



IDAHO WATER RESOURCE BOARD

MINUTES OF TELEPHONIC BOARD MEETING NO. 2-10

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

February 5, 2010
Idaho Water Center
Boise, Idaho

Chairman Chamberlain called meeting 2-10 to order at 8:30 a.m. and requested roll call.

Agenda Item No. 1, Roll Call

Board Members by Phone

Terry Uhling, Absent	Vince Alberdi
Chuck Cuddy	Bob Graham
Gary Chamberlain	Leonard Beck
Roger Chase	Jerry Rigby

Staff

Hal Anderson, Administrator	Brian Patton, Bureau Chief
Helen Harrington, Section Mgr.	Patsy McGourty, Admin. Asst.
Bill Quinn, Engineer	Jack Peterson, Federal Liaison
Gary Spackman, Interim Director	Phil Rassier, Deputy Attorney General

Guests by Phone or in Person

Walt Poole, Dept. of Fish and Game	Norm Semanko, Idaho Water Users Assn.
Lynn Tominaga, Idaho Groundwater Appropriators	
Stan Hawkins, Great Feeder Canals	Dan Temple, A & B Irrigation
Craig Evans*	Alan Koelsch
Scott Clawson*	Dan Steensen, Attorney
Jeff Raybould*	Mike Webster, Office of the Governor
Harriet Hensley and Clive Strong, Deputy Attorneys General	
Rich Rigby, Bureau of Reclamation	Stephen Jensen, Office of the Governor
Jonathan Bartsch and Joan Sabott, CDR Associates	
Linda Lemmon*	Walt Mullins, Milner Irrigation District
Jon Bowling, Idaho Power	Tom Arkoosh, Attorney
Brian Olmstead, Twin Falls Canal Co.	Randy McMillan, Clear Springs

Rebecca Casper*, CAMP Implementation Committee Member

CAMP Committee Members

Agenda Item No. 2, Public Comment

There was no public comment.

Agenda Item No. 3, ESPA CAMP Draft Funding Legislation

Mr. Anderson stated that at the last Board meeting Phil Rassier presented the draft funding legislation for discussion at the work session. There were a couple of issues still to work through; 1) who was included in the spring user's category, and 2) incidental recharge. Mr. Bartsch was charged to meet with a smaller group and the Implementation Committee to resolve these issues. He introduced Mr. Bartsch.

Mr. Bartsch stated that at the last Board meeting he had committed to the Board another effort to get consensus on outstanding issues. He met with a small group in Chubbuck to develop supportable resolutions. There was not total agreement. After the meeting, a document was distributed to the Implementation Committee who held a teleconference to discuss the issues and the overall CAMP. The Implementation Committee reviewed the spring users' language. There were concerns about the current version of the legislation and a number of letters were sent to the Board. With these additional concerns, Mr. Bartsch stated we do not have legislation to move forward. All of the Implementation Committee agreed with the intent of the legislation. Their additional conclusions were that 1) the legislation should be a mandatory assessment based on the plan; a fee not a tax; 2) the spring user language and the recharge concept were agreed upon. The constitutional issue remains. There was a desire to have more clarity about the recharge implementation.

Chairman Chamberlain asked for Board questions or comments. There were none. Mr. Anderson noted that the latest version 1.9 of the funding legislation was being considered today. It includes the new language for spring users and the legislative intent of the managed recharge approach. He asked Mr. Rassier to go over the additions.

Mr. Phil Rassier, Deputy Attorney General, stated that he had updated the legislation late yesterday with changes on page 3, finding number 7. He read from the text regarding incidental recharge. On page 5 a modification of (b) Spring Users was also read by Mr. Rassier. Chairman Chamberlain asked for a clarification on the page numbers since many were reading from version 1.8.

Mr. Rassier noted at the end of Section 42-1785, on page 9, version 1.9, some language was deleted at the request of the counties. Mr. Anderson added that Mr. Patton presented the draft legislation to the County Treasurers Association and they voted 40-4 to approve the legislation. The Chairman was glad to hear that.

Mr. Anderson stated he had had a lengthy discussion with the Chairman of the House Resource Committee concerning the difficult situation the Board is in now since the Implementation Committee may not totally support the legislation. There is a conceptual agreement from the majority of the Implementation Committee. After that a series of letters was received by the Board criticizing the legislation. Representative Stephenson had stated he would like to have a little more time to try to keep the process going forward. The Implementation Committee and the Legislature have invested a significant amount of time and money to move this forward. He would like the Board to continue for two more weeks to resolve issues expressed in the letters from the surface water users. If something is not accomplished this session, the future success may be limited.

Mr. Rigby stated that the Board had fully supported the CAMP process. He expressed appreciation for the stake holders' involvement. He asked as a Board member if there were groups on the phone that wanted to kill the CAMP legislation. He expressed urgency to get this legislation passed after all the work that had been done and there is financial support. He urged groups to come forward who did not support the ESPA CAMP.

Chairman Chamberlain asked for Board feedback. Mr. Beck asked if there were other attorneys who had clients that submitted letters. He asked if the constitutional issues were resolvable or deal breakers. Mr. Dan Steenson responded that he had not seen the legislation until January 21. His stated the legislation was complicated and he identified issues in it. He thought that work could be done with the bill. The letters sent to the Board stated those issues.

Mr. Rassier stated he had read some of the comments and he expressed appreciation that some may not have seen it until recently. He stated that in working with all the staff and parties and Attorneys General that many of the concerns have been weighed. The one big issue that remains and has always been acknowledged is the question of whether or not this legislation which requires a fee rather than a tax will be workable. Staff attorneys feel the fee approach is supportable and defensible and worth proceeding with. Members of the Implementation Committee stated that they did not want a new taxing entity. This issue may be litigated. Another issue, he said, is does the Board have the ability to venture into this area or does it interfere with the right to appropriate water. These are concerns that can be addressed in the legislation to clarify those who have this issue.

Mr. Beck told Mr. Steenson that from the origination of the House Bill and the implementation of the CAMP process, the collection model was always from the counties. He wondered where Mr. Steenson's concern was.

Mr. Steenson said he was only aware from the 21st of January of the legislation. He stated that it isn't so much the manner of collection but the question of can the Board be given the authority by the Legislature to collect a fee since the Constitution gives the Board its authority. Perhaps the Attorney General has evaluated the issue. He stated he had not had time to research the issue. For the companies he represents the greater concern is the legislation should not be subject to interpretation. CAMP objectives are being transposed to the statutes themselves and thus become a

law. His clients are concerned about the administration of water rights in times of shortage. There needs to be a clear distinction between aquifer management and water right administration.

Mr. Tom Arkoosh asked to be recognized. He addressed Mr. Rigby's question about killing the bill. Since the legislation had been displayed to the legal community, there have been 3-5 fatal problems. First, the tax versus fee problem can be resolved. He stated there should be tighter drafting and discussion on this issue. The legal community could go before the Implementation Committee to say that the issues are resolved. This debate cannot go to the Legislature, but should be resolved before. He suggested that those with legal concerns meet with Mr. Rassier and get those issues resolved in the bill. This would be more successful. Chairman Chamberlain stated that time is of the essence. Mr. Arkoosh stated this could happen within the next two weeks.

Mr. Arkoosh went on to ask if this bill is limited to aquifer management or will it drift into water management. Language can be changed to clear that up. The Attorney General's office should invite the legal community to meet and resolve these issues.

Mr. Cuddy stated that his feedback says that the opportunity to go forward is close to zero. This is discouraging because of the amount of taxpayer's money that had been spent on this effort. Those who oppose this should come forward and help to resolve the issues.

Mr. Alberdi stated that he worked on the CAMP process for a long time. He stated he would hate to see this opportunity go by. Time needs to be limited to bring it forward. Attorneys can do their best and go forward.

Chairman Chamberlain apologized to the legal people on the phone that different versions of the legislation were not disseminated.

Mr. Rigby respectfully disagreed that the legislation was not out there for anyone who wanted to find it. He also added that shelving the bill is an option; however, the Governor has committed \$1 million and the Board has matching monies. These options could disappear. Wheeling fees have been paid for recharge until the assessments could come in. Those fees may not continue.

Mr. Chase stated he had served on the CAMP committee for a long time and he found it hard to believe that anyone couldn't get information. He supported Mr. Rigby's statement.

Chairman Chamberlain stated the meeting was open to the water users. Mr. Graham asked for a comment. He stated it was discouraging to have worked this long only to find out that there was not agreement. He found it difficult to believe that the Legislature would pass legislation knowing that funding would be needed later only to disapprove funding. One comment from a letter from Mr. Johnson questioned whether individuals from the trout business were under represented in the CAMP. If that's true, that is a difficult barrier. He liked the idea of waiting another week or two to get attorneys together to work out the difficulties.

Mr. Clive Strong stated that he had observed the process and read the letters; however, these issues could be resolved by settlement. He was not convinced that a meeting with a group of attorneys would have a productive outcome. After his review of the letters he determined some of the complaints are legal issues. Mr. Strong questioned whether the letter-writers were in support of ESPA CAMP. He asked if the parties had a full commitment to the policies of the Implementation Committee.

Chairman Chamberlain asked for response from the parties. Mr. Dan Temple stated A and B Irrigation did not think the plan would solve the issues today; however, his group supports some parts of the plan. He stated that litigation has taught that the wording of legislation is very important. His group fears that if concerns are not addressed, there will be future problems.

Mr. Brian Olmstead, Twin Falls Canal Company, agreed with Mr. Rigby that some people want to kill the legislation; however, he thought they were a minority. Twin Falls Canal Company supports the legislation. Any attorneys representing them will work with Mr. Rassier on the proposed legislation.

Mr. Walt Mullins with Milner Irrigation District accepted participation in the meeting to work through the issues.

Mr. Randy McMillan of Clear Springs Foods expressed support of the concept of ESPA CAMP. He stated he is a fishery biologist. Clear Springs encourages support for working on the legislation with Mr. Rassier. Clear Springs is concerned that if the Board votes to move forward with the legislation and then there is opposition based on legal principles, the legislation will not be passed.

Mr. Lynn Tominaga stated he had not written a letter, but his group also supports CAMP and would like to participate in this meeting.

Ms. Rebecca Casper, an Implementation Committee member, encouraged the attorneys to keep the committee intent in the legislation. The entire process had been free from legal drag because of using the stakeholder model. She expressed personal frustration at the process but she acknowledged that it had been rewarding. She felt disdain that now people are not supportive. She was shocked that these issues were not raised in committee. She said the committee was studying the tax versus fee in 2008 and now there is non-support. She requested the Board to exercise leadership at this time to keep the legislation moving forward. There is a great deal of consensus she added.

Chairman Chamberlain asked if looking back, she thought any group was misrepresented or not represented. Ms. Casper stated no; however, some groups had shrunk back in the meetings. Mr. Beck protested that the letters were not written by newly hired counsel, but by counsel who were already representing groups. Ms. Casper apologized, but some of the counsel were new to her. Chairman Chamberlain stated that water groups have attorneys on their staff. New ground is being charted by this process to solve problems. He asked Mr. Rassier to have a meeting with a group of

attorneys to resolve these issues even though the Governor himself had asked that attorneys not be involved in this process.

Mr. Rassier stated he would be willing to sit down and meet with these parties and Mr. Strong would probably want to be present. Mr. Tominaga stated that he had only seen one or two of the letters and he asked if copies could be provided for his attorneys. The Chairman stated that they will be available on the website. Mr. Anderson stated he had a copy and they would be posted on the website.

Mr. Chase asked if parties could be notified to provide comments within a two-week period. The Chairman stated that the February 11th meeting would cover that need and the following week the Board would meet and make a decision. Mr. Graham asked if any Board members would be present for the attorney meeting. Mr. Rassier suggested to the Board to avoid leaving anyone out. Mr. Bartsch should coordinate the meeting to ensure that everyone is invited. The Chairman wanted the meeting before Wednesday of the next week.

Mr. Bartsch stated that he would coordinate the meeting and he would like to discuss the issue raised by Mr. Strong as to what the attorneys would be discussing in comparison to the framework of the ESPA CAMP Plan.

Mr. Jeff Raybould expressed concern about the structure of the attorney meeting next week. There are unresolved issues about the recharge concept and what the wheeling fees will be in the future. The fees need to be adequate or the problem will not be resolved.

Mr. Bartsch stated that there are two issues here: 1) the constitutional issue; and 2) the legislation itself. He wanted to provide more clarity about the recharge concept and the Board's decision on the wheeling fees. There are different ranges of fees being discussed.

Mr. Stan Hawkins presented his issues. He stated that Mr. Bartsch had received notice from Mr. Hicks that he is no longer physically able to participate in the Implementation Committee. Mr. Bartsch had told Mr. Hicks that the Board needs to fill this position. He stated that Mr. Hicks wanted him to be appointed in his place. Because of that, he felt like their group, the Great Feeder Canals, have been frozen out from what is going on with the Implementation Committee. Mr. Bartsch hadn't responded to his e-mails. He wanted to have his attorney present for the attorney meeting. Mr. Hawkins addressed the comments that people want to kill CAMP. He stated that there are users in his group who do want it to go away, but he felt the issues could be resolved. He stated that the people who are paying the bills need consideration.

Mr. Rigby responded to Mr. Hawkins that he had not just referred to his group, but that there are other groups. Mr. Hawkins stated he had arrived late to the call and he had not heard the whole conversation. Mr. Hawkins added that he had provided an outline to Mr. Bartsch to resolve issues. Mr. Hawkins stated no one had responded to him.

Mr. Bartsch asked if the Board wants a one to two-week process to finalize the legal questions, outline the recharge program and build complete consensus around those issues. The Chairman agreed.

Mr. Graham discussed two points: One, he hoped everyone understood the importance of going ahead with this process. There is hope today. Secondly, he stated that if the ESPA CAMP process is not successful, what other process is there to accomplish these goals. A failure here could jeopardize the CAMP's in the Rathdrum and Treasure Valley.

Mr. Anderson stated that Mr. Bartsch, Mr. Rassier and Mr. Strong will coordinate a meeting with a group of attorneys to discuss components of the legislation and other issues under contention. The Chairman agreed. He stated the attorneys will not change the work of the Implementation Committee.

Mr. Anderson added that staff will work on clarification of the managed recharge approach. Another issue associated with this is the funding part. At the Board meeting the Governor's office had committed \$1 million dollars from stimulus funds with matching funds from the state. A motion was made at the Board meeting to obligate \$1 million from the Pristine Springs fund to match. The Governor clarified that there is no federal requirement for a match, but the Governor's office anticipates that money will be matched with the water users' contribution. Moving ahead with the funding legislation will ensure that. The Governor's office does not support a new tax, but a fee-based approach.

Mr. Craig Evans commented that he was a letter writer and involved in prior recharge activity. He stated that the groundwater users he represents are in favor of the ESPA CAMP process. They desire that all canal companies be involved in recharge efforts and that no preference is given to any canal company. They would not support any preferential treatment. The Chairman stated that as the Water Resource Board reviews recharge efforts, different canal companies may have recharge greater benefits than others. This may be a consideration for the Board in the future.

Mr. Bartsch stated that recharge will be discussed later. He summed up again the procedure for moving forward. The recharge concept developed at the Chubbuck meeting would be discussed again.

Mr. Strong added that this process is on life support at this moment. Funding issues in the Legislature are severe. He stated that having Board presence at the attorney meeting would be very important. Mr. Chase offered to attend the meeting.

Mr. Bartsch expressed a desire to set a tentative date for next Thursday, Feb. 11th to have the attorney meeting. Some time is needed to notify parties of the meeting. The Chairman agreed. Mr. Anderson suggested that a follow-up Board teleconference could be set on the 18th. Chairman Chamberlain agreed that a teleconference on the 18th at 8:30 a.m. should be set. Mr. Bartsch stated he would coordinate another meeting on the recharge issue. Chairman Chamberlain asked if the

recharge issue and other issues could be worked out at that time. Mr. Bartsch responded that if the parties are in agreement, he would present that to the Board. Hopefully, all groups would come back and report to the Board that they are happy with the legislation.

Mr. Rigby stated he had a conflict on the 18th, but he could call in off and on. Secondly, there is unfinished business. Mr. Hawkins indicated Mr. Hicks is no longer able to function. Mr. Anderson noted that the Board had not received any letters from Mr. Hicks. Mr. Bartsch stated he had received two e-mails from Mr. Hicks and Mr. Bartsch told him he needed to communicate with the Board. He stated that this could be reconsidered on the 18th. He suggested including Mr. Hawkins in the recharge and attorney meetings. The committee composition could be discussed at that time.

Mr. Rigby moved that Mr. Stan Hawkins be appointed an interim replacement for Mr. Hicks on the ESPA CAMP Implementation Committee until the Board could act. Mr. Beck seconded. The Chairman asked for a voice vote. All were in favor.

The Chairman asked for this to be an agenda item. Mr. Anderson stated that other nominations will be solicited also. Mr. Beck asked Mr. Hawkins to ask Mr. Hicks to forward a letter to the Board. Mr. Hawkins stated that there had been four other changes to the committee and he wondered if the same process was honored. He asked if Mr. Bartsch could forward a letter from Mr. Hicks. The Chairman responded that the Board would like a letter directly from Mr. Hicks. Mr. Hawkins stated that Mr. Hicks is undergoing medical tests for heart surgery, but he would try to get that. Mr. Bartsch also agreed to forward his e-mail to the Board. For the agenda on the 18th, there are a number of other participation issues that need to be discussed.

Agenda Item No. 4, Other Non-Action Items Board Members May Wish to Present

Mr. Beck stated that the Bureau of Reclamation had not received funding for the Minidoka Dam Raise and the project is on hold. Mr. Chase asked if the additional study for the five-foot raise would go on. Mr. Anderson responded yes. There was further discussion about the meeting on the 11th.

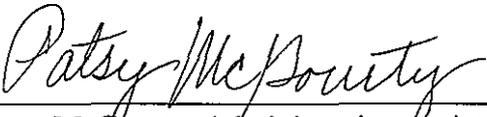
Agenda Item No. 6, Adjournment

The Chairman adjourned the meeting.

Dated this 12th day of February, 2010.



Secretary



Patsy McGourty, Administrative Assistant II

Board Actions:

1. Mr. Rigby moved that Mr. Stan Hawkins be appointed an interim replacement for Mr. Hicks on the ESPA CAMP Implementation Committee until the Board could act. Mr. Beck seconded. The Chairman asked for a voice vote. All were in favor.