

**STATE BOARD OF EQUALIZATION
OPEN MEETING
MINUTES OF MEETING HELD AUGUST 16, 2021**

In attendance: Commissioners Tom Katsilometes, Jeff McCray, Elliot S. Werk, and Janet Moyle; Maria Young, Phil Skinner, George Brown, Tom Arkoosh, David Cooper, Amber Dresslar.

Kolby Reddish, Deputy Attorney General, Becky Ihli, Paralegal for the Tax Commission, Ted Sorenson, witness for appellant, and Erin Cecil, assistant to Tom Arkoosh joined by phone.

Commissioner Katsilometes, Chairman for the State Board of Equalization, reconvened the State Board of Equalization for 2021 (Board) at 9:00 a.m. August 16, 2021.

This is the presentation of appeal for the non-utility generators (NUGs) – the “Hydro Companies.” Tom Arkoosh, Attorney, is representing the several non-utility generators and Nathan Nielson, Deputy Attorney General assigned to the Tax Commission is representing the Operating Property Bureau. The Board will take breaks periodically and due to the length of the presentations, the Board will recess for lunch at approximately 12:00 p.m. and reconvene at 1:30 p.m. The Board may ask questions throughout each presentation. There are 33 NUGs that have requested a hearing. Accordingly, the following will be presented during the same hearing:

- i. AJMS, LLC
- ii. Fulcrum, LLC dba Barber Dam Hydro
- iii. BC Hydro, LP
- iv. Bell Mountain Hydro
- v. Birch Power Company dba Birch Creek Hydro
- vi. American Falls Reservoir dba Black Canyon Hydro
- vii. Briggs Creek Hydro
- viii. Bypass Limited
- ix. Crystal Springs Hydroelectric, LP
- x. Dietrich Drop Hydro
- xi. Dry Creek, LLC
- xii. SE Hazelton A LP dba Hazelton A Hydroelectric
- xiii. Hazelton B Hydroelectric Project
- xiv. Big Wood Canal Company dba Jim Knight Hydro Plant
- xv. Lateral 10 Venture
- xvi. Lemhi Hydropower Company
- xvii. Arkoosh Hydro Inc dba Little Wood River Ranch II
- xviii. Lowline Rapids, LLC
- xix. Magic Reservoir Hydro, Inc
- xx. Marco Power, Inc
- xxi. Marsh Valley Development, Inc
- xxii. Midway Power, LLC
- xxiii. Mile 28 Water Power Project, LLC
- xxiv. Mink Creek Hydro, LLC
- xxv. North Gooding Main Hydro, LLC
- xxvi. North Side Canal Co.
- xxvii. Pigeon Cove Power Co, LLC dba Pigeon Cove

- xxviii. Riverside Hydro I, LLC
- xxix. Rock Creek Joint Venture
- xxx. Big Wood Canal Company dba Sagebrush Hydro Plant
- xxxi. Shoshone Hydro LP dba Shoshone Hydro Project
- xxxii. Saint Anthony Hydro, LLC
- xxxiii. Wilson Lake Hydro Project

At the prehearing conference held August 3, 2021, Mr. Arkoosh and Mr. Nielson estimated they will each take approximately six hours for their presentations, for a total of 12 hours; therefore, this hearing may reconvene on Tuesday, August 17, 2021.

Maria Young, Secretary to the Board, and Phil Skinner, Legal Advisor to the Board, will track the time for each presentation. Mr. Arkoosh will present first since he has the burden of showing that the Operating Property Bureau's values are incorrect. After Mr. Arkoosh is finished, Operating Property Bureau will present their case.

Commissioner Katsilometes asked if there is any business to present prior to the beginning of Mr. Arkoosh's presentation. Mr. Arkoosh specified that he expects Ted Sorenson to call in for the hearing; however, as the hearing is not scheduled to begin until 9:30 a.m., he will not likely call in until that time. Commissioner Moyle asked for a 15-minute break to let the appellant have their 9:30 a.m. start time. Commissioner Werk understood the start time was 9:00 a.m. asked Ms. Young if there was any other communication about it being 9:30 a.m. She said the 9:30 a.m. start time was on the prehearing memo.

Nathan Nielson asked to be recognized for a statement prior to the beginning of the hearing. Commissioner Katsilometes recognized Mr. Nielson who said he doesn't expect the Bureau's presentation to take six hours. Additionally, Mr. Nielson objected to, and asked the Board to exclude, a report by Jim Hitchner that was not received until the afternoon of August 13. He argued the Bureau is prejudiced due to the late filing. Further, Mr. Nielson argued the report lacks foundation. The Bureau asks the Board to exclude this document for lacking foundation and because it was untimely filed.

Commissioner Katsilometes thanked Mr. Nielson. Commissioner Werk clarified the timeline. He understands the timeline for the Board of Equalization is very compressed. Mr. Nielson said that by agreement, the initial documents were supposed to have been filed by August 9. Mr. Arkoosh represented during the prehearing conference, that we would not likely receive it until later in the week but that the state would have it by the 12th at the very latest. It arrived on the 13th after the noon deadline.

Commissioner Katsilometes asked for any comment on Mr. Nielson's objection to the exhibit. Mr. Arkoosh noted that the referenced document is a rate study commissioned for litigation following their appeal and he thought it only fair the Board see this expert report because it will be presented to the District Court if there is an appeal. Mr. Arkoosh said he represented to the state at the prehearing conference that he would submit the report as early as possible. He delivered it within the hour it was delivered to them. Their deadline for rebuttal documents was Friday, August 13. Mr. Arkoosh said his expert will rely on this document, as an expert can rely on both hearsay and on unadmitted evidence. Mr. Arkoosh noted Jim Hitchner's qualifications; he is a respected evaluator in the United States. The representation that this report is late is incorrect. The representation that it needs to be signed is

incorrect. The language at the bottom of the pages indicates it is a work product, but they are willing to share it with the Board to help in their decision.

Commissioner Werk asked Mr. Skinner when the document was due. Mr. Skinner confirmed to the Board that the submission of documents was Monday for the taxpayer to provide initial materials, Wednesday for the Tax Commission to respond, then Friday for final rebuttal submissions. Mr. Skinner reminded the Board that in Idaho Property Tax Administrative Rule 407.09.g: Rules of evidence. "...Unless otherwise provided in these rules the Idaho Rules of Evidence will be generally followed but may be modified at the discretion of the Tax Commission to aid in ascertaining the facts. When an objection is made to the admissibility of evidence, the evidence may be received subject to later ruling by the Tax Commission." That means the Board can delay ruling on the objection and continue with the hearing then decide whether to accept the report. The Rule continues, "The Tax Commission, at its discretion either with or without objection may limit or exclude inadmissible, incompetent, cumulative or irrelevant evidence." That is the guidance he can offer.

Commissioner Moyle said it sounds as though this document was discussed at the prehearing conference and the state knew it would be delivered. Commissioner Werk said he isn't sure whether this has been updated or has been in existence for some time as it refers to other litigation. Mr. Arkoosh said there is a 2018 case, and this document was updated to cover 2019 and 2020 which are pending, and 2021 is this hearing. That's why it refers to the other case. Commissioner Werk asked Mr. Nielson whether the delivery time of this document put the Bureau in a position where they feel they were unable to review and respond and are not prepared because of the lateness? Mr. Nielson said that while the time is compressed for hearing appeals, the taxpayer isn't so constrained. They know they are going to appeal likely weeks or months in advance. They had considerable time to have this prepared and to the Commission in a timely manner. Mr. Neilson does believe it prejudices the Bureau in its defense. They can respond as well as they can today because they have had an opportunity to review it and have found some deficiencies in the report. They are unable, though, to provide the written information the Board could use during deliberation of this matter.

Commissioner Moyle asked if the state agreed to a timeline and whether the deadline was Friday? Mr. Nielson said they did not agree to a deadline on when this would be submitted. Mr. Neilson said he would not have complained had they received it on the 12th which would have given him an opportunity to work with the Bureau and prepare a response. Commissioner Moyle clarified that there was no conversation whether this document would or wouldn't be allowed to be submitted.

Mr. Arkoosh took issue with the claim this report is a "late file." The state submitted a 116-page presentation on a rate study in their materials submitted Wednesday. This report is in response to that. It is timely. It wasn't filed in the afternoon; it was filed by 12:02 p.m.

Mr. Nielson said the deadline for all information to be submitted was by noon on Friday. Whether it was supposed to be Monday or Friday, it was delivered to him at 12:07 p.m. on Friday August 13. It is pedantic, but he wanted to ensure the Board knows the cutoff.

Commissioner Moyle noted Monday was August 9, and now Mr. Nielson is talking about Friday at noon, which is August 13, so at some point, it seems there was an agreement that there would be an extension or that documents would be allowed. Mr. Arkoosh said the Chairman's order said that they would file their initial materials on Monday, the state would respond on Wednesday, and the reply was due on Friday. The difficulty he has is that they've hired the foremost expert in the United States on valuation and he would think staff would embrace that.

Commissioner Katsilometes asked Mr. Skinner if this is something on which he, as Chairman of the Board, should rule or whether the Board should make this determination about whether to allow this report. Mr. Skinner said he believes it is the Board's responsibility. They can receive the information, note the objection, and hold it for later. Commissioner Katsilometes recommended the Board note the objection from the Bureau and that the information was not received by August 9, but in the case of fairness and due process, he would suggest allowing the information; however, it is up to the Board.

Commissioner Werk said they have discussed many times the Board of Equalization times are very compressed. They are less compressed for the appellant than for staff because the appellant can know they will appeal a month prior to the due date and in this case, they could have known a year ago. He is trying to determine whether the Bureau has been put at a disadvantage by evidence appearing that they haven't been able to respond to. Mr. Arkoosh read a portion of the prehearing conference order. Commissioner Werk noted that individual taxpayers submit appeals wherein they have missed deadlines by a day, and they don't get their refund. The Tax Commission doesn't play with 2 minutes or 10 minutes or half a day. They decide based on the law. If Mr. Arkoosh received the document at 12:02 and the state received it at 12:07, that is past the deadline. Mr. Arkoosh agreed that the deadline was 12:00 but noted this is not a tax filing deadline.

Commissioner Katsilometes asked for a determination by the Board by motion and vote. Commissioner McCray said Mr. Skinner has provided the leeway to consider this objection throughout the hearing process. Mr. Nielson has acknowledged he will present argument against how the study was conducted, so he would like to defer the decision until later in the hearing. Commissioner Werk agreed with that assessment. Commissioner Moyle said she is unsure this can be deferred because evidence must be accepted before it can be heard. Commissioner Werk said the issue before the Board is whether they will allow it. The Board has been asked to disallow the submittal. If that decision is deferred, the evidence is accepted until the Board determines whether it has prejudiced the state's case.

Commissioner Katsilometes again asked for a decision: Commissioner Werk moved to defer the decision on Mr. Nielson's motion to disallow this submittal until later in the proceeding. Commissioner McCray seconded the motion. Commissioner Katsilometes asked Maria Young to conduct a roll call vote on the motion. Commissioner McCray, Commissioner Moyle, and Commissioner Werk voted aye. The decision to allow or disallow the report is deferred until later during the hearing is approved.

David Cooper and Ted Sorenson will testify for appellant. Kyle Rayworth, Idaho State Tax Commission Operating Property Bureau will testify for the state. All parties were sworn in by Maria Young.

Mr. Arkoosh interviewed David Cooper for the purposes of this hearing. Mr. Cooper is presented as an expert witness for the appellant with over 50 years' experience. He's been involved with the Hydro companies for over 35 years. As a CPA, Mr. Cooper completed 15 to 20 valuations per year. Regarding this case, and to be able to offer opinion, Mr. Cooper has reviewed the state's appraisal reports from 2015 through 2021, the operator's Operating Statements from 2018 through 2021, and he's reviewed the state's Capital Yield Studies from 2015 through 2021. He has also reviewed the expert reports commissioned on behalf of the Hydro Companies for the 2018 case and for the 2019 through 2021 cases. Mr. Cooper responded to Mr. Arkoosh's questions regarding the

valuation and methodologies for the appraisals. Based on all the reports he has reviewed, Mr. Cooper said he does not believe the Tax Commission staff has any sense of what the real market value is for these projects. They do not appear to have any experience that would give them that sense, nor do they have any training that he has seen, and their outcomes prove that point. Mr. Cooper stated, in response to questions from the Board, that he has not appraised non-utility generators and is not charging a fee for what he is doing here today. Mr. Cooper continued responding to Mr. Arkoosh's questions regarding the valuation and methodologies and about what investors consider when valuing a plant. Mr. Cooper said they look at the income/revenue stream. Mr. Cooper said for the first time ever in all the states' appraisals he has reviewed, the state moved away from using the 5-year discounted cash flow methodology to using a contract period methodology.

The Board recessed briefly.

The hearing resumed; Mr. Arkoosh continued questioning Mr. Cooper. Mr. Cooper has selected two properties to review with the Board and discussed calculations and the revenue depictions. Commissioner Moyle stated when doing mass appraisals, an average is used, and if Mr. Cooper wished to defend the NUGs separately, then individual values would be needed. Mr. Cooper said he is only attempting to help the Commissioners understand how the process works.

Mr. Arkoosh summarized that they request the appraisals be re-run with the 14.5% and 15.5% capitalization rate and limit the future projection to no more than 5 years with no more than 1% and no cost evaluation.

Mr. Arkoosh offered all submitted exhibits for introduction except for the earlier noted objection to Exhibit 7, Mr. Hitchner's report.

Commissioner Katsilometes allowed Mr. Nielson to cross-examine Mr. Cooper. Mr. Nielson spoke directly to Mr. Cooper with the acknowledgement of the chair. Mr. Nielson clarified numbers that were incorrectly cited early in Mr. Cooper's testimony; Mr. Cooper agreed with the correction. When asked if he is an assessor, Mr. Cooper said he is not an assessor, a certified property tax appraiser, nor a licensed appraiser. Mr. Cooper said he is certified to appraise business entities. Mr. Nielson continued asking Mr. Cooper questions related to his earlier testimony. Mr. Nielson asked, specific to the properties owned by Mr. Cooper, if there was any information that, had the Bureau received that information, would have changed the valuation of the property. Mr. Cooper said he is unaware of anything additional that could have changed the valuation.

Mr. Arkoosh interviewed Ted Sorenson for this hearing. Mr. Sorenson has been involved with the small Hydro projects since the early 1980's, is an engineer by trade and has designed approximately 50 Hydroelectric plants. He owns or holds lease interest and operates 25 of those. Mr. Sorenson concurs with Mr. Cooper that the risk reported by the state is too low. Mr. Sorenson said the risk in owning a Hydro project, in his opinion, is greater than being in the stock market.

Mr. Nielson asked if Mr. Sorenson would he sell if offered the appraisal value for purchase. Mr. Sorenson said he would, but it is a personal philosophy. Mr. Nielson asked if Mr. Sorenson is recommending the Bureau use the market approach when valuing these properties. Mr. Sorenson said yes. Mr. Nielson said that is not a matter that has been protested by any of the other properties. Mr. Sorenson said these are worth what they will produce. He will not get into specifics about a market approach or discounted cashflow. When asked what water data he is using for the current year, he said he used the USGS, and the Idaho forecast this past winter. He also talks with the water managers.

The Board recessed for lunch and reconvened at 1:45.

Nathan Nielson is representing the Operating Property Bureau. Mr. Nielson said the Hydroelectric Companies have appealed to the Board of Equalization because they don't like the appraised values but cannot clearly articulate why they don't like the values. They've asked the Board to redetermine the values but have provided no real way for the Board to do so. The question isn't so much about methodology but their preference for value; they don't like the amount of tax. The focus should be on the proper methodology. Kyle Rayworth, Senior Property Tax Appraiser has been sworn in and will testify for the Idaho State Tax Commission Operating Property Bureau.

Mr. Nielson asked Mr. Rayworth about industry standards and comparisons to surrounding states. Mr. Rayworth said Idaho only reviews other states' data to determine if Idaho is comparable. He reviewed the industry-based trends (based on industry-submitted data) used to determine values. Idaho is lower overall due to accounting for "rainy-day" reserves and lower corporate income tax. Ultimately, Idaho provides a more conservative projection of the properties' net cash flow. Mr. Rayworth also reviewed the effective yield rates, which is just another way of looking at their values. The referenced slides show evidence from the industry that Idaho is undervaluing the properties and providing a conservative estimate. On average, the 33 Hydro properties are looking at an average return on investment of approximately 10% per year. Mr. Hitchner's report references numbers well above the average. Mr. Rayworth said these projects can last up to 100 years. They are getting their investment back, on average, in 10 years. Over the life of the investment, they potentially receive their investment back 10-fold. Using the same information for these projects, they replaced the total investment value with the Bureau's assessed value and the recapture rate went from 10 years to 6 years. Based on an average from these projects, they are recapturing the assessed values every 6 years. Mr. Nielson reiterated that it appears the Bureau is undervaluing the properties, as opposed to overvaluing. Mr. Rayworth agreed.

Mr. Rayworth reviewed the industry valuation trends. The values are slightly less than what they were 10 years ago. Commissioner Werk asked about the significant increase in the Rock Creek Venture project. Mr. Rayworth said that prior to 2017, their revenue was being under projected. Their revenue projections were 45% below actual and when the Bureau adjusted that in 2017, it caught up to them. Commissioner Werk clarified that prior to 2017, their value was not reflective of what the value should have been. Mr. Rayworth agreed.

Mr. Rayworth reviewed deposition testimony that was part of the 2018 court case saying testimony reveals several properties don't believe they're overvalued. Mr. Arkoosh objected; the representation of what people said during their depositions is unfair; there is quoted text, but Mr. Rayworth is referring to the witness saying he doesn't know why they're appealing because [the properties] don't believe their projects are overvalued is incorrect and unfair. Commissioner Katsilometes allowed quoted text from the deposition.

Mr. Nielson reviewed trend slides that show the Bureau's values are low, the project value has remained flat over the last decade, and it may be unclear if all the appealing properties believe their values are too high, as estimated by the Bureau. Mr. Arkoosh objected saying that if that is a question, he requests it be stricken. [Mr. Nielson] is leading; he can't testify. Mr. Nielson replied that this is an informal process. Commissioner Katsilometes asked if he was asking a question and Mr. Nielson said he was making a closing remark on the slide they had just viewed. He doesn't know if it's objectionable in front of this body to make statements. He will limit himself to questions if that is the

wish of the Board. Commissioner Katsilometes advised Mr. Nielson to continue with the information submitted from the Bureau.

Mr. Neilson said one of the reasons the properties have appealed is that they seem to believe their values will decrease significantly and he asked Mr. Rayworth to review some of the fears the property owners have identified. Mr. Rayworth reviewed some of the contract rates. Some are tied to natural gas prices. He discussed how the two relate saying several contracts have renewed. Mr. Rayworth reviewed the data he has available that goes back approximately 25 years. Mr. Nielson summarized that it does not appear rates are dropping and that contracts have increased over time. There is no indication that rates are trending down. Mr. Rayworth agreed with those statements.

Mr. Rayworth reviewed the brief Mr. Arkoosh submitted for this hearing. He highlighted some of the discrepancies between the brief and what is being heard today. Mr. Nielson asked Mr. Rayworth to address Mr. Hitchner's report; he did. Mr. Nielson noted the complaints of the petitioner include that the Bureau has no properly qualified appraiser to appraise these properties, that the Bureau's methods were inadequate, that the Bureau missed information that would have led to a different conclusion of value, that discount rate was incorrect and that the appraised value did not equal market value. Ultimately, the issue is whether the Bureau correctly captured risk. Mr. Rayworth agreed. Mr. Nielson offered that Mr. Rayworth is qualified, the Bureau's methods were grounded in proper standards, the property owners are responsible for providing data, so if data is lacking, it is the fault of the property owner, the discount rate is correct, and the appraisal properly submitted the value. Mr. Rayworth does believe the appraisal properly accounts for company and market risk. The Bureau will recommend the Board adopt the Bureau's appraised value as assessed for each property.

Mr. Nielson reviewed the requirements for appraisers in the state of Idaho and noted Mr. Rayworth's qualifications as a certified property tax appraiser. Further, Mr. Rayworth outlined that the methods used were grounded, citing the Western States Association of Tax Administrators (WSATA) Manual and the National Conference of Unit Value States (NCUVS) guidance. The operator's statements are completed by the property owners or their representatives. Mr. Rayworth denied ignoring any information that was submitted by any property owner, nor has he excluded any information. Mr. Rayworth explained the difference between market value and taxable value; the market, cost and income approaches and the applicability of each. He also reviewed the various models and methods used to appraise these properties. Mr. Rayworth said he believes they have properly accounted for industry risk factors and would recommend those values be put forth, as provided. His conclusion about the discount rate is that they are influenced, either significantly or completely, by industry data. Mr. Rayworth said they now have contract information for all the appellants which allows for a more contract-based valuation and income projections. Mr. Rayworth's final recommendations to the Board are that the appraisal values be accepted as presented. Mr. Nielson said the Bureau has gone out of its way to incorporate market and the histories of the company-specific information into the appraisals. The methods appear to be more in line with what is being requested in petitioner's request.

The Board reconvened after a brief recess.

Commissioner Katsilometes allowed Mr. Arkoosh to cross-examine Mr. Rayworth. Mr. Arkoosh asked Mr. Rayworth about his education history, his certifications as an appraiser and his qualifications to do appraisals and the types of appraisals. Mr. Arkoosh asked, because Mr. Rayworth does not have a business appraisal certification and this is a business-type appraisal, if he will defer to someone that has a resume like Jim Hitchner? Mr. Rayworth said he would not defer to Mr. Hitchner.

Mr. Arkoosh continued asking questions of Mr. Rayworth, refuting the validity of the appraisal based on Mr. Hitchner's report. Commissioner Moyle asked Mr. Arkoosh why he is asking Mr. Rayworth to defend Mr. Hitchner's report. Mr. Arkoosh said Mr. Rayworth represented during the presentation what Mr. Hitchner did or did not do and the question only followed that representation. Commissioner Katsilometes said Mr. Rayworth has answered the question and asked Mr. Arkoosh to continue. Mr. Arkoosh asked, and Mr. Rayworth responded to, further questions. The Board expressed their confusion about the line of questioning. Mr. Arkoosh responded that the people who invest in these properties want to make a return-on-investment and don't care how much it costs to build a plant saying Mr. Cooper and Mr. Sorenson have testified to those points. The people who invest in these don't care if they're overbuilt. They care about the cash flow. Cost approach for those who invest in these plants is irrelevant. Mr. Arkoosh summarized that Mr. Rayworth has said an informed investor wants to know what the cost of the investment is, and he is arguing that they don't; they want to know how much money they will make. Mr. Rayworth continued answering questions.

Mr. Nielson said they've made the recommendation of the Bureau; however, he asked Mr. Rayworth about what a buyer may want and what that buyer should expect, saying they are not the same things. Mr. Rayworth replied that if the market conditions show only a 10% rate of return, the buyer cannot then just wish that rate of return up to 20%. Mr. Nielson further asked about using the contract information and Mr. Rayworth responded.

Commissioner Katsilometes asked if there is any discussion about the presentations. Commissioner McCray requested the closing statements be presented Tuesday morning. Mr. Arkoosh said he has only a brief closing statement to present tomorrow when the Board reconvenes.

Commissioner Katsilometes recessed the Board until 9:00 a.m. on Tuesday, August 17, 2021.

Maria Young
Secretary

Tom Katsilometes
Chairman of the Idaho State Board of Equalization