



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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

Dirk Kempthorne, Governor
C. Stephen Allred, Director

IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 22 & 23, 2003

The Board of Environmental Quality convened on October 22, 2003 at 8:30 a.m. at:

Idaho Department of Environmental Quality
Conference Rooms A & B
1410 North Hilton
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Paul C. Agidius, Chairman
Dr. J. Randy MacMillan, Vice-chairman
Dr. Joan Cloonan, Secretary
Donald J. Chisholm, Member
Craig D. Harlen, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

Steve Allred, Director
Jon Sandoval, Chief of Staff
Martin Bauer, Administrator, Air Quality Division
Susan Burke, Compliance Specialist, Water Quality Division
Jess Byrne, Intergovernmental Affairs
Debra Cline, Management Assistant to the Board
Doug Conde, Deputy Attorney General
Orville Green, Administrator, Waste and Remediation Division
Harriet Hensley, Deputy Attorney General
Jason Jedry, Community Affairs
David Mabe, Administrator, Water Quality Division
Pat Nair, Stationary Source Program Manager, Air Quality Division

OTHERS PRESENT:

Robbin Finch, Boise City
Justin Hayes, Program Director, Idaho Conservation League
Jack Lyman, Idaho Mining Association
Krista McIntyre, Stoel Rives
Christopher Pooser, Stoel Rives
Brad Purdy, Attorney, Idaho Conservation League
Dick Rush, Idaho Association of Commerce and Industry

CONTESTED CASE HEARING

SOLOMON V. DEQ, CONTESTED CASE DOCKET NO. 0101-03-01 **ORAL ARGUMENT ON INTERVENOR POTLATCH CORPORATION'S PETITION FOR** **REVIEW OF THE HEARING OFFICER'S PRELIMINARY ORDER ON STANDING**

- **Brad Purdy, appeared on behalf of petitioners Idaho Conservation League (ICL), Mark Soloman, and Friends of the Clearwater**
- **Krista McIntyre, Stoel Rives, appeared on behalf of the Potlatch Corporation**
- **Lisa Kronberg, Deputy Attorney General, appeared on behalf DEQ**

NOTE: A FULL TRANSCRIPT OF THE HEARING IS AVAILABLE THROUGH THE DEQ HEARING COORDINATOR'S OFFICE, CONTACT (208) 373-0418.

Chairman Paul Agidius stated the Board was prepared to hear oral argument in this matter. Each party was allowed 15 minutes to present oral argument.

Krista McIntyre, representing Potlatch Corporation, requested the Board reverse the hearing officer's preliminary orders issued in this matter and dismissal of the underlying petition. She briefly discussed the procedural background of the case. Potlatch believes that none of the three petitioners has factually supported that they have any real concrete particularized or imminent injury that was causally connected by DEQ's issuance of these two permits and that can be redressed by their contested case.

Lisa Kronberg, representing DEQ, discussed the history of the case and explained DEQ's process in issuing the permits. She argued in support of DEQ's actions and asserted that the hearing officer erred in his decision. She requested the Board to reverse the hearing officer's decision. She adamantly denied accusations of bad faith tactics by DEQ and explained the actions in question.

Brad Purdy, representing Mark Solomon, ICL, and the Friends of the Clearwater, argued in support of the hearing officer's decision granting the petitioners standing in this matter. He asserted it would be inappropriate to grant summary judgment at this state of the proceeding because there were genuine issues of material fact to be addressed. He stated if the Board overturns its own hearing officer's ruling at this stage, the Board will have effectively shut the public out of the Title V permitting process.

Chairman Agidius allowed the parties time to present rebuttal. Board members asked questions of the parties, then deliberated the matter.

- **MOTION:** Dr. Randy MacMillan moved the Board go into executive session as authorized by Idaho Code § 67-2345(f) to consider and advise its legal counsel in pending litigation.
SECOND: Dr. Joan Cloonan
ROLL CALL VOTE: Motion carried. 6 ayes (Chisholm, Cloonan, Harlen, MacMillan, Purdy, Agidius); 0 nays; 1 absent (McLaughlin).

The meeting room was cleared of everyone except Board members and Board counsel, Harriet Hensley, at approximately 1:00 p.m. The Board reconvened its open meeting at 1:20 p.m. No action was taken by the Board during the executive session.

- **MOTION:** Dr. Joan Cloonan moved the Board deny standing to the petitioners based on the three criteria required to establish standing: **1) They must demonstrate an injury that is real, concrete, and particularized, actual and imminent and not just speculative or hypothetical.** The injury alleged in the record in the affidavit of Mark Solomon alleges an injury to his aesthetic and recreational value and possibly to his health from breathing fumes from the Potlatch facility. **2) There must be a causal connection between the injury suffered and the conduct complained of.** They must show that there is a causal connection between the issuance of two permits in lieu of one permit that would cause Mr. Solomon's injury. Dr. Cloonan did not see a causal connection between existing Potlatch emissions and the fact that they were issued two permits in lieu of one. **3) A decision in their favor must redress the injury.** Dr. Cloonan believed, if in fact one permit were issued, there would be no difference in how DEQ handled enforcement of violations.

SECOND: Dr. Randy MacMillan

DISCUSSION: Dr. MacMillan believed the petitioners had failed to establish concrete injury, causality, and redressability. Chairman Agidius also thought the petitioners had failed to establish concrete injury, and felt the record showed that it was speculative and hypothetical. Craig Harlen also believed the petitioner had failed to meet the first requirement of injury.

Chairman Agidius rejected the claim that because a party has participated in the process, they should automatically have standing. He thought that claim was incorrect and believed a party must meet all three requirements before standing could be granted.

Harriet Hensley discussed first party standing and organizational and representational standing and requested the Board provide guidance on this matter before an order is drafted. She will review the record again to determine if there are any allegations of organizational or representational standing. Chairman Agidius asked that the order clearly define and set out what is needed to establish standing.

Don Chisholm commented that from a procedural standpoint, the order should address that the Board is ruling on a motion for summary judgment using the record, and is still bound by the rule requiring all inferences to be viewed in favor of the non-moving party. He believed the petitioners failed to establish a distinct and concrete particularized injury that is causally linked to the issuance of two permits instead of one.

AMENDMENT: Don Chisholm moved to amend the motion by replacing it with the following language: I move the Board reject the decision of the hearing officer denying the Potlatch Motion for Summary Judgment and enter an order granting the Potlatch Motion for Summary Judgment filed on the issue of standing.

SECOND ON AMENDMENT: Dr. MacMillan seconded the amendment.

ROLL CALL VOTE ON AMENDMENT: Motion carried. 6 ayes (Chisholm, Cloonan, Harlen, MacMillan, Purdy, Agidius); 0 nays; 1 absent (McLaughlin).

ROLL CALL VOTE ON AMENDED MOTION: Motion carried. 6 ayes (Chisholm, aye; Cloonan, aye; Harlen, aye; MacMillan, aye; McLaughlin, absent; Purdy, aye; Agidius, aye); 0 nays; 1 absent.

Harriet Hensley will draft the order and circulate it to Board members for review.

Dr. Randy MacMillan asked that the record clarify the information provided by DEQ (the emails from McCutchison and EPA) were irrelevant to the Board's decision on the standing issue. Harriet Hensley believed the documents related to the substantive issues in the case and did not affect the standing issue. The Board members concurred.

PUBLIC COMMENT PERIOD:

Justin Hayes, ICL, requested clarification regarding an earlier statement that participation in the public comment process is not sufficient to demonstrate standing. He asked, in the reverse, if it was necessary to participate in the public comment processes to demonstrate standing. Chairman Agidius stated the order would clearly set out what was required to establish standing. Mr. Hayes stated he would appreciate any guidance the Board could provide.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

a. April 24, 2003

Don Chisholm requested a change to Page 3, Paragraph 3, to change "bi-level" to "high level."

- **MOTION:** Don Chisholm moved the Board adopt the April 24, 2003 minutes as amended.
SECOND: Dr. Randy MacMillan
VOICE VOTE: Motion carried; 6 aye; 0 nay; 1 absent (McLaughlin).

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Steve Allred announced that David Mabe, Administrator of the Water Quality Division, would be leaving DEQ next month to accept a position with the federal government. Mr. Mabe has done an excellent job and it will be a real loss for DEQ. Toni Hardesty will replace Mr. Mabe as administrator of the Water Quality Division. She has done an excellent job working for the Department for the last six months on a special project regarding the air quality rules, and will be a great asset to the water programs. Chairman Agidius thanked Mr. Mabe for all the work and guidance he provided to the Board.

Director Allred briefly updated the Board on a number of issues including the budget and legislation for the upcoming session.

AGENDA ITEM NO. 3: WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0303 (TEMPORARY RULE)

Susan Burke, Compliance Specialist, Water Quality Division, presented this rule which is brought forward to correct errors found in Section 210. Those areas that have been identified for correction include cross-reference citations, the domestic supply use criteria for chlordane in Subsection 210.01, and the conversion factor for cadmium in Subsection 210.02. In addition, this rulemaking will include the addition of omitted dissolved total conversion factors for chromium (VI) and mercury in Subsection 210.02. These are all basically housekeeping corrections.

Dr. Randy MacMillan stated the City of Boise had previously expressed concerns regarding this temporary rule, and asked if those concerns had been addressed. Ms. Burke said she has been in contact with the City of Boise regarding their concerns. Those issues are beyond the scope of this rulemaking and would need to be noticed up and addressed in a separate rulemaking.

Dr. MacMillan discussed the avenues available for people to learn how to apply the standards.

- **MOTION:** Dr. Randy MacMillan moved the Board adopt, as temporary rules, the Water Quality Standards and Wastewater Treatment Requirements as presented under Docket No. 58-0102-0303, with an effective date of October 24, 2003.
SECOND: Dr. Joan Cloonan
VOICE VOTE: Motion carried; 6 aye; 0 nay; 1 absent (McLaughlin)..

AGENDA ITEM NO. 4 **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO,
DOCKET NO. 58-0101-0301 (ANNUAL UPDATE OF FEDERAL
REGULATIONS INCORPORATED BY REFERENCE)**

Paula Gradwohl, Administrative Rules Coordinator, explained the Rules for the Control of Air Pollution in Idaho are updated annually in order to maintain conformance with EPA's regulations. This rulemaking will incorporate by reference the EPA changes into the rules.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal under Docket No. 58-0101-0301, with an effective date of October 24, 2003.
SECOND: Craig Harlen
VOICE VOTE: Motion carried; 6 aye; 0 nay; 1 absent (McLaughlin).

AGENDA ITEM NO. 5 **RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF
ENVIRONMENTAL QUALITY, DOCKET NO. 58-0123-0301
(PENDING RULE)**

Paula Gradwohl presented this rule to modify the Rules of Administrative Procedure before the Board to address problems that have been identified since the rules were first adopted in 2001. This rulemaking establishes public notice requirements and modifies procedures for filing petitions. It also clarifies the procedures for intervention, review and reconsideration of interlocutory orders, and Department action not stayed. Negotiated rulemaking was conducted. Advocates for the West submitted comments suggesting the Board revisit the substantive standard for intervention in this rulemaking. DEQ decided not to address the matter at this time because a legal review of the standard indicated it was consistent with what other state agencies

use. Doug Conde commented the Board might want to revisit the standard for intervention at some point in the future.

Paula Gradwohl reviewed each of the changes. Don Chisholm suggested the timeframe for the public notice requirement be changed from 10 days to 14 days to be consistent with other timeframes in the rules. He also suggested a change to Section 351 regarding petitions to intervene. The proposed language required the intervenor to “demonstrate that the intervention would not unduly broaden the issues and cause delay or prejudice to the parties.” Mr. Chisholm suggested the words “demonstrate that” be changed to state briefly why. He believed the suggested wording would be appropriate and effective at this stage of a case and would prevent unduly burdensome requirements.

Doug Conde stated he had no objection to the suggested changes.

- **MOTION:** Don Chisholm moved the Board adopt the rules of Administrative Procedure before the Board of Environmental Quality as presented in the final proposal under Docket No. 58-0123-0301 with amendments of Section 047 to change the time period from 10 days to 14 days, and Section 351 to delete the words “demonstrate that” and substitute “state briefly why.”

SECOND: Dr. Joan Cloonan

VOICE VOTE: Motion carried; 6 aye; 0 nay; 1 absent (McLaughlin).

AGENDA ITEM NO. 6 **CONSIDERATION OF HEARING OFFICER APPLICATION FOR BOARD APPROVAL**

Paula Gradwohl presented the application and resume of Judith Lewis-Fraze to be placed on the list of Board approved hearing officers. Doug Conde stated he had reviewed the resume and believed Ms. Lewis-Fraze was well qualified and would be a good addition to the hearing officer list.

- **MOTION:** Don Chisholm moved the Board approve the addition of Judith Lewis-Fraze to the hearing officer list.

SECOND: Craig Harlen

VOICE VOTE: Motion carried; 6 aye; 0 nay; 1 absent (McLaughlin).

Director Steve Allred discussed a recommendation from the Governor’s Blue Ribbon Taskforce suggesting creation of a quasi-judicial function within the executive branch to preside over contested cases throughout the state.

AGENDA ITEM NO. 7 **DISCUSSION OF CONTESTED CASE PROCEDURES**

- a. Appointment of Board Members as Presiding Officers

Paula Gradwohl presented the question of whether there should be a process for a Board member(s) to act as hearing officer in a contested case. The rules currently give the hearing coordinator (Ms. Gradwohl) the authority to appoint a hearing officer from the list of Board approved hearing officers, but there is no approval process in place for appointing one or more Board members. Under the current process, a letter is sent out notifying Board members that a contested case has been filed and a hearing officer will be appointed unless the Board or a

member notifies the hearing coordinator within the timeframe that they wish to act as hearing officer in the case. Ms. Gradwohl questioned whether the Board would like to approve the appointment of one or more members of the Board to act as hearing officer by a motion, resolution, or some other action.

Doug Conde stated another issue that needs clarification for this process is whether a Board member who acts as hearing officer in a case, can then hear and deliberate the matter when it comes back before the full Board. Harriet Hensley and Doug Conde researched the matter and reported their findings to the Board in a memo. Their legal opinion found that it is appropriate for a Board member to participate on both levels. The memo also advised Board members on the following issues:

- Hearings can be very lengthy and require a large time commitment.
- A member acting as a hearing officer must be very careful to avoid ex-parte contact.
- A member should avoid taking a position on the issues until the end of the proceeding.

Director Allred also noted that in some cases, such as the Glanbia case, the hearing will involve conflicting expert testimony. He felt it would be difficult to judge the testimony without viewing it in person to observe the demeanor and credibility of the witness. This is particularly important in cases that involve issues of fact, and not just legal procedural issues. Don Chisholm suggested investigating the use of video depositions.

Doug Conde suggested the Board set up a protocol to allow a member to act as hearing officer on a case without having to convene the entire Board for approval. Chairman Agidius questioned whether the issue would come up often enough to cause a problem, and noted that Board meetings via conference call can be quickly arranged.

Nick Purdy clarified that he did not want to take part in hearings as a presiding officer who would take part in the decision making; he simply wanted to be able to attend hearings to observe, ask questions, and contribute comments. He felt this was an important role for Board members to take to ensure they are fully prepared to hear contested cases. Doug Conde noted that in order to ask questions and participate in such a manner, a member would have to be one of the presiding officers. An attorney from the approved list of hearing officers can still be appointed to run things. He noted that many agencies have their entire Board serve in such a capacity. This would require a commitment to attend the entire hearing.

Craig Harlen asked if the Board could request expert witnesses to appear before them when deciding a case that they had not attended as a presiding officer. Mr. Conde confirmed that because the Board reviewed a hearing officer decision de novo, they have the right to supplement the record by requesting expert witnesses to appear before them to gather additional information and testimony.

Alternative ways for Board members to attend hearings to observe testimony and ask questions were discussed. Harriet Hensley noted that Board members could attend hearings to observe testimony without acting as a presiding officer, and questioned whether it might be appropriate for members to ask questions through the hearing officer since he is acting in the Board's place. Don Chisholm pointed out that in judicial proceedings most judges do not interject themselves into the process by asking questions. Some judges occasionally ask questions to clarify issues for themselves, but most studiously avoid cross-examining witnesses

to ensure they do not lose their impartiality. He believed having a Board member write out a question for the hearing officer to ask was an appropriate solution. Doug Conde explained that the parties in a case have the right to disqualify a hearing officer. He believed the parties would have to be given notice that a Board member intended to take such action. If proper notice were given, there would be no reason a Board member could not attend a hearing and ask questions in this manner.

Harriet Hensley advised that a Board member would have to attend all of the hearing and not just the testimony of some of the witnesses, or there might be allegations the member was swayed by certain testimony without hearing all sides. Craig Harlen feared the Board might prejudice itself by being involved in the hearing process before it comes to the Board for a final decision. He wondered if it might be the best role for the Board to keep its distance and remain the last decision on a matter.

Harriet Hensley recommended the Board convene a meeting to take official action whenever a Board member(s) wishes to act as hearing officer in a contested case. Board members concurred that:

- The hearing coordinator will contact the Board prior to appointing a hearing officer when a new case is filed. The hearing coordinator will give the Board a specific date by which to request to be appointed to preside over the case. If the hearing coordinator does not receive a request, a hearing officer will be appointed.
- The Board must take official action to appoint a Board member(s) to act as hearing officer in a contested case. The hearing coordinator will notify the chairman when a request has been received to act as hearing officer and a special conference call meeting can be convened to consider the request.
- The hearing coordinator will notify the Board when a contested case hearing is scheduled.

b. Contested Case and Rule Docket Status Report

Paula Gradwohl briefly reviewed the contested case and rule docket status reports.

Director Allred suggested the Board revisit the Rules of Administrative Procedure before the Board at some time in the future to discuss whether the rules are working well for them.

Dr. Cloonan commented that IACI had suggested Board members attend negotiated rulemaking meetings when possible.

The meeting adjourned at 4:00 p.m. and reconvened on October 23 at 8:30 a.m.

October 23, 2003

The Board of Environmental Quality convened on October 23, 2003 at 8:30 a.m. at:

Idaho Department of Environmental Quality
Conference Rooms A & B
1410 North Hilton
Boise, Idaho

ROLL CALL

BOARD MEMBERS PRESENT:

Paul C. Agidius, Chairman
Dr. J. Randy MacMillan, Vice-chairman
Dr. Joan Cloonan, Secretary
Donald J. Chisholm, Member
Craig D. Harlen, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

Steve Allred, Director
Jon Sandoval, Chief of Staff
Debra Cline, Management Assistant to the Board
Doug Conde, Deputy Attorney General
Harriet Hensley, Deputy Attorney General

OTHERS PRESENT:

Jenna Borovansky, Idaho Rivers United
William Eddie, Advocates for the West
Travis Thompson, Barker Rosholt & Simpson

CONTESTED CASE HEARING

IN THE MATTER OF SECTION 401 WATER QUALITY CERTIFICATION FOR RELICENSING THE C. J. STRIKE HYDROELECTRIC FACILITY, CONTESTED CASE DOCKET NO. 0102-01-06, ORAL ARGUMENT ON HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

NOTE: A FULL TRANSCRIPT OF THE HEARING IS AVAILABLE THROUGH THE DEQ HEARING COORDINATOR'S OFFICE, CONTACT (208) 373-0418.

Chairman Paul Agidius stated the Board was prepared to hear oral argument on the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order. The Chairman stated the parties would be allowed 30 minutes each.

- **William Eddie appeared on behalf of Idaho Rivers United and American Rivers (Petitioners).**
- **Doug Conde, Deputy Attorney General, appeared on behalf of the Department of Environmental Quality.**
- **Travis Thompson appeared on behalf of Idaho Power Company**
- **Harriet Hensley, Deputy Attorney General, represented the Idaho Board of Environmental Quality.**

William Eddie stated the question before the Board is whether the 401 Certification issued by DEQ provides reasonable assurance that all of Idaho's water quality standards will be met. He discussed concerns that issues such as total dissolved gas and flow management were not adequately addressed in the 401 Certification. He asserted that the 401 Certification does not provide reasonable assurance that all of the water quality standards will be met. He asked that the Board remand this case back to DEQ to address the concerns he discussed.

Doug Conde observed the basis of the appeal appeared to be an issue of timing. He discussed the concerns of the Petitioners and how they would be appropriately addressed. He argued that the decision of the hearing officer was correct and the requirements of the Clean Water Act were met by the 401 Certification.

Travis Thompson argued that the hearing officer properly analyzed the case law for the TMDL process and 401 certification. He pointed out the standard does not require absolute certainty the water quality standards will be met. He requested the Board adopt the hearing officer's decision granting DEQ's motion for summary judgment and denying the Petitioners.

The parties responded to questions from Board members.

- **MOTION:** Dr. Randy MacMillan moved the Board go into executive session as authorized by Idaho Code § 67-2345(f) to receive legal advice from its counsel.
- SECOND:** Dr. Joan Cloonan
- ROLL CALL VOTE:** Motion passed. 6 ayes (Chisholm, Cloonan, Harlen, MacMillan, Purdy, Agidius); 0 nays; 1 absent (McLaughlin).

Chairman Agidius announced the Board would adjourn to go into executive session, then reconvene afterwards. The meeting room was cleared of everyone except Board members and the Board's counsel, Harriet Hensley, at 10:20 a.m. The Board reconvened its open meeting at 10:45 a.m. and Chairman Agidius opened the floor to deliberation.

- **MOTION:** Nick Purdy moved the Board affirm the action of the hearing officer in the matter of the Section 401 Water Quality Certification for Relicensing the C. J. Strike Hydroelectric Facility, Contested Case No. 0102-0106 because DEQ has demonstrated the water quality standards can be met using the TMDL process.
- SECOND:** Craig Harlen
- DISCUSSION:** Chairman Agidius said he would probably support the motion and noted that it was important for the Board to follow up on the progress by asking for periodic updates on the matter. Dr. Randy MacMillan agreed it was appropriate to receive updates and pointed out that DEQ has always done an excellent job of updating the Board and the public on the progress of all of its TMDL activities.

Don Chisholm expressed concern with how open-ended the process is. He recognized there are many practical reasons why it is difficult to set deadlines for compliance, but this seems to be a promise of compliance with the water quality standards without any guarantee of compliance. It can be extended so far out into the future that the facility may never come into compliance. He felt it goes to the heart of the question of whether we are going to accommodate people or accommodate species, and it goes back to issues related to the Endangered Species Act. The certification creates the impression we are going to make progress, and the people may act in good faith to do that. On the other hand, looking at the

matter to see if the Department has acted within the letter and spirit of the law, it is hard to say whether the certification means anything because it is so open-ended.

Mr. Chisholm wondered about the consequences if the state had waived its right to issue a certification versus issuing a certification that says at some time in the future they will do something. He felt the Board had the responsibility to enforce the spirit of the law as well as the letter of the law. The certification complies with the letter of the law, but whether it complies with the spirit of the law remains to be seen.

Chairman Agidius replied that he has worked with the TMDL process, and while lengthy, did not feel it was totally open-ended. There are schedules and timeframes that have to be met. He believed the certification did meet both the spirit and the letter of the law. It is just a complex problem that requires a lot of work and there are no quick, short fixes. The TMDL process and the parties are already in place working to identify a solution. He believed all the parties would act in good faith and continue to ensure the effort moves forward.

Craig Harlen said he reviewed the record and it appears there have been valuable and concrete actions taken. If the Board affirms the hearing officer's order, it will create a tool for DEQ and the state to use to assure compliance. Idaho Power has assured it will take steps at the C. J. Strike facility to comply with the TMDLs. That assurance provides a concrete tool to use to ensure Idaho Power's compliance now and in the future.

ROLL CALL VOTE: Motion carried. 6 ayes (Chisholm, Cloonan, MacMillan, Purdy, Agidius); 0 nays; 1 absent (McLaughlin).

Chairman Agidius directed Harriet Hensley to draft a proposed opinion in the matter.

The meeting adjourned at 2:30 p.m.

/S/

Paul C. Agidius, Chairman

/S/

Dr. Joan Cloonan, Secretary

/S/

Debra L. Cline, Management Assistant and Recorder