EASTERN SNAKE PLAIN AQUIFER WORKING GROUP MEETING

MINUTES
WEDNESDAY, DECEMBER 8, 2004
9:00 A.M., BOISE CITY COUNCIL CHAMBERS
BOISE CITY HALL, BOISE, IDAHO

The meeting was called to order by Cochairman Representative Dell Raybould at 9:30 a.m. Other committee members present were newly appointed Cochairman Senator Don Burtenshaw, Senator Laird Noh, Senator Dean Cameron and Representative Jack Barraclough. Senator Stanley Williams, Senator Brent Hill, Senator Clint Stennett, Senator Bert Marley, Representative Maxine Bell, Representative JoAn Wood and Representative Wendy Jaquet were absent and excused. Speaker Bruce Newcomb was also in attendance.

Others present were Joe Jordan, Idaho Water Resources Board; Mike Faulkner, North Snake Ground Water District; Clive Strong, Attorney General's Office; Chuck Brendecke, Lynn Tominaga, Tim Deeg, Jason Webster, Mike Creamer, Randy Budge and Brenda Tominaga, Idaho Ground Water Appropriators; Jerry Rigby; Craig Evans, Bingham Ground Water District; Lynn Carlquist, Rodney Bolich and Rex Minchey, North Snake Ground Water District; Randy MacMillan, Clear Springs Foods, Justin May, Rangen, Inc.; Rocky Barker, Idaho Statesman; Byron Evans, BMLR; Keith Cornelison; Jeff Clawson, Water District 120; Linda Lemmon and Gary Lemmon, Thousand Springs Water Users Association; Bill Taylor, Bonneville-Jefferson Ground Water District; Ted Whiteman, Jerome Cheese Company; Bert Bowler, Idaho Rivers United; Bill Jones; Lynn Babington, Lynclif Farms; Gayle Batt, Idaho Water Users Association and Dennis Tanikuni, Idaho Farm Bureau. Staff members present were Katharine Gerrity, Toni Hobbs and Ray Houston.

After announcing **Senator Burtenshaw** as the new cochairman of the committee, **Representative Raybould** commented that it would be difficult to replace **Senator Noh** and the knowledge that he has gained over the years. **Senator Burtenshaw** noted that it is apparent,

from the information presented over the summer at all of the various meetings, that it will take the cooperation and input of many different groups to solve the problems being addressed by the Committee. **Senator Burtenshaw** went on to say that he is confident that everyone will do their best to find a workable solution.

Director Karl Dreher, Idaho Department of Water Resources, was introduced to give a presentation on the status of settlement efforts relating to the Eastern Snake Plain Aquifer.

Before **Director Dreher** began his presentation, he noted that informational meetings have led to a series of negotiations between ground water districts in Water District 130 and the ground water districts in Water District 120. Each group of ground water districts is negotiating with the affected group of surface water right holders in their area. He said that it was his understanding that some people in the Mud Lake area are interested in forming a ground water district. The Director noted that, in his opinion, this would be a good idea. He went on to say that as the adjudication comes to an end and water rights are decreed, any party to the adjudication, including the state, can petition the court for authority to be given interim administration of those rights. Pursuant to the laws in Idaho that deal with water rights administration, when water rights are decreed, the Director of the Idaho Department of Water Resources is required to create water districts with water masters to begin administering those rights in accordance with their priority and other elements.

Director Dreher said that a water district is coming to the Mud Lake area to be known as Water District 110. This creates the potential for ground water rights being administered together with surface water rights in accordance with various priorities. In times of shortages, as we have seen in the Thousand Springs area and the American Falls area, the ground water rights in the Mud Lake and surrounding area will be subject to administration. In times of shortages this may mean, that without mitigation, those rights may face potential curtailment. According to **Director Dreher,** it is very difficult for an individual right holder to put together an adequate mitigation plan. He noted that Idaho statutes allow for the voluntary creation of ground water districts for the primary purpose of providing a vehicle to provide mitigation that will allow for out of priority diversions to continue. Without a ground water district in place, in **Director Dreher's** opinion, it will be very difficult for the people in the Mud Lake area to continue to divert water with

relatively junior water rights in times of shortage.

Director Dreher said that he remains optimistic that there are solutions to these issues at hand that are reasonable and can be implemented so they will make a difference. Whether those solutions are acceptable to either side is another question. From **Director Dreher's** perspective there are things that can be done that are affordable and will make a difference. In his opinion, progress is being made towards coming to some form of a longer term agreement in the Thousand Springs area. This does not mean that there is 100% agreement or 100% consensus but, from **Director Dreher's** perspective, there seems to be a dynamic where the ground water users and affected holders of surface water rights seem to be narrowing their differences, with some exceptions.

Director Dreher went on to describe settlement efforts that have been discussed primarily in the negotiations involving the Thousand Springs area. This information is available in a power point presentation posted on the Idaho Department of Water Resources website http://www.idwr.state.id.us/Committee/default.htm with other Eastern Snake Plain Aquifer working group information. **Director Dreher** went on to say that a concept is being developed that recognizes, in terms of mitigation, that there needs to be an identified, quantified, obligation of the ground water districts. If the obligation is not performed, according to **Director Dreher,** the only remaining alternative is curtailment of the junior priority rights. In addition, there would also be commitments by the State of Idaho. Taken together there would be a level of mitigation that would hopefully be negotiated and beyond that there would be commitments that the state would make primarily addressing restoration or enhancement of the resource.

In looking at how these obligations and commitments can be met, one potential obligation of the ground water districts could include the buy down of demands through the use of subordination agreements. **Director Dreher** explained that subordination agreements have always been a part of the prior appropriation system of laws. They are not a new idea in Idaho. They are a vehicle under which a junior priority right can buy down the call made by a senior priority water right holder. In the opinion of **Director Dreher, Clive Strong and various legislators,** this is an obligation that is appropriate for the mitigation side the issue.

Another potential obligation of ground water districts would involve

the rental of natural flow rights purchased by the state. **Director Dreher** said that the invitation for the offer to sell was issued and is posted on the Idaho Department of Water Resources website. There was also a press release issued to help get the word out. Since the offer to sell ends sometime in January, there is not a lot of time for people to respond. He clarified that this is not an offer to purchase because the price has not been set. The purpose of the offer to sell is to allow the state to gauge how much interest there is from water right holders below the Thousand Springs area to see if the state can assist in meeting the obligation for 60,000 acre feet of natural flow that the Bureau of Reclamation is entitled to secure pursuant to the Nez Perce Agreement. It is also to see how much interest there may be beyond that to be used due to shortages that exist on the Eastern Snake Plain. If respondents to that offer have a water right the state thinks would be usable for the purposes of meeting the ESA obligations and for purposes of addressing the shortages on the Eastern Snake Plain, the state could potentially lease that water right for 2005. At this point the BOR has chosen not to initiate a leasing program for 2005. Instead the Bureau is hoping the state's efforts in securing the offers to sell through leasing will be sufficient to meet their needs in 2005.

To the extent the state does acquire natural flow below the Thousand Springs area, potential obligations of ground water districts, according to **Director Dreher,** may include rental of these natural flow rights for:

- Direct delivery to shortened senior water rights;
- Conversions from ground water irrigation; and
- Surface water delivery through the Sandy Pipeline.

Director Dreher said that recharge has not been included in these obligations because the water is probably too expensive to be used for that purpose. Rental rates for the water would be comparable, if not equal, to what the BOR would be paying for storage water for flow augmentation. In his opinion, it does not make sense to use water that is that expensive for recharge. It makes more sense to use it to directly address the shortages in the form of mitigation.

In addition to renting the natural flow, to the extent that additional storage water is available for rental from the Water District 01 rental pool, that is viewed as another potential obligation of the ground water districts. In addition, other potential obligations of the districts include water management projects for the purpose of averting calls

and targeted recharge, in terms of affecting a particular group of springs for the purposes of mitigation.

Curtailment of irrigated acreage to offset the shortfalls is another potential obligation for ground water districts. **Director Dreher** said that while he can identify the rights that need to be curtailed, if necessary, a better solution in the context of mitigation, might be for the ground water districts to identify where these acreages are located that should be curtailed.

Potential commitments by the State of Idaho would include the provision of matching funds, both in-kind and cash, for the CREP program. **Director Dreher** noted that due to the fact that the issue of whether the cash should be provided by the state or whether it should be a mitigation commitment of the ground water users has not been resolved, the state commitment for the CREP program is focusing on the in-kind match at this time.

According to **Director Dreher,** another potential commitment of the state is the subsidization of the purchase of existing water rights. With regard to the revenue needed to pay for the bonds that might be issued to acquire natural flow rights, to the extent that there is a difference between the revenue that can be created through renting those rights and the revenue needed to repay the bonds, that could be a state commitment. This would include assessments to the parties that are directly benefitted by the purchase.

Director Dreher noted that large scale managed recharge, for the purpose of improving supply and overall conditions in the Eastern Snake Plain Aquifer, is another potential state commitment. According to **Director Dreher,** large scale recharge is not going to be easy and there are numerous institutional factors that have to be resolved.

Another potential state commitment, according to **Director Dreher,** would be water management projects to improve supply. The difference between this obligation and the obligation for ground water districts is that the ground water districts would undertake water management projects to avert calls. The state would undertake water management projects to improve supply.

Director Dreher said that state commitments could also potentially include cost sharing for continued financial assistance from the Department of Commerce, the extension service and so on.

Director Dreher went on to say that the state would also potentially commit to the maintenance of the ground water model. This tool is very important and will continue to be so in terms of making decisions. It is the best tool available to quantify the interaction between ground water and natural surface water but people have to have confidence in it. For that to happen, it has to be maintained.

Another state commitment, according to **Director Dreher,** would be to fulfill its statutory authorities and obligations to enforce and administer water rights.

Director Dreher said that in discussing these obligations, the ground water districts have proposed some additional requirements. These requirements include correction of measurement and reporting of surface water diversions where it is insufficient. The districts also propose that agreements be in place to wheel or convey supplemental supplies. Another proposal of the districts is that agreements be in place to accept substitute supplies.

Obligations, as proposed by ground water districts, for water users in general, include funding of Eastern Snake Plain Aquifer management, both long and short term as well as participation in the planning and implementation of any type of management plan.

Director Dreher said that one question that has been asked repeatedly is how the proposals would be paid for. In an effort to advance the dialogue, **Clive Strong** volunteered to put up a "strawman" of how costs could be allocated. The proposal is simply an idea to get dialogue going, and to demonstrate that the proposals could be accomplished.

Director Dreher went on to say that assumptions were made that the cost to accomplish the proposal would be $135 million and that revenue bonds could be issued for the entire $135 million at a 5% interest rate. If that were the case, it would take an income stream of about $9 million per year. The following proposals include three allocations of cost for ground water users on the Eastern Snake River Plain (users above the springs), surface water users on the Eastern Snake River Plain and water users below the plain in the Thousand Springs, Buhl and Hagerman area.

Ground Water Uses on the Eastern Snake River Plain

Water Use	Fee per Unit	No. Of Units	Fee Subtotal
Ground water irrigation only	$5/acre	889,000 acres	$4,445,000
Supplemental ground water	$1 + $4 * % ground water/acre	348,600 acres	$1,046,000
Domestic	$25/residence	50,000	$1,250,000
Municipal	$250/cfs	760 cfs	$ 190,000
Commercial	$250/cfs	180 cfs	$ 45,000
Industrial	$250/cfs	200 cfs	$ 50,000
Hydropower	-	-	-
Fish Propagation	-	-	-
		Totals:	$7,026,000

Surface Water Uses on the Eastern Snake River Plain

Water Use	Fee per Unit	No. Of Units	Fee Subtotal
Surface water irrigation only	$1/acre	871,500 acres	$871,500
Domestic	$25/residence	500	$ 12,500
Municipal	$50/cfs	5 cfs	$ 250

Commercial	$50/cfs	3 cfs	$ 150
Industrial	$50/cfs	0 cfs	$ 0
Hydropower	$50/cfs	100	$ 5,000
Fish Propagation	$50/cfs	500	$ 25,000
		Totals:	$914,400

Director Dreher explained that the strawman shows that the numbers will work out if the costs are shared with a broad enough group. The principal at play is that, in general, the junior priority use is ground water on the plain and the senior priority use is generally surface water on the plain and below the rim. Another principal is that junior users would pay on the order of five times more than senior users. **Director Dreher** noted that, in his opinion, the senior right holders also benefit from many of the proposed actions.

Water Uses Below the Eastern Snake River Plain

Water Use	Fee per Unit	No. Of Units	Fee Subtotal
Ground water & mixed irrigation	$5/acre	5,000 acres	$ 25,000
Surface water irrigation only	$1/acre	12,700 acres	$ 12,700
Domestic	$25/residence	700	$ 17,500
Municipal	$50/cfs	2 cfs	$ 100
Commercial	$50/cfs	1 cfs	$ 50
Industrial	$50/cfs	0 cfs	$ 0
Hyrdopower	$50/cfs	2,300	$115,000
Fish Propagation	$50/cfs	3,270	$163,500
		Totals:	$333,850

Director Dreher commented that costs could be spread differently but this was just a strawman example to show that it is doable. From his perspective, the costs appear to be manageable.

Representative Raybould explained that an economic study done by the surface water users from American Falls Reservoir to Milner was distributed to the Committee. He said that many of the numbers that have been used over the summer have been based on a study done by an agricultural economic group from the Magic Valley primarily to show what would happen with a curtailment of ground water. The study done by the surface water users appears to point out the economic impacts of what is happening with the lack of surface water. As a result of these differences, **Representative Raybould** explained that the Committee has acquired the services of independent economists to work solely for the state to give an independent, unbiased economic study of all of the issues involved. He went on to say that they hoped the study will be completed by the first part of January and then that data will be compared to the data from the other studies.

Mr. Clive Strong was introduced as the next speaker. He said that in terms of Water District 130, the intent is to go forward with discussions in small group settings to work on the elements of their solution. He said it was hoped that negotiations with Water District 120 would be further along than they are. Work is still being done to try to resolve the differences in that area.

Mike Faulkner, North Snake Ground Water District, agreed with **Mr. Strong's** description of the status of negotiations. He said that it is a very difficult process even if everyone agrees on all of the facts. He said his hope is that progress will be made in Water District 120.

Representative Raybould clarified that the Committee is not planning to ask the Legislature to go to the general fund for $135 million. That is why these fees and programs have been discussed. It would be the water users who would be funding their own mitigation and restoration problems.

Senator Cameron agreed with **Representative Raybould.** He said that more detail and facts are needed. As offers to sell come in, the state will be able to see what water is available for sale and what the cost will be. At that time a decision can be made as to whether the state can afford to proceed. He stated that we are not in a position that the state budget could step in to take care of the problem and even if it could, that might not be the appropriate overall answer. **Senator Cameron** noted that, on the other hand, he still has questions about how to handle the bonding issue and the potential impacts of that bonding. He stated his concern about what the

potential damage would be if those bonds are defaulted on. He said that these are not easy solutions and recommended that everyone think diligently and soberly about potential solutions and what impacts they may have to the state and to the economy.

Senator Burtenshaw commented that all of the various working groups from around the state have recommendations on how to solve the problems in their areas that involve funding. He said that everyone needs to realize that these areas are not going to support funding the Eastern Snake Plain Aquifer issue and that those water users in the Eastern Snake Plain Aquifer are going to have to foot the bill to solve their own problems. He agreed with **Senator Cameron** on the bonding issue and how to tie that into this agreement which is for 30 years. In his opinion, in good water years it might be difficult to collect payment on the bonds.

Senator Burtenshaw asked if the biological opinion gives the state a 30 year reprieve from anything else that may come along. **Mr. Strong** explained that through the context of the ESA, the state tries to put together a framework or program that is blessed by the federal agency as being sufficient to meet the needs of the species. Under ESA regulations there are conditions where reopening that agreement can happen. It is a risk management situation. In his opinion, the Nez Perce Agreement is a framework that the federal agency believes will be acceptable for 30 years, the biological opinion would be issued on that basis and absent any significant changes in circumstances, it will likely stay in place for 30 years.

In response to another question from **Senator Burtenshaw, Mr. Strong** said there is a biological assessment that has been prepared by the Bureau of Reclamation and submitted to the U.S. Fish and Wildlife Service and NOAA Fisheries. That biological opinion is due to be issued by March 31, 2005. If that biological opinion is not consistent with the framework of the Nez Perce Agreement, the parties have the right to withdraw from both the agreement and the biological opinion. From **Mr. Strong's** perspective, both the agreement and the biological opinion are important to each other. In his opinion, there will not be a way to reach resolution of the conjunctive management issues or on the biological opinion without being able to resolve the two issues simultaneously. Both are competing for the same water supply and in order to be able to figure out if the water supply is sufficient to satisfy those needs, resolution needs to happen at the same time. **Rich Rigby, Bureau of Reclamation,** agreed that it will be very difficult to implement one of

these agreements without the other.

Senator Burtenshaw asked what would happen if the Legislature did not pass the Nez Perce Agreement. **Mr. Strong** said that if the Nez Perce Agreement is not successful, it would be the state's intent to move immediately into reinstituting the appeal and to conclude litigation on the Nez Perce claims. Meanwhile the state would also be defending the actions on the biological opinions in federal court in Oregon. That could take many years. **Senator Burtenshaw** said that water users in the state need to get behind this agreement to make sure it passes. In his opinion it is very important for the state's adjudication process.

Representative Barraclough commented that many of the issues being discussed today have been around for many years. Many issues, such as recharge, have been discussed for decades as has modeling. He stated that throughout the summer, the Committee and others have learned a lot about Idaho's water situation. He said that it would be his hope that in looking at these proposals, people will remember that the water supply cannot be returned to what it was in the 1900s or the 1950s. Getting past the fact that someone has a senior water right that supercedes everything else is also important. Finding a solution that is so helpful to one group while destroying others is not the way to go in terms of the economics of the state and people's livelihoods. In his opinion, resolution of the Eastern Snake Plain Aquifer is very important. Now we need to look for a fair way to resolve the issues. It is impossible to solve problems without being aware of what they are. He expressed his hope that everyone involved in these negotiations will do their best to resolve some of these problems that have existed for years. **Representative Barraclough** said that it has been known for years, since the 1960s, that these problems were coming and the question is how can we, as individuals, in the best interest of the state, find the best solution for everyone. In his opinion, this solution can be found as long as everyone realizes the seriousness of not solving the problem.

The meeting was adjourned at 10:50 a.m.