

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – March 12, 2020 – 9:30 a.m. (MDT)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d'Alene
155 North Maple Street, Blackfoot**

MINUTES OF THE MARCH 12, 2020 MEETING

NOTE: The following report is not a verbatim transcript of the discussions at the meeting; however, is intended to record the significant features of those discussions.

Chairman Jeffrey Diehl called the meeting to order at 9:30 a.m. (MDT)

Board Members Present:

Jeffrey Diehl, Chairman
Jerry Piper, Vice-Chairman
Bob Chandler
Scott Spears
Nichole Rush
Roy Ellis
Darrin Ulmer
Jeanna Anderson

DBS Staff Members Present:

Chris L. Jensen, Administrator
Ron Whitney, Deputy Administrator
Spencer Holm, Deputy Attorney General
Patrick J. Grace, Regional Manager, Region 2
Adam Bowcutt, Regional Manager, Region 3
Gary Sonnen, Regional Supervisor, Region 1
Bill Hale, Damage Prevention Program Specialist
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

There were no new issues to discuss under open forum.

◆ **Approval of the March 12, 2020 Agenda, February 13, 2020 Special Meeting Minutes and January 23, 2020 Meeting Minutes**

Board Member Nichole Rush asked agenda items 07 *Emergency Locates* and 08 *Current Statute Possible Proposed Changes* be combined as they relate to each other.

When asked, the topic *Utility Coordinating Council (UCC) Funding* was not on the agenda as the individual addressed it at the January 2020 meeting did not have any additional information to present at this time. Although the Board had wanted to further discuss this topic, it could not be added to the agenda as the open meeting laws require an agenda be posted, and persons of interest notified, 48 hours prior to the commencement of the meeting.

MOTION: Jerry Piper made a motion to approve the March 12, 2020 agenda with amendment, as well as approve the February 13, 2020 special meeting minutes and January 23, 2020 meeting minutes as presented. Bob Chandler seconded. All in favor, motion carried.

◆ **Administrative Appeals Hearing**

Idaho Backhoe--DAM1912-0033 – Tony Shuyler represented Idaho Backhoe, Terry Harpt represented Intermountain Gas Company, Compliance Program Specialist Amy Kohler represented DBS, and Deputy Attorney General Spencer Holm was the facilitator. The Division provided Exhibits A through T. With no objections from Mr. Shuyler and Board, the Chairman approved the introduction of the exhibits into the record. Mr. Shuyler requested six additional documents be accepted as evidence. With no objections from Ms. Kohler and the Board, Chairman Diehl approved the introduction of Exhibits 1 through 6 into the record. All parties were sworn in and provided testimony to DAM1912-0033, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. Mr. Shuyler did not challenge the damage; however, contested the 18-month probationary period and fines. As a first offense, training is required, which Idaho Backhoe completed prior to the hearing.

MOTION: Roy Ellis made a motion to uphold the appeal and reject the recommended training. Darrin Ulmer seconded. Two ayes and five nays. Motion failed.

MOTION: Bob Chandler made a motion to deny the appeal. Nichole Rush seconded. Five ayes and two nays. Motion carried.

The Deputy Attorney General explained the rights of Idaho Backhoe.

ACTION: Deputy Attorney General Holm will generate a Final Order on Appeal by the Board for the Chairman's signature with a signed copy to Idaho Backhoe.

Idaho Lines and Signs--DAM1911-0036 – Ken Balliet represented Idaho Lines and Signs, Vance Matthews represented Idaho Power, Compliance Program Specialist Amy Kohler represented DBS, and Deputy Attorney General Spencer Holm was the facilitator. Witness for Idaho Lines and Signs was Paul Barrutia and Patrick Wood for DBS. Neither party objected to the other's exhibits; therefore, on behalf of the Board, Chairman Diehl approved the introduction of Exhibits A through W (DBS), and 1 through 5 (Idaho Lines and Signs) into the record. All parties were sworn in and provided testimony to DAM1911-0036, violation of IDAPA 07.10.01.020.01.b *Notice of Excavation*. Ms. Kohler requested an audio recording be entered into the record as Exhibit X. With no objections from Mr. Balliet and Board, the Chairman approved the exhibit. It was later determined the recording was not relevant to this appeal. Board Member Rush recused herself from the hearing as she is an employee of Idaho Power. Mr. Balliet did not dispute the damage; however, questioned how Idaho Power handled the issue. Ms. Kohler stated if all the information heard at today's hearing had been provided at the time of the responses by Idaho Lines and Signs, the complaint by Idaho Power would have been denied due to lack of evidence to support the claim.

MOTION: Jerry Piper made a motion to reject the imposed penalty. Roy Ellis seconded. Five ayes and one nay. Motion carried.

The Deputy Attorney General explained the rights of Idaho Lines and Signs.

ACTION: Deputy Attorney General Holm will generate a Final Order on Appeal by the Board for the Chairman's signature with a signed copy to Idaho Lines and Signs.

DAS-CO--DAM1911-0027 – Prior to the hearing, Emily Kane, Deputy City Attorney for the City of Meridian, petitioned the Board with a Notice of Appearance and Petition for Order Granting City of Meridian Intervention as a Party. Based on IDAPA 04.11.01.353, *Granting Petitions to Intervene (Rule 353)*, Deputy City Attorney Kane stated the City has met the criteria listed in the petition by showing direct and substantial interest in any part of the subject matter of a proceeding, and does not unduly broaden the issues. Deputy Attorney General Holm acknowledged the City does has a direct and substantial interest based on damages to their underground facility; however, that is not the focus of this proceeding. The appeal is to determine if there is a civil penalty against Das-Co for an alleged violation of the Damage Prevention laws is in the public interest. In addition, adding the City as a party would unduly broaden the issues as Ms. Kane stated she was only going to focus on what DBS recommended; however, her brief has additional issues that were not proposed by the Division.

MOTION: Nichole Rush made a motion that based on the Deputy Attorney General’s advice, the Board not allow the City of Meridian to be an interested party. Darrin Ulmer seconded. Four ayes, one nay and two abstained. Motion carried.

ACTION: Deputy Attorney General Holm will generate a Final Order by the Board for the Chairman’s signature with a signed copy to the City of Meridian.

Ben Hitchcock represented Das-Co, Compliance Program Specialist Amy Kohler represented DBS, and Deputy Attorney General Spencer Holm was the facilitator. Public witnesses for the City of Meridian were Emily Kane, Mark Anderson, Cameron Ambroz and Brian Kerr. With no objections from all parties and the Board, Chairman Diehl approved the introduction of the following exhibits into the record: 1) A through QQ (DBS), 2) 1 through 10 (Das-Co), and 3) PW 1 through 4 (City of Meridian). All parties were sworn in and provided testimony to DAM1911-0027, violation of IDAPA 07.10.01.020.01.a *Pre-Marking Excavation Site*.

MOTION: Bob Chandler made a motion to uphold the appeal. Darrin Ulmer seconded.

SUBSTITUTE MOTION: Scott Spears made a substitute motion to deny the appeal. Roy Ellis seconded. Two ayes, five nays, and one abstained. Motion failed.

VOTE ON MOTION: Five ayes, two nays, and one abstained. Motion carried.

The Deputy Attorney General explained the rights of Das-Co.

ACTION: Deputy Attorney General Holm will generate a Final Order on Appeal for the Chairman’s signature with a signed copy to Das-Co.

◆ **Billboards**

With a budget of \$55,000 to \$60,000, the Board was asked if it would like to move forward with billboard advertisement throughout the state of Idaho.

MOTION: Bob Chandler made a motion to authorize the spending to move forward with the billboard advertisement. Roy Ellis seconded.

AMENDED MOTION: Jerry Piper amended the motion to move forward with the billboard advertisement, budget not to exceed \$65,000, DBS to manage the project, five billboards to cover the state, and three artworks. Roy Ellis seconded. Seven ayes and one abstained. Motion carried.

◆ **Financial Update**

On behalf of Deputy Administrator Ron Whitney, Damage Prevention Program Specialist Bill Hale reviewed the financial report. With several amendments, a final version of the report will be provided to the Board at a future date.

ACTION: The Deputy Administrator will email a revised financial report to the Board.

At the January 2020 Board meeting, Board Member Jerry Piper requested an “actual” balance total for expenses and revenue be added to the financial report. There is a running balance for projected revenue; however, nothing on the actual. Mr. Hale will address this with the Deputy Administrator.

ACTION: The Deputy Administrator will include, in future reports, the actual total balances of expenses and revenue.

Board Member Rush completed an audit on the ten cents per call, monies provided by Password and Digline; concluding everything is accurate.

Damage Prevention Code Books – DBS has ordered approximately 2,000 Damage Prevention Code books. The Damage Prevention Program Specialist offered to deliver books to the Division’s Coeur d’Alene office and Board Member Bob Chandler on his next visit to north Idaho.

ACTION: Damage Prevention Program Specialist Hale will transport, on his next trip to north Idaho, Damage Prevention Code books.

◆ **Damage Prevention Training Report**

Training – Reviewed was the Idaho Damage Prevention Training report. Due to the Corona Virus, the Common Ground Alliance (CGA) has cancelled its annual meeting scheduled in April 2020. The Chairman explained that in the past DBS trainers were asked to be conscientious of the major type of damages occurring and provide training accordingly. In addition, Damage Prevention Program Specialist Hale was asked to provide, in his bi-monthly updates, a forecast of future training based on data and/or feedback from the industry.

ACTION: The Damage Prevention Program Specialist will provide his training schedule, for the remainder of the year, at the May 2020 Board meeting.

PHMSA Grant – Currently, \$20,000 from the Pipeline and Hazardous Materials Safety Administration (PHMSA) grant is being used for visual training. The Division can always

make an amendment to the grant should the Board want to move in a different direction with training.

DIRT Report – The deadline to 2019 damages to the Damage Information Reporting Tool (DIRT) is March 31, 2020. The Division will present a report at the May 2020 Board meeting.

ACTION: At the May 2020 Board meeting, the Compliance Program Specialist will furnish a 2019 DIRT Report.

◆ **Education and Training (E & T) Subcommittee Update**

PHMSA Grant (Cont'd) – Board Member Jeanna Anderson explained the basis behind the recent submittal of the PHMSA Grant. At a recent subcommittee meeting, the Deputy Administrator brought forth suggestions on how to spend the \$20,000 for education and training, which will be presented at the May 2020 Board meeting.

ACTION: An outline of future education and training ideas will be addressed at the May 2020 Board meeting.

New Chairperson – Board Member Anderson will remain on the E & T Subcommittee; however, Board Member Piper is now the Chairperson.

UCC Funding – This topic was originally discussed at the January 2020 Board meeting. Board Member Chandler cautioned offering funds as the Board doesn't want to set a precedence of always giving away money. In north Idaho all utilities pay an additional .20¢ on their locates, which supports UCC events.

With local UCCs financially struggling to put on events, and as a way to bring more awareness to the industry, Board Member Rush stated with the current excess of funds from civil penalties, the Board might consider approving, on a one-time basis, proposals it felt would be worthwhile. As far as charging additional monies on locates, that would have to go through Digline, as well as approval by the Board.

Grant – For the May 2020 Board meeting, Chairman Diehl asked DBS to provide a breakdown on the dollar amounts allocated and to which particular causes.

ACTION: An itemization of the requested monies and causes on the grant will be presented at the May 2020 Board meeting.

◆ **Emergency Locates and Current Statute Possible Proposed Changes**

The topic of emergency locates has previously been addressed; however, is still unclear. Board Member Rush suggested creating a new subcommittee to review the statutes, in sections; taking in industry feedback and experience to determine if there are any improvements that need to be made. Board Member Rush offered to serve; however, did not want to be the subcommittee chairperson. Chairman Diehl stated this could be an “as needed” subcommittee and as feedback is received, the subcommittee can delve into it; bringing recommendations to the Board. Rather than make any decisions today, board members were asked to ponder this

issue, and the topic *Statute Review Subcommittee* be brought back as an action item at the May 2020 Board meeting.

When asked, Board Member Chandler would like to see clarification on the reporting of emergency locates as north Idaho does not report damages the same. Although a ground fault or backed up sewer line is an emergency locate, they are not considered “damages” and not within the purview of the Board.

ACTION: The topic *Statute Review Subcommittee* to be placed on the May 2020 Board meeting agenda as an action item.

◆ **Compliance Report**

Reports – The new checklist of detailed violations, third page of the Damage Prevention Complaint form, has been a tremendous help when processing complaints.

Collections – The Compliance Program Specialist briefly explained the collection process. When asked, the Division has heard very little dissatisfaction among the industry since the new civil penalty fee (tier) structure was implemented. Chairman Diehl acknowledged the improvement of the complaint form has better equipped DBS to make an analysis of the complaint. In addition, the direction the Board offered to DBS, with regard to the pyramid assessment associated with violations, has gained greater clarity and further helped to provide guidance to DBS when the maximum civil penalty imposition was appropriate. Board Member Rush disagreed as she continues to hear at UCC meetings, and from local utilities, the question of what the Board is doing about the fees. It was stated if industry wants change, it needs to bring a solution to the Board.

◆ **Administrator Report**

Budget – Although the Joint Finance-Appropriations Committee (JFAC) has already approved the Division’s budget, the House rejected it and five others. JFAC will adjust the budgets; bringing them back to the House and Senate floors for a final vote.

◆ **Adjournment**

Chairman Diehl adjourned the meeting at 3:03 p.m.

BOB CHANDLER, VICE-CHAIRMAN
DAMAGE PREVENTION BOARD

RON WHITNEY, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

09/16/2020rb