

**STATE OF CALIFORNIA**  
**CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**  
**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**  
**Held on May 1, 2013**  
**Sacramento, California**

**PRESENT:**

Art Carter, Chairperson  
Ed Lowry, Member  
Judith Freyman, Member  
Kari Johnson, Acting Executive Officer  
Ursula Clemons, Presiding Administrative Law Judge  
Martin Fassler, Presiding Administrative Law Judge  
Jeff Mojcher, Chief Counsel  
Thomas Song, Industrial Relations Counsel II  
Lee Berlin, Executive Secretary

**MINUTES OF APRIL 17, 2013 MEETING:**

*(Approve or amend minutes of previous Board meeting)*

ACTION: Member Lowry moved that the Board approve the draft minutes of the April 17, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the April 17, 2013 Board meeting.

**ADMINISTRATIVE MATTERS:**

*(Information regarding the general administration of cases pending before the Appeals Board)*

1. 2012 RULEMAKING MATTERS:

*(Discuss/implement Board rulemaking changes)*

ACTION: The 2012 rulemaking effort has been concluded. The new rules will take effect on July 1, 2013.

**NEW BUSINESS:**

*(The Appeals Board hears and discusses new reports presented by staff.)*

1. 2012/2013 BUDGET:

*(Review and discuss budget issues for the fiscal year)*

ACTION: No report.

2. 2013-2014 BUDGET:

*(Discuss budget issues for upcoming fiscal year)*

ACTION: Chair Carter informed the Board that DIR's budget group is still working on the sequestration numbers for 2013/2014.

**OLD BUSINESS:**

*(The Appeals Board hears and/or discusses matters on a follow-up basis.)*

ACTION: No report.

**LEGISLATION:**

*(Review and discuss current legislation which may affect the Appeals Board)*

ACTION: The Board has received requests from stakeholder groups seeking updates on AB 1277 and AB 1165. Chair Carter asked that Board members refrain from discussing pending legislation at this time.

**CHAIRPERSON'S REPORT:**

*(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)*

ACTION: On May 2, Chair Carter will attend a Senior Management Meeting with the Director of the Department of Industrial Relations in Oakland.

**BOARD MEMBERS' REPORTS:**

*(Hear reports from Board Members on activities and issues affecting the Appeals Board.)*

ACTION: Member Lowry reported that he will be meeting with the staff of the Senate Rules Committee next week in preparation for his confirmation hearing. Member Freyman will also be meeting next week with the staff as part of her confirmation process.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters and news from the Department and Appeals Board.)*

ACTION: Acting Executive Officer Kari Johnson suggested that the Board convene a meeting of its Advisory Committee to finalize the videoconferencing regulations. Some questions asked in previous discussions of hearings via videoconference include any possible costs to witnesses to make videoconferencing equipment available, and if there are services that can be dispatched to very remote locations.

**STAFF REPORTS:**

*(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)*

ACTION: Chief Counsel Mojcher reported that the Board has received a new writ from Big Lots. The Board discussed the number of pending writs and DARS.

Any matter not completed at this meeting may be continued to subsequent meetings

**PUBLIC COMMENT:**

*(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)*

ACTION: No report.

The Board recessed to its Closed Session.

**DECISIONS OF ADMINISTRATIVE LAW JUDGES:**

1. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 12-R5D1-0337  
ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.
2. FONTANA UNIFIED SCHOOL DISTRICT, 12-R3D3-1746  
ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.
3. TILTON PACIFIC CONSTRUCTION, INC., 12-R2D1-0516  
ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.
4. VENETIAN STONE WORKS, 12-R3D1-0947 THROUGH 0949  
ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.
5. VH PROPERTY CORP DBA TRUMP NATIONAL GOLF CLUB LA, 12-R3D5-1725  
ACTION: The Board took no action on this matter.

**DECISION AFTER REMAND:**

1. BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1218 THROUGH 1221  
ACTION: Member Lowry moved that the Board approve this Decision After Remand of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision After Remand of an Administrative Law Judge.

**PETITIONS FOR RECONSIDERATION**

1. JERRY'S TREE SERVICE, A PARTNERSHIP, 13-R1D5-9022  
ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

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2. NORTHWOOD DESIGN PARTNERS, INC., 2013-R1D4-9021

ACTION: Member Lowry moved that the Board vote to deny the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

3. ROCHE EXCAVATING, INC., 2013-R3D1-9236

ACTION: Member Lowry moved that the Board vote to deny the Legal Unit's recommendation to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to accept the Legal Unit's recommendation to deny this Petition for Reconsideration.

**DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):**

1. BILL NELSON GENERAL ENGINEERING CONSTRUCTION, INC.,  
10-R2D5-2399 AND 2400

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

**MATTERS PENDING RECONSIDERATION:**

*(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)*

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592

AC TRANSIT, 08-R1D4-0135

AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786

ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655

BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963

BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241

BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448

BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563

C.C. MYERS, INC., 08-R1D1-952 THROUGH 955

C & L BLUE INC., 11-R4D1-2942 AND 11-R4D1-2943 THROUGH 2945

CLARK PACIFIC PRECAST, LLC, ET AL, 09-R2D1-0282

COFFMAN SPECIALTIES, INC., 10-R3D3-3532

COMMERCIAL METAL FORMING, 09-R3D1-1592

COMMUNITY RECONSTRUCTION SOLUTIONS, INC., 11-R1D1-1484

CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960

CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362

EZ MIX, INC., 08-R4D3-1898

GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687

HARRIS CONSTRUCTION, 03-R2D5-3914

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HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389  
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272  
IRWIN INDUSTRIES, 08-R6D4-1454  
K H S & S OF CONCORD, INC., 11-R2D2-0374 and 0375  
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844  
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714  
LION RAISINS, INC., 08-R2D5-2253 AND 2254  
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822  
M1 CONSTRUCTION, INC., 12-R4D1-0222 AND 0223  
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406  
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298  
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791  
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022  
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864  
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,  
INC., 08-R2D1-0025 AND 0026  
PERSONNEL PLUS, INC., 11-R3D5-1302  
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048  
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710  
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055  
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025  
SIERRA FOREST PRODUCTS, 09-R2D5-3979  
SMUD, 08-R2D1-4887 THROUGH 4889  
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 08-R2D1-3414  
THROUGH 3418  
STAFFCHEX, 10-R4D3-2456 THROUGH 2458  
SUNRISE GROWERES FROZSUN FOODS, 09-R4D3-2850  
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443  
TL PALVICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310

**MATTERS HELD OVER FROM PREVIOUS MEETINGS:**

*(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)*

OLD D'S APPAREL, INC., 12-R4D1-1177 AND 1178

*(Decision of Administrative Law Judge)*

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

**ORDER AFTER REMAND:**

SDUSD-PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297

ACTION: Member Lowry moved that the Board approve this Order After Remand of an Administrative Law Judge. Member Freyman seconded.

The Board voted to approve this Order After Remand of an Administrative Law Judge.

**ORDERS DISMISSING APPEAL:**

DAMION MANTLE DBA DAMION MANTLE PAINTING & DECORATING,  
12-R1D1-2569 THROUGH 25  
WEST SIDE ELECTRIC, INC., 12-R3D1-2021

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal of an Administrative Law Judge.

**ORDERS GRANTING LEAVE TO FILE LATE APPEAL:**

**ORDERS DENYING LEAVE TO FILE LATE APPEAL:**

**LEGISLATION:**

**PENDING LITIGATION:**

*(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)*

**SUPERIOR COURT:**

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)  
ACTION: Chief Counsel Mojcher reported that he may be in court later in the week regarding this matter.
3. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-80006047 (07-R5D1-3611)
4. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
5. SMUD, 34-2010-80000723 (08-R2D1-4887)
6. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
7. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
8. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965

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9. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
10. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
11. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
12. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
13. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
14. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
15. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
16. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
17. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
18. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
19. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
20. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
21. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
22. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
23. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
24. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
25. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
26. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
27. HOME DEPOT USA, INC., BS141301 (10-3284)

- 28. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
- 29. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)
- 30. THYSSENKRUPP ELEVATOR CORP., 34-2013-80001456 (11-2217 ~ 2219)

**ORDERS OF ADMINISTRATIVE LAW JUDGES:**

*(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)*

- 4580 UNIVERSITY AVE INC. DBA SUPER MERCADO MURPHY, 12-R3D2-1865  
AND 1866
- ADVANCED FRAMING STRUCTURES CORP., 13-R6D2-0240
- AIR GAS DRY ICE, INC., 12-R3D5-2323
- AMERICAN SUBCONTRACTOR GROUP INC., DBA AMERICAN DEMO,  
12-R3D3-0991 THROUGH 0993
- AUDIO VISUAL SERVICES GROUP, INC., DBA PSAV PRESENTATION SERVICES,  
12-R3D1-1395 AND 1396
- BENZ SANITATION, INC., 12-R6D2-2827 AND 2828
- CHOOSE BLACKHAWK, INC., 12-R3D6-0644 AND 0646
- CITY OF SAN JOSE DEPARTMENT OF TRANSPORTATION, 12-R1D2-2874
- COCA COLA REFRESHMENTS USA, INC., 13-R1D4-0120
- COUNTRY SWEET PRODUCE, INC., 13-R4D7-1065
- DPA LABORATORIES INC., DBA DPACI, 12-R4D3-2054
- DYNAMIC CONSTRUCTION SERVICES, INC., 12-R3D5-1400
- EDCO WASTE SERVICES LLC., 12-R6D2-2339
- EISEL ENTERPRISES INC., 12-R6D2-3016 THROUGH 3024
- EMPLOYERS OUTSOURCING INC., 12-R3D2-1810
- EMPLOYER'S OUTSOURCING INC., 12-R3D2-1905
- FABTRONICS, INC., 13-R6D2-0713 THROUGH 0719
- FAMILY RANCH, INC., 12-R6D7-3298 AND 3299
- F & B ASSOCIATES INC. DBA BEST BEVERAGE CATERING, 12-R3D6-1685
- GOLDEN STATE BORING & PIPE JACKING INC., 12-R5D2-1880
- GRAPHIC TRENDS, 12-R3D6-1909 AND 12-R3D6-1925
- GRANITE CONSTRUCTION COMPANY, 12-R5D1-3048
- GT WATER PRODUCTS, INC., 12-R6D2-1001 AND 1002
- HONEY BAKED HAM COMPANY, 12-R3D1-1160 AND 12-R3D1-1552 \*
- HUSSMANN CORPORATION, 12-R3D3-2020
- INTERAMERICAN MOTOR CORPORATION, 10-R3D5-0221 AND 0222
- IRELAND INTERIOR SYSTEMS INC., 12-R1D1-2023 AND 2024
- MAGANA LABOR SERVICES, INC., 12-R6D5-2055
- MEDIA BLAST & ABRASIVE, INC., 12-R3D1-0014 THROUGH 0016
- METRO FIRE & SAFETY, INC., 12-R3D2-1602

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MITCO INDUSTRIES, INC., 12-R3D3-1430 AND 1431  
MONTESSORI IN THE CITY, 13-R2D1-0925  
MV TRANSPORTATION, 12-R2D1-2034 AND 2035  
NATIONAL RAISIN COMPANY, 10-R2D5-3778  
ONLINE GRAPHICS AND FINISHING, 12-R3D1-1833  
ORANGE COUNTY FIRE AUTHORITY, 11-R3D1-2850  
ORR BUILDERS, 12-R3D3-2048  
PAC-DENT INTERNATIONAL INC., 12-R6D2-1183 THROUGH 1186  
PACIFIC MARITIME ASSOCIATION, 11-R1D4-0134  
PACIFIC SOUTHWEST IRRIGATION CORP., 12-R2D4-1592 THROUGH 1595  
ROSS PLASTERING, INC., 13-R1D2-0914 AND 0915  
SIGNA MECHANICAL, 12-R3D3-2073  
ALICIA SILVA AND/OR RAMIRO SILVA, 12-R3D1-2159  
SINECERA INC., DBA CROWN PRECISION, 12-R3D6-1868  
ST. IVES LABORATORIES, INC., 12-R4D3-1574 AND 1575 \*  
STRATEGY BUILDERS INC., 12-R3D2-3573  
TEHACHAPI RECYCLING, INC., 12-R6D2-2825 AND 2826  
TERMINALIFT LLC., 12-R6D2-0831 AND 0832  
TRI BORING INC., 12-R5D2-2409  
UNITED PARCEL SERVICE INC. DBA UPS, 13-R3D2-0549 AND 0550  
VILORE FOODS COMPANY INC., 13-R6D2-0633 AND 0634  
WC STAFFING INC., DBA WEST COAST STAFFING, 12-R3D2-1834 \*  
WECKERLE SALES CORPORATION, 12-R3D5-1683  
WEST COAST STAFFING INC., 12-R3D2-1811 \*  
WINSLOW CONSTRUCTION AND ELECTRIC COMPANY, 12-R3D5-3615

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Chair Carter seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended

**PERSONNEL:**

*(Issues regarding staff)*

ACTION: No Report

The Closed Session was continued until May 2, 2013. The meeting was reconstituted at 3:50 p.m. In attendance were Art Carter, Ed Lowry, Kari Johnson, Jeff Mojcher, Thomas Song and Lee Berlin. The Board discussed possible effects of proposed legislation AB1277 and AB1165 and instructed staff to prepare an analysis for the Department. The meeting was adjourned at 5:28 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned 5:29 p.m.