FLATHEAD JOINT BOARD of CONTROL
SPECIAL MEETING MINUTES (Arlee)
ST. IGNATIUS, MONTANA
August 22, 2013

PRESENT
Mission: Jerry Laskody (Paul Wadsworth, Jerry Johnson – Absent)
Jocko: Boone Cole (Kerry Doney, Roger Christopher –Absent)
Flathead: Wayne Blevins, Bryan Bohn, Jim Baker, Shane Orien (Trent Coleman –Absent)
Member-at-Large: Ted Hein
Consultant: Jon Metropoulos, Bill Slack
Staff: Johanna Clark

The meeting was called to order @ 2:04 p.m. by Chairman Boone Cole.

Agenda Item #1:

"Settlement of the Internal Litigation, FJBC vs. Mission Irrigation District and Jocko Irrigation District" Chairman Boone Cole made a brief statement to inform the public of a settlement offer to the Jock and Mission Irrigation Districts and their individual commissioners. In regards to the withdrawal of the Mission and Jocko District, Consulting Attorney Jon Metropoulos made a brief statement in regards to the meeting held on June 14, 2013 which were in violation of the open meeting laws along with violation to some individual privacy rights. The FJBC, Boone Cole and Jerry Laskody, filed a suit on July 12th, 2013 to rectify the perceived violations. Litigation costs money and divisiveness, and the FJBC would like to encourage unity. The following are the terms of settlement offered:

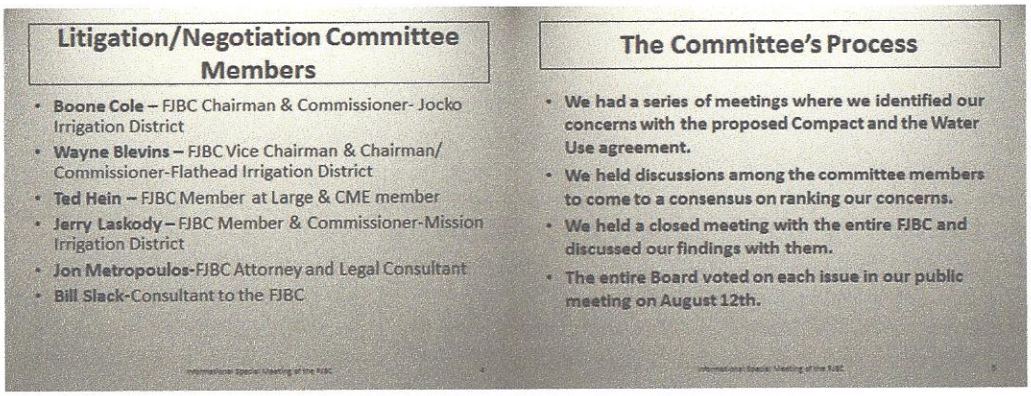
- Rescind the decision to withdrawal from the FJBC.
- 1 week notice to public of intention to complete the withdrawal process again.
- Attorney Fees will be paid by each district.
- FJBC Assessment fees will be paid by each district.
- Settlement offer expires Monday August 26th, 2013

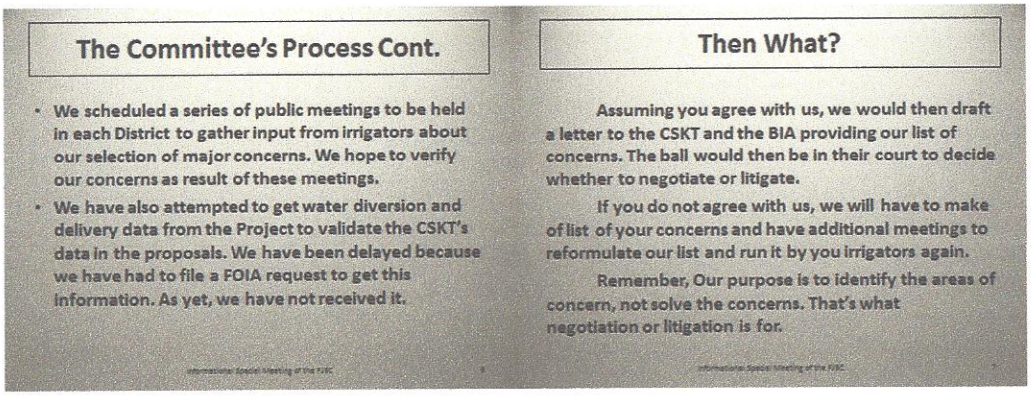
Public Comment:

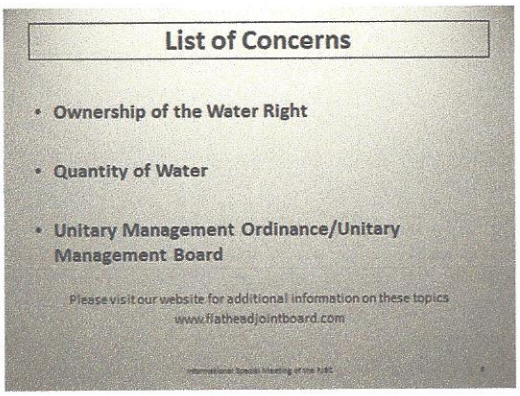
Agenda Item #2 – Discussion of Issues

- Ownership of the irrigation water right;
- Volume of irrigation water right;
- Water Management Board.

Commissioner Jerry Laskody's Power Point presentation **"Concerns with the Proposed Compact"** was presented in regards to the above mentioned topics. Commissioner Jerry Laskody stated that the purpose of this meeting and the ones to follow in surrounding areas was to gather feedback from the irrigators and discover if the FJBC is on the right track with the topics for discussion.







A hand out prepared by Consulting Attorney Jon Metropoulos was provided to the public. (Attached to these minutes) followed by a brief statement by Jon Metropoulos to explain each of the scheduled topics. Ownership of the water right should be a project right as opposed to an individual irrigator right. This topic was passed by the FJBC 12-0 as a concern for discussion. As to the topic, Quantity of water, individuals have been asked what they were worried about. Irrigators will get the same if not more with the current water user agreement. The FJBC would like to see the data/studies showing these statements to be correct. This topic was passed by the FJBC 12-0 as a concern for discussion. The UMO/UMB (i.e. A Flathead Reservation Water Management Board to implement what is called a "Law of Administration") is a five person board, consisting of two individuals appointed by the tribe, two appointed by the government and the remaining position will be appointed by the current appointed members of the UMB. The FJBC voted 9-3 to place this as a concern for discussion. The FJBC is here to get irrigator comments. There is nothing that can be solved at this time, only discussed with the tribe and the government.

Public Comment: Christopher C. noted a typographical error on page 2. Chris S. questioned whether the FJBC had identified any water right facts promises to tribal members and non-tribal members. In the Homestead Act days, the project was promised to irrigators. Jon M. responded that there are numerous documents in regards to this subject and it is the bases of the opinion that the water right should be owned by the FJBC and the BIA jointly. Numerous irrigators believe the water right should be owned by the individual irrigator. In other reservation areas the water right is owned by the water entity and government. Leroy D. stated that if irrigators were dissatisfied with the actions of Kerry Doney and Roger Christopher, wouldn't they be here? Dean B. responded that intimidation is a factor in the public not attending this meeting. In his opinion a great deal of documentation stated that the water right should be owned by the individual irrigator. Clark M. questioned why the Jocko water was diverted to Mission and Ninepipe Area. Why are the irrigators still paying for water when irrigators were ensured that the debt was paid in full? The water at this point should be free. Jon M referred the question to Bill Slack. Bill Slack responded that it was always a common question in the middle of July in Arlee, as to why the water was being sent over the divide. He questioned when was the last time an irrigator witnessed the canal running full? If the canal is witnessed by irrigators running full, than the river is running full also. As soon as the north fork went down, beginning about the 10th of July, by the 20th we would be done taking water to the north because there was no excess water to take. The only water moving was seepage that could not be controlled. Assessments are for operation and maintenance of irrigation water and has nothing to do with past debt. Mary S. questioned whether the tribe has communicated to board its willingness to discuss these topics and if not, what is the plan of the FJBC to move forward. Commissioner Jerry Laskody responded that a letter would be drawn to both the tribe and the government with the FJBC findings for discussion. Leroy D. questioned how negotiation can take place with only one party at the table. Jon M. responded that the wordage negotiation is incorrect. The FJBC is looking to have a discussion at this time. Leroy D. commented on Bill Slack's statement. The power company paid off the construction debt for the district land not tribal or trust land. A percentage of the O & M was paid on the trust and tribal land with no input from the tribal members. Bill Slack responded that the net power revenues were calculated out by a per acre basis and the trust land was given a credit on that on the construction charges. Leroy D commented on a rumor a sizable amount of net revenue money available when an agreement is reached. Bill Slack responded that he was unaware of any additional funds available upon agreement. Sunny commented that the funds in question have long since been spent on multiple programs. Merrell B. made a brief statement in support of Commissioner Kerry Doney and he does not share in the fear and negative opinions of the current form of the water compact. He stated that the FJBC does not represent his lands or his family and is in support of the Jocko District withdrawal from the FJBC. Perry F. questioned the secretarial water rights issues citing legal precedents. Jon M. responded that the cases cited were accurate and that a court has not made a decision as to whether they are in fact Walton Rights. Perry F. questioned if the project was claiming the secretarial water rights on the reservation. Jon M. stated that the secretarial rights were not included in this agreement although some of them may be affected depending on canal access. Bill Slack commented that the secretarial rights were separate from the compact, although the UMB will have jurisdiction of all water rights on the reservation so in some form they will be part of the project. Commissioner Jerry Laskody stated if an irrigator is utilizing project ditches for delivery of secretarial water, than the irrigator is governed to the amount of water allocated to everyone in the district. Mary S. questioned the situation in Klamath River vs. our situation and what are the similarities. Jon M. stated that the history and facts are completely different between the two reservations. ESA issues are acute in the Klamath area along with a severe water shortage. Chris S. requested that the FJBC look into the transference of allotted lands purchased by non-tribal irrigators. It is known that the FJBC has filed for water rights within the reservation numerous times. Jon M. responded that he was aware of the filings, although he has very little information to provide. Sunny questioned the reasoning behind quantity of water as a topic for discussion. Commissioner Jerry Laskody responded that the current model will not stand as a method of determining sufficient water needs of the irrigators. The irrigators will not be able to operate on the current allocations. Many have told the FJBC, irrigators will not lose a drop of water. The FJBC would like to see the data to assure those facts. Jon M stated that the quantity of water topic is a process of gathering information and verify historic use. Leroy D. commented that he is not concerned with quantity of water. In the Jocko, water is shared until it is no longer available. As to the UMB, the tribe has proven that they are more than qualified to oversee water issues on the reservation with an example being the Mission Valley Power whose rates are the lowest in the state. Dean B. commented that the CME is the major factor for the Jocko District being out of water at this time. The CME has not been following the rules set forth. Carol L. made a brief statement supporting all three topics for discussion. John S. made a brief statement in support of the FJBC and supports all three topics for discussion, stressing the removal of a UMB from the water use agreement. Christopher C. made a brief statement in support of the three topics for discussion with the tribes and government. Clark commented that quantity comes from Mother Nature. Steve D commented that it would be very difficult to figure out quantity, ownership is the devil in the

details, figure out how to work with a UMB and stated his support of the current compact. Any other option, we will lose. Chris S. commented that he has yet to see any documentation listing what the minimum amount of water delivered to the irrigator will be. Commissioner Jerry Laskody responded that the unrealistic minimum delivery is zero. When you make your business in agriculture, it is a risk you will take. Dean B. commented that a minimum as well as a maximum should be stated in the agreement. Terry B. commented in respect to the water right, the current agreement forces relinquishment. Article from Char-Koosta News Article was shared with the FJBC concerning the previous opinions of Steve Hughes and Alan Mikkelsen. What are the real needs of the tribes? Gene Erb made a brief statement in regards to a meeting taking place at the Ninepipes Lodge called by the State of Montana. This meeting was a invitation only event and he was asked to leave. Corey Swanson, from the Attorney General Office, for the State of Montana, was witnessed leaving the meeting as well. Gene Erb read documents in support of the belief that water rights were sold with the land. Christopher C. commented as to the legalities of the meeting taking place at Ninepipes. Trudy S. made a brief statement in support of the FJBC public meeting forum. In her opinion, the closed meeting taking place at Ninepipes is typical of behavior seen as of late. Irrigators are left out of the decision process, leaving them feeling as though their opinions are unimportant. Trudy S. asked that the FJBC hold government officials liable for their actions, representing the irrigators with an iron fist. Public asked for the FJBC commissioners to be introduced to the public. Clark stated that the only quota you can depend upon is what Mother Nature delivers to you. Leroy D. stated that very little discussion has been held in regards to in-stream flow. The tribe has the power to shut water off to meet the requirements but they have yet to do so and that should be remembered. David P. questioned whether upon purchasing his land, did he inadvertently sign away his rights and that somehow placed him and his family under tribal jurisdiction. Jon M. responded that no documents have been signed to his knowledge placing land owners under tribal jurisdiction. Chuck C. commented that through his years of working for the tribe and with the irrigation project, this compact is a fair agreement in his opinion. He helped work on most of what it entails to include the delivery of double duty water issues. An irrigator is only going to get what water is in the mountains. No one wants the Federal Government involved in this process. The current system works and everyone should stop being paranoid over the "what may happen". Commissioner Ted Hein closed the meeting with a statement to the public and irrigators. "We are here to listen, maybe not fix the problems right now, but we are here to listen."

Meeting was adjourned at 4:03 p.m.

Approved_____2013

D. Boone Cole, Chairman:_____

Jim Baker, Secretary:_____