



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF DRINKING WATER
Marie E. Owens, P.E.
Director

Drinking Water Board
Betty Naylor, *Chair*
Roger G. Fridal, *Vice-Chair*
Kristi Bell
Brett Chynoweth
Jeff Coombs
Tage Flint
Eric Franson, P.E.
Alan Matheson
David Stevens, Ph.D.
Marie E. Owens, P.E.
Executive Secretary

DRINKING WATER BOARD MEETING
November 13, 2018 – 1:00 pm
Multi Agency State Office Building – Board Room 1015
195 North 1950 West
Salt Lake City, Utah 84116

FINAL MINUTES

*Kristi Bell, the new Drinking Water Board member was sworn in and ratified prior to the start of the Drinking Water Board meeting on this same day.

1. Call to Order

Betty Naylor, Board Chairman called the meeting to order at 1:00 p.m.

2. Roll Call

Board Members present: Betty Naylor, Roger Fridal, Brett Chynoweth, Kristi Bell, David Stevens, Brad Johnson (filling in for Alan Matheson), and Jeff Coombs via electronic participation.

Tage Flint joined the meeting at 1:05 pm, being present for agenda Items 5 on.

Division Staff present: Marie Owens, Hayley Shaffer, Michael Grange, Jennifer Yee, Gary Rager, and Nathan Lunstad.

3. Election of Board Chairman & Vice Chairman

Marie Owens informed members it is time to take nominations for the Chairman and Vice Chairman, which will be effective as of the January 2019 Board meeting.

- David Stevens made a motion to retain Betty Naylor as Board Chairman and Roger Fridal as Vice Chairman. Brett Chynoweth seconded. The motion was carried unanimously by the Board.

4. Approval of the Minutes:

A. August 28, 2018

- Betty Naylor moved to approve both the August 28, 2018 and October 12, 2018 minutes as presented. Roger Fridal seconded. The motion was carried unanimously by the Board.

B. October 12, 2018

- Minutes were approved during agenda item 4(A).

5. Financial Assistance Committee Report

A. Status Report – Michael Grange

Michael Grange, Technical Assistance Section Manager with the Division of Drinking Water (DDW, the Division) reported there is currently a balance of \$772 thousand in the State SRF fund. Over the course of the next year, the Division is expecting an additional \$2 million to come into the fund, for a total of approximately \$2.8 million for project allocation through October 31, 2019. He reported there are two loans anticipated to close before the end of this year.

Betty Naylor asked why a water system that had previously pulled their application was still showing on the status report. Michael clarified this system will be removed from the report by the next Board meeting.

Michael then reported currently there is approximately \$68.5 million in the Federal SRF fund. Over the course of the next year, the Division is expecting about \$20 million to come into the fund. He reported this amount could however change with the recent congressional approval, resulting in approximately \$1.17 billion for FY19 and increasing to \$1.9 billion by FY21. He reported there are two loans anticipated to close on January 3, 2019, and others in the process.

Michael informed the Board that although there are no current State or Federal projects on today's agenda, it is anticipated there will be requests for several loans at the January meeting.

B. Project Priority List – Michael Grange

Michael Grange reported there are no proposed projects to be added to the project priority list this month.

6. Rulemaking Process

A. Authorization to Adopt Cross Connection Control Rules – Gary Rager

Gary Rager, Environmental Scientist III with DDW reported there were no substantive comments received during the open comment period through the Office of Administrative

Rules or through the Cross Control Commission. Division staff recommends adoption of both R309-105-12: Cross Connection Control Rule and R309-305 Cross Connection Control and Backflow Prevention Certification Rule.

Betty Naylor reminded the Board many of these rule changes were grammatical and terminology amendments. Gary also included there is now a specific requirement for a community water system to have a certified Program Administrator.

David Stevens asked how it will be documented and determined if a water system's Administrator is certified and how often this designated person would need to be recertified. Gary replied the Administrator would need to pass the exam once and would then be eligible to remain in compliance through CEUs annually.

Roger Fridal asked how these rule changes will be enforced. Gary replied it would be documented in a system's sanitary survey if they do not have "trained staff", which will now include having a certified Program Administrator.

Kristi Bell asked if DDW would need to know if a water system is using a contracted operator as their Program Administrator. Gary responded that DDW would need to have a record for that water system to prove they are in compliance with the new requirement.

Brett Chynoweth confirmed this requirement is only applicable to community water systems over 500 in population. Gary replied those systems with >500 in population will go into effect in 2020 and those systems with <500 will go into effect in 2022.

Marie Owens clarified if a community water system fails to meet the requirement of having a Program Administrator, points will be added to the system's IPS report and will be identified as a deficiency.

- David Stevens made a motion to adopt R309-105-12 and R309-305 as amended and presented, and to include the phased implementation schedule as proposed. Roger Fridal seconded. The motion was carried unanimously by the Board.

B. Authorization to Begin to Amend Revised Total Coliform Rule (RTCT) – Jennifer Yee

Jennifer Yee, Environmental Coordinator with DDW reported the proposed amendments to R309-100-9, R309-105-4, R309-110-4, R309-200, R309-210-8, R309-211, R309-215-10&16, R309-220-4, R309-225-4 were made to rectify the rule to be in compliance with EPA in order to maintain primacy.

Marie Owens reminded the Board they had previously approved amendments to this rule, however EPA had comments on various items that needed to be corrected and brought back for revision authorization.

Betty Naylor noted a spelling error on R309-110-4. Jennifer replied this will be corrected prior to the final rule adoptions.

- Tage Flint made a motion to authorize to begin rulemaking to amend all of the rules as presented on the agenda under this section, and to file the proposed rule amendment

with the Office of Administrative Rules for publication in the Utah State Bulletin. David Stevens seconded. The motion was carried unanimously by the Board.

C. Update of Ongoing Rulemaking Activities

i. Improvement Priority System

Jennifer Yee informed the Board of the upcoming changes to the Division's Improvement Priority System (IPS). The amendments to this rule will allow the point system to be in better alignment with EPA's Enforcement Tracking Tool (ETT), and will more heavily weigh deficiencies that could impact public health. The Division staff has been marketing the changes to stakeholders in an effort to receive informal public comment. It is anticipated this rule will be brought before the Board at the April 2019 meeting for authorization to begin the amendment process.

Marie Owens added the IPS is essentially a report card for a water system and currently, due to inconsistencies, is not alerting Division staff if a water system is in trouble with EPA. The changes will allow staff to assist earlier on and help bring a water system back into compliance before EPA is involved. The rule will also be more concise and condensed from 40-50 pages to 4-5, and will include a reference table of the point values. She informed the Board the technology programming is done and the Division will roll out the current and future points to water systems at the 2019 RWAU conference in February. The implementation of the rule will be delayed to allow time for systems to address deficiencies prior to the January 2020 effective date.

ii. Water Operator Certification

Michael Grange informed the Board the current Water Operator Certification Rule is outdated, incomplete, and may not be in full compliance with EPA. He explained the bulk of the changes will include rearranging sections of the rule, modifying the training and CEU requirements, and altering the complexity criteria for treatment plants and distribution systems. It is anticipated this rule will be brought before the Board at the January 2019 meeting for authorization to begin the amendment process.

David Stevens asked Michael what he meant by saying the rule is "outdated". Michael replied there are many rules referenced that no longer exist.

iii. Public Water System Identification

Marie informed the Board of a taskforce that was put together several years ago to discuss and identify issues from public water systems, and many gaps were noted. One problem in particular is the issue of a land developer placing an entire community behind a master meter. The residents presume that because they pay their water bill to the city, they would not be liable for infrastructure damage, water quality issues, etc. However, because these residents are behind the master meter, they are, in many cases, unknowingly fully responsible. To combat this problem, master meters will be discouraged from use and a designated "parent" must be established at all times. The responsible party will no longer be allowed to relinquish custody without another delegated authority in place.

The rule will include a section on new “prospective water systems” to ensure infrastructure standards are met up front. The Division would have limited authority over these systems until the population designations are met. A second new section that will be added is titled “permit by rule” for low risk water systems (apartment buildings, hospitals, schools, etc.). This will be applicable to a system so long as they receive their water from an approved public water system and do not treat or store the water onsite. If this designation is not automatic for a water system, it may be applied for and approved or denied at the discretion of the Director. The third addition will include the State having authority over water systems on federal land.

Marie stated the Division has started the process of reaching out to stakeholders to educate them on the proposed changes, and are also accepting informal public comment. Because this rule impacts the Division’s primacy, it will also need to include EPA review.

David Stevens asked what the recourse will be for the many orphaned systems already established. Marie replied it would be determined who the legal authority is for that system and would then be the person legally responsible if an issue were to arise.

Tage Flint asked if generally the likely scenario is the developer of a system leaves the title of the system to the homeowners without designating a parent authority. Marie replied the developer would now need to transfer the title to another legal entity. If that was indeed the homeowners, they would need to incorporate as an HOA and would be considered the legal entity over that water system.

Tage asked if it would be possible to tighten development at the county level in order to avoid these issues altogether. Marie replied that is the goal and we would encourage the county to be aware of these rules and to delay issuing building permits without first verifying the Division has documentation on record. For this to be effective, it would need to be an easily accessible online system with a quick turnaround time to prevent any interruptions to the county’s issuance of building permits.

Tage asked if the problem is being perpetuated by considering and approving SRF loans for private water systems. Marie replied the hope is that by mandating the water system have a legally responsible party, private entities and developers will build up to the respective city’s standards from the beginning in order to eventually have the city take over the system, which could be funded through the SRF programs.

David asked why a developer wouldn’t just create an HOA from the start to avoid the liability issues later. Marie replied the Welcome to the Club letters sent from the Division are intentionally harsh to get the attention of the responsible party in hopes the person or entity absorbing that liability is aware of the full responsibilities of being a public water system.

David reminded the Board and Division staff that care must be given to ensure it is the legally responsible party being held accountable. Marie agreed and added when a system comes on record with the Division, they will be informed of these liabilities at that time.

iv. Minimum Sizing Requirements

Nathan Lunstad, Permitting Section Manager provided a presentation (see attached) and overview of the minimum sizing requirement changes that were based on the 2014 legislative audit, and went into effect July 2018. The new standards will no longer be generalized, will be system specific based on reported data, must be submitted by a certified water operator, and will need to include: 1) peak day source demand, 2) average annual demand, 3) total number of retail equivalent residential connections (ERCs), and 4) quantity of non-revenue water. A water system will also have the option to submit an engineering study by the effective date in the absence of the data to the Division of Water Rights (DWRi). Possible consequences of not submitting data will include 50 deficiency points added to their IPS report.

Marie added this is an example of why the IPS rule needs to be amended as this is not an imminent public health concern, yet is weighed heavier than other deficiencies that are a public health concern. Nathan continued stating that another factor that will impact water systems that fail to submit their data will have a hold put on requests to the Division for any substantial addition or alteration to their system until the data is received.

Wholesale water suppliers are exempt from having system specific sizing standards, however they must still submit their data to DWRi.

Nathan reviewed the parties involved in these changes as well as the proposed timeline which will include three implementation phases based on the populations served. He advised of the education efforts provided by Division staff to assist water systems including webinars, presentations, guidance documents, and examples of how to accurately collect the data.

Tage Flint thanked Nathan for the great summarization of the changes and asked if a community wanted to require less than the state standard for water demand, would they need to make a case to the Division Director. Nathan responded indeed that is the case, however they can also submit an engineering review or use historical data. Tage followed up by asking if each individual ERC would need to be counted to set the standard to something different. Nathan replied at this time it is based on the source and will be a part of the system's master plan. Since the standards are system specific, there is some flexibility.

7. Rural Water Association Report – Dale Pierson

Dale Pierson with Rural Water Association of Utah (RWAU) reviewed the national apprenticeship program that is underway and will include 4,000 hours of training provided by the employer and 288 additional hours of instruction by RWAU on various trainings and online courses. Two of the four years of instruction will be paid for by the water system and is available to all systems of all sizes. The apprenticeship will also include the water operator certification training and exam. Dale informed the Board the first apprentice is onboard as of last week and they are continuing to take applications.

David Stevens asked what the goal is for the apprenticeship program. Dale replied it offers the candidates a skillset in the water industry, specifically with a given water system. They are able to solicit their water operator certification status on resumes, and it will be helpful to the whole industry for these candidates to gain real world, hands-on knowledge.

David Stevens asked if there are problems with smaller water systems having the ability to offset the costs for a portion of the apprenticeship program. Dale replied that indeed this has

been an issue for smaller systems. RWAU is actively seeking both state and federal dollars to assist with these costs.

Marie Owens thanked RWAU staff for their report and for assisting and supporting these water systems in need through the apprenticeship program.

8. Open Board Discussion – Betty Naylor

A. Public Comment Period

Brad Johnson informed the Board that other DEQ Boards have a place saver on their agenda to allow for public comment. All Boards have been asked to follow this protocol and was brought before the Drinking Water Board for discussion. The suggestion was made to add a place saver at the end of the agenda to allow for public comment with a three minute per person time limit, which can be extended at the discretion of the Board chair. The caveat to this is time may still be requested during an agenda item for public comment with prior notification.

B. Board Training Schedule

Marie Owens reviewed the two upcoming Board member training opportunities. The first will be prior to the January 15th meeting onsite at the Multi-Agency State Office Building from 12-1pm. Topics will include the roles, responsibilities, ethics, and code of conduct for Board members. The second training will be prior to the February 28th meeting in St. George at the RWAU annual conference. The topic will be on the State and Federal Revolving Funds.

9. Director's Report

A. Legislative Updates

Marie Owens reviewed the recent meetings of the Natural Resources, Agriculture, and Environment Interim Committee. She informed them of the four working subgroups that were created by the Executive Director of the Division of Natural Resources under the direction of this committee to address issues related to private property, surplus water, constitutional amendments, and extraterritorial jurisdiction. She reported she was asked to chair the extraterritorial jurisdiction workgroup which met close to ten times and had between 40-50 attendees at each meeting to work through issues in an attempt to come to a consensus. Marie informed the Board she would be giving presentations on this topic at the State Capitol that evening as well as the following morning. The following legislators are anticipated to run these bills: Senator Ralph Okerlund – Extraterritorial Jurisdiction, Representative Kim Coleman – Surplus Water, and Representative Keven Stratton – Constitutional Amendments. The property rights issue was not legislatively recommended and will not be run as a bill during the 2019 session.

Marie also informed the Board Representative Stephen Handy has opened a bill file for testing drinking water in schools for lead.

Tage Flint commended Marie on her time and leadership with the extraterritorial jurisdiction workgroup, stating the recommended proposed language will be a big improvement.

B. Enforcement Report

Marie Owens reviewed the report of water systems with a current status of “not approved” for various reasons as well as those systems under formal and informal enforcement. She reported the last time this report was brought before the Board there were over sixty systems under this umbrella and currently, there are forty-seven. Division staff has been actively working to assist water systems in order to be moved to approved and removed from this list. They are also diligently working with systems to solve the deficiency issues and ultimately prevent them from being added to this list.

Betty Naylor asked why there were both positive and negative IPS point values. Marie explained and continued stating this is another reason the IPS point system is being rewritten and will no longer include negative points to mask deficiencies that could impact public health.

Marie informed the Board the systems that are not approved are now retroactively being asked to provide Tier II public notification, and must continue according to the guidelines until they are moved to an approved status.

C. Enforcement Procedure Discussion

Marie Owens directed Board members to the DDW Enforcement Workflow Chart (see attached) which indicates all of the tools available for enforcement purposes. She informed the Board a public water system can get points added to their IPS report card for a variety of reasons, and the staff then have corresponding enforcement tools to address these issues. Marie explained one of these tools, a Corrective Action Plan (CAP), will allow a water system an extended period of time to address the deficiencies, as well as silence their IPS points while under the CAP.

She continued, informing the Board everything on the left-hand side of the workflow is considered informal enforcement, while the items shown on the right in red font are considered formal and enforceable enforcement. At this point, all documents become “orders” and are sent under the Director’s signature. Two options under this umbrella include a bilateral Compliance Agreement Enforcement Order (CA/EO) and a unilateral Administrative Order (AO). If a water system fails to meet the agreements in either of these orders, they are expected to show cause to the Division why further enforcement steps should not be taken. Failure to comply at this point would cause the case to be turned over to the Attorney General’s office to seek relief through District Court by fines or injunctions.

Copies of the state statutes were provided and referenced to inform the Board of their authority in these processes. It was the opinion and recommendation that due to the burdens of holding a hearing in front of the board, the case be turned directly over to the Attorney General’s office for Division relief.

- Roger Fridal made a motion to approve the proposed enforcement workflow as presented. Tage Flint seconded. The motion was carried unanimously by the Board. (Jeff Coombs was not on the line at the time of this vote).

D. Other

Marie Owens had no other items for discussion.

10. Other

Betty Naylor asked members if they would like to continue to receive the “current news” section in their Board packets. She expressed her appreciation and desire to continue having this item available at the meeting. Other members agreed and the current news will continue to be a part of the packet going forward.

11. Next Board Meeting:

Date: Tuesday, January 15, 2019
Time: 1:00 pm
Place: Multi Agency State Office Building
Board Room - 1015
195 North 1950 West
Salt Lake City, Utah 84116

12. Adjourn

- Betty Naylor moved to adjourn the meeting. The motion was carried unanimously by the Board.

The meeting adjourned at 3:00 p.m.