

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on March 3, 2016
West Covina, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Jeff Mojcher, Chief Counsel
Neil Robinson, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Andia Farzaneh, Graduate Student Assistant
Jennifer Garcia, Reyes Construction Inc.
David Jones, Director of Occupational Div. AGC of California
Jora Trang, Managing Attorney, Worksafe

MINUTES OF February 18, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the February 18, 2016 Board meeting as amended. Member Freyman seconded. The Board voted to approve the draft minutes of the February 18, 2016 Board meeting as amended.

NEW BUSINESS:

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

ACTION: No report.

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: No report

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)

OPERATIONS UPDATE:

ACTION: No report

STAFF REPORTS:

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

OASIS PROJECT:

ACTION: Continued work is being done to finish within the scheduled timeframe.

RULEMAKING:

ACTION: The Board held a public hearing regarding its Stay of Abatement and Rules of Practice and Procedures Rulemaking Package. Two members of the public attended the meeting in Sacramento, and one attended at the Board's office in West Covina. One member of the public had comments for the Board. The Board thanked the public for attending and commenting.

LITIGATION UPDATE:

ACTION: A hearing was held February 26, 2016.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

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

ACTION: No comments

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

PETITIONS FOR RECONSIDERATION:

KNIGHT TRANSPORTATION PORT SVC., LLC, 15-R3D5-9225

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

LOUIS TANGALASKIS dba ELIAS CONSTRUCTION, 15-R4D1-9236

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

BOTHUM TURKEY FARM, 15-R2D4-0137

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.

RAAM CONSTRUCTION, INC., 15-R1D4-0155

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.

ORDERS DISMISSING APPEAL:

HOME DEPOT USA STORE #6684, 15-R4D4-0118

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.

ORDER DENYING LEAVE TO FILE LATE APPEAL

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.)

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.)

CABRILLO ECONOMIC DEVELOPMENT CORP., 11-R4D3-3185 and 3186
CALSTRIP STEEL CORPORATION, 12-R3D6-1998 & 1999

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

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

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
DAVEY TREE SURGERY CO., 13-R3D3-1018 THROUGH 1021
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
HERMAN WEISSKER, INC., 13-R3D1-3279
JM ENVIRONMENTAL, INC., 15-R2D1-9232
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
MAGNA TOOL INC., 15-R3D1-9214
MASTER CARE WINDOW WASHING, 15-R1D4-9230
MDB MANAGEMENT INC., 14-R4D1-2373 AND 2374
MORROW-MEADOWS CORP., 12-R4D1-0717 THROUGH 0719

OC COMMUNICATIONS, 14-R2D2-0120, 0166 and 0340

ACTION: The Board discussed this matter.

SIERRA FOREST PRODUCTS, 09-R2D5-3979
SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562
THROUGH 2570
UNITED PARCEL SERVICE, 13-R3D2-2664 and 2665

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. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
3. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
4. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
5. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
6. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
7. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
8. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
9. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
ACTION: Member Lowry moved that the Board approve this Order of Remand by Court. Member Freyman seconded. The Board voted to approve this Order of Remand by Court.
10. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
11. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
12. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
13. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
14. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)

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15. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575
(12-R5D1-337)
16. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
17. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749
(2008-R2D1-3414 THROUGH 3418)
18. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
19. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
20. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817
(09-R6D2-2238 ~ 2241)
21. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
22. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
23. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360
THROUGH 3362)
24. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
25. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
26. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL
(14-R3D2-1935 & 1936)
27. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
28. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR,
15CV-00945 (08-R2D1-3093 ~ 3098)
29. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
30. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
31. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002204
(12-R3D1-0781)
32. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
33. NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391

34. TRI STATE STAFFING, 12-R6D2-0378
35. CHEVRON U.S.A., N15-2013 (13-R6D3-0655 THROUGH 0662)
36. T & R CONSTRUCTION GROUP, BS159712 (14-R4D3-4120 & 4121)
37. ABM FACILITY SERVICES, INC. dba ABM BUILDING VALUE, 30-2016-00831661,
12-R3D6-3496 ~ 3498

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191
THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456
(11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953,
34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

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.)

3 PLUS LOGISTICS CO., 15-R3D5-1782
99 CENTS ONLY STORES LLC, 16-R3D3-0014 THROUGH 0017
A & A MUFFLERS, INC. DBA MOTA AUTO REPAIR, 15-R6D5-4682
THROUGH 4684
ADVANCED ROOFING SERVICES, INC., 15-R1D4-1104 AND 1105
ALDELANO CONTRACT STAFFING SERVICES, 16-R1D4-0226 AND 0227
AMES CONSTRUCTION, INC., 15-R5D2-3947
ANDERSON AND MIDDLETON DBA DELANO FARMS, INC., 15-R6D5-3669
AND 3670
ANGEL CONTRERAZ DBA CONTRERAZ SMOG & AUTO REPAIR,
15-R6D7- 1938 THROUGH 1940
BEE SWEET CITRUS, INC., 15-R2D5-1123 THROUGH 1125
BRAGG CRANE SERVICE, 15-R2D1-3166 AND 3167
BRETLYN, INC DBA B A E ROOFING, 15-R2D1-2509
BRUSH RESEARCH MANUFACTURING COMPANY, INC., 16-R4D4-0065
CARDINAL PAINT AND POWDER, INC., 15-R4D4-2328

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CCL TUBE INC, 15-R3D5-0643 AND 0644
CEVA LOGISTICS US INC, 15-R3D3-3571 AND 3572
C&K MARKET, INC DBA RAYS FOOD PLACE, 15-R2D3-4363
COMMERCIAL DISPLAY SYSTEMS, LLC., 15-R6D2-4571 THROUGH 4573*
CUMMINS PACIFIC, LLC, 15-R1D4-2312 THROUGH 2315
COMMUNICATIONS TEST DESIGN INC, 15-R3D3-0168 THROUGH 0170
DAVID & ERIKA ENTERPRISES INC DBA SENTRY FIRE PROTECTION,
15-R2D3-4633
DAVIS WIRE CORPORATION, 15-R4D4-1521 AND 1522
DAY-LEE FOODS, INC., 15-R1D4-4204 THROUGH 4206
KEVIN DENNIS DBA DEPUE WAREHOUSE COMPANY, 15-R2D1-1115
DESERT RECYCLING, INC., 16-R3D3-0035 AND 0036
DMCE CONCRETE & ENGINEERING CONTRACTORS DBA DMCE, INC.,
15-R2D1-3688
DOMER PRECISION, INC., 15-R3D5-2807
FISHER CONSTRUCTION, INC., 15-R3D1-1390
FLORICULTURA PACIFIC, INC., 16-R6D1-0104 THROUGH 0106
FRENCH BROTHERS CUSTOM SHUTTERS, INC., 15-R6D2-4418
THROUGH 4421
GERDAU-CONCO, 15-R1D2-1967
GJOKO KONDOVSKI DBA TIMEOUT CAFÉ, 16-R6D5-0200 AND 0201
GRANITE CONSTRUCTION COMPANY, 15-R1D2-0850
HENKELS & MCCOY, INC, 14-R4D4-3185
HENSEL PHELPS, 15-R3D2-1133 AND 1134
HONEY BAKED HAM, INC., 15-R2D1-2052
J.A. NETZEL CONSTRUCTION, 15-R1D2-2431
J-FOUR ENTERPRISES, INC. DBA MR. SPRINKLER FIRE PROTECTION,
15-R2D4-3696 AND 3697
KMS DESIGNS, INC., 15-R3D1-3172 THROUGH 3174
KOOSHAREM, LLC DBA SELECT STAFFING, 15-R2D4-2556
KOSAREFF FARMS, 14-R4D7-4228 THROUGH 4230
LA COUNTY MTA, 14-R4D1-2854
LANGER JUICE COMPANY INC, 15-R4D4-0092 THROUGH 0094
LEHIGH SOUTHWEST CEMENT COMPANY, 15-R5D1-3661 THROUGH 3663
MEL SERVICES INCORPORATED DBA WORKERS.COM, 15-R1D5-3687
MODERNICA INC, 15-R4D1-3775
MONOPRICE, 15-R4D4-4801
MARIA GUADALUPE NEGRETE DBA SUNRISE LABOR SERVICES,
15-R2D4-2230
MENU PRINTERS, INC., 15-R3D1-1129
MENU PRINTERS, INC., 15-R3D1-1130
NEHEMIAH REBAR SERVICES INC, 15-R2D1-3515
NEW KOOSHAREM CORPORATION DBA SELECT STAFFING, 15-R3D3-4561
NORMAN'S NURSERY, INC., 15-R6D2-2930 THROUGH 2933
NORTH COAST WATERPROOFING INC, 15-R1D5-4534

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NORTHROP GRUMMAN AEROSPACE SYSTEM, 15-R3D5-4410
NOVOTEC, INC., 15-R1D3-0353
PALISADE BUILDERS, INC., 15-R1D2-2228
PGMC COMPANY, INC., 15-R3D1-2513 AND 2514
PHILLIPS 66, 15-R7D1-3505 THROUGH 3511
PINNACLE CONSTRUCTION CO, 15-R2D5-0829 AND 0830
RAMA FOODS MANUFACTURE CORP., 15-R4D4-2181 THROUGH 2186*
LOUIS JOSEPH RAMIREZ DBA RAMZ CO CONST., 15-R6D5-3819 AND 3820
RATTO BROS INC, 14-R6D7-3516
RJS & ASSOCIATES, 15-R1D3-3801 THROUGH 3803
RND CONTRACTORS, INC., 15-R4D4-1341 AND 1342
ROBERTSON'S READY MIX, 15-R3D2-2696 THROUGH 2698
ROLFE CONSTRUCTION, 15-R5D1-1081 AND 1082
ROYAL AIRE, 16-R2D3-0268 THROUGH 0270
R & R LABOR, INC DBA R & R LABOR, 15-R6D1-1990
SAN MARCOS GROWERS, INC. DBA SAN MARCOS GROWERS,
15-R6D2-4574 THROUGH 4578
SILICON VALLEY IRON WORK, INC., 15-R6D1-2161
SMC CONTRACTING, INC., 15-R2D1-2728
SONOMA COUNTY ANIMAL SERVICES, DEPARTMENT OF
HEALTH SERVICES, 15-R1D5-4537
STRATEGIC OUTSOURCING, INC., 15-R6D1-2495 THROUGH 2499
SUNNYVALLEY SMOKED MEATS, INC., 15-R2D4-4389 THROUGH 4391
SYNERGY PROJECT MANAGEMENT, 15-R1D1-3827
THE DON CHAPIN CO. INC., 16-R1D2-0151
THE GOLDEN 1 CREDIT UNION, 16-R2D1-0352
THE RECYCLE DEPOT, INC., 15-R2D5-3650 THROUGH 3652
THE WILLOW GROUP, INC., 15-R4D1-2840
TOMMY LANE PAINTING & CONSTRUCTION, 15-R1D5-3685 AND 3686
TRI-CITY CONCRETE, 15-R1D5-4452
TRINET GROUP, INC., 15-R6D1-3017 THROUGH 3021
UNIVERSITY OF SAN FRANCISCO, 15-R1D1-2006
UNIX-PACKING, INC. DBA MAMMOTH WATER, 15-R4D4-2374 AND 2375*
VARIAN MEDICAL SYSTEMS, INC, 15-R2D1-0526
WERMERS MULTI-FAMILY CORP. DBA WERMERS, 14-R5D5-
1812 THROUGH 1814
WEST COAST ASM, 15-R1D3-3420 AND 3421
WIRETECH, INC., 15-R4D1-2152 THROUGH 2155
W.REYNEVELD CONSTRUCTION, INC, 15-R4D7-4741

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

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PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 12:04pm 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 12:06pm.