

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on January 25, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Candice A. Traeger, Board Member
Ed Lowry, Board Member
Jeff Mojcher, Chief Counsel
Michael Wimberly, Executive Officer
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF JANUARY 4, 2011:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Lowry moved that the Board vote to approve the draft minutes of the January 4, 2012 Board meeting for posting. Member Traeger seconded. The Board voted to approve the draft minutes of the January 4, 2012 Board meeting for posting.

ADMINISTRATIVE MATTERS:

(Review and discuss most current Board statistics)

1. STATISTICS

ACTION: No Report

a. YEARLY STATISTICS

ACTION: No Report

NEW BUSINESS:

(The Appeals Board hears and/or discusses new matters brought before the members.)

1. 2011/2012 BUDGET

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

ACTION: No Report

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: The Board discussed proposed language for 2012 rulemaking. Counsel Johnson updated the Board on items of 2012 rulemaking that are scheduled for discussion at the next meeting of the Advisory Committee.

OLD BUSINESS:

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

1. ADVISORY COMMITTEE MEETINGS

ACTION: The next meeting of the Advisory Committee will be held in Sacramento on February 2, 2012.

LEGISLATION:

ACTION: Chairperson Carter mentioned that portions of SB829 will be taken up sometime next May.

CHAIRPERSON'S REPORT:

ACTION: Chairperson Carter thanked members of the Board and staff for their assistance during his recent confirmation process.

BOARD MEMBER'S REPORT:

ACTION: Member Traeger had no report. Member Lowry thanked the Board members and staff for their assistance during the confirmation process.

EXECUTIVE OFFICER'S REPORT:

ACTION: Executive Officer Wimberly welcomed new staff members Thomas Song, Mary Dryovage, Neil Robinson, Kevin Reedy and Lee Berlin.

STAFF REPORTS:

ACTION: Chief Counsel Mojcher reported on a new writ of mandamus

PUBLIC COMMENT:

ACTION: No report.

The Board recessed to its Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

KOOSHAREM CORP. DBA SELECT FOCUS, 10-R1D2-0390

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

UNDERGROUND CONSTRUCTION CO., INC., 09-R1D3-3518

ACTIONS: Member Lowry moved that the Board vote to approve this Decision of an Administrative Law Judge. Member Traeger seconded. The Board voted to approve this Decision of an Administrative Law Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

AIRPORT COLLISION REPAIR & TOWING, INC., 11-R4D1-0509 AND 0510
ALPHA SYSTEMS FIRE PROTECTION, INC., 11-R4D1-1315 THROUGH 1316
AM-X CONSTRUCTION & EXCAVATION, INC., 10-R2D1-0339 THROUGH 0341
ANDREWS FARMS – A PARTNERSHIP, 09-R2D4-2645 THROUGH 2647
AUBURN PLACER DISPOSAL, INC., 08-R2D1-4003
BEVERLY HILLS USD, 11-R4D1-1453
BIG J CONSTRUCTION, INC., 10-R2D3-4066 AND 4067
BLAIR HOUSE HOMEOWNERS ASSOCIATION, 11-R4D1-1125 and
11-R4D1-1187
BLUE SKY REMEDIATION SERVICES, INC., 10-R3D6-2493 THROUGH 2495
MARIA GUADALUPE BRAVO DBA GOLDEN AG PAYROLL SERVICE,
08-R2D3-3281
BURNETT AND SON MEAT PACKING, 11-R4D2-0665 and 11-R4D2-1127
CHEVRON USA, INC. DBA N. AMER. EXP. & PROD., 11-R6D4-0333
CITY OF LOS ANGELES – DC TILLMAN WATER RECLAMATION,
11-R6D4-1249
CITY OF ROSEVILLE PUBLIC WORKS, 11-R2D1-0697
CUTTING EDGE BUILDERS, 11-R2D3-0540
DAYLIGHT FOODS, INC., 10-R1D2-3608 AND 3609
ENVIRONMENTAL ENGINEERING CONSULTING & REMEDIATION, INC.,
11-R2D1-0411
EUROAMERICAN PROPAGATORS LLC, 11-R6D5-2552 AND 2553 and
11-R6D5-2695
GRANITE CONSTRUCTION COMPANY, 09-R5D1-1923
GRANITE CONSTRUCTION COMPANY, 10-R5D1-2556*
KARS TOWING & TRANSPORT, INC., 09-R2D5-0560 AND 0561
KHAM BORIBOUN DBA K. B. FARMS, 11-R2D5-2059
KIRSCHENMAN ENTERPRISES, INC., 10-R2D5-2780
MCM CONSTRUCTION, INC., 08-R2D3-4201 AND 4202
METAL MANUFACTURING COMPANY, 11-R2D1-0499 THROUGH 0501
METRO MILLING SERVICES, INC., 11-R2D1-0372*

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MICHAEL MURPHY CONSTRUCTION, INC., 11-R4D1-1269 AND 1270*
N. A. CHADJERIAN YOUTH CORRECTIONAL FACILITY, 11-R2D4-0256 THROUGH
0258
NITAKAYA USA, INC. 11-R3D6-0448 AND 0449
OILSEEDS INTERNATIONAL LTD., 09-R2D1-1083 THROUGH 1085
PEP BOYS AUTO PARTS, 11-R2D4-0014
PIAZZA ALMOND HULLING, INC., 11-R2D4-0733 AND 0734
PL HOMES, INC., 11-R2D1-0498
QUALITY HARVEST, 11-R6D5-2391 AND 2392
REBAR ENGINEERING, INC., 11-R4D1-1317 AND 1318
REINFORCING POST-TENSIONING SERVICES, INC., 08-R2D1-4170 THROUGH 4172
S. G. S. RECYCLING ENTERPRISES, INC. DBA A & S METALS, 10-R2D4-3201
AND 3202
SIERRA PACIFIC INDUSTRIES, 10-R2D3-1728
TAYLOR WINGS, INC., 09-R2D1-0159 THROUGH 0162*
TESSIER CABINET CO., INC., 11-R6D2-0908 THROUGH 0916
DAN JOHN WILLIAM TRACEY DBA AIRDRAULICS, 11-R4D2-1350
WESTERN BADGE & TROPHY COMPANY DBA WBT INDUSTRIES, 11-R4D2-1349

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

DELTA TRANSPORTATION, INC., 08-R2D1-4999

ACTION: Member Traeger moved that the Board vote to reconsider this Order of an Administrative Law Judge, on its own motion. Member Lowry seconded. The Board voted to reconsider this Order of an Administrative Law Judge, on its own motion.

D & D CONSTRUCTION SPECIALTIES, INC., 08-R4D3-4814 THROUGH 4816

ACTION: The Board took no action.

ORDERS DISMISSING APPEALS:

ALIKA IKAIKA ENTERPRISES INC. DBA ATTENTION TO DETAIL,
10-R1D2-1191

ACTION: Member Traeger moved that the Board vote to approve this Order of an Administrative Law Judge. Member Lowry seconded. The Board voted to approve this Order of an Administrative Law Judge.

ORDERS AFTER REMAND:

RDV FARMS INC., 08-R2D3-4282 THROUGH 4284

ACTION: Member Traeger moved that the Board vote to approve this

Order of an Administrative Law Judge. Member Lowry seconded. The Board voted to approve this Order of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

A-CO TEMPORARY POWER, 10-R4D1-3110 and 11-R4D1-9206

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

ARSEN MKRTCHYAN DBA COLTON HANDWASH, INC., 08-R3D3-9181

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

DEVCON CONSTRUCTION, INC., 09-R1D2-3398

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

WF HAYWARD CO., 10-R6D7-2021 AND 2022

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

DENIALS OF PETITIONS FOR RECONSIDERATION (DRAFTS):

SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 07-R2D3-0275 THROUGH 0280

ACTION: The Board accepted the Chief Counsel's recommendation to reschedule consideration of this Denial of Petition for Reconsideration Draft until the February 1, 2012 meeting and to extend itself an additional 15 days in which to act in accordance with Labor Code section 6624.

MATTERS PENDING RECONSIDERATION:

AARON METALS COMPANY, INC., 09-R1D4-2137 AND 2138
AC TRANSIT, 08-R1D4-0135

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AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
AGWOOD MILL & LUMBER, INC., 08-R1D5-1068
VERNON MELVIN ANTONSEN & COLLEEN K. ANTONSEN, INDIVIDUALLY DBA
ANTONSEN CONSTRUCTION, 06-R2D3-1272
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO.,
09-R6D2-2239 THROUGH 2241
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CA RASMUSSEN, INC., 08-R4D5-219 AND 220
COMMERCIAL METAL FORMING, 09-R3D1-1592
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
DESIGN BUILDERS, INC., 08-R4D4-1901
DUININCK BROS., INC., 06-R4D3-2871
DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
DUKE PACIFIC, INC., 08-R3D3-574
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
FORTUNA IRON WORKS 06-R2D3-4222
HB PARKCO, 07-R4D2-1730 AND 1731
THE HERRICK CORP., 07-R3D1-0495
HOME DEPOT, 10-R3D6-3284
JENSEN PRECAST, 05-R2D1-2377
JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
L & S CONSTRUCTION, 10-R3D2-1822
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
LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540
MARINE TERMINALS, 08-08-R6D2-1920
MICHELS CORP. DBA MICHELS PIPELINE CONSTRUCTION, 07-R5D1-4274
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NIBBI BROTHERS ASSOCIATES, INC., 07-R1D1-2494
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022
PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC.,

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08-R2D1-0025 AND 0026

P G & E CORPORATION DBA PACIFIC GAS & ELECTRIC CO., 11-R4D3-9132

POUK & STEINLE, INC., 09-R3D3-0491

RAMON ARANDA DBA I & R PALLETS, 10-R6D5-9053

ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048

JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710

SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196

SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055

SHERWOOD MECHANICAL, INC., 08-R3D2-4690 THROUGH 4693

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 FROZSUN FOODS, 09-R4D3-2850

A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443

TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,

05-R2D4-2650 AND 2651

A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0469

AND 0460

UNITED PARCEL SERVICE, 07-R3D3-3322

WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095

RIEZEBOS CONSTRUCTION, INC., 08-R2D5-1730

ACTION: Member Traeger moved that the Board vote to approve Order of Remand for this matter pending reconsideration. Member Lowry seconded. The Board voted to approve Order of Remand for this matter pending reconsideration

LEGISLATION:

(Discussion of pending legislation which may affect the Board).

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. JERLANE, 37-2009-00059323-CU-WM-NC (08-1733)

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2. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB),
34-2007-00882192-CU-WM-GDS, (01-3261)
3. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB)
(00-440)
4. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
5. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
6. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
7. WPCS INTERNATIONAL SUISUN CITY, INC., 34-2010-80000430 (09-
9280/9281)
8. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-
R5D1-3611)
9. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-
R2D1-0027 THROUGH 0030)
10. EMERSON RUSSELL MAINTENANCE CO., RG-10543219 (08-R1D4-4167)
11. SMUD, 34-2010-80000723 (08-R2D1-4887)
12. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
13. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
14. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-
0188~0191)
15. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010
(08-R2D1-3273)
16. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)

COURT OF APPEAL

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)

PERSONNEL:

(Issues regarding staff)

ACTION: Executive Officer Wimberly reported on the positive progress of staff members assigned to new positions.

Any matter not completed at this Closed Session may be continued to subsequent meetings.

Chairperson Carter adjourned the Closed Session at 11:45 A.M.