



# IDAHO WATER RESOURCE BOARD

## MINUTES OF MEETING

MEETING NO. 12-04

Friday December 17, 2004 8:30 a.m., MDT  
Idaho Water Center, 322 E Front Street, Boise, ID  
6<sup>th</sup> Floor Conference Rooms

**Dirk Kempthorne**  
Governor

**Jerry R. Rigby**  
Chairman  
Rexburg  
At Large

**Terry T. Uhling**  
Vice Chairman  
Boise  
District 2

**Dick Wyatt**  
Secretary  
Lewiston  
District 1

**Leonard Beck**  
Burley  
District 3

**Bob Graham**  
Bonners Ferry  
At Large

**L. Claude Storer**  
Idaho Falls  
District 4

**Gary M. Chamberlain**  
Challis  
At Large

**Joseph L. Jordan**  
Boise  
At Large

Meeting No. 12-04 of the Idaho Water Resource Board was called to order via teleconference by Chairman Mr. Rigby  
At the Idaho Water Center in Boise Idaho  
(One Recording Tape)

### Agenda Item No. 1, Roll Call

#### *Board Members Attending via Conference Call*

Jerry Rigby, Chairman	Claude Storer
Joe Jordan	Terry Uhling
Leonard Beck	Gary Chamberlain
Bob Graham	Dick Wyatt - Secretary

#### *Department of Water Resources Staff Present*

Hal Anderson, Administrator	Bill Graham, Bureau Chief
Crystal Calais, Admin. Asst. II	Brian Patton, Staff Engineer
Mary McGown, Resource Planner	
Thomas Grant, Resource Planner	

#### *Arriving later:*

Karl Dreher, Director	Michael Keckler, PIO
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#### *Guests*

Kraig Bare, Jefferson Irrigation Co.  
Howard Conrad joined the meeting later to inquire about selling his water rights to the State.

### Agenda Item No. 2, Approval of Minutes

**Motion:** Mr. Chamberlain moved to approve the minutes for meeting Nos. 11-04. Mr. Jordan seconded the motion.

**Voice Vote:** 8 Ayes, 0 Nays. *Motion passed unanimously.*

**Agenda modifications** – Addition to item # 7 is the Resolution for Board Approval of the Nez Perce Agreement and recommendation for Legislative Approval.

**Motion:** Mr. Beck moved to modify the agenda to include the Nez Perce Agreement Approval. Mr. Jordan seconded the motion.

**Voice Vote:** 8 Ayes, 0 Nays. *Motion passed unanimously. Agenda Modified.*

### **Agenda Item No. 3, Public Comment**

There was no public comment made.

### **Agenda Item No. 4, Dworshak Hydroelectric Project Status Report**

Brain Patton, staff engineer; gave the status report of the Board's Dworshak Hydroelectric Project. Numbers given in the Board folders were current up to November 1st. December numbers were available too late to include and would be gone over at next meeting. The plant is running without problems and ahead of budget projections. He reviewed the budget and expense worksheet.

### **Agenda Item No. 5, IWRB Financial Report**

#### ***5a. Status Report***

Mr. Patton reviewed the financial program accounts. Numbers up to November 1<sup>st</sup> were included in Board folders. Mr. Patton went over numbers through December 1<sup>st</sup>. In the Revolving Development Account, the balance is \$384,199.00. In the Water Management Account the current available balance is \$4,506.00 for a total available balance of \$388,705.00. Funding is available for all financial requests on the agenda, which would total \$223,000.00.

#### ***5b. Smith Road Water Users Association, Grant Request***

Smith Road Water Users Association is requesting grant money in the amount of \$3,000.00 to conduct a study of it's system in response to water quality concerns – Primarily, elevated arsenic and fluoride levels in their well. Staff has not recommended approval of this grant as the Board had previously decided to curtail grants for municipal and community water studies, in lieu of low or no interest loans.

Mr. Chamberlain made a motion that the Board issue a loan for the full amount with interest set at 2% for a term of one year.

Mr. Graham asked for the percentage rate to match previous loan requests of 4%.

**Motion:** Mr. Chamberlain conceded and amended his motion to issue a loan for \$3000.00 at an interest rate of 4% for the term of two years. Mr. Wyatt seconded the motion.

**Roll Call Vote:** Beck, Aye; Chamberlain, Aye; Graham, Aye; Jordan, Nay; Storer, Aye, Uhling, Aye; Wyatt, Aye; and Rigby, Aye. **7 Ayes, 1 Nays. Motion passed.**

Mr. Jordan requested the Board's previous decision to curtail grants for municipal and community water studies are reviewed at the next full meeting in January. Mr. Chamberlain and Mr. Wyatt agreed and staff was asked to add this to the next meeting agenda.

Mr. Rigby asked that Vice Chairman Uhling take the chair because of a perceived conflict of interest for Chairman Rigby in the matter of Jefferson Irrigation District's request for Board funding and his firm's representation of the District in other matters.

### ***5c. Jefferson Irrigation District, Loan Request.***

Mr. Patton reviewed the loan request by the Jefferson Irrigation District in the amount of \$220,000 to deepen one well and replace two others. The work is underway and is almost completed at this point. The irrigation company did obtain short term financing from the local bank in Mudd Lake, which would be repaid with the requested Water Board loan funds. The District supplies water to over 11,000 acres near Mudd Lake. The Board has made two previous loans to Jefferson Irrigation District in the past; once in 1992 for \$130,000 for well deepening and that loan was repaid about two weeks ago, and in 2002 the Board loaned \$111,000 for another deepening project and payments are being made. Repayment should not be an issue. Mr. Patton stated the only potential caution he would point out that the District is located in the newly proposed water district 110 and it is potentially likely that ground water users will need to provide mitigation to Surface Water users. The Staff recommends the approval of the loan in the amount of \$220,187 with a 10-year term.

Mr. Bare, Jefferson Irrigation Company commented that they are doing what they can to continue to provide water to the users.

Mr. Graham - Will the new water district mitigation measure make repayment an issue?

Mr. Patton - It is unlikely that this would be an issue.

Mr. Dreher - Asked what prompted the deepening of the wells needed - how far?

Mr. Bare - Declines in productivity, dropping water levels - some are down by half - A few of the shallow wells have gone dry...

Mr. Dreher - What's the priority of the rights?

Mr. Patton - They have a number of rights that range from 1913 to 1980

Mr. Dreher - Ten rights totaling 400 cfs - about 50 cfs would be junior to 1952. They are in pretty good shape for water calls - as far as rights...

Mr. Uhling - Are there any other details that the board should be aware of before making a decision on this loan?

Mr. Dreher - No - other than the formation of Dist 110

Mr. Jordan - If mitigation is required can we have an added security of writing something into the loan agreement?

Mr. Patton - if mitigation would be required - the responsibility would fall on all the members of the district and certainly not on the company alone. The Board already holds the water rights and the facilities for the loans.

Mr. Graham - Can we do a 10-year loan rather than 15-year loan?

Mr. Bare - Preferred a 15 year term but didn't think it would be a hardship on the company to accept a 10 year term.

Mr. Chamberlain - Regarding the current user rate of \$10 / per share - How many shares per acre?

Mr. Bare - Approximately 3 shares per acre.

Mr. Uhling - What is the confidence for long-term production?

Mr. Bare - Looking very good for the long term.

**Motion:** Mr. Graham made a motion for approval of the Loan of \$220,000 for a five year term at 5 ½ % Interest. Mr. Storer seconded.

**Roll Call Vote:** Mr. Beck, Aye; Mr. Chamberlain, Aye; Mr. Graham, Aye; Mr. Jordan, Aye; Mr. Storer, Aye; Mr. Uhling, Aye; Mr. Wyatt, Aye; Chairman Rigby, Abstain. **7 Ayes, 0 Nays, 1 Abstain. Motion passed.**

Mr. Bare left the meeting.

## **Agenda Item No. 6, ESPA Settlement Agreement**

Mr. Dreher led the discussion. Negotiations between the surface and ground water users are proceeding very slowly. Thousand Springs area users seem to be coming closer to an agreement. Whereas the users in the American Falls area seem to be digressing from reaching an agreement. The same can be said of users near Blackfoot down to Minidoka. An example was given using the current water model where a number of scenarios were run. One of which was curtailing groundwater rights of various priorities junior to 1870, 1949, 1961, 1973 and 1985. The results of curtailing all rights junior to 1870, (which is essentially everything except for the rights held by the tribe,) from near Blackfoot to Milner, would provide an increase in the reach gain of about 888 cfs at steady state. That represents additional water in the Snake River to what's currently there.

The planning model is now being updated to 2002 conditions and can be used to determine increased reach gains. The problems lie in the spilling of water below Milner. We are trying to assist with negotiations in all these areas but are essentially leaving it up to the users to reach their own agreements. The extended stipulated agreement for the American Falls area expires December 31<sup>st</sup>. The one-year agreement in the Thousand Springs area expires March 31<sup>st</sup>. The Director expressed his expectations of reaching an orderly resolution, consistent with the law, while giving people adequate notice and an equitable agreement.

Mr. Graham – Questioned legally resolving the issue of stored water and whether it can be used for other things rather than the rights they were intended.

Mr. Dreher – It's not that the space holders don't have the right to use the water for some other purpose; they clearly do. That's what the water bank was intended for. The question should be whether junior priority ground water right holders should be responsible for replacing depletions to surplus storage from their usage.

### ***6a. Invitation for Offer to Sell Water Rights***

Mr. Dreher clarified with regard to the Strawman proposal funding, stating it doesn't use any general funds or include anyone outside the settlement area paying anything for it.

Mr. Uhling excused himself and abstained from participating in the Offer to Sell Water Rights discussions.

Mr. Dreher reminded the Board that the Offer to Sell was reviewed by Rick Skinner to ensure non-taxable bonds could be used. If the Board decides to purchase water rights or issue revenue bonds for same. Went on to talk about a funding proposal and did say it would cover more than just acquiring water rights. The funding proposal would generate about 9 million dollars per year, which would hypothetically cover \$135 million revenue bond issuance which has been presented simply as an example of how significant this amount of money was. It doesn't mean that we are going to issue that amount in revenue bonds.

Mr. Dreher went over financial options such as non-taxable bonds, Water User fees for irrigated acres and/or usage and well assessments – The Director already has the authority to impose \$25 fee and require every well owner to measure and pay for the measurements. Using the Strawman proposal, ground water users on the plain would end up paying approximately seven million dollars. There are other issues to consider such as priority dates, growing seasons and areas of impact where many options & details are still being examined.

Mr. Jordan – referring to clarification of the Strawman proposal - Will this permit non-taxed bonds and still permit collection of a fee from a finite area?

Mr. Dreher responded that a final determination has not been made? Referred to Rick Skinner's presentation saying the broader-based the fee can be, the better. That doesn't necessarily mean it should or will be a statewide fee. The nine million is what could be raised with this kind of a fee structure.

Mr. Graham asked for clarification of the fee structures already in place with regard to some people who might oppose the reporting possibly more than the fee itself.

Mr. Dreher again stated there are many options within the structure that are open to change.

Mr. Graham asked if the estimates included collection costs?

Mr. Dreher responded that the collection costs could be included but we haven't yet looked at what the costs may be. Cited several examples of county assessments and the advantage of having fees collected by the counties rather than the Department itself as part of property tax collection.

Mr. Dreher reviewed different fees for several uses and groups, which could be assessed to help generate the money needed. Clarified that without a settlement all we have is the Strawman framework for funding. To date, we have not heard any other proposals, which are drastically different from the Strawman proposal.

Mr. Dreher continued and covered the Invitation for Offers to Sell Water Rights. We've made a number of revisions and it is posted for public awareness. If we don't get much interest, it will make next year's flow augmentation program to the bureau somewhat problematic. We wanted to prevent the State competing with the Bureau of Reclamation and it's rental of water next year. We addressed this by saying if a person puts in an offer to sell and if the State is interested in acquiring those rights, we would seek to put an option to buy for a one year period using the money that the Bureau of Reclamation would pay to rent the water. So we would essentially be renting the water using the BOR's money with the Board getting a one-year option to purchase. The BOR is supportive of this and clearly hoping that there will be at least 60K acre feet of water leased and optioned through this process. Mr. Dreher committed to the BOR that if there isn't the amount leased, then the Department would help them get the water leased for next year outside of this program. Considering hiring Stan Clark as a temporary employee to help with this given his effectiveness in past negotiations.

Mr. Rigby – Asked Mr. Beck to call Howard Conrad. His number was given to staff and referred to Cynthia Bridge-Clark for follow up on his interest in the Invitation for Offer to Sell his Water Rights.

Mr. Jordan – Expressed concern that all information given regarding the State purchasing Water Rights is uniform.

Mr. Dreher responded that we haven't yet structured anything at this time.

Mr. Anderson clarified that staff is working together, with Cynthia; at sticking very close to giving only information that is on the Offer to Sell. We are trying to avoid any discussions pertaining to hypothetical questions and the like.

Mr. Graham asked if the price a seller wants (for water rights) is included in the offer to sell.

Mr. Anderson responded affirmatively. Sellers are asked to give both the asking price and a lease price for the next year. Confirmed that there is confidentiality regarding offers.

Mr. Dreher stated that we would not make the results of this public as part of an exception to the public records act being acquisition of real property. Clarified that an offering price does not mean that's the price the State will pay. The Department has a good general idea of the value of the hi-lift pump water.

Mr. Graham asked if there was a particular price in a given area or a range?

Mr. Dreher stated that we would prefer to be paying people in the same area the same amount. Reviewed the clause, which states that the Board reserves the right to not accept or reject any sale offers.

Mr. Beck had to exit for a funeral.

Mr. Graham – regarding Northern issues – As to who would be paying the fees for the Strawman proposal – Clarified that not all residents as much as all users would be paying – Cited a Legislator using more school funding as a reason the Legislature will have difficulty coming up with additional funds.

## Agenda Item No. 7, Nez Perce Agreement, Minimum Streamflows

Mr. Anderson addressed Mr. Rigby's request to formalize the Board's approval of the Nez Perce Agreement and to recommend Legislative approval through a resolution. Referred to resolution drafted by staff and reviewed by Mr. Rassier as well as reviewed by the Attorney General's office with one suggested modification to wording on page one being the change from "Instream flows" to "minimum streamflows". Mr. Strack advised to remove the last line "of importance to the tribe."

**Motion:** Mr. Jordan made a motion for approval of the Resolution Providing Board Approval of the Nez Perce Agreement and Recommending Legislative Approval with discussed modifications made. Mr. Wyatt seconded.

**General Vote:** Mr. Beck, Aye; Mr. Chamberlain, Aye; Mr. Graham, Aye; Mr. Jordan, Aye; Mr. Storer, Aye; Mr. Uhling, Abstained; Mr. Wyatt, Aye; Chairman Rigby, Aye. **7 Ayes, 0 Nays, 1 Abstain. Motion passed.**

Mr. Bill Graham gave update on the status and activities of the Nez Perce Term Sheet Minimum Stream flow activities – Referred to status memo included in Board folders.

Bill talked about working with the Office of Species Conservation, the Attorney General's office, Fish & Game and the Nez Perce Tribe to finalize the List A & B streams. They are working on memorandums of commitment that will deal with important habitat issues. Talked briefly about local citizen / stakeholder group meetings being held as well as workshops to solicit local input. Went over schedule of recent and upcoming events.

Mary McGown conducted a meeting, with Mr. Jordan, December 1st covering Snake River Water Rights Agreement Minimum streamflows and habitat in the Little Salmon Basin. Mr. Jordan also attended and said the meeting went well.

Mary discussed the individual committee meetings in Riggins with Fish & Game, the Nez Perce Tribe, Fish & wildlife, representatives from the Governor's Office and the Payette Nat'l Forest the next day, December 2nd. We were able to set Minimum Flows for the Little Salmon – Our goal was to get them set for Boulder and Elk Creek as well but it took a while to go over the hydrology and previous measurements/estimates – Biologists recommended 50% exceedence flows for all months – We are having a conference call next Tuesday to finish tributaries and wrap up habitat recommendations.

Mr. Jordan – Regarding questions received at the Technical Committee meeting – Clive wrote a memo called B list stream process that should be distributed to members.

Mr. Anderson agreed to send out Clive's Memo on B lists to everyone...

Mr. Bill Graham stated that we weren't likely to go below the 50% exceedence.

Mr. Bill Graham – Commented on the Bull Trout recovery Plan.

Mr. Rigby cautioned staff not to publish exceedence below 50%

Thomas Grant commented on the Valley Creek tributary meeting also attended by Mr. Chamberlain – The meeting was fairly well attended. At the Pahsimeroi Meeting, the Board already has a minimum streamflow and so was focused on habitat.

Mr. Chamberlain commented that he would have liked to have more attending – but thought the meeting went well overall.

Mr. Bill Graham went over upcoming events outlined in the memo included in the Board folders. We will have our A & B Lists prepared for adoption of the minimum streamflows by the Board in time for the next meeting. Our goal is to have all this wrapped up by March 21<sup>st</sup>.

Bill concluded his report.

## **Agenda Item No. 8, Director's Report**

Mr. Dreher went over a couple items of general interest. Expressed concern regarding the Department's budget being reviewed by the Governor's office. While the Department is not proposing any legislation this year, there was one piece of potential legislation having to do with the Treasurer's office being able to purchase the Dworshak bonds – We haven't drafted anything and believe that it should fall on the Treasurer's office to draft and carry the legislation. The Department is open to furthering this if the Board feels strongly about following up on the legislation. Karl suggested having Mr. Rassier contact the Treasurer's office to suggest drafting legislation and encouraging them to carry it.

Mr. Uhling agreed that it would be better if the Treasury presents this.

Mr. Rigby asked that staff and Mr. Rassier follow up with the Treasurer's office to proceed.

Mr. Dreher concluded his report.

## **Agenda Item No. 9, Other items**

Mr. Uhling had no other items to present.

Mr. Wyatt had no other items.

Mr. Graham – Suggested setting up the next two meeting dates and setting up a full year of meeting dates.

Mr. Anderson stated that staff would set up a calendar of proposed meeting dates for the upcoming year to review at the next Board meeting.

Mr. Jordan addressed the inducement resolution included in Board folders for which feasibility studies have not been received and so no action was taken on it.

Mr. Chamberlain had no other items.

Mr. Dreher commented on the Order to Fish Creek Reservoir Company not to store any water in the reservoir and to leave the outlet gates open because they had not made any efforts to begin rehabilitating the dam, which is in danger of failing very soon. Nine buttresses had been identified as having holes in the last year. These were patched and we've recently found another one with a hole through it. At the time of the last inspection by staff, the emergency warning system was not working and has been sent for repair, but even with a working system, Karl is unwilling to allow storage just because of the poor history and unsafe nature of the dam. The company is having demolition testing done but that doesn't tell whether the dam would sustain the load, any more deterioration or earthquakes, etc. 18 families use the storage water and can't come up with needed funds to repair/replace the dam. Suggested at a recent meeting, that the company use its limited funds to find alternate means of procuring storage water.

Mr. Dreher informed the Board about the Order issued in response to a petition to designate the aquifers in the Moscow/Pullman area as a Critical Groundwater or Groundwater Management Area. The order did not designate any Management areas at this time, but could, with out further review, if needed, be put into effect. Karl also ordered the Polouse Basin Aquifer Committee to create a citizen advisory group to include the petitioners as well as a Department representative as an ex-officio member to facilitate communications between the parties.

On the same day, Glen Saxton issued a preliminary order granting a permit to appropriate Ground Water in the Moscow /Pullman area for Naylor Farms to extract clay to develop organic insecticides as well as irrigate some experimental crops.

Both orders have received petitions to reconsider.

Mr. Rigby asked that we schedule the next Board meeting for January 24 & 25, 2005 to coincide with the IWUA meeting. The following meeting was set for March 10 & 11, 2005 in Boise.

Mr. Jordan, Mr. Uhling, Mr. Beck and Mr. Storer are all up for re-appointment this year. Mr. Jordan has sent in his letter of resignation to the Governor's office.

Mr. Chamberlain made a Motion to adjourn  
Mr. Jordan seconded.

Meeting adjourned at 11:45 a.m.

Dated this 17th day of December 2004.

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D. Richard Wyatt, Secretary

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Crystal Calais, Administrative Assistant II

### **Board Actions**

1. Mr. Beck moved to modify the agenda to include the Nez Perce Agreement Approval. Mr. Jordan seconded the motion. *Motion passed unanimously. Agenda Modified.*
2. Mr. Chamberlain made a motion to issue a loan for \$3000.00 at an interest rate of 4% for the term of two years. Mr. Wyatt seconded the motion. *Motion passed.*
3. Mr. Graham made a motion for approval of the Loan of \$220,000 for a five-year term at 5-½ % Interest. Mr. Storer seconded. *Motion passed.*
4. Mr. Jordan made a motion for approval of the Resolution Providing Board Approval of the Nez Perce Agreement and Recommending Legislative Approval with discussed modifications made. Mr. Wyatt seconded. *Motion passed.*