

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – November 30, 2017 – 9:30 a.m. (MST)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d'Alene
2055 Garrett Way, Building 1, Suite 4, Pocatello**

MINUTES OF THE NOVEMBER 30, 2017 MEETING

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

Chairman Mark Van Slyke called the meeting to order at 9:30 a.m. (MST)

Board Members Present:

Mark Van Slyke, Chairman
Vaughn Rasmussen, Vice-Chairman
Joe Leckie
Roy Ellis
Bob Chandler
Jeffrey Diehl
Nichole Rush
Jerry Piper
Linda Phillips
Jeanna Anderson

DBS Staff Members Present:

Chris L. Jensen, Administrator
Ron Whitney, Deputy Administrator
Spencer Holm, Deputy Attorney General
Patrick Grace, Regional Manager, Region 2
Jeff Egan, Regional Manager, Region 3
Fred Sisneros, Financial Manager
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

There were no new issues to address during open forum.

◆ **Approval of the November 30, 2017 Agenda**

MOTION: Jeffrey Diehl made a motion to approve the agenda as presented. Jerry Piper seconded. All in favor, motion carried.

◆ **Approval of the September 28, 2017 Board Meeting Minutes**

MOTION: Jerry Piper made a motion to approve the minutes as written. Bob Chandler seconded. All in favor, motion carried.

◆ **Delegate Authority to DBS--Idaho Code § 55-2203(16)(f)**

Based on Idaho Code §§ 55-2211 and 55-2203(16)(f), DBS will continue to recommend training and civil penalties to violators. The Board will review contested cases or cases where alleged violators do not respond.

◆ **DPB/DBS Informational Seminars**

The Public Utilities Committee has \$25,000 in funds available, through Fiscal Year 2018, to assist in sponsoring the creation of an educational workshop. The Division hired a part-time employee to provide data entry on all complaints. The cost for continuing education is included in the city of Idaho Falls' license fees. Monies could possibly be available to support training and/or seminars in that area. The Education/Training Subcommittee will meet prior to the January 2018 board meeting; bringing an appropriate agenda for a workshop.

ACTION: The topic *DPB/DBS Informational Seminars* will be placed on the January 2018 Board meeting agenda as an informational item.

It was suggested training be provided at the 2018 Idaho Utility Coordinating Council (UCC) spring meeting, and Bannock UCC contractor event.

MOTION: Roy Ellis made a motion to move forward on informational seminars. Nichole Rush seconded. All in favor, motion carried.

◆ **PHMSA 2016 Audit**

Patrick Grace, Regional Manager, Region 2, informed the Board of the purpose of Pipeline and Hazardous Materials Safety Administration's (PHMSA) annual evaluation audit. The checklist for PHMSA's 2016 audit is complete. Although the Board made great strides towards PHMSA's requirements, the state of Idaho failed the audit because it did not have the means to issue civil penalties or other enforcements related to damages of PHMSA facilities. To help improve the 2017 evaluation, Mr. Grace advised the Board of David Appelbaum's, State Evaluator for PHMSA, recommendations.

◆ **Idaho Code § 55-2210 Excavations Exempt from Notice Requirements**

Vice-Chairman Vaughn Rasmussen explained an incident where a farmer hit a power line while plowing his field and the utility company billed him for the damages. The farmer cites he is exempt based on Idaho Code § 55-2210. Board members were asked their interpretation/feelings of the code. A lengthy discussion ensued on where the burden falls and whether the farmer is exempt from notice requirements and/or obligated to pay for the damages.

◆ **Ethics Law--Presentations and Reimbursements**

Upon researching the ethics law, Deputy Attorney General Spencer Holm stated a board member is eligible for travel reimbursement by the state IF invited to speak on behalf of the Board at an event outside their jurisdiction. However, the board member must get pre-approval by the Board, or, if short notice, by the Chairman. Chairman Van Slyke will clarify, in writing, the process for reimbursement of travel costs.

◆ **Sewer/Water Lines in Right-of-Way**

Upon researching legal opinions in other states on who is responsible for locating sewer/water lines in the right-of-way, the Deputy Attorney General did not find any useful cases, as they were very fact specific. Statutes from several states require facility owners to assist excavators in finding laterals in the right-of-way, similar to Idaho laws. While other state statutes state if the facility owner's comply with statute, they are not asserting ownership of the laterals and not liable for damages. Washington's statutes were the most helpful, addressing laterals and utility easements. Copies of Washington statutes were distributed at the meeting.

In October 2017, DBS sent a letter to the Idaho Association of Cities (IAC) and Association of Idaho Counties (AIC), making them aware of this dilemma and inviting them to this meeting to provide insight. Not hearing from either association, Deputy Administrator Ron Whitney offered to schedule meetings with the two associations to try to get them to pursue this topic farther. Also suggested was to get on their agendas for upcoming annual meetings.

ACTION: Deputy Administrator Ron Whitney will contact IAC and AIC to discuss the topic *Sewer/Water Lines in Right-of-Way*.

◆ **Damage Complaints Review**

The Division has received a fair amount of complaints it cannot discern on what the alleged violation is. Therefore, DBS created a violation checklist to be included with the complaint form.

A lengthy discussion ensued on whether a letter or copy of the complaint form justifies providing a "Notice of Complaint" to the alleged violator by the complainant. It was determined DBS should provide the complaint form to the alleged violator upon request; adding a line for the alleged violators e-mail and statement to the affect "If you would like an electronic copy of the complaint, please provide your e-mail" on its notification letter.

ACTION: The Division will include on its notification letter a line for the alleged violators e-mail address and sentence offering to send electronically the complaint form upon request.

◆ **Damage Prevention Board Ad Campaign**

Donations by a public entity are non-cognizable funds. Financial Manager Fred Sisneros explained the Board could go through the appropriation budget or authorization for a non-cognizable application to request spending authority by the Division of Financial Management (DFM). The Board decided to go through the appropriation budget, forecasting \$20,000 in donations. The Chairman signed a letter to DFM seeking a supplemental appropriation.

MOTION: Jeffrey Diehl made a motion to amend agenda item ten *Damage Prevention Board Ad Campaign* from informational to action item. Roy Ellis seconded. All in favor, motion carried.

MOTION: Jeffrey Diehl made a motion to seek spending authority for non-cognizable gifts up to \$20,000. Vaughn Rasmussen seconded. All in favor, motion carried.

◆ **Definition of Business Day**

In Idaho law, the definition of a business day is any day other than Saturday, Sunday or holiday, and a day is a period of 24 hours as a unit of time; i.e., midnight to midnight. The Damage Prevention Board's statute states an excavator must notify a one-number notification service, Digline or Password, not less than two business days. Digline and Password's computer systems are time sensitive and based off an 8 a.m. to 5 p.m. business day. This topic was brought up based on discrepancy between the law and one-number notification services on the understanding of a business day.

Board Member Linda Phillips stated Digline's advisory board (underground facility owners) and the UCCs of Password, need to discuss/decide if they want to update their methodology on "business day" after 27 years; affecting the way their computer systems issue the date/time for locates.

◆ **Publication of Rules**

DBS has over 1,000 booklets of the Damage Prevention Board's statute in stock. Deputy Administrator Whitney suggested 1,000 booklets of the temporary rules be published and paired with statute. The temporary rules, if approved, should become permanent upon sine die of the 2018 legislature. By the time the rules become permanent, the Division anticipates publishing the statute and rules together. At the direction of Chairman Van Slyke, the Division will publish 1,000 booklets of the temporary rules.

ACTION: The Division will have 1,000 copies of the temporary rules printed into booklets.

◆ **Compliance Report**

Virtual DIRT – Idaho's Virtual Private DIRT is now active; however, the only information DBS, has been able to gather is pre-2014 from Password and Digline. Board Member Linda Phillips explained all Common Ground Alliance (CGA) stakeholders must register to submit to DIRT. Digline and Password, Administrators, then have access to their accounts. Although CGA has transferred some of the required information, Board Member Phillips believes a section of the program still needs added to Idaho's Virtual Private DIRT.

Together, Board Member Phillips and DBS will contact CGA to get Idaho Virtual Private DIRT functioning properly.

Personnel – The Compliance Program Specialist reiterated DBS has hired a part-time employee to provide data entry on all complaints, etc.

◆ **Administrator Report**

Financial Report – Reviewed was Fiscal Year (FY) 2018 financial statement, as of October 31, 2017, for the Underground Facilities Damage Prevention Fund.

10 Cents Per Call – DBS has received \$54,000 in revenue for the first seven months of FY 2018.

Grant – The current grant from PHMSA, \$90,000, will need expended by August 31, 2018. The intent is to pay the first year of a new part-time employee, keep \$10,000 in a contingency fund, and have approximately \$55,000 for education, training, marketing, etc. The Education/Training Subcommittee will need to determine how much to set aside for group training and marketing. A Request for Quotes will need developed for marketing. April is the target month since it is 811 month.

Presentations – DBS offered to put together a program for presentation throughout the state of Idaho in January, February and March 2018, on who is/what does the Damage Prevention Board offer. Vice-Chairman Rasmussen suggested collaborating with entities to assist in the costs, and asked the Board to information him of upcoming events. DBS offered its staff/facilities, and board members were encouraged to put together presentations in their areas as well.

◆ **Adjournment**

MOTION: Joe Leckie made a motion to adjourn the meeting. Bob Chandler seconded. All in favor, motion carried.

The meeting adjourned at 3:20 p.m. (MST)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

01/30/2018rb

DATE