Board of Water Resources

Briefing Meeting

6.18.2020

THOSE PRESENT: Blaine Ipson

Kyle Stephens

Juliette Tennert

Wayne Andersen

Randy Crozier

Norman Johnson

James Lemmon

Charles Holmgren

Todd Adams

Candice Hasenyager

Joel Williams

Todd Stonely

Scott McGettigan

Shalaine DeBernardi

Marcie Larson

Randy Staker

Kim Wells

Lindsay Russell

Tom Cox

Marisa Egbert

Russell Hadley

Jaqueline Pacheco

Carmen McDonald

Michael Christensen

Kim Wells

Called to order by CHAIR BLAINE IPSON at 10:05. A roll call vote was taken of Board Members and all were present.. The meeting is in accordance with the Governor’s Covid-19 Pandemic Guidelines and is being virtually held.

DIRECTOR TODD ADAMS announced all staff.

CHAIR IPSON asked for any changes to the minutes. CHAIR IPSON noticed that the Board Members were not listed as present in the Board Meeting from May. NORMAN JOHNSON felt the need to add “ flood irrigation” to page 2 in the Briefing Meeting under Muddy Creek.

SPECIAL ITEMS:

RE439 Porcupine Highline Canal Company

MARISA EGBERT this will not be presented today. Because of the emergency slope failure adjacent to their canal, the company wants to hold off because of the potential cost estimate to fix the slope. They may not need to fix it. They also want to get some additional information from the NRCS and the Division of Wildlife about additional potential funding.. They have been able to pipe the canal next to the failure and are able to deliver water. But there continues to be a concern about the slope stability. They may come back in August if they cannot cover the costs.

RE060, Hooper Irrigation Company

KYLE STEPHENS there are certainly a lot of concerns and Russell will go over these

RUSSELL HADLEY this is addressing 3 different projects that the Board committed funds to in 2003, 2008, and 2012 and construction started shortly after each committal. The purpose of the project was to install a lawn and garden system in the area (installation of 14 miles of pipe to replace existing earth and ditches as well as regulating reservoirs and pump stations) that services 1586 homes. The total cost of the combined projects is about $13,275,000 and the Board’s share was 85% or about $11,284,000.

The first project, RE060 was for the Hooper Reservoir Pump Station and required approximately $5,541,000 to be returned at 3% interest with payments for 25 years increasing 2.86% each year until 2032. The 3% was because they were below the affordability guideline. The 2.86% increase was how things were done at the time and was based on expected growth in the area.

The second project, RE238 was for the Taylor Reservoir Pumping Station and 10 miles of pipe and hook ups. The cost for the Board on this project was about $5,475,000 to be returned at 1% interest over 30 years and to increase 3.37% each year until 2039. The growth rates come from the Governor's Office of Planning and Budget.

The final project, RE311 was to provide 4600 feet of pipe to the Hooper Haven subdivision which was about $267,000 from the Board and returned at 4% interest with level payments for 20 years until 2030. Previous director Dennis Strong had requested that interest rate because it was benefitting developers who had previously made an agreement with the sponsors.

On page 3, you can see that the payments for 2020 will be $533,000 and by 2031, they will be $717,500 after which they will begin decreasing. The total principal balance for all 3 projects is about $8,656,000. According to the Board Guidelines, residents can afford to pay up to $82.76 per month for all water service. The average culinary water between Hooper and Taylor is $33.18 a month and the applicant currently charges $34 per month for secondary lawn and garden water. Therefore, for all domestic water, the applicant is averaging $68.81 per connection (which puts them $13.95 a month below the Board’s affordability guideline).

Currently, the interest rate on municipal projects with the board is 2.08%. If the Board agreed to put all 3 projects at that interest rate over 20 years, the repayments would be a total of $533,600 and that is staff’s recommendation.

The applicant states the 2009 payment of $589,000 was nearly unaffordable. Staff looked at the company financial statements, which it showed that there was profit of about $403,000 excluding depreciation. Staff discovered that the company is split into two separate companies, one covering agricultural water (A shares) and one covering lawn and garden water (B shares) each with separate bookkeeping and bank accounts. The only time they are combined into one spreadsheet is for taxing. This made them look more profitable than they were and they have had some accounting issues. We do not know right now exactly how profitable they were in 2019.

SHALAINE DEBERNARDI just to clarify, the Board’s affordability is not based on the profit they say they have or that we see on their books. It is based on the guideline of what they can pay for water and what their median adjusted gross income was. The profit may be inaccurate but the calculations are not.

RUSSELL HADLEY they also have about 200 more connections lined up that are going to be in subdivisions. They recently did have a subdivision of 30 planned homes drop out so the number in the report is slightly less now. This number may continue to decrease as the economy has changed as some of those connections have been on their list for a long time. The only reason I wanted to share their profit and additional connections was to show that they are profitable and growing.

Staff recommends if the Board decides to amend each repayment term to state the balance owed will be purchased at 2.08% over 20 years.

Another issue is regarding some late fees they have accrued. This was not included in the motion. They have accrued late fees last year for bouncing their payment check months late and the late fee amount owed is $68,152.78. They would like to have the Board waive those fees.

SHALAINE DEBERNARDI this is “if the Board chooses” and it would be best to talk about the other items they are actually going to request because they will be at the Board Meeting and they will be asking for different terms. Please talk about that first.

RUSSELL HADLEY the applicant has requested these repayments be adjusted because the large increasing payments are becoming difficult to make and the calculated growth rates have not occurred. The applicant is requesting that the combined balance be returned over 25 years at 1% interest with level payments that total approximately $393,000. We did inform them that they do not qualify for the 1% interest rate but the Board can do what it wants but we do not see a reason for the Board to do so because the current standard for municipal projects is 2.08%. They were hoping to get a 25 year repayment plan if they had to pay 2.08% interest, with annual payments of $447,700.

VICE-CHAIR STEPHENS initially I wondered if the growth projections had been realized (they had not). Are they current with the payment status now except for the late fees right now?

SHALAINE yes

VICE-CHAIR STEPHENS when was the last time they raised their water rates? We need to ask them because the amount they can afford versus what they are currently paying shows some flexibility. If they have not asked for an increase in awhile, they perhaps should be willing to consider that to make up that difference.

RUSSELL I do not know the answer to that. It looks like the population growth has been 2.9% in Hooper but Taylor is unincorporated so we are not sure of the growth there.

JULIETTE I am somewhat uncomfortable with this situation. I want to be reasonable given the current economic conditions so I am wondering if they would be eligible for the COVID-19 hardship policy?

SHALAINE we discussed this with them yesterday. They are not sure how much of the COVID-19 Policy we are looking at today is the issue for them. Yes, developers are not moving as quickly because of COVID but the biggest concern is the growing payments and while they are able to make them now, they are looking at the schedule and the amounts in the future and the payments are quite large. They just want to level it out and plan for it with some additional time and cushion to perhaps plan some other projects and possibly start installing secondary meters. They will lay out the reasons for you during the Board Meeting.

This is an odd situation because we are not a bank and we do not use growth rates anymore, as Russell said. It is just not reasonable to do that.

JULIETTE how many other projects are out there with these escalating payments?

SHALAINE there are a few but there are not too many out there. The ones that are out there have not complained. Some have additional projects with the Board but we have structured the repayments of those to accommodate the existing growing payments.

JULIETTE we are not talking about huge numbers per se but we are going to have this tax earmark and we will have this hardship program available… are we concerned about the balance sheet?

SHALAINE at this point, we are not concerned.

TOM COX Davis Weber has a number of projects with us that do have increasing payments and if we were to change the interest rate on previous projects based on today’s interest rate, Davis Weber will be on the agenda in August asking for a change in their repayment plans. I am not sure if we should be concerned about that or not.

SHALAINE that is a valid point.

RUSSELL the biggest concern to me was to get rid of that growth rate and when they approached me about this, I told them that we had done that before and could do it again. We were not initially sure of how to handle the interest rates.

SHALAINE Tom, I did want to point out that on one of these projects, the existing rate is 1% and if they ask for consistent terms, the 1% will go up. The 4% project is a small project and the biggest project is currently at 1%.

VICE-CHAIR STEPHENS what are staff’s feelings regarding the request to the payments going from 20 to 25 years?

RUSSELL they want to install meters on the whole system, run pipelines on their own without having to come to the Board so they can grow, and a few other reasons they will entail during the meeting.

SHALAINE after running the numbers yesterday, the combined repayment at 2.08% for 20 years is $533,600 and the repayment at 2.08% for 25 years is $447,700 which would give them $89,900 a year that they would have to work on their own system without having to come back to the Board. We are not against the 25 years, we just went with the guidelines which say that 20 is plenty of time.

DIRECTOR ADAMS the 2.08% and the $533,600 is based on your Board guidelines so that is what we followed.

RANDY CROZIER as I looked at this, I noticed that if we go to the 20 year repayment, the highest repayment amount of $717,700 will go down to $533,600 for every payment and that is almost $190,000 difference in the repayment amount from those two scenarios. I know they are saying that they can use that extra amount to do projects on their own but if they can get the 1% interest rate, they will be back looking for help with these future projects as well. I hate to set the precedent to drop to 25 years because I think we would be kind going to 20 years. I would prefer to go with our own guidelines.

SHALAINE you are absolutely right and this is why we tell people that the Board can make the decision for themselves. I did want to clarify that this has happened a fair amount so this is not setting precedence but the Board can do what it would like in approving these types of changes.

RANDY I recognize that but there are plenty of entities that come to us for funding and they pay according to what they agreed to. It just does not seem to be consistent or fair to those who stick to their agreed upon amount.

WAYNE ANDERSEN I will piggyback a bit off of Randy’s comment but coming to us to forgive their late fees. They get themselves in trouble and they want to be bailed out. I would feel better about going to 25 years and adding the late fees to the balance just so they have to pay them over time with their current balance.

RUSSELL we did have a discussion about the meter program and the 1% loan and 85% cost sharing on meters and that is a long-term goal of theirs. They likely would come back in the future to get some meter money from us and that is why it is there for, but they are very thankful for that offer of the 20 years repayment plan. They are asking for something a little better than that, but if the Board decides to agree to the 20 years, they will be happy.

RANDY I would also be thrilled with the 20 year offer if I was them.

CHAIR IPSON I have the same question that Kyle has which is when was the last time they raised prices and if it has been awhile, why have they not asked for a rate increase?

RUSSELL I will call the secretary now to find out when the last time they raised their rates was.

VICE-CHAIR STEPHENS I think that would be great to know going into the meeting later this afternoon.

RANDY if they could raise their rate by $5, it would give them some flexibility to make payments and be able to do projects on their own.

CHAIR IPSON for the amount they are saving between the 20 and 25 years will not give them much to work with in terms of secondary meters and other such projects.

RANDY if they want to be able to do projects on their own, they will need to raise the rates and the affordability index shows that they can do that. If we went with the 20 years repayment plan and forgave the $68,000 I could be okay with that.

CHARLES HOLMGREN I agree with Wayne’s assessment on this with adding the late fee to their payments over 25 years. I have an applicant that is going to come forward to ask for an additional 10 years but they are completely agricultural and they really will have a tough time making those payments. Residential areas don't typically have quite the same problems as dairy farmers in Cache Valley. This will be in a future meeting.

NORMAN JOHNSON I am of the opinion that they agreed to take the loans the way they were and they should stick to those terms.

RUSSELL they raised their rates 6 years ago by $4 a month.

SHALAINE this company’s payments are due September 1 each year so if you want to table this for today and explore other options, that is fine. No one seems super happy with the proposals and there are different opinions on each of the ideas. This is completely up to you and we are happy to help with that. And yes, they did agree to the terms when the paperwork was signed but things are different than they were then and we are not a bank and we do not necessarily refinance but we can do what you, the Board, would like to do.

JAMES LEMMON I agree with many points made but I think it would be good to table it and get more information. Regarding the late fees, is that just one year that they owe? And have they been on time with the rest of the payments?

RUSSELL yes, one year of late fees owed now.

SHALAINE they have been late previously to this year. As Russell mentioned, they treat themselves as 2 separate companies. But because of that, they have borrowed from the agricultural side to make the payments. They did that last year and the check for $518,000 bounced. We have waived late fees before and they have been late other times but its not alway been their fault as there were some issues with the State Division of Finance (the company was not getting statements sent).

JULIETTE there was mention before of issues with their accountants not being able to work out some of the data points from finances so that might be a reason to table this until the next meeting as well.

CHAIR IPSON $68,000 seems high for a late fee and how does that stack up to normal late fees?

SHALAINE it is high and the reason for that amount is the size of the payment and how late they were this year. They thought that the payment was made November 12, so they were already late, but they did not actually reconcile and make their full payment until April 15 because that check bounced. The late charges were approximately $36,000 on RE060, $28,500 on RE238, and $3,500 on RE111. They did not have their money in the right account when they tried to make their payment in November. Their secretary does not know all the accounting and the accountant does not really differentiate between the Ag and Irrigation accounts. She knows they have separate accounts but does not keep track of them as 2 separate entities. Its too many people and not one who seems to know all the aspects.

WAYNE I do not understand how someone could not know that a check for that amount bounced.

SHALAINE I am not sure how that happened either.

RANDY I would think that tabeling this and letting staff work with them and figure all of this out would be best at this point. Then we are all on the same page.

VICE-CHAIR STEPHENS there are a lot more questions than answers at this point so I would not feel comfortable making a motion. Do we let them make their presentation and then table the discussion after that?

SHALAINE I would suggest tabling it before the presentation because the information that is going to be gathered is going to result in no decision anyways. It should be tabled as it comes up on the agenda with direction to staff of what should be looking for before it is brought back in August.

DIRECTOR ADAMS that is a fine suggestion but the Board can decide what they would like to do. It seems to make more sense to not listen to the full presentation until we have more information and clarification

WAYNE can we contact them beforehand and let them know we would like to hold off until August?

CHAIR IPSON because it is on the agenda and the agenda is a public notice, they have the right to have the floor if they want it. We can reach out to them and see if they voluntarily want to hold off but if they want to be heard, we are obligated to hear their proposal/request.

VICE-CHAIR STEPHENS Russell mentioned that they wanted to be able to make their case. I am confused as which direction we should take and what their reaction will be to us if we table it up front and do not give them the opportunity to discuss it.

CHAIR IPSON I don’t believe we can just tell them we will not listen today because it’s been published. We can reach out and let them know where we stand and let them make their decision.

SHALAINE I believe that sounds reasonable and I will send them all an email when we are finished in this meeting and let them know what we have discussed.

DIRECTOR ADAMS I would suggest making a phone call instead.

SHALAINE I was going to send the email so I could reach the president, secretary, and engineer all at the same time but Russell can call the company president directly on top of that.

JAMES I am wondering if changing the date of payment to possibly November 1 would give them time to raise money?

SHALAINE I am not sure the date really affects it and the September 1 date is what they requested previously.

RUSSELL going back to their financial statements, it’s really not important to bring up the Ag side, it was just to show that they are profitable. The accountant can figure that out, just not today. The number of connections that are up and coming will change because of the economy but they are still growing. They really would be happy with the 20 year repayment plan, as suggested by staff. In regards to the late fees, that is the Boards call and the secretary will be apologizing for those late fees.

CHAIR IPSON make the phone call and let them know of the concerns we discussed and if a motion is made, I would feel comfortable doing what the staff has recommended and adding the late fees into that.

VICE-CHAIR STEPHENS I concur with that thought process. I could make that motion. The staff has worked hard with them and if they are amenable to staff's recommendations, including the late fees, I am inclined to lean in that direction.

CHAIR IPSON there were 2 new applications RE440 Nibley Blacksmith Irrigation Company and RE441 Provo City. We have received those applications and we will be looking at both in the future.

New Polices

* COVID-19 Payment Deferral Policy

VICE-CHAIR STEPHENS my only comment was to include an “approve by date” and that has been added so I am comfortable with that information.

CHAIR IPSON who would be willing to make a motion on that policy?

VICE-CHAIR STEPHENS I would be happy to do so.

* Policy Reducing Funds Committed

CHAIR IPSON who would be willing to make a motion on that policy?

JULIETTE TENNERT I would be happy to make that motion.

SHALAINE just a clarification, this is not if they don’t use all the money, it is like Blanding City, where they bid came in lower and they did not want to be obligated to the higher payment. With a bond, if they dont take it all the amount not used comes back to the Board and pays off the end of the loan. It does not reduce their annual payments. This policy is for staff to be able to make those changes before we go to a bond closing.

CHAIR IPSON if you would give a brief introduction on both of those during the meeting, that would be helpful.

* Second Memorandum of Agreement Concerning the Upper Colorado River Basin Fund

SCOTT MCGETTIGAN the Colorado River Storage Act had some requirements regarding power revenues collected which has led to some complications. There are more revenues collected than are necessary to repay the participating projects from CRISPA. This money is not perceived as being very accessible because it would only be meant for a new project that is authorized by Congress.

There was a situation where the money being collected would not have likely been able to be used for anything because it would not have been able to be approved through Congress so this collection of money had an effect on the power firm rate that is charged to those customers. The customers organized with CREDA (Colorado River Energy Distributors Association) and they proposed an option for how to best address this and have money that could be usable. This would be done through sharing a collection of revenues between the states. The act states that revenues cannot be shared between states. This would state that if there is consent between the states, they can share those power revenues to pay off projects with a new memorandum of agreement. They could collect only what is necessary to repay the projects and that reduces the amount of money that is collected through these power revenues and reduces the effect on the firm power rate charged to WAPAs customers. This was proposed back in 2010 and it is called MOA 1 or the original MOA.

This was set to expire in 2025 but we were approached by CREDA and WAPA to redo the agreement before the expiration. They are hoping to incorporate this into WAPA’s power rate study and they wanted to make sure the MOA did not lapse so there is not an overcollection of power revenues. This new MOA will also address some issues that have developed over the years with the first agreement. This money can only be used for Reclamation facilities on elective O&M and that can be difficult to figure out what qualifies. This money has been used for several projects in the state; the Olmstead power plant was partially funded, Blue Cut Canal water right transfer, Steinecker Canal, and Red Fleet Reservoir as well. The Upper Basin Consumptive Use study was also funded through this money.

The money collected will be $245 million from the Upper Basin States for the next 17 years and Utah’s allocation of that is $3.1 million per year. The total avoided over collection amount will be $323 million.

CHAIR IPSON thank you Scott, it looks like it is in Utah’s best interest to formally extend this agreement. The resolution would authorize the Director through the Utah Board of Water Resources to sign this agreement concerning the Upper Colorado River Basin fund. We would approve the MOA and have Director Adams sign this.

NORMAN I would be glad to make that motion.

SHALAINE Scott will have a slide with the recommended motion that will be up for all to see.

RANDY How does this affect the funds on the salinity control program?

SCOTT this money is separate from the salinity portion.

CHAIR IPSON there will be a Planning Report about climate change water resource potential adaptation strategy in Utah from Krishna Khatri.

There will also be an update given to the Board From Joel Williams on the Lake Powell Pipeline project and we will be discussing and taking action on a draft comment letter on the Environmental Impact Study (EIS). The letter will be to Rick Baxter, who is the program manager with the Bureau of Reclamation. We will have a Bear River report from Marisa Egbert on the corridor preservation and right of way acquisition.

MARISA EGBERT we have closed on one property for $29,400 at this point and I can discuss that further in the Board Meeting later today. I will also be able to share a map with you of the property. We are trying to stay ahead of development In addition to the money that was spent for the land, additional costs include the surveying, right of way agent, etc to ensure that the transaction is done correctly.

JOEL WILLIAMS the status of funds are very similar to what they were in the last meeting. The Revolving Construction fund is looking a bit tight for funding so we are trying to divert projects to the C&D fund to allow the Revolving fund to build up again. The money that goes into that fund are repayments while the C&D fund gets the sales tax revenues each year.

The C&D fund has a healthy balance although we do have some big projects coming through applications. The City Water fund could take on another project. Overall, the funds are good and the Board has the capability to fund future projects on the horizon.

NORMAN JOHNSON did we reach out to the applicants who had been on the books for awhile with no forward movement on projects?

JOEL WILLIAMS as we have been reaching out to them, many have said that they want to continue with that project but they are on a more extended timeline. If it goes beyond 6 years, they would need to do a re-authorization.

SHALAINE DEBERNARDI I will reach out to staff and have them pursue those who have not responded.

DIRECTOR ADAMS the legislature is in their 5th special session and are looking at budget cuts. There was some information from the executive appropriation and it seems like they are doing budget cuts up to 7 or 8% which is what we as a division are expecting to be hit with. We submitted some ideas of cuts at 2,5, and 10% including things like Millsite desilting, expense travel, water conservation rebates, the Logan River Monitory Observatory with USU, and most of the water education program.

If there are any reimbursements for Board Members travel and meeting per diems, please send those to Randy.

VICE-CHAIR STEPHENS if we have not kept track of the hours for the virtual meetings, can staff fill that in if we sent the document in sans those hours?

DIRECTOR ADAMS yes, that is fine.

CHAIR IPSON moving on to Other Items, there were 6 protests that were received by the Division of Water Rights regarding the Lake Powell Pipeline Change Application. Our legal council received permission to condense those into one response which was put together by legal council for both the Division of Water Resources and the Washington County Water Conservancy District. That was filed yesterday June 17, 2020). There will be a hearing eventually on this. There has been a lot of publicity from the Utah Rivers Council and a few others regarding this project. Would it be fitting to ask staff (on behalf of the Board) to develop a letter to the media regarding the change application?

DIRECTOR ADAMS if the Board directs us to do so, we will prepare that.

JULIETTE TENNERT I like the idea of preparing a letter of that nature and providing that clarification in the midst of misinformation that may be out there.

RANDY CROZIER is this premature to begin this or should we wait for this to go through the State Engineer. We would not want to seem like we are influencing their office.

CHAIR IPSON if we were to wait for their office to move through this process, it would be 4-6 years before we write the letter

VICE-CHAIR STEPHENS I concur with what Randy mentioned in that we would not want to put the cart before the horse or be perceived as influencing. It would be good to have the clarification but it might be premature at this point.

WAYNE ANDERSEN we need to be prudent but there is a lot of misinformation by those who are opposed to the project. I would not want to sit back and do nothing. It does not seem beneficial.

JAMES LEMMON will the letter we looked over this week be going to the State Engineer?

CHAIR IPSON that is who it was sent to in response to the protests we received.

NORMAN JOHNSON I think it would be good to let the world know where the Board stands.

DIRECTOR ADAMS we could have our communications team draft a letter that would address the support for the project and stay away from the change application and other issues like that. We will do what you ask us to do.

CHAIR IPSON if the letter were to just do as Director Adams mentioned, would that remove concern?

VICE-CHAIR STEPHENS that would be something I would support.

RANDY CROZIER I do support a letter of support that does not mention the water right.

WAYNE ANDERSEN could we have the staff draft a letter and send that to the Board to review?

CHAIR IPPSON would these need to be a formal agenda item at the next meeting?

DIRECTOR ADAMS I do not believe this needs a formal agenda item.

SHALAINE yes, that is correct.

CHAIR IPSON I think that if we could have staff draft a letter like that which provides some explanation, it would be beneficial for us to review.

DIRECTOR ADAMS yes, we can work on that and if it is the will of the Board, I could work with the Chair to finalize and prepare that letter.

CHAIR IPSON I would like the input from the Board after that letter is drafted as well. Before we move on, have we been able to speak with Hooper on how they would like to proceed?

SHALAINE DEBERNARDI they are ready to proceed today.

CHAIR IPSON they are going to be present and are hoping for a resolution then?

SHALAINE DEBERNARDI yes, that is correct

DIRECTOR ADAMS thanks to everyone that has put in service during this time. The Board Meeting will begin at 1 pm this afternoon.