



# Oregon

**State Board of Examiners for  
Engineering & Land Surveying**

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**LAW ENFORCEMENT COMMITTEE**

**Meeting Summary**

**April 14, 2011**

Members Present:

Dan Linscheid, Chair

Ed Butts

Ken Hoffine

Carl Tappert

Staff Present:

Mari Lopez

Jenn Gilbert

James R. (JR) Wilkinson

Allen McCartt

Andrew Johnson

Others Present:

Joanna Tucker-Davis, AAG

A meeting of the Law Enforcement Committee (LEC) was called to order at 8:00 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, OR 97301.

**Informal Conferences**

2642

The LEC held a teleconference with the respondent, a 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 continuing professional development (CPD) activities in violation of Oregon Revised Statute (ORS) 672.200(4), Oregon Administrative Rule (OAR) 820-010-0635(1),(5), OAR 820-015-0026, OAR 820-020-0015(7),(8), and OAR 820-020-0025(1).

The respondent signed his renewal form certifying he completed the required Professional Development Hour (PDH) units in compliance with CPD requirements. When the respondent was requested to participate in the CPD audit, he failed to respond to the first and second notices. On the third request, the respondent replied and apologized for his delay. He also notified that he had retired from the practice of engineering and requested what further documentation he could submit. Because he failed to submit proper documentation, the case file was transferred to the Regulation Department. The respondent subsequently submitted PDH documentation, but for time periods before and after his audit period.

The respondent introduced his response to the NOI. He wanted the Board to consider his attempts to respond to the Board by telephone because he was unable to contact staff or get a response to his messages. He asserted his actions to respond show he was cooperative. In addition, he believed he completed the required PDH units. However, he admitted that he did not have supporting documentation. He added that with the help of Board Investigator Allen McCartt he was able to submit qualified PDH units in March 2011. However, when he retired and left employment he did not keep the documentation with him. Given the circumstances, the respondent offered to accept a \$2,000 civil penalty and requested the suspension be dropped. He added that he is completing a lengthy professional career and did not want to sully his record.

Upon consideration, the LEC offered a settlement agreement with a civil penalty of \$2,500 and no suspension. The LEC would record that he failed to supply sufficient documentation or the correct documentation. The allegations regarding not maintaining records and being untruthful were removed. The respondent accepted the offer. **The LEC recommended the Board approve the settlement agreement.**

### 2613

The LEC met in an informal conference with the respondent, a PLS and Certified Water Right Examiner (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). A prior County Surveyor alleged that the respondent set monuments for a Property Line Adjustment (PLA) in 2007, but failed to file a map of survey. The Board received into evidence two different PLA maps both showing the respondent seal and signature and his certification statement that the map was “a true representation of fact.” In his response to the allegations, the respondent wrote that he had not set monuments, which contradicted his certification.

The respondent gave background on events by noting he was on contract with an engineering firm and this project was completed for a client of the engineering firm. He did research, field work, and tied monuments. In anticipation of land use planning, the respondent prepared three survey maps representing different lot configurations to adjust the property lines of two lots. He was not going to set monuments until one option was approved. Since the client wanted to handle the land use application process, the surveys were a work in progress. The review process was prolonged and neither the respondent nor the firm received notification that one of the options had been chosen. In fact, it was a fourth option that was approved. Somehow, the client received approval of a fourth option, which was unknown to the respondent, and the client never notified the respondent or the engineering firm.

When the PLA options came to the attention of the county surveyor and to the respondent, he contacted the client who wanted the survey completed. The respondent set monuments in accordance to the fourth option and filed the record of survey. Among the issues throughout the process was miscommunication, but monuments were not set and a map of survey was not required to be filed. It was a surprise to him that the issue arose. Once the respondent was made aware, he took action to complete the survey and to file the map.

LEC member Ken Hoffine, PLS, PE, CWRE, asked what the respondent would do differently. The respondent admitted he would not have put the certification statement on the draft PLA's.

LEC member Carl Tappert, PE, CWRE, inquired about the final disposition of the three maps. The respondent replied that he prepared the three options and it was the client who was to manage the approval process. However, Assistant Attorney General (AAG) Joanna Tucker-Davis noted that the respondent sealed and signed three maps showing set monuments when they had not been set. The respondent insisted that he had no knowledge about how the maps in evidence were received by the County Surveyor. To present the options, the respondent prepared and sealed paper versions and not the Mylar version.

LEC Chair Dan Linscheid, PLS, asked the respondent how he responded to the County Surveyor and the respondent answered “no monuments were set.” However, Linscheid observed that the maps with set monuments show the “Approval” stamp of the Bureau of Development Services. The respondent stated that the application was submitted without his knowledge because the client had complete control. He added he should have wrote “monuments to be set.” Regardless, he recommended to both the client and to the County Surveyor that the PLA’s should be a replat, but that was not what was decided, so he prepared the maps and legal descriptions for three options, but not for option four.

The respondent explained that the ownership was in two parcels and the action was to make two property line adjustments. He distributed the final map of survey showing option four. Prior to the PLA decision, there were other lot line configurations because of houses, trees, fountain features, and minimum square footage. For each configuration, he prepared two maps of survey. The respondent claimed he received confirmation from the County Surveyor on using two PLA’s. Tappert reminded the respondent the issue is three sets of two maps each showing set monuments when they were not set. In reply, the respondent noted that the County Surveyor and planning approved option four, so he set monuments in February 2011. The final Mylar map was reviewed and is at the printer.

Tappert pointed out that if the fourth option was approved, which the respondent was not aware, how did he know where to set monuments. The respondent explained that he prepared the final map using the legal descriptions with fee number. There are three parcels and he set monuments as per the county descriptions for the three parcels. Hoffine commented that it was a roundabout way to do things. The respondent agreed stating he learned not to stamp a map unless there are irons in the ground.

Upon consideration, the LEC offered a settlement agreement wherein the respondent would agree to retire his PLS registration and CWRE certification, continue to make timely payments on civil penalties under his prior settlement agreement, and close out any current projects. The respondent noted only one project, which is at the Marion County Surveyor’s Office. The LEC also recognized that the respondent registration renews on December 31, 2011, and therefore agreed to allow him to retire at that time his PLS registration and CWRE certification without reinstatement. In addition, the LEC assessed him a \$1,000 civil penalty for violating OAR 820-020-0025(1). **The LEC recommended the Board approve the settlement agreement.**

### 2643

The LEC held a teleconference with the respondent, a delinquent 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).

The respondent 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.

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

He 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. Hoffine reminded the respondent 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. The respondent expressed knowledge of the rules and law.

The LEC reviewed the CPD documentation in semester units that the respondent 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. The respondent 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. The respondent replied it was not his intent.

The LEC began a series of questions about mail and communications as a means to show how he failed to cooperate. The respondent clarified that he was working an unusual project in that he was on six weeks and off two weeks, 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 LEC 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.

When the LEC accepted the Spanish classes as part of his employment and focused on the documentation as insufficient because of the incorrect form and missing dates, he volunteered to have the college submit the dates. Linscheid replied that he failed to do that during the audit and then waited to respond until the NOI was sent, which was not cooperation.

Upon consideration, the LEC offered the respondent a settlement agreement wherein the respondent 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. The respondent asserted again that he cooperated. Linscheid informed the respondent that he knew in January, which was at the beginning of the audit, that the Board was conducting an audit. The respondent 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. The respondent accepted the terms. **The LEC recommended the Board approve the settlement agreement.**

#### **Committee Meeting:**

2588

The LEC (Ed Butts recused himself) discussed that complainant, a PLS, alleged that the respondent, a PE and Principal of an engineering firm, 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. The investigation revealed that the respondent hired a land surveyor in 2008 and he had his company Web site updated to reflect his company's expanded capability. After the last of three surveyors left, the respondent modified the Web site to offer only those land surveying services that can be performed by a licensed professional engineer. However, due to an oversight with his Web developer, the Web site was not accurately updated. Once he was notified of the violation, he took immediate action to correct the problem. **The LEC recommended that the Board close the case as compliance met.**

2591

The LEC discussed an anonymous complaint against the respondent, President of an electrical contracting company, regarding the allegation that his company 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. The respondent responded to the allegations that his company offers and provides engineering services by designing control systems for water treatment systems. Also, the respondent identified PE as the registered engineer in his company. At the time of the complaint, the respondent appeared in compliance with Board statutes and rules. During the investigation, however, it was discovered that the respondent no longer employed a PE and that the respondent's company was an Oregon State Electrical Construction Contractor with a Supervising Electrician who was the secretary of the company. Because the company 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, the company partnered with another PE in order to provide electrical

services that met the requirements under OAR 820-010-0715(2).<sup>1</sup> **The LEC recommended the Board close the case as compliance met.**

2597

The LEC (Ed Butts recused himself) discussed an anonymous complaint against the respondent, a PE, regarding her wedding announcement in which it was stated she was an engineer. The complainant noted that the respondent at the time was an engineering intern. The investigation revealed that the respondent submitted emails of the article for publishing that indicated her status as an engineering intern. However, her status was truncated to engineer when the article was published. Later, the respondent was issued her professional engineer registration, especially qualified as a civil engineer, on January 3, 2011. **The LEC recommended the Board close the case as allegations unfounded.**

2625

The LEC discussed that the respondent, a PE, signed his renewal form certifying he completed the required PDH units in compliance with CPD requirements. When the respondent was requested to participate in the CPD audit, he failed to respond to the first notice. A second notice was returned as undeliverable. After resending to a second address and the respondent failing to respond to third and fourth notices, the case file was transferred to the Regulation Department. When the respondent responded to the allegations, he apologized and noted that he relocated his office and laid-off his secretary. He believed that his mail was lost during the transition. Included with his response was CPD documentation indicating 33 PDH units for the audit period.

The investigation revealed another matter. The respondent 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 respondent provided the WV Board information regarding the single-family residential structure, but the WV Board found that he failed to provide the information in a timely manner and issued him a disciplinary fine. Subsequently, the Wisconsin (WI) Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors took action against the respondent for failing to notify them of the WV action. They assessed the respondent a disciplinary fine and required him to complete an ethics course. The LEC found in April 2009 that the respondent notified the Board of the actions taken by the other jurisdictions as required and determined not to open a law enforcement case.

However, the investigation found that additional action has been taken by the WI Board to which the respondent failed to notify OSBEELS. In September 2009, the WI Board found that the respondent failed to complete the required ethics course and, among other sanctions, suspended

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1) ORS 820-010-0715(2): The engineer registration requirements of ORS 672.002 to 672.325 do not prevent a construction contractor from offering services constituting the practice of engineering when all of the following conditions are met: (a) The construction contractor holds an active license under ORS 701; (b) The services offered by the construction contractor, constituting the practice of engineering, are appurtenant to construction services to be provided by the contractor; (c) The services constituting the practice of engineering are performed by an engineer or engineers registered under ORS 672.002 to 672.325; and, (d) The offer by the construction contractor discloses in writing that the contractor is not an engineer and identifies the registered engineer or engineers that will perform the services constituting the practice of engineering.

his registration for a minimum of two years. Because the respondent was suspended, it triggered review requirements under OAR 820-020-0015(6). Based on a March 4, 2011, LEC recommendation, staff issued the respondent a Notice of Intent to Suspend Registration and Assess a \$2,000 Civil Penalty. The respondent failed to respond to the NOI, so **the LEC recommended the Board issue the respondent a Final Order by Default for violation of OAR 820-010-0605(1), OAR 820-010-0635(5), OAR 820-020-0015(7) and (8), OAR 820-020-0045(4), and ORS 672.200(4).**

#### 2635

The LEC discussed that the respondent, a PE, signed his renewal form certifying that he completed the required PDH units. When the respondent was requested to participate in the CPD audit, he failed to respond. The respondent received a third notice as shown by his signature on the return receipt. However, he failed to respond, so the case file was transferred to the Regulation Department. Upon failure to respond to the allegations letter, Board Investigator Allen McCartt contacted the respondent who informed him that all of his records were destroyed due to heavy rain that collapsed the roof of his office: everything was lost. He committed to submitting photographic documentation of the damage, but was unable to submit CPD documentation because of extensive damage.

The LEC inquired as to why the respondent failed to respond. McCartt conveyed that the respondent was very busy rebuilding his business, which was his top priority. In addition, the respondent stated he kept current with PDH requirements and documents were stored in the office, but offered no excuses beyond the roof damage. Due to health concerns from mold on paper products, he was not allowed access to the structure. While the LEC understood his predicament, LEC member Ken Hoffine remarked that the respondent did not respond until directly contacted by an investigator. The respondent should have been in contact earlier in order to avoid a sanction. The LEC determined to issue the respondent a Notice of Intent for failing to cooperate with the Board and failure 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

The LEC discussed that the respondent, a PE, submitted a renewal form with the words “inactive status” written on the signature line on May 1, 2009. However, the respondent’s registration was in exempt status from June 15, 2005 to June 16, 2009, which was eliminated effective September 20, 2007. OSBEELS wrote and explained to the respondent the requirements to place his registration into inactive status on May 18, 2009. Subsequently on June 15, 2009, OSBEELS received a signed renewal form from the respondent certifying that he completed the required PDH units. The respondent was randomly requested to subsequently participate in an audit of documentation to support the PDH units claimed as a condition of the biennial renewal period. The respondent responded to the second notice noting that he was inactive during the audit period and that he had not completed the required PDH units. Once the Examinations & Qualifications Committee (E&Q) reviewed his correspondence, his file was transferred to the Regulation Department.

The respondent was sent a respond to the allegations letter, but he failed to respond. After several unsuccessful attempts to contact him, the respondent telephoned McCartt to inform that

he had not completed the required PDH units for the audit period. He continued that he did not respond to the allegations because his response would be a repeat of his earlier statement. In addition, the respondent apologized for his misunderstanding regarding inactive/exempt status and asked what he had to do to retire his registration. The LEC determined to issue the respondent 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) and (5), OAR 820-015-0026, OAR 820-020-0015(7), and OAR 820-020-0025(1).

#### 2641

The LEC discussed that the respondent, a PE, submitted a renewal form in June 2006 with a request to place her registration into exempt status. When the respondent submitted her renewal form in May 2008, she signed certifying she had completed the PDH units required for returning a registration to active status. The respondent subsequently was randomly requested to participate in an audit of documentation to support the claimed PDH units. The respondent failed to respond to the first request, but responded to a second notice by noting she was unable to retrieve her records and by asking for a one-year grace period to complete the units. The Board granted her time to gather and submit her records, but would not grant time to complete the PDH units. Because the E&Q Committee had not received her response, the case was transferred to the Regulation Department for further review.

When the respondent responded to the allegations, she reiterated that she did not have the records and hoped the Board would allow her time to meet the CPD requirements. She added her willingness to relinquish her Oregon registration if the Board would not allow her additional time. The time was not granted because she had not met the 15 units or fewer required by OAR 820-015-0026(3). The LEC determined to issue the respondent 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

The LEC discussed that the respondent, a PE, failed to submit a renewal for his Oregon professional engineering registration and it went into delinquent status on August 21, 2006. On November 25, 2008, the respondent submitted a signed renewal form certifying he had completed the required PDH units for returning a registration to active status. The respondent subsequently was randomly requested to participate in an audit of documentation to support the PDH units claimed as a condition of his renewal period. However, the respondent failed to respond to any audit requests, so his file was transferred to the Regulation Department for review.

When the respondent responded to the allegations letter, he submitted a CPD Organizational form listing his claimed PDH units. The respondent provided no supporting documentation for the PDH units. Moreover, the respondent provided no response to the allegations for his lack of action. Upon investigator contact, the respondent stated he obtained the required PDH units for the audit period. The respondent was able to also reconstruct his records to submit them to show compliance with CPD requirements. McCartt confirmed for the LEC that the respondent was difficult to contact. The LEC determined to issue the respondent Issue a Notice of Intent to Assess a \$1,000 Civil Penalty for violation of ORS 672.200(4) and OAR 820-020-0015(8).

## **New Business:**

### *Preliminary Evaluation: Complaint*

The LEC reviewed a preliminary evaluation of a complaint received from the complainant, an Anaheim, CA. resident. The complainant was involved in a motor vehicle accident in Los Angeles County, CA, on July 23, 2006. She broadsided a commercial type truck and a lawsuit was initiated regarding her injuries. A Corvallis, OR, firm modeled the accident at the apparent request of an attorney from Santa Barbara, CA. The complainant made four allegations regarding the report. Board Investigator Wilkinson commented that it was not clear if the analysis performed and the findings of the Corvallis firm falls within the definition of engineering. In addition, he pointed out that an unlicensed person is claiming supervision and control over a registrant and asked should have the registrant sealed and signed the report? Lastly, the accident and lawsuit occurred in California and Wilkinson questioned whether the Board has jurisdiction. The LEC found that the report was prepared in Oregon, but it was for an accident and attorney in California. As a result of crossing jurisdictional lines, the LEC determined to not open a law enforcement case.

### *Preliminary Evaluation: unlicensed CWRE*

The LEC reviewed a preliminary evaluation of a letter from the respondent regarding his unauthorized alteration of a Water Right map that originally was prepared by a CWRE, who is also a PLS. The respondent wrote that he modified a map submitted to the Water Resources Department (WRD) for approval and that it was done without the CWRE's knowledge. In addition, he admitted to removing the CWRE seal and signature from the original map and replacing it with the CWRE's PLS seal and signature from a map of survey that PLS had prepared for him in May 2005. Investigator Wilkinson informed the LEC that upon receiving the respondent's letter he contacted the PLS, CWRE for additional information, which was received.

Chair Linscheid commented that this was not the unlicensed practice of surveying. However, it was pointed out that the respondent removed both the Water Right Map title and the CWRE seal and renamed it a Map of Reservoir Location with CWRE's PLS seal. The Map was accepted by WRD, but the reservoir was improperly located. WRD staff contacted the PLS, CWRE about the Map and he informed them he had not prepared the Map. Wilkinson emphasized that the PLS was not willing to file a complaint. However, the respondent's actions appear in violation of Board statutes and rules and the Board might have a separate interest.

The LEC also discussed how the definition of land surveying under Senate Bill 55 modified ORS 672.005 to include physical or legal features of the earth and improvements on the earth. A reservoir meets these definitions and the respondent fixed its location by using a coordinate system. Linscheid asserted that the respondent did not locate boundary lines and therefore did not engage in surveying activities.

Tappert observed that any person who forges a professional's seal onto a document should be sanctioned. Wilkinson drew attention to ORS 672.007, which defines the practice of land surveying to including performing any service defined by ORS 672.005. While the investigation will clarify the particular violation to include those activities prohibited under ORS 672.045, the

respondent still engaged in the unlicensed practice of land surveying. The LEC determined to open a law enforcement case.

*Preliminary Evaluation: complaint unlicensed CWRE*

The LEC reviewed a preliminary evaluation of a complaint received from the complainant regarding a PLS. The complainant wanted a water right transfer from his neighbor, so he contacted the respondent to prepare the transfer. Later, the complainant found out that the respondent was not a CWRE. Wilkinson informed the LEC that the complainant was unaware that the respondent was working under the supervision another PLS, CWRE. The complainant complained that the other PLS, CWRE has a full time job with the Forest Service and there were problems with the water right application. For evidence, the complainant submitted copies of the respondent prepared map, an incomplete water right application, and an invoice with the respondent's charges. Wilkinson highlighted that the statutes and rules governing the practice of a CWRE are divided between the WRD and OSBEELS. This division of responsibilities has left gaps where OSBEELS rules regarding sanctioning in this case may not apply.

In response to a question about their business relationship, Wilkinson replied that other PLS that is also a CWRE and the respondent own the building in which the respondent conducts business, but the respondent is the sole owner of the surveying company. Based on an earlier interview with the respondent, the other PLS, CWRE oversees his CWRE work. In this instance, the complainant found out that the respondent was not a CWRE and refused to pay his fees. The respondent sued the complainant for payment of CWRE services and won.

AAG Tucker-Davis proposed one option for evaluation in that the respondent might be practicing outside his area of competence. The question is whether the practice of land surveying extends to the practice of water right examination, which is a question complicated by engineers and registered geologists who also have the additional certification to engage in CWRE practice. LEC member Ed Butts, PE, CWRE, commented that he has to establish a recognized location that is referenced to section, township, and range. However, to argue that CWRE work is based solely on land surveying under SB 55 might be difficult. For example, an engineer can do a limited amount of survey work and if the LEC determines that CWRE is the practice of land surveying, then the question becomes why are registered geologists certified. Tappert, who is a PE and CWRE, pointed out that the respondent does the work that the CWRE seals. Plan stamping might not fit because the CWRE is still responsible for what is on the application.

LEC member Ken Hoffine, PE, PLS, CWRE, commented that if a client goes to an engineering firm and the work is outside their expertise, they would find a consultant who can perform the services. They would stamp that portion of the work. Butts agreed adding that he retains experts in various fields to assist him when needed. Hoffine stressed that the respondent is not informing his clients that he does not have the expertise. AAG Tucker-Davis refocused the discussion by noting there is no statutory jurisdiction over unlicensed CWRE work. The question becomes if there is a link to his PLS registration and that connection is difficult to reach. The LEC determined to not open a law enforcement case.

**Unfinished Business:**

*Kalb response to LEC Questions*

The LEC reviewed Evelyn Kalb, PLS, JD, responses to four questions they had prepared during the February 11, 2011, LEC meeting regarding her evaluation of a case against a PLS. In those surveys Kalb evaluated, she found no established corners that the respondent rejected. However, Kalb had noted that the respondent does not mention a double corner on his record of survey MOS#1897. The respondent also made no deed references. She noted other instances where the respondent made no or limited deed references. Kalb had 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.*” The LEC in February expressed concerns about the respondent’s lack of deed references and prepared four questions.

Chair Linscheid commented that Kalb suggested changing the rules to clarify certain sections and to develop a standard of practice manual. In addition, he noted Kalb suggested that Board member Sue Newstetter, PLS, gather relevant deeds of selected surveys. Kalb would evaluate the deed references against ORS 209.250(2). Kalb also noted that the proposed effort to review deeds was not within her original scope of work. She was first retained to evaluate surveys where the respondent was involved in placing double corners. Her research led her to question how the respondent is evaluating deed references consistent with ORS 209.250(2).

#### Exercising Control over ORS 209.200

The LEC reviewed a memorandum prepared by Wilkinson that discussed the Board’s jurisdiction over ORS 209.200. Wilkinson commented that the respondent in a case raised the issue during the field investigation, but it pertains to any survey where Public Land Survey System (PLSS) corners are involved. The respondent’s investigation regards whether he followed accepted land surveying standards. However, Hoffine stated there is also a standard of care issue. He recounted his experiences of when corner placement questions come up, he would bring together responsible authorities to fix a single position, including the BLM. He added that he sets original corners, but for other corners he would seek agreement. The respondent does not appear to do that. For him, the question circled around to the legal standard question.

It appeared to Tappert that the respondent interpreted the evidence and reached his conclusions and the courts should make the determination. Linscheid expressed the issue as not whether 99% of surveyors would have done it a different way, but whether it was reasonable to do it the way he did. The issue is reasonable. He added that there are conflicts between the statute and the BLM *Manual of Surveying Instructions*. For example, the requirements for referencing bearing trees for quarter-corners under ORS 209.130(2) are different than in the *Manual*. There are other professional judgment issues that come directly from a conflict between statute and the *Manual*.

The LEC discussed two methods for establishing standard of practice. One is by statute, rule, and *Manual* and the other is by litigation. There can be two different opinions and only through the courts can the boundary be determined. In response to whether the issue is the original corner position or the boundary line that is formed by deeds, Hoffine remarked that the public is typically more concerned about their boundary as defined by their corners. There can be two different opinions from a deed about where the corner should be positioned and the courts are to resolve the differing opinions.

Board member Sue Newstetter joined the discussion by stating a surveyor has the ability to draw upon the *Manual*. She explained that in the respondent's case there are two different professional opinions on whether the stone was marked as to identify an original corner position. The Board can use the revised BLM *Manual* regarding monumentation and corners to develop a standard of practice manual, but the revised *Manual* would not apply retroactive to the respondent's case. The BLM has learned about local corners and they have changed the *Manual* as a result. She continued that a standard of practice should not be narrowly written, but it should offer guidelines for referencing deeds and what to include on a map of survey. For example, the standard should include providing enough detail in narratives for surveyors who follow to understand what was done as in the case of setting double corners. A surveyor should explain their reasoning in the narrative so there are no questions about how their survey was done and what supporting documentation formulated the resolution. There will always be differences of opinion, but surveyors need to explain how they got there. Surveyors need to reference deeds, which already are required by ORS 209.250(2). However, not all surveyors understand how to reference or evaluate them.

AAG Tucker-Davis characterized the word "controlling" in ORS 209.250(2) as opinion because a surveyor does not have to list what was not controlling. She explained that a surveyor might be able to describe what was controlling during a hearing, which was not in the narrative, because they are not required to list what was reviewed as part of determining what controlled. There is no current requirement to explain this process in the narrative. Newstetter agreed stating that is an example of what needs to be included in a standard of practice manual. The LEC directed further effort to compile and review the deeds.

*Crowley memorandum regarding case #2539*

The LEC reviewed a memorandum prepared by Wilkinson that was an update to a collection effort against respondent Larry Crowley regarding law enforcement case #2539. Crowley was issued a Default Final Order on May 10, 2010, which assessed him a \$9,000 civil penalty for various violations of unlicensed practice of engineering. Crowley never responded to the investigation, to the Notice of Intent, or to prior collection efforts. As a result, the LEC authorized on August 12, 2010, the Department of Justice to conduct a judgment debtor examination (JDE). The JDE occurred on February 24, 2011, and the AAG found that 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.

Wilkinson noted that this collection effort highlights needed Board policy guidance about uncollectable civil penalties. Staffs need policy on how to handle such accounts. Hoffine noted that if Crowley was an unlicensed person who lived in another state and would not return to Oregon, then it would make sense to write-off the account. However, Crowley is an Oregon resident who has a track record of representing himself as an engineer when he is not. The issue is final disposition. The LEC determined to keep the case as subject to monitoring.

*Preliminary Evaluation: complaint unlicensed engineering/ Professional reviewer report*

The LEC discussed a professional review of reports prepared by the respondent. The LEC authorized the review at the February 11, 2011, meeting and staff worked with professional

reviewer, a PE especially qualified as an acoustical engineer, to prepare his report. The professional reviewer expressed the opinion that the respondent had engaged in the unlicensed practice of acoustical engineering by preparing his reports on a Biomass Power Plant. Wilkinson also informed the LEC that he received calls regarding a potential settlement between the proponents and opponents of the plant. While a request to drop the allegations was never received, the Board might have a separate interest because of potential unlicensed practice. The LEC directed to open a case.

Case #2572: Respondent's Exceptions to Amended Proposed Order (ORS 192.690)

The LEC discussed the Respondent's Exceptions to Amended Proposed Order. The Board filed for a Summary Determination with an Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH). The ALJ subsequently issued a Proposed Order on law enforcement case #2572. The Board modified the Proposed Order and issued an Amended Proposed Order on March 24, 2011, to which the respondent's attorney filed exceptions.

AAG Tucker-Davis informed the LEC that the Governor issued an Executive Order that exempted OSBEELS from the 30-day statutory requirement that a hearings officer's Order becomes final unless modified within that timeframe. She noted if an attorney does not regularly practice administrative law, they might not know that the exemption was granted. Nevertheless, she continued that the Board needs to respond to Respondent's Exceptions to Amended Proposed Order. Since the Board substantially changed the Proposed Order, the Board issued an Amended Proposed Final Order. The Respondent's Exceptions are to the Board's Amended Proposed Final Order. The Board will issue an Amended Final Order.

Tappert stated that the respondent can argue their case to the Board. AAG Tucker-Davis added that if they do not agree with the Amended Final Order they can appeal. The Board needs to address the exceptions in the Amended Final Order.

However, AAG Tucker-Davis emphasized the Board does not have rules regarding oral arguments and the Board needs to make a decision. She suggested two options. First, the Board could make its decision at the May meeting regarding oral arguments and then have oral arguments at the July meeting. Second, the Board could make the decision in May to have oral arguments and to conduct those arguments that day. He should be notified about oral arguments and be informed of the two options so he can be present and prepared. If the Board agreed with the second option, the attorney should be there ready to present his arguments. The issue is whether oral arguments will occur in one or two meetings. **Chair Linscheid declared the LEC recommended the Board make the decision on oral arguments.** AAG Tucker-Davis clarified that the only decision at this point is to tell the respondent's attorney to show up at the May meeting where the two options can be discussed. Chair Linscheid added that the LEC does not have the authority to approve a one or two meeting process. The LEC directed that staff inform the attorney of the matter.

The LEC briefly reviewed the Cases Subject to Collections, the Cases Subject to Monitoring, and the Case Status Report and offered no comments.

Adjourned at 11:50