

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

Monday, March 9, 2020

8:30 a.m.

*Portland, Oregon*

**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:**

15  
16 Bob Houston, Rules Coordinator, discussed five separate rule writing requests, four active and one  
17 new:

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

25  
26 **Request 1 – Request Approval of Proposed Service Fees Rule Language for Adoption**

27  
28 Background: The Oregon Department of Administrative Services has updated the Statewide Policy on  
29 Public Records Request Fees and Charges (107-001-030). At the July 9, 2019 Governing Board  
30 meeting, the Board authorized the Department to initiate rulemaking to amend OAR 632-001-0010  
31 to comply with the statewide policy on Public Records Request Fees and Charges. The proposed  
32 draft amendments to OAR 632-001-0010 were approved at the September 9, 2019 Governing Board  
33 meeting.

34  
35 Staff Recommendation: Authorize DOGAMI staff to proceed with the proposed language and submit  
36 final permanent rule language OAR 632-001-0010 to Archives Division, Secretary of State.

37  
38 Bob Houston, Interim Legislative Coordinator, stated The Oregon Department of Administrative  
39 Services has updated the Statewide Policy on Public Records Request Fees and Charges (107-001-  
40 030). The updated policy has progressed through the rulemaking procedures and now needs to have  
41 the final draft language approved by the Board to submit to the Secretary of State’s Office and  
42 Legislative Counsel’s Office for final adoption. The effective date, pending Board approval, could be  
43 as early as March 11, 2020.

44  
45 Chair Maffei asked to clarify if this request is to line up DOGAMI’s fees for Public Records with what  
46 DAS requires. Houston confirmed, stating it went through the public hearing process with no  
47 comments received.

48  
49 Board Action: **Kozlowski moved to authorize DOGAMI staff to proceed with the proposed language**  
50 **and submit final permanent rule language OAR 632-001-0010 to Archives Division, Secretary of**  
51 **State. Teeman seconded. Motion carried.**

52  
53  
54 **Request 2 – Update on Permit Boundary Survey Maps Rulemaking**

55  
56 Background: The Board authorized the Department to initiate rulemaking on OAR 632-030 at the  
57 September 9, 2019 Governing Board meeting to amend rule language relating to the submittal  
58 requirements of a permit boundary survey map.

60 Houston stated this request is on hold pending drafting of the language and working through other  
61 rulemaking efforts ahead of it.

62  
63 Proposed Board Action: No Board Action Required.

64  
65

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

67

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

73

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

78

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

85

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

92

93 Proposed Board Action: No Board Action Required.

94

95

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

98

99 Background: Under certain conditions the Department may modify an operating permit or  
100 reclamation plan without the consent of the operator (ORS 517.831). The Department must provide  
101 the operator with an opportunity for alternative dispute resolution in the manner provided in  
102 ORS 183.502. Currently, OAR 632-001 does not provide an alternative means of dispute resolution.  
103 At the December 9, 2019 Board meeting, the Board authorized the Department to initiate formal  
104 rulemaking on OAR 632-001 to provide an alternative dispute resolution procedure.

105

106 Houston said the Agency is requesting approval of the proposed Dispute Resolution Model Rule  
107 language for adoption by reference. The Attorney General (AG) provides this language as a Model

108 Rule. Rulemaking for a Model Rule follows an abbreviated process. The Attorney General's  
109 Collaborative Dispute Resolution Model Rule language is provided below for Board approval. The  
110 rule's proposed effective date occurs after the rule is filed with the Secretary of State Archives  
111 Division.

112  
113 Chair Maffei asked if it had gone out for comment. Houston explained that as part of the abbreviated  
114 process, it does not need to go through this step because it is a Model Rule that has already gone  
115 through the process and been approved for the AG.

116

117

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118 Collaborative Dispute Resolution Model Rule language for review:

119 632-001-000X (Collaborative Dispute Resolution Model Rules)

120 The Attorney General's Collaborative Dispute Resolution Model Rules, OAR 137, division 5, as in  
121 effect on December 9, 2019, are adopted and incorporated into this division.

122

123

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

127

128

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

131

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

138

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

143

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

146

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

149

150 Ashford asked for background on the timeline. Lewis, MLRR Program Manager, explained when she  
151 started at DOGAMI she went through the rule writing efforts, focusing on ones identified in the files,  
152 and this was not in there; it only came to her attention in the fall and she put it on the list to get  
153 done. She stated MLRR has not actually permitted any sites in sage-grouse habitat for operating  
154 permits since 2016. For the Exploration Permits they have worked closely with the Department of  
155 Fish and Wildlife (ODF&W) to make sure their concerns were met. Lewis said Division 37, the

156 chemical process mine, is covered by ODF&W under their own rules and is not part of this effort; the  
157 Agency will be looking at Division 37 rules to make sure they are in compliance with the Executive  
158 Order.

159  
160 Lewis stated she has seen in the files that in past practice, it has been helpful to take some time to  
161 see how things play out before initiating rulemaking. The Department also went through a lot of  
162 changes during the time following the Executive Order. It did not rise to the top of the priority list,  
163 but this winter, ODF&W contacted DOGAMI to start the process.

164  
165 Chair Maffei asked what the rulemaking effort looks like for Lewis and her staff going through all the  
166 rules to ensure they are consistent with what is in the Executive Order. Houston explained they will  
167 need to develop draft language, form a RAC, collect comments, and follow the similar processes for  
168 rule writing. Maffei reiterated it sounds like a lot of work based on the shortfall of funds for the  
169 MLRR program and asked how it would be addressed. Avy said ODF&W has offered to help with this  
170 endeavor and hoped DOGAMI would have it completed by the end of the year. Avy said he explained  
171 to ODF&W this required Board approval in March to proceed with rulemaking.

172  
173 Kozlowski asked if there are any permits coming up that are implicated by this. Lewis answered none  
174 that she is aware of for Operating Permits, but there are one Oil and Gas Permit and two Exploration  
175 Applications for sites that may be in sage-grouse habit, but that is not known for certain. The staff  
176 currently works closely with ODF&W to ensure their concerns are addressed, so they are following  
177 the spirit of the Executive Order even if the rules are not in place yet.

178  
179 Chair Maffei asked how this would be staffed without the fee bill. Lewis said it can be done with  
180 current staff and with it taking priority over other duties. The permit boundary survey map has been  
181 bumped for staff to focus on more of the legislatively required rulemaking and there is capacity to  
182 address these. She stated Vaughn Balzer, Flood Plain Mining Reclamationist, will be working as lead  
183 on both this rule and HB 2202 due to his application workload getting under control. The hope is  
184 there will not be layoffs. Maffei asked how that will impact the inspections. Avy said there will be an  
185 impact and it is based on triaging highest priority issues. He said the inspections will be lower priority  
186 and the Agency will not meet the KPM, but those inspections that are conducted are more targeted  
187 and fruitful; it is not just about total numbers.

188  
189 Chair Maffei asked if it was a fair assessment to say that if the Board approves this rulemaking, it is  
190 also making a policy decision about what the priorities are for MLRR and they are saying that going  
191 forward with this rulemaking is more important than inspections. Avy said he agreed with her  
192 statement, but believes it is balanced by the multi-agency impact of the sage-grouse policy and  
193 Executive Order, and the interest in moving that forward. He thinks the Governor's Office will be  
194 very supportive of the Board making this policy call in terms of priority. Maffei asked if the Agency is  
195 already implementing the Executive Order in spirit by consulting with ODF&W, why is there a priority  
196 for DOGAMI to change the rules now. Avy said the Agency is the last one to complete this and  
197 ODF&W wants to avoid the potential possibility of litigation that this rulemaking would avoid.

198  
199 Ashford asked if the same staff doing the rulemaking is the same staff that do the inspections. Lewis  
200 said there is a small overlap but not necessarily the same staff; it is still staff time that is not core  
201 mission.

202  
203 Chair Maffei said she would rather avoid litigation over implementation of the Executive Order.

204  
205 Kozlowski stated the comments Chair Maffei made are the exact kind of comments the Board needs  
206 to think about as the Agency moves forward and thinks ultimately they need to support this for  
207 reasons outside of the Agency. But stressed, cautioned, and emphasized the Board needs to look at  
208 that carefully as we move forward.

209  
210 Teeman said DOGAMI needs to move forward with the rulemaking, but in the Executive Order it does  
211 say under the second part (Directed and Ordered), "All state agencies shall carry out the actions  
212 described in the Oregon Sage-Grouse Action Plan to the full extent of their authorities and funding."  
213 This appears to be an unfunded mandate and would not want it to jeopardize the inspections that  
214 are occurring.

215  
216 Chair Maffei wanted to reflect the level of reluctance of the Board because it is very concerned about  
217 taking resources away from MLRR.

218  
219 Board Action: **Kozlowski moved to authorize DOGAMI staff to initiate formal rulemaking on**  
220 **OAR 632 to implement Executive Order No. 15-18 regarding the Oregon Sage-Grouse Action Plan.**  
221 **Teeman seconded. Motion carried.**

222  
223 **5) Legislative Update:**

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

225  
226 Houston stated the 2020 Short Session adjourned last Thursday. Both the DOGAMI budget and MLRR  
227 fee bill went as far as they could in the Legislature but did not receive a floor vote prior to the  
228 walkout. There is a potential Special Session that may be scheduled in mid-April. The other option is  
229 an anticipated May Emergency Board that could pass the DOGAMI budget, but would not be able to  
230 address the MLRR fee bill. The fee bill could be addressed in the upcoming 2021 Session. If the fee  
231 bill does not get passed, MLRR would have a shortfall, which could possibly be addressed by being  
232 given a one-time General Fund infusion to supplement the program until it made it to session to  
233 avoid layoffs and program disruption.

234  
235 Kozlowski asked if the Agency is optimistic that the budget will be passed. Houston answered yes.  
236 Avy stated everything starts from scratch if it goes to another session and the fee bill would roll up  
237 into one bill instead of having the existing amendment. Houston said the Agency did meet with the  
238 representative of the aggregate industry, who supports the fee bill after they reached an agreement  
239 and consensus of the proposed fee increase. He confirmed it will be backed going into the session.  
240 This speaks highly of the aggregate industries' continued support of the MLRR program.

241  
242 Houston explained that late in the Subcommittee of the Ways and Means hearing, the mining  
243 industry tried to add several amendments to repeal the Exclusion Certificates (EC) provisions or set a  
244 lower threshold of when the EC is needed. The Agency did not have time to review the information  
245 or engage stakeholders since it was dropped one hour before the hearing. The amendment to  
246 modify the EC language was not successful and we are anticipating that it will likely come up again in  
247 the 2021 session. Maffei asked if the Agency anticipates this being added into a Special Session and if  
248 DOGAMI will be prepared to discuss it. Houston said yes, he does anticipate it and the Agency would  
249 be prepared to talk to it since DOGAMI was advocating for a similar concept in a prior session.

250

251 Ashford asked about the status of a House Bill related to the tsunami line and DOGAMI giving  
252 approval for certain structures in the tsunami zone. Houston answered it was HB 4119, which died  
253 on the floor. It was brought forth by Representative Gomberg, and was intended to direct the  
254 Building Codes division to adopt the ASCE 7-16 building codes and tsunami design zone line. It also  
255 called DOGAMI out to continue its consulting role with respect to providing information on the  
256 impact of the tsunami on a site being proposed prior to the developer submitting their plans to  
257 Building Codes. Houston stated there is a clear distinction between Building Codes and DOGAMI.  
258 Building Codes would have all land use decisions and DOGAMI would be in a consulting role with the  
259 developer to provide information on what the modeled tsunami inundation impact would be at a  
260 particular location.

261  
262 Kozlowski asked why it did not go forward. Houston explained it reached a similar point as the fee  
263 bill. It made it to the floor but did not have enough quorum votes to progress. He said some  
264 concerns were raised by community members (push back) advocating for a land use model of  
265 avoidance instead of an engineering approach. It will more than likely be brought back. Houston  
266 clarified that DOGAMI's role is based on its mission and providing science backed information.  
267 Kozlowski asked if the land avoidance issue goes back to the old 379 Line and what the driving force  
268 is. Houston said as he understood the comments voiced during the hearing, there was a reference to  
269 implementing land use decisions that would say no building could occur in the zone as an alternative  
270 solution being advocated.

271  
272 Ashford asked if there was any conflict with ASCE 7 and the proposed legislation in DOGAMI's line.  
273 Houston said some members of ASCE felt that DOGAMI should not be in the consultation role and  
274 the bill should not reference specifically the ASCE 7-16 language, but reference it generally so the  
275 legislation would not need to be updated each time it was changed by ASCE. DOGAMI staff provided  
276 alternative language to Representative Gomberg and his staff. This could come back to the 2021  
277 Session for clarification on language.

278  
279 Chair Maffei asked why they had a concern with DOGAMI being in a consultation role. Houston said  
280 it was based on DOGAMI providing earth science information, but not consultation on buildings,  
281 building location, or design due to HB 3309 that removed DOGAMI's role. Maffei said it appears this  
282 is not entirely in conflict with DOGAMI's view about consulting on these matters. Houston confirmed  
283 and said the Agency submitted language to address the issue.

284  
285 Avy said if there is a Special Session, it may be limited to only bills that focus on urgent matters and  
286 not necessarily policy bills that can wait.

287  
288 Briefing: **No Board Action Required.**

289  
290 **6) Financial Report:**

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

293  
294 Ballard walked the Board through the memo in the Board Packet regarding Biennium and Fiscal Year  
295 2019, which ended June 30, 2019. Due to the Agency's financial issues last year, it was a slow close  
296 that ended December 31, 2019. DOGAMI ended with a General Fund balance of \$4588, coming from  
297 a total of \$5.4 million. Ballard said on behalf of DAS and the work they have been doing the last 6

298 months, it was incredible they made it that close. The ending balances for Other Funds ending was  
299 \$302,000 and Federal Funds was negative (-) \$18,313. The negative amount is attributed to the fact  
300 that DOGAMI is an agency that must do the work first, then bill for it later, but invoicing was not  
301 done so it will be collected this next biennium.

302  
303 Ballard stated the ending balance for MLRR was \$198,751. The Strong Motion Instrument Fund  
304 ending balance was \$276,926 and the Reclamation Guarantee Fund ending balance was \$613,637.

305  
306 Chair Maffei asked about the security release and what it means. Ballard explained it has to do with  
307 a bond or deposit by an entity who is getting a permit that goes on record. The money goes into a  
308 bank account, and when all items are addressed, the bond or security is then released. Ballard asked  
309 Lewis to provide more details. Lewis explained that as security for the Operating Permits, the Agency  
310 requires a deposit to cover the cost of reclamation if the operator walked away at any moment.  
311 MLRR accepts several types of securities, including bonds held by a bank, or cash up to \$50,000 per  
312 site for smaller sites. This fund represents that cash, which is kept separate from the operating  
313 funds, and is held while the Operating Permit is active. Lewis added if someone goes to close a site  
314 or if MLRR reevaluates the size of the operation and the security is changed, there may be a need to  
315 release the funds in order for them to either submit a different type of bond, or once the site is  
316 completely reclaimed and closed, the cash is given back. Maffei asked if the four that were released  
317 had to do with sites being closed. Lewis said she was not sure but could provide the information if  
318 needed. Maffei replied it was not necessary, she was just curious if sites were closing up.

319  
320 Ashford asked when the budgets are rolled up to the Legislature, if the securities are separate or  
321 rolled up into the funds to make it appear the program is in better shape than it is. Ballard answered  
322 they are separate, but the Strong Motion Instrument Fund rolls up into the GS&S totals.

323  
324 Ballard stated Fiscal Year 2020 numbers are through the month of December and General Fund is  
325 currently showing a negative (-) \$3,227,978 million due to the Agency tracking to a 1-year budget and  
326 does not have the second-year funding. While expenditures are planned out, the revenue has not  
327 been dropped in to offset them. Other Funds have an ending balance of \$110,962 and Federal Funds  
328 are a negative (-) \$11,978, because there is a lag of invoicing and revenue collection.

329  
330 Ballard said MLRR is projecting an ending balance of \$195,542 at the biennium. She wanted to  
331 mention that while there is an ending cash balance, this is attributed to projected collections related  
332 to the Calico Project. Even though this is an end of the year balance, there is action in the springtime  
333 that shows very low numbers which will require the Agency to mitigate the cash flow in order to end  
334 the year off. Ballard said due to the concerns of the budget not being signed off by the Legislature,  
335 DOGAMI has been in contact with DAS to discuss how to keep the Agency afloat during this time.

336  
337 Ballard stated as of December 31, 2019, the ending balance for the Strong Motion Instrument Fund is  
338 \$326,136, and the Reclamation Guarantee Fund is \$720,207.

339  
340 Kozlowski stated she really likes the summary, it is very clear, and helps her understand the  
341 information and where the Agency is financially.

342  
343 Ballard said all outstanding grant financial reporting has been completed for the quarter and is  
344 current to date. The Grant Budget Monitoring Tool has been released and will help manage grants.  
345 It is a monthly projection of all the hours and costs associated with grant tracking. Project managers



346 have been using it and identifying room for improvement. The next step is to add in actual hours to  
347 compare to what has been budgeted. It will help direct scheduling of projects, staffing of projects  
348 and better management to the grant itself. The grant financial reporting is happening on a monthly  
349 basis. Another tool that was created is Project Level Financials, which contains summary numbers  
350 and helps provide more detail for project managers to better align with projects.

351  
352 Ballard said the Business Office positions have been filled and the activities have been moving over  
353 from DAS to the Agency. The backlog has been caught up and there are routine processes  
354 happening, including invoicing and revenue collection. Indirect Costs are being calculated and being  
355 booked on a monthly basis. She told the Board there will be higher numbers in the next set of  
356 financials due to the backlog activity that has been happening. More cleanup activities are being  
357 done to reclassify the project charges being moved from General Fund to actual projects. She is  
358 happy to report where the Agency is at as of today.

359  
360 Kozlowski asked if the staff find the tools easy to use. Ballard said she cannot speak on behalf of the  
361 staff, but she can say that as they are being used, people are identifying information that is causing  
362 recognition of things that need to be fixed, which is a good sign. One example she gave is benefit  
363 costs and recognizing that in budgets it was not very transparent, but it is now. They know how to  
364 mitigate it, and this will help them plan better.

365  
366 Teeman asked if the Grant Budget Monitoring Tool could be shown to the Board. Ballard said this  
367 could be done as a presentation to the Board at the next meeting.

368  
369 Chair Maffei asked why the 19-21 spreadsheet shows at 53% use but only at 25% of time. Ballard  
370 said there is a higher General Fund spend because of projects that have not been reclassified yet.  
371 There are also some shortages for Services and Supplies in the first-year budget, but will be  
372 addressed in the second-year budget. Maffei asked why the reallocation/reclassification has been so  
373 high and if it is a one-time problem for the first 6 months of the biennium. Ballard explained it was  
374 because of the biennium close, there was no funding, and the bills had to be held. She stated  
375 invoicing and payables are being caught up. Maffei asked when this backlog is expected to be  
376 completely caught up. Ballard answered she thought it will be another 2 months. Ballard stated the  
377 next step is to get more finely tuned with the financials by looking at how the Agency is budgeting  
378 and being able to budget in a more refined articulate manner, not just for General Fund but Other  
379 Funds and Federal Funds as well.

380  
381 Ashford said he is so happy to hear the positive news.

382  
383 Board Action: **Kozlowski moved to accept the Budget Status Report as presented. Teeman**  
384 **seconded. Motion carried.**

385  
386 **7) Public Comment:**

387 Chair Maffei asked for public comment. No public comments.

388  
389 **Break**

390  
391 **8) Civil Penalties:**

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

394  
395 Lewis said a full Civil Penalties legal packet containing all the details for the penalty of late payment  
396 was presented at the last Board meeting and MLRR received the penalty payment in February. Lewis  
397 stated they will be tracking the incoming funds from Civil Penalties and the time spent on collection  
398 efforts made by Buchner to provide the Board with a balance sheet showing how the costs are or are  
399 not covered by those funds, based on the rules and statutes of how the funds are handled. Lewis  
400 explained instead of providing the legal packet for each Civil Penalty for Board approval, a summary  
401 table will be provided of all the non-payment of renewal fees that have been recorded since the  
402 implementation of Civil Penalties on July 1, 2019. A handout titled Non-Payment of Renewal Fees –  
403 Civil Penalty Fact Pattern Matrix was provided to the Board to review.

404  
405 Buchner discussed the table, which records the steps in the process to determine whether and how  
406 much to propose for a Civil Penalty. She explained the ones that were waived and why, then  
407 reviewed the two currently proposed for Civil Penalties, including the City of Pendleton. She said  
408 they are requesting the Board's guidance regarding the City of Pendleton on whether a reduced fee  
409 penalty should be assessed. Avy stated Pendleton had recently experienced a flood, they are  
410 struggling financially, and have not received emergency funds. He thinks this may be one that is not  
411 assessed a penalty. Chair Maffei asked questions about the letters sent to the permittees. Buchner  
412 explained in the case where they wanted to pursue the Civil Penalty, a Letter of Referral was sent  
413 informing them their case is being presented to the Governing Board for a Civil Penalty and the  
414 amount they may be charged. For violations not meeting the criteria to receive a Civil Penalty, no  
415 referral letter is sent and the permittee is contacted over the phone to resolve the situation.  
416 Buchner confirmed the two being discussed today have received the referral letter. Maffei said she  
417 feels penalties should be used as a deterrent and issued occasionally, but feels these two do not rise  
418 to the level of the one issued a Civil Penalty in November and the penalty fee should be waived.  
419 Kozlowski said she is in agreement with Chair Maffei and feels a letter should be sent to both  
420 permittees saying the fee is being waived because they paid the renewal fee.

421  
422 Ashford said he feels they should receive a letter stating the fee has been waived this time but will  
423 not be next time. He is looking at how short staff resources are and how much it costs to keep  
424 sending notices. Ashford also does not want to get into a habit of always waiving fees. He asked how  
425 much discretion the Agency has in waiving penalties. Chair Maffei asked Diane Lloyd (DOJ) for input  
426 on the Agency's discretion. Lloyd answered there is authority in state statute and rules to issue Civil  
427 Penalties for late fees. The Agency does have discretion, but the staff is trying to be consistent. She  
428 feels as the process develops, DOGAMI will be interested in rulemaking for a more specific  
429 framework.

430  
431 Kozlowski asked if the staff has a recommendation. Buchner stated when the Notices of Civil Penalty  
432 being assessed are sent out, there is an opportunity for the permittee to contest it. Buchner said  
433 another option is to adjust the wording to indicate the penalty has been calculated but state due to  
434 mitigating factors the penalty has been waived but the violation will still be recorded and considered  
435 in calculating Civil Penalties for future violations. Kozlowski said it makes sense and is consistent with  
436 what Ashford was thinking about. Lewis asked for input from the Board on what else to consider in  
437 the evaluation. Chair Maffei asked how much the permit renewal fee is compared to the penalty.  
438 Buchner answered renewal fees are \$850 plus (+) fees for production, calculated at per ton rates.  
439 Maffei said the penalties seem to be working. Ashford asked when the Civil Penalties went into

440 effect. Buchner stated July 1, 2019. Ashford also thinks the Agency could be lenient the first year as  
441 an education process, with higher charges taking effect after the first year. Kozlowski likes the idea  
442 of noting the permittees are late, it is being documented, and considered in the future. Jeremiah  
443 said she wants to ensure that each permittee is treated equally, but does agree that leniency should  
444 be given if there are compelling factors presented.

445  
446 Teeman wanted to clarify the decision for both cases presented is, the fee is waived but a Notice of  
447 Violation (NOV) will stay on their record and the next violation would be a fee of \$500. Maffei  
448 answered yes. The letter would say the Board has determined that the penalty amount of \$250 will  
449 be waived this time and they will have a Notice of Violation on file, so if they are late next year it is  
450 \$500. Buchner said they will send a Civil Penalty packet to each one, with a penalty of \$0 and a  
451 statement that the violation will be on the record.

452  
453 Board Action: **Kozlowski moved to allow staff to move forward with Civil Penalties amount of \$0**  
454 **and the Notice of Violation on the record for the presented cases as discussed. Teeman seconded.**  
455 **Motion carried.**

456  
457 **9) Grassy Mountain Update:**

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

459  
460 Lewis stated that at the last Board meeting the Agency was 2 weeks into the 90-day completeness  
461 review of the first ever Consolidated Permit Application for chemical processing mining in the State  
462 of Oregon. The Completeness Review was completed and submitted to the applicant on February 19,  
463 2020, with a request for additional information. It was in the form of a 5-page letter with over 120  
464 pages of comments. The comments were compiled from all of the cooperating and permitting  
465 agencies that will be reviewing and contributing to the drafting of permits. Lewis wanted to  
466 compliment and commend the DOGAMI staff who helped with a very short and intense effort to  
467 complete the review. The response from the applicant was generally very positive but overwhelmed;  
468 they recognized the comments had validity and are working to develop a plan to address the  
469 comments. Chair Maffei asked if there is an anticipated response time. Lewis stated she is having  
470 weekly check-ins with Nancy Wolverson, Calico's Project Manager, and they are expecting a  
471 minimum of 2-3 months for a response to the comments. Lewis will be meeting with them and their  
472 Chief Financial Officer (CFO) to continue conversations around how to keep the process moving  
473 forward.

474  
475 Chair Maffei asked if more data needs to be collected. Lewis said she did not think there was any  
476 additional data collection needed, but there were concerns around the consistency within the data  
477 presented. MLRR had Cardno, a contractor, combine the comments into a single format with four  
478 categories of comments required by the completeness evaluation. The categories were: 1) if  
479 information is missing, baseline would not be complete; 2) conflicting information or difficult to  
480 understand; 3) nice to have, and will be needed later on, but not needed for completeness; and 4)  
481 could not find what they were looking for. Lewis said the organization of the report was a little  
482 lacking so they suggested some federal guidelines for indexing of reports and PDFs, making things  
483 accessible and available so the documents can be searched.

484  
485 Chair Maffei asked what the next steps will be once the application is complete. Lewis discussed the  
486 Application Review Process Diagram presented at the last Board meeting, which is posted on the

487 DOGAMI website. Lewis said as part of the review, a public hearing was held in Ontario, OR in  
488 February with about 30-35 attendees; many State agencies participants called in. There were only  
489 two submitted written public comments on the completeness of the application. Lewis said the  
490 hearing did help her understand the concerns of the public.

491  
492 Kozlowski told Lewis the work she is doing is impressive on such an overwhelming project. She  
493 complimented the staff and Lewis for her leadership role to keep it moving. Lewis stated she is  
494 having weekly conversations with Calico and she writes a meeting summary, Wolverson edits it, then  
495 it is turned into a PDF, and each keeps a copy in their file to document their discussion.

496  
497 Lewis said one item not included in the Legislative Update, is the fee bill that moved forward did not  
498 include funding for the Limited Duration (LD) NRS 4 position requested to support the project  
499 management and technical oversight of the Chemical Process Mining Program. She will now be  
500 looking at options to move forward with staffing the project, which may include doing an RFP for a  
501 contractor or possibly have a rotation from another state to manage the project. Lewis is confident  
502 the staff pulled together to complete the first 90 days would be able to handle the second 90-day  
503 completeness review, but someone really needs to be in place moving forward. Kozlowski asked if  
504 there are consultants who do this work. Lewis said there are consultants who work on mining  
505 projects in other states and manage large projects that have federal-state coordination, so she does  
506 believe there are individuals qualified and capable to do the job. Chair Maffei asked if the position is  
507 just to see through when the permit is issued. Lewis responded yes.

508  
509 Ashford asked if it would be a lump sum contract or time and materials, and would it be cost  
510 recovery by Calico. Lewis answered yes, it could be either, but she would work with procurement to  
511 determine the best option. Chair Maffei asked if Calico has a say in who is hired. Lloyd replied no.

512  
513 Diane Teeman said she represents the Burns Tribe on this project, so she will abstain from any  
514 decision making and may need to recuse herself if necessary.

515  
516 Briefing: **No Board Action Required.**

517  
518 **10) MLRR Update:**

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

520  
521 Lewis stated the packet contained the program update and included the ENGAGe Spring 2020  
522 newsletter. [It can also be found online: <https://www.oregongeology.org/mlrr/engage.htm>]

523  
524 Permit Status Summary

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

529  
530 Lewis stated the average time to process a surface mining application is down to 6 months, which are  
531 ones that have no issues; they are also getting some older ones completed. This is due to staff  
532 efficiency, and balancing the number of applications and inspections or compliance issues they are  
533 dealing with. She said when staff do inspections, they often find compliance issues. Lewis is working

534 with staff to target the inspections to new sites, amendments, transfers, closures and complaints as  
535 priorities. She would eventually like to add big producers and ones not inspected in 5 years. There is  
536 a plan to increase site inspections in a responsible, sustainable manner, while ensuring paperwork is  
537 completed.

538  
539 Lewis briefly discussed the Risk of Late Payment table in Figure 3. There is now 9 months of data.  
540 She reviewed the numbers, which included the two Civil Penalties discussed earlier. In January they  
541 issued one NOV and have been in communication with them. She explained it is an Exclusion  
542 Certificate, which the permittee is going to pay the renewal fee and close their site. Lewis said the  
543 threat of Civil Penalties is helping MLRR keep the permittees in compliance with payments. March is  
544 potentially a big month and she is curious to see how it plays out.

545  
546 Lewis said for the Compliance Summary, Buchner has been uncovering the reasons for violations.  
547 The total number of compliance actions have gone from 60 to 99 because the specific category of  
548 mining outside the permit boundary, now included mining without a permit, has been added.  
549 Teeman asked if the mining without a permit are ones that have expired. Buchner answered the  
550 category includes ones that have never had a permit, sites that have closed but someone has started  
551 using the site again, and ones that are ongoing compliance actions where they have been told they  
552 need a permit but are dragging their feet.

553  
554 Lewis stated the Spring newsletter discusses Grassy Mountain, compliance, and the change in the  
555 definition of surface mining that went into effect January 1, 2020, which basically removes  
556 construction projects from the definition as long as they are not selling the material from the site.  
557 Chair Maffei asked if there has been a reduction in the workload associated with those types of  
558 requests. Buchner said not yet.

559  
560 Lewis stated MLRR will be using the newsletter as a form of outreach to provide information on the  
561 fee increase, if it is approved, and also looking at other ideas to roll out the information including  
562 webinars.

563  
564 Briefing: **No Board Action Required.**

565  
566 **11) GS&S Update:**

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

572  
573 Houston provided a staffing update. The Agency is recruiting a Limited Duration (LD) NRS 1 position  
574 to be a landslide geologist. There were 127 applications received and Sarah Lewis will be lead for the  
575 hiring committee. There will be video and in-person interviews for seven candidates, with the  
576 anticipation to have someone starting in April to work on a BLM grant for landslides. The grant is  
577 intended for someone early in their career to gain experience. Kozlowski asked about the NRS 1 and  
578 where the work will be done. Houston answered in the Coos Bay region.

579

580 Houston stated there are four new projects, three new publications, and fourteen new proposals and  
581 potential projects.

582  
583 Houston stated the Portland staff held a food drive selling baked potatoes and baked goods earning  
584 \$500, which equates to 1500 meals. The team consisted of Lori Calarruda, Bill Burns, Nancy Calhoun,  
585 Christina Appleby, and Deb Schueller. Calarruda said this was for the annual Governor's Food Drive  
586 and an additional \$50 in tips was raised for the baked goods that were left over after the event.

587  
588 Houston asked the Board for input on how they would like information conveyed to them. Kozlowski  
589 said it would be nice to have a summary for the GS&S projects, similar to what Ballard provides.

590  
591 Briefing: **No Board Action Required.**

592  
593 **12) Director's Report:**

594 Director Avy presented his Director's Report on the following:

595  
596 Geological Survey & Services Program Manager

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

605  
606 Kozlowski asked Avy how optimistic he is regarding the availability of people with the competency for  
607 the position. Avy responded it will be a challenge finding someone with technical experience and a  
608 manager background, and even more challenging for one with a Registered Geologist license. He  
609 believes it is worth the pursuit and feels confident they can find someone to fill the position. Avy  
610 stated the Agency did not get the MLRR Chemical Mining Permit Lead position.

611  
612 Internal Communications Plan

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

618  
619 Kozlowski asked what the components of the plan are. Avy said it will be a written document that  
620 contains expectations for different sections of the Agency; it will be a working document and  
621 updated as necessary. He hopes to have it completed in the next couple of weeks.

622  
623 Grants – Approval Pipeline/Sideboards

624 Avy said the team has been coming up with a tool to make the grant selection process easier and  
625 ensure everything is covered with appropriate sideboards, and to determine what types of grants to

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

635  
636 Kozlowski said it appears to be a good tool to determine which specific grants to focus on that will  
637 support the new direction for DOGAMI. Chair Maffei said it will be helpful to see the document/tool.  
638

### 639 2021-23 Agency Request Budget & Legislative Concepts

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

### 648 649 Strategic Planning 2022-2028

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

660  
661 Ashford stated participating by phone this time was a good experience and the information was very  
662 clear.

663  
664 Briefing: **No Board Action Required.**

### 665 666 **13) Confirm Time and Date for Next Meeting:**

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

669  
670 Chair Maffei said currently 3 p.m. – 9 p.m. on Sunday, July 12, 2020 is being held for a potential Board  
671 Retreat. Maffei reminded members the Board Retreat is not to discuss business but strictly more of a

672 team building experience to help the group work together to guide the Agency. The Board discussed  
673 if this should still take place. Maffei said she feels the group works together well and does not feel it  
674 is a good use of time or money to have one at this time. Jeremiah agreed saying she would prefer to  
675 use the time and money for a public meeting. Ashford agreed, but feels it should be brought up  
676 again next year. It was decided not to hold a Board Retreat at this time. Maffei asked to have the  
677 next Board meeting planned as a working lunch with anticipation of a longer meeting to cover topics,  
678 including the Strategic Plan.

679

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

682

683 May 14 – call-in 9 a.m. – 11 a. m.

684

685 June 23 – call-in 9 a.m. – 11 a. m.

686

687 **14) Public Comment:**

688 Chair Maffei asked for public comment. No public comments.

689

690 **15) Board Adjourn:**

691 Chair Maffei adjourned the meeting at 12:03 p.m.

692

693 APPROVED


694

695

696

697

698

  
\_\_\_\_\_  
Laura Maffei, Chair