

**FLATHEAD JOINT BOARD OF CONTROL OF THE MISSION, JOCKO AND FLATHEAD IRRIGATION
DISTRICT(S)
Regular Meeting Minutes
June 14, 2016**

Present:

Jocko: Boone Cole, Dean Brockway, Loretta Adams

Mission: Tim Orr, Gene Posivio, Jerry Laskody

Flathead: Wayne Blevins, Bruce White, Richard Erb, Paul Guenzler, Shane Orien

Member at Large: Ted Hein

Attorney of Record: Kristin Omvig, Bruce Fredrickson

Staff: Johanna Clark

CTO: 1:05 p.m.

Pledge of Allegiance was conducted.

Agenda was approved as presented.

Jennifer Kaplan, candidate for Jocko Irrigation District Commissioner in the 2016 Special Election made a statement to the Board, questioning if she was going to be currently seated to the Jocko Irrigation District. Chairman Boone Cole responded that she would not be seated at this time due to the disputed election administration. Kaplan then questioned - when was the notice of meeting published and where, who attended the meeting, when were the documents notarized and when was the Oath of Office performed. She requested that all documents pertaining to Commissioner Loretta Adams's appointment to fulfill the term vacated by Commissioner John Trimble be provided to her in a week's time.

Commissioner Richard Erb requested that Candidate David Lake and Candidate Janette Rosman be seated on the current FJBC Board. Commissioner Paul Guenzler commented that his rights as a Commissioner were violated due to not receiving notifications of meeting by either email or hard copy/U.S. Post. Executive Manager Johanna Clark responded that to her knowledge all emails were being delivered due to return receipt reports being reported back to the Blackfoot email address but that she would again look into the issue. Clark added that hardcopy of meeting notices was unavailable due to meetings being scheduled without sufficient mailing time. Hard copies would be received after the meeting had occurred. Commissioner Guenzler requested that a text message or a phone call be utilized for further notification ensuring that he has received correspondence and notifications.

Commissioner Richard Erb questioned the Board's response to his previous request. Chairman Boone Cole responded that due to previous Board action, the current Board members seated are the current Flathead Joint Board of Control of the Mission, Jocko and Flathead Irrigation District(s). The election was cancelled and a Resolution was passed regarding this matter. Commissioner Erb responded that this is a contested issue and that cancelling the election is beyond FJBC authority. Commissioner Erb will continue to pursue his objective to seat the contested candidates on the Board as per the certified results received from Lake County.

Commissioner Shane Orien responded that current Board members should remain focused on rescheduling a timely and legal election and that it will never be acceptable for fee-land owners not to receive a ballot and/or participate in selecting their representatives. Commissioner Orien added that results from a rescheduled election may not differ, but that the results are not what this current Board is contesting when it chose to cancel the election.

#1 – Approval of Budget and Warrants

- **Commissioner Richard Erb moved to withhold (hold in escrow) payments to Board Commissioners meant to compensate for meeting/mileage after May 10, 2016, also to include payments to legal counsel (RMLP PLLP) related to the contested election beginning April 21, 2016, not to be released until a resolution could be reached.**

Chairman Boone Cole stated that legal services for RMLP PLLP is a base retainer of \$15,000.00 per month which includes all legal work performed. Attorney Kristin Omgig stated that the billing statement for May which has not been submitted yet, would be able to show the amount of hours related to the election issue.

- **Commissioner Paul Guenzler 2nd the Motion presented by Commissioner Richard Erb.**

Commissioner Jerry Laskody questioned the soundness of not utilizing legal counsel when the Board has been brought into litigation over a disputed election. Gary G. questioned who had brought legal suit against the Board. Attorney of Record Kristin Omgig responded that Mission Valley Irrigators United, Inc., Jack Horner, Ralph Salomon, Janice Tusick and Jack and Susan Lake have brought legal suit against the FJBC on May 23, 2016, claiming illegal FJBC reformation in 2014 and failure to seat contested 2016 election candidates. The FJBC has provided an Answer to the litigation that is available upon request.

Commissioner Richard Erb commented that he is not a legal participant within the Mission Valley Irrigators United, Inc., but is looking into the option of a Writ of Mandamus where as Erb would ask a judge to rule on the issue of seating the contested 2016 candidates. Chairman Boone Cole called for a vote on the Motion presented by Commissioner Richard Erb. Commissioner Paul Guenzler asked for clarification on timeline of payment vs. billing statements.

- **Motion failed 10-2 against.**
- **Commissioner Tim Orr moved to approve the Budget and Warrants as presented and was 2nd by Commissioner Gene Posivio.**
- **Motion carried. Commissioner Paul Guenzler and Commissioner Richard Erb against.**

#2 Approval of Minutes.

April 21, 2016 – Commissioner Jerry Laskody provided written changes to typographical errors within the provided minutes. Commissioner Richard Erb commented that the minutes show that some individual members requested that the election issue be presented to a judge for ruling. Commissioner Shane Orien responded that he has questioned Lake County Attorney Steve Eschenbacher about extended the election deadline.

- **Commissioner Wayne Blevins moved to approve the April 21, 2016 minutes with discussed changes and was 2nd by Commissioner Gene Posivio.**

- **Motion Carried.**

May 2, 2016 –

- **Commissioner Loretta Adams moved to approve the May 2, 2016 minutes and was 2nd by Commissioner Gene Posivio.**
- **Motion Carried.**

#3 – 2016 Election Update

Attorney or Record Kristin Omvig stated that a Stipulation Agreement had been filed to open the sealed records pertaining to the 2016 Special Election, in an effort to determine why certain parties had not received their official ballots. Legal Counsel has contacted Lake County Attorney Steve Eschenbacher to schedule a meeting discussing the rescheduling of a September 2016 Election. Chairman Boone Cole questioned if the County had provided the criteria required for a designated voter as per their interpretation of Montana law. Attorney Omvig responded that no further documentation had been provided by Lake County to her knowledge.

Chairman Boone Cole briefly discussed the Board's issues with how previous 2015-2016 elections were administered as well as neighboring irrigation districts procedures. Wade S. questioned if there was a record of completed ballots that were rejected for unknown reasons. Commissioner Boone Cole stated that Lake County had unclear procedures and no available reports to provide the Board or public. Wade S. then questioned how this Board could change Montana law to an individual vote rather than a per acre vote. Chairman Boone Cole responded that any changes would require an act of legislature. Commissioner Jerry Laskody commented that voting by acreage is very shaky. David Lake commented that he had heard over two hours of patriotic speeches and believes the Board to be arrogant by not listening the voters and acting as though the voters don't matter. Commissioner Bruce White questioned the land owners that were not given the opportunity to vote. Chairman Boone Cole responded that there was no law change from the election conducted in 2015 and that the change of opinion within the County was not properly communicated. Commissioner Paul Guenzler commented that the Board is fighting amongst themselves and that the Board should seat the contested Commissioners until all issues can be resolved.

Sheila V. commented that seating the contested Commissioners it would make the Board appear that there is no need for a second election due to acceptance. Commissioner Jerry Laskody responded that the 2016 election was tainted and therefore this Board holds no fault for the actions it has been forced to take to resolve and reschedule. Commissioner Richard Erb commented that the perception of fraud requires a court of law to intervene and the current Board chose not to utilize that option. Commissioner Tim Orr responded his disagreement, adding that the County broke five laws in an effort to enforce one law. Orr reminded the Board that County Attorney Steve Eschenbacher apologized to Board publicly for County error. Commissioner Gene Posivio commented that the County was notified prior to the close of the election that administration was disputed. Commissioner Jerry Laskody responded that the FJBC election was a special election with special rules and normal practices do not apply. Laskody commented on the meeting between the Civil County Attorney Wally Congdon and FJBC legal counsel that agreed upon cancelling the election as the best course of action. The decisions made by the Board were not made lightly.

Gene E. commented on an alleged illegal meeting with certain members of the Flathead District. Wade S. commented that he was also not aware of the meeting. Commissioner Richard Erb responded that multiple steps were taken to notify the public to include newspaper and posting on the FJBC office as is normal practice. Member at Large Ted Hein commented that Camas appeared to be left out of communications. Commissioner Erb responded that he had notified Commissioner Bruce White.

A member of the public commented that the County should be held accountable for their actions. David Lake questioned the issue of term limits within the FJBC bylaws and how the Board planned on dealing with the issue. Commissioner Tim Orr responded that it has nothing to do with the outcome of the election but with the 800 land owners that did not receive a ballot. Chairman Boone Cole responded that this issue is a unique situation and that the Board is doing the best it can do with what legal advice is available. Member at Large Ted Hein commented that the obvious solution is rescheduling the election. Jennifer Kaplan commented that the Board members seemed to communicate well but there should be consideration for those members of the public that did vote in this election. Kaplan questioned what procedures will be implemented to ensure a rescheduled election would be administered correctly.

Commissioner Tim Orr responded that a meeting had been held with County Attorney Steve Eschenbacher requesting that the County place their requirements in writing but as of this date such documentation has not been provided. Commissioner Jerry Laskody responded that arguments should be presented to the County that failed to administer the election correctly. Kaplan recommended that the Board place an ad in the paper directing voters to contact a certain County officials regarding this issue. Carol L. stated that those not effected by the law interpretation did not have to jump through any hoops to vote in the special election. Janette R. questioned the contact from the County in 2015 and why the Board did not respond. Commissioner Bruce White responded that procedure and rules still have not been authorized or communicated. Chairman Boone Cole responded that the alleged letter from Mark Russell being referred to was meant to be an opening of discussion and the Board had no knowledge of the significance.

David P. agreed that a letter from the FJBC within the papers would be beneficial. He added that the County would be the correct point of contact and commended the Board for attempting to move forward in a method fair to all land owners. Attorney of Record Kristin Omgvig responded that County officials had nothing in writing to clearly define a legal voter for the purpose of voting in a special district election. There has been no clear protocol or uniform behavior within the recent election.

#4 – BIA O/M Payment and Proposed Assessment Increase

O/M Billing on behalf of the Bureau of Indian of Affairs that is due on July 1, 2016 was presented to the Board for approval to include the Mission, Jocko and Flathead Irrigation District(s). Executive Manager Johanna Clark informed the Board concerns over land owner whose irrigation assessments are in arrears although full payment is being submitted to the BIA regardless of receipt. Commissioner Tim Orr recommended that communication take place with the Flathead Irrigation Project over the upcoming months. Commissioner Richard Erb commented on the dilemma of whether current Board action could be contested, especially expenditures related to the contested election. Wade S. questioned FJBC legal counsel if the decision to leave the Commissioners seated was legally sound. Attorney of Record Kristin Omgvig responded that in her opinion all current actions of the Board including

approving the O/M payment action is legal as per Montana law and previous resolutions passed by the Board.

- **Commissioner Gene Posivio moved to submit warrants from the Operating and Maintenance Account for June 2016 billing received from the Flathead Irrigation Project and was 2nd by Commissioner Richard Erb.**
- **Motion Carried – Unanimous**

Executive Manager Johanna Clark provided the Board with communications from the Flathead Irrigation Project of their intent to raise the Operating and Maintenance Assessment by \$7.50. Clark stated that no request had been filed with Federal Register as of June 2016 and that similar activity had transpired last fiscal year where the FJBC had filed objections to the increase. The Board will be required to take action on the proposed increase due to filing dates approaching within Lake, Sanders and Missoula County for the amendment to tax statements.

Commissioner Tim Orr commented that complete financials had not been provided by BIA officials detailing where previous funds had been allocated (3.5 Million CME Funds). Orr stated that Pete Plant, Project Manager has communicated a need for additional employees to assist in operating the project although he firmly disagreed that such hiring is needed at this time. Without the Joint Board as it is sitting today, negotiations will cease in returning operation of the irrigation project to the land owners. The project will not be turned over to three separate irrigation districts as per mandate from Congress. Member at Large Ted Hein commented that \$300,000 of the 3.5 million being discussed was specifically for pumping. J. Kaplan questioned if project personnel normally attend FJBC meetings to provide updates to Board members and public.

G. Grandy questioned previous meetings in Washington D.C. with a purpose of negotiating return of management of the irrigation project and if any progress was being made. Grandy believes that until there is full disclosure from the BIA and proper operation of the project, no increase to assessments should be considered. Commissioner Richard Erb questioned if Pete Plant had been invited to the current FJBC meeting, seeing that he had attended the FID meeting earlier this week upon direct invitation. Commissioner Erb related the specific needs (personnel and additional equipment) of the irrigation project that would require an increase to assessments. Commissioner Tim Orr responded that additional employees were not required and if additional funds were needed, the BIA should utilize the CME money that was transferred to them. Commissioner Jerry Laskody commented his frustration with the lack of communication between the public and the project administration. Chairman Boone Cole questioned the amount of employees requested by the project for 2017. Commissioner Richard Erb responded that he believed it was 52 employees in the plan provided (currently 36 employees).

W. Shepard commented that under the CME, employees worked year round. Commissioner Bruce White questioned where the qualified employee would be found due to certain requirements for hiring. D. Passieri commented that assessments will continue to rise until no land owner will be able to afford to support the irrigation project any longer, giving parties reason to decommission the project. G. Erb commented on documentation provided to the Commissioners (Columbia River Basin Project). Commissioner Paul Guenzler commented that the increase would cost him \$3.00 per cow. A solution is that each individual unite. Commissioner Shane Orien commented that SB 3013 gives the irrigation

project to the CSKT. Chairman Boone Cole commented that BIA turnover issues have been rescheduled until June 30, 2016.

Executive Manager Johanna Clark requested that direction be communicated to FJBC legal counsel in the case that an assessment increase request is filed with the Federal Register.

- **Commissioner Tim Orr moved to instruct FJBC legal counsel to follow and comment as needed any requests submitted to the Federal Register regarding an Assessment Increase (\$7.50) on behalf of the Flathead Irrigation Project and was 2nd by Commissioner Gene Posivio. (A draft of comments will be provided to Board prior to submission.)**
- **Motion Carried. Unanimous.**

A member of the public requested that Pete Plant be invited to personally explain the requested increase to current assessments.

- **Commissioner Bruce White moved to table the Assessment Increase topic of discussion until the July 2016 FJBC meeting and was 2nd by Commissioner Gene Posivio.**
- **Motion Carried. Unanimous.**

Agenda Item #5: FERC Update.

Chairman Boone Cole briefly explained the history behind current FERC litigation. Commissioner Jerry Laskody commented on the water right usage exchanged for the building of Kerr Dam that guaranteed a low-block cost of power (cost of production/bargain power) as well as net-power revenue. Briefs are due July 8th and a Response Brief due August 6th, 2016. Wade S. commented that that low-block cost of power benefits not only the irrigation project, but the residential community as well. Chairman Boone Cole commented that the only chance to protect this issue is through the actions that the FJBC is currently taking. Elaine W. commented on the loss of revenue to Lake County upon purchase the Kerr Dam by the CSKT. Janette R. questioned the subject matter of negotiations and if the Boards actions do in fact represent the entire valley. Chairman Boone Cole responded that this issue does in fact involve power rates and usage for the entire valley.

Discussion continued explaining the original purpose and intent of the net power revenue. (Approx. 2 million dollars per year.)

Agenda Item # 6: CSKT Compact Update/S. 3013.

Attorney of Record Kristin Omvig provided a legal update on litigation currently filed in District Court regarding the legality of the CSKT Compact. Updates were provided regarding Senator Jon Tester's bill (S.3013) recently submitted to U.S. Congress for consideration, attempting to ratify the CSKT Compact.

Agenda Item #7: K. Mazure Payment Schedule of Legal Expenditures

Chairman Boone Cole briefly described the F.E.R.C legal firm and related attorney fees for work performed. The Board is currently still within 2016 budgeted amounts but final fees are unknown at this time. A letter stating payment ability (Payment Agreement) on behalf of the FJBC was provided the Commissioners for review and approval. Payment Agreement is intended to be submitted to K. Mazure for consideration. Commissioner Paul Guenzler questioned the remaining billing for the F.E.R.C.

Consultant. Executive Manager Johanna Clark responded that final billing had yet to be received but that the Board had already approved the \$22,000.00 statement from May 2016. Commissioner Richard Erb questioned the available funds for remaining legal fees for the 2016 fiscal year. Commissioner Loretta Adams questioned if the Board had capped legal expenses. Commissioner Tim Orr commented that the legal team has been hammered by discovery requests and it is difficult to estimate total cost. Orr stated if the Board is successful in this litigation, it could be worth millions to the FJBC and the irrigation project. Discussion continued regarding 2015-2016 legal expenditures and available funding. Commissioner Richard Erb requested that an early communication that billing may be approaching the budgeted amount be added to the communication to K. Mazure.

- **Commissioner Bruce White moved to submit the Proposed Payment Plan communication the K. Mazure on behalf of the FJBC with modifications and was 2nd by Commissioner Paul Guenzler.**
- **Motion Carries. Unanimous.**

Agenda Item #8: Addition of Irrigated Land to the Individual Irrigation District(s).

Lake County Civil County Attorney Wally Congdon presented Lake County position on irrigated lands joining the irrigation district. (Non-District Land) A land owner can petition the FJBC to bring their irrigated lands into the district by written request by owner.

Project Report was provided to the Commissioners and members of the public.

Meeting was Adjourned at 3:13 p.m.