

RAFT RIVER WATER USERS

Advisory Board Minutes

January 20, 2004, 10:30 a.m.

Raft River Electric, Break Room

Malta, Idaho

Advisory Board

Members Present: Mike Lewis
Roscoe Ward
Nolan Branch

Excused: Reid Stewart

Others Present: Tim Luke, Idaho Department Water Resource Representative(joined at 10:45 a.m.)
Allen Merritt, Idaho Department Water Resource Representative (joined at 10:45)

The meeting was called to order at 10:30 a.m. by Mike Lewis

Meeting Objective:

The purpose of the meeting was to discuss the main objectives of a meeting they were going to have with Utah Department of Water Resource representatives and Idaho Department of Water Resource representatives to discuss the administration of water flowing into the State of Idaho from the State of Utah. They decided that the following items would be discussed at the 11:00 a.m. meeting.

Agenda:

1. Raft River Water users concern about the valley floor losing so much water in drought situations, water not coming down Raft River and Clear Creek, pumping, drought, etc.
2. Explain the 1928 Albion Land & Title-Jobe Adams law suit that included all the communities water rights including Naf. The Jobe Adams Decree that was the result of that law suit listed all the tributaries flowing into Raft River including Clear Creek, Naf, Standrod, Yost area and Lynn Valley, etc.
3. To observe if the Utah Department of Water Resources recognizes in their State "Date of Priority" on water rights both in Utah and Idaho.
4. Since IDWR had told Mike Lewis that UDWR had informed the Idaho Director that they would not meet with the Raft River Advisory Board to discuss the administration of water at the Utah Line if Dave Sundberg, Raft River users water master, was in attendance as they were not pleased with Dave's work. The Advisory Board would make an agreement with UDWR that if they were going to insist that Raft Rivers water users replace water master, Dave Sundberg, because they were not pleased with his work then Raft River water users were going to require UDWR hire someone else besides Vernon Kempton to be the Clear Creek water master. That way new people would be working with the administration of Clear Creek water on both sides of the state line.
5. Additional acres that are being irrigated in Utah since the Jobe Adams Decreed rights. The acreage was decided upon by 1928 Albion Land & Title-Jobe Adams law suit.

Tim Luke from Boise and Allen Merritt from Twin Falls arrived at this time and ask the Advisory Board

members to state their matters of concern. The board members discussed the items listed above as items of concern. Tim Luke said that Nolan Branch was automatically the Chairman of the Advisory Board since he was the Chairman of Raft River Water Users.

Tim Luke reminded the Board members that UDWR Director told him that Utah Department of Water Resources would not attend a meeting with the Raft River Advisory Board at 11:00 a.m. if Dave Sundberg was in attendance. They said they would turn around and go back to Utah as they were not pleased with the work Dave was doing in helping with the measuring of water coming into Idaho in Clear Creek. Utah also told Tim Luke that they were very pleased with Vernon Kempton's work.

Tim Luke reminded the Board that they were going to have to hire a new water master as Utah would not work with Raft River Water Users if they had Dave Sundberg involved in anyway.

Meeting Adjourned: 10:55 a.m.

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January 20, 2004, 11:00 a.m.
Raft River Electric Board Room
Malta, Idaho

Advisory Board

Members Present: Nolan Branch
Mike Lewis
Roscoe Ward

Excused: Reid Stewart
Mike Spencer

Others Present: Stan Spencer, representing Mike Spencer
Mark Stewart, representing Reid Stewart
Connie Winder, representing Reid Stewart
Tim Luke, Idaho Department of Water Resource Representative
Allen Merritt, Idaho Department of Water Resource Representative
Bob Fotheringham, Utah Department of Water Resource Regional Engineer
Scott Clark, Utah Department of Water Resource Engineer, Technician
Jeff Sessions (joined at 11:20 a.m.)

The meeting was called to order at 11:00 a.m. by Nolan Branch

Nolan Branch turned the meeting over to Mike Lewis to conduct discussion with Utah Representatives on issues concerning water rights on both sides of the Utah - Idaho Line.

Mike expressed his concern about the valley floor losing so much water in drought situations, water not coming down Raft River and Clear Creek, pumping, and drought, etc. He explained that loss of water in the Raft River valley is extremely critical. One of the main concerns of the Raft River Water Users is the loss of water coming from Utah.

Mike ask Bob Fotheringham about water in Cub River Area and Malad Pass. He ask how they determined who would use water in that area. Bob said there had been studies and a decision made, taking into consideration Historical Use and Prior Dates, on a fair way to distribute the water in three States. They called the agreement the Bear River Compact. Bob said the decisions were made mainly on "Date of Priority". He said that all come about when a law-suit was motivated by Idaho Power involving two major Decrees in the 1920's. Bob said on dry years there is a trigger on emergency situations in a compact between states. Historical flows plays a big part on decisions.

11:20 a.m. Jeff Sessions arrived.

Tim Luke said that any water right that has been given in the last 80 years is not a very good water right because of "Date of Priority".

Mike said because of drought and water not reaching the Raft River valley the valley floor has actually dropped because the aquifer is not being replenished. Things are getting to where we need to figure out how to stay in this valley.

Tim said there is more pumping than there used to be. Water management decisions are creating a steady downward trend on Raft River.

Bob said there are decrees Idaho is required to deliver to Bear River. Idaho won't deliver a drop of water if there is going to be pumping in Cache Valley. He said that was information from a Court decree.

Mike told the group about the Jobe Adams Decree and explained the 1928 Albion Land & Title-Jobe Adams law suit that included all the communities water rights including Naf. The Jobe Adams Decree was the end result of that law suit and listed all the tributaries flowing into Raft River including Clear Creek, Naf, Standrod, Yost area and Lynn Valley, etc. It also lists all water rights and acreage to be irrigated by those water rights.

Bob explained on the map the Lynn Valley and the Lynn Reservoir and said that when a well was drilled there were some acres dried up. He said all that can be observed on the internet.

Mike ask what the doctrine of "prior water rights" meant? He quoted the law between the states and ask if Utah observed that law? Bob said he was not familiar with the law he was talking about. But explained that Utah does not have a Compact with the State of Idaho concerning the Raft River valley. He said that the springs and the water missing in the Raft River valley he thought was created by irrigation pumps.

Mike said if there was a law everyone needed to abide by the law and that everyone needs accurate measuring devices. Bob Fotheringham said since we don't have a Compact all Utah is concerned about is Utah water rights.

Tim Luke said that a Compact between States could create an agreement to abide by "Date of Priority".

Bob said that they are trying to keep track of what goes on in Lynn Valley and in the Utah Narrows strictly by self government because the water users up there don't want to hire a water master. The problem is mainly an issue on management.

Nolan Branch mentioned that it was his understanding that Hal Amidan had opened new ground and was irrigating additional acres. Scott Clark said "that they drive up to the Lynn Valley Reservoir to check the water level a couple of times a year and they don't see any change but we don't look around." Bob ask Stan Spencer if he knew of any acres that were being irrigated that was new ground and he said "no" he sure didn't know of any.

Mike Lewis said if everyone had a legal measuring device there would be no problems.

Tim Luke suggested that the Raft River Advisory Board send Bob Fotheringham a letter of request on specific problem areas on expansion. Mike and Tim talked about the Idaho State legislature working with Utah to create one water district and hire one water master to deal with the whole stream. They felt it would be managed more fairly. Bob suggested that the best way may be to go through Tim Luke to the Idaho State Legislature, from the Idaho Legislature to the Utah State Legislature, etc. Tim mentioned that in Idaho after the adjudication that is going on right now Jr. water rights will be curtailed. Bob said he thought a lot of the Idaho problem was caused by so many acres being irrigated that was never irrigated years ago. Mike said that in the Raft River valley both the ground water and surface water need to be managed.

Tim suggested that the Advisory Board request maps with an overlay of the water rights on them from Utah Department of Water Resource.

Mike ask details about the amount of water Clear Creek receives before it is divided and sent down to Idaho. Mike and Nolan said it was their understanding that the split was Idaho- 57 % Utah- 43%. They ask if that was correct. Bob Fotheringham said "yes". Tim Luke showed a copy of an agreement between the States that was started in 1998 that states the 57/43 split was correct. Mike continues with conversation about an accurate measuring device to measure Utah-Idaho water and ask if the weirs were accurate. Bob said "no" the Utah weir was not accurate as it was a very difficult thing to accomplish. Bob said they put in a data gauging station but took it out a few years ago and put it someplace else in Utah. They ask him why? And Bob said they were quite costly and they needed it somewhere else. Nolan said they needed two different weirs. Bob said he wouldn't agree to that. Bob said they didn't like working with Dave Sundberg. He was not doing a good job and here is what the Judge thinks about Dave and his work. (Showing a document from the Utah Court.) Nolan said Raft River water users feel Dave Sundberg is doing a good job. But since you won't work with us if Dave is in that position lets replace both water masters and hire two new people. Jeff Session said he wouldn't replace Vern. He likes Vern and so does everyone else in Clear Creek. Bob said that Vern would not be replaced. Besides Vern is voted in by the water users and Bob couldn't replace him anyway as that is up to the water users in Clear Creek. Jeff Sessions agreed with Bob Fotheringham.

Mike, Nolan, Tim and Bob discussed the problem of weirs to measure the Clear Creek Stream flow. Scott and Bob said it is a design challenge because of the rocks and trees that come with the early spring flow. Whatever device is used ~~has~~ must be designed to handle a mass which makes an accurate measuring device very difficult. Mike said for sure there has got to be an accurate weir to measure Idaho water and every water user in Utah and Idaho must have an accurate weir. An Idaho weir at the State line is the point of diversion for all Idaho water users. Mike, Nolan, Roscoe, Bob, Tim and Jeff Sessions talked about going into Utah to check weirs any time they wanted so they could see if the water is being measured properly all the time. Jeff Sessions said he didn't think that would be a problem. They discussed the right of way to check water weirs and ditches. Bob said there may be a trespass issue because of private property rights.

Mike said that the Advisory Board would be writing a letter to UDWR with a request for information on items of concern to the Raft River Water users.

Bob Fotheringham again explained that Dave Sundberg didn't do a good job and had a Court Document as proof. He said all records were turned over to Dave and the Courts. Bob feels that Vern Kempton done a great job. Bob said that Dave cost Utah a lot of time, resources and dollars.

Meeting Adjourned: 1:55 p.m.