

FLATHEAD JOINT BOARD OF CONTROL

Special Meeting Minutes

ST. IGNATIUS, MONTANA

November 12, 2013

PRESENT

Flathead: Wayne Blevins, Bryan Bohn, Shane Orien, Trent Coleman, and Jim Baker

Jocko: Boone Cole, Kerry Doney and Roger Christopher

Mission: Jerry Laskody and Jerry Johnson and Paul Wadsworth

Member at Large: Ted Hein

Consultant/Attorney: Jon Metropoulos

Staff: Johanna Clark

Project: Absent

CTO: 11:00 A.M.

Pledge of Allegiance was conducted.

- Commissioner Bryan Bohn motioned to approve current Agenda as presented and was 2nd by Chairman Wayne Blevins. Motion Carried.
- October 15, 2013. Commissioner Bryan Bohn motioned to approve, Commissioner Jerry Laskody 2nd – Motion Carried
- October 23, 2013 Commissioner Jim Baker moved to approve, Member at Large Ted Hien 2nd – Motion Carried
- Warrants as listed in November 2013 Budget were approved as presented by Executive Secretary Shane Orien.

Old Business:

Atty. of Record Jon Metropoulos provided legal update on current litigation.

WMWUA vs FJBC and Ingraham - Writs of prohibition are still in place. Multiple discussions with Attorney Brian Schuck, no resolutions have been reached. Motions have been filed to dissolve writs. December 13, 2013 will be a scheduling conference (WMWUA).

Staff Reports: N/A

CME Report: Member at Large Ted Hein reported on recent CME activity. Mr. Brown attended the meeting, reported on Black Lake. Crow dam design will be done by February 2015. Lower dry fork in the Camas area now has a representative in various upgrades and maintenance is being performed. Project secretary has been replaced. The CME did not want to discuss the possibility of the dissolution of the FJBC. The drought management plan topic was discussed. Executive session was called to discuss the management employee contract.

Commissioner Shane Orien questioned why Steve Hughes was welcome to speak at the CME when no other public comment was taken.

Project Report: N/A

Jocko/Mission Irrigation District Litigation- (Addition to the Agenda- No Action Taken) Attorney of Record Jon Metropoulos commented on litigation filed on October 16, 2013 by the Jocko and Mission Irrigation District attorneys. The Jocko and Mission Irrigation Districts through their attorneys sued Lake County, Montana an attempt to stop the FJBC Referendum. The FJBC along with approximately 44 individuals, 34 named, approximately 10 unnamed, a motion to intervene was filed on the 28th. Judge McNeil had retired as of September 5, 2013. Judge Manley will be undressing our brief and hopefully denying their requests for an Injunction and Temporary Restraining Order. The two Districts (plaintiffs) claimed it to be a waste of public tax resources. The court supported the position of the current FJBC board allowing the public to participate by voting/providing input on the Referendum. Attorney of Record Jon Metropoulos also filed a counterclaim on behalf of the individual parties and the FJBC due to the violation of Constitutional Rights – there were multiple violations but only one was specified within the counterclaim. Further discussion will need to be held to ascertain how we will move forward.

Trudy Samuelson commented on correspondence recently received by irrigators within the irrigation districts. Constituents are confused as to the wordage and purpose of the referendum due to misinformation. Sheila V. questioned how the results of the referendum would be tabulated. Member at Large Ted Hein commented that in his discussions with the Lake County elections office, that the referendum would be separated by counties and irrigation districts. Attorney of record Jon Metropoulos responded that the board's request was project wide irrigation district specific. John S. stated that in his opinion it did not matter how it was broken down, that the information received will be the same. Member at Large Ted Hein responded that tribal irrigators would be intimidated to participate. Gene Erb stated that he believed the issue was personal property right and questions the board as to whether the county attorney needed to be involved in the movement forward. David Passieri commented on information contained within the BLM website and issues concerning non district land. He questioned the board if they were aware of what the exact acreage was on district land for voting purposes.

Bill Slack responded that no exact numbers were available at this time and that the board must maintain adherence to privacy laws within our state. Wayne Scammon questioned the board on how non-district land irrigators could be protected by privacy law when they are using project water. The board responded that the project is not on the water they manage the distribution. Commissioner Jerry Laskody questioned if anyone was aware of the number of non-district acres residing within the project. Bill Slack responded that non-district land is owned by both tribal and nontribal and that it would be very difficult to gather such information. David Passieri recommended that the CME look into the issue and provide report. Terry Backs commended the board on conducting the referendum. Trudy Samuelson reported that other real estate agents were selling farm ground within the reservation for \$4000 to \$6000 an acre but in surrounding areas water issues are a concern and land is selling for significantly less. Attorney of record Jon Metropoulos encouraged public participating in the meeting to communicate with neighbors and friends encouraging them to vote in the upcoming referendum. Lloyd Ingraham commented on the public's concern expressed about litigation, reminding them that it is historically been the court's position that the irrigation project was constructed for the benefit of the land owners and the water utilized therein.

Attorney of Record Jon Metropoulos responded that it is never been this words intention to utilize litigation as its first choice but that this board is not fearful of litigation as a tool to represent irrigators. Commissioner Shane Orien commented on recent letters to the editor stating that the board favors litigation. Sheila V questioned the board on the public information provided stating that she noticed some board members texting and communicating privately during the meeting was highly inappropriate. She believes that commissioners are unable to listen and focus on the meeting while distracted by whatever information is flowing through their cell phones. John asked responded that there are public statutes in regards to behavior of elected commissioners during public meetings. Attorney of record Jon Metropoulos

commented on a newspaper advertisement placed by the tribe looking for an engineering firm to perform an environmental report. He has had multiple discussions with various engineering firms in regards to this matter. It is his opinion through his conversations that an environmental assessment report could not and would not be completed by 2014. Commissioner Shane Orien questioned anyone's knowledge regarding instream flows. Attorney of Record Jon Metropoulos responded that he believed 1996 with the last time such topics were discussed. He believed as long as the needs of the bull trout are met there is no need to implement additional instream flows. A May 22, 2013 correspondence to Stanley Speaks from the Flathead Joint Board of Control touched on this subject adding that it does not matter what water right you have the need of the fisheries will always supersede the water right. The Bureau of Indian affairs has the right to set those flows without public discussion Flathead Joint Board of Control.

Commissioner Shane Orien questioned the difference of instream flow with and without the current water use agreement. Attorney of Record Jon Metropoulos responded that he believed the flow data to be the same. Ed W questioned whether the board had considered hiring an additional attorney due to the overwhelming workload for attorney of record Jon Metropoulos. He is fearful that the potential of loss here on the reservation with the water use agreement and instream flows is detrimental. Terry Backs commented on instream flows and documentation she had read related to robust River flow data. She believes that instream flow current rate have not been measured for worst-case drought years. They are merely wet year numbers. Terry Backs believes this agreement gives the instream flows a time immemorial water right. The parties have never proven that the interim instream flows are needed or adequate for the fish. Trudy Samuelson commented on the September 2013 report touching on the subject of climate change. She stated that agriculture on its own was very low on the list of important within the report.

John S. commented on Trudy Samuelson's statement about a 10 year plan within the report she had researched. He found it within the 10 year plan it dictated certain removal of certain species of trees along with certain production types that will be limited due to the climate change. Ross M. commented on maintenance needs of the irrigation project to include lifting devices etc. Member at large Ted Hein responded that he was aware of project manager Gordon Winds failure to follow through on many maintenance issues within the project this past irrigation season.

Meeting was adjourned @ 2:30 p.m.