at the maximum penalty amount for each classification, which is $98,000 to each the operator and landowner; they are proposing the Civil Penalties do not go below the EEO of $29,000 each. Chair Maffei asked if there are costs to MLRR if the Civil Penalties are challenged; how much to defend the penalty? Lloyd said there are potential costs, since MLRR would refer it to the Office of
Administrative Hearings. There have been four or five matters referred to OAH, but none have had a hearing. With facts that are irrefutable, they are unlikely to go through the hearing process. She thinks there is the added benefit of deterring others in the future. Maffei agreed that this should be pursued.

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

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

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

5) Public Comment:

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

6) Board Adjourn:

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

APPROVED

Laura Maffei, Chair