State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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

James E. Risch, Governor
Toni Hardesty Director

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

November 16, 2006

The Board of Environmental Quality convened on November 16, 2006 at 8:30 a.m. at:

Department of Environmental Quality
Conference Center
1410 N. Hilton
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT

Dr. Joan Cloonan, Chairman
Marti Calabretta, Vice-chairman
Craig Harlen, Secretary
Donald J. Chisholm, Member
Kermit V. Kiebert, Member
Dr. John R. "Randy" MacMillan, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT

None

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Martin Bauer, Administrator, Air Quality Division
Barry Burnell, Administrator, Water Quality Division
Jess Byrne, Interagency Affairs
Debra Cline, Management Assistant to the Board
Douglas Conde, Deputy Attorney General
Stephanie Ebright, Deputy Attorney General
Orville Green, Administrator, Waste Management & Remediation Division
Rick Huddleston, Wastewater Program Manager
Tom John, Microbiology Rules Analyst, Drinking Water Program
Lisa Kronberg, Deputy Attorney General
Mark Mason, Wastewater Engineer
Mary-Anne Nelson, Monitoring & Assessment Program Manager, Surface Water
Jon Sandoval, Administrator, Boise Regional Office
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

John Barclay, Idaho Council on Industry and the Environment (ICIE)
Pat Barclay, ICIE
Neil Colwell, Avista Corporation
Mark Dunham, Idaho Association of Commerce and Industry (IACI)
Robbin Finch, Boise City
Mitchell Hart, Mountain Island Energy, LLC
Justin Hayes, Idaho Conservation League
Alex LaBeau, IACI
Linda Lemmon, Idaho Aquaculture Association
John McCreedy, ICIE
Krista McIntyre, Stoel Rives
Ken Miller, Northwest Energy Coalition
Brent Olmstead, Milk Producers of Idaho
Suzanne Schaefer, SBS Associates
Jim Werntz, EPA
Seven unidentified members of the public who did not sign in

- All attachments referenced in these minutes are permanent attachments to the minutes on file at the Idaho Department of Environmental Quality. To obtain a copy, contact the Board assistant at (208) 373-0465.

Chairman Joan Cloonan presented a certificate of appreciation and gift to Dr. Randy MacMillan and thanked him for his outstanding service as Board chairman.

PUBLIC COMMENT PERIOD

John McCreedy, Vice-president and General Council for Amalgamated Sugar Company, spoke on behalf of the Idaho Council on Industry and the Environment. ICIE has formed a new committee, the Environmental and Regulatory Affairs Committee, which he will chair. The focus of the committee will be to provide a consistent, long-term forum for its members to engage in a constructive dialog and exchange ideas and information on environmental issues that affect Idaho industry. The committee will not focus solely on lobbying, although that will be part of its function. The goal will be to bring together the collective environmental and scientific expertise of the committee members to focus heavily on the use of good science in shaping public policy on environmental issues.

Mr. McCreedy noted membership to the committee is open to individuals and fees are set at a reasonable rate to ensure representation from a broad cross-section of Idaho's businesses and individuals. The committee hopes to come together to collectively bring comments to the Board and DEQ negotiated rulemaking issues.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. October 11, 2006 meeting minutes

- **MOTION**: Don Chisholm moved the Board adopt the minutes of the October 11, 2006 meeting as presented.
  SECOND: Marti Calabretta
  VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Toni Hardesty, Director, reported she met the newly appointed EPA Region X Administrator, Elin Miller, at a recent meeting with other DEQ and agriculture administrators in the region. Director Hardesty anticipates a visit to Idaho from Administrator Miller relatively soon.

Director Hardesty noted that interest has been expressed in having a Board meeting in the Twin Falls area. She said the Board may want to think about field trip sites and issues of interest in the area.

The Idaho Environmental Summit is planned for December 5-7, 2006, in Boise. Director Hardesty distributed a flyer and draft agenda for the Board's review. DEQ is one of many agencies sponsoring the summit.

Lisa Kronberg, Deputy Attorney General, briefed the Board on the hearing she attended yesterday on the SAFE air lawsuit. The state is an intervenor in the case, but did not present argument at the hearing. A decision is expected within the next six months.

AGENDA ITEM NO. 3: RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0602 (PENDING RULE) (*ANNUAL UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE*)

Martin Bauer, Administrator, DEQ Air Quality Division, explained this rule is the annual incorporation by reference of federal rules as of July 1, 2006. This rulemaking is necessary to ensure state rules for the control of air pollution remain consistent with federal regulations. It was not a negotiated rulemaking, but did include a public comment period and a public hearing. It does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

The rule also specifically exempts certain federal regulations from incorporation by reference, including:

- In accordance with *New York v. EPA*, the clean unit and pollution control project provisions, which the federal court vacated, are expressly omitted.
- Certain sections of 40 CFR Part 51 and Appendix Y, which are part of the Regional Haze Rule, are expressly omitted for clarity and consistency.
- Federal Register publications regarding coal-fired utilities are specifically exempted in IDAPA 58.01.01, Subsection 107.03.p. By omitting these publications, DEQ is responding to the motion made by the Board in June 2006, as well as Governor Risch's Executive Order signed October 4, 2006, directing DEQ to opt Idaho out of the Mercury Cap and Trade program. This is one of two rules required to accomplish this direction.

As a result of a public comment received, a change was made to the rule. The original rule excluded incorporation by reference of publications related to sources other than coal-fired facilities owned or operated by utilities. The original rule was changed to include omission of only those publications as they apply to coal-fired electric steam generating units, as defined in 40 CFR 60.24.

Mr. Bauer suggested the next agenda item, Docket No. 58-0101-0603, be presented for the Board's consideration in unison with this rule because the two are closely related. Chairman Cloonan directed Mr. Bauer to present the next docket so the Board could consider and deliberate both rules together.

AGENDA ITEM NO. 4: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0603 (PENDING RULE) *(ELECTRIC GENERATING UNIT CONSTRUCTION PROHIBITION)***

Mr. Bauer stated this rule is necessary to comply with federal law ensuring the state of Idaho meets its annual coal-fired electric utility steam generating unit mercury emissions budget. This was not a negotiated rule; however, a public comment period and public hearing were held. The regulated community would incur no increased cost based on this rule. This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

As motioned by the Board and directed by Governor Risch, Idaho is opting out of the Mercury Cap and Trade program. This requires two actions. First, Idaho must opt out of the Mercury Cap and Trade program, which Docket No. 58-0101-0602 does; and second, Idaho must then establish rules that ensure the state meets its annual coal-fired electric utility steam generating unit mercury budget. The budget for Idaho is zero pounds based on Idaho not currently having any coal-fired power generation. This rule (Docket No. 58-0101-0603) prohibits construction of any coal-fired power units as defined in 40 CFR 60.24. This ensures that Idaho will comply with the state mercury emissions cap of zero. This rule and the previous rule comprise the plan that Idaho is required to submit to EPA on November 17, 2006, to ensure compliance with the Clean Air Mercury Rule.

Chairman Joan Cloonan pointed out that if the Board does not adopt by reference the EPA rule regarding coal-fired plants, that rule is still in effect in Idaho as a federal rule. The rule covers the whole nation and requires the zero mercury budget for Idaho. Mr. Bauer confirmed that even if the Board does not adopt the rule, it is still a federal rule that applies nationwide.

Dr. Randy MacMillan noted the Board's motion also directed DEQ to initiate negotiated rulemaking to potentially allow Idaho to opt back into the Cap and Trade program if the Legislature decides coal-fired power plants should be part of Idaho's energy plan. The Board is interested in moving forward with an examination of Idaho's energy needs and what it would take to opt into the program in an environmentally responsible way and protect public health. He asked what DEQ's timeline was for initiating the rulemaking. Mr. Bauer stated DEQ was not in the process of negotiating an "opt-in" rule because this is not the time to do so. The legislative committee is still putting together its report. Once all the information is amassed and, if a decision is made that Idaho should opt in, DEQ will begin negotiated rulemaking to opt in.

Don Chisholm expressed concern that this course of action might cause too long of a delay given the state's future energy needs. He thought it would be more efficient for DEQ to get started with the rulemaking process while the legislative committee was gathering information and making its decision. Mr. Bauer noted the Board's motion did not specify a time, and DEQ felt it would be prudent to wait until all the information was amassed before entering into negotiated rulemaking.

Director Hardesty explained rulemaking cannot be initiated during the legislative session. During that time, information will be gathered and the new governor may make a decision. DEQ will be ready to respond, depending on those actions, possibly as early as April 2007. She noted that Governor Risch has also indicated he does not believe the time is right to begin negotiated rulemaking for opting in to the CAMR Program. He favors taking one step at a time, beginning with meeting this initial EPA deadline. A great deal of information is being gathered, but the Governor feels there will not be adequate information available by the end of December to move forward with rulemaking at this time. Mr. Chisholm restated his concern that the initial steps of the lengthy rulemaking process be started to put the pieces in place for when DEQ is ready to move forward.

Chairman Cloonan opened the floor to public testimony and asked staff to be prepared to respond to comments.

Director Hardesty stated Governor Risch was unable to attend the meeting, but asked that she read his written testimony. Governor Risch has reviewed the comments that have been received, including the comments submitted by Stoel Rives directly to the Board members, and remains committed to his directive. He is convinced that the appropriate position for Idaho is to opt out of the Cap and Trade program, and he believes this position is shared by the majority of Idahoans.

Krista McIntyre, Stoel Rives, testified on behalf of Mountain Island Energy Holdings. Mountain Island is developing a clean coal power project for Soda Springs, Idaho, and is very interested in the outcome of this rule. Ms. McIntyre stated Mountain Island does not support the proposed rule and believes any rulemaking at this time on opting in or opting out of the CAMR program is premature. A lot of information is being developed by the legislative energy committee, and to adopt a rule today that would potentially have to be undone by the Legislature or the Board seems premature. She stated adopting the rules would be premature for the following reasons:

- Idaho can conform to the CAMR on the November 17, 2006 deadline without submitting a plan to EPA.
- Participation in the Cap and Trade program is essential if a clean coal project is to be developed in Idaho.
- The proposed rules prohibiting all coal-fired generation in Idaho are inconsistent with Idaho Code §§ 39-124 and 39-125—the temporary moratorium established by the Idaho Legislature on certain coal projects during the 2006 session.
- She urged the Board to either disapprove the proposed rules, both Docket Nos. 58-0101-0602 and 0603, or defer action until the spring of 2007.

Ms. McIntyre discussed the written comments she submitted on October 10, 2006, and her follow-up comments of November 13 (Attachment 1). As an alternative to submitting a CAMR plan to EPA by the November 17 deadline, she suggested Idaho submit a letter of certification

that no existing facilities covered by CAMR are located in Idaho and, therefore, Idaho is exempt from the plan requirements. She said that this is a legally viable alternative (provided in 40 CFR Part 60, Subpart B) that would allow the decision makers in Idaho an additional six months to consider more fully the best course. She discussed the legislative Interim Committee on Energy, Environment and Technology (Interim Committee) established by the Idaho Legislature in 2006 by House Concurrent Resolution 16 to undertake and complete a study of environmental, energy, and technology issues. She reported that the Interim Committee discussed coal-fired energy at its August 2006 meeting. Members reflected the following sentiments:

- To leave out coal and to not discuss its merits and disadvantages would seem to be remiss in terms of base load generation.
- There needs to be recognition that coal could help meet Idaho's energy needs.
- Governor Risch's decision to opt out could be superseded at any time by the Legislature.
- The Interim Committee's charge is to develop a comprehensive energy policy for the state, and that policy should not be determined based on the current Governor's decision to opt out of the Cap and Trade program.

Ms. McIntyre noted that one subcommittee of the Interim Committee reported it had reached consensus that Idaho should examine whether it is appropriate to opt into the Cap and Trade program for the purpose of attracting a clean coal facility.

Ms. McIntyre said the rules are not ready for adoption and again urged the Board to disapprove the rules or defer action until early 2007 to allow the Interim Committee to complete its studies and make recommendations. Meanwhile, Mountain Island will be able to move forward with its clean coal facility development in Soda Springs without a rule that makes its project unlawful. Mountain Island hopes to work with DEQ to respond to the environmental, economic, and energy needs of Idaho.

Ms. McIntyre discussed her written comments of October 10 regarding the procedure and processes around the adoption of IDAPA 58.01.01.107.03.q and that portion of Docket No. 58-0101-0602 (Attachment 2). In response to those comments and subsequent discussions with Paula Wilson, DEQ Rules Coordinator, Ms. Wilson revised the DEQ Web site to address those concerns. Ms. McIntyre continued that while issues remain around the November 2005 status of information flow between the Board, DEQ, and the public on that rulemaking, no one wants to take the rules off the table for a technicality. Therefore, she stated she wanted to register those concerns, thank Ms. Wilson, and ask the Board to focus more on the substantive reasons for disapproving or deferring action on this rule.

Marti Calabretta said she was not comfortable with doing nothing and waiting because neither the Interim Committee nor the Governor's Office has asked the Board to delay action on this matter. She asked what consequences would result if the Board approved the proposed rules. Ms. McIntyre said if Idaho adopts rules that do not encourage clean coal projects, Mountain Island may take its project to its site in Wyoming. The project, on its face, would appear unlawful in Idaho and investors and developers would not want to continue to invest time and resources. She also said adopting a rule that makes a type of energy supply illegal would make it very difficult to have constructive and robust conversations that keep coal in the mix when the Interim Committee and others discuss Idaho's energy future.

Don Chisholm was interested in learning about the timing of a number of issues to see if there was a way to accommodate good development. He asked if it would effectively amend the state

implementation plan (SIP) if Idaho failed to opt out, and how Mountain Island could proceed with its project if the SIP required zero mercury emissions. Ms. McIntyre responded Mountain Island is aware Idaho currently has a moratorium in place against permitting coal-fired power plants, other than clean coal, and has already asked DEQ to confirm that its project is exempt from the moratorium. If Mountain Island is declared exempt, it will begin developing monitoring and modeling protocols and taking steps to submit a permit application for the facility. She believed overlaying a blanket prohibition against any coal-fired generation in the state would put a stop to Mountain Island's ability to continue to work within the exemption of the moratorium and begin to develop the environmental background information needed for the permit application. She explained the existing SIP for Idaho is separate from the CAMR plan requirement and believed that with the exemption from the moratorium, Mountain Island would be free to proceed with a permit application without any modification to the SIP if the Board does not approve this proposed rule.

Martin Bauer disagreed with Ms. McIntyre's analysis and said doing nothing and failing to submit a plan by the November 17 deadline would indicate to EPA that Idaho wanted to opt into the CAMR program. EPA could then develop a plan for Idaho at any time and lock it into the program. A negative declaration, as suggested by Ms. McIntyre, is only for the existing units in a state. The plan must still address sources that are coming into the state. The negative declaration merely says that Idaho does not have any existing sources in the state; if Idaho still has a zero budget and wants to opt out, it must have a rule in place stating how it will accomplish the zero budget.

Mr. Bauer read a November 14, 2006 letter from EPA (Attachment 3) confirming DEQ's understanding that the state needs to submit an adopted plan and that a negative declaration under 40 CFR 60.23(b) would not relieve the State of Idaho of the obligation to submit an adopted state plan. Mr. Bauer said the state is required to submit a plan to EPA by November 17, 2006, that includes a decision to opt out, as motioned by the Board and directed by the Governor, and a plan that includes a rule that ensures Idaho is enforcing its budget.

Chairman Cloonan commented if Idaho chooses to opt into the CAMR program, it is important for Idaho to be able to promulgate rules to ensure tools exist at the state level to control "hot spots" and to permit clean coal facilities.

Krista McIntyre said she had not had an opportunity to review the November 14 EPA letter. She believes the parties are saying similar things about what needs to happen, but differ in what they think the letter to EPA should say. She thinks it is reconcilable that Idaho claim the exemption from the CAMR plan requirements, but also put EPA on notice that Idaho is opting out now to defer action, but may opt in later or look to them to write a federal plan that opts Idaho in. She said the problem is that the current proposal to DEQ under Docket Nos. 0602 and 0603 is a premature conclusion that the best thing for Idaho is to opt out. She agreed it would be necessary for Idaho to promulgate its own rules to manage hot spots and local concerns. It would be consistent with how other states are approaching their mercury planning process. She said the only way to have a clean coal technology facility in Idaho is to participate in the Cap and Trade program. Even clean coal technology will emit some mercury, she noted, and the only way to meet the zero budget would be for the facility to buy allowances. If Idaho wants the emission rate to be more stringent than the EPA limit set in the Clean Air Mercury Rule, it can

write a rule to do that. This is one of the many issues that need to be investigated in a negotiated rulemaking.

Martin Bauer noted that if the Board chose not to adopt these rule dockets (0602 and 0603), it would also not be adopting by reference all the other rules Idaho needs. Alternatively, if the Board takes out the exemption, rules on it, and incorporates it, the outcome will be to incorporate the coal-fired electric generating units (EGUs) and ask EPA to opt Idaho into the CAMR program. Mr. Bauer believes the safest action to meet the plan requirements by the November 17, 2006, deadline is to opt out of the program, knowing that Idaho can opt into the program later.

Don Chisholm asked if Mountain Island had secured the credits needed to build a facility in Idaho. Ms. McIntyre said it had not acquired the necessary credits because the emission trading program is not up and running. Credits will be available for purchase in the future and will come mostly from eastern power plants that will be required to put more stringent controls in place for NO_x and SO_x emissions that have a co-benefit reduction of mercury. As those requirements come into effect and the pollution control equipment is installed on those units, those credits will be loaded into the system and will be available for purchase. She said it will be years before the system can be implemented.

Ms. McIntyre discussed the process EPA would follow if Idaho did not opt out of the CAMR program by the deadline. EPA is required by its regulations to promulgate a rule within six months after the deadline, but if the state proposes a plan during that timeframe that is approvable, the state plan will be used. She said that even if Idaho did nothing by the deadline or put EPA on notice that it was still deliberating, the state would still have six months to opt out and develop its own plan.

(The Board took a 20 minute break to allow everyone to review the November 13 letter from Krista McIntyre [Attachment 1] and the November 14 letter from EPA [Attachment 3].)

Mitchell Hart, Managing Director, Mountain Island Energy, testified against the proposed rule dockets and discussed the importance of opting in to the CAMR program to allow the development of clean coal facilities in Idaho. (See Attachment 4 for full comments.) He said timing is critical and Mountain Island needs to move forward with the project immediately to ensure permitting and construction of the plant is completed in time to meet the rapidly growing power needs in the region.

Mountain Island Energy intends to develop an advanced clean coal electric generating station near Soda Springs, Idaho. Mr. Hart said he is also a member of the Soda Springs City Council and feels he represents the sentiments of the citizens of Soda Springs. He noted that while the debate over the prospect of building a coal-fired power plant has been emotional in certain parts of the state, the community of Soda Springs would welcome an advanced clean coal power plant. Mountain Island chose to pursue its clean coal development project in the area because:

- The community wants economic and industrial development to come there.
- The community has a 100-plus year relationship with industry.
- Southeast Idaho would welcome an advanced clean coal power plant, and its communities have proven they are capable of demanding strict operating standards of its existing local industries.

- The community has developed high demands of environmental excellence, has worked closely with industry to fix past problems, and will establish fair, strict, and achievable performance standards for the future.
- The projected demand for power in eastern Idaho is evident.
- Both Avista and Idaho Power have made coal-fired power an essential component of their integrated resource plans for meeting Idaho's power demands.

Mr. Hart believes a decision to opt out of the Cap and Trade program will have dramatic negative effects for Idaho including:

- Power companies and municipalities in Idaho will be unable to provide a diversified portfolio of low cost, clean, state-based electrical power without the option of in-state based clean coal power generation.
- Power prices for future imported electric power will be higher.
- Idaho industry will see its future electric costs rapidly escalate when forced to purchase higher-cost imported electricity.
- Idaho communities that would welcome a clean coal power plant will remain economically depressed because their ability to attract and support advanced technology providing clean coal power plant projects will be limited.
- Economic benefits will move across Idaho's borders to neighboring states.
- Mountain Island's project will move over Idaho's border into Wyoming, and Idaho will lose jobs during construction and during its 30-year projected life, millions of dollars in investment capital, and millions in tax dollars.

Mr. Hart briefly discussed recent information from experts about the effects of coal-fired power plants and mercury on the environment. He cited a March 2006 presentation by Gail Charnley at www.healthriskstrategies.com and a study Mountain Island commissioned by Ecology and Environment (www.ene.com). The findings of the study included:

- A clean coal power plant with 90-95% mercury removal is estimated to emit 11.2 lbs of mercury per year.
- One 2,000-acre wildfire is estimated to emit 10.2 lbs of mercury per event.
- The gold operations of north central Nevada emit significantly more annual mercury emissions and drift over the state of Idaho.

In conclusion, Mr. Hart requested the Board:

- Keep the door open on advanced clean coal power generation;
- Instruct DEQ to advise EPA of the state's intentions to opt into the CAMR Cap and Trade program, holding open the option to adapt future state mercury rules that will be strict, fair, and achievable; and
- Assure that any future state-based mercury rule is a consensus decision that includes all branches of government and is fair to the entire state of Idaho.

Don Chisholm asked about the other regulatory steps Mountain Island would have to take to move forward with its project in Soda Springs and their timing. Mr. Hart responded one key issue driving the project was its application for Section 48 tax credits through the Department of Energy and the IRS. Mountain Island must permit the facility within two years following the granting of the tax credits. He fears that would not be possible if the Board makes the decision to opt out of the Cap and Trade program. The air quality permit is the main issue that will drive other regulatory issues including local rules, zoning requirements, and water quality issues. The

facility will be a merchant plant unless Mountain Island partners with an investor-owned utility, which is a possible.

Craig Harlen asked how much power the project would generate and what the anticipated mercury emissions would be in pounds per year. Mr. Hart stated the project was targeted to produce 400 megawatts, with estimated mercury emissions of 11.2 pounds per year.

Dr. MacMillan asked if Mountain Island had secured the necessary water rights to operate the facility. Mr. Hart stated a water rights consolidation plan is ready to execute, but all the necessary water rights have not yet been acquired.

Mr. Hart urged the Board to include a statement to EPA to leave the door open to opting in to the Cap and Trade program in the future, even if it chooses to opt out for now. To send a message to close the door in a very finite way would be devastating to Mountain Island trying to attract capital and move forward in a timely fashion, he said. Chairman Cloonan confirmed it was the Board's intention and direction to DEQ (at the June 2006 Board meeting) to move forward with rules that would give the state the ability to potentially opt back into the program in the future.

Lisa Kronberg pointed out the description of Idaho's CAMR Program described in Appendix A to the Response to Comments includes the statement, "As in any plan submitted to EPA for approval, Idaho may submit future revisions to this plan." She confirmed the intent of this language was to clarify that the action is being taken as a "place holder," but based on future information and negotiations, it may change. Director Hardesty noted that DEQ requested and received a letter from EPA confirming that Idaho can still opt in to the Cap and Trade program in the future, even if it chooses to opt out now.

Don Chisholm commented the Interim Committee may decide Idaho needs coal-fired power plants in Idaho, but may not be willing to accept mercury emissions from a merchant plant which leaves its mercury emissions here but sends its energy out-of-state. He asked if any commerce clause issues or other laws would prohibit Idaho from adopting a plan with such restrictions. Krista McIntyre said that while she was not an expert in this matter, she has been told that a claim could be made if the state were to choose to discriminate against one type of project over another. Mr. Hart stated Mountain Island did not intend to move power from the Soda Springs project out of the region. Its market analysis shows a demand for more than 400 megawatts of power in southeastern Idaho. Their intent is to sell the power to area industrials, municipalities and cooperatives, not to California.

Neil Colwell testified on behalf of Avista Corporation, a gas and electric utility headquartered in Spokane, Washington, that generates and sells power in multiple states (Montana, Idaho, Washington, and Oregon). He said he believes a commerce clause question could arise if Idaho were to try to restrict the output of an energy facility into other states. He pointed out that Idaho currently imports about 50% of its power supply and actively buys, sells, and trades power all over the western United States within the integrated grid that runs from northern Mexico to western Canada.

Craig Harlen confirmed it was his understanding that by opting out of the Cap and Trade program, the Board was preserving all of its options, including the ability to opt into the program at any time, and allowing flexibility for DEQ to respond to hot spots in the state, as well as

allowing the Interim Committee and the new administration to take action. He believes the comment cited by Lisa Kronberg from Appendix A of Idaho's CAMR program description is a step toward putting it on record for firms like Mountain Island that Idaho wants to examine all the options and ensure it will be able to react in its best interest in the future.

Alex LaBeau, President, Idaho Association of Commerce & Industry (IACI), expressed concern with the current language in the proposed rule. (See Attachment 5 for full comments.) IACI believes the language is not consistent with the intent of the resolution creating the Interim Committee passed by the Legislature last session. Mr. LaBeau noted the resolution said nothing that would indicate the Legislature's intent to completely bar any form of energy generation from discussion. IACI feels the proposed rule takes an option off the table that has yet to be thoroughly considered by the Interim Committee. IACI recommends the Board take a "time-out" in the adoption of this rule until an integrated energy plan is created by the Interim Committee.

Mr. LaBeau continued that if the Board chooses to move forward with this rule, IACI requests it be amended to conform to the same timeline outlined in House Bill 791 which put a two-year moratorium on the permitting of coal-fired power plants. This would effectively sunset the rule on April 7, 2008. IACI believes this would provide the opportunity to have the Legislature complete its work and avoid a potential conflict in the future.

Justin Hayes, Idaho Conservation League, testified in support of the rules and stated he looks forward to taking part in a negotiated rulemaking to develop Idaho-specific rules that may at some point allow for some mercury emissions from some aspect of coal-fired power plants. He observed that most of the issues discussed at this meeting were discussed at the Board's June 2006 meeting. He believes the Board and the Governor made the correct decision as a result of those discussions.

Mr. Hayes said he sympathizes with Mountain Island's concern, but said if Idaho does not close the door to everyone now, it must open the door to everyone. He urged the Board to adopt the rule to opt out of the program until Idaho knows what it needs and develops the rules to usher in the development appropriately. Opting into the program now opens Idaho to everyone and makes it vulnerable to any project, including Sempra. Mr. Hayes pointed out this issue has had robust public discussion for the last six months. He feels bringing a last minute proposal to the table to try to keep the door open is not right and asked the Board to stay the course with the proposed rule.

Marti Calabretta asked if ICL would ever support any level of mercury in the state. Mr. Hayes replied that a number of industrial sources in the state already emit mercury, and ICL is interested in a discussion on how to limit their mercury emissions. He thinks coal will continue to be an important source of energy in the country, but looks forward to policy and economic incentives to clean up the emissions and encourage energy sources that produce significantly less than current sources. Eleven pounds of mercury from a 400-megawatt power plant is a significant reduction from the amount a traditional pulverized coal plant produces. Mr. Hayes noted the technology for the cleaner gasification coal plants is not available yet, so it is difficult to embrace at this point, but he looks forward to learning more.

Neil Colwell commented this is the second time he has attended a Board meeting on this matter and both times letters from EPA were presented at the meeting. He hopes in the future, questions and issues that can be anticipated will be brought forward sooner to allow the public and interested parties time to fully review and comment. In regard to the two EPA letters, he suggested that rather than discussing the matter in terms of "opting in or opting out" they discuss it in terms of adoption of a state plan. He pointed out the EPA letter did not say, "if you opt out now, you can opt in later." It said, "if you adopt a state plan, you can amend your state plan in the future." He felt this was a significant difference.

Mr. Colwell does not think it will be difficult for Idaho to continue to achieve its zero mercury budget. He believes the best way for Idaho to keep its options open is to ensure it is at zero now and allow the option for cap and trade in the future. The only way to ever get any mercury into the state under these regulations is to allow for some form of cap and trade. If Idaho were to opt in and adopt a state plan that allows for the use of cap and trade, he would urge the Board to conduct negotiated rulemaking to reach agreement on conditions under which cap and trade could be conducted. The rulemaking could clearly specify parts of the state that would allow development and the total limit for the state.

Mr. Colwell said Avista's integrated resource plan directs that 50% of its resources to address new load come from conservation, renewable resources, and upgrades to existing facilities. The other 50% is to be acquired from contracts and company-owned generation. He said this balance is important to the economic stability of the company. It is very important to limit how much power is purchased from the market because of extreme price increases such as those during the Enron situation where the cost went from $26 per megawatt to $200-500 per megawatt. He assured that, given the increasing demand for power in Idaho, generators of power will be very motivated to conclude negotiated rulemaking rapidly so projects can move forward with clearly defined regulations.

Mr. Colwell reported he attended the Interim Committee meeting in Post Falls yesterday at which it was decided to include two actionsin the Committee's plan: 1) require state agencies to be available (for technical input and support) to county commissioners and those who might be siting power plants; and 2) direct the Public Utilities Commission, the Department of Water Resources, and DEQ to investigate clean coal technologies to determine if there are barriers to investment for environmentally preferred uses of coal. The Interim Committee will have to vote on the entire plan before these issues are adopted.

Mr. Colwell summarized, saying the Interim Committee has appeared to consistently support keeping clean coal on the table as an option. Avista encourages maintaining the current zero mercury budget and adoption of a state plan that allows Idaho to move forward with negotiated rulemaking. The Cap and Trade program will not be in rule for six months, which will allow Idaho time to address the issue.

Martin Bauer pointed out that neither of the letters from EPA presented at the Board meetings contained new information not previously provided in briefing materials to the Board or in the CAMR plan. Director Hardesty confirmed the letters contained no new information. She added DEQ agrees it is best to have all information to the Board ahead of time and tries to anticipate what will be needed. In this instance, it was a response to a late comment sent directly to the

Board members so there was no opportunity to include it in the public comment record. The information was consistent with DEQ's statements of the past six months.

Krista McIntyre commented on Governor Risch's order and statement read earlier, noting that while he sets policy, his Executive Order does not have the force and effect of law, contrasted with Idaho Code §§39-124 and 125, the Idaho Legislature's intent to adopt an integrated energy plan for the state and leave the door open for clean coal projects. She said that the state plan, no matter what Idaho submits tomorrow, is not going to conform to EPA's expectation. EPA's November 14, 2006, letter specifies that Idaho's rules are to be fully adopted when submitted to EPA, but Idaho will not be able to do that and will tell EPA our rules are in flux. To underscore the emissions level cited by Mountain Island earlier, she pointed out the technical information translates into its emissions being three times less than integrated gasification combined cycle technology and six times less than pulverized coal technology—the kind of clean coal technology we want in the state. To keep Mountain Island in the conversation and the dialog constructive, she said the question before the Board should be, "Are rule dockets 58-0101-0602 and 0603 helpful or not in the next six months of dialog about the state's energy plan?"

- **MOTION**: Craig Harlen moved that because the Board wishes to preserve as many options as possible for the state of Idaho, the Board adopt the Rules for the Control of Air Pollution in Idaho, as presented in the final proposals under Docket No. 58-0101-0602 and 0603.
  SECOND: Marti Calabretta
  DISCUSSION: Nick Purdy asked if the motion could be amended to add a requirement that DEQ move forward with the negotiated rulemaking as soon as the Legislature adjourns and the energy plan is completed.
  Doug Conde suggested the action be taken as a separate motion or direction to DEQ to move forward with the rulemaking expeditiously.
  Marti Calabretta was concerned there might be constraints or pressures influencing DEQ staff that would affect the timing and asked for the Director's input to see if this was a realistic expectation.
  Director Hardesty replied it is a reasonable timeframe, especially if there is some flexibility with when DEQ begins the rulemaking. A great deal is happening on the national front, and a lot of data is coming forward. All the states are in the same position of needing to make their declarations. If data could be gathered from other states to provide a good format and starting point, it would be very helpful to DEQ and an efficient way to proceed. A number of issues could affect the negotiated rulemaking; it could include just EGUs, or it could include other things such as whether Idaho wants to have more stringent limits than the federal requirements. This would require going through the technical analysis and the stringency provisions. Significant data should be available for DEQ to move forward once the Legislature is adjourned. Director Hardesty offered to report back to the Board at its next meeting if the situation has changed.
  Craig Harlen reiterated his support for the language Lisa Kronberg cited earlier (from Idaho's CAMR program description) clarifying that Idaho may submit future revisions to this plan. He emphasized the importance of clarifying that the intention of this action is to preserve options, not to close the door on options.
  Kermit Kiebert encouraged DEQ to work closely with the Interim Committee to ensure a good understanding of the intentions of this important group of policy makers. Chairman Cloonan agreed it was important to clearly communicate with the Legislature and explain the

Board's intentions in taking these actions and express willingness to take direction from the Interim Committee.
Director Hardesty added DEQ has presented to the Interim Committee a number of times and continues to keep the dialog open to assure good communication between the executive branch and the legislative branch on this very complex issue.
ROLL CALL VOTE: Motion carried by unanimous vote. Calabretta, aye; Chisholm, aye; Cloonan, aye; Harlen, aye; Kiebert, aye; Purdy, aye; MacMillan, aye.

- **MOTION**: Nick Purdy moved the Board direct DEQ to enter into negotiated rulemaking to develop rules that are protective of human health and the environment and provide the potential for Idaho to opt in to the CAMR program after the Idaho Legislature adjourns and the Interim Committee issues its energy plan.
  SECOND: Don Chisholm
  DISCUSSION: Randy MacMillan questioned whether the Interim Committee's energy plan had to be approved by the full Legislature, and if not, how it would affect the rulemaking if the direction of the Legislature was different from the recommendations of the energy plan. The question was discussed and it was clarified the intent of the motion is that there will be additional information and guidance from numerous sources including the energy plan, the Legislature, the new governor, other states, etc. The motion also sets a timeframe for the negotiated rulemaking efforts to begin.
  ROLL CALL VOTE: Motion carried by unanimous vote. Calabretta, aye; Chisholm, aye; Cloonan, aye; Harlen, aye; Kiebert, aye; Purdy, aye; MacMillan, aye.

AGENDA ITEM NO. 5: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0303 (PENDING RULE) (*TITLE V AIR QUALITY OPERATING PERMIT REGISTRATION FEES*)**

Martin Bauer explained this rule is needed to set Title V air quality operating permit registration fees. Payment of the Title V permit program costs by a fee is mandated by the Clean Air Act. By federal law, the state cannot maintain primacy of the Title V program unless it collects fees sufficient to cover all reasonable direct and indirect costs of operating the program. This rule will generate sufficient funds for the next two years to cover all program costs and maintain primacy of the Title V program. This was a negotiated rule attended by representatives of both large and small Title V industries statewide. The rule will increase the fees being collected by $400,000 per year.

Mr. Bauer continued that during the first few years DEQ administered the program, surplus fees were collected and those surplus fees have been used to cover the costs incurred above those collected in fees over the years. The surplus is now depleted, requiring an increase in the fees to cover expenses. Consensus was reached during the negotiated rulemaking and there should be no contentious issues. The rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than the federal rules.

Mr. Bauer further explained the details of the rules and assured DEQ will be monitoring the program costs and fee assessments to make sure it is collecting enough fees and spending them appropriately.

Dr. MacMillan noted this rule has been very contentious in the past when it came before the Board and asked why there was no controversy at this time. Mr. Bauer explained there was controversy in the negotiated rulemaking, but they were able to work it out and reach agreement. Give and take occurred on both sides. DEQ was able to present its costs and justify its expenses to the satisfaction of the parties in the negotiated rulemaking. He added that while they did not meet at the number he wanted, they did meet at a number he believes the program can get by on for two years. The cost of operating the program in the past has varied due to the number of permits issued and the level of compliance. Compliance abilities in the program for the first two years were not up to EPA requirements; however, last year DEQ operated the program as required, and it cost about $2.4 million. During the negotiated rulemaking, DEQ agreed to set the fees to provide a lower level of funding of $2 million. Three things convinced Mr. Bauer the lower level of funding would be adequate for the next two years:

- DEQ is implementing a streamlining procedure in its permitting process which should gain efficiency and reduce costs.
- DEQ staff are becoming more experienced and efficient in compliance.
- Several staff vacancies in the last quarter provide a temporary savings.

Suzanne Schaefer, SBS Associates, testified on behalf of P-4 Production, LLC (Monsanto) in support of the proposed rule. P-4 participated in this negotiated rulemaking and all previous rulemakings relating to the Title V program. Ms. Schaefer commended Mr. Bauer and thanked DEQ staff for working with the stakeholders on this controversial issue to negotiate a fee structure that all the parties could agree on. She believes this rule has made progress in the last six years and now puts a fee structure in place that is working. She feels the negotiated rulemaking process is working the way it should and has allowed the stakeholders to modify the rule where needed in a way that allows the parties to reach consensus.

- **MOTION**: Marti Calabretta moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0303.
  SECOND: Dr. Randy MacMillan
  VOICE VOTE: Motion carried unanimously.

AGENDA ITEM NO. 6: **IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS, DOCKET NO. 58-0108-0602 (PENDING RULE) *(PHASE 2 DEVELOPMENT OF FACILITY DESIGN STANDARDS FOR PUBLIC DRINKING WATER SYSTEMS***

Tom John, Microbiology Rules Analyst, DEQ Drinking Water Program, presented this rule to initiate phase two of the facility and design standards for public drinking water systems mandated by Section 2 of Senate Bill 1220 passed by the Idaho Legislature in 2005. Negotiated rulemaking was conducted and a panel of licensed engineers assisted in developing the preliminary draft that was issued for public comment. Stakeholders involved in the negotiated rulemaking included city engineers, private consulting engineers, district health departments, EPA, water utility representatives, and water system operators. This rule essentially restates information that has always been part of the rule, but is now written into the rule instead of being incorporated by reference. It also revises the rules as necessary for consistency with changes made during the negotiated rulemaking process and includes housekeeping changes based on feedback from the regulated community and DEQ staff who routinely use the rules. He noted

one of the real achievements of this rulemaking will be to narrow the range of interpretations and provide for greater consistency around the state.

Mr. John responded to questions regarding redundancy requirements for small systems, and the application of the rules to non-transient and non-community water systems. He explained the rules generally are not applied retroactively to existing water systems but if upgrades or significant material modifications are made, the systems must be brought into compliance with the rules. The rules apply to all classes of public water systems, but a waiver process allows DEQ to consider individual situations and make allowances.

Dr. MacMillan asked if a non-community public water system would be required to have two ground water sources (wells). Barry Burnell confirmed it was his interpretation of the rules that non-community public water systems would not be required to have two wells.

Don Chisholm asked if DEQ anticipated any water systems having a problem meeting the power supply requirement to have a stand-by power source. Mr. John responded this was one of the more controversial issues in the rulemaking. After much discussion, a compromise was reached that sets a desirable standard for stand-by power, but allows DEQ to take various considerations into account to reduce the amount of stand-by power required. DEQ does not intend to ask existing water systems to install stand-by power; however, most systems are choosing to do so.

Nick Purdy expressed concern about how the proposed rules would affect subdivision water systems. For example, a 30-lot subdivision would be required to drill two wells, have a stand-by power supply, and also meet separation requirements already required by DEQ and IDWR. He feared these regulations combined might be impossible to meet in some instances. Mr. John explained that DEQ rules place no separation requirements on wells. He pointed out the two-well requirement for community water systems has been in the rules for many years; it is not new in this rulemaking. This was not an issue of concern in the negotiated rulemaking. The main concern in the area of stand-by power and redundancy was the redundancy requirement for things like fire flow, which is four – ten times the flow of normal domestic demand. To respond to this concern, DEQ put a provision in the rules to waive the redundancy requirement if the system had a 1,500 gallon per minute fire pump.

Marti Calabretta said it was unclear how and why the volume of water for fire suppression issue was involved in the drinking water rules, what agency had the fire authority, and what the real risk was to the homeowners. She was concerned that the solution developed in the negotiated rulemaking was to allow a statement to advise the customer that sufficient water for fire suppression was not available. Barry Burnell replied that depending on county planning and zoning requirements, a housing development may choose to use its domestic water supply for fire suppression as well as culinary use. When a subdivision chooses to use its well for this dual purpose, DEQ is concerned that the water supply stays safe for the citizens to consume as culinary water. De-pressurization can occur during a major fire that would allow contaminants to enter the distribution system.

Tom John clarified the statement referred to is not that there is not sufficient water for fire suppression; it is a statement that the amount of water that is available for fire suppression has been approved by the local fire authority. DEQ's concern is merely that it not detract from the

availability of the water system to continue to provide safe drinking water; other than that, DEQ defers completely to the local fire authority.

Chairman Cloonan commented she is somewhat nervous with rules containing so much explicit detail. She asked if DEQ believed the rules were flexible enough to allow for newer and better ways to do things as they are developed. Mr. John responded DEQ tried throughout the rules to be as flexible as possible. This is an issue that was discussed repeatedly during the negotiated rulemaking. DEQ designed the rules to be flexible and recognize there may be multiple ways to solve a problem. At the same time, DEQ tried to be fairly explicit with the language in response to requests from the regulated community to have rules that are more concise and explanatory so they understand what is expected of them.

- **MOTION**: Craig Harlen moved the Board adopt the Idaho Rules for Drinking Water Systems, as presented in the final proposal under Docket No. 58-0108-0602 as amended by the language under section 552.01.b. Facility and Design Standards-Operating Criteria for Public Water Systems.
  SECOND: Dr. Randy MacMillan
  VOICE VOTE: Motion carried. 6 Ayes (Chisholm, Cloonan, Harlen, Kiebert, Purdy, MacMillan); 1 Nay (Calabretta).

AGENDA ITEM NO. 7: **WASTEWATER RULES, DOCKET NO. 58-0116-0502 (PENDING RULE) *(PHASE 2 DEVELOPMENT OF FACILITY AND DESIGN STANDARDS FOR WASTEWATER SYSTEMS)***

Mark Mason, Wastewater Engineer, presented this rule to respond to Senate Bill 1220 adopted by the Idaho Legislature in 2005. The bill directed DEQ to work with an engineering committee and stakeholders to develop facility and design standards for wastewater. The bill also amended Idaho Code § 39-118 which necessitated modifying DEQ rules on plan and specification review for drinking water, wastewater, and other waste systems. This rulemaking is the second phase of this effort. It separates the wastewater rules from the water quality standards, and modifies several sections based on input from stakeholders and DEQ.

Mr. Mason said the approach to writing this rule was to have an open-ended rule that sets a standard while leaving flexibility for design engineers to use their professional judgment in how they want to meet the rule. Representatives from the Idaho Association of Cities, consulting groups, IACI, Idaho Mining Association, INEL, wastewater operators, and rural water representatives attended the negotiated rulemaking and took part in developing this rule.

Chairman Cloonan noted the language, "at the Department's discretion" was included in several places, and again stated her support for allowing this flexibility in the rules to provide room for improved methods and technology. Mr. Mason added noted that a lot of research is going on in wastewater treatment, and DEQ tried to structure the rule to accommodate new technology.

- **MOTION**: Dr. MacMillan moved the Board adopt the Wastewater Rules as presented in the final proposal under Docket No. 58-0116-0502, and as amended in Section 430.
  SECOND: Craig Harlen
  DISCUSSION: Kermit Kiebert asked what criterion was used to determine the need for a licensed operator for small wastewater systems. He is concerned the requirement for a

licensed operator for small systems will create an unnecessary expense that will be passed on to consumers. Barry Burnell explained when DEQ selected the wastewater volume to determine licensure versus nonlicensure, one of the elements considered was the cutoff from standard individual systems versus the large soil absorption systems in the subsurface sewage program. There are operation and maintenance requirements such as submitting an annual report, conducting ground water monitoring, and performing routine maintenance (cleaning septic tank and dosing chamber, flushing screens, and electrical maintenance issues with the pump). DEQ looked at these issues to determine what size of system needed to have a licensed operator to manage the system. Monitoring is important to see if operational changes need to be made. The approach is to make sure the system is operating properly and does not end up with sewage on the ground from inattentive operation of the wastewater system. The licensure requirement is not new in this rule.

VOICE VOTE: Motion carried by unanimous vote.

AGENDA ITEM NO. 8: **RULES FOR THE RECLAMATION AND REUSE OF MUNICIPAL AND INDUSTRIAL WASTEWATER, DOCKET NO. 58-0117-0601 (PENDING RULE) *(PERMIT ISSUANCE FLEXIBILITY; DISINFECTION REQUIREMENTS; CLASS A USES AND MIXING; TURBIDITY LIMIT FOR MEMBRANE FILTERS)***

Barry Burnell requested Docket No. 58-0117-0601 and Agenda Item No. 9, Docket No. 58-0117-0701 be presented together. Docket 0601 is the pending rule and Docket 0701 is the same rule presented as a temporary rule. The temporary rule is requested so the Class A reuse wastewater rules will be in effect tomorrow. Chairman Cloonan approved the request.

AGENDA ITEM NO. 9: **RULES FOR THE RECLAMATION AND REUSE OF MUNICIPAL AND INDUSTRIAL WASTEWATER, DOCKET NO. 58-0117-0701 (TEMPORARY RULE) *(PERMIT ISSUANCE FLEXIBILITY; DISINFECTION REQUIREMENTS; CLASS A USES AND MIXING; TURBIDITY LIMIT FOR MEMBRANE FILTERS)***

Mark Mason presented the pending and temporary Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. These rules underwent major changes in 2004 and 2005, most of which involved easing the requirements and limits made in the 2004 rule. This rulemaking is necessary to add more uses to Class A reclaimed wastewater, add the industry standard for disinfection of Class A reclaimed water, modify the turbidity standard for membrane filters to the industry standard, clarify treatment redundancy requirements, and clarify conditions under which Class A effluent may be mixed with other irrigation water.

This was a negotiated rulemaking attended by municipalities, industry, consultants, and developers. A public comment period was held and modifications were made to the rule to respond to public comments. There were no contentious issues and no stringency issues.

Mr. Mason detailed other changes to the rule including addition and modification of definitions for clarity and streamlining some requirements and permit applications.

Don Chisholm suggested a change to both rules in the warning language regarding labeling “not potable water” to include Spanish language and an international symbol. Revisions were

discussed and made to Sections 601.02.b.ii(1) and (2), 601.02.d.i., and 601.02.e.iv and v. to incorporate the suggested warning language in Spanish and the international symbol.

Dr. MacMillan asked what the current school of thought was in the expert community regarding micro-pollutants and endocrine disrupters in sewage, particularly with regard to using Class A reclaimed wastewater for recharging ground water. Barry Burnell responded emerging contaminants of concern is an important topic, and is new regarding personal care products and endocrine disrupters. He believes step one is the additional research looking at efficacy of these small, minute compounds presented into the environment. EPA and USGS are conducting monitoring and sampling as part of their investigations of existing surface and ground water quality. Over the past couple of years, the Idaho Department of Water Resources has also included personal care products as part of its statewide monitoring program for ground water. Some of the wells are testing positive for personal care products. Mr. Burnell believes we are at the front end of a new set of contaminants that we are investigating and trying to get a handle on. It is too soon to begin to speculate whether NPDES discharge permits or wastewater reuse permits would begin to include these emerging contaminants of concern as part of the permit conditions.

Mark Mason expects years of monitoring and a lot of research into what those levels of mean. Investigations are also looking at how to treat for those contaminates if necessary.

Dr. MacMillan asked how closely the rules aligned with IDWR's management of its injection well program. Mr. Mason replied direct injection of wastewater into wells is not allowed in these rules or in IDWR's. The state of Washington allows direct injection of Class A effluent if it has gone through reverse osmosis, but has yet to put that rule to use. DEQ considered including this use in these rules, but decided to wait and see how it proceeds in other states.

Barry Burnell noted at one point IDWR contemplated having a memorandum of understanding with DEQ to transition the underground injection control program, which includes storm water and the deep injection well program to DEQ. It has been a year or two since the discussions.

Dr. MacMillan asked if the drinking water community in the public who depend on aquifer water should feel confident in the safety of how those programs are operated. Mr. Burnell replied IDWR could best respond to the question. Director Hardesty added DEQ has worked closely with IDWR on the issue of recharge and the question of how to protect down-gradient domestic water uses during recharge. A firm plan is now in place and guidance exists regarding what kind of monitoring is required for individual recharge projects in order to protect the water.

- **MOTION**: Marti Calabretta moved the Board adopt as pending rules, the Rules for Reclamation and Reuse of Municipal and Industrial Wastewater, as presented in the final proposal under Docket No. 58-0117-0601, as amended in the revisions distributed in the meeting to Section 601.07.c and d. on "permitted disposal option" and in Sections 601.02.b.ii(1) and (2), 601.02.d.i, and 601.02.e.iv and v. to add language requiring warning language in English and Spanish and the international symbol for "Do not drink." Ms. Calabretta further moved the Board adopt as temporary rules the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater as presented under Docket No. 58-0117-0701 with the effective date of November 17, 2006, with the amendments distributed at the Board meeting to Section 601.07.c and d. on "permitted disposal option" and in Sections

601.02.b.ii(1) and (2), 601.02.d.i, and 601.02.e.iv and v. to add language requiring warning language in English and Spanish and the international symbol for "Do not drink."
SECOND: Nick Purdy
VOICE VOTE: Motion carried by unanimous vote.

AGENDA ITEM NO. 10: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson updated the Board on pending contested cases. The hearing officer in the Pristine Springs case granted DEQ's motion for summary judgment. Pristine Springs filed a petition for Board review of the decision. The matter could be scheduled for oral argument before the Board at its February 2007 meeting. Doug Conde advised the rules require the Board to accept or deny the petition before hearing the matter. The Board will meet by special telephone conference on December 12, 2006, at 10 a.m. to consider the petition for review. If the petition is accepted, a briefing schedule will be set at the meeting.

Dr. MacMillan said he would recuse himself from the Pristine Springs contested case.

AGENDA ITEM NO. 11: REGIONAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT

The Board tentatively set the following 2007 meeting schedule:

February 21 & 22 – Boise
April 18 & 19 – Boise
June 20 & 21 – Twin Falls
October 10 & 11 – Boise
November 14 & 15 - Boise

Don Chisholm suggested the Board try to hold two-day meetings with substantive, educational presentations on the issues the first day whenever possible. Chairman Cloonan agreed noting the tours and educational presentations were very valuable to Board members. Director Hardesty asked if the Board preferred to have day-long workshops with technical presentations or to have presentations as part of the Board meetings. Members felt both styles were helpful and preferred a combination of both.

Nick Purdy asked about the status of the effort to move toward regionalization of water and wastewater systems. Director Hardesty explained this issue began with a Senate Concurrent Resolution that directs DEQ to research the issue and submit a report in January 2007 with recommendations as to whether the Legislature needs to take further action to enact rules or laws. DEQ is gathering the information.

The meeting adjourned at 2:50 p.m.

/s/

Dr. Joan Cloonan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder