

MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS
OF THE OWYHEE IRRIGATION DISTRICT

January 22, 2002

The regular monthly meeting of the Board of Directors of the Owyhee Irrigation District was held on January 22, 2002, at the offices of Stunz, Fonda, Kiyuna & Horton, LLP, 106 Main Street, Nyssa, Oregon, at 1:05 p.m., Larry White, Vice-President of the District, presiding.

The following Directors were present:

Duane L. Drydale	Jerry Nagaki
Larry White	Fred Schilling

Also present were: J.L. Eldred, Water Master; Tom Zittercob, Hydroelectric Supervisor; Jeff Hess, District Patron; Kathy Pratt and Duane Pearson, from Malheur County Soil and Water Conservation District; Jay Chamberlin, District Manager; and Michael W. Horton, Secretary and General Counsel.

MEETING NOTICE. Mr. Chamberlin reported that he gave notice on January 15, 2002, to the news media, namely the Ontario Argus Observer and Radio Station KSRV, as to the time, date and place of the meeting.

RESERVOIR STORAGE. Mr. Chamberlin reported that the reservoir storage as of January 22, 2002 is 129,450 acre feet and that the storage as of January 22, 2001 was 264,712 acre feet. Mr. Chamberlin stated that he was scheduled to fly the snow course this week but because of weather changes, he will be waiting until next week. Mr. Chamberlin handled out Bureau of Reclamation inflow estimates and a printout of 30-year averages. He stated that the trend would be to have adequate water.

MINUTES AND FINANCIAL OVERSIGHT. Minutes of the meeting of Directors held on November 27, 2001, had been mailed to each Director prior to the meeting. A motion was made by Director Schilling and seconded by Director Nagaki that the minutes be approved as submitted. The motion passed unanimously.

TOM ZITTERCOB, HYDROELECTRIC SUPERVISOR REPORT. Tom Zittercob reported that the Mitchell Butte penstock pipe has been installed and welded in. There is still concrete to be poured. He stated that an extensive coating has been applied to the pipe and that the concrete will be poured in the near future.

Mr. Zittercob reported that the Dam Plant is ready to go. The Tunnel Power Plant is going through its standard maintenance.

He stated that a new hi-tech ceramic coating is being applied to the shafts to prevent pitting and eroding. The testing lab will be in the area on February 4 to conduct the regular maintenance tests. This year the generators, switches, and batteries will be tested. The testing should take about one week. He stated that the Mitchell Butte Power Plant is one week away from being operational.

Vice-President White asked if the costs on the penstock repairs at Mitchell Butte are coming in close to the estimates. Mr. Zittercob stated that all of the bills have not yet been received but he believes that it will be close. Mr. Zittercob invited the Directors to come up to Mitchell Butte and view the work that has been done. He stated that Mr. Chamberlin has located some magnesium anodes that are going to be welded in prior to the concrete being poured in order to prevent electrolysis.

At 1:20 p.m., President Bruce Corn joined the meeting. Vice-President White turned the meeting over to President Corn.

MALHEUR COUNTY SOIL AND WATER CONSERVATION DISTRICT (SWCD)
PRESENTATION. Duane Pearson stated that SWCD is looking at applying for grants to monitor the drains in the area. He stated that DEQ is unable to account for a portion of the TMDLs and is therefore attempting to put the unaccounted for figure on the farm drains which flow into the Snake River. SWCD is asking for approval from the local districts to have the drains monitored. He stated that if the District is in favor of such monitoring that he would like to have a letter sent to them stating that fact.

Kathy Pratt stated that the Bureau of Reclamation has agreed to help with the cost of having the drain water analyzed. She stated that it appears as if DEQ may want to classify the drains as a point source rather than a non-point source for TMDLs. She encouraged the District to comment on the draft TMDL. She stated that an important appendix has been left out which hurts farmers. Mr. Chamberlin stated that he visited with the Bureau of Reclamation and they have agreed not to charge for the water analysis. Mr. Horton asked what farmers should be commenting on. Mrs. Pratt stated that the dissolved oxygen and phosphorus levels are not consistent throughout the document. Mrs. Pratt stated that she would get more information on commenting on the TMDLs to Mr. Horton.

At 1:50 p.m., Mrs. Pratt and Mr. Pearson left the meeting.

Director Drydale made a motion which was seconded by Director Nagaki authorizing President Corn to sign written comments to the TMDL as prepared by Mr. Horton. The motion

passed unanimously. A motion was made by Director Schilling and seconded by Director White authorizing Mr. Horton to write a letter to SWCD in support of the drain testing. The motion passed unanimously. Mr. Zittercob stated that in 1984 a temperature study was done when the dam was put in that may be helpful.

REORGANIZATION. Mr. Horton stated that this, the first meeting in January, is the time for the reorganization of the Board.

ELECTION OF PRESIDENT. President Corn opened the nominations for the election of the President of the District for the ensuing year. Director Schilling nominated Bruce Corn. Director Drydale seconded the nomination. A motion was made by Director Schilling and seconded by Director Drydale that nominations be closed and a unanimous ballot cast for the election of Bruce Corn as President of the District for the ensuing year. The motion passed unanimously.

ELECTION OF VICE-PRESIDENT. President Corn opened the nominations for the election of a Vice-President of the District to serve during the ensuing year. President Corn nominated Larry White. The nomination was seconded by Director Drydale. A motion was made by Director Schilling and seconded by Director Drydale that nominations be closed and a unanimous ballot cast for the election of Larry White as Vice-President of the District for the ensuing year. The motion passed unanimously.

DESIGNATION OF MEMBERS TO SERVE ON THE JOINT COMMITTEE. President Corn stated that the next order of business was the designation of four members of the Board of Directors to serve as members on the Joint Committee. A general discussion was had. A motion was made by Director Nagaki and seconded by Director Schilling that Directors Nagaki, Schilling, Corn, and Drydale be named as representatives to the Joint Committee and that Director White be an alternate to serve at any meeting of the Joint Committee when any of the designated members are not present. The motion passed unanimously.

MONTHLY MEETING DATE. It was noted that the regular Board meetings presently take place on the Tuesday following the third Monday of each month. A motion was made by Director Schilling and seconded by Director White that there be no change in monthly meeting dates for the ensuing year. The motion passed unanimously.

2002 ASSESSMENTS. The Directors noted that the Board has made its assessment for the operation and maintenance of the District for 2002 at the rate of \$34.50 per irrigable acre. They noted that there will be no construction charge obligation in 2002. They also noted that the assessment for the year 2001 was a total of \$32.00 per acre. A motion was made by Director White,

seconded by Director Nagaki, and carried unanimously that the following resolution be adopted:

BE IT RESOLVED, that the Owyhee Irrigation District does hereby assess for the year 2002 the sum of \$34.50 per irrigable acre for operation and maintenance, delinquencies and collection, reserves, and administrative expenses, and the sum of \$10.00 per acre foot for each acre foot of excess water. The assessment for operation and maintenance, delinquencies and collection, reserves, and administrative expenses shall be payable on or before April 15, 2002, and the assessment for excess water shall be payable on or before December 15, 2002, and any assessments not paid on the due date shall be considered delinquent; and

BE IT FURTHER RESOLVED, that the Owyhee Irrigation District does hereby assess an interest charge of 1 $\frac{1}{2}$ % per month or fraction thereof, as required by Oregon law, on all of the aforementioned assessments which are not paid when due, it being understood that payments made after they are past due must include the full 1 $\frac{1}{2}$ % interest for the month in which payment is made regardless of the date of the month on which payment is made; and

BE IT FURTHER RESOLVED, that the Board shall sit as a Board of Equalization for the purposes of reviewing and correcting its list of water charges and apportioning the charges made thereunder for the 2002 irrigation season at 11:00 a.m. on February 26, 2002, at the offices of Stunz, Fonda, Kiyuna & Horton, LLP and Michael W. Horton shall be directed to cause notice of the equalization meeting to be published.

BE IT FURTHER RESOLVED:

1. The charges assessed for operation and maintenance, delinquencies and collection, reserves, and administrative expenses represent the actual cost of providing the service of delivering water to water users.

2. The service of delivery of water to individual water users is provided by the Owyhee Irrigation District only on the specific request of individual water users.

APPOINTMENT OF SECRETARY AND LEGAL COUNSEL. Mr. Horton offered his and his firm's services to the District on the same terms as last year. A motion was made by Director Schilling and seconded by Director Drydale that Michael W. Horton be appointed Secretary and Legal Counsel for the District for the year 2002; that his law firm be appointed attorneys for the year 2002 for an annual retainer to be paid for routine services in the sum of \$13,200.00, payable in monthly installments of \$1,100.00; that out-of-pocket expenses be paid by the District in addition to the

said retainer; and setting compensation at the rate of \$102.00 for services rendered which are not covered by the retainer. The motion passed unanimously.

APPOINTMENT OF ASSISTANT SECRETARY. A motion was made by Director White and seconded by Director Drydale that Gene Stunz be appointed as Assistant Secretary of the District for the year 2002. The motion passed unanimously.

APPOINTMENT OF AUDITOR. President Corn announced that the next item of business is the selection of the auditor for the District. A motion was made by Director Nagaki and seconded by Director Schilling that Bledsoe & Bledsoe be auditor for the District during the year 2002 for the 2001 audit. The motion passed unanimously.

INSURANCE AGENT OF RECORD. President Corn stated that the next item of business is consideration of the District's insurance agent of record. A motion was made by Director Schilling and seconded by Director White that Ray Waldo and Field-Waldo Insurance be appointed as the District's insurance agent of record. The motion passed unanimously.

DEPOSITORIES. Discussion was held concerning the depositories of the funds of the Owyhee Irrigation District. Mr. Chamberlin recommended that the District continue with the present depositories. A motion was made by Director Drydale, seconded by Director Nagaki and carried unanimously that Klammath 1st Federal Bank, Nyssa Branch; United States National Bank of Oregon, Nyssa Branch; and the Local Government Investment Pool as administered by the State Treasurer of Oregon, shall be designated as the official depositories of the funds of the District, and that the same may be withdrawn from the said depositories on checks or advices signed by any two of the following: Fred S. Schilling, Duane L. Drydale, Bruce Corn, Jerry Nagaki, and Larry White, Directors of the District; Jay Chamberlin, Project Manager; Michael W. Horton, Secretary; and Gene Stunz, Assistant Secretary; provided, however, that funds may be transferred electronically from bank accounts of the District to the Local Government Investment Pool, or from the Local Government Investment Pool to bank accounts of the District, by direction given by Jay Chamberlin.

REGISTERED AGENT. Michael W. Horton reported that Gene Stunz is currently the designated agent for the District. A motion was made by Director White and seconded by Director Nagaki that Gene Stunz be designated the District's registered agent. The motion passed unanimously.

APPOINTMENT OF PROJECT MANAGER. A motion was made by Director Drydale and seconded by Director Schilling that Mr. Chamberlin be retained as Project Manager of the District. The motion passed unanimously.

MITCHELL BUTTE POWER PROJECT.

Financial Report. Mr. Chamberlin handed out a financial report prepared by Nichols Accounting Group for the Mitchell Butte Power Project for the period ending December 31, 2001. A copy of the report is attached to these minutes. The Directors reviewed the report.

Accounts Payable. Mr. Chamberlin presented the following schedule of accounts payable:

Handy Wholesale Products	210.60
Columbia Pain and Coatings	89.40
Ace Irrigation and Mfg. Co.	804.46
UAP Timberland	522.00
U.S. Bank	1,305.00
AT&T	14.52
Riverside Electric	167.88
AT&T	22.52
Malheur Bell	49.96
Owyhee Irrigation	175.64
Nichols Accounting Group	<u>222.00</u>

Total \$ 3,719.85

Mr. Chamberlin noted that the listing for NWFF Environmental on the agenda is actually an account payable for the Owyhee Dam Power Plant and is not included in the accounts payable for Mitchell Butte. Director Schilling asked about the payment to U.S. Bank. Mr. Chamberlin looked up the invoice and stated that it is for a bond management fee. A motion was made by Director Schilling and seconded by Director Drydale that the accounts payable for the month of January as listed in the corrected agenda be paid. The motion passed unanimously.

OWYHEE DAM POWER PROJECT.

Financial Report. Mr. Chamberlin handed out a financial report prepared by Nichols Accounting Group for the Owyhee Dam Power Project for the period ending December 31, 2001. A copy of the report is attached to these minutes. The Directors reviewed the report.

Accounts Payable. Mr. Chamberlin presented the following schedule of accounts payable:

Owyhee Irrigation	175.64
Stunz, Fonda, Kiyuna & Horton, LLP	142.00
Ore-Ida Utilities	250.90
Ontario Tel Answer	138.00
Waldo Insurance Co.	5,809.00
Nichols Accounting Group	285.00
NWFF Environmental	<u>2,079.60</u>

Total \$ 8,880.14

A motion was made by Director Drydale and seconded by Director Nagaki that the accounts payable for the month of January as listed in the corrected agenda be paid. The motion passed unanimously.

TUNNEL POWER PROJECT.

Financial Report. Mr. Chamberlin handed out a financial report prepared by Nichols Accounting Group for the Tunnel Power Project for the period ending December 31, 2001. A copy of the report is attached to these minutes. The Directors reviewed the report.

Accounts Payable. Mr. Chamberlin presented the following schedule of accounts payable:

Federal Energy Regulatory Commission	25.00
Ore-Ida Utilities	191.19
Owyhee Irrigation	175.64
Nichols Accounting Group	<u>335.00</u>

Total \$ 726.83

A motion was made by Director White and seconded by Director Nagaki that the accounts payable for the month of January as listed in the agenda be paid. The motion passed unanimously.

WATER MASTER REPORT. J.L. Eldred, District Water Master, reported that the #5 motor at Dead Ox Pumping Plant is being repaired. The motor made a bad noise when it was started. When the motor was broken down to be repaired, it was learned that the insulation on the windings is all gone. Mr. Eldred passed around a portion of the damaged windings along with a sample of the new windings which will be installed. The new windings will have a baked on enamel insulation. He noted that the old windings are most likely the originals which are 68 years old. After this motor is repaired, he wants to see what the cost is and perhaps go in and replace the windings in the other motors as preventive maintenance. He stated that the motors at Dunaway Pumping Plant are of a different type.

Mr. Eldred stated that no work is being done on the Dunaway pumps since they ran fine last year. At the Dead Ox Pumping Plant, impellers are being pulled and repaired. An oiler pump setup is also being changed. Mr. Eldred stated that the penstock at Mitchell Butte is now better than the original. He said that electrical circuitry at Dead Ox Pumping Plant has been changed around and that Dunaway is ready to be started. He further reported that there are a few pipelines on schedule to be installed. The weather has caused the pipeline projects to get backlogged along with completing the ditching.

RECLAMATION REFORM ACT OF 1982. Mr. Horton stated that he and Mr. Chamberlin have had two meetings with Bureau of Reclamation officials with regard to the District amending its contract in order to come under the discretionary provisions of the Reclamation Reform Act. He stated that the District can reduce its paperwork requirements by 70% if it comes in under the discretionary provisions. Mr. Horton explained the Reclamation Reform Act and the implications of the District amending its contract to come under the discretionary provisions. He stated that in the past, the concern was that if the contract was amended, the entire contract would be opened up specifically the provisions of the payment of construction charges. The contract is written in such a way that the District's construction payments are tied to energy costs. As energy costs go up, the District's payment on construction charges goes down. When electrically charges went up in 1986, the District construction payment went down to zero and it has stayed there ever since. With the current electrical charges, it is anticipated that the District's required construction payment will remain at zero for the foreseeable future.

Mr. Horton stated that he and Mr. Chamberlin met with Bureau officials on three different occasions. At one of the meetings, they met with John Keys, who is the Commissioner of the Bureau of Reclamation. At all of the meetings, the Bureau of Reclamation assured them that amending the contract only to come under the discretionary provisions of the RRA would not affect any of the provisions relating to payment of the construction charges. Mr. Horton presented a letter from John Keys, a letter signed off by the Bureau of Reclamation's field solicitor, and a letter from Jerrold Gregg, all of which assured the District that the contract amendment will relate only to the discretionary provisions of the RRA. Mr. Horton stated that he has completed his own research and has made the same findings.

Mr. Chamberlin stated that if the Board decides to come under the discretionary provisions at today's meeting that the paperwork can be sent in so that it will apply to this spring's reporting year. Mr. Horton read a resolution to adopt the discretionary provisions of the Reclamation Reform Act of 1982. A motion was made by Director Schilling and seconded by Director

White to adopt the recitals and resolution as read. The motion passed unanimously. A copy of the resolution is attached to these minutes.

Mr. Horton read a resolution to amend the District's contract only to the extent required to conform to the discretionary provisions of the Reclamation Reform Act of 1982. A motion was made by Director Drydale and seconded by Director Nagaki to adopt the recitals and resolution as read. The motion passed unanimously. A copy of the resolution is attached to these minutes. Mr. Horton was instructed to send the resolution to the Bureau of Reclamation.

AQUATIC HERBICIDES. Mr. Chamberlin stated that another MAO will be needed this year in order for the District to apply aquatic herbicides. According to DEQ, a permit will not be completed in time to cover this irrigation season. He noted that by entering into the MAO, the possibility of a third-party lawsuit is not eliminated. The MAO does show the District's good faith in attempting to comply with the Ninth Circuit Court of Appeal's holding in the matter. He stated that the MAO will again have to go to public hearing and he is hopeful that eventually the District will be able to get a permit. He said that the federal EPA has backed off on making a decision on aquatic herbicides at this time.

At 2:50 p.m., Jeff Hess left the meeting.

Mr. Chamberlin said that the District must follow the MAO to the tee. He further stated that he has been elected as the National Representative for OWRC. At a recent national meeting he attended, the issue of aquatic herbicides was the main topic on the agenda. He said that the cost of the aquatic herbicides has gone up by 5%. There will be a meeting with DEQ on the MAO on the 8th of February. Mr. Horton emphasized that the MAO does not prevent third-party lawsuits but that the Board must make a choice between entering the MAO and applying aquatic herbicides or not applying. Mr. Eldred noted a problem with patrons putting ponds containing fish at the end of waste-ways. Currently, the water is diverted around those ponds when chemical is applied. The right-of-way for waste-ways was discussed.

TMDL HEARING. Mr. Chamberlin reminded the Directors that the draft TMDL is out and available for public comment. The comments need to be in by February 19. He stressed the importance for area farmers to attend meetings and provide comments. He said that Clint Shock has done a great job on behalf of the farmers.

EQUIPMENT PURCHASES. Mr. Chamberlin said that Director White asked about planned equipment purchases for the year at the last Board meeting. At that meeting, he was not ready to state which equipment items needed purchased. He has now reviewed the District's equipment needs and a small single-axle dump truck is needed. Two small pickups are also needed. The old ten-yard

dump truck is in bad shape and needs to be replaced. A smaller dump truck that does not require a CDL is needed. President Corn advised Mr. Chamberlin to do some shopping and get back with figures at the next Board meeting.

AGEING PIPELINES. Mr. Chamberlin said that many of the District-owned pipelines are getting quite old. He is contemplating replacing those pipelines. His thought is to replace one per year. He said that there have been a number of patrons in the office requesting pipelines installed. President Corn asked him to come back with specifics on pipeline replacements. Mr. Chamberlin said that the cost of pipe is currently down and it may be a good time to buy pipe and install it later. Director Drydale emphasized the importance of staying within the budget and still accomplishing the tasks that need to be done.

ANNUAL REPORT FOR WATER USERS. Mr. Chamberlin said that it is the time of year when an annual report to water users is sent out. He asked the Board for their input into what items should be in the letter. President Corn said that the TMDL issue should be in the letter. Director Schilling said that the outlook for a good water year should also be included.

EXECUTIVE SESSION. Mr. Chamberlin said that the meeting needs to be reconvened in executive session in order to discuss employee matters pursuant to ORS 192.660 (1)(h). At 3:23 p.m., J.L. Eldred and Tom Zittercob left the meeting and the Board entered executive session.

At 4:10 p.m., the Board returned to regular session.

B&M EQUIPMENT BUILDING. A motion was made by Director Schilling and seconded by Director White authorizing the Manager and appropriate officers of the District to enter into an earnest money agreement offering to purchase the B&M Equipment building for \$100,000 with a contingency on the building and grounds receiving an environmental clean bill of health and other common contingencies being met. The amount of earnest money to be submitted is \$5,000.00. The motion passed unanimously.

STATEMENT OF CASH. Mr. Chamberlin presented the following summary of the cash (or equivalent) on hand January 22, 2002.

Mitchell Butte Bonds (9.675%)	259,000.00
Local Government Pool - USBR Reserve	300,000.00
LGIP - Equipment Reserve	156,500.00
LGIP - Needle Valve Reserve	.00
LGIP - O & M Fund	1,611,579.48
U.S. Bank - Checking Account	55,886.37
LGIP - Environmental Reserve	137,000.00

DIRECTORS' COMMENTS. Director Drydale informed Mr. Chamberlin of the Board's strong support for him to participate in national water user meetings. He also presented a hunting

knife to be given to John Ross at the annual employee retirement dinner in February. He asked Mr. Horton to present the gift to Mr. Ross on behalf of the Directors. Mr. Chamberlin said that the retirement dinner will be held at the Boulevard Grange in late February.

ADJOURNMENT. There being no further business to come before the meeting, the same was adjourned by President Corn at 4:25 p.m.

Respectfully submitted,



Assistant Secretary

APPROVED: _____