IDAHO WATER RESOURCE BOARD

MINUTES OF TELEPHONIC MEETING
IDAHO WATER RESOURCE BOARD
MEETING NO. 13-05
July 12, 2005, 8:35 a.m.
Idaho Department of Water Resources at the Idaho Water Center – 6th Floor
Director's Conference Room, 322 East Front Street, Boise, Idaho

Meeting No. 13-05 of the Idaho Water Resource Board was called to order via teleconference by Chairman Rigby
At the Idaho Water Center in Boise Idaho
(One Recording Tape)

Dirk Kempthorne
Governor

Jerry R. Rigby
Chairman
Rexburg
At Large

Terry T. Uhling
Vice Chairman
Boise
District 2

Dick Wyatt
Secretary
Lewiston
District 1

Leonard Beck
Burley
District 3

Bob Graham
Bonners Ferry
At Large

L. Claude Storer
Idaho Falls
District 4

Gary M. Chamberlain
Challis
At Large

Lawrence 'Vic' Armacost
New Meadows
At Large

Agenda Item No. 1, Roll Call

Board Members Attending

Jerry Rigby, Chairman	Terry Uhling
Leonard Beck	Gary Chamberlain
Bob Graham	Vic Armacost

Board Members Absent

Claude Storer	Dick Wyatt

Department of Water Resources Staff

Hal Anderson, Administrator	Bill Graham
Crystal Calais, Admin. Asst. II	Director Karl Dreher
Cynthia Bridge-Clark	John Homan
Phil Rassier	Brian Patton

Guests Present by Telephone

Bill Taylor	Lynn Tominaga
Randy Budge	Mike Creamer
Clive Strong	Tim Deeg
Gail McGarry	

Agenda Item No. 2, Public Comment

There was no public comment.

322 East Front Street, P.O. BOX 83720, Boise, ID 83720-0098 Tel: (208) 287-4800 Fax: (208) 287-6700

Agenda Item No. 3, Request by IGWA to Amend Loan Contract

Mr. Patton briefed the Board on the amendment to the $2.6 million plus change loan the Board had made to IGWA to meet mitigation requirements this year. The loan carried a 4% interest rate with a three-year payback term. The IGWA is requesting two different amendments; first, to split the single loan contract into five separate contracts; and second, to eliminate the requirement to lease the water board water that is in the water bank. The existing loan contract carries the requirement that they must lease about 4,000 acre-feet.

Chairman Rigby asked Mr. Patton to give a history to the Board. The Director asked Mr. Patton if the five contracts were equal. Mr. Patton said there was a pro-rata break down of the cfs per district.

Mr. Patton asked Mr. Anderson to assist him with the history. Mr. Anderson gave a brief history of the IGWA loan. Mr. Tim Deeg asked for a list of all people on the conference call. The following people were on the line: Tim Deeg, Idaho Ground Water Appropriators; Randy Budge, Secretary and General Counsel for Idaho Ground Water Appropriators; Mike Creamer, Counsel for Idaho Ground Water Appropriators; Bill Taylor, Bonneville-Jefferson Canal Co.; Lynn Tominaga, Executive Director for the Idaho Ground Water Appropriators; Hal Anderson, IDWR; Clive Strong, Deputy Attorney General; Gail McGarry, Bureau of Reclamation. Present from the department were Cynthia Bridge-Clark, IDWR; John Homan, Idaho Attorney General's Office; Brian Patton, IDWR; Karl Dreher, Director, IDWR; Phil Rassier, Deputy Attorney General; Bill Graham, IDWR; Crystal Calais, IDWR.

Chairman Rigby took questions from guests and Board members on the history Mr. Anderson had presented. He then asked IGWA to present their request. Mr. Budge asked for a clarification on the timing that the water lease by the Board was actually accepted into the bank. Mr. Anderson asked Ms. Clark to respond. She noted that the offer the Board made was April 6 through 9th. Contracts were formulated and signed June 22, 27 and July 1. The actual acceptance into the bank was signed the same day and another was signed when it was received. The actual applications were received back January 7th. The Board made the offer March 29 for the lease with option to purchase. Three individuals responded in writing to the department on April 6 and 9th.

Chairman Rigby confirmed that the department made offers to purchase or lease; however, the only interest was in leasing. The Director stated that when the RFP went out, it was for multiple purposes: permanent acquisition and lease in 2005. The department did make an offer to lease with an option to purchase. IGWA went out with its own offer and was offering to pay more. Anyone that was interested in selling their water went to IGWA. There were only two who responded to the department, including Bell Rapids.

Mr. Budge wanted to clarify that the Board's request for proposal closed on January 5, 2005 long before IGWA even went out with their application in late March. The Director acknowledged that was correct. He stated it would not be accurate to say that IGWA was competing with the department. The Director stated that he was correct, but what happened was when IGWA put their offer out, people withdrew from the department's offer and that's how the timing fits together.

Mr. Budge presented the history of the IGWA loan request. On May 13 the Board passed a resolution authorizing the loan request, but there was no indication that the Board had leased any water or that it was in the bank. The first knowledge they had that the Board had leased 4,645 acre-feet was from an e-mail from Hal Anderson on May 18th. Mr. Budge stated that he responded to

Hal Anderson's e-mail by stating that IGWA did not need any additional water. He also took this information to the next Board meeting. Mr. Patton later told Mr. Budge that there was water in the water bank and IGWA would be expected to lease that first. This issue was presented to the Board of IGWA after that, but they declined to lease this additional for $92,000 and some cents. Just yesterday IGWA signed an exchange agreement with the bureau and the department didn't complete their review until last Thursday. IGWA then became aware that they must take the additional water that they did not need. IGWA has already incurred a large debit and has more water than they probably need. Mr. Budge stated that there seems to be an after the fact attempt to impart on IGWA's ground water users this additional water by the Board. A point of possible compromise is a willingness by the Board to adjust the fee being taken on our overall lease program. The Board will be taking a $250-260,000 fee for the IGWA transactions. He stated this is an exorbitant amount of money. Mr. Budge asked for questions.

Chairman Rigby said he had discussed this issue with all parties and he felt a need to discuss with the Board at a closed session before he discussed it further with IGWA. He called for other comments. Mr. Bob Graham clarified with Mr. Budge the suggestion to adjust the rate. He asked what amount of adjustment he wanted. Mr. Budge responded that they would like the amount of fees to be reduced by the cost of the additional water ($92,000). Mr. Graham said it didn't sound like much of a compromise. He asked if IGWA was interested in paying part of it. Mr. Budge said he would have to take it to IGWA's Board. The Board of IGWA voted that they were not willing to spend any more money and they do not want to acquire any more water. Perhaps another compromise could be entertained. Chairman Rigby asked for additional comments.

Mr. Mike Creamer pointed out that this was a learning process for all parties. The Board needs to take a facilitator role. The record is clear. If the Board had intentions of acquiring water and requiring the ground water users to accept it and to pay for it for whatever reason, that was not communicated to IGWA. This has resulted in the situation we have today. Essentially, additional water is being forced on ground water users. He stated this is probably not the way we want the water bank to work. Also, since the water year is going from bad to good, it is important to keep costs down for ground water users. As the Board discusses this, he asked they keep this in mind.

Mr. Budge wanted to make an additional comment. These unprecedented issues are uncharted waters for everyone and this is just a miscommunication. Director Dreher asked if IGWA's letter to place water into the bank did not constitute acceptance of that water into the bank? When did we accept IGWA's water? IGWA's water was accepted into the bank on July 7th according to Cynthia Clark. To clarify the timeline, the department had the invitation for offer to sell. The acquisition program began in December-January, but a letter was sent out offering to lease these water rights with an option to purchase on March 29th. The department received offers from three individuals that were accepting the Board's offer to lease these water rights to the bank for whatever purposes, i.e., mitigation, on April 6th and 9th. Ms. Clark said it was her understanding based on the applications she had received for the bank and copies of the private lease agreements that were signed between the high-lift pumpers and IGWA that those agreements were signed between May 11 and May 12th. So a lot of these events were evolving at the same time. On the Board's behalf there really was intent to follow through with leasing of this water demonstrated by their acceptance of these leases by three individuals. Some of the contracts and acceptance of those rights into the bank was delayed somewhat because everything has been evolving quickly and the department needed to have a better idea of how that was going to function with IGWA's and others needs. The acceptance of the leases and the Board's intent was demonstrated in late March and early April.

Mr. Leonard Beck stated that IGWA asked the Board for a loan of $2.6 million for 85,000 acre feet of water and that was accepted. He asked how much was the cost per acre-foot? They responded about $38.60 for eleven of the twelve leases. There was a small quantity for which they paid $16.50 per acre-foot. Mr. Beck stated then that the $2.6 million did not cover all of the water that they leased. Mr. Budge said this was correct. IGWA also has dry-land leases that were not part of the loan application. The loan application only sought funding for high-lift leases below Milner. Mr. Beck asked how many acre-feet that would have entailed? Mr. Budge stated $75,048 was the amount offered in the lease application. Following the department's review, the amount was $65,437.60. The primary difference had to do with the reduction of United Water. Mr. Beck stated that Mr. Budge had entered into some contracts or agreements with the bureau. Mr. Budge stated yes, in order to use the water, IGWA was required to have a temporary exchange agreement with the bureau. Because the water is below Milner, the water will be in the river available for flow augmentation of the bureau downstream. In order for IGWA to use the water, put it up river in storage where it could be delivered to surface water coalition and others in response to the Director's delivery call. The bureau then agreed to exchange the water below Milner for water that it had available in District 1 storage upstream.

Mr. Beck asked if the letter to exchange water with the bureau referred to the $65,000 or the $85,000 amount? Mr. Budge answered that the amount of water qualified based upon the department's review of these leases is the $65,000 with a loss of 20 cents through the exchange process which accounts for the amount of water that would be available during the irrigation season so the net amount that they would have in storage upstream for the bureau is 52,821 acre-feet.

Chairman Rigby asked for any additional comments by IGWA. Mr. Anderson had another point of clarification. The issue of the surcharge that Mr. Budge and IGWA are asking for, which is a requirement of the water supply bank statute and rules, is for natural flow water for 2005. The 10% surcharge does not come to the Board; it comes to the Department of Water Resources to provide for administrative costs. Chairman Rigby asked Mr. Budge if he understood the difference between the surface water and the storage water as to the surcharge, who that actually goes to? Director Dreher said he meant to clarify that earlier. Director Dreher told Mr. Budge that this money is used to pay the salaries and the other department costs of verifying the eligibility of the lease in the first place. Then it's used to pay the costs for making sure that the water is not diverted out of the river, but in fact is shepherded downstream to Hells Canyon. It is not a fee that is under the control of the Board. Director Dreher stated that the amount of time that the department took to verify the lease involved months of time for attorneys and staff. The fee pays for that.

Mr. Budge stated that they were not aware of what the fees were for. He stated that the inequity seems to be the high price of the water at $38.60. The twelve leases do not have a lot of water rights and that $250,000 seems excessive for administrative costs incurred. Director Dreher added that this is not unprecedented. Bureau of Reclamation has actually leased water at $50.00 per acre-foot with the 10% fee. The department staff's efforts go on for months. He stated that just because the water is accepted in and the exchange takes place, there is still monitoring that has to occur. There is not another way to finance this.

Mr. Budge stated that he appreciated the clarification. Director Dreher also clarified that there is a 10% fee charged by the water Board for rental storage water. In that instance, that 10% does go to the water Board; none of it goes to the department. The purpose for this fee is to further the water Board's grant and loan program. This is the way the Legislature set it up and it is clear they intended the water Board to charge a fee for the purpose of financing water projects.

Chairman Rigby reiterated that the Board intent here was to help the ground water users by putting out the lease in the first place. A miscommunication is another issue. The Board needs to discuss and resolve this. He asked everyone to hang up so the Board could go into Executive Session. Director Dreher suggested that for non-Board members who are still on the line and wish to be contacted to please give their phone numbers. Those identifying were Randy Budge, Mike Creamer, and Tim Deeg.

Mr. Chamberlain moved that the Board go into executive session for the purposes of discussing a matter that may potentially result in litigation. Mr. Armacost seconded.
Voice Vote: All in favor. None opposed.

After coming out of Executive Session where nothing was decided, Chairman Rigby stated on behalf of the Board that this is an uncharted issue and IGWA was doing their very best possible. The Board needs to be consistent with the rules. The Legislature has made it clear that the Board will play a major role in the issues in the future. The Board accepts that IGWA did not fully comprehend what the fees were for, but does not want to point fingers at anyone. The Board has the position of holding state money. The Board has the ability to compromise with the interest and this may reduce the problem. The Board does not want to waste any water.

Mr. Chamberlain made the motion that the Board approve a resolution reducing the interest rate from 4% to 2/5% on the American Falls Aberdeen, Bingham, Bonneville-Jefferson, Magic Valley and North Snake Ground Water Districts for the lease of Snake River water rights for the 2005 irrigation season. Mr. Graham seconded.

Chairman Rigby asked for discussion. Mr. Budge asked if the loan would be separated out into five separate notes for each of the districts. Chairman Rigby asked if Mr. Chamberlain if the intent of the motion was not to separate out the notes. Mr. Chamberlain acknowledged that was correct.

Roll Call Vote: Mr. Wyatt, Absent; Mr. Armacost, Aye; Mr. Storer, Absent; Mr. Beck, Absent; Mr. Chamberlain, Aye; Mr. Graham, Aye; Mr. Uhling, Absent; Chairman Rigby, Aye. 5 Ayes; three absent. **Motion passed.**

Chairman Rigby stated that the net affect is significant financially. Mr. Budge asked for the financial calculation to take the IGWA Board. Mr. Patton stated he would send the exact figures to Mr. Budge later in the day. Director Dreher offered to have Cynthia Clark participate in the IGWA Board meeting to help clarify the timeline of events and explain the Water Bank rules to ease misunderstanding. Chairman Rigby stated that the Board needs to have a better working relationship with IGWA. Further questions and discussions ensued regarding water bank issues. Chairman Rigby pointed out to Mr. Budge that the Board was leasing to benefit ground water users and if that did not occur, that is a problem. Again, Director Dreher offered to have Ms. Clark assist IGWA in understanding the process.

Chairman Rigby again expressed a need for better communication and asked IGWA to involve the department in any press release that might be issued. Mr. Budge stated that the Board had made a good solution for the problem.

Mr. Tim Deeg stated that members are concerned that the water might not be utilized. Director Dreher addressed this concern by stating that the broader issue is how does IGWA make use of their water. The Director stated he could only go so far in light of contested cases. The Director discussed his latest order for Water District 1. He stated IGWA needs to consider 1) to determine how much of the water they need to supply the conversion; 2) identify the quantity of

water they need to allocate through the Sandy pipeline; 3) what they need or choose to allocate to any targeted recharge opportunities. That leaves the block of uncommitted water, which consists of storage in Water District 1 that IGWA obtained through the private leases or indirectly through the exchange with the Bureau of Reclamation or Water District 1 rental pool. Rental pool procedures state that any water acquired with the bureau of with Water District 1 space holders will have to be used this year. Director Dreher said IGWA was wondering if they could carry over some of the storage water to a future year. He stated the department was willing to consider a mechanism to do that. He noted that neither IGWA nor any of its districts hold space in the reservoir system. What IGWA could do is look at what entities are exposing them to delivery call. He said the department would be issuing an order soon regarding water supply and demands. Director Dreher said that IGWA could assign a portion of the storage water to entities making delivery calls. This would increase carryover storage for next year and buy insurance against a delivery call.

Mr. Tim Deeg expressed concern that this was not a conservative approach to water management. There is a risk in this process. Director Dreher agreed.

Mr. Tominaga stated that IGWA needed to supply water conversions next year. He offered ideas about options. Director Dreher asked IGWA to remember a lawsuit that was filed by A & B Irrigation against Ron Carlson about water account and the way the exchange occurred. He stated it is important to remember that water is stored in order of the priority of the right where there is space, not necessarily stored in the reservoir where you might want it to be stored. He further explained what might occur in this process. He urged IGWA to talk to Ron Carlson and Tony Olenichak to get a good understanding of what may or may not happen with the water.

Mr. Mike Creamer expressed appreciation of the Board's solution to the IGWA lease problem. He also thanked the Director for offering some solutions to IGWA. He further discussed water supply issues. He expressed a desire to work with department staff to identify recharge sites. There was discussion about the recharge topic.

Agenda Item No. 4, Other items

No other items.

Mr. Chamberlain moved to adjourn the meeting.
The motion was seconded and all remaining Board members were in favor.

Meeting adjourned.

Dated this 19th day of May, 2006.

D. Richard Wyatt, Secretary

Patsy McGourty, Administrative Assistant II

Board Actions

1. Mr. Chamberlain made the motion that the Board approve a resolution reducing the interest rate from 4% to 2/5% on the American Falls Aberdeen, Bingham, Bonneville-Jefferson, Magic Valley and North Snake Ground Water Districts for the lease of Snake River water rights for the 2005 irrigation season. Mr. Graham seconded.

Roll Call Vote: Mr. Wyatt, Absent; Mr. Armacost, Aye; Mr. Storer, Absent; Mr. Beck, Absent; Mr. Chamberlain, Aye; Mr. Graham, Aye; Mr. Uhling, Absent; Chairman Rigby, Aye. 5 in favor, three absent. **Motion passed.**