



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

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Toni Hardesty Director

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**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**February 22, 2007**

The Board of Environmental Quality convened on February 22, 2007 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  
Donald J. Chisholm, Member  
Kermit V. Kiebert, Member  
Dr. John R. "Randy" MacMillan, Member  
Nick Purdy, Member

**BOARD MEMBERS ABSENT**

Craig Harlen, Secretary

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Toni Hardesty, Director  
Mark Dietrich, Deputy Director  
Susan Burke, Compliance & Special Projects  
Barry Burnell, Administrator, Water Quality Division  
Jess Byrne, Interagency Affairs  
Debra Cline, Management Assistant to the Board  
Douglas Conde, Deputy Attorney General  
Don Essig, Water Quality Standards Lead  
Orville Green, Administrator, Waste Management & Remediation Division  
Susan Hamlin, Deputy Attorney General  
Beth Kittelmann, Legal Assistant  
Michael McIntyre, Surface Water Program Manager  
Mary-Anne Nelson, Monitoring & Assessments Program Manager  
Johnna Sandow, Water Quality Standards Specialist  
Paula Wilson, Rules Coordinator

### **OTHERS PRESENT:**

Representative Sharon Block, Idaho House of Representatives, District 24  
Court Reporter  
Fritz Haemmerle, Haemmerle & Haemmerle PLLC  
Harriet Hensley, Deputy Attorney General, Natural Resources  
Mike Puett, MSE Environmental  
Daniel Steenson, Ringert Clark Chtd.

- ❖ 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.

### **PUBLIC COMMENT PERIOD**

Representative Sharon Block, Idaho House of Representatives, District 24, addressed the Board to express the concern of her constituents in the Magic Valley regarding the Board's discussions and actions during its November 16, 2006, meeting in regard to coal-fired power plants in the state of Idaho. (See Attachment 1 for full comments.) She stated the majority of people in Idaho do not want coal-fired power plants located in the state. She distributed copies of a 2006 Boise State University survey that documents only 5.3% of the people of Idaho thought coal-fired power generation was the most desirable source of power generation. She noted that 8,500 people from the Magic Valley signed petitions in opposition to a 600-megawatt coal-fired power plant proposed there last year. She said people in the Treasure Valley also vehemently opposed the location of the Pioneer coal-fired power plant in their area.

Representative Block said the people of Idaho have concerns for their families, environment, and existing industries that may be impacted by contamination produced by coal-fired power plants. She discussed concerns about existing mercury contamination in ten Idaho water bodies and mercury drifting into the state from Nevada mines. She quoted an article in the *Times News* that stated, "The University of Nevada released a study showing mines in northern Nevada have been releasing hundreds of times the allowable amount of mercury into the atmosphere. The Idaho DEQ suspects some of this mercury has found its way into Salmon Falls Creek Reservoir near Rogerson, Idaho." The article further states it is believed some of the plants are emitting even 600 times more than allowable limits.

Representative Block continued that coal contains 21 contaminants of possible harm to human health including lead and arsenic. Idaho already has existing problems with lead and arsenic contamination. Technology that removes contaminants from emissions still leaves contaminated waste that must be dealt with. If the waste is buried in Idaho, it can enter into the aquifer through fractured basalt.

She encouraged the development of Idaho's energy resources such as wind, hydro, geothermal, and biomass and noted that coal is not an Idaho resource. If renewables are not enough, Idaho has a world class nuclear laboratory. If it is decided that Idaho must have electricity produced by coal (even though it contributes to greenhouse gases and global climate change and has adverse impacts to Idaho's forests, agriculture, and hydropower potential), she urged that the plants be located at the mine mouth in Wyoming or Utah. The geology is stable in those states and they have experience and expertise with coal-fired power plants, while Idaho does not. Soda Springs has been proposed as a possible site. She questioned why Idaho would want to open the entire state to coal-fired power plants when Soda Springs is only 40 miles from the Wyoming border.

Representative Block said the people of Idaho are looking to the Board to protect the health and safety of the people, the environment, and existing industries. She urged the Board to take the position that there will be no coal-fired power plants within the borders of the state of Idaho and that the mercury cap will remain at zero.

Don Chisholm discussed the stringency issue and how its requirements might apply to this matter. The Board could not adopt a rule regarding air quality standards that would be more stringent than a federal rule without authorization from the legislature. He was concerned there would be pressure for Idaho to simply opt into the program without having specific protective rules if an energy shortage situation developed. He asked if Representative Block could commit to her constituency and the state to take appropriate action in the legislature authorizing the Board to put a protective rule in place.

Representative Block replied she thinks energy is a top priority in the legislature and the state right now. She said actions such as upgrading transmission lines, bringing new renewable energy online, and looking at nuclear energy are being taken to ensure adequate energy will be available in the state. She restated that if coal is necessary, the best place for it to be located is at the mine mouth.

Mr. Chisholm noted that the state energy plan, as proposed, would allow for coal-fired generation in Idaho. Representative Block said she would not support the energy plan as long as it includes coal-fired power plants in Idaho and plans to debate against that portion of the plan when it comes to the floor of the Idaho House of Representatives. Mr. Chisholm said he believes that a plan that takes both sides into account will serve the people better than an absolutist position that allows no coal-fired generation in the state of Idaho. Representative Block responded that while she respected his position, she believes the health and welfare and safety of the existing industries and the environment in Idaho are very important. She has worked with experts who are knowledgeable about what is necessary to protect the public health and safety, and believes the risks associated with coal-fired power plants are so extensive that it will not be possible to adequately protect the health and safety of the people and the environment with regulations.

Chairman Cloonan commented she believes the Board will go forward with negotiated rulemaking for standards for mercury. She urged Representative Block and others who are concerned, particularly those with technical expertise, to participate in the negotiated rulemaking to ensure rules are developed that are protective of the health and safety of the people and the environment.

Marti Calabretta asked Representative Block if she was requesting specific action from the Board. Representative Block requested the Board take the position that there will be no coal-fired power plants located within the borders of the state of Idaho, and that Idaho's mercury cap will remain at zero. Ms. Calabretta explained the Board's role has never been to set policy, but rather to respond to specific rulemaking actions. As a Board member she may support an issue, but the Board as a whole does not generally vote to take a position on an issue. Representative Block stated she understood the Board's position, and restated her request to ask that the Board keep her testimony in mind as it proceeds with its deliberations on this issue.

**AGENDA ITEM NO. 1:            ADOPTION OF BOARD MINUTES**

- a. November 16, 2006 meeting minutes
- b. December 14, 2006 meeting minutes

- **MOTION:** Don Chisholm moved the Board adopt the minutes of the November 16, 2006 meeting and the December 14, 2006, meeting as presented.

**SECOND:** Nick Purdy

**VOICE VOTE:** Motion carried by unanimous voice vote.

c. Action Items

There are no current action items and none were presented at this meeting.

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

Director Hardesty updated the Board on legislative issues. She said DEQ is presenting three pieces of legislation and reported the following progress:

- Legislation to give DEQ primacy of the underground storage tank program has moved forward and Idaho will be administering that program.
- Legislation to move administration of the contract for remediation work taking place in northern Idaho from the Department of Administration to DEQ has moved through the House and is before a Senate committee. DEQ has provided briefings on the matter and expects the bill to move forward without any problems.
- SB1148, a housekeeping bill, is moving forward to clean up a number of issues relative to authorities that DEQ no longer has or never had. The bill also fully assigns the INL oversight program to DEQ with specific roles and responsibilities. It was previously under the Governor's office, and this action clarifies what DEQ has been doing all along. It also moves the INL settlement fund under another statute with other public funds. The bill passed out of committee in the Senate with a unanimous do pass and is expected to be introduced in the House next week.

The Director discussed a number of budget-related issues including:

- Four of the seven decision units requested by DEQ were approved by the Governor's office:
  - acceptance of federal funds for administering the underground storage tank program,
  - acceptance of federal funds for the Brownfield development position in Coeur d'Alene,
  - appropriation of state funds for the air information management system (\$100,000) and the community re-investment pilot initiative (\$1.5 million).All were funded by JFAC, plus an additional \$60,000 DEQ had requested for mercury monitoring was added to DEQ's budget.
- The three new FTEs DEQ requested (two for the underground storage tank program and one for the Brownfield's program) were not approved by the Governor. He asked that DEQ support the programs with existing staff. DEQ will review and prioritize staff to find existing vacant positions to fill the three new positions.

Director Hardesty briefly discussed the *SAFE v. EPA* lawsuit. EPA lost the lawsuit in appeals court. Attorneys from DEQ and the Department of Agriculture are reviewing the results of the court case and will be making recommendations to the agencies regarding whether they should ask for a rehearing or appeal the matter. DEQ is also evaluating what steps the agency should take if it does not proceed with a legal challenge. The agency will investigate whether it would be appropriate to ask for a SIP change and what that would involve. In the meantime, the Department of Agriculture has made a policy decision, after consultation with DEQ and legal advisors in the Governor's office, not to issue any burn authorizations through the end of the year. Director Hardesty noted this does not affect burning that

occurs on Indian reservations because that is under federal law. That burning will still occur and the Department of Agriculture will continue to provide information regarding meteorological conditions.

Director Hardesty announced Mark Dietrich had accepted the position of DEQ deputy director. Mr. Dietrich formerly served as regional administrator of the DEQ Pocatello Regional Office. Pete Wagner accepted the position of regional administrator of the DEQ Boise Regional Office. Mr. Wagner formerly served as the Airshed Manager of DEQ's Pocatello Region.

Director Hardesty said DEQ is developing a policy to provide guidance for reimbursement for Board members for the time they spend reviewing legal documents and preparing for contested cases. DEQ legal staff determined it is appropriate to reimburse members for this time. The Department is working with other state agencies that have experience in this matter to prepare a draft to share with the Board.

Chairman Joan Cloonan commented the Idaho Council on Industry and the Environment provided presentations to four legislative committees on the rulemaking process, the difference between rules and guidance, and the stringency issue. She said Director Hardesty attended the briefings and did a good job answering questions from legislators.

Don Chisholm asked if DEQ was confident it could operate the underground storage tank program in a manner that would adequately protect the environment without the additional staff it had requested. Director Hardesty responded DEQ was comfortable it could operate the program successfully with the federal funding provided. Mr. Chisholm advocated that the program be operated in an aggressive manner to provide proactive management of the problem to prevent the kinds of problems Idaho has experienced in the past. Director Hardesty said she was convinced DEQ will do a good job operating the program because it will be working with the regulated community in a proactive manner to assure compliance.

Marti Calabretta discussed SB1148 and expressed concern about the changes brought about by this legislation, specifically regarding PCBs. She wanted to make sure the changes did not take out the part of the statute that ensures there will be no PCB incineration at the Superfund site. Doug Conde said he did not recall anything in the statutory language that was removed that dealt specifically with incineration.

**AGENDA ITEM NO. 3:                    WATER QUALITY STANDARDS – TEMPORARY , INTERMITTENT, AND EPHEMERAL WATERS DISCUSSION**

Don Essig presented an educational discussion and Power Point presentation on temporary, intermittent, and ephemeral waters in Idaho. The presentation provided an historical perspective, definitions, and an overview of the issues involved in this matter (Attachment 2).

The following definitions were added to Idaho's water quality standards in 2000 to define ephemeral and intermittent waters:

**Ephemeral Waters.** A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table.

**Intermittent Waters.** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is

considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent.

Perennial waters are not defined in the water quality standards; thus, everything not defined as ephemeral or intermittent is considered perennial. Undesignated waters are presumed to support cold water aquatic life.

Mr. Essig discussed the significance of how streams are classified so the correct use designations and criteria can be applied to the streams. Classification also impacts assessments in 303d list formulation, development of TMDLs, and NPDES permitting issues. More monitoring and flow data are needed to have reliable information for classification.

Doug Conde briefly discussed the recent *Rapanos* decision and how it may affect application of the Clean Water Act to ephemeral or intermittent waters.

**AGENDA ITEM NO. 4:                    CONTESTED CASE HEARING  
PRISTINE SPRINGS, INC. v. DEQ, DOCKET NO. 0102-05-02, ORAL  
ARGUMENT ON PRISTINE SPRINGS' PETITION FOR REVIEW OF AND  
EXCEPTIONS TO PRELIMINARY ORDER**

**APPEARANCES**

- Fritz Haemmerle, Attorney, Haemmerle & Haemmerle PLLC, appeared on behalf of Pristine Springs, Inc., Appellant
- Daniel Steenson, Attorney, Ringert Clark Chartered, appeared on behalf of Blue Lakes Trout Farm, Inc., Clear Lakes Trout Company, Inc., Estate of Earl M. Hardy, Fisheries Development Company, Idaho Trout Company, Inc., Rim View Trout Company, Inc., Rainbow Trout Farms, Inc. ("Trout Companies"), Intervenors.
- Douglas Conde, Deputy Attorney General, appeared on behalf of the Idaho Department of Environmental Quality, Respondent
- Harriet Hensley, Deputy Attorney General, appeared as counsel to the Board.

**NOTE:** A full transcript of the hearing is available from the DEQ Hearing Coordinator's Office. Contact Paula Wilson at (208) 373-0418.

Dr. Randy MacMillan recused himself from this case and left the meeting table. He observed the proceedings from the audience.

Chairman Cloonan announced 30 minutes would be allowed for each party to present oral argument including rebuttal, with additional time allowed for questions. Deliberation will follow and additional questions may be asked. The Board may accept the hearing officer's order, remand the order to the hearing officer with direction, or request additional testimony and information.

Fritz Haemmerle focused his testimony on the issues of:

- The 970.2 pound per day limit
- Whether a TMDL should have been set for Warm Creek
- The individual allocation for Pristine Springs, and
- The proper compliance point for measuring individual allocation

Mr. Haemmerle argued the statutory reasons for appeal including:

- DEQ acted in excess of its statutory authority .
- The decisions made by DEQ were based upon unlawful procedure.
- The decisions were arbitrary and capricious, without substantial evidence, and in violation of Pristine Springs' constitutional rights.

In conclusion, Mr. Haemmerle said these are very important points to Pristine Springs individually, to the aquaculture industry as a whole, and to how the state of Idaho creates TMDLs in general. He requested the Board enter an order consistent with Pristine Springs' position, or in the alternative, remand this case to the hearing officer with instructions.

Mr. Purdy asked if Pristine Springs' position was in the six items in the conclusions on Page 56 of Mr. Haemmerle's brief. Mr. Haemmerle confirmed those six points detailed the relief Pristine Springs was requesting.

Don Chisholm suggested the parties not be allowed to respond to additional questions after the end of the oral argument during the Board's deliberation. He said it would create a problem with the record and would not be a legitimate part of a record on appeal.

Harriet Hensley advised the Board was free to create a record in which it hears from the attorneys, they provide their argument, and the Board deliberates and asks questions. This would be part of the record that goes to the district court in the event the case is appealed. The Board has flexibility in terms of how it manages the hearing.

Fritz Haemmerle commented he agreed with Mr. Chisholm's comments. He believed it would be a cleaner and preferred way to proceed.

Harriet Hensley recommended the Board go into executive session so she could provide further legal advice on this matter.

- **MOTION:** Don Chisholm moved the Board go into executive session as authorized by Idaho Code § 67-2345(f) to advise and seek advice from its legal counsel regarding probable litigation.  
**SECOND:** Nick Purdy  
**ROLL CALL VOTE:** Motion carried. 5 ayes (Calabretta, Chisholm, Kiebert, Purdy, Cloonan); 0 nays; 1 absent (Harlen); 1 recused (MacMillan).

The room was cleared at 11:10 a.m. and only the Board members, Harriet Hensley, and Debra Cline remained in the closed executive session. No votes were taken and the Board did not deliberate the case. The Board ended its executive session and reconvened its open meeting at 11:27 a.m.

Chairman Cloonan commented this is the most complicated case the Board has heard and stressed the importance of following the best procedures.

- **MOTION:** Don Chisholm moved the Board hear oral argument from counsel for the two remaining parties, then hear rebuttal, allow for a question-and-answer period for Board members to clarify questions they may have, but not take further input from the parties during deliberation.  
**SECOND:** Marti Calabretta

**DISCUSSION:** Ms. Calabretta asked for clarification that DEQ staff would not be providing input during the deliberation. Mr. Chisholm confirmed it was the intent of his motion that DEQ staff would not provide further input after the question-and-answer period. Only the Board's legal counsel, Harriet Hensley, will provide input.

**VOICE VOTE:** Motion carried. 5 ayes; 0 nays; 1 absent (Harlen); 1 recused (MacMillan).

Doug Conde, representing DEQ, explained development of the TMDL and basis for the allocations for Pristine Springs. He testified that the allocation DEQ set for Pristine Springs meets the legal requirement of the Clean Water Act, and what Pristine Springs is seeking is a TMDL that cannot meet the target for Warm Creek and won't meet the state Water Quality Standards in the Snake River. For these reasons, he said the hearing officer's decision should be affirmed by the Board.

Dan Steenson, representing the Trout Companies, Intervenors in this case, testified regarding how the issues in this case affect Blue Lakes Trout Company and the other intervening companies in this matter. He noted that DEQ and Pristine Springs had both agreed that an outcome of these proceedings should not be a decrease in Blue Lakes' allocation.

Mr. Steenson stated there is confusion regarding the issue of whether a TMDL for Warm Creek has been established. DEQ has stated there is a TMDL for Warm Creek only in the sense that it has assigned a loading capacity and looked at input from sources. As he interprets it, if there is a TMDL for Warm Creek, it is not being administered the way a TMDL should be. This may lead some to seek to have it administered consistent with the label that has been assigned to the tributary. Mr. Steenson urged the Board to remand this issue to the agency to correct this aspect of the document where there is disagreement between the primary parties whether there is a TMDL or an allocation for Warm Creek..

Mr. Steenson said he agreed with Mr. Haemmerle with respect to the compliance point issue.

The Board heard rebuttal from the parties and Chairman Cloonan opened the floor to questions from the Board. No questions were received and the Chairman closed the floor to questions and testimony. She stated the contested case was closed and directed the court reporter to go off the record.

Chairman Cloonan opened the floor to deliberation by the Board. Members discussed each of the six requests outlined in the Petitioner's brief.

Board members deliberated the Petitioner's first request, that the Board should find that Warm Creek should not be assigned a TMDL.

➤ **MOTION:** Don Chisholm moved the Board find it was appropriate for DEQ to give Warm Creek a tributary allocation in the same manner allocated to the other tributaries—wasteload allocation, load allocation, and margin of safety which is the equivalent of a TMDL without formally complying with a TMDL.

**SECOND:** Marti Calabretta

**VOICE VOTE:** Motion carried. 5 ayes; 0 nays; 1 absent (Harlen); 1 recused (MacMillan).

Marti Calabretta commented her rationale for supporting the motion was that the issue of concern is the Snake River. All the sources to the Snake River including the tributaries have to be considered in order to meet the water quality standards on the Snake River. Therefore, it is appropriate to focus on each of

the tributaries, and Warm Creek could be assigned the equivalent of a TMDL without itself being a limited water body.

Members discussed the Petitioner's second request, that PSI should be assigned a wasteload allocation of 96.7 pounds per day instead of 55.46 pounds per day. The issue of pounds versus concentration was discussed in detail.

- **MOTION:** Don Chisholm moved the Board find DEQ used a rational basis to assign the wasteload allocation for Pristine Springs and uphold the decision of the hearing officer on that point.
- SECOND:** Nick Purdy
- VOICE VOTE:** Motion carried. 4 ayes; 1 nay (Calabretta); 1 absent (Harlen); 1 recused (MacMillan).

Board members deliberated the Petitioner's third request alleging that in determining PSI's allocation, a finding should be made that the wrong flow rate was assigned to PSI, and PSI's flow rate should be no less than 216.1 cfs. Board members discussed the need to use the best available data, the effect of deadlines on the process, and the flow issue. Nick Purdy expressed concern that the determination may have been based on inaccurate or unfair data. Chairman Cloonan discussed the history of the TMDL process for the Snake River.

Marti Calabretta said she was not comfortable with the division and allocation among all of the parties and all of the causes. She commented the Board may want to consider whether it wants to penalize an industry that recycles and reuses water, or enhance and encourage industries that reuse water.

Chairman Cloonan pointed out the 970.2 pound per day limit was not the limiting number for this group. The 970.2 number becomes irrelevant to Pristine Springs because of the .1 milligram per liter allocation for Warm Creek.

Nick Purdy suggested it would make sense to consider a motion to uphold the hearing officer's decision in its entirety. He would then look for another motion to direct DEQ to reevaluate the TMDL in the Mid-Snake and at least lay out some guidelines.

- **MOTION:** Nick Purdy moved the Board uphold the hearing officer's decision in its entirety.
- SECOND:** Don Chisholm
- DISCUSSION:** Chairman Cloonan clarified this motion addressed the entire hearing officer's decision including the remainder of the six issues.
- VOICE VOTE:** Motion carried. 5 ayes; 0 nays; 1 absent (Harlen); 1 recused (MacMillan).

Harriet Hensley advised that the suggestion to ask DEQ to reevaluate the TMDL would not be appropriately addressed during deliberation on this case. She recommended the Board close out its deliberation in this matter and work with the DEQ Director in a different venue that would allow all the parties to submit comments and provide information.

Chairman Cloonan stated the contested case and deliberation was officially closed.

Fritz Haemmerle asked for clarification on the question regarding a TMDL for Warm Creek. The Board approved a motion earlier in the meeting that appeared to find there was no TMDL for Warm Creek, and then the Board approved a motion upholding the hearing officer's decision in its entirety. The hearing officer's decision maintained the designation of a TMDL on Warm Creek. Mr. Haemmerle asked if the

second motion over ruled the first motion on the specific question of whether there is a TMDL on Warm Creek. Don Chisholm replied the result is that the Board has upheld the decision in its entirety, but in writing and circulating the opinion, the Board will address the distinction that is being made. Chairman Cloonan commented the hearing officer's decision did have language that was somewhat uncertain on this issue. It did not specifically say there was a TMDL; it did say there was a load allocation.

Randy MacMillan rejoined the Board meeting at this point.

Chairman Cloonan opened the floor to discussion regarding reevaluating the TMDL for the Mid-Snake River. She said it was her understanding that the Board wanted to make sure the coming evaluation of the TMDL for the Mid-Snake River would take into account new and better data, standards for collection of data would be followed, and the WAG would consider the limits, loading, percentage reduction and whether these are reasonable.

Nick Purdy suggested the reevaluation also clarify whether the TMDLs for tributaries are TMDLs or load allocations. He asked if there could be some flexibility regarding the point of compliance on Warm Springs.

Director Hardesty stated DEQ will conduct reevaluations of TMDLs on a five-year schedule. The TMDL for the Mid-Snake River was promulgated in 2005, so it is scheduled for reevaluation in 2010. When the legislature passed the regulation requiring the reevaluations, many TMDLs were already done. While the reevaluations cannot all be done at once, given the sensitivity to this TMDL, DEQ will make it a priority to attain the five-year review schedule. DEQ will take note of Board requests in the reevaluation process.

Chairman Cloonan added it was important, before the reevaluation process begins, to ensure the data is being collected in an appropriate manner.

Randy MacMillan pointed out one of the concerns about reevaluation is that the state will look at whether the TMDL is doing what it is designed to do. If it is not improving water quality, the TMDL could be more stringent after the reevaluation. So there is a significant potential downside for industry in expediting the review of the Mid-Snake or any other TMDL. He added it may take up to 50 years before the TMDLs on large water bodies begin to show an impact. He urged great caution in moving forward with any type of expedited review of the Mid-Snake TMDL.

Chairman Cloonan said the most important issue to move forward with at this time is improved data collection. Director Hardesty noted there was discussion last year, even among the parties who put forward House Bill 145, that the five-year reevaluation period might be too short of a time to give the TMDLs to work and a ten-year timeframe might be more appropriate.

Randy MacMillan discussed the history leading into the development of the TMDL and the NPDES permit for the aquaculture industry.

**AGENDA ITEM NO. 5:            LOCAL REPORTS AND ITEMS BOARD MEMBERS MAY WISH TO PRESENT**

Marti Calabretta requested the June Board meeting be moved to June 27 and 28. Board members agreed to the change.

Randy MacMillan discussed growing concern about how the state plans to deal with temperature TMDLs. It is not clear to the point sources how the state is going to deal with water temperatures when incoming water is higher than the required temperature.

Barry Burnell explained the approach DEQ has been taking for temperature TMDLs has been to look at headwater streams that are capable of providing a greater amount of shade to the watershed to lower the overall temperature within the watershed. DEQ has created an approach called “potential natural vegetation” that EPA has accepted. It uses shade as a surrogate to temperature and percentage of shade as a mechanism to decrease the solar load on streams to effect a cooling of the water. Although applicability to very large rivers in Idaho is minimal, Mr. Burnell thinks it is appropriate to take an incremental approach and look at large rivers and their tributaries as a first step to meet the temperature criteria. One of the other tools to look at is natural background conditions within waters. That will become a very important aspect of temperature TMDLs. DEQ is aware that certain point sources will have difficulty in meeting temperature criteria and so that has to be big factor in how a temperature TMDL is developed. Subbasin assessments will be developed to answer fundamental questions such as whether site-specific standards are appropriate.

The meeting adjourned at 4:45 p.m.

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Dr. Joan Cloonan, Chairman

/s/

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Debra L. Cline, Management Assistant and Recorder