

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION  
Held on January 16, 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 JANUARY 2, 2013 MEETING:**

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

ACTION: Member Lowry moved that the Board approve the draft minutes of the January 2, 2013 Board Meeting. Member Freyman seconded. The Board voted to approve the draft minutes of the January 2, 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: Acting Executive Officer Kari Johnson reported that the comment period for the current rulemaking package will end on January 25.

2. 2013 HEARING CALENDAR/STATISTICS REPORTS

*(Review and discuss current calendaring and statistical information)*

ACTION: Acting Executive Officer Kari Johnson explained how the hearing calendar report and several other statistics reports are compiled and suggested alternative formats for the information being reported.

**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)*

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ACTION: Acting Executive Officer Johnson discussed the progress of the proposed remodel of the West Covina office and the security issues the project is expected to remedy.

**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: No report.

**CHAIRPERSON'S REPORT:**

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

ACTION: Chair Charter reported that he and Acting Executive Officer Johnson will meet the Federal OSHA representative for the quarterly meeting on January 25.

**BOARD MEMBERS' REPORTS:**

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

ACTION: No report.

**EXECUTIVE OFFICER'S REPORT:**

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

ACTION: No report.

**STAFF REPORTS:**

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

ACTION: No report.

**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:**

DAVID R. MILLER CONSTRUCTION INC., 11-R2D1-0456

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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.

GLOBAL LEISURE PRODUCTS, INC. DBA SPA HOPPER, 12-R2D2-1416

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.

RONALD D. LITTLE DBA AAA TREE SERVICE, 11-R2D1-1499

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.

JOHN MOURIER CONSTRUCTION INC., DBA JMC HOMES, 11-R2D1-0086

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.

RAJ KUMAR SHARMA DBA SUNRISE ORCHARDS, 10-R2D1-3390 AND 3391

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.

SOUTHLAND-TUTOR-PERINI JOINT VENTURE, 11-R5D1-3248 AND 3249

ACTION: Member Lowry moved that the Board grant reconsideration of this matter on its own motion. Member Freyman seconded. The Board voted to grant reconsideration of this matter on its own motion.

T. SHANNON CONSTRUCTION, INC., 11-R2D2-2053

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.

THYSSENKRUPP ELEVATOR, 11-R2D1-2217 THROUGH 2219

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.

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YNT HARVESTING, 08-R2D5-5010

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.

**ORDERS OF ADMINISTRATIVE LAW JUDGES:**

ADB ENTERPRISES, LLC DBA GILL RANCH COMPANY, 12-R6D7-1924

ALBANY BOWL PROPERTIES PARTNERSHIPS, LP, 12-R1D4-2495 THROUGH 2497 \*

ALLIANCE RESIDENTIAL BUILDERS II GP INC., 12-R4D2-1219

BERKE DOOR & HARDWARE, INC., 11-R2D1-0543

BEST DRILLING & PUMP INC., 12-R2D5-2735 AND 2736

BO DEAN CO INC., 12-R5D1-1879

BODYCOTE THERMAL PROCESSING INC., 12-R4D2-1223 THROUGH 1225 \*

BUTTE LODGE OUTING CLUB, INC., 12-R2D3-0981 \*

CABLE BROTHERS INC., 12-R4D2-1220 AND 1221

CALIFORNIA DAIRIES, INC., 12-R2D5-1598

CALIFORNIA FORENSIC MEDICAL GROUP INCORPORATED, 12-R1D5-1797

JOSE CARDENAS DBA CARDENAS CONSTRUCTION, 12-R6D7-2291 AND 2292

CITY OF LEMOORE WASTEWATER TREATMENT PLANT, 12-R6D3-1776  
THROUGH 1779

CLARK & SULLIVAN BUILDERS, INC., DBA CLARK & SULLIVAN  
CONSTRUCTION, 12-R2D3-2163 THROUGH 2165

CLEAN COAT PAINTING, INC., 12-R2D2-0740

PEDRO DUARTE DBA DUARTE AUTO BODY, 12-R6D7-2056 AND 2057

FOXFIRE CONSTRUCTORS, INC., 12-R5D1-2110

GENERAL MILLS, INC., 12-R2D4-1490

ROSALIO GONZALES DBA LOS AMIGO TRANSMISSION & AUTO REPAIR,  
12-R6D7-1473 THROUGH 1475

GEOFFREY AND JIL HALES DBA BARNDIVA, 12-R1D5-1309

J. GILMORE CONSTRUCTION, INC., 12-R6D7-1921 THROUGH 1923

DAVE LUNA, ROBERT BURKHARDT DBA TRU-COLOR CONCEPTS,  
12-R6D7-1855

MARKET RECYCLING INC., DBA CANCO RECYCLING, 12-R3D5-0707 AND 0708 &  
12-R3D5-1190

MONTE VISTA FARMING COMPANY, 12-R2D4-1702 THROUGH 1704

PENNY NEWMAN GRAIN COMPANY, INC., 12-R2D4-0777 AND 0778

PICTURE PERFECT POOL SERVICES, INC., 12-R2D2-1666

PLANT SCIENCES INC., 12-R2D3-3251

PRODUCERS DAIRY FOODS, INC., 09-R2D5-1656 THROUGH 1659

RJS & ASSOCIATES CONCRETE STRUCTURES, 12-R1D3-2571

JESSICA RODRIGUEZ, 12-R2D4-0353

SACRAMENTO REGIONAL TRANSIT DISTRICT, 11-R2D1-2820

SAN RAFAEL ROCK QUARRY, INC., 12-R5D1-2165

SHINGLETOWN TREE SERVICE, 12-R2D3-0077 AND 0078

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SOLNUS THREE LLC DBA ROSEVILLE POINT HEALTH & WELLNESS CENTER,  
11-R2D1-3170

STEVE WILL'S TRUCKING & LOGGING LLC, 11-R2D3-0430

STEVE WILL'S TRUCKING & LOGGING LLC, 11-R2D3-0431

STILLWATER CAT HAVEN, 12-R2D1-3459

SUTTER EMERGENCY CENTER, 12-R6D3-2532 \*

TUTOR-SALIBA CORPORATION, 12-R5D1-1946 THROUGH 1956

UNITED COMPOST & ORGANICS, DBA FOXFARM SOIL & FERTILIZER  
COMPANY, 12-R2D3-2501

USS CAL BUILDERS, INC., 12-R4D1-0289

VALLEY CREST TREE CARE SERVICES, 12-R4D1-1218

VENTURA FOODS, INC., 12-R6D4-2449 THROUGH 2451

VICTOR PRODUCE, INC., 12-R2D4-2098

WAWONA FROZEN FOODS, 12-R6D3-0690 THROUGH 0693

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

**ORDERS DISMISSING APPEALS:**

EDCO WASTE & RECYCLING, 12-R3D2-0163 AND 0164

DRAEGER CONSTRUCTION, INC., 11-R1D1-2215

FURNITURE BY THURSTON, 11-R2D1-2497 THROUGH 2499

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges. Orders with asterisks are deemed approved as amended

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

NORTH RANCH BUILDERS INC., 12-R6D7-3624 THROUGH 3626

ACTION: Member Lowry moved that the Board approve this Order Granting Leave to File Late Appeal from an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Granting Leave to File Late Appeal from an Administrative Law Judge.

**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.)*

1. SOUTHERN CALIFORNIA EDISON, 12-R3D3-0499  
(*Petition for Reconsideration*)

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

Member Lowry further moved that the Board extend itself an additional 15 days in order to respond to the Petition in accordance with Labor Code section 6624. Member Freyman seconded the motion. The Board voted to extend the time to act by 15 days in order to respond to the petition.

2. TL PAVLICH CONSTRUCTION, INC., 11-R3D6-1303 THROUGH 1310  
(*Decision of Administrative Law Judge*)

ACTION: Member Lowry moved that the Board grant reconsideration of this matter on its own motion. Member Freyman seconded. The Board voted to grant reconsideration of this matter on its own motion.

#### **PETITIONS FOR RECONSIDERATION**

1. FOSTER DAIRY FARMS, 10-R2D1-1981

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

2. JACOV HERSCU DBA JACK'S GENERAL CONTRACTING,  
11-R1D4-1725-1729

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

3. PCS SOLUTIONS, INC., 12-R3D6-0578 AND 0579

ACTION: Member Lowry moved that the Board vote to grant reconsideration and remand this matter to the Administrative Law Judge. Member Freyman seconded. The Board voted to approve an Order of Remand for this matter.

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

1. LIU'S ENTERPRISE CONSTRUCTION, CO., 12-R3D1-9141

ACTION: Member Lowry moved that the Board vote to approve these draft Denials of Petitions for Reconsideration for signature. Member

Freyman seconded. The Board voted to approve these draft Denials of Petitions 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  
CALIFORNIA ERECTORS, INC., 10-R1D2-2772 THROUGH 2775  
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955  
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  
COUNTY OF ALAMEDA, GENERAL SERVICES AGENCY, 11-R1D4-3064  
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  
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389  
IN THE POCKET, INC. DBA BRENTWOOD BOWL, 11-R1D3-2272  
IRWIN INDUSTRIES, 08-R6D4-1454  
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  
MARINE TERMINALS, 08-R6D2-1920  
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298  
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791  
ORANGE COUNTY FIRE AUTHORITY, 12-R3D1-0364  
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  
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 FROZ SUN FOODS, 09-R4D3-2850  
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443  
VAN EVERY CONSTRUCTION, INC., 11-R1D4-0936 AND 0937

**LEGISLATION:**

ACTION: No report.

**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. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)  
ACTION: Chief Counsel Mojcher reported that the legal unit is preparing a brief to file this week in preparation for a hearing scheduled in February.
4. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430  
(09- 9280/9281)
5. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
6. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP,  
34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
7. SMUD, 34-2010-80000723 (08-R2D1-4887)
8. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
9. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)

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10. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
11. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
12. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
13. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
14. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)  
ACTION: Chief Counsel Jeff Mojcher reported that this case was decided last week in a Los Angeles court and the judge ruled in favor of the Board.
15. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
16. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
17. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
18. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
19. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
20. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
21. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
22. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
23. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
24. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
25. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
26. PRESTON PIPELINES, INC., 34-8012-80001277 (09-R6D7-3345)
27. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
28. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)

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29. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)

30. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)

**PERSONNEL:** *(Issues regarding staff)*

ACTION: Acting Executive Officer Kari Johnson discussed personnel matters.

The Closed Session adjourned at 12:37 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 at 12:38 p.m.