

MT NEBO WATER AGENCY
BOARD MEETING

Held via remote conferencing through Zoom Video Communications
Tuesday, May 26, 2020

CONDUCTING Gene Shawcroft, Chairman

BOARD MEMBERS Gene Shawcroft, Central Utah Water Conservancy District
Marty Larson, Genola City
Warren Peterson, Goshen Valley Local District
Brett Christensen, Payson City
Howard Chuntz, Salem City (7:38 a.m.)
Nick Miller, Santaquin City
Brandon Gordon, Spanish Fork City
Boyd Warren, Strawberry Highline Canal Co
ABSENT - Nathan Ivie, Utah County

ALTERNATE BOARD MEMBERS Chris Hansen, Central Utah Water Conservancy District
David Tuckett, Payson City
Chris Thompson, Spanish Fork City
ABSENT - Paul Munns, Goshen Valley Local District
ABSENT - Seth Sorenson, Salem City
ABSENT - Lynn Mecham, Santaquin City
ABSENT - Richard Nielson, Utah County

TECHNICAL COMMITTEE Chris Hansen, Central Utah Water Conservancy District
Travis Jockumsen, Payson City
Bruce Ward, Salem City
Norm Beagley, Santaquin City
Chris Thompson, Spanish Fork City
ABSENT - Richard Nielson, Utah County
ABSENT - Melanie McVicker, Goshen Valley Local District

STAFF Kim E. Holindrake, Payson City Recorder

OTHERS Steven Clyde, Clyde Snow
Steve Jones, Hansen Allen & Luce
David Hansen, Hansen Allen & Luce
Sterling Brown, Strawberry Water Users
Marcus Faust, Attorney
Wes Quinton, Goshen Valley Local District
Richard Tullis, Central Utah Water Conservancy District
Rachel Musil, Central Utah Water Conservancy District
Jared Hansen, Central Utah Water Conservancy District

1. Call to Order

Chairman Gene Shawcroft called this meeting of the Mt Nebo Water Agency Board to order at 7:30 a.m. The meeting was properly noticed.

2. Public Comment Period

No public comments.

3. Approval of Minutes – February 24, 2020 Meeting

Warren Peterson noted a change of the word “capital” to “capitol” around line 24.

MOTION: Warren Peterson – With the change, that the minutes be approved as presented.

Motion seconded by Marty Larson. Those voting yes: Gene Shawcroft, Marty Larson, Warren Peterson, Brett Christensen, Howard Chuntz, Nick Miller, Brandon Gordon, Boyd Warren. The motion carried.

4. Technical Committee Report – Chris Hansen

a. Groundwater Management Plan; Status Update

Chris Hansen reported the Technical Committee got the groundwater database program started with Hansen Allen & Luce. There were a couple other tasks discussed. One, to formalize a document/framework on how to handle protests on behalf of Mt Nebo Water Agency. A resolution will be brought to the Board in June allowing protest to be made without convening the Board. Two, the groundwater database was started; but the formulation needs to be finished for the cost sharing. This will be ready in June as the budget is finalized.

Dave Hansen reported a list of all the entities has been prepared that have been contacted regarding the groundwater database. Those identified in green have verbally confirmed to be involved in the process and are moving forward. Those identified in gray either don't apply or information hasn't been received back from them. He will continue to work on who will participate, primary contact information, and status in the process. One entity has started entering data into the spreadsheet. He will continue to work with and contact entities. The state engineer has some limited information. The problem is the data that is available doesn't fill the desire for this frequency we are trying to get to over the next year. There is some limited information but not to the level we are trying to achieve. There are several entities that don't have a lot of data. The water level is unknown in some wells and other wells aren't even metered.

Sterling Brown questioned leading up to this point has there been discussion on tapping into canal company knowledge and resources; adding or consolidating additional canal companies. He sees one or two canal companies and clearly there are more.

Chris Hansen stated we are trying to get the outreach going, and they have a list of irrigators. From the technical side, this was started with the member agencies. With the COVID issue, they haven't had the ability or time to get a full list to reach out to other entities. This was the plan from the very first discussion. They want as much data from as many entities as possible. They plan to fully get all

the information from the irrigation companies. It is a work in progress and could take 1.5 years with the COVID situation.

Gene Shawcroft noted the focus is on those who operate wells for groundwater data and not necessarily surface water.

Chris Hansen stated he is grateful and appreciates the work Hansen Allen & Luce is doing especially Dave Hansen.

5. Discussion on Water Banking – Warren Peterson (7:47 a.m.)

Warren Peterson stated with S.B. 26, Water Banking Amendments, there is quite an opportunity for Mt Nebo Water Agency to be in the water banking business and share resources back and forth with entities. There is substantial benefit to the Agency to look into water banking and perhaps see if it is beneficial to the members. He suggested establishing a committee off the board with support from the Technical Committee and Steve Clyde. The statute is almost custom made for an organization such as Mt Nebo Water Agency.

Steve Clyde noted it's a great idea and a really good opportunity. It works hand in hand with change applications.

MOTION: Warren Peterson – That the Agency establish an exploratory committee to evaluate whether a water banking arrangement would be beneficial to the Agency, and they report their findings back for further action. The committee members would include the Technical Committee as a foundation, Steve Clyde, Howard Chuntz, Marty Larsen, Warren Peterson, and Sterling Brown. Motion seconded by Marty Larson. Those voting yes: Gene Shawcroft, Marty Larson, Warren Peterson, Brett Christensen, Howard Chuntz, Nick Miller, Brandon Gordon, Boyd Warren. The motion carried.

6. Legislative Updates – Steve Clyde

a. 2020 Legislative Sessions

Steve Clyde reviewed the various water bills that passed this year.

H.B. 130: Water Use Amendments – Allows split-season change applications, which provides for the shared use of water where an irrigator may use a portion of their water and lease the remainder to someone else for a short term. It works very well with water banking.

H.B. 40: Water Loss Accounting – This was a very ambitious program to try to get into a process of implementing water loss accounting for every water system. It would have required a lot of expenditures and a lot of data generation on an annual basis. Smaller communities were bawking because of the cost and complexity. Originally written, it was basically legislative procurement of a single vendor and people took exception. The bill that actually passed is more of an investigative bill with a working group looking at water loss accounting benefits and pulling accounting practices together while working through the Water Task Force and Legislative Water Development Commission. The working group needs to report to those two entities by October 2020; and then

those entities report to the Legislature in October or November 2020. It will move fast and come back next year with a more detailed bill with additional public input.

H.B. 41: State Water Policy Amendments – This bill indicates the very first time for a pronounced water policy and lists a lot of interests of the state from water conservation to efficiency, protecting Lake Powell and Bear River projects, dealing with public information, analyzing water banking, split-season leases, and other mechanisms to help save and conserve water. It provides no cause of action to anybody if the state adopts legislation that doesn't conform to the stated policy, which begs the question why have the policy if not willing to do anything to implement or enforce it. He's not sure it does anything but it's there.

H.B. 94: Water Applications Amendments and H.B. 95: General Adjudication Water Amendments – These were technical tweaks to the statute.

H.B. 96: Water Forfeiture Amendments – This is a minor tweak Previously water held under a lease is being protected from forfeiture. The problem was the lease was simply an agreement where the use of the water is the protection. The lease didn't have to be documented; it could simply be a handshake. The State Engineer had difficulty in looking at forfeiture issues. The amendment requires a written lease with a terminal end date so it can't be a perpetual arrangement and must account for the water use. The other aspect recognized 40-year plans are a very important issue to protect water for future needs. There has been no guidance from the State Engineer on what goes into the 40-year plan. Some plans are very detailed and some are very cursory. The State Engineer must engage in rule making and put parameters on what goes into a 40-year plan to better define the justification of carrying water long term. Warren Peterson noted the State Engineer is also developing the rules that are mandated by this statute. It might be good for this group to have a regular update. Steve Clyde will plan that for each future board meeting.

H.B 105: Water Facilities Amendments – This amendment beefs up the statute on what constitutes unlawful activity and connection into another water system without permission or causing damage. It includes a heftier penalty. It reinforces the need for a contractual arrangement.

H.B. 166: Watershed Councils – This was identified by the Governor's Water Strategy Team in 2016 and reported in 2017. The Agency could use this as a water community to bring more entities to the table. It is a desire to create a collaborative process where multiple stakeholders such as environmental groups, agricultural groups, conservation groups, Native American, and anyone who wants to be involved in these local stakeholder groups. There is an umbrella including the State Watershed Council, then local councils underneath to help advise policymakers. It is purely advisory with no legislative authority. The state is divided into 12 water drainage areas who will have representation on the State Watershed Council. He clarified that the Division of Water Resources are to meet no later than July 1, 2020, to organize the state council and establish governing standards. Watershed councils are subject to the open meeting law and GRAMA, which makes them quasi statutory entities. Warren Peterson noted that the local entities will come up as the local areas see the need to organize and are not mandated. The July 1, 2020, will be problematic. It was originally set to be next year but amended at the last minute.

H.B 168: Public Water Supplier Relocation Amendments - This requires UDOT to pay 100% of the costs if it disrupts a public water supply, which hasn't been the case in the past.

H.J.R.3: Proposal to Amend Utah Constitution – Water Resources of Municipalities – A year ago, the Legislature adopted an amendment Article XI, Section 6, addressing the ability of municipalities to provide water service outside its corporate boundaries. It went into a very detailed process designating service areas that could include both city boundaries and outside areas, which is similar to when Salt Lake City extended services into Salt Lake County at a time when Salt Lake County had no water service in rapidly developing areas. It also addressed issues of providing water surplus to the current needs of a water service area on a surplus supply basis. This amendment makes a couple minor tweaks by replacing pronouns. It will now go to the voters in November this year. If passed, it will be implemented along with a statute dealing with the sale of water to services areas outside corporate boundaries and the sale of water to areas on surplus supply contracts not within a current service area. A chain of events will happen if approved.

S.B. 26: Water Banking Amendments – This statute is very lengthy and all were encouraged to read it. It allows the state to put water banks in place under the supervision of the Board of Water Resources. There will be a state water bank with appointed members. Local banks can be created in community areas if desired. There can be two forms of water banks; one is statutory with nonpublic entities that is run by lay water users and the other is contractual that is available only to public entities. There are three pilot areas; Bear River, Heber River, and Price River, which already have ongoing activity. A project manager has been hired by the Division of Water Resources to help manage these three banks up and running and see how they work over the 10-year program. Water banking obviously works best where storage facilities are available, which is largely big public entities with excess capacity to hold the bank water. The process is loosely structured so the banks can structure themselves on how to operate, staff, and government. It has to be approved by the Division of Water Resources.

S.B. 51: Secondary Water Requirements – There was a long series of bills before the Legislature regarding every use of water and every single irrigation head gate, which would be difficult and expensive to do. It brought a lot of objections regarding the recording keeping and required metering because of the expense. It provided some funding. This is a refinement of the bill that passed last year. The other three companion bills were defeated. The effort is to get a better handle on how water is being used.

S.B. 144: Water Related Process Amendments – This is a technical amendment in response to a litigation case. This bill clears what the court muddled through decisions.

Discussion:

Warren Peterson stated the H.B. 39 amendments require three people involved in production agriculture to be members of the Agricultural Water Optimization Task Force rather than leaving it to some of the nonproducers.

Steven Clyde noted this was a good fix because agriculture was the focus of the bill.

Marty Larson stated water banking is based on water rights and not water supply and asked for clarification. Genola receives all its culinary water from wells and has more rights than it's currently using because of anticipated growth. Would this be an ideal case for water banking? A concern is if a

water renter expands their infrastructure with temporary water, which could be detrimental to everyone.

Steve Clyde stated basically for a water bank, a change application is filed to move the water right to the water bank. Once there, the water right can be moved from here to there. When an entity leases from the water bank, the entity has the right to have the water delivered. It is done under the water right itself instead of sheer volume although volume becomes an issue. The revenue stream comes back to the water right owner. Irrigation companies have already had their water allocated to them and may have storage, which isn't dealing with the water right because it's already been allocated. This could be an ideal case for Genola to use water banking on a temporary basis until there is a demand and generate some revenue. It is more of a vehicle for agricultural users to make multiple use of the water, which is where most of the water banking will be seen. Large irrigation projects with water in excess may carryover or bank the excess water. It is a work in process but has been very successful in Idaho and the northwest, which have the Snake River and the Columbia River. Utah doesn't have a similar water supply anywhere in the state. The current statute gives the opportunity to try and see how water banking works. He feels it will work very well and is a good tool to minimize the buy and dry approach of stripping off agricultural land for urban growth. Urban growth cannot be allowed on a rented water supply. This is a short, stopgap filling on drought, relief-type issues. Municipal growth has to have a firm water supply behind it. Water rights will be constrained to historic parameters. Banked water can be used for a variety of purposes, but an irrigation right will be used in the irrigation season. There are enough safeguards in the statute to not cause harm to people.

Warren Peterson explained that with a reservoir, there is carryover water. A water bank doesn't deal with carryover water or sharing of water during the season. A water bank deals with the need for a water right change then it goes through the water bank under the direction of the Board of Water Resources. The change application has to be processed through the State Engineers Office. One shareholder leasing to another shareholder within the service area of the company does not need to go through the water bank but through the regular water right accounting. An area to explore is using aquifer storage; using a water right to aquifer replenishing is temporary.

Richard Tullis noted that one of the main concepts on water banking is the extensive analysis of a water right with the change application. Water banking doesn't expand or enlarge the water right but gives flexibility for the use. It is still tied to a specific analysis of the water right. The concern of expanding infrastructure with rented water was a concern expressed through the process.

7. Tentative Budget – FY 2021 - Dave Tuckett (8:27 p.m.)

Dave Tuckett presented a Board Memo showing the account balances; Administration \$31,681.75, Project #2 \$20,105.13, Project #4 \$6,852.69, and Reserve \$5,000. Since the last meeting, once invoice was received for the groundwater database for \$3,145.31. The tentative budget includes administrative expenses at \$2,920.00 and revenues at \$2,920.00. With plenty in the administrative account; the shareholders will not be assessed this year. The tentative budget for Project #2 moved the \$20,105.13 to Project #4 and closes Project #2, which requires approval from the Board. He will meet with Chris Hansen and Junior Baker this week to determine what entities own these funds and have it ready for the final budget in June. Project #4 includes remaining expenses of \$39,154.69 and revenues of \$26,957.82, which includes the allocation of Project #2. Assessments will need to be done for the balance of Project #4. There is also a feasibility study associated with Project #4 for

\$50,000, which has not been assessed. The tentative budget needs to be approved at this meeting and then a public hearing will be noticed to adopt the final budget at the June 15th meeting.

Steven Clyde stated at the June meeting, there needs to be a hearing to amend the current budget and reallocate the funds for Project #2 and a separate hearing for the new budget.

MOTION: Warren Peterson – To amend the budget for the current fiscal year based on the report that will be received from the Technical Committee of possibly moving those funds from Project #2 to Project #4 and set a public hearing for June 15. Motion seconded by Marty Larson. Those voting yes: Gene Shawcroft, Marty Larson, Warren Peterson, Brett Christensen, Howard Chuntz, Nick Miller, Brandon Gordon, Boyd Warren. The motion carried.

MOTION: Marty Larson – To accept the (tentative) administrative budget and capital budget and set a public hearing for June 15. Motion seconded by Howard Chuntz. Those voting yes: Gene Shawcroft, Marty Larson, Warren Peterson, Brett Christensen, Howard Chuntz, Nick Miller, Brandon Gordon, Boyd Warren. The motion carried.

8. Other Business (8:39 a.m.)
 - a. Information/Discussion Items for Future Meetings

No discussion.

9. Next Meeting
 - a. June 15, 2020

Discussion to meet virtually or in person in June. Salem City has been holding meeting in their council chambers with about 25 people who are well separated. The Governor's directive for no anchor location ends June 30. The consensus of the Board is to hold a Zoom meeting in June.

MOTION: Howard Chuntz – To adjourn. Motion seconded by Marty Larson. Those voting yes: Gene Shawcroft, Marty Larson, Warren Peterson, Brett Christensen, Howard Chuntz, Nick Miller, Brandon Gordon, Boyd Warren. The motion carried.

The meeting adjourned at 8:40 a.m.