



IDAHO WATER RESOURCE BOARD

MINUTES OF EMERGENCY TELEPHONIC MEETING

MEETING NO. 03-05

Tuesday, February 9, 2005, 9:00 a.m., MDT

Idaho Water Center, 322 E Front Street, Boise, ID
6th Floor Conference Rooms - TELECONFERENCE

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

Lawrence 'Vic' Armacost
New Meadows
At Large

Meeting No. 03-05 of the Idaho Water Resource Board was called to order via teleconference call by Chairman Rigby
At the Idaho Water Center in Boise Idaho
(One Recording Tape)

Agenda Item No. 1, Roll Call

Board Members Attending

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

Board Members Absent

Terry Uhling

Department of Water Resources Staff Present

Hal Anderson, Administrator	Bill Graham, Bureau Chief
Crystal Calais, Admin. Asst. II	Brian Patton, Staff Engineer
Phil Rassier, Dep. Attorney General	

Others Present:

Clive Strong, Dep. Attorney General
Jean Baldrich, Nez Perce Tribal Representative
Jeff Whitingham, Nez Perce Tribal Council

Reason for Emergency Meeting:

Because of pending Legislative action to approve the Minimum Stream Flows approved by the board yesterday. There was one provision in the resolution that the Tribe interpreted as being offensive to the agreement. That provision deals with the "whereas clause" that refers to the 30 year agreement. That 30-year agreement doesn't apply to the instream flows and it is specifically intended to be a recital demonstrating the history of the agreement. Clive Strong made a recommendation to the Board to remove that provision, as it is unessential to the overall resolution.

Agenda Item No. 2, Public Comment

There was no public comment made.

Agenda Item No. 3, Snake River Water Rights Agreement Minimum Stream Flow Resolution

Mr. Anderson read the offending whereas of the Resolution for the Minimum Streamflow Water Rights provided for the Snake River Water Rights Agreements.

“The Term sheet provides guidance for the further settlement of issues and provides the responsibilities of the parties over the 30-year term of the agreement and”

Mr. Rigby asked the Tribe’s representatives to explain the nature of their concerns.

Mr. Whiting stated that reference to the 30-year term of the agreement and it is therefore characterizing the Snake River Water Rights Agreement of 2004 as a 30-year agreement, which is inaccurate for some of the components of the agreement. The agreement and the Federal Legislation that approves it are a hybrid of an Indian Water Settlement and ESA agreement. Part of that hybrid are, in fact, 30-year terms. Parts of that agreement are permanent agreements, where the Nez Perce Tribe is making waivers of its water right claims forever. So the Indian water settlements are not for a 30-year term, and that recital, or the second whereas is inaccurate and that is a serious problem for our client. And if it becomes part of what the Minimum Flow Legislation is based on, it becomes a serious problem.

Mr. Strong did not feel that the clause was necessary or vital to the Resolution and recommended that the Board simply strike the offending paragraph.

Mr. Anderson stated the two obvious choices before the Board. The first being to eliminate the entire paragraph (“whereas”) or the second choice would be to put a semi-colon after the word ‘parties’ and just eliminate the phrase, “over the 30-year term of the agreement”

Mr. Whiting and Mr. Strong both agreed that either option would fulfill the requirements for the Tribe.

Motion: Mr. Graham made a motion to strike the second paragraph completely.
Mr. Wyatt seconded that motion.

Roll Call Vote: Jordan, Aye; Chamberlain, Aye; Storer, Aye; Graham, Aye; Beck, Aye; Wyatt, Aye; Uhling, Absent; Rigby, Aye – 7 Ayes, 0 Nays, 1 Absent. *Motion passed* – Resolution Amended.

Mr. Anderson stated that the amendment needed to be made *nunc pro tunc* –

Mr. Rassier explained that *nunc pro tunc* means that changes be as if they occurred on the date of the original Resolution. This would allow the Board to move forward with the resolution without changing the date.

Continued:

Motion: Mr. Graham modified his motion to modify the Resolution and strike the second paragraph completely *nunc pro tunc*.

Mr. Wyatt seconded that modified motion.

General Vote: All stated Aye, in favor. No Nays heard. Motion Passed.

Agenda Item No. 4, Other Items

Mr. Storer does not expect to be available for the next scheduled meeting.

Agenda Item No. 5, Next Meeting

The next scheduled meeting is March 3rd & 4th, 2005

Mr. Graham made a Motion to adjourn. Mr. Storer seconded.

Dated this 9th day of February 2005.

D. Richard Wyatt, Secretary

Crystal Calais, Administrative Assistant II

Board Actions

1. Mr. Graham modified his motion to modify the Resolution and strike the second paragraph completely *nunc pro tunc*. Mr. Wyatt seconded the modified motion. ***Motion passed.***