



# IDAHO WATER RESOURCE BOARD

## AGENDA

### MEETING NO. 2-14 OF THE IDAHO WATER RESOURCE BOARD

**C.L. "Butch" Otter**  
Governor

Idaho Water Center  
Conf Rm 602B

IWRB Members May Participate by Phone  
322 E. Front St., Boise, Id 83702

**February 5, 2014 at 7:30 a.m.**

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**Roger W. Chase**  
Chairman  
Pocatello  
District 4

**Peter Van Der Meulen**  
Vice-Chairman  
Hailey  
At Large

**Bob Graham**  
Secretary  
Bonners Ferry  
District 1

**Charles "Chuck"  
Cuddy**  
Orofino  
At Large

**Vince Alberdi**  
Kimberly  
At Large

**Jeff Raybould**  
St. Anthony  
At Large

**Albert Barker**  
Boise  
District 2

**John "Bert" Stevenson**  
Rupert  
District 3

1. Roll Call
2. Executive Session – Board will meet pursuant to Idaho Code § 67-2345 subsection (1)(c), for the purpose of considering the acquisition of an interest in real property not presently owned by a public agency. Executive Session is closed to the public.  
Topic: Discussion- Acquisition of water right not owned by a public agency.  
Following adjournment of Executive Session – Meeting reopens to the public
3. Water Rights Acquisition
4. Adjourn

#### AMERICANS WITH DISABILITIES

The meeting will be held in facilities that meet the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting the Idaho Department of Water Resources at (208) 287-4800.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE PURCHASE OF ) A RESOLUTION AUTHORIZING  
WATER RIGHTS NOS. 2-10300A, 2-10300B, ) EXECUTION OF A TERM SHEET  
and 225/240ths of 2-10472 ) AND APPRAISAL

WHEREAS, the Idaho Water Resource Board (the "Board") is a constitutional agency of the State of Idaho and empowered by Idaho Code § 42-1734 to acquire, purchase, lease or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects; and

WHEREAS, the Mountain Home Air Force Base, as well as surrounding agricultural wells and municipal wells, draw their supply from the Mountain Home Aquifer; and

WHEREAS, the Idaho Department of Water Resources (IDWR) estimates that the rate of withdrawal from the Mountain Home Aquifer exceeds the rate of natural recharge to the aquifer and due to declining ground water levels IDWR established the Cinder Cone Butte Critical Ground Water Area in 1981 and the Mountain Home Ground Water Management Area in 1982; and

WHEREAS, the State of Idaho has a tradition of supporting the United States military, and intends to continue that tradition of support and partnership to assist the military in achieving its national security functions; and

WHEREAS, in order to sustain the Base and its mission, a long-term sustainable water supply for the base must be developed; and

WHEREAS, the IDWR and the Board have been discussing water supply conditions with the Base for several years, and intend to continue discussions about securing a water supply for the Base for present and future needs of the Base; and

WHEREAS, if the Base is supplied with surface water from the Snake River, that would begin the process of balancing the withdrawals from, and recharge to, the Mountain Home Aquifer; and

WHEREAS, a 2010 Economic Impact Analysis by the United States Air Force, assisted by Boise State University, shows that the estimated annual economic impact from the Mountain Home Air Force Base is approximately \$1.02 Billion; and

WHEREAS, helping to sustain the Base is consistent with Governor Otter's Project 60 economic initiative, which is a goal to grow Idaho economy to \$60 Billion annually; and

NOW, THEREFORE BE IT RESOLVED, that the Idaho Water Resource Board authorizes the Chairman to execute the Term Sheet dated January 28, 2014 on behalf of the Board for the acquisition of water right nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472

for the purpose of obtaining a water supply for Mountain Home Air Force Base.

NOW, THEREFORE BE IT FURTHER RESOLVED, the Board hereby directs that an appraisal of water right nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472 be completed by an independent appraiser that is knowledgeable about water rights prior to executing a final purchase and sale agreement for said water rights.

DATED this 5th day of February, 2014.

ATTEST:

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ROGER CHASE, Chairman

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BOB GRAHAM, Secretary

## TERM SHEET

### ACQUISITION OF WATER RIGHTS TO SUPPLY WATER TO THE ELMORE COUNTY WATER PROJECT

This non-binding term sheet is intended to summarize the principal terms of a proposed purchase by the Idaho Water Resource Board ("IWRB") of certain Water Rights from the seller J.R. Simplot Company, a Nevada Corporation ("Simplot").

#### RECITALS

A. Water supplies within Elmore County are limited and are presently inadequate to meet the needs of water users. In November 1982, the Idaho Department of Water Resources ("IDWR") established the Mountain Home Ground Water Management Area to manage and better regulate ground water withdrawals from the aquifer. IDWR determined that water in the Mountain Home Study Area was declining and approaching conditions of a critical ground water area.

B. The Mountain Home Air Force Base ("MHAFB") operates a water system within the Mountain Home Ground Water Management Area. MHAFB, which accounts for approximately \$1 billion in annual economic activity within a \$50 billion Idaho economy, needs a replacement water supply. The City of Mountain Home and other water users desire additional water supplies to offset declining ground water levels in the area.

C. The proposed transaction will allow IWRB to investigate the acquisition and transfer of water rights to supply water to the MHAFB. The Water Rights offered for sale provide for the diversion of up to 12.5 cfs from the Snake River for the irrigation of 625 acres at an annual volume of no more than 2,500 acre-feet per year.

D. Simplot and IWRB intend to commence negotiation of a definitive water rights purchase and sales agreement consistent with the terms set forth below. To facilitate the negotiation of the definitive agreement, Simplot and IWRB agree that Simplot will prepare an initial draft of the Water Right Purchase and Sales Agreement ("Agreement").

E. The Agreement shall have the following terms and conditions:

1. Water Rights: The Water rights offered for sale by Simplot to be conveyed to the IWRB are identified as Idaho Department of Water Resources water right nos. 2-10300A, 2-10300B and 225/240<sup>ths</sup> of the rights, quantity and volume available under water right no. 2-10472. Simplot shall retain the remaining balance of the rights, quantity and volume (15/240<sup>ths</sup>) under water right 2-10472 (hereafter referred to as the "Water Rights"). The IWRB may acquire all or a portion of the Water Rights.

2. Purchase Price: The purchase price shall be Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (“Purchase Price”).

- (i) In the event the IWRB chooses to purchase only a portion of the Water Rights, the Purchase Price would become the product of multiplying \$1,000 per acre-foot times the number of acre-feet acquired.
- (ii) The Purchase price shall be paid in cash or other form of immediately available funds at Closing as further described below.

3. Closing. Method of Payment: The Closing of this transaction shall occur at a location that is mutually acceptable. The closing date shall be on or before July 15, 2014. Should the IWRB choose to acquire a portion of the Water Rights, the IWRB shall provide Simplot with written notice that it is making such election and the amount of the Water Rights to be acquired on or before July 1, 2014. The parties acknowledge that the closing of this transaction is contingent upon the appropriation of funds by the Idaho Legislature.

- (i) At Closing, Simplot shall provide the IWRB with a water right quitclaim deed conveying all of Simplot's interest in the Water Rights acquired to the IWRB, except for Simplot's right to repurchase as further described below.

4. Simplot Right to Repurchase Water Rights: Simultaneously with the closing of the sale of the water rights, IWRB and Simplot will execute a separate agreement granting Simplot an option to purchase the water rights from IWRB at \$1,000 per acre foot. The option period for Simplot to exercise its right to purchase water rights shall be no later than February 1, 2021 unless IWRB provides Simplot written notice on or before January 1, 2021 that it is exercising its right to a 5 year extension to February 1, 2026. Simplot’s option to purchase shall be temporarily suspended upon the official offering of sale of the revenue bonds needed to finance the project and shall terminate upon the successful sale and issuance of the bonds. If Simplot fails to exercise its option as described herein, Simplot shall have no further interest in the Water Rights.

5. Limitation on Use of Water Rights. During the option period, IWRB shall not use the Water Rights, or any portion thereof, for any purpose other than for retention or expansion of the MHAFB, without the prior written consent of Simplot which consent shall be granted or withheld in Simplot’s sole discretion.

6. Investigation: Simplot shall cooperate with IWRB and provide all documents readily available to Simplot, including any conceptual engineering and/or design documents for the development of a pumping plant and pipelines previously created to supply water for the MHAFB.

7. Other Provisions: The parties anticipate that the Agreement will also contain such other terms, conditions and provisions as are customary in a real property purchase and sale transaction of this nature. IWRB will, as soon as possible after the execution of this Term Sheet and at its expense, secure an appraisal of the water rights.

Final Agreement: The execution of any binding agreement among the parties is subject to approval by Simplot Boards of Directors and upon the Idaho Water Resource Board adopting of a resolution authorizing the purchase of the Water Rights according to the terms and conditions identified herein.

This Term Sheet is intended as a general expression of the terms and conditions, under which the parties are willing to proceed to prepare, negotiate and if acceptable to all parties in their respective sole discretion, execute a final Agreement. Neither this Term Sheet nor the execution hereof as provided below, shall be binding on either party until the formal Agreement is executed by both parties.

If in agreement with the terms and conditions as outlined above for review and approval, kindly acknowledge the agreement by executing the enclosed copy of this Term Sheet in the space provided below.

If the Term Sheet is not accepted by February 7<sup>th</sup>, 2014, this Term Sheet shall become null and void.

AGREED AND ACCEPTED as of this 5<sup>th</sup> day of February, 2014.



Idaho Water Resource Board

By: Roger Chase

Print Name: Roger Chase

Its: Chairman

Date: 5 February 2014



J. R. Simplot Company

By: David Spurling

Its: Senior Vice President, Secretary and  
General Counsel

Date: 28 January 2014