



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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Curt Fransen, Director

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

May 20, 2015

The Board of Environmental Quality convened on May 20, 2015, at 9:00 a.m. at:

**Boise WaterShed Community Room
West Boise Wastewater Treatment Plant
11818 W. Joplin Road
Boise, Idaho**

BOARD MEMBERS PRESENT

Kevin Boling, Vice-Chairman
Beth Elroy, Secretary
Dr. John R. "Randy" MacMillan, Member
Kermit Kiebert, Member
Carol Mascareñas, Member

BOARD MEMBERS ABSENT

John McCreedy, Chairman
Nick Purdy, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Curt Fransen, Director
Douglas Conde, Senior Deputy Attorney General-DEQ, Legal Counsel to the Board
Paula Wilson, Rules Coordinator
Rosie Alonzo, Management Assistant, Assistant to the Board
Jess Byrne, Deputy Director
Barry Burnell, Administrator, Water Quality Division
Tim Wendland, Loans Program Manager
Tiffany Floyd, Administrator, Air Quality Division
Kari Kostka, Policy Analyst
Ed Hagan, Ground Water Program Manager
Mary Anne Nelson, IPDES Program Manager
Don Essig, Water Quality Standards Lead

OTHERS PRESENT

Jack Lyman, Idaho Mining Association
Lynn Tominaga, Idaho Rural Water Association
Justin Hayes, Idaho Conservation League
David Wynkoop, Sherer & Wynkoop, LLP

- ❖ All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality (DEQ).

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CALL TO ORDER AND ROLL CALL

Chairman John McCreedy was unable to attend the meeting. Vice-Chairman Kevin Boling presided and called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. Roll call was taken. Chairman McCreedy and Mr. Nick Purdy were absent, but there was a quorum.

Vice-Chairman Boling opened the floor for the public to address the Board on topics not specifically on the agenda. No topics were addressed.

AGENDA ITEM NO. 1: DIRECTOR'S REPORT

DEQ Staff and Organizational Changes

Sharon Keene, administrator for DEQ's Environmental Management & Information Division, retired at the end of December. The communication function of that division has been moved to the Director's Office under the management of Erica Shiflet, who will now report to Deputy Director Jess Byrne. Mark Clough has been named the new administrator for the Environmental Management & Information Division overseeing IT and programming functions. Mark will also continue overseeing the quality assurance aspect of the department and will continue with the transuranic waste auditing function at INL through the 2008 agreement.

Another significant change was the resignation of Regional Administrator Pete Wagner who took a position in the private sector. Aaron Scheff was selected as the new regional administrator for the Boise Regional Office.

Legislative Session

- Budget – The overall budget is about \$65 million. DEQ picked up three additional positions for the IPDES program, one position for air quality work, and funding for a part-time position for Pend Oreille Commission work. DEQ also received one-time funding for replacement items such as vehicles, computers, and monitoring equipment, and a 3% general fund increase for change in employee compensation (CEC).
- Proposed Legislation – DEQ had three pieces of legislation: 1) Outstanding Resource Water language clarification (passed); 2) state revolving loan fund amendment to allow for thirty-year repayment terms for all drinking water loans (failed); and, 3) Community Reinvestment Pilot Initiative amendment to provide DEQ authority to fund additional remedial projects (failed).
- Rules – All 2015 rules were approved.
- Coming year – DEQ has started the annual cycle for legislative proposals. We are looking at statutory changes for the IPDES program and also plan to bring back the drinking water legislation to allow thirty-year loans. We have begun drafting our 2017 budget proposal for the Governor's Office where we will be asking for three additional IPDES positions. IPDES funding (i.e., general fund versus fees) is one of the larger issues

still needing addressed. We will also have a number of significant rules including IPDES rules and new toxics criteria for fish consumption.

Other Environmental News on the Horizon

- Idaho Conservation League filed a petition with EPA to request the Treasure Valley be declared nonattainment for PM_{2.5}.
- EPA intends to promulgate 111(d) rules this summer which will require power plants to decrease greenhouse gas emissions. This proposed rule is very controversial and lawsuits are anticipated.
- A revised ozone standard is due for release from EPA this fall. Currently, the standard is 75 parts per billion (ppb). EPA is looking at 65–70 ppb which will put the Treasure Valley at risk of nonattainment and have an effect on DEQ's crop residue burning program.

Farewell

Director Fransen stated that May 22, 2015, will be his last day as director after 37 years in state service. He indicated that Deputy Director Byrne will serve as Acting Director starting May 25, 2015, and that Governor Otter is beginning interviews in early June to make a new appointment. Director Fransen expressed his gratitude to the Board for their support.

Director Fransen stood for and responded to questions from Board members.

Vice-Chairman Boling thanked Director Fransen on behalf of the Board for his careful stewardship of the department and his outstanding work with the Board.

AGENDA ITEM NO. 2: APPROVAL OF MEETING MINUTES

Minutes of November 3, 2014 – Special Meeting
Minutes of November 19 and 20, 2014 – Board Meeting
Minutes of December 2, 2014 – Special Meeting
Minutes of December 4, 2014 – Special Meeting

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt all the above mentioned minutes collectively as prepared.
- **SECOND:** Ms. Carol Mascareñas.
- VOICE VOTE:** Motion carried unanimously.

Vice-Chairman Boling inquired about the status of Magnolia Nitrogen Idaho (Magnida). Director Fransen said he could only report what he has heard indirectly and stated that the project is still viable though construction has not yet begun. He indicated that one of the major investors dropped out of the project and Magnida is now working to replace the funding, but the project is slated to move forward.

AGENDA ITEM No. 3: CONSIDERATION OF HEARING OFFICER APPLICATION FOR BOARD APPROVAL – DAVID E. WYNKOOP

Vice-Chairman Boling gave Mr. David Wynkoop the opportunity to tell the Board about his background and his reasoning for applying to be added to the Board list of hearing officers. Mr. Wynkoop stood for and responded to questions from the Board. Questions were also directed to Mr. Doug Conde and Ms. Paula Wilson on the process for selecting a hearing officer from the Board-approved list with discussion on how the process protects the Board, the department, and other involved parties.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality approve adding Mr. David Wynkoop to the DEQ hearing officer list.
- **SECOND:** Mr. Kermit Kiebert.
- VOICE VOTE:** Motion carried unanimously.

Vice-Chairman Boling and other Board members stressed the importance of having a better structured process for selecting hearing officers. Vice-Chairman Boling asked Mr. Doug Conde and Deputy Director Byrne to work together on a process and present it at the next meeting. Dr. MacMillan emphasized the need to consider not only how hearing officers are selected but also how they are removed from the approved list.

AGENDA ITEM No. 4: GROUND WATER QUALITY RULES (TEMPORARY RULE)
RULEMAKING INITIATED TO MAKE REVISION FOR CONSISTENCY WITH HOUSE BILL 197.

Mr. Barry Burnell, Water Quality Division Administrator, introduced himself and stated that this ground water quality temporary rulemaking, Docket 58-0111-1501, makes modifications to be consistent with a 2015 revision to Idaho Code 39-102 enacted under House Bill 197. The bill included an emergency clause requiring the Board to adopt a temporary rule by June 1, 2015. The code revision clarifies that degradation of ground water caused by mining activities is allowed at the point of compliance as long as the operator is implementing best management practices. Mr. Burnell reviewed each of the four revised sections along with the added language and the unique process for this rule. He responded to questions from the Board during his presentation. Mr. Conde and Director Fransen also commented.

Vice-Chairman Boling asked for comments from the public. Mr. Jack Lyman addressed the Board providing some history on the interpretation of the Ground Water Quality Rules and explained the purpose for these new changes. Mr. Lyman became the sponsor of the legislation and worked closely with DEQ on the needed language clarification. He urged the Board to adopt the rule as presented. Director Fransen made additional comments on the process and stated this was a viable way to solve the problem and clarifies what was intended in the statute. There were no further comments from the public.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as temporary rule the Ground Water Quality Rules as presented under Docket No. 58-0111-1501, with an effective date of June 1, 2015.
- **SECOND:** Ms. Carol Mascareñas.
- VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 5: FY2016 STATE WASTEWATER LOAN PRIORITY LIST

Mr. Burnell proceeded to introduce Mr. Tim Wendland, Grants and Loans Program Manager. A handout was prepared as a refresher on the Grants and Loans Program and was used as a primer for agenda items 5, 6, 7, and 8. Mr. Wendland walked the Board through the handout, giving a program overview, and touching on the priority list and Intended Use Plan (IUP) process. He explained the requested \$10 million fund transfer from the drinking water state-revolving loan fund (SRF) to the clean water SRF and touched on new federal requirements. Board members asked questions during the presentation. One question inquired whether the Board needed a separate motion for the funds transfer. Mr. Burnell said, and Mr. Conde concurred, the motion would be for the approval of the IUP. The IUP includes the fund transfer.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality approve the FY2016 State Wastewater Intended Use Plan as presented by the Idaho Department of Environmental Quality.
- **SECOND:** Mr. Kermit Kiebert.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 6: FY2016 STATE WASTEWATER PLANNING GRANT PRIORITY LIST

Mr. Burnell described the FY2016 State Wastewater Planning Grant Priority List. It was noted that the City of Nampa requested an amount larger than what DEQ is able to fund so they were not selected. He also explained that when a facility is bypassed for various reasons, the next highest rated facility is typically approved.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality approve the FY2016 State Wastewater Planning Grant Priority List as presented by the Idaho Department of Environmental Quality.
- **SECOND:** Ms. Beth Elroy.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 7: FY2016 STATE DRINKING WATER LOAN PRIORITY LIST

Mr. Burnell briefly presented the FY2016 State Drinking Water IUP which includes reference to the \$10 million transfer from the drinking water SRF to the clean water SRF. He explained the different uses of the fund which includes principle forgiveness as part of the federal capitalization grant. He pointed out that the drinking water loan program is able to fund all projects. The number two ranked project, North Kootenai Water District, sent a letter stating they would not be able to accept DEQ's grant, but they were left on the list as a contingency if conditions should change within this fiscal year. Mr. Burnell and Mr. Wendland stood for and responded to questions from the Board.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality approve the FY2016 State Drinking Water Loan Intended Use Plan as presented by the Idaho Department of Environmental Quality.
- **SECOND:** Dr. Randy MacMillan.
- **VOICE VOTE:** Motion carried unanimously.

AGENDA ITEM NO. 8: FY2016 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST

Mr. Burnell presented the FY2016 State Drinking Water Planning Grant Priority List and explained that there are eleven projects on the list totaling \$338,500 which is less than the \$350,000 available. This gives DEQ the opportunity to do small increases if a project requests additional funding.

- **MOTION:** Ms. Carol Mascareñas moved that the Idaho Board of Environmental Quality approve the FY2016 State Drinking Water Planning Grant Priority List as presented by the Idaho Department of Environmental Quality.
 - **SECOND:** Mr. Kermit Kiebert.
 - **VOICE VOTE:** Motion carried unanimously.
- ❖ The Board adjourned at 11:55 a.m. to have lunch on site and to take part in an overview of the Boise WaterShed Facility. The Board also took a tour of the West Boise Wastewater Treatment Plant.
 - ❖ Vice-Chairman Boling called the meeting back to order at 2:10 p.m.

AGENDA ITEM NO. 9: REPORT ON WATER QUALITY STANDARDS NEGOTIATED RULEMAKING HUMAN HEALTH CRITERIA FOR TOXICS/IDAHO FISH CONSUMPTION RATE

Mr. Burnell, along with Mr. Don Essig, Water Quality Standards Lead, updated the Board on the rulemaking for human health toxics criteria and Idaho's fish consumption rate. The summary covered April's rulemaking, policy recommendations, and calculation inputs. Mr. Burnell and Mr. Essig went over a handout listing various policy recommendations and other decisions made and responded to questions from the Board. Mr. Conde touched on the tribal treaty fishing rights that may have an impact on how criteria are calculated.

Vice-Chairman Boling asked if there was public comment. There were none.

AGENDA ITEM NO. 10: REPORT ON IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM (IPDES) PROGRAM NEGOTIATED RULEMAKING

Mr. Burnell introduced Ms. Mary Anne Nelson, IPDES Program Manager, who provided the Board a brief report on IPDES Program progress. She gave an update on rules, the fee structure outlined, and the steps DEQ must take going forward. She reported that the program is hitting all milestones and is still aiming for the September 1, 2016, application deadline with EPA. Mr. Conde, Mr. Burnell, and Ms. Nelson responded to questions from the Board.

AGENDA ITEM NO. 11: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Ms. Paula Wilson, Rules Coordinator, reviewed the rule docket status report and the current contested case.

AGENDA ITEM NO. 12: REPORT ON ADMINISTRATIVE HEARING STANDARD OF REVIEW

Mr. Conde reminded the Board of the memo sent to members to address the administrative hearing standard of review issue with IPDES permit appeals. Vice-Chairman Boling expressed that the memo was very helpful. A discussion took place on how to move forward. DEQ will provide the Board with the IPDES Administrative Appeals Options Discussion Paper submitted to the negotiated rulemaking group and set a conference call with the Board to discuss again at a later date.

AGENDA ITEM NO. 13: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

Vice-Chairman Boling wished Director Fransen well on his retirement and applauded him on an outstanding job as director.

THE MEETING ADJOURNED AT 3:42 P.M.



John McCreedy, Chairman



Beth Elroy, Secretary



Rosie Alonzo, Assistant to the Board and Recorder