

**STATE BOARD OF EQUALIZATION
OPEN MEETING
MINUTES OF MEETING HELD AUGUST 16, 2023**

In attendance: Commissioners Tom Katsilometes, Jeff McCray, Janet Moyle, and Jared Zwycart; Maria Young, Phil Skinner, Jerott Rudd, Kyle Rayworth, Brett Jarvis, Joe Blades, George Brown.

Commissioner Katsilometes, Chairman for the State Board of Equalization, reconvened the State Board of Equalization for 2023 (Board) at 9:00 a.m. August 16, 2023.

Commissioner Katsilometes noted the Board will discuss and deliberate upon the appeals for which no hearing was requested. He read into the record those that have stipulated for decisions without a hearing. AJMS, LLC; Barber Dam Hydro; BC Hydro LP; Bell Mountain Hydro; Birch Creek Hydro; Black Canyon Hydro; Briggs Creek Hydro; Bypass Limited; Dietrich Drop Hydro; Dry Creek LLC; Elk Creek; Hazelton A Hydroelectric; Hazelton B Hydroelectric Project; Jim Knight Hydro Plant; Lateral 10 Venture; Lemhi Hydropower Company; Little Wood River Ranch II; Littlewood Hydro Project; Lowline Rapids LLC; Magic Reservoir Hydro Inc; Marco Power Inc; Marsh Valley Development; MC6 Hydro; Midway Power LLC; Mile 28 Water Power Project LLC; Mink Creek Hydro LLC; North Gooding Main; North Side Canal Company; Pigeon Cove Power, LLC; Riverside Hydro LLC; Rock Creek II; Rock Creek Joint Venture; Sagebrush Hydro Plant; Saint Anthony Hydro LLC; Shoshone Hydro Project; Wilson Lake Hydro Project.

Brett Jarvis, Deputy Attorney General assigned to the Tax Commission and representing Idaho State Tax Commission Operating Property Staff, was recognized to explain the stipulation. Mr. Jarvis acknowledged that Kyle Rayworth, Senior Appraiser, is present to answer questions. He explained that there was a trial regarding several previous years' appeals in September 2022. The District Court Judge issued a decision that was published in May 2023. The judge listed several things the Tax Commission should consider when conducting appraisals on these properties. Mr. Jarvis briefly discussed what the decision said and how Mr. Rayworth implemented those changes when updating the appraisal before the Board today. These properties also requested the Railroad Revitalization and Regulatory Reform Act (4-R) adjustment, as the other operating properties have.

Commissioner Katsilometes clarified that the Board's decision on Monday, August 14, 2023, regarding the 4-R Act will apply to these properties' final values as it will to all operating properties. Commissioner Moyle asked about the stipulation saying she understood these properties were agreeing to the value, and that the issue was related to the 4-R Act. Mr. Jarvis said that is an important point. These properties did not stipulate that Mr. Rayworth's appraisals were right. They are stipulating that they disagree with Mr. Rayworth's appraisals. They've disagreed in the past and the Board has upheld staff and they expect that will be the case again. The stipulation isn't to agree with Mr. Rayworth; it's waiving the hearing so the Board will decide the case based on what is before them so they can appeal to the District Court. Commissioner Moyle asked if we are presented with anything indicating why they disagree with the value? Mr. Jarvis said they disagree; they filed their protest and said they view it as a foregone conclusion, based on previous years' appeals, that the Board will uphold staff. The only thing in the record is an email from David Cooper, a representative of these properties. Commissioner McCray asked if that email from Mr. Cooper is about the value this year

and the work Mr. Rayworth did, or is it on the future appraisal? Mr. Jarvis responded that the critique applies to the methodology Mr. Rayworth used for all the appraisals this year.

Commissioner Zwycart asked if the rebuttal is the same complaint against all of them? Mr. Rayworth was recognized to respond. Mr. Rayworth said they submitted two updated appraisals using the court's recommendations. These two examples show the state's interpretation of the District Court's opinion. Mr. Rayworth understands that the critique of these two applies uniformly to the others.

Commissioner Moyle asked if these critiques were not those argued before the court? They asked for something before the court, they were granted it, and now have come back and said they disagree with the methodology? Mr. Rayworth said, as far as he can tell, they interpreted what the judge said completely differently than the state, which appears to be contradictory of the decision. They also had issues that weren't brought up at trial, as well as some that are brand new.

George Brown, Property Tax Division Administrator, was recognized for comment. Mr. Brown said he's uncomfortable having Mr. Rayworth answering questions that the appealing party should be answering. The appealing properties have chosen not to argue their case and they've asked the Board to make their decision based on the paperwork they've provided. Commissioner Moyle said she observed there are new issues that weren't presented to the court, so it's a little unfair for the Board to be reviewing it. Mr. Jarvis responded that they didn't stipulate to agree with Mr. Rayworth's appraisals. The state signed a stipulation waiving a hearing. They elected not to have a hearing but to receive a decision they can take before the court. If they were to come before the Board today, they'd be able to argue whatever they wanted. Commissioner Moyle asked if this is a stipulation that they will add to the court cases before? Is this a separate case that will go before the court, or will it be combined with the previous cases?

Mr. Skinner read the relevant section of the stipulation: "...That both parties hereto waive formal hearing upon the 2023 property tax appeals filed before the Board of Equalization by the Taxpayer, and request the matter be decided upon the record." That's the stipulation. We aren't stipulating that this will or won't be part of the old case. Our Administrative Rules say a party can stipulate saying they don't want a hearing; they only want a decision that can be appealed to the court. All that's stipulated is that they've presented to the Board of Equalization before. They have the same issues, even though Mr. Rayworth has updated the appraisals. The stipulation is they don't need a hearing, the Board has everything in writing, please give them a decision. It is then up to the appealing party whether to go to court, to combine it or not.

Commissioner Moyle said her problem is that is what they stipulated to, yet they've presented new argument. If the Board has heard it all before, why are we hearing new arguments? Mr. Skinner said the statement that the Board has heard their arguments before is a mindset. The stipulation is that they've presented their requests and criticisms in writing, please issue a decision based on the written materials; and the rules allow it. Commissioner Moyle commented that she prefers we don't stipulate. She said that then we don't run into this; every year the Board can hear the arguments they want to bring before the Board and she doesn't have to wonder if it's an old argument or a new argument. If they want to appeal every year, then let the Board hear them every year. Mr. Brown added that the Board is hearing them: they submitted paperwork and asked the Board to make a decision based on that written material.

Chairman McCray asked that Mr. Rayworth present a high-level overview of the process for creating the appraisal, taking into account the judge's decision. Additionally, he clarified that the appraisals attached to the stipulation agreement are the final appraisals and the values the Board will decide on later this week. Mr. Rayworth said yes. Mr. Rayworth outlined the points in the decision that guided him through updating the appraisals.

Commissioner Katsilometes opened the floor to deliberation. Commissioner Moyle commented that it bothers her that the appealing party indicates the Board will just agree with staff. She doesn't think the Board has ever "just agreed with staff." She believes the Board has always taken the opportunity to get into these cases and take them extremely seriously. She has also brought forward some of the concerns the judge has brought forward. The fact that we're stipulating, and they say the Board just agrees with staff anyway, to her is a bit of a rub. She doesn't like that attitude. She supports staff when they're acting within their scope. She doesn't like the attitude that the Board will only support staff without listening to both sides. That is not the case.

Commissioner Zwygart said he has read staffs appraisals. He's tried to understand what is going on, but he doesn't have one of their appraisals before him to compare what they believe their values should be. How can the Board take their side when they don't provide a dollar amount? The only amounts the Board can see are provided by the state. Have they provided any appraisals of these facilities? Mr. Jarvis responded saying no. That was a similar problem two years ago when they came before the Board with no alternative, only criticisms.

Commissioner Moyle also pointed out that as this has progressed, and we've been before the court, staff has also tried to take into consideration everything the court has said and she really feels staff has done a good job in trying to do what they feel is best. It's a lot of work to do an appraisal, and then to have to turn around and do another appraisal. The judge noted that it's difficult to understand when these are all lumped together. Today's decision isn't really a decision. They made assumptions and put us in a box.

Commissioner McCray said that given the deliberation and the fact that there isn't any other data or argument to suggest otherwise, he recommends the Board request decisions upholding staff's appraisals, as provided to the Board.

Mr. Skinner clarified the Board is upholding the updated appraisals. Commissioners McCray, Zwygart, and Moyle agreed with the request for decisions. Mr. Skinner will prepare draft decisions for the Board to review and approve on August 25, 2023.

Commissioner Zwygart asked if the values they have for these properties will be lowered due to the 4-R adjustment? Mr. Jarvis responded that whatever the value is decided upon by the Board will be reduced by the amount of the 4-R adjustment, as it's applied to all operating properties.

Mr. Skinner will show the Board members drafts of the decisions prior to Friday and they will have an opportunity to comment, to him, about any changes. Those draft decisions will contain a section about the value and that they've requested the 4-R adjustment.

Commissioner Katsilometes said that is a good question because the Board will now discuss the properties that only have the 4-R adjustment issue. He read those properties into the record. They are Idaho Power; Avista Corporation; Lucky Peak Power Project; Arrowrock Power Project; PacifiCorp; Lumen Technologies, Inc.; Rathdrum Power, LLC; Tesoro Logistics Northwest Pipeline,

LLC; Northwest Pipeline, LLC; Gas Transmission Northwest; South Forks Joint Venture; Marysville Hydro Partners; Holly Energy Partners, LP; Telephone and Data Systems, Inc.; and Zayo Group, LLC.

Mr. Skinner will prepare draft decisions based on Monday's decision for these properties and how it affects each property.

The Board will convene at 9:00 a.m. Thursday, August 17, 2023, to hear Syringa Networks, LLC's presentation.

There being no further business, Commissioner Katsilometes recessed the Board until 9:00 a.m. on Thursday, August 17, 2023.

Maria Young
Secretary

Tom Katsilometes
Chairman of the Idaho State Board of Equalization