



# IDAHO WATER RESOURCE BOARD

## MEETING TRANSCRIPT 7-14

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

Idaho Water Center  
Director's Conference Room  
322 East Front Street, PO Box 83720, Boise, Idaho 83720

July 9, 2014

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

Chairman Roger Chase called the meeting to order at approximately 9:35 am. Chuck Cuddy and Jeff Raybould were absent. All other Board members were present.

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

### Agenda Item No. 1, Roll Call

#### *Board Members Present*

**Bob Graham**  
Secretary  
Bonners Ferry  
District 1

Roger Chase, Chairman  
Bob Graham, Secretary  
Bert Stevenson  
Albert Barker

Pete Van Der Meulen, Vice-Chairman  
Vince Alberdi

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

#### *Staff Members Present*

Gary Spackman, Director  
Brian Patton, Bureau Chief  
Clive Strong, Deputy Attorney General  
Harriet Hensley, Deputy Attorney General  
John Homan, Deputy Attorney General  
Jack Peterson, Senior Advisor Emeritus  
Mandi Pearson, Admin. Assistant

**Vince Alberdi**  
Kimberly  
At Large

**Jeff Raybould**  
St. Anthony  
At Large

#### *Guests Present*

Stephen Goodson, Special Assistant to the Governor  
Lynn Tominaga, Idaho Ground Water Association,  
Jon Bowling, Idaho Power  
Shelley Davis, Barker Rosholt & Simpson

**Albert Barker**  
Boise  
District 2

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

### Agenda Item No. 2, Executive Session

At approximately 9:35 am the Board resolved into Executive Session by unanimous consent pursuant to Idaho Code Section 67-2345 (1) subsections (c) and (f), for the purposes of considering the acquisition of an interest in real property not presently owned by a public agency and to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. No action was taken by the Board during the Executive Session. The Board resolved out of Executive Session and into Regular Session at approximately 10:30am.

### Agenda Item No. 3, Mountain Home Water Rights

**Brian Patton:** We are out of Executive Session, Mr. Chairman. We're back on the record, Mandi?

**Mandi Pearson:** Yes.

**Mr. Patton:** The next item on the agenda is Mountain Home Water Rights and you have a resolution in front of you concerning a resolution authorizing execution of a purchase and sale agreement.

**Chairman Chase:** Do we need to have any explanation of that for the record?

**Mr. Patton:** That is the resolution that would authorize the Board to enter into and execute a purchase and sale agreement for the purchase of water rights numbers 2-10300A, 2-10300B, and a certain percentage of 2-10402 [correction, this number should be 2-10472] with the JR Simplot Company. Also associated with that purchase and sale agreement is the associated option agreement that has been discussed and would give Simplot the right to re-purchase those rights under certain conditions in the event that the Board is not successful in completing an agreement with the United States Air Force.

**Chairman Chase:** Is there any discussion on that? Is there a motion? Is there a motion or any discussion?

**Mr. Barker:** Mr. Chairman, we'd looked at- the Board has looked and I've looked at the proposal. It is consistent with the terms of the outline in the terms sheet. It provides a source of water for Mountain Home Air Force Base which the Governor's Office and the Board both have determined are important to maintain the Base into the future. We understand that the Air Force is willing to proceed in this direction and based upon that I would recommend approval of the resolution as proposed by staff.

**Mr. Stevenson:** I would second that.

**Chairman Chase:** The motion has been moved and seconded. Any discussion? Call the roll, please.

**Roll Call Vote:** Mr. Cuddy: Absent; Mr. Alberdi: Aye; Mr. Stevenson: Aye; Mr. Raybould: Absent; Mr. Van Der Meulen: Aye; Mr. Graham: Aye; Mr. Barker: Aye; Chairman Chase: Aye. Motion passed.

**Chairman Chase:** Thank you. Good job on that, John, and all those who worked on that. We really appreciate your efforts.

**John Homan:** Not a problem.

**Mr. Patton:** Mr. Chairman, I would like to recognize both John and Jack Peterson have been instrumental in moving this process forward with the purchase of those water rights and discussions with the Air Force Base.

**Chairman Chase:** Now, Jack, you're still working for us for free, aren't you?

**Jack Peterson:** Yes.

**Mr. Patton:** We keep trying to put him back on the payroll and I've got an office space ready for him, but he just won't quite come back full-time. He is, actually, going to Western States Water Council on our behalf next week to present on this topic. They've asked us to do so. In fact, the Air Force is also sending- how many people? Three?

**Mr. Peterson:** Three. Two from D.O.D in Washington and one from the Air Force out of San Antonio.

**Mr. Patton:** So that meeting will be in Helena, Montana early next week, so Jack is still helping us a lot in this process. I'd just like to recognize that.

**Chairman Chase:** Thank you. Okay, let's move to our next item.

### Agenda Item No. 4, Aqua Life Facility

**Mr. Patton:** Mr. Chairman, the next item on the agenda is the Aqua Life Facility. As you recall, the Board is in the process of acquiring the Aqua Life facility from the Idaho Department of Parks and Recreation. The Aqua Life facility is a fish hatchery located along Billingsley Creek in the Hagerman Valley. Earlier, when the Board authorized the purchase and sale agreement of the Aqua Life facility from Idaho Department of Parks and Recreation, the Board also entered into a Letter of Intent, which is in effect a term sheet, with the Idaho Department of Fish and Game and the Idaho Ground Water Appropriators. That Letter of Intent was subsequently included in the Idaho Ground Water

Appropriators' second mitigation plan, which was approved, I think, with some conditions by the Director last week. And I would like to note for the record that Gary stepped out for this discussion. Since that time, the Idaho Ground Water Appropriators have requested that the Board enter into a new Letter of Intent that would be only between the Water Board and IGWA, the Idaho Ground Water Appropriators. This one does not contemplate any involvement by Idaho Fish and Game. This Letter of Intent contemplates a direct pump of water from the Aqua Life facility back uphill to the Rangen facility rather than involving the three-party agreement, moving water over from the Idaho Fish and Game hatchery that was contemplated in the earlier Letter of Intent that the Board did enter into. With that brief explanation, we do have a representative from the Idaho Ground Water Appropriators present this morning and I would stand for any questions that the Board may have. You also do have a resolution in front of you that would authorize the Board to enter into this new Letter of Intent that IGWA provided.

**Chairman Chase:** Is there any questions for Brian at this time?

**Mr. Alberdi:** Mr. Chairman, this is Vince. Two questions. One, when we go to pumping, or the ground water appropriators go pumping this water from the Aqua Life site up to Rangen's- I'm sure that you've investigated right-of-ways and are those in place or is this something subject to us approving or going along with what we are looking at today and what is the approximate cost to pump the water. Lynn, I guess these questions are for you.

**Lynn Tominaga:** Mr. Chairman, I think that was Vince that asked the question. We are in the process of trying to gain the easements for the additional mile that would be needed to put the pipeline in. The cost would be relatively the same in terms of the second mitigation plan and this one. We're just looking at maybe some frictional loss on the additional mile that would be pumped. So the operation and maintenance and upkeep of the facility would be fairly similar in cost to what our second mitigation plan was involved and I can send you the engineering document from our second mitigation plan if you're interested in that information.

**Mr. Alberdi:** Would the right-of-ways that you are endeavoring to acquire be on county roadways?

**Mr. Tominaga:** I haven't been privy to those easement discussions so I couldn't be specific so I can probably have Randy Budge get ahold of you or T.J. Budge get ahold of you and let you know the other easements or right-of-ways that we would need to gain.

**Mr. Alberdi:** Thank you.

**Chairman Chase:** Any questions at this time?

**Mr. Barker:** Mr. Chairman.

**Chairman Chase:** Go ahead, Al.

**Mr. Barker:** I guess I have significant concerns about what I view as rushing into an agreement like this. I think, from what I have heard, we're buying a fish hatchery that has needs for significant amounts of improvements to make it viable- in the millions of dollars. We are now proposing to sell off the fish hatchery's most valuable asset- its water, or at least a significant portion of its water. I don't know if this is the most senior of the water rights, the most junior of the water rights, or what. I presume IGWA would want the most senior rights. So we end up with, in my view, a broken down facility without its most valuable asset that we're paying a significant amount of State funds for. I just am not comfortable that the Board is adequately protecting this State asset. We don't know what is going to be paid for for this. I just think it's way too premature to enter into an agreement until we know what's going to happen with the rest of the facility and what the price is going to be or the water that's being proposed to be taken from this facility. And based on that, I just can't support this proposal. And if, Brian, you have some response to my concerns, I'd appreciate it.

**Mr. Patton:** Mr. Chairman, Mr. Barker, I understand those concerns. However, I do believe the legislature's intent in directing the Board to acquire this facility was to be able to provide a source of water supplies that could be used to help resolve some of the water supply conflicts that we are experiencing in the Hagerman Valley. In fact, I believe that's right in the Statement of Purpose in the legislation that they passed.

**Chairman Chase:** Brian, this is Roger. Please answer a couple of questions. Number one, do we know

how much water would IGWA be taking and how much would be left? And second, the fish hatchery has some fish- would that be removed? Would the fish hatchery be remediated so that it would be taken back to open land? What would happen with the fish hatchery? Whose responsibility would that be?

**Mr. Patton:** Great questions, Mr. Chairman. You own the fish hatchery, or will shortly own the fish hatchery as soon as we complete the paperwork. The fish that the Aqua Life facility has in real water, wet water between 30 and 40 cfs of springflow depending on the season. The facility also has rights to a certain amount of water that's diverted from Billingsley Creek. So moving 10 cfs of that springflow from Aqua Life to Rangen as is contemplated by the Letter of Intent would still leave 20 to 30 cfs of springflow remaining. That facility is currently leased out to SeaPac on a month-to-month lease and we're working on firming those lease terms up from where they were when it was in ownership by Parks. My understanding is that in the event you entered into this Letter of Intent and then moved forward and completed an agreement with IGWA, that that fish hatchery would still be viable although perhaps at a reduced lease amount and would still continue in operation as a commercial fish hatchery unless the Board and the State decided that there was some higher value for the remaining assets of that property.

**Chairman Chase:** Let me follow up on that because that was a question that I had. That water that's left- could we use that water, for instance, put it in the Water Bank and lease it out to people so there would be a cash flow with us that takes the fish hatchery just out- remove the fish hatchery?

**Mr. Patton:** Ultimately, you could. I think there may ultimately be enough demand in the Hagerman Valley for the full 30 to 40 cfs of springflow in order to help address these conflicts, but we're not there yet. And you are receiving a cash flow from the lease of the fish hatchery to SeaPac. You also have the opportunity based on this Letter of Intent to receive a cash flow for either the purchase or lease of those water supplies to IGWA for delivery to the Rangen facility. So you do have the opportunity to develop additional cash flows here if that's where you want to go.

**Chairman Chase:** Well, that's what I'm looking for- in the long-term what values do we have? I don't want to be in the fish hatchery business. I'd rather find a way to use that water to help us with the issues in the Hagerman Valley so there would never be a fish hatchery there again so that water would help us with some of our other issues- to find a way to use it as something that produces revenue for the Board. Those are my thoughts.

**Mr. Barker:** Mr. Chairman, for Brian, what is it we're getting in a lease- you mentioned this last time and I forgot- from SeaPac? What is it Fish and Game is trying to get from this lease?

**Mr. Patton:** The Department of Parks and Recreation is currently getting \$3000 a month.

**Mr. Barker:** \$3000 a month?

**Mr. Patton:** \$3000 per month, yes.

**Mr. Barker:** And, that is with the idea that they could use the full 40 cfs of water.

**Mr. Patton:** Right, they have expressed concern- not necessarily concern- they've expressed their interest in going to some kind of variable lease rate based on the amount of water that is removed and delivered to other purposes.

**Mr. Barker:** And is that springflow declining as well as the other springflows in the valley are?

**Mr. Patton:** That springflow has not declined nearly as dramatically as some of the other springflows, like Rangen's. But there is some long-term decline that has been observed there, yes.

**Mr. Barker:** So, do we have a plan for what we're going to do with this facility? Are we going to shut it down, are we going to continue to accept something less than \$3000 a month in lease payments? What is it we're going to do if we sell off a portion of this water? What are we going to do with that facility? That's my concern.

**Mr. Patton:** My intent, if you sell off or lease off a portion of this water and it's no longer available for SeaPac's use, would be to continue operating it, leasing it to SeaPac at whatever terms we then agree to. The Board still retains that asset and those water supplies to be used to resolve any future conflicts that may occur in the Hagerman Valley.

**Mr. Barker:** Have we done an Environmental Assessment on the property to know what kind of

liabilities we've taken on when we bought this property?

**Mr. Homan:** Mr. Chairman, Mr. Barker, we acquired it from Parks and there was not an Environmental Assessment done. We have yet to acquire it from Parks. It's been held up for some surveys to be completed, but at some point here in the very near future the property will be transferred from Parks over to the Idaho Water Resource Board.

**Mr. Barker:** So, we've got a facility that is in need of significant repairs to be able to be used as a fish hatchery, at least from Fish and Game's perspective. We've got unknown liabilities that we're taking on and we're getting rid of the best piece of the value of this facility for something that we don't even know what the price is. That's why I'm concerned about where we are in this proceeding- going ahead without knowing the answers to some of those questions. I'm just going to repeat what I said before- I think it's just premature for us to enter into an agreement with IGWA for the purchase of that 10 cfs without having the answers to those questions.

**Mr. Stevenson:** How long is it going to take to get what you want? You have to remember that IGWA's up against the line- they've really got to start construction on that pipeline from Tucker Springs or from this one. If they go from Tucker Springs, then the cost for them to refurbish this for Fish and Game becomes almost astronomical. This is the thing that I'm a little concerned about- the delay. Maybe Fish and Game should have sold it to Clear Springs instead of the State buying it- instead of the Water Board buying Aqua Life. I don't know what the cost was there. Then they would have all the water. Has anybody, Clive or anybody talked to them about how soon...? The other thing I'm concerned about is will the Department approve this mitigation from the water from Aqua Life here, rather than using the other one? Department of Water Resources has got to buy in on that. Brian, do you know where we're at on that?

**Mr. Patton:** The second mitigation plan was approved last week and the third mitigation plan which this is a component of has been filed with the Department. I'm not sure exactly what schedule they'll get to it on.

**Clive Strong:** One additional piece of information you should know is that Rangen did file an acceptance of the water yesterday from the second mitigation plan.

**Mr. Stevenson:** I guess the one thing I'm concerned about is the letter I received yesterday from Cindy at the Department, was that that had to be completed by the 19<sup>th</sup> of January of 2015. If they're going to make those dates, somebody's got to move pretty fast.

**Chairman Chase:** A question- somebody refresh me- did the State Legislature appropriate money from their budget to pay for this or are we paying for this?

**Mr. Patton:** Mr. Chairman, the State Legislature, through House Bill 644, actually directed you to acquire this from the Idaho Department of Parks and Recreation at a cost of \$1.635 million dollars, which is \$1.1 million below its current appraised value. They did not appropriate the dollars, but remember they did appropriate you \$15 million dollars plus the ongoing \$5 million. That was part of the quid pro quo that was going on. It very clearly was their intent- I'm reading from the Statement of Intent here in the legislation- "It is in the public interest for the State to retain ownership of the Aqua Life fish hatchery property and water rights. Retaining ownership allows use of those assets to resolve delivery calls in the Hagerman Valley." So it was very clearly their intent for you to enter into these types of these agreements in order to resolve these water use conflicts.

**Chairman Chase:** Thank you.

**Mr. Graham:** A comment and a question for Brian, I guess. I really intend to lean towards what Al Barker has said, particularly. The key word that he initially said was that we may be premature on this but the question is also: in your opening remarks on this issue, Brian, you said that the Director did something on this issue yesterday with some reservations. Have those reservations been acted upon in this agreement?

**Mr. Patton:** Mr. Chairman, Mr. Graham, no, I said the Director stepped out of the discussion because he is the hearing officer on the Rangen water calls.

**Mr. Graham:** I got that, but this is different. My query is different than that. He reviewed something

yesterday on this subject, and you said that he approved it but had some reservations on it.

**Mr. Patton:** Oh, I see what you're referring to. Last week, he did approve what is known as the second mitigation plan for the Rangen delivery call with some conditions in that that laid out timelines and when the mitigation actions had to be in place.

**Mr. Graham:** And those conditions are part of that now?

**Mr. Patton:** They are part of the mitigation plan that he approved, yes.

**Mr. Graham:** Thank you.

**Mr. Patton:** Mr. Chairman, I would like to remind the Board that they have already entered into a three-party Letter of Intent regarding this facility with IGWA and the Fish and Game that was included as part of that approved second mitigation plan.

**Chairman Chase:** We've already agreed to buy this.

**Mr. Patton:** I didn't catch those questions.

**Chairman Chase:** I said that we've already agreed to buy this fish hatchery.

**Mr. Patton:** Yes, the Legislature has directed you to acquire the fish hatchery and those purchase and sale agreements are in process.

**Mr. Graham:** In that regards then, Brian, with Al's comment about it being premature, if we don't do this now until we get better information, are there any major drawbacks in the immediate future of not agreeing to this today?

**Mr. Patton:** If you do not do this today, the prior Letter of Intent that you have executed with IGWA and Fish and Game is still in effect. That is part of the second mitigation plan. The drawback is that IGWA believes that their third mitigation plan, which is partly reflected by this Letter of Intent, will be a less expensive and easier to put into place mitigation plan than the one that has already been approved as part of the second mitigation plan.

**Mr. Graham:** But that does not tell me that there are major problems created by not moving on this Letter of Intent today.

**Mr. Patton:** They will need the Letter of Intent in order to present that to the Department as part of their third mitigation plan, yes. Otherwise the second mitigation plan that has already been approved will be the one that's in effect.

**Chairman Chase:** A question on that- and this may be for Al, I may put you on the spot here- are there any of these questions or concerns that you have that can be resolved in, say, 30 days?

**Mr. Barker:** Mr. Chairman, I don't know how long it would take to resolve but one of the issues is price. If IGWA thinks this is cheaper they obviously must have an idea of what they think they're going to pay. And the second thing is, what are we going to do with this facility? How much are we going to get in the way of rent. \$3000 a month on a \$1.6 million dollar project a month isn't very much and I guess we hear that number is going down. What is it going to take to take care of this facility? We are the landowners of something that- I think Bert said- was astronomical to repair. Are we going to just shut it down? What is it we're going to do? I'd like to know that before I start selling off the water.

**Mr. Patton:** Mr. Chairman, Mr. Barker, just one comment. You already have agreed to sell off 10 cfs worth in the prior Letter of Intent that was executed.

**Mr. Barker:** Brian, that also included having the facility refurbished.

**Mr. Patton:** It did, in order to move Fish and Game into it, that's correct.

**Mr. Barker:** And it tells us what was going to happen with that facility- how it's going to be used and how it's going to be managed. And now, instead of that, all we've got is no 10 cfs of water for an unknown price.

**Mr. Tominaga:** Mr. Chairman- IGWA is figuring that the same agreement that we had with the Water Board and Fish and Game. We are not asking for less money or any of that. We are just looking at gaining the 10 cfs. So in terms of the amount of money, it is the feeling of IGWA that it would be the same as what was negotiated before.

**Chairman Chase:** Lynn- when you say the same, you mean the operating cost and everything at the end of the day if you do it this way is going to be the same as the plan that was already approved?

**Mr. Tominaga:** Mr. Chairman- I agree. That's the operation and maintenance of the delivery system would be very similar, it's just that we would have some frictional loss or a slight increase in electrical costs over the life of the project.

**Chairman Chase:** To go along with that, somebody could maybe answer this question for me. When I look at this, the value of paying \$1.6 million, it's obvious to me that you're never going to recoup that at \$2 to 3 thousand dollars a month. But to me the value is- it gives us water and it gives us flexibility to use to resolve the issue in the Magic Valley and the calls. There is less water being used. Does that make any sense at all- that that's the real value to us that we've got that 30 cfs to help us with other issues in the Magic Valley?

**Mr. Tominaga:** Mr. Chairman- that's the intent of the Legislature and that's our intent also. We want to try and resolve the issues. I don't know if the Board knows this already, that Rangen has made another delivery call based upon a 1957 water right, so we're not out of the woods yet. There is supposed to be some kind of Status Conference later this month. We had four additional water delivery calls being made against the ground water folks, and so the issues of water curtailment and the effect on the economy of the state is going to be more and more important as we move forward and that is my concern, Mr. Chairman and members of the Board.

**Chairman Chase:** And the other question that goes along with that is, if we have that 30 cfs, could we lease that to people and make more money than what we're making today?

**Mr. Barker:** Mr. Chairman, if I could answer that. This is a non-consumptive water right, so the only people that you could release it to are people who have a non-consumptive need. You can't lease it for use to grow crops with.

**Chairman Chase:** That's what I was looking for, Al. That helps me. Thank you.

**Mr. Barker:** Mr. Chairman, I had a question for Lynn. Lynn, does that mean that the deal is basically the same? Does that mean that you're going to refurbish the hatchery?

**Mr. Tominaga:** Mr. Chairman, Al, what we were looking at is the preliminary costs that I've seen to refurbish and provide the Fish and Game facility is about 7-8 million dollars. We were hoping to avoid some of that by leasing the water from the Water Board or purchasing the water from the Water Board at what we believe is the going price for what we purchased the Blue Lakes and Clear Lakes proposal, but I haven't been privy to most of the negotiations- that's been done through our attorneys. Our intent is to do something similar in terms of the water leasing or purchase, but not necessarily the building or facility.

**Mr. Stevenson:** Clive, as you've listened to this discussion, how much of this plays into solving some of those other problems that we've been working on down in the Hagerman Valley? Has this become a crucial issue there or where are we at on that?

**Mr. Strong:** It's probably worthwhile having a conversation about that right now. Speaker Bedke, Mat Weaver, Brian Patton, and myself met with some of the Hagerman water user interests earlier this week. Those conversations have led to a follow-up meeting that we're going to have with another group to continue working forward on that. There are really two components to the term sheet. Frankly, there's a lot of confusion about the term sheet. Let me clarify a couple things for the record. One, IGWA has referred to the term sheet in both the second mitigation plan and the third mitigation plan, and that has caused concern by some of the water users in the Hagerman Valley that the term sheet has been agreed to. We have made it clear, unequivocally, that the term sheet is simply a straw man. It is not a binding agreement on any party at this time. It is one potential pathway of moving forward. Speaker Bedke made that clear to those representatives on Monday and he will continue to make that point clear. I think what's really happening right now is that there's just a lot of confusion going on and until that confusion gets sorted out, a lot of people are reacting in ways that may not be based upon the full amount of information. To answer more directly your question, Bert, where we stand right now is there is the Rangen delivery call that is being handled through the mitigation plans that are being submitted by IGWA. Where we stand today on that is the second mitigation plan has been approved. The second mitigation plan has been accepted by Rangen as of yesterday, so as it stands right now, nothing else

changing, IGWA has the option of moving forward with the Tucker Springs water and delivering it directly to Rangen pursuant to the agreement that this Board has executed with IGWA and in accordance with the plan. What IGWA seeks to do is a third mitigation plan, and what we're talking about today relates to that third mitigation plan. Its desire is to look at an alternative to Tucker Springs which would be delivery of water directly from the Aqua Life facility to the Rangen Hatchery. The proposal you have before you today is their expression of interest to the Board to move forward on that. The questions that Mr. Barker has raised are very legitimate questions that need to be answered. Those are questions that really come down to negotiating the terms and conditions. What you have is essentially an offer from IGWA to acquire water directly from the hatchery in another way. The question is: What terms and conditions would the Board want to impose on that? So, it seems to me that the discussion that should be happening that hasn't really happened up to this time is for a conversation about what terms and conditions the Board would be willing to consider this alternative. And I'm going to step out a little bit here, but it seems to me that the better course for the Board right now is -you have a Board meeting coming up in Bonners Ferry- would be to allow those conversations to occur between now and then, and then we could provide better information to the Board so you can make a more informed decision.

**Mr. Stevenson:** Thank you, Clive.

**Chairman Chase:** I appreciate that, Clive, because that's what I was thinking. We've got that meeting next week and if we can get some of these answers... thirty days or a week because that just might be helpful for us to answer some of these questions before we make this decision. If it's only a week, I'd be more comfortable doing that.

**Mr. Barker:** Mr. Chairman, based on the discussion, I move we table this issue until the next meeting.

**Chairman Chase:** Until the Board meeting in North Idaho, correct?

**Mr. Barker:** Correct.

**Mr. Alberdi:** I'd second that.

**Chairman Chase:** It's been moved and seconded. Is there any discussion?

**Mr. Stevenson:** I would support that motion.

**Chairman Chase:** Lynn, what does this do for you guys and Brian. I mean, can you get us some good answers- some better answers?

**Mr. Patton:** I'll let Lynn answer that question first, and then John and I will take a shot at that from the staff perspective.

**Mr. Tominaga:** We're just looking at trying to complete our third mitigation plan. Any delay will provide some problems for us because we have to have something constructed by the 15<sup>th</sup> of January and so any delay in terms of finally getting an agreement done. But our intent is to come in and probably offer the same amount as we purchased the other facilities that we've already spent money on, on that cfs price, which is in the 50-70 thousand dollar per cfs. I can tell you right now the fish facilities that we're leasing back to both SeaPac and to Clear Springs is a lot more than what you guys are getting for your lease at Aqua Life, and so I won't say how much we're getting, but I can tell you that you guys are not getting utilization of the facility like you should.

**Chairman Chase:** That is good information to know, Lynn. I appreciate that. Brian?

**Mr. Patton:** We can try and address some of those questions that Mr. Barker raised between now and next week. I'm not sure we'll be able to answer all of them between now and next week. John, do you have any thoughts?

**Mr. Homan:** Mr. Chairman, the agreement to acquire the Aqua Life facilities cost the Board \$1.6 million. Getting \$3000 a month from Sea Pac certainly isn't a very good return on \$1.6 million. What is proposed here- we don't know the details at this time, but Lynn provided a couple of borders to it- is to enter into some negotiations with IGWA and find out the terms of whether it's a sale, whether it's a lease- exactly what they're paying for, and see how that return matches up, and try to get some sort of decent return for the Board's expenditure of a \$1.6 million. And then with what's left over that IGWA doesn't use, then we can find out what SeaPac's willing to pay. We'll probably have to adjust the lease. We've submitted a month-to-month type of lease in writing to SeaPac. They haven't really responded

officially, although we've heard that they want it to be variable depending on how much water is available. So these are some of the details we need to work through. The Letter of Intent is structured as a non-binding general expression of intent and the purpose for it is to try to set the groundwork to foster discussions of these important details. Perhaps if everything goes well we can find some preliminary numbers for the Board to kick around at its meeting next week.

**Chairman Chase:** Thank you. Any other discussion?

**Mr. Alberdi:** A question for Clive in regards to the balance of the water that remains in Aqua Life in the event that 10 cfs is pumped to Rangen. Are there any benefits that you can see, Clive, down the road for mitigation of the balance of that water?

**Mr. Strong:** Yes.

**Mr. Alberdi:** And if so, maybe we can discuss that in Bonners Ferry?

**Mr. Strong:** Correct, we can do that.

**Mr. Patton:** Mr. Chairman, Mr. Alberdi, I think there will be no shortage of places to utilize that water for mitigation and resolving conflicts in the Hagerman Valley.

**Chairman Chase:** We've got a motion on the floor- is there any other discussion? Call the roll, please.

**Mr. Patton:** Mr. Chairman, I think you can just do a voice vote.

**Chairman Chase:** Okay, all in favor?

**Voice Vote. All in favor. Motion passed.**

**Mr. Patton:** Mr. Chairman, we'll add that to the agenda for the meeting in Bonners Ferry and spend some more quality time with this topic in Bonners Ferry.

**Mr. Graham:** Be careful, we don't have a lot of time there.

**Chairman Chase:** If we start earlier up there, like at 7, it's really only 8 to most of us.

#### **Agenda Item No. 5, Swan Falls Agreement Minimum Flows**

**Mr. Patton:** Mr. Chairman, next item on the agenda is Swan Falls Agreement Minimum Flows and I'm going to turn the floor over to Clive to lead this discussion.

**Mr. Strong:** Do we want to get the Director back in since he's been involved?

**Mr. Patton:** Yes.

**Mr. Strong:** I'd like to just wait for him.

**Chairman Chase:** If we're waiting for someone to come in- I've talked to a couple of you about some items we're going to discuss in North Idaho. It may be we put some time limits on some of these discussions so the people know that we've got a lot to cover too. We might want to look at that- maybe say "You've got fifteen minutes to cover this issue," if need be.

**Mr. Patton:** I think we can also advance the start times to, say, 8 o'clock on both days, perhaps. We'll have to look at Thursday with those that may be travelling on the State Plane and see what we can do as far as start times to gain a few more minutes. He's walking in now.

**Chairman Chase:** I'm sure Clive is going to get us out before noon.

**Mr. Strong:** We'll get you out before noon- or I can get you out before noon, depending on how many questions you ask.

**Chairman Chase:** That's the problem.

**Mr. Barker:** Was that directed at me, Clive?

**Mr. Strong:** I'm not directing that to anybody.

\*Laughter\*

**Mr. Patton:** Thank you for taking the time this morning. I didn't really intend it to be quite this long, so thanks for making the time.

**Chairman Chase:** Okay, let's move forward.

**Mr. Strong:** Gary, we're just ready to start the Swan Falls discussion. Do you want to lead that with the meetings we've had with Idaho Power Company and then I can fill in behind you, or how would you like to do that?

**Director Spackman:** I'd be happy to speak for just a minute. Thank you. I'm walking in cold into a meeting without being prepared and without any notes and maybe I'll make enough missteps that Jon Bowling here will close me down. Members of the Board and Chairman Chase, we and Idaho Power have been watching very carefully the information that is being measured and reported about flows in the Snake River in the Swan Falls area and particularly at the Murphy Gage. We've also been watching other gaging stations and we've been monitoring the flows in the Snake River below Milner as well as some other stations and we've been tracking the releases of storage for flow augmentation and now as I understand it those releases have ended, I think ended Monday evening, and then my understanding is that Idaho Power is releasing water out of American Falls their own storage, and those will continue for, how long, Jon, maybe a week or ten days or something? Or two weeks?

**Jon Bowling:** Let's see, probably another 12 days.

**Director Spackman:** We've even been looking at some information on springflows and trying to compare and looking at where we're at, but it appears that the flows in the Snake River are may be in the range of 200 cfs less this year than they were last year. There are technical people that have been meeting from both the Department and Idaho Power on a regular basis. There's an ongoing dialogue maybe daily. I think it has been to that point, Jon, because everybody wants to be on the same page. We want to accurately measure as best we can so we can predict what's happening. We've also met with representatives from Idaho Power last week. I think Department staff out-numbered Idaho Power three-to-one, Jon. Maybe two-to-one, but I think we were three-to-one. Of course they come in with more firepower. It wasn't controversial. What we were really trying to do is figure out what the Department and the Board and Idaho Power can do as we approach a possible reduction in flows below the minimum flow of 3900 cfs. So we've talked about possibilities. The initial predictions were we probably wouldn't drop below 3900. I'm not sure anybody anticipated the string of hundred-degree days that we're looking at. We really hadn't talked about the heat and it will be interesting as the releases for flow augmentation come in and Idaho Power's water comes in and we subtract that quantity of storage that's contributed, what those numbers will start to show. We'll be very close to the 3900 if we don't drop below it this year, and so we needed to put something in place and talk about it and I hope that sets the stage, Clive, for a further discussion with the Board.

**Mr. Strong:** It really does. Thanks, Gary. We emailed out to you a couple of documents that I've prepared in the past and I've presented to the Board. It seems like each time we try to get to this issue we come to an agenda and end up at the end of the agenda and we're compressed for time. What I'd like to do is give you an overview of what we're proposing and encourage you to identify the questions or concerns that you have and I'll try to address those rather than go through a longer history, because I could spend the better part of a day on this subject, but I'm not sure that's the most productive use of our time. The practicality that we're dealing with is that we've now got a monitoring plan in place, as Gary has referenced. It's one that's been agreed to by all parties. There is still some reservations by representatives of the city of Pocatello, but I think all the rest of the technical group are in agreement on the methodology that we're going to use to measure the flows at Swan Falls and that would be a three day moving average. The reason we do that is, under the decrees for the water rights it provides that we're to maintain 3900 cfs average daily flow. When I say maintain, that's the protected right at the river. There's often times people talk in terms of breaching the Swan Falls Agreement. It's really not a breach- the Swan Falls Agreement has been fully executed. What we're really dealing with now are water right issues. The priority date for the Company's water rights ensure or provide that we would regulate the river to achieve those minimum flows as against water rights that are treated as junior to those water rights. Under the Swan Falls Agreement there are two classes of water rights. There's what we call the fully subordinated water rights. Those are the ones largely, and I'm going to simplify it here, are ones that pre-date October 25, 1984- the decreed rights. That's the date the Agreement was executed and is one that we use and say those rights, regardless of what the flow in the river is, if those rights pull up below 3900, they are not subject to curtailment. On the other hand, the water rights that are junior to that October 25, 1984 date, and again that's an over-simplification, and divert within an area that we call

the trust water area, which is identified on a map and the rules, those rights are subject to curtailment if the flows fall below 3900 cfs. That's the issue that we're trying to grapple with, is what happens in the event that we reach that 3900 cfs. There are some practical considerations that we have to deal with.

**Chairman Chase:** Clive, I'm going to interrupt you for just a minute, to make sure I'm clear on something. The trust water rights- that's already policy that we can use that water, right?

**Mr. Strong:** It's not policy- this is what the law is. What the State and the Company agreed to as part of the Swan Falls Agreement, is that the flows above 3900 cfs and 5600 cfs in the Snake River are available for development, provided that if the flows fall below the 3900 or 5600, then those rights are subject to curtailment. So as we approach that number, then there comes the practical question of does curtailment really provide an adequate remedy? Both the Company and the State, I think, are in agreement on this, that it's not really a desired outcome from either party's perspective. It's kind of a blunt instrument that is there and has to be exercised if we can't find another solution. It's a blunt instrument in that if we curtail those water rights, the reality is the water won't accrue to the benefit of the Company at its time of need at the facility. Likewise, the curtailment of those water rights has significant economic consequences throughout the State. What we've been exploring is the idea of creating essentially a Bank, which would take into account that if those flows go below 3900 cfs, then there would be a debit we would owe. And when I say we that's the royal we, because it's not a State obligation to do that, but an overall obligation of the water user community to make that available. What we're proposing for this year is that the Board make its storage space available in the event that we fall below that 3900/5600 as an offset for any debits that would be owed. The Company would then be able to call on that water at a time that was consistent with its needs. The practicality of that is it gives the Company a remedy that's effective in terms of offset, and at the same time it avoids the economic consequences of a larger curtailment. As you can see in the resolution that's before you, the proposal is really an interim measure, because long-term this is an obligation that needs to fall to those that divert trust water, so the Department will be moving forward this fall with those trust water rights to begin developing a process for, if they want to avoid the curtailment, this banking concept. What we're trying to do is use this as a bridge for this year. I'm going to step back for just a second- we don't run the risk of falling below 3900 this year because the Company will operate the river in a way to sustain at least the 3900 because it has an obligation under its FERC license. But, as the Agreement makes clear, then we deduct from the flow in the river those actions that are attributable to the Company's operations. One of those actions attributable to the Company's operations is the release of its water or rental of water above the Milner Dam. The Company is going to begin releasing its water, and so as we calculate those flows at the Murphy Gage, we need to back out the water that's attributable to the Company's storage space, and that's when we'll probably see, if we do encounter it this year, we'll see a debit there but the flows won't actually be below 3900. That's why this debit system would work, because the flows will stay up there but the Company would then have access to that water at a time that it could use to benefit its rate payers and overall Company operations. In broad strokes, that's the proposal that you have before you, is this idea of creating on a temporary basis this bank. I did hear from Jim Tucker, the Company's attorney. He's met with the Company's execs. They have reviewed this proposal. He has indicated to me that they are supportive of this proposal and they're waiting for a reaction back from the Board. Assuming this is acceptable from the Board's perspective, it would give us the mechanism to deal with any potential consequences this year and provide a pathway for addressing this problem in a longer-term basis. With that, Mr. Chairman, let me stop and what I'd like to do is try to entertain any questions you might have so I can have the conversation more focused on information that may be helpful to you.

**Chairman Chase:** Thanks, Clive. Questions?

**Mr. Alberdi:** Mr. Chairman, Clive, what's the alternative if we don't go along? Is it curtailment?

**Mr. Strong:** Yes, that is the alternative- curtailment.

**Mr. Alberdi:** Any other alternatives?

**Mr. Strong:** It's either water or curtailment. I don't know of any others that we have available this year

to address the problem should it arise. What we're hoping is that the hot weather will cool down a little bit and we'll avoid it for one more year.

**Mr. Stevenson:** Clive, I'm not as familiar as Vince or others. This 5000 cfs that we have in storage, what would happen in succeeding years, under this agreement if our reservoirs don't fill?

**Mr. Strong:** Mr. Chairman, Mr. Stevenson, a correction: it's 5000 acre feet of storage space. My understanding is we have around 4000 acre feet of actual water in that storage space.

**Mr. Patton:** Just under as of today.

**Mr. Strong:** Right. So, what happens is if that water goes down then we have a deficit in the Board's storage account. If we had long-term succession of dry years, this is not a long-term solution to that problem. That's why we're saying this really needs to be an interim measure and we need to begin now to plan for the longer term solutions. There are some potential longer term solutions that would require negotiations with parties. You could enter into agreements not to divert, for example, as a way to keep flows in the river. You could enter into some programs that would deal with trying to do some off-stream storage that could be provided at various times, or optioning for water in the future. I think all of those discussions are on the table, but we need to get the right people around the table to begin having those discussions.

**Mr. Stevenson:** Thank you, Clive.

**Mr. Van Der Meulen:** Mr. Chairman, a question for Brian. Brian, I don't have a good feel for how long that 5000 acre feet of storage space is good for at some different average flow rates that we might miss the Murphy minimum by. Do we have anything on that?

**Mr. Alberdi:** I can help you out. If it's 4000 acre feet, that is 2000 second feet however you want it. If you want it for 10 days, it's 200 a day. You can adjust that 4000, divide it by the number of days and you've got your flow.

**Mr. Strong:** Typically we've seen in the past that this low-flow period extends for a week to two weeks.

**Mr. Alberdi:** So if we went 10 days that would be 200, Pete, that's where we would be. If we went 14 it would be accordingly less, probably about 165.

**Mr. Van Der Meulen:** Thanks, Vince.

**Chairman Chase:** Any other questions?

**Mr. Barker:** Mr. Chairman, is there any talk about asking the water users who are subject to the trust water, to somehow reimburse the Board if we have to make this water available to Idaho Power this year? Or is that something we're going to postpone until the future?

**Mr. Strong:** Mr. Chairman, Mr. Barker, the proposal right now is to go ahead and solve the problem for the immediate. It does not preclude a conversation with regard to recoupment of those costs. But practically, given the timeframe we have right now, it's just not feasible to get that commitment before we have to make the decision.

**Mr. Alberdi:** Mr. Chairman, Clive, in regards to the debit- it sounds like something that might be workable- but how to you pay that debit if you've got a dry year? How does that happen?

**Mr. Strong:** Mr. Chairman, Mr. Alberdi, right now the way we pay that debit is- our expectation is the storage space is sufficient to pay it for this year, but for long-term that is not a long-term solution. Those are the conversations we've got to have.

**Mr. Van Der Meulen:** Mr. Chairman, Clive, I think it's a fairly creative way to solve the problem this year and I appreciate your concern for next year. I'd like to suggest we consider the last paragraph of the document, at the last sentence that we change it to read "develop a mechanism whereby in the future the costs of and fees for delivery" of the storage water. So we reinforce that last paragraph that this is just an interim solution for this year and that our expectations are that the trust water right holders will be paying for this water in the future.

**Mr. Strong:** Those sound reasonable. I know the Director's been trying to jump in on the conversation here.

**Director Spackman:** Mr. Chairman and members of the Board, all I wanted to say is that the Department has committed to initiate contact and discussions with those trust water right holders this

fall and start working through them a series of discussions about assuming their obligations that you're talking about, both for the payment of the administrative costs and delivery of the Board's water but also talking about the other alternatives that Clive identified. We've told those people in a previous letter that we sent to them, particularly those folks whose term permits or term licenses have expired or are expiring that these conversations will begin and we'll start those conversations in earnest this fall. Thanks.

**Mr. Van Der Meulen:** Mr. Director, Mr. Chairman, this will just tell them one more time.

**Mr. Strong:** Pete, could you take us back so we can get the words in the right place?

**Mr. Van Der Meulen:** The tail-end of the last sentence of the last paragraph: "develop a mechanism whereby in the future the costs of and fees for delivery of the Palisades storage water ... will be borne by the Trust Water Right owners." Just to put them on notice that in the future they're going to pay for the water and the cost of delivery. That's the only hiccup I've had in this whole thing. I think this debit system is really a creative way to work through this.

**Mr. Strong:** I have to commend the Company. They've been very helpful and cooperative as we've worked through this problem.

**Mr. Van Der Meulen:** But you know they get an advantage out of this too, and I assume Jon's there, because they'll get to call for this water when it will be worth the most to them.

**Mr. Strong:** And that benefits us all as both rate payers and tax payers.

**Mr. Van Der Meulen:** You bet, you bet. I don't have a problem with it at all. If they get something out of it for going the extra mile to work with us and with the trust water right holders, then good on them. It ought to work for everybody to be a good deal.

**Chairman Chase:** Pete, a question. You left out the word "administrative" and I assume you did that because by just saying "fees," it's all fees including administrative.

**Mr. Van Der Meulen:** Absolutely. Any fee that came by, they'd pick up. The Board and the Company and the Department, I think, are really doing their best to work with these people and keeping them in business because as I understand in having read that material before, their options are either to mitigate or curtail. Pick one. We're really putting together for them the basis of what can potentially be a really good mitigation program. Thanks.

**Chairman Chase:** Any other discussion? Do we need a motion, then, with these changes? Is that where we're at?

**Mr. Patton:** Yes, Mr. Chairman, you would need a motion to adopt the resolution in front of you with the changes that have been proposed by Mr. Van Der Meulen.

**Mr. Barker:** I make that motion, Mr. Chairman.

**Chairman Chase:** Is there a second?

**Mr. Stevenson:** I'll second that.

**Chairman Chase:** Any discussion? Voice vote here or...?

**Mr. Patton:** I would suggest a roll call vote. There is the potential for dollars to exchange hands here. I think we just better be safe.

**Chairman Chase:** Mandi, please give us the roll call vote please.

**Roll Call Vote:** Mr. Cuddy: Absent; Mr. Alberdi: Aye; Mr. Stevenson: Aye; Mr. Raybould: Absent; Mr. Van Der Meulen: Aye; Mr. Graham: Absent; Mr. Barker: Aye; Chairman Chase: Aye. Motion passed.

**Mr. Strong:** Mr. Chairman, a point of personal privilege?

**Chairman Chase:** You've got it.

**Mr. Strong:** We got done in less than an hour.

**Chairman Chase:** Clive, I'm really proud of you today, buddy.

\*laughter\*

#### **Agenda Item No. 6, Other Non-Action Items Board Members may wish to discuss**

**Mr. Patton:** Mr. Chairman, you're at Other Non-Action Items Board Members may wish to discuss, and I believe you had a few things that you wanted to discuss.

**Chairman Chase:** We're going to discuss them in North Idaho, and I'll send an email out about them. Just a few things I want to give you a heads-up or three things I want the Board to think about. We need to spend more time talking about money, in my opinion, and where our money is going and probably the time to do that would be in the study session before the Board meeting. It's obvious from the discussion today, we're dealing with millions and millions of dollars of money more often than we have in the past, so I'd like to see us do that. Second, we're looking for some ideas on recharge projects and I want to discuss that a little bit up in North Idaho. Are there some ways to contract out with some people or any ideas you have on that, which I think would be really important to us. I'll send an email out that kind of explains my thoughts on those so we can discuss them up in North Idaho next week. That's all I have. Anybody else have anything?

**Stephen Goodson:** Mr. Chairman, this is Stephen Goodson with the Governor's Office. May I have the floor?

**Chairman Chase:** You sure can, Stephen.

**Mr. Goodson:** Mr. Chairman, members of the Board, prior to the vote on the purchase of the Simplot water rights, I should have declared that the Governor, although he appoints members of the Board, the purchase of the Simplot water rights could have a potential conflict of interest for the Governor, seeing that his family members have an interest in the Simplot Revocable Trust, so I just wanted to get that on the record and the Governor does recognize that it's a conflict of interest, but although he did not vote, he does appoint members of the Board and would just like to get that on the record.

**Chairman Chase:** Thank you, Stephen, we appreciate you doing that.

**Mr. Goodson:** Thank you, Mr. Chairman.

**Chairman Chase:** Anything else?

#### **Agenda Item No. 7, Adjourn**

**Chairman Chase:** Do I have a motion to adjourn?

**Mr. Barker:** So moved.

**Mr. Van Der Meulen:** Second.

**Voice Vote. All in favor. Motion passed.**

**Chairman Chase:** Thanks, everybody.

The IWRB Meeting 7-14 adjourned at approximately 11:45 am.

Respectfully submitted this 18<sup>th</sup> day of July, 2014.

  
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Bob Graham, Secretary

  
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Mandi Pearson, Administrative Assistant II

Board Actions:

1. Mr. Barker made a motion that the Board approve the resolution authorizing execution of a purchase and sale agreement and option agreement in the matter of the purchase of water rights nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472. Mr. Stevenson seconded the motion. Roll Call Vote. 6 Ayes, 2 Absent. Motion passed.
2. Mr. Barker made a motion to table the Aqua Life Facility issue until the next meeting. Mr. Alberdi seconded the motion. Voice Vote. All were in favor. Motion passed.
3. Mr. Barker made a motion to adopt the resolution in the matter of the Swan Falls Agreement minimum flows with the stated changes. Mr. Stevenson seconded the motion. Roll Call Vote. 5 Ayes, 3 Absent. Motion passed.