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Scott McClure, P.E., Secretary, Twin Falls  
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John W. Howe, P.L.S., Member, Coeur d'Alene

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**May 2004**

**NEWS BULLETIN**

**Thirty-fifth Edition**

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**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.

**SCOTT McCLURE, P.E. REAPPOINTED TO THE BOARD**

Scott McClure, P.E. of Twin Falls was reappointed to the Board for an additional five year term by Governor Dirk Kempthorne. McClure, President of McClure Engineering, Inc. has been an active member of the Board for the last five years, as well as participating in meetings of the National Council of Examiners for Engineering and Surveying (NCEES) and the Western Zone of NCEES. We look forward to another five years of activity from Scott.

**JOHN W. HOWE, P.L.S. APPOINTED TO THE BOARD**

John Howe, P.L.S. of Coeur d'Alene has been appointed to the Board for a five-year term by Governor Dirk Kempthorne, effective May 24, 2004. Howe, who works for Meckel Engineering and Surveying, has been licensed as a professional land surveyor in Idaho since 1971. His is also licensed in other Western states as well as having been appointed by the Bureau of Land Management as a U.S. Mineral Surveyor. We look forward to John's contribution to the activities of the Board.

**CLYDE PORTER, P.L.S. GOES OFF BOARD**

After serving ten years on the Board, Clyde Porter, P.L.S. of Boise and Garden Valley is about to regain his freedom. Clyde was first appointed to the Board by Governor Cecil Andrus in 1994 and was reappointed by Governor Dirk Kempthorne in 1999. He served two years each as Secretary, Vice Chair, and Chair of the Idaho Board; he served two years as Assistant Vice President of the Western Zone of NCEES; he served on the Examinations for Professional Land Surveyors Committee of NCEES for nine years and the Finance Committee for one year. He was a regular attendee at the Board Members Forum of the American Congress of Surveying and Mapping, chairing it for one year. Clyde put in an average of over fifty days of service to the Board annually and his activity and input will be missed. He plans on spending more time with his wife, Christine, as well as plowing snow at his home in Garden Valley.

**INTERNATIONAL COMITY ISSUES ADDRESSED BY THE BOARD**

The Idaho Board is addressing one aspect of the issue of international comity by becoming active in the Pacific

Northwest Economic Region (PNWER) organization. The organization was founded as a private/public partnership with representatives from the U.S. states of Alaska, Washington, Oregon, Idaho and Montana and the Canadian Provinces of British Columbia and Alberta as well as the Yukon Territory. The mission of PNWER is to increase the economic well-being and quality of life for all citizens of the region, to coordinate provincial and state policies throughout the region; to identify and promote "models of success"; and to serve as a conduit to exchange information. Not only does PNWER serve to facilitate cooperation and coordination among the member jurisdictions, but it also promotes communication between the public and private sector within these jurisdictions. The Idaho Board passed a resolution in June of 2003 which recognizes the differences between the licensing systems in Canada and the US, but also recognizes that persons licensed in all PNWER jurisdictions are fully qualified and experienced to practice the profession of engineering. The resolution goes on to encourage licensing authorities to seek legislative amendments empowering the Boards to issue a license to a license holder in another jurisdiction when, in the opinion of the Board, the requirements of the home jurisdiction are substantially equivalent to those required by the host jurisdiction. The Board continues to study the differences and similarities of the licensing systems in place in Canada and the US in order to better understand and evaluate the equivalency of the two systems.

### **LAND SURVEYOR WORKSHOPS WELL ATTENDED**

Nearly 200 persons attended the land surveying workshops hosted by the Board throughout the state this winter. The workshops covered subjects including the Rules of Professional Responsibility, the statutes on Corner Perpetuation and Filing, the statutes on Recording of Surveys and the statutes on Plats and Vacations. Numerous attendees suggested that the Board should consider repeating the workshops every two to three years, or as necessary to keep the license holders abreast of changes in the laws and rules.

### **IN LAND SURVEYING, WHAT IS A "MATERIAL DISCREPANCY"?**

The statutes of Recording of Surveys requires that a survey be recorded if it "Discloses a material discrepancy with previous surveys of record" or if it "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." Jack Clark, P.L.S. recently inquired of the Board "What amount of discrepancy or variation would be the trigger to require a registrant to file a Record of Survey?" In answering, the Board relied upon Idaho Code section 55-1911, which states,

"Error of closure. Any survey of land involving property boundaries, including, but not limited to, public land survey lines, shall be conducted in such a manner to produce an unadjusted mathematical error of closure of not less than one (1) part in five thousand (5,000)."

The Board concluded that if a survey reveals a discrepancy with a previous survey of record which is not in excess of one part in five thousand, then the surveyor should not consider that he has found a material discrepancy, and thus would not be required to file a Record of Survey.

### **LEGISLATION PASSES**

The Idaho Legislature passed House Bills No. 484 and 485 this year. HB 484 amended the Recording of Surveys statute by provided a definition of "basis of bearing"; by clarifying that all corner records should be referenced on a survey; by clarifying that the location of a monument must include a bearing and distance; and by clarifying what surveys of record must be referenced. HB 485 amended the licensing law for engineers and surveyors by clarifying that engineering experience must be gained after graduation; by requiring that an applicant for assignment to the exam for certification as an LSIT or licensure as a PLS must have a minimum of 15 semester credit hours of surveying courses; by allowing up to two years of experience for graduate education; by clarifying that the Board may charge for the administration of examinations by an outside party; by clarifying that the Executive Director is an affected party in disciplinary matters and thus eligible to file complaints; and by clarifying that issuance of licenses to practice engineering and land surveying is a state function and prohibiting local jurisdictions from requiring licenses or fees to engage in the professions. The Board will be publishing and distributing a booklet containing the latest version of the laws in the near future.

### **RULE AMENDMENTS GO INTO EFFECT**

Upon adjournment of the legislature on March 20, 2004, amendments to the Board Rules of Procedure went into effect. These amendments clarify the status of bachelor degree programs that are not accredited by the Engineering Accreditation Commission of ABET; they preclude candidates who fail an exam from reviewing the exam due to security concerns; they allow the Board to proctor an exam for a candidate for licensure in another jurisdiction who qualifies for assignment to the exam in Idaho; they recognize the equivalency of education from a program recognized in the Washington Accord as being substantially equivalent to EAC/ABET; and they clarify that comity applicants who have not completed an approved engineering program must complete specific courses in order to be considered equivalent of an engineering graduate.

### **RULES REJECTED BY LEGISLATURE**

As a result of a recent disciplinary matter, the Board promulgated Administrative Rules which would have required registrants and certificate holders to communicate with their clients and be candid with them. The Rules had been published initially as Proposed Rules in August 2003, and then, after some modifications, as Pending Rules in November 2003. The Pending Rules were reviewed by the recently concluded session of the Legislature. Even though no comments had been received during the publication process, some licensees expressed concerns during the Legislative review process about possible interpretations of the Pending Rules. The Board was sympathetic to the concerns expressed, and voted to ask the Legislature to pass a Concurrent Resolution rejecting the Pending Rules, because the only way that Pending Rules are prevented from going into effect is the passage of a Concurrent Resolution rejecting them. The Board will likely revisit the issue this year.

### **BOARD TO PROMULGATE RULES**

Due to the concerns expressed over Pending Rules during the last session of the legislature, the Board will be doing Negotiated Rulemaking this year. The Board is suggesting that a new sub-rule of the Rules of Professional Responsibility be considered. The sub-rule, which would be IDAPA 10.01.02.005.06 would be entitled "Obligation to Client" and would state "A Registrant shall be complete, objective and truthful in all communications with clients." The Board would appreciate your thoughts on this suggestion. Please write the Board at 600 S. Orchard, Suite A, Boise, Idaho 83705 not later than June 30, 2004.

### **BOARD TO OUTSOURCE EXAM ADMINISTRATION**

The Board has retained the services of ELSSES, LLC to administer the certification and licensing examinations. The decision to outsource the exam administration was driven primarily by security issues. Since the exams which are used for certification and licensing purposes in Idaho are used nationally, a security breach of the exams could compromise an exam whose replacement value exceeds hundreds of thousands of dollars. Facing the difficulty of insuring against such a loss or possibly posting a bond, the Board elected to outsource. ELSSES, LLC is an affiliate of the National Council of Examiners for Engineering and Surveying, of which the Idaho Board is a member, and which is the organization that prepares the examinations. ELSSES, LLC was created to provide an exam administration service that eliminates liability for the state boards. It will provide all shipping and receiving of exams, will rent the exam space, will provide proctors, and otherwise perform all exam administration functions previously undertaken by the Board and staff. The Board will continue to determine eligibility of candidates for assignment to the exam, and provide ELSSES, LLC with a list of approved candidates. The examination fee will be increased by \$90 per candidate per exam in order to cover the additional expenses of this service.

### **BOARD HOLDS HEARINGS ON FIRE ALARMS AND SPRINKLER SYSTEMS**

The Board held hearings in Boise in September 2003, in Moscow in January 2004, and in Pocatello in February 2004 regarding a petition from the Executive Director requesting a Declaratory Ruling. The request is for the Board to rule on whether the design of fire alarm systems and fire sprinkler systems for commercial applications in Idaho constitutes the practice of professional engineering as defined in Idaho Code Section 54-1202(c). The hearing in Boise was well attended and the Board received significant and valued input from contractors, city officials, Fire Marshals, engineers and technicians. As a result of that input, additional hearings were scheduled

in Moscow and Pocatello. The hearings in Moscow and Pocatello were not well attended and the Board is considering additional hearings in order to allow anyone with an interest in the matter to provide input.

### **BOARD OPINION ON SUPERVISION, DIRECTION AND CONTROL**

The Board received an inquiry regarding the need for physical presence of a license holder to provide direction and control of an exempt employee or subordinate. The Board concluded that supervision and direction and control do not relate to physical proximity, but to involvement of the professional in responsible charge in the supervision of their unlicensed employees or subordinates. Regardless of the physical location, the law requires that the professional be in responsible charge of the work as defined in Idaho Code.

### **WHEN ARE SEALED PLANS REQUIRED?**

A City Building Official wrote regarding the authority of a Building Official to waive the requirement for the submission of plans prepared by a registered design professional. The Board responded that waiver of the requirement was a judgment call of the Building Official and hinged on whether compliance with the applicable code can be assured by the Building Official without the design documents. In the Board's opinion, whether that can occur depends upon several factors, key of which are the complexity of the systems, size of the project, criticalness of the systems operation, and construction conditions expected to be encountered. First, if the systems to be installed are simple, incorporating components with which the code official is familiar, and only required to accomplish basic code functions with which the code official is familiar, waiver might be considered. Second, if only a minimal number of system components are required and interactions between systems and components are clearly understood and verifiable, again, waiver could be considered. On the other hand, a small project may be a complex one, in which case the waiver should not be considered. Third, if the systems only fulfill basic comfort functions, and their failure would not adversely affect the health, safety or function of the building, waiver may be justified. The final factor is the construction conditions expected to be encountered on site during construction. Stamped drawings provide the code official with record documents establishing construction standards regardless of whether the code official is able to verify all details of construction. If such documents are not available, the code official is accepting the obligation of confirmation by observation that all aspects of construction are satisfactory. If it is anticipated that key components may be concealed without the code official being able to establish their adequacy by observation, the presence of design documents provides a means of assuring adequacy of construction without the requirement that the Building Official observe all elements of construction. The Board believes that judicious application of the four criteria above provides the guidance necessary for the code officials to make appropriate decisions regarding the waiver of design documents being prepared by a registered design professional.

### **ANNUAL REPORT TO THE GOVERNOR**

The following was sent to Governor Dirk Kempthorne as the Board's Annual Report for Fiscal Year 2003:

During the 2003 fiscal year the Board met for five regular meetings, two special meetings and two telephone conference call meetings to conduct Board business, review applications, grant licenses and consider complaints.

The term of Scott McClure, P.E. expired on May 24, 2003. Mr. McClure was reappointed by Governor Dirk Kempthorne for a five year term which will expire on May 24, 2008.

As of the end of the fiscal year there were 5,720 Professional Engineers, 599 Professional Land Surveyors, 158 combined Professional Engineer/Professional Land Surveyors, 1,221 Engineers-in-Training, 41 Land Surveyors-in-Training, 960 engineering and/or land surveying business entities and 358 persons who have elected to take Retired Status. All renewals, except business entities, are on a biennial renewal basis. Business entities renew annually.

Licenses were issued to 283 engineers by comity with other states and to 67 who successfully completed the examination process; 14 land surveyors by comity with other states and to 9 who successfully completed the examination process. There were 194 successful examinees in the Fundamentals of Engineering examination and certificates as Land Surveyors-in-Training were issued to 3 successful examinees in the Fundamentals of Land Surveying examination. In addition, Certificates of Authorization were issued to 133 business entities to

perform professional engineering or professional land surveying or both in the State of Idaho.

The Idaho Legislature passed, and Governor Kempthorne signed, House Bill No. 53 which clarified the conditions under which the Board could grant a license to an applicant who was originally licensed in another jurisdiction. The Board also adopted changes to its Administrative Rules which eliminated references to “infractions” and replaced them with references to “violations”. Administrative Rule changes also modified the official office hours, the age at which a license holder could elect to take “retired status”, the number of years of experience required of an applicant with a non-engineering degree, and the publication of disciplinary actions on the internet.

The Board received a total of 20 complaints against engineers, land surveyors, business entities and unlicensed persons in fiscal year 2003 and 4 were carried over from previous years. Of these 24 complaints, 12 were dismissed or terminated without consent agreements or formal hearings and 5 were pending resolution at the end of the fiscal year. Seven complaints were closed following issuance of Final Orders of the Board accepting Consent Agreements which resulted in the admonishment of seven license holders and the deposit of \$3,500.00 in Administrative Penalties to the General Fund of the State of Idaho.

### **DISCIPLINARY ACTIONS**

The following actions on complaints have been taken by the Board since publication of NEWS BULLETIN No. 34 in June of 2003. 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. 03.13 – IN THE MATTER OF Brent S. Bingham, Unlicensed in Idaho** The Fourth District Court of the State of Idaho, in and for Ada County, issued an ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION and an ORDER GRANTING MOTION FOR PERMANENT INJUNCTION in District Court Case No. CV OC 0305265D. The first ORDER states “It is further ORDERED that Defendant Brent S. Bingham is restrained from the commission or continuance of the practice of professional engineering in the State of Idaho and from the commission or continuance of any acts in violation of Idaho Code Sections 54-1201 through 54-1235 commonly known as the Engineers and Surveyors Act.” The second ORDER states “It is further ORDERED that Defendant Brent S. Bingham is perpetually restrained from the commission or continuance of the practice of professional engineering in the State of Idaho or holding himself out as a licensed engineer in the State of Idaho. IT IS FURTHER ORDERED that Defendant Brent S. Bingham is perpetually restrained from the commission or continuance of any acts in violation of Idaho Code Sections 54-1201 through 54-1235 commonly known as the Engineers and Surveyors Act.”

**Docket No. 04.02 – IN THE MATTER OF Alexander A. Hudson, P.L.S., P.E.** Hudson signed a STIPULATION in which he admitted that he failed to set a corner and file a corner perpetuation record for it in violation of Idaho Code Section 55-1604 and 55-1608. He also failed to show evidence of the filing of a corner record as required by Idaho Code Section 55-1906. Hudson was admonished by the Board and was fined \$500 which was deposited to the General Fund of the State of Idaho.

**Docket No. 04.04 – IN THE MATTER OF J.R. Weissrock, P.L.S.** Weissrock signed a STIPULATION in which he agreed there was sufficient evidence to support allegations that he did not properly conduct a survey. Weissrock elected to enter into permanent retirement status effective not later than June 30, 2004 after correcting the deficiencies in the survey and the legal descriptions associated with the survey.

**Docket No. 04.05 – IN THE MATTER OF David E. Benton, P.E./L.S.** Benton signed a STIPULATION in which he admitted that he failed to show several easements on a plat as required by Idaho Code Sections 50-1302 and 50-1304. In addition, he admitted that he failed to obtain thirty (30) Professional Development Hour units as required by Idaho Code Section 54-1208(1) and IDAPA rule 10.01.04.005. Benton was admonished for each of the failures and was fined \$500 for each failure. In addition, he was required to present evidence that he

filed for public record the documents necessary to reflect the easements omitted from the plat and he was required to present evidence that he has completed the requirements of IDAPA Rule 10.01.04.005 not later than June 30, 2004.

**IN MEMORY OF THOSE RECENTLY DECEASED**

Earl W. Bruett, 2233 CE/LS, Nampa, ID	Herb Pember, 1828 CE, Ocean Shores, WA
Jorge M.Calle, 4913 EE, Boise, ID	Lee Robinson, 2361 CE/LS, Pocatello, ID
Eugene C. Figg, 4298 CE, Tallahassee, FL	Emil Rodakowski, 2362 CE/LS, Poplar Grove, IL
John C. Goble, 3416 CE, Santa Rosa, CA	Arthur G. Schwartzenhauer, 440 CE, Manzanita, OR
Laurence R. Langdon, 1927 EE, Boise, ID	C. James Spencer, 1636 ME, Emmett, ID
Wesley G. Luster, 10481 CE, Meridian, ID	C. Grayson Willard, 5049 CE, Greensboro, NC
Richard A. Morley, 928 LS, Spangle, WA	

**EXAMINATION RESULTS**

The following is a summary of results from the October 2003 administration of the certification and licensing examinations:

	<b>Number of Examinees</b>	<b>Number Passing</b>
<b>Fundamentals of Engineering Exam</b>	97	91
Boise State University Students	20	20
Idaho State University Students	15	12
University of Idaho Students	47	45
Non-students	15	14
<b>Fund. Of Land Surveying Exam</b>	11	5
<b>Professional Engineer Exam</b>	51	37
Chemical Engineering	1	1
Civil Engineering	21	14
Control Systems Engineering	3	3
Electrical and Computer	7	5
Environmental Engineering	6	5
Fire Protection Engineering	2	2
Mechanical Engineering	9	5
Nuclear Engineering	1	1
Structural II Engineering	1	1
<b>Professional Land Surveyor Exam</b>	5	4

See [www.state.id.us/ipels/index.htm](http://www.state.id.us/ipels/index.htm) for a **CALENDAR OF UPCOMING EVENTS**

**IDAHO BOARD OF REGISTRATION OF  
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