

EIWRC Annual Meeting Minutes

November 9, 2023,

Idaho Falls City Council Chambers

1. Present: Skyler Johns, TJ Budge, Tyler Pratt, Mayor Rebecca Casper, Payton Hampton, Dylan Anderson, Mayor Donald Powell, Craig Storman, DG (?), Representative Dustin Manwaring, Representative Kevin Andrus, Representative Julianne Young, Representative Gerald Raymond, Camron Hammond, Daniel Wilcox, Mayor August Christensen, Josh Wheeler, Don Dixon, Scott Bruce, Princeton Lee, Mayor Marc Carroll, Renee Richardson, Josh Sorensen, Kyle Wilson, Marynette Herndon, Karey Hanks, David Richards, Keith Davidson, Connie Christensen, Bob Turner, Adam Young, Kirt Schwieder, Brad Buttars, Roger Warner, Director Matthew Weaver, Tracy Bono. Zoom: Keith Esplin, Senator Doug Ricks, SRVID.
2. Welcome and introductions – Roger Warner
 - a. Coalition members please stay after discussion to elect board members.
 - b. December 7 board meeting will be held at Smitty's at 11:30. We will discuss important financial and dues issues at that time.
3. Welcome and introduce IDWR Director Mat Weaver:
4. Mat Weaver
 - Opening Comments:
 - o Recently appointed two Deputy Directors: Shelly Keen & Brian Patton.
 - Brian will continue WRB role
 - o \$250 million in ARPA and \$299 in general fund
 - o \$11 million ongoing general funds; sustaining water resources repairing aging infrastructure and flood control activities.
 - o Ongoing appropriation in 31 million (+); lots of growth; lots of scrutiny and great expectations to use the money
 - o Stream protection; ground water protection programs are growing
 - o Approval from governor for 2 deputies and 5 bureau chiefs
 - o Deputies will assist Director with duties
 - o Down 20-30% of FTEs; retirement and other issues; wants to get the agency fully staffed; management and executive management fully staffed; several important leadership vacancies
 - o Near term focus is to get the department staffed and functioning.
5. Q&A: Moderated by Roger
 - Questions: Discussion between conflict of roles Director plays in settling disputes; should the Director be the hearing officer? Will it Change going forward.

- o Answer: number one question from water users pertains to this issue; Director not being able to participate in conversations stifles resolutions; intent is to rely more on independent hearing officers; Tuthill and Dreyer were much less active in hearings; meeting with folks outside the agency to act as hearing officers. Former director was concerned about relying on folks without the legal and technical background to preside over these issues. Commitment is to find independent hearing officers and rely on them. That being said, the orders are recommendations and can be appealed to the Director; on some of the issues, the legal, technical, and institutional knowledge needed, it's important to have the Director's role to hear appeals be maintained.
- Questions: How do we balance maximizing the use of water resources and conserving the resources while doing it within the confines of prior appropriation;
 - o Answer: Clear Springs Foods v. Spackman: discussion on this issue. There is a balance that must be struck. Hard to find balance on ESPA 1 million ground water acres and 1.1. surface water acres. Hard to make each side happy; Supreme. Court. says it lies within the discretion of the director. His commitment is to follow the law; have statutes rules, when they are not clear, we have policy, if unclear, go into unsettled legal grounds; conjunctive management is still being figured out; since 2005 been in painful process of figuring out through the courts what the answer is. Need to consider the case of the delivery call that is in front of you.
- Question: Ground water users are installing lots of new technology for measurement and conservations; but some surface water users seem to not be changing to new infrastructure, but rather are just lowering assessments. The best water rights are the early canal rights; but ground water users are getting water calls against them; difficult balance, no bright lines to show inefficiency. Two meetings with the GMA advisory committee; please give thoughts on what he is seeing right now and where he would like to see it go.
 - o Answer: difficult to find balance between optimal utilization and prior appropriation; but there is a third leg to that, article 13, water plan, Idaho code 42-237A. Will use resources in a sustainable way; if over appropriated, then Director must administer in priority; Common ground everyone has on committee is preserving the aquifer for future generations; Differences of opinions how to get there. Advisory committee: Idaho Code, ground water management area; start protecting or managing, supply sufficient to meet the needs; various tools for Director to accomplish this. Best way to manage is 43-233A and B for management are long term preservation activities and delivery calls (symptom of the declining ground water system; long term, ground water management plan is the correct vehicle for preserving the aquifer.
- Question: EIWRC exists to get laws that reflect east Idaho position on water issues; how can we help the Department?
 - o Answer: Do you think of yourselves as akin to IWUA and the TVWU (Treasure Valley Water Users)? Both those groups are largely agnostic to the

contentious issues before the Department; when they are out making law (unless specific irrigation districts) they do not move forward without consensus; they offer support to the department by providing opportunity and forum for folks to discuss the hard conversations, and they do not think of the department in any adversarial way; Matt wonders if this group has thought of the department as an adversarial group in the past. The Department is the hydrological facts of the State; we need to stop decline because it is significant enough that we have to stop taking more out and put more back in. Back in 2021, those were the sentiments they felt. Engage in the science and technical conversations that help develop the data for the ESPA. We can vary the model data in useful specific locations. Department always wants to make decisions based on best available science and data; Alan Wylie, “all models are wrong, but still useful”.

- Questions: Identity of the EIWRC is hard to perceive from Boise; member run; focus from the beginning is to gather all users in East Idaho, so as to not pit against each other; originally had robust participation from developers and cities; purpose was to be solution oriented; since formation in 2007-08; landed on two things over and over, education (ourselves and the public and legislators on ag) most policy is driven by ag; the other pillar is solutions, and these often become legislative; cannot have good legislation if the legislators do not understand issues; stay away from lawsuits because they have winners and losers; we feel there is sufficient water if we manage it more effectively; Want to ask if there is a role for the optimism when we say that smart management with conservation is key; do you support legislation that implements this when we have uniformed legislation? What is the best use of our time.
 - o Answers: supports education finding solutions; wants to see better management of the resource. The best ideas do not just come out of Boise; he works with issues East of King hill for last ten years; he knows this part of the state best; legislation where there is consensus and support by everyone is critical; ongoing litigation is usually because the law is unclear; he thinks some things in chapter 2 of 43, there are some items that are unclear optimal use and prior appropriation and sustaining is unclear and contentious; recommends that ideas come from here, but they get vetted by IWUA legislative committee first. Not opposed to it as a matter of fact.
- Questions: conjunctive management is ambiguous; ordered to manage conjunctively and order to curtail; not a lot of tools to manage conjunctively; are there tools you would like to add to the tool box.
 - o Answers: nothing comes to mind; do have dual rights, different priority rights; to him conjunctive management is when there is not enough water, juniors get curtailed. That is something we do in Idaho that not many states do (Colorado, some areas in Arizona). States that have ignored it, Kansas, Texas, Nevada, Cal. Several generations mined a resource until they did not have it. Difficult to conjunctively management; don't have all the tools worked out right now. But the goal of CM needs to be pursued.

- Questions: Cities and businesses like stability in flow of resources; seemed weird that the solution to the problem that could be managed in a broader way was to curtail water users; look at capacity of aquifer, recharge, etc., seems there is opportunity for broader public policy to raise aquifer; but he is told IDWR does not get into legislation, which is weird because most states have legislative office in department; can you speak to this?
 - o Answer: IDWR has been very involved as administrator and support to mediators like Bedke and Clive Strong to resolve; he wrote legislation to support the 2016 settlement. IDAPA chapter 37 helped with rules, proposing and revising; bring legislation every year; work with governor's office; bringing two pieces of legislation this year; hesitant to go into the realm of policy because large group of folks who do not want policy created in this area; but he has to have policy in his department to operate; rulemaking, bringing legislation is responsibility of the department; need to revise is not specific enough; but think of legislation that is difficult to build consensus around; reminded of legislation ten years ago: credit for legislation for credits of recharge 10 years ago. Very controversial; not type of legislation he thinks the department should bring; want to work on more efficiency-based policy.
- Question: What does the hiring pool look like for the admin positions?
 - o Answers: Pool is very thin. Have not seen recovery since Covid. Trying to hire engineer; must post several times for candidate pool; may fill with engineers in training; folks move on in one or two years to higher paying jobs; Do not pay technical people enough; Boise and Coeur d' Alene cost of living has made this very difficult. Management: for whatever reason, middle management and leadership opened up but there is not a lot of interest internally to apply for these positions. Many of the folks there at department are younger and like their work-life balance. They are trying to find ways to fix this.
 - o Follow-up- Roger said that they are seeing similar issues with finding managers in the private sector.
- Question: See a lot of water projects going on in the state; what is the balance between water conservation and recharge projects.
 - o Answer: Who is the right person to talk about this? This is ripe for full conversation and understanding in Idaho. Efficiency trap: as we irrigate land more efficiently it will help; but these efficiencies result in more consumption of water; number one input of water in ESPA is incidental recharge from delivery or seepage from fields. 1.4-million-acre feet. Converting to more efficient systems, holding consumptive use the same. Have to have eyes wide open as to what are all the components of the water budget and what will be the predictable outcomes of that budget. People should be asking whether state and federal agencies should be funding conservation projects on delivery systems and farms.
 - o Follow-up: When Roger was with IWRI, they employed folks from Australia (water savings is water stealing); if you conserve water that contributes to

- incidental recharge, you may be stealing from the person who was benefitting from your incidental recharge.
- o Answer: Some say you can prevent by preventing enlargement of future use but this is impossible to do.
 - Question: Issue with juniors having to solve the problem of efficiency. Should the juniors be the only ones who take action or responsibility for the efficiency trap.
 - o Answer: he is not saying that IDWR is opposed to efficiencies. There are benefits to efficiency; we need to not kid ourselves about what we are doing; need to understand the water budget and how the actions we take are affecting the water budget.
 - Question: appreciated Director meeting with BGWD yesterday and meeting today;
 - o Answer: His commitment is to be very accessible to folks; he hopes the people know he is committed to speaking to everyone. Wants to be available.
 - Questions: In the context of the settlement agreement there is a lot of land is there is a mechanism in place to make sure water rights are not abandoned; assured that land in mitigation plan does not have water rights abandoned; may want to transfer more senior water right on CREP to other land; has this come up in the department.
 - o Answer: If in mitigation plan, CREP, or water supply bank; 223 protects them. If you think it is part of a mitigation plan, but it is not, then that is a problem. IDWR is not out looking for forfeited water rights. Usually comes to light when conflict with neighbors or transfers occur. Doctrine of resumptive use may cure.
 - Question: When you talk about stabilizing the aquifer, is it a return to 1960 levels, today, and does it include rolling averages? What do you mean when you say stabilize the aquifer?
 - o Answer: to him it means, there will be year to year fluctuation due to snowpack, but the trend cannot have a downward slope, needs to at least be flat; But because there is material injury determined question is difficult; no one things recovery to the 1990s? But should there be return to area since when the courts determined a material injury; he does not know; need to be modest in what short term recovery looks like; if start small can expand over time. What kind of recovery? He does not know; sometimes there is no injury.
 - Question: Thoughts on independence on modeling and on hearing officers?
 - o Answer: his agency is impartial; no bias when collecting data or measuring; partner with USGS in modeling efforts; rely on data collected by many different groups; IDWR is to maintain ground water and quality networks; but IWRI are authorized under federal rules, seed money granted, then directors had to raise money and operate in collaboration with U of I. IDWR, not to be overly harsh with U of I, but they have grown less interested in what IDWR is doing; so his perspective is that IDWR develops the expertise in-house out of necessity. There is a new IWRI director, hopeful he will be interested; U of I since Rick Allen retired, evapotranspiration research interest was lost. IDWR is doing this out of necessity.

- Question: Cities are interested in water rights, quantity, and quality. Millions on treatment, only to put into the river and get no credit. To put it someplace useful, so create infrastructure to use water to extinction. Would like to divert wastewater in Idaho falls for some other use. But do you have any thoughts on return flows and why cities cannot use the river to deliver to a productive use down the river? Do we need legislation to this point? States along the Colorado river do this. Where should we go as a state?
 - o Answer: Was in the moratorium case. This issue is in front of him and he is actively writing a decision on this issue. But actions like those in Colorado would be widely disruptive and would disrupt the status quo in water district 1. Maybe it is a good idea.
 - Question: thoughts on seeing ongoing growth and loss of incidental recharge.
 - o Answer: treasure valley is worse than here; and he thinks there is a lot of difficulty that comes from that. Question is whether we use less water when we urbanize? Looking at it through BSU in the treasure valley to determine if consumptive use goes down due to urbanization.
6. Thank Mat and guests.
7. Business meeting – election of board members:
- a. Roger Warner, Rocky Mountain Environmental
 - b. Mayor Marc Carroll, Blackfoot
 - c. Mayor Steve Adams, Sugar City
 - d. Mayor Donald Powell, St. Anthony
 - e. Idaho Falls: Mayor Rebecca Casper or David Richards
 - f. Fremont Madison: Aaron Dalling or Jeff Raybould
 - g. Scott Bruce, Falls Water
 - h. Alan Jackson, Bingham Groundwater District Alan Jackson
 - i. Bob Turner, IGWA
 - j. Bear Lake Water Watch: David or Claudia Cottle
 - k. Skyler Johns, Taggart / Olsen
 - l. Tracy Bono, Ammon
 - m. Dean Mortimer, Comfort Construction
 - n. Keith Davidson, Rexburg
 - o. Brad Buttars, Bonneville Jefferson Groundwater District
8. The same officers were elected for 2024. Roger Warner – President, Dave Richards – Vice President, Alan Jackson – Treasurer, Skyler Johns – Secretary, Keith Esplin – Executive Director, Amy McKoon – Bookkeeper.
9. Meeting adjourned