

*FLATHEAD IRRIGATION DISTRICT*

**Minutes of Special Meeting “Townhall with Lake County Commissioners”**

The meeting of the Flathead Irrigation District with special invites to the Mission Jocko Irrigation Districts, the Lake County Commissioners, and the Public, was held in Ronan, Montana, on the August 30, 2022, at 6:00 p. m. Notice was given to all Members of the Flathead Irrigation District prior to the meeting.

In attendance:           **Flathead Irrigation District:**  
Paul Guenzler (in person)  
Janette Rosman (in person)  
David Lake (in person)  
Bruce White (in person)  
Trent Coleman (in person)  
Cassie R. Dellwo, Attorney (in person)

**Mission Jocko Irrigation Districts:**  
Ray Swanson (in person)  
Gene Posivio (in person)

**Lake County Commissioners:**  
Gale Decker (in person)  
Bill Baron (in person)  
Steve Stanley (in person)  
Members of the Public (List can be provide upon request)

Cassie R. Dellwo began the meeting, a summary of which follows:

Introduction- Cassie R. Dellwo

County Commissioners’ Presentation- Chairman, Gale Decker

- 1) The Letters sent to the commissioners by the irrigation districts were highly inflammatory and accused the commissioners of ignoring black letter law.
- 2) The Montana Statutes do not apply to the collection of O&M fees as it is preempted by federal law.
- 3) The commissioners asked the following questions:
  - a. Who do the County Commissioners represent
  - b. Is lake county a party to the contract entered into 1904
  - c. Should the irrigation fees be assessed on properties that do not access water
  - d. Why irrigation cannot get accurate records to the county commissioners
  - e. Did the MWRPA change how the irrigation districts operate
  - f. Why are the irrigators so opposed to the BIA collecting the assessments
- 4) Per the County Commissioners, FIIP is the only Indian irrigation project to use a county to collect funds.
- 5) The Flathead Indian Irrigation Project has all liens extinguished

- 6) There are a substantial number of properties that are included in the districts but do not have access to water.
- 7) FIIP is a federal project and Lake County should have no responsibility in the project

#### Flathead Irrigation District's Response-Cassie R. Dellwo

- 1) Failure to collect the assessments could result in limited to no water next year.
- 2) Agriculture is a large portion of the tax base in Lake County.
- 3) The Flathead Irrigation District still has contracts with the federal government for the operations of FIIP.
- 4) Most of the County's issues with the collection of fees can be better addressed at the statutory level.
- 5) While the County Commissioners did not sign the contract, the contract required the approval of a Lake County Judge making Lake County a party to the contract.
- 6) The County Commissioners of Sanders County, Flathead County, and Missoula County will continue to collect O&M assessments.

#### Flathead Irrigation District's Response- Janette Rosman

- 1) As Irrigation District Commissioners, we have not been provided the questions and concerns that have been expressed by the County Commissioners from taxpayers.
- 2) Has a property ever had to be sold due to failure to pay irrigation assessments?
  - a. Gale Decker responds – not to his knowledge
- 3) Sit downs to find a resolution with the County Treasure have been offered and turned down.

#### Flathead Irrigation District's Response - continued-Cassie R. Dellwo

- 1) Sanders County Commissioner Glen Magera – sent the message that Sanders County will be continuing to collect assessments and that to remove the County from this process removes the neutral party between the Irrigation Districts and the BIA.
- 2) Missoula and Flathead Counties are continuing to collect as well.

#### Questions to the Lake County Commissioners

- 1) Why is the county going to continue to collect the Administrative Assessments but not the operations and maintenance assessments.
  - a. Response – Bill Baron – The administrative fees go to the districts and not to the BIA. The O&M goes to the BIA.
- 2) Where is the law that states you get to choose which of the assessments are collected?
  - a. Response – Bill Baron – Falls back on state law and what goes back and forth between the BIA and DOR. Tonight, is the first time he heard that if the DOR doesn't do its job, it is up to the County.
- 3) The irrigators would like to know what the basis of your decision was, if there was a personal bias involved?

- a. Response – Gale Decker – The reason behind the decision 1) believe it is a BIA project and its responsibility and 2) the information obtained from the irrigation districts is full of errors and we as a county field all of the call from irrigators complaining about their tax bills.
  - b. Why are the irrigation districts looking to sue the County instead of the Department of Revenue - they are not adhering to the statutes
  - c. Response – Bill Baron – Robin Verts is the treasurer for the county and in one month she put in 64 hours to correct problems with the assessments. In a good year with no problems her assessment is it costs her office about \$32,000 to do this. When there a lot of problems the price skyrockets.
  - d. Response – Gale Decker – The treasurer present bills for correcting all of these records a couple of years ago to the districts. The Mission and Jocko District have never sent payment.
    - i. Response – Ray Swenson – Your then attorney, Wally Congdon, told us that we did not have to pay.
    - ii. Response – Gale Decker – Wally Congdon was not the attorney for the irrigation districts.
    - iii. Response – Ray Swenson – He was your attorney.
- 4) Cassie Dellwo – Notified the public that Wally Congdon is no longer counsel for the Lake County Commissioners.
- 5) State law requires that the County assess and collect the irrigation assessments for the irrigation districts, how can our county disregard that law?
- a. Previously answered.
- 6) One of the County Commissioners has represented that they are concerned about liability for the project if they continue collecting, what liability is being referred to?
- a. Response – Bill Baron – my concerns is that if we know there are properties that can't get water do we have liability for making those assessments.
    - i. Response – Cassie Dellwo Receiving and sending out the funds collected is the only thing that the county is liable for under MCA 85-7-2166.
  - b. Response – Gale Decker –There was a lawsuit in Missoula County regarding being assessed for irrigation water without access. The MT Supreme Court ruled in favor of the taxpayers.
    - i. Response – Cassie Dellwo – The irrigation districts do not have the ability to remove land from the project. Under the contracts, it is the Secretary of Interior's decision. Everybody has a route to remove their land. You need to file the petitions through their system.
- 7) Do you have liability on behalf of the fire districts, water and sewer districts in Lake County?
- a. Response – Bill Baron –We have limited liability. If a district does not do its job the county has to take over and we are liable for taking over until we can appoint a new board (in reference to a non-irrigation district).

- 8) Can you please tell us how the cost to administer just the administrative fee is different that also having the O&M included?
- a. Response – Bill Barron – The Administration fee goes directly to the districts, so we have a responsibility to collect that fee (former attorney Wally Congdon told them that). To make a correction, it is a long process and take a lot of time.
  - b. Follow up Question –Can you explain the cost to the assessment?
    - i. Response – Bill Barron – Robin put that information together.
  - c. Follow up Question –Can you tell us how much it would cost just assess the administration fee?
    - i. Response – Bill Barron – I am assuming it would be half of the \$32,000.
- 9) If the irrigators agreed to pay for a portion of the costs to administer the fee assessment and collection, would you proceed with collections? - this is a hypothetical.
- a. Response – Gale Decker – Why can't the irrigation districts provide the treasurer with accurate records. It has been a problem for 5 or 6 years. In 2019, the irrigation districts informed the county that they were going to stop using Black Mountain Software. If there was a way for the county to receive a fee, the is issue is finding the amount. Our County Treasures would need to track her calls and a drop ins from irrigators. Discussed former process with Johanna and weekly communications with the DOR and used the Black Mountain software to make updates. The Irrigation Districts chose to move away from that process.
  - b. Response – Janette Rosman – The BIA “Bible” is the paperwork held up, Janette brought it in even though the county did not want it.
  - c. Response – Cassie Dellwo – The Black Mountain software – we heard that the software created problems for the elections department. The discrepancies we find are from the splits of land. The BIA is getting all of the information in one bulk transfer and are presently about 2 years behind in updating. The BIA is the only party that can officially determine the amounts of irrigated acers with each split. It is frustrating for all parties.
- 10) With the recent resolution, did it concern you or was it taken into consideration, that the decision impacts over 100,000 acres in our valley, over 1,000 producers and missions of dollars of income for the community?
- a. Response – Gale Decker – Why are the irrigation districts not holding the Department of Revenue to the statutes?
  - b. Response – Cassie Dellwo – The DOR does not collect the fees, which is the biggest concern for the irrigators right now. As stated previously, legislative change is required to make this work better.
- 11) As elected officials, you took an oath of office, what was your oath?
- a. Response – David Lake – We are frustrated with this; we are here because of our frustrations. We need to work on our solutions to these problems. Our

board is especially adverse to litigation and we believe that we are already hitting on some solutions. Unfortunately, what is going on here is quite serious – I don't want this meeting to go south.

- b. Response – Gale Decker – I, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana and discharge the duties of my office with fidelity, so help me God.

12) At the last public meeting, there was a statement that irrigation districts were no longer public corporations, is it your position that the Flathead Indian Irrigation Project doesn't benefit the lands of the county?

- a. Response – Bill Baron – I think they benefit the land.

At this time, Cassie R. Dellwo opened the meeting to comments and questions from the public.

Corrective comment from Paul Guenzler – restated by Cassie Dellwo – There was comment earlier from the County that the project is owned by the BIA and it is not, it is owned by the federal government in trust.

Bill Barron – if you are right and the county does have to get a bill to fix all the problems for all the state and all the extra time involved.

Response – Cassie Dellwo – part of the resolution is to get legislative change, getting the BIA, DOR and everybody else together to fix the problem. We also need to know, if the question is, can the county be paid we need to know how much is being charged and if it can go into escrow until there is a decision on whether or not counties can collect administrative fees for their role.

Response – Ray Swenson – Mission and Jocko still maintain an office and we have an office manager – we would be willing to have our office assistant assist as she understands the process. Robin can refer the calls to her, and we can, in the short term, answer those questions instead of Robin. One of the main problems is when we get the information from the BIA we get it in PDF and our responsibility is to get in a format that Robin can use. We got sideways with Black Mountain and we have been working on the issues. Previously we only had a few changes a year and the last couple of years have been unprecedented and the BIA is swamped. I think they are doing their best, but there are unintended consequences.

Steve Stanley – The county commissioners have been trying to understand the system and the repairs needed. I spent the last year trying to learn about this – it is frustrating that it is a clear statute that the DOR needs to do their job then the County does its job. I do not understand why we don't get the DOR to do their job. The other thing is the other option is that the BIA does the billing. The easy answer is DOR do your job.

Janette Rosman – It is important that people know that the DOR is who does the land splits and it is only done once a year.

Larry Nelson of the BIA- This project was built for the Native Americans on the reservation. As the land was divided the ownership became more diverse. The BIA manages 17 irrigation projects, but this one is unique. The irrigators have the chance to manage the project themselves. There is a process for property owners to remove their land from the project. They must file with the Secretary of the Interior – it is a lengthy process. The assessments are similar to taxes – similar to the school system – if you are going to live within the boundaries of the FIIP the BIA has the right to assess you. If you do not receive water you may file to be removed, in the meantime you will continue to get a bill. County Commissioners, was the Missoula Case a Federal project?

Response – Gale Decker – No.

Larry Nelson cont.'d – How many years have you collected taxes for the irrigation districts?

Response – Gale Decker – I think since we became a county in 1923.

Larry Nelson cont.'d – Why change now? We can say it is because of incorrect records, but we get records from you. If you sell your property you need to let the project know. With the passage of the MWRPA you wonder what changed.

Katie Harding – Previous elections office – the elections office did not tell the districts to get rid of Black Mountain, but we could do it by excel spreadsheet.

Breann Johnson – attorney with Western Roots law – what may be a workable solution is that the assessment process is a difficult process. The County under state statute, is required to assess and collect. The only resolution is to work on the state statutes and in the interim and accept offers of assistance.

Tim Orr – the irrigation districts in December is going to pick up the assessment for the first half. The first 6 months is paid – don't forget that. Let's talk about who sets the fees, the project manager (BIA) does with the consultation of the irrigation districts. The reasons that there are mistakes on the books – there was a person working as the project acreage recorder – that does not exist anymore. Question is, with the excess funds collected by the BIA, why can't we get some of that back?

Cassie R. Dellwo – I can answer that – federal law. Unfortunately, we have already made that inquiry with the BIA multiple times, and they have a system in which excess funds may be used in future season and it is in the Code of Federal Regulations.

Leroy Lake - no question – discussion of when the county collects the fees and the interest that accrues.

Bill Baron – the county does not get the interest; it gets paid to the irrigation districts.

Jan Tusick – Bill Baron, you had a resolution at the last meeting to give us more time. Is there an opportunity to revisit?

Response – Steve Stanley – the resolution was tabled for a year. We gave them time.

Response – Gale Decker – Commissioner Barron made a resolution to delay action another year and it died without a second.

Cassie R. Dellwo- That resolution was seconded but was voted down 2-1.

Response – Gale Decker – the motion was not adopted. We are always open to revisiting.

Response – David Lake – this highlights why we are having this meeting, we need to come up with a solution

Mr. Wise- Spoke on his belief that the county commissioners' actions were allowed because federal law preempt state law. Do you agree with me?

Response – Cassie Dellwo – no.

Dave Bick- why do the commissioners have so many imaginary scenarios, especially when they are already paying the employees to do the work rather than paying outside people to collect the fees. Why would you think you can just pass a resolution to get out of your duty?

Response – Gale Decker – there is a finite pool of money to provide county services and when that money is gone, we cannot pay for services. We do not want to keep collecting money for the BIA.

Response – Paul Guenzler – twice a year the irrigation districts right a check to the BIA. You are not paying the money to the BIA, you are paying the districts and then they pay their bills. Also, the project is owned by the federal government not the BIA.

Gene Erb – Every acre is issued a “serial number.” No question.

Ben Rosemont- Can you legally stop doing your job?

Response – Gale Decker - Is it a good use of County resources to collect the fees when the BIA could be collecting them on behalf of the irrigators.

Max Krantz- Spoke in support of the county commissioners continuing to collect assessments and questioned the legality of the commissions stopping collection?

Chris \_\_\_\_\_ - Commissioners represent the whole county not just the irrigators. And they shouldn't be prioritizing the irrigation

Bill Barron – It is our job to do things that impact the community.

Mr. Wise-The commissioners cannot use money earmarked for specific use to use as a general fund. They cannot use the money to enforce an unlawful mandate.

Commissioners- If you go to the BIA website, they already have a page to pay the assessments on trust land. Why can't they use this to collect the assessments.

Bill Barron- There are irrigator paying directly as we speak. We asked the BIA if we stop what would happen and the BIA said they would bill directly.

Paul Guenzler-Thank you for coming. Give the agricultural community a chance to get this worked out. We need to get an operating group going if the BIA remains in charge there will only be more problems.

Having reached the end of the meeting, it was adjourned by Cassie R. Dellwo.

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Cassie R. Dellwo – acting secretary

The full meeting may be listened to at:

[https://us02web.zoom.us/rec/share/610gdY81qEscSSoETjP7HP8zOiBd\\_gp\\_yN1BDYGwZ71VdsUtus\\_w9GV35N4Z\\_6xa.KhYMohNVH1w8Rsrf](https://us02web.zoom.us/rec/share/610gdY81qEscSSoETjP7HP8zOiBd_gp_yN1BDYGwZ71VdsUtus_w9GV35N4Z_6xa.KhYMohNVH1w8Rsrf)

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