

**MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS
BOARD OF DIRECTORS MEETING
September 13, 2003, Red Lion Colonial Inn, Helena, MT**

CALL TO ORDER: The MARLS Board of Directors' meeting was called to order by President Bryan Block September 13, 2003 at 10:00AM.

ROLL CALL

MARLS Board of Directors

President Bryan B. Block
President-elect Gerald A. Pavlick – present by phone
Vice-President Thomas M. Henesh – proxy Gerald Pavlick
Past President Linda S. Smith – proxy Bryan Block
Secretary/Treasurer James H. Burton
Northwest Chapter President Jane Eby – designated representative Joe Kauffman
Western Chapter President Toby Dumont – not present
South Central Chapter President Steven C. Anderson – designated representative Tom Trizinski
Central Chapter President Thomas E. Stark – not present
Southeast Chapter President – Neil A. Bratton – not present
North Central Chapter President – Stephen D. Babb
Southwest Chapter President – Erland Gendreau – not present
Northeast Chapter President – Troy Jensen

Committee Chairpersons

Board of Registration – Warren Latvala
Scholarship – Bill Weikel
Standards of Practice – Craig L. Brown
West Fed – Denis Applebury

Administrative Secretary – Kay McDonald

Determination of Quorum – a quorum present

Introduction of Guests: Jim Kembel

Agenda Revisions:

1. Recommendation for MARLS to submit a brief to the Supreme Court of MT - Latvala
2. Purchasing QuickBooks Accounting program for MARLS Secretary/Treasurer - Burton
3. MARLS representation to the MT Clerk & Recorder Conference - Jensen

Secretary/Treasurer Report – Jim Burton

September 12, 2003

Glacier Bank Checking	\$12,588.04
Whitefish Credit Union	
Legislation	\$1250.00
Reserve	\$25250.24
Savings	\$36013.32
Scholarship Accounts	
DA Davidson	\$47372.58
Whitefish Credit Union	<u>\$22768.34</u>
Total Scholarship Accounts	\$70140.92

2002-2003 year end totals:

Income	\$106266.28
Expenses	<u>\$99,839.49</u>
Net Income	\$6426.79

Secretary Treasurer report accepted by the BOD; seconded; QCMC

CHAPTER REPORTS

Northwest Chapter – Jane Eby

The Northwest Chapter held their annual picnic and golf scramble. One meeting was held since the June BOD meeting.

Western Chapter – Toby Dumont

The Western Chapter has held several meetings working on the upcoming MARLS conference, February 25-28, 2003 and they are working on the seminars and speakers and scheduling for the conference.

South Central Chapter - Steve Anderson

The South Central Chapter a meeting on July 13, 2003 attended by 11 members. Items discussed include nomination for Fellow Membership of Warren Latvala (passed by voice vote), scholarships, TrigStar, review of new laws from the last legislative session and proposed rule changes. The advertising of surveying by an engineer without a surveying license was also discussed. It was decided that we should bring the issue to the Board of Directors.

An open discussion of ethical and practical issues followed the business portion of the meeting and seemed to be enjoyed. This kind of interaction is informative and interesting and will probably be continued. Thanks to all who attended. I encourage those who haven't been to a meeting for a while to give it a try.

Central Chapter – Tom Stark – no report

Southeast Chapter – Skip Bratton

Our September meeting was well attended by members from Absarokee, Billings and Red Lodge. Various agenda items on the 9/13/03 MARLS Board of Directors meeting were discussed.

All agreed that James Hahn would be a good addition the Montana Board of Professional Engineers and Land Surveyors.

We discussed the merits of the new proposed corner recordation form. The group felt it would be beneficial to have a corner record on corners other than PLSS corners. We also agreed that Skip Bratton and Gerald Pavlick would attend the upcoming meeting of the Clerk and Recorders in Forsyth if MARLS would like them to.

Randy Thomas, Trig-Star Committee Chair, indicated that next years test should be available late this fall. Some schools participating in the program have mentioned that a test held in the fall would complete their fall semester trigonometry course nicely. Randy also mentioned that MARLS scholarships may become available to students not in a survey curriculum. It was agreed that this could benefit our profession in the long run.

There was good discussion on ARM 24.183.2202(3) which states “licensees having knowledge of any alleged violation of the laws and rules of professional conduct must report all such allegations to the Board”.

North Central Chapter –Stephen Babb – no meetings held

Southwest Chapter – Erland Gendreau

There has been no formal meetings in the chapter but several of us have had lunch meetings and went over the complaint in the eastern part of the state. We plan on holding a meeting as soon as the summer rush is over.

Northeast Chapter – Troy Jensen

We held a meeting September 9th and discussed the Montana CORS Station. This project has been in suspending status due to the summer workload. Olson will e-mail PowerPoint presentation to Mike Madler. We discussed the MARLS Health Insurance proposal, the MARLS Marketplace.

Discussion was held to the proposal to change the name of MARLS from Montana Association of Registered Land Surveyors to Montana Association of Licensed Land Surveyors. The Chapter voted to keep the name the same.

Due to the infancy of the chapter there will be no candidates for Outstanding Surveyor, Fellow Member or Honorary Member this year.

Troy mentioned that Debi Anderson was putting together articles for newspaper publication. If you're interested in contributing please contact Debi.

The soon to be implemented CCRF and procedure generated much discussion. As the implementation date id October 1st everyone needs to get familiar immediately. Troy will recommend to the Board that someone familiar with the new form and filing structure be sent to the County Clerk and Recorders conference in Forsythe.

The final item of discussion regarded monument boxes. Troy supplied an MDOT drawing and a discussion was held on selecting corners that could use a monument box and the chapter would do the installation as a Community Project. Troy and Russ will research the Richland County area for candidate corners.

Troy informed the membership that Richard Thom has retired from Interstate Engineering. Rich's career spanned 37+ years of surveying and he will be greatly missed.

COMMITTEE REPORTS

2004 Conference – Western Chapter

The 2004 Conference will be held in Missoula, February 25-28, 2004 at the Holiday Inn, Parkside. The theme is “Titles and Boundaries Past and Future”. The Wednesday seminar will be made up of two sessions. The morning session will feature Judge McClain, a local judge, Phil O'Connell and Don Snavely, two local attorneys will present the program. They will explain the dos and don'ts of courtroom testimony, cover how to prepare a defendant's case, cover how to prepare a plaintiff's case, demonstrate how a deposition is conducted, demonstrate how to testify at a deposition, show what the rules of evidence are, and show how to introduce evidence. The afternoon session will feature a different local judge but the same attorneys. Judge McClain will be conducting a mock trial. The trial will be conducted on an actual boundary dispute that was held in a district court. We will se if the original decision was correct. Phil O'Connell will be representing Dan McGee as the plaintiff and Don Snavely will be representing Dan Brien as the defendant. They will hold a mock trial on an actual case that has gone through the process. The rest of the conference has not yet been confirmed but if progressing very well.

Board of Registration - Warren Latvala

The Montana Board of Professional Engineers and Professional Land Surveyors held one meeting since the last MARLS meeting, on Jul 24th and 25th in Helena, Montana. The following items of interest to MARLS were discussed:

1. Dan McCauley gave a report on the progress (or lack thereof) by the Geomatics Advisory Committee. Despite thinking that the GAC had reached consensus on the major issues until the very end of meeting No. 10 on June 6, the issues raised at that time by the MDOT representative indicated there was, in fact, not a consensus. No additional progress was made at the July meeting, as a written list of proposed changes to afford consensus was not provided. Dan was hopefully optimistic that suggestions for resolution would be forthcoming at the next committee meeting.

2. The MARLS proposed changes to the ARM (24.183.1001) to bring those rules in conformance with the change in state statute (70-22) regarding the form of Corner Recordation forms were submitted to the Board. They took the proposed changes under advisement but did not take formal action. Such changes will require public notice and public hearings before they can be approved.

3. Regarding the Board's previous request that only formal complaints be issued instead of informal questions or letters advising the Board of possible violations, the Board reviewed ARM 24.183.2202(3) which states that licensees must report alleged violations to the Board but does not require filing of a formal complaint. The Board acknowledged that that rule does place a burden on licensees if such a report must be in the form of a formal complaint. They are reviewing the requirement to try to work out a suitable format for reporting possible violations so that they can be investigated without requiring a formal complaint from a licensee trying to comply with the referenced ARM.

4. With regard to item No. 5 of my last report, the Board's minutes from that meeting did not reflect that they would file their own complaint against the "corner locator" in the Bozeman area despite my (and at least one Board member's) personal notes stating they would file such a complaint. The Board's official minutes state that they would send a letter to the individual involved stating that locating corners for mortgage inspections are included in the practice of surveying.

5. With regard to item No. 6 of my last report, the BPELS did not receive a response from the MDT regarding the "Passing Zone" contract. The Board's attorney therefore sent the MDT a "Cease and Desist" letter regarding such contracts not including a requirement for the work to be performed by a PE or PLS.

6. New members of the BPELS, Vic Cundy (PE) and Jim Hahn (PLS) were introduced.

GIS/GPS Negotiated Rule Making Committee report – Warren Latvala & Dick Smith Report on Geomatics Advisory Committee meetings Nos. 11 and 12.

The 11th meeting of the GAC was held in Helena on July 2nd. The written description of MDT's one or two problem issues and proposed solutions requested of the MDT representative by Chairman Dan McCauley was not provided. As such the committee started at the beginning of the document and revisited each point to determine which the MDT considered a problem. The first of those issues was on page 2 of the page document, concerning geodetic control surveys. MDT is evidently using non-licensees to perform such surveys and believes that, so as the control data is accepted by NGS for publication, accuracy is verified by that agency and licensure should not be required. Proceeding through the document, it was apparent that MDT did not think any type of GPS survey should be restricted to surveyors except for property boundary surveys. Those exempt GPS surveys would include locations of fixed works of engineering. Other committee members tried to find a compromise position on such issues, starting from the compromises that the surveying representatives had already granted and working toward the MDT positions. Nothing was resolved at the meeting, I was asked to re-consider our previous compromise on restricting contracts for location of fixed works of engineering to licensees when any accuracy was "expressed or implied. The MDT representative was again asked to provide a written list of issues and language for proposed solutions.

The 12th meeting of the GAC was held in Helena on August 8th. At that meeting MDT had prepared a written description of the issues they considered problems, sans proposed solutions. The "one or two" issues had grown to fifteen comments addressing items on pages 2 through 12 of the 12 page document, the last one "reserving the right to get final comment by (MDT) others" before the document is finalized. The "passing zone" location issue was again brought up, MDT posed the issue as not of one of public safety but as a need to determine the amount of paint required for yellow "no passing" striping of the highways, but with one meter accuracy requirements. At that point it became clear to me that MDT wanted that accuracy for pay quantities for contracted striping (and that not considered "authoritative") rather than for determining how many cans of paint they needed. Accordingly, after discussing those issues from 10:00 a.m. to past 4:00 p.m. with no new agreements, I made a statement that the MDT had "sand-bagged" the entire committee and wanted to re-do the entire document, instead of having presented and argued their positions for the entire year as had the rest of the representatives. Chairman McCauley rightly pointed out that my statement was not helpful but was in fact a hindrance to achieving consensus. Not wanting to be a hindrance, I left the meeting.

The vast majority of the representatives of the various interested groups and agencies have truly worked to achieve a consensus, and made concessions to do so. On MARLS behalf, I have addressed each issue based on the outcome of previous issues. The present document is what I would have prepared on my own. I have agreed to concessions, on MARLS behalf, in large part based on concessions granted by the representatives of other groups. The resulting document reflects all of those concessions. It is not what I or we wanted but I believe we can live with it.

I'm sure the other groups feel the same. Accordingly, it is not a collection of individual agreements but is instead a single agreement that incorporates all that we have done.

At this point, if a change is sought on any single point, all subsequent points and agreements are null and void. The changes sought by MDT would therefore nullify the entire document. Despite it being impolitic to express, I believe that we (all the other committee members)

have been sandbagged. Starting over with the negotiations will take another year. Of all the various representatives the surveyor representatives are likely the only ones who are volunteering time off from their own businesses or taking leave time from their employment. That situation, combined with the distances we are driving compared to all but one of the other representatives, are ample cause to acknowledge that we can be “out-lasted” by a representative attending on state time on behalf of a stated agency based in Helena.

The question of whether or not the committee will decide to address MDT’s concerns at this point, and basically start over on the negotiations, will be decided at a meeting within the next two weeks, the date not as yet confirmed.

I do not believe it is in MARLS, NSPS, their designated representatives or other regularly attending surveyors’ interests to start over. If committee does decide to start over I would recommend that MARLS cease participation. If the committee does decide to start over and MARLS decides to continue participation, I would request that MARLS appoint another representative in my place.

Stephen Babb moved that Warren Latvala’s report on the Geomatics Advisory Committee (Negotiated Rule Process) with the report’s recommendation to refuse to begin over re-writing the current draft agreement, be accepted as MARLS position. If the committee allows MDT to continue reversing the direction of the process, then MARLS will withdraw from participation and not continue in the negotiated rule process. Seconded by James Burton; discussion; QCMC.

Continuing Education - Debi Anderson – no report

CPC Evaluation – Rick Goacher

There is a position on the CPC Evaluation committee open. Please submit your interest to be on that committee to Rick Goacher.

CPC application approvals:

GPS Users Group –(Coordinates, Projections and Software) 4 PDHs

National Business Institute (Practical Guide to Zoning and Land Use Law in Montana) 6 PDHs

PESI (MT Law of Encumbrance: Easements and Rights of Way) – submitted to committee 9/16/03

Conference Speaker submitted to committee 9/16/03

Executive/Budget Committee – Linda Smith

The executive committee did not have any meetings. We did agree upon a purpose, duties and membership. The purpose of the committee is to provide continuity within the leadership of MARLS through information sharing; continually monitor the MARLS budget and spending and administer the secretary’s contract. The membership of the committee consists of the President, President-elect, Vice President, Secretary-Treasurer and two to three members from the general membership yet to be determined.

Historical - Don Ebbutt – no report

ITWG & MGIC – Ken Jenkins

I attended the August 17, 2003 ITWG meeting at Lubrecht Forest. A quorum was not present, and election of new officers was discussed. It was suggested that nominations could be provided via e-mail. There is also discussion of the changing role of ITWG and of perhaps merger with other IT groups.

The September MGIC meeting and strategic planning session was also discussed. Several suggestions were made along the lines of MGIC being a more effective advocate of GIS efforts, specifically toward opening lines of communication with executive State and Federal offices. Also discussed was how MGIC might be more effective in securing funds for ongoing GIS layer development and maintenance.

It was also noted that MGIC asked for a group of technical people to meet and discuss Metadata as related to the efforts of the Geomatics Committee and the ongoing rule making sessions with the Board of PE and LS. It was suggested that surveyors who are familiar with the discussion should be part of the group.

The quarterly MGIC meeting and subsequent strategic planning session was held at the UM facility on Sourdough Island at Salmon Lake, September 4 and 4, 2003. The executive order and MGIC membership makeup was discussed. MARLS President or designee was permanently added to the MGIC membership, and it was approved to add two members of the Montana Legislative body, one from each party.

A progress report and demonstration on the National Map was given. The National Map will update the USGS Quads and will utilize local GIS mapping data to ultimately provide near real time updated maps on-line, with many different layer themes available. It was a very interesting presentation, and a good example of a user-friendly GIS end product.

The Strategic Planning Session on September 5 sought to help MGIC identify direction and assignments for development and implementation of a strategic plan. The agreed upon goals of the strategic plan focused on education and outreach as well as funding of GIS development and maintenance. One likely inclusion in the strategic plan would be development of legislation for the purpose of funding a portion of the Montana GIS effort. Details will be worked out, but it is likely the legislation would propose a document-recording fee, collected at the County level.

Many surveyors, realtors and others utilize GIS on a daily basis for research, project estimating and planning, PLSS search areas, ownership information, . . . Continued development of the GIS layers as well as maintenance and enhancement of existing layers is vital to business in Montana, and when the details are presented, it is hoped that MARLS and other user organizations would support the funding effort.

Much useful GIS data for surveyors is available at <http://nris.state.mt.us>.

Legislation - Rick Gustine

Jim Kembel discussed with the BOD various legislative issues and the need for MARLS involvement with Title 76 Chapter 3. October 30th will be the initial meeting for this committee.

Membership - Kay McDonald

Membership dues are still coming in, dues were due July 1st with second notices being sent out to the membership in October.

Newsletter - Ron Milam – no report

NSPS - Dick Smith – no report

Professional License Oversight - Dick Smith – no report

Scholarship - Bill Weikel

See Scholarships under old business.

Special Awards – Linda Smith

Linda needs to submit the MARLS person receiving “Outstanding Surveyor Service Award” to NSPS for “National Survey Excellence Award”, also suggested to contact Dave Dorsett regarding the NSPS “Student Project Award”. Kay will get these award applications to Linda.

Standards of Practice – Craig Brown

ALTERNATIVE MARLS MEMBERSHIP

In researching the membership requirements and fees of neighboring states, I found a consistent pattern with the definitions and methods of fee determination. Most other states in the region classify an Associate Member as anyone not licensed in that state but benefiting from the land surveying profession. This includes an employee working under the supervision of a Land Surveyor, an LSI, or a government employee not licensed in the state.

Some states, e.g., Nebraska, have an Affiliate Member which is a person licensed in another state or licensed in another professional field such as a PE, Realtor, Abstractor, Attorney, etc., where land surveying of interest to their professions. Wyoming refers to this type of membership as a Special Membership.

In each of the states researched, Associate or Affiliate Memberships were non-voting and dues were generally around 50% those of an Active Member.

Student Memberships were considerably less, usually \$15 – \$20, and likewise, non-voting.

Neighboring states have varying definitions and varying fee amounts for their membership categories. In most cases, a category could be used for anyone desiring to become a member. In all cases, only Active, licensed members have voting privileges.

State	Type	Fee based on Active	
Nevada	Associate	50%	All non-voting
Nebraska	Associate	50%	
	Affiliate	25%	
Utah	Associate	50%	Non-Reg or Gov’t employee
	Affiliate	33%	
Wyoming	Associate	67%	
	Special	67%	
Oregon	Associate	50%	
Idaho	Associate	50%	
Washington	Associate	50%	
California	Associate	50%	
Colorado	Associate	67%	

State membership information is available from the MARLS website if anyone is interested in further information regarding memberships.

Chapters please discuss this at the chapter level and report back to the BOD at the December meeting.

Trig Star & NSPS CST State Coordinator - Randy Thomas

The Trig-Star committee determined the recipients of the 2003 Richard E. Lomax National Trig-Star Scholarships and Teaching Excellence Awards when they met on July 26, 2003. There were twenty-nine state winners submitted this year. The awards will be presented in a special ceremony at the NSPS Board of Governors meeting during the American Congress on Surveying and Mapping (ACSM) annual conference in Nashville, Tennessee, April 16 to 21, 2004.

The Richard E. Lomax National Trig-Star Scholarships are awarded as follows:

- First Place: Mason Victors, Chugiak High School, Chugiak, Alaska
- Second Place: Christopher Dow, Battle Ground High School, Battle Ground, Washington
- Third Place: David Liu, Jasper High School, Plano, Texas

The Richard E. Lomax National Teaching Excellence Awards are presented as follows:

First Place: Mr. Goniewiecha, Chugiak High School, Chugiak, Alaska
Second Place: Ms. Cindy Jager, Battle Ground High School, Battle Ground, Washington
Third Place: Ms. Jayne Fischer, Jasper High School, Plano, Texas

This year the committee listed the remaining competitors in their order of finish. Erwin Dunbar, Montana's representative, finished fourteenth out of twenty-nine.

Now is the time to start planning for the 2004 Montana Trig-Star program. I would welcome all ideas or suggestions on any matter concerning Trig-Star, anything to make it better.

If there are new contacts in any chapters, I would appreciate those names, phone numbers and addresses, as soon as possible.

West Fed - Dick Smith & Denis Applebury

WestFed held its spring meeting in Reno Nevada in June of 2003. We held an informal meeting on June 20th and a formal meeting on the 21st. It was encouraging to see the attendance. There were only three people missing from the meeting.

The first topic of interest was how the conference went in February. It was reported that it was a success from attendance as well as financially. The conference had over 400 attendees. The scholarship auction netted over \$36,000 with almost \$15,000 coming to WestFed. We also received \$16,000 for our share of the proceeds from the conference. A job well done by Oregon, Washington and WestFed for their efforts.

WestFed awarded \$7,200 in scholarship awards during the past year. WestFed still has the policy of giving scholarships to students attending a 4-year degree program. They feel the individual states can help the local 2-year degree programs in their state.

The following is a paraphrased version of all of the state reports.

Alaska reports that they are looking at the legality of the use of GPS for retracements and dependent resurveys. They are working hard on getting required continuing education however politics got involved so they will try again next legislative session. They were able to fend off a bill requiring survey standards written by someone who didn't understand surveying and they fought against an adverse possession bill.

Arizona held their annual conference in conjunction with ACSM. They are also working on a code of ethics to be added to their charter. They are also holding workshops that are state specific for those taking the state PLS exam. Finally they are like us in that they are dealing with GIS and the GIS community.

California has done a neat thing for their membership. They have contracted with Office Depot and Quest to get discounts on office supplies, hotels, car rentals and airfare. They are active with the Trig*Star program and award very nice prizes. Their web page has a chat room where anyone can get on line and discuss the issues. They are looking at a proposed bill that would allow the recording of survey maps of deceased surveyors and they are attempting to eliminate the temporary licensure of Land Surveyors.

Colorado is busy working with their legislature concerning their Sunset Review process. Part of the review process is the continuing education requirements, determining what the name of the state board is to be, establishing penalties for practicing without a license and determining the qualifications to sit for the SI and PLS exams. In other words a lot of work for those who are involved. Idaho has finally decided to go to a single zone projection for their state plane co-ordinate system. They also reported that they have been having problems with GPS frequencies interfering with local voice communications. The FCC rule states that voice transmissions have priority over data transmissions, they are working to overcome the problem.

Nevada is attempting to get a four-year degree program in place however they are having problems. They are actively working with their legislature on several issues including the experience requirements for licensure and several bills dealing with water rights, a big issue with surveyors in Nevada.

New Mexico is compiling a speaker's list to help those putting on conferences in the state. Their executive secretary is gone so they are looking for another one and oddly enough their new governor fired all of the state board of registration and appointed his own choices.

Oregon's four-year degree program is still in trouble. Budget problem affect all schools and especially those programs with low enrollment. The Oregon surveyors are working hard to get a lien law passed but they are butting heads with the mortgage bankers association, go figure why they would care. They have also launched a program sponsoring public service announcements on public broadcasting to promote the surveying profession across the state.

Washington is still trying to get required continuing education. They fell victim to last minute politics so they will try again next year. They are also working on defining GIS work and surveying definitions. They are actively promoting the Tri*Star program. Wyoming is working on monumenting their center of population position. Their state board of registration is considering hiring a full time investigator.

WestFed is continuing to work closely with ACSM to help promote the surveying profession in America. They are perusing the USGS in an effort to save the field data that they have in their records. WestFed is opposed to the Express Map and tracking that problem along with NSPS. They are urging the NSPS Governors to work together to promote the surveying needs of the western states and finally they are attempting to contact the BLM to encourage them to reinstate the micro filming of the GLO notes.

The next meeting will be held at Albuquerque New Mexico on October 25th, 2003. It is my hope that Dick can make it to the meeting because I will not be able to attend.

OLD BUSINESS

MARLS Group Health Insurance – Jonathon Roen & John Cicon

BC/BS questionnaire were mailed to the MARLS membership the first week of September.

MARLS Banner

Don Ebbutt, Bill Weikel and Jane Eby will be attending the Historical Society Conference in Michigan next week and present on behalf of Montana's Professional Surveyors Association to the foundation a duplicate of our association's banner to be proudly displayed at the museum with those of the other associations.

Unlicensed Surveyor update – Troy Jensen

Correspondence from the Montana Department of Labor and Industry has logged in the MARLS complaint as#2004-01 PEL on August 7th, 2003. This will be forwarded to the respondents for a response. Once a response is received the BOARD will determine if an investigation is necessary. At that point we will be contacted and a screening panel will review evidence etc. This could take six months. We are advised to seek legal counsel if other remedies are available.

Scholarships & Trig-Star Scholarships – Bill Weikel

The scholarship committee has reviewed applications for second year student scholarships and has recommendations prepared to present to the Board at this meeting. We have also discussed and prepared recommendations for first year scholarships and for scholarships and for scholarships attached to the Trig Star Program. Bill recommended to the BOD the following MARLS.

The BOD discussed the scholarship program and made suggestions to the committee regarding additions and changes to the scholarship applications and program. The BOD tabled the First Year Student and the Trig Star scholarship program presentation. The committee will review these programs and present this to the BOD at the December meeting.

Scholarships for 2003:

Kris Caister - \$1250 Tiny Tillotson
Michael Cochran - \$1250 Tiny Tillotson
Ron Schlagenhauser - \$1250.00 Tiny Tillotson
Jerald Sabol - \$1000.00 Roy Bandy
Bret Walchuk - \$1000 Roy Bandy

Warren Latvala moved to increase the 2003 MARLS Scholarship total to \$5750.00; three Tiny Tillotson Scholarships of \$1250.00 apiece; two Roy Bandy Scholarships of \$1000 apiece issued as stated above; Seconded by Stephen Babb; discussion; QCMC.

Travel Expense submittals:

Dick Smith to attend West Fed Meeting, Albuquerque, New Mexico – Estimate \$750 – Dennis Applebury moved to approve; seconded by Joe Kauffman; QCMC.

MARLS Representative (Bryan Block agreed to attend for Dick Smith) to attend NSPS meeting in Gaithersburg, Maryland October 3-6, 2003 (Dick cannot attend) – Estimated expense of at least \$900 – James Burton moved to approve; seconded by Tom Trizinki; QCMC

Appointment of MT Board of PE & LS position (MARLS submitted James Hahn to Governor Martz) – Bryan Block

The BOD was informed by Denis Applebury that James Hahn has been appointed to the MT Board of PE & LS.

“MARLS Outstanding Surveyor Award” nominations

Chapters please submit to MARLS BOD by November 30, 2003. The chapters may obtain the form on the website or through Kay.

Nominations for Fellow or Honorary membership 2004

The South Central Chapter submitted the nomination of Warren Latvala for a MARLS fellow membership. *They were asked to fill out the nomination form to submit to the BOD by the December meeting.*

Life membership requests submitted to BOD for approval at Sept. meeting – Kay McDonald

Ronald W. Allen – BOD moved to accept life membership request; seconded; QCMC.

James Osman submitted request but does not qualify for life membership; not a licensed land surveyor.

Document Standards Resolution final version update – Linda Smith – no report

Certified Corner Recordation – Sub Chapter 10 – Steve Anderson

I am concerned that there may be many questions raised at the Clerk & Records Conference. I suggest that we think about having someone for them to call at a pre-arranged time to answer questions if necessary. If we handle this poorly they may end up being hostile testifiers at upcoming public hearings. We should also be willing to listen to what they have to say. I will contact Janice

Hoppes on about Friday, 8/29, inform her of our handout, find out how many copies and can ask her about some kind of teleconference if you like. Maybe she should see this draft.

Denis Applebury - The BPELS discussed the changes that will be required in the ARM to comply with the corner record in lieu of a certificate of survey resulting from SB406. The Board requested that MARLS provide suggestions and recommendations. (See ARM 24.183.1001)

The BOD discussed CCRF the following motion was made:

Jerald Pavlick moved to accept the draft Steve Anderson submitted of the CCRF, description of Corner Record Indexes and a copy of SB406 and allow these to be taken to the Clerk & Recorders Conference for Gerald Pavlick, Skip Bratton and Troy Jensen to attend on behalf of MARLS. MARLS will submit this to the MT Board of PE & LS for implementing into the Administrative Rules these laws passed by SB 406. Seconded by Denis Applebury; QCMC.

CORNER RECORD INDEXES

This handout was prepared in September of 2003 by the Montana Association of Registered Land Surveyors (MARLS) for use by the Montana Association of Clerk and Recorders.

CHANGE IN STATUTES: The last Montana Legislative Session passed a MARLS sponsored bill (SB 406, attached) which provides for alternative uses for the Corner Record forms and changes the way in which some Corner Records are to be indexed. MARLS has also submitted an amended Corner Record form (attached) and amendments to the Administrative Rules to the Board of Professional Engineers and Land Surveyors (BPELS) for their review and approval.

The purpose of the change is to allow for a Corner Record to be used in lieu of a Certificate of Survey for some simple retracement surveys of parcels which already have a **survey of record**. This would primarily involve corner monument replacements and the form could not be used to transfer title. While surveyors have always been able to file a Corner Record for any corner, there has been no reliable or consistent manner in indexing non-PLSS (Public Land Survey System) corners.

UNDER THE NEW SYSTEM, the existing PLSS corner index will remain as is. A second **Survey of Record** Index will be needed. The **Survey of Record** Index will have a separate list of Corner Records for each township. As envisioned by MARLS, that list will be in the order of:

1. Section,
2. Under each section there will be:
 - (a) Lists of surveys recorded before the C.O.S. numbering system was started (e.g. Deed Book/Page, Recorder Plat No., etc.)
 - (b) A list of Subdivision Plats by name or number
 - (c) A list of Certificates of Survey by number
3. Under each of a, b & c, above, there will be a list by parcel or lot number.

Identification of the corner itself will be made on the sketch (hence the need for "show enough information...") and will NOT be indexed. The lists of surveys and plats (a, b & c) may vary in each county depending upon the way the surveys and plats were filed or recorded in the past. If a book-page or document # system already exists, the Clerk and Recorder could utilize these to index the Corner Record forms. The index could be in spreadsheet or database software that would be easily added to as needed. It will be the responsibility of the surveyor to know and understand the indexing system in the county he or she is filing in.

A closed circle should be put in the section diagram no matter which index is being used. For non-PLSS corners the approximate location in the section (not necessarily on grid lines) should be shown as a visual aid if known.

The administrative rule proposed to be changed that affects indexes is as follows:

24.183.1001 (2) *The information to be included in a corner record is as follows:*

.... (f) *Cross index and section diagram: The ~~cross~~ index information at the bottom of the page should be completed by the surveyor. Only the single township and range index where the corner is filed or, if applicable, the Lot/Parcel number and Plat/Survey designation shall be completed. The lower righthand corner is a corner location diagram and should have the pertinent section filled in at the top and a closed circle indicating the appropriate corner position in the section filled in. This is intended to be an aid in searching the "record" once it has been filed.*

THE NEW LAW WILL GO INTO EFFECT ON OCTOBER 1st of 2003. One of MARLS' concerns is that some of the Corner Records filed before a new index is in place will be extremely difficult to research in the future. We encourage you to help us keep

that from happening. If you have questions about any of this, please contact your local MARLS chapter president. Their names and phone numbers are listed below:

Northwest Chapter: Jane Eby in Kalispell 755.5329
Western Chapter: Toby Dumont in Missoula 728.1880
South Central Chapter: Steven Anderson in Bozeman 586.0277
Central Chapter: Thomas E. Stark in Helena 443.3758
Southeast Chapter: Neil A. (Skip) Bratton in Red Lodge 446.1860
North Central Chapter: Stephen K. Babb in Great Falls 268.1188
Southwest Chapter: Erland Gendreau in Butte 683.9555
Northeast Chapter: Troy Jensen in Sidney 433.5617

THANK YOU.

Steve Anderson, South-Central Chapter President

Attachments:

Senate Bill 406

Corner Record form as submitted by MARLS to the BPELS

PAC NW Econ Region update – Tom Henesh – no report

TSS complimentary recipient request from BOD – none this meeting

MARLS replacing “REGISTERED LAND SURVEYOR” with “LICENSED LAND SURVEYOR”

This needs to be presented to the General Membership at the conference. Application forms, Treasure State Surveyor, Bylaws, etc. have “Registered” – should these be changed to “Licensed”. BOD asked Kay to do a search in MARLS forms, Bylaws, etc. to see where “Registered Land Surveyor” should be replaced with “Licensed Land Surveyor” or “Professional Land Surveyor”.

“Surveying and the Public” newspaper articles update – Debi Anderson – no report

Denis Applebury said Debi might want to look into PBS for an avenue as Oregon has launched a program sponsoring public service announcements on public broadcasting to promote the surveying profession across the state.

NEW BUSINESS

Correspondence

Bryan thanked Stephen Babb for making the frame for the “Breakfast on the Bighorn” print that Bryan presented to the Alberta Land Surveyors Association at their spring conference. The President of the Alberta Association will be attending our conference in February.

Warren asked that the MARLS BOD keep Dave Bowman in our thoughts and prayers as he has cancer. The South Central Chapter is setting up a picnic and gathering to honor Dave, October 4th from 11AM until 3PM, as reported by Steve Anderson below. Dave has equipment for sale; please contact Warren if you are interested.

RE: Upcoming Dave Bowman Picnic (and a note in a bottle) – Steve Anderson, South Central Chapter President

C. M. Thorpe was Gallatin County Surveyor or City of Bozeman Surveyor off and on from the late 1880s until the mid 1940s. His field notes were known to sometimes contain witticisms. A whiskey bottle was left as a memorial on one of his winter surveys with a comment in his notes something like: "Left whiskey bottle over pipe to keep it warm in this cold weather." That bottle was found during a modern retracement survey, though I can't tell you by whom.

Dave Bowman bought the South-Central Chapter a bottle of whiskey to toast him with. He requested that the bottle be buried as an accessory or memorial to the "Initial Point of Virginia City" during our picnic in Dave's honor on October 4, 2003. The picnic will be held at the fishing ponds at the north end of town from 11 A.M. until 3 P.M.

Several chapter members have put up prize money for a contest to determine the most clever and appropriate note that we can put in the bottle. The note should display the same spirit as C. M. Thorpe and be brought in person (early in the day) to the picnic where the entries will be judged by chapter officers. The prize money (presently \$60) will be given out at the picnic. Anyone can enter, but they must be present to win. Please keep your entry brief since at least one of the officers (me) is a slow reader. We encourage you and your family to attend and help us to honor Dave whether or not you enter this contest.

Landmark Enterprises (Paul Como, owner) request to republish Tiny Tillotson Book

The Board discussed this request and the MARLS BOD did look into republishing the Tiny Tillotson book in recent years and asked Kay to contact Greg Martinsen in reference to this request and report back to the December meeting.

Request from MT Board of PE & LS – MARLS thoughts regarding the following three items:

1. An issue about licensed people having to report alleged violations to the board. ARM 24.183.2202(3) states "Licensees having knowledge of any alleged violation of the laws and rules of professional conduct **must** report all such allegations to the Board". Interest to see how the profession views such a requirement and would you have any suggestions on how to resolve a potential problem? – BOD discussion – Denis stated that the Board says that person would need a complaint filed – but it was brought up that

you don't have to turn in a complaint according to this section, as the rules state this now, all you have to do is report it. So there is a conflict in the law and this section of the ARM. Denis will keep the BOD informed of the Board's decision regarding this issue. This section has to be fixed, do we leave the word "MUST" report all such alleged allegations. This would be according to ARM "file a complaint". "Must" is a mandatory word and "may" or "in your professional opinion" could be used in its place. The MARLS BOD directed Denis to review this change for the wording of "Must". Chapters please discuss this philosophy at the chapter meetings.

2. The second issue deals with reduced seal sizes such as Cadd drawings and the use of electric signatures? This is an interesting question in this day of computers. – BOD discussion with suggestions given to Denis. People are transferring electronically and MT Board does not allow this. This needs to be addressed as this is future technology already in use and not allowed.

3. The last question is how would the MARLS BOD view transferring the Montana PLS exam to an electronic computer exam conducted and proctored by a qualified computer exam contractor? BOD – discussion – NCEES test is given this way and would make it much easier for those to take this exam across five proctor sites across Montana, more time to take the test, and the BOD agreed this could be a beneficial possibility for MT PLS exams and would save costs for the Board.

Recommendation that MARLS submit a brief to the Montana Supreme Court in regard to Appeal of Montana Eighth Judicial District Court, Cascade County: Causes No. CDV-00-804, CDV-99-1152, and ADV-00-742. – Submitted by Warren Latvala

Three specific issues arose during the trying of the referenced cases that are cause for considerable concern to professional land surveyors. Those issues are addressed below.

1. Is evaluation of the cause of movement of riparian boundaries a part of a surveyor's duties?

Riparian boundaries are by definition "ambulatory". Such boundaries are frequently encountered by surveyors. Over time those boundaries can move due to water action in the form of accretion and erosion, or in the form of avulsion.

The Bureau of Land Management's *Manual of Surveying Instructions* Sections 7-69 through 7-72 define accretions, erosion and avulsion. Section 7-73 states "An avulsive change cannot be assumed to have occurred without positive evidence. When no such showing can be made, it must be presumed that the changes have been caused by gradual erosion and accretion." Section 7-74 provides guidance in differentiating between accretion/erosion and avulsion, and Sections 7-75 and 7-76 identify how boundaries do or do not change dependent upon whether or not the water's action was avulsive in nature.

Numerous continuing education courses regarding riparian boundaries, including differentiating between accretion/erosion and avulsion, are available to surveyors willing to expend the time and costs of attendance. They address issues from the coring and dating of trees to locating abandoned channels relative to the locations of the original surveyed channel and considering soil and vegetation types within the area of concern. Careful review of the meander notes of original surveys also provides information that may shed light on the previous nature of a riparian boundary including soil types, bank height, ground cover, water depth and etc, that may help explain subsequent movement. Line notes of the original surveys may also note sloughs, overflow channels that can provide similar explanations of the causes of subsequent water actions.

In the above referenced cases, one and possibly two surveyors testified that surveyors are not competent to evaluate accretion/erosion versus avulsive action of water on riparian boundaries. One surveyor further testified that surveyors should not attempt to establish such boundaries, that being up to the courts. As a result of that testimony, a third surveyor was not permitted to testify as to what physical evidence was noted and considered prior to completing a survey and preparing a Certificate of Survey showing his opinion of the current location of the affected boundaries.

We acknowledge and agree that any survey performed by a professional land surveyor is only his/her professional opinion of the location of boundaries and is subject to review by the courts. We disagree as to whether performing such surveys is an appropriate function for professional land surveyors. We further hold that evaluation of evidence of accretion and erosion versus avulsion is necessary to locating the current riparian boundaries. Surveyors may seek the opinion of other professionals in the physical sciences prior to completing such surveys but doing so does not reflect a lack of competence, but instead reflects a cautionary professional approach to what may be a contentious situation.

2. What consideration should private professional land surveyors give to the government *Manual of Surveying Instructions*?

The various editions of the *Manual of Surveying Instructions* were prepared to guide government surveyors in their surveys of public lands. The instructions and methods of performing surveys, retracements and dependent resurveys included in those *Manuals* are considered the "Bible" for performing modern surveys except in cases where they differ from current statutes or Appellate Court decisions.

In the referenced cases, a surveyor was asked if the *Manual* had been adopted by statute in the State of Montana. The surveyor could not state that the *Manual* had in fact been adopted by statute, leaving the impression that the *Manual* was completely without authority for any survey except of government lands.

The authority a surveyor should afford the *Manual of Surveying Instructions* is critical to proper performance of our work. We definitely need guidance from the court on this matter, or any and all of our work based on the *Manual* is subject to challenge on those grounds alone.

Tom Trizinski presented this to the BOD and the BOD asked that we table until the December meeting so copies of the above can be distributed to the BOD and chapters for their review.

Purchasing QuickBooks Accounting program for MARLS Secretary/Treasurer – Jim Burton

Jim requested the purchase of the QuickBooks Accounting Program for Jim Burton, Secretary/Treasurer for use in reviewing and obtaining financial reports from Kay. This will significantly help him to review the financial reports eliminating a long paper trail by being able to lookup, review with the financial program for MARLS Secretary/Treasurer duties and reports for MARLS.

Denis Applebury moved to purchase the QuickBooks 2003 accounting program for Jim Burton, Secretary/Treasurer for use in reviewing and obtaining financial reports from Kay disbursed under Misc. Unforeseen Expenses; seconded by Joe Kauffman; QCMC.

Good of the Order:

Denis discussed the process of evaluations of complaints with the BOD.

BOD discussed occasional sales and the process, each counties guidelines.

A card is being sent to David Bowman signed by the BOD at this meeting.

New hats, denim shirts, polo shirts are available for sale; please pass this along to your chapter members.

MARLS BOD meeting adjourned at 4:35PM.

Respectively submitted,

Kay McDonald

Administrative Secretary

Sent to BOD and Committee Chairs for corrections September 26, 2003.

Corrections notified to Kay by October 4, 2003.

APPROVED BY:

James Burton

MARLS SECRETARY/TREASURER

DATE: _____