
***California Underground Facilities Safe Excavation Board
("Dig Safe Board")***

September 14, 2020

Agenda Item No. 17 (Action Item) – Staff Report

Resolution No. 20-09-01 Authorizing Underground Service Alert of Southern California ("DigAlert") and Underground Service Alert of Northern California and Nevada ("USA North 811") to Use the Board's Seal on Invoices for Board Regulatory Fees

PRESENTER

Tony Marino, Executive Officer

SUMMARY

During discussions regarding regulatory fee collection, representatives of the regional notification (one-call) centers expressed desire for the Board to allow them to use the Board's seal on invoices for the fee. Statute requires a non-governmental entity to have an expressed connection or approval from a governmental body to use a symbol such as a seal in solicitation. Staff recommends the Board approve Resolution No. 20-09-01 permit use of the Board's seal on invoices and other fee-related communications with one-call center members.

STRATEGIC PLAN

2020 Strategic Objective: Continue Building a Foundation for Board Operations
Strategic Activity: Review of the Board's Fee Regulation

BACKGROUND

The Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016)¹ created the Board and authorized it to obtain funding for its operational expenses from fees charged to members of California's two one-call centers (Gov't Code §

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB661

4216.16(b)).² To implement this statute, the Board on August 20, 2018 approved a regulation to require the one-call centers to assess the fee through their standard invoicing processes and collect it on the Board's behalf (Title 19, § 4010, California Code of Regulations).³ Both of the state's one-call centers provide invoices for the regulatory fee to their members using invoices that are separate from the invoices they use for membership dues. During the June 2020 Board meeting, staff provided information showing weak compliance of one-call center members in paying the fee.⁴ During the Board's June 8, July 13, and August 8, 2020 meetings, one-call center representatives identified the lack of an official Board seal on the invoices as a barrier to collection, as several members had responded to the invoices with questions of whether they were fraudulent, and expressed a desire to use the Board's seal on the invoices the regional notification centers send on the Board's behalf to convey the legitimacy of the invoices.

DISCUSSION

Business and Professions Code section 17533.6 protects individuals from misleading solicitations from persons representing themselves as government agencies. The law states that:

“it is unlawful for any person, firm, corporation, or association that is a non-governmental entity to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service [...] unless the nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.”

The one-call centers have an expressed connection with the Board through the fee regulation in 19 CCR § 4010. This connection may not be evident to a one-call center member, nor is the scope of the one-call center use of the seal clear from this connection. The Board could address these issues through regulation or resolution. As a change in regulation could take 15 months or more, the regulation option is not feasible to explicitly authorize immediate use of the seal.

² https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4216.16.&lawCode=GOV

³ 19 CCR § 4010(b)(2), [https://govt.westlaw.com/calregs/Document/IC79205F948E049F395A4C532744BC5EA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IC79205F948E049F395A4C532744BC5EA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

⁴ Agenda Item 4: Staff Report – Update on Fee Implementation and Collection, June 8-9, 2020, <https://digsafe.fire.ca.gov/media/2386/item-4-fee-implementation-accessible.pdf>

RECOMMENDATION

Approve Resolution No. 20-09-01 authorizing Underground Service Alert of Southern California (“DigAlert”) and Underground Service Alert of Northern California and Nevada (“USA North 811”) to use the Board’s seal on invoices for Board regulatory fees.

ATTACHMENTS

A: Resolution No. 20-09-01

ATTACHMENT A

**CALIFORNIA UNDERGROUND FACILITIES SAFE
EXCAVATION BOARD**

RESOLUTION NO. 20-09-01

**AUTHORIZING UNDERGROUND SERVICE ALERT OF SOUTHERN
CALIFORNIA (“DIGALERT”) AND UNDERGROUND SERVICE ALERT
OF NORTHERN CALIFORNIA AND NEVADA (“USA NORTH 811”) TO
USE THE BOARD’S SEAL ON INVOICES FOR BOARD REGULATORY
FEES**

WHEREAS, Government Code section 4216.16 authorizes the Board to collect a fee from members of the state’s regional notification centers not to exceed the reasonable regulatory cost incident to enforcement of Government Code section 4216 et seq.;

WHEREAS, the Board adopted in Resolution 18-08-01 Section 4010 of Title 19 of the California Code of Regulations to establish fees pursuant to Government Code section 4216.16, and the regulations required the regional notification centers to collect the fees on the Board’s behalf;

WHEREAS, subsequently, several members of the state’s two regional notification center have expressed concern that the invoices sent by the regional notification centers on the Board’s behalf do not look official;

WHEREAS, during the Board’s June 8, July 13, and August 8, 2020 meetings representatives of the regional notification centers had expressed a desire to use the Board’s seal on the invoices the regional notification centers send on the Board’s behalf to convey the legitimacy of the invoices;

WHEREAS, Business and Professions Code section 17533.6 states that it is unlawful for any person, firm, corporation, or association that is a non-governmental entity to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service unless the nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization;

WHEREAS, Section 4010 of Title 19 of the California Code of Regulations creates an expressed connection between the state's two regional notification centers and the Board for the purpose of collection of the Board's regulatory fee;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

1. Underground Service Alert of Southern California ("DigAlert") and Underground Service Alert of Northern California and Nevada ("USA North 811") may use the Board's seal on an invoice requesting a member pay of the Board's fee, a statement informing a member of balance due for the Board's fee, or communication informing a member of the consequences of late payment or nonpayment of the Board's fee, if the document contains the following language:

"Use of the Dig Safe Board seal is authorized pursuant to Board Resolution 20-09-01."

2. This resolution shall take effect immediately upon approval.

Date of Adoption: September 14,
2020

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 20-09-01 adopted by the California Underground Facilities Safe Excavation Board on September 14, 2020: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD AUTHORIZING UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA (“DIGALERT”) AND UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA AND NEVADA (“USA NORTH 811”) TO USE THE BOARD’S SEAL ON INVOICES FOR BOARD REGULATORY FEES.

Tony Marino
Executive Officer

Carl Voss
Chair

Date: September 14, 2020