



# Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors

Spring/Summer 2018 - NEWS BULLETIN 61st EDITION



## Board Members

Raymond J. Watkins, P.E., Chair, Coeur d' Alene  
Dusty Obermayer, P.L.S., Vice Chair, Coeur d' Alene  
George L. Wagner, P.E., Secretary, Boise  
John Elle, P.E., P.L.S., Member, Pocatello  
John Tomkinson, Public Member, Star  
George A. Murgel, P.E., Ph.D, Member, Kuna  
Glenn Bennett, P.L.S., Member, Boise

## Board Staff

Keith A. Simila, P.E., Executive Director  
[keith.simila@ipels.idaho.gov](mailto:keith.simila@ipels.idaho.gov)

James L. Szatkowski, P.E., Deputy Director  
[jim.szatkowski@ipels.idaho.gov](mailto:jim.szatkowski@ipels.idaho.gov)

Jennifer Rowe, Administrative Assistant  
[jennifer.rowe@ipels.idaho.gov](mailto:jennifer.rowe@ipels.idaho.gov)

Edith Williams, Technical Records Specialist  
[edith.williams@ipels.idaho.gov](mailto:edith.williams@ipels.idaho.gov)

Board Phone Number: (208) 373-7210

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## INTRODUCTION

This NEWS BULLETIN is distributed a minimum of twice per year by the Idaho State Board of Licensure of Professional Engineers and Professional Land Surveyors to inform the public and the State's Professional Engineers and Professional Land Surveyors of those events which significantly affect the professions.

Board Home Page <https://www.ipels.idaho.gov>



### Board Votes to Elect Raymond J. Watkins, P.E. as Chair

The Board elected a new chairman to succeed Glenn Bennett. Raymond will serve until new elections are held in June of 2019.

# Board Member Highlights

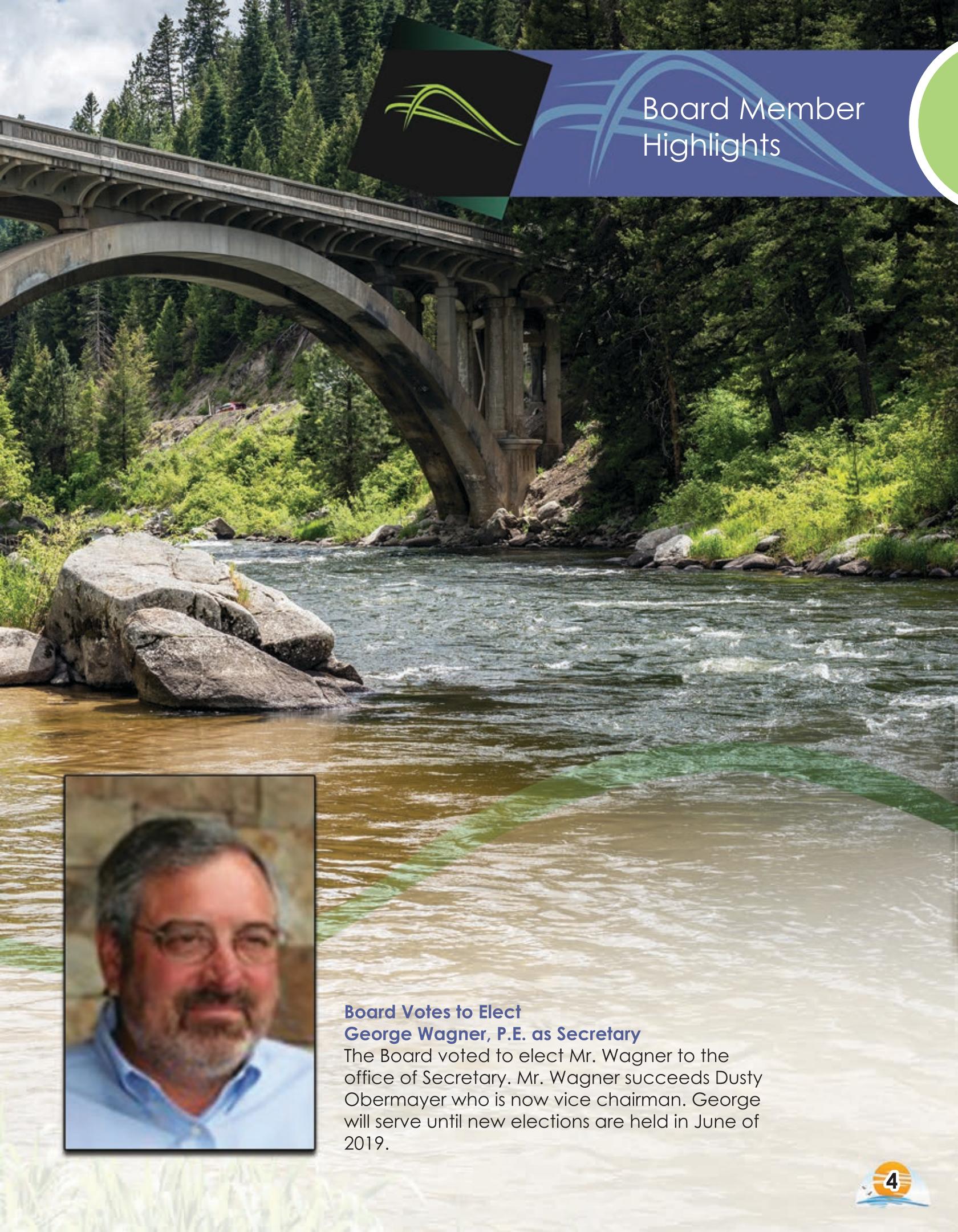


## Board Votes to Elect **Dusty Obermayer, P.L.S. as Vice Chair**

The Board voted to elect Mr. Obermayer to the office of Vice Chair. Mr. Obermayer succeeds Raymond J. Watkins who is now chairman. Dusty will serve until new elections are held in June of 2019.



## Board Member Highlights



### **Board Votes to Elect George Wagner, P.E. as Secretary**

The Board voted to elect Mr. Wagner to the office of Secretary. Mr. Wagner succeeds Dusty Obermayer who is now vice chairman. George will serve until new elections are held in June of 2019.

# Introduction

## New Land Surveyor on Board Staff Hired

The Board will announce the new licensed professional land surveyor selection in July. The selected person will work with professional land surveyors and professional organizations to assist in developing and implementing the laws, rules and policies of the Board, assist the staff in investigating and prosecuting complaints, work with the legislature on laws and rules and work with the Board on new policies important to the profession.

## New Application Process for All Engineering and Land Surveying Initial Licenses

Beginning July 1, 2018, applications for initial licensure are submitted after passing the National Council of Examiners for Engineering and Surveying (NCEES) the Fundamentals (FE and FS) examination and the Professional (PE and PS) examination. Once both examinations are passed and the qualifying education and experience are met, then applications for licensure may be submitted to the Board. The Board will no longer assign applicants to the PE or PS examination. NCEES maintains minimum requirements for examination as a condition of registering. There is no application deadline date as applications are received continuously. Applicants must still meet the Idaho residency requirement to apply for initial licensure.

## Examination Failure Provision Repealed

The Board proposed and the legislature enacted Senate Bill 1252 that repealed the requirement to obtain additional education and waiting periods after two or more PE or PS examination failures. Beginning July 1, 2018, applicants may re-take those examinations within the examination periods allowed by NCEES. This change affects applicants for both initial and comity licensure.





## Introduction

### Final Report Now Available for Lt. Governor Little's Executive Order - Licensing Freedom Act

The Executive Order is established to assess the effect of licensure requirements on Idaho employment and business opportunities. The final report is posted on the Board's website.

### Online Applications Now Available

All applications for licensure or certification are now available online as posted on the Board's website. Application fees must be paid online with online applications. Paper applications may be used but are not required. Online payment cannot be used with paper applications but checks or money orders are still accepted.

### Certificates of Authorization to be Offered Discontinued Status

Business entities offering engineering and land surveying services in Idaho are required to obtain a Certificate of Authorization (COA) from the Board. A new option to "discontinue" the COA is offered for those business entities that are no longer offering services in Idaho. The discontinued status discontinues the requirement to pay a renewal fee and discontinues the accumulation of late fees. Reinstatement of a discontinued COA will require a new COA application and new application fee. Discontinued status must be requested in writing, otherwise it is assumed to be an expired COA in which case late fees will accumulate. Practicing or offering to practice engineering or land surveying services in Idaho with a discontinued or expired COA or without a COA is a violation of Idaho law, unless the business entity is a sole proprietorship. The effective date is July 1, 2018.

# Introduction



## New Fees Effective July 1, 2018

The Board adopted new fees to be implemented at the start of fiscal year 2019. The fee increase is due to increased costs. The new fees are as follows:

- Renewal biennial fee for professional engineers and professional land surveyors - **\$150**
- Renewal biennial fee for dual licenses PE/PLS - **\$300**
- Renewal annual fee for business entity Certificate of Authorization - **\$120**
- Renewal biennial fee for retired licensees - **\$10 (no change)**
- Renewal biennial fee for interns - **\$20 (no change)**
- Application fee for initial licensure without NCEES Council Record - **\$100**
- Application fee for initial licensure with NCEES Council Record - **\$80 (new option)**
- Application fee for faculty restricted license - **\$100**
- Application fee for business entity Certificate of Authorization - **\$200**
- Application fee for comity licensure without NCEES Council Record - **\$150 (no change)**
- Application fee for comity licensure with NCEES Council Record - **\$125 (no change)**
- Application fee for intern certificates – **free no charge**
- NCEES still requires examination fees for the fundamentals and professional examinations paid directly to them at the time of registration



## Board Decisions



**The Board received a letter from a county surveyor in Southern Idaho.** It was sent to many surveyors in the area. This letter described that in reviewing plats and records of survey, the listing of prior surveys and other elements are routinely omitted. No complaint was filed but violations were evident. No land surveyor wants to receive a complaint. The time and expense of responding along with the mental anguish to address the conflict, is something to be avoided. To this end, the Board seeks an improved understanding of current Idaho Code and IDAPA Rules as they relate to surveys and corner records. A periodic review of these statutes and rules will help avoid unnecessary complaints. Statutes and rules change over time and it is incumbent on practitioners to stay current with the state of the practice, which includes legal updates.

These statutes and rules sometimes apply to engineers, such as **55-1613 - Monuments Disturbed by Construction Activities**, and, like land surveyors, are subject to disciplinary action for non-compliance. The following are areas of special concern for land surveyors.

### TITLE 55, CHAPTER 19 - RECORDING OF SURVEYS

**55-1901. Purpose.** The purpose of this chapter is to provide a method for preserving evidence of land surveys by providing for a public record of surveys. The provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting and boundaries.

Upon investigating complaints, it is found that some surveys are not recorded. Consider that if surveys are not recorded, evidence is not preserved. Surveyors should not be reluctant to record surveys. It is a rare situation when a record of survey is not required.

## Board Decisions



### **55-1904. Records of Survey – When Filing Required.**

After making a land survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated. A record of survey shall be filed within ninety (90) days after completing any survey which:

- (1) Discloses a material discrepancy with previous surveys of record;
- (2) Establishes boundary lines and/or corners not previously existing or of record;
- (3) Results in the setting of monuments at corners of record which were not previously monumented;
- (4) Produces evidence or information which varies from, or is not contained in, surveys of record relating to the public land survey, lost public land corners or obliterated land survey corners; or
- (5) Results in the setting of monuments that conform to the requirements of section 54-1227, Idaho Code, at the corners of an easement or lease area.



#### **Historical Photo**

Work on Crystal Springs  
Road Approach.  
Construction - Materials  
at Crystal Springs Road  
(US 30) 2002-05



## Board Decisions

Record of Surveys must be recorded within ninety (90) days after completing the survey. Previous Board opinions have determined that the setting of monuments is the trigger for the 90-day clock to begin. When setting monuments meeting the requirements of 54-1227 surveyors cannot claim many months later that they were only marking temporary positions and therefore, the survey was not complete. This does not meet the requirement. A temporary monument cannot be identical to a permanent monument (rebar and cap) as licensees and the public cannot tell the difference. Once a monument is set it may be relied on by land owners or other surveyors and as such cannot languish without pedigree.





## 55-1904. Records of Survey – When Filing Required. (Continued)

(1) The perception of the meaning of material discrepancy seems to be that it applies only to measurements, however it extends beyond that. It also includes discrepancies in evidence. Consider a subdivision done 50 or 60 years ago that shows one-inch iron pipes were set at the lot and block corners. During the course of your retracement survey for a lot in that subdivision you discover rebar at the corners you use to determine the corner positions for your survey. That difference would constitute a material discrepancy with previous surveys of record or the subdivision plat, and a Record of Survey should be recorded, even though the measured distances are not significantly different than the record. The same would apply for other monuments called for in a metes- and-bounds conveyance or prior survey that differ from what is found on the ground. If you are retracing a previous plat, record of survey or metes-and-bounds description that calls for a specific monument and you find nothing, if you remonument this position with your monument and cap, this would be a material discrepancy and a new record of survey needs to be recorded.

(2) As we know, many older subdivisions did not set monuments at lot corners or even block corners. They may have set only the roadway intersections or the exterior boundary of the subdivision. When performing a retracement survey to field locate and mark the corners of a lot or lots in that situation, a Record of Survey should be recorded since you are setting monuments at corners of record that were not previously monumented. The same principle would apply for a metes-and-bounds retracement where there is no evidence that those corners of record contained in the conveyance were ever monumented, i.e. no called for monuments or not appearing on a previously recorded Record of Survey or plat.

## 55-1906. Records of Survey - Contents.

The records of survey shall show:

- (1) All monuments found or set or reset or replaced, or removed, describing their kind, size, location using bearings and distances, and giving other data relating thereto;
- (2) Evidence of compliance with chapter 16, title 55, Idaho Code, including instrument numbers of the most current corner records related to the survey being submitted and instrument numbers of corner records of corners which are set in conjunction with the survey being submitted; basis of bearings, bearing and length of lines, graphic scale of map, and north arrow;
- (3) Section, or part of section, township and range in which the survey is located and reference to surveys of record within or crossing or adjoining the survey;
- (4) Certificate of survey;
- (5) Ties to at least two (2) public land survey corner monuments of record in one (1) or more of the sections containing the record of survey, or in lieu of public land survey corners, to two (2) corners of records recognized by the county surveyor. Records of survey which are within previously platted subdivisions of record need not be tied to public land survey corner monuments.

**(1) Showing all monuments** seems very clear, however, there are still surveys being recorded that do not show, describe or reference all the existing monuments related to another corner or explain by note or narrative why a new monument was set and another not accepted or why one was accepted and another was not – the other data relating thereto requirement. It is not acceptable to say you found a two-inch diameter aluminum cap.

A close-up photograph of a red fox walking through tall, dry grass. The fox has a thick coat of reddish-orange fur with a white patch on its back and a bushy tail. It is looking towards the right of the frame.



## 55-1906. Records of Survey - Contents (Continued)

### (1) Showing all monuments (Continued)

The aluminum cap is not the monument. The rebar or pipe underneath the cap is the monument. In order to describe the "kind and size" you need to describe the material the monument is made of and the diameter of the monument as well as what stamping is on the cap. In the event the monument type and size is not accessible, e.g. set in asphalt or concrete, then you should state so on your survey.

**(2) Evidence** - Again, it seems clear but there are still surveys being recorded without showing the most current corner recording information or showing anything at all. The Basis of Bearing must also be shown as the bearing between two monumented corners, not just a call to a GPS reading.

**(3) Reference** on the maps in some manner any surveys of record within, crossing or adjoining the survey they are performing. This includes subdivision plats as well as Record of Surveys and is important in order to preserve evidence of prior land surveys. Many times this is neglected, or a full accounting of the surveys of record are not shown.



### (4) Certificate - 50-1309 – Certification of Plats (1)

The owner or owners of the land included in said plat shall make a certificate containing the correct legal description of the land, with the statement as to their intentions to include the same in the plat, and make a dedication of all public streets and rights-of-way shown on said plat, which certificate shall be acknowledged before an officer duly authorized to take acknowledgments and shall be indorsed on the plat. The professional land surveyor making the survey shall certify the correctness of said plat and he shall place his seal, signature and date on the plat.

**55-1901** Says that the recording of surveys statute shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting and boundaries. Therefore, Record of Surveys must also contain a certification from the surveyor as to the correctness of his survey.

(5) Ties to corners of record must be existing monuments on the ground and not calculated positions and as such must include the required information pertaining to corner perpetuation and filing.

**Question 1 – Rehabilitating PLSS Corners** If I find a section corner (or any original gov't corner) that is a rebar and a yellow plastic cap am I required to replace the plastic cap with a cap marked as shown in the BLM manual and with his PLS number? This would also apply to finding an iron pipe, RR spike etc.



# Board Decisions



## Question 1 Answer

***Idaho Code 55-1604. Filing Requirements.*** A professional land surveyor shall complete, sign, and file with the county clerk and recorder of the county where the corner is situated, a written record of the establishment or restoration of a corner. This record shall be known as a "corner record" and such a filing shall be made for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated or used as control in any survey. The survey information shall be filed within ninety (90) days after the survey is completed, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this chapter.

## ***Idaho Code 55-1608. Professional Land Surveyor to Reconstruct Monuments.***

(1) In every case where a corner record of a survey corner is required to be filed or recorded under the provisions of this chapter, the professional land surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner.

(2) Any monument set shall conform to the provisions of section 54-1227, Idaho Code, and shall be surmounted with a cap of such material and size that can be permanently and legibly marked as prescribed by the manual of surveying instructions issued by the United States department of the interior, bureau of land management, including the license number of the professional land surveyor responsible for placing the monument. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. If the monument is set by a public officer, it shall be marked by an appropriate official designation.

Based on **55-1604, Idaho Code**, if a land surveyor finds a monument at a government land corner position and there is a corner record filed on it that is substantially the same as what he finds, i.e. the same monument called for, reference ties still existing, etc., then an updated corner record is not required.



## Board Decisions

### Question 1 Answer (Continued)

If, however, the land surveyor finds a different type of monument than what is called for in the corner record or the references ties are missing or different then a new corner record is required to be filed because it is no longer substantially as described.

Based on **55-1608, Idaho Code**, if a surveyor has to file a new corner record due to inadequacies outlined in **55-1604**, Idaho Code, then the land surveyor is required to rehabilitate the monument to the standard called for in **55-1608**, unless special circumstances preclude use of such monument as described in **54-1227** Idaho Code.

### Question 2 - Requirement to Set Monuments

We will be doing a boundary line adjustment between a pair of un-platted parcels and we are having an in-house debate as to the legal requirement for monumenting all of the corners of the two new resultant parcels. It is clear in the code that the filing of a record of survey is required, but I am not finding the code that explicitly states what the monumentation requirements would be in this instance. My understanding and policy has always been that I would be obligated to monument all of the corners as well as to file a record of survey. However, in researching this matter more carefully, I am now finding that I can't back up that understanding with a code reference as it pertains to monumentation. The code is clear when it comes to monumenting lots in a subdivision and monumenting section corners.



**Historical Photo**  
The Coeur d'Alene Resort floating boardwalk is the largest floating boardwalk in the world.

## Board Decisions



### Question 2 – Requirement to Set Monuments (Continued)

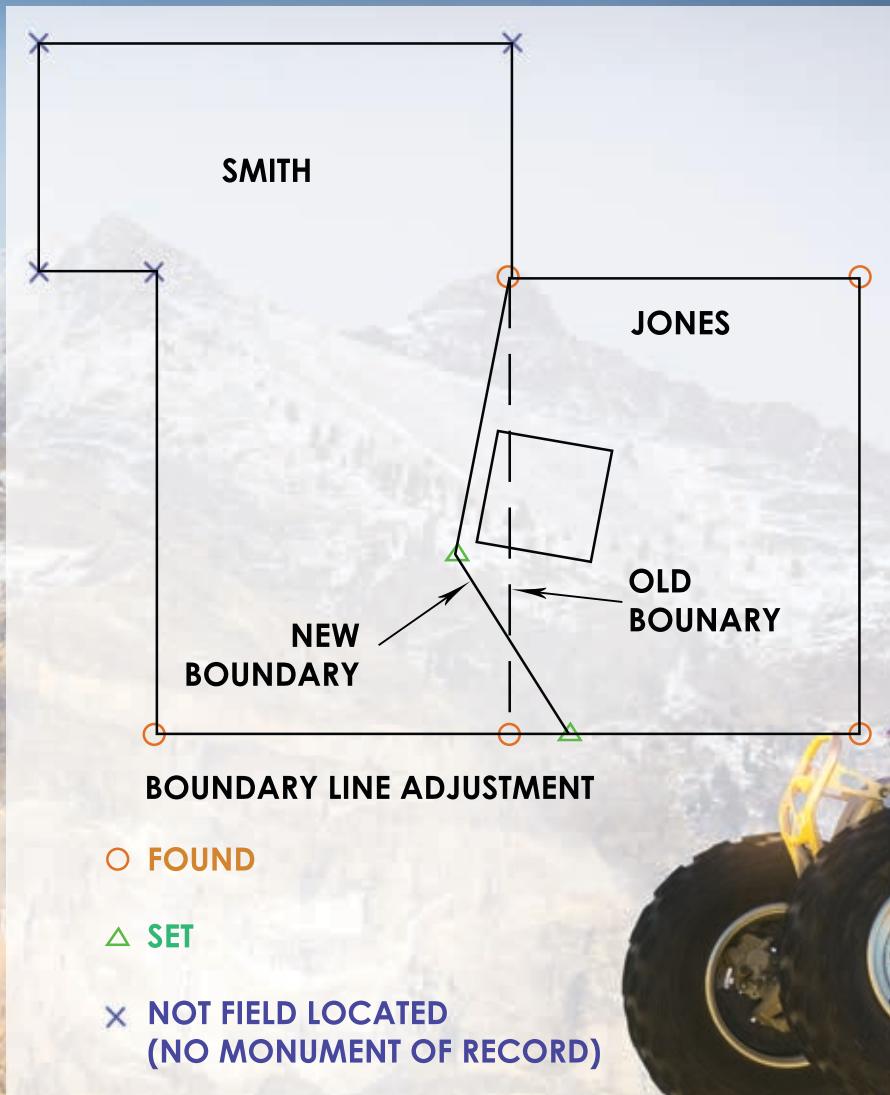
**55-1904. RECORDS OF SURVEY — WHEN FILING REQUIRED.** After making a land survey in conformity with established principles of land surveying, a surveyor shall file a record of survey with the county recorder in the county or counties wherein the lands surveyed are situated. A record of survey shall be filed within ninety (90) days after completing any survey which:

- (1) Establishes boundary lines and/or corners not previously existing or of record; [This is clear]
- (2) Results in the setting of monuments at corners of record which were not previously monumented; [But this in itself is not an explicit requirement to set monuments.]

So now I am wondering if I have been over reaching in my interpretation of the code. What is the monumentation requirement in the described scenario (see exhibit)? I would greatly appreciate any guidance or wisdom that the board might have to offer in this matter. Thanks! Best regards.

Land Surveyor from North Idaho





# Board Decisions



## Question 2 Answer

The answer to your question about if you need to set all the monuments during a boundary line adjustment is - it depends. As with many surveying questions, the answer isn't always black and white. Below are the applicable laws and rules.

### **54-1227. Surveys -Authority and Duties of Professional Land Surveyors and Professional Engineers**

#### **10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY**

##### **005. RESPONSIBILITY TO THE PUBLIC.**

01. Primary Obligation. All Licensees and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties. (5-8-09)

02. Standard of Care. Each Licensee and Certificate Holder shall exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances. (3-29-10)



## Board Decisions

### Question 2 Answer

03. Professional Judgment. If any Licensee's or Certificate Holder's professional judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the Licensee or Certificate Holder shall inform the employer or client of the possible consequences and, where appropriate, notify the Board or such other authority of the situation. (5-8-09)

In answer to your question with respect to the example you presented, here are some questions you should ask yourself:

1. Are you in fact protecting the public safety, health and welfare by not setting the monuments?
2. If you do not set these monuments, are you following the Standard of Care?
3. Is your client or employer not wanting you to set these monuments because it would add additional cost to the project, but you believe that to protect the public safety, health or welfare, you should set these monuments?

If the answer to questions 1 or 2 is no, then you need to monument these corners. If the answer to question 3 is yes, then you need to inform your client and your employer that you do need to set these corner monuments.

## Board Decisions



### Question 2 Answer (Continued)

You should in most circumstances work towards convincing your client that it would be better to set the monuments in order to protect them. In your example, it would be good to talk to both property owners about setting all of the monuments. We understand that cost is usually the issue, but you need to be cautious about letting cost overrule what may not be protecting the public.

Field located means setting a lath, nail, hub, scratch an "x" on the ground with your foot, or otherwise show your client where their boundary corner is in the field. Such action requires setting a permanent corner monument. The Board has previously stated that if you are surveying the perimeter of your client's property, you are also field locating the corners and must set monuments.

Some counties have a particular procedure you need to follow for boundary line adjustments. Your example was silent on the final result regarding descriptions for the property(s).  
Were the descriptions written only for the sliver parcels that were exchanged?





## Board Decisions

### Question 2 Answer (Continued)

If that is the case, the county might then consider those as separate parcels and assign them parcel numbers and Smith and Jones would each receive two tax notices. Setback requirements might also apply to each of the individual parcels and Jones may still be in violation until the parcels are combined into one description. That would then leave Smith with a deed that would end up being described as a vesting deed with an exception and an "including" or "together with" parcel.

If descriptions were written for Smith and Jones that incorporated the new configuration into two new metes and bounds described parcels, then how were the corners referenced? Were the corners that were found or set called for and described and the others called "to a point?" Because two parcels not previously of record were created, and new descriptions for those parcels were prepared for recording new deeds, how is the public protected if those missing corners are not monumented and called for in the new deed? We all know how important called for monuments are in retracing surveys. These are just a few things that need to be considered when making decisions about whether or not to set monuments in order to protect the public.

# Board Decisions

## Question 2 Answer (Continued)

There are many other issues where we as surveyors may not be adequately protecting the public, without at a minimum, a field visit to check for occupational and other issues such as double monumentation, conflicting elements etc., when completing a boundary line adjustment. There are cases where it is required to set all of the monuments, but there are also cases where it may not be required.

It is recommended land surveyors have a clear contract in place that states the scope of work of the deliverables. In your scope and contract you can state why you believe that in order to protect your client and the public, you will need to set the monuments or why are you will not be setting the monuments.

You can also include local jurisdiction rules and policies.

It is not possible to visualize every scenario which could influence the answer to your question. You were on the right path by believing you should be setting the corner monuments. It comes down to the question - are you protecting the public and following the standard of care?



## Board Decisions

### Question 3

#### Criticizing the Work of Another Engineer

I have a situation on which I would appreciate your opinion. We provide engineering services for a large subdivision in a nearby small north Idaho city. The city has a contract city engineer. The contract city engineer routinely reviews our engineering plans and specifications for approval by the city.

I have recently found that the contract city engineer is discussing various aspects of our work, sometimes in a critical manner, with a representative of the Idaho DEQ. I have not had the benefit of providing input on these discussions, and it bothers me that this kind of discussion is taking place without the opportunity of my input.

I also provide contract city engineering services for another small city in north Idaho. I am very careful in my review comments to make those comments directly to the design engineer, and I provide copies of my communication to the city as well as the DEQ.

Am I asking too much to have the opportunity to provide this input to the contract city engineer's concerns while he is discussing these items with a representative of a public agency? Do the actions of the contract city engineer pose a conflict with Section **007.04** of the Rules of Professional Responsibility?

Thanks very much for your opinion on this matter.



# Board Decisions



## Question 3 Answer

The answer to your question is - it may or may not be a violation for another engineer to criticize your work. The key is:

1. Whether it is done in public (like a public meeting) without first talking to you. That would be indiscriminate criticism and it is prohibited by our ethics rule 007.04. There is no rule that says engineers cannot criticize other engineers in public, they just can't do it without first talking to you with the intent of understanding your side of the story.
2. Rule **007.04** also applies to injury done to you by the words or actions of another licensee – such as criticism that is slander or malicious with the intent of harming your prospects for future employment. This may be difficult to prove given DEQ isn't a client who may hire you in the future.

## Histrorical Photo

Broadway - Chinden  
Connector, Boise, Idaho.  
Construction workers  
building a bridge.  
1988



### Question 3 Answer (Continued)

Since we do not know the nature of their criticism, we cannot say for sure if they are violating any of our ethics rules. We'd recommend you have a conversation with the engineer involved and ask them as a courtesy to first talk to you before they talk to DEQ, or at least concurrently. You may want to ask them to extend the same courtesy to you that would be given to them in like circumstances. Sometimes professionals have different opinions and exercise unique judgement without there being anything wrong with the design or work of another engineer. Other times there may be problems that need to be addressed as material discrepancies. You know as a city engineer, you have a responsibility to protect the public by making sure the codes and standards are met. City engineers hold a lot of influence on how those codes and standards should be applied to specific projects.



# Statute and Rule Changes



## Rule Changes Adopted by the Legislature in 2018

Three rule change proposals were adopted by the Board and are now in effect. They can be found at <https://adminrules.idaho.gov/rules/current/10/index.html>.

## Rule Changes proposed for adoption by the Legislature in 2019

Docket **10-0101-1801** relates to implementing SB 1252 which repealed the provision requiring additional education and waiting periods after multiple professional examination failures and decoupled the professional examinations from the experience requirement. It also allows business entities to request their COA be discontinued which effectively removes late fees. This rule goes into effect on July 1, 2018 as a temporary rule but must still be approved by the legislature in 2019.

Docket **10-0102-1801** relates to the requirements of surveyors to notify affected landowners when setting monuments that represent a material discrepancy with existing monuments of record. It also requires the Board be notified when unresolved material discrepancies are encountered.

Docket **36-0602-1801** relates to electronic recording of survey instruments such as corner records, plats and records of survey.



## Statute and Rule Changes

### Law Changes Adopted by the Legislature in 2018

**House Bill 621** was not adopted that would have granted land surveyors a right of entry.

**House Bill 658** was adopted by the legislature changing the trespass laws of Idaho. No exemption for surveyors needing access was added. It can be found at <https://legislature.idaho.gov/sessioninfo/2018/legislation/H0658/>.

### Out-year Law Changes Considered by the Board

The Board is considering updates to existing laws in the coming years (2019 or later) and is interested in comments by interested stakeholders before deciding to proceed. The proposals are posted to the Board's web site. A summary is as follows:

1. Right-of-entry for land surveyors
2. Corner Filing and Recording – for land surveyors that clarifies which corners are Public Land Survey corners and adds the center of section and 1/16th corners to those that require a CP&F form to be filed when subdividing a section. It also requires establishment of the C  $\frac{1}{4}$  of a section as part of the subdivision survey.
3. Records of Survey and Plats – adds a narrative.
4. Monuments - non-metallic monuments such as county surveyor stones must be rehabilitated with magnetically detectable monuments.

# Statute and Rule Changes



## **GUEST ARTICLE – QBS FACILITATORS COUNCIL NEW QBS RULE REGARDING SUBCONSULTANTS**

The Rules of Professional Responsibility regarding “Selection on the Basis of Qualifications” in IDAPA 10.01.02.009.05 prevent licensees or certificate holders to submit bids in response to solicitations governed by Idaho Code 67-2320, the “QBS” Law. The Idaho Board of Professional Engineers and Land Surveyors (Board) proposed a change to the rule by adding “subconsultants” to the language. The purpose was to clarify that it is also against the Rules for subconsultants to submit bids in response to a QBS solicitation. The rule was approved by the 2018 Idaho Legislature and is currently in effect.

### **How does this new rule effect engineers and land surveyors and how should license holders approach it in the QBS selection process?**

Good question. The QBS Facilitator Council is a group of professionals representing the various design professions. We give advice and guidance to both owners and design professionals in the proper application of the QBS Law. The Board was gracious enough to allow us to provide this guest article to provide some guidance on this issue. Below is a list of Q&A that can hopefully answer your questions.



## Statute and Rule Changes



### **Q1: What's the best way to ensure compliance with the new rule?**

A1: The very best way is for owners (and/or consultants who prepare the QBS Request for Proposal (RFP) or Request for Qualification (RFQ) for the owner) to specify that: "All design professions anticipated to work on the project shall be named in the response (include firm names and general project responsibilities). Failure to do so may be grounds for rejection or reevaluation of the response."

### **Q2: What if a prime consultant asks me for a bid when they were selected in a QBS process?**

A2: Don't give them a bid. Giving them a bid is now against the Rules of Professional Responsibility. Explain the new rule to them.

As with any new Rule, there will be an education period as people adjust to the new rule.

### **Q3: What does the prime consultant do if they need a subconsultant on their team that was not listed with their original proposal?**

A3: It depends on the RFP or RFQ, but likely they will have to ask the owner to add the subconsultant to the team after the fact. That may require a rescore of the proposal or might disqualify the prime consultant. The owner will be the final arbitrator of these situations. The QBS Council continues to educate owners on QBS best practices – again, requiring that the entire potential team be listed in the response is the best approach.

# Statute and Rule Changes



## NEW QBS RULE REGARDING SUBCONSULTANTS

**Q4: What does the prime consultant do if a subconsultant they listed in their winning QBS response either becomes unavailable or does not provide a reasonable price?**

A4: It depends on the RFP or RFQ, but likely they will have to ask the owner to substitute a different subconsultant for the one that is unreasonable or unavailable. If justified, those circumstances would likely allow for substitution (without rescoreing the proposal) so long as the replacement subconsultant is of similar qualifications as the original. Again, the owner will arbitrate those cases.

**Q5: What happens if I witness a subconsultant giving a bid price to a prime consultant or an owner during or after a QBS selection process?**

A5: Notify Board staff. They will educate the license holder or take disciplinary action if warranted.





**Q6: What if I'm asked to provide a bid for engineering or surveying services to a contractor who has a construction contract on a public works project?**

Q6: Since the contractor is not subject to the QBS law, you may submit a bid for services that are part of the contractor's work. With that said, however, public agencies and owners should refrain from placing design services in construction contracts that are better done during the design phase and under the QBS process.

- Services better done under the initial design through QBS would include all engineering and surveying to perform the design, control layout, and critical elements of the construction staging or phasing for the project. In addition to the overall design package, examples of other design elements that should be done by the QBS selected Design Professional might include construction traffic control, temporary cross over design, and survey control staking.
- Services better left to the contractor for bidding in their construction contract should be limited to those specific to their means and methods of construction. Examples might include shoring, false work, proprietary retaining wall systems, and dewatering.

**Q7: What if I have more questions or concerns?**

A7: Please notify Board staff or the QBS Facilitator's Council (Teri Ottens) at (208) 321-1736 or [tottens@amsidaho.com](mailto:tottens@amsidaho.com)

# Education

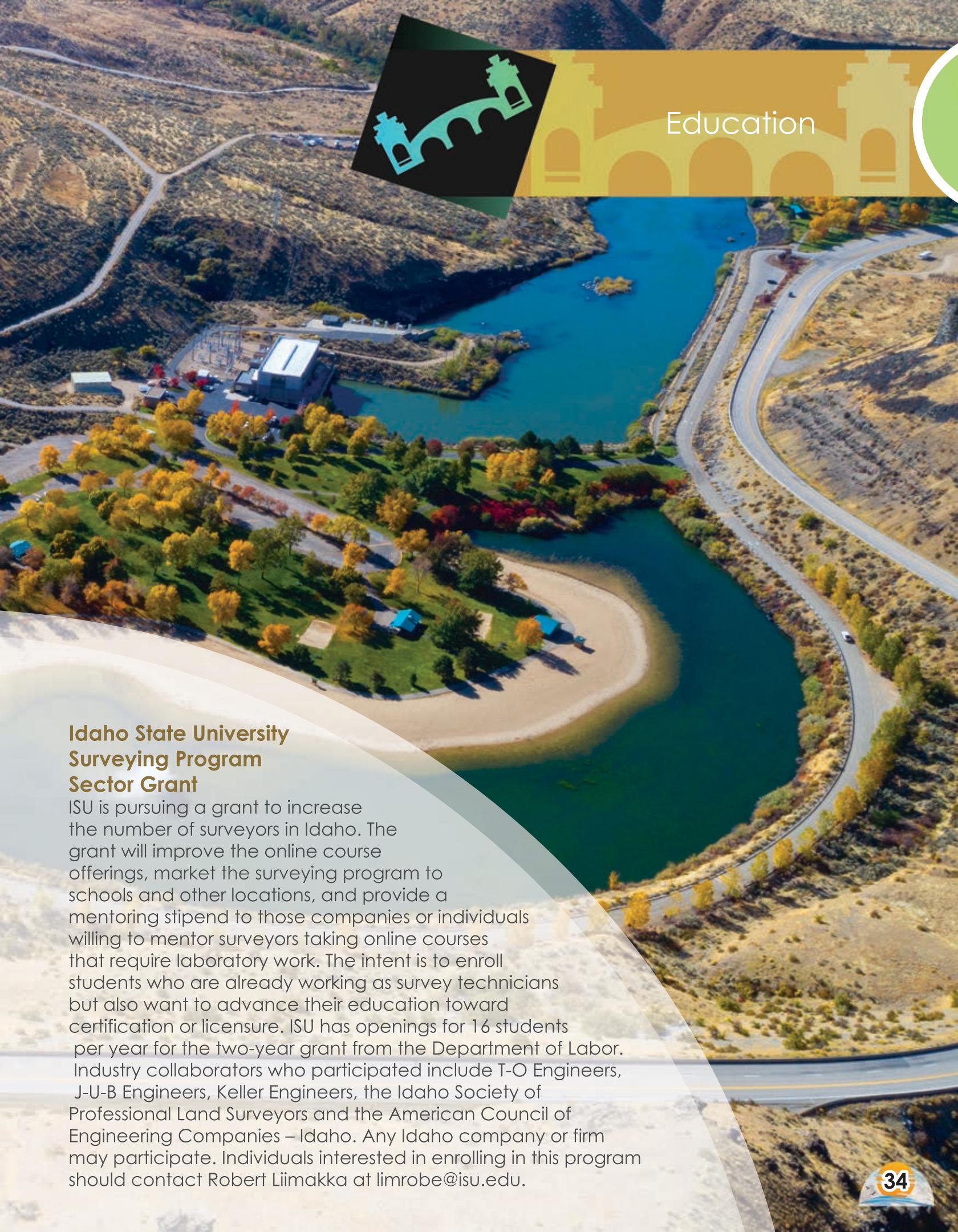


KEEP YOUR FORESTS GREEN

## Survey Education Subcommittee

The Board continues to look for ways to increase the educational options for students seeking to become land surveyors. Currently Idaho State University (ISU) in Pocatello offers the only Board approved and ABET accredited surveying program. They now offer all four years in an online format that can be taken in lieu of relocating to ISU. The need for new surveyors entering the profession is increasing as more surveyors are retiring each year and few new surveyors entering the profession. The Board, working with industry and the Idaho Society of Professional Land Surveyors wants to see more survey educational options in the future.

One change being adopted is to make the surveying a 2 + 2 program where students will enroll for two years and receive an Associates of Applied Science degree and then enroll in the final two-year program for a Bachelor's degree. For those with a related science degree, ISU is considering a "certificate" program for those completing ISU surveying courses that meet the minimum requirements in the Board's rule. Obtaining a certificate from ISU demonstrates the survey educational requirements are met, which enables a clear pathway to licensure.



# Education

## **Idaho State University Surveying Program Sector Grant**

ISU is pursuing a grant to increase the number of surveyors in Idaho. The grant will improve the online course offerings, market the surveying program to schools and other locations, and provide a mentoring stipend to those companies or individuals willing to mentor surveyors taking online courses that require laboratory work. The intent is to enroll students who are already working as survey technicians but also want to advance their education toward certification or licensure. ISU has openings for 16 students per year for the two-year grant from the Department of Labor. Industry collaborators who participated include T-O Engineers, J-U-B Engineers, Keller Engineers, the Idaho Society of Professional Land Surveyors and the American Council of Engineering Companies – Idaho. Any Idaho company or firm may participate. Individuals interested in enrolling in this program should contact Robert Liimakka at [limrobe@isu.edu](mailto:limrobe@isu.edu).

# Examinations and Licensure



## NCEES Seeks Volunteers for Fundamentals of Engineering and Surveying Exam Content Review

NCEES is currently seeking engineering professionals to participate in a content review for the Fundamentals of Engineering (FE) and the Fundamentals of Surveying (FS) exam. The results of this survey will be used to update the specifications for the exam, which is typically the first step in the process leading to professional engineering or surveying licensure.

NCEES requires a cross section of professionals—including licensed professional engineers and surveyors and academics teaching engineering and surveying courses—from all engineering disciplines and surveying to complete an online survey about the fundamental knowledge and skills necessary for a recent engineering or surveying graduate to work in a manner that safeguards the health, safety, and welfare of the public. The survey can be completed in 20–30 minutes.

“These studies help NCEES ensure its licensing exams remain relevant to current professional practice,” explained Director of Exam Services Tim Miller, P.E. “The value of this content review depends on the number of people who participate, so NCEES is eager to get input from as many engineering professionals as possible.” The survey is open at [ncees.org/FEcontentreview](http://ncees.org/FEcontentreview) or [ncees.org/FScontentreview](http://ncees.org/FScontentreview) until August 20, 2018. For more information, email [FEcontentreview@ncees.org](mailto:FEcontentreview@ncees.org) or [FScontentreview@ncees.org](mailto:FScontentreview@ncees.org).





## Examinations and Licensure

### Professional Engineering Examinations Converted to Computer Based Test

NCEES is offering Professional Engineering (PE) examinations in Computer Based Test (CBT) format for the Chemical and Nuclear Engineering Examinations in 2018 and the Environmental and Petroleum Engineering Examinations in 2019. The other PE examinations will follow in 2020 and beyond.

Tests are offered at any Pearson-VUE operated test centers such as those in Boise, Spokane, WA and Ogden, UT. They are not offered at university campus test centers where the FE and FS exams may be taken. Applicants meeting the NCEES education requirements are automatically assigned to the examinations once registered.



# Examinations and Licensure



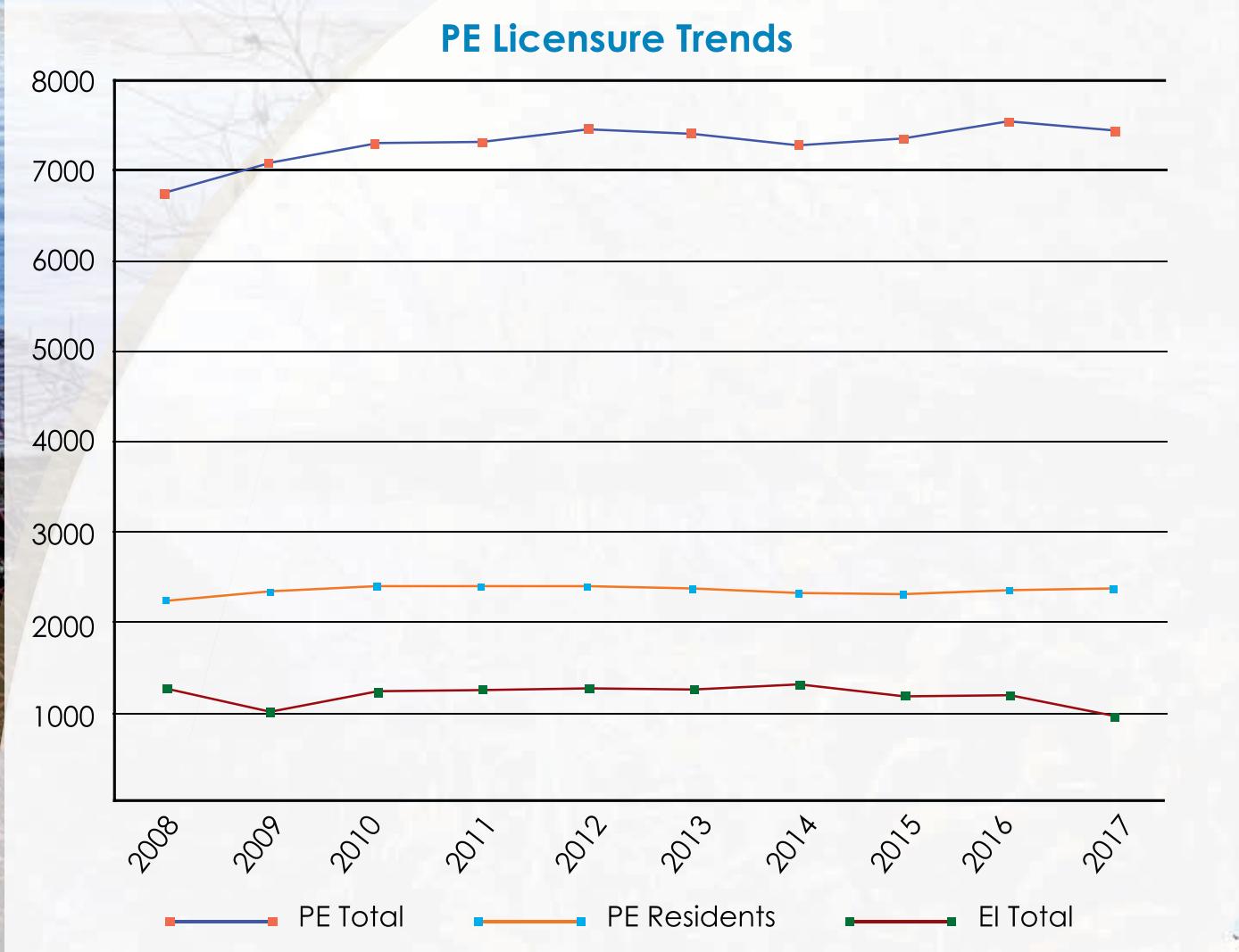
## New Idaho Professional Engineers Licensed by Examination

First Name	Last Name	City	State	Field
Kayla	Jacobsen	Boise	ID	Civil Engineering
Jared	Eby	Boise	ID	Electrical Engineering
David	Sherman	Nampa	ID	Civil Engineering
Krista	Heindel	Boise	ID	Civil Engineering
Kathleen	Klacik	Boise	ID	Control Systems Engineering
Tyler	Smith	Meridian	ID	Electrical Engineering
Mark	Pacold	Boise	ID	Civil Engineering
William	Marshall	Twin Falls	ID	Mechanical Engineering
Erica	Iverson	Eagle	ID	Civil Engineering
Kara	Cafferty	Shelley	ID	Environmental Engineering
Christine	Zimmerman	Boise	ID	Civil Engineering
Nathan	Porter	Caldwell	ID	Civil Engineering
Benjamin	Davis	Moscow	ID	Civil Engineering
Janet	Zarate	Lewiston	ID	Civil Engineering
William	Johnson	Boise	ID	Civil Engineering
Kevin	Young	Boise	ID	Civil Engineering
Clemente	Salinas	Caldwell	ID	Civil Engineering
Caitlin	Short	Meridian	ID	Electrical Engineering
Matthew	Sipple	Boise	ID	Civil Engineering
William	King	Eagle	ID	Mechanical Engineering
Joshua	Baker	Eagle	ID	Civil Engineering
Daniel	Friesen	Nampa	ID	Civil Engineering
Peter	Foss	Star	ID	Civil Engineering

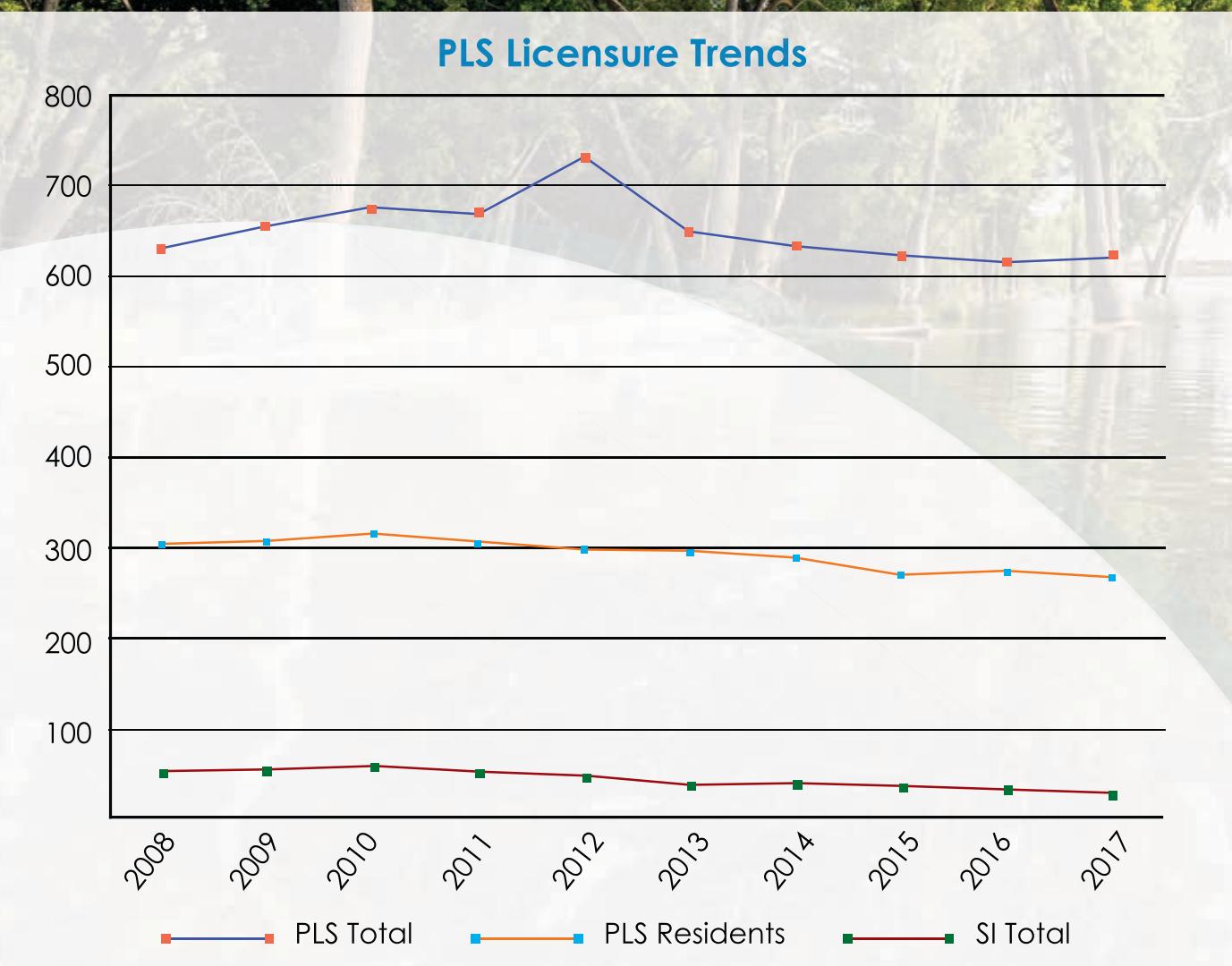




## Examinations and Licensure

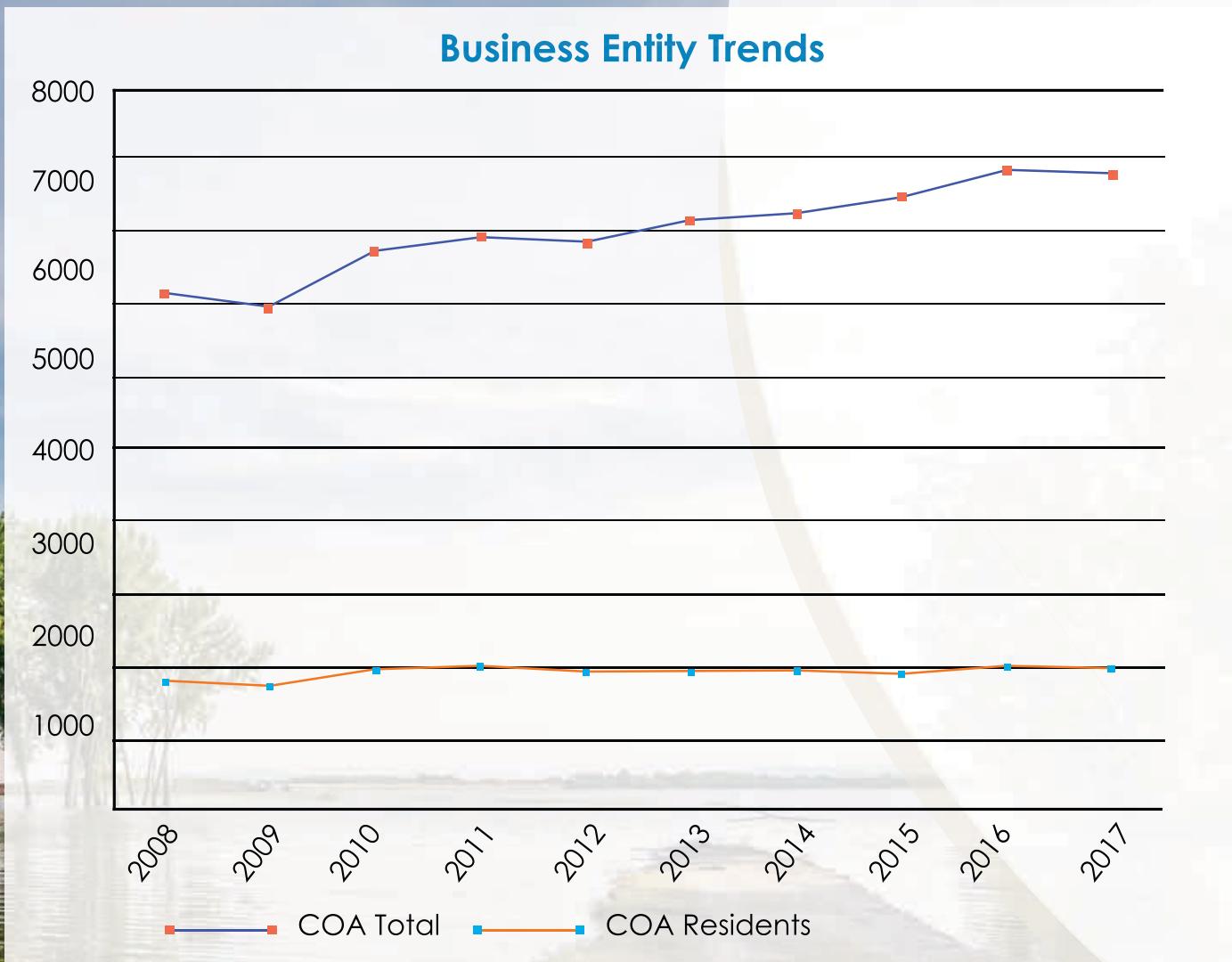


# Examinations and Licensure





## Examinations and Licensure



## Enforcement



### Disciplinary Actions

The following are summaries of final actions taken by the Board since publication of the last news bulletin.

#### **Docket No. FY 11.11 In the Matter of Chad Erickson, P.L.S. L-7157**

The Board's final order revoking Mr. Erickson's license and related district court decision was appealed to the Supreme Court and is awaiting trial. His license revocation is stayed by the court pending trial.

#### **In the Matter of Ryan Reed Hales, P.E., Lehi, UT**

##### **Unlicensed Engineering Practice - Criminal Complaint**

The matter involves a professional engineer who failed to renew his license for several years and failed to obtain a Certificate of Authorization and continued to practice engineering in Idaho. The matter was referred to the Attorney General. Upon investigation it was determined and affirmed in court that Mr. Hales was guilty of a misdemeanor, fined \$1,000 plus court costs, received 5 days jail time, suspended, with two years of probation, and was ordered to perform 50 hours of community service.

Mr. Hales has since renewed his license and obtained a COA for his company Hales Engineering, LLC.

# Enforcement

## In the Matter of Thomas Paul Kitchen, Kellogg, ID

### Unlicensed Engineering Practice (dropped) and Forgery - Criminal Complaint

The matter involves a person who completed engineering education and examinations, but did not complete the process for obtaining a P.E. license. Instead, Mr. Kitchen forged a wall license and used the forged license to obtain employment and worked for a period of time while holding himself out as a P.E. The matter was referred to the Attorney General. Mr. Kitchen entered a guilty plea and was sentenced by the court for felony forgery. Further terms of the agreement and order included a prison term – 1-year fixed plus 2-years indeterminate for a total not to exceed 3-years suspended sentence, 2-years supervised probation, 30 days of jail, and \$245.50 court costs and fees, \$1,000 fine, \$500 reimbursement for defense and court fund, and \$1,337.66 restitution for the cost of investigation and prosecution to the licensing Board.

## Docket No. FY 17.04 In the Matter of Forrest Keirnes, P.L.S. L-6373.

The matter involves work performed by Respondent in connection with a survey conducted in Camas County, Idaho. The Board received a Certificate of Service as required by the final Consent Order which indicated the requirements of the Consent Order were met. The respondent agreed to remove monuments and revise his record of survey and CP&Fs. Prior to closing the case, the board directed the staff to check if all the conditions of the Consent Order and Certificate of Service were met. Upon investigation, it was found that one of the two

monuments was not removed as asserted in the Certificate of Service and correspondence with the respondent. The respondent, when confronted with the evidence confessed that the monument was not removed. The monument was later removed. Upon negotiation of a penalty for such misconduct the respondent volunteered to retire his license.

# Enforcement



## Docket No. FY 17.07 In the Matter of Dean Briggs, P.L.S. L-3619.

The matter involves work performed by Respondent in connection with a record of survey (ROS) completed as part of a Sporting Clay Facility in Gem and Boise Counties, Idaho. A number of calculated positions of GLO corners, the failure to meet minimum standards required for ROS and standard of care comprise the issues. The Respondent acknowledges that his work on this project was inferior to the acceptable standard of care of the profession for not furnishing the required written calculations. Respondent has had an opportunity to review this matter and agrees that there is sufficient evidence to support a finding that Respondent failed to perform in accordance with the standard of care of the profession in violation of **IDAPA 10.01.02.005.02**. Further, Respondent's conduct in this matter constitutes a violation of **IDAPA 10.0102.005.01**; violation of Idaho Code section 55-1604, filing requirements, violations of **Idaho Code section 55-1608**, surveyor required to reconstruct monuments, violations of **IDAPA 10.01.03** rules for corner perpetuation and filing, and violation of **Idaho Code section 55-1906(1)(2) and (4)** records of survey, contents.

The Board reprimands the Respondent. That within thirty days, Respondent shall tender to the Board a check of \$2,500 payable to the General Fund of the State of Idaho.

That respondent shall complete at his own expense, the following within nine months after the date of the Certificate of Service of the Final Order, and provide a Certificate of Completion to Board Staff no later than 5:00 p.m., Mountain Time, on that deadline date.

1. File the CP&Fs identified
2. Construct or reconstruct the monuments identified



## Enforcement

### Docket No. FY 17.07 In the Matter of Dean Briggs, P.L.S. L-3619. (Continued)

3. Refile CP&Fs as indicated below
  - a. Refile and list record of original corner on CPF instrument numbers identified
  - b. Refile and list subsequent history of the corners described
  - c. Refile and list instrument numbers of previously recorded CPFs on corner records
  - d. Show evidence of how the positions for the corners listed were calculated
  - e. Show the evidence of how the positions were calculated for the corners where new monuments were set
  - f. Refile and list the 1917 GLO survey by Mans Coffin as a reference document, and use the information shown on that survey to properly calculate the proportioned corner positions identified
  - g. Refile and give evidence or information showing the properly researched and retracted prior surveys before the calculated section and  $\frac{1}{4}$  section corners required for control in the survey
4. Amend and record the Record of Survey correcting the deficiencies identified
  - a. Re-establish a new monument
  - b. Show CPF instrument numbers
  - c. Place a "Certificate of Survey" on the ROS

### FY 17.12A in the matter of D. Neil Morgan, P.L.S., L-806

The matter involves the failure of the licensee to record a Record of Survey within 90 days as required by Idaho law. The licensee correctly recorded the survey and agreed to retire his license in lieu of discipline.

### Voluntary Retirement of Expired License

Robin R Finlayson, P.E., Boise, Idaho

### Surrender of License in Lieu of Discipline or Compliance with CPD

Glenn A. Elwell, P.E., Buhl, Idaho

### Retirement of License in Lieu of Compliance with CPD

Richard Myron Eacker, P.E., Kirkland, WA

# Enforcement



## Cases Dismissed by the Board

### **FY 16.04 In the Matter of Steven Wellington, P.L.S. L-7881**

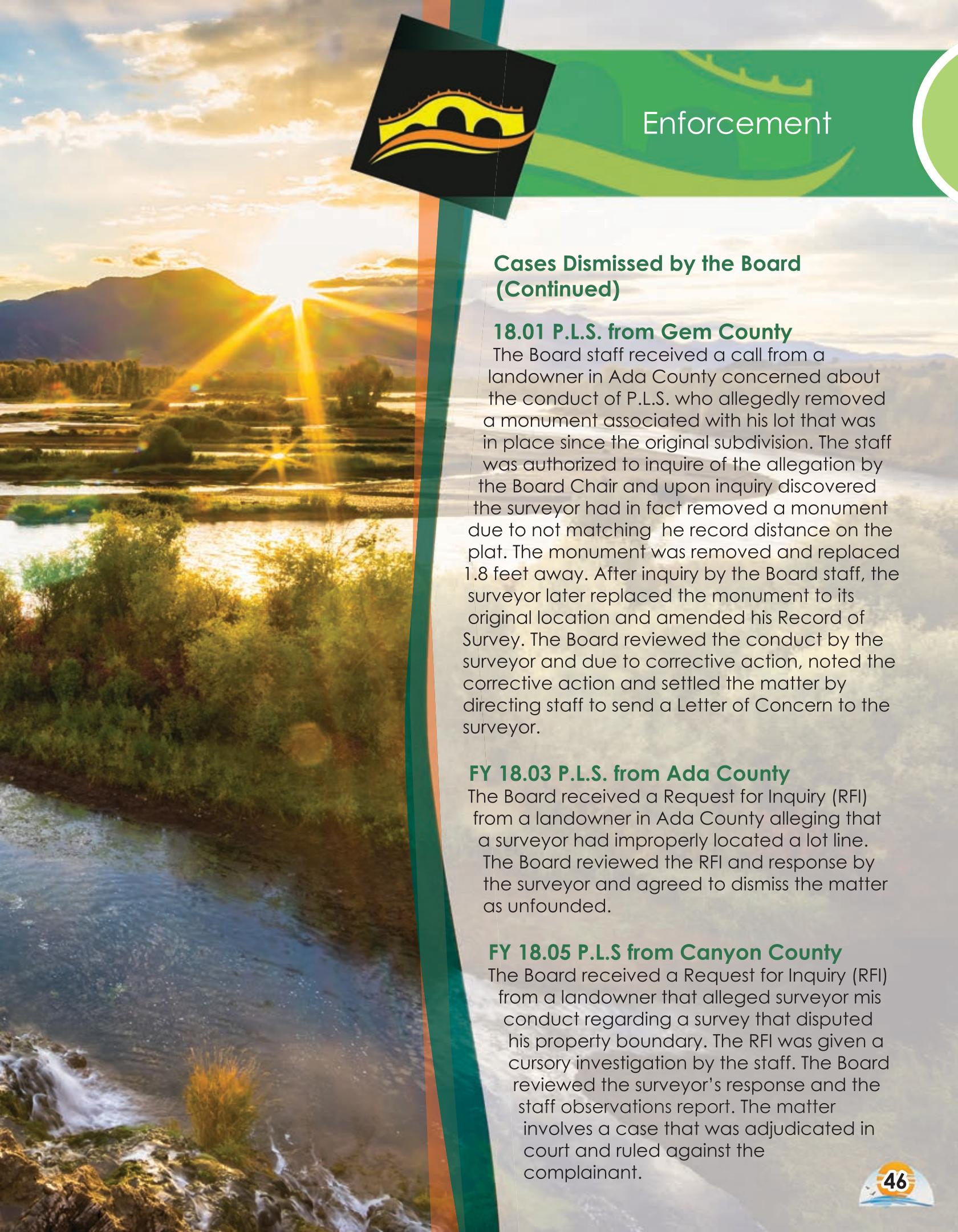
The Board's final order dismissed all counts brought by the staff. The final order can be found on the Board's website.

### **FY 17.12 P.L.S. from Bingham County**

A Request for Inquiry (RFI) was received by a landowner in Bingham County regarding the conduct of a P.L.S. for allegedly withholding surveying information and not adequately performing a survey. The Board investigated the matter and determined no significant violations were evident, with the exception that a prior recorded survey was not listed on his Record of Survey as required by **55-1906(3)**. The P.L.S. was notified of this deficiency and corrected it via a recorded Affidavit. Upon receiving the evidence of this correction, the Board dismissed the original complaint as unfounded. The Board also dismissed the violation of **55-1906(3)** as de minimis. The complaint alleges other surveyors were involved but the Board found insufficient evidence of misconduct and dismissed the allegations as unfounded.

### **FY 17.15 P.L.S. from Latah County**

A complaint was received from a landowner in Latah County regarding the conduct of a P.L.S. for allegedly not properly regarding a court settled mediation agreement and allegedly not using a correct monument in surrounding surveys. The Board authorized staff to investigate the matter. Based on the facts determined in the investigation, the Board dismissed the matter as unfounded.



## Enforcement

### Cases Dismissed by the Board (Continued)

#### **18.01 P.L.S. from Gem County**

The Board staff received a call from a landowner in Ada County concerned about the conduct of P.L.S. who allegedly removed a monument associated with his lot that was in place since the original subdivision. The staff was authorized to inquire of the allegation by the Board Chair and upon inquiry discovered the surveyor had in fact removed a monument due to not matching the record distance on the plat. The monument was removed and replaced 1.8 feet away. After inquiry by the Board staff, the surveyor later replaced the monument to its original location and amended his Record of Survey. The Board reviewed the conduct by the surveyor and due to corrective action, noted the corrective action and settled the matter by directing staff to send a Letter of Concern to the surveyor.

#### **FY 18.03 P.L.S. from Ada County**

The Board received a Request for Inquiry (RFI) from a landowner in Ada County alleging that a surveyor had improperly located a lot line. The Board reviewed the RFI and response by the surveyor and agreed to dismiss the matter as unfounded.

#### **FY 18.05 P.L.S from Canyon County**

The Board received a Request for Inquiry (RFI) from a landowner that alleged surveyor misconduct regarding a survey that disputed his property boundary. The RFI was given a cursory investigation by the staff. The Board reviewed the surveyor's response and the staff observations report. The matter involves a case that was adjudicated in court and ruled against the complainant.

# Enforcement



## Cases Dismissed by the Board (Continued)

Both the surveyor for the complainant and the respondent identified the same information on their respective surveys and there was no conflict between surveys regarding existing monuments and the location of a fence that was the subject of a disputed boundary. The complaint alleges the surveyor did not properly regard the deed. The Board reviewed the matter and dismissed the RFI as unfounded. The district court had already adjudicated the interpretation of the deed and respective boundary. There was no misconduct found regarding either of the surveyors involved with the exception of some missing information required by **55-1906**, Idaho code such as a surveyor certification and basis of bearing. One of the surveyors involved was sent a letter of warning to include these on all future records of survey.

### FY 18.06 P.L.S. from Twin Falls County

The matter involves a Request for Inquiry (RFI) from a landowner who recently purchased property and didn't believe the right-of-way (ROW) access was sufficient indicating the surveyor involved had not properly legally described the ROW or allowed sufficient width prior to the sale of the property. The Board reviewed the complaint and the response from the surveyor and dismissed the case as lacking jurisdiction. The landowner creating the deed is responsible for the ROW width, not the surveyor.



## In Memory of Those Deceased

### IN MEMORY OF THOSE RECENTLY DECEASED

**Former Board members Bill Ansell, P.E. and Clyde Porter P.L.S. passed away.**

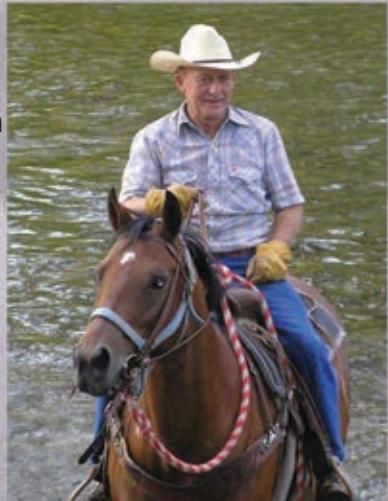
#### **WILLIAM JOSEPH ANCELL, Sr. P.E., D.E.E. 1937-2017**

Following a courageous battle with a devastating illness, William Joseph Ancell, Sr. died at his home in Boise with the assurance of his salvation through Jesus Christ. Bill was born October 17, 1937 in Chicago, Illinois to Marion Sylvester and Linda Elizabeth (Walker) Ancell. He was known as a man of faith and integrity in every facet of his life. He never failed to live his life so that others could see Christ in him and proclaimed the same by daily wearing a cross in his lapel. He graduated from Tri-State College in Angola, Indiana with a degree in Civil Engineering. While living in Lansing, Michigan he earned a degree in Business Administration. His early career included Assistant County Engineer for Monroe County, Michigan; County Engineer for Muskegon County, Michigan; and Assistant Director of Public Works for Lansing, Michigan. He found such pleasure in the challenge of creating a well-run organization then wanting to move on to a greater challenge. In 1972, when Boise had a population of only 70,000, he moved his family from Michigan to become the Director of Public Works for the City of Boise. Boise was a perfect fit for him due to the rate of growth that it sustained over the years. He often said he did not have to move on because there were always fresh challenges that came with the growth. He maintained a lifelong dedication to the service of the people of Boise. He loved Boise and the recreational activities it offered as well as the pleasure he took in his position. As a Registered Professional Engineer, he served as President of the Idaho Society of Professional Engineers, served on several American Society of Civil Engineers Peer Review teams, and on numerous other boards, both local and national. Serving under six mayors, he implemented and administered numerous forward-thinking design, construction, and environmental projects. He remained Director of Public Works until his retirement in 2003, at which time he had served the people of Boise for over 32 years. After his retirement, Bill chose to give back to his profession in many ways. One of these was his commitment to service on the Idaho Board of Professional Engineers and Professional Land Surveyors and the Dispute Review Board for the State of Idaho.

# In Memory of Those Deceased

## Clyde Porter, P.L.S. 1938-2018

Clyde was born November 14, 1938 near Picabo, Idaho to Chester, "Chet", and Eunice Porter. He grew up in the Wood River Valley of Idaho attending schools in that area. He learned to ski at Sun Valley and worked in the lodge as a teenager. He came to Boise in 1955 and met Mary Christine Henrichs. They were married on September 8, 1957. Their first child, Wade Keith, was born a year later on their first wedding anniversary. Their second child, Jeanette, was born June 29, 1963. He began working on a survey crew for a pipeline through Oregon, then worked for Idaho Power doing preliminary surveying for Brownlee Dam. He worked on hydro electric dams throughout the northwest for the next 25 years. In 1972 he moved with his family back to Boise where in 1975 he started his own business, Porter's Land Surveying, which he and his son, Wade, ran for the next 40 years. During this time he served on the Professional Engineering and Land Surveying Licensing Board for ten years. He served on the National Council of Examiners for Engineering and Surveying for ten years as well. While on the board for NCEES he was able to travel extensively around the United States with wife, Christine. Clyde was a licensed pilot and loved to fly airplanes with his cousin, Gordon Eldredge, a retired airline pilot, as often as he could. He loved to snow ski, to ride horses, game and bird hunting of all sorts, fishing and trail hiking with family and friends. He was proceeded in death by his parents, five brothers and one sister. He is survived by his wife, Christine, son Wade and daughter Jeanette as well as two brothers and two sisters, MANY nephews, nieces and long time friends. Clyde was beloved by many and will be very deeply missed. Clyde passed away on January 26, 2018.





## Calendar Of Upcoming Events

July 31-August 1, 2018  
August 16-18, 2018  
August 30, 2018  
September 13-14, 2018  
October 27-28, 2017  
November 8-9, 2018  
February 7-8, 2019  
February 20-23, 2019  
April 5-6, 2019  
April 11-12, 2019  
May 16-18, 2019  
June 11-14, 2019

Board Retreat in Riggins, Idaho  
NCEES Annual Meeting in Phoenix, Arizona  
Deadline for Registering with NCEES for Fall PE & PS Exams  
Board Meeting in Boise, Idaho  
PE Examinations in Boise, Idaho  
Board Meeting with Deans in Boise, Idaho  
Board Meeting in Boise, Idaho  
ISPLS Conference in Pocatello, Idaho  
PE Examinations in Boise, Idaho  
Board Meeting in Boise, Idaho  
NCEES Western Zone Meeting in Boise, Idaho  
Board & ISPE Meeting in Coeur d'Alene, Idaho

### Board Staff

Keith Simila, PE Executive Director  
[keith.simila@ipels.idaho.gov](mailto:keith.simila@ipels.idaho.gov)  
James L. Szatkowski, PE Deputy Director  
[jim.szatkowski@ipels.idaho.gov](mailto:jim.szatkowski@ipels.idaho.gov)  
Jennifer Rowe, Administrative Assistant  
[jennifer.rowe@ipels.idaho.gov](mailto:jennifer.rowe@ipels.idaho.gov)  
Edith Williams, Technical Records Specialist  
[edith.williams@ipels.idaho.gov](mailto:edith.williams@ipels.idaho.gov)  
Office Phone (208) 373-7210