



State of Idaho
DEPARTMENT OF ENVIRONMENTAL QUALITY
BOARD OF ENVIRONMENTAL QUALITY

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IDAHO BOARD OF ENVIRONMENTAL QUALITY

MINUTES

October 12, 2005

The Board of Environmental Quality convened on October 12, 2005 at 8:30 a.m. at:

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

ROLL CALL

BOARD MEMBERS PRESENT

Dr. John R. "Randy" MacMillan, Chairman
Dr. Joan Cloonan, Vice-chairman
Marti Calabretta, Member
Donald J. Chisholm, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT

Craig Harlen, Secretary
Marguerite McLaughlin, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT

Toni Hardesty, Director
Jon Sandoval, Chief of Staff
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
Don Essig, Water Quality Standards Manager
Jeff Fromm, Technical Services
Orville Green, Administrator, Waste & Remediation Division
Jerri Henry, Chemical Rules Manager
Dave Hovland, Ground Water Program Manager
Sharon Keene, Customer Resources Team Leader
Lisa Kronberg, Deputy Attorney General

DEQ Staff Present (continued)

Mark Mason, Wastewater Engineer Program Lead
Mike McGown, Administrator, Boise Regional Office
Mike McIntyre, Surface Water Program Manager
Paula Wilson, Rules Coordinator

OTHERS PRESENT:

William Eddie, Advocates for the West
Robin Finch, Boise City
Senator Bob Geddes, President Pro Tem, Idaho State Senate
Justin Hayes, Idaho Conservation League (ICL)
Jack Lyman, Idaho Mining Association (IMA)
Krista McIntyre, Stoel Rives
Dustin Miller, Idaho Farm Bureau Federation (IFBF)
Dick Rush, Idaho Association of Commerce & Industry (IACI)

- ❖ 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

Justin Hayes, Idaho Conservation League (ICL), shared a display and presentation the ICL prepared for a recent conference on deposition of pollution (Attachment 1). The presentation, "Mercury Pollution in Northeast Nevada Air: A Screening Level Survey of the Potential Impacts of Gold Processing Facilities on Air Quality," reports on very large mercury emissions charted over the last seven or eight years from a number of gold mines and gold processing facilities in Northeast Nevada. The mercury emissions travel into Idaho and potentially affect Idaho's water quality. The ICL believes the emissions are impacting regional air and water quality.

Chairman MacMillan recognized Senator Bob Geddes, Pro Tem of the Idaho Senate, and thanked him for attending the Board meeting.

AGENDA ITEM NO. 1: ADOPTION OF BOARD MINUTES

- a. October 12, 2005 Meeting
 - **MOTION:** Dr. Joan Cloonan moved the Board approve the minutes of the October 12, 2005 meeting as presented.
 - SECOND:** Don Chisholm
 - VOICE VOTE:** Motion carried unanimously.

- b. Review of Action Items
 - (1) Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues.

Jon Sandoval reported he and Senator Hal Bunderson, Co-chair of the Environmental Common Sense Committee, had addressed the annual meetings of both the Association of Idaho Cities and the Idaho Association of Counties. The goal was to engage them and provide more information about impacts the growth and population booms all across Idaho are having on the infrastructure. They continue to work on educating local government officials and trying to identify solutions.

AGENDA ITEM NO. 2: DIRECTOR'S REPORT

Director Toni Hardesty reported the Coeur d'Alene Tribe's request to EPA to be treated as a state was granted. The Tribe is expected to publish their draft water quality standards for public comment within the next month.

DEQ may introduce legislation for rules to provide funding to administer the State Revolving Fund. DEQ receives 4% of the federal funds to administer the program. As funding dollars have decreased for the program, this amount is no longer adequate. Legislation and rulemaking to put a fee or program in place to administer the program are planned to go forward this year.

Director Hardesty reported there are still some DEQ positions frozen due to budget cuts. The Environmental Council of States (ECOS) continues to work to represent all 50 states in trying to get EPA to absorb some of the budget cuts instead of passing them all on to the states.

EPA recently issued a draft report on the audit of DEQ's quality assurance program. The report stated DEQ has a model system for quality assurance/quality control that is well conceived, relevant and effective. They specifically mentioned that DEQ has a great internal staff accreditation and peer review policy that could be used as a template for other state agencies, and that DEQ training procedures were noteworthy and a very important part of the QA system.

The DEQ state office and Boise Regional office were recently honored with the City of Boise Enviroguard award for pollution prevention practices such as purchasing, recycling, and alternative transportation.

Marti Calabretta mentioned her constituents in northern Idaho are concerned about the Coeur d'Alene Tribe TAS. Recent comments by commissioners and local elected officials expressed concern about the role of DEQ and the state in these proceedings. The small communities have very limited resources and would like more support as they deal with very expensive legal and scientific issues. Ms. Calabretta felt there should be some role of advocacy in terms of helping communities deal with such issues.

Ms. Calabretta asked about the public comment process for the Tribe's water quality standards, DEQ and the state's position on the TAS, and the impact on upstream industry. Director Hardesty provided a brief background on the TAS. She noted this is a federal process that the state can, and has commented on, but does not have authority to approve or disapprove. The state has been involved in the process to work with the Tribe as they develop their standards to encourage them to be as consistent as possible with the state standards. In the event of conflicting water quality standards, DEQ will interact with the Tribe in much the same way as they do with other neighboring states. The Tribe plans to go out for full public comment on its water quality standards and everyone will have an opportunity to comment. DEQ has been working actively with industry to respond to their concerns. Fact sheets and other information have also been distributed to local communities and posted on the EPA website.

Director Hardesty noted the Board's agendas for the October and November meetings are very full, but the Board may wish to have Curt Fransen, Deputy Attorney General from Northern Idaho, attend a future meeting to brief the Board on tribal law, sovereignty, the TAS and other issues. Marti Calabretta suggested the Board have the meeting in northern Idaho to provide a presence and hear the concerns of the local and tribal people and industry. Chairman MacMillan confirmed it was the intention of the Board to meet in Northern Idaho, but felt it might be beneficial to be educated on the issues before going to the area.

Director Hardesty added that while the Coeur d'Alene Tribe is the first to be granted Treatment as a State in Idaho by EPA, other tribes within the state are expected follow. EPA has granted TAS to tribes in many of other states and there is a lot of case law related to the matter.

Marti Calabretta asked that information on how the TAS affects NPDES permits and TMDLs be provided to the Board. She also asked for a listing of other tribes that had been granted TAS by EPA and an update on their status and implementation of water quality standards.

- **MOTION:** Marti Calabretta moved the Board commend the DEQ director and staff for the exceptional work that lead to the outstanding Quality Assurance audit report from EPA.
SECOND: Dr. Joan Cloonan
VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEMS NO. 3: ELECTION OF OFFICERS

- **MOTION:** Don Chisholm moved the Board re-elect the current Board officers: Dr. John R. MacMillan, Chairman; Dr. Joan Cloonan, Vice-chairman; and Craig Harlen, Secretary, by unanimous consent.
SECOND: Marti Calabretta
VOICE VOTE: Motion carried by unanimous vote.

AGENDA ITEM NO. 4: WASTEWATER-LAND APPLICATION PERMIT RULES, DOCKET NO. 58-0117-0501 (PENDING/TEMPORARY RULE) (WATER QUALITY LIMITS AND REQUIREMENTS FOR RECLAIMED WASTEWATER)

Barry Burnell, Administrator, Water Quality Division, stated this rulemaking was initiated by the Board to respond to issues that arose after it adopted some amendments to the Wastewater-Land Application Rules last year. Mark Mason, DEQ's Wastewater Engineer Program Lead, led the effort to make the recommended changes.

Mark Mason discussed the negotiated rulemaking process used to develop the changes. Representatives from different municipalities, industry, consultants, and developers were involved in the rulemaking process. Mr. Mason explained the changes including revisions to modify and clarify existing water quality limits and other requirements for the various classes of municipal reclaimed water, to add and clarify various definitions, to change the name of the rules from "Wastewater Land Application Rules" to "Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater," and to make various changes in the rules associated with this name change. The name change was needed to reflect that the rules go beyond just land application of wastewater in the field, to reuse of treated wastewater. This rule change was

needed because DEQ determined the existing water quality limits and other requirements for Class A and Class B reclaimed wastewater might be too strict.

No additional cost to the regulated community is expected as a result of these changes; in fact, there may be some cost savings due to different treatment processes now available.

Mr. Mason pointed out the federal government does not regulate identification or reuse of wastewater. While this rule is in line with federal guidelines and other state's rules, there are no federal rules. Doug Conde, Deputy Attorney General, stated this rulemaking really does not call into question the stringency requirements in Idaho law, but because it does regulate an activity not regulated by the federal government, DEQ followed the requirements in Idaho Code § 39-107D and included the notice and information in the notice of proposed rulemaking.

Dr. Joan Cloonan commended Mark Mason for his proficient work in bringing this rulemaking forward and working with a group varied of interests. She asked if the municipalities were content with the rule changes. Mr. Mason believed the municipal systems were satisfied with the rule changes. A lot of the rules pertain to municipal systems, whereas nearly all the guidance pertains to industrial systems. He believed in the future there would be additional guidance for municipal systems. Mr. Mason pointed out while the reuse rules do pertain mostly to domestic wastewater in municipal systems, there is still the opportunity for industry to make different uses of their wastewater. The rules do not specifically address it, but there is the opportunity.

Nick Purdy observed Amalgamated Sugar submitted rather critical comments and asked if their concerns had been addressed. Mr. Mason responded that a number of the comments did not pertain to this particular rulemaking, but rather to how their permits were being processed. DEQ met with Amalgamated twice to address their concerns.

Don Chisholm suggested a housekeeping change to the wording in Section 601.08.h to include tenants or occupants of homes, as well as the homeowner. Mark Mason agreed to the suggestion stating it was the intent of the language to include tenants and occupants.

Chairman MacMillan noted the definition of wastewater in this rule was different than the definition of wastewater in some other rules. He asked if this caused confusion in the regulated community. Mark Mason explained it does not cause a problem as long as the word is used consistently within a particular rule.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt, as temporary and pending rules, the Wastewater-Land Application Permit Rules, as presented in the final proposal, with the amendment to Section 601.08.h suggested by Don Chisholm to change "homeowner" to "occupant," under Docket No. 58-0117-0501, with the temporary rules becoming effective December 7, 2005.

SECOND: Don Chisholm

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 5: WASTEWATER-LAND APPLICATION PERMIT RULES, DOCKET NO. 58-0117-0502 (PENDING RULE) (PUBLIC PARTICIPATION PROVISIONS)

Barry Burnell explained the purpose of this rule is to set out in rule public participation provisions for the Wastewater-Land Application Permit process. The rules currently do not require DEQ to provide public notice or an opportunity for the public to comment during the permit process, although DEQ has been providing for this. This rule will also shorten the number of days allowed for the director to make an application completeness determination from 60 days to 30 days.

Dr. Joan Cloonan stated she supported the rule and has advocated for some time formalizing public participation procedure within the rules.

- **MOTION:** Nick Purdy moved the Board adopt the Wastewater-Land Application Permit Rules as presented in the final proposal under docket No. 58-0117-0502.
- SECOND:** Don Chisholm
- VOICE VOTE:** Motion passed by unanimous voice vote.

AGENDA ITEM NO. 6: WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0501 (DESIGNATED USE FOR SODA CREEK; REVISED DEFINITIONS)

Barry Burnell stated this rule docket will change the designated use for parts of Soda Creek and revise definitions for ephemeral waters and intermittent waters. He introduced Don Essig, DEQ Water Quality Standards Coordinator, who presented the rule and explained the changes in detail.

Don Essig said an earlier use attainability study had indicated there was no aquatic life in Soda Creek, resulting in a designation of “none.” However aquatic life has since been discovered and the designation of none is being removed, leaving the water body undesignated. This will result in the water body being protected for a default use of cold water aquatic life. He pointed out that DEQ has not proposed a designated use of cold water aquatic life. The matter is still open as to what the proper designation should be. The rules indicate that an undesignated water body is presumed to be protected for cold water aquatic life.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the Water Quality Standards and Wastewater Treatment Requirements as presented under the final proposal under Docket No. 58-0102-0501.
- SECOND:** Marti Calabretta
- VOICE VOTE:** Motion carried by unanimous voice vote.

AGENDA ITEM NO. 7: WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS, DOCKET NO. 58-0102-0502, (PENDING RULE) (CONSOLIDATED LANGUAGE REGARDING E.COLI CRITERIA)

Don Essig presented this rule to clarify and consolidate three different sections in the rules regarding E. coli bacteria. There are no changes to the real underlying criteria or the numbers,

the changes merely bring these sections together in one place. The goal is to help people understand these sections better.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt the Water Quality Standards and Wastewater Treatment Requirements, as presented in the final proposal under Docket No. 58-0102-0502.

SECOND: Don Chisholm

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 8: GROUND WATER QUALITY RULE, DOCKET NO. 58-0111-0501, (PENDING RULE) (CONSISTENCY WITH FEDERAL DRINKING WATER REGULATIONS)

Barry Burnell explained this rulemaking was undertaken to provide protection for Idaho's groundwater and to make changes to the Idaho Ground Water Quality Rule consistent with the federal drinking water regulations designed to protect human health. The changes include:

- 1) Change numerical standard for arsenic from 0.05 mg/l to 0.010 mg/l;
- 2) Add numerical standard for uranium as 0.030 mg/l, CAS # 7440-61-1; and
- 3) Add nonmaterial standard for Giardia 0 cyst/10 liters and Cryptosporidium 0 oocyst/10 liters.

These proposed changes are consistent with the maximum contaminant levels adopted by the EPA for the federal drinking water standards. In Idaho, 95% of the drinking water comes from ground water. The new arsenic standard has been adopted by EPA and by DEQ in its Rules for Public Drinking Water Systems. The standard becomes effective January 23, 2006.

Mr. Burnell explained that arsenic and uranium are found naturally in Idaho in the ground water, and are sometimes at levels above the proposed standard. In cases where there is a natural background level above the proposed standard, the Ground Water Quality Rules allows the natural background number to become the standard. This provision was negotiated in 1996 when the Ground Water Quality Rule was first adopted. It remains in effect for any of the contaminants of concern present in ground water. The active mineral extraction areas are also exempted from compliance with the standards.

DEQ has suggested EPA conduct a cost/benefit analysis for the drinking water arsenic standard, and requested they continue to evaluate the arsenic standard using the most up-to-date scientific information available. At the request of EPA, the National Academy of Sciences recently reviewed and reaffirmed EPA's arsenic standard of 0.010 mg/l. So the scientific studies have been reviewed by an independent agency to verify that EPA's approach in determining a safe standard for arsenic in drinking water should be placed at 0.010 mg/l.

Mr. Burnell asserted the adoption of this new standard for the protection of ground water will protect the sources of public water systems in Idaho from increases above the safe drinking water standards. The Ground Water Quality Act provides for DEQ to adopt ambient ground water standards based on EPA adopted drinking water maximum contaminant levels. Protecting ground water sources from degradation allows public water systems to avoid installing costly treatment technologies to bring the contaminants below the safe drinking water levels.

DEQ did receive comments from Legislative Services regarding the stringency issue. Mr. Burnell said the rule regulates an activity not regulated by the federal government; however, the

Ground Water Quality Plan and Act direct DEQ to adopt the Ground Water Quality Rule and the standards associated with it.

Mr. Burnell responded to comments that DEQ should consider the economic repercussions of lowering the arsenic standard. DEQ believes the proposed standard will not cause economic repercussions because of the provision for natural background levels. The proposed change will maintain the protection of the existing ground water quality in accordance with the state's policies that are outlined in the Ground Water Quality Rule. DEQ also believes implementing the proposed standard will provide additional protection to ground water from arsenic, thereby allowing public water systems to avoid increased costs of having to install treatment systems, and the overall economic impact will be either neutral or positive.

Barry Burnell summarized stating the proposed standard of 0.010 mg/l for arsenic in ground water is consistent with surrounding states. Oregon and Washington have a more restrictive standard; Montana, Nevada and Utah are using of 0.010 mg/l standard; Wyoming uses .050 mg/l (Wyoming does not have primacy of the drinking water program). It is also consistent with the approach in the Ground Water Quality Act.

Dr. Joan Cloonan stated she was ambivalent about changing the arsenic standard and was not sure of the full implications of the change. She pointed out the Ground Water Quality Act states, "The Board of Health and Welfare may [emphasis added] adopt by rule, after consultation with the Ground Water Quality Council, ambient ground water quality standards for contaminants for which the administrator of the United States Environmental Protection Agency has established drinking water maximum contaminant levels (MCLs)." She believed this wording did not direct DEQ to adopt the standards, but rather states DEQ may adopt standards for contaminants for which MCLs have been established. The Ground Water Council certainly anticipated that MCLs would be used, for at least that first round. She further observed the Ground Water Quality Rule does not discuss protecting for drinking water, but for down-gradient beneficial uses.

Dr. Cloonan discussed the use of natural background for a standard and its limitations. She was also concerned about the stringency issue and felt the §39-107D notification process should have been followed. She felt the change to the arsenic standard and the addition of the new standards warranted following the stringency process. Doug Conde, Deputy Attorney General, responded to the concerns regarding the stringency issue explaining DEQ was not regulating any new activity with this rule. The Ground Water Quality Rule and Act were adopted some time ago. This docket simply proposes to change a standard, and does not propose to regulate any new activities.

Barry Burnell noted the Ground Water Quality Act identifies drinking water as a beneficial use for ground water, and further discussed the natural background provision. He emphasized the importance of protecting ground water as the drinking water source for 95% of the population. A million people or more in Idaho rely on ground water as their drinking water source.

Dr. Cloonan asked what type of activities would increase ground water levels of arsenic. Mr. Burnell responded that managed recharge and agricultural activities have the potential, but can be controlled with best management practices and practical alternatives. As agricultural practices have changed from flood to sprinkler irrigation, there is less recharge and there are fewer and fewer contaminants entering the ground water from agricultural practices.

Don Chisholm asked if the office of Legislative Services and DEQ were of the same opinion regarding the stringency issue. Doug Conde indicated Legislative Services did have a question as to whether §39-107D applied and DEQ did respond to the question. Barry Burnell pointed out Legislative Services submitted a subsequent memo, as a result of the review of the rules provided by the Senate and House subcommittees, stating they were pleased to report no objections would be filed in the matter.

Marti Calabretta asked what percentage of drinking water wells in Idaho were private individual wells. Mr. Burnell responded there were over 2,000 drinking water systems in the state serving 970,000 Idahoans, and about 360,000 private wells or springs.

Ms. Calabretta posed questions regarding how compliance with the new standard would be measured and handled, why it was being proposed at this time, and how private wells would be protected. Mr. Burnell responded compliance can be measured through data from a number of monitoring activities such as the Idaho Department of Water Resources' statewide ground water monitoring, monitoring that occurs during activities such as permitting wastewater land applications, and monitoring for arsenic areas of concern by the Department of Agriculture and the U.S. Geological Survey. Recent adoption of new MCLs by EPA, research published by the National Academy of Science, and the policy of the state of Idaho to protect ground water for beneficial uses guide the timing of this effort.

Director Toni Hardesty detailed key points driving the timing of the rulemaking including:

- 1) the new drinking water standard will become effective in January 2006;
- 2) DEQ evaluated the issue and believes it is good policy to have the ground water standard consistent with the drinking water standard ; and
- 3) DEQ would like to be in a preventative position as opposed to responding to problems. For example, without the change, a person might get a permit allowing them to discharge at a higher rate than the drinking water standard. This could result in degrading the ground water to a level where a water system would have to treat it to meet the new drinking water standard, thus passing on the expense of compliance on to the community.

Marti Calabretta expressed concern for the individual wells that do not have the benefit of monitoring, and the economic impact to existing mining operations.

Barry Burnell stated the active mineral extraction area exemption in the rule provides for the areas within mines that are extracting minerals to be exempt from the standards. From a mining perspective, most of DEQ's concerns have been related to contaminants entering surface waters. He was unaware of any existing mining operations that have arsenic entering ground water systems. The Department of Lands and the U.S. Forest Service permits mining operations. Mr. Burnell did not see any economic impact and felt the existing permits and protection measures that are in place to protect against other metals associated with mining operations would also be effective for arsenic as well.

Mr. Burnell commented there are no regulations in place for private wells to meet certain drinking water standards. Individuals can put in a well and drink from it at their own risk. He believed the anti-degradation measures in the Ground Water Act directed DEQ, as well as all other state agencies, to use best management practices and practical methods to protect the ground water from degradation.

Chairman MacMillan asked if there was any effort to notify private well owners they may be drinking water that EPA and the National Academy of Science have determined to be hazardous to their health. Mr. Burnell responded that DEQ identified arsenic areas of concern as a mechanism to educate individuals in the state about areas where individuals should have their wells tested. DEQ is doing follow-up on those areas to assist and refine the delineation of those arsenic areas of concern. So DEQ has attempted to provide information; however, they are not contacting individual property owners. The district health departments have an active role in private water supplies, but are limited to bacteria and nitrates as part of their analysis for private water supplies.

Chairman MacMillan asked if the district health departments would have the ability to better educate and encourage treatment of private wells for arsenic if the rule were adopted. Mr. Burnell stated he did not believe it would mandate any action by the districts other than what they are already doing.

Chairman MacMillan stated he was aware there is still controversy in the scientific community as to whether the 10 mg/l or 50 mg/l is the appropriate MCL for arsenic to protect the public health. He thought if the state were convinced the 10 mg/l is an important MCL, there would be a concerted effort to educate all private well owners and encourage them to test their wells and make necessary modifications to protect their health.

Barry Burnell said DEQ believes the best available science should be used in setting MCLs, and relies on EPA and the review of the National Academy of Sciences to confirm the 10 mg/l standard. DEQ identified arsenic areas of concern as its effort to begin an outreach level, and asked its regional offices to do follow-up training in those areas to gain additional information. The DEQ Drinking Water section has also been working with the Division of Health to develop informational brochures for private well owners. DEQ proposed this rule to set the arsenic standard for ground water at 10 mg/l as a positive action towards protection of public health.

Nick Purdy feared there would be problems with the rule regarding stringency and compliance with §39-107D. He felt the rule had merit and was needed, but did not think it would be successful at the legislature unless it had strong support from the regulated community.

Marti Calabretta requested the Board be given a copy of the map DEQ prepared showing the arsenic areas of concern. (Attachment 2).

Dick Rush, IACI, submitted written comments (Attachment 3), and testified in opposition to the proposed arsenic standard in the rule. He stated IACI is not raising an issue regarding the rulemaking process and believes the rules were followed in publishing the notice. He assured IACI firmly believes in the negotiated rulemaking process and does not bypass the process and the Board and take issues directly to the legislature.

Mr. Rush noted IACI also opposed a proposal to adopt the drinking water arsenic standard for surface water during a negotiated rulemaking held earlier in the year for a surface water rule.

Mr. Rush summarized IACI's concerns with the proposed arsenic standard:

- Idaho has a high naturally occurring concentration of arsenic that makes it difficult to regulate.
- There is no agreed upon method for establishing natural background level.

- The rule does not comply with Idaho Code §39-107D regarding stringency and good science.
- It is unprecedented for DEQ to adopt a rule that will immediately result in many of the aquifers in the state being in noncompliance.
- DEQ statements and other studies do not support the need for the new arsenic standard to protect public health.
- Who will pay for the significant studies and research to determine natural background, and which level of natural background will DEQ use if the findings differ in an area?
- If DEQ's entire purpose in lowering the arsenic standard is to protect ground water as a drinking water source, the natural background exception will not achieve that purpose.

Mr. Rush reminded the Board that Idaho Code §39-107D was passed unanimously by the Idaho Legislature, showing strong support for the use of good science in adopting rules. He also pointed out that while the Legislative Services office said they would not file an objection to the rule, they did not say they agreed with the DEQ analysis of the §39-107D issue.

IACI requested the Board reject the portion of Docket No. 58-0111-0501 changing the numeric standard for arsenic and direct DEQ to initiate a more comprehensive evaluation of how ground water protection should be implemented which fully takes into consideration how aquifers should be designated and how the regulated community should be regulated. Mr. Rush suggested it may be appropriate to reinstate the Ground Water Council to fully evaluate these issues as was envisioned in the state Ground Water Plan.

Barry Burnell responded to IACI concerns, saying the natural background provision in the rule would address aquifers not being in compliance with the arsenic MCL. He stressed DEQ's position that EPA should use all available information and best science to establish rules. DEQ was not in favor of the 5 part per billion arsenic standard for drinking water systems originally proposed by EPA. Many of the comments cited by IACI that DEQ previously made against the EPA proposed standard were focused on the cost benefit analysis that is afforded to the adoption of rules for the protection of drinking water. So those comments should be viewed with that perspective, and not simply that DEQ was in opposition to the change. Mr. Burnell assured DEQ does recognize the natural background of arsenic and uranium in Idaho.

Justin Hayes, Program Director for Idaho Conservation League, testified in support of the rule. He also stated support of DEQ having a larger role in providing information to the public and notification to private well owners who are in arsenic areas of concern. ICL supports this rule because it is a public health issue and feels it should not be allowed to become a political issue. Although ICL does not perceive this rule to be in conflict with §39-107D, Mr. Hayes believed the issues raised regarding stringency should be resolved so the rule does not fail at the legislature because of a technical issue.

As a human health issue, ICL believes it is important for Idaho to periodically review its standards and update them as appropriate as additional information is made available, taking advantage of the best available science including that developed outside of the state.

ICL believes the provision providing the elevated natural background would become the standard should cover the interests of industry—except that subset of industry that has a vested interest in polluting.

Marti Calabretta discussed the difficulty of balancing the need to protect the environment and the demand for natural resources. She noted the arsenic areas of concern clearly were located in non-mining areas and questioned how ICL believed the balance should be achieved in the best interest of the citizens of the state. Mr. Hayes assured ICL was an advocate for responsible mining and acknowledged the value of the industry in the United States. ICL supports low-impact mining using the most protective measures to assure there is the least harm done possible. One of the driving mechanisms for encouraging that sort of behavior is standards that make it a requirement. ICL believes this would increase the likelihood that mining will be a long-term player in Idaho's economy because they would be a partner in protecting the environment to the maximum extent possible.

Mr. Hayes felt this was a good example of the need for agencies to work together to educate the public about the health risk of drinking water from private wells with elevated arsenic levels.

Jack Lyman, Idaho Mining Association, testified against the proposed rule and requested the Board reject the rule and consider seeking direction from the legislature. He cited the following concerns:

- There is no federal mandate to adopt the new standard.
- There is no directive from the legislature.
- 96% of Idaho's ground water is not used for domestic or drinking water purposes.
- A process has not been identified on how natural background will be established, leaving a number of unanswered questions.

Don Chisholm asked if there were any existing protocol for establishing natural background with the 50 ppb level. Barry Burnell stated the federal Resource Conservation and Recovery Act (RCRA) program has a protocol used during cleanups establishing the natural background by looking at up-gradient monitoring wells adjacent to the affected area. The Wastewater Land-Application Program has developed statistical guidance for ground water quality data that evaluates how to set natural backgrounds. It is currently being reviewed by DEQ statisticians as part of the Wastewater Land-Application Program upgrade. The nutrient-pathogen evaluation process also looks at natural background in order to determine the upgradient ground water quality concentrations with respect to nitrate and uses up gradient monitoring wells as the source of information for natural background. When there are multiple wells available, an average is used to determine natural background. Mr. Burnell felt there was adequate well-established procedure through these three different programs.

Doug Conde added there are existing consent orders with phosphate mining operations that set out a process for determining and applying natural background levels. They are the product of an exercise DEQ went through in cooperation with mining companies to agree on a protocol for determining natural background and what to do when changing trends are detected in ground water quality.

Don Chisholm asked if Mr. Lyman could agree there was adequate protocol that is relatively well accepted by the mining side and the regulators. Mr. Lyman responded that while there are differing methodologies existing in the RCRA program, consent orders, wastewater applications, and the Wastewater Land-Application program, they all seem to consider upgradient statistical averages. He was unaware of any assurance that the proposed lower standard would solve the problem of elevated arsenic levels in ground water. He discussed concerns the Thompson Creek Mine has with how their wells will be averaged and what corrective action would be expected.

He explained the role geology can play in arsenic levels and questioned how that would be considered. The IMA fears these uncertainties could lead to expensive procedures and lawsuits for the mining industry.

Marti Calabretta observed that tailings impoundments would not be exempt and asked how a mining company would meet the new standard at historic and new sites. Mr. Lyman suspected a pump-and-treat process would be used on historic sites and new sites would be designed to use a pump-and-treat process or have some kind of lining to prevent migration. Such processes could result in a great deal of expense with very little environmental benefit. He emphasized the mining process does not bring arsenic into the site for use in the mining process—the arsenic is already there. Sometimes the mining process can put arsenic into a form that is more readily available to the environment, and there are regulatory programs to assure it is not done in a way that is detrimental to the environment.

Dustin Miller, Idaho Farm Bureau Federation (IFBF), testified against the proposed rule citing concerns regarding the addition of a numerical standard for giardia and cryptosporidium. The IFBF just recently became aware of the proposed rule, and raised the following questions and concerns:

- Does science exist showing the need for a zero standard for these parasites?
- These new standards could negatively impact the livestock producing community.
- How will impacts from wildlife be addressed, and how will wildlife be regulated?
- Does the best available science indicate a high enough threat exists to ground water from the existence of these parasites in surface water?

Mr. Miller stated with so many questions left unanswered regarding these standards, the IFBF stands in opposition to the rule change.

Barry Burnell responded to the questions stating the overriding principle with giardia and cryptosporidium is that it takes a very low dose to cause disease in humans. The impacts of cryptosporidium to drinking water systems across the nation have been quite profound. The cryptosporidium outbreaks of disease in public drinking water systems make it very important for the state to have standards that address giardia and cryptosporidium. Epidemiological studies have been conducted over the years when disease outbreaks have occurred due to these parasites in drinking water. Wells that are near surface waters that contain these parasites can be affected.

The affects from wildlife sources are mainly runoff from lands where wildlife is present. The bacteria and protozoan from wildlife can end up in surface waters. As far as a ground water perspective, the importance of adding a giardia and cryptosporidium standard is to protect public health from an acute contaminant that causes disease at very low doses.

The map, “Areas of Arsenic Detections in Ground Water with Average Results Exceeding Drinking Water Standards,” was distributed (Attachment 2). Barry Burnell stated the purpose of generating the map was an educational information outreach effort to let individuals know that if they are in an arsenic area of concern, they should test their wells. The vast majority of samples showing arsenic levels of 10 ug/l or greater were from Southwest Idaho and Southern Idaho in Twin Falls, Owyhee, Canyon, Gem, Payette, and Washington counties. There are a scattering of samples exceeding 10 ug/l in other parts of the state, but not enough to be considered arsenic areas of concern. The map is part of the “Preliminary Evaluations of Arsenic Detections in

Ground Water: A County-Level Arsenic Review” which is available on the DEQ website at: http://www.deq.idaho.gov/water/data_reports/ground_water/arsenic_county_level.pdf

Chairman MacMillan opened the floor to deliberation by the Board.

Dr. Joan Cloonan discussed her concerns with the rule. She felt there was confusion about how ground water standards are used, in part, due to the way the rules are written. The confusion leads to questions as to what it means to be out of compliance and what actions will be required. She was not certain the rule change was needed at this time. In addition, she was concerned about how the rule fits into the Idaho Code §39-107D requirements. She believed arguments could be made both ways on whether or not the section applies to this rule. Dr. Cloonan thought there was information available upon which to base the rule, but urged the caution of doing the procedural things required under §39-107D.

Don Chisholm observed this situation is an example of why he has concerns with the §39-107D stringency law. It seems there is a terrible amount of time and resources wasted by DEQ and in meetings because of the stringency law. He preferred to see matters debated on the basis of merit, not procedural issues. He believed Mr. Lyman raised some good points on behalf of the IMA and felt they should be addressed in a substantive way, rather than a mechanical analysis. Mr. Chisholm stated, after hearing the testimony, he was inclined to favor omitting the proposed arsenic standard from the rule and adopting it with the other proposed changes.

Nick Purdy stated while he could agree with Mr. Chisholm’s proposal, he believed the best use of time would be to send the rule back to DEQ and request they initiate rulemaking to resolve the concerns expressed by industry. He did not support the rule as presented and felt it had no chance of being adopted by the legislature because of the stringency issue.

Director Toni Hardesty pointed out DEQ spends a lot of time and resources in the negotiated rulemaking and public comment process. There were a number of entities presenting testimony today who did not take part in the negotiated rulemaking or submit public comment. She stated DEQ is eager to work with the public to resolve the type of concerns and questions brought forth today, and hoped they would use the negotiated rulemaking and public comment process to resolve issues. It puts DEQ in a better position to respond to the issues and is a much more efficient use of state resources.

Marti Calabretta agreed with Director Hardesty’s comments that the negotiated rulemaking process was the best, most efficient way to proceed with rules. The technical details are best addressed during negotiated rulemaking, and not in front of the Board in a one or two-day meeting. The Board needs to be educated about the rules in advance, but is put in a bad position when asked to make last minute decisions when issues have not been fully vetted. Ms. Calabretta felt it was appropriate for the Board to adopt rules they believed were in the public interest and allow the legislature to do its job and make decisions when there are conflicting issues. She believed the Board should not act on issues based on what it believes the legislature will do or not do.

Ms. Calabretta said she did have a number of concerns with the rule, as expressed earlier in the meeting. She suggested if DEQ wishes to be protective regarding these constituents they determine what can be done proactively, beyond setting a standard. This would help the Board then take the next step as well.

- **MOTION:** Don Chisholm moved the Board adopt the Ground Water Quality Rule as presented in the final proposal under Docket No. 58-0111-0501, with the exception of the arsenic standard which would remain as it presently exists.

SECOND: Dr. Joan Cloonan

DISCUSSION: Chairman MacMillan asked if IACI believed the current motion would raise the same concerns regarding Idaho Code §39-107D. Dick Rush responded the only issue raised by IACI in this rule is the arsenic standard, so they probably would not testify on the rule as proposed in this motion. He could not guarantee that no one else would bring up the stringency or good science issue.

Jack Lyman believed 39-107D would still be an issue and would apply because the rule would still be imposing two new standards that do not exist in the present rule.

Doug Conde advised removing the arsenic standard from the rule would not change the applicability of §39-107D.

VOICE VOTE: Motion failed. 2 ayes (Calabretta, Chisholm); 3 nays (Cloonan, MacMillan, Purdy); 2 absent (Harlen, McLaughlin).

Dr. Cloonan commented there were worthy technical reasons for going forward with the new standards, but thought it should go back through negotiated rulemaking again to resolve the outstanding questions and concerns.

- **MOTION:** Dr. Joan Cloonan moved the Board table the Ground Water Quality Rule as presented in the final proposal under Docket No. 58-0111-0501, and urge DEQ to go forward with negotiated rulemaking to reconsider the applicability of Idaho Code §39-107D and address the other issues discussed today.

SECOND: Nick Purdy

DISCUSSION: Nick Purdy stated he would like the negotiated rulemaking to determine the method and criteria for determining natural background.

Chairman MacMillan stated his sole concern with the rule was compliance with Idaho Code §39-107D. He felt DEQ should be very cognizant of the spirit §39-107D entails, and not just the strict interpretation of the law. In terms of maintaining a good relationship with the Idaho Legislature, he recommended the Board not tackle the issue through a rulemaking process, but address it directly. Marti Calabretta questioned how the issue would be brought to the legislature, if not through a rule. Chairman MacMillan thought it could be brought up in committee. He noted Don Chisholm authored an eloquent article on the issue in the law journal, and thought there was some value in reconsidering the stringency law.

VOICE VOTE: Motion carried. 3 ayes (Cloonan, Purdy, MacMillan); 1 nay (Calabretta); 1 Abstain (Chisholm); 2 absent (Harlen, McLaughlin).

Doug Conde clarified that although the Environmental Protection and Health Act (EPHA) requires a vote of four to adopt a rule, it would not apply in this motion because a rule is not being adopted. Marti Calabretta added that a chairman has the authority to withdraw any item from the table and schedule it for a future meeting.

AGENDA ITEM NO. 9: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0501, (PENDING RULE) (EXEMPTS DEFERRED SOURCES FROM REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT)**

Martin Bauer, Administrator of the Air Quality Division, presented this rule to make changes pertaining to sources of air pollution that were deferred from the Title V permitting program. This rule was previously adopted by the Board as a temporary rule in May 2005 and is currently in effect. No comments were received, and only a minor clerical correction was made to the rule. There were no controversial issues in this rulemaking, and it should not result in costs to the regulated community or DEQ, and may in fact result in a savings to industry.

Mr. Bauer stated there are no stringency issues; this rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than the federal regulations.

- **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules for the Control for Air Pollution in Idaho, as presented in the final proposal under Docket No. 58-0101-0501 and further moved the Board adopt the revision included in the final proposal as an amendment to the previously adopted temporary rules, with the amendment becoming effective December 7, 2005.

SECOND: Nick Purdy

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 10: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0503, (PENDING RULE) (RESPONSE TO HOUSE BILL 230 AND SENATE BILL 1228: REGULATED AIR POLLUTANTS)**

Martin Bauer explained this rule is required by House Bill 230 and Senate Bill 1228 to address the definition of regulated air pollutant as it applies to various Clean Air Act permitting programs. There is one change from the initial proposed rule; a correction to ensure the application of the state only toxics air pollutant program remains unchanged. During the public comment period, DEQ determined the correction was needed and drafted proposed language. IACI, the sponsors of House Bill 230 and Senate Bill 1228, proposed a sequencing change, which DEQ supports. It is IACI's version of the definition of modification that is now presented. DEQ requested the Board revise the proposal to include IACI's proposal and change and approve the proposed rule.

William Eddie testified on behalf of the Idaho Conservation League against the proposed rule. He stated the rule comes from a change in law that has already been adopted by the Idaho Legislature. It is not the product of a negotiated rulemaking, and there was never a roundtable discussion as to whether the changes in this rule are a good idea. DEQ will submit this rule change to EPA for approval to amend the federally approved state implementation plan (SIP). However, federal law requires the state to undertake certain required public notice and comment processes. ICL asserted the legislature did not follow the federally required public notice and comment requirements and believe if it is submitted to EPA, it will not be approved. The text of the proposed changes to the SIP must be provided to the public and they must be notified of where they can provide comment on the proposed changes.

ICL believes this was a hasty, political process with last minute amendments and two combined bills. DEQ then had the administrative job to put these changes into the rules.

ICL requested the Board ensure the Clean Air Act and EPA regulations regarding public process are followed in this matter and withhold approval of the rules until an opinion can be obtained from the Attorney General determining whether or not the rules were followed.

Mr. Eddie stated ICL also has substantive concerns with the proposed changes in this rule. The Treasure Valley has problems with compliance with federal standards for ozone. Volatile organic compounds (VOCs) are regulated precursors for ozone. A growing body of science is finding there are significant emissions of VOCs from livestock operations. DEQ has the authority under the current rules in the permit to construct requirements to control VOCs from dairies. That authority has not been exercised yet, but it exists. This rule proposes changes that would strip that authority from DEQ except in perhaps the most enormous dairies. Many emissions from dairies are fugitive emissions—they do not come from a stack or chimney. By stripping out the authority to regulate fugitive emissions from most sources under the permitting programs, you are stripping the authority to control a very large source of VOCs in the Valley. He cited recent approval by Payette County for construction of an 11,000 animal dairy. Under conservative VOC emissions estimates, this will bring more than 100 tons of VOC emissions per year. This is a source that is receiving absolutely no review for air emissions from DEQ. ICL has other substantive concerns detailed in the comments they submitted to this rule.

Dr. Joan Cloonan asked if EPA submitted any comments or input on the legislation. Martin Bauer said EPA did submit comments which resulted in the trailer bill to address those comments. He could not speak to ICL's concern with the process, but said conversations with EPA technical staff indicated if this rule were submitted, it would cover what Idaho needed to do to get its regulated air pollutant definitions in line with the feds. There was no discussion as to whether it could be approved for the SIP.

Chairman MacMillan asked for legal guidance on ICL's concern about the public comment process not being followed. Lisa Kronberg, Deputy Attorney General, responded when working on the rule she did look at the issue but did not research whether the legislative process would be sufficient for SIP approval. She hesitated to give a legal opinion without fully researching the issue. She noted when it is submitted for SIP approval, EPA will propose approval, disapproval or partial approval in the Federal Register. During this federal process, EPA can determine the public comment process was not followed or ICL can raise its concerns that the process was not followed.

William Eddie said ICL will comment at that stage of the process; however their written comments on this rulemaking include specific cites to the federal requirements for the state for adopting and proposing a SIP change to conduct its own compliance with the public comment requirements.

Don Chisholm asked if the Attorney General's Office could have an opinion available for the Board's review before its November meeting. Lisa Kronberg confirmed she could have an opinion available in time. Marti Calabretta questioned the value of an Attorney General opinion when the legislature provided clear direction by passing a bill through both houses that were signed by the Governor. Don Chisholm acknowledged the concern, but believed after reviewing the ICL comments regarding the process used with the legislation, that the public was deprived

of the opportunity to comment. He stated he would like to see the Board defend the right of the public by deferring this rule until the next meeting and reviewing the Attorney General's opinion and communicating the results to the legislature. Mr. Chisholm felt in order to best serve the people of Idaho, the Board should speak up on issues to help develop a policy in the state that has a rational approach to these issues. He believed it was an appropriate role for the Board.

Nick Purdy observed it seemed dangerous to omit fugitive emissions from regulation and asked why such wording was proposed. Martin Bauer explained this wording lines the state up with exactly with how EPA runs its major programs. William Eddie pointed out the statutes for the Air Program allow DEQ to be more stringent than federal requirements with justification.

➤ **MOTION:** Nick Purdy moved the Board table the Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0503 until the November 17, 2005 Board meeting when a legal opinion can be received from the Attorney General on whether the proper federal procedures were followed concerning public comment.

SECOND: Don Chisholm

VOICE VOTE: Motion carried. 3 ayes (Chisholm, Purdy, MacMillan); 2 nays (Calabretta, Cloonan); 2 absent (Harlen, McLaughlin).

Chairman MacMillan announced the rule would be tabled until the November Board meeting when hopefully a legal opinion will be available from Lisa Kronberg.

AGENDA ITEM NO. 11: **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, DOCKET NO. 58-0101-0506, (PENDING RULE) (PERMIT CLARIFICATION: BASELINE ACTUAL EMISSIONS AND TRANSFER OF PERMITS)**

Martin Bauer explained last year DEQ revised its major permitting program due to changes in federal law. This rule is proposed to revise a number of definitions to provide consistency between the major and minor air quality permitting programs. It also proposes two new subsections allowing permits to construct and Tier II operating permits to be transferable. The rule should result in decreased costs to the regulated community. There are no controversial or stringency issues associated with the rule.

Paula Wilson noted two minor typographical corrections needed to references in Section 209.06 and 404.05.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules for the Control of Air Pollution in Idaho as presented in the final proposal, and as modified for correction of typographical errors, under Docket No. 58-0101-0506.

SECOND: Marti Calabretta

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 12: RULES AND STANDARDS FOR HAZARDOUS WASTE, DOCKET NO. 58-0105-0501, (PENDING RULE) (ANNUAL UPDATE OF FEDERAL REGULATIONS INCORPORATED BY REFERENCE)

Orville Green, Administrator of the Waste Management and Remediation Division, presented this docket to perform the annual update of rules which is required for the state to maintain primacy of the Hazardous Waste Program. This update will make Idaho's rules consistent with the federal rules and no more stringent than federal rules. Mr. Green briefly reviewed the changes and noted that no public comments were received on the rules.

➤ **MOTION:** Dr. Joan Cloonan moved the Board adopt the Rules and Standards for Hazardous Waste as presented in the final proposal under Docket No. 58-0105-0501.

SECOND: Marti Calabretta

VOICE VOTE: Motion carried by unanimous voice vote.

AGENDA ITEM NO. 13: CONTESTED CASE AND RULE DOCKET STATUS REPORT

Paula Wilson reviewed the contested case report, noting the deadline to appeal the order in the Simmons Sanitation case has passed and no petition to appeal has been received. A new contested case has been filed by Pristine Springs Inc. regarding the Upper Snake TMDL modification.

She estimated there will be 13 rule dockets before the Board at the November meeting. She reminded the response to comments and DEQ's revised proposed rules are posted on the DEQ website, if members would like to review materials before the meeting binders are mailed out.

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

Marti Calabretta discussed the Coeur d'Alene Tribe TAS and the ambivalence of the local communities as to the tribe's and the state's roles in terms of how the TAS will develop. The tribe is well-financed to do the task and has had a long-term commitment to environmental concerns. Emotions are running high as the area becomes a test case for how this process will play out. She also provided a brief update on the continuing Bunker Hill cleanup activities in Northern Idaho.

Ms. Calabretta raised questions regarding the role of the board as an advocate for communities and the concerns of the public. She suggested the Board have a discussion at a future meeting to develop a list to define what the Board does, and what it could or should be doing to best serve DEQ and the citizens of Idaho. There seems to be uncertainty regarding what the actual authorities are by law as compared to what boards do and what they are expected to do. She felt members needed a better understanding of how Board actions fit into the direction the agency takes over time and how actions could guide and give feedback to the legislature. What is the appropriate role of the Board, can it provide support to DEQ in its budgetary process with the legislature? She felt the Board was at a point where it is using the rulemaking process to send a lot of messages to a lot of people, when perhaps it would be more productive to do it some other way.

Dr. Joan Cloonan commented part of the role of the Board is clearly set out in law and is pretty narrow, but there are a lot of other opportunities where the Board could provide valuable support and service. There is a perception in the community that the Board is an advisor or someone they can come to and ask for help and information. She felt there was a real mix of talent on the Board that could be valuable to the director and the department to provide input, feedback, and support.

Don Chisholm commented the Board could act as an advocate for DEQ issues before the legislature and let them know their positions as citizens. The legislature has such a broad range of complex issues to consider, it would be valuable to have a Board who really understands these issues help them out. He felt the Board was not functioning the way it should if they did not speak up. He noted some state boards invite legislators who are chairs of germane committees to attend meetings as ex-officio members. This may be something the Board may want to consider.

Marti Calabretta discussed the role other state boards play in providing outreach to their constituents and ways to let the public know the actions and activities of the board.

Director Hardesty thought it would be good to engage in a conversation regarding roles the Board might be able to play beyond just rulemaking. She stated DEQ tries to be respectful of Board members' time and recognizes the importance of the Board as an impartial hearing officer. DEQ would not want to do anything to cross the line to affect public perception as to how the Board is involved in the agency. It is important the public and regulated community feel comfortable they can come to the Board and get a fair hearing. She stated DEQ will continue to bring things forward to the Board and welcomed ideas and comments. She acknowledged and appreciated the members' efforts to reach out to their communities to make people feel like they have a citizen board to hear their concerns. She also welcomed the Board's support when DEQ's rules and budget go before the legislature.

Chairman MacMillan stated a discussion may be set during a spring meeting when the tribal law discussion takes place.

The meeting adjourned at 3:00 p.m.

/s/

Dr. John R. MacMillan, Chairman

/s/

Craig Harlen, Secretary

/s/

Debra L. Cline, Management Assistant and Recorder

ACTION ITEMS

1. Update on the actions of the ECSC Servicing Communities: Planning for the Future Subcommittee and Land Use Planning Act issues. (Jon Sandoval)