**General FJBC Minutes October 10, 2017**

***Board Members Present***

Ray Swenson, Gene Posivio, David Lake, David Vincent, Janette Rosman, Tim Orr, Dean Brockway, Bruce White, Ted Hein.

***Board Members Absent***

Blaine Edwards, Boone Cole

***Attorney’s Present***

Bruce Fredrickson, Kristin Omvig, Kurt Hafferman

***Valley Journal Staff Recording Visual Video Taping***

Karen Peterson David Passiere

***Minutes:***

***This set of minutes are including the corrections and suggestions to the September FJBC Board Meeting…***

Ray stated that people wanted to include a couple more details on the Camas water situation in the September Board meeting minutes. Minutes to include that the water was shut off on August 10, 2017 for approximately 2 weeks and then was turned back on. It was then turned off on September 5, 2017 and there was still water available in Hubbard Dam. Paul Grieco stated that they were promised two weeks of water from the shut off in August. From communication efforts with Pete Plant Camas irrigators had thought they would have water available to them through the week of September 22, 2017. Paul Grieco corrections also to include that Pete Plant suggested for Paul Grieco to file a “Tort claim” against the BIA. Ray Swenson states a tort claim is a form of a lawsuit. Paul Grieco stated how important this was to be included in the minutes. Ray Swenson asked how detailed we need to be in the minutes. Bruce Fredrickson states that it is a general reflection of the topics discussed, it’s not a verbatim record of all that is included. He continues to suggest including topics, responses, public comment, and general description of what happens.

Ray Swenson states that it’s all recorded therefore, the details are in the recording. There were many concerned individuals stating that the general details need to be written down according to the recording of the board meeting. Ray Swenson suggested to table the minutes until the next meeting to assure the proper inclusions in the minutes from concerned irrigator Paul Grieco. He went on to explain that two Camas irrigators pay a $100,000 in O&M fees between the two of them. For their financial harm can we apply pressure to Pete Plant. They want this to be included in the minutes. Janette Rosman states is there a way we can work with them to get this resolved.

Janette Rosman states that we are not managing this irrigation project that it’s up to Pete Plant and his employees to manage the water project.

There was a question on the By-Laws and the representation of the acres. David Lake questioned the equal representation of the board members by acres and wants them to be accurate.

There was a concern in a gap in check numbers. Gene Posivio states he would look into it. There was a discussion about crossing checking the district assessments and making sure that all transfers are accurate including checking account balances. Ray Swenson suggested semi-annually FJBC can check a quarterly on each district account assessment about the time that the big amounts of O&M are either coming in or going out. Janette Rosman questioned the missing checks. Ray Swenson states he likes the breakout 79%, 14%, and 7% and explains these do fluctuate through the year. Ray discussed the budgets and warrants and posting them on the website once the budgets and warrants are approved and official then they will be posted for public to review. Janette Rosman and Paul Grieco discussed how accessing the budgets and warrants on the website was not user friendly and needed to be fixed. Chantelle Begay agreed to fix the website to be more user friendly.

David Lake made motion to approve minutes with the contingency to find the 10 missing checks from 9088-9098. Paul Guenzler seconded. Budgets and Warrants passed unanimously.

**Pete Plant Presentation**

Ray Swenson reminded Pete Plant about the Camas discussion from the last board meeting held in September, he continued to state that a couple larger land owners were shorted water for irrigation. He explained they took offense to your comment about filing a tort claim and felt the discussion should have been included in the minutes. Pete Plant explained, what is the method for filing a claim and the method is filing a tort claim, that’s the recourse. He continues to state that you don’t have to do it and that he wouldn’t like you to do it. A public member states filing a tort claim is going to cost him money nobody cares. Pete Plant continues if you want to file a claim what the issue is to why you want to file a claim. There was a question regarding what happened to lead up to filing a tort claim. Paul Guenzler commented to Pete Plant that the water was shut off August 7th for at least two weeks. Camas was promised water for two more weeks until September 22, 2017. Then it was turned off the day after Labor Day. To file a claim what should we do? Pete Plant explained that is dry over in Camas and there is hardly no rain. Pete Plant discussed the budget of $2,374,000 and that is within their budget of $3.4 million. That includes $273,000 from last month and he continued to discuss when the pumps would be shut off and routine maintenance including the problems with the canal and fixing the pump over in Camas. Ray discussed that then there should not be any structure failure on pump anymore with any luck. Depending on the budget and the weather there will be changes in employment. Tim Orr asked how many employees would be kept working. Pete Plant explained 6-7 employees will be kept and that’s not including the office employees. There will be about 20 employees working. Typically, the ditch riders will be laid off from Thanksgiving until March. Tim Orr asked if they could get an inventory of the equipment, mileage, etc. Pete Plant discussed the hours worked on the machines and whom fixes the machines.

Paul Grieco wanted to know why they do not get stock water in Camas. Pete Plant explained there just isn’t the water for stock water it’s a historically drier place in Camas and to meet the quota for water it would hard to supply a large amount of water. He continued to state if they wanted to take the risk of supplying 2000-acre feet of stock water to such a drier place. Why can’t there be enough water when there was 5000 feet of water left in Hubbard Reservoir. There was a discussion about meeting the quota and it not being like that in the past. Mary stated that she felt that Grieco’s comment was just dismissed about not having enough water from it being shut off for at least 2 weeks. Pete Plant and Mary Mathias had a discussion about Paul Grieco’s prior comment. Pete Plant explained that there are all sorts of irrigators wanting and needing water all at the same time and one has to be able to meet the quota, deal with the canals, and ditch riders to be able to supply this water. Mary Mathias stated that 700-acre feet of water is a lot to just dismiss and the water should not just be taken away from them. Then in order to do something about it they have to then spend more money to file a law suit. She states she just doesn’t understand it. There was a discussion about why the water was turned off in first place. Pete Plant explained that the lower reservoir was low therefore, they had to shut it off. There was a discussion about sharing the water through A & B canal. The question of when the water was to be shut off was discussed. Weather, water consultant, and use is dependent on when the water is shut off. Pete Plant states that it’s in the guidelines of when the water is shut off. A question of how do we deal with the situation of reduction in supply of water. There was a discussion of figuring out a way for the ditch riders to tell the irrigators that they are not going to have enough water supplied in that canal that they had used over their quota. Sheila Vallejo asked if you don’t get the water then are the rates reduced. It was explained that the irrigators pay for the O&M and the delivery of water they do not pay for the water. Sheila asked what if you don’t get the water and it’s not your fault. Ray Swenson states the bill still comes. Gene asked about a stream in Charlo and tribal members moving around that stream. Pete Plant asked if $6400 could be taken out to pay for weather stations in Camas a couple in Jocko and one in Round Butte. Ray Swenson stated that he didn’t think irrigators would mind if the money was taken out of the O&M to pay for this. Pete Plant discussed the location of a one is overshadowed by some trees and there is some that needs to be moved. Pete Plant will need to give Chantelle L. Begay his e-mail. Ray Swenson asked if the water project wanted to deal with the Montana Rail Link and them having a disaster plan in place. Pete Plant accepted the responsibility to deal with the Rail Link. They need to know the sources in case of a disaster that can happen.

**Kurt Hafferman Discussion**

Four issues will be discussed.

The work will not be done by the end of September. This will not happen. He gave a presentation of when the majority of their work will be done. Everybody in state will file a stock water right they want all the stock water rights first.

He gave a discussion on secretarial rights and holding water rights and the secretarial rights that were not filed. Some people did file and they have a claim file. The people that pay O&M then they have a secretarial right. Ray Swenson explained that Pete Plant has a list of whom has secretarial rights that the water project is being delivered to. Hafferman needs people that he can talk with that have secretarial rights and how it is different from project water and needs to know who pays the O&M and who doesn’t pay the O&M. Ray Swenson discussed the people that have acres under secretarial B that get their water through a project facility. He continues to state that the 800 acres affects FJBC because they don’t pay the O&M fees on those acres. Dean Brockway states that the secretarial B water is being used by everybody. Hafferman states that we are conveying some of that water to the secretarial right. We need to separate it out. We both get advantages to conveying water to those secretarial rights. Hafferman explained that we need to explain to the Water Court how this works. Therefore, if the Board can come up with the people that have individually claimed water rights then he can speak with these people to understand how it works.

On the acres that are not claimed and never had water rights to it also needs to be discussed. He also needs to find another attorney to assist with this case.

Tim Orr asked about tribal members that convey water into the water project. The way they issued those secretarial rights before the F.I.P. was formed need to be addressed and he needs a copy of those stats. Hafferman discussed non-irrigated O&M properties that has water being conveyed but we don’t charge O&M on it. Historically we all need to understand it and the way you look at it. There are a few names up the Jocko where they were putting in those 40-acre tracts in the project. Need to understand the individual water rights. Trying to get FJBC, State, and Water Project to understand it.

Chris Chavez gave a reminder about the public menu if you didn’t file before 1973 how far that translates up to the DNRC he does not know. Hafferman explained that if you didn’t file it individually then it’s still inverted and conveyed within the project.

When I get a better understanding then I will have the wide-open discussion of how FJBC understands it, how the State understands it, and the Water court understands it.

Wade Shepard and Harlan are looking at the land that the State has contested and we are not making any determination whether you have a water right or not. He explained what they are researching. He continues to discuss who has problems with water rights on their land and what they had to do. There was a discussion of the State being concerned about whether the land had ever been irrigated and the State is not going to let FJBC count it as being irrigated. These are the people that Hafferman needs to speak with to get the case resolved. Hafferman gives a presentation on what he is going to bring forth to Water Court concerning what FJBC has delivered in water to these individuals. Hafferman wants to have a conversation with those people to be on the same page. Janette Rosman states that the Black Mountain Software (BMS) labels would help with that. Hafferman made a request to get the list from BMS in an excel spreadsheet instead of in a PDF format. He needs it in an electronic format instead of on paper so he can edit the document. Wade Shepard asked Hafferman who he wants to speak with? Hafferman replied, that you will have to go over every piece of land to see if its irrigated, speak with the land owner, and see how much is getting paid on it. Ray states that Hafferman can give a preliminary list. Hafferman replied that he needs to first understand how the water is moved around and understand the politics of how the water is delivered. Hafferman gives a discussion about how the Water Court deals with water distribution within regions and not every irrigated piece of land. Dean Brockway gives a statement on hydropower. He continues to discuss the problems he has had with the State that its ok for them to use his water but it’s not ok for him to use their money and gives Hafferman his contact information to further discuss his issues.

Wade discusses the Compact Implementation Technical Team (CITT) and what they are doing. Ray Swenson discussed what he learned at the Water Rights Seminar pertaining to the DNRC and CSKT Water Compact. He continued to state that they gave a presentation about the Water Project. Janette Rosman asked again what that website was, the site is [www.CSKT/Montana/CITT.org](http://www.CSKT/Montana/CITT.org). There was a discussion on where the stations were and about how everything is in place except the annual O&M. There was concern about where the money would come from and is was predicted to come from an increased O&M fee through FJBC. They are trying to get the reading up on the website so that irrigators can access the readings. Ray Swenson speaks of the modernization proposal from Cal Poly and everything buried in pipe and efficiency. The reality of it is that it will be 50-$60 a year O&M to cover this. They are interested in the return flow. Seepage control at the end of Jocko don’t make no sense to start at the bottom and lose all that water in between. There is a lot of budget issues. He asked about Board approval for a CITT and the meetings that are covered. The issue was about the water being banked and saved in reserve.

Ray Swenson suggested putting a separate issue to be taken action on by the FJBC Board on a separate agenda at the next month’s board meeting. The issue of banking water in reserve for later use. He needs to know if the Board is for it or if they are against it. Any water savings that is done is being recorded. Anything that’s done that saves water will be taken out of delivery and put in the instream flow. Dean Brockway states they dumped water down K canal because of all the water savings. He doesn’t agree with it they were trying to increase the water flow in that stream. Board wants to know who is controlling how much water is being saved. Ray Swenson declares that they cannot take any action on this issue today. Elaine Willman, a member of the public states she called Congress and wanted to know the exact status of the compact and continued to give a discussion on the Water Compact and whether it even exists. Therefore, why does the CITT exist if the Compact doesn’t exist. Elaine Willman states it hasn’t even approached Congress for ratification and is fundamentally wrong. Ray Swenson states that Bruce and Kristin’s appeal may be the first to do something about that. There was concern that the CSKT will just take that reserved water and let it go down the river for profit. Chris states that if the Compact goes through and the CSKT claims that water you will not get it back. Dean Brockway thinks that why put money into improvements to bank more water if it’s not even going to go through. CITT improvements and Pete Plants improvements are two separate things. More discussion about banking the water was given. The board discussed whether or not to approve it or not. Any water that CITT saves in improvements will be banked and that banked water will go in affect. Wade wants to know is the Board for banking the water. CITT will be the ones to bank the improvements. Wade needs direction in knowing what to do so he can state something either way. Chris states the underlying question is does the Board agree with banking water with the improvements. Ray states where we are going to disagree is who gets to bank the water?

**Bruce Fredrickson Discussion**

He declares the audit is done. It is not available for public distribution yet. The insurance carrier and proof of claims forms are not out yet. The FBI also wants to meet before public record. There was $221,000 that was not approved by the FJBC Board those funds derived from many different transactions. Bruce Fredrickson explained how it was done. Jan identified the transactions through a lot of legwork. The draft is in the office. Ray Swenson wants to know if the insurance company may fight us on this. Bruce Fredrickson replies that the work product is outstanding. It couldn’t have been done better. The insurance company will probably have questions which is normal. He doesn’t know the timeline when they will make payment on the claim because they have a lot of transactions to go through. Ray Swenson states the audit is basically done.

Litigation update; they are waiting on the Supreme Court and when that opinion hits and we get that in an email it’s just a matter of waiting for it. Bruce Fredrickson touched base on the 9th Circuit. An argument will be considered some time in December. There was a discussion on the reformation. The Mission and Jocko discovery applies. A discovery will be filed. Ray Swenson asked about the update on excessive billing. Between rates and the number of bills should be simple to go through and Fredrickson has an attorney that can do this to resolve the issue. Ray Swenson gave a discussion about the Mission District and where they got the money to cover attorney fees. Dean Brockway declares that the attorneys they had hired were a conflict of interest and needs to be taken seriously. We need to demand justice. Both the Jocko and Mission District brought in Mr. Mikkelsen and he used to serve on the Board. They did not have the money to hire an attorney and they hired him anyway. Ray Swenson discussed the service of attorneys to each district when the Mission and Jocko withdrew from the Board. Janette Rosman states that the Flathead District would not be obligated to pay for the Jocko and Mission District attorney that they had hired when they didn’t have any money. Ray states that the attorney’s ran up a bill of $195,000 in 10 months. The Mission District at the time said that there was O&M reserve money and the attorney sat back and let it happen even though he knew there was no such thing as reserve money just so he could get paid. There is $95,000 still owed. Under Joint Operation how do we want to deal with this because this does deal with Joint Operations.

Dean Brockway reads what Judge Manley was asking for. It states that whether the motion should be decided. James Manley is sitting on this up there he needs to be shown the By-Laws and the Montana codes. The only way these can be changes is through reformation or 60-80 % of irrigators signing a petition to change it. There should have been a vote by the irrigators for it to be changed.

**By-Laws**

Ray Swenson states he proposed changes to the By-Laws and read what was proposed to be changed. Dean Brockway states that irrigators needed to approve of the withdrawal. Wade Shepard asked if it’s illegal can we make it legal. Bruce White stated that one wants to make it as hard as possible to withdraw from a board. Bruce Fredrickson explains Montana code provisions cannot be overwritten by By-Law action. He goes on to explain how By-Laws can be changed either by written vote by majority of the irrigators or by written vote by majority of the Board. The majority vote is 2/3 vote.

Ray Swenson began discussion about the designee form where Janette Rosman knows more about this. Janette states now under a new legislative bill we now have to have a designee for each property owner. She explains that BMS can print out labels that pertain to all the land owners or irrigators. She then gave a presentation on redoing everybody’s designation form. Janette Rosman states that Katie Harding recommended that everybody redo the designee form. Susan states that the form does not have to be notarized. She states there is no statute requiring it.

Ray Swenson gave an overview of what was discussed at the Water Rights Seminar and the professional connections he made that benefited the water rights issue with FJBC.

**Public comment was taken.**

Gene Erb gave a discussion on the laws of the districts. Who changed the name of the company and who issued the bonds?

Dean Brockway discussed the By Laws pages 594-692. For Irrigation District information. A Joint Board what all applies. Ray Swenson states on late 1979 1980’s the legislature had to do work for this Joint Board to be formed. Bruce Fredrickson discussed the adoption of the By-Laws. Susan Lake stated that if they are going to make it hard for districts to withdraw then they need to go back to 2014 and retro making it just as hard to form the Joint Board. Ray Swenson states we have to follow the Montana Code to letting districts withdraw.

Janette Rosman made motion to adjourn meeting. Tim Orr seconded. Passed unanimously.