

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on March 20, 2013
Sacramento, California**

PRESENT:

Art Carter, Chairperson
Ed Lowry, 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
David Donnell, ESQ, Robert D. Peterson Law Corporation

MINUTES OF MARCH 6, 2013 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the March 6, 2013 Board Meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the March 6, 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 Johnson reported that the rulemaking package was submitted to the Office of Administrative Law last week as planned.

2. 2013 HEARING CALENDAR/STATISTICS REPORTS:

(Review and discuss current calendaring and statistical information)

ACTION: The Board reviewed appeals initiation statistics for the calendar year to date.

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: Acting Executive Officer Kari Johnson discussed the Federal sequestration action. The Board can expect a budget reduction of about \$65,000 this fiscal year, \$209,000 in 2013-2014 fiscal year and approximately \$214,000 for fiscal 2014-2015.

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: Chair Carter reported that he has heard some new bills are beginning to take shape that could have an effect on the Board's operations.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Carter reported that he is expecting to hear some news regarding the ongoing issue of mental health hospital workers.

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: Acting Executive Officer Kari Johnson reported that the ORACLE testing is still proceeding using an improved testing platform. She also explained that the Board staff will hold its quarterly safety meeting on March 22, and has updated its IIPP.

STAFF REPORTS:

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

ACTION: No report.

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:

ANDREW M. MARTIN COMPANY, 11-R4D1-3119 THROUGH 3122

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

CRAIN WALNUT SHELLING INC., 12-R2D3-0600

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

MOROSO CONSTRUCTION, INC., 12-R6D7-1585

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

NORTH STATE GROCERY INC. DBA HOLIDAY QUALITY FOODS,
11-R2D1-0950 AND 0951

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

PETITIONS FOR RECONSIDERATION

GUARDSMARK, LLC, 12-R3D1-0056

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

MID-COAST BUILDERS SUPPLY, INC. DBA NEW MCB, INC., 2011-R4D3-2780

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

DENIAL OF PETITIONS FOR RECONSIDERATION (DRAFT):

1. BIG LOTS #4038, 11-R3D2-1929 THROUGH 1931

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Chair Carter 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.)

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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
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
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
LFP VIDEO GROUP LLC DBA HUSTLER VIDEO, 11-R6D2-0966 ~ 0968
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
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
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
SOUTHERN CALIFORNIA EDISON CO., 12-R3D3-0499
SOUTHLAND-TUTOR-PERINI JOINT VENTURE, 11-R5D1-3248
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

ACTION: The Board took no action on these matters.

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.)

ORDERS DISMISSING APPEAL:

1. JOE PURCELL DBA JOE'S TREE SERVICE, 12-R2D2-2036
ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Dismissing Appeal of an Administrative Law Judge.
2. WALLDESIGN, INC., 12-R2D1-0938 AND 0939
ACTION: Member Lowry moved that the Board approve this Order Dismissing Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Dismissing Appeal of an Administrative Law Judge.

ORDERS GRANTING LEAVE TO FILE LATE APPEAL:

1. COUNTY OF RIVERSIDE – ANIMAL CONTROL SERVICES, 13-R3D3-0486
ACTION: Member Lowry moved that the Board approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge.
2. LAMPSON VILLAGE APARTMENTS, 13-R3D1-0487 THROUGH 0491
ACTION: Member Lowry moved that the Board approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge.
3. OAKVILLE PRODUCE PARTNERS, LLC DBA GREENLEAF, 13-R1D1-0485

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ACTION: Member Lowry moved that the Board approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve this Order Granting Leave to file Late Appeal of an Administrative Law Judge.

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

CUSTOM AIR TRUCKING, INC., 13-R6D2-9023

NORTHWOOD DESIGN PARTNERS, INC., 13-R1D4-9021

JERRY'S TREE SERVICE A PARTNERSHIP, 13-R1D5-9022

ACTION: Member Lowry moved that the Board approve these Orders Denying Leave to file Late Appeal of an Administrative Law Judge. Chair Carter seconded. The Board voted to approve these Orders Denying Leave to file Late Appeal of an Administrative Law Judge.

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. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)

ACTION: Chief Counsel Mojcher reported that the Board prevailed in this action.

2. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)

3. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)

4. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-80006047 (07-R5D1-3611)

ACTION: Chief Counsel Mojcher reported that the legal unit has prepared a brief for this matter and will submit it to the court on or before March 22, 2013.

5. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)

6. SMUD, 34-2010-80000723 (08-R2D1-4887)

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7. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
8. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
9. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
10. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
11. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
12. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
ACTION: This matter was concluded last month. The Board has submitted a Bill of Costs.
13. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
14. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
15. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
16. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
17. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
18. SHERWOOD MECHANICAL, INC., 37-2012-00101466 (08-R3D2-4690 ~ 4693)
19. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
20. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
21. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
22. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
23. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
24. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
25. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
26. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)

27. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
28. A. TEICHERT & SON, DBA TEICHERT AGGREGATES, RG12 659881 (10-R5D1-3029)
29. HOME DEPOT USA, INC., BS141301 (10-3284)
30. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
31. ORANGE COUNTY FIRE AUTHORITY, 30-2013-00628178 (10-3667)

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.)

AMERICANA UNITED BUILDERS CORP., 12-R4D3-1610
ANDAZ WEST HOLLYWOOD, 11-R4D1-1512 AND 1513 *
ANDERSON ENTERPRISES, INC. DBA ROYAL MOTOR SALES, 12-R1D1-3628 *
BETTS EXPRESS, 12-R4D3-3015
BOBO CONSTRUCTION, INC., 12-R2D1-3708
BOGGS EQUIPMENT & ENGINEERING, 11-R2D3-1643 THROUGH 1645
BNBT BUILDERS DBA BNBUILDERS, INC., 12-R1D1-1521 AND 1522
BRIGGS ELECTRIC, 12-R3D6-1357 AND 1358
B T MANCINI, 10-R1D2-2661 AND 2664
CITY OF ALAMEDA POLICE DEPARTMENT, 12-R1D4-3707
CITY OF ALAMEDA FIRE DEPARTMENT, 12-R1D4-3706
CONCEPT COATING, 12-R2D4-1386 THROUGH 1389
EICHLEAY ENGINEERS INC. OF CALIFORNIA, 12-R5D3-1037
EMMETT'S EXCAVATION, INC., 11-R2D5-3086
ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC., 12-R4D7-3798
ESPARZA ENTERPRISES, INC., 12-R6D5-2013
FOODPHARMA, 12-R6D2-2484 AND 2485
FOODPHARMA, 12-R6D2-2603 THROUGH 2609
GLANBIA NUTRITIONALS (NA), INC., 12-R3D2-1172 AND 1173
JOSE THOMAS HERNANDEZ DBA THOMAS ROOFING, 11-R2D1-1192
HILL PHOENIX INC. DBA HILL PHOENIX WALK-INS, 12-R3D6-1572 AND
12-R3D6-1790
HYATT REGENCY CENTURY PLAZA, 11-R4D1-1743 *
IN-HOUSE CUSTOM DECALS, 12-R3D6-1607 AND 1608 *
JEFFREY LAY CUSTOM PAINTING, INC., 12-R4D3-1226
DAVID A KUTTLER DBA KUTTLER TREE SERVICE, 11-R2D1-2766 THROUGH 2769

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LEAL VINEYARDS, INC., 12-R6D1-2245
MARQUEZ BROTHERS INTERNATIONAL, INC., 12-R2D5-0271 THROUGH 0273
MERIDIAN MANAGEMENT GROUP, 12-R1D1-1376 THROUGH 1378
MICHELS CORPORATION, 12-R2D2-2226
MID-STATE BUILDERS, INC., 12-R2D1-0854 AND 0855
NEW CENTURY INDUSTRIES, INC., 12-R3D6-1605 AND 1606
NORTH KERN WATER STORAGE DISTRICT, 12-R4D6-2407
NUMATECH WEST (KMP) LLC, 12-R3D6-1537 AND 1538
PRECAST INOVATIONS, INC., 12-R3D1-1990
P.W. STEPHENS ENVIRONMENTAL, INC., 12-R1D5-2147 AND 2148 *
SYNERGY PROJECT MANAGEMENT, INC., 12-R1D1-2314
SUNLAND WOOD PRODUCTS, 12-R6D2-2520 AND 2521
SUNLAND WOOD PRODUCTS, 12-R6D2-2522 THROUGH 2531

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 adjourned at 10:40 a.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 10:41 a.m.