



# Oregon

State Board of Examiners for  
Engineering & Land Surveying  
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Minutes of Meeting  
May 10, 2011

## **CALL TO ORDER**

President Davis called the meeting to order at 9:00 a.m. in the conference room of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) office at 670 Hawthorne Avenue, SE Suite 220, Salem, Oregon 97301.

## **Members Present:**

Grant Davis  
Edward Butts  
James Doane  
Ken Hoffine  
Mari Kramer  
Dan Linscheid  
Carl Tappert  
Sue Newstetter  
John Seward  
Amin Wahab

## **Visitors Present:**

Bob Neathamer, PLS  
Gary Johnston, PLS  
Fred VanNatta  
Stephen Topaz  
Meredith Boyden, Attorney

## **Others Present:**

Mari Lopez, OSBEELS Executive Secretary  
Jenn Gilbert, OSBEELS Executive Assistant  
Allen McCartt, OSBEELS Investigator  
JR Wilkinson, OSBEELS Investigator  
Joanna Tucker-Davis, Assistant Attorney General

## **APPROVAL OF AGENDA**

Mr. Seward requested to add one item to the agenda under New Business; Interim Update – Goals of the Executive Secretary. It was moved and seconded (Linscheid/Doane) to approve the agenda as amended. The motion passed unanimously.

## **APPROVAL OF MINUTES**

It was moved and seconded (Kramer/Linscheid) to approve the minutes of the March 8, 2011 Board Meeting as presented. The motion passed unanimously.

## **PUBLIC INPUT**

President Davis welcomed the guests. There was no public input.

## **EXECUTIVE SECRETARY'S REPORT**

### Committee Activities

Ms. Lopez reported that the Examinations and Qualifications (E&Q) Committee, External Relations Committee (ERC), Finance Committee, Law Enforcement Committee (LEC), Professional Practices Committee (PPC), Rules and Regulations (R&R) Committee, Standards of Land Surveying Practices, and the Nominating Committee each met during the interim. The Committee minutes were included in the packets.

### Administrative Activities

#### *Oregon Specific/National Council of Examiners for Engineering and Surveying (NCEES) Examinations*

Ms. Lopez reported that the National Council of Examiners for Engineering and Surveying (NCEES) PE, PLS, FE, and FLS examinations were administered at the Oregon State Fairgrounds in Salem on April 8 and 9. Although OSBEELS did not participate in observing the NCEES' administration, Amanda Sloan, Jennifer Carmack, and Matt Bryan staffed the Oregon Specific Forest Engineering examination administration in the OSBEELS office on April 8 and the Oregon Specific Land Surveying examination at the University of Phoenix on April 9.

Additionally, Ms. Lopez noted that the Certified Water Right Examination (CWRE) took place on April 8 in conference room 124A of the Water Resources Department in Salem and at a second site in La Grande at the Agricultural Services Center in the Bud Jones Conference Room.

While the numbers of "No Shows" for the NCEES administered exams were yet to be reported, Ms. Lopez informed the members that the numbers of "No Shows" for the Oregon Specific administered exams were as follows: Forest-0, Oregon Specific Land Surveying-4, and CWRE-0. A total of 641 applicants were approved for the April exam administration.

### *Registration*

Ms. Lopez briefly noted that the annual renewal activity for June is underway. Staff mailed approximately 3,000 courtesy reminders April 1 to allow sufficient time for registrants to comply with the new requirement of submitting the Continuing Professional Development (CPD) Organizational form.

### *2011 Western Zone Meeting*

Ms. Lopez reported that Grant Davis, Dan Linscheid, Sue Newstetter, and Amin Wahab have been registered to represent OSBEELS at the 2011 Western Zone Meeting in Spokane, Washington later this month.

### *NCEES 90th Annual Meeting*

Arrangements have been made for the NCEES Annual Meeting on August 24-27 at the Westin Providence in Providence, RI. President Davis stated that he will be unable to attend and the incumbent Board President should attend as the NCEES Funded Delegate (The NCEES will pay the travel expenses of one voting delegate from each Member Board to attend the Annual Meeting). In addition Ms. Lopez informed the members that NCEES will pay the travel expenses

and registration fee of one first time attendee from each Member Board. Business Delegate Notification response is needed by July 15.

#### *Society for Mining, Metallurgy & Exploration*

Ms. Lopez briefly noted that correspondence was received from the Society for Mining, Metallurgy & Exploration (SME) related to the NCEES Model Law. The purpose for the correspondence is to make OSBEELS aware that SME is strongly opposed to the current “Master’s or Equivalent” (MOE) program. There was no further discussion.

#### *Explore Engineering & Surveying Evening at Umpqua Community College*

Ms. Lopez reported that the Registration Department, Amanda Sloan, Jennifer Carmack, and Matt Bryan, will be managing an OSBEELS booth and presenting information about OSBEELS, the examination process, and the registration process (the pathway to engineering and/or land surveying professions) at Umpqua Community College (UCC) on May 12.

#### *Professional Land Surveyors of Oregon (PLSO) – Pioneer Chapter*

Ms. Lopez reported that the Regulation Department, Allen McCartt and JR Wilkinson, will be presenting an overview of OSBEELS’ regulation process to the Pioneer Chapter on May 12 in Cascade Locks.

#### *Legislation*

Ms. Lopez reported on the following bills currently in the 2011 Legislative Session:

HB 2893 – Revises requirement for giving of notice by registered professional land surveyor or employee or agent of land surveyor prior to entry upon land for survey work purposes. Mr. Johnston and Mr. VanNatta were in attendance on behalf of PLSO and to request comment from OSBEELS. Mr. Johnston reported that there is opposition to HB 2893 amongst the members of PLSO; unfortunately, it appears to be from confusion. He further summarized that the revisions being considered by the Legislators and the concern and also the support held by those in the surveying community. President Davis noted that it was beneficial to hear the discussions that are being held by the surveying community but it is not appropriate for the Board to comment in a positive or negative manner with respect to the proposed language.

SB 157 – Provides for one member of State Board of Examiners for Engineering and Land Surveying to be registered photogrammetrist. On May 5, SB157 was read for a third time under consent calendar; passed.

#### *Board Vacancies*

Ms. Lopez noted that the Governor’s office may fill the position shortly that was vacated by George Gross, PE in 2007 (Congressional District 3).

#### *Staffing*

Ms. Lopez reported that Andrew Johnson, the newest Investigator submitted his resignation on April 20; last day April 22. He informed management that the reason for his resignation was that he was offered a job with another state agency performing investigations at a higher salary. Therefore, prior to reposting the position Ms. Lopez informed President Davis that she would look into reclassifying the Investigator positions to another class with a higher pay scale. The Position

Classification Review conducted by Jim Walsh, Classification/Compensation Consultant with Human Resource Services Division at DAS was provided for the Board's review. In sum, Ms. Lopez will reclassify the Investigator positions to Compliance Specialist 2. Additionally, she stated that the first round of interviews is scheduled to be held on May 12 for the one full-time Social and Communications Media Specialist position.

Ms. Lopez reported that Jennifer Carmack submitted her resignation on May 5; last day May 31. Since Ms. Carmack was authorized as the alternate authorized signatory to sign checks, Ms. Lopez recommended that JR Wilkinson assume this responsibility as of June 1. It was moved and seconded (Kramer/Tappert) to approve James R. (JR) Wilkinson as the alternate signatory authority for the Board. The motion passed unanimously.

### **PRESIDENT'S REPORT**

President Davis had nothing additional to report.

### **EXAMINATIONS AND QUALIFICATIONS COMMITTEE**

Mr. Butts reported that the E&Q Committee met on April 15, 2011 to discuss the matters contained in the Committee minutes. Additionally, Mr. Neathamer was in attendance to present his report on the April 2011 administration of the Oregon Specific Land Surveying examination. Mr. Neathamer informed the Board that 24 of the 28 qualified individuals elected to attend the examination administration. 13 of the 24 examinees obtained a passing score compliant with Oregon Administrative Rule (OAR) 820-010-0463(3). Additionally, 5 examinees may review their examination pursuant to OAR 820-010-0470(1). There was no further discussion.

#### **Registration**

*Comity Applications* – Mr. Butts directed the members' attention to the list of 61 professional engineer applicants for registration by comity. It was moved and seconded (Butts/Tappert) to approve the list of 61 professional engineer applicants as presented. The motion passed unanimously.

Mr. Butts directed the members' attention to the list of 6 professional land surveyor applicants for registration by comity. It was moved and seconded (Butts/Tappert) to approve the list of 6 professional land surveyor applicants as presented. The motion passed unanimously.

*1st Registration Applications* – Mr. Butts directed the members' attention to the 5 applicants seeking 1<sup>st</sup> registration. It was moved and seconded (Butts/Linscheid) to approve the 5 applicants as presented. The motion passed unanimously.

### **EXTERNAL RELATIONS COMMITTEE**

Ms. Newstetter reported that the ERC met on April 15, 2011, to discuss the matters as contained in the Committee minutes. Additional discussion was held by the Board regarding the following matters:

### *Logos and Taglines*

The Board took a moment to view the various logos and taglines submitted by Crendo for consideration. After a brief discussion, the Board determined to allow the Committee and staff to make the final decision.

### **FINANCE COMMITTEE**

Mr. Tappert reported that the Finance Committee met on April 15, 2011, to discuss the matters as contained in the Committee minutes. There was no further discussion.

### *Finance Reports*

Members reviewed the Statement of Net Assets (Balance Sheet) and the Statement of Activities (Profit and Loss Statement for the period of July 1, 2009 through March 31, 2011. This time period reflects the latest data received in bank statements for the 2009 – 2011 biennium.

### **LAW ENFORCEMENT COMMITTEE**

Mr. Linscheid reported that the LEC met on April 14, 2011, to discuss the following matters:

#### **Informal Conferences**

Mr. Linscheid recognized that respondent Stephan Topaz and his attorney Meredith Boyden were in the audience and requested that the Board modify the agenda to first discuss law enforcement case #2572. AAG Tucker-Davis briefly provided an overview of the contested case hearing process.

#### *2572 – Stephan R. Topaz / OSBEELS*

AAG Tucker-Davis began by noting that Mr. Topaz chose to have a hearing with an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). The ALJ issued a Proposed Order, which does two things among others. Of particular interest to this case, it documented the ALJ's findings of fact and the conclusions of law. This was a unique case, she explained, in that prior to the hearing the Board filed a Motion for Summary Determination because the facts were not in dispute. Rather, the issues were of a legal nature so a hearing was not necessary. Arguments were made by written submission to the ALJ. The ALJ issued a Proposed Final Order and found the case should be dismissed, which the Board discussed at the April meeting. The Board disagreed with the ALJ findings and conclusions and determined to issue an Amended Proposed Order. The Amended Proposed Order was issued March 23, 2011.

In response to a question regarding the requirements of Oregon Revised Statute (ORS) 183.464, which the respondent argued required the Board to file exceptions with the ALJ within 30 days, AAG Tucker-Davis emphasized that ORS 183.464 subparagraphs (1) to (4) require the ALJ to issue the Final Order. However, subparagraph 5 allowed the Governor to exempt state agencies, which was done and includes OSBEELS. As a result, the Board can issue the Final Order. She also made note that ORS 183.460 required the Board to issue the Amended Proposed Order to provide an opportunity to the respondent to file exceptions and to present arguments to the Board. Mr. Topaz through his attorney filed exceptions and they were provided to the Board in their packets. Some agencies allow oral and written arguments, but OSBEELS does not have such a rule. Regardless, AAG Tucker-Davis understood that Mr. Topaz's attorney was no longer

requesting oral arguments. The Board was provided written exceptions to consider during deliberations. She concluded by stating the Final Order has not been issued, which was the next step in the process.

Mr. Seward asked if there was new information in the exceptions. AAG Tucker-Davis replied that this was not the respondent's opportunity to retry the case, but to provide legal arguments about the case. The exceptions are limited to the record itself. The Board had to issue the Amended Proposed Order because the Board determined to change the ALJ findings and conclusions. The Amended Proposed Order was fair notice in contemplation of the change and their exceptions are an opportunity to provide feedback for the Board to consider as part of further deliberation.

At this point, President Davis requested AAG Tucker-Davis to discuss the exceptions. She began by noting the first exception was the Governor's exemption, which was discussed. The other exceptions were addressed in a motion practice that was distributed to the Board at the April meeting. She reminded Board members if they need additional time to review the motion practice, which was a compendium of motions and exhibits filed by both parties for the Motion for Summary Determination, they should delay their decision. Members noted familiarity.

**The Board left the public meeting under the authority of ORS 192.690 to deliberate on contested case #2572.**

**Upon returning to the public meeting, it was noted that no decisions were made during the deliberation.**

The Board reconvened back into public session. However, Mr. Topaz and his attorney did not return to the meeting. It was moved and seconded (Seward/Linscheid) to uphold the Amended Proposed Order as the Final Order in the case of Stephan Topaz. The motion passed unanimously.

2642 – James A. Stevenson / OSBEELS

Mr. Linscheid reported the Committee met by teleconference in an informal conference with respondent James A. Stevenson, PE, to discuss a Notice of Intent to Suspend Registration and Assess a \$4,000 civil penalty (NOI) for lack of cooperation during an audit of his CPD activities in violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7),(8), and OAR 820-020-0025(1). Mr. Stevenson failed to provide proper documentation of CPD compliance when audited. During his informal conference, Mr. Stevenson asserted that he had completed the required amount of professional development hours (PDH), but had not kept documentation of his efforts. Mr. Stevenson noted that he retired from professional practice and offered to pay a \$2,000 civil penalty with no suspension. The Committee agreed to drop the suspension, but would assess a \$2,500 civil penalty because he failed to maintain his records. However, the allegation regarding untruthful was removed. It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Stevenson. The motion passed unanimously.

2613 – George B. Cathey / Robert A. Hovden

Mr. Linscheid reported the Committee met with respondent George B. Cathey, PLS, CWRE, to discuss a Notice of Intent to Revoke Registration and to Assess a \$6,700 Civil Penalty (NOI) for

violating ORS 672.200(4) and OAR 820-020-0025(1). Prior Multnomah County Surveyor Robert Hovden, PLS, alleged that Mr. Cathey set monuments for a Property Line Adjustment (PLA) in 2007, but failed to file a map of survey. The investigation found that Mr. Cathey sealed and signed survey maps with certification statements as “a true representation of fact” for three alternative configurations to the PLA. However, Mr. Cathey wrote the Board that he had not set monuments, which contradicted the certification. Mr. Cathey stated that the PLA was a client-driven process and that the client had not informed him a fourth configuration had been approved. Once notified a PLA had been approved, Mr. Cathey set monuments and accordingly filed the map of survey. The Committee observed that the three alternative configurations were not marked preliminary and appeared to be completed surveys. Mr. Cathey agreed to a \$1,000 civil penalty and to retire his PLS registration and CWRE certification without reinstatement on December 31, 2011, for violating OAR 820-020-0025(1). It was moved and seconded (Linscheid/Tappert) to approve the settlement agreement with Mr. Cathey. The motion passed unanimously.

### 2643 – David H. Stitt / OSBEELS

Mr. Linscheid reported the Committee met by teleconference in an informal conference with respondent David H. Stitt, PE (delinquent), to discuss a Notice of Intent to Suspend Registration and Assess a \$4,000 civil penalty (NOI) for lack of cooperation during an audit of his CPD activities in violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7),(8), and OAR 820-020-0025(1).

Mr. Stitt stated that he has been a registered engineer for over thirty years and during that time he has maintained his professionalism and ethics. He emphasized that he was out of the country most of the time last year and missed some of the letters. However, his career is based on cooperating and teaming with government regulators. He disagreed that he failed to cooperate and that he was untruthful. He claimed to have more than the required PDH units, but admitted to not keeping records on internal trainings. He submitted a college transcript in March and realized afterwards that it was not for 2010, but for 2006. Nevertheless, he asserted that his PDH units exceeded the required amount. He added that he did not want a black mark on his record.

Mr. Linscheid asked whether the State of California requires continuing professional development. He replied no. Mr. Linscheid then asked if he maintained a line of communication for mail with his home or office. Mr. Stitt revealed that he only has a cell phone, but he is available in any country. He noted he was in Madagascar when he spoke with Board Investigator JR Wilkinson.

Mr. Stitt added that he has missed mail and discovered that he was delinquent only when he received the NOI. His renewal had slipped through the cracks, but no one contacted him about the matter. It was his intent to renew, but the case has left him with a bad feeling and he was unsure about renewing. Committee member Ken Hoffine reminded Mr. Stitt that Board rules clearly state what is required to maintain an Oregon registration, including renewal and CPD requirements, and that the rules are accessible anywhere in the World via the Web. Mr. Stitt expressed knowledge of the rules and law.

The Committee reviewed the CPD documentation in semester units that Mr. Stitt submitted. The two-term Spanish classes at Diablo Community College were considered non-technical training. In addition, the transcript showed only semester notations and not dates. He countered that the

classes were directly related to his employment because at the time he was working in South America. Regardless, the class dates were not shown on the printout and he failed to use the approved form to report his PDH units. AAG Tucker-Davis made the point that it appeared he was not responsible to be available for Board communications. He replied it was not his intent.

The Committee began a series of questions about mail and communications as a means to show how he failed to cooperate. Mr. Stitt clarified that he was working an unusual project in that he worked six weeks on and two weeks off, which is when he would return to California. He commented that he did not get his mail, but did receive the January audit letter and did not know how to respond. He later provided what he thought was required for an audit in 2010. If he had any idea that it was for an earlier time period, he would have sent it. He also informed the Committee that he could have kept better internal training records and was unaware that forms were available. He procrastinated in responding last year, but he met his obligations.

The Committee accepted the Spanish classes as part of his employment and focused attention on the documentation as insufficient. Mr. Stitt provided the incorrect form and it was missing dates, so he volunteered to have the college submit the dates. Mr. Linscheid replied that he failed to do that during the audit and waited to respond until the NOI was sent, which was not cooperation.

Upon consideration, the Committee offered Mr. Stitt a settlement agreement wherein Mr. Stitt would be assessed a \$1,500 civil penalty for failure to keep and submit proper records and for failure to cooperate with the investigation. The suspension was removed. Mr. Stitt asserted again that he cooperated. Mr. Linscheid informed Mr. Stitt that he admitted he received the first audit letter at the beginning of the audit, but chose not to respond. Mr. Stitt could have reviewed the rules on-line and used the approved form. However, he waited until the NOI was sent to respond and then his submittal was not in conformance with the rules. Mr. Stitt accepted the terms. It was moved and seconded (Linscheid/Butts) to approve the settlement agreement with Mr. Stitt. The motion passed unanimously.

### **Committee Meeting**

#### 2588 – Keith Whisenhunt / Robert D. Hamman

Mr. Linscheid reported the Committee discussed that complainant Robert D. Hamman, PLS, alleged that respondent Keith Whisenhunt, PE, Principal of Product Delivery Group, LLC, was engaged in the unlicensed practice of surveying by advertising for and offering to perform land surveying services on his company Web site without employing a professional land surveyor. Mr. Linscheid commented that Mr. Whisenhunt hired professional land surveyors and he updated his Web site to reflect his expanded capability. However, the surveyors left and he failed to properly update his Web site due to an oversight with his Web developer. Mr. Linscheid noted that once Mr. Whisenhunt was notified of the violation, he took immediate action to correct the problem. It was moved and seconded (Linscheid/Tappert) to close the case as compliance met. The motion passed unanimously.

#### 2591 – Lucas Hardy / OSBEELS

Mr. Linscheid reported the Committee discussed an anonymous complaint against respondent Lucas Hardy, President of The Automation Group (TAG) Inc. The complainant alleged that TAG was engaged in the unlicensed practice of engineering by advertising for and by offering

engineering services on the company Web site without employing a professional engineer. Mr. Linscheid acknowledged that TAG was an electrical contractor that does not offer engineering services to the public, but performed engineering to custom manufacture water control system panels for their clients. To comply with requirements, however, TAG partnered with Todd Beecher, PE, to provide electrical services that met the requirements under OAR 820-010-0715(2). It was moved and seconded (Linscheid/Tappert) to close the case as compliance met. The motion passed unanimously.

2597 – Natalie Grenz-Janney / OSBEELS

Mr. Linscheid reported the Committee discussed an anonymous complaint against respondent Natalie Grenz-Janney, PE, regarding her wedding announcement in which it was stated she was an engineer. Mr. Hoffine commented that Ms. Grenz-Janney prepared the announcement by correctly noting she was an engineering intern, but someone else changed her title to engineer. She afterwards successfully passed her examination and is a PE. Mr. Doane asked whether there was a screen for such allegations. Mr. Wilkinson responded by stating this was an anonymous complaint, so there was no way to contact the complainant. Regardless, the complainant submitted evidence that showed a violation and only through the investigation did the evidence surface to show Ms. Grenz-Janney had correctly submitted the announcement. This actually shows the investigation process working. It was moved and seconded (Linscheid/Tappert) to close the case as allegations unfounded. The motion passed unanimously.

2625 – Dennis S. Nelson / OSBEELS

Mr. Linscheid reported the LEC discussed that respondent Dennis S. Nelson, PE, signed his renewal form certifying he completed the required PDH units in compliance with CPD requirements, but failed to respond to any audit notice letters. When he finally answered the respond to allegations letter, he apologized and noted that he relocated his office and laid-off his secretary. Included with his response was CPD documentation indicating 33 PDH units for the audit period. The Committee evaluated the CPD documentation and found he was in compliance, but also found he was in violation for failure to change his address and to cooperate. During the investigation, however, another matter came to light.

Mr. Nelson is a resident of Wisconsin who notified the Board in February 2009 of his involvement in an investigation by the West Virginia (WV) Board of Registration for Professional Engineers. The Committee reviewed a preliminary evaluation in April 2009 finding that Mr. Nelson notified the Board of the actions taken by the other jurisdiction as required and determined not to open a law enforcement case. Subsequently, the Wisconsin (WI) Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors took action against Mr. Nelson for failing to notify them of the WV action. They assessed him a disciplinary fine and required him to complete an ethics course. However, Mr. Nelson failed to notify OSBEELS of the additional action by the WI Board. Thereafter, the WI Board suspended Mr. Nelson when he failed to complete the ethics course, which triggered OSBEELS review requirements under OAR 820-020-0015(6).

The Committee recommended that staff issue Mr. Nelson a Notice of Intent to Suspend Registration and Assess a \$2,000 Civil Penalty. After it was issued on March 4, 2011, he failed to respond so the Committee recommended the Board issue Mr. Nelson a Final Order by Default for

violation of OAR 820-010-0605(1), OAR 820-010-0635(5), OAR 820-020-0015(7),(8), OAR 820-020-0045(4), and ORS 672.200(4). It was moved and seconded (Linscheid/Doane) to approve a Final Order by Default. The motion passed unanimously.

2635 – Rimvydas I. Gurcinas / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Rimvydas Gurcinas, PE, signed his renewal form certifying that he completed the required PDH units, but failed to respond to audit letters. Upon failure to respond to the allegations, Board Investigator Allen McCartt contacted Mr. Gurcinas who informed him that all of his records were destroyed due to heavy rain that collapsed the roof of his office. Consequently, he could not produce his CPD records. As a result, the Committee determined to issue Mr. Gurcinas a Notice of Intent for failing to cooperate with the Board and to maintain his records in violation of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026(1), and OAR 820-020-0015(7),(8).

2636 – Walter J. Holle / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Walter Holle, PE, submitted a signed renewal form certifying he had completed the required PDH units. Mr. Holle responded to the second audit notice noting that he was inactive during the audit period and had not completed the required PDH units. During the investigation, Mr. Holle did not respond to the allegations, but called Mr. McCartt to state that he had not completed the required PDH units for the audit period and that he did not respond to the allegations because his response would be a repeat of his earlier statement. As a result, the Committee determined to issue Mr. Holle a Notice of Intent to Suspend Registration and Assess a \$4,000 Civil Penalty for violations of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2641 – Leni J. Seymon / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Leni J. Seymon, PE, submitted a renewal form in June 2006 with a request to place her registration into exempt status. However, she signed a subsequent renewal form certifying she had completed the PDH units required for returning her registration to active status. When Ms. Seymon was randomly chosen to participate in an audit of documentation to support the claimed PDH units, she failed to respond to the first audit letter, but responded to a second notice by noting she was unable to retrieve her records. The Board granted her time to gather and submit her records, but would not grant time to complete the PDH units as per OAR 820-015-0026(3). As a result, the Committee determined to issue Ms. Seymon a Notice of Intent to Suspend Registration and Assess a \$3,000 Civil Penalty for violations of ORS 672.200(4), OAR 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

2647 – Philip L. Wurst / OSBEELS

Mr. Linscheid reported the Committee discussed that respondent Philip Wurst, PE, submitted a signed renewal form certifying he had completed the required PDH units for returning his registration to active status. When Mr. Wurst was randomly requested to subsequently participate in an audit of documentation to support the PDH units claimed as a condition of his renewal period, he failed to respond to audit letters. However, Mr. Wurst responded to the allegations letter and he submitted a CPD Organizational form listing his claimed PDH units, but provided no supporting documentation for the claimed PDH units. As a result, the Committee determined to

issue Mr. Wurst Issue a Notice of Intent to Suspend Registration and Assess a \$1,000 Civil Penalty for violation of ORS 672.200(4) and OAR 820-020-0015(8).

### **New Business**

#### *Preliminary Evaluation: Halpern complaint*

Mr. Linscheid reported the Committee discussed a preliminary evaluation of a complaint from Ethel Halpern of Anaheim, CA. Ms. Halpern was involved in a motor vehicle accident in Los Angeles County, CA, where she broadsided a commercial type truck. A lawsuit was initiated regarding her injuries and Hayes + Associates of Corvallis, OR, modeled the accident at the apparent request of Barry Snyder, an attorney in Santa Barbara, CA. While Ms. Halpern made four allegations regarding the report, the Committee found that the report prepared in Oregon was for an accident, attorney, and resident of California. Board member John Seward inquired if there was an unlicensed practice of engineering aspect. Mr. Wilkinson replied that the Hayes + Associates report was countersigned by a registrant who did not use his seal, but the Committee did not address the question if the report constituted the practice of engineering. Regardless, Mr. Linscheid stated the Committee did not open a case due to jurisdiction matters.

#### *Preliminary Evaluation: Giottonini unlicensed land surveying practice*

Mr. Linscheid reported the Committee discussed a preliminary evaluation regarding Lou Giottonini and his unauthorized alteration of a Water Right map that originally was prepared by Robert Bagett, PLS, CWRE. Mr. Giottonini modified a map submitted to the Water Resources Department (WRD) for approval and it was done without Mr. Bagett's knowledge. He removed Mr. Bagett's CWRE seal and signature from the original map and replaced it with Mr. Bagett's PLS seal and signature from a map of survey that Mr. Bagett had prepared for him in May 2005. Mr. Hoffine commented that this case is a client of Mr. Bagett who cut and paste a surveyor's seal and signature onto a Map of Reservoir Location that Mr. Giottonini prepared. As a result, the Committee determined to open a case regarding the unlicensed practice of land surveying.

#### *Preliminary Evaluation: Winegar complaint CWRE Watson*

Mr. Linscheid reported the Committee discussed a preliminary evaluation regarding a complaint from Ron Winegar regarding Jack Watson, PLS. Mr. Winegar wanted a water right transfer from his neighbor Larry Lassen, so he contacted Mr. Watson to prepare the transfer. Later, Mr. Winegar found out that Mr. Watson was not a CWRE and he refused to pay the invoice. Mr. Watson sued Mr. Winegar for payment of CWRE services and won. Mr. Winegar was unaware that Mr. Watson was working under the supervision Carl Stout, PLS, CWRE. As a result, the Committee determined to not open a law enforcement case.

However, Board member Sue Newstetter, PLS, questioned the decision because of the ethics of offering services that were outside his area of expertise. She also stated that perhaps the investigation should focus not on Mr. Watson, but on Mr. Stout who would sign the CWRE report for WRD. Ms. Newstetter recognized the regulatory difficulties of law enforcement given the current status of shared regulation of CWRE activities between WRD and OSBEELS.

AAG Tucker-Davis emphasized that this issue is the subject of ongoing discussion. She added that there are other rules that could be explored. Board member Carl Tappert commented that had Mr. Watson performed unlicensed manicurist work the Board would not have jurisdiction. While both

are regulated practices, there is no connection between what a PLS and manicurist can practice like there is no connection between a PLS and CWRE. Ms. Lopez clarified that there is no basis for the argument that a CWRE is a specific technical field of land surveying because registered professional engineers and registered geologists can also be a CWRE. She concluded that the Board has to look to other rules that may pertain and that effort has been ongoing. Ms. Newstetter replied that the Winegar-Watson issue has caused uproar in her community.

After further discussion about options, Mr. Tappert asserted that any option is difficult because there are no rules regarding investigations of unlicensed practice of a CWRE. He concluded that the allegations involved a disgruntled client. Mr. Linscheid agreed noting there are current limitations to the Board's ability to seek a sanction on this matter. AAG Tucker-Davis offered to prepare an analysis to look at various options. Ms. Lopez added that the day after the Committee meeting that she and J.R. Wilkinson met with Dwight French, WRD, and with AAG Katherine Lozano to review the rules. There seemed to be options. AAG Tucker-Davis suggested the matter be referred back to the Committee where she could provide legal advice. The Board determined to refer it to the Committee.

Mr. Seward asked whether the Board needed to promulgate rules or to seek statutory authority. In reply, Ms. Lopez stated that there was a hearing on a WRD bill that would give OSBEELS the authority to investigate CWRE activities and it would require continuing education for CWRE certifications. She speculated that if the bill passes and is signed, the Board would have to promulgate rules.

## **Unfinished Business**

### *Kalb response to Committee Questions*

Mr. Linscheid reported the Committee discussed Evelyn Kalb, PLS, JD, and her responses to four questions they had prepared during the Committee meeting on February 11, 2011. He also noted their discussion involved a related staff memorandum regarding exercising control over ORS 209.200. Regardless, Ms. Kalb was retained as a professional reviewer to evaluate allegations against Jack Watson, PLS, and in those surveys Ms. Kalb evaluated she found no established corners that Mr. Watson rejected. However, in her report Ms. Kalb noted that Mr. Watson does not mention a double corner on his record of survey for client William Douglass (MOS#1897) and he provided no deed references.<sup>1</sup> She also noted other instances where Watson made no or limited deed references. Because of her evaluation, the Committee expressed concerns about Mr. Watson's lack of deed references and prepared the four questions. Upon review of her response, the LEC directed further investigation. Ms. Newstetter stated that she is gathering deed records and other information for Ms. Kalb to review, so the deed research is ongoing. She suggested that the LEC expect a report at their August meeting. She added that the Standards of Land Surveying committee would look closer at the need for clear narratives.

### *Crowley memorandum regarding case #2539*

Mr. Linscheid reported the LEC discussed a staff memorandum regarding respondent Larry Crowley. Mr. Crowley was issued a Final Order by Default on May 10, 2010, which assessed him

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<sup>1</sup> Kalb asserted that ORS 209.250(2) requires a narrative to "state which deed records, deed elements, survey records, found survey monuments, plat records, road records, or other pertinent data were controlling when establishing or reestablishing the lines."

a \$9,000 civil penalty for various violations of unlicensed practice of engineering. Mr. Crowley never responded to the investigation, to the Notice of Intent, or to prior collection efforts. As a result, the Committee authorized on August 12, 2010, the Department of Justice (DOJ) to conduct a judgment debtor examination (JDE). The JDE occurred on February 24, 2011, and the AAG found that Mr. Crowley is subject to other collection efforts, including those by the IRS, and that it was the opinion of the AAG that he has little else to offer as immediate collection targets. Mr. Tappert noted that this issue raised the question of non-collectable civil penalties.

*Preliminary Evaluation: Steele complaint La Forest/ Professional reviewer report*

Mr. Linscheid reported the Committee discussed a professional review of reports prepared by Dale La Forest. The Committee authorized the review at the February 11, 2011, meeting and it was the opinion of the reviewer that Mr. La Forest had engaged in the unlicensed practice of acoustical engineering by preparing his reports on the La Pine Biomass Power Plant. The Committee directed staff to open a case.

Mr. Linscheid reported that the Committee discussed the Cases Subject to Collections, the Cases Subject to Monitoring, and the Case Status Report and offered no further comments.

**PROFESSIONAL PRACTICES COMMITTEE**

Ms. Newstetter reported that the PPC met on April 15, 2011, to discuss the matters contained in the Committee minutes. Additionally, the *Mission, Functions, Goals* of the Committee was present to the Board. It was moved and seconded (Newstetter/Seward) to approve the *Mission, Functions, Goals* as presented. The motion passed unanimously.

Mr. Linscheid reported that the Standards of Land Surveying Practices Committee met on April 15, 2011 to discuss the matters contained in the Committee minutes. There was no further discussion.

**RULES AND REGULATIONS COMMITTEE**

Mr. Seward reported that the R&R Committee met on April 15, 2011, to discuss the matters contained in the Committee minutes. Additional discussion was held regarding the following matters:

*OAR 820-010-0260 – Rejections*

It was moved and seconded (Kramer/Tappert) to approve the rulemaking process to amend OAR 820-010-0260 as presented. The motion passed unanimously.

*OAR 820-010-0520 – Registrants or Certificate Holders Not Qualified to Practice*

It was moved and seconded (Linscheid/Wahab) to approve the rulemaking process to amend OAR 820-010-0520 as presented. The motion passed unanimously.

*OAR 820-010-0530 – United States Military Registrants*

It was moved and seconded (Kramer/Tappert) to approve the rulemaking process to amend OAR 820-010-0530 as presented. The motion passed unanimously.

As a result of the Rules Hearing held at 1:30 p.m., the following action was taken by the Board:

*OAR 820-010-0325 – Budget*

It was moved and seconded (Seward/Tappert) to amend OAR 820-010-0325 as presented. The motion passed unanimously.

*OAR 820-010-0635 – Continuing Professional Development*

It was moved and seconded (Tappert/Seward) to amend OAR 820-010-0635 as discussed. The motion passed unanimously.

**UNFINISHED BUSINESS**

Nominating Committee

Mr. Doane reported that the Committee briefly met on April 15, 2011, and the members shown in the minutes were nominated. Mr. Seward announced that he would like to withdraw his name for consideration as a nominee for the Vice President. As a result, unanimous votes were given as follows:

Board President – Dan Linscheid

Vice-President – Carl Tappert

These positions are effective July 1, 2011 through June 30, 2013.

**NEW BUSINESS**

Interim Update – Goals of the Executive Secretary

Mr. Seward briefly repeated the decision made during the January 2011 Board meeting related to the evaluation of the Executive Secretary. As a result of moving the evaluation date to occur during the month of July, he would like to receive an interim update on the progress of the goals. After discussion, Ms. Lopez agreed that an update during the 18-month period (January 2011-July 2012) was a reasonable request and easily achievable. In order to synchronize the dates, Ms. Lopez will only need to provide this update during the January 2012 Board meeting. There was no further discussion.

**ADJOURN**

The meeting was adjourned at 1:37 p.m.

**NEXT MEETINGS**

Next Board Meeting:

July 12, 2011

Next Committee Meetings:

LAW ENFORCEMENT:

Thursday, June 9<sup>th</sup> at 8:00 a.m.

Standards of Land Surveying Practices:

Thursday, June 9<sup>th</sup> at 12:00 p.m.

RULES & REGULATIONS:

Friday, June 10<sup>th</sup> at 8:00 a.m.

EXAMINATIONS & QUALIFICATIONS:

Friday, June 10<sup>th</sup> at 9:00 a.m.

EXTERNAL RELATIONS:

Friday, June 10<sup>th</sup> at 11:00 a.m.

FINANCE:

Friday, June 10<sup>th</sup> at 11:30 a.m.

PROFESSIONAL PRACTICES:

Friday, June 10<sup>th</sup> at 1:00 p.m.