

# OSBGE MEETING MINUTES

DECEMBER 4, 2009

## Members Present

Richard Heinzkill, Public Member  
Chris Humphrey, RG, CEG, Board Vice-Chair  
Dr. Vicki McConnell, RG, State Geologist  
Dr. Stephen Taylor, RG, Board Chair  
Rodney Weick, RG, CEG  
Mark Yinger, RG

## Staff Present

Susanna Knight, Administrator

## Visitors Present

Luncheon Guests [12:00 PM to 1:15 PM]

The meeting was preceded by an 9:00 AM Work Session convened in Corvallis, Oregon, OSU, Wilkinson Hall, Room 203. At 9:00AM, Vice Chair *Humphrey* announced the following:

Per ORS 192.660(1), the Board will now meet in executive session for the purpose of reviewing documents or records that are exempt by law from public inspection under ORS 192.660(2)(f).

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced.

No decision will be made in executive session. At the end of the executive session, the Board may meet in public session to make a decision under ORS 183.482(6).

At 9:45 AM, Chair *Taylor* announced a break. The Work Session continued at 10:00 AM.

**Board Committee Assignments:** Chair *Taylor* distributed a document outlining current Board committee assignments; asked if anyone wanted to switch committees; and then reported that due to the imbalance (*Weick* serving on three different committees and *Yinger* not assigned to any committee), he would like to assign *Yinger* to Chair the RULES ADVISORY COMMITTEE. *Weick* and *Yinger* agreed to this change.

**National Meeting of GSA in Portland:** *Taylor* then solicited applause for *McConnell* stating that her committee put together a superb meeting of the Geological Society of America (GSA) which convened at the Portland Convention Center in October. *McConnell* reported that even in this economy, almost 6000 were in attendance and that a record number of 413 abstracts were submitted. *Weick* reported that the LIDAR presentation was packed. *Taylor* observed that rock geologists are still the mainstay of GSA.

**Discussion of Guidelines:** The Board began a discussion of the Guidelines posted on the Board's web site (Engineering Geology, Hydrogeology, *draft* Geology). *Taylor* offered that the guidelines could be reviewed as standards but asked Board members to share their position on the guidelines. *Yinger* suggested that standards in the Administrative Rules can be dangerous. *McConnell* offered that the guidelines are geared toward report writing. Once the engineering geology exam was implemented, the Engineering Geology guidelines were developed to differentiate between the content of an engineering

geology and a geology report. *Taylor* stated, supported by *McConnell* that the guidelines serve as outreach. *Heinzkill* interjected that that the guidelines become “de facto” standards for the Technical Reviewers. *Weick* offered that the “must” language needs to be vetted. *Taylor* asked: What are the criteria for a good report? *Humphrey* shared that in environmental practice, the criterion is set but in geology practices both the criteria and the conclusion must be documented. He suggested that when guidelines are written the question is asked: What should be in a report? *McConnell* said there should be no “will” or “shall”, but rather a template should be set out which lays out a logical flow. *Yinger* asked if the Board could start each guideline with a disclaimer.

*Taylor* stated that the guidelines posted on the web site have different statuses and asked if the Board should leave them as they are. *Yinger* offered that if the Board chooses to leave them there, then they should be reviewed regularly. *Heinzkill* agreed and stated that the drafts should go off. *Weick* suggested a series of fact sheets but regardless of how it is done, it must be vetted from time to time. *Taylor* asked “Should the Board hire a consultant to do this?” The following series of questions were addressed:

- **Does the Board consider the guidelines an asset?** *Heinzkill*, yes; *Humphrey*, no; *McConnell*, no; *Taylor*, yes; *Weick*, yes; *Yinger*, yes. *Taylor* offered that they are more valuable than not; *McConnell* supported that they are valuable.
- **Do we overhaul what exists or run with what we have?** *Heinzkill*, abstain; *Humphrey*, overhaul; *McConnell*, overhaul; *Taylor*, overhaul; *Weick*, overhaul; *Yinger*, overhaul. *Taylor* concluded that the guidelines are valuable but they need work!
- **What should be done with existing documents on the web?** *Heinzkill*: draft should be removed, others remain; *Humphrey*: drafts should come off but would like to see all removed; *McConnell*: leave everything up as it gives a compelling reason to get things done; *Taylor*: agree that updates are needed, but until the courts resolve the revocation case, all should be left alone; *Weick*: leave alone until litigation is completed; *Yinger*: drafts removed, others remain. *Taylor* summarized that the web site should be left alone until the Supreme Court case is over. *Humphrey* asked about modifications to reports. *Taylor* responded that everything can be modified but nothing should be changed out until the new documents are ready.
- **How should updates be handled?** *Taylor* suggested that this needs to be done ASAP, but how? Do we pay for services? *McConnell* asked: hire a consultant? Or total volunteer? *Taylor* offered that both budget and cost combination must be combined. *Humphrey* asked what the Board wants in guidelines and offered that the discussion should start by developing a philosophy as to how they should be done, audience, objectives.
- **Should it be done totally internally or with outside help?** *Heinzkill*, *Humphrey*, *McConnell*, *Taylor*, *Weick* and *Yinger* all supported that this project should be done with outside help. *Taylor* suggested that the Board should craft an RFP. *McConnell* suggested that a Work Session be convened for this purpose separate from a Board meeting. *Taylor* offered that a four-hour block of time should be sufficient. A straw poll of members selected a Special Retreat: VM, ST, RH, RW versus a Regular Board meeting: CH, MY. *Taylor* announced that a special retreat should convene with a goal of crafting an RFP to send out. Members agreed that a Saturday would be best. *Taylor* offered to do the initial organization.

A ten-minute break was announced with the Board reconvening again at 11:20 AM.

**Legislative Language:** *Taylor* offered that the last two legislative sessions have shown the Board that it must keep simple any immunity language for the statute. He recommended modeling the language after the Physical Therapy Licensing Board with a slight modification so it could read as follows:

The Board, its members, employees, and reviewers who act within the scope of Board duties without malice are immune from civil liability.

*McConnell* stated that if the Board wants immunity on the record, this is something we need to get passed. *Heinzkill* reminded the Board that the ACLU representative was neutral on the language from the Physical Therapy law, ORS 688.160. Staff will draft up the language for the next Board meeting and for additional discussion and adoption.

**Discussion of AC 09 10 232:** *Taylor* presented a copy of the ORS and an OAR that speak to the question regarding the status of an incarcerated registrant. The ORS states that the Board “has the power to”. *McConnell* noted that the ORS does not require that the Board take action but asked about the policy of the Board. Staff is not aware of any policy or of any Administrative Rule for guidance on this inquiry. *Yinger* informed the Board that the registrant that sent the email question also telephoned him and was upset that a felon remained on the Board roster. But *Yinger* questioned if the Board should or would want to take away a registration so a person cannot practice in real life after imprisonment is over. *Taylor* stated that the Board would determine action on this item during the meeting.

**Template for the Technical Reviewers:** *Taylor* asked if changes had been made to the template. When reviewing information, it was confusing to him as additional questions appeared to have been added. *Heinzkill* responded that he had expanded one section to include separate statements for fraud, deceit, incompetence, negligence as the AAG requests answers to each item. Other Board Members expressed confusion also about the change in the template. *Humphrey* offered that the reviewers interpreted the information differently. *Weick* suggested that the AAG’s questions be considered for placing in the template. *Yinger* stated that how question five is answered could cause question six to be skipped so the form is now misleading. *Taylor* stated that the Compliance Committee should not make changes on the “fly” to the template and the Board should go back and review the template. *McConnell* suggested that staff seek input from the reviewers.

**Luncheon:** At noon, *Taylor* welcomed numerous visitors joining the Board for lunch. The following university faculty were present: Dr. Mary Santelmann, Professor Roger Nielson, Professor Roy Haggerty, RG, and Emeritus Professor Robert Yeats. Many graduate students in the Water Resources program were also present. Following lunch, *Taylor* presented a PowerPoint about the Board, the regulation of the practice, the national geology exam and states that require it for registration, and the work of the Board. A question and answer period followed with an informal visiting time ending the lunch break.

+++++

Chair *Taylor* called the quarterly meeting of the Oregon State Board of Geologist Examiners (Board or OSBGE) to order at 1:35 PM.

1. **Visitor and Board Introductions:** The Chair indicated that all visitors and Board participants were introduced during the luncheon and no other guests were present to introduce at this time.
2. **Agenda:** One agenda item was added: 7. Correspondence f. AC 09 12 250. *Taylor* moved to approve the agenda with the addition. *Seconded and passed unanimously.* *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes. There was no discussion about or additions or changes to the September 18, 2009 meeting minutes. *Humphrey* moved to approve the 9/18/2009 Meeting Minutes as presented. *Seconded and passed unanimously.* *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes.
3. **Administrator Report**

- a. Knight referred the Board to the **Administrator Report AR 2009-4: Summary of Staff Activities** since 9/18/2009. She reported that an auditor was back again on December 2, 2009 inquiring about the financial implications of an upcoming Supreme Court case. Knight stated that no information about ongoing cost for this case is available. She also informed the Board that the last two week of this year will be spent preparing the biennial report required of all semi-independent Boards which is due before January 1, 2010. She directed the Board to the ASBOG pass rate for Oregon candidates, 84% for the fundamental and 75% for the practice. The Council of Examiners for the Oregon/Washington Engineering Geology exam met on November 24, 2009. Results will be released pending information from Washington to be received after December 8, 2009. The Board concurred that the 2009 CEG Test Form 1 & 2 should be re-anghuffed before being administered.
  - b. Updated **Revenue/Expense Report for Current Biennium**: Knight reviewed the report with the Board and noted that a \$450 expense was incurred under *Training* where no money was budgeted. This expense was the registration fee for the ASBOG annual meeting which Board Member *Yinger* was authorized to attend. Likewise, the *Out of State* travel expense account incurred charges because Oregon did participate in both the Council of Examiners and the national meeting convened in Birmingham, Alabama.
  - c. *McConnell* moved to approve **Check log #3035 to 3072 and #9115 to 9118. Seconded.** Discussion: *Humphrey* questioned why long periods existed with no checks were written. Knight explained that the checks posted on this list are all checks from August 26, 2009 to November 23, 2009. The cutoff date for the check list was November 23, 2009 in order to place the information in the meeting packet. Many days no checks are issued and the same checks are generally issued each month. *Passed. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*
  - d. **3-Year Comparison of Changes in Monthly Renewals**: *Taylor* noted that the renewals are holding at this time. A 5% decline in registrant renewals was incorporated into the budget for 2009-11. Although the October renewal rate is above this threshold, the months of July-September average close to the 5% drop in renewals. Three registrants were reported deceased in October.
  - e. **Edward Jones Update on CD Purchase Agreement**: Knight directed the Board to the Certificate of Deposit balance of \$69,761.30. This is the Board's reserve account. A substantial drop in interest rates has occurred in the past 18 months.
4. **Visitor and Board Introductions**: No visitors were present.
  5. **Compliance Report**: Chair *Heinzkill* presented the following cases:
    - a. **CC#08-04-008**: This case remains open. The Board referred this Arizona report stamped by an Oregon Registered Geologist to the Arizona Board of Technical Registration (ABTR). The Oregon Board is awaiting information from the ABTR.
    - b. **CC#09-03-011**: *Heinzkill* moved to close this case by stating the Board's position about stamping and signing only eligible work and by restating information from a 12/12/2007 letter issued to this registrant regarding stamping of CEG work *Seconded.* Discussion followed. *Weick* asked that a citation about the engineering geology law be included and also offered that a letter be issued to the Tillamook County regarding the planning ordinance by informing them that it is a violation of the geology statute. A Registered Geologist cannot stamp engineering geology work in support of a Professional Engineer. *McConnell* suggested that a panel discussion or presentation to AOC or LOC about this issue might be considered. *Passed. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*
    - c. **CC#09-03-012**: *Taylor* moved to close this case with an explanatory letter about engineering geology practice and stamping. *Seconded.* *Taylor* commented that it is confusing when a

geological summary is in a cover letter which is then stamped. *Taylor* noted that the Board is in need of a Work Session item on stamping procedures. Motion *passed*. *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes.

d. **CC#09-05-015:** *Heinzkill* moved to close this case as unfounded. A citizen is complaining about a report prepared by an Engineering Geologist. *Seconded and passed unanimously*. *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes.

e. **CC#09-09-001:** *Heinzkill* reported that the respondent in this case has corrected the stamping issue where he failed to stamp a report presented into the public record. *Heinzkill* moved to issue a LETTER OF CONCERN and note that future violations may result in civil penalties of up to \$1000 per violation. *Seconded*. *Yinger*, abstained; *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes. *Motion passed*. *Humphrey* offered that a one file pdf should be considered a report. The Board concurred that an outreach letter be written to DEQ, Pendleton, who accepted this unstamped report. *Taylor* thanked Compliance Chair *Heinzkill* for all his work and the fine job he is doing and again stated for the record that a Work Session of stamping issues is needed.

## 6. Committee Reports:

a. **Administrative Rules:** *Weick* stated that he had no report but per the WORK SESSION information, he is handing Chair of this committee off to *Yinger*.

b. **Joint Compliance Committee:** *Weick* reported that a December 15, 2009 meeting has been noticed with the key issue being the Brookings letter.

c. **Legislative:** *McConnell* informed the Board that the draft language presented in the Work Session would come before the Board for approval at the next meeting. Nothing will be submitted for the 2011 Legislative Session until after the February 2010 ends.

d. **Outreach:** *Taylor* updated the Board on outreach efforts as follows:

i) Presentation to OSU Water Resources Program for Ethics;

ii) K-12 science standards are being enacted. Western Oregon University is working on curriculum changes to reflect this and state testing changes are being made. *Taylor* is handing this off to a WOU colleague who will work on the assessment component. *McConnell* shared her thanks with *Taylor* for all his work in this curriculum effort. *Taylor* offered that it is a very slow process and will continue with the assessment piece handed off. *Heinzkill* asked that an article be prepared for the newsletter so that those registrants that became engaged in this process know that they made a difference.

iii) Presentation at today's luncheon to the group of guests. This is a great opportunity to spread the word about the regulation of geology.

e. **Professional Practice:** *Humphrey* reported two items.

i) **ODOT Stamping Policies:** *Humphrey* reviewed an email from Bernie Kleutsch, RG, CEG of ODOT who was selected to a committee to set ODOT stamping policies. The email presented ODOT's current policy of when the agency is to use a PE, RLA, RG or CEG to stamp, not how. As the Chair of the Professional Practices Committee, the Board directed *Humphrey* to work with Kleutsch. The Board is available to review and/or consult about this issue

ii) **AEG Task Force:** *Humphrey* reported that he had heard nothing additional about the status of this effort.

f. **Task Analysis, EG:** *Humphrey* reported that a Council of Examiners for Oregon and Washington met and set the cut score for the examination. The Board discussed the cut score concern for the two new forms of the examination previously expressed by *Humphrey*. *Weick* moved that the two new forms of the engineering geology exam not be administered until a re-anthoffing occurs due to the concern on the statistical sampling. *Seconded and passed*. *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes.

**7. Correspondence**

- a. **AC 09 10 224:** The citizen's email relayed his concerns about rules and regulations of the Board. He was a complainant in a case where the Board's position was different than the outcome hoped for by the complainant. Staff did provide follow-up information to this person after consultation with the Board's AAG. The Board took no additional action.
- b. **AC 09 10 231:** This registrant's email was in response to the October 2009 Board Newsletter and the registrant offered that it might be in order to thank Vicki McConnell and the local committee for a successful GSA meeting in Portland. Both congratulations and a round of applause was offered for McConnell's work.
- c. **AC 09 10 232:** The Board discussed an email from a registrant questioning why the roster carries an active registrant that is imprisoned for an unlawful act/felony which under ORS 672.675(3) would be grounds for a license revocation. (See discussion during Work Session). The Board concurred that there is no precedent regarding such a situation. Board Chair *Taylor* recommended that this inquiry be referred to the Board's Counsel as there may be other general statutes that address this type of situation. *Heinzkill* also suggested that the Board should hear something from its AAG about the relationship between the ORS (law) and the OAR (rules). *Taylor* offered that the Board should have no interaction with the incarcerated registrant.
- d. **AC 09 10 233:** The October newsletter notified registrants about the City of Portland's request for input on revisions to its Infiltration Test information. A registrant provided input to the City of Portland regarding the section on "Presumptive and Performance Infiltration Testing" and provided his input to the Board. The Board offered thanks to the registrant for his input.
- e. **AC 09 11 240:** The ASBOG Executive Committee responded to a letter issued by OSBGE regarding ASBOG's Friday night meeting conducted annually prior to the national meeting on Saturday. OSBGE offered its concern that important discussion about agenda issues that occurred in the Friday night meeting was not reflected in the Saturday meeting minutes. The four concerns raised by OSBGE were addressed in the memo from ASBLG President Lisa Hoosey and concluded by stating that the ASBOG Executive Committee believes the current procedure best serve the members of ASBOG. *Humphrey* inquired of this year's delegate *Yinger* how he viewed the Friday night meeting. *Yinger* offered that he saw it more as a social event; that discussions about meeting agenda items did not occur. The Board concurred that this was the hoped for outcome of its letter.
- f. **AC 09 12 250:** A registrant is alerting the Board with concerns he sees with a conflict between the registration of geologists for the public practice of geology and the DEQ's Underground Storage Tank Soil Matrix Cleanup Services Supervisor license. The registrant is concerned that decisions about geology are being made by unqualified individuals. *Humphrey* stated that if the groundwater is contaminated, everything changes for the UST licensee. *McConnell* suggested that perhaps a letter should be written to DEQ asking for clarification as to how DEQ is not in violation of the geology registration laws. *Humphrey* suggested reviewing the DEQ Soil Matrix rule to make a determination if part of this job is the public practice of geology and if it is, contact DEQ. *Taylor* suggested that OSBGE needs to look at the DEQ UST information. *Yinger* volunteered to do a review and prepare information for the next Board meeting.

**8. No Visitors were present.**

**9. Old Business**

- a. Action List:** The Board reviewed the Action List and directed staff to keep earlier items that still need to be addressed.
- b. Compliance Flow Chart:** *Heinzkill* distributed a document with some revised wording. The Board worked through those changes. It was noted that a procedural complaint i.e. failure to stamp, failure to sign, etc. would not need to go through a Technical Review process so a yes box directly below the Procedural Complaint box which goes exits to the Compliance Committee should be added. *Heinzkill* will complete that chart so that it can replace the current Flow Chart posted on the web.
- c. Experience Verification Form:** The Board reviewed the documents drafted by *Humphrey*. With a revision on page 2 asking if the primary work of the applicant was geology related and if no, what percentage was geologic related, *Weick* moved to approve the EMPLOYMENT VERIFICATION FORMS for both the practice ASBOG exam and the engineering geology examination with the revision to the related work clause. *Seconded and passed. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*
- d. Pre-ASBOG Exam Acceptance:** The Board discussed the position of the Washington Board regarding acceptance of pre-ASBOG exams from Oregon, Idaho and California. *Humphrey* offered that the Board has no understanding of previous tests. *Taylor* stated that the Board has had this question numerous times before and inquired as to why the Board would change it now. *Weick* offered that the California exam was tough when he took it. *Humphrey* asked but what about Idaho's exam and what about other states? Any decision would be based on hearsay. *Taylor* offered that there is no reason to change the OSBGE rules now. *Weick* asked if an applicant would have to take both the practice and the fundamental exams. *Taylor* requested discussion. *Humphrey* offered that the Board cannot limit this to California and Idaho; it would have to look at something broader. *Taylor* asked about all states and then inquired if there was enough interest in this topic to place it on a Work Session agenda. The straw vote confirmed that this should be moved to further discussion during a Work Session.
- e. Policy of Pursuing Complaints of unlicensed practice:** *Taylor* asked what this topic was regarding. With no response from the Board, he dismissed this item from the agenda.
- f. Consideration of a Community Bulletin Board in the OSBGE Examiner:** Due to the lateness of the hour, *Taylor* moved to table this item. *Seconded and passed. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*
- g. Oregon Licenses, Permits & Registration Directory:** Due to the lateness of the hour, *Taylor* moved to table this item. *Seconded and passed. Heinzkill, yes; Humphrey, yes; Taylor, yes; Weick, yes; Yinger, yes.*

## 10. New Business

- a. Report of the November 7, 2009 National ASBOG Meeting:** *Yinger* distributed a written report of the ASBOG Council of Examiners and the national meeting of ASBOG that convened in Birmingham, Alabama on November 5-7, 2009. *Yinger* served as the Board's representative and in addition to a very thorough written report, also provided the following synopsis:
- The ASBOG budget is \$46,000 in the hole; no discussion about cutting expenses.
  - State membership fees will be raised in 2015.
  - The Friday night dinner was a social affair with no business discussed.
  - The annual meeting was intense. The Texas delegate stopped the budget discussion during the meeting until the budget documents were reprinted in readable quality and redistributed to the delegates.

*Weick* inquired as to who conducts the ASBOG audit? OSBGE was intrigued by the Canadian interest in the examination. *McConnell* offered that the current Canadian registration exam is based on ethics and law, not on geologic knowledge.

**b. Approve 2010 Meeting Dates:** The Board discussed the current GUIDELINES FOR OSBGE MEETING LOCATIONS. Included in the rotation schedule for December 2010 is Southern Oregon University. *Taylor* offered that the annual campus meetings were established as an outreach effort to universities with geology programs and offered that the SOU program no longer meets this criterion. *Taylor* moved to remove SOU from the rotation. *Seconded*. It was noted that the next December meeting would convene on the campus of Western Oregon University. *Passed*. *Heinzkill*, yes; *Humphrey*, yes; *Taylor*, yes; *Weick*, yes; *Yinger*, yes.

The Board then determined that Thursday, March 4, 2010 would be the meeting date even though it is the day before the national exam. The June 11, 2010 date was selected as well as the September 10, 2010 date. These both reflect the second Friday of the month. Traditionally the Board has met on the first Friday. The calendar for 2010 is now ready for posting on the web page.

**11. Public Comment:** No public was present.

**12. Announcements**

- a. The next Board quarterly meeting will convene on Thursday, March 4, 2010 in Salem, Oregon at the Board office building.
- b. The national ASBOG exam will be administered on March 5, 2010, at the Board office.
- c. The Engineering Geology Exam will be administered on March 5, 2010 at the Board office.
- d. A special retreat will be held to discuss the updating process for the Board's Guidelines. Staff will work with the Board members to select a date that works for all members.

**13. Adjournment:** Chair *Taylor* adjourned the meeting at 5:25 PM.

Respectfully submitted,

Susanna R. Knight  
Administrator

The minutes of the December 4, 2009 Board Meeting were approved as presented at the March 4, 2010 Board Meeting.

Respectfully submitted,

Susanna R. Knight Administrator