**FLATHEAD JOINT BOARD OF CONTROL**

SPECIAL MEETING MINUTES

**ST. IGNATIUS, MONTANA**

June 9th, 2014

**PRESENT**

**Flathead: Wayne Blevins, Paul Guenzler, Shane Orien, Trent Coleman, Bruce White**

**Jocko: Boone Cole, John Trimble, Kerry Doney**

**Mission: Jerry Laskody, Tim Orr, Gene Posivio**

**Member at Large: Ted Hein**

**Consultant:** **Jon Metropoulos**

**Staff: Johanna Clark**

**Project:** Absent

**CTO** - 11:00 am

Pledge of Allegiance was conducted.

Commissioner Boone Cole motioned to approve current agenda as posted and was 2nd by Commissioner Jerry Laskody.

Billing Statements and Warrants as listed in June Budget were reviewed and approved as presented by Executive Secretary Shane Orien. (See Budget and Warrant List)

Executive Manager Johanna Clark questioned the contracting of a local CPA firm to assist the board quarterly. Commissioner Shane Orien instructed Clark to research the cost and to submit proposals to the board for review.

Commissioner Boone Cole motioned to approve Minutes from May 27, 2014 FJBC Special Meeting and was 2nd by Commissioner Jerry Laskody.

Commissioner Bruce White questioned the Vice Chairman position – Commissioner Boone Cole responded that the bylaws placed two positions for the Vice Chairman seat within the FJBC.

Chairman Wayne Blevins called for a vote. Motion carried unopposed.

**Agenda Item #1 - Discussion and Possible Action regarding appointment of Member-at-Large for the one (1) year term within the FJBC.**

Commissioner Jerry Laskody nominated Ross Middlemist and was 2nd Commissioner Boone Cole. Commissioner Tim Orr nominated Ted Hein and was 2nd by Commissioner John Trimble. Commissioner Boone Cole motioned to close nominations and was 2nd by Commissioner Gene Posivio.

Chairman Wayne Blevins called for a vote:

* Ross Middlemist - 5 in favor
* Ted Hein - 5 in favor

Tie vote was cast; Chairman Wayne Blevins cast a vote for Nominated Member at Large Ted Hein. By motion Nominated Member at Large, Ted Hein was appointed for (1) Year term.

**Agenda Item #2 - Discussion and Possible Action regarding Proposed Remainder 2014 Fiscal Year Budget.**

Commissioner Boone Cole questioned whether it needed to be approved today or can it be amended and approved at a later date. Commissioner Shane Orien will continue to work on the FJBC budget and remainder individual district debt responsibilities for the next upcoming FJBC meeting and will ask for help from fellow commissioners if needed. Commissioner Jerry Laskody questioned approving for this month only to approve the transfer of funds to the FJBC from the districts. Commissioner Gene Posivio agreed motioning to temporarily approve the current presented budget and was 2nd by Commissioner Bruce White. Motion carries unopposed.

**Agenda #3 – Discussion and Possible Action regarding Legal Representation for the FJBC and pertaining documents.**

Commissioner Gene Posivio moved to hire the Kalvig Law Firm from Kalispell. No second was received. Motion dies. Commissioner Jerry Laskody moved to retain current consulting attorney Jon Metropoulos as well as an additional recommended firm with consulting attorney Jon Metropoulos acting as lead counsel for a two (2) year term. Member at Large, Ted Hein questioned changing the current retainer contract stating that he supports leaving the retainer contract with consulting attorney Jon Metropoulos as is. Commissioner Shane Orien stated support of leaving the retainer contact as is. Consulting Attorney Jon Metropoulos asked for a brief recess to speak with Chairman Wayne Blevins privately.

* Meeting called back to order.

Commissioner Boone Cole then offered a 2nd to Commissioner Laskody’s previous motion. Commissioner Trent Coleman questioned the current retainer agreement for Consulting Attorney Jon Metropoulos. Chairman Wayne Blevins responded that the current agreement would be amended and the budgeted retainer would now be $150,000.00 per year with a thirty day clause should the board choose to no longer utilize Consulting Attorney Jon Metropoulos. Commissioner Shane Orien responded that the current approved budget reflected the previous contracted amount and that it will need to be amended prior to the upcoming meeting. Executive Manager Johanna Clark reminded the board that statements showing work flow and monthly expenditures to include travel from Consulting Attorney would be helpful. Consulting Attorney Jon Metropoulos made a statement in regards to the additional firm he was recommending to the commissioners of the FJBC. It is his opinion that through his prior dealings, Dana Hupp is respectable and highly qualified and has a highly qualified team working with her firm that will be an asset to the FJBC and the current issues. Consulting Attorney Jon Metropoulos stated that the firm in question has agreed to a rate of $190.00 per hour to work for the FJBC.

**Public Comment:** Sheila V. (Mission) made a statement of support of the board being back together and showing a unified front in the decision making process on behalf of the irrigators. Terry Backs made a statement of support for getting additional help with all the issues stating that one person cannot accomplish the tasks ahead of this board alone. Gene E. (Flathead) stated his concerns with hiring an in state group offering his opinion that there may be better firms available outside of our state. He kindly reminded the commissioners that the WMWUA still has an active litigation to include discovery requests of current attorney Jon Metropoulos. Gene E. and fellow irrigators have spoken with firms outside of the state and he believes this is a better option for the FJBC then to keep repeating the same behavior and expecting a different result. He also stated that nothing has been done here within the FJBC and the fellow irrigation districts, but fighting and misdirection going on to explain that last fall three individuals were called from the WMWUA as well as members of the FJBC board and that they appeared at the meeting in question in attempt to give away our water rights. He claimed that in his opinion, that the state of MT is/was claiming ownership of our water use rights and there is back money owed to the project and its irrigators. Public comment was made in regards to paying taxes under protest and the timeline in regards to the process with the county. Public comment on the actions over the last few years and they would like to see a summary of the suits in question and what the plan of the current FJBC was to resolve the issues in a timely manner. Public commented that attorney's take money for years and years before they come up with settlement options for their clients and irrigators would hate to see that activity take place here. The public would like to see progress now and not five or ten years down the road. Gene E. (Flathead) questioned Consulting Attorney Jon Metropoulos as to his knowledge of the the Kerr Dam filings. Terry B. stated that Lake County has also filing in regards to this matter.

Chairman Wayne Blevins called for a vote on the previous motion.

* Commissioner Gene Posivio - Nay
* Member at Large, Ted Hein - Abstained
* Commissioner Kerry Doney – Abstained
* Commissioner Paul Guenzler – Abstained
* Commissioner Trent Coleman – Abstained

Motion carried 6 - 5 in favor.

**Agenda #3 - Discussion and Possible Action regarding administrative position for the FJBC and pertaining documents.**

Commissioner Bruce White motioned to hire Executive Manager Johanna Clark at her current rate of salary ($16.00) plus PERS and paid leave/vacation. Motion was 2nd by Commissioner Gene Posivio.

**Public Comment:**

Sheila V. (Mission) stated her support of rehiring Johanna Clark going on to state that over the previous year, Johanna Clark’s work on behalf of the irrigators and the commissioners has been exemplary. Commissioner Gene Posivio commented his agreement with her statement. Executive Manager Johanna Clark questioned the board as to whether any thought had been given to salary vs. hourly wage. Chairman Wayne Blevins responded that Commissioner Shane Orien would have to research the issue and the board would discuss again at a later date.

Motion carried unopposed.

**Old Business:**

**Item #1 - WMWUA vs. FJBC** – Consulting Attorney Jon Metropoulos made a statement stating that nothing has taken place on the suit due to lack of legal representation for the other parties involved. It is the hope of the FJBC as well as himself that a pending settlement will be soon coming.

**Item #2 - Ingraham vs. FJBC** – Consulting Attorney Jon Metropoulos has had no discussion and or interaction with Lloyd Ingraham for some time so is unable to offer a status update to the irrigators. As to the history of the litigation, Writs of Prohibition have been issued against the previous FJBC as well as the individual districts. To his knowledge, all writs are still pending. Previous attorneys of record for the MID/JVID individually, filed a Motion to Dismiss on this matter. A Motion to Disqualify was filed on behalf of the FID by Consulting Attorney Jon Metropoulos. It is the opinion of this board to move towards settlement on this litigation as well.

**Item #3 - CSKT vs. Water Court, 20th Judicial District Court, FID, MID, JVID, 6 named individual project irrigators and an “unknown number” of Project irrigators to obtain ownership of all Project water rights by the CSKT-** Consulting Attorney Jon Metropoulos stated that time lines have been extended with a current deadline of July 23, 2014 for various responses from all parties. The AG’s Motion to Dismiss without Prejudice allows this filing to be resubmitted with the court of record at any time. The AG asserts the MT water court has jurisdiction over the current ownership of the water right and it is Mr. Metropoulos opinion that this action does or will not resolve all the issues at hand regarding this litigation. No decisions are expected until this fall on all recent filings.

**Public Comment:**

Rory Horning (Flathead) questioned Consulting Attorney Jon Metropoulos on the specifics of the CSKT suit and their right in doing so under federal and state law. Gene E. (Flathead) commented that the attorney’s need to get on the discovery requests and the FJBC should locate the FERC license for KERR Dam as soon as possible stating that time was of the essence.

**Item #4 - FID vs. BIA/DOI –** **to require Turnover** – Consulting Attorney Jon Metropoulos stated that the BIA suit needs to move forward quickly and in his opinion our next course of action is to submit a request for discovery as well as an injunction. The FJBC is planning for these actions to take effect over the 2014 summer irrigation season.

**Public Comment** –

Member at Large, Ted Hein questioned whether this course of action is a repeat of the previous organization methods. Consulting Attorney Jon Metropoulos responded that it is the intention of the FJBC to have the operation of the project turned over to the irrigation districts as well as some appointees of fellow agencies over the upcoming months. Bill Slack questioned the philosophy behind the tribe’s suit and beliefs. Consulting Attorney Jon Metropoulos responded that in his opinion, the tribe believes that they have title to all lands within the boundaries of the reservation and that when the government opened the reservation to settlement, it did not break that change of title. He went on to state that the tribe believes that the procedures were not followed to the letter of the law in regards to the selling of land within the reservation. Reservation land is not public domain and does not apply to legal rule in other areas. Consulting Attorney Jon Metropoulos does not believe the belief express by the tribes will stand up legally in a court of law stating that it was unique theory with limited legal basis. He went on to further explain that the tribe wishes to reserve all water and land within and surrounding the reservation to itself. Gene E. (Flathead) commented that the compact referenced appendixes regarding title and water rights, also stating that something took place for the tribe to form a relationship with the US. The tribes name is already on water rights for our rivers and streams. Our problems are bigger than the local levels and our government officials know more than they are divulging. Rory H. (Flathead) commented that the tribe retained 1st right of refusal for property being transferred out of trust. Someone committed fraud to those that land was sold too. The chain has been broken for some time. Public questioned the board on whether it is true that the tribe cannot complete the purchase of Kerr Dam until all the current water issues are settled. Consulting Attorney Jon Metropoulos responded that they are completely separate issues and one outcome does not depend or reference another. Ed W. (Flathead) questioned the lease and the transfer of water rights from the Kerr Dam reservoir stating that the original lease was somewhere in the timeline during 1984 and that the license in questions referenced 15,000 horse power for what we refer to as the low cost block of power. He questioned why it would not continue to operate as it has done over the years upon change of ownership. Consulting Attorney Jon Metropoulos responded that the tribe opposes the low block of power and therefore will be changing operating procedure and current rates soon thereafter its purchase. The previous FJBC did not want to expand the low black power at the initial date in which they were presented the opportunity; the second opportunity is taking place now. The license stated that after the 15 yr. anniversary. No one other party is going to undergo the necessary steps, so now the current FJBC is planning on accomplishing the required tasks. Ed W. (Flathead) stated that fee land owners leased their water right and we need to fight to keep our water right to the Dam. Those funds are going to the tribe and we need to push that the funds go to the districts, adding that we do not know where the money is going right now. Ed W/ (Flathead) asked the status on tetra tech’s recent billing statement as well as the status on attorney billing for the MID/JVID. Commissioner Jerry Laskody responded that we were looking into further negotiations.

Gene E. commented that CB McNeil had stated that the water rights were valuable and the FERC license and contracts are located somewhere and need to be located. Bill S. commented that the licenses are not lost. They are on file with FERC. This is a complicated pile of documentation. There was much activity over the years and it is a large process to locate such documents. Consulting Attorney Jon Metropoulos stated that he is trying to understand Gene's request but has been unable to do so due to the complicated nature of the questions. Gene E. stated that our legal ground should be that they should not have messed with personal water rights. John S. (Flathead) stated that the tribe asked for 100% control on low cost black of power and courts claimed that was false. John S. (Flathead) believes that Gene is concerned about the flow of revenues. Discussion took place in regards to the specifics of the Kerr Dam sale and the definition of the water rights attached to such sale. Member at Large, Ted Hein stated that Gene wants to know where the revenue monies have gone and in his opinion the FJBC and counsel need to look into the matter. Commissioner Jerry Laskody stated that we need to prioritize the issues and work on them as we can get to them. The legal predicament that we are in is complex and fighting among ourselves will not get us any closer to solving the issues. Commissioner Boone Cole stated that the reason we are here today because individuals gained knowledge of actions taking place and he strongly disagrees with the behavior of the tribe.

Public questioned what the board has to offer the tribe in negotiations and what is the plan now. Commissioner Tim Orr stated this is not about tribal and non-tribal, this is about property rights. Commissioner Boone Cole responded that the issues were complicated and now we are spending many hours trying to come up with an answer. The public questioned bringing in an arbitrator to assist with current legal matters. Commissioner Jerry Laskody questioned what water rights were worth to each irrigator and when property values drop your ground is not going to be worth what you paid for it. Bill S. (Mission) commented that an arbitrator would cause further complications with the compact commission and the perspective of the federal government. John S. (Flathead) commented that this is the process that we are in and we are working towards representative government, stating that the commissioners are capable individuals. He further commented that if the tribe chooses not to negotiate with the FJBC and fellow agencies, than that is their choice. Commissioner Shane Orien commented that the tribe has been utilizing financial threats to local families due to their opinion on the compact for a period of time now. Commissioner Tim Orr motioned to a copy of the compact stating that with it being so large, most either have not read it or do not understand it. He added that the commissioners are trying to make the compact acceptable to all land owners. Michael Gale (Flathead) offered comment in regards to the arbitrator option and stated he did not support an arbitrator. Member at Large, Ted Hein stated our plan is to follow the law and treaties and it is our intention to move forward in that manner.

Commissioner Shane Orien moved to hold check until Project Manager G. Wind appears in person to provide a report to the FJBC in regards to current irrigation issues, Member at Large Ted Hein 2nd. -

Board discussion took place in regards to receiving reports from the project and options to encourage interagency relationships. Frank Delgado (Flathead) recommended sending a register letter to the FIIP office and BIA Representative Bud Moran stating that irrigators and the FJBC wish to receive a project report. Commissioner Bruce White stated that this is federal grant money and we should decide this carefully how the FJBC wished to proceed. Bryan Bohn (Flathead) stated the money will not guarantee anything and we should just release it to the project. Commissioner Jerry Laskody stated we will not gain anything by holding the check. Commissioner Boone Cole supports sending the money and that Gordon Wind’s actions are only a symptom of the bigger picture. John Swenson (Flathead) asked why it was sent to the FJBC and not the project. Commissioner explained the process of applying and receiving federal money on behalf of the project. Commissioner Shane Orien withdrew his motion to hold the check. Commissioner Jerry Laskody stated that the irrigators deserve to see a project representative at the FJBC meetings to give a report and that a letter might be a good start to getting someone here. Public discussion took place on proper methods of requesting reports. Rory H. (Flathead) stated that the FJBC is responsible for accountability.

Commissioner Boone Cole moved to deliver check to project immediately and Commissioner Tim Orr 2nd – Commissioner Gene Posivio voted against - motion carries.

O&M Payment – Commissioner Boone Cole moved to pay project billing when funds are available and was 2nd by Commissioner Jerry Laskody - motion carries.

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Chairman Wayne Blevins announced that a meeting from the Montana water association was upcoming.

**Meeting adjourned 1:30 p.m.**