



June 2008

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President's Message – Where We Are... Stan Clark

Last summer, a group of concerned Eastern Idaho water users met and formed this coalition when it became apparent that stakeholders on the Snake River Plain were not represented in some of the key water-related decision making processes. We formed a nonprofit corporation and appointed an executive committee. Our first act was to hold a public meeting to gauge the interest and need for such an organization. The response was very positive. Since then, our executive committee has met monthly to track issues and respond to them as needed. The following are some areas we have been working on:

[read more page 2.](#)

Legal Update... Nathan Olsen

Last December, EIWRC made its first "splash" in the legal realm by filing an amicus brief to support the IDWR on an action brought by North Side and Twin Falls canal companies against IDWR. North Side and Twin Falls were asking the 5th District Court to subvert the IDWR from issuing an opinion on whether the hydropower license located at Milner Dam should contain subordination language to upstream consumptive uses, including groundwater recharge. North Side and Twin Falls were "anticipating" that the IDWR was going to issue an opinion unfavorable to them, and essentially wanted the Court to take over the administrative process.

From EIWRC's perspective, for the Court to rule in favor of Twin Falls/North side in this action, would jeopardize a key tool in water management and preservation—namely recharge. Thus it was vital that EIWRC make its voice heard with the Court. EIWRC was also joined by several other interested water users or "petitioners" in our area in submitting the brief.

[Read more on page 2](#)

Pilot Project—Shelley Mitigation...

Roger Warner

Late in 2007, conversations began with the City of Shelley, a subdivision developer, and the Idaho Department of Water Resources (IDWR). Their purpose was to explore the possibility of using existing surface water irrigation for ground water recharge in exchange for a new ground water right to serve the City of Shelley and newly annexed lands.

Director Tuthill of IDWR encouraged this proposal and termed it a "pilot project." Meetings were held and a permit application was filed. IDWR agency personnel offered comment on the "approvability" and conditions that would be required if such a permit were approved.

The next step was to bring in any entities that would be likely to have issues with this type of an undertaking, namely Twin Falls Canal Company and associated water purveyors. Travis Thompson, of Barker Rosholt and Simpson of Twin Falls,

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President's Message – cont'd

- We have followed the CAMP process very closely. As result, we formed a Recharge Committee to develop a plan for recharging the aquifer. This proposal is currently awaiting action by the full CAMP Committee for possible inclusion in their final report.
- We have laid plans for a legislative and legal affairs committee to work with the legislature over the interim and on into their next session.
- We are supporting the city of Shelley with a pilot project to allow the use of irrigation water to be recharged to the aquifer and later pumped into the city's water system to be used to supply water to new city resident. This new approach holds a lot of potential for eastern Idaho.
- We have assembled a stellar board of directors that meets quarterly. They are to provide direction and identify issues the Coalition may need to be involved with. We have 32 Directors who each represent a very broad group of people.
- Last fall, we joined with the Mud Lake Water Users and the Fremont Madison irrigation districts on an amicus brief filed in the Milner Re-licensing case. That motion was dismissed.
- We are refining a website for our members that will allow them to follow what is going on with water issues with very little time or effort. Please feel free to visit the site at www.easternidahowater.org

(For more information on the website see page 4.)

One of the best ways to make a difference will be for the EIWRRC to be represented at the various water conventions and meetings around the state such as IWUA water law seminars and other key committee meetings. With the high price of gas, it is important to keep an eye on our costs so will still have enough money in the coalition's reserve for any issues we must respond to quickly. As president, I pledge to attend as many meetings as possible while still keeping an eye on the bottom line.

Legal Update –cont'd

EIWRRC argued in its brief that that North Side and Twin Fall's action should be dismissed because, absent extraordinary reasons, it was inappropriate to ask the Court to take over the duties of the IDWR. In essence, the canal companies were demanding judicial review and action for an administrative decision that had not yet been made.

Fortunately, the Court agreed with EIWRRC and the other petitioners and dismissed the action, indicating that Twin Falls and North Side had "failed to exhaust their available administrative remedies" before filing the action. A copy of EIWRRC's brief and the Order can be found on the website. In addition, we were pleased that the Court accepted EIWRRC's petition to appear as an amicus, opening up an avenue for our future participation before the Court.

The issue of the subordination of power use by recharge still remains a hot issue, especially in Idaho Power's suit against the State of Idaho. The State of Idaho's Chief of Civil Litigation, Steve Olsen, will address this issue among others when he speaks to the EIWRRC board on June 2.

Shelley – cont'd

Thompson confirmed that his clients did have concerns about the pilot project. After trying to address their concerns unsuccessfully, the developer and the City of Shelley decided to move forward with the application and requested that IDWR begin the hearing process. IDWR held a pre-hearing conference on Wednesday, May 28, 2008.

Generally, a pre-hearing conference is an opportunity for both sides to speak openly and determine if there is opportunity for settlement. Several issues were discussed at length at the conference last week including what constitutes reasonable anticipated future needs for municipalities and the land use planning act, particularly title 67-6537

Title 67-6537 indicates that lands with appurtenant surface water rights which change to a new use (i.e. houses) must use the surface water for irrigation. In Boise and other areas this statute has been narrowly interpreted to mean that a developer must provide a secondary irrigation system from the original surface water source. But in this case, both the applicant (the city) and the developer feel that using the surface water for recharge to mitigate for a new ground water right is consistent with, and therefore satisfies, the statute's language. *Continued on page 3*

Dual Pipe Irrigation—Benefit or Problem?... [Scott Bruce](#)

Communities in Eastern Idaho have faced tremendous growth over the past decade. In the past few years, obtaining adequate water rights has become an issue for growing communities and private water systems. One option to provide adequate water supply for a growing population is to use existing surface irrigation water rights for consumptive water (i.e. watering of lawns and landscapes) thereby allowing a community or private water system to stretch its existing water rights. Consumptive use of water puts a heavy load on a potable water system. A water provider must construct costly infrastructure to meet the seasonal peak demands of its customers' consumptive water use. One option to put less stress on municipal and private water system's existing water rights and infrastructure is a dual pipe irrigation system.

Some communities in Idaho have implemented dual pipe systems with mixed success. The primary benefit of a dual pipe system is the immediate ability to use an existing surface irrigation water right on agricultural land that is developed for purposes other than agriculture. This right can be used to irrigate lawns and landscapes instead of crops. On the surface (pun intended), the idea appears to be an ideal solution. Unfortunately, it is in the implementation where most of the problems arise.

Most irrigation districts or canal companies do not have business models that make it attractive for them to take responsibility for the operation and maintenance of dual pipe irrigation systems. The alternative is to have a third party such as a home owner's association (HOA), municipality, or private water system, service the development of, and oversee the operation and maintenance of, a secondary irrigation system.

If an HOA runs the operation, a significant problem arises when it comes to collecting and saving funds for future repair and replacement of major system components (i.e. pump replacements, main line replacements, etc.). Most HOAs are not willing to raise their dues enough to be prepared for the inevitable replacement of such components—they are often not equipped to manage such large contingency accounts.

Municipalities or private water companies may be better prepared to keep dual-pipe systems working in the long-term, however, other issues arise. Most existing municipal or private water systems will not have dual pipe throughout their entire system.

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Shelley – cont'd

At the conclusion of the pre-hearing conference, IDWR Administrator Gary Spackman, indicated he will receive motions and briefs from both parties and make a determination of the Department's position with respect to the administration of this statute by August 8, 2008.

A glimmer of hope for a rapid resolution of this issue hinges around whether the City of Shelley chooses to require secondary systems for future development or continue down the road of recharge mitigation—or a combination of the two. If no resolution is achieved, a hearing is scheduled for September 17 and 18, 2008.

Listening to the discussions held during the pre-hearing conference did not make it clear why one method is favored over another. Ostensibly, the overarching consideration is the protection of ground water supplies. Since converting surface water to ground water by means of a scientifically acceptable recharge program causes no injurious effect (according to the state's ESPA aquifer model), it makes one wonder if groundwater protection really is of primary concern.

Legislative Update... [Representative Dean Mortimer](#)

During the recently completed 2008 Legislative Session there were two key pieces of legislation that affected water and water management.

House Bill 644 appropriated \$24,599,500 to the Department of Water Resources for fiscal year 2008. The bill shifts the remaining 14.5 positions from the Snake River Adjudication program to the Water Management program, with attorney general costs and seven of the positions funded on a one-time basis. This leaves a \$1 million ongoing hole to fill in the FY 2010 budget. The bill also includes a cash transfer of \$20 million from the General Fund to the Aquifer Planning and Management Fund to pay for the first six years of a statewide aquifer planning effort.

Senate Bill 1511 appropriated \$10 million for FY 2008 and transfers it to the Water Resource Revolving Development Fund to address a looming water crisis in the Magic Valley. With this \$10 million and \$5 million approved from the Economic Recovery Reserve Fund in 2006, the Water Resource Board is in the process of facilitating the purchase of a large private fish hatchery west of the Blue Lakes Country Club near Twin Falls. The Board has two partners that will, over time, pay the majority of the \$26 million purchase price. Once acquired, the water rights will be used by the ground water users to address a pending water delivery call and by the city of Twin Falls to provide water to address present and future domestic and municipal water quality and water supply needs. This legislation also includes a \$1.8 million FY 2009 appropriation, as a trailer to HJM 8, to determine the feasibility of enlarging Minidoka Dam and replacing Teton Dam.

Dual Pipe Irrigation—Benefit or Problem? – cont'd

Customer complaints result in refusal to pay and other collection worries. Yet another problem is how well the irrigation district or canal company will be able to respond to water delivery both—where and when. A dual pipe system needs to be able to accommodate peak demand. An insufficient number of delivery days in a week will increase demand on the days when water is available—e.g. all customers in the development will want to water their lawns at the same time. This results in the need for larger and more costly delivery infrastructure.

One other consideration of a dual pipe system is cost. The cost of installing a dual-pipe system for each home in a development could potentially prove to be cost prohibitive especially in starter homes. This could cause developers to go elsewhere in the short-term. Municipal and private water systems could mitigate some if not all of the cost by reevaluating existing development fees to account for reductions in required infrastructure costs to the potable water system (i.e. less water right for in-house use only, fewer municipal wells to meet peak in-house use demands, fewer storage tanks to meet peak demands, etc.).

Though the problems with implementing dual systems are not insurmountable, it is quickly apparent that addressing the issues and working out problems requires time, money, and the cooperation of all parties involved-- from the irrigation districts and canal companies to the municipal potable water systems, to the developers, and even the home owners themselves. It must also be remembered that dual systems are not the only means for delivering water to newly developed properties.

CAMP – Camp Advisory Committee ... Jeff Raybould

The Idaho Legislature through the interim House and Senate Resource Committee has been working on the Eastern Snake Plain Aquifer (ESPA) issue since 2004. During the Second Regular Session of the 58th Idaho Legislature, the Legislature determined to have the Idaho Water Resource Board develop a comprehensive management plan for the ESPA. The Water Board held several public meetings seeking input on how to better manage the ESPA.

At this point the Water Board determined to form a citizens committee to develop the Comprehensive Aquifer Management Plan (CAMP) for the ESPA. The committee members were nominated by all interest groups across the ESPA. All interest groups are represented on the CAMP committee including, surface water, ground water, mixed use, domestic well owners, municipalities, hydro power, and development. Agency personal and Idaho Department of Water Resource personal also participate in the CAMP process.

The first meeting of the CAMP committee was held in June of 2007 with meetings held each month since. To date the primary mission of the committee has been to gather information on the ESPA and to help educate the members of the committee who have not had the benefit of working on these complex water management issues in the past.

The CAMP committee is now poised to move forward with the heavy lifting of putting together an actual management plan. This will require some difficult decisions to be made and the members of the committee will need to stay focused on the long term goal of managing the ESPA for the continued benefit of today's current uses as well as allow for future growth for the state of Idaho.

The Eastern Idaho Water Rights Coalition has broad representation on the CAMP committee and has provided valuable input to the process so far. The EIWRC Recharge Committee helped CAMP members create a recharge plan to use excess storage water in the fall of the year in greatly increase the amount of recharge activity possible in any given year. EIWRC members presented the plan to CAMP and it has been incorporated into the matrix of options CAMP is considering at this time.

EIWRC Website Is Now Online

We are pleased to announce that the long-awaited website for the Eastern Idaho Water Rights Coalition is ready for your use. We invite you to visit the site at your earliest convenience. The site will be maintained with up-to-date water news and information that affects Eastern Idaho's water and the rights to use it.

In addition to water news and announcements, we have a "Member's Only" section. These pages include important coalition newsletters, meeting minutes, committee lists, announcements, etc. This part of the site also contains a "Member's Forum" feature that will allow all members to post and share their thoughts on key issues. We invite you to sound off on water matters that interest you.

As always, your input is vital. If you are aware of a meeting, an article, an event, or a study that others in the coalition should know about, please let us know so we can get the word out on the website

If you encounter any difficulty with the site, please contact the web administrator – Sherry Laney at contact@easternidahowater.org. She will be happy to help.

Upcoming Events

- The 2008 Summer Water Law Seminar sponsored by the IUWA is in **Sun Valley, June 16-17**. For registration go to www.iwua.org.
- CAMP Advisory Committee **June 19th Aberdeen**, 10-5p.m.
- CAMP Advisory committee, **July 23rd Burley** 10-5 p.m.
- Next EIWRC Board Of Directors/Full Membership Meeting September 4, 2008 time and location TBA