

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

Thursday, February 2, 2023, beginning at 9:00 a.m.

## Thursday, February 2, 2023

<b>Board Members Present:</b>	President Rossana D’Antonio; Fel Amistad; Alireza Asgari; Kathy Jones Irish; Coby King; Betsy Mathieson; Paul Novak; Mohammad Qureshi; Frank Ruffino; Wilfredo Sanchez; and Christina Wong
<b>Board Members Absent:</b>	Vice-President Michael Hartley
<b>Board Staff Present:</b>	Ric Moore (Executive Officer); Nancy Eissler (Assistant Executive Officer); Tiffany Criswell (Enforcement Manager); Celina Calderone (Board Liaison); Christopher Pirrone (Legal Counsel); Tara Welch (Legal Counsel)

### I. Roll Call to Establish a Quorum

President D’Antonio called the meeting to order at 9:02 a.m., and a quorum was established.

### II. Pledge of Allegiance

Mr. King led everyone in the recitation of the Pledge of Allegiance.

### III. Public Comment for Items Not on the Agenda

During Public Comment, Dan Walsh, County Surveyor, representing Ventura County Public Works Agency, welcomed the Board and expressed his appreciation for meeting in person and throughout the state to allow the public to attend.

Todd Traunero, representing Caltrans, announced that he is the new liaison until a replacement can be found for Steve Hao.

Bob DeWitt, representing ACEC, would like to participate in the Sunset review process.

Carl Josephson, representing SEAOC, introduced Kelsey and Michael Parolini with the San Luis Obispo SEAOC Licensing Committee.

### IV. Legislation

#### A. 2023 Legislative Calendar

Ms. Eissler presented the Legislative calendar and reported that bills are coming out in print. She has noticed one spot bill for DCA that makes a change to the general Business & Professions Code that pertains to the Department. She also received some information on Sunset. She inquired as to when the Board will

receive the official questions that will need to be addressed in the report and when it would be due. DCA’s Deputy Director for Legislation has not heard anything specific but those who are reporting this year received them in August and those reports were due January 3, 2023. The majority of the questions and information that the Board will need to provide do not change much other than updating statistics. Assuming the report will be due at the end of December or the beginning of January, it will be at the November Board meeting that the Board will need to take action on the final report. Prior to the November meeting, staff will bring information to the Board. Mr. Moore explained that there are generally two Board members who assist staff during the review process; a discussion should be held at the next meeting to determine who those two members will be. Ms. Eissler added that the Board will have to take formal action at a meeting to approve and adopt the final report, noting that everyone will have an opportunity to review it prior to approval. Ms. Eissler also explained that members of the public will have the opportunity to provide public comment at Board meetings as well as testifying before the Legislature.

**V. Consideration of Rulemaking Proposals**

- A. Consideration of Comments Received During the 45-day Comment Period and Proposed Modifications to Noticed Text Relating to Rulemaking on Amendments to California Code of Regulations (CCR), Title 16, Sections 3005 (Fees), 3024 (Abandoned Applications), and 3031 (Examinations: Geologist-in-Training, Professional Geologist, Professional Geophysicist and Specialty Certification), Addition of Section 3024.5 (Postponements), and Repeal of Section 3026 (Unqualified Applicant: Refund of Examination Fee) and Adoption of Proposed Rulemaking

<b>MOTION:</b>	Ms. Mathieson and Ms. Irish moved to direct staff to proceed as recommended to reject the comments as specified and provide the responses to the comments as indicated in the staff recommended responses.
<b>VOTE:</b>	11-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
President D’Antonio	X				
Vice-President Hartley				X	
Fel Amistad	X				
Alireza Asgari	X				
Kathy Jones Irish	X				
Coby King	X				
Betsy Mathieson	X				
Paul Novak	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Wilfredo Sanchez	X				
Christina Wong	X				

<b>MOTION:</b>	Ms. Mathieson and Ms. Wong moved to direct staff to take all steps necessary to complete the rulemaking process including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulation and the rulemaking documents and adopt the proposed regulations as described in the notice for 16 CCR sections 3005, 3024, 3024.5, 3026, and 3031, as noticed.
<b>VOTE:</b>	11-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
President D'Antonio	X				
Vice-President Hartley				X	
Fel Amistad	X				
Alireza Asgari	X				
Kathy Jones Irish	X				
Coby King	X				
Betsy Mathieson	X				
Paul Novak	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Wilfredo Sanchez	X				
Christina Wong	X				

**VI. Administration**

A. Fiscal Year 2022/23 Budget Report

Mr. Moore reported that Fiscal Year 2022/23 budget authority is \$13,466,000, which represents a 1% increase from last Fiscal Year, and the actual expenditures for the prior Fiscal Year were approximately 90% of the budget authority. There was an increase in revenue due to the fee changes that took effect two years ago. As reported in previous meetings, there has been a significant increase in initial application volume which is contributing to the revenue increase. Total revenue is down due to the low renewal year. He explained that revenue alternates between a low renewal year and high renewal year. Last year was the higher renewal year.

**VII. Enforcement**

A. Enforcement Statistical Reports

1. Fiscal Year 2022/23 Update

Ms. Criswell reviewed the enforcement statistics. Ms. Mathieson inquired about the increase in percentages in cases that are referred for formal disciplinary action; the increase from last year appears to be continuing this

year, and she wondered if there is an explanation for the increase other than the types of cases that are being received. Ms. Criswell noted that, historically, the Board is always within 15-18%, and there is not a whole lot of differences in cases received. She explained that staff is working on probation monitoring so there is an increase in petitions to revoke probation. Mr. Novak asked what the circumstances under which a case is closed and does not move forward. Ms. Criswell explained that it depends on everything from mitigating factors, severity of allegations, violations determined, complaint history along with more egregious violations such as negligence or incompetence. Many cases are not severe enough that we could not just put the subject on notice that violations occurred and can close the case with a warning. Also, in cases involving unlicensed activity where there was an apparent ignorance of the law that perhaps was not as significant, it is not always necessary to go as far as administrative action.

During public comment Michael Parolini expressed his appreciation for the staff of the Enforcement Unit.

## **VIII. Exams/Licensing**

### **A. Examination/Licensing Updates**

Mr. Moore reported that ASBOG is now directly collecting examination fees along with applicants registering with ASBOG. Each board needs to provide ASBOG with an eligibility list of candidates who can register for the Fundamentals of Geology or the Practice of Geology examinations. This new process went live yesterday, February 1, 2023, by ASBOG initiating the Authorization to Test notices and they are pleased with how it is progressing so far.

During Public Comment, Carl Josephson announced that NCEES has decided that the last paper and pencil Structural examination will be administered October of 2023 and will go to Computer Based Testing (CBT) beginning in 2024.

## **IX. Executive Officer's Report**

### **A. Rulemaking Status Report**

Ms. Eissler reported that now that the ASBOG Rulemaking is very close to being finalized, staff will continue working on the other Rulemaking packages. More information will likely be provided at the April meeting.

### **B. Update on Board's Business Modernization Project**

Mr. Moore reported that the next release for all four boards has been pushed back to the end of February in order to conduct more testing with central cashiering prior to its release. A subsequent release is scheduled for March as staff was notified to begin testing as a result of fixes and requests that were completed. The Professional Geologist and Geologist-in-Training applications will be held until March due to the additional testing to provide sufficient time to

fully vet the applications. The updates will be reflected in the next report.

In addition to addressing bugs and refinements, Mr. Moore explained the first half of 2023 is being dedicated to the Professional Geologist (PG) and Geologist-In-Training (GIT) applications in addition to the Traffic Engineer, Geotechnical Engineer, and Structural Engineer applications.

The second half of 2023 will include the enforcement discipline queue which will require more work to assist the Enforcement Unit to monitor and manage cases. Time permitting, the introduction of the Certified Engineering Geologist (CEG) and Certified Hydrogeologist (CHG) applications is anticipated to take place.

2024 includes completing the enforcement goals to allow the management of informal conference and appeals in addition to implementing the license renewal assessment.

The Board, along with other project entities for BMC1 and BMC2, are collaborating with DCA to utilize QBIRT, (Quality Business Interactive Reporting Tool), the department's integrated reporting system.

#### C. Personnel

Mr. Moore introduced the new Senior Registrar, Geologist Joshua Goodwin, who started with the Board on January 3, 2023. Mr. Goodwin is a graduate of Chico State University with a Bachelor of Science degree in Geology and comes to the Board with 22 years of experience.

There are currently three vacancies, one in the Licensing Unit, one in the Administrative Unit, and one in the Enforcement Unit that resulted from a retirement.

Mr. Moore reported that since the Connect roll-out and since the Board office has opened back up after the pandemic, there has been a significant decrease in foot traffic in the office. Dawn Hall, the Administrative Unit manager, along with Candace Cummins, the Licensing Unit manager, are working together to combine the duties of both units to draw more potential candidates to the vacancies.

#### D. ABET

No report given.

#### E. Association of State Boards of Geology (ASBOG)

Ms. Mathieson reported there will be an exam development meeting but due to it being held in a prohibited state, she will not be able to attend.

#### F. National Council of Examiners for Engineering and Surveying (NCEES)

Mr. Moore reported that an email was distributed to all Board and Associate

members in late January in reference to committee preferences to allow the President-Elect an opportunity to select from the volunteers to serve on committees for NCEES during 2023/24.

G. Update on Outreach Efforts

Mr. Moore reviewed the Board's outreach efforts.

H. Strategic Plan Discussion – Review of Objective 1.3 Develop a strategy to implement a continuing education requirement to help licensees maintain and improve their professional knowledge and awareness of new, pertinent laws.

Mr. Moore recalled that at the December 2022 Board meeting, the Board requested to discuss Objective 1.3 from the Adopted Strategic Plan 2022-2027 related to continuing education. In addition to the Business and Professions Code section 166 language, he reviewed some suggestions and recommendations to aid in this discussion.

Mr. Moore reviewed Objective 1.3 of the Strategic Plan and Business & Professions Code 166, which requires the Director of DCA to adopt regulations to establish a framework for continuing education for all boards to utilize. The department is beginning the rulemaking process to adopt regulations to establish these guidelines. Mr. Moore noted that the Board already has statutory authority to require licensees to complete an assessment of their knowledge of the laws and regulations at the time of renewal. However, this has not yet been implemented because we did not have a way to track compliance. With the Connect system, a framework has been established to be able to reach out to licensees to deliver, monitor, and track who has completed it as part of the license renewal process. Mr. Moore suggested the following considerations to aid in the discussion.

- Identify what concerns are needed which address this effort and what supporting evidence is available to demonstrate how the public is not being protected now.
- Research other DCA boards/bureaus with similar license disciplines who have implemented new requirements in recent years and what hurdles they faced in this process.
- Research what other NCEES/ASBOG member boards do in terms of managing and verifying compliance as well as any that have implemented new requirements in recent years and what hurdles they faced in this process.
- Evaluate the potential effect this would have on the Board's operations in terms of staffing and implementing processes to record, manage, and verify compliance.
- Evaluate the potential fiscal impact this would have on the Board's current budget authority (i.e., new staff positions, impact on fees, etc.)
- Identify and evaluate any potential impact on licensees in terms of increasing regulatory requirements to maintain a license.

- Evaluate any potential fiscal impact this would have on application and license renewal revenue (i.e., increase, decrease, etc.)

President D'Antonio recalled that when the Board worked on the Strategic Plan, it was almost unanimous, if not unanimous, that the Board include this item to explore the feasibility of continuing education. She expressed how important this topic is given how the professions are evolving. She believes there is an opportunity for the Board to ensure that licensees are staying current. She has witnessed some of the disciplinary issues which highlights the need to keep licensees current. Ms. Mathieson added that over the years she's heard that the legislature considers continuing education requirements a potential barrier to licensure and that the Board has not had a serious discussion about it.

Mr. King appreciates the concerns Mr. Moore and Ms. Eissler presented. He agrees with Ms. Mathieson that the Board has not had a serious discussion about it and probably should. He is very curious to see how quickly DCA will move forward with the regulations and how the regulations would impact those employed by the government as there are exceptions for some government employees for other licensing programs. He concluded that the Board should move forward deliberately but cautiously while exploring some of the bullet points.

Ms. Eissler explained that the Board would have to justify this to the legislature because, while they may be in favor of modifying existing requirements for professions, sometimes they are not very interested in creating new requirements. If the Board wanted to move forward, we would need to address the importance that it is a requirement vs. a hurdle to those obtaining or maintaining a license. There have been historical studies that have attempted to correlate continuing education to a reduction in enforcement issues without success.

Mr. Novak commended staff and added that there should be discussion of the feasibility and process relative to legislative authority.

Ms. Wong explained the importance of exploring all aspects as it may prove to be very complicated. The Board exists for consumer protection and the disciplinary cases she sees are due to the lack of knowledge of the current laws. She believes if the Board has a strong legislative package and continues to have the conversation it is achievable but will be a monumental task.

Mr. Moore reported that this tied back to the license renewal assessment. The Board was able to justify it at the time to show how many violations there were in the Acts and Board Rules, not necessarily standards of practice, rather knowing where the common violations are in the rules and laws. It could serve as a good introduction and monitor how it is being accepted and complied with.

It is not intended to be a hurdle or an examination. It will be similar to a pilot study and be managed in Connect. It will be a great method to see if it is something that the Board wants to consider.

Dr. Qureshi believes this is not the approach to take on this matter. He suggested a two-member committee to work with staff to aid in the development as it may be more productive long term. He explained that staff is currently very busy and if there are more tasks assigned, they will have to prioritize what is important.

Mr. Novak indicated that as a practicing professional, continuing education requirements can prove to be a burden; however, it does force him to stay current on the laws and added that it can be a financial burden as well for those who are just getting started.

During Public Comment, Mr. Walsh provided his experience and was given the option of education and took advantage of it as he felt a responsibility as a licensee to stay current. As a manager, he encourages his staff to continue their education.

Mr. Parolini indicated that he supports continuing education and recommends creating an opt out for retirees.

Alan Escarda, representing Professional Engineers in California Government (PECG), reported that PECG's official position is that it supports continuing education but not as a mandatory requirement.

<b>MOTION:</b>	Mr. Novak and Ms. Irish moved to direct staff to continue to research these bullet points, including the process, procedures, and timelines for getting legislative authority; the impact for licensed government employees and retirees; how it would work monitoring with Connect; and report to a sub-committee, which will work with staff and provide reports to the Board, as appropriate.
<b>VOTE:</b>	11-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
President D'Antonio	X				
Vice-President Hartley				X	
Fel Amistad	X				
Alireza Asgari	X				
Kathy Jones Irish	X				
Coby King	X				
Betsy Mathieson	X				

Paul Novak	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Wilfredo Sanchez	X				
Christina Wong	X				

President D’Antonio and Ms. Wong will serve on the sub-committee.

**X. President’s Report/Board Member Activities**

No report given.

**XI. Approval of Meeting Minutes**

A. Approval of December 8, 2022, Board Meeting Minutes

<b>MOTION:</b>	Ms. Wong and Dr. Amistad moved to approve the December 8, 2022, meeting minutes as amended.
<b>VOTE:</b>	11-0, Motion Carried

Member Name	Yes	No	Abstain	Absent	Recusal
President D’Antonio	X				
Vice-President Hartley				X	
Fel Amistad	X				
Alireza Asgari	X				
Kathy Jones Irish	X				
Coby King	X				
Betsy Mathieson	X				
Paul Novak	X				
Mohammad Qureshi	X				
Frank Ruffino	X				
Wilfredo Sanchez	X				
Christina Wong	X				

**XII. Discussion Regarding Proposed Agenda Items for Next Board Meeting**

No report given.

The Board recessed for closed session

**XIII. Closed Session – The Board met in Closed Session to discuss, as needed:**

A. Deliberate on a Decision(s) to be Reached in a Proceeding(s) Required to be Conducted Pursuant to Chapter 5 (commencing with Section 11500), as Authorized by Government Code Section 11126(c)(3)

B. Confer with, or Receive Advice from, Its Legal Counsel Regarding Pending Litigation Pursuant to Government Code Section 11126(e)(1) and (2)(A), on the following matters:

1. *Ryan Crownholm, et al. vs. Richard B. Moore, et al.*, United States District Court, Eastern District of California, Case No. 2:22-cv-01720-DAD-CKD
2. *Roy Allen Olsen, et al. v. California Board of Professional Engineers, Land Surveyors and Geologists, et al.*, Sacramento County Superior Court. Case No. 34-2022-00328379

**XIV. Adjourn**

Open Session reconvened at 12:33 p.m. Ms. Criswell reported that in Closed Session, the Board took action on two stipulations, one proposed decision, a petition for reconsideration, and discussed litigation. The meeting was adjourned at 12:35p.m.

**PUBLIC PRESENT**

Bob DeWitt, ACEC-CA  
Kelsey Parolini, SEAOC  
Michael Parolini, SEAOC  
Todd Traunero, Caltrans  
Alan Escarda, PECG  
Melissa Gear, DCA