



EIWRC/RDC 2018 Symposium
Eastern Idaho Water Supply Alternatives
“Water Policy Leadership”

Introduction

Thank you for the invitation to be here today. As a tap-water junkie, I do not feel equal to the task, but I can tell you that I am very proud of the two organizations hosting this conference. I believe this agenda represents the exact conversation we should be having at this time.

Many, if not most of you are aware of Stan Clark’s passing. He was a key member in both of the organizations sponsoring today’s event and it was he who invited me to speak today. So you can perhaps understand why I was in a reflective mood when I put pen to paper for my remarks this morning.

I first met Stan in 2006 when he brought then-candidate Butch Otter to a meeting in Island Park with developers where we discussed water and development. He was “Otter’s water guy.” And from there our association continued and eventually resulted in the formation of the Eastern Idaho Water Rights Coalition in the summer of 2007.

Stan served as the Coalition president for many years. This was in part because he was kind enough to carry that workload. And it was also

partly because he was easily recognized as a leader. Stan had the right set of qualities for the job:

- He had a kind manner and was **respectful and fair** even when the conversation had the potential to become heated.
- He also had lots of **water knowledge**—not the formal engineering kind, but the kind you get out in the ditches and from knowing seasons of plenty and seasons of drought.
- He had an insider’s understanding of public policy processes—enough to know that **planning, cooperation, and consensus** make a good basis for good policy.
- He wasn’t afraid of **innovating** or trying something new.
- Stan had lots of **common sense**.
- Finally, he **optimistically** believed that our useable water supply could be better **managed**.

I believe these are the attributes we all need more of—*respect, fairness, knowledge, consensus, innovation, common sense, and confidence in management* accompanied by a strong dose of Stan Clark’s brand of *optimism*.

I have spent enough time in water conversations over the past decade or more to know that Stan’s basic attributes are not always present every time a water conversation takes place in this state. Yet, taken together, these attributes would give us all better water policy.

I also know that we assembled here today are qualified more than most to know that our state needs water leadership now more than ever. Water supplies are finite and Idaho needs to be creative in terms of how we find, use, and manage our water. Water for growth, water for agriculture and water for prosperity.

So how are we going to encourage or ensure the leadership we need? I am not entirely sure, but I have some opinions and some ideas.

Who Makes Idaho's Water Policy?

Let's start with a rundown of the key players in making water policy.

Elected Officials

The people we elect are the ones tasked with approving water policy. I believe this is where effective leadership begins and ends. But does it? All too often I hear state level elected officials say things like *"Bring me a solution"* or *"I don't think you will find consensus for that this year."*

Why do elected officials shy away this role? Not all do, of course. But for the majority, I do not entirely understand why they feel unequal to the task. It is too easy to believe they do not take on a hard problem like water policy simply because it may be difficult to explain it to the electorate. I will not ascribe such cowardice to Idaho officials. We are made of tougher stuff around here. Rather, I tend to believe there are other factors at work.

Knowledge. One in a lack of knowledge. Water policy is difficult. It is technical. (I sometimes believe excessively so, but that's another subject.) And our elected officials are part-time and without the means at their disposal to become much better informed than they are. How do we resolve this?

A part-time, staff-less system like legislature employs requires—demands—that the bureaucracy and the private sector (special interests like ours) step in to inform the members of the legislature and statewide elected officials. We know they will make better decisions with better information. We know it is hard for them to get them information. So we need to give it to them. White papers, conferences like this one (maybe held when they can attend) make sense. Something else I am a big fan of is bootcamp. Why not a water boot

camp? Who better than us to offer it to the elected officials at the start of every new legislature? Every two years we roll out a half-days' worth of curriculum on Idaho's water policy and the impact of it.

Confidence in Management. Secondly, there is a philosophical ideal that runs strong among Idaho's elected officials—I actually tend to share it as do many in this room because I have heard you say it. It is that less government is better. Fewer laws, fewer programs, fewer layers, etc. I agree.

That only works well then the laws are sufficient and when the constitution we live under is flexible enough to contemplate something for Idaho beyond being a surface-watered, agrarian-based economy. But what has happened, is that the legal framework that has served us well for a hundred and fifty some years needs some minor updates and tweaks. We simply use water differently. We have developed measurement and monitoring capabilities, and we have developed efficiencies that all ought to be recognized and further encouraged by our laws. And they aren't—perhaps because the philosophy gets in the way.

The philosophy only works with the right set of laws. We are not there yet. How do we know that? It is simple. We are in court too often. This is when your actions are dictated by your courts, and not your legislature. The courts exist to shape and interpret laws—not make them. But when it comes to Idaho's water law, if you do not know your court cases, you come up short in your understanding. And when you can't negotiate the landscape without an attorney, it is a sign that your policy is not healthy and robust. The rule is that policy should be made by the elected policy makers—not the courts.

Optimism. Like Stan, I believe in governance and management. I believe in courts and attorneys too—in their proper roles. We are not there yet. But I am very optimistic that we can get there.

Consensus and Respect. Now, no one says that elected officials must have all the answers. But it is they who have the necessary authority to create the forums needed for our other leadership attributes to be exercised. Back in 2007 Governor Otter created the CAMP— Comprehensive Aquifer Management Planning Committee. That was a years-long effort that allowed for a great deal of great conversation. For price of a facilitator, lunch and some staff time, great strides were made in the public conversation about aquifer management. The antipathy that had existed toward recharge was properly eroded in the meeting with data, dialogue and consensus during the few years the CAMP group met. Respect developed.

I can't remember which year, but it probably was in 2010 or 11 (after CAMP) that the EIWRC had representatives from Idaho Power come and speak at our annual meeting. Now there was a time when IP was portrayed as the "bad guy" in Eastern Idaho water conversations. But with respect, bridges were built.

CAMP goals were not immediately realized and not directly funded, but the relationships, the ideas, and the policy goals were not forgotten. Some of the principles and practices we discussed and vetted (with data) have made their way into practice today. The Governor's leadership in this area was helpful even if not immediately rewarded with policy change.

Administrative Experts and Officials

What about the unelected officials? Government textbooks call them the *administration*, and the *bureaucracy*. Executives call them *staff*. The media calls them *government experts*. And the public calls them *they* or *someone*. Wise people might acknowledge them as beleaguered and underpaid *public servants*.

I wish to pay tribute to this group. Their daily work can be discouraging at times. How must it feel to have access to the data and the answers and not be able to get anyone to pay serious attention?

It is not too difficult to understand this group might become jaded from time to time. In a career spent trying to convey what they know with only lukewarm responses, we tend to hear things coming from staff like, “The courts won’t go for that,” or “*Yeah, that could work, but you’ll never get that through the legislature.*”

What makes these highly informed administrative experts shy away from improving policy? Too tired of trying? Unwilling to rock the boat? Bureaucratic inertia? I do not know for certain, but I suspect that somewhere along the way, we wanted to make sure that those who are unaccountable (meaning unelected) do not make the policy.

Knowledge and Common Sense. Well, this takes us right back to knowledge and perhaps good old common sense as well. What is it in our collective psyche that makes it so hard for us to accept facts and data and the scientific information applicable to the problems we face? Why are we afraid of the information staff members have to offer? So long as our policymakers themselves remain engaged in policymaking and not cede it to staff, it only makes sense that we would want to have policy informed by facts, not made in spite of them.

How do we improve the channels of communication between the experts and the policymakers? That is a tough one. I can tell you that during the CAMP process staff expertise was on display. IDWR experts engaged and presented. They went back to their offices and computers and re-examined when questions were raised. The back-and-forth was very helpful. Guess what happened? The dialogue was informed by the staff; the policy recommendations were improved by the knowledge they share. At no time did anyone feel that this “unelected” branch

was dictating policy recommendations. Administrative expertise should not be feared or ignored.

Stakeholders

This is such an overused term anymore. A decade or more ago it was a very fashionable way to identify those who had skin in the game. I will still call them stakeholders—but if there is a new buzzword, please let me know.

I am talking about the ***user groups***—irrigation districts, the canal companies, the pumpers, and the cities. I am talking about the ***membership groups***—the coalitions and associations. This also includes other groups and actors like the Committee of Nine, the Watershed Council, and others I may have left out. It includes the private sector too—more about that in a minute.

The proper role of those who are impacted by a policy—the stakeholders—is to speak up. Most often, only those who are negatively impacted reach out to decision-makers. And that is okay. If something is going well, only a politician seeking a headline might want to over-manage that. But when things are *not* working, it is entirely appropriate to speak out for a redress of grievances. That is the American way.

And when, in the course of speaking out, we encounter officials who are unresponsive, we have two choices. We must find out if this is because they are unwilling or incapable of addressing the problem. If so, the path is simple. We unelect them. That is also the American way.

But if they are unable to address the problem simply because they are unaware, we inform them. Back to knowledge again. Stakeholders must share their knowledge. The system requires it.

Stakeholders not only raise concerns, they can also be a source of new ideas. And that takes me to a very powerful subset of the stakeholder group.

The Private Sector

It is almost always the case that in a free enterprise system like ours that the best ideas come from outside the system. The entrepreneurs, the innovators are the ones who hatch the ideas unencumbered by the conventions, the rules, the “should be” kinds of thinking. The private sector delivers the “could be” kinds of solutions.

Not all ideas are great. Just as in business where the data show that roughly 2/3 of small businesses fail within the first few years of existence, more than half of these innovative ideas probably won't be good. Yet it only on takes one great idea once in a while to transform, to disrupt the current practice just enough to truly make a difference. Pumping, water banking, lining canals, conversions, buy-outs, managed recharge—all were innovative at some point. And all have in some way changed the water landscape.

What is the next great idea in water management? I don't know. But I sure as heck will ask a member of the RDC before I ask a legislator. The private sector is the richest source of ideas we have. IT I not just RDC—developers, hydrologists, engineers, and even some attorneys all have skin in the game.

I have already said that we must demand more of our elected officials. But for them to deliver, we must give them more to work with. We can't take petty grievances to them. Guess what, when we do, they push us off and we end up in the courts where grievances usually play out. So,—just as legislators make lousy innovators, they also make lousy judges. In our system we need to take the innovative ideas in the form of *proposed solutions* directly to them for enactment.

I have also learned that the private sector will also give up if they are disappointed too often. The font of innovative ideas will dry up if progress is not made. When the private sector gives up on water, guess what happens? They stop seeking policy certainty and policy equity and they simply pay for that certainty and equity. Prices go up. Competition kicks in and the almighty dollar arbitrates and picks the winners and the losers.

Unlike other western states, Idaho has pretty much avoided that scenario. Until only recently, we existed in a world of plenty and a lot of healthy growth occurred. But in recent years I have heard developers say it is too expensive to wait for water policy solutions that will free up water for growth. The speed of business is fast and often, they prefer to buy their way out of the mess or just walk away. Neither is good. Walking away forestalls growth—period. And buying a way out drives costs up. Homes and real estate cost more. Businesses find it more difficult to do business. As a local official, I worry about an Idaho that is both small and expensive. That is not a healthy growth scenario. It does not breed jobs. It doesn't keep kids home after graduation. It doesn't give as many Idahoans a stake in the American Dream. It is not a scenario that I can support. It is not optimistic.

How Should We Make Idaho Water Policy?

And I remember Stan saying in many a meeting, we have plenty of water in the system, water we frequently spill over Milner, water we can manage better.

Policy that manages better. How to do we get there? What needs to happen? Well, as I have tried to outline, I believe we need to stay in our lanes. Each actor in the conversation needs to play the right role.

Policymakers

- must become more informed
- cannot pick and choose their data
- must act and not defer
- Must engage and create useful policy forums
- They must look to the future—the status quo is not perfection, it rarely is. There is always room for improvement. If Elected officials so not look out for the future, who will?

Policy Experts

- Must not prescribe; but inform
- Must be bold
- Must not give up

Stakeholders

- Must speak up and engage
- Must elect the correct officials

Private Sector

- Must innovate and keep seeking more creative and less expensive solutions.
- Must communicate the good ideas in the form of proposals.

It is a complicated but necessary process. Some have called it a dance—the dance of legislation. If it is a dance, it a lot of steps. But I know some of you guys are pretty good dancers.

I also have been working with many of you long enough to know what we all wear more than one of these hats. Or, we have at least worn different hats in this conversation at different times—property owner, surface water user, pumper, ratepayer, developer, staffer, expert.

But how many of you also own a policy-maker hat? Far too few. I encourage you to consider wearing that hat. First of all, just think of what great strides we would make in the knowledge gap if more of the people in this room were in legislative seats. You'd save us all time and money.

But seriously, after my last election I can tell you that I feel somewhat qualified to testify that elections can be difficult. But the satisfaction of making good policy and framing a brighter future for Idaho is better than you might suppose.

Now I realize that I have invoked Stan's name a quite a bit today (I really was affected by his passing). I would simply encourage you, if you can imagine his voice in your head, not to rule out jumping in. When the opportunity to throw your hat into the arena, embrace it. Our state needs policy makers who are informed, or at least inform-able, and who are not philosophically afraid of exercising a little informed governance.

Idaho has been blessed with a remarkable water supply and a powerfully effective water system in the form of mountains, lakes, rivers and aquifers. There is no water problem we cannot solve with respect, knowledge and data, good management, consensus, innovation, and plenty of Clark-style optimism.

Good luck in your conversations today.