

FLATHEAD JOINT BOARD OF CONTROL

Regular Meeting Minutes

ST. IGNATIUS, MONTANA

May 13, 2015

PRESENT

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

Jocko: Boone Cole, Dean Brockway

Mission: Tim Orr, Gene Posivio, Jerry Laskody

Member at Large: Ted Hein

Consultant/Attorney: Bruce Fredrickson, Kristin Omvig

Staff: Johanna Clark

Project: Absent

Individual Irrigation District(s) Meeting CTO – 12:12 p.m.

Pledge of Allegiance was conducted.

- Commissioner(s) Richard Erb, Dean Brockway and Tim Orr verbally conducted and/or swore to the required Oath of Office at the request of Commissioner Boone Cole and provided fee-land documentation to the FJBC Executive Manager Johanna Clark.

Jocko Irrigation District Appointment of Chairs:

- Commissioner Dean Brockway nominated Commissioner Boone Cole for Jocko Irrigation District Chairman and was 2nd by Commissioner Boone Cole. Nomination Carried. Commissioner Boone Cole listed as Chairman for the Jocko Irrigation District for a term of 1 year.
- Jocko Irrigation District Chairman Boone Cole nominated Commissioner Dean Brockway for Jocko Irrigation District Vice-Chairman and acting Secretary. Nomination Carried. Commissioner Dean Brockway listed as Vice-Chairman and acting Secretary for the Jocko Irrigation District for a term of 1 year.

Mission Irrigation District Appointment of Chairs:

- Commissioner Gene Posivio nominated Commissioner Tim Orr for Mission Irrigation District Chairman and was 2nd by Commissioner Jerry Laskody. Nomination Carried. Commissioner Tim Orr listed as Chairman for the Mission Irrigation District for a term of 1 year.
- Chairman Tim Orr nominated Commissioner Jerry Laskody for Mission Irrigation District Vice-Chairman and was 2nd by Commissioner Gene Posivio. Nomination Carried. Commissioner Jerry Laskody listed as Vice-Chairman for the Mission Irrigation District.
- Vice-Chairman Jerry Laskody nominated Commissioner Gene Posivio for Mission Irrigation District Secretary and was 2nd by Chairman Tim Orr. Nomination Carried. Commissioner Gene Posivio listed as Mission Irrigation District Secretary for a term of 1 year.

Flathead Irrigation District Appointment of Chairs:

- Commissioner Bruce White nominated Commissioner Wayne Blevins for Flathead Irrigation District Chairman and was 2nd by Commissioner Shane Orien. Nomination Carried. Commissioner Wayne Blevins listed as Chairman for the Flathead Irrigation District for a term of 1 year.
- Chairman Shane Orien nominated Commissioner Bruce White for Flathead Irrigation District Vice-Chairman and was 2nd by Chairman Wayne Blevins. Nomination Carried. Commissioner Bruce White listed as Vice-Chairman for the Flathead Irrigation District.
- Vice-Chairman Bruce White nominated Commissioner Shane Orien for Flathead Irrigation District Secretary and was 2nd by Chairman Wayne Blevins. Nomination Carried. Commissioner Shane Orien listed as Flathead Irrigation District Secretary for a term of 1 year.

Meeting recessed @ 12:21 p.m. for Lunch prior to FJBC Executive Session @ 1:00 p.m.

FJBC Meeting was called to order @ 2:18 p.m.

Agenda Item #1 – Review of Agenda/Minutes and Approval of Budget/Warrants/Contracts

Commissioner Jerry Laskody questioned warrant # 8701 (\$6,345.00) listed as Montana Water Resource Association stating that he believed it was the intention of the FJBC to end its membership with the association. Commissioner Boone Cole responded that the board was in agreement to no longer have membership within the MWRA and correspondence would be drafted in regards to the matter.

- Commissioner Shane Orien moved to approve the May 2015 Budget and Warrant report with warrant # 8701 (\$6,345.00) to MWRA being stricken and voided. Motion was 2nd by Commissioner Gene Posivio. Vote was called. Commissioners Paul Guenzler and Commissioner Richard Erb voted Nay. Motion Carried 9-2.

Executive Manager Johanna Clark asked the Commissioner to review WWC Work Order and request for 2015 Budget amendment in the amount of \$10,000.00. Attorney of Record Kristin Omgvig stated that discussions held with Mr. Ed Evereart of WWC Engineering have led them to recommend to the FJBC Commissioner to retain the services of WWC Engineering at an hourly basis with no amendment to the 2015 Budget.

- Commission Boone Cole motioned to pay by additional warrant(s) all current billing received from WWC Engineering up to current date and to have any further work approved by FJBC Commissioner on an as needed basis. (Hourly) Motion was 2nd by Commissioner Jerry Laskody. Motion Carried.

Minutes from April 22, 2015 were presented for approval. Commissioner Boone Cole and Commissioner Wayne Blevins amended the minutes to read:

- Dave Stipe from Charlo; Giles Gordon is from Ronan; Maxine Scammon is from Saint Ignatius.
- Commissioner Tim Orr moved to approve the Minutes for April 22, 2015 with the listed corrections and was 2nd by Commissioner Jerry Laskody. Motion Carried.

Public Comment: No Public Comment

Agenda Item #2 – By-Law Amendment and Restructure

Attorney of Record Kristin Omgvig stated that her firm was open to further discussion from the Commissioners regarded prospective changes to the current FJBC By-Laws. Commissioner Jerry Laskody commented that further wordage and/or provisions structuring the terms in which an individual Irrigation District can withdraw from the Flathead Joint Board of Control need to be under board consideration. (i.e. 2/3 Majority, Voter Participation) Commissioner Richard Erb commented his agreement with need to have a public vote before a District board decides to withdraw from the FJBC to avoid repetition of previous actions but supported a simple majority and disagreed that any further requirements would be necessary beyond a per acre vote. Erb commented that previous board actions did not allow the public to participate by referendum. Commissioner Jerry Laskody responded that he did not believe the MCA's required a referendum, only a contract amongst the separate Irrigation Districts that desired to reform the Flathead Joint Board of Control for joint operation.

Commissioner Richard Erb disagreed stating that fee-land irrigators needed to be involved in such decisions. Commissioner Boone Cole briefly described past events that led to the disbandment of the previous FJBC and reminded Commissioners that the referendum conducted showed the Mission and Jocko Irrigation District constituents had not wished for the districts to remove themselves from the FJBC. Commissioner Shane Orien commented that in his opinion it was an opportunity for the minority to control the majority and that the current board wanted to ensure that such actions were not repeated. Orien stated that it would be more fiscally responsible for the irrigation district to operate jointly (FJBC). Member at Large Ted Hein asked Commissioner Richard Erb to clarify his argument regarding this issue. Commissioner Shane Orien stated that political conflict of issues would not benefit the irrigators and that it has been his concern that "per acre" votes can be compromised. Commissioner Dean

Brockway responded that as irrigators, we have all been through this before and it was proven to not be cost effective. Brockway believes that it is more responsible to work together through the FJBC than to attempt to work separately.

Commissioner Tim Orr commented that control of the Flathead Irrigation Project required that the existence of the FJBC (Mandate from Congress). The formation of the FJBC was solely for the purpose of operating/maintaining the irrigation project. Orr reminded the board that congress would not allow operation of the irrigation project to be managed by three individual irrigation districts. Commissioner Shane Orien commented that the FJBC By-laws have no teeth, they are not permanent. Orien stated that in their current form and wordage, the by-laws will continue to be amended at the will of seated commissioners and that a contract would benefit the fee-land irrigators and board members to avoid repeating past events. Commissioner Richard Erb questioned if there had been a signed Contract at the time of reformation of the FJBC. Executive Manager Johanna Clark responded that there was a signed Contract on file by and between the three irrigation districts at the time of reformation of the FJBC. Commissioner Boone Cole requested that the Contract discussed by provided to the newly elected Commissioners. Commissioner Richard Erb questioned what board actions needed to be taken to the public for approval/referendum. Commissioner Jerry Laskody responded that as per title 85 of the MCA, indebtedness of an individual irrigation district required a 60% majority vote. Commissioner Boone Cole recommended that the board form a committee to review current by-laws and make recommendations at an upcoming FJBC meeting for further discussion/action.

Gene Erb (Saint Ignatius) commented that the 1935 Codes of Montana detailed the specific duties and responsibilities of the FJBC and recommended that board members to review and follow as dictated. Christopher Chavesse (Ronan) believes that the FJBC needs breathing room and should focus on regaining operation of the irrigation project.

Commissioner Boone Cole recommended that the Chairman of the individual irrigation district form the committee to review the by-laws and report back to the remaining Commissioners at the next meeting. Commissioner Richard Erb commented that the Secretary of the FJBC seems to have significant responsibility and the board should consider compensating such positions accordingly.

Commissioner Boone Cole commented that Commissioner had shown concern over the rotating Chairman position. (4 month rotation of the individual irrigation district chairman)

- Commissioner Bruce White motioned to amend the current FJBC By-laws to allow the FJBC Chairman to be appointed by the remaining Commissioner for a term of no more than one year. Motion was 2nd by Commissioner Shane Orien.

Commissioner Richard Erb asked that the re-appointment of position term limit be reviewed and/or amended. Commissioner Jerry Laskody responded that he approved of the rotating chair; it allows equal participation amongst the Commissioners. Laskody does not believe that any limits need to be placed on terms at this time. Commissioner Boone Cole commented that by Robert Rules of Order, a Motion to Suspend might be needed to amend the by-laws with a 2/3 vote of the board members. Cole questioned Attorney of Record Kristin Omgig as whether this topic would need to be addressed at a later date.

Commissioner Bruce White questioned whether the board could move forward with by-law action concerning the Chairman position and work on any other issues later in the year. Attorney of Record Kristin Omgig responded that with appropriate motion, the board could move forward. Commissioner Shane Orien commented that he would prefer to amend the rotating chair but would be open to further discussion. Commissioner Richard Erb recommended suspending the current by-laws as discussed. (Article 6-Section II).

- Commissioner Richard Erb motion to suspend the current FJBC By-laws to allow for Commissioner Bruce White's motion to be presented. Motion was 2nd by Commissioner Shane Orien. Vote was called on Commissioner Bruce White and Commissioner Richard Erb's Motion. Motion Carried.

Public Comment: No Public Comment

Flathead Joint Board of Control Appointment of Chairs:

Commissioner Boone Cole was nominated for Chairman of the Flathead Joint Board of Control. Nomination was 2nd by Commissioner Tim Orr. Nominations were closed. Commissioner Boone Cole was listed as Chairman of the Flathead Joint Board for a term of one year.

Commissioner Wayne Blevins was nominated for Vice-Chairman of the Flathead Joint Board of Control. Nomination was 2nd by Member at Large Ted Hein. Nominations were closed. Commissioner Wayne Blevins was listed as Vice-Chairman of the Flathead Joint Board for a term of one year.

Commissioner Shane Orien was nominated for Secretary of the Flathead Joint Board of Control. Commissioner Bruce White was nominated for Secretary of the Flathead Joint Board of Control. Nominations were closed. Commissioner Bruce White requested removal from nominations. Commissioner Shane Orien was listed as Secretary of the Flathead Joint Board of Control for a term of one year.

Ted Hein (Hot Springs) was nominated for Member-at-Large of the Flathead Joint Board of Control. Commissioner Gene Posivio 2nd the nomination. Nominations were closed. Member at Large Ted Hein was listed as Member-at-Large Re-elect for the Flathead Joint Board of Control for a term of one year.

Public Comment: Ken Cornelius questioned if public comment was going to be taken regarding the representation of district areas. Cornelius believes that some areas of the Flathead District are over represented by re-electing Member at Large Ted Hein (Camas), being that the Camas is the smallest irrigated acreage. Member-at-Large Ted Hein responded that Camas/Flathead Irrigation District is not the smallest participant and that historically, the Camas area has not been adequately represented on the Flathead Joint Board of Control. Vice-Chairman Wayne Blevins commented that the Member-at-Large position represents each district independently. Wade Shepard commented that FJBC Commissioner represent every fee-land irrigator, not just their districts independently.

Agenda Item #3 – FERC

Attorney of Record Kristin Omvig discussed recommending that the FJBC file an Intervention to preserve the Low-Block Cost of Power related to the Flathead Irrigation Project. Commissioner Jerry Laskody commented that the issue of Net Power Revenues were not clear but would be discussed at great length. Laskody believes that the 1948 Repayment Contract make such Revenues an issue. Chairman Boone Cole commented that all current license and comments have been requested. Christopher Chavesse questioned if the board was aware of any updates regarding Sen. V. Jackson's filings. Commissioner Jerry Laskody responded that Jackson's filing is what opened the opportunity for the FJBC for file. Gene Erb stated that the FJBC was previously a party to FERC issues. Commissioner Bruce White commented that the board might want to entertain a motion to allow legal counsel to intervene on behalf of the FJBC.

- Commissioner Bruce White motion to give Attorney of Record Kristin Omvig authority on behalf of the FJBC to file/proceed with intervention/comment (Northern Energy's Co-licensing – May 28, 2015). Motion was 2nd by Vice-Chairman Wayne Blevins.

Commissioner Richard Erb questioned if the Motion on the table referred to a paper hearing or a court hearing and recommended that the Motion be amended to determine such issues at a later time.

- Commissioner Bruce White amended his Motion to include the determination of a paper hearing or a court hearing. Motion Carried.

Attorney Kristin Omvig provided litigation updates. (WMWUA, CSKT Lawsuit, BIA Turnover) Commissioner Shane Orien questioned as to whether legal counsel could turn-up the heat on current litigations to achieve results. Christopher Chavesse reminded the Commissioners of his earlier comments regarding breathing room to accomplish tasks at hand.

Agenda Item #4 – Project Report

Pete Plant - Flathead Irrigation Project report and related email correspondence was read to the public in attendance. (See attached)

Ed W. questioned why Hillside Reservoir was not capturing water and if there were requirements he was not aware of. Commissioner Jerry Laskody asked Executive Manager Johanna Clark to request a Point of Contact sheet from Pete Plant – Project Manager to assist in getting information to the public. Member-at-Large Ted Hein commented on Crow Reservoir and the time line on when it would be operational. Commissioner Richard Erb

stressed the importance of project management establishing a rotation plan to deal with water shortages in specific areas during drought years.

Commissioner Jerry Laskody referenced the Bureau of Indian Affairs recent Water Update meeting and the issue raised in regards to the responsibility of the FJBC to get pertinent information to the public. Laskody believes that it is the Project's responsibility to notice their meetings accordingly. Ray Swenson stated his disagreement, believing that the FJBC should do everything in its power to get as much information to the public as possible even if the responsibility lies elsewhere. Executive Manager Johanna Clark commented that the FJBC Administrative personnel had been in contact with the project personnel and that all parties would make every effort to share as much pertinent information as possible.

Member-at-Large Ted Hein questioned the employment of Mr. Gordon Wind and his related role within the Flathead Irrigation Project. Hein had been advised that Mr. Wind was still an employee under the CME, even though to FJBC knowledge, the CME was no longer a valid entity and remaining funds were frozen temporarily until projected release to the BIA. Wade Shepard presented the 2015 Fiscal Budget of the Flathead Irrigation Project that list a civilian employee. Shepard questioned if the board members knew what the definition of such employment was and why such employment would be compensated at over \$70,000.00 per year.

Joe Reed commented that he believes there has been a severe breakdown in communication. Reed reported that in some project areas, maintenance personnel were performing the duties of ditch rider with higher than normal compensation for services. He believes that it would be in the best interest of the project/irrigators for the FJBC to stay as one operating unit and to encourage work relations with the Bureau of Indian Affairs. John Swenson commented that the board is united by Contract but that dissolution only required a 90 day notice. Bill Slack commented that the board should be contacting State Senators in an effort to share pertinent information and to add pressure to outside parties. Gene Erb commented on recent difficulties on getting water delivery to owned parcels.

Wade Shepard questioned the Commissioners regarding the \$7.00 increase scheduled by the BIA/Flathead Irrigation Project and if the board had a plan to interrupt the increase. Commissioner Shane Orien commented that the FJBC will request a more detailed billing statement to the Flathead Irrigation Project to determine cost prior to upcoming billing period. Commissioner Tim Orr commented that the Comprehensive Review strictly dictated that the FJBC be involved in Project Financial matter and/or decisions. Commissioner Shane Orien responded that current issues were frustrating for everyone involved and that the FJBC would attempt to encourage communications with Pete Plant – FIP. Ray Swenson commented that in his review of the 2015 Flathead Irrigation Project Budget, it appears that most funding is allocated to employee wages with very little monies left over for betterment.

- **Meeting was adjourned @ 3:41 p.m.**