

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Minutes of the Special Board Meeting
Held virtually, Tuesday, March 30, 2021, at 4:00pm

Board members participating were Chairwoman Karen Purcell, PE; Vice Chair Michael Kidd, PLS; Brent Wright, PE/SE; Angelo Spata, PE; Thomas Matter, public member; Matthew Gingerich, PLS; Also joining were Patty Mamola, Executive Director; Chris MacKenzie, Board Legal Counsel; Susan Fischer, Board Government Affairs Liaison; Murray Blaney, Operations/Compliance and Louisa Kern, Administrative Assistant. Lynnette Russell, PE was absent.

Participating as a guest of the board was Roland Westergard, PE, Lic # 001685.

1. Meeting conducted by Chair Karen Purcell, call to order and roll call of board members to determine presence of quorum.

Ms Purcell called the meeting to order at 4:01pm.

Board members, guests and staff introduced themselves.

2. Pledge of Allegiance

3. Public comment.

There was no public comment.

4. Discussion and possible action on approval of March 11, 2021, board meeting minutes.

21-20 A motion was made by Mr Spata seconded by Mr Kidd to approve the March 11, 2021, board meeting minutes. The motion passed unanimously. Mr Gingerich abstained from the vote as he was not present at the meeting. Ms Russell was not present for the vote.

5. Consideration of initial licensure applicant requests to waive certain requirements of Nevada Revised Statutes and Nevada Administrative Code Chapter 625.

Mr Spata recommended granting the request to waive NRS 625.193 (1) (a) made by Rolando Tumaque applying for civil engineering licensure.

21-21 A motion was made by Mr Spata, seconded by Mr Wright to approve the waiver request. The motion passed unanimously. Ms Russell was not present for the vote.

6. Board approval of non-appearance applications for initial licensure. Refer to Addendum A for list of applicants.

The Board reviewed nine applications in the board packet for initial licensure and recommendations

were made.

21-22 A motion was made by Mr Gingerich, seconded by Mr Matter to approve the initial licensure applications as noted. The motion passed unanimously. Ms Russell and Mr Fyda were not present for the vote.

7. Discuss Nevada Senate Bill 155 related to State Engineer and Department of Water Resources.

Ms Mamola said this agenda item is for SB 155, a bill that removes the requirement that the head of the Division of Water Resources be the state engineer and allows that position to be held by some other qualified person, and then the state engineer title would go to a deputy of that organization. She added the item is presented so the board can deliberate and determine whether it would like to take a position of support, opposition, or neutral on this bill. Ms Mamola said, additionally, we have Mr Roland Westergard, PE, a past state engineer and former board chair, who provided public comment at the last board meeting who is available to answer any board questions.

Mr Westergard - I commented extensively at the last board meeting and I continue to feel strongly that it's necessary to maintain that requirement that the state engineer be licensed. The decisions that are made in that office that are critical for the state as it has been over the last hundred plus years that that office has been in existence. I think we just need to have a person in there that has been qualified through the procedures that the board follows, and that is of course the common terminology— education, experience and examination. As I said before a lot has happened over time but I continue to maintain that what has not changed is the necessity to have the most qualified person that you can find in that position. There has also been discussion as I understand it, that they're having trouble finding applicants that meet these qualifications and that they want to expand the field by changing the requirements in eliminating the basic one of registration as an engineer. I would submit that we can't afford to reduce the standards that exist in the interest of protecting what's obviously a valuable resource in the state of Nevada. So, with that I'd be glad to answer any questions.

Mr MacKenzie said, for those on the board that are not familiar, Mr Westergard served as the State engineer for more than a decade and was also head of the Department of Conservation Natural Resources, so he can offer a unique insight into this issue.

Mr Wright - I completely agree with Mr Westergard. I think that the concerns he raises are very valid and that it would be a mistake to put someone in that position who potentially could be overridden by their Superior and their professional opinion be disregarded or changed or watered down or something. I think it would be a mistake and so I would oppose any legislation that made it so that someone other than a licensed engineer could be the state engineer.

Mr Matter - *I don't see how you can have that person in that position without them being an engineer.*

Mr Gingerich - *I don't see a need to change the existing language in the statute. So, I'm in agreement with the board members.*

Mr Kidd - *I am in support of the opinion of my fellow board members. I would like to see the board oppose the bill and not even just take a neutral stance.*

Mr Spata - *I have a general question. Looking through the regulations, and I know this is different, for any other engineering business is the engineering business required to have an engineer of record or a PE be the manager of that organization or CEO of that organization?*

Ms Mamola - *No.*

Mr Spata - *Or do they just have to have individuals on staff to do business and operate from an engineering perspective?*

Ms Mamola - *Yes, they just have to have those individuals on staff to do that work.*

Mr Spata - *I don't disagree at all with my colleagues. I think it's important to have that person in that role and I don't disagree with that. What I am concerned with is us as regulatory board jumping in and getting involved and making that change as to how they operate their business and I don't know that I'm against a change, but I'm against us jumping in and taking a stance.*

Ms Purcell - *It sounds like Angelo your position is more to stay neutral.*

Mr Spata - *Yes.*

Mr Fyda - *I agree with Mr Spata. I do like the idea of a PE being there, but I do understand where the state is coming from. I think hydro geologists would be a good fit in terms of water resources. I think a neutral stance might be best.*

Ms Purcell - *I agree with Mr Westergard and some of my other fellow board members that this position should have a PE, just based upon some of the critical decisions, the ethical decisions that are put in front of this individual and I feel that a PE is warranted knowing they're bound by ethical standards. I would be in favor of opposing this bill.*

Ms Fisher - *The bill has already been heard, so the next step would for it to go to work session which is where they vote thumbs up or thumbs down, or they don't ever bring it up at all. It was heard on March 18th, because we didn't have a formal position, I did call in as under neutral with concerns and said we don't have a formal position on this bill yet but there have been some concerns expressed by some individual board members. What the head of BCNR, Bradley Crow said during testimony, and I will tell you after hearing some of the opposition during the hearing, he was very visibly frustrated. He said if some of the professional engineers out there who are opposed to this bill want to take a pay cut and come in here and head up this agency great, but we can't find any willing to take the job for what we pay. He was very upset. So, there wasn't a lot of support for, there was certainly more opposition than support. So, I don't know where it'll go from here and I have not worked on this bill so I haven't been talking with committee members individually about this particular bill only because we didn't have a formal position.*

Mr Wright - *I hadn't considered what Mr Spata brought up and it makes sense. I'm thinking maybe Mr Westergard or someone who knows more about the water resources engineering in this position might know the answer. You have firms that don't have to be owned by a professional engineer. But Professional Engineers are in responsible charge of all the work done by that firm. In the case of the state engineer, that person is in responsible charge of all those decisions that require professional variants of knowledge and where the non-engineer owner of an engineering firm isn't making engineering decisions, they are hiring engineers to make those decisions. In this situation, the state engineer is the one making those decisions, but they would not be the owner or CEO equivalent, so it seems like they would be alike.*

Mr Fyda - *I'll respond. Looking at the SNWA's board and most of their executive team that handles that are PEs, and I believe even their counsel has engineering training in water resources. So, I think it would be good to I guess put everyone on equal footing I guess metaphorically speaking.*

Mr Spata - *My argument is related to the board's role and stepping into business matters of an agency. I'm not sure if that is something the board should be doing.*

Ms Mamola – *The board's focus is Public Safety. And the board needs to decide if this is a public safety issue or not? As Mr Westergard puts it, is if you have someone over that state engineer that person could easily override the decision made by the engineer. It is different in a business setting as compared to government setting. Administrators in government make decisions for any number of reasons and a lot of times those decisions are made because the governor tells you he wants that decision. But in having a professional engineer in that position, they are held to a higher standard. They are held to the standard of public protection. They must be thinking about the public in every decision they make and not only is their job at stake, but their livelihood is at stake because they are regulated by us. An administrator isn't regulated. We have administrative law processes that we can bring to bear against that person. Our concern is Public Safety and that is where you need to decide is this warranted enough where the Board needs to weigh in? Are we that concerned with Public Safety that we're adamant about saying this position must be an engineer?*

Mr Westergard made the comment in our previous meeting that water resources should have been grooming from within the agency to have somebody come up through the ranks to be able to fill that position, for whatever reason that didn't happen. Now they're in this predicament. It could be anyone that could fill that position that they deemed to have the qualifications needed to be administrator of that organization. It kind of reminds me, and I am almost reluctant to say this on the record, but it reminds me of Flint Michigan a little bit. This person is in charge of Nevada's precious natural resource of water.

Ms Purcell - *In my mind it is a matter of public safety and that adds to the reason why I feel that we should oppose this bill and that that person in that position should be a licensed professional engineer.*

21-23 A motion was made by Mr Kidd, seconded by Mr Gingerich that the board submit a letter of opposition to the Senate bill. The motion passed unanimously. Ms Russell was not present for the vote.

Ms Mamola said she would work with Mr Spata, chair of the Legislative Committee, to draft a letter of opposition on behalf of the board. (ACTION Item)

Mr Westerguard - *I appreciated the board's obvious serious consideration of this critical issue. And obviously I'm pleased with the results, but I just want to thank you not only for your efforts today, but as a former member of that board and I think I said this the last time how much I personally appreciate and I think I can speak on behalf of a lot of people in Nevada how much I appreciate it and we appreciate the efforts of the board and so with that I'll just say, thank you and good luck in your future deliberations.*

8. Consider updating regulations to include language about minimum standard for submittals to a public entity.

Ms Mamola said this item was added to the agenda for deliberation, but if the board agrees, I'd suggest it be sent back to the PAL committee for further review. If you recall, I reported at the last board meeting there were several agencies that read our newsletter article earlier in March about the quality of plan submittals who indicated they were very interested in participating in the PAL committee to be part of those discussions. I think it is important to hear from all agencies and hear what their perspective is before we make any decision. Ms Mamola said following expanded conversations at the PAL committee, and a degree of consensus, the item would then go before the Legislative Committee to decide if amendments are required, and then it will be brought back to the full board. That is my recommendation. Ms Mamola added that the next PAL meeting is scheduled for May 19, 2021.

Mr Spata said he agreed with the recommendation. It is certainly worth broadening the reach of the discussion with the agencies and getting a full understanding of what support they are looking for to be able to consider all options. We need to understand if it is a process issue or a quality of engineering issue that impacts public health, safety and welfare.

Ms Mamola asked if Mr Spata would be available to participate in the next PAL meeting. He said he would.

9. Public comment.

There was no public comment.

10. Adjournment

Ms Purcell thanked board members and guests for their participation and adjourned the meeting at 4:39pm.

Respectfully, Patty Mamola
Executive Director