

**BOARD OF ADA COUNTY COMMISSIONERS
MINUTES OF THE MEETING FOR THE REVIEW OF OBJECTIONS
TO THE RECORD: IDAHO CONSERVATION LEAGUE V. BOARD OF ADA COUNTY
COMMISSIONERS, CASE NO. CV OC1221165
THURSDAY, JANUARY 17, 2013
1:30 P.M.**

The Board of Ada County Commissioners (Board) met this date in an Open Meeting in the Commissioners' Conference Room of the Ada County Courthouse Complex to act on the following items. Staff members present: Ray Chacko, Prosecuting Attorney's Office. Minutes Recorder: Sue Axtman.

I. IN THE MATTER OF CALL TO ORDER:

Commissioner David L. Case called the meeting of the Ada County Commissioners to order at 1:36 p.m.

II. IN THE MATTER OF ROLL CALL:

Commissioners David L. Case, Jim Tibbs and Rick Yzaguirre were present.

III. OPEN SESSION:

D. Case explained that each side would have the opportunity to present their case to the Board. He said that after both sides have been heard, if the Board feels they have enough information, the Board will make a determination through a motion.

D. Case stated for the record that the Board has received and read three letters, two from Bryan Hurlbutt of Advocates for the West, Representing Idaho Conservation League (ICL) and one from counsel. He then turned the floor over to B. Hurlbutt.

B. Hurlbutt advised the Board that if the Dynamis project continues to move forward as currently approved by the County, ICL is prepared to vigorously litigate the case. He said the idea that the case could possibly be slowed down if the underlying approval changed came up at the scheduling conference with the judge after the petition was filed.

B. Hurlbutt proceeded to provide a general overview of ICL's position on how the preparation of the record is supposed to move forward under Rule 84. He said ICL has filed an Objection to the Record and is now awaiting the County's determination on the objection. He stated that if the County denies the objection, ICL will have the chance to bring it up to the District Court.

He then discussed ICL's objections. He stated that he believed that three of the underlying agreements between the County and Dynamis should be included in the record as they relate to the lease agreement and the content of the lease agreement. He explained that County's counsel seems to agree that the agreements should be included in the record, but there seems to be a dispute as to whether this is the appropriate time. He stated that ICL filed the objection to seek to include the missing documents. He argued that that standard set forth in the Idaho Administrative Procedure Act 67-5275 for documents included in the record is very broad and he believes the documents they are requesting fit within that standard.

Addressing the County's objection, he said that R. Chacko advised him that the County has only filed a Notice of Objection with the Court. He said he does not feel there is a mechanism in Rule 84 for the County to object to its own record.

D. Case then turned the floor over to R. Chacko.

R. Chacko stated that the County generally did not have a problem getting all documents relating to Dynamis that predated the October 23, 2012, hearing into the record. He explained that October 23, 2012, was the date the acting Board actually took action and therefore, pursuant to Rule 84, only the documents that came before the Board for action on that day are up for review under the petition. He said the proper way to get the documents that predated October 23, 2012, is at the District Court level. He said he was concerned about the PUC Order requested by ICL as it has never been before the Board, but stated that could also be addressed at the District level.

With regard to the County's objection, he explained that under Rule 84 either party may file an objection. He advised that the objection was filed because some of the documents requested by ICL weren't before the Board, but were before the Planning and Zoning Commission. Those documents were put in the record. In the interest of keeping the record consistent with Rule 84, he stated that the County is taking the position that the Planning and Zoning related documents were not appropriate for the record as they had not been before the Board of Commissioners at the time.

The Board and parties discussed taking these issues to the District Court. The Board affirmed that the County does desire to get all the documents related to the contracts into the record by following procedural protocol.

ACTION: J. TIBBS MOVED THAT, HAVING REVIEWED THE IDAHO CONSERVATION LEAGUE'S DECEMBER 20, 2012, AND JANUARY 16, 2013, LETTERS REGARDING ITS OBJECTIONS TO THE AGENCY RECORD IN CASE NO. CV OC 12 21165, THE ADA COUNTY BOARD OF COUNTY COMMISSIONERS REFRAIN FROM ADDING THE ADDITIONAL DOCUMENTS IDENTIFIED BY THE IDAHO CONSERVATION LEAGUE AS IT APPEARS THAT IDAHO RULE OF CIVIL PROCEDURE 84 CONTEMPLATES THAT THE ADDITION OF SUCH DOCUMENTS IS BETTER ACCOMPLISHED AT THE DISTRICT COURT LEVEL PURSUANT TO ITS AUGMENTATION PROCESS, AT WHICH TIME THE BOARD'S COUNSEL CAN WORK WITH THE IDAHO CONSERVATION LEAGUE'S COUNSEL TO INCLUDE PRIOR DYNAMIS CONTRACTS SUCH AS THOSE IDENTIFIED IN THE LEAGUE'S DECEMBER 20TH LETTER AS ITEMS ONE THROUGH THREE. R. YZAGUIRRE SECONDED. J. TIBBS, AYE, R. YZAGUIRRE, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

ACTION: R. YZAGUIRRE MOVED THAT, HAVING REVIEWED THE OBJECTION TO THE AGENCY RECORD FILED BY THE ADA COUNTY PROSECUTING ATTORNEY'S OFFICE ON JANUARY 9, 2013, CASE NO. CV OC 12 21165, THE ADA COUNTY BOARD OF COMMISSIONERS REMOVE FROM THE AGENCY RECORD THE ITEMS LISTED IN SAID LETTER AS THEY APPEAR TO BE OUTSIDE THE SCOPE CONTEMPLATED BY IDAHO RULE OF CIVIL PROCEDURE 84 IN THAT THEY APPEAR TO BE THE RECORDS OF ANOTHER AGENCY AND/OR WERE CREATED AFTER THE DATE OF OCTOBER 23, 2012, BOARD OF COUNTY COMMISSIONER ACTION THAT IS THE SUBJECT OF THE CURRENT PETITION FOR JUDICIAL REVIEW. J. TIBBS SECONDED. R. YZAGUIRRE, AYE, J. TIBBS, AYE, AND D. CASE, AYE. THE MOTION CARRIED UNANIMOUSLY.

VI: IN THE MATTER OF RECESS:

There being no further business to come before the Board at this time, the meeting was recessed at 1:54 p.m.

Chairman

ATTEST:

Christopher D. Rich, Ada County Clerk