

Notes by D. Tutthill

7/31/2008

Channel 2

Brad Foster

Pre trial Brief Filed

Challenges - standing of protestants
 - Storage use is already
 - None in state has a right to use that water
 - Superior right and

Roger W. Chase

Storage water

Gw - 16-18 KAF/year

Presently 16 wells

Admitted

Exhibit A - Contract between City & BOR

50 KAF

City has purchased this water

Has leased this water privately
 (to IGWA)

This year 20 KAF to Idaho Power Co

Two reasons:

1. Rising cost of Power in Id

2. Recover funds from water

Water lease was approved by the City Council

Admitted Exhibit B Lease

Admitted Exhibit C Application & Attachments

Admitted Exhibit D Notice of Proposed Lease

Admitted Exhibit E Pre-hearing notice

City plans to retain 3KAF for mitigation, should it be found to be necessary.

Presently - no diversion works from the Snake River
Moving toward the use of surface water

Has placed water in the rental pool in the past

X Exam - by Jerry Rigby

BoR contract w/ City of Pocatello is unique -
as different from other spaceholders

Has taken advantage of rental pool procedures
in the past

Rental pool procedures have a bearing on City of
Pocatello

Chase Cont.

City is unique - so it should be different from other watersusers - has different standing due to being a city

* decision item - discuss to what extent the uniqueness of the city should control in this matter (City of Pocatello has special powers - for example it can cross Fort Hall lands to install a surface water system)

The Rental Pool Rules are not fair to the GW users or the City of Pocatello

"I don't think carryover exists anymore."

* exam by Rob Harris

- Does uniqueness carry beyond being a municipality
- Ans - not in contract

* decision item - discuss the relationship between 108a/b and the Rental Pool

42-1736 a Policy 32 of State Water Plan
Ofs flow at Milner

* exam by Randy Budge

City would plan to continue to sell water downstream if ~~cost~~ profit is higher
Selling water to IPCO

Take a portion for mitigation, a portion for ag & a portion for IPCO.

Rental Pool ~~Re~~ Rules 3.2

- Primary purpose is to provide water for space holders
- 3.2 - 2 party leases not allowed for power generation prohibition

Ongoing discussions w/ IPCO - Mayor Chase is a proponent of sale of water to IPCO - mostly discussions w/ Greg Panter

Channel 3 Re-direct

Why not go through rental pool? To avoid last to fill.

Majority of City water is culinary - and non-consumptive.

City of Pocatello spent \$1M in ^{outside} water litigation costs last year

Major Chase re-direct

Allocation this year is 24 KAF
 Penalty for last to fill limited this amount
 Fish augmentation water goes below Milner
 Last to fill is a deterrent

X Exam - Rigby

Mr. Chase - thinks that the 42-18A & B reg'ments
 include a last-to-fill requirement

Rental Pool Rules need to be re-done

X Exam - Chase

Protestants

Lyle Swank

Rental Pool Procedures are approved to be included in the
 record for this matter (no objections by applicants)

Protestants would be impacted by the proposed lease

Swank (cont.)

Status for 2008

Large Pool - 50 KAF

Small Pool - 5 KAF (Also, over-under cleanup)

Of 50 KAF for this year, most is still available
(several tens of thousands)

Water above Miner can be re-used

Below Miner is totally consumptive relative toward
Upper Snake R. basin

Uniqueness of City is limited to easement issues

→ Palisades Contract in Record?

52 min
on channel 3

"A 108 A+B ~~Rental~~ lease outside the Rental
Pool procedures would undermine the system"

Do the rules work? Yes, they have been modified
as time goes by. ~~the~~ Users share

Lunch Break

Channel 4 Lyle Swank

#6.1 of Rental Pool rules - price increases if
fill does not occur

Lyle Swank (Cont)

Rental Pool procedures are consistent with

12:02 on X Exam by ^{Dean} Trimmer
Ch 4

How are the impacts of second-party leases (private) determined? Ans: WDOJ makes the determination. For those that opted into the Rental Pool, they share in losses & proceeds. Opt-in orgs. are on the hook for proportionate shares.

Why analyze non-irr impacts, when irr impacts will also affect ability to fill.

21:00 on 4 "Does anyone have the ^{a superior right to use} water?" Ans: No ^{Stored}

Does leasing to someone above Miner cause less impact than leasing to IPCO? Yes, due to return flows.

This year the storage for IGWA was reduced in the allotment to City of Pocatello.

In 2007, surface water users purchased/used water in the Rental Pool.

Ly. Swank (cont.)

2007 -- about 100KAF of private leases
- about a dozen private leases

Allocation determinations about refill determined by WDOI staff

2006 system did not fill due to flood control

Re Direct

1:04
ch 4

Opt-out - kept whole

Opt-in - Close to equity - not perfectly equitable

2007 was a high demand year - BOR usually comes closer to filling than then, but all spaceholders were treated fairly

* Concept - likelihood of refill is an important component of a storage water right (or attribute)

T.R.
Tim Deeg

about
1:20
ch 4

Am falls GWD rep to IGWA - now serving as president
(7 years) CAMP rep

WDOI Rental Pool has been important for mitigation plans.
No objection to use of water above Milner

Tin Deeg (cont)

Mutually beneficial relationship with City of Pocatello

Admitted	Protestants Exhibit 1	Summary of IGWA Leases 2005
Admitted	" " 2	" " " " 2007
Admitted	3	Summary of IGWA Leases 2008

* In keeping w/ State Water Plan, operate upper river in a separate manner from lower river (as evidenced by zero flow at Milner)

- But downstream obligations of NEEPCo Settlement must be met
- Downstream ok if extra (as determined via Rental Pool)

- If Lower Lease would create

- Higher cost water
- Potential Shortages
- Potential injury to juniors
- Reduced ability to mitigate impact of juniors
- Open market system would flow to highest dollar (past Milner)
- Curtailment could be more likely
- One year of curtailment would likely result in bankruptcy & economic instability

Tim Deeg (cont)

- Judicial notice of testimony in 130 case
Dec 2007, economic info
- Also admitted in 120 delivery call case
City of Pocatello
- Hamilton report also admitted, incl x exam of
witnesses, &

2:08

Ch 4

x exam of Tim Deeg

This year City of Pocatello has proposed to lease
water to both IGWA & IPCO

* Concept: Statutory balance between

- Rental Pool Statutes
- 42-108
- Water Plan Zero Flow

* Concept - "Superior" rights held by irrigators
with other rights?

Wendy Murphy

2:23

Ch 4

Secy for Palisades Water Users &
Water Mitigation Inc.

Storage

11/12

Murphy (cont)
Admitted Exhibit No 4 - Contract

Final Comments

- Briefing? - Fri 8th

IDWR to take notice of

Original File - Containing Application & Assoc processing docs
Exhibits A → E, 1 → 3

Judicial notice of economic information

- Question on Exhibit 3 Rental Pool Procedures

- Time frame

- Electronic Record available upon request to
Debbie Gibson of our office (CP)