

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)
CREATION OF A WATER DISTRICT IN)
THE UPPER SALMON RIVER BASIN AREA)
IN ADMINISTRATIVE BASINS 71 & 72)
_____)

TRANSCRIPT OF HEARING

Conducted November 9, 2005, Challis, Idaho
Before Presiding Officer Karl J. Dreher
Director, Idaho Department of Water Resources

Transcribed by Patsy McGourty
Administrative Assistant
Department of water Resources

Proceedings transcribed from electronic sound recording.

1 KARL DREHER: Good evening. I am Karl Dreher, Director of the Idaho Department of
2 Water Resources. I am serving as the presiding officer in this matter which deals with
3 the creation of a water district in the Upper Salmon River Basin. The matter concerns the
4 creation of this proposed district that would include both department administrative
5 basins 71 and 72. The provisions of Idaho Code § 42-604 require that this hearing be
6 held prior to the creation of a water district by the director of the Department of Water
7 Resources. The hearing is being conducted on November 9, 2005. We went on the
8 record at approximately 8:10 p.m. This meeting began shortly after 7:00 p.m. but was
9 preceded by a period of questions and answers on related matters.

10 The purpose of this hearing is to provide affected water right holders or their
11 representatives an opportunity to make an oral statement on the record stating their
12 position, views or concerns regarding the creation of the proposed water district. For the
13 purposes of this hearing persons making statements do not need to be sworn in nor will
14 they be subject to cross-examination. All persons signing up to speak will be heard
15 before others are heard and all persons wishing to speak once will be heard once before
16 anyone speaks a second time. Notice of this hearing was mailed to each affected water
17 right holder in the proposed district as required under the provisions of Idaho Code § 42-
18 604. In addition, notice was published in the *Challis Messenger* and the *Big Wood River*
19 *Journal*, two newspapers of general circulation within the proposed district. This hearing
20 was preceded by a public information meeting that was held on October 24, 2005. That
21 meeting was conducted by Mr. Dave Tuthill and Mr. Tim Luke of the Department of
22 Water Resources and it too was noticed along with this hearing in the individual notices
23 sent to individual right holders as well as the notice that was published in the *Challis*

24 *Messenger* and the *Big Wood River Journal*. The purpose of the public information
25 meeting was to determine the reasons for the creation of the proposed water district and
26 to describe the duties that the watermaster of the district would be expected to carry out
27 under the supervision of myself or the person in my position.

28 Assuming that there are no further questions, we're now at the point to where we
29 need to take formal statements and comments from those persons who wish to be heard at
30 this time. So we'll take these in order of the people that signed up. The first individual is
31 J.R. Challis if you would come forward and state your name and address for the record.

32 Go ahead and have a seat.

33

34 CHALLIS: Director Dreher my name is Jack Challis. I'm a water right owner in Challis
35 Creek Water District 72C. Also currently serve as secretary-treasurer for both water
36 district 72C and 72B and have served in past years as watermaster for both of these
37 districts and currently continue to serve as watermaster for the Warm Spring Canal water
38 users. Though my testimony this evening is my own, I am confident that put to a vote it
39 would represent the opinion of the vast majority of all water right owners in both districts
40 72C, having 86 right owners representing 158 surface water rights, as well as 72B having
41 32 water right owners representing 60 surface water rights.

42 In 1997 our district 72C took the initiative with the help of IDWR personnel to
43 GPS and numerically identify all diversions in our drainage. At the same time while
44 utilizing duly approved district resolutions all diversions were mandated within a
45 reasonable time frame to be brought into compliance with IDWR Water Master
46 Handbook Construction Guidelines, as well as Idaho Code, with regard to lockable head

47 gates and approved measuring devices. This was completed by our water district as well
48 as 72B in 1997. Simultaneously, we began to develop a data base software program
49 subsequently dubbed watermaster whereby we could 1) maintain complete records of
50 individual water right owners, both past and current, as well as designated authorized
51 representatives in cases of out-of-state or off premises water right owners; 2) key to each
52 owner their respective water right, their purchase date, their maximum allowable cfs and
53 the priority date; 3) key water right and source to each diversion or diversions designated
54 by the right to receive such deliveries; 4) allow an ongoing entry of flows throughout the
55 irrigation season as logged and submitted by our watermaster for each water right at their
56 respective point of diversion; and 5) configure data base extraction procedures whereby
57 water deliveries could be detailed and made available in hard copy or electronically in
58 virtually any format for reporting usage by owner, right, diversion, source, irrigation
59 season, and time period within any irrigation season or any combination thereof.

60 Now we are being presented with the creation of what is deemed the Upper
61 Salmon Water District though many in this proposed new district would question any
62 actual needs for such actually exists. Let it suffice to say that the majority realize, like it
63 or not, the now finalized Wild and Scenic Rivers Agreement has made this proposed new
64 district mandatory. That having been said, I like others in the proposed district have been
65 working in a steering committee created by your department to establish a workable
66 format. This effort continues but in light of the hearing tonight preceding any steering
67 committee recommendations or conclusions, I felt it necessary to bring forward facts and
68 a resulting proposal I feel should be considered in your evaluation of this new district.

69 In the presentation by the department's Mr. Dave Tuthill and Mr. Tim Luke in the
70 Upper Salmon Water District public meeting held here October 24, slides were included
71 outlining the necessity for an Upper Salmon Water District watermaster to oversee this
72 new district. Relevant discussion revealed expense to water owners for this man or
73 woman anywhere from \$70,000 to \$100,000 annually. While it was noted the
74 department, you specifically, had generously offered to provide this individual and
75 support requirements free of charge for the first two years, thereafter this expense will
76 undoubtedly have to be borne by Upper Salmon Water District water right owners. This
77 is where my concern arises. The justification for the aforementioned expense depicted by
78 Mr. Tuthill and Mr. Luke's slides outlined the obligations to which IDWR must comply
79 in order to meet conditions of the Wild and Scenic Rivers Agreement and the resulting
80 requirements of the Upper Salmon Water District watermaster and in turn all water right
81 owners. These include lockable controlling works, approved measuring devices,
82 collection and recording diversion data, enforcing water rights in priority, curtailing
83 unauthorized and excessive diversions, include surface water as well as ground water,
84 quarterly reporting of diversions, again surface water and ground water, annual reports
85 and budgets. Director Dreher, other than inclusion of the ground water information
86 easily added to our database and reporting quarterly rather than annually, a simple two-
87 hour matter of programming our current software to create such a report from data
88 already available, we can do everything you require now today. Not only that, we could
89 provide the same data back to 1997. No less important and the obvious learning curve
90 we faced were done at our sole expense. In this light, how is it logical much less fair that

91 water district 72C as well as 72B should be burdened to pay for the other water users in
92 the new Upper Salmon Water District to comply with everything we can already do?

93 One last point. I'm going to take the liberty of anticipating your suggestion that
94 by providing the Upper Salmon Water District watermaster the first two years this will
95 allow sufficient time to even the playing field, as to say, and allow the others to catch up.
96 With all due respect, IDWR has not been able to get anyone in the proposed Upper
97 Salmon Water District other than 72C and 72B to comply for the many, many years
98 Idaho Code has always mandated most of these exact procedures. Frankly, we consider it
99 highly unrealistic that in the next two years the department can possibly get this done.
100 However, if we are proven wrong, and you get it done, we should then unquestionably
101 contribute our proportional share. On the other hand, if you cannot, we do not feel we
102 should be forced to participate in any of the costs until all Upper Salmon Water District
103 water right owners are in compliance with what we have already done and will continue
104 to do in the future. Thank you.

105 DREHER: Thank you. Okay, Jerry Hawkins.

106 HAWKINS: Mr. Director, I'm going to be short. I might even write mine out. I can't
107 remember that much. I'm Jerry Hawkins. Live here in Challis. I'm here for Water
108 District 72F and I don't have a lot to say except on the concerns of putting an upper basin
109 watermaster over that we have to pay for up in here. When Mr. Foster's already over
110 there and we view him as the man to go to in the upper basin and since our watermaster
111 and our secretary-treasurers run the districts that are established and the one that will be
112 required will have to compile and keep documentation and information that the
113 Department of Water Resources need, we feel that there is no need for the upper basin

114 watermaster because if the district needs to answer to the department, that can be done
115 through Mr. Foster at the Salmon office and eliminate the middle man in a role there that
116 we'd have to pay for out of our pocket.

117 Now so many of the people that we've been dealing with here the last few years
118 especially around through the many challenges the state's been up against with the
119 landowners and water users here, we understand about a head gate and a measuring
120 device because we're going to go there through a court. One or the other is where we're
121 going and we have no problem with that and we understand it and as a matter of fact, the
122 people in a lot of areas are supportive of it since they fully understand the position of the
123 state. But we do not support the upper basin watermaster and have to pay for him. We
124 would talk to the department to give us Mr. Foster here, let us work with him. Let him be
125 our watermaster and we've asked to sign on with the recommendation that was made by
126 73, 74 and 75 that put together here awhile back and outlined that a plan of what we
127 would like to go to and we would fully like to support him in this and we hope that you
128 all would support us in it. I do want to thank you for having the town meetings in closing
129 here because it saved us and the people around here a lot of travel time and stuff and put
130 it on yawl's back instead of just having a regional meeting and have us come down to em.
131 We really appreciate that and thank you for listening.

132 DREHER: Thank you. Blair.

133 KAUER: Director Dreher and those concerned, my name is Blair Kauer. I'm a person
134 within the boundaries of water district 74, 74W, 74Q and several other water districts.
135 We have several water districts in Basin 74, more than is on my toes and feet, more than I
136 can count. The creation of water districts is necessary certainly for the administration of

137 water, but particularly in water district 74, all of the appropriated water is being mastered
138 It just isn't necessary to have another watermaster mastering something that isn't
139 necessary. That's the whole reason for creating a water district is to master appropriated
140 water; therefore, I do not feel that water district 74 needs to be an Upper Salmon Basin
141 water district. Whose senior water rights are not already being protected?

142 Another question that I had is who's going to pay for that Upper Salmon Basin
143 watermaster once it is created and of course, and if it is created under one person, one
144 vote regardless of how much water they own, they would have an equal share of election
145 for that watermaster. In my opinion, also, as we do in water district 74, we pay the
146 assessment on water right held and it works very well for paying that watermaster under
147 the water right held, not the water right used. It's a good system. And those particular
148 statutes I think can be created in this water district and function quite well.

149 My last comment is if we don't need it, we don't want it and I guess we don't
150 want it in water district 74. Thank you.

151 DREHER: Mr. Kauer, you did not state your address for the record.

152 COWER: The address is Box 111, Lemhi, Idaho 83465.

153 DREHER: Thank you. Okay, I believe that's everybody that signed up to testify that
154 didn't subsequently indicate that they had decided not to testify. Is there anybody else
155 here....oh, wait a minute. I'm sorry, Mr. Whitaker, if you would like to testify, please.

156 WHITAKER: Director Dreher, I'm James Whitaker, Leodore, Idaho, P.O. Box 240. I'm
157 on the advisory board of 74W and 74Z, and I guess the thing I kind of want to
158 reemphasize ... I disagree somewhat with a little that's been said here but I think we're
159 pretty unanimous on this Upper Salmon River Basin head watermaster as far as who's

160 going to pay for him and who's deriving the benefit. And as you've already indicated
161 that the Forest Service and the Idaho Dept. of Water Resouces, the main reason we're
162 having the watermaster is to make sure that we're not irrigating any ground that's not
163 supposed to be irrigated or we're not diverting any water that's not supposed to be
164 diverted. Well, in most of these districts, we're pretty good policemen ourselves on our
165 neighbors and I feel like that the concept has been working real good in our area the way
166 we have it in essence... over there we've got the sub districts 74W and 74Z, and if we've
167 had a problem as far as measuring or training or something, we've called in Rick Sager
168 who is on the Lemhi River or Bob (Foster) to come or both of them to come out and
169 straighten that thing out and I feel likeI think it's good to have that the first two years
170 to get this whole organization put together and I agree that the state should pay for that at
171 that point in time, but after we kind of get this thing evolved and I think as you've
172 indicated, it's kind of open to do things, but with the days that we've got computers and
173 we get these people trained in essence I can't see why we probably need anybody that
174 we don't presently have in the system already. We might just need to expand Bob's area
175 over the whole area or something like that because I realize that 71 and 72 probably
176 haven't been receiving this same coverage, but I feel like that 73, 74 and 75 apparently
177 have, and we're pretty well already, like I say, policing each other, and if we have a
178 problem, why we've always called in your personnel probably out of the Eastern Idaho
179 office and they've come up and went through with the watermaster and we've had that
180 done on our tributaries ... just as in the past when somebody isn't happy, why we've had
181 them come up and go with the watermaster and the advisory board and then we'd go out
182 and go up and check the ditches and if we needed to put in and block somebody's head

183 gate, or if we needed a measuring device fixed, why we got it fixed, but I think we're
184 way over emphasizing the need down the road for this fellow that's going to be requiring
185 a lot of money to police us in essence. And if that's his job, merely police us and train
186 us, I think he can train us in a couple years and I think that we've got the training with
187 Bob and Rick already on the ground. Those guys can come; they're close to us. I don't
188 see a need after a couple of years of possibly having this head watermaster in at least why
189 we can't just go to the water department if we have problem. I think that we ought to give
190 that some real consideration not cut in stone that we're going to have that and assume that
191 responsibility of paying for him down the road, but anyway with that, thank you, Director
192 Dreher, for giving me the opportunity to testify tonight and I think we're heading in the
193 right direction, and I appreciate the effort that you folks have made working with the
194 steering committee, and coming up and giving everybody an opportunity to ask questions
195 and hopefully work this thing out right to begin with. I realize that we've come to a point
196 in time when water is very important and that we need it tied to us and with that, thanks
197 again.

198 DREHER: Thank you. Okay, now is there anybody here who's had a change of heart
199 that didn't sign up to testify that now wants to testify? Okay. Please state your name and
200 address for the record.

201 BRECKINRIDGE: Katie Breckinridge, Box 685, Picabo 83348. After listening to a lot
202 of testimony and understanding very significantly that there are large portions of water
203 that have already been measured and there are already adequate water measurement
204 districts in place, I refer back to my experience in a different water management district
205 where the same scenario took place, but there were still large areas and amounts of water

206 that did not have a current way to be measured and so that became ... I question now if the
207 first stage of this district could be looking at a map and including all of the area that does
208 not have a current water measurement district, a current means of measuring their water.
209 And I think a lot of that is going to fall in 71 and my understanding is that 71 and 72 are
210 the first districts that have to come on line. It sounds like 72 is well prepared. I know 71
211 is not. And if there could be a way that 71 could look in a different matter instead of
212 looking at 71 and 72, but look at all of the districts that fall under the proposed water
213 measurement districts, and identify the areas and the water users that are not currently
214 being measured, and identify that water and those water right users become the first ones
215 that have to step forward and come up with a form of measuring our water and would fall
216 under the benefit of the first two years of your offer to pay or hire a watermaster. I think
217 from that point forward we could then look at all the other areas that have the current
218 water measurement district and try to decide how we could all come together and that
219 would alleviate the strong question here tonight of why do we need to have a layered
220 system. There are large quantities of water that are already measured. There are also
221 large quantities of water that are not measured. I think we need to be able to identify
222 both of those as we move forward. Thank you very much.

223 DREHER: Thank you. Okay anybody else that did not sign up to testify that wants to
224 testify now? Is there anybody that has testified that wishes to add something or testify a
225 second time? Okay. Going once, going twice. All right.

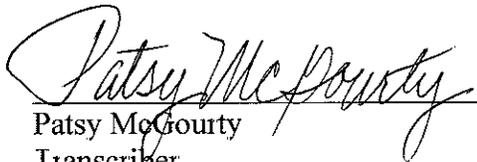
226 Given that it appears that there are no other persons that want to make a
227 statement, that will conclude the record of oral statements in this proceeding. Thank you
228 to all that did come forward to testify. The hearing record for this matter will remain

229 open for a little more than ten days through November 21st to allow time for the submittal
230 of additional written comments as provided for in the notice of this proceeding and as
231 required by Idaho Code § 42-604. After considering the entirety of the record, I will
232 issue a final order following the close of the comment period to dispose of this matter and
233 a copy of that final order will be sent by regular mail to all holders of water rights
234 affected by the order. Any water right holder who disagrees with the final order may file
235 a petition for reconsideration with me within 14 days of the service date of the order.
236 Any party feeling aggrieved by the final order may seek judicial review before the district
237 court within 28 days of the issuance of the final order or within 28 days of the action
238 taken on any petition for reconsideration. Thank you for attending. The record is now
239 closed except for the taking of additional written comments.

PROCEEDINGS CONCLUDED

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



Patsy McGourty
Transcriber



Date