



State of Idaho  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
BOARD OF ENVIRONMENTAL QUALITY

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

James E. Risch, Governor  
Toni Hardesty Director

**MEMBERS OF THE BOARD**

**IDAHO BOARD OF ENVIRONMENTAL QUALITY**

**MINUTES**

**December 14, 2006**

Dr. Joan Cloonan  
Chairman  
9038 W. Beachside Lane  
Boise, ID 83714

Marti Calabretta  
Vice-chairman  
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Craig D. Harlen  
Secretary  
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**LEGAL COUNSEL**

Douglas M. Conde  
Harriet A. Hensley

**MANAGEMENT ASSISTANT**

Debra L. Cline  
(208) 373-0465

The Board of Environmental Quality convened by special conference call on December 14, 2006 at 10 a.m. A speaker phone was set up to allow public participation at:

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

**ROLL CALL**

**BOARD MEMBERS PRESENT**

Dr. Joan Cloonan, Chairman (in person)  
Marti Calabretta, Vice-chairman (via telephone)  
Craig Harlen, Secretary (via telephone)  
Donald J. Chisholm, Member (via telephone)  
Kermit V. Kiebert, Member (via telephone)  
Nick Purdy, Member (via telephone)

**BOARD MEMBERS ABSENT**

Dr. John R. "Randy" MacMillan, Member (recused from this matter)

**DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF PRESENT**

Toni Hardesty, Director  
Barry Burnell, Administrator, Water Quality Division  
Jess Byrne, Interagency Affairs  
Debra Cline, Management Assistant to the Board  
Douglas Conde, Deputy Attorney General, DEQ  
Harriet Hensley, Deputy Attorney General, Natural Resources Division  
Paula Wilson, Rules Coordinator

**OTHERS PRESENT:**

Dan Steensen, Ringert Clark  
Fritz Haemmerle, Attorney at Law (via telephone)  
Two unnamed representatives from Idaho Water Users Association

❖ 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.

**CONTESTED CASE HEARING – IN THE MATTER OF PRISTINE SPRINGS, INC. V.**

**DEQ, CONTESTED CASE DOCKET NO. 0102-05-02, PRISTINE SPRINGS' PETITION FOR REVIEW OF AND EXCEPTIONS TO PRELIMINARY ORDER**

**APPEARANCES**

- Fritz Haemmerle, Attorney at Law, appeared on behalf of Pristine Springs, Petitioner
- Douglas Conde, Deputy Attorney General, appeared on behalf of the Idaho Department of Environmental Quality (DEQ), Respondent
- Dan Steensen, Ringert Clark, appeared on behalf of Blue Lakes Trout Farm, et al., Intervenor
- Harriet Hensley, Deputy Attorney General, counsel to the Board of Environmental Quality

Chairman Cloonan announced the sole agenda item for this Board meeting will be a contested case hearing in the matter of Pristine Springs, Inc. v. DEQ, Contested Case Docket No. 0102-05-02. The Board will hear Pristine Spring's Petition for Review of and Exceptions to Preliminary Order. She clarified the Board will have no deliberation on substantive issues. The purpose of the hearing is only to decide whether the Board accepts or refuses the petition for review.

Chairman Cloonan noted there were no objections to the Board accepting the petition for review in the documents provided to the Board. She opened the floor to comments from the parties.

Fritz Haemmerle testified this is a very important matter, not only to Pristine Springs, but the entire aquaculture industry in the Mid Snake River area. He believes these issues are quite complex and this is a good opportunity for the Board to review the hearing officer's decision and review the issues in the case. He urged the Board to accept the petition and hear the matter.

Douglas Conde stated DEQ did not object to the Board accepting the petition and hearing the matter. DEQ supports the hearing officer's decision, but feels the Board should see the full record and allow the parties an opportunity for briefing and oral argument.

Dan Steensen said he had no objection to the petition.

- **MOTION:** Don Chisholm moved the Board grant Pristine Spring's Petition for Review of and Exceptions to Preliminary Order, set a briefing schedule, and set the matter for hearing.
- SECOND:** Marti Calabretta
- ROLL CALL VOTE:** Motion carried. Ms. Calabretta, aye; Mr. Chisholm, aye; Mr. Harlen, aye; Mr. Kiebert, aye; Mr. Purdy, aye; and Chairman Cloonan, aye.

The Board set the following briefing schedule:

- The Petitioner and Intervenor will have 28 days from this date to file briefs (date extended due to holidays).
- The Respondent, DEQ, will file its brief 21 days after that.
- Oral argument will be heard at the February 21-22 Board meeting in Boise.

Marti Calabretta commented on the importance of the allocation of the Snake River and how the Board deals with TMDLs. She asked about the information and materials the Board would

receive on this issue and if the Board would receive guidance on what kinds of substantive questions members could ask.

Chairman Cloonan responded it was her understanding the Board would receive the briefs prior to the hearing and have time to deliberate on the basis of the briefs and the oral argument, and have an opportunity to raise questions at the oral argument. The Board would then have 53 days after the oral argument to make a decision, and the decision could be that it needs additional information.

Ms. Calabretta asked if Board members would be allowed to ask who is on the advisory groups and who attended the meetings, or if this information would be part of the record.

Harriet Hensley explained the decision the Board will make, if a decision is made on the day of the oral argument, will be based on the record and the argument presented by the attorneys. If, on that day, or earlier, the Board wishes to require further evidence, then the Board must meet and deliberate on that issue and make a decision with a quorum present. If at oral argument the Board decides it wants additional information, it can deliberate on that decision.

Ms. Calabretta asked if something is alluded to, but the detail is not presented either by DEQ or the parties, a Board member could ask for more detail. Ms. Hensley responded the Board could make a decision that it wants further development of the facts—it would have to be a Board decision, deliberated with a quorum present.

Mr. Conde clarified that additional information may be submitted. The decision the Board will make initially will be on the record, but that decision could be that the Board wants additional hearings or evidence presented. The Board can do that by either remanding the matter to a hearing officer or having the evidence presented directly to the Board.

The meeting adjourned at 10:20 a.m.

/s/

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Dr. Joan Cloonan, Chairman

/s/

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Craig Harlen, Secretary

/s/

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Debra L. Cline, Management Assistant and Recorder