



**IDAHO BOARD OF ENVIRONMENTAL QUALITY
MINUTES**

AUGUST 31, 2000

The Board of Environmental Quality convened at 10:00 a.m. at:

Idaho Department of Environmental Quality
1410 North Hilton, Conference Room C
Boise, Idaho

AGENDA ITEM NO. 1 ROLL CALL

BOARD MEMBERS PRESENT:

Donald J. Chisholm, Chairman
Paul C. Agidius, Vice chairman
Marti Calabretta, Secretary
Dr. J. Randy MacMillan, Member
Senator Marguerite McLaughlin, Member
Nick Purdy, Member

BOARD MEMBERS ABSENT:

Dr. Joan Cloonan, Member

DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT:

C. Stephen Allred, Director
Jon Sandoval, Chief of Staff
Debra L. Cline, Administrative Assistant to the Board
Doug Conde, Deputy Attorney General, DEQ
Paula Gradwohl, Paralegal/rules coordinator
Jess Byrne, Community Affairs
David Mabe, Administrator, Water Quality Division
Mike McIntyre, Surface Water Program Manager

OTHERS PRESENT:

Jane Gorsuch, Intermountain Forest Assn.
J. Dallas Gudgell, Idaho Conservation League
Melinda Harm, Land and Water Fund
Barb Heller
Jack Lyman, Idaho mining Association
Grant Simonds, Idaho Outfitters and Guides Association
Lynn Tominaga, Idaho Water Users Association
Jim Werntz, U.S. Environmental Protection Agency

a. ADOPTION OF THE MINUTES OF THE JULY 25, 2000 BOARD MEETING

- **MOTION:** Dr. Randy MacMillan moved the minutes of the July 25, 2000 Board meeting be adopted as prepared.
SECOND: Paul Agidius
VOICE VOTE: Motion passed unanimously. 6 ayes; 0 nays; 1 absent (Dr. Joan Cloonan)

AGENDA ITEM NO. 2 DIRECTOR'S REPORT

Director Steve Allred reported on the Department's activities and issues. The Department is monitoring the impacts of the wildfires on the health and environment of the state. A larger area is currently under fire than ever before in the history of the state.

A lawsuit has been filed in Northern Idaho by a group called Save our Summers which contends the air quality issues are controlled by the Americans with Disabilities Act. DEQ believes that is not the appropriate control for air quality. Although they are not a party to the lawsuit, DEQ has been involved in negotiations with the Treasure Valley Airshed. They hope to reach a settlement soon. DEQ will be heavily involved in the solution including the maintenance plan for the Treasure Valley. Funding sources are currently being investigated.

Director Allred reported on a significant change in how DEQ deals with airshed quality. The process is unique to Idaho and is similar to how water quality is handled. Instead of using permits as the ultimate method, it uses air quality plans and utilizes permits as one of several tools to control air quality. Most importantly, the process recognizes reality as far as climate and air flow conditions.

Director Allred discussed the ongoing negotiations in the Coeur d'Alene Basin. The negotiations have been a long and difficult effort. Mr. Allred recognized Hecla Mining Company for their extraordinary efforts in trying to negotiate a settlement. The TMDLs have been released for the area. The agency delayed releasing the TMDLs so they could be integrated into the clean-up plan which was ready in July 2000.

Proposed legislation for the upcoming session will include a bill regarding criminal enforcement issues. Meth labs are becoming a real concern and are a significant threat to the

environment. Idaho currently lacks adequate authority to deal with these issues. DEQ is working with law enforcement and the Attorney General's Office to develop legislation.

There has been a dramatic increase in the disposal of waste through land application. The number of applications DEQ receives for land application disposal has increased nearly 100%. The increase has inundated department staff and they will request four new staff positions, mainly for the regional offices.

The standard rulemaking process has been revised to provide for the review of the proposed rules by a technical writer to ensure accurate, correct documents are brought to the Board for adoption.

AGENDA ITEM NO. 2: OUTSTANDING RESOURCE WATER NOMINATIONS – BOARD ACTION

Doug Conde, Deputy Attorney General, DEQ, reviewed possible actions for the board to consider on the ORW nominations submitted by the Idaho Conservation League, Idaho Rivers United, and the Greater Yellowstone Coalition. Possible actions include: 1) to recommend to the legislature all or some of the waters nominated as ORWs; 2) to recommend all or some of the waters nominated as ORWs and to identify the best management practices (BMPs) that would be applicable for activities within those watersheds; 3) to designate the ORWs but provide that the restrictions on the new or existing activities would only become effective once the BMPs are developed and become a final rule after legislative approval; or 4) to develop a new system where the Board would make a recommendation to the legislature to study certain water bodies for ORW designation, if the legislature then agreed, they would then by law designate ORW studied water bodies. Hopefully funding would also be supplied by the legislature. DEQ and other designated agencies would then develop the baseline water quality and BMPS. That information would be given to the legislature before they made their final decision on whether to designate.

Dr. Randy MacMillan asked if there was a national requirement that ORWs be developed in a state. Doug Conde explained that this is somewhat of an open issue. The Clean Water Act (CWA) requires anti-degradation provisions and the state has met that obligation in its water quality standards. There is an argument that if you have these anti-degradation provisions on the books, but you've never implemented them, then you are not meeting the provisions of the CWA. Montana and Wyoming have designated ORWs in wilderness areas, but they have never been brought to their legislatures. Therefore, they are state designations, not national designations. They apparently exist on paper only and have no force and effect of law.

Chairman Don Chisholm asked if Idaho had adequate anti-degradation provisions in place to protect the state from a lawsuit under the CWA to force implementation of anti-degradation standards. Doug Conde stated he believed the anti-degradation standards in place in the Water Quality Standards were sufficient to meet the requirements of the CWA. Those standards have been approved by the EPA.

Don Chisholm commented that after ten years of attempting to get an ORW designated unsuccessfully using the current process, it seems some changes need to be made. He discussed

the possibility of developing BMPs to be presented in conjunction with the ORW nominations to reduce the fear factor people have over the effect of the designation. Marti Calabretta agreed and indicated that the Health and Welfare Board had similar discussions regarding the fear that many people have of an ORW nomination and how that created an impediment to getting an ORW designated by the legislature.

Dr. Randy MacMillan asked if it was practical, from a scientific standpoint, to be able to measure when a water body is actually degraded. Doug Conde responded there is a definition of lowered water quality and DEQ has protocols they use to make those decisions. Dr. MacMillan questioned how natural processes would be factored into those decisions and was concerned that a judge with limited scientific knowledge would end up making decisions on degradation issues. Doug Conde explained that the ORW statute had provisions to deal with such issues. If a landowner/operator follows the established BMPs and water quality is still lowered (possibly due to natural processes) the owner/operator is protected from any liability. If needed, the BMPs can be revised to ensure water quality is protected. David Mabe explained the Department also has experience in dealing with the issue of natural processes on water quality through the TMDL process and understands how those issues must be factored in.

Senator Marguerite McLaughlin noted her concern that ORW designations would be considered only in wilderness areas. The wildfires currently burning in the wilderness areas are unmanned and there will most certainly be a major affect on the water quality in those areas. She questioned whether the federal government shouldn't first be doing something to ensure the water quality. Steve Allred observed that by being proactive we could attempt to impact what the federal land management agencies do, particularly on matters under the CWA, by using influence early on to set the direction of the federal agencies.

David Mabe discussed briefly the process the Department would use to establish baseline water quality levels in ORWs. The process will probably be a combination of biological parameters, some chemical parameters, and the history and potential issues in each particular watershed. They will select the water quality parameters based on the area designated and then establish either chemical or biological parameters that will best reflect what goes on in that basin. They will then track changes in the basin based on the type of activities that occur. Dr. Randy MacMillan questioned whether changes in the water quality could cause stricter and stricter BMPs. David Mabe explained that in dealing with such situations, DEQ does research and testing to determine the cause of the change. If the change is due to natural processes, it is doubtful any changes would be made to the BMPs; however, if the change is caused by manmade activities, DEQ would review the situation to see if it is an issue of the BMPs not being properly or consistently implemented. They might meet with the parties, i.e. Packers and Guides, to discuss the situation to determine if it is an implementation problem or if the BMPs need to be modified or if a new BMP needs to be added.

Paul Agidius asked if the burden of proof was on the individual or the Department to prove whether the change was manmade or a natural process. Doug Conde explained that the provisions of the Idaho Code prohibit conducting new or modifying existing nonpoint source activities that can lower water quality on an existing ORW. The code also provides that if you are following the BMPs that you are in compliance with the provisions of the act. If an agency

were to take an enforcement action, the agency would have to prove that it was some activity that an individual has taken that is not in compliance with the approved BMPs.

Senator Marguerite McLaughlin expressed concern that any ORW designation would prevent expanding the economy. The existing activities would be grandfathered in, but there can be nothing else—no economic growth. She mentioned that there is a lot of area in the wilderness with a lot of mineral potential. She stated she wanted to be really sure that we are not limiting changes. Doug Conde pointed out that an ORW designation does not prohibit new activities, they just have to be conducted in accordance with the BMPs so as not to degrade water quality. The code also provides that BMPs will be reviewed and revised where needed every four years in consultation with landowners, federal managers, operators, and the public to determine conformance with the objectives of the act.

Steve Allred pointed out that in most cases in the streams in the state of Idaho, there is no room for additional development. That is why we have TMDLs with load assignments and in most cases, the loads have to be reduced.

Michael McIntyre, Program Manager for Surface Water, Water Quality Division, reviewed the public comment report, the synopsis of the comments, and the comment summary. Over 400 pages of comments were received from over 200 commentors. Although the comment period closed last Monday, DEQ is continuing to receive comments and will accept them through the end of Board meeting. Three times as many people supported ORWs as opposed them.

Nick Purdy observed that the ORW process has been before the Board for ten years. He felt it is time the Board proceed with the nomination of at least one water body to see how an ORW designation will work. He suggested one in a wilderness area that would be the least contentious and have the best chance of being approved by the legislature. If the designation is effective in protecting the environment and landowners and operators are able to see how the designation affects them, maybe then the Board could move on to other designations as needed. He pointed out that in the public comments, even members of the timber industry supported the designation of an ORW totally in a wilderness area, because they also wanted to see how the BMPs, rules, and the process would play out.

➤ **MOTION:** Nick Purdy moved the Board direct staff to develop Best Management Practices for the area in the wilderness and in the Forest Service and including what private property there is in the interior of the Middle Fork of the Salmon River drainage as an Outstanding Resource Water nominee. If the Board approves of the BMPs, the nomination will then be forwarded on to the Idaho Legislature.

SECOND: Motion died for lack of second.

Michael McIntyre distributed a list of the water bodies within the nominated areas that are 303D listed. He also supplied Board members with a list of expenses to date associated with the ORW designation.

Mr. McIntyre reviewed information being gathered on water quality data that already exists on the nominated water bodies. Several regional offices of both the Department of Fish

and Game and the U.S. Forest Service have notified DEQ that they have water quality information they would like to contribute; however, they are unable to respond at the present time due to the forest fires. They estimate it will be October before they are able to supply the information. He discussed how the baseline water quality information would be established. The Department will use a process already in place called beneficial use reconnaissance monitoring and interpret the results through the water body assessments guidance which relies heavily on a biological component for determination of water quality status.

There are currently approved BMPs on the books (most in the form of rules which have been approved by the legislature) for mining, forest practices, solid waste, and some for agriculture. Mr. McIntyre suggested these might be used as a place to start when developing BMPs for ORW areas. He also stated DEQ has an established definition of "lowered water quality" through the beneficial use reconnaissance and water body assessment guidance procedures.

Michael McIntyre reviewed highlights and key points from the public comments. In the nominated segments of the St. Joe River, there are no 303D listings, and the Department of Fish and Game has noted that the Upper St. Joe is the last stronghold of an intact, healthy Bull Trout population—the only one of its kind in the entire Spokane drainage. Some tributaries in the upper watershed have alleged temperature violations, which are being dealt with through the TMDL process. There is strong opposition from the locals in the St. Maries and Wallace area, and Shoshone and Benewah Counties have both requested public hearings.

The Selway River has no current human activity and no history of human activity. There is no TMDL in process. The nominated area is almost entirely within wilderness boundaries, and the U.S. Forest Service manages the entire area. According to the Department of Fish and Game, it is a significant state and regional fishery, with endangered species issues and concerns that could be addressed with an ORW designation. The Outfitters and Guides would be the primary affected industry. The BMPs from the 1997 ORW nomination already exist and the Board could incorporate the operating requirements of the Outfitters and Guides under those permits as BMPs.

The Middle Fork Salmon River has some history of mining activity and some of the nominated segments are outside of the wilderness boundaries. TMDLs are due on Bear Valley and Monumental Creeks in 2005. It has a significant national fishery and water related recreational resources. It also has endangered species (Bull Trout, salmon and steelhead) and issues, which could be addressed by an ORW designation.

The South Fork of the Snake River nomination has two segments on the 303D list (Fall Creek and the South Fork of the Snake). The TMDL is currently underway and is due this year. There is a significant amount of private property within the area. The water quality of the area is affected by the operation of Palisades Reservoir, and there are a number of private water rights in the nominated area. The area has national fisheries significance and water related recreational resources. However, Mr. McIntyre felt the politics may be stacked against this nomination.

The Boise River nomination has some 303D listed segments and TMDLs are due this year. It is a regional fishery. There are a number of legacy issues in the watershed with logging

and the Atlanta Dam mercury situation, which make it difficult to determine what is natural and what is human caused when trying to set baseline water quality. There are three forks that drain into reservoirs (Arrowrock, Anderson Ranch and Lucky Peak) and that can affect water quality.

After reviewing the matter with Director Allred, Water Quality Program staff and legal counsel, the Department recommends the Board go forward with some number of ORWs. They feel this is important for two reasons: Idaho has some of the highest water quality in the United States and an ORW designation would solidify that; and secondly, DEQ would like to see the process go forward because of all the process questions they continually run into that would be defined and refined. Given those points and all the other information previously discussed, DEQ recommends a few nominations go forward on waters that affect as few private land owners, water rights, and livelihoods as possible. Keeping the nominations within existing wilderness boundaries allows for quick, easy development and implementation of BMPs and should eliminate much of the opposition. Based on those facts, the Selway River seems the best choice, followed closely by the Middle Fork of the Salmon River. Establishing water quality baselines on both should be easier because they have few, if any, human factors to consider. The Department feels the St. Joe has merit, but may not be achievable at this time given the issues with Plum Creek Timber Company and local opposition. However, once an ORW designation is established and questions are answered as to how it will affect things, a designation may be possible on the St. Joe in two or three years.

DEQ recommended public hearings be limited to the affected cities, plus three general state locations and teleconferencing. They further recommended an independent facilitator be hired to conduct the hearings and prepare a report. Professor Freemuth from Boise State University would be a good choice. He has conducted the hearings twice before and DEQ was very pleased with his work. The hearings should be held in early October.

Jane Gorsuch, Vice-president, Idaho Affairs, Intermountain Forest Association, stated the membership of the Association is very concerned that ORW designations will raise troublesome legal issues and will become a vehicle to stop land management activities. They feel ORWs are unnecessary to protect water quality because state water quality plans are already in place. She felt they were not reacting due to fear of what might happen with an ORW designation, but from their own experience with water quality issues. She felt certain a designation would limit, sometimes severely, land management activities and would affect real estate and private property and bring lawsuits. Ms. Gorsuch commented that although the process states it does not restrict activities, she feared the practical affect would be that the process would create so much bureaucracy it would be impossible to get through it to get anything done. She pointed out that there are roads and trails within wilderness areas that could be impacted by an anti-degradation designation.

Ms. Gorsuch challenged the process used by DEQ to develop its recommendation. She recommended the Board hold the current petitions, modify the list and send it to the legislature for study and review; that the legislature then reduce the list down and send it back to DEQ with funds to set the water quality criteria and develop BMPs, and then send it back to the legislature for concurrence or rejection. She felt public hearings would not be fair or effective at this time due to the number of people involved in fighting wildfires who would not be able to attend.

Lynn Tominaga, Idaho Water Users Association, stressed their two main areas of concern are the water rights issue and the baseline water quality information. They are particularly concerned about the designations in the Boise River system and the South Fork of the Snake because the areas include Palisades Reservoir and Anderson Ranch Reservoir. They also have concerns about the North Fork of the Boise because of the possible Twin Springs Reservoir site. An ORW designation would take it off the list of possible reservoir sites forever because it would change the water quality. IWUA also wants a better understanding of how private property issues would be handled regarding the loss of use of property and whether the state would be liable for any financial loss by property owners.

Mr. Tominaga also expressed concern over the cost of gathering baseline data. He stated it would cost probably \$100,000 each year for three years per segment to collect biological data on the fisheries or aquatic life. He discussed the problems that can occur when the water quality flowing into an ORW does not meet the water quality standards of the ORW. Mr. Tominaga stated he agreed with the comments of the IFA regarding public hearings, and felt that since many of the segments have been nominated before, the comments gathered from a public hearing would be very similar.

Jack Lyman, Idaho Mining Association, stated he has been involved with the ORW process for over ten years and attended the public hearings on previous nominations. He felt that public hearings would only be a test of how well the interest groups are organized and would not provide any clarity on the issue. The expense and time would only take resources away from other water quality issues, and the results from the hearings would be the same as from the previous hearings. He reiterated the Idaho Mining Association's support for the designation of the Middle Fork of the Salmon River as an ORW, and stated that is the only nomination they would recommend.

Melinda Harm, attorney for the Land and Water Fund of the Rockies, expressed deep concern that Idaho has yet to designate an ORW. The Land and Water Fund of the Rockies is a nonprofit environmental law firm who represents other public interest organizations such as the Idaho Conservation League on natural resource issues in Idaho and the Rocky Mountains. The anti-degradation agreement created the ORW process 12 years ago and there are still no Outstanding Resource Waters designated for the state. It is the Land and Water Fund's position that the state of Idaho has an obligation to protect the best and highest quality of waters by providing them this level of protection. They feel it is the responsibility of the Board to go forward with public hearings on all the nominations and feel it would also be a good opportunity for the new Board to see how the people of the state feel about protecting these waters. The fact that over two-thirds of the written comments support ORWs indicates the importance of the issue.

Dallas Gudgell, Idaho Conservation League, commented he was somewhat discouraged by the earlier discussions because they seemed to "come in the back door" for a Board who is responsible for the environmental quality of the state. The focus was on all the reasons why we can't protect the water and the "what ifs." ICL believes the main goal is clean water, and if the Clean Water Act is fully and correctly implemented, the result will be clean water. He noted there seemed to be a lot of fear driven comments that if an ORW is designated it will end up in court. But to not move forward with public hearings, or an ORW designation that includes

waters outside the wilderness area, or to make no designations at all seems to send one message; that they are left with no other resort than to go to court. The ICL would much prefer to work cooperatively and progressively with the Board to get things done without having to go to court.

Dallas Gudgell submitted 62 additional e-mail comments that were directed to the ICL website in error. He stated he had personally reviewed all of the comments received by DEQ and approximately 80% supported ORWs. He felt that although the public comments may be somewhat similar to previous ones, the public climate has changed and warrants holding hearings. He noted that former Governor John Evans submitted written comments in support of all the nominations, Senator Clint Stennett and Representative Wendy Jaquet commented in favor of ORWs, the Nez Perce Tribe commented fully in favor of the Selway as a nomination, and the Nez Perce Forest and the Bitterroot Forest both commented fully in support of an ORW designation. These comments all show a change in climate. Mr. Gudgell stated ICL strongly supports holding public hearings on all segments. He recommended grouping together a wilderness designation for public hearings that joins the Selway and the Middle Fork Salmon together as a wilderness designation (as nominated – not restricting the boundaries to wilderness areas, because it doesn't make sense to break up the watershed). If public comment or the legislature recommend removing the segments outside the wilderness area, that can be done later on in the process. He further recommended the remaining three nominations be grouped together for public hearings. He offered a prioritized list; first the wilderness designation package as suggested above, the St. Joe, the Boise River (they have recommended taking out the portions listed on the 303D list), and lastly the South Fork of the Snake.

Senator Marguerite McLaughlin suggested there are different, less political ways to bring water quality protection issues to the legislature (besides the ORW process) which would be more successful and bring fewer problems to the state. She questioned why the groups petitioning for ORW designation were not looking at places where there really was pollution and state laws already in place to cure it, to create a clean water base. Dallas Gudgell responded they would be glad to look at new ways and welcomed ideas the Board suggested, such as bringing BMPs forward with ORW nominations. He stated ICL would be willing to work with any effort to look at amending the process. ICL works on anti-degradation issues for clean water and the clean up of dirty water, and sometimes those issues overlap. For example, he felt an ORW designation would help with TMDL issues downstream.

Marti Bridges, Conservation Director for Idaho Rivers United, urged the board to move forward with public hearings on all five ORW nominations. She concurred with Dallas Gudgell's suggestion that the two major wilderness rivers, the Selway and the Middle Fork of the Salmon, be grouped together and prioritized. However, she felt a more complex system such as the St. Joe River, where there is a mix of uses, should also be nominated so the ORW process can play out. Ms. Bridges felt it was important for the new Board to be involved in the hearings and see what the public has to say. She did not believe the current wildfire situation was a problem because most of the people involved in the fire fighting effort are trained professionals from the agencies and the military, and that by October the weather patterns will have resolved most of the fires.

Ms. Bridges discussed a suggestion by Doug Conde regarding another way of evaluating or prioritizing rivers that might be eligible for ORW designation. She felt the idea held strong

promise and would like to work with DEQ and the Board to develop a system. She also supported the idea of a more casual format for the public hearings and teleconferencing or recorded testimony. Ms. Bridges challenged the Board to set the standard in establishing ORW protection and asked them to provide the leadership to move forward with the process, while looking at ways to improve the system as we learn more about how it will work.

Grant Simonds, Idaho Outfitters and Guides Association, stated about 170 business will be affected by the nominations; about 140 of them, both land and water based, are related to the two wilderness areas. Outfitters need both clean water and reasonable regulation in order to continue as viable businesses. At the 1997 hearings they asked what the threat was to the Selway and the Middle Fork and tributaries that required this additional protection. No one was able to answer that question. IOGA would like to have a higher degree of certainty of what the BMPs will be and how they will affect them. They recommended the Board instruct DEQ to develop BMPs as they relate to IOGA and gather baseline data first and then proceed to the legislature. Mr. Simonds suggested beginning the collection of data immediately due to current conditions such as low water and the impact of fires. The baseline data should reflect more than just a "snapshot."

Mr. Simonds felt that holding public hearings would not be a good use of resources because they would reflect substantially the same information as the previous hearings. He would rather see the resources go to developing information (BMPs and baseline data) to provide more certainty. He stressed that Outfitters and Guides are already heavily regulated by both state and federal government. They want to be sure what the BMPs are so they don't provide another tool to reduce their viability. He pointed out that the Forest Service Special Use Permit does not provide specific language dictating how they should operate, so it could not be used as BMPs. It needs to be clarified. They believe the way they operate now under federal guidelines would be appropriate, but specific language needs to be developed in BMPs. Michael McIntyre advised that DEQ is currently meeting with IOGA to address this issue and come to an agreement. They will use the Forest Service permit and guidelines as a starting point to develop and define BMPs.

Chairman Don Chisholm observed that Doug Conde's No. 4 option, which suggests changing the way the ORW process works by submitting all the nominations to the legislature with the direction that they send them back indicating which ones to go forward with and funding to complete the studies, would address almost everyone's comments and concerns. Since all the Board's and DEQ's efforts mean nothing if the legislature does not approve it, this seems to be the best way to ensure the state's resources are spent wisely.

➤ **MOTION:** Senator Marguerite McLaughlin moved the Board refer all the ORW nominations currently under consideration and recommend legislative changes in the process such that the Board recommend a list of streams to the legislature to study, and with agreement of the legislature provides funding to DEQ to develop baseline water quality standards, develop BMPs, and with Board approval, send the package back to the legislature for final approval.

DISCUSSION: Paula Agidius clarified that the motion does not nominate the ORWs at this time, it just sends the package to the legislature for review and recommendations. The nomination would take place at the end of the process. Senator McLaughlin confirmed that was the intent of her motion.

SECOND: Paul Agidius

DISCUSSION: Dr. Randy MacMillan remarked that the current statutory process seems to be fundamentally flawed because of what it does not include. He suggested the Board identify what the flaws are and suggest ways to the legislature of how the process can be improved to reduce the problems dealing with anti-degradation. He felt either all five nominations should go forward as described in the motion, or the two wilderness areas should go forward. Dr. MacMillan commented that the statute requires the Board to pass some judgment on the nominations, and not just turn it over to the legislature to decide.

Nick Purdy agreed it is the Board's responsibility to make a recommendation to the legislature and felt the motion did not comply with current law. Paul Agidius also agreed the Board would not be doing what it is charged to do, but felt the Board could not do what it is charged to do because it is being asked to make a determination without all the facts. He stated he would not be willing to make any recommendation without knowing what the baseline data and the BMPs will be. Mr. Agidius commented that perhaps the Board should make a recommendation to the legislature that they change the process and provide language on how it should be changed.

Nick Purdy stressed that DEQ staff made a recommendation that the Board should approve at least one nomination, and public comment supports at least one or two wilderness designations. He restated his support for his original motion and suggested the Board approve at least one of the nominations for recommendation to the legislature based on development of BMPs, if needed, a request for funding to complete baseline data studies could be included in the recommendation. Mr. Purdy felt the nomination could go forward without public hearings based on the written comments and the previous ten years of comments and hearings already received.

Doug Conde advised that current law requires the Board to make some recommendation on the ORW nominations. There may be a creative way to do that with legislation that revamps the process while still carrying out the task; for example, making an ORW recommendation to the legislature with some proposed legislation that modifies the process.

AMENDMENT TO MOTION: Nick Purdy moved the motion be amended to nominate the Selway River and Middle Fork Salmon River for designation as ORWs contingent on the legislature providing funding for development of BMPs and baseline data subject to Board approval.

SECOND ON AMENDMENT: Marti Calabretta

DISCUSSION: Dr. Randy MacMillan questioned why the Board had to take action at this time. He stated he was very uncomfortable making any recommendation at this time without knowing what changes would be made to the process and what the BMPs would be. Doug Conde pointed out the motion should be crafted carefully to ensure the Board is making a recommendation to the legislature in some form or another to designate an ORW.

➤ **MOTION:** Paul Agidius moved the pending motion be tabled until the next meeting.

SECOND: Nick Purdy

VOTE: Passed unanimously. 6 ayes; 0 nays; 1 absent (Dr. Joan Cloonan)

- **MOTION:** Nick Purdy moved the Board direct legal counsel to draft a proposed recommendation to the legislature recommending the nomination of the Middle Fork Salmon River and the Selway River contingent on legislative funding for development of baseline water quality standards and BMPs for possible future designation, he further moved the Board direct legal counsel to draft proposed changes of the process for nominating ORWs to the legislature.
- SECOND:** Marti Calabretta
- VOICE VOTE:** Motion passed unanimously. 6 ayes; 0 nays; 1 absent (Dr. Joan Cloonan)

Senator Marguerite McLaughlin asked why the Board was obligated to move in such a hurry on the ORW matter. The Board is new and has had only two meetings. She stated she strongly disagreed with the idea that the Board had to take action on the ORW issue instantly. Senator McLaughlin felt when the Board had to make such major decisions it should not be pushed into it on its second, third or fourth meeting. Nick Purdy pointed out that the legislature would first have to take action, and the Board would not have to make a final decision on the matter for a full year. Senator McLaughlin reiterated that she felt pressured because the Board was moving and acting like they had to take action immediately, and she believed it wasn't necessary.

- **MOTION:** Dr. Randy MacMillan moved the Board not hold public hearings on the ORW nominations at this time pending re-examination at the next Board meeting.
- SECOND:** Senator Marguerite McLaughlin
- VOICE VOTE:** Motion passed. 5 ayes; 1 nay (Marti Calabretta); 1 absent (Dr. Joan Cloonan)

The meeting adjourned at 4:15 p.m.



Donald J. Chisholm, Chairman



Marti Calabretta, Secretary



Debra L. Cline, Administrative Assistant
and Recorder

BOARD OF ENVIRONMENTAL QUALITY

Policy for Compensation—Honorariums and reimbursable expenses for members of the Idaho Board of Environmental Quality.

PURPOSE:

To formalize a policy which sets forth the manner in which DEQ will compensate Idaho Board of Environmental Quality (“Board”) members regarding compensation, honorariums and reimbursable expenses.

STATEMENT OF POLICY:

1. **OFFICIAL MEETINGS.** The members of the Board shall receive fifty dollars (\$50.00) per day for each day spent in the actual performance of duties and shall be reimbursed for their actual and necessary expenses, subject to the limits provided in Section 67-2008, Idaho Code. Daily compensation shall be allowed for up to two (2) additional days, thus allowing for travel both to and from the meeting. Therefore, the daily rate shall be the compensation for attending official Board meetings and for travel.
2. **DISCRETIONARY DUTIES.** Each Board member shall be allowed and encouraged to spend discretionary time not to exceed six (6) days annually representing the Idaho Board of Environmental Quality and/or the Department of Environmental Quality at functions, meetings, hearings and/or other public business deemed in the interest of either the Board or the Department and shall be compensated at the daily rate. Each Board member shall certify for each day utilized as a discretionary day that he/she actually worked and provided services relating to official duties for the Board and shall list the meetings on his/her travel record.

3. SPECIAL ASSIGNMENTS. Each board member shall be compensated at the daily rate for special assignments necessary to attend conferences, workshops, or meetings throughout the state or outside the state on behalf of the board provided that he/she shall have the advance authorization of the chairperson of the board or her/his designee, or as otherwise authorized by a majority vote of all members of the board (four votes). Where such special assignments require travel, such travel expenses shall be authorized before any expense is incurred, as provided in this paragraph. These requests will be limited and based upon the availability of funds as determined by the funding and resources available to the Board on an annual basis.

4. BI-MONTHLY REPORTING. Each Board member shall report his/her compensation request at least bi-monthly. In cases where such compensation totals five (5) hours or more, that shall be the equivalent of one (1) full day. Partial days of four (4) hours or less may be counted as half days and will be allowed on honorarium voucher requests.

5. EXPENSE REIMBURSEMENT. The Board incorporates by reference Idaho Department of Environmental Quality Fiscal Policy 4.3, as it currently exists and as it may be amended in the future (see copy attached). Such policy shall govern all expenses and includes lodging and travel requests.

IMPLEMENTATION:

This policy shall be effective immediately.

DATED this 18th day of October, 2000.


Chairman

IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS
DEPARTMENT OF ENVIRONMENTAL QUALITY
PENDING RULE
DOCKET NO. 58-0108-0001

FINAL PROPOSAL

The Department of Environmental Quality recommends that the Board of Environmental Quality adopt the rule as initially proposed in the Idaho Administrative Bulletin, Volume 00-7, July 5, 2000, pages 97 through 100.



STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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

Dirk Kempthorne, Governor
C. Stephen Allred, Director

DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE
DOCKET NO. 58-0101-0001

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapter 1, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

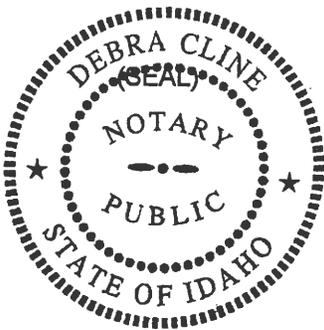
10/18/00
Date

Donald J. Chisholm
Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
County of Ada) ss.

On this 18th of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Cline
Notary Public for Idaho
Residing at: Calderwood
Expires: 7/21/01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
PENDING RULE
DOCKET NO. 58-0101-0001

FINAL PROPOSAL

The Department of Environmental Quality recommends that the Board of Environmental Quality adopt the rule as initially proposed in the Idaho Administrative Bulletin, Volume 00-8, August 2, 2000, pages 157 through 164.



STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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

Dirk Kempthorne, Governor
C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE AND
AMENDMENTS TO TEMPORARY RULE
DOCKET NO. 58-0101-9903**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapter 1, Idaho Code, and under the provisions for pending and temporary rule adoption contained in Sections 67-5224 and 67-5226, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, are hereby adopted as a pending rule and amendments to temporary rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

10/18/00
Date

Donald J. Chisholm
Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
County of Ada) ss.

On this 18th of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Cline
Notary Public for Idaho
Residing at: Caldwell, ID
Expires: 7/21/01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
PENDING RULE
DOCKET NO. 58-0101-9903

FINAL PROPOSAL

The initial proposal appeared in the Idaho Administrative Bulletin, Volume 00-8, August 2, 2000, pages 149 through 156. Sections 700 and 710 have been amended as provided in Idaho Code § 67-5227. Section 209 has been presented as initially proposed and, therefore, has not been reprinted.

The Division of Environmental Quality recommends that the Board of Environmental Quality take the following action:

IDAPA 58.01.01.209	ADOPT AS INITIALLY PROPOSED
IDAPA 58.01.01.700	ADOPT AS AMENDED
IDAPA 58.01.01.710	ADOPT AS AMENDED



STATE OF IDAHO
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Board of Environmental Quality

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

Dirk Kempthorne, Governor
 C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
 BY THE BOARD OF ENVIRONMENTAL QUALITY
 ADOPTION OF TEMPORARY RULES
 DOCKET NO. 58-0109-0001**

Pursuant to the authority granted to the Board of Environmental Quality in Chapter 1, Title 39, Idaho Code, and under the provisions for temporary rule adoption contained in Section and 67-5226, Idaho Code, I declare that the following Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.09, Rules Regulating Swine and Poultry Facilities, are hereby adopted as temporary rules.

SECTION AFFECTED

IDAPA 58.01.09.200
 IDAPA 58.01.09.205
 IDAPA 58.01.09.400

ACTION TAKEN

ADOPTED AS PRESENTED
 ADOPTED AS PRESENTED
 ADOPTED AS PRESENTED

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

10/18/00
 Date

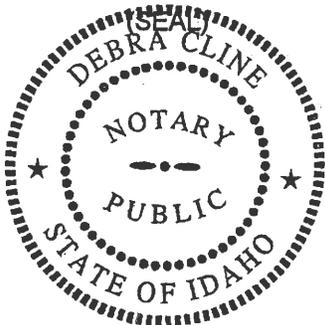
Donald J. Chisholm
 Donald J. Chisholm, Chairman

STATE OF IDAHO)
)
 County of Ada) ss.

On this 18th of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Debra Cline
 Notary Public for Idaho
 Residing at: Calduell, ID
 Expires: 7/21/01





STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
Board of Environmental Quality

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

Dirk Kempthorne, Governor
C. Stephen Allred, Director

**DECLARATION OF RULEMAKING
BY THE BOARD OF ENVIRONMENTAL QUALITY
ADOPTION OF PENDING RULE
DOCKET NO. 58-0102-0001**

Pursuant to the authority granted to the Board of Environmental Quality in Title 39, Chapters 1 and 36, Idaho Code, and under the provisions for pending rule adoption contained in Section 67-5224, Idaho Code, I declare that the Idaho Department of Environmental Quality rule sections contained in IDAPA 58.01.02, Water Quality Standards and Wastewater Treatment Requirements, are hereby adopted as a pending rule as presented in the attached Final Proposal.

I hereby certify that this action has been taken in compliance with Title 67, Chapter 52, Idaho Code.

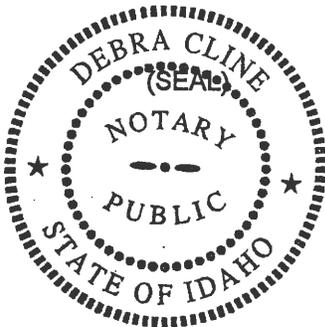
10/18/00
Date

Donald J. Chisholm
Donald J. Chisholm, Chairman

STATE OF IDAHO)
) ss.
County of Ada)

On this 18th of October, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Chisholm, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Cline
Notary Public for Idaho
Residing at: Caldwell, ID
Expires: 7/21/01

WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS
DEPARTMENT OF ENVIRONMENTAL QUALITY
PENDING RULE
DOCKET NO. 58-0102-0001

FINAL PROPOSAL

The Department of Environmental Quality recommends that the Board of Environmental Quality adopt the rule as initially proposed in the Idaho Administrative Bulletin, Volume 00-6, June 7, 2000, pages 26 and 27.