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James H. Milligan, Vice Chair, Moscow
Clyde Porter, P.L.S., Secretary, Boise
Leslie M. Walker, P.E., Member, Pocatello
Larry J. Hodge, P.E./L.S., Member, Moscow

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June 2001 NEWS BULLETIN Thirty-first Edition

INTRODUCTION

This News Bulletin is being distributed by the Idaho State Board of Registration 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. Future News Bulletins will be printed and distributed as the Board deems advisable.

LESLIE M. WALKER, P.E. REAPPOINTED TO BOARD

Leslie M. Walker, P.E. of Pocatello was appointed by Governor Dirk Kempthorne to a second five year term on the Board of Professional Engineers and Professional Land Surveyors. Walker has served as Board Secretary,

Vice Chair and Chair during his first term, as well as Hearing Officer at Administrative Hearings. The Board looks forward to another productive term of service from Mr. Walker.

MINIMUM PASSING SCORE INCREASED ON STATE-SPECIFIC PLS EXAMINATION

The last issue of the NEWS BULLETIN reported that the State-Specific Professional Land Surveyor examination is now an open-book "take-home" exam rather than a proctored and timed test. That format change prompted the Board to raise the minimum passing score required to

pass the exam. Candidates are now allowed to miss no more than six out of sixty questions relating to the Idaho Code and Administrative Rules and are now allowed to miss no more than five out of twenty questions relating to survey of public lands.

LEGISLATURE AMENDS STATUTES

The 2001 session of the Idaho Legislature passed House Bill No. 24 as amended, which will result in changes to Title 54, Chapter 12 of Idaho Code, the Engineers and Surveyors Licensing Law effective July 1, 2001. The legislation clarifies that engineering projects in Idaho must be done by a person licensed as a professional engineer in Idaho, even if the calculations, drawings, etc. are done outside Idaho. It will require that any "business entity" (any form of business except a sole proprietorship) obtain a certificate of authorization from the Board in order to offer professional engineering or professional land surveying services to the public through

its employees. It will require that unsealed non-final drawings be clearly marked as "preliminary," "draft," "not for construction" or with similar words to distinguish the document from a final document. It will preclude the Secretary of State from accepting for filing any organizational documents of an Idaho business entity which includes engineering or land surveying in its name, unless the Board has issued a certificate of authorization or letter indicating the eligibility of the business entity to receive such certificate. A booklet containing the amended statutes will be sent to all license and certificate holders in the near future.

BOARD DISMISSES COMPLAINT AGAINST PROFESSIONAL LAND SURVEYOR

NEWS BULLETIN NO. 31 JUNE 2001

A professional land surveyor set a property corner for a client. The property corner was located approximately fifteen feet into a field cultivated by the client's neighbor. The attorney for the neighbor placed a telephone call to a second professional land surveyor who expressed the opinion that the monument set at the property corner could be driven down so as to not interfere with farming. An unidentified person then drove the monument into the ground and removed the fence corner that had been placed near it. The client then filed a broadly-worded complaint with the Board that was interpreted by the Board to accuse the second professional land surveyor of violation of various statutes and the Rules of Professional Responsibility. The Board determined that the matter lacked evidence to support charges of fraud, deceit, gross negligence, incompetence or misconduct as provided in Idaho Code §54-1220 (Disciplinary action - Procedures.) The Board then evaluated the aspect of the complaint

apparently alleging violation of the Rules of Professional Responsibility and concluded that the statement made by the second professional land surveyor to the attorney for the neighbor was not "public", and therefore not a violation of Administrative Rule 10.01.02007.01 (Public Statements). In evaluating a possible violation of Administrative Rule 10.01.02005.02 (Standard of Care), the Board concluded that the second professional land surveyor was not under "duty" to the attorney who simply called and asked the second professional land surveyor his opinion in regard to the matter of the monument interfering with the neighbor's farming practices. Since the second professional land surveyor was never present at the location of the corner monumentation, the Board also dismissed any claims that might relate to a violation of Idaho Code §54-1234 (Monumentation - Penalty and liability for defacing.)

ADMINISTRATIVE RULE CHANGES

Upon adjournment of the Legislature on March 30, 2001, several changes in the Board's Administrative Rules went into effect. The Board's Rules of Procedure were amended to conform with statutory amendments regarding publication of a roster and the switch to biennial renewals; extension of the deadline for submission of an application for the Spring exams to January 10; elimination of a fee for rescheduling an examination; allowing exam review at a location other than the Board office; allowing the disposal of exam materials after one year. The Rules of Professional Responsibility were amended to require the discoverer of a material discrepancy, error or omission to reference

specific codes, standards or physical laws which are believed to be violated, and to identify documents which are alleged to contain such discrepancies. The Rules for Corner Perpetuation and Filing were amended to allow clear spaces on the Corner Record form as requested and required by the County Recorder in order to place recording information in an unobstructed area. The Rules of Continuing Professional Responsibility were amended to conform with changes from annual to biennial renewals. A booklet containing the amended Administrative Rules will be sent to all license and certificate holders in the near future.

BOARD AND STAFF ACTIVE AT NATIONAL LEVEL

Board Members and staff are active on numerous committees of the National Council of Examiners for Engineering and Surveying (NCEES). Larry Hodge, P.E./L.S. has recently chaired the Advisory Committee on Council Activities and served as a member of the Licensure Promotion Task Force, the Engineering Licensure Qualifications Task Force and the Nominating Committee. Scott McClure, P.E. and Leslie Walker, P.E. have both been involved in the Special Committee on Experience Evaluation. Clyde Porter, P.L.S. has been active on the Examinations for Professional

Surveyors Committee and James H. Milligan, P.E. was recently appointed to the Examinations for Professional Engineers Committee. In addition, Porter is currently serving as Assistant Zone Vice President from the Western Zone of NCEES. David L. Curtis, P.E. has chaired the Mobility Task Force the last two years and has been a contributor to the Uniform Procedures and Legislative Guidelines Committee. The Board has long been of the opinion that active participation at the national level provides an opportunity for input that benefits the citizens of Idaho.

BOARD ELECTS NEW OFFICERS

At its April meeting the Board elected Scott McClure, P.E. of Twin Falls as Chair, James H. Milligan, P.E. of Moscow as Vice-Chair, and Clyde Porter, P.L.S. of

Boise as Secretary. The newly elected officers begin their terms on May 25, 2001.

ANNUAL REPORT TO THE GOVERNOR

The following report of Board Activities was submitted to Governor Dirk Kempthorne for Fiscal Year 2000.

During the 2000 fiscal year the Board met for seven regular meetings and seven telephone conference call meetings to conduct Board business, review applications, grant licenses and consider complaints.

The term of Leslie M. Walker, P.E., who had served on the Board for five years, expired May 24, 2000. Mr. Walker was reappointed by Governor Dirk Kempthorne for a five-year period. His term will expire May 24, 2005.

Members of the Board and staff are serving on various committees of the Western Zone as well as committees of the National Council of Examiners for Engineering and Surveying.

As of the end of the fiscal year there were 5,006 Professional Engineers, 590 Professional Land Surveyors, 304 combined Professional Engineer/Professional Land Surveyors, 1,162 Engineers-in-Training, 43 Land Surveyors-in-Training, 556 engineering and/or land surveying corporations and 270 persons who have elected to take retired status.

Licenses were issued to 322 engineers by comity with other states and to 81 who successfully completed the examination process; 14 land surveyors by comity with other states and to 3 who successfully completed the examination process. There were 196 successful examinees in the Fundamentals of Engineering examination and a certificate as a Land Surveyor-in-Training was issued to one successful examinee in the Fundamentals of Land Surveying examination. In addition, Certificates of Authorization were issued to 105 corporations to perform professional engineering or professional land surveying in the State of Idaho.

The Board received a total of 35 complaints against engineers, land surveyors, corporations and unlicensed persons in fiscal year 2000 and 20 were carried over from previous years. Of the 55 complaints, 36 were dismissed or terminated without consent agreements or formal hearings and 12 were pending resolution at the end of the year. Four complaints were dealt with through formal hearings which were held in accordance with Board Administrative Rules and Consent Agreements were entered into to resolve three of them. The Board revoked the license of one professional land surveyor and one professional engineer. The Board reprimanded or admonished four license or certificate holders and fined one license holder a total of \$750.00, which was deposited in the General Fund of the State of Idaho. The Board fined one certificate holder \$2,000 which was placed in a Suspense Fund pending the outcome of an appeal of a Board Order.

The Legislature amended the statutes to, among other things, allow a change from annual to biennial renewal of licenses and certificates and to discontinue the practice of issuing Temporary Permits for the practice of professional engineering.

BOARD EXPRESSES OPINION ON “BUILDING COMMISSIONING”

In response to an inquiry from Larry V. Osgood, P.E., Administrator of the State Department of Administration, Division of Public Works, the Board expressed an opinion regarding services provided by a Commissioning Authority or Commissioning Agent or Commissioning Consultant. Services performed include participation in design, installation and start-up. The Board opinion stated, in pertinent part,

“After reviewing the services performed by the Commissioning Agents, the Board concluded that persons performing those services would be practicing professional engineering as defined in Idaho Code and that those services could only be performed under the responsible charge of a person licensed as a professional engineer.”

PRICE REDUCTION ALLOWED FOR APPLICANTS HAVING AN NCEES COUNCIL RECORD

The Board adopted a fee schedule which includes a \$20 fee reduction for a comity application which includes a Council Record issued by the National Council of Examiners for Engineering and Surveying (NCEES). A Council Record is a compilation of credentials including experience, education, references and verification of examinations. It is available to anyone licensed as a

professional engineer or professional land surveyor in any of the US jurisdictions. Applications which include a Council Record require less staff time to prepare and evaluate, thereby justifying the price reduction. For more information, contact NCEES at (800) 250-3196 or visit their web site at www.ncees.org

BOARD EXPRESSES OPINION ON LEGAL DESCRIPTIONS

Daniel Hayhurst, P.L.S. of Lewiston, Idaho asked the Board three questions regarding the preparation of legal descriptions. The questions and the answers provided by the Board follow.

QUESTION Should legal descriptions written by professional land surveyors in the State of Idaho be sealed by them?

ANSWER Yes, we believe that a professional land surveyor ***SHOULD*** seal, sign and date legal descriptions written by them, but unless an actual field survey has been performed by the professional land surveyor, the requirement to do so is not imposed by either statute or administrative rule.

QUESTION Does it make any difference if the legal description is based on a field survey done by the surveyor or is based on office work only (using deed descriptions and recorded surveys by other surveyors)?

ANSWER Yes [it does make a difference], but we provide the following additional analysis. Idaho Code section 54-1202(f) defines “land surveying” and “professional land surveying” as

“. . . responsible charge of **surveying of land** to determine the correct boundary description, to convey, to establish or reestablish land boundaries, or to plat lands and subdivisions thereof.”
(Emphasis added)

The Board is of the opinion that in order for a person to have practiced land surveying, they must have performed some “surveying of land”, which the Board interprets to mean a field survey. A legal description prepared without a field survey using deed descriptions and recorded surveys by other surveyors would not constitute the practice of surveying, would not require a professional land surveyor license to prepare, and thus would not, in our opinion, be considered to fall within any of the categories listed in Idaho Code section 54-1215(3)(b) requiring a professional seal, signature and date.

QUESTION [Idaho Code section] 54-1215(3)(b) states that “The seal, signature and date shall be placed on all final specifications, land surveys, reports, plats, drawings, plans, design information and calculations, whenever presented to a client or any public or governmental agency.” Do legal descriptions fall into any of these categories?

ANSWER A legal description prepared following a field survey is one of the end products of that field survey, and would, in our opinion, be a “report” under Idaho Code section 54-1215(3)(b) which would require a seal and signature. A legal description prepared without a field survey using deed descriptions and recorded surveys by other surveyors would not constitute the practice of surveying, would not require a professional land surveyor license to prepare, and thus would not, in our opinion, be considered to fall within any of the categories listed in Idaho Code section 54-1215(3)(b) requiring a professional seal, signature and date.

BOARD EXPRESSES OPINION ON SURVEY OF LEASED SITES

In response to an inquiry from Ronald P. Monson, P.L.S. of Moscow, Idaho, the Board expressed an opinion regarding the survey of leased sites in Idaho. That opinion stated, in pertinent part,

“After considerable discussion, the Board concluded that when a field survey is conducted and corners and/or boundaries are created to define the location of a leased site, professional land surveying, as defined in Idaho Code §54-1202(f) is being performed. As such, a person licensed as a Professional Land Surveyor in Idaho must be in responsible charge of such services. Further, if a field survey is conducted, monuments must be set and a Record of Survey must be filed as required under Idaho Code §55-1904(2).”

A copy of the opinion letter was sent to each County Recorder and County Assessor in Idaho.

BOARD OFFICE HOURS TO CHANGE TEMPORARILY

From June 1 to September 30, 2001 the Board office will experiment with a shift in office hours. During that four month period, the office will be open from 7:00 am until 4:00 pm including the noon hour. The revised hours are

being tried to shift the use of electricity away from peak times. Please submit any comments you may have on the revised hours to the Board.

DISCIPLINARY ACTIONS

The following actions on complaints have been taken by the Board since publication of NEWS BULLETIN No. 30 in May of 2000. In addition to those listed below, the Board received numerous complaints against individuals or companies who were inappropriately advertising under headings or names that could be interpreted to indicate that they were professional engineers or professional land surveyors, when in fact, they were not. The companies or individuals agreed to discontinue or revise the advertising or title.

DOCKET No. FY 99.20 RICHARD H. HARBERT, P.E. Mr. Harbert was previously ordered by the Board to complete a specific course in Engineering Ethics and submit evidence of completion of that course not later than January 1, 2001. The Board's ORDER was appealed in the Fourth District Court and the Court affirmed the ORDER in its entirety. Mr. Harbert did not comply with that ORDER, and effective January 1, 2001, his license as a professional engineer in Idaho was revoked.

IN MEMORY OF

In years past, the Board has published information about deceased license and certificate holders in the roster. Since the roster is no longer published in hard copy, the NEWS BULLETIN will be used to memorialize the deceased.

Robert Earl Alworth, EE 549, Boise, ID
Woodrow E. Arrington, CE 365, Idaho Falls, ID
Clifton E. Baker, CE 1682, Boise, ID
David Baker, CE 4244, Bremerton, WA
James E. Banks, LS 4559, Silverton, ID
Terry P. Becker, CE 2424, Portland, OR
Sadekally Bhora, CE 8216, Bedford, TX
Archie L. Biladeau, CE 362, Boise, ID
Ralph H. Borgeson, CE/LS 1241, Garden Valley, ID
Stephen L. Braun, CE 6948, Eastsound, WA
Clark A. Brewington, EE 2072, Dayton, WA
Richard Glynn Brown, ME 6485, Albuquerque, NM
Charlie Burns, LS 4107, Challis, ID
Dell Cazier, LS 741, Cheyenne, ID
Garry R. Clark, LS 988, Alameda, CA
Fred K. Clements, ME 1292, Boise, ID
John D. Coffman, CE 3750, Golden, MO
Stephen D. Corey, EE 8148, Aurora, CO
Dean A. Cox, CE 4118, Spokane, WA
Donald L. Cox, CE/LS, Boise, ID
Lewis H. Curry, CE 5164, Axtell, UT
Ross E. Dake, EE 1926, Pocatello, ID
Lawrence V. Dunsmore, LS 844, Spokane, WA
John P. Ferguson, LS 695, Spokane, WA
Charles C. (Chuck) Fiske, CE 629, LS 1028

Albert Gaschler, CE/LS 2207, Ontario, OR
Thomas Edward Gaynor, MinE 3408, Palisades, ID
Carl E. Geib, Jr., EE 7502, Stockton, CA
Joseph J. Gilgan, EE 887, Tucson, AZ
Edward S. Glenn, CE 3681, Sun City, AZ
James D. Hanley, CE 1887, Baker City, OR
Bill Harris, MinE/LS 753, McCall, ID
Glen Steven Harrison, EE 1732, Idaho Falls, ID

Robert George Harshman, EIT 1452, Boise, ID
Joseph Roy Hilton, Jr., CE 2941, Boise, ID
James Elwood Howard, ME 927, Pocatello, ID
Dean Preston Jamison, CE 5609, Centerville, UT
Paul K. Jones, EE 5053, Houston, TX
Jason Paul Kelley, CE 7674, Filer, ID
H.H. Krichbaum, CE/SE 1174, Pocatello, ID
Carl H. Kuhn, CE 3183, Mercer Island, WA
John Joseph Lopez, EE 2508, Albuquerque, NM
Richard A. Maule, CE 1173, Walla Walla, WA
DeWitt D. McNutt, Jr., LS 902, Coeur d'Alene, ID
James Robert Nicoli, CE 5308, Tigard, OR
James P. O'Connor, EE 933, Boise, ID
John Vernon Otter, CE 395, Boise, ID
William F. Owen, CE 4276, Denver, CO
Kenneth F. Pacquer, CE 8020, Seattle, WA

Steven J. Pierce, CE 8510, Butte, MT
Richard Frank Ragsdale, LS 777, Boise, ID
Shirly J. Ross, CE/SE 1185, Boise, ID
Les Paul Selberg, CE, SE 8386, Phoenix, AZ
Barry J. Simon, LS 980, ME 7295, Rathdrum, ID
Richard E. Skinner, EE/LS 2923, Portland, OR
Weston B. Smedley, CE/SE/LS 2480, Inkom, ID
Wayne B. Smith, EE 567, Twin Falls, ID
Jesse J. Swank, EE 4693, Boise, ID
Wayne A. Thompson, CE/LS 2370, Jerome, ID
Aaron K. Tsubaki, CE/LS 3363, Ontario, OR
Daniel R. Tyler, EIT 5000, Idaho Falls, ID
Frederick P. Wanless, EE 2307, Spokane, WA
Glenn M. Ward, ME 8702, Yakima, WA
Lyman Dwight Wilbur, CE 685, Boise, ID
Dennis A. Williams, CE 5457, Great Falls, MT

FORMER BOARD MEMBER ARCHIE L. BILADEAU, P.E.

Archie L. Biladeau, P.E., 93, of Boise passed away of natural causes on April 3, 2001. He graduated from the University of Idaho with degrees in Mining and Metallurgy as well as Civil Engineering. His professional career included employment with the City of Boise, the Idaho Department of Public Health, the United States Army and the Atomic Energy Commission. He

was active in professional and technical societies and was a member of the Board of Registration of Professional Engineers and Professional Land Surveyors from 1976 to 1981. He is survived by his wife, Virginia and his two sons, Garre and Glenn who are also licensed as professional engineers. The Board's condolences go out to the family.

LARRY J. HODGE, P.E./L.S. COMPLETES SECOND TERM ON BOARD AND RECEIVES AWARD

On May 24, 2001 Larry J. Hodge, P.E./L.S. of Moscow completed his second five-year term as a member of the Board. Hodge was appointed to his first five-year term by Governor Cecil Andrus in 1991 and he was reappointed in 1996 by Governor Phil Batt. He has been an officer of the Board six of the ten years and has been active at both the regional and national levels with the National Council of Examiners for Engineering and Surveying (NCEES). He was awarded the Outstanding

Service Award for the Western Zone of the NCEES in May of this year. Larry is not eligible for reappointment, but serves until his replacement is appointed and qualified. He has been appointed an Emeritus Member of the Board in order to allow him to complete service in some national activities in which he has been involved. The remaining Board Members and staff will miss his unique and often thought-provoking perspective on the difficult issues that come before the Board.

BOARD EXPRESSES OPINION ON RIGHT-OF-WAY PLANS

In correspondence to the Idaho Transportation Department, the Board expressed an opinion that if Right-of-Way Plans are the result of a field survey, the information derived from which is used to prepare legal descriptions for conveyances, then the work falls within the definition of the practice of professional land

surveying contained in Idaho Code. Such work must be performed under the responsible charge of a person licensed as a professional land surveyor and the work product must be sealed, signed and dated by the professional in responsible charge.

Calendar of Upcoming Events

June 29 & 30, 2001 Board of Registration Meeting in Boise
August 1, 2001 Application Deadline for Fall Examinations
September 14 & 15, 2001 Board of Registration Meeting in Boise
October 26, 2001 PE and PLS Examinations in Boise
October 27, 2001 FE (EIT) and FLS (LSIT) Examinations in Boise
November 16 & 17, 2001 Board of Registration Meeting in Boise
January 10, 2002 Application Deadline for Spring Examinations

**IDAHO BOARD OF REGISTRATION OF
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