

Flathead Joint Board of Control of the Mission, Jocko and Flathead Irrigation Districts
Special Meeting
October 22, 2015

DRAFT

- Commissioner Paul Guenzler Absent

CTO: 1:08 p.m.

The Pledge of Allegiance was conducted.

Agenda item #1 – Appointment of a CITT Representative

Chairman Boone Cole gave a brief description of the reasoning for this special meeting and recent correspondence from Mr. Stanley Speaks DOI-BIA. Chairman Cole commented that it is this board's position that the 2015 CSKT Compact has not passed and that pre-implementation in any form is illegal. He stressed to the board and the public that he was unaware if an appointment made by this board would actually be seated or even considered for the CITT committee. Commissioner Gene Posivio responded that this board is a municipal governing body and if State government officials do not respect the appointment recommended, he believes the system to be broken. Commissioner Posivio strongly believes that a representative is needed to ensure a constant source of information.

Commissioner Shane Orien questioned if the formation of the technical committee was legal due to the 2015 CSKT Compact not being ratified at this time.

- **Commissioner Jerry Laskody motioned for the FJBC to submit no representative appointments at this time and communicate the board's position by written correspondence to Stanley Speaks, DOI - Bureau of Indian Affairs and was seconded by Commissioner Shane Orien.**

Public Comment: Commissioner Tim Orr disagreed with the current motion stating that this board could appoint an interim representative under protest. Commissioner Gene Posivio does not believe the guidelines forming this technical committee to have been thought out very well. Commissioner Dean Brockway recommended that this board allow the Compact as well as formation of the technical committee to move through the legal process and questioned legal counsel if submitting an appointment would place the board at risk of additional lawsuits. Commissioner Bruce White responded that a Member at Large was appointed for the purpose of this board but also questioned the opinion of legal counsel regarding the matter.

Commissioner Tim Orr commented that in his opinion Mr. Stanley Speaks (BIA) does not have jurisdiction nor authority for such formation and that it is Governor Steve Bullock that is supporting pre-implementation. Commissioner Bruce White recommended drafting correspondence to the State of Montana addressing such concerns. Commissioner Jerry Laskody responded that the Flathead Irrigation project is a Federal Project which puts such responsibilities back into the Bureau of Indian Affairs jurisdiction. Commissioner Tim Orr disagreed stating that the governor has authority over MCA title 85's which clearly mandate how the project is to be operated and managed.

Member at Large Ted Hein questioned Mr. Stanley Speaks ability to call for an appointment adding that Congress has not even seen/reviewed the CITT issue yet. He believes this board should take no action at this time. Commissioner Shane Orien requested a roll call of the Commissioners vote on behalf of the irrigators. Chairman Boone Cole made a brief statement that in his opinion pre-implementation of the 2015 CSKT Compact will begin with the formation of the CITT, to also include adaptive management as per the wordage of the Compact. He went on to quote Appendix 3.5 of the 2015 CSKT Compact, Sect II as a resource for such belief. Commissioner Bruce White questioned how many members would be seated on the CITT and Chairman Cole responded that to his knowledge, there would be five (5) members. Commissioner Gene Posivio expressed concern that the irrigators will have no direct involvement if in fact the 2015 CSKT Compact passes Congress.

Member at Large Ted Hein questioned legal counsel if the FJBC or its representatives/employees has received direct correspondence requesting an appointment. Attorney Bruce Fredrickson responded that no notification or request had been received directly. Member at Large Ted Hein again questioned legal counsel if Mr. Stanley Speaks had authority to move forward with the formation of the CITT. Attorney B. Fredrickson responded that to his knowledge an informational request letter had been directed to all fee-land irrigators within the Flathead Irrigation Project stating that formation was expected to take place on October 24, 2015. Fredrickson does not believe that Mr. Speaks has any authority due to Congress not yet ratifying the 2015 CSKT Compact. Commissioner Jerry Laskody commented that there is no legal justification to move forward, implementing a Compact that has yet to be ratified. He questioned why this board would want to participate and recommended that the board not take any part in what is considered an illegal activity.

Commissioner Richard Erb disagreed, stating that the establishment of the committee is considered legal and that this board needed to determine what the specific duties would be as it related to the Flathead Irrigation Project. He agreed that adaptive management would be an illegal action but that he believed the sole purpose for the early formation was to obtain additional water use and availability data. (i.e. measuring devises) Commissioner Erb stressed that the Flathead Irrigation Project can turn down/refuse the recommendations of the CITT. He believes additional communication is needed and that it would be an appropriate course of action to appoint an interim member to the CITT, allowing board representation. Commissioner Bruce White questioned the boards recourse should the CITT begin adaptive management. Commissioner Shane Orien commented that had the 2015 CSKT Compact been ratified, he would be supportive, but he feels as though this board and its representation have been ignored.

Commissioner Richard Erb responded that Mr. Speaks did in fact ask/request irrigator input with his correspondence related to possible appointment considerations. Commissioner Gene Posivio responded that technically Mr. Speaks contacted and asked the irrigators and not the FJBC directly. Commissioner Shane Orien stressed his concern that upon implementation of the CITT and if the 2015 CSKT Compact is not ratified in Congress, it will very difficult to remove such an entity. Commissioner Jerry Laskody responded that by participating, this board would be sending the wrong message to the State of Montana as it related to the 2015 CSKT Compact. Commissioner Gene Posivio responded that the government will be mandating through this committee when the irrigators can or cannot irrigate. Commissioner Tim Orr commented that State government, nor the BIA have any knowledge about the

successful operation of the Flathead Irrigation Project and that this board wants the ability to participate in where the measurement data is being reported/gathered.

Commissioner Gene Posivio commented his agreement with the boards concerns but that receiving information as it pertained to the irrigation project was of significant importance. Commissioner Tim Orr again recommended that the board submit an interim recommendation under protest. Susan Lake responded to the boards concerns by stating that she did not believe the CITT intention was to pre-implement the 2015 CSKT Compact and that the formation is more concerned with acquiring the data for better water management. Lake went on to describe the professional experience of the members already appointed by the State of Montana to the CITT. Chairman Boone Cole responded that this board was not concerned with credentials, but are more concerned about possible agendas that may not be in the best of interest of the irrigators. Ray Swenson questioned the board about a possible plan B should the Compact pass current litigation and Congress. Swenson recommended that the board take whatever measures necessary to find out the rules of the game. Tony O. commented that he believed there to be no right decision, stating that in his opinion this is a catch 22. Wendy Davis questioned if the board could send a representative unofficially to observe the public meetings and report back to the FJBC board members.

Randy Doty described in his opinion recent questionable events concerning the Kerr Dam purchase, questioning if the board could draft a letter stating this boards objection with the formation of the CITT prior to ratification of the Compact. Attorney Bruce Fredrickson responded that a letter had in fact been drafted and presented in two formats for the commissioner's consideration. The first draft allows the board to submit a recommendation for appointment, while the second is one of refusal as well as clearly requesting the terms in which the State believes they can form such a committee. (CITT) Carol Lyons questioned if the draft letters could be read for the public. Chairman Boone Cole read the draft proposed correspondence into the record. Elaine M. questioned if this board did not offer a possible representative, would the State appoint one on their behalf. Bill Slack corrected the board in that the CITT member submittal is a nomination not an appointment.

Commissioner Richard Erb questioned the board and legal counsel as to what law they felt was being violated, making the formation of the CITT an illegal action. He further commented that if the committee was spending State funds for the betterment of the Flathead Irrigation Project, he did not see a possible violation in which to argue. Commissioner Erb again stated his agreement that if the committee were to begin pre-implementation, that in effect would define an illegal action but he did not believe that to be the case here. Attorney Bruce Fredrickson responded that it is this majority board's position that the 2015 CSKT Compact has not yet passed and with such a position, formation of the CITT is considered illegal in its entirety. He went on to stress that it is his legal opinion that measurement could and should be considered adaptive management as clearly defined within the 2015 CSKT Compact. Commissioner Richard Erb disagreed stating that twenty (20) years of data is strong and useful information. Commissioner Shane Orien again questioned the board's recourse in the event of pre-implementation of the 2015 CSKT Compact by the CITT. No legal response was provided.

Member at Large Ted Hein questioned who would attend the public meetings for the CITT. He also questioned whether the committee would be able to hold executive sessions in which the public would not attend or participate. Commissioner Jerry Laskody responded that he did not believe the

committee to have legal reasoning to hold executive session and would have to maintain public meeting laws required by the State of Montana. Dave Long questioned where the meetings would be held.

After board review of the draft correspondence provided by legal counsel, Chairman Boone Cole offered an amendment to Commissioner Jerry Laskody's previous motion.

Amendment to the Motion will include the following:

**** Take out the 2nd sentence reading "Accordingly, the FJBC declines your invitation..." and strike "defacto member of the CITT..." distribution will include a cc of approved correspondence to Governor Steve Bullock for his review.**

- **Chairman Boone Cole motioned to approve the amendment (listed above) to Commissioner Jerry Laskody's Motion for consideration and was seconded by Commissioner Jerry Laskody.**
- **Motion carried. Commissioner Tim Orr against.**
- **Chairman Boone Cole called for a vote on the Motion for consideration with the above approved amendment.** (Commissioner Jerry Laskody motioned for the FJBC to submit no representative appointments at this time and communicate such a position by written correspondence to Stanley Speaks, DOI - Bureau of Indian Affairs and was seconded by Commissioner Shane Orien.
- **Motion carried – Commissioner Tim Orr, Commissioner Gene Posivio and Commissioner Richard Erb against.**

Meeting was adjourned at 3:30 p.m.