

Flathead Irrigation District Meeting August 25, 2021. 1:00 PM  
Lake County Extension Office, Community Center, back door.  
303 3<sup>rd</sup> Avenue NW., Ronan, Mt.

Attending Commissioners: Paul Guenzler, David Lake, Bruce White & Janette Rosman  
Absent: Trent Coleman

Pledge:

Safety of Dams and BIA were not present at this meeting.

**July Minutes:** David Lake made the motion to accept July minutes. Janette second. Passed.

**Warrants:** Janette made motion to accept the warrants, David second. Passed. The following warrants were paid: Click here Designs, LLC., \$55.00, Five Valleys Law, PLLC \$253.00. Whaley & Assoc., PC \$750.00. Total \$1058.00. **Flathead Irrigation ADM \$595,925.00. O&M \$456,675.00. Accounts. As of July 31, 2021.**

**Flathead Joint Board Checking Account \$13,204.00.** (Mission and Jocko Districts share will be turned over to FID, due to the larger amount that was transferred from FID account to pay FJBC bills when we were all a part of FJBC and they had not participated the paying of those bills).

**Cassie Dellwo: FJBC Distribution of Assets.** David Lake made motion to approve distribution of FJBC assets. District office building in Saint Ignatius to be placed in all three Districts names according to the FJBC percentages and checking account to be released to FID noted above. Paul Guenzler will be signing the final documents. Janette second, passed.

**Cassie Dellwo: Lake County Resolution Intent.** Cassie's documents and Lake County Commissioners Resolution of Intent are attached to the minutes and will be recorded as such at the courthouse. Janette made the motion to approve of Cassie representing the FID in regards to Resolution of Intent 21-20 sent out by Lake County Commissioners and response to County Commissioners regarding the collection of Irrigation Assessments. David Lake Second. Janette, David and Paul voted yea, Bruce abstained. Passed.

Cassie also passed more copies of the Survey Results with Summary comments at this meeting. Survey is posted on [FlatheadIrrigationDistrict.org](http://FlatheadIrrigationDistrict.org) without the comments due to increased size of file for website.

**Public comment:** Janette reported the LSG sight did not pick up Wipfli's notice of contract with FID on their web page. Janette brought it to LSG attention after having two conversations with Wipfli. Audit is due in October. On another matter LSG sent Whaley Accounting that they needed documentation for dissolving FJBC. Whaley accounting had sent Judge Manley ruling several years ago and will do so again. Paul signed a document stating FJBC no longer existed.

Commissioners were reminded to attend August 30, 2021, 1:00, Lake County Commissioners hearing on Resolution Intent. Cassie will be representing FID.

David Lake made motion to adjourn, Paul second.

RESOLUTION OF INTENT 21-20

WHEREAS, Montana Code Annotated 85-7-2133, (Sec. 2) states that the county treasurer is the custodian of all funds belonging to the (irrigation) district; and,

WHEREAS, the county treasurer shall pay out the funds upon the order of the board of the commissioners of the irrigation district; and,

WHEREAS, the Montana Water Rights Protection Act, Section 13 (a) (k), designates the Secretary of the Interior as the entity with legal authority and responsibility to operate the Mission Valley Division of the Flathead Indian Irrigation Project; and,

WHEREAS, the Montana Water Rights Protection Act, Section 13 I (1), provides that the irrigation districts may enter into an agreement with the Tribes, (Confederated Salish and Kootenai), to operate and maintain the FIIP; and,

WHEREAS, no Irrigation District or the Tribes have requested or made an agreement to operate the FIIP. Therefore it is no longer necessary, or appropriate, for the County to facilitate billing and collection of irrigation assessments; and,

WHEREAS, MCA 85-7-2155 provides authority for the Board of County Commissioners to sell land when taxes and assessments of the irrigation district are not redeemed within the time; and

WHEREAS, Montana Code Annotated 85-7-2108 requires that any special tax assessment levied for any purpose shall be a lien upon the land; and,

WHEREAS, the MWRPA Sec. 13 (b) extinguishes all liens on properties served by the FIIP; and,

WHEREAS, the County has no process available to collect unpaid irrigation fees or assessments;

WHEREAS, it is the intent of the County, beginning in tax year 2022, that the Lake County Treasurer will cease billing, collecting, and distributing any fees or assessments related to the Flathead Indian Irrigation Project;

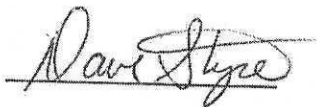
NOW, BE IT RESOLVED that there will be a public hearing on Monday, August 30, 2021, at 1:30 pm, relative to this resolution;

PASSED AND ADOPTED THIS 28<sup>th</sup> DAY OF JULY, 2021.

BOARD OF LAKE COUNTY COMMISSIONERS



William D. Barron, Chairman



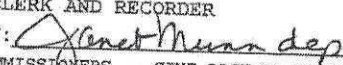
Dave Stipe, Member



Gale Decker, Member

Attest: 

Katie Harding, Clerk & Recorder

590570 RESOLUTION Pages: 1  
STATE OF MONTANA LAKE COUNTY  
RECORDED: 07/29/2021 2:17 KOI: RESOLUTION  
KATIE HARDING CLERK AND RECORDER  
FEE: \$0.00 BY:   
TO: LAKE COUNTY COMMISSIONERS , GIVE BACK TO KATIE,



*Signed by Commissioner*

**FIVE VALLEYS LAW, P.L.L.C.**

1410 S. Reserve St., Ste. C, Missoula, MT 59801  
(406) 203-1410

Tiffany A. Nunnally

Tiffany M. Kelley

Cassie R. Dellwo\*

\*Also licensed in North Dakota

Brooke Burnham, Paralegal

August 25, 2021

**ELECTRONICALLY MAILED**

Lake County Commissioners  
lakecommissioners@lakemt.gov

RE: Resolution of Intent 21-20

Dear County Commissioners:

Five Valleys Law, P.L.L.C. represents the Flathead Irrigation District and submits this comment regarding Resolution of Intent 21-20 ("Resolution of Intent"). On July 28, 2021, the Board of Lake County Commissioners ("Lake County") issued the Resolution of Intent stating in short that it is Lake County's intent to cease billing, collecting, and distributing any fees or assessments related to the Flathead Indian Irrigation Project ("FIIP"). A public hearing on the Resolution of Intent has been set for August 30, 2021, at 1:30 P.M.

A basic reading of the Resolution of Intent shows several flaws in the reasoning of Lake County in its intent to cease the statutorily required actions to bill, collect, and distribute assessments related to Flathead Irrigation Indian Project, which includes the Flathead Irrigation District.

The Resolution of Intent fails to recognize that Montana law requires Lake County to collect irrigation tax assessments. Moreover, that Montana law specifically gives Lake County the authority to lien real property of any taxpayer that does not timely pay the irrigation assessment in the same way that Lake County liens property for failure to pay real estate taxes.

The Flathead Irrigation District was formed in accordance with MCA Title 85 Chapter 7 and the enactment of the Montana Water rights Protection Act did not invalidate its formation. Unless and until there is an appropriate dissolution process, Lake County is still bound by state law to act on behalf of the public entity. To date no proceeding to initiate dissolution of the Flathead Irrigation District has occurred.

Under MCA 85-7-2136, "The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not."



Under MCA 85-7-2159, "If there has been no redemption of tax liens assigned to an irrigation district or any other person as provided by law and notice has been given as required in 15-18-212, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or any other holder of an assignment certificate."

Under MCA 85-7-2155, "When lands and premises with attached tax liens and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed ... the board of county commissioners of the county... shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued."

Under MCA 85-7-2134, "If for any reason a levy of taxes or assessments ... is not made for any irrigation district in any year ... the board of county commissioners of the county in which the district is situated shall ... ascertain the total amount to be raised for all purposes of the district. The board of county commissioners shall make the levy ... that should have been made by the board of commissioners of the district and shall furnish the county clerk with a list of the lands and the amount of taxes or assessments."

Lake County has a legal obligation to collect the assessments. The Montana Legislature is so adamant about collecting the assessments that under the County Commissioners must issue their own assessments when the Irrigation District fails to provide the county clerk with the list of assessment. In this specific case, the Flathead Irrigation District has properly provided its lists of lands and the amounts of assessment by the allotted time and will continue to do so.

Moreover, the Resolution of Intent inaccurately states that the Montana Water Rights Protection Act automatically and immediately extinguishes any liens, including water assessment liens, on the Flathead Indian Irrigation Project. Instead, the Montana Water Rights Protection Act Section 13 (b), states any lien created by 33 Stat 302, Chapter 1495 and 35 Stat. 449, Chapter 216 is extinguished and released. No other lien created by Montana law, federal law, or tribal law is extinguished.

Every tax assessment (like the irrigation assessments) created by law except those created by 33 Stat 302, Chapter 1495 and 35 Stat. 449, Chapter 216 are still enforceable as a lien. For example, any assessments created by the Irrigation District Revenue Bond Act are Montana Law (MCA 85-7 at part 14) and not subject to extinguishment. Any assessments created under 62 Stat. 269, chapter 340 is not subject to extinguishment. Lake County has read too far into the "extinguishment of liens" and misunderstood the provisions of the Montana Water Rights Protection Act.

Furthermore, the Lake County states "no Irrigation District or the Tribes have requested or made an agreement to operate the FIIP. Therefore it is no longer necessary, or appropriate, for the County to facilitate billing and collection of the irrigation assessments[.]" The presumption is wrong. Under the Montana Water Rights Protection Act, a joint entity may be formed between an irrigation district and the tribes, or the tribes establish their own organization to manage the FIIP. There is no time frame for either of these options to occur nor do either of these things require an agreement with the County. Under Montana Water Rights Protection Act Section 13(i)(2)(D), "Nothing in this subsection limits the

ability of an organization established pursuant to subparagraph (A) to include the costs of administering the Flathead Indian Irrigation Project when establishing annual assessment rates in accordance with part 171 of title 25, Code of Federal Regulations (or successor regulations).”

Overall, for Lake County to decide that it no longer has to comply with Montana Law and collect irrigation assessments in accordance with Title 85 Chapter 7 of the Montana Code Annotated is a breach of its duties to the public.

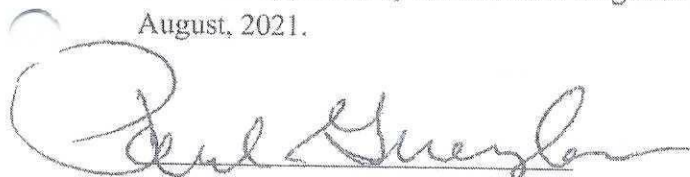
Sincerely,

FIVE VALLEYS LAW, P.L.L.C.

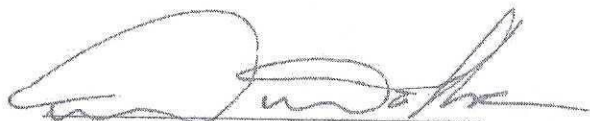


Cassie R. Dellwo

Read and approved by the Flathead Irrigation District Board of Commissioners this 25<sup>th</sup> Day of August, 2021.



Paul Guenzeler




David Lake

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Bruce White

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Trent Coleman



Janette Rosman