



IDAHO WATER RESOURCE BOARD

MINUTES OF TELEPHONIC BOARD MEETING NO. 11-09

C.L. "Butch" Otter
Governor

Terry T. Uhling
Chairman
Boise
District 2

Gary M. Chamberlain
Vice-Chairman
Challis
At Large

Bob Graham
Secretary
Bonners Ferry
At Large

Charles "Chuck" Cuddy
Orofino
District 1

Leonard Beck
Burley
District 3

Roger W. Chase
Pocatello
District 4

Vince Alberdi
Kimberly
At Large

Jerry R. Rigby
Rexburg
At Large

October 20, 2009
Idaho Water Center
Boise, Idaho

Chairman Uhling called meeting 11-09 to order at 8:00 a.m. and requested roll call.

Agenda Item No. 1, Roll Call

Board Members by Phone

Terry Uhling
Chuck Cuddy
Gary Chamberlain
Roger Chase

Vince Alberdi
Bob Graham
Leonard Beck
Jerry Rigby

Staff

Hal Anderson, Administrator
Brian Patton, Bureau Chief
Helen Harrington, Section Mgr.
Patsy McGourty, Admin. Asst.

John Homan, Deputy Attorney General
Chris Bromley, Deputy Attorney General
Gary Spackman, Interim Director
Cindy Yenter, Watermaster
Districts. 130 and 140

Guests by Phone or in Person

Peter Anderson, Trout Unlimited
Candice McHugh, Attorney
Randy Budge, Attorney

Mike Webster, Office of the Governor
Dan Temple, A & B Irrigation Co.

Agenda Item No. 2, Public Comment

Mr. Randy Budge stated that he represented the groundwater users and was here to listen to the discussion concerning the AWEP Program and Mitigation Issues. He noted that the groundwater users have various mitigation plans pending seeking the Director's approval. They are concerned that

everyone works cooperatively to avoid competitiveness over mitigation credits. Their question is whether the Board should be deciding mitigation credit issues that are under the Director's authority.

Chairman Uhling stated that this issue will be discussed under Agenda Item No. 4. Mr. Anderson stated this issue has come up during the administration of the AWEPP Program. The Interim Director was also present to provide input. The Board will be briefed and can discuss the issue to determine future actions.

Agenda Item No. 3, FY2010 Budget Holdback Plan

Mr. Anderson stated that at the last Board meeting in late September there was a presentation by the Interim Director regarding a Fiscal 2010 Budget Holdback of 7.5% of general funds. Options were presented to accommodate this holdback. Staff have been compiling the details of the recommended funding assistance from the Board's Planning and Aquifer Management Fund that will be given to the Department to cover the holdback. Mr. Anderson stated that each Board member had received some handouts itemizing the various funding mechanisms and memos from staff. This information was presented to the Division of Financial Management and to Legislative Services. Initial approval was received; however, the plan requires legislative action.

Chairman Uhling asked Board members if they had received the documents and they all had. He stated that he understood that the Board and the Department's budgets are submitted together. Mr. Anderson stated that \$566,000 of the Board's Aquifer Planning and Management Fund would be transferred back to the Legislature to replace the Department's general fund monies. This will be a one-time action with legislative approval to offset holdbacks for the Department.

Mr. Graham asked what the impacts to the Treasure Valley and Rathdrum Prairie studies would be. Mr. Anderson first discussed the memo from Brian Patton to Mr. Anderson. Mr. Anderson asked Mr. Patton to explain his memo to the Board.

Mr. Patton stated that the Aquifer Management and Planning Fund is an interest bearing account. The work items would be reduced by \$335,000 plus the interest that would have been earned. This would delay or eliminate a weather modification study, a lake level study for Lake Pend Oreille and an Idaho water centric budget analysis for the Rathdrum Prairie CAMP. The Treasure Valley CAMP would be cut by \$70,400 by reducing the Geophysical Investigation and Model Development. The ESPACAMP would be cut by \$70,000 by reducing Measurement and Monitoring for the model.

Board members were confused by various figures on the handouts. Mr. Anderson explained that interest on the balance left in the account after \$335,000 brings it up to \$500,000. \$66,000 was an unused amount in a contract account with the University of Idaho for the ESPA Model and will be an offset for existing contract work. Funds will be added totaling \$566,000, the whole amount earmarked for the Department.

Mr. Patton further explained that the continuing accrued interest in the Aquifer Management Account over five years is currently at 2%. \$165,000 of this interest is the amount that will be contributed to the \$566,000 for the Department. Mr. Anderson stated that this is an allocation of interest earned. Mr. Patton stated the Aquifer Management Account has a balance of \$5 million and generates a lot of interest. There was further discussion about the mechanics of this accounting. Mr. Anderson explained how the account was setup with the Board being allowed to keep the earned interest. Interest was not included in the cost elements of the tasks for the original program. Mr. Patton and Mr. Anderson answered questions and further explained.

Mr. Alberdi summarized that he understood that staff are using \$335,000 from the Treasure Valley, Rathdrum and ESPA CAMP funds, adding \$165,000 in interest from the Aquifer Management and Planning Fund and \$66,000 from the remaining funds in a Department contract account to total \$566,000, the total amount contributed to the Department for the holdback. Chairman Uhling and all Board members agreed on this understanding.

Mr. Graham asked if the Division of Financial Management and the Governor's Office were on board with this. Mr. Anderson responded that it is acceptable to them. Mr. Graham asked what the impact would be to planning efforts and where would the staff end up. Mr. Anderson stated that one of the major reasons staff have taken this approach is to use one-time funding to meet the FY2010 holdback. The Department is making more permanent long-term changes and with the Board's contribution, the total of 7.5% can be reached. Mr. Anderson stated there may be deeper cuts for FY 2011 that will affect Board and Department programs.

Chairman Uhling questioned whether the Board should make this large contribution and not the Department. He asked if Board members were comfortable with this process knowing the Department does not have any good choices at this point. Mr. Graham asked if staff had considered putting some of the aquifer studies on a one-year hold. Mr. Patton stated that staff did consider that; however, the two studies (Rathdrum and Treasure Valley) are paid for with dedicated funds. Either choice would result in less money for the studies although some interest earned may allow some of the delayed tasks to take place later.

Mr. Rigby asked if the Board's share was proportionate to its budget as compared to the Department. Mr. Anderson explained that Department staff support Board programs. Personnel and resources are intertwined for the Board and the Department. Some staff are exclusively paid by Board programs; others also work in the water rights section, but still support Board programs. In 1974 the two staffs were combined. Mr. Rigby understood the complicated connection with the Department. Mr. Rigby asked if the Board was shouldering its share of the holdback. Mr. Anderson responded that it was generously supporting.

Mr. Chase stated the Board is contributing a high percentage from their funds to preserve the Department. He stated that if the interest rate goes up, some programs could be funded later. Mr. Patton agreed that programs could be refunded later if additional funds are secured. Mr. Anderson stated that additional funding could be found in the future. Mr. Chase expressed concern that more

funds could be taken by the Legislature. Mr. Anderson stated that happened last year when \$12 million was taken back by the Legislature from the Aquifer Management Account. Mr. Chase expressed support for what staff were doing to keep the Department functioning.

Chairman Uhling stated that the Board is part of the Department's budget and he wanted to let the whole Board know the extent of the Board's contribution. He asked Interim Director Spackman to speak.

Interim Director Spackman expressed gratitude for the Board's support for the Department. He discussed the mechanics of moving monies from the Board to the Department to cover the holdback. Interim Director Spackman discussed the history of the Aquifer Management and Planning Fund and conversations with the Governor's Office. Staff are looking at specific elements of the plans to convert funds for the holdback. He discussed the steps the Department has taken including laying off all temporary employees who are paid from the general fund. Three full time positions are being eliminated including a contracts/grants coordinator, adjudication bureau chief and the public information officer. Legislative action is needed for some of the other steps. He stated that the holdback could carry forward for the budget for FY2011 and the Department will have to absorb this cutback for without the Board's help. In the next 6-8 months Interim Director Spackman stated that statutorily mandated programs will need to be eliminated because the Department will not be able to perform them.

Interim Director Spackman stated that he is ranking by importance the Department programs. Board programs are ranked separately from the Department. He stated he will look at staff in programs that might be cut and try to reassign them or make adjustments because of projected retirements. An example is the dam safety program which has gone from 7 to 2 employees. The Board's assistance is disproportionate at this time, but it gives the Department time to plan and make future reductions in the budget. He thanked the Board for the opportunity to speak.

Chairman Uhling thanked Interim Director Spackman for his comments and acknowledged how difficult his decisions are at this time. Mr. Graham agreed. Mr. Graham stated that if the Rathdrum Prairie CAMP were dropped, there would be a negative backlash from the citizens. A postponement would probably be accepted more easily.

Chairman Uhling stated that a fair amount of time had been spent on Agenda Item No. 3. He asked other members if they were in agreement. Interim Director Spackman responded to Mr. Graham's concerns by stating that the Governor's Office is sensitive to the North Idaho issues. Mr. Anderson stated that Mr. Ray Houston from the Legislative Auditor's Office is also very sensitive to North Idaho issues. Mr. Anderson stated that no motion or action is needed by the Board for the budget changes today.

Mr. Cuddy stated he appreciated all comments by the Interim Director and staff. The next legislative session will be especially important to the Board and the Department.

Agenda Item No. 4, AWEP Program and Mitigation Credit Issues

Mr. Anderson discussed the AWEP Program and the ESPA CAMP and an issue that has come up. The AWEP Program is funds provided through the Federal Farm Bill for conservation projects. The ESPA was identified as a priority area to implement projects. The proposal submitted by staff and others was to provide projects for the implementation of the ESPA CAMP. Several items were conversions of ground water to surface water supplies and conservation projects in the Hagerman area. The question that has arisen concerns specific language in the ESPA Comprehensive Aquifer Plan which states, "This plan is not designed to provide mitigation credit for any individual group although it is expected that plan implementation should reduce demand for administrative solutions." Mr. Anderson stated the reason this was added was to recognize the Board's responsibility in implementing the plan and the director's responsibility to provide water right administration for the state. The Director's decision for mitigation is something the director could consider in a specific contested case or a call and the requirement for junior appropriators to mitigate their effect on senior water right users.

Mr. Anderson stated that a question had come up about what points need to be considered to move forward with the implementation of AWEP program and conversion projects specifically, the ability of water districts or an individual's opportunity to get mitigation credits for senior users' delivery calls. The staff, Director and Board have not discussed this issue. Mr. Anderson stated that discussion is needed before moving ahead with projects.

Chairman Uhling asked that anyone who addresses the issue today not confuse the role of the Board with the Director's role. The Board does not administer water rights; that is the role of the Director and the Department. Under the ESPA Plan the Board has provided actions that can take place which may or may not be mitigation to manage the aquifer. Mr. Anderson agreed and stated that the opening statement in the Plan states that the Plan does not in any way neutralize or modify the Prior Appropriation Doctrine. The intent was to make clear that the Plan does not usurp the Director's responsibility for water rights administration. However, Mr. Anderson stated the implementation of the AWEP program is between the Board, NRCS and the Department. In moving ahead there is no intent by the Board to modify the Director's responsibility.

Mr. Rigby agreed with the Chairman's comments and expressed appreciation that this issue is being brought before the Board. Mitigation issues are under the Director's responsibility.

Mr. Anderson gave an example of an issue and asked Cindy Yenter, Watermaster for Districts 130 and 140 in the Eastern Snake, to identify questions that are coming up from water users.

Ms. Yenter stated that during CAMP development there were many questions about mitigation and AWEP projects. She added that water user's questions are if they take this Federal money, what kind of mitigation will they be eligible for. She stated that she tells them that if they accept the money and sign a contract, it would benefit them, but it may not be acceptable to their district's mitigation plan.

Mr. Anderson added that the Board has an agreement to move ahead with the AWEP projects and be responsible to provide matching fund requirements. AWEP provides a 75% Federal dollar amount with a 25% local match. The agreement does not say where that match money has to come from. The question is if the money is provided for the match component from CAMP funds for instance, would that preclude an individual or organization from receiving that as a mitigation credit. Or, if the individuals themselves are providing the matching money, could they claim a mitigation credit. He asked Interim Director Spackman to weigh in on this issue.

Chairman Uhling agreed and asked if the Deputy Attorney General was present. He did not want to put the Director in a difficult position. Mr. John Homan, Deputy Attorney General, stated that the Chairman had drawn a clear line between the Department and the Board's responsibilities. As long as everyone honored that, the discussion could move forward.

Interim Director Spackman addressed the issue and admitted to everyone that he perceived and viewed his relationship with the Board and the CAMP process as being symbiotic. He stated that he could not ignore the intent of the CAMP when giving mitigation credit. He expressed gratitude for the Board's sensitivity to administering the CAMP plan. The Interim Director recognized that there are many different views on this topic about what the Director should or should not do. He stated that he would look very hard at the language in the ESPA CAMP Plan when he considers decisions. He added that he hadn't made any determination on the mitigation credit issue. Even though AWEP is a program that has been adopted by the Board as part of the CAMP process, if the actual CAMP funding is not used for it, then the Director should have the ability to allow mitigation credits. He stated that it is difficult to go beyond that.

Chairman Uhling stated he would feel uncomfortable about giving any guidance to the Department and he thought the Board needed advice of counsel. The Board's intent is to facilitate actions to improve the aquifer.

Mr. Cuddy added that the long-term and short-term effects of the AWEP program need to be assessed. Chairman Uhling agreed and questioned what the change in the water budget would be. He discussed previous issues with the CREP program and the discussions about its effect on the water budget. How the allocations and administrations play out is an administrative issue with the Department. Mr. Rigby agreed. He stated that the ESPA CAMP Implementation Committee deals with issues first and brings directions to the Board. How this affects the Department's mitigation decisions is up to the Director. Mr. Graham stated this is a sufficient statement for now.

Mr. Beck asked if there was a process to get the AWEP funding. Mr. Patton responded that the AWEP funds are available over a five-year period mostly for ground water to surface water projects. The second component is delivery systems in the Thousand Springs reach and some projects for demand reduction activities. Every year there is a sign up period and a ranking of projects that takes place. For the ground water to surface water projects, the ranking is currently being done for about 12 applications totaling about 4800 acres. More projects could be funded in the next four years.

Mr. Beck asked if the highest criteria in the ranking deals with the health of the aquifer or some other criteria. Mr. Patton stated that change in water budget is the staff's criteria; however NRCS has other criteria.

Mr. Chamberlain stated he understood the concern about the monies from the NRCS versus the individual; however, with the state of the economy, those Federal monies may not be there in the coming years. He urged the Board staff to look at the projects for mitigation purposes for individuals. He was concerned about losing Federal funds.

Chairman Uhling responded that he assumed that none of the funds would be lost. The question is that the Board does not have the right to make the decisions about the projects being accepted for mitigation. He asked Mr. Anderson if there was any reason that applications could not continue to move through the process for projects and Mr. Anderson stated no.

Interim Director Spackman added that one difficulty is the issue of whether mitigation credit is given or not bears on whether the program is successful and whether people will participate. Perhaps this should be discussed in the ESPA Implementation Committee. He wondered what things were necessary to make the program viable.

Chairman Uhling thought a discussion would take place with the Implementation Committee. He further stated that the whole issue needs to be reviewed by the Attorney General's office to advise the Board and the Department on appropriate actions in the process. For example, he said, the Board could create a discussion about a mitigation bank.

Interim Director Spackman pointed out that some interaction needs to occur, but he didn't know what the framework or process should be. He suggested that John Homan and the Implementation Committee weigh in on the issue. Mr. Anderson replied that the Implementation Committee thought the Board needed to lead the way. He went on to say that staff wanted to bring the issue up and discuss this with the Board and the Interim Director.

Mr. Anderson stated that using the CAMP monies was the most important. The mitigation issue needs to be considered in this context.

Mr. Rigby stated that the Implementation Committee needs Board guidance, but the boundary between the Board and the Department needs to be honored. Chairman Uhling agreed. He did not want to create any misunderstandings about Board responsibilities. Legal authorities are needed for the Board's actions in this situation stating what the Board can or cannot do. He asked for clarification on the issue and resolving it.

Interim Director Spackman responded that perhaps the Department should come up with alternatives or a proposal for AWEP and a methodology or a set of standards by which mitigation would or would not be given. He offered to take the lead. Chairman Uhling thought that would be helpful. Water users are trying to decide how the conservation practices would fit into individual

responsibilities for mitigations. Interim Director Spackman added that the use of the AWEP program had been suggested in a proposed mitigation plan by one of the groundwater districts. Discussions will need to be held on that issue. This will be addressed internally with the Department. He wanted the Board to understand that he is sensitive to what the goals of the ESPA CAMP are and making the AWEP program successful.

Chairman Uhling stated Interim Director Spackman's idea was very helpful. Mr. Chase stated that it is a very good idea and direction is needed from the Department. Chairman Uhling asked if there were any other comments from parties. Mr. Anderson stated that Mr. Budge had left; but Ms. Candice McHugh stated that they had nothing further to add.

Agenda Item No. 5, Other Non-Action Items Board Members May Wish to Present

There were no other items presented.

Agenda Item No. 6, Adjournment

Mr. Graham moved to adjourn. Mr. Cuddy seconded and all were in favor.

Dated this 28th day of Oct, 2009.



Secretary


Patsy McGourty, Administrative Assistant II

Board Actions:

There were no Board actions.