



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

1410 North Hilton, Boise, ID 83706-1255, (208) 373-0502

C. L. "Butch" Otter, Governor  
Curt Fransen, Director

**MEMBERS OF THE BOARD**

Carol Mascareñas  
Chairman  
5000 Baltimore Circle  
Idaho Falls, ID 83401

John McCreedy  
Vice-Chairman  
1951 S. Saturn Way  
Ste. 100  
Boise, ID 83709

Kevin C. Boling  
Secretary  
5881 N. Ferdinand Court  
Coeur d'Alene, ID 83814

L. Nicholas "Nick" Purdy  
Box 686  
Highway 20  
Picabo, ID 83348

Dr. John R. MacMillan  
P.O. Box 712  
Buhl, ID 83316

Kermit V. Kiebert  
P.O. Box 970  
Ponderay, ID 83852

Beth Elroy  
P.O. Box 6  
Mail Stop 01-602  
Boise, ID 83707

**LEGAL COUNSEL**

Douglas M. Conde  
Harriet A. Hensley

**BOARD ASSISTANT**

Rosie Alonzo  
(208) 373-0240

**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**May 7, 2014**

The Board of Environmental Quality convened on May 7, 2014, at 8:30 a.m. at:

**Center for Advanced Energy Studies (CAES)  
Auditorium  
995 University Blvd.  
Idaho Falls, Idaho**

**BOARD MEMBERS PRESENT**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Curt Fransen, Director  
Douglas Conde, Senior Deputy Attorney General, DEQ  
Paula Wilson, Administrative Rules Coordinator  
Rosie Alonzo, Management Assistant, Assistant to the Board  
Jess Byrne, Deputy Director  
Barry Burnell, Administrator, Water Quality Division  
Tim Wendland, Loan Program Manager  
Eric Neher, Idaho Falls Regional Administrator  
Kerry Martin, INL Oversight Program Regional Manager  
Susan Burke, INL Oversight Coordinator

**OTHERS PRESENT:**

Lynn Tominaga, Idaho Ground Water Association (IGWA)  
Dawn Blevins, Monsanto  
Lana Egan, Idaho National Laboratory

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

## CALL TO ORDER AND ROLL CALL

Chairman Carol Mascareñas welcomed everyone to the Idaho Falls area and to the Center for Advanced Energy Studies (CAES). She called the meeting of the Idaho Board of Environmental Quality (Board) to order at 8:37 a.m. Roll call was taken. All Board members were present.

Chairman Mascareñas opened the floor for the public to address the Board on topics not specifically on the agenda. No topics were raised.

## AGENDA ITEM NO. 1: ELECTION OF BOARD OFFICERS

Chairman Mascareñas clarified that the elections being held are for calendar year 2014. Elections are typically held at the end of the year, but because the December 2013 meeting was cancelled, elections did not take place. There will be an election for 2015 officers at the end of this year. She opened the floor for a motion.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality retain the present 2013 Board officials for the 2014 calendar year. Board officials are: Carol Mascareñas, Chairman; John McCreedy, Vice-Chair; and Kevin Boling, Secretary.
- **SECOND:** Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

## AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Curt Fransen began by noting that two Board members will be absent from tomorrow's May 8 meeting but that the Board will still have a quorum. He also noted that a big focus over the next two days will be the priority lists for drinking water and wastewater grants and loans. Last year there seemed to be a lot of interest from the Board in better understanding the priority list development process. As such, he stated that today's working session is intended to explain the complex process DEQ goes through annually prior to presenting priority lists to the Board for approval. Tomorrow the FY2015 priority lists are on the agenda for the Board's consideration.

Director Fransen proceeded with his report:

**Agency-sponsored Legislation** – DEQ had three pieces of legislation for the 2014 session:

- 1) *HB390 Sanitary Restriction* – this fixed an oversight from 2000 when DEQ became a department. There was a reference to the Board of Health and Welfare when it should have been the Board of Environmental Quality.
- 2) *HB391 WW & DW Revolving Loan Accounts* – this allows the Board of Environmental Quality to transfer funds between the wastewater and drinking water loan funds. This legislation also contained an emergency clause and became effective upon the signature of the Governor.
- 3) *HB392 Relating to Antidegradation* – this legislation amends the Idaho water quality standards provision regarding insignificant degradations of water quality that are exempt from Tier II antidegradation review. After a challenge by the Greater Yellowstone Coalition, the previous provision, commonly referred to as the *de minimus* exemption, was disapproved by EPA as inconsistent with the Clean Water Act. There is a rulemaking before the Board tomorrow to make DEQ's rules consistent with the new statute.

**Senate Bill 1260** – *Restriction of hazardous waste in RCRA landfills*. This legislation allows the disposal of certain materials not regulated by the Atomic Regulatory Act to be disposed of in a commercial hazardous waste disposal facility in Idaho. There will be a rulemaking later this year to align DEQ rules with this statutory change.

**House Bill 406** – *NPDES Primacy*. This legislation begins the process for the State of Idaho to seek primacy for the National Pollutant Discharge Elimination System (NPDES) program which regulates point sources discharging into surface waters. The Idaho Association of Commerce and Industry (IACI) introduced this legislation which received broad industry and legislative support. The Board will be updated further on this topic tomorrow.

**Rulemaking Process** – DEQ and other state agencies took part in a Joint House and Senate State Affairs Committee meeting on the negotiated rulemaking process. DEQ received many compliments from a number of legislators and was held up as a model for conducting negotiated rulemaking in Idaho.

**DEQ Budget** – Touching on some of the highlights of this year's budget:

- DEQ will receive \$86,000 for an Analyst 3 position to address overdue revisions to Idaho's water quality standards.
- The state will cover the \$1,450 per employee increase in health insurance premiums.
- DEQ will receive \$500,000 in one-time funding for capital items such as vehicles, computers and monitoring equipment.
- DEQ will receive a supplemental appropriation to begin building an NPDES program and to hire three full-time employees.
- The Legislature provided funding for an ongoing 1% Change in Employee Compensation salary increase and a one-time 1% bonus. In addition, the Joint Finance and Appropriations Committee approved using long-term salary savings to augment ongoing merit and short-term salary savings for bonuses.

**Rulemaking** – Director Fransen noted that there have been very few rulemakings as of late but DEQ anticipates many more this year. He touched on the various upcoming rulemaking topics.

Director Fransen responded to questions from the Board throughout his presentation.

**AGENDA ITEM NO. 3: ADOPTION OF MEETING MINUTES**

Minutes of October 17, 2013

- **MOTION:** Mr. John McCreedy moved that the Idaho Board of Environmental Quality adopt the October 17, 2013 minutes as prepared.
- **SECOND:** Dr. Randy MacMillan.
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 4: WORKING SESSION – WASTEWATER AND DRINKING WATER PRIORITY LISTS**

The Board was briefed by Mr. Barry Burnell, Water Quality Division Administrator, and Mr. Tim Wendland, Grants and Loans Program Manager, on the process for determining wastewater and drinking water priority lists and developing the Intended Use Plans. The PowerPoint presentation provided to the Board is available as an attachment to these minutes. The Board will consider adopting the FY2015 wastewater and drinking water priority lists at tomorrow's scheduled meeting.

**ADJOURNMENT**

The meeting adjourned at 11:03 p.m. The Board will reconvene on May 8, 2014, at 9:00 a.m. Upon adjournment, the Board was led on a tour of CAES and the Computer Assisted Virtual Environment (CAVE). Chairman Mascareñas extended an invitation to public attendees to join the tour as well. After touring the CAVE, the Board then toured other facilities at the Idaho National Laboratory.

The Board of Environmental Quality reconvened on May 8, 2014, at 9:00 a.m. at:

**Center for Advanced Energy Studies (CAES)  
Auditorium  
995 University Blvd.  
Idaho Falls, Idaho**

**BOARD MEMBERS PRESENT**

Carol Mascareñas, Chair  
Kevin Boling, Secretary  
Nick Purdy, Member  
Dr. John R. "Randy" MacMillan, Member  
Kermit Kiebert, Member

**BOARD MEMBERS ABSENT**

John McCreedy, Vice-Chair  
Beth Elroy, Member

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Curt Fransen, Director  
Douglas Conde, Senior Deputy Attorney General, DEQ  
Paula Wilson, Administrative Rules Coordinator  
Rosie Alonzo, Management Assistant, Assistant to the Board  
Jess Byrne, Deputy Director  
Barry Burnell, Administrator, Water Quality Division  
Tim Wendland, Loan Program Manager

**OTHERS PRESENT:**

Lynn Tominaga, Idaho Ground Water Association (IGWA)  
Dawn Blevins, Monsanto  
Vanica Dugger, U.S. Department of Energy – Idaho

Chairman Carol Mascareñas called the meeting of the Idaho Board of Environmental Quality (Board) to order at 9:00 a.m. Roll call was taken. All Board members were present with the exception of Mr. John McCreedy and Ms. Beth Elroy.

Chairman Mascareñas offered again time for the public to address the Board on topics not specifically on the agenda. No topics were raised.

**AGENDA ITEM NO. 5: FY2015 STATE WASTEWATER LOAN PRIORITY LIST**

Mr. Barry Burnell, Water Quality Division Administrator, introduced himself and Mr. Tim Wendland, Grants and Loans Program Manager, to assist him in the presentation. Mr. Burnell explained that the 2015 Intended Use Plan (IUP) for the Grants and Loans Program is the mechanism by which the Board may authorize the transfer of funds between the two state revolving fund (SRF) accounts. He expounded on the process for creating the priority list and the process DEQ used to develop the IUP. He also addressed the changes made in response to public comments. He touched on the fund transfer language and many of the fiscal aspects related to managing the SRFs. He noted for the current state fiscal year, that DEQ is requesting to transfer \$10 million from the drinking water SRF to the clean water SRF.

Opportunity was given to Board members to ask questions during the presentation. At the conclusion of the presentation, Chairman Mascareñas asked if there were questions from the public. There were none. A motion was requested.

- **MOTION:** Dr. Randy McMillan moved that the Idaho Board of Environmental Quality approve the Water Pollution Control State Revolving Fund for the FY2015 Intended Use Plan which includes the State Wastewater Loan Priority List and authorizes DEQ to transfer \$10 million dollars from the Drinking Water State Revolving loan account into the Clean Water State Revolving loan account.
- **SECOND:** Mr. Nick Purdy
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 6: FY2015 STATE WASTEWATER PLANNING GRANT PRIORITY LIST**

Mr. Wendland offered for the Board's consideration and approval the FY2015 State Wastewater Planning Grant Priority List. The list was developed in a similar fashion to the Wastewater Loan Priority List. It is a simpler effort because there is no requirement for an Intended Use Plan. DEQ did receive a couple comments on this particular priority list which were addressed. Mr. Wendland and Mr. Burnell responded to questions from the Board.

Chairman Mascareñas asked if there were comments from the public concerning the Planning Grant Priority list. There were none. Chairman Mascareñas asked for a motion.

- **MOTION:** Mr. Nick Purdy moved that the Idaho Board of Environmental Quality approve the FY2015 State Wastewater Planning Grant Priority List as presented by the Department of Environmental Quality.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 7: FY2015 STATE DRINKING WATER LOAN PRIORITY LIST**

Mr. Burnell presented the FY2015 State Drinking Water Loan Priority List and IUP for the Board's consideration. The process is the same as that of the State Wastewater Loan Priority List. This particular IUP also identifies the transfer of \$10 million dollars from the Drinking Water SRF to the Clean Water State SRF. A minor change to the language on page three of the IUP was made where the bottom line of the financial statement reads "Net Remaining Loan Obligation." To clarify this statement, it now reads, "Net Resources Available to Loan." Mr. Burnell went on to explain the results of the priority ranking for this list.

Mr. Burnell stood for and responded to questions from the Board.

Chairman Mascareñas opened the floor for a motion.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality approve the Drinking Water State Revolving Fund FY2015 Intended Use Plan, with the minor amendment to the plan, which includes the FY2015 State Drinking Water Loan Priority List and authorizes DEQ to transfer \$10 million dollars from the Drinking Water State Revolving loan account into the Clean Water State Revolving loan account.
- **SECOND:** Mr. Nick Purdy
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 8: FY 2015 STATE DRINKING WATER PLANNING GRANT PRIORITY LIST**

Mr. Wendland presented the FY2015 State Drinking Water Planning Grant Priority List. The method for constructing the Drinking Water Planning Grant Priority List is similar to the Wastewater Grant Priority List. DEQ did not receive comments on this priority list. All but one entity who submitted a letter of interest was funded. He explained that the two lowest ranking projects had the same total number of rating points and that the tiebreaker between them was awarded to the system that scored higher in the area of public health related needs.

With no questions from the Board or from the public, Chairman Mascareñas asked for a motion.

- **MOTION:** Mr. Kevin Boling moved that the Idaho Board of Environmental Quality approve the FY2015 State Drinking Water Planning Grant Priority List as presented by the Department of Environmental Quality.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 9: WATER QUALITY STANDARDS – DOCKET NO. 58-0102-1301 (PENDING RULE)**

Mr. Burnell addressed the Water Quality Standards (WQS) – Docket No. 58-0102-1301 rulemaking which seeks to revise the section on insignificant degradation or the *de minimus* exemption within Idaho's antidegradation policy. DEQ is requesting this change to retain the flexibility to make antidegradation decisions and to match language adopted into statute (Idaho Code 39-3603) under HB392. Mr. Burnell went over the history and revisions of the rulemaking to-date. He then asked for approval as a temporary and pending rule with a temporary rule effective June 2014 and the pending rule effective date coinciding with legislative approval. Concluding, Mr. Burnell stood for and answered questions from the Board.

Chairman Mascareñas asked for questions or comments from the public. There were none. She then took a motion from the Board.

- **MOTION:** Dr. Randy MacMillan moved that the Idaho Board of Environmental Quality adopt as temporary/pending rule the Water Quality Standards as presented under Docket No. 58-0102-1301, with the temporary rule becoming effective on June 4, 2014, and the pending rule becoming final and effective upon the adjournment *sine die* of the First Regular Session of the Sixty-third Idaho Legislature, if approved by the Legislature.
- **SECOND:** Mr. Kermit Kiebert
- **VOICE VOTE:** Motion carried unanimously.

**AGENDA ITEM NO. 10: REPORT ON WATER QUALITY STANDARDS NEGOTIATED RULEMAKING – HUMAN HEALTH CRITERIA FOR TOXICS/IDAHO’S FISH CONSUMPTION RATE**

Mr. Burnell updated the Board on the rulemaking for Human Health Criteria for Toxics and Idaho’s Fish Consumption Rate. He reminded everyone that in May of 2012, EPA disapproved DEQ’s 2006 water quality standard rule submittal relating to human health criteria for 88 toxic pollutants. As a result, DEQ initiated a new rulemaking which began in October of 2012. Until October 2013, the rulemaking effort was focused on developing a survey questionnaire to help identify relevant fish consumption rates for Idaho.

Since the last Board update, Northwest Research Group was hired to assist in preparing and implementing the survey. Survey implementation began last month and will run for a full year.

Additionally, since the last update, it is worth noting that of the five tribes in Idaho, only two have elected to administer a similar survey of tribal members.

Approximately one year from now DEQ will begin developing a rule. A number of policy decisions will need to be made, including: 1) whether to include non-consumers with fish consumers in the data pool; 2) protection of the general population versus a targeted sub-population; 3) probabilistic risk assessment in the calculation of human health criteria; 4) market fish and relative source contributions of contaminants; 5) whether anadromous fish be included in the evaluation; 6) level of protection; 7) suppression of fish consumption; and, 8) implementation of human health criteria. DEQ expects the rule to come before the Board in November of 2015 and be presented to the Legislature for approval during the 2016 session.

Mr. Burnell answered questions from the Board.

**AGENDA ITEM NO. 11: REPORT ON IMPLEMENTATION OF HB406 REGARDING ESTABLISHMENT OF A STATE NPDES PROGRAM**

Director Fransen gave a synopsis of the tasks and issues before DEQ and the Board with regard to a state-run NPDES program. An internal working group was put together, comprised of Director Fransen, Deputy Director Jess Byrne, Deputy Attorney General Doug Conde, Water Quality Division Administrator Barry Burnell and Pocatello Regional Administrator Bruce Olenick, to map out DEQ’s strategy for assuming primacy.

Mr. Burnell continued, providing more detail on the establishment of a state NPDES program. He addressed HB406, the 2014 legislation sponsored by IACI and HB645, the trailer appropriations bill which authorized three new full-time employees with \$300,000 in ongoing funding. He explained that DEQ is currently looking to begin the process of hiring the program manager.

*(NOTE: Board Member Kevin Boling left the meeting at 11:15 p.m. to make his flight. No further decisions were made by the Board which would have required a quorum.)*

Mr. Burnell covered some of the challenges DEQ and the Board may face when seeking program authorization from EPA, including options for addressing conflict of interest requirements for developing a permit appeal process, making needed statutory changes, and other issues. He also described the process for attaining funding to staff the program at yearly intervals. EPA's approval is estimated to take one to one and a half years after application submittal which is required by September 1, 2016.

During the presentation, Mr. Burnell responded to questions from the Board.

**AGENDA ITEM NO. 12: CONTESTED CASE AND RULE DOCKET STATUS REPORT**

Ms. Paula Wilson, Administrative Rules Coordinator, reviewed the current contested case and rule docket status report. A reference copy of the promulgation status report is attached to the minutes on file.

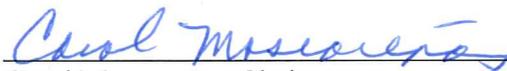
**AGENDA ITEM NO. 13: DISCUSSION OF LOCATION/AGENDA FOR OCTOBER AND NOVEMBER 2014 BOARD MEETINGS**

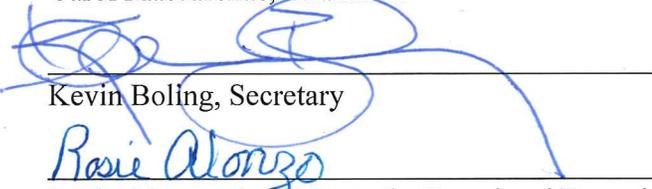
Chairman Mascareñas mentioned that the October meeting might not be needed, but she asked Board members to hold the October dates just in case. The next meeting will be held in Boise.

**AGENDA ITEM NO. 14: LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

There were no other items to present.

**THE MEETING ADJOURNED AT 12:02 P.M.**

  
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Carol Mascareñas, Chairman

  
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Kevin Boling, Secretary

  
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Rosie Alonzo, Assistant to the Board and Recorder