



**IDAHO BOARD OF ENVIRONMENTAL QUALITY  
MINUTES**

**JULY 25, 2000**

The Board of Environmental Quality convened at 1:00 p.m. at:

Idaho Department of Environmental Quality  
1410 North Hilton, Conference Room A  
Boise, Idaho

**AGENDA ITEM NO. 1            ROLL CALL**

**BOARD MEMBERS PRESENT:**

Paul C. Agidius, Member  
Marti Calabretta, Member  
Donald J. Chisholm, Member and Acting Chairman  
Dr. Joan Cloonan, Member  
Dr. J. Randy MacMillan, Member  
Senator Marguerite McLaughlin, Member  
Nick Purdy, Member

**BOARD MEMBERS ABSENT:**

None.

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:**

C. Stephen Allred, Director  
Jon Sandoval, Chief of Staff  
Debra L. Cline, Administrative Assistant to the Board  
Doug Conde, Deputy Attorney General, DEQ  
Bill Gale, Administrator, Technical Services Division  
Paula Gradwohl, Paralegal/rules coordinator  
Bill Jerrel, Loan Programs Manager  
Larry Koenig, Administrator, Planning & Special Projects Division  
Lisa Kronberg, Deputy Attorney General, DEQ  
David Mabe, Administrator, Water Quality Division  
Mike McIntyre, Surface Water Program Manager

**OTHERS PRESENT:**

Hal Franck, Silver Sage Water  
Bob Frick Associated Press  
Jane Gorsuch, Intermountain Forest Assn.  
J. Dallas Gudgell, Idaho Conservation League  
Byron Keely, Local Highway Technical Assistance Council  
Brent Olmstead, IACI  
Kent Reetz, private citizen  
Lynn Tominaga, Idaho Water Users Association  
Tom Turco, Central District Health

Don Chisholm, Acting Chairman, amended the agenda to add item **No. 5.a. Request to Extend the Comment Period for Outstanding Resource Water Nominations, by Shoshone County and Benewah County.**

**AGENDA ITEM NO. 2            DIRECTOR'S REPORT**

Director Steve Allred welcomed the new Board members and stated he looked forward to a productive working relationship with the Board.

**AGENDA ITEM NO. 3            ELECTION OF OFFICERS**

Don Chisholm opened nominations for chairman.

- **MOTION:** Dr. Randy MacMillan nominated Don Chisholm as chairman of the Board.  
**SECOND:** Nick Purdy
  
- **MOTION:** Senator Marguerite McLaughlin nominated Marti Calabretta as chairman of the Board.  
**SECOND:** Dr. Joan Cloonan  
**ROLL CALL VOTE (ON CHISHOLM FOR CHAIR):** Agidius: aye; Calabretta: nay; Chisholm: aye; Cloonan: nay; MacMillan: aye; McLaughlin: nay; Purdy: aye.  
**MOTION PASSED: 4 AYES; 3 NAYS.**

Nominations were opened for the position of vice-chairman.

- **MOTION:** Dr. Randy MacMillan nominated Paul Agidius as vice-chairman of the Board. No other nominations were received. He further moved Mr. Agidius be declared elected vice-chairman by acclamation.  
**SECOND:** Nick Purdy  
**VOICE VOTE:** Motion passed unanimously. 7 ayes; 0 nays.

Nominations were opened for secretary of the Board.

- **MOTION:** Nick Purdy nominated Marti Calabretta as secretary of the Board.  
**SECOND:** Paul Agidius  
**MOTION:** Paul Agidius moved that as no other nominations were received, Ms. Calabretta be declared elected secretary by acclamation.  
**SECOND:** Dr. Joan Cloonan  
**VOICE VOTE:** Motion passed unanimously. 7 ayes; 0 nays.

Board officers for 2000 will be:

Don Chisholm, Chairman  
Paul Agidius, Vice-chairman  
Marti Calabretta, Secretary

Chairman Don Chisholm asked for comments from the Board members regarding establishing a public comment period on the agenda, not to exceed thirty minutes, at the beginning of each Board meeting to allow the public to address the Board on any topics of interest (not already specifically shown as agenda items). This practice was previously established by the Board of Health and Welfare to give the people of the state an opportunity to address the Board freely. Paul Agidius favored the idea and stated he supported an open process that allowed the general public the ability to speak to the Board. The Board members concurred unanimously.

**AGENDA ITEM NO. 4**      **RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES, DOCKET NO. 58-0122-0001 (TEMPORARY RULE)**

Bill Jerrel, Loan Program Manager, presented the proposed rules. These rules implement the provisions of the 2000 legislation enacted under Senate Bill 1387 (§§39-3624 – 39-3627, Idaho Code) which gives DEQ authority to provide grants to public drinking water systems in Idaho. The drinking water grant program will provide guidance for issuance of grants to eligible public drinking water systems in Idaho to do planning for drinking water construction projects. Negotiated rulemaking was conducted with representatives of the Idaho Water Users Association, the Water Utilities Council, Consulting Engineers of Idaho, and the Drinking Water Advisory Committee. The Governor found that temporary adoption of the rule is appropriate because this rulemaking confers a benefit to the public. The new grant program gives drinking water systems the financial help they need to begin planning work and move toward design and construction using Idaho's state revolving fund (SRF) loans. DEQ estimates that adopting this rule as a temporary rule will shorten the time by which grants are available by three to six months.

- **MOTION:** Marti Calabretta moved the Board adopt, as temporary rules, the Rules for Administration of Planning Grants for Public Drinking Water Facilities as presented under Docket No. 58-0122-0001, with an effective date of July 26, 2000.  
**SECOND:** Dr. Randy MacMillan  
**DISCUSSION:** Nick Purdy declared a conflict of interest on this matter. He is a stockholder in a company that owns a community water system which has applied for a loan and therefore will abstain from voting. Marti Calabretta commented that a bottleneck obviously

exists for water systems to get the help they need to get a viable loan application, and these rules will help resolve that problem. Some refinements to the rules may be needed, but since it is a temporary rule, those changes can be made in the process. Senator Marguerite McLaughlin questioned the technical changes sent out on page eight and how they will be handled. An error was noted in paragraph 11, line 2, the word "in" was omitted. Chairman Chisholm stressed the Board's concern that the rules be presented technically correct and error free so there will be no confusion or misinterpretation by the federal government, legislature or other entities dealing with the rules. Director Allred assured the technical corrections noted would be corrected.

**AMENDMENT TO MOTION:** Senator Marguerite McLaughlin moved the Board direct staff to make the technical and typographical corrections as discussed.

**SECOND:** Paul Agidius

**VOICE VOTE ON AMENDMENT:** Motion passed. 6 ayes; 0 nays; 1 Abstention (Purdy).

**VOICE VOTE:** Motion passed. 6 ayes; 0 nays; 1 Abstention (Purdy).

**AGENDA ITEM NO. 5:            OUTSTANDING RESOURCE WATER NOMINATIONS - UPDATE**

Michael McIntyre, Program Manager for Surface Water, Water Quality Division, provided a status report on the Outstanding Resource Water Nominations (ORWs) filed with the Board of Health and Welfare in April 2000 by the Idaho Conservation League, Idaho Rivers United, and the Greater Yellowstone Coalition. In June, the Board of Health and Welfare acted to begin the public notice process on the entire package of nominated segments. The public notice period started on July 6 and runs through August 21, 2000 for all five nominated watersheds. Public notice is being given in newspapers (a list of all newspapers was supplied to the Board) and a 3" x 6" advertisement will also be run on August 3 & 4 in those same newspapers. Information on the ORWs is also posted on DEQ's web page on the Internet including the public notice, the complete nominations, and maps. The public may comment via the Internet, e-mail, fax, or in writing.

DEQ is also in the process of compiling a list of water quality information for the nominated segments. A preliminary list of information was provided to the Board in their meeting materials. Mr. McIntyre discussed the baseline data, how it is collected and how it will be used. They hope to have the information available to the Board at the next meeting. Dr. Randy MacMillan asked if any of the nominated segments were listed as needing TMDLs. Mr. McIntyre stated that some were on the 303D list and were scheduled for TMDLs. More information will be supplied to the Board on that matter, hopefully at the next meeting.

**a.        Request to Extend the Comment Period for Outstanding Resource Water Nominations, by Shoshone County and Benewah County.**

Don Chisholm asked how many comments had been received on the ORW nominations so far. Paula Gradwohl responded that six comments had been received to date. Chairman Chisholm was concerned that the longer the public comment period was open, the more pressure would be put on staff to process the information received. Director Steve Allred stated he was concerned about extending the comment period from two stand points; first, an extension would allow very little opportunity to process information and make a decision in time to forward a recommendation to the legislature; and second, he was very concerned about the resources the

Department had to support the Board in the nomination process. Director Allred suggested as an alternative that they close the record on the scheduled date of August 21, and schedule public meetings to allow further comment in areas where they decide to go forward with the nominations.

Dallas Gudgell, Idaho Conservation League (ICL), reviewed the rationale for each of the nominations, citing threat of development and the need to protect nationally and world-wide recognized outstanding waters. He also noted a correction to the nominations. The nomination incorrectly states that there are native cut throat in portions in the headwaters of the Boise River; there are cut throat – but not necessarily native. Their comments will include that correction. Mr. Gudgell stated he would not like to see the comment period extended because it would not allow an adequate time frame to get the nominations to the legislature this year. He felt the 45-day comment period was sufficient. He stated ICL's comments may also include a request for a public hearing; but feared if the comment period was extended and public hearings were also scheduled, that would cause a time crunch as well.

Jane Gorsuch, Vice-president, Idaho Affairs, Intermountain Forest Association, stated the membership of the Association is very interested in the ORW issue, clean waters, and the protection of waters; as well as the issues they deal with everyday -- professional forest management and mill operations. The Association feels the 45-day comment period is sufficient and is comfortable with it ending on August 21, 2000. The Association also feels very comfortable with limiting the number of segments down to those that were considered during the legislative session in 1998, which included seven stream segments within wilderness boundaries. Regarding the request for extension and public hearings, the Association feels the issues really haven't changed that much since 1981, except there are a few more stream segments under consideration. Therefore, they feel there is not a need for a lot more public comment. Narrowing the scope would avoid a lot of public expenditure and private resource expenditure, and allow the Board to get right down to the issues by having them look only at those waters within wilderness areas. Ms. Gorsuch also stated the Association's support for developing rules and regulations for submission to the legislature with the ORWs. This would allow the legislature to know what they were voting on as far as land management activities and restrictions.

Jack Lyman, Idaho Mining Association, stated he had worked with the ORW process on four previous occasions. His observation was that the Board of Health and Welfare consumed itself with process at great expense without an appropriate recognition of the political reality that was ultimately going to be exercised at the end of the process. In 1992 the Mining Association nominated the Middle Fork of the Salmon River. It is the only body of water that was ever nominated which was approved by both houses of the legislature. He advised that anything the Board could do to temper its statutory responsibility to conduct a fair and open process to gather public comment with political judgment of what's "do-able" in today's legislature would greatly facilitate the consideration of its ultimate decision. Mr. Lyman believed the nominations as they currently exist have no chance of passing the Idaho legislature next session. He reiterated the Idaho Mining Association's support for the designation of the Middle Fork of the Salmon River as an ORW. He felt there may be other stream segments, within the wilderness areas, which have a chance when there is a political reality. Mr. Lyman did not support extending the public

comment period, and recommended the Board severely limit any public hearings and narrow the list of nominations as quickly as possible, keeping political reality in mind.

Don Chisholm asked Mr. Lyman if he had discussed with Department staff the possibility of developing rules and best management practices (BMPs) in advance to be presented to the legislature with the ORW nominations. Mr. Lyman replied he had not discussed the matter with staff, but conceptually supported that approach. Marti Calabretta felt that the fear of the unknown, particularly among independents who were not represented by associations, was a major factor blocking the success of previous ORW nominations. She believed it would greatly reduce the fear factor if the BMPs and rules could be developed and presented at the same time as the ORWs.

Byron Keely, Deputy Administrator for the Local Highway Technical Assistance Council, commented on the ORW nominations. His agency provides technical assistance for 286 cities, counties, and highway districts in the state who have administration over 35,000 centerline miles of road (over half of which are gravel or earth based). Mr. Keely commented that many of the ORW designations, if they impact local highway jurisdictions, will impact those that are in public land counties. These counties have seen a 75% reduction in their federal forest reserve money, 70% of which is used to maintain their highways. Mr. Keely was also concerned that the comment period was being run during high construction season, which makes it difficult for many of the entities he deals with to comment. He was also concerned that there are no existing BMPs for maintaining gravel roads. The Idaho Transportation Department BMPs currently only deal with asphalt or cement-based roads. They are currently being updated, but the focus is not on unpaved roads, and it is unsure what the cost impact will be to implement those BMPs and what the cost of oversight will be to state and local agencies. Mr. Keely favored a concurrent effort at identifying a failsafe ORW nomination with development of BMPs and a real assessment of what the actual impact of implementing them would be.

Dallas Gudgell commented that ICL would also support bringing rules forward and developing BMPs so people would have a better understanding of what they are dealing with. He reiterated that while they oppose extending the comment period, their written comments may request a public hearing or support other requests for public hearings. Mr. Gudgell expressed concern with allowing only "political reality" to drive the process between now and November. He felt there were a number of creative things which could be done, such as bringing the rules forward with the nominations, and favored allowing the political reality to play itself out in the legislature rather than trying to second guess it at this stage. He suggested that, as in the past, two nominations go forward; one wilderness designation nomination, and the South Fork of the Snake or the St. Joe River or pieces of the headwaters of the Boise River as a separate nomination.

Marti Calabretta commented on the basis for the request for public hearings by the Shoshone and Benewah County Commissioners. Shoshone County has been impacted by a 75% reduction in revenue from timber sales and is also experiencing losses in mining revenues. The county has recently been identified as having the highest level of child poverty in the state. The county commissioners want to influence the Board early on in the process not to proceed with any action that would further impact the economy of Shoshone and Benewah Counties. A

citizen advisory group on the Coeur d'Alene River Basin has met and is also requesting public hearings.

The Board discussed options regarding hearing locations, timeframes, and Department resources. Don Chisholm suggested the Board decline to extend the comment period, allow the process to go forward, and look at a proposal to the legislature to nominate certain areas and develop BMPs simultaneously and get the legislation changed so the BMPs can go as rules or proposed rules with the designation. Senator Marguerite McLaughlin asked if the Board could change which areas were included in the nominations. Chairman Chisholm confirmed that the Board could identify which segments it wanted included in the nominations.

Michael McIntyre suggested the Board allow the current public comment period to end on August 21, 2000. Staff will compile the comments for the Board's review. The Board can then convene a meeting and review the information and make a decision as to how to go forward with the nominations, whether to split up the package, and if and where public hearings will be held. In the meantime, staff will prepare for public meetings.

- **MOTION:** Marti Calabretta moved the Board continue with the present public comment period which closes on August 21, 2000, deny the request for extension, and defer responding to Shoshone and Benewah Counties' requests for public hearings until the public comment period has ended and the Board has convened and considered those public comments. She further moved the Board meet during the end of August 2000, but no later than September 15, 2000, to decide which areas will be considered and set public hearings for those areas.

**SECOND:** Dr. Randy MacMillan

**VOICE VOTE:** Motion passed unanimously. 7 ayes; 0 nays.

Marti Calabretta asked if information would be available regarding development of BMPs at the next meeting. Director Allred pointed out that developing BMPs is complex and will most likely require a lengthy negotiated process. Staff can identify the generic issues which might be involved in BMPs. Don Chisholm asked staff to prepare some draft legislation for the Board's review at the next meeting that would allow the BMP process to proceed parallel with the ORW nomination process. Director Allred noted that present law does not prevent the Board from submitting BMPs with ORW nominations; it simply requires that you go forward with BMPs within six months of the designation. Doug Conde will work on developing a draft for the Board's review. Jack Lyman pointed out that any rules adopted related to an ORW must be statutorily enacted.

#### **AGENDA ITEM NO. 6**

#### **YEAR 2000 BOARD MEETING SCHEDULE**

The Board scheduled the following meetings for the remainder of year 2000:

- August 31, 10:00 a.m. in Boise
- October 17 & 18, 1:00 p.m., Boise
- November 8 & 9, 8:30 a.m., Boise

Jack Lyman extended an invitation to the Board on behalf of the phosphate industry to come to Soda Springs to tour the phosphate fields and be briefed on the ever-growing selenium issue. He will follow up with a written invitation and stated he hoped the board would plan a meeting in Pocatello soon which could include such a tour. Don Chisholm thanked Mr. Lyman and stated the Board would probably not be able to schedule such a meeting until the spring. He said the Board would welcome a video or slide presentation at a meeting before that time.

The Board reviewed travel, compensation and reimbursement policies. They will discuss the matter further at the next meeting and set a policy. Until that time, the existing Board of Health and Welfare compensation policy will remain in effect.

The meeting adjourned at 3:05 p.m.



Donald J. Chisholm, Chairman



Marti Calabretta, Secretary



Debra L. Cline, Administrative Assistant  
and Recorder