

FLATHEAD JOINT BOARD OF CONTROL

Special Meeting Minutes

ST. IGNATIUS, MONTANA

December 9, 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 and Brian Shuck (teleconference line)

Staff: Johanna Clark

Project: Absent

CTO: 11:00 A.M.

Pledge of Allegiance was conducted.

- Commissioner Shane Orien motioned to approve current Agenda as presented and was 2nd by Vice-Chairman Wayne Blevins. Motion Carried.
- November 12, 2013. Commissioner Bryan Bohn motioned to approve, Commissioner Jerry Laskody 2nd – Motion Carried
- November 22, 2013 Commissioner Jim Baker moved to approve, Member at Large Ted Hien 2nd – Motion Carried
- Warrants as listed in December 2013 Budget were approved as presented by Executive Secretary Shane Orien.

Old Business:

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

Ingraham/WMWUA-

July 8, 2013, the court vacated all scheduling deadlines on the representation of Western Montana Water Users in the Flathead Joint Board of Control. Parties are engaged in settlement issues of a complex nature. Prior to that time an Answer to the Western Montana Water Users amended complaint and Ingram amended complaint was due, Jon had failed to meet the deadlines and no documents were submitted to the courts. Parties have been in discussion the months following. (Regarding protecting the water right owned by the Flathead Joint Board of Control as a fiduciary duty to the irrigators.) On Wednesday, Brian Shuck filed a Motion to Default against Flathead Joint Board of Control or more specifically the Flathead Irrigation District. After hours of discussion, it is his legal opinion that there is no settlement to be had. The court scheduling conference scheduled for 2:30 p.m. on Wednesday in Polson, Montana on the same day a Response to the Entry of Judgment is due. Response is called a motion to set aside Entry of Default judgment and he is working on the motion brief an affidavit now. He will file that in person this afternoon. No harm should come to the defendant from the lapse in his judgment. He apologized to the board.

Brian Shuck made a statement to the board. The order in July only sets aside scheduling as it relates to trial dates. An Answer was not filed in this case not only once, but twice. (WMWUA vs FJBC) First complaint filed in January 2013 and an Answer to that filing was due sometime in April of 2013, an Entry of Default was not filed even though it was an option to the plaintiff. A second Amended Complaint was filed in July 2013 and the judge allowed 90 days for an Answer to be filed. This is five times longer than any other party get to file an answer to an amended complaint. The July 8 order in no way sets aside all of the aforementioned deadlines. His clients did not want to file an Entry for Default Judgment but with current actions of dissolution of the Flathead Joint Board of Control they felt as though they were left no other options. There has been no consensus on the CMD agreement. His clients have taken the position that this agreement is void and have asked or provided request for discovery documents to the board and board counsel over one year ago. We asked him to admit documents did not exist, Metropolis denied, we asked for him to present them to us for our review in January. They were due the end of February and now nine months has passed and none of the requested documents have been produced. He has left us no option but to request the court to compel him to turn over such documents. It is a puzzle to him as to why a settlement agreement cannot be reached.

He asked that Metropoulos provide a draft of the settlement agreement, where parties agreed to 99% of the language. Lloyd Ingraham was part of the settlement discussions that took place yesterday. Jon Metropoulos and Commissioner Jerry Laskody participated as well. Attorney of record Jon Metropoulos responded that he was not of the opinion that an agreement was near. Plaintiffs want \$65-\$75,000 for a lapse in attorney of record Jon Metropoulos's judgment. Chairman Boone Cole commented that no decisions or actions would be taken today due to the issues needing to be researched further. Commissioner Paul Wadsworth commented on a meeting held between Commissioner Jerry Laskody and Attorney of Record Jon Metropoulos, questioning if such attendance is accurate. Commissioner Trent Coleman commented that such discussions were not common knowledge of other board members asking Metropoulos if the Mission and Jocko Districts pull out if the Flathead Irrigation District will be the only district that falls under default. Attorney of record Jon Metropoulos responded that he was unsure at this time. Brian Shuck responded that the Entry of Default is only listed against the Flathead Irrigation District and the Flathead Joint Board of Control.

Staff Reports: N/A

CME Report: N/A

Project Report: N/A

Dissolution of the FJBC – Resolution 2013-8

Attorney of record Jon Metropoulos provided a brief description of the history leading up to the dissolution of the FJ BC by the Mission and Jocko Irrigation District. Attorney for the Mission and Jocko Irrigation District requested that all assets currently owned by the Flathead joint board of control the signed over individually to the irrigation districts. He recommends that all assets to include the office located in St. Ignatius, Montana and the water rights on behalf of the irrigator's service the quitclaim deeded to the Flathead Irrigation District protective custody. Commissioner Jerry Johnson recommended that the board consider selling the main office adding that the joint files need to be transferred and kept at a separate location. Commissioner Roger Christopher recommended that the individual irrigation districts be responsible for their separate files and stored in locations within separate irrigation districts. Commissioner Jerry Johnson commented separate irrigation districts have never lost their legal status by combining of the joint entity. Chairman Boone Cole commented that in his opinion he found the task of separating the files contained within the building difficult.

- Motion was made and seconded to approve Resolution 2013 – 8. Motion Carries.

Commissioner Paul Wadsworth commented that he knew an individual who could transfer the financial information currently contained in the Flathead Joint Board of Control computer programs to individual district accounts fairly quickly. (i.e. Hard drive) Commissioner Shane Orien questioned who would be responsible for the individual irrigation districts data. Commissioner Jerry Laskody commented that it is the Commissioner's responsibility to protect the information and assets until a plan can be provided by the district pulling out of the FJBC. Commissioner Jerry Johnson responded that they have a plan, and that it was nothing hard. Commissioner Shane Orien requested to see such a plan if in fact one existed. Member at Large Ted Hein commented that he failed to believe such an information exchange would only require 15 minutes of time.

Commissioner Jerry Johnson commented that if assets were to be quitclaimed, they should be quitclaimed to the three separate Irrigation Districts not only to the Flathead Irrigation District. Commissioner Shane Orien questioned if the St. Ignatius property could be sold while quitclaimed to the Flathead Irrigation District. Attorney of record Jon Metropoulos responded that he was unsure at this time and reminded the board that he had an Entry of Default document to work on and that that would require his focus. Commissioner Jerry Laskody made a statement in support of locking up the assets until the individual irrigation districts can meet and come to an acceptable agreement.

Atty. Jon Tietz stated his disagreement with quick claiming the property the Flathead Irrigation District, secondly a draft plan on behalf of the Mission and Jocko Irrigation District's withdrawal was provided earlier in the week. Tietz stated that a draft was also provided to Attorney of record Jon Metropoulos on an earlier date and that he failed to provide it to the board. He believes no previous negotiations were possible due to individuals trying to stop the dissolution. Attorney of record Jon Metropoulos did not recollect receiving anything from attorney Jon Tietz other than an email dated Friday at 3:30 PM. Commissioner Paul Wadsworth responded that if attorney of record Jon Metropoulos had filed the necessary documents discussed earlier in the meeting, he would've had sufficient time to review the secondary quitclaim deed as well as a possible plan of operations presented by attorney Jon Tietz.

Trudy Samuelson directed a comment to attorney Jon Tietz, she believes the focus of stopping the dissolution is to protect the water rights and ensure proper water delivery. The irrigators have a lot at stake and she would like to see an attorney aggressively protecting that. She believes we are much better off by protecting wells, protecting water use. Commissioner Jerry Johnson commented that he had been advised federal teams had signed the draft compact. Member at Large Ted Hein recommended that all discussion remain on topic. Commissioner Trent Coleman stated he did not believe the Flathead Irrigation District needed to be responsible for the Mission and Jocko Irrigation Districts paperwork.

Chairman Boone Cole called for a vote on the previous motion. Steve Hughes questioned whether the Flathead Irrigation District planned on taking over all the liability as well and that such issues were not listed within the motion. Attorney Jon Tietz requested that the motion be amended to quitclaim the assets to all three irrigation districts. Trudy Samuelson questioned how the title withheld now. Chairman Boone Cole responded that title was currently held under the name Flathead Joint Board of Control. Commissioner Jerry Johnson requested to amend the motion currently on the table.

- Commissioner Jerry Johnson would like the motion amended to have all three irrigation districts responsible for all current assets and liabilities. Commissioner Paul Wadsworth seconded the motion.

Attorney of record Jon Metropoulos recommended that if the motion was to be amended, that it be amended with the wordage that all commissioners must perform their duties as applicable by law. Commissioner Paul Wadsworth questioned the meaning behind such wordage. Jon responded that there are specific state laws mandating how public records are to be kept and distributed. Without a specific process outlining the current dissolution, and is not hopeful that the Irrigation District will be able to do so as per state law. Commissioner Jerry Johnson accepted such wordage and has amendment. Sheila V questioned the board on how the Jocko Irrigation District was going to portion any responsibility for liabilities; to her knowledge they have no funds available. Merrill Bradshaw asked for clarification on which state statutes related to documentation. Skip Biggs questioned who would have the fiduciary duty of protecting irrigator's water rights and records. Lloyd Ingraham questioned the board and documents

had been filed with District Court in regards to the rays of assessment by the Mission and Jocko Irrigation District. It is his opinion that those commissioners file the assessment raise late and therefore the County should not accept the assessment.

Attorney of record Jon Metropoulos commented that he had no knowledge of that subject at this time. Chris C commented that any raise in assessment has to be filed by the 1st week of August but that he is more concerned about the issue of Quick Claim deeds. Commissioner Jerry Laskody responded that the main purpose for the quick claim deeds is to protect the water right. He does not want anyone knowing what to water right and therefore feels the right course of action. Attorney of record Jon Metropoulos recommended to individual quitclaim deed, one for the office and one for the Flathead Joint Board Controls water right held on behalf of the irrigators serviced by the project. Attorney of record Jon Metropoulos made a brief statement in support Commissioner Jerry Laskody's position. Commissioner Jerry Laskody recommended two separate motions for each quitclaim deed. Skip Biggs recommended that the water right filings show that they are owned by the individual irrigator. Leroy Lake commented that positions seem to have switched from previous opinion. Attorney of record Jon Metropoulos communicated his believe that water right was not owned by the individual. Jon responded that there is a project water right owned by the Flathead Joint Board of Control or perhaps the Flathead Joint Board of Control and the federal entity, it is always been the board position that it owns about on behalf of the irrigators.

Public questioned the joint responsibility for liability and how it related to Brian Shuck for the Mission and Jocko Irrigation District. Commissioner Jerry Laskody commented that it is to include all assets and all liabilities. Public stated that the Jocko Irrigation District is not part of the Western Montana Water Users litigation and questions their liability as it relates to that matter. Attorney Jon Tietz responded that all three districts are included in the mentioned lawsuit. The Flathead Irrigation District and the Flathead Joint Board of Control failed to respond to the filings inside this litigation while the Jocko and Mission Irrigation District did respond. Trudy Samuelson recommended a security and surveillance system to assist with security of district documentation.

Chairman Boone Cole reviewed the wordage of Resolution 2013 – 8 for informational purposes and the possible amendments.

Chairman Boone Cole called for a 5 minute recess. Meeting was called back to order.

Atty. Jon Tietz requested a 24 hour continuance of the meeting to work out acceptable language. He stated board members could return at 11:00 AM tomorrow to discuss the matter further. Attorney Jon Metropoulos's schedule will not permit an additional meeting and it was his understanding that the dissolution date would be extended to allow for additional time for negotiation. Commissioner Jerry Laskody commented that all commissioners may not be available for a meeting. Commissioner Jim Baker stated his agreement with the inconvenience. Commissioner Jerry Laskody requested consideration of an extension of the withdrawal and that amending the resolution will require additional time. Attorney of record Jon Metropoulos suggested a meeting as soon as December 20, 2013. Commissioner Jerry Laskody commented that approving the resolution today would be subject to specific restraints; we could go with the original motion and be done with this issue today. It is his opinion that the commissioners of the Mission and Jocko Irrigation District need to agree to the extension or the current board will be forced to pass the wordage as it is currently written. Commissioner Paul Wadsworth questioned amount of time needed to negotiate this issue with attorney of record Jon Metropoulos.

Commissioner Paul Wadsworth commented that if the current Resolution is passed, it will open up quite a court case. Attorney of record Jon Metropoulos responded that it is the board's intention to negotiate the issue further. Commissioner Jerry Johnson stated his support of an additional meeting in 24 hours. Commissioner Paul Wadsworth agreed. Commissioner Jerry Johnson questioned a rescheduled meeting until December 20, 2013. Attorney of record Jon Metropoulos agreed briefly describing the negotiated understanding. He would like to see in the entire board vote for this Resolution to instill faith that negotiations will resume on Wednesday.

Commissioner Jerry Johnson withdrew his previous amendment to the motion. Public comment continued.

- Commissioner Jerry Laskody motioned to amend the resolution. Commissioner Jim Baker seconded to adopt resolution 2000 –8 with the noted amendment. (Close of business on December 20, 2013 four 5 PM) - Motion carried

Meeting was adjourned @ 4:30 p.m.