

WTWG Minutes for Monday, June 6 at 10:30 AM

Bob Barwin
Tom Cowan
Dar Crammond
Chris Lynch
Tom Monroe

Dave Brown
Tom Ring
Stuart Crane
Lisa Pelly , by phone
Ron Van Gundy

Meeting was called to order at 1:35 PM by Dar Crammond. The group approved the minutes of 5/31/05

Lisa Pelly offered up transfers 2005-8, and 2005-40 through -46. DC recapped that these were orders pendente lite to be in force for the remainder of the adjudication or five years, which is the term of the leases. DC confirmed that they were based on straight WIG values with no drought year factors. LP said they would go to hearing on 7/14/05. Chris Lynch said he had reviewed these transfers for potential operational impacts and found they were under the 50,000 af five-to-three transfer cap. Bob Barwin added that the if we ignore the transfers to trust and some others there current status of the five-to-three is closer to 45,000 af. LP said that the WWT may have other transfers in the pipeline. CL observed that if the transfers are on the tributaries, they don't create an operations issue for Reclamation – provided they don't cross a control point. The group approved all the WWT transfers. Tom Cowan clarified that Roza was approving these for the drought season only, and may have issues with the longer term approval. TC said his view was that the WTWG, right now, was only engaging temporary transfers. TC said that if Roza had objections to the longer term leases, they would raise them on 7/14.

DC asked the group's opinion about the interface of the pendency of the adjudication and the five year term. DC said it seemed that the OPL would last as long as Acquavella, and if that was less than five years, Ecology's process – the ROE process – would pick up where the Court left off. BB said that DOE will be doing an ROE on this set of transfers, and that this is clearly not a drought emergency situation. BB noted that there is a big gray area between temporary and permanent for purposes of PTO 17 – a five or thirty year transfer seems in many respects like a permanent transfer, and Ecology will, to be safe, treat them as such.

There were no new proposed transfers.

DC updated the group on 2005-39, the Reclamation fallowing initiative. DC said that the transfer was going forward, that he had drafted a trust transfer based on the form on the DOE website. DC had included several lines of protective language in the transfer that he hoped would meet the proratables concerns over moving Project water into the state trust. Ron Van Gundy asked how the state would actually move the water to the domestic users. DC said that the transfer really created a legal right to interfere with senior storage and that DOE was the appropriate body to make that work out. DC said that DOE will be regulating these juniors and will be able to evaluate whether this block

of water is effective mitigation. BB said that was not an optional inquiry – DOE has to regulate these folks. TR said this makes some sense to him because it is state-based junior water rights being regulated, but that if it were federal pre-05 rights, it would be a different situation. TC noted that if the Bureau could contract directly with these users, or effect a contract directly with Ecology, that would be preferable. TC said that if this or any other block of Project water can be made available, especially in a drought, it should go to the proratables. TC said that if this continues, then storage will begin to go to others at the expense of the proratables. For that reason, TC said that Roza would oppose this kind of arrangement for any future transfers. TC asked that the OPL that goes with this transfer have the strong no precedent paragraph. TC again said that Roza was concerned about moving any Project water into state trust, whether for instream flow or actual consumptive use mitigation, Roza has to be concerned with protecting their water supply, even when the impact is very small. TC said that Roza will not approve any future deals where it looks like new users are “lapping” the proratables, especially where the use of water is for non-Project purposes.

TR said that his impression was this was not a TWSA balancing transfer, but rather a transfer to offset storage impacts. TR said that the Pott transfer covered Parker flows, but that transfer could not account for storage impacts. TR said that the YN would agree with Roza generally, but that the current transfer is an accounting exercise that does not create new uses by post-05 users, only puts them in priority.

TC said that he hopes Ecology will find a way to fund a permanent fix for this situation. DC said that the way to do that would be to find a contract for Project water, fallow the land, and move it to the end users somehow. DC further noted that this block of water was pretty clearly the U.S.’s property to dispose of. TC said that the proratables are first in line for any available water and that the U.S. has a duty to the contractors that supercedes these juniors. RVG and TC said that we need to have a forum to have a discussion of these issues. TC promised a letter that squares up the questions from the Roza point of view. BB noted that the best we may be able to do short term is to pose the questions.

The group approved the transfers.

BB had two further items. On the M&R order, BB said that it would supercede the Teanaway and Big Creek orders. BB noted that Reclamation has had some problems with timely reporting there and because Ecology is beginning to get their system of reporting and non-compliance noticing up to speed, they are better prepared to take these problems on. BB said there would be a mailing list generated for the M&R order. BB noted that the proposed order will be in the July 1 Court notice and set for hearing on August 11. BB said there will also be a media notice.

The second item was a reminder for all those who participated in the water banking effort to support Peggy Clifford’s application for the Water 2025 grant. Peggy had asked for letters of support. The grant would be for 250 K, and the idea is to spend the money on a storefront and an employee. A large chunk of the money could be used to buy a water right to use as the basis for the bank. That water right could be bought wholesale and “retailed” to users as leases. The bank would be a seller looking for buyers with no instream or out of stream preference for leases. RVG observed that the bank could be a clearinghouse and a broker. BB observed that the bank would still have to follow the

OPL or 90.03.380 route for transfers, and that Ecology and Reclamation would have to work through any contract related issues for the water.

The group decided to move back to a once a month meeting because most of the emergency work was done for this year. The next meeting will be on 6/27/05 at 10:30. Future meetings would be on an as-needed basis, but everyone should try to reserve the last Monday of the month for WTWG matters.

The group adjourned.