

# MINUTES

## MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

**August 28 and 29, 2013  
Beginning at 9:00 a.m.**

**Wednesday, August 28, 2013**

**Board Members Present:** Erik Zinn, President; Kathy Jones Irish, Vice President; Diane Hamwi; Carl Josephson; Coby King; Mike Modugno; Ray Satorre; Jerry Silva; Robert Stockton; and Patrick Tami

**Board Members Absent:** Philip Quartararo and Hong Beom Rhee

**Board Staff Present:** Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Jeff Alameida (Budget Analyst); Ray Mathe (Staff Land Surveyor & Examination Manager); Susan Christ (Staff Civil Engineer & Licensing Manager); and Gary Duke (Legal Counsel).

### **I. Roll Call to Establish a Quorum**

The meeting was called to order by President Zinn at 9:06 a.m. Roll Call was taken, and a quorum established.

Mr. Silva arrived 9:07 a.m.

### **II. Public Comment**

Mr. Grutman addressed the Board and read a statement he prepared into record in reference to a closed case. He expressed his concern with the investigation process and claimed the case was dormant for two years and that the expert was not qualified to perform the review due to lack of experience in private practice and failed to answer basic questions. He believes the expert selection is less than adequate and that the expert should be liable and cited in accordance with Board Rule 415 for testifying outside his area of competence and refund fees paid to him by the Board. He indicated that he won this case without legal representation because he is an expert in his field, and it was a costly process for him and the Department.

Stan Horwitz spoke as an individual Professional Engineer. He explained that California is the only state with a dual system of engineering registration with Practice Acts and Title Acts. He is recommending the Board do strategic planning and work with the Governor and agencies to pass legislation to make changes to the Engineers Act by updating and making the various registrations consistent with all other states.

Mr. Satorre arrived 9:14 a.m.

### III. Executive Officer's Report

#### A. Legislation

##### 1. Discussion of Legislation for 2013:

Ms. Arnold provided an update on the legislation the Board is following.

AB 186 Professions and vocations: military spouses: temporary licenses. This bill would authorize a board within DCA to issue a temporary license for 12 months to an applicant who meets certain requirements.

STATUS: Introduced 1/28/13. Last amended 6/24/13. Passed Assembly. Heard in SEN B,P&ED Committee 7/1/13 - testimony taken. Further hearing to be set – this is now a 2 year bill.

BOARD POSITION: Oppose unless amended

AB 1057 Professions and vocations: licenses: military service. This bill would require each Board within DCA to inquire in every application for licensure if the applicant is serving in, or has previously served in, the military – commencing January 1, 2015.

STATUS: Introduced 2/22/13, amended 6/3/13. Passed Assembly. To be heard on SEN floor.

BOARD POSITION: Watch

AB 1063 Surveyors and engineers. (Amends Sections 6732, 8751, 8772 of, and adds Section 8764.6 to the B&P Code) This bill would prohibit the use of certain titles using the words engineer or surveyor unless the person is appropriately licensed. Additionally it would authorize a licensed surveyor to include additional information, as specified, with a record of survey. This bill would require any monument set by a land surveyor or civil engineer to be marked as specified, and to be marked with the name of the agency and the political subdivision it serves, if set by a public agency.

Appropriations 5/24/13 – held under submission. This is a two year bill.

BOARD POSITION: Oppose unless amended

SB 152 Geologists and Geophysicists: written contracts. (Add Section 7839.2 to B&P Code) This bill would require Geologists and Geophysicists to use a written contract when contracting to provide geological or geophysical services, as specified. It will provide for consistent operations among engineers, land surveyors, geologists and geophysicists.

This bill also repeals temporary authorizations for engineers, geologists and geophysicists. This is a Board sponsored bill.  
STATUS: Signed by the Governor. The Board will no longer offer temporary authorizations to engineers, geologists and geophysicists. Will require that geologists and geophysicists use written contracts.  
BOARD POSITION: Support

SB 207 Department of Consumer Affairs: license information. (Amend Section 27 of B&P Code) This bill will eliminate the requirement that the Board for Professional Engineers, Land Surveyors, and Geologists disclose its licensee's address of record. This is a Board sponsored bill.  
STATUS: Introduced 2/8/13. Scheduled to be heard in SEN BP&ED Committee 4/15/13 - bill pulled by author. This is a two year bill.  
BOARD POSITION: Support

SB 679 Berryhill. Licensees: reporting requirements. (Amend Sections 6770, 6770.1, 6770.2, 8776, 8776.1, and 8776.2 of the B&P Code) This bill would revises the amount for a licensed engineer or Land surveyor to report a civil action judgment, settlement, arbitration award, or administrative action to the Board from "\$50,000 or more" to "more than \$50,000." It also reduces the reportable amount of any civil action judgment or binding arbitration award or administrative action of \$25,000 or greater.  
STATUS: Introduced 2/22/13. Amended 6/12/13. Passed Senate. To be heard in ASM floor.  
BOARD POSITION: Watch

SB 822 Committee on Business, Professions and Economic Development. Professions and vocations. (Amend Section 7887 of, and add Section 7851 to, the B&P Code) This is one of the Committee's omnibus bills. Among other things it creates a "retired registration" for geologists and geophysicists. Language provided by the Board.  
STATUS: Introduced 3/20/13. Amended 6/12/13. Passed Senate. To be heard on ASM floor.  
BOARD POSITION: Support

Mr. Duke inquired why AB 186 is a two-year bill. Ms. Arnold reported that the committee had concerns based on the comments, and lack of comments, from other DCA boards.

B. Strategic Plan Update

Mr. Alameida highlighted items to achieve this fiscal year. The first release of BreEZe is supposed to go into effect in mid to late September and may impact the second and third release dates. Mr. Moore reported that staff is anticipating the BreEZe implementation for the subsequent releases may be delayed about a year. Mr. Silva recommended planning items to replace BreEZe related topics in the upcoming Strategic Plan. Mr. Moore noted that staff will review the plan and suggested items may be brought to the next Board meeting.

Mr. Alameida noted that descriptions of goals were added per Mr. King's request. He reviewed the completed tasks and pointed out those tasks that are dependent upon BreEZe implementation. Mr. King suggested tracked changes from meeting to meeting. Vice President Irish asked whether there was any flexibility to contract out for technology support. Mr. Moore indicated that the Board would have to contract with someone who is familiar with the programs in the legacy system (ATS and CAS). The concern at this point is that the code is frozen for ATS and CAS, and, therefore, they cannot guarantee the same functionality will be in BreEZe. Mr. Modugno asked if we are still providing input to the BreEZe system. Mr. Moore explained that Mr. Donelson and Ms. Baker have been monitoring, testing, and attending meetings. Ms. Eissler added that once the release one boards go live, they will focus on the release two boards to have them focused on testing and, at that point, transition to communicating with the release three boards, which includes the Board. At that point, we will have the opportunity to provide them with our requirements.

Mr. Alameida continued to discuss Out of State Travel (OST). The requests were denied as they did not adhere to the budget letter and were deemed not mission critical. He indicated that he can try and resubmit the OST requests for individual trip requests. Mr. Alameida is trying to get more information about other boards' efforts from the Budget Office and added that 30 of 75 requests were approved, which is a drastic improvement from previous years. Mr. Moore added that DCA has been supportive of the requests; it is the higher level approvers who are denying the requests. Mr. Tami explained that for auditing purposes, it is mission critical both from a fiscal point of view and from reviewing what is going to be contained in the exams. He recommended that if the Board does not get approval to attend, the Board should consider pulling out of NCEES as the Board does not have the knowledge of exam content; the Board should investigate the cost of writing its own exams and the impact this change will have. Mr. Stockton inquired if it would help if the individual pays their own way to attend out of state trips. Mr. Alameida indicated that it seems less likely when someone offers their own funding. Mr. Moore explained that despite the fact that there is no cost to the state, it is about perception that someone is traveling on State business so there must be a

cost to the State. Mr. Modugno concurred with what Mr. Tami suggested regarding investigating the cost of writing replacement exams ourselves. Mr. Moore indicated that a Budget Change Proposal (BCP) would need to be done if the Board were to start writing its own exams for all disciplines. Mr. Josephson indicated that there would be a ripple effect as California licensees may not get comity with other states which means California engineers would not be able to practice in other states. A break away from NCEES would have a huge impact on the profession. Mr. Tami noted there would be a significant up front cost to develop. Mr. Zinn explained the political issues that would require marketing and advocacy. Mr. Silva believes that communication with legislators is key. Mr. Moore requested that Mr. Alameida provide a copy of the justification letter to the Board members. Mr. Silva asked to invite Agency to the Board meetings. Mr. Moore will assemble preliminary documentation for a BCP to write exams as back-up to be included with the justification and budget letter. It would be appropriate to advise the DCA Director of plans.

Mr. Moore expressed his concern for ASBOG meetings as there is always a cost associated with attending. Mr. Silva suggested including examples of what the Board could not vote on that negatively impacted the exams. Mr. Moore recommended including the effects on the practice as well.

Vice President Irish suggested an AdHoc Committee to handle the business surrounding this issue. Mr. Moore noted that the Board usually designates NCEES liaisons as they are familiar with NCEES topics.

**MOTION:** Mr. King and Mr. Satorre move to create an AdHoc committee to include Mr. King and Mr. Silva to explore strategies for approval of necessary travel to be approved by the Governor's office.

**VOTE:** 10-0, Motion carried.

C. Personnel

Mr. Moore reported the Cindy Fernandez, Enforcement Analyst, will be retiring effective August 29 after working for the Board since November of 1988. Ms. Eissler has started the hiring process for a new employee.

A new senior registrar position became effective July 1, 2013. Staff is actively working with DCA Personnel to revise the existing classification to include professional geologist and geophysicist terminology as well as revising other language to more closely reflect the Registrar's role in supporting the Board's operations.

**MOTION:** Mr. Satorre and Vice President Irish moved to present a certificate of commendation to Ms. Fernandez.

**VOTE:** 10-0, Motion carried.

D. Administrative Task Force

Mr. Moore reported that the Administrative Task Force has been in communication since the last meeting and is currently performing the review of the Board's Operating Procedures and TAC Operating Procedures. They are reviewing a draft staff evaluation pertaining to Board Rule 425 regarding the land surveyor application review process. In addition, Mr. Moore reported that, at Mr. Modugno's request, the Task Force would be reviewing a specific enforcement case due to the length of time it took to process.

E. BreEZe Status Update

Mr. Moore reported that at this time, they are anticipating that the legacy system will be down from September 12 through 16. On September 17, the Release I boards will be on BreEZe and the other boards will be up and running on the existing legacy systems. He expressed concern with the functionality of the legacy systems when it is brought back online. Mr. Moore explained that he is encouraging everyone to renew as soon as possible to avoid any issues and that information will be distributed via the Board's website, Facebook, and Twitter.

F. Discussion of Plastic ID Cards

Mr. Moore reported that several years ago the Board elected to discontinue issuance of the plastic ID cards to licensees due to costs associated with maintaining the legacy equipment and the availability of supplies necessary to produce the cards. However, licensees have expressed their preference for the plastic ID cards. He inquired with DCA to have them print approximately 5,000 ID cards per month; however, they indicated that they could not keep up with the demand. Ms. Jones Irish noted that the ID cards should be produced in an environmentally conscious manner. He presented two options for possible re-implementation of the ID cards to licensees.

Option 1: Provide cards to all licensees at no charge. This would occur for new licensees on a flow basis and during the first 2 year renewal cycle until all licensees are accounted for.

Option 2: Provide cards to licensees on request at a fee.

**MOTION:** Mr. Tami and Mr. Stockton moved to select Option 1 plastic cards to be distributed to everyone.

Public Comment – Brian Sorensen, representing PEGG provided his opinion on plastic vs. paper card. He indicated that licensees prefer the plastic ID cards and that would be easier to do in-house than to contract with an outside vendor.

**VOTE:** 10-0, Motion carried.

#### **IV. Enforcement**

##### **A. Enforcement Statistical Reports**

###### **1. Fiscal Year 2012/2013 Year End Report**

Ms. Eissler presented the complete fiscal year report.

###### **2. Fiscal Year 2013/2014 Report**

Ms. Eissler reported that they are still working towards managing the older cases and added that the Enforcement Unit completed some of the older investigation cases in August. She added that there will be quite a few disciplinary decisions that will become effective in the next few months based on Board actions. Although they have eliminated the backlog of cases that were waiting to be referred to the Attorney General's Office, the aging will continue to show in the stats while those cases go through the process.

Mr. King suggested including statistics showing the aging of cases based on the outcome of the investigation. Mr. Tami and Mr. Silva suggested highlighting areas of progress and concern at each meeting.

##### **B. Posting of Enforcement Actions on the Board's Website**

Ms. Eissler reported that this item was included in the Strategic Plan because it was a new requirement to post decisions and, therefore, needed to get caught up. Also, there was a need to focus on posting older enforcement actions. It is an ongoing process when a disciplinary decision becomes final and effective to when it is posted on the Board's website.

#### **V. Exams/Licensing**

##### **A. EIT/LSIT Certificate Process Discussion**

Mr. Moore reported that a year ago the EIT/LSIT certification process changed to taking the national fundamentals exams prior to applying to the Board. Upon passing, the candidate can apply to the Board for certification. He noted that since California started this process, it has now become a nationwide practice that many other states' boards are turning to. However, there are inconsistencies in the Board's regulations and statutes. There are instances that the requirements for further licensure, one must hold a certification. At other times, the laws and regulations mention they must only pass the fundamentals exam. Mr. Moore requested direction from the Board for standardization of laws and procedures.

Ms. Christ indicated that most PE candidates have an EIT certification and others only have passed the FE exam. Professional license applicants require a verification of information needed for EIT/LSIT certification.

Public Comment - Roger Hanlin, PLS, representing himself as a private practitioner, commented that his firm routinely does projects for public agencies where a statement of qualifications is submitted and includes certifications as EIT and LSIT. It is a crucial piece of information in their statements of qualifications that is tied into their compensation. They have worked on levee projects where the certification as an EIT is required for inspections as they want that level of expertise on the jobsite. He encouraged the Board to maintain the certification requirement.

Mr. Tami does not want to do away with something that has value.

The recommended motion is to adopt a position requiring one of the following for all PE.PLS candidates:

1. EIT/LSIT Certification; or
2. Only successful passage of the FE/FS examination

**MOTION:** Mr. Stockton and Mr. Tami moved to adopt Option 1 and direct staff to evaluate current laws with Legal Counsel and, if necessary, pursue legislative/regulatory revisions to formalize the Board's position.

**VOTE:** 10-0, Motion carried.

Mr. Silva was not present from 1:15 p.m. to 2:34 p.m.

**VI. Approval of Delinquent Reinstatements**  
No report given.

**VIII. Consideration of Rulemaking Proposals**

- A. Proposal to Amend Title 16, California Code of Regulations Sections 416 and 3060, Substantial Relationship Criteria
- Ms. Eissler reported that at the last meeting, the Board inquired about taking action against a licensee if they have had a criminal conviction and the relationship between the crime of which they were convicted and the professional practice. She explained there is statutory authority to take action against a licensee to revoke or suspend their license if they have been convicted of a crime and to deny issuing a license to an applicant if they have been convicted of a crime. The statutes indicate that the crime or act is substantially related to qualifications, functions, and duties of the profession. In addition, there are also regulations for professional engineers, land surveyors, geologists, and geophysicists which further expand on the substantial relationship. In her research, Ms. Eissler discovered there are general Business and Professions Code sections that apply to all licensing boards that require the boards to adopt regulations regarding the substantial relationship criteria.

Ms. Eissler introduced the Board's Liaison Deputy Attorney General David E. Hausfeld to discuss how the Attorney General's Office interprets the sections and criminal convictions when pursuing disciplinary action against a licensee or when handling a Statement of Issues matter when the Board has denied issuing a license to someone based on their criminal convictions.

Mr. Hausfeld made a presentation in reference to the denial, suspension, or revocation of a license based upon criminal conduct. He explained the two sections under the Business and Professions Code that apply to all agencies, Sections 480 and 490; he also noted that Section 6775 applies to professional engineers, Section 8780 to professional land surveyors, and Section 7860 to professional geologists and geophysicists.

He continued by noting the protection of the public should be of utmost interest of the Board. A conviction should be related to the license holder's activities. This does not mean that the licensee must be in violation of his actions with a client. This can relate to a criminal conviction that has no bearing on his practice as an engineer if it shows harm or potential harm to the public. When there is a logical connection between the conviction and a licensee's fitness or competence to practice his profession, there does not need to be a finding of an adverse impact on the profession. The potential for adverse impact is important. The licensee's judgment indicates he has a propensity to be a danger to himself or others. They look for the link between the conduct and fitness to practice. The nature of the crime, the underlying facts, and the license involved are carefully evaluated. Substantial relationship does not mean the crime or act must have occurred during work or part of the practice.

Under Business and Professions Code 481, the Board can establish its own disciplinary criteria and some boards are more specific. Each agency has different regulations and requirements.

Mr. King inquired if there are crimes that do not rise to substantial relationship. Mr. Hausfeld explained that infractions do not count; misdemeanors are usually less than a felony. It always depends on the crime. If it is a crime that has a potential of harming the public, then disciplinary action is taken. It does not always result in revocation. It may result in probation, ethics courses, etc.

Mr. Tami commented that it is hard for licensee to know what is substantially related if it is not part of practice.

Vice President Irish explained that a license is a privilege, not a right. If convicted of a crime, one would lose that privilege.

President Zinn stated no one in the industry would want to hire someone who has been convicted and stripped of their license.

Ms. Eissler explained the reason why the Board's numbers are low is that currently there is no fingerprint requirement for the licensees. Criminal information is relayed to the Board by means of the public. Some licensees report their criminal convictions, as required by the Reporting of Legal Actions laws, but there is no way to independently determine if all licensees are reporting when required to do so.

**MOTION:** Mr. Tami and Mr. Stockton moved to have staff review similar language to Sections 416 and 3060 from other boards and bring recommendations to a future meeting.

**VOTE:** 9-0, motion carried.

- B. Adoption of Proposed Amendments to Title 16, California Code of Regulations section 3060 (Substantial Relationship Criteria), 3061 (Criteria for Rehabilitation), and 3064 and 419 (Disciplinary Orders)

Ms. Eissler reported that the changes being proposed are to align the two sets of regulations together. The Board approved the proposed changes, and they were submitted for the 45-day public comment period, and there were no comments. The recommendation was for the Board to adopt this as the final language but now the Board needs to approve removing Section 3060, based on the Board's action on the prior item, and provide a 15-day notice to the public to inform them of this change.

**MOTION:** Mr. King and Mr. Josephson moved to remove Section 3060 from the regulatory proposal and move forward with the rulemaking process as required.

**VOTE:** 9-0, Motion carried.

- C. Adoption of Proposed Amendments to Title 16, California Code of Regulations Sections 411, 412, 3008, and 3009 (Seal, Signature, and Address Change)

Mr. Alameida reviewed the regulations. One comment was received during the 45-day comment period; however, it was not necessary to make changes to the regulations because of it. The regulation file was provided to OAL for final review; however, the OAL attorney indicated that some minor changes needed to be made the language for clarity. The changes were noticed for a 15-day comment period; however, no comments were received. Therefore, at this time, staff is requesting that the Board adopt as final the proposed amendments and to delegate to the Executive Officer to finalize the rulemaking file.

**MOTION:** Mr. King and Mr. Modugno moved to adopt as the final language the proposed amendments to Sections 411, 412, 3008, and 3009.

**VOTE:** 9-0, Motion carried.

**MOTION:** Mr. King and Vice President Irish moved to delegate the authority to the Executive Officer to finalize the rulemaking file with OAL.

**VOTE:** 9-0, Motion carried.

- D. Adoption of Proposed Board to Title 16, California Code of Regulations sections 420.1 and 3021.1 (Applicant Fingerprinting Requirements)  
Mr. Alameida reported that OAL was in final review of the package and agreed with the one comment received during the 45-day period, which the Board had rejected. As such, it was necessary to make minor modifications to the language to clarify that the term “applicant” as used in the regulatory sections has the same meaning as stated in the enabling statute, specifically Business and Professions Code Section 144, subdivision (c). The changes were noticed for a 15-day comment period; however, no comments were received. Therefore, at this time, staff is requesting that the Board adopt as final the proposed amendments and to delegate to the Executive Officer to finalize the rulemaking file.

**MOTION:** Mr. Josephson and Mr. King moved to adopt as final the proposed language for Sections 420.1 and 3021.1 and to delegate to the Executive Officer to finalize the rulemaking file for submittal to OAL.

**VOTE:** 9-0, Motion carried.

- E. Adoption of Proposed Amendments to Title 16, California Code of Regulations Sections 442 and 3035 (Examination Subversion)  
Ms. Eissler reviewed the regulation and indicated that there were no comments during the 15-day period.

**MOTION:** Mr. King and Mr. Satorre moved to adopt as final the proposed amendments to Sections 442 and 3035 and to delegate to the Executive Officer to finalize the rulemaking file for submittal to OAL.

**VOTE:** 9-0, Motion carried.

## **IX. Administration**

- A. Board Budget Presentation Options  
Mr. Alameida presented three options to report the Board’s Budget.

Mr. Silva returned at 2:34 p.m.

Mr. Alameida believes that the fund condition should be included since it is what is provided to the Department of Finance and the Governor. As the Board reviewed the options, Mr. Silva asked Mr. Satorre if providing full details twice per year was sufficient, and Mr. Satorre agreed. Mr. Alameida indicated that Option 3 is a hybrid of a synopsis and fund condition. Mr. Silva asked to define twice per year. Mr. Moore explained that twice per year would be the first meeting of the new fiscal year and six months later. Mr. Satorre stated that a synopsis was fine but to provide a more thorough review twice per year and added that the details were not necessary at every meeting, once or twice per year is sufficient. President Zinn confirmed that anyone may request any budgetary information at any time outside a Board meeting.

After further review, it was determined that the Board preferred Option 3 and that a more detailed report would be provided twice per year as indicated.

**B. FY 2012/13 Budget Overview and FY 2013/14 Introduction**

Mr. Alameida provided the budget overview where he explained expenditure authority, revenue and revenue codes, appropriation and the fund. He reported on the 2013/14 fund condition and identified the PELS and GEO expenditures and revenue sources.

Mr. Moore reported that the Senate Budget and Fiscal Review Committee requested a hearing for August 29. They have indicated that they are reluctant to repay the loan. He and Mr. Alameida will be attending hearing.

**X. Technical Advisory Committees (TACs)**

**A. Board Assignments to TACs**

Mr. Moore provided an update to a correspondence request that was made in reference to maintaining communication with the State Mining and Geology Board. He stated in his letter that he wishes to attend each other's board meetings and TAC meetings on a regular basis to help further communication.

**B. Appointment of TAC Members**

Mr. Josephson reported that there are currently two vacancies on the Structural TAC. He recommended Mr. Alireza Asgari and Mr. Ryan Huxley be appointed to fill those vacancies.

**MOTION:** Mr. Josephson and Mr. Stockton moved to appoint Mr. Asgari and Mr. Huxley to the Structural TAC.

**VOTE:** 9-0, Motion carried. Mr. Satorre was not present for the vote.

Mr. Satorre returned to the meeting at 3:47 p.m.

D. Approval of Proposed 2013/2014 Workplans

Mr. Stockton reported that in addition to the items listed in the Civil TAC workplan, the TAC would like to review the decision by the Water Quality Control Board to do a separate certification for unlicensed individuals. It is the opinion of the TAC that these unlicensed individuals are practicing outside their area of expertise.

**MOTION:** Mr. Stockton and Mr. Silva moved to adopt workplan with the additional item.

**VOTE:** 10-0, Motion carried.

C. Reports from the TACs

1. Civil TAC

Mr. Stockton reported on the Civil TAC meeting that took place on August 27 that included Neal Colwell, Jim Foley, and Adam White. Mr. Foley was appointed as Chair, and Mr. White as Vice-Chair.

a. Discussion and Possible Recommendation Regarding Request to Amend Title 16, California Code of Regulation section 424 (Experience Requirements – Professional Engineers)

The TAC reviewed PCEG's request to the Board to change the experience requirements for traffic engineer applicants who are already licensed as civil engineers. The TAC voted to recommend that the Board not make changes to the requirements.

b. Discussion and Possible Recommendation Regarding Request to amend Business and Professions Code section 6731 (Civil Engineering Defined)

The TAC reviewed a request by the Air Resources Board (ARB) that the Board expand the definition of civil engineering to include work relating to air quality so that such work done by civil engineer applicants would count as qualifying work experience. The TAC was of the opinion that the work as described by ARB was not the practice of civil engineering and should not be counted as qualifying work experience for civil engineer applicants. The TAC voted to recommend to the Board that the Board not expand the definition of civil engineering to include work relating to air quality.

Public Comment – Brian Sorensen indicated that the state does not have an environmental engineering license. He inquired if the Board would support an environmental discipline considering the level of environmental work that takes place. Mr. Stockton indicated that he believes it is a good idea but it would be difficult to achieve. Mr. Moore indicated that there is only a national exam; California does not have a state exam. Mr. Tami reported that, in the past, when the Board tried to make changes to the Practice and Title Acts, it did not go well. His recommendation would be to have a professional society propose it through the Legislature.

**MOTION:** Mr. Stockton and Mr. Modugno moved to deny the requests to amend 16 CCR 424 and Business and Professions Code section 6731 and to direct staff to notify PECG and ARB of the decision.

**VOTE:** 10-0, Motion carried.

### 3. Joint TAC

- a. Evaluation of Subsurface Utility Engineering (Locating) pertaining to Business and Professions Code, sections 6731, 6731.1, 7802.1, and 8726.

Mr. Moore reported the Civil Engineering, Geology and Geophysics, and Land Surveying TACs met to discuss subsurface utility locating and engineering. He noted that ASCE issued a report regarding guidelines for federal projects indicating that subsurface locating was an engineering activity that utilized geophysical methods and should be performed by professional engineers. However, since California is one of two states that license geophysicists, questions could be raised regarding whether the work should be performed by civil engineers or geophysicists in California. The TACs agreed that the current statutes and regulations for civil engineering, geophysics, and land surveying covered every aspect that was mentioned in the report. There are some activities that could be engineering, land surveying, and geophysics. It would have to be handled case by case if enforcement was necessary. They did agree that it would be beneficial to provide outreach given the number of private firms that offer subsurface utility locating. Also, they felt that it may be a good time to discuss clarifying the definition of geophysics. Mr. Tami thought it was a great opportunity to have a cross profession discussion. Mr. Stockton suggested possibly including the Structural TAC in the joint meetings.

Mr. Moore added that if they were to meet again, they would discuss digital submittals of signatures and continuing education.

President Zinn reported that the Geology & Geophysics (G&G) TAC discussed the results of the Joint TAC meeting and also considered continuing education in the future. He indicated that they were impressed by the Joint TAC meeting and felt they made constructive progress. He would like to see one of the three meetings held per year be a Joint meeting among TACs.

D. Approval of Proposed 2013/2014 Workplans (continued)

President Zinn reported that the G&G TAC suggested changing Item #7 of their workplan to read “Review licensing issues affecting other states as needed to determine if the same issues may be relevant to California.” For Item #8, they removed the word “Issue” and replaced it with “Review forthcoming,” and add an item #11, “Meet with other TACs to review and discuss multidisciplinary licensing issues.”

**MOTION:** President Zinn, after handing over the gavel to Vice President Irish for this item, and Mr. King moved to approve the amendments to the workplan with the changes as described.

**VOTE:** 10-0, Motion carried.

Mr. Mathe reported that the Land Surveying TAC had a very productive meeting. They worked on Board Rule 464 regarding corner records. In addition, he briefed the TAC on the discussions he has had with the workgroup regarding possible changes to the experience requirements.

**MOTION:** Mr. Tami and Mr. Silva moved to approve the Land Surveying TAC workplan.

**VOTE:** 10-0, Motion carried.

Mr. Josephson reported that the Structural Engineering TAC appointed Gregg Brandow as Chair and Douglas Hohbach as Vice-Chair. The TAC listened to a proposal from SEAOC regarding SEAOC’s plan to introduce legislation that would expand the type of buildings that would be required to be designed by structural engineers. They are referred to as “significant structures.” Washington, Oregon, and Utah all require that significant structures be designed by structural engineers. Nevada has a trigger that buildings above a certain size must be designed by structural engineers, and Hawaii and Illinois require that all buildings be designed by structural engineers. While the TAC was favorable to SEAOC’s proposal, this needs to be discussed further and possible modifications to their proposal.

During Closed Session, the TAC discussed the 16-hour SE exam. Mr. Josephson reported that the TAC suggested a review of the content and grading annually or every other year.

Mr. Josephson noted a change to #6 in the SE workplan to read “To review and audit the exam development administration and the results of the NCEES Structural Exam, to verify and evaluate whether or not the exam is adequate for the needs of California, and make recommendations to the Board.”

Mr. Tami expressed concern with the exam being used as an entry level exam in many states.

Mr. Josephson explained that California, for licensure as a civil engineer, only requires two years of experience after college whereas Illinois, Utah, and Hawaii require four years of experience. Those sitting for the exam in California possibly have a year less than those in other states. The Model Law Structural Engineer is separate from the Model Law PE. The TAC is concerned whether the exam meets California’s needs.

**MOTION:** Mr. Josephson and Mr. Satorre moved to approve the Structural TAC workplan

**VOTE:** 10-0, Motion carried.

## **XI. Liaison Reports**

### **A. ASBOG**

President Zinn reported that he was invited to attend the National Subject Matter Expert meeting as a Board member but funding was denied. He will attend but will not represent California.

### **B. ABET**

No report given

### **C. NCEES**

Mr. Moore reported that several members, because of their association with committees, but not representing the California Board, were able to attend the Annual Meeting in San Antonio, TX. Topics of discussion included engineering surveying. The model law definition of engineering includes engineering surveys. Proposals for revisions were denied.

Mr. Moore reported that 49 of 69 jurisdictions are moving forward with the automatic model for the fundamentals of engineering and surveying examinations.

Mr. Moore advised that the Ohio board made a motion to change the voting procedures. Currently, each board has one vote, rather than one

vote per state, so states with multiple boards have multiple votes, such as Illinois which has separate PE, SE, and LS boards, while combined boards, such as this Board, has only one vote. The proposal was to allow one vote per professions regulated by the board, which would give boards such as ours two votes. However, this motion did not pass.

Mr. Moore reported that the Board has been approached by South Korea and Japan to reach a Memorandum of Understanding to accept their applicants for licensure in California. They are not seeking to move to California; they just want licensure. He explained that Japan has an engineering license and has been administering NCEES exams for more than ten years. They have over 4,100 candidates that have passed the FE exam and 300 that have passed the PE exams. Their experience and education requirements mirror NCEES's Model Law; a degree is required and four years of experience before they can sit for the exam. They were advised that if their degree is ABET accredited, there may be a possibility to collaborate with them. If not, according to our regulations and laws, the Board can grant up to two years for a non-ABET four year degree. It appears their requirements closely match our requirements. The only hurdle is the SSN or ITIN which all applicants are required by law to provide to the Board.

Mr. Moore reported that South Korea may be problematic. They do have NCEES exams for the FE and PE but do not require them. They have 84 different levels of engineering licenses. Mr. Moore indicated that they would like to accommodate them as much as possible but may be difficult to achieve.

- D. Technical and Professional Societies  
No Report Given

#### **XVI. Other Items Not Requiring Board Action**

- A. Future Board Meeting Schedule

Mr. Moore recommended that the next meeting be moved to October 16 and 17, rather than October 3 and 4 and recommended the first or second week in December in lieu of November.

After further discussion, it was determined that meetings would be rescheduled to October 10 and 11 and December 5 and 6. Despite the meetings being scheduled for two days, they may be reduced to one-day meetings.

**The Board Recessed at 4:49**

**Thursday, August 29, 2013**

**Board Members Present:** Erik Zinn, President; Kathy Jones Irish, Vice President; Diane Hamwi; Carl Josephson; Coby King; Mike Modugno; Ray Satorre; Jerry Silva; Robert Stockton; and Patrick Tami

**Board Members Absent:** Philip Quartararo and Hong Beom Rhee

**Board Staff Present:** Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Ray Mathe (Staff Land Surveyor & Examination Manager); Michael Donelson (Staff Electrical Engineer & Administrative Manager); and Gary Duke (Legal Counsel).

**I. Roll Call to Establish a Quorum**

The meeting was called to order by President Zinn at 9:03 a.m. Roll Call was taken, and a quorum established.

Mr. King arrived at 9:04 a.m.

**VII. Reconsideration of Decision Regarding Delinquent Reinstatement Application of Dennis Reid**

Ms. Eissler summarized that Mr. Reid was licensed as a mechanical engineer and his license went delinquent due to non-payment of renewal fees. He applied for reinstatement and the Board granted that reinstatement conditioned upon his taking and passing the national 8-hour mechanical engineering examination. Mr. Reid is asking the Board to reconsider this requirement based on his work experience, which he believes demonstrates that he is technically competent to have his license reinstated without him taking the examination.

Mr. Reid addressed the Board and indicated that he presented a binder representing the work he had done since the 1990's. He reported that he took and passed the exam in 1976 and maintained his license by paying renewal fees until 1991. In 1988 he moved and sent an address change to the Board. He had not done any work that required a professional engineer license and indicated that it was not a high priority to maintain his license. He stated that he did not receive a renewal notice and did not think much about it. He was approached to do consulting and he thought it would be beneficial to ensure his license was current and discovered that it had been cancelled. He claim that his address was not changed and, therefore, he never received a renewal notice. He does not think it is appropriate to have to re-take the examination.

He stated that he founded two successful race car companies, has 14 patents and started an industry of electronic mechanical-type equipment, developed transmission products, has performed a redesign of General Motor's transmission products which now is standard in race cars and monster trucks. In addition, his company has supplied transmissions to Ford and Chrysler for production vehicles. He indicated that he has a history of continuous innovation

and engineering and feels he is more than qualified to be a Professional Engineer.

Mr. Donelson reviewed and recommended Mr. Reid's reinstatement condition upon his taking and passing the exam due to the length of time his license has been expired. He explained that the information regarding Mr. Reid's experience and the recommendation were reviewed by Mr. Silva and former Board Member Paul Wilburn before the recommendation was presented to the Board to require Mr. Reid to take and pass the exam. Mr. Donelson pointed out that in Mr. Reid's case he is working in an exempt field and is asking for his license back and that gives him the ability to practice outside exempt areas.

Mr. Reid stated that he took the exam 35 years ago, was granted a license and had the qualifications to be a professional engineer then and now has an additional 35 years of experience. Mr. Tami noted that he was impressed by his resume and wants to ensure that Mr. Reid has kept up-to-date on the Board Rules and Regulations. Mr. Reid explained that other than the periodicals that are regularly written, he has not, but he would review them before entering into any agreements to provide mechanical engineering. Mr. Tami followed up with if Mr. Reid was to enter into a contract with the public to do mechanical engineering, if he could recognize what needs to be in the contract. Mr. Reid indicated that he does not have knowledge of that but would do research. He added that meeting any regulations, standards, payment issues, all business practices would have to be reviewed to ensure that they are legal and ethical, and good engineering practices would have to be followed.

Mr. Stockton asked Mr. Reid what his motivation was to reinstate at this time. Mr. Reid indicated that he would like to stay active in engineering by doing consulting work. He wants to ensure that he is not cut out of any potential jobs by not having a P.E. license.

President Zinn pointed out that at the time Mr. Reid stopped renewing his license he was able to practice mechanical engineering for schools and hospitals. If his license was to be reissued today, would he feel qualified to do so. Mr. Reid responded by saying he did not know. He doubts he would do that as he has no interest in that area, just automobiles. Mr. Reid indicated he was somewhat familiar with the Board's Professional Code of Conduct. Mr. Duke is concerned that much has changed since Mr. Reid's license became delinquent in terms of the law. Mr. Reid is aware of business practices and business law. He works in a very competitive field where confidentiality is key.

Mr. Reid stated he plans on working with private corporations, racing manufacturing, OEM, General Motors, Ford, and Chrysler. He used to be an R&D Engineer in the 1970's and may start again.

Mr. Reid noted that if he had renewed his license, , there would not be a question as to whether he had kept current with the laws or had continued to practice in the mechanical engineering field since there are no continuing education requirements. President Zinn asked if the responsibility to renew is on the licensee or the Board. Mr. Donelson clarified that it lies with the licensees.

Vice President Irish stated that she is concerned with how cavalier Mr. Reid was in renewing his license in the past and recommends that he take it more seriously. Mr. Josephson explained that a professional engineer is required to only practice in his area of competency. He wants to reiterate that is something the Board takes very seriously. Mr. Tami has no doubt that Mr. Reid is technically competent but his concern is that Mr. Reid is not competent in the laws and rules and made up answers to try and answer them rather than explaining that he did not know. Mr. Reid believes that most licensees could not answer the questions if in his position. Mr. Tami pointed out that Mr. Reid is before the Board and is proving he cannot. Mr. Reid assured the Board that he would make sure he is knowledgeable of the laws and that he only practices in his area of expertise.

**MOTION:** Mr. Modugno and Mr. Satorre moved to not require Mr. Reid to re-take the exam and reinstate his license.

**VOTE:** 7-1-2, Motion carried; Mr. Tami opposed, and Vice President Irish and President Zinn abstained

#### **V. Exams/Licensing (continued)**

##### **B. Update on October 2013 Exams**

Mr. Mathe reported that examination notices were sent out via e-mail to 3,800 individuals, and only 30 were returned which is a significant reduction. E-mail addresses are not required to be provided by the candidates; for those who do not provide an e-mail address a letter is mailed. As of yesterday, 50% of the eligible candidates have already scheduled for the civil, geotechnical, traffic, and professional land surveyor exams. This is the second PLS exam administration this calendar year. There were 200 PLS candidates eligible for the October 2013 exam. Typically, during the October cycle there are 50 candidates that take the national PS exam. In April, there were 400 PLS candidates who applied. There appears to be an increase in candidates overall.

#### **XIV. President's Report/Board Member Activities**

Vice President Irish thanked the Board for their vote of confidence and staff for their efforts.

#### **XV. Approval of Consent Items**

##### **A. Approval of the Minutes of the June 13, 2013, Board Meeting**

**MOTION:** Mr. Silva and Mr. Satorre moved to approve minutes

**VOTE:** 9-0-1, Motion carried; Vice President Irish abstained since she was not in attendance at the June meeting.

**XII. Closed Session** – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126 (e)(1), and 11126(e)(2)(B)(i)]

A. Civil Litigation

1. Dennis William McCreary vs. Board for Professional Engineers, Land Surveyors, and Geologists, Sierra County Superior Court Case No. 7361
2. Thomas Lutge v. Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs, Sacramento Superior Court Case No. 34-2012-80001329-CU-WM-GDS

**XIII. Open Session to Announce the Results of Closed Session**

Mr. Duke reported that during the Closed Session the Board adopted by consent four stipulated settlements, adopted four default decisions and four proposed decisions, and made two decisions after rejection of proposed decisions. Ms. Eissler advised that the Board discussed the two lawsuits as noticed on the agenda.

**XVI. Other Items Not Requiring Board Action** (continued)

Ms. Eissler stated that many years ago the Board discussed changing the laws to address issues with delinquent reinstatements, such as what conditions might be placed on the reinstatement depending on the length of the delinquency period and what other conditions might be imposed. Based on the discussions at the last Board meeting and current Board meeting, the Board may want to discuss this again. President Zinn directed that staff research this issue and present options to the Board at a future meeting.

Mr. Duke noted that, during its Closed Session discussions, the Board directed staff to make presentations on the selection of independent technical experts for enforcement case review and on the cost recovery authorization provided in Business and Professions Code section 125.3 at a future meeting.

Mr. Tami indicated that he would like the Board to discuss what would need to be done to place additional requirements on licensees at the time of renewal, such as a requirement that they take and pass an open-book questionnaire covering the laws and regulations. President Zinn directed staff to begin researching this issue and present options at a future meeting.

**XVII. Adjourn**

Meeting adjourned at 1:17 p.m.

**PUBLIC PRESENT**

Ruin Grutman  
Roger Hanlin, CLSA  
Joe R. Silva, AICHE  
Bryan Sorensen, PECG  
Stan Horwitz  
Art Sutton  
Bob DeWitt, ACEC  
Dennis Reid