

## LAND RECLAMATION COMMISSION CONFERENCE CALL MEETING

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**August 18, 2008**  
**2:30 p.m.**

Chairman, Jim DiPardo called the meeting to order at 2:35 p.m. with role call.

**Commissioners Present:** Jim DiPardo, Chairman; Dr. Gregory Haddock, Vice Chairman; Joe Gillman; Kevin Mohammadi (present for Ed Galbraith), Nick Matherly, Col. John Riffle and Bob Ziehmer.

**Staff Present:** Larry Coen, Staff Director, Bill Zeaman, and Tina Stockman.

**Others Present:** Harry Bozoian, Attorney General's Office; Jane Martin, Scotts Concrete; Jim Sickel, Curran & Sickel, Attorney for Jane Martin; Bee Enowski, Crybaby Campgrounds; and Lisa Weppner, daughter of Ms. Enowski.

### INDUSTRIAL MINERALS

#### **Dredging Incorporated, vs. Bee Enowski**

Chairman DiPardo asked for a brief synopsis of the issue before the Commission today. Larry Coen explained that in the July 24<sup>th</sup>, 2008 meeting, the Land Reclamation Commission voted to require Ms. Enowski to allow access within 15 days and reclamation by the company within 60 days after that. However this has not occurred to date. Subsequently, Ms. Enowski wrote a letter to the Commission asking for another 60 days and the Commission will need to act on that request. Chairman DiPardo asked Harry Bozoian if he had anything to add. Mr. Bozoian stated that the Commission did order access within 15 days and then reclamation; however that did not occur because the landowner is requesting another change. The question before the Commission is whether the reclamation that has been completed is in compliance with the law.

Chairman DiPardo then asked Dr. Haddock to explain his review of the aerial photos.

Dr. Haddock, whose specialty is geography and geographic information systems, reviewed briefly his analysis of the 2001 and 2007 aerial photos that he received regarding this site. The photos show the location of the Dredging, Incorporated, pit, the river and the embankment separating the two. He had georeferenced the two photos to

within 2 or 2 ½ meters which would allow anyone to then equally compare the two photos for scale, location, etc. He was also able to compare the photos with 2007 data from the University of Missouri. He explained that in 2001 it was about 80 meters from the river's edge to the mine pit and in 2007 it was about 57 meters between the two features. A little of this difference can be the water level, but much of it is due to the bank erosion along the river which brings the water's edge closer to the mine pit. He further explained that using the University of Missouri data from 2007 and consulting with a geomorphologist, he had reviewed aerial views of a mile upstream and a mile downstream and that the river is experiencing bank stabilization problems all throughout this region. There were trees in the 2001 photo that are completely missing in the 2007 photo. There are also trees in the 2007 photo that look like they will fall into the river with the next high water. Therefore, he concluded that the bank stabilization problems occurring along the river adjacent to the mine pit is a natural regional phenomenon, not a result of the mining activity. He concluded that the Commission cannot hold Dredging Incorporated responsible for the changing river conditions. Mr. Coen explained that the photos were provided to the Commission by email just to look at the river and bank stability. They have nothing to do with the mine site or mine plan. Ms. Enowski stated that if someone would just come and look at the site they could see her concerns. Ms. Enowski then explained that in her view the bank stabilization was directly caused by the mining done by Dredging, Incorporated, because they have piled dredged materials about 20 or 30 feet higher on the bank at this location than elsewhere along the river, and she owns about a mile along the river. She stated that the past inspectors and the mine plan call for grading the bank to traversable. Jim DiPardo asked how long it had been since the last visit to the site. Bill Zeaman stated that the last inspection was conducted by Andrew Reed on October 19, 2007. Ms. Enowski further stated that Andrew Reed, Land Reclamation Program Inspector, last fall would not listen to her concerns, and determined that the site was stable from about 100 feet away. He told her that if she disagreed with him he could still use the "special circumstances button."

Mr. Jim Sickel, Attorney for Jane Martin of Dredging, Incorporated, disagreed with Ms. Enowski and stated that this is not what happened last fall on site. He stated that Ms. Enowski agreed with everything discussed on site that day, with a final plan to move forward with work they agreed to do, and then later she changed her mind and would not allow access to do this work. Ms. Enowski stated that she was trying to protect her property.

Chairman DiPardo stated he has been on the Commission for eight and a half (8 ½) years and the Commission has tried to resolve this matter with Ms. Enowski several times and nothing ever works. He said that the Commission needs to find a conclusion to this matter. Chairman DiPardo stated that the Commission made a final decision in July and Ms. Enowski's Attorney was present. Now the Commission has been informed that she need another sixty (60) days to find a new attorney.

Ms. Enowski explained that since her attorney had advised her that she did not need to be at the July Commission meeting, she felt misrepresented and needed the additional 60

days to seek new legal council. Ms. Enowski then read a paragraph of a letter that she had received from her attorney just before the July 24<sup>th</sup> meeting. Mr. Sickel asked Ms. Enowski who wrote this letter. When she replied Mr. Brownlee, Mr. Sickel stated that he thought that Mr. Brownlee was no longer her Attorney. She stated that the Attorney who represented her at the July meeting had never talked to her, had never visited the site, and she didn't even know who he was. She then stated she did not know what happened to her 1<sup>st</sup> attorney. Mr. Sickel then replied that she had dismissed her first attorney because she owed them thousands of dollars and didn't want to pay, and she is dismissing this attorney because she did not like what he told her. Mr. Sickel stated they cannot agree to the request for another sixty (60) days. He stated that this has gone on long enough and every time Dredging agrees to something, the conditions change again. Ms. Enowski stated she has not changed anything. She wants the same thing she has always wanted. Mr. Sickel stated that Dredging has agreed to do what DNR wanted, but she always wants something different. Dredging needs to resolve this matter today regarding reclamation or be released of the bond. Chairman DiPardo asked Harry Bozoian if the Commission can discuss this matter in open session. Mr. Bozoian replied if the Commission wants to go into Closed Session they certainly may. Mr. Coen explained that the Closed Session teleconference line would be available at 3:15 p.m.

Colonel Riffle then asked about the statement she had made in her letter to the Commission about her attorney's alleged conflict of interest with the Commission, but Ms. Enowski did not really know, she just believed there was a conflict. Colonel Riffle then asked how many trees she had lost to the river along the bank next to the mine pit, and Ms. Enowski did not know how many trees were lost, just that they seem to fall in frequently. Colonel Riffle stated that if she has a photographer and has been keeping track of the loss of trees then she should know how many trees have been lost. Ms. Enowski stated that if someone would just come and look they would understand.

Jim Sickel stated that he disagreed with Ms. Enowski's belief that the mine pit had anything to do with the trees along that bank falling into the river, rather that he agreed with Dr. Haddock's review that the river banks all along this stretch were unstable and that bank failure is a natural phenomenon having nothing to do with the presence of the mining activity. Mr. DiPardo then asked the Commissioners if they wanted to go into Closed Session or if they were comfortable continuing the discussion in Open Session.

Kevin Mohammadi questioned Ms. Enowski about the July 22<sup>nd</sup> letter from Mr. Brownlee that contained five (5) conditions. When he asked her about those conditions she stated that she was fine with them and that is the reason she did not attend the meeting. However, that is not what happened. Mr. Coen explained that Ms. Enowski's five (5) conditions were presented in July, but they were not acceptable to Dredging or to the Commission. Dr. Haddock then explained that he had asked Dredging if they would accept two (2) of the five (5) conditions. He did not want to see trees removed as provided in the other conditions. Those two (2) conditions were then provided back to Ms. Enowski as a final offer from the Commission which she did not accept and is the reason for today's conference call. He further stated that he felt that the Commission

should discuss all of this in Open Session in fairness to both the Operator and the landowner. Mr. DiPardo asked if all the Commissioners were comfortable with that. Mr. Coen stated that if the Commissioners want to ask their attorney for legal advice they should really do that in Closed Session. Colonel Riffle then made the motion that the Commission go into closed session to discuss this issue with the Commission's attorney. There was no second to this motion, so the motion died. Mr. DiPardo stated that the Commission would continue discussion in Open Session but that he is frustrated with the issue because he does not see it ever getting resolved between the two (2) parties. He further stated that the Commission is just wasting tax payers' money on this issue and he would like to see it put to a vote.

Dr. Haddock stated that part of the Commission was ready to release the bond in July but he had made a motion to try one more time if access could be gained in 15 days plus one. This did not occur. Dr. Haddock then made the motion to release Dredging, Incorporated from the bond, and Nick Matherly seconded the motion. A discussion of the motion followed.

Joe Gillman asked the parties that since the Commission had ordered a settlement in July what the parties did to meet that settlement. Ms. Martin explained that they were ready to implement the reclamation ordered by the Commission but had not yet gained access from Ms. Enowski to do so. Kevin Mohammadi asked what the Company was going to do if they had access. Dr. Haddock stated that the Commission's Order was to grade out areas around three (3) sides of the pit, pick up all construction debris over 100 pounds and seed the property. Mr. Mohammadi reiterated that the grading would be east of the pit and north and south of the pit. He then asked Ms. Enowski if she would agree to this. Ms. Enowski stated that since the Commission's proposed settlement did not include lowering and grading the bank between the pit and the river, and because the proposed settlement did not include sufficient recovery of the solid waste she believes is buried at the site, she cannot accept the Commission's final settlement order.

Harry Bozoian then advised that the motion should include reference to release of bond because the site met the legal standards for release of bond. Dr. Haddock then agreed to amend his motion to release Dredging, Incorporated from the bond because the site met the legal standards for release. Nick Matherly then again seconded the motion.

The vote to release Dredging, Incorporated from the bond was unanimous by role call vote.

Jim DiPardo – yes  
Dr. Haddock – yes  
Col. Riffle – yes  
Bob Ziehmer – yes  
Nick Matherly – yes  
Kevin Mohammadi – yes  
Joe Gillman – yes

**ADJOURN**

Colonel Riffle made a motion to adjourn. Dr. Haddock seconded the motion. The motion carried unanimously by role call vote.

Jim DiPardo – yes  
Dr. Haddock – yes  
Col. Riffle – yes  
Nick Matherly – yes  
Joe Gillman – yes  
Bob Ziehmer – yes  
Kevin Mohammadi – yes

Respectfully submitted,

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Chairman