

# MINUTES

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

**December 5, 2013**  
**Beginning at 9:00 a.m.**

**Thursday, December 5, 2013**

**Board Members Present:** Erik Zinn, President; Kathy Jones Irish, Vice President; Diane Hamwi; Eric Johnson; Carl Josephson; Coby King; Dr. Hong Beom Rhee; Ray Satorre; Jerry Silva; Robert Stockton; and Patrick Tami

**Board Members Absent:** Diane Hamwi, Philip Quartararo

**Board Staff Present:** Ric Moore (Executive Officer); Joanne Arnold (Assistant Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Jeff Alameida (Budget Analyst); Raymond Mathe (Examinations Manager); Brooke Phayer (Outreach Analyst); Erin LaPerle (Geology Program Analyst); Tiffany Criswell (Enforcement Analyst); and Gary Duke (Legal Counsel).

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

The meeting was called to order by President Zinn at 9:00 a.m. Roll Call was taken, and a quorum was not established.

### **II. Public Comment**

Mr. Michael Edwards, attorney for a licensee, introduced himself and addressed the Board on his own behalf. He is a thirteen year member of the San Diego County Planning Commission. He has been an attorney for 40 years and a member of other boards and commissions. He provided copies of a letter he provided the Office of the Attorney General before the 3-day hearing involving his client. Mr. Edwards expressed his concerns with the lack of investigation done by the Office of the Attorney General and the Board prior to action being pursued against his client. He also expressed his concerns that the Board's Technical Expert consultant expected too high of a standard of practice. Mr. Edwards noted that his client suffered a financial burden defending this matter and the judge dismissed all but one of the charges.

Mr. Edwards stated that Code section 41135 requires a certificate of merit before litigation can be filed against a design professional. He suggested that the Board consider employing of engineers in the same area as the project and directing the Attorney General's Office to conduct more interviews.

**Mr. Satorre arrived at 9:08, and a quorum was established.**

### III. Executive Officer's Report

#### A. Legislation

1. Discussion of Legislation for 2013. Ms. Arnold reported on the following bills:

**AB 186** Maienschein. 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** Medina. 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: Signed by Governor 10/03/13. Chapter 693, Statutes of 2013.

BOARD POSITION: Watch

**AB 1063** Eggman. 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.

STATUS: Introduced 2/22/13. Last amended 5/6/13. Heard in ASM Appropriations 5/24/13 – held under submission. This is a 2-year bill.

BOARD POSITION: Oppose unless amended

Bob DeWitt representing ACEC reported that AB 1063 will be dropped as written and produce another bill that he believes the Board will support and drop the filing provisions. The other provisions regarding protecting the city and county engineer titles will be retained. They are currently seeking an author.

**SB 207** Cannella. 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 licensees' addresses of record on its website. 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 2-year bill.  
BOARD POSITION: Support

Ms. Arnold reported that SB 207 did not make it out of the first committee. Senate staff indicated that Senator Canella is not opposed to resurrecting the bill, but something would have to change for that to happen.

G.V. Ayers, representing the Senate BP&ED Committee indicated that a bill that was referred to committee last year can be brought out again in 2014; however, it must get out of the house of origin by the end of January. In dealing with the disclosure issues in Section 27, there have been changes to the Code to move towards more disclosure. The legislation carried by the former chair, Liz Figueroa, made it more explicit to list the address of record but alternately give the licensees the option to provide another address of record other than their home address. They would be reluctant to move away to lesser disclosure. DCA and its Boards are not consistent with how the information is presented on their websites. He would have great reservations with changing the overall policy, and that is why he has maintained a critical view. Mr. Tami indicated that another law prohibits disclosure of public officials' home address, and, therefore, he believes we are not in compliance with a separate law. He asked for advice or suggestions in dealing with two laws that conflict with each other. Mr. Ayers suggested speaking with the Board's legal counsel to determine if there is a conflict at all.

2. Legislative Proposals for 2014
  - a. Recommendation to Establish a Code Section Regarding Petitions for Reinstatement or Modification of Penalty in the Geologist and Geophysicist Act

Mr. Alameida reported that the proposal is to mirror the PE and LS Act and make the three acts consistent.

**MOTION:** Mr. King and Mr. Satorre moved to adopt the recommended motion.

**VOTE:** 8-0 motion passed

- b. Recommendation to Remove Petroleum Geologists Certification from Code section 7842

Mr. Alameida reviewed the proposal that would amend Section 7842 to eliminate qualifications for a certification in Petroleum Geology. He explained that it would eliminate the qualifications as

the Board does not issue a certification in petroleum geology. Professional Geologists are already authorized and licensed to perform petroleum geology.

**MOTION:** Mr. Zinn and Mr. King moved to adopt the recommended motion.

**VOTE:** 8-0 motion passed

C. Strategic Plan

Mr. Alameida reviewed the Board's Action Plan and explained the goals, descriptions and objectives. He reported that the fingerprinting regulations were approved and will be effective January 1, 2014, and eliminating Business and Professions Code section 6760, temporary authorization, will take effect January 1, 2014.

Mr. Moore suggested outlining any new dates in red. President Zinn believes item 3.8, ASBOG administration of national examinations, should be listed as ongoing. He disagrees with the statement that indicates that it is determined to be unfeasible at this time. He added that he does not think that ASBOG is opposed to administering exams, and there would be more leverage if there was representation from California.

D. Personnel

Mr. Moore reported that Jaime Ingram was recruited to work for another Department, and we are currently recruiting for her vacancy. He met with CalHR along with DCA personnel to discuss the status of the reclassification of the Senior Registrar position to include a licensed geologist and to modify the classification to better suit the needs of the Board. They are optimistic about it as there were minor changes; however, it will still take approximately six to eight months before starting to recruit for a geology registrar. In addition, one of the Board's Staff Services Manager, Linda Brown, who has been with the Board for six years and has worked for the state for 39 years, will be retiring. Recruitment for her position will start early next year.

**Ms. Jones Irish arrived at 9:36**

E. Administrative Task Force

Mr. Moore reviewed the Administrative Task Force (ATF) report. He pointed out that at the June 2013 meeting, the ATF provided recommendations for the purposes of reducing the aging of the investigation portion. Implementation has begun based on the recommendations provided. The ATF met with Ms. Eissler, Enforcement Manager, and Ms. Criswell, Enforcement Analyst, to review the oldest cases and come up with a plan of action. They have been monitoring adjustments and volumes in workload and completion to balance the load.

President Zinn felt strongly about items 3 and 10 of the recommendations which included possibly assigning an unlicensed case coordinator to encourage follow up and monitoring of those cases particularly when utilizing the services of DOI and assign someone to regularly monitor AG workload. Ms. Eissler explained that each individual analyst receives a monthly report from DOI that includes hours billed to each case. If the analyst notices that no hours have been billed then they contact the DOI supervisor for a status update. President Zinn would like estimated completion dates from DOI. Ms. Eissler added that there may be a timeframe within DOI but this information is not relayed to the Board. President Zinn recommended inquiring about completion dates.

Mr. Moore continued to report on a more recent case that the ATF reviewed to determine why the case aged as long as it had in an effort to better understand the delay. Mr. Stockton asked where the ATF stands on the selection of experts. Mr. Moore explained that both members of the ATF discussed that a person with five years' experience does not necessarily know what the standard of care is but also cautions that someone with over 20 years of experience can be far removed from actual practice as well. He added that it is important to focus on recent areas of expertise and not just the length of time they have been licensed.

Mr. Moore suggested a Board member to work with the ATF and staff to modify the existing Areas of Expertise form utilized to recruit experts to effectively capture their expertise. Ms. Eissler suggested sending them to each Board member in that area of practice.

Mr. Stockton noted that it seemed as if the ATF was indicating that actual experience was more important than total years. Ms. Eissler clarified that five years minimum licensure is a good start but the focus on how recent the experience was and how long have they had the experience.

Mr. Johnson suggested peer review as it is common in business practice.

Mr. Edwards addressed the Board during public comment. He believes the Board needs to raise the hourly rate of expert consultants.

B. Presentation regarding Sunset and Legislative Process

Mr. G.V. Ayers, Consultant for the Senate Business and Professions Economic Development Committee, introduced himself and described his responsibilities. He distributed and reviewed a hand out with the schedule of the Sunset Review for the next four years. He reported that the Board's report would be due in 2014 and the review and legislation would take place in 2015. The Committee will request a report by May of 2014. He explained that the request will ask questions and contain charts regarding the history of the Board, operations, licensing, enforcement, and examinations. The report will be submitted for review by November 1,

2014, and the Committee will provide the Board with questions and any issues that may arise. The hearing would take place in March 2015. It is an opportunity for the Board to make recommendations for changes. Mr. Ayers is concerned with the enforcement timeframes and understands that the Board does not have control over the entire process. He would like to make them more manageable.

Mr. Ayers does not anticipate it being difficult with the Board and applauds the direction that the Board is headed.

Mr. Silva inquired if there are examples of other boards' modifications. Mr. Ayers indicated that examinations are one example and whether staffing is adequate.

Mr. Silva added that the Out of State travel issue currently at the forefront. Mr. Ayers explained that it is very appropriate to meet with the committee to plan the best course of action. Sometimes the issues can be combined which can be good or bad.

C. BreEZe Status Update

Mr. Moore reported that the Phase I boards are progressing. The fingerprint requirements may force the Board to make a change to ATS before migrating to BreEZe. Mr. Donelson is working closely with the BreEZe team. Christine Lally with Board & Bureau Relations reported that Phase II is tentatively planned to go live September 2014.

**IV. Enforcement**

A. Enforcement Statistical Reports

Ms. Eissler reported that 50 investigations were completed in November. Half of those were over a year old. One of the reasons why some cases go 3-4 years is because of the length of time people take to respond.

Mr. Tami indicated that he is pleased with the numbers going down but it is nowhere near acceptable. He would like the ATF to look at the investigation process and determine if bundling related cases is a good idea. Mr. Josephson believes it is a threat to the public to have subjects continue to work during the investigation process. Mr. Moore encouraged the Board to focus on the 50 closed cases in November. The staff is very aware of the issues and his goal is to not have any over a year old by the Sunset Hearing. Mr. Silva inquired if there is a comparison with prior Sunset statistics. There may be a systematic problem. Ms. Jones Irish inquired whether or not protocols and processes have been evaluated by an outside source to ensure that the best practices are being employed. Mr. Moore noted that staff is working towards what is reasonable. He would like to present findings at the next Board meeting. President Zinn inquired about performance audits. Mr. Moore explained that they are

starting to identify where some of the issues are. There is some outside impact which they are trying to address and come up with a reasonable time frame. Mr. King shares everyone's concern but cautioned that it is important to understand that this is due process and due process takes time. Mr. Moore is trying to resolve this appropriately and efficiently.

Mr. Moore explained that he does not want to sound coercive with subjects by explaining their case will go the Attorney General's Office if they are not responding but also does not want to give the impression that it will go away if they do not respond. Ms. Jones Irish indicated she is interested in a consistent, uniform standard; if set in place appropriately, it would be defensible.

Mr. Josephson inquired about citations. Ms. Eissler explained that citations are public record and will be on the Board's website. They are informal enforcement actions and delegated to the Executive Officer to issue administrative citations that contain an order of abatement and an order to pay an administrative fine. If the person appeals the citation through the formal hearing process, then the Board sees them through the proposed decision. If the person does not appeal, they do not go before the Board. She further explained that when a citation is issued, a person has 30 days to appeal. If it is appealed the citation does not become final until all avenues of appeal are exhausted; if they do not appeal it, it becomes final at the end of the 30 days.

Mr. King noted that it may not necessarily be staff but systems improvement. While he understands that every case is different, it seems necessary to find gaps, eliminating waste of time, and becoming more efficient.

**XI. 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
3. Rubin Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145675
4. Rubin Grutman v. Board for Professional Engineers, Land Surveyors, and Geologists, Los Angeles Superior Court Case No. BS145796

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

Ms. Eissler reported that during Closed Session the Board took action on a default decision, four proposed decisions, and three stipulations.

**V. Exams/Licensing**

**A. Update on October 2013 Exams**

Mr. Mathe addressed the Board on the October exam administration that went well. Results from NCEES and ASBOG were received earlier than in the past but are not ready to be released until the state results are available. The recommended cut scores are expected today and will be finalized next week. He is hoping results will be released during the following week. At that time the examination statistics will be posted on the Board's website. Mr. Josephson reported the Structural exam is being graded the following day.

Computer Based Testing for the FE and FS exams will start in January.

Mr. Moore explained that OPES has concerns for the California specific certified engineering geologist exam, the certified Hydrogeologist exam, and the geophysicist exam primarily due to very few Subject Matter Experts to work on the examinations. Ms. Smith is constantly trying to recruit with great difficulty. Mr. Tami asked why they are not participating. President Zinn indicated that he would help in the recruiting process by contacting various agencies for assistance.

**VI. Approval of Delinquent Reinstatements**

**MOTION:** Mr. King and Mr. Satorre moved to approve.

**VOTE:** 9-0, Motion passed

**VII. Consideration of Rulemaking Proposals**

**A. Update on Board Rules 420.1 and 3021.1 (16 CCR 420.1 and 3021.1), Engineers, Land Surveyors, Geologists, and Geophysicists Applicants Fingerprints**

**C. Update on Board Rules 442 and 3035 (16 CCR 442 and 3035) Examination Subversion**

**D. Update on Board Rules 411, 412, 3008, and 3009 (16 CCR 411, 412, 3008, and 3009), Engineers, Land Surveyors, Geologists, and Geophysicists Seal, Signature, and Address Change**

Mr. Kereszt, Enforcement Analyst for the Board reported that the rulemaking packages for Items A, C, and D in the agenda package have been formally approved, and the amendments will be effective January 1, 2014.

- B. Update on Board Rules 416 and 3060 (16 CCR 416 and 3060) (Substantial Relationship Criteria)

Ms. Eissler explained that an update to the substantial relationship criteria regulation that the Board discussed will be provided at next Board meeting.

## **VIII. Administration**

- A. FY 2013/14 Budget Overview

Mr. Alameida reported on the budget overview contained in the agenda. He explained that expenditures for the engineers and land surveyors fund have increased versus last Fiscal Year as a result of increased contract costs with Prometric. He also indicated that overall, the Board is generating more revenue than allocated expenses and is projected to have a surplus at the end of the year. Applications have increased mainly due to EIT and LSIT continuous filing.

As for the geologist and geophysicists expenditures, they remain consistent with the last Fiscal Year, and contracting with OPES is ongoing for occupational analysis of the state examinations. Applications have increased for GIT, PG, CEG, and CHG. Revenue at year-end should remain consistent with historical averages.

- B. Out-of-state Travel Update

Mr. Moore distributed a copy of a letter written to the Agency Undersecretary in an attempt to set up a meeting to discuss out-of-state travel. He met with Denise Brown, DCA's Director, to solicit her assistance and discussed ideas that could place this issue in a mission critical position. The Agency Undersecretary indicated that he would review the information. Mr. Moore will continue communication with Agency and DCA and keep Board members informed.

Christine Lally reported that the Governor's Office changed its process within the last six months and delegated more authority to the Agency Secretary to approve.

## **IX. Technical Advisory Committees (TACs)**

- A. Board Assignments to TACs

Mr. Moore indicated that traditionally there are two Board members assigned to each TAC; a licensed member and a public member. He does not believe there are any public members and suggested President Zinn assign some members as it helps ground the TAC. Mr. Silva indicated that he is on the geology TAC. Mr. King will consider the land surveying TAC, Ms. Jones Irish will consider the structural, and President Zinn will contact Ms. Hamwi for the Structural TAC.

Mr. Moore announced that the Structural TAC will meet December 19 and the Geology TAC will meet January 14.

- B. Appointment of TAC Members  
No report given
- C. Reports from the TACs  
No report given

## X. Liaison Reports

A. ASBOG  
President Zinn reported that he attended a Subject Matter Expert Workshop and ASBOG requested more participation from the California Board. The exams looked good and he feels confident that the exam is appropriate for California.  
He also reported that they are coordinating an increase awareness of licensure. ASBOG has done work in this regard and President Zinn, Mr. Moore, and Mr. Phayer are interacting with ASBOG to acquire a booth at the next conference to help facilitate this measure.

B. ABET  
Mr. Stockton reported that the process went well and was informative. He expressed his concern with the aging of professors.

C. NCEES  
1. Patrick Tami - Nomination for Western Zone VP

**MOTION:** Mr. Satorre and Mr. Stockton moved to nominate Mr. Tami to NCEES Western Zone Vice-President.

**VOTE:** 8-0-1, Motion passed, Mr. Tami abstained

Mr. Josephson reported that NCEES is having a structural item writing in San Francisco January 10-11. They are soliciting structural engineers within a 150 mile radius of San Francisco.

Mr. Moore reported that NCEES is looking for judges for the Future City program, specifically licensed land surveyors. It will take place January 25 in San Jose and San Bernardino. They are also searching for virtual judges for engineering.

Mr. Phayer, outreach analyst for the Board, reported that NCEES is promoting the engineering award program booklet. The Board will be receiving 200 copies for distribution to various colleges and universities.

D. Technical and Professional Societies

Mr. Moore and Mr. Mathe attended a CLSA chapter meeting in Modesto where they tried out a new presentation that was geared to generate discussion regarding the Board's Enforcement Program vs. the Professional Practices Committees of CLSA in an attempt to set up collaboration. It was well received.

**XI. President's Report/Board Member Activities**

President Zinn welcomed Eric Johnson to the Board and reported that Michael Modugno's term expired and wanted to convey his appreciation to Mr. Modugno.

Mr. Silva would like to know the number of letters of recognition sent to engineers for years of service. Mr. Moore will provide those numbers.

**XII. Approval of Consent Items**

(These items are before the Board for consent and will be approved with a single motion. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the October 10, 2013, Board Meeting

**MOTION:** Mr. Silva and Mr. Josephson moved to approve with correction.

**VOTE:** 9-0, Motion passed

Ms. Jones Irish would like to see a summary and status of requests to staff for tracking purposes.

**XIII. Other Items Not Requiring Board Action**

The next Board meeting is scheduled for February 12 and 13, 2014 in San Diego.

**XIV. Adjourn**

Meeting adjourned at 4:00 p.m.

**PUBLIC PRESENT**

Bob DeWitt, ACEC

Michael Edwards

Steve Hao, CalTrans

Don Schinske, SEAOC

Garry Maurath, AEG

Roger Hanlin, CLSA

G.V. Ayers, Senate BP&ED

Craig Copelan, PECG

Christine Lally, Board & Bureau Relations