

Signed  
Minutes  
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**Minutes of Meeting of the Board of Directors  
of the Wood River Valley Irrigation District # 45  
October 3, 2013**

The regular meeting of the Board of Directors of the Wood River Valley Irrigation District # 45, noticed for October 3, 2013, was **called to order** by Director Wilson at 5:00 p.m. on October 3, 2013 at its regular place of meeting located at 110 Honeysuckle Street, Bellevue, Idaho.

Director Wilson declared that a *quorum* was present, consisting of Directors Wilson, Super and Gardner.

The minutes of the prior meeting of September 9, 2013 were read and approved by all Directors and then signed.

Director Wilson opened the meeting by deferring the time for opening "Public Comments" until after reports.

**REPORTS**

MANAGER KELLY SHANNON reported as follows:

that on the subject of moving of the ditch on Tom Beck's property, Kelly will get with Mr. White on what will need to be done *vis a vis* recording the survey document which Kelly has obtained or other documentation based on the survey;

that he removed bridge planks crossing the ditch in the area of the Thorton and Niedrich properties;

that users have indicated they have no further need for water and he is now sending water to the storage pond on Pero Road for recharge purposes;

that he will be removing some metal flumes from the ditch which will be re-installed at other locations;

that the Goat Project is still an open item under consideration;

that Cottonwood sucker and stump removal work will proceed next week on the H'way 75 leg;

Mr. Super moved that the survey documents obtained in connection with the work around Mr. Beck's property and/or additional documents as may be necessary be prepared and be recorded, the costs of document preparation and recording to be paid for by the District. Director Gardner seconded the motion and it was unanimously passed.

Whereupon, Mr. Shannon continued with his report as follows:

that he had driven over 5000 miles this season; that the truck needs tires and some other maintenance expenses will need to be incurred;

that as to the Bloomfield insurance claim, the adjuster inquired of Kelly if a burn permit had been issued and that he indicated he had referred the adjuster to the fire department.

Mr. White interjected that Mr. Bloomfield has indicated to Mr. White that the carrier is sending forms to Mr. Bloomfield to sign, whereupon the claim will likely be paid.

SEC-TREAS JIM WHITE reported as follows:

that monthly banking and financial reports prepared by the book-keeper had been distributed to the Directors; that Sarah has been helpful in fine tuning the status and addresses of several accounts;

that he is working on and will advise the board as soon as possible *vis a vis* the impact of past improper assessments and the process to re-assess those few unpaid accounts, as based on input from counsel in accordance with statutory procedures;

that as to bookkeeping matters, Stacie will stay to the end of the year; that Linda Gates appears to be the best candidate to replace Stacie (whereupon, Steve Wilson interjected that he concurred and approved of the selection of Linda Gates); that

Linda Gates appears very capable and qualified; that Linda and Stacie will be working together so as to be able to transition with as few problems as possible and in particular, Linda, Stacie and Mr. White will all be participating in the invoicing process based on the budget as may approved and the rate structure as may approved and as finalized.

## **PUBLIC COMMENT TIME**

Steve Beevers commented as follows: that as to a proposed budget, he has a copy of the 2013 budget and a copy of the proposed 2014 budget on which he has already provided feed back to the Directors; that absent extraordinary legal expenses, he estimates that a budget of around \$123,000 a year appears historically sufficient to him for the district's budget; that he has been working with Steve Wilson on a possible memorandum of understanding ("MOU"); that the Partitioner's have not filed a new petition for partition so as to demonstrate a good faith effort to facilitate further negotiations.

Jan Super commented as follows: that she is concerned that an MOU may not stand up in court; that she believes a set of By-Laws could be a more effective way to come to some sort of agreement.

Mr. Beevers commented further: that an MOU can be converted to a contract, with all individuals who signed the prior (now pulled by some) Partition Petition;

Jim Super commented: that it might be possible to negotiate an MOU if the two largest landowners (*e.g.*, Beevers and Stevenson) were to agree to remove the threat of a new filing of a new petition for partition.

Mr. Beevers commented further: he believes an MOU should not take that long to hammer out and could be converted to a contract fairly easily.

Director Wilson commented: that the partitioners have not re-filed any petition for partition; that there are two concepts being floated:

1. To Keep district as one and to come up with By - Laws to protect everyone; he doubts that will work because By-Laws will not likely address voting rights issues

in a way that would satisfy Mr. Beevers and the other partitioner's.

2. He prefers working towards an MOU for a contract that would allow for an agreement under the new statute that would keep the current district voting structure of one person-one vote while allowing the new district to be created under the new law and that under the new law both districts – the current and the new – would be under a Board of Control as provided by the new statute and that would allow the new district to determine its own voting structure; that the two Boards of Directors (the current and the new) would direct the Board of Control, but he acknowledges that the current district would have only two seats on the Board of Control whereas the new district would have 3 seats.

Jim Super commented: that he believes the By-Laws could be structured to protect both groups. The practical difficulties of drafting and implementing By-Laws would mean that it cannot be done quickly; that, among other things, we would need time to create a legitimate map which by itself could take several weeks to get to a point where we have an official map for the district; that he suggests setting the issue of voting methods aside (to which Mr. Beevers interjected and voiced his strong objection).

Steve Beevers commented further: that as he sees it, the district is in the business of delivery of water; he believes that if you own the most land, and pay most of the costs, then you should have a vote commensurate with the size of the check which he writes on behalf of Redstone; that he is not satisfied with just one vote; that he wants a vote commensurate with the size of Redstone's check; that for him, the fundamental tenant must start with votes based on ownership; absent that, he can't see how any method can be structured that would be acceptable to him.

Gary Frugard commented: that it is the board of directors that runs the business of the District; that it appears that Mr. Beevers wants to elect directors based on ownership of land.

Jan Super commented: that the district is a quasi governmental entity based on one person one vote and not based on how much you pay in taxes.

Mr. Beevers commented further: saying "no, it's a business": that Redstone's business is farming.

Mark Gower commented: that given Mr. Beever's position, ... Stevenson ??? (tape is not clear).

Mr. Wilson commented: that other districts base their voting methodology on acreage, but our district is unique and is not structured that way.

Jim Super commented: that the directors are duty bound to protect the rights of all members and to deliver water based on priority dates and quantities and to bill based on benefits as determined by statute; that he has reviewed the current rate structure with Mr. Beevers; that he and Mr. Beevers agree that rate structure respecting the 1901, 1902 priority year rights may need some tweaking for the coming year and that adjustment in this year's rate structure can be made to adjust for the anomalies seen for those years in the current year's rate structure.

Steve Beevers commented further: that his 2010 bill was less than the current bill for the 1902 water alone.

Director Gardner commented: that she feels the district could stay as one district, if the By-Laws were to provide for acreage weighted voting.

Jan Super: that she would like to hear specifically the reasons why the Petitioners filed their Petition for Partition in the first place.

Mr. Beevers commented further: speaking for Redstone, he wants to have its ownership as the basis for voting rights; that the rate structure that he and Director Super have been working on still needs some tweaking; that he believes the statute says we should only be billed for what we are delivered: (Secretary's note: Mr. Beevers is incorrect as to what the statute provides.)

Mr. Wilson commented: that the district is billing in accordance with the statute and that the assessment methods and expenses are defined by statute.

Jim Super commented: that he did not support a proposed flat rate assessment structure last year, as had then been suggested, because, for one reason, it would have cost Redstone even more.

Mr. Wilson commented: that we have a dilemma, to keep district as one, but the

problem is that Redstone wants acreage weighted voting.

Mr. Super commented: that he was not sure by what percentage the electors would have to approve a set of By-Laws. (Secretary's note: it would require a 2/3 vote of the electors to approve the creation of a set of by-laws).

Mark Gower commented: that he could get behind supporting a set of by laws, but only if they truly protected our interests; that absolute power corrupts; that as he hears it, the partitioner's won't really negotiate unless they get one vote per acre.

Mr. Wilson: that if bylaws could be created that everyone here in this room (i.e, those who attend meetings regularly) could "buy off" on, then it may be successfully "sold" to the electors at large.

Bette Gower: that past treatment tells us that one vote per acre has resulted in a situation of unacceptable domination by large users over the small users.

Steve Beevers: that he understands that; that he acknowledges that mistakes were made in the past, but suggests folks need to "get over it"; that he reiterates that the district is in the business of delivering water; that those who signed the petition never believed the electors would allow acreage weighted voting, so that is why they went ahead with the Petition for Partition; that the Board of Control (BOC) under the new law would just be responsible for the day to day management of district; that the BOC, does not set the budget, rather the budget must be jointly agreed upon by both boards.

Jan Super commented; that she is concerned by-laws, even if created, could later be changed by acre weighted voting.

Steve Beevers commented: that he says he *does* understand that the small user's fear is based on the idea that having been kicked once, they don't want to be kicked again.

Sheila White commented: that the fear is real because in the past we paid for water that went down south to the big users.

Mr. Beevers commented further: that for him there is, and needs to be, a high

sense of urgency; he wants to get this done; he has done deals worth hundreds of millions of dollars in just two or three weeks.

Judy Grigsby commented: that we too have lives and businesses to run.

Mr. Wilson commented: that we need to decide tonight on a path forward.

Jim Super: commented that any proposed set of By-Laws will have to be voted on and approved by the electors of the district at large.

Mr. Wilson: that he concurs that any by laws, even if passed by the board, would still need to be put to electors in a district wide election; that it is likely that a new petition for Partition will be filed soon, if we can't move forward quickly.

Director Gardner: moved that Steve Beevers and Steve Wilson go forward with an MOU/contract. (No second).

Mr. Wilson commented: that an MOU would have to turn into a set of by-laws eventually; that an MOU is really just a list of things that need to be created for the necessary protections.

Steve Beevers commented further: that a MOU and By Laws can be prepared so as to provide the fundamental protections that you want and provide for the voting method that Redstone wants.

Jim Super: that even with an MOU or a set of by-laws to keep the district as one; those dissatisfied would still have right to try to use the new law if they aren't happy; that Redstone is really a real estate development project.

Director Super: moved to work towards a set of by laws to keep the district in tact. (No second).

Sarah Gardner commented: that since Steve Wilson is not going to be on the board for much longer, that we need to have Steve Wilson and Steve Beevers work on an MOU and that district agree to whatever they agree upon. (No second).

Jim Super commented: that he was not willing to give up the District's rights to

challenge the unconstitutionality of the new law.

Jim Super commented: that he was willing to work on a set of By laws with protections and if adequate protections were in place, then he believes that one acre per vote could be included in by laws.

Mr. Wilson commented: that he would not agree with any motion that gives up the District's rights to litigate.

Sheila White: that a lot a people are upset with the present situation; that the so-called "costs of future litigation" are in fact not likely to be as high as the numbers being suggested by some; that the tree cutting expenses were over \$100,000.

Steve Beevers: that he believes that the tree cutting only cost around \$40,000; that with respect to Mr. White (who he acknowledged is an attorney), that attorneys are in the business of law, but that he (Mr. Beevers) never has had an attorney yet who has provided an accurate budget to him; that the current budget was \$8,000 budgeted for attorneys fees, but the District has already spent some \$20,000; that Steve Wilson has told him that Attorney Waldera has estimated an additional \$20,000 to \$25,000 would be needed to litigate; that Mr. Beevers considers that estimate as way too low; that legal costs will be much more; that litigation will spawn collateral litigation; that he will not pay his assessment if there is litigation; that litigation would be lunacy; that he believed that that the petitioners would have to re-file their petition for partition by today in order to have an election (for the board of directors for the new district) in February; but that they have held off, to demonstrate good faith.

Steve Beevers commented: that the Board of Control does not set policy; and that the Board of Control does not make assessments.

Sheila White: that she sees Mr. Beever's as the only new person in the picture; that all the others are essentially the same people who have been responsible for the illegal assessments and improper conduct in the past.

Mr. Wilson commented: that from just a dollars and cents standpoint, the dollars charged in the last five years for five acre parcels prior to this year's assessments were around three times what they should have been; that he believes that it has



not been worth his time and effort to save a couple hundred dollars a year.

Sheila White: that she would like to know what it is that Mr. Beevers or the petitioners believe that we have done that is unfair.

Beevers commented: that his bill went up for water I didn't get.

Jim Super commented: that the District has scant records to work off of; that it would be best is to keep district as one; that if a MOU or By laws could be created to protect all members, then the voting system could possibly go to acreage weighted voting.

Mr. Beevers: that he would like to see a list of the issues for which protection needs to be created; he asks how long it would take to put such a list together.

Jim Super commented: that he would ask Mr. Beevers to do the same thing.

Mr. Beevers said he would do so.

Sheila White commented: that she wondered if Mr. Beevers really understood why his bill was so low years ago?

Mr. Beevers commented: that, yes, he knows why.

Mr. Beevers commented further: that the 2009 budget was \$69,000.

Mr. Beevers commented: that for him, the deal breaker is about one vote per acre.

Mr. Frugard commented: that he wondered why Mr. Beevers doesn't trust the current board or the electors.

Mr. Beevers commented: that he owns the majority of Redstone.

Sheila White commented: that she would like to know if it was done right this year.

Mr. Wilson commented: Yes, this year the assessments were done according to the

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statute, but in the past they had a dual rate structure created by Pepin Corzo<sup>S</sup> Harris and Mr. Bashaw which dual rate structure was not a legal structure.

Sheila White commented: that she would like to hear clearly if this last years' billing was done correctly.

Directors Wilson and Super jointly commented: that yes, it was done correctly this year.

Director Super commented: that this year's assessments were based on the data that we had available; that he recognizes that an issue exists as to very junior rights (e.g., 1901 and 1902) and he is trying to tweak the rate structure this year to make appropriate adjustments for those junior rights.

Mr. Wilson commented; that he wants to see if a MOU and a set of By Laws be worked on at same time.

Director Gardner: made a motion to continue working on an MOU, .... (No second).

Director Gardner: that she would rather have an MOU in place than not in place.

Director Wilson: that he would like to work towards an MOU.

Beevers commented further: that he suggests two parallel efforts, one, to move forward on a MOU and in parallel with that effort, also move forward at same time on a set of by laws and perhaps take a straw man poll so as to determine if acre-weighted voting would fly and if it doesn't fly, then as for himself, by-laws won't matter.

Director Wilson moved: that he we should agree to efforts on a two parallel track, one an MOU track and one, a By laws track/ if by laws can... (incomplete thought).

Mr. White inquired: that it was hard to follow what is being proposed; that if it is the sense of the directors to authorize a negotiation on parallel concepts, and if so, he believes that the board should give a negotiating team authority and

instructions to proceed on such parallel tracks; if the sense is something more or other than that, then whatever else is being considered is not clear to him.

Mr. Wilson commented; that as he understands it, the idea is no more than that, but with the additional concept of "time being of the essence".

Mr. White suggested possible language for a proposed resolution.

Wilson suggested a 10 day period of time, or perhaps no time limit.

Director Gardner suggested the negotiating team report to the directors upon completion of their work.

Director Super noted that the board would still have to meet to consider whatever proposals may come about from the negotiations.

Mr. Beevers commented: that he wanted a dead-line and suggested 10 days; that the team be given until October 14.

Director Gardner, so moved. (No Second).

Jan Super: that she wanted to know who the negotiating team for the District would be.

Mr. Wilson announced that: the negotiating team for the District consists of Andy Waldera, the district's attorney, Steve Wilson and Jim Super; that Jim Super is meeting with Steve Beevers tomorrow.

After extensive discussion between the directors and with input from Mr. Beevers, on motion duly made by Director Gardner and seconded by Director Super, and unanimously approved by all three directors:

#### **IT IS RESOLVED AS FOLLOWS:**

That the negotiating team for District 45, to consist of Directors Wilson and Super with the assistance of counsel for the district, Andy Waldera, is authorized and directed, to negotiate concurrently along parallel lines for (1) a possible

Memorandum of Understanding and (2) and a possible set of By Laws and report back to the Board as to the status of such dual track negotiations by October 14, 2013.

## **BUDGET and ASSESSMENT MATTERS FOR 2014 WATER YEAR**

Wilson: Submitted a proposed budget of \$145,000; that the proposal has been created with input from Steve Beevers and the other Directors; that copies were made available and were passed out.

The Directors, with additional comments from Mr. Beevers, then discussed possible revisions to the proposed budget; the discussions included comments by Director Gardner calling for the elimination of the \$500 budgeted for the Gannett parcel and cuts to the proposed training expenses and cuts to the proposed audit expense.

Director Wilson commented that we have not done audits in the past, but that he understands that an audit is required and that the \$1,500 in the budget is based on a quote he has received from someone last year who does audits irrigation district books.

Director Gardner then suggested that the \$6,000 emergency fund line item be reduced.

Director Gardner and Wilson commented that they discussed with Mr. Beevers the need for more money for ditch works maintenance.

Mr. Beevers commented: that he suggested that Kelly Shannon propose specific needs and costs for long term ditch works maintenance matters and if the amounts budgeted are not used, then the board should allow those dollars to flow to the "float".

Kelly Shanon made the following suggestions: cutting spraying from \$4,000 to \$2,000; cutting Contractor expenses of \$6,000 to \$4,000.

Director Wilson suggested taking it to \$5,000.

Mr. Beevers commented: that he notes that fuel expense “actual” is below “budget”.

Director Wilson explained that we had four months without anyone on the job or driving, so fuel expense were effected.

Other discussions ensued with input from Mr. Beevers and the directors on specific line item adjustments to the budget, as proposed by Mr. Wilson.

Additional discussions ensued about the months when the ditch rider expense could be adjusted.

Director Wilson announced that with the revisions as discussed so far, that would bring the budget down to approximately \$137,300. And, if there ends up being a \$10,000 surplus, as he projects, being carried over from the current year, then that would drop the need to \$127,292 for the coming year’s assessment.

The Directors, for the Assessment Fund expense, then set that rate at \$35.00 for each of the 121 users, which would amount to \$4,235.00.

Director Gardner: moved to accept the proposed budget, as discussed and as revised, at \$127,292, which includes \$4,235 at \$35 per user for the Assessment Expense Fund. Super seconded and whereupon it was passed unanimously.

Director Super then proposed structural adjustments to the rate structure which had been used this past year; that the rate structure could be re-calculated based on updated data if and when provided by Kevin Lakey, the Watermaster of District 37. All directors agreed to press Mr. Lakey for the data necessary to adjust the rate structure to reflect actual dates of priority cuts by Kevin Lakey for 2012 and 2013, which Super commented would allow adjustments to “use days” for the 1901 and 1902 priority years to zero which would have an impact on users with large rights for those years, including, significantly, Mr. Beevers’ Redstone Partners property.

Director Gardner: Made a motion to accept the current rate structure as used this past year, but with adjustments to be made by Mr. Super to include additional data for the priority cut dates used in 2012 and 2013, if that data is promptly provided

by Kevin Lakey. Director Super seconded the motion whereupon it was unanimously approved.

## **ELECTION MATTERS**

Mr. White announced: that three nominating petitions have been filed: Mr. Frugard, Ms. Gower and Ms. Engelhardt; that all petitions have been qualified and verified by the county clerk and all contain at least the minimum requirement of 12 valid signature; that after verification by the county clerk, Ms. Gower withdrew her petition, leaving two qualified nominee candidates to stand for election set for Nov 5, 2013, Mr. Frugard and Ms. Engelhardt.

Discussion of potential location. Mr. White was authorized to investigate and arrange for a location and to include the location in the notice to be given of the election.

## **NEW BUSINESS**

Mr. Shannon was instructed to work up a set of proposed project descriptions for ditch work improvements and maintenance and a budget for each.

As to the tabled Petition to Modify the district previously submitted by Mr. Goettsch, which had been tabled, Director Gardner indicated she did not want to pursue it any further.

Whereupon, motion made by Director Super to bring the matter off the table and to reject the petition. Mr. Super began to give two reasons... whereupon, director Wilson commented that "reasons" were not necessary.

The motion was Seconded by Director Gardner, whereupon it was unanimously passed and therefore the Petition to Modify the district is rejected by the Board.

## **PUBLIC COMMENT**

Sheila White commented: that she wished to inquire about the authority of a director who has signed the Petition for Partition in the past to continue to vote on related matters.

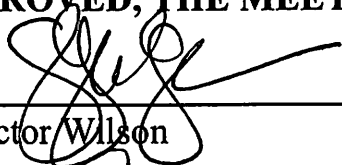
Director Wilson commented that he has been advised by counsel that Sarah Gardner has voting rights at the present time because the old petition has been pulled and there is no current petition pending, but he noted that situation could change if a new petition for partition were to be filed.

Jim Super commented that he believes Mr. Goettsch's petition to modify the district was defective because it did not describe the lands to be excluded, only the names of certain owners.

### **NEXT MEETING**

The Board then set the next regular meeting for Tuesday, November 12, 2013, because November 11, 2013 is Veterans Day.

**MOTION TO ADJOURN, MADE, SECONDED AND UNANIMOUSLY APPROVED, THE MEETING WAS ADJOURNED AT 7:40 P.M.**

  
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Director Wilson  
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Director Super  
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Director Gardner