DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Office of the State Fire Marshal
Underground Facilities Safe Excavation Board
2251 Harvard St., 4th Floor
SACRAMENTO, CA 95815
(916) 568-3800
Website: https://digsafe.fire.ca.gov

CA Underground Facilities Safe Excavation Board ("Dig Safe Board")

October 15, 2018
10:00 a.m.

Office of the State Fire Marshal
Sequoia Conference Room
2251 Harvard St., 4th Floor
Sacramento, CA 95185

MEETING MINUTES

BOARD MEMBERS PRESENT:

Marshall Johnson
Vince Bernacchi
Ron Bianchini
Randy Charland
Marjorie Del Toro
Bill Johns
Carl Voss

BOARD MEMBERS ABSENT:

Jessica Arden
Amparo Munoz

STAFF:

Tony Marino, Executive Officer
Brittny Branaman, Policy and Budget Manager
Zachary Trammell, Government Analyst
Jason Neyer, Government Analyst
Misty Catano, Government Analyst
Kerstin Lock, Education and Outreach Officer
Jason Corsey, Chief of Investigations
Carla Newman, Supervising Investigator
Deborah Yang, Legal Counsel

OPEN SESSION

Chair Johnson called the meeting to order at 10:02 a.m.

Agenda Item No. 1: Executive Officer's Report

Executive Officer Tony Marino updated the Board on new staff.

Chief of Investigations Jason Corsey introduced new staff: Carla Newman, Supervising Special Investigator in Sacramento, and Anna Brown Supervising Special Investigator in Los Angeles.

Executive Officer Tony Marino provided an update on AB 1914; DigAlert's PHMSA grant; staff cost report; an email from a landscape contractor voicing thoughts and concerns such as no shows, line depth and tree roots; and staff assignments.

Chair Johnson asked for comments from Board members. There were none.

Chair Johnson asked for public comments. There were none.

Agenda Item No. 2: Board Member Public Engagement Reports

Chair Johnson asked Board members to share any relevant experiences with the public regarding the Board and safe excavation practices.

Member Voss provided an update on the Area of Continual Excavation. Member Voss and Staff Kerstin Lock and Brittny Branaman have started to engage local farm bureaus. Staff has created an online survey to help with this project.

Member Del Toro provided an update on the water association.

Chair Johnson asked for comments from Board members. There were none.

Chair Johnson asked for public comments. There were none.

Agenda Item No. 3: Election of Interim Chairperson (Government Code § 4216.14(e))

Chair Johnson expressed that he will not be able to attend the next upcoming meetings. He would like to nominate Member Voss to serve as interim chairperson during his absence.

Chair Johnson asked for public comments. There were none.

Board Action

Motion to elect Member Voss as interim chairperson.

MOTION:	Chair Johnson	SECOND:	Member Del Toro
AYES:	Members Bernacchi, Bianchini, Charland, Del Toro, Johns, Johnson		
NOES:	None		

ABSTAIN: Voss
RECUSE: None

MOTION ADOPTED.

Agenda Item No. 4: Resolution No. 18-10-01: Approve Memorandum of Understanding with the California Public Utilities Commission and Authorize the Executive Officer to Execute the Memorandum of Understanding.

Legal Counsel presented the Memorandum of Understanding ("MOU") and explained the purpose to share confidential information with the California Public Utilities Commission. Information sharing practices and cooperation among the state agencies with investigations and enforcement actions will increase the Board's resources to effectively carry out its responsibilities.

Executive Officer Tony Marino discussed the investigation management system, separation of investigative and enforcement functions, and the importance of the MOU.

Chair Johnson asked for comments from Board members.

Member Del Toro asked the Chief of Investigations to explain the steps to investigate both sides because the Dig Safe Board will be conducting its own investigations.

Chief of Investigations Jason Corsey confirmed that we will investigate both sides and be fair. The plan is to begin investigations in March 2019.

Member Charland stated that we will likely need to hear from multiple parties, such as contractors, operators, land owners, and others involved in an incident.

Member Johns asked if we are working with the State Fire Marshal's Office on an MOU.

Legal Counsel stated that we have had discussions with the State Fire Marshal's Office about establishing an MOU, but it may not be necessary as we are housed under the State Fire Marshal's Office. Staff is currently in discussions with the Contractors State License Board about establishing an MOU.

Chair Johnson asked about an MOU with the Occupational Safety and Health Administration ("OSHA").

Legal Counsel stated an MOU may be established with OSHA in the future if necessary, rather than on a case by case basis.

Executive Officer Tony Marino stated that each MOU will be different depending on the agency that we are working with.

Chair Johnson asked if there were any other comments from the Board.

Chair Johnson asked for public comments.

A representative from the Public Utilities Commission asked if about findings for municipal utilities and if the Board has subpoena authority.

Legal Counsel answered that the Board has the authority to issue subpoenas.

Executive Officer Tony Marino stated if there is damage municipal utilities are subject to an investigation.

(Meeting recessed for a break at 10:45 a.m. and resumed at 11:00 a.m.)

Chair Johnson asked if there were any other comments from the public. There were none.

Board Action

Motion to approve Resolution No. 18-10-01: Approve Memorandum of Understanding with the California Public Utilities Commission and Authorize the Executive Officer to Execute the Memorandum of Understanding.

MOTION:	Member Bianchini SECOND: Member Voss
AYES:	Members Bianchini, Bernacchi, Charland, Del Toro, Johns, Johnson, Voss
NOES:	None
ABSTAIN:	None
RECUSE:	None

MOTION ADOPTED.

Agenda Item No. 5: Discussion on Enforcement Policy.

Executive Officer Tony Marino presented a draft enforcement policy. He stated we have been thinking about the way that we want to do our job when it comes to enforcement and looked at the Federal Aviation Administration's compliance philosophy. Improving communication, improves safety. We need to look at other means for enforcement than just citations. The focus should be on correcting the error. Enforcement should include corrective action.

Chair Johnson asked for comments from Board members. There were none.

Chair Johnson asked for public comments.

A representative from the Southern California Contractors Association addressed his members' concerns about liability and how the draft enforcement policy's affects paper mistakes like a failure to obtain a 28-day ticket renewal.

A representative from the California Farm Bureau Federation expressed that it would be helpful to understand the Board's role in education prior to enforcement.

A representative from DigAlert addressed the ability to file complaints to the Board.

Member Bianchini stated we also need to focus on the reason the Board to be formed and create an enforcement policy that applies to excavators and operators.

Chair Johnson asked for other comments from Board members. There were none.

Chair Johnson asked if there were any other public comments.

A representative from West Valley Construction incidents should be viewed holistically. Maps should be available from utilities, not just in archive.

A representative from Alliant Energy expressed the origins and purpose of the Dig Safe Act of 2016.

(Meeting recessed for lunch at 11:39 p.m. and resumed at 1:31 p.m.)

Agenda Item No. 6: Investigation Implementation Plan.

Chief of Investigations Jason Corsey stated that we are hiring investigators next month and working on developing an investigation division policy and procedures, education, compliance, enforcement, training for investigators, and a case management system. We want to have investigators ready by March 2019.

Chair Johnson asked for comments from Board members.

Member Del Toro asked about the number of investigator positions.

Chief of Investigations Jason Corsey stated we have one more supervisor needed for the Los Angeles office, and a total of eight investigators.

Chair Johnson asked for public comments.

A representative from the Southern California Contractors Association asked if investigations will be complaint driven. Executive Officer Tony Marino stated the Board will discuss that in the next agenda item.

Chair Johnson asked if there were any other public comments. There were none.

Agenda Item No. 7: Notification of Damages: Staff will discuss and seek members and public input on notification of damages.

Staff Zachary Trammell stated currently the regional notification centers do not have standardized tickets for no responses. It is projected that the regional notification centers will have the tickets standardized by March 2019.

Executive Officer Tony Marino stated we are looking at how to start with investigations. Staff would like to engage with willing operators to provide information pertaining to all damages stemming from “no ticket” violations on a regular basis. Staff also recommends the Board provide direction to investigate “no response” tickets once they become available in March 2019.

Member Charland discussed communication and information shared by operators,

excavators, and regional notification centers. Member Bianchini the process to obtain a ticket.

Chief of Investigations Jason Corsey stated training for investigators in the subject area of excavations and underground facilities will be necessary and ongoing.

Executive Officer Tony Marino explained the data from other states in the staff report.

Chair Johnson and Members Johns and Charland discussed responses to tickets.

Chair Johnson asked if there were any other comments from Board members. There were none.

Chair Johnson asked for public comments.

A representative from the Public Utilities Commission stated he supports mandatory reporting.

A representative from DigAlert discussed how they handle electronic positive responses.

A representative from Pacific Gas & Electric (PG&E) discussed issues with delineation and markings.

A representative from West Valley discussed how they manage tickets and the software available to manage them.

A representative from PG&E stated they have different information that is available to them, but the ticket management system does not provide all the details.

A representative from the Southern California Contractors Association discussed the differences between “no calls” and “no responses” to tickets, and the importance of looking at the trends because it will help with education or enforcement.

Chief of Investigations Jason Corsey and Executive Officer Tony Marino discussed the purposes of an investigation, including looking at causes.

A representative from the Public Utilities Commission discussed notifications to the Board, including those regarding mismarkings.

A representative from SoCal Gas addressed bucketing all no responses or no responses only when there are damages.

A representative from West Valley Construction asked about the process or protocol for education, including the available resources. Executive Officer Tony Marino answered that the Board will address that topic in the next agenda item.

(Meeting recessed for a break at 2:50 p.m. and resumed at 3:09 p.m.)

Agenda Item No. 8: Education: Staff will discuss and seek members and public input on creating educational courses.

Staff Jason Neyer presented his report on an education program and discussed the available options to provide education: in-house or outsourcing.

Member Del Toro expressed her support to offer education in-house.

Member Bianchini asked staffing and resources in the Board's current budget to offer education in-house.

Executive Officer Tony Marino answered that budgeting is a challenging process. But, the plan is for staff to work on curriculum development with Member Del Toro and others. The investigators may offer trainings once a month.

Members Bianchini and Charland asked about online classes.

Staff Jason Neyer stated staff has looked at online classes. Ideally at first, we need to focus on education to satisfy a sanction. After that, we can explore other options.

Member Del Toro stated that the Board should make sure we can provide the first step and then move forward and grow. The Board should ensure we have a core program that is effective before we spend additional resources on an online program.

Member Bernacchi asked about education as part of enforcement and the cost.

Member Charland asked about workshops with stakeholders on curriculum development.

Member Voss expressed that education relates back to the draft enforcement policy.

Chair Johnson asked for public comments.

A representative from West Valley Construction discussed education curriculum and how education would be used in enforcement.

A representative from Alliant Energy discussed the steps after the curriculum is established and education as part of the process to obtain a permit.

A representative from the Public Utilities Commission discussed existing educational resources, logistics to offer education, and education as part of enforcement.

A representative from the Southern California Contractors Association stated the curriculum should be tailored to maximize effectiveness.

Chair Johnson asked if there were any other public comments. There were none.

Chair Johnson stated the Board will continue this discussion tomorrow.

Other Business
None.

Public Comment

Chair Johnson asked for public comments. There were none.

Adjournment
Meeting adjourned at 3:57 p.m.

October 16, 2018
9:00 a.m.

Office of the State Fire Marshal
Sequoia Conference Room
2251 Harvard St., 4th Floor
Sacramento, CA 95185

MEETING MINUTES

MEMBERS PRESENT:	Marshall Johnson, Chair Ron Bianchini* Vince Bernacchi* Randy Charland Marjorie Del Toro Bill Johns Carl Voss
BOARD MEMBERS ABSENT:	Jessica Arden Amparo Munoz
STAFF:	Tony Marino, Executive Officer Brittny Branaman, Policy and Budget Manager Jason Neyer, Government Analyst Misty Catano, Government Analyst Kerstin Lock, Education and Outreach Officer Jason Corsey, Chief of Investigations Carla Newman, Supervising Special Investigator Deborah Yang, Legal Counsel

OPEN SESSION

Chair Johnson called the meeting to order at 9:07 a.m.

Agenda Item No. 9: Education: Staff will discuss and seek members and public input on creating educational courses.

Chair Johnson stated we ended with education yesterday.

Chair Johnson asked for comments from Board members.

Member Del Toro recapped yesterday's discussion on education.

Member Johns stated the best way to start would be to train everyone on everything so that everyone can know the other sides, including mapping and misconceptions.

Member Charland discussed the accreditation standard used by National Utility Locating Contractors Association ("NULCA").

(*Member Bernacchi arrived at 9:29 a.m.)

Member Del Toro discussed next steps to develop an education program.

Chair Johnson asked for public comments.

A representative from the California Farm Bureau Federation asked the Board to keep in mind that certain remote or rural areas may not have a broadband signal and so, online education may be difficult for individuals in those areas.

A representative from the Southern California Contractors Association discussed the Common Ground Alliance ("CGA") best practices.

A representative from the Public Utilities Commission discussed education for violators.

A representative from the Southern California Contractors Association discussed the purpose of the Dig Safe Act of 2016 to increase participation in calling 811, and education for excavators and non-compliant excavators.

(*Member Bianchini arrived at 9:36 a.m.)

Chair Johnson asked if there were any other public comments. There were none.

Agenda Item No. 10: Area of Continual Excavation Outreach and Regulations: Staff will update members on outreach to the agricultural community and regulation development to implement Government Code section 4216.10.

Member Voss started the discussion with existing law on area of continual excavation ("ACE"), current onsite practices, and a survey and other outreach activities with staff.

Member Johns discussed the Board's goals for ACE.

Member Voss asked for comments from Board members.

Board members discussed what operators and farmers should go over during an onsite meeting and a standard onsite meeting form as it relates to the agriculture community.

Chair Johnson asked for public comments.

A representative from the California Farm Bureau Federation expressed the need for consistent information.

A representative from PG&E raised the issues of frequency of determining the depth, who is allowed to excavate under that ACE ticket, and how the lines will be marked for the entire year.

A representative from the California Farm Bureau Federation discussed the purpose and expectation of an annual ACE ticket.

A representative from PG&E discussed the challenges communication at an onsite meeting, and the importance of communication with or to the worker.

A representative from the Southern California Contractors Association stated that some of these issues have already been resolved and the Board must focus on establishing minimum elements for onsite meetings.

(Meeting recessed for a break at 10:50 a.m. and resumed at 11:02 a.m.)

Board members discussed the issue of subsurface installation line depth and the operator's responsibility regarding depth; potholing practices used to locate underground infrastructure and minimum standards for potholing as it relates to the agriculture community; and the criteria for an ACE ticket exemption for farmers who don't have utility lines on their land, and how absence of lines will be recorded.

Other Business

None.

Public Comment
Chair Johnson asked for public comments. There were none.

Adjournment
Meeting adjourned at 12:28 p.m.

Respectfully submitted,

/s/ Tony Marino

Tony Marino
Executive Officer

Attest:

/s/ Marshall Johnson

Marshall Johnson
Interim Chair