

workplan requires staff to research codes of professional conduct in existence at other California agencies and at out-of-state engineering/land surveying regulatory programs and prepare recommendations for the Enforcement Committee by January 2001; PELS does not expect to publish the regulations for public comment until at least June 2001. Also in October 2000, staff briefed Board members on plans to publicize the new written contract requirement applicable to engineers in AB 2629 (Cox) (see above). Staff will feature the new requirement in a front-page article in the fall 2000 issue of PELS' *Bulletin* newsletter, request that professional societies publish notices regarding the requirement in their publications, and reprint PELS' *Consumer Guide* to include information on the new requirement.

Also in October 2000, PELS' Administrative Committee reviewed a cost estimate from CSU Sacramento's Institute for Social Research (ISR) to perform the title act study required by SB 2030 (Figueroa) under an interagency agreement (see above). Once projected at \$200,000, ISR's cost estimate rose to \$465,000 because the study is due on September 1, 2001. Board members expressed deep concern about the cost of the study, especially in light of the Board's projected deficit and its failure to obtain any fee increase in 2000. On the other hand, Board member Jim Foley noted that the study would cost \$5 per licensee and that, if well done, it could streamline the Board's licensing system and solve many fiscal and other problems for the Board in the future. The Administrative Committee recommended, and the full Board approved, a proposal to work with DCA and ISR to come up

with a reasonable scope of work for the project and a payment schedule that the Board can manage.

At PELS' December 2000 meeting, ISR Director Carole Barnes, Ph.D., and ISR Research Associate Nancy Bolton, Ph.D., made a presentation to PELS on the parameters of the title act study and noted that they had already gathered six boxes of materials from PELS staff on the title act issues. Dr. Barnes opined that the study is not as expansive as it appears on paper, and noted that ISR and DCA had adjusted the cost of the study to \$300,000. PELS was also notified that DCA is managing the study and that PELS members and staff should be sources of information. At PELS' April 2001 meeting, the Administrative Committee reported that the contract for the title act study with ISR had been finalized and that work had started on the project. At this writing, SB 26 (Figueroa) (which is urgency legislation) would postpone the due date for the study to September 1, 2002 (see 2001 LEGISLATION).

## FUTURE MEETINGS

**2001:** June 7-8 in Sacramento; June 28 in Sacramento; July 26-27 in Los Angeles; September 6 in Burlingame; October 18 in Monterey; December 13-14 in Sacramento.

**2002:** January 24-25 in Van Nuys; March 7-8 in San Francisco; April 25-26 in San Diego; June 13-14 in Sacramento; July 25-26 in Arcadia; November 14-15 in Glendale.

**2003:** January 23-24 in Anaheim; April 24-25 in northern California; June 12-13 in Sacramento; July 24-25 in San Diego; September 4-5 in Monterey; October 16-17 in Los Angeles; December 11-12 in Sacramento.

## Board for Geologists and Geophysicists

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The Board for Geologists and Geophysicists (BGG) is created in the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was established to regulate geologists in 1969; in 1972, its jurisdiction was extended to include geophysicists. BGG, whose regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR), is a consumer protection agency within the Department of Consumer Affairs (DCA). In 2000, the name of the agency was changed from "Board of Registration for Geologists and Geophysicists" to "Board for Geologists and Geophysicists" by SB 2028 (Figueroa) (Chapter 393, Statutes of 2000) (see 2000 LEGISLATION).

The Board registers geologists and geophysicists, and certifies engineering geologists and hydrogeologists. Candidates for registration as geologists must pass both parts (Fundamentals of Geology and Practice of Geology) of the examination prepared by the National Association of State Boards of Geology (ASBOG), as well as a California-spe-

cific examination developed and administered by BGG. Applicants must also fulfill specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of qualifying academic study, research, teaching, and professional experience.

BGG is authorized to investigate and discipline registrants who act in violation of its statutes or regulations. The Board may issue a citation to registrants or unlicensed persons for violations of Board rules; an administrative fine of up to \$2,500 may accompany such a citation.

BGG maintains five standing committees: Enforcement Oversight, Examination, Executive, Legislative, and Technical Advisory. Several of these committees include non-Board members. The Board's staff currently consists of five full-time employees and one part-time employee. BGG's \$900,000 annual budget is funded by license fees.



The seven-member Board is composed of four public members, two geologists, and one geophysicist. The Governor appoints the three professional members and two of the public members; the Senate Rules Committee and the Speaker of the Assembly each appoint one public member. At this writing, there are two vacancies on the Board—one registered geologist seat (a gubernatorial appointment) and one public member seat to be appointed by the Speaker of the Assembly. On June 1, 2001, the terms of geophysicist David Cummings and engineering geologist Seena Hoose expire; after that date, Cummings and Hoose may serve in a “grace term” of up to one year or until they are replaced or reappointed, whichever occurs first.

## MAJOR PROJECTS

### Board Survives Sunset Review

Every DCA licensing board is subject to a periodic review of its necessity and performance by the Joint Legislative Sunset Review Committee (JLSRC). BGG was last reviewed in 1995–96. Following that review, the legislature passed SB 1077 (Greene) (Chapter 1137, Statutes of 1996) and SB 2031 (Ayala) (Chapter 1136, Statutes of 1996), which extended the Board’s existence until July 1, 2001 and reduced the Board’s composition from eight to seven members (including a majority of four public members). [17:1 CRLR 114; 16:2 CRLR 102–03; 16:1 CRLR 118]

In anticipation of BGG’s July 2001 sunset date, the JLSRC held a hearing on BGG on November 30, 1999. Prior to the hearing, the Board prepared a report updating the JLSRC on its progress and accomplishments since its last sunset review, and the JLSRC issued a background paper in which it identified issues to be addressed at the hearing and in the review process. The background paper identified the following sunset review issues: (1) whether state licensure and regulation of geologists and geophysicists should continue; (2) whether new definitions for the practice of geology and geophysics are necessary to determine licensed versus unlicensed activity; (3) why geologists are placing their official seals on real estate disclosure documents that are not geologic reports; (4) whether the seven-year experience requirement for geologists and geophysicists should be reduced; (5) why BGG continues to take almost no disciplinary action against its licensees; and (6) whether the Board structure should be continued or BGG’s regulatory program should be transferred to DCA.

Executive Officer Paul Sweeney and Board members Sharon Jasek Reid and Seena Hoose represented BGG at the November 1999 hearing before the JLSRC. Reid began BGG’s presentation by updating the Joint Committee on the Board’s accomplishments since its last sunset review. She noted that in

the spring of 2000, the Board would administer ASBOG’s national geologist exam for the first time, accompanied by a short Board-developed, California-specific examination; both of these exams are multiple choice. In addition, the Board amended its regulations to replace the arbitrary 70% pass rate on exams with a psychometrically-recognized criterion-referenced pass point method which was first used on the spring 1999 exam [16:2 CRLR 99]; as a result, the pass rates on the Board’s exams have increased from 26% to 35%. Reid also reported that in February 1998, the Board voted to enter into comity agreements with 26 other state boards that administer the ASBOG exam, and sent letters to those boards describing California’s process for licensure by comity. This opens the door for individuals licensed in other states to become licensed in California, and for California-licensed geologists to become licensed in other states that require passage of the ASBOG exam.

Reid noted that “the Board’s primary focus is continual improvement of its enforcement program.” Since its last sunset review, BGG has added an associate engineering geologist position to act as enforcement coordinator “to aggressively pursue a proactive outreach and enforcement program.” BGG also established an Enforcement Oversight Committee consisting of one professional Board member and one non-Board-member licensee to review closed enforcement cases to assist in identifying trends in enforcement activity and situations where the Board’s enforcement procedures might be improved. As a result of its outreach, Reid stated that “the number of complaints received by the Board almost doubled in the past year” (from 24 in 1997–98 to 41 in 1998–99). The number of complaints filed by non-licensee members of the public increased from 10 to 14; the number of complaints referred to

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BGG by governmental agencies increased from one to five. The number of complaints referred by BGG to DCA’s Division of Investigation increased from five in 1997–98 to nine in 1998–99. According to Reid, “the Board presently has 43 open cases, including four pending at the Attorney General’s Office and six that are

being handled by local district attorney’s offices.” The average number of days to process complaints decreased from 207 days in fiscal year 1995 to 99 days in fiscal year 1998. Additionally, the Board adopted regulations to implement its citation and fine authority in 1995, and—to date—BGG had issued nine citations with fines. BGG also adopted a code of professional standards in 1999, which—according to Reid—“will open new opportunities for enforcement actions previously lacking.”

Next, Seena Hoose addressed several of the issues identified by JLSRC staff. In response to the issue whether geologists and geophysicists should continue to be licensed by the state, Hoose reminded the JLSRC that state-level licensure of geologists grew out of the profession’s dissatisfaction with the “hodgepodge” of city and county licensing requirements

for geologists during the late 1960s. She noted that during the last decade, California experienced eight major earthquakes injuring 94,000 people, killing 130 people, and causing \$27 billion in physical damage. Between 1992 and 1995, landslides caused 29 deaths and \$2 billion in losses in California. Hoose contended that "the harm that results from improperly constructed dams, roads, and bridges, other construction activities that cause landslides, and improperly identified earthquake hazards and faults is well-established. These geologic hazards impact the public in major ways by injuries, deaths, destruction of lives, destruction of property, and consumption of tax dollars. With sound geologic input and appropriate review by public agencies, and implementation of geologic recommendations during construction, much of this damage and loss would be avoided." Hoose also contended the geologist licensure is justified by environmental concerns about groundwater resources, including contamination of groundwater supplies by leaking underground storage tanks, land application of industrial waste, leaking landfills, and saltwater intrusion due to groundwater withdrawal. According to Hoose, "the unregulated practice of geology and geophysics could have major financial, health, and safety impacts for consumers."

JLSRC Chair Senator Liz Figueroa asked the BGG representatives how many complaints the Board receives from individual consumers (as opposed to government agencies or licensees complaining about unlicensed practice). Executive Officer Sweeney responded that BGG had received approximately 100 complaints since 1992, and that about half of them were from consumers who are not licensed professionals. In response to Senator Figueroa's question why BGG had taken no disciplinary action against a licensee in the prior three years, Reid responded, "Lack of oversight on the part of the Board and a prior enforcement officer who did not understand the importance of the enforcement program."

Next, the JLSRC asked whether the Board had developed new definitions of the practice of geology and geophysics. Hoose noted that BGG had held numerous public hearings in northern and southern California to obtain input on substantial revisions to the Geologist and Geophysicist Act, which—at that time—were being reviewed by DCA's Legal Office for clarity and accuracy. Hoose expressed hope that BGG would be able to find a legislative author for the revised act in 2001 (see 2001 LEGISLATION). She stated that "gray area" issues of licensed versus unlicensed activities would be well-defined in the revised act.

The JLSRC also discussed whether geologists should be signing and stamping real estate disclosure documents. According to Hoose, "the real estate disclosure law identifies several professions which have the ability to lift the liability for the natural hazard disclosure document from the realtor and the owner of that property and transfer that liability to that third party. Geologists are one of those professions." She noted that the Board and its Technical Advisory Committee held public hearings during 1999 to address the role of regis-

tered geologists in preparing real estate disclosure reports. In 1999, the Board received a legal opinion from DCA's Legal Office stating that there is no legal prohibition on a geologist's completion or sealing of real estate disclosure documents; however, the completion of such documents is not the practice of geology. Hoose opined that "if a geologist stamps or seals a real estate disclosure document, he/she is putting his/her professional license on the line, and perhaps the consumer is getting a better bargain because the consumer has recourse to us if the work is not properly done" (see below for further information on this issue).

The JLSRC also questioned BGG's existing experience requirements. Under current law, applicants for geologist registration must have a total of seven years of professional geological work performed under the supervision of a licensee or the equivalent. Two years' credit is given if the applicant has a qualifying bachelor's degree (thus requiring five years of work experience in addition to the degree); and three years of credit is given if the applicant has a qualifying master's degree or higher (thus requiring four years of work experience in addition to the master's degree). The JLSRC indicated that five years of professional supervised experience beyond a bachelor's degree seems excessive in light of the fact that engineers are required to have only two years of supervised experience if they have a bachelor's degree and only one year of supervised experience if they have a master's degree. The Board representatives stated that seven years of experience is required only of those candidates who lack a bachelor's degree; those with degrees can satisfy the experience requirement with fewer years. BGG also noted that no geologist applicant has applied to take the exam under the seven-year pathway since its first sunset review.

The JLSRC questioned why the Board should continue to exist, and what services a board provides that cannot be offered by a bureau within DCA. Reid responded that "once a regulatory program is moved to a bureau, it gets less attention. Our sole reason for being here is to protect the public—this is a technical, science-based profession." Hoose also noted that since contaminated groundwater has become a problem, about 30 states now license geologists, and opined that a board is necessary to oversee the exam process (to ensure that those who are licensed are competent) and the enforcement process (to excise those who become incompetent).

A representative of the Association of Engineering Geologists expressed support for continuation of statewide licensure of geologists by the Board. She recounted the prior "proliferation" of local regulations governing geologists, and stated that a uniform statewide regulatory approach is both preferable and necessary. She also noted that geologists' license fees support the activities of the Board, such that geologist self-representation on the Board is appropriate. A representative of the California Council of Geoscience Organizations also stated support for continuation of the Board.

At a second hearing on April 4, 2000, the JLSRC specifically requested that the Board reconsider whether to re-

duce the experience requirement for geologists and geophysicists found in Business and Professions Code sections 7841 and 7841.1. The JLSRC again pointed out that the existing seven-year requirement exceeds that of other state boards and is regarded by many as an excessive and arbitrary barrier to entry into the profession, particularly considering the additional hurdle imposed by BGG's examination, which has an average passage rate of approximately 30%. In addition, the JLSRC and DCA released several joint recommendations: (1) California should continue to license and regulate geologists and geophysicists, and BGG should continue to be the state's regulator; (2) BGG should submit its statutory rewrite of the Geologist and Geophysicist Act to the JLSRC for review; (3) the Board should adopt regulations to define and clarify the use of the geologist's seal, and to expressly prohibit its use on real estate disclosure documents unless the geologist has undertaken an actual geologic evaluation; and (4) the Board should continue its efforts to improve its enforcement program. The legislature subsequently passed SB 2028 (Figueroa), extending the existence of BGG until July 1, 2005 (see 2000 LEGISLATION).

At its September 2000 meeting, the Board directed its executive officer to make certain recommendations to DCA Director Kathleen Hamilton regarding improvements in the sunset review process. BGG suggested that (1) the timelines for the process should be made more clear to all participants, (2) consideration should be given to increasing the length of time between reviews from four to eight years, and (3) thought should also be given to not requiring a subsequent review if a board has adequately responded to all of the JLSRC's concerns in the prior review and there are no new issues.

## Board Rejects JLSRC's Request to Reduce Experience Requirement

In response to the JLSRC's request to reevaluate its seven-year experience requirement (see above), BGG agreed to seek legislation rescinding the seven-year experience requirement at its February 2000 meeting—although perhaps not in the manner intended by the JLSRC. BGG voted to seek repeal of the licensure pathway permitting an applicant with seven years of experience but no bachelor's degree to sit for the exam. Under BGG's proposal, applicants without a bachelor's degree would not qualify for licensure.

At its April 2000 meeting, the Board decided to issue a request for comments on the JLSRC's proposal to reduce its existing experience requirements, and to schedule a public hearing on the matter its June 2000 meeting. BGG also instructed Executive Officer Paul Sweeney to contact all ASBOG-member states, verify their experience requirements, and inquire whether a reduction in California's experience

requirements would impact the ability of California licensees to be eligible for reciprocity licensure in other ASBOG states.

In June 2000, the Board took public comment on its proposal—focusing mainly on its desire to eliminate the pathway to licensure for applicants who do not have a bachelor's

degree (because, according to the Board, it is not being used). As to reducing the experience requirement for other candidates who have a bachelor's degree or higher, the Sacramento Section of the Association of Engineering Geologists testified in opposition to reducing the experience requirement. After reviewing doz-

ens of written comments from current licensees—most of whom opposed any reduction in the experience requirement, BGG decided to create a subcommittee consisting of a professional Board member, a public Board member, one representative of the Technical Advisory Committee (TAC), and one representative of the Examination Committee to study the issue and report back to BGG at a future meeting.

On November 16–18, 2000, the subcommittee—consisting of Board members Seena Hoose and Karen Melikian, TAC member Tony Sawyer, and Examination Committee member Ernie Weber—met to review occupational analyses of the geologist profession prepared by DCA's Office of Examination Resources and ASBOG and to categorize the tasks identified in the analysis as "supercomplex," intermediate level, or entry level. The subcommittee identified seven of the 61 tasks on the list as "supercomplex" for the practice of geology in California, and promised to submit recommendations on the experience requirement at a future meeting.

At its January 2001 meeting, BGG reviewed the subcommittee's two-page handwritten report which had been faxed by Ernie Weber, who noted that ASBOG's occupational analysis was based on responses submitted by over 2,500 professional geologists. Of the 61 tasks identified by ASBOG, the subcommittee selected seven that it considered "the most important and demanding of the professional geologist in the protection to the public." Based on its analysis, the subcommittee concluded that "the level of experience and knowledge to sit for the examination for the professional license should remain at five years for California applicants." Weber also noted that "of the 24 ASBOG states, 18 require five years or more of work experience to sit for the examination....Work experience of less than five years would penalize California applicants who which [sic] to practice in other states requiring a professional license." After reviewing the subcommittee's recommendation, BGG voted 3–2 to recommend that the current experience requirement to sit for the geology examination remain unchanged. At this writing, BGG's proposal to change its experience requirements is pending in SB 136 (Figueroa) (see 2001 LEGISLATION).

**The JLSRC again pointed out that the existing seven-year requirement exceeds that of other state boards and is regarded by many as an excessive and arbitrary barrier to entry into the profession, particularly considering the additional hurdle imposed by BGG's examination, which has an average passage rate of approximately 30%.**

## BGG Attempts to Resolve Turf War with OEHHA over REA IIs

In February 2001, BGG and the Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency (Cal-EPA) finally came to agreement on the legality of certain work performed by "environmental assessors" who are registered by OEHHA but not licensed as geologists or geophysicists by BGG.

The cleanup of contamination caused by the release of industrial chemicals, hazardous waste, or other hazardous substances is governed by a complex variety of state and federal laws and regulations. In 1986, the legislature enacted the Environmental Quality Assessment Act, Health and Safety Code section 25570 *et seq.*, which authorized a new class of "environmental assessors" who are registered with the state to provide technical assistance to small and medium-sized businesses in complying with complex regulations dealing with hazardous substance management. These "registered environmental assessors" (REAs) are generalists who qualify for registration by possessing a degree in a physical or biological science, engineering, or law, and have at least five years' experience in their field and two years' experience in performing environmental assessments.

In 1995, AB 1876 (Richter) (Chapter 820, Statutes of 1995) substantially expanded the role of REAs in hazardous waste management. Under AB 1876, the "generalist" REAs registered under the 1986 law became "Class I" REAs; the statute further created a new class of registered environmental assessors (REA IIs) authorized to manage the cleanup of a site under the supervision of the Department of Toxic Substances Control (DTSC), also within Cal-EPA. Like Class I REAs, REA IIs are registered by OEHHA if they have a degree in engineering, a physical or biological science, or a related field; eight years of professional environmental experience, including four years of site mitigation (cleanup) experience (which requirements are set forth in detail 14 CCR 19030 *et seq.*); and four favorable letters of reference, one of which must be from a lead agency. AB 1876 authorizes REA IIs to conduct investigations of potential hazardous substance release sites using preliminary endangerment assessment (PEA) procedures that are approved by DTSC. REA IIs provide opinions based "upon careful study of a site, including, but not limited to, preliminary endangerment assessments, remedial investigations, feasibility studies, remedial design, remedial actions, corrective actions plans, remedial action plans and other work associated with the investigation, assessment and remediation of hazardous waste and hazardous substance release sites."

Because the type of investigation and research required in any hazardous substance remediation project involve "site characterization," including the determination of lateral and vertical extent of contamination in soil and groundwater (be-

low the earth's surface), BGG has long been concerned that REA IIs are practicing geology or geotechnical engineering without being licensed.

BGG's concerns were heightened in January 2000, when OEHHA sent a letter to lead agencies introducing them to the REA II program. OEHHA's letter notified lead agencies of "the availability of a resource of qualified environmental professionals for site investigation, assessment and remediation work." The OEHHA letter emphasized that "registrations for engineering and geology are not specifically for the development of an opinion about contamination, environmental risk,

or the need for additional work at hazardous waste and hazardous substance release sites," whereas the REA II registration requirements focus on those with documented experience (including at a

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lead agency) in site assessment and site remediation. OEHHA also encouraged lead agencies to use REA IIs: "Because of the stringent qualification review of REA II applicants..., we recommend that your staff require that an REA II conduct future investigative and remediation work."

In March 2000, BGG Executive Officer Paul Sweeney sent a letter to Cal-EPA Secretary Winston Hickox, expressing concern that environmental site investigation and remediation actions comprise the practice of geology, and that OEHHA's letter implies that REA IIs may practice geology. On April 14, 2000, OEHHA Chief Deputy Director Val Siebal responded to Sweeney's letter, reminding BGG that the Office of Administrative Law (OAL) had considered BGG's concerns about unlicensed activity by REA IIs when OEHHA adopted its REA II program regulations in 1998, and that OAL had rejected those comments. Siebal continued: "In fact, the REA II program recognizes that the Registered Geologist has a role within the environmental assessment, investigation, and remediation framework. While the California Health and Safety Code (H&SC) and the California Code of Regulations clearly state that an REA II is authorized to conduct assessments, investigations, and remediation work, H&SC section 25570.4 and Title 14, Chapter 3, section 19041(f) of the CCR, also clearly indicate that registration as an REA II does not authorize the registrant to practice geology. However, the activities of environmental assessment, investigation, and remediation are not the exclusive domain of the geologist, nor are these activities solely comprised of the practice of geology." Siebal noted his willingness to work together to resolve BGG's problems, and offered to schedule a meeting with Sweeney.

On June 5, 2000, Sweeney mailed a letter to all REA IIs indicating that BGG had received inquiries concerning REA IIs and the practice of geology. Sweeney alerted REA IIs to language in OEHHA's regulations specifying that "all engineering or geologic work" must be performed by a registered professional in compliance with the licensing requirements of BGG and/or the Board for Professional Engineers and Land

Surveyors. Sweeney described several aspects of an environmental site assessment and/or PEA that “can be considered the practice of geology” (including determination of extent of contamination in soil or groundwater, evaluation of geologic and hydrogeologic characteristics of the site, and determination of naturally occurring hazardous materials), and cited to a DTSC manual requiring the preparation of all geologic or engineering plans, specifications, drawings, and reports to be performed by or under the direct supervision of a California-registered geologist or civil engineer, “as appropriate.” According to Sweeney, “therefore, the portions of environmental site assessments and PEAs that constitute the practice of geology must be performed by or under the direction of a California Registered Geologist.”

In the meantime, DCA Director Hamilton requested a legal opinion from the Department’s Legal Office, which noted that both BGG and OEHHHA statutes and regulations agree that REA IIs may neither hold themselves out as geologists/geophysicists nor issue “geologic reports” without being licensed by BGG; however, REA IIs may perform “geologic work” if working subordinate to a BGG registrant. The legal opinion also noted that neither BGG’s nor OEHHHA’s statutes provide an exemption to BGG’s registration requirement for REA IIs performing “geologic work”: “to the extent their work involves the professional practice of geology, such persons should be registered accordingly. The underlying law concerning REA IIs and the regulations adopted by OEHHHA so state.”

In an attempt to alleviate substantial confusion in the REA II community, BGG and OEHHHA representatives met with officials of Cal-EPA, DCA, and the Attorney General’s Office in July 2000 and agreed to cooperate in drafting a letter to be posted on the Web sites of both agencies and mailed to all REA IIs. Subsequently, OEHHHA Chief Deputy Director Siebal and REA Program Chief Beth Jines attended BGG’s January 2001 meeting to discuss the latest draft of the letter; Jines and Executive Officer Sweeney agreed that the two agencies would notify each other when a complaint is received about the other’s registrant.

On February 23, 2001, OEHHHA and BGG released their joint letter, which was signed by Siebal and BGG President David Cummings. The letter states that it is intended to clear up confusion caused by OEHHHA’s January 2000 letter and BGG’s June 2000 letter, and to “clarify the role of REA II registrants and Registered Geologists in site mitigation activities.” According to the letter, an REA II is a “project manager who utilizes personal expertise as well as the expertise of other environmental professionals (such as Registered Geologists and Professional Engineers) in the development of hazardous waste site cleanup opinions....While the practice of environmental assessment, investigation and remediation encompasses an expansive field, the practice of

geology often comprises an important element of that work. Geologic investigations and interpretations leading to the REA II’s site cleanup opinion must be performed by a Registered Geologist. Likewise, a Professional Engineer should perform engineering design and evaluation activities.” While the letter cites section 19041(f), Title 14 of the CCR, for the proposition that “all professional engineering or geologic work shall be performed by a registered professional in compliance with the requirements of the Professional Engineers Act...and the Geologist and Geophysicist Act...,” it also says that “activities that are performed at a subprofessional or apprentice level, or routine activities, including but not limited to drafting, sampling, sample preparation, laboratory work, etc., do not require professional registration as a geologist.” The letter closes by noting that OEHHHA and BGG “will continue to work closely together to enhance the ability of the State to protect human health and the environment by moving forward to mutually implement our respective programs.”

## Board Restricts Use of the Geologist’s Seal

Business and Professions Code sections 7852 and 7852.1 authorize Board registrants and certificants to obtain and use a seal bearing the registrant/certificant’s name, license number, and a legend declaring that the person is a registered professional and/or certified in a specialty. At its August 1999 meeting, BGG—“assisted” by two conflicting legal opinions—discussed the increasing use of the official seal by BGG registrants on real estate transfer disclosure documents, including

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“natural hazard disclosure statements” (NHDSs) that must be submitted by real estate sellers to buyers of property in California under AB 1195 (Torlakson) (Chapter 65, Statutes of 1998) and AB 248 (Torlakson) (Chapter 876, Statutes of 1999). Anyone may prepare an NHDS, because the information to be disclosed is derived from publicly available government maps provided by government agencies. It was brought to the Board’s attention that BGG registrants are preparing these documents and affixing their official seal to them. According to the legal opinions, it is not unlawful for a BGG registrant to prepare an NHDS, but the use of the official seal may be misleading because it may imply to consumers that the NHDS is a geologic report (it is not) and/or that geologic survey work was performed (when it probably was not). Further, BGG’s attorney warned that the use of the official seal on an NHDS may subject Board registrants to discipline if the use of the seal is misleading and/or the work performed is incompetent, negligent, or fraudulent. At BGG’s August 1999 meeting, DCA Director Kathleen Hamilton suggested that the Board formulate standards on the appropriate use of the registered geologist’s seal. [17:1 CRLR 115–16]

At its December 1999 meeting, BGG discussed the regulation of seal use by registrants. Board member Dorene Dominguez expressed concern that registrants’ use of a BGG-

sanctioned seal on a document that does not entail the practice of geology might deceive the public. Upon seeing such a seal, a consumer might assume that a geologic or geophysical inspection of the property had been performed, when that has not actually occurred. The Board voted to announce on its Web site that it would consider regulatory action. BGG's announcement requested public comment by February 4, 2000 on a proposal to restrict the use of the official seal to documents that directly relate to the practice of geology or geophysics.

Following the receipt of over 100 written comments and a public hearing at its February 2000 meeting at which the Board heard extensive oral testimony, BGG decided to issue a "strongly-worded advisory statement" as soon as possible to registrants on the proper use of the seal. The Board reaffirmed its previous conclusion concerning the importance of communicating to its registrants that when they affix their seals to documents, they may be held accountable and liable for the content of those documents; BGG also instructed its legal counsel to determine whether its advisory statement could be challenged as "underground rulemaking." On February 7, 2000, BGG issued an advisory statement noting that completion of an NHDS is not the practice of geology; although geologists may complete an NHDS, the Board advised its licensees not to use their seals on NHDSs.

On April 13, 2000, the Board issued its "Board Policy on the Use of the Board's Seals." According to that policy statement, "seals should only be used on reports, documents, attachments, maps or any other forms of written communication required to be prepared by a licensed registered geologist or registered geophysicist." The policy also stated that "the completion of a Natural Hazard Disclosure Statement is not the practice of geology and therefore it is not appropriate to seal Natural Hazard Disclosure Statements and other non-geologic reports and forms such as escrow reports and resumes...." Finally, the policy warned that "if consumer confusion continues, it may be necessary to more closely regulate the use of seals."

At BGG's December 1, 2000 meeting, DCA legal counsel Gary Duke reported that, following a discussion with Deputy Attorney General Susan Ruff, he had concluded that the seal policy was subject to challenge as an underground regulation. In fact, on November 11, 2000, registered geologist (and former BGG executive officer) John Wolfe formally asked OAL to issue a regulatory determination on the matter. The Board responded by rescinding the policy and ordering it removed from its Web site. Further, the Board directed staff to initiate the rulemaking process by preparing draft regulatory language for review at the next meeting.

On March 2, 2001, BGG published notice of its intent to amend section 3008, Title 16 of the CCR. The proposal would add new subsection (d), which would prohibit the use of a geologist's or geophysicist's seal on any real estate transfer disclosure statement required by Civil Code section 1102.6. The new subsection would clarify that the official seal may be used on "any geologic or geophysical report or opinion,

dealing with matters within the scope of the professional's license and expertise, if said report or opinion is attached separately as a substituted disclosure pursuant to a real estate transfer disclosure statement required by section 1102.6 of the Civil Code." On April 20, 2001, BGG held a public hearing on its proposed amendment to section 3008; no comments were submitted. The Board approved the proposed language with minor technical amendments, released it for an additional 15-day comment period, and delegated to the Executive Officer the authority to approve the regulation if no adverse comments are received.

## Update on Other Board Rulemaking

The following is an update on BGG rulemaking proceedings, some of which are described in more detail in Volume 17, No. 1 (Winter 2000) of the *California Regulatory Law Reporter*.

◆ **Name Change.** On February 28, 2001, OAL approved BGG's nonsubstantive amendments to sections 3000, 3003, and 3005, Title 16 of the CCR. These amendments reflect in BGG's regulations the statutory change of the agency's name from "Board of Registration for Geologists and Geophysicists" to "Board for Geologists and Geophysicists" (see 2000 LEGISLATION).

◆ **Board Adjusts Exam Fee Structure.** On April 28, 2000, BGG published notice of its intent to amend sections 3005 and 3031, Title 16 of the CCR, to accommodate its administration of the ASBOG licensing exam to geologist applicants. The ASBOG examination is administered in two parts (Fundamentals of Geology and Practice of Geology); geologist applicants are also required to take and pass a California-specific examination developed and administered by BGG. Each of these three tests is graded separately. The amendment to section 3031 clarifies that a candidate who passes either ASBOG component and/or the California exam will be given credit and must retake only the failed exam(s). The amendments to section 3005 specify a separate examination fee for each of the three tests. The fee for taking either of the two separate parts of the ASBOG test is \$150; the fee for taking one section of the ASBOG exam plus the California exam is \$250; and the fee for taking the California exam is \$100. Following a June 16, 2000 public hearing on these proposed amendments, BGG adopted them. On September 14, 2000, OAL approved the changes.

On March 2, 2001, BGG announced its intention to again amend section 3005, pursuant to an examination price reduction by ASBOG. Under this proposal, the fee for the Fundamentals of Geology test will be reduced to \$125. Other test combinations that include this portion of the ASBOG examination will also be reduced by \$25. BGG held a hearing on this amendment on April 20, 2001, approved the proposed change subject to minor technical amendments, released it for an additional 15-day comment period, and delegated to the Executive Officer the authority to approve the regulation if no adverse comments are received.

## CONSTRUCTION AND DESIGN REGULATORY AGENCIES

◆ **Abandoned Applications.** On April 28, 2000, BGG published notice of its intent to amend section 3024, Title 16 of the CCR, to define when an application for licensure is considered abandoned and to allow the Board to recover its costs of processing applications, additional proctors, and staff time when an applicant for licensure fails to appear for an examination without obtaining a postponement from the Board. The amendments primarily add new subsection (d) to section 3024, which states that when an applicant fails to appear for a scheduled exam without obtaining a postponement from the Board, the Board will retain a portion of the examination fee as follows: (1) for failure to appear as scheduled for two sections of the national geologist exam, BGG may retain \$75 of the examination fee; (2) for failure to appear as scheduled for one section of the national geologist exam, BGG may retain \$50 of the exam fee; and (3) for failure to appear as scheduled for an examination for registration as a geophysicist, certified engineering geologist, or certified hydrogeologist test, the Board may retain \$25 of the exam fee. [17:1 CRLR 117] BGG held a hearing on these proposed amendments on June 16, 2000 and adopted them; OAL approved them on September 18, 2000.

◆ **Notice to Clients of State Licensure.** On March 15, 2000, OAL approved BGG's addition of section 3066 to Title 16 of the CCR. The new regulation implements SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998), which requires BGG and other DCA occupational licensing boards to adopt regulations requiring their licensees to provide notice to their clients that they are licensed by the State of California. Under new section 3066, effective April 14, 2000, a BGG registrant may satisfy the notification requirement by (1) displaying either the license itself or a notice of licensure in the public area of the business premises, or (2) providing a statement of licensure to each client, which must be signed and dated by the client and retained in the registrant's records. The new regulation also requires registrants in responsible charge of geologic and/or geophysical projects to include statements of licensure on all contracts, bids, and responses to requests for proposals; and to include their license numbers on all correspondence and business cards. A licensed principal or partner in a geologic or geophysical firm must print his/her license number on all advertising, including telephone directory and Web site advertising. [17:1 CRLR 116-17; 16:1 CRLR 121]

[Redacted]

[Redacted]

### 2000 LEGISLATION

SB 2028 (Figueroa), as amended June 15, 2000, is BGG's sunset legislation (see MAJOR PROJECTS). The bill extends BGG's sunset date until July 1, 2005; changes the agency's name from "Board of Registration for Geologists and Geophysicists" to "Board for Geologists and Geophysicists"; and provides that any reference in law or regulation to the Board by its former name is deemed to refer to BGG. SB 2028 was signed by Governor Davis on September 8, 2000 (Chapter 393, Statutes of 2000).

**AB 303 (Thomson)**, as amended August 29, 2000, enacts the Local Groundwater Management Assistance Act of 2000 (Water Code section 10795 *et seq.*) and establishes the Local Groundwater Assistance Fund. [17:1 CRLR 118] Upon appropriation by the legislature, the money in the fund will be used by the Department of Water Resources to assist local public agencies by awarding grants to those agencies to conduct groundwater studies and carry out groundwater monitoring and management activities. The Department will award grants based on the recommendations of a Technical Advisory Panel, the membership of which will be appointed by the Secretary of the Resources Agency and must include a licensed geologist and a licensed hydrogeologist. Governor Davis signed the bill on September 25, 2000 (Chapter 708, Statutes of 2000).

**AB 2644 (Calderon)**. Education Code section 17210 defines "environmental assessor" for purposes of analyzing proposed school sites for environmental hazards as either a class II environmental assessor registered by OEHA (see MAJOR PROJECTS) or a licensed hazardous substance contractor. As amended August 18, 2000, AB 2644 amends section 17210 to include within the definition of "environmental assessor" registered professional engineers, registered geologists, and registered certified engineering geologists. The bill was signed by the Governor on September 13, 2000 (Chapter 443, Statutes of 2000).

**SB 1729 (Hayden)**, as amended May 30, 2000, would have codified regulations requiring all new school sites to be reviewed for seismic hazards through geological and soil engineering studies. The bill would have required these studies to be completed by a certified engineering geologist in consultation with a geotechnical engineer (a seismic safety expert). If such a study indicates that a school building presented a potential seismic hazard, the bill would have required the Department of General Services to monitor and review seismic hazard mitigation measures. According to the analysis of the Assembly Appropriations Committee, the bill would have resulted in negligible school bond costs because it would merely have codified existing regulations.

On September 29, 2000, Governor Davis vetoed the bill, stating: "Assessing school sites for potential seismic hazards is necessary to ensure the safety of California's students. For this reason, current state regulations require school districts to utilize a California-certified engineering geologist in consultation with a California-registered geotechnical engineer where the Office of the State Architect has reason to believe that a geologic hazard exists. Seismic safety reports must be reviewed by the Department of Conservation, Division of Mines and Geology, on behalf of the State. The State Architect also reviews seismic mitigation plans, as well as Field Act compliance, to ensure a high level of safety. In addition, as a result of legislation that I signed last year, the Department of Toxic Substance Control must review site assessments to ensure that they comply with safety standards. With these many layers of review and a specific regu-

lation that applies in circumstances where a geologic hazard exists, this bill is unnecessary and would create a state mandated local program with reimbursable costs potentially in the millions of dollars."

**SB 2006 (Leslie)**. Under existing law, after January 1, 2008, general acute care hospital buildings that are determined to pose certain earthquake-related risks are required to be either improved or only used for nonacute care. After January 1, 2030, all acute care inpatient hospital buildings that are not in substantial compliance with certain seismic safety standards developed by the Office of Statewide Health Planning and Development (OSHPD) are required to be demolished, replaced, changed to nonacute use, or seismically retrofitted so that they are in substantial compliance. As amended August 29, 2000, SB 2006 adds new section 130063 to the Health and Safety Code, which authorizes any hospital, with regard to a general acute care hospital building located in Seismic Zone 3 (as indicated in the 1995 edition of the California Building Standards Code), to request from OSHPD an exemption from certain nonstructural requirements of Title 24 of the CCR if the hospital building complies with year 2002 nonstructural requirements. To qualify for an exemption under section 130063, a hospital must provide a site-specific engineering geologic report that demonstrates an earthquake ground shaking potential below the maximum allowable level determined by OSHPD. SB 2006 was signed by the Governor on September 28, 2000 (Chapter 851, Statutes of 2000).

## 2001 LEGISLATION

**SB 136 (Figueroa)**, as amended April 30, 2001, contains BGG's proposed rewrite of the Geologist and Geophysicist Act (see MAJOR PROJECTS); the bill would essentially repeal much of the existing act and completely rewrite it. Among many other things, SB 136 would replace BGG's existing registration system with a licensing system. New sections 7803.2, 7803.3, 7803.4, and 7803.5 would establish the licensing system and define the terms "licensee," "licensed geologist," "professional geologist," "licensed geophysicist," and "professional geophysicist." SB 136 would also change the Board's quorum (for purposes of capacity to conduct business) from four members to "a majority of the duly appointed board members," require the Board to adopt a "code of conduct" that all Board members must follow, authorize BGG to adopt regulations requiring its licensees to complete continuing education as a prerequisite to license renewal, repeal section 7887 (in which the legislature has established BGG's fees), and authorize BGG to establish its fees by regulation.

Proposed new sections 7802.2 and 7802.3 would redefine the "practice of geology" and the "practice of geophysics" as "the performance or supervision of geological/geophysical service or work for others, including, but not limited to, investigation, evaluation, planning, surveying, mapping of geologic phenomena or data, and may include the review, including regulatory review of geologic work, the performance of which is relevant to public welfare or the safe-

guarding of life, health, property, and the environment, except as otherwise specifically provided by this chapter." The bill would also replace existing definitions of the terms "geologist" and "geophysicist," and prohibit licensees from practicing or performing geological or geophysical work in any field unless they are competent and proficient in that field, as demonstrated by their education and experience. The bill would also protect the use of BGG's license titles.

This bill would amend section 7841 to revise the requirements for geologist licensure. Currently, it is possible for an applicant with seven years of experience of professional geological work and 30 units of college-level coursework in geological sciences to become licensed as a geologist without obtaining a college degree (see MAJOR PROJECTS). Under proposed section 7841, geologist applicants must obtain a bachelor's degree with a major in geological sciences from a college or university to qualify for licensure; BGG would be authorized to identify in regulation "those core curricula in geological sciences that are deemed to meet minimum educational requirements." In addition, "the applicant shall have a documented record of a minimum of five years of experience in geology or a specialty of geology, obtained subsequent to completion of the academic requirements..., and professional geological experience of a character satisfactory to the board, demonstrating that the applicant is qualified to assume responsible charge of appropriate work upon licensure as a geologist. The experience must be gained under the supervision of a geologist or geophysicist licensed in this or any other state, or under the supervision of others who, in the opinion of the board, have the training and experience to have responsible charge of geological work." [S. B&P]

**AB 446 (Committee on Business and Professions)**, as amended April 16, 2001, would allow BGG to collect all accrued and unpaid penalties on delinquent renewals upon renewal of an expired license. Under existing law, only the renewal fee in effect on the last regular renewal date must be paid in order to re-register. DCA is sponsoring this bill to put an end to the custom of some registrants who intentionally allow their certificates to lapse for several years, waiting to renew until just before the five-year statutory revocation date. [A. Appr]

**AB 269 (Correa)**, as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including BGG). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor's appointments secretary. [A. B&P]

## RECENT MEETINGS

At its December 3, 1999 meeting, BGG unanimously agreed to administer its examination for registration as a geophysicist only once each year, beginning in the spring of 2000.

The test was formerly given twice annually, once in the spring and once in the fall.

At BGG's February 5, 2000 meeting, the Executive Committee reported that it had undertaken a review of BGG's *Board Member Guidelines and Procedures Manual* and recommended some amendments to that document. The Board adopted the committee's amendments unanimously, including an implementation of Business and Professions Code section 141 stating that BGG will consider enforcement action against California licensees who have been disciplined in another state. The Committee also added a new provision concerning ethics training for Board members, pursuant to Government Code section 11146 *et seq.*

At its April 2000 meeting, BGG reviewed the results of its first administration of ASBOG's licensing examination for geologists on March 17, 2000. Of 162 candidates who took both the ASBOG exam plus the California-specific exam, 78 passed for a 48% pass rate. Nationwide, 497 individuals took the Fundamentals of Geology portion of the ASBOG exam, while 399 took the Practice of Geology component of the exam; 56.1% of those taking the Fundamentals portion passed, while 66.2% of those taking the Practice of Geology portion passed.

At its June 2000 meeting, the Board reviewed and made minor revisions to a draft of the new *Staff Member Guidelines and Procedures Manual* presented by Executive Officer Sweeney. BGG adopted the revised version unanimously. According to its preface, the Manual contains procedures that are "guidelines for the Board's executive officer and staff in the handling of examination, licensing and enforcement-related matters. This document is an internal office document that has no legal status and can be used, modified or disregarded depending on the circumstances of a particular case...."

The Board's August 2000 meeting was cancelled due to lack of a quorum.

At its September 29, 2000 meeting, BGG elected geophysicist David Cummings as president and public member Dorene Dominguez, who is vice president of Vanir Construction Management in Los Angeles, as vice president for 2001.

Also in September 2000, the Examination Committee reported on its progress with on-demand testing for the California-specific examination for geologists. BGG has a master services agreement with the Experior firm to implement such testing by offering the exam at Experior's nine sites in California and selected sites outside the state. DCA's Office of Examination Resources is researching the out-of-state testing sites to identify those that meet California security criteria as well as BGG's cost considerations. The Committee reported that the examination question bank is deficient, so item-writing workshops have been scheduled to remedy this deficiency by providing sufficient additional examination questions.

At its December 2000 meeting, the Board voted to accept the recommendations of the Technical Advisory Committee (TAC) to amend its *Board Member Guidelines and Procedures Manual*. BGG amended the manual to state that

it should strive to ensure that TAC's composition is representative of the various disciplines of geology and geophysics as well as the various geographic areas of California. Further, the amended policy states that a majority of the members of TAC should be BGG registrants. BGG also adopted a policy prohibiting an individual from serving concurrently on more than one of the Board's standing advisory committees. Concerning the minimum qualifications of professional members on BGG committees, the Board adopted policies requiring: (1) at least ten years of professional experience in the field, (2) current California registration as a geologist or geophysicist, and (3) a lack of pending or prior disciplinary action. The Board rejected TAC's suggestion for a fourth minimum qualification: membership and active participation in a professional geoscience organization.

At its January 2001 meeting, BGG reviewed the results of the fall 2000 administration of the ASBOG geologist exam and the accompanying California-specific exam. A total of 132 candidates took both parts of the ASBOG exam plus the California exam; 41 examinees passed, for a pass rate of 31%.

At its April 2001 meeting, BGG made minor amendments and then adopted its 2001 Strategic Plan as revised by the Strategic Planning Committee. The Board drafted its original Strategic Plan on June 20, 1997 and has since updated it in June 1998, April 1999, April 2000, and April 2001. The Strategic Plan identifies BGG's goals in the areas of examination/licensure, enforcement, public awareness, and Board administration. Each of the goals is then expressed in terms

of specific objectives with definite action plans to achieve those objectives. BGG includes an outline of each year's accomplishments as appendices to the Plan.

Also during its April 2001 meeting, the Board discussed Executive Officer Sweeney's recommendation that the California-specific examination be eliminated from the requirements for registration as a geologist. Sweeney explained that the California-specific exam was probably required in SB 1984 (Greene) (Chapter 992, Statutes of 1998) because the national exam was an "unknown" to the California Board at that time. Sweeney opined that, based on BGG's administration of the ASBOG exam three times and his attendance at more than a dozen Examination Committee meetings, the ASBOG examination sufficiently tests entry-level competence, and the additional one-hour California test with its 30 multiple choice questions "does little to protect the public from any violation of any existing, or potential, standard of care by a practitioner." Sweeney also noted that the California-specific exam requirement causes inconvenience to examinees and increases costs for the Board. BGG decided to revisit the issue in two years, allowing time to gain more experience with the ASBOG test before committing to a course of action.

## FUTURE MEETINGS

**2001:** August 3 in Sacramento; September 28 in Sacramento; and December 7 in Sacramento.

**2002:** March 25 in Sacramento; July 12 in Sacramento; September 24 in Sacramento; December 5 in Sacramento.