

Statement RE Hawkins Settlement*

Nancy Chaney, Mayor, 3-3-08

Synopsis:

When fundamental interests compete, somebody loses. This is the case with the controversial Hawkins Agreement to sell water across the state line. Fundamentally, it pits near-term economic gain against long-term environmental sustainability, profit against water, and neighbors against neighbors. As confident and capable as they may seem, economists, hydrologists, traffic engineers, planners, elected officials, news reporters and other members of the public can only speculate as to the effects of the proposed development and the precedent it would set. I opposed the Agreement because in my opinion, it does not benefit Moscow.

Whether we like the outcome or not, the agreement was approved by the majority of those elected to represent the citizens of our community. Permission to sell water across the state line lies with Idaho Department of Water Resources. Regardless of Director Tuthill's decision, it is important that a variety of parties —local, regional, state, federal, public and private— work collaboratively to provide for a sustainable water supply in the Palouse Basin, to facilitate basin-wide conservation efforts, and to develop in responsible and sustainable ways, environmentally, socially and economically. We move on from here.

Overview:

The Agreement involves a 714,000+ square-foot (phase one of two) shopping mall on 205-acres at the corner of Airport Road and Highway 270 on the Washington side of the state line.

- It guarantees Hawkins the ability to immediately drill a well to extract 45 acre-feet of water, as allowed by two disputed water rights transfers from Washington Department of Ecology.
- If IDWR approves the sale of water across the state line, the Agreement promises 65 acre-feet of Moscow's limited allotment of potable water as an alternative (i.e. 20 acre-feet more than authorized by DOE), and the potential for more if/when (presumably de-valued) treated effluent becomes available.
- It sends a message to Moscow residents who are complying with the Water Conservation Ordinance that their efforts are for naught.
- If such sale is authorized, the Agreement could significantly reduce Whitman County's investment in on-site infrastructure costs, and potentially free-up some of its \$9.1M in bonds to expedite other development impacts along the 270 Corridor.
- The Agreement provides that the City shall not appeal or protest, directly or indirectly, any proposals for the so-called Stateline Project that are not issues of public health, safety or nuisance.
- It assures Hawkins that their fees and rates shall be fair, reasonable and in keeping with similarly situated customers.
- It offers the possibility of wastewater treatment at Moscow's facility, conceivably with little if any authority to influence types of businesses that contribute concentrations of fats,

oils, grease or other legally allowed discharges, except as may be addressed in the rate structure.

- It does not require Hawkins to otherwise participate in capital projects such as Moscow's Well #10, a surface reservoir, or the City's effluent re-use system, although clearly, they stand to benefit from all of those projects.

Background:

Citizens are understandably concerned about this issue. We have arrived at this place through a long series of actions and circumstances:

- Moscow's well-deserved reputation as the region's retail center and the success of local businesses made the site attractive to Hawkins.
- Whitman County Commissioners sought wide-ranging economic development. Because of low population density, they are not obligated to concentrate construction by Pullman, as would otherwise be required by Washington's Growth Management Act.
- Transportation decisions affect land use. The design of the 270 Corridor is an improvement over what we had before, but it is more conducive to strip development and sprawl than to expeditious flow of traffic and user safety. As conceived, the southwestern quadrant of the Ring Road, leading motorists to Hawkins' front door, would do the same.
- Water does not abide by political boundaries. Washington DOE has authority over water use in that jurisdiction. As a stakeholder, Moscow provided comments at a number of public meetings, as anticipated by the State Environmental Policy Act, Whitman County's Conditional Use Permitting Process, and the DOE appeals process. The City argued that Hawkins' intended point of withdrawal could have an adverse effect on Moscow's municipal use. IDWR controls water in Idaho, but did not participate.
- It's human nature to withdraw from prolonged discomfort. At some point, some portion of the public and the majority of Moscow's City Council decided they'd reached their limits. I speculate that it was related to the complexity of trying to understand the water resource, the time commitment and potential cost involved with the legal process, and because political will and the public's patience waned in the face of a publicity campaign that unfairly and inaccurately depicted Moscow as meddlesome, unreasonable, anti-business, greedy, and mean-spirited.

FAQ's:

- **How did this happen?** The general topic of Hawkins was in the public's eye from the fall of 2005, when their "Coming soon" sign appeared along the highway. A series of publicly noticed meetings followed, and the City participated each step of the way. After SEPA and CUP protests were rejected, the City appealed to DOE. (Those appeals have been dismissed, per the Settlement Agreement.) Previous and present City Councils were consistently informed and involved. When it became obvious that the cost of protracted litigation could exceed the Council's tolerance and likely, the City's budget, I broached the idea of mediation to formulate what could have been a communally agreeable, if not singly beneficial, outcome. Mediation offered the possibility of a shorter, more affordable process among Moscow, Hawkins, DOE and the town of Colton (entangled because of its

agreement to “trade” water rights with Hawkins). The Council could have voted to not approve the resultant Agreement, while expressing a desire to continue conversations and negotiations, and to open it up for more public input. Council member Tom Lamar made such a motion, but it died for lack of a second.

- **Was it legal?** Yes. Latah County Prosecutor Bill Thompson issued a written statement on Feb. 29, and said that the City’s “...executive session appears to fall within the authorization of Idaho Code 67-2345 (1) f.” Executive sessions to discuss legal matters are duly noticed and documented by the City, and a 2/3 majority vote of the Council is necessary to hold an executive session. No votes are taken during executive sessions. Once the City became enmeshed in the legal aspects of the appeals, philosophical and budgetary limits set by Council, details of litigation, etc., were reasonably —legally and logically— kept confidential. (Someone likened it to not showing a poker hand to one's rivals.) No votes were taken nor "deals" struck behind closed doors, although the judge who facilitated the mediation required a commitment to not disclose contents of that discussion. According to the City’s Attorney, that restriction is commonly the case. The City made a good faith effort in mediation. Attendees agreed only to "present the (resultant draft of the) Settlement Agreement to (our) respective entities for consideration," not to encourage its approval. The vote to accept it was made in an open public meeting. I emphasized the importance of the matter and invited comments from Council members and the public before the vote.
- **How much did it cost?** Legal expenses up to the time of mediation totaled a relatively modest \$5,000. All-total, the estimated cost was approximately \$12,000. Had Moscow benefited from the settlement, that amount could reasonably be considered an investment in our community’s future.
- **Was/is the Stateline Project presented inevitable?** No. As of the Settlement Agreement, Hawkins had not purchased the property nor signed any tenants to its proposed project. No new water rights had been approved in Whitman County in something like 20 years. Moscow’s appeals were based on disputed transfers approved by DOE. With appeals now dismissed, it is unknown how that process might have played out. Even if the Council had rejected the Settlement Agreement, they could have opened up public discussions and possibly, have still kept Hawkins involved in negotiations.
- **What’s next?** The decision to allow or disallow sale of water across the state line lies with Idaho Department of Water Resources Director David Tuthill: <http://www.idwr.idaho.gov/>; Email IDWRInfo@idwr.idaho.gov or david.tuthill@idwr.idaho.gov or 322 E. Front St, PO Box 83720, Boise, Idaho 83720-0098; Ph: (208) 287-4800; Fax: (208) 287-6700.
- **Where may I learn more?** The Agreement is linked from the City's home page <http://www.ci.moscow.id.us/PDF20Documents/HawkinsSettlementAgreement.pdf> Other background information may be found on the Palouse Conservation Network Web site <http://pwcن.org/> Moscow Civic Association, PWCN and Moscow Chamber of Commerce Community Development Committee will host a public forum/panel discussion on this matter on Tue. March 4 at 6:30PM in the 1912 Community Center.

***Position statements representing Council majority and minority views were also solicited**