



# IDAHO WATER RESOURCE BOARD

## MINUTES OF TELEPHONIC BOARD MEETING NO. 16-08

**L. "Butch" Otter**  
Governor

December 15, 2008  
Idaho Water Center  
Boise, Idaho

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

Chairman Rigby called meeting 16-08 to order at 9:00 a.m. and requested roll call.

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

### Agenda Item No. 1, Roll Call

**Bob Graham**  
Secretary  
Bonners Ferry  
At Large

#### *Board Members by Phone*

Jerry Rigby, Chairman	Claude Storer
Chuck Cuddy	Bob Graham

**Charles "Chuck"  
Cuddy**  
Orofino  
District 1

#### *Board Members in Person*

Terry Uhling	Vic Armacost
Gary Chamberlain	Leonard Beck

**Leonard Beck**  
Burley  
District 3

#### *Guests by Phone*

John Chatburn, Governor's Office	Linda Jones, Holland and Hart
Rick Skinner, Attorney	Jonathan Bartsch, CDR
Jon Boling, Idaho Power	Harriet Hensley, Deputy Attorney General
Mike Webster, Governor's Office	Kent Lauer, Idaho Farm Bureau

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

#### *Guests in Person*

Jim Wrigley, Wells Fargo Bank	Greg Newberry, Home Federal Bank
Lynne Tominaga, IGWA	Stephen Goodson, Governor's Office
Peter Anderson, Trout Unlimited	Kevin Lewis, Idaho Rivers United
Dave Blew, Idaho Power	Shelley Davis, Barker Rosholt

**Gary M.  
Chamberlain**  
Challis  
At Large

#### *Staff Members Attending*

**Lawrence "Vic"  
Armacost**  
New Meadows  
At Large

Hal Anderson, Administrator	Helen Harrington, Section Manager
Dave Tuthill, Director	Bob McLaughlin, Public Info Officer

Patsy McGourty, Admin. Asst.      Brian Patton, Bureau Chief  
John Homan, Deputy Attorney Gen.    Cynthia Bridge Clark, Engineer

**Agenda Item No. 2, Public Comment**

There was no public comment.

**Agenda Item No. 3, Matters Associated with the Loan to North Snake and Magic Valley Groundwater Districts**

Mr. Anderson stated that staff have been working with Mr. Wrigley on financing opportunities with a local bank. The loan to the North Snake and Magic Valley Groundwater Districts from the Pristine Springs Purchase is the subject of this financing. Mr. Newberry from Home Federal Bank was present with Mr. Wrigley from Wells Fargo Bank. Mr. Rick Skinner, the Board's bond counsel was on the line.

Mr. Wrigley met last week with Home Federal Savings representatives and after discussions the bank is offering to participate in the loan rather than purchase the loan. The loan would be owned and serviced by the Board. The bank would purchase 100% of the revenue stream from the loan. This is different than the original approach. The participation option is easier for the bank since it reduces risk and enforcement.

Mr. Newberry explained that enforceability in the case of default was a tremendous issue. By funding a participation in the loan the initial documents of the Pristine Springs sale are enforceable by the Board. A straight purchase would require additional credit information from the groundwater districts and since the loan documents are already in place this creates a problem.

Mr. Homan stated the original assignment of the loan to the bank would make the bank responsible for default enforcement. With the new participation in the loan, the Board would retain the enforcement responsibilities. In the event of a default in the case of participation terms and conditions would need to be agreed upon. Currently the water is held in trust by the Board. There was discussion about terms and conditions needed.

Mr. Wrigley discussed the credit behind the loan including the groundwater mitigation, the Director's Orders and the lien. Mr. Uhling asked if the participation agreement had been drafted. Mr. Anderson stated that staff are still in the verbal discussion stage and this discussion is just an update of possible options. Mr. Uhling asked about the terms of the agreement, the discounts and interest rates. Mr. Wrigley replied they are still in the same range as originally outlined.

Chairman Rigby asked if a participation in the loan would increase contingent liability to the Board. Mr. Uhling responded that with the new approach the risk will remain with the Board. If there is a default, the Board would be responsible.

Mr. Newberry stated that in discussions about defaults the terms would be that the Board would have a time period of three to six months to negotiate with the Bank. Chairman Rigby added that the Board has to look at the worst case scenario for default. Mr. Uhling stated that it would be helpful to have all these terms for review.

Mr. Skinner stated there are different ways to do participations in loans. He explained the various approaches. He asked if the Board would be responsible for the payments and Mr. Newberry stated that the Board would be responsible for payments. The bank would like for the Board to be able to make the defaulted payments while pursuing legal collections from water users. There were further discussions about payment options.

Mr. Graham stated that the shifting of the enforcement from the bank to the Board leads him to ask if there is a greater anticipation of default by the bank representatives. Mr. Wrigley responded that the greater issue is whether a third party like the bank could enforce the terms of the loan with the groundwater districts. Mr. Newberry replied that he is the risk mitigation officer for the bank. His personal review of the risks in the Magic Valley area includes crop prices in agriculture, business viability for the dairy industry, etc. He did not see any factors that would indicate a greater risk of default for the last year's business.

Chairman Rigby noted that even if the participation agreement does not happen, the Board is still responsible for enforcement of the loan to the groundwater districts. Mr. Homan added that the Board has the ability to compel the groundwater districts to exercise their assessment authority. The bank could also do that. The second option the Board has is the collateral of the water rights. Also, the Board as a Trustee may choose to stop providing water to the groundwater districts. This makes the Board and the department in a better position to enforce the loan agreement than the bank.

Mr. Uhling stated his enthusiasm was not as great for the participation agreement because the Board is not eliminating risk and obtaining useable revenue. Chairman Rigby stated that the Board has been fortunate that there have not been defaults in the past. A draft agreement is needed to consider this further.

Mr. Anderson stated that the different approach was offered a few days prior to the meeting and staff wanted to inform the Board right away. Chairman Rigby asked if the first approach was off the table. Mr. Newberry responded yes, that it was. Chairman Rigby asked staff to proceed cautiously with the second option. Mr. Skinner added another issue - does the Board have authority to make whole. There are legal issues that need reviewing. Mr. Homan also stated that he had not had time to answer these questions either.

Chairman Rigby stated that these discussions are still preliminary. However, staff should still look into proceeding by reviewing all terms and conditions. Mr. Wrigley added that the make whole condition could be removed. He discussed other terms that the bank could review which would put the liability for management and enforcement with the Board. Mr. Uhling discussed other terms for curing a default.

Mr. Beck asked why this particular bank was the only bank making offers. There was discussion about local banking. Mr. Wrigley responded that many local banks are not lending right now and some are too small to handle the \$10 million loan. There was further discussion.

Chairman Rigby asked staff if they had enough direction to move forward. Mr. Uhling said staff should continue to investigate the possibilities. Other questions were answered for Board members and they agreed that staff should continue the discussions.

#### **Agenda Item No. 4, Results of the ESPA CAMP Public Meetings**

Mr. Anderson stated that three public hearings were held in Pocatello, Twin Falls and Idaho Falls to present the draft ESPA CAMP Plan to the public. Mr. Bartsch will update the Board on comments from those meetings.

Mr. Bartsch summarized the public meetings. On December 2 a meeting was held in Pocatello with 19 attendees and two commenting. On December 4 in Twin Falls there were 40 attendees with eight commenting. On December 10 in Idaho Falls there were 34 attendees with six commenting. He thanked the Board members for attending and staff for all their work on the meetings. At the meetings, Board members welcomed the public. Mr. Bartsch made a Power Point presentation and then the public was welcomed to comment.

The comments included overall support for CAMP from several organizations. There is little opposition to the plan including concerns about incidental recharge. Some individuals say credits should be given for this. Some neutral comments were received. Some people wanted more detail in the plan before monies are committed. Mr. Bartsch stood for questions.

Mr. Bartsch stated that spring users were unhappy with the reach gains stating that they were not enough to cover negative impacts in the past. Mr. Anderson confirmed there was only one spring user that expressed that opinion. Mr. Bartsch stated other comments were that the plan was not perfect but it gets us started. Others thought the plan should minimize increasing government. Some said the plan represents a delicate balance of interests and should not be modified. Mr. Bartsch added that there were other discussions about clarifying the role of surface water storage and a need for clarification of the plan regarding mitigation credit. A number of comments were that the plan and process changes the way water is managed in the ESPA both above the ground and below the ground. There will continue to be needs for mitigation. Other details were requested on funding details. A comment was made as to how to be true to the CAMP and adaptive management strategies.

Mr. Bartsch discussed cost and funding comments. Two domestic users expressed a desire to be included in the funding scenario and wanted a voice at the table. Another comment was that the state must provide its financial contribution outlined in the plan or water users will not want to provide their share. Other comments concerned administrative curtailments on users which would cause them to be paying for CAMP even though they are out of production. Another comment stated that users who do not contribute should not have a voice at the table like others who are paying for CAMP. He summarized other verbal comments.

Chairman Rigby noted that other comments can be received until January 5<sup>th</sup>. Mr. Anderson asked Ms. Helen Harrington to talk about comments received in writing. Ms. Harrington stated that four comments have been received. Mr. Vince Alberdi provided an e-mail comment as a follow-up to his verbal comments at a meeting. Mr. Jon Marvel with the Western Watersheds Project and a guide from the Idaho Guide Service made comments about environmental impacts. Mr. Randy McMillan also provided follow-up to verbal comments. Mr. Bartsch stated that with all these comments the plan has a solid foundation for moving forward.

Director Tuthill stated that he had been to two meetings recently. The first in Hagerman with the spring users and the level of endorsement from both Randy McMillan and Linda Lemon championing the need for the CAMP process to continue was outstanding. The second meeting was with the Idaho Ground Water Appropriators in Pocatello to discuss the \$2 per acre with the groundwater users. There was a lot of discussion about growing government. They voted later in the day to support the CAMP plan.

Mr. Anderson noted that he had met with the legislative representatives and discussed his concern about the plan not being submitted before the start of the Legislature. Mr. Rassier has reviewed whether the plan may be submitted later. Legislative Services staff are aware that the plan may not be ready until the 1st of February. The Board is on track to get this completed and finalized by February 1.

Chairman Rigby thanked staff and Mr. Bartsch for all their hard work to get this accomplished. Mr. Bartsch stated that the next teleconference for the Board is January 9, 2009 at 9:00 a.m. Any final comments received by January 5<sup>th</sup> will be presented at that time.

Mr. Anderson added that he and Mr. Bartsch would be re-engaging the Advisory Committee to get them apprised of further comments also. The chairman agreed a final meeting would be imperative.

Mr. Beck discussed some of the comments made and noted that there is some uncertainty about recharge credits and what is needed is for these people to put their comments in writing. Mr. Bartsch responded that he had encouraged people to provide written comments. Mr. Tominaga stated that the groundwater districts will be providing written comments.

#### **Agenda Item No. 5, Preliminary Permit Application for Galloway**

Mr. Anderson state that at the last Board meeting Mr. Cuddy asked what would be needed to apply for a Preliminary Permit for Galloway Dam. He asked Ms. Harriet Hensley from the Attorney General's Office to provide some information about the process.

Ms. Hensley stated that a preliminary permit is not necessary before filing for a license application. It provides 3 years to do feasibility studies before filing for a permit. It holds the place in line. Preliminary permits are simple and do not need much information.

Director Tuthill stated that since the last Board meeting, he had met with the principles of Agua Caliente from Colorado. Mr. Michael Zacharoff, Ms. Jones and Mr. Meyers were present to discuss the potential for moving forward. Mr. Jack Peterson who is with the Department of the Interior was present and provided an assessment about building both projects. There is a possibility of building both projects. There is interest in moving forward. Agua Caliente is aware of the \$1 million feasibility study and has offered to contribute \$1 million for this study. The Governor's Office is aware of this possibility. Mr. Zacharoff is interested in moving forward. The department needs to prepare what the feasibility study would involve. He asked for Ms. Jones' input. Ms. Jones responded that she had no further input.

Mr. Anderson asked what Mr. Cuddy's intent was about applying for a preliminary permit. Mr. Uhling suggested that this should be decided at a Storage Sub-Committee Meeting. The next Storage Sub-Committee meeting will be held on January 23<sup>rd</sup>. Mr. Cuddy added that filing a permit could be important. Mr. Uhling agreed that this could be considered on January 23<sup>rd</sup>. Director Tuthill stated that staff will continue to work with others on the private financing of the feasibility study.

**Agenda Item No. 6, Other Items Board Members May Wish to Present**

There were none.

Mr. Uhling moved for adjournment; Mr. Cuddy seconded. All were in favor.

Dated this 6<sup>th</sup> day of January, 2009.



Secretary



Patsy McGourty, Administrative Assistant II

Board Actions:

No Board actions were taken.