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APPROVED  
9/5/2014

**Minutes of Special Meeting of the Board of Directors  
of the Wood River Valley Irrigation District # 45  
May 31, 2014**

The Special Meeting of the Board of Directors of the Wood River Valley Irrigation District # 45 was **called to order** by Director Super at 5:00 p.m. on May 31, 2014 at the office of the district located at Unit 4B, 1411 S. Main Street, Bellevue, Idaho.

**QUORUM**

Director Super assumed the chair and declared that a *quorum* was present, consisting of Directors, Super, Gardner and Frugard.

Director Super announced that this Special Meeting has been called for the sole purpose of evaluating the recently filed petition for partition and the district's possible responses thereto.

Director Super announced that the Board of Commissioners of the County will be formally presented with the Petition for Partition at the meeting of the commissioners on Tuesday, June 17, 2014.

Director Super announced the names of each of the signatories on the Petition for Partition (hereafter, "PFP") and then described his understanding of the nature of the PFP and part of the history of his efforts and Mr. Wilson's efforts to negotiate with Mr. Beevers, and Director Super indicated he knew of no response as yet from Attorney Arkoosh to the Board's proposal to mediate the disputes.

Director Super invited the other directors to comment before opening the meeting to public comment.

Director Frugard inquired about whether the signature of an home owners association officer would be sufficient, when the landowners have not signed the petition and whether that issue had been addressed by counsel. Director Super indicated the issue had been addressed by counsel in the past and that the law was clear that the petition needed to be signed by landowners.

Director Gardner commented the John Stevenson has been out of country for a while and that may be why there has been no response from Attorney Arkoosh; that she will contact Mr. Stevenson now that he is back and try to get some more information by the next meeting of June 9 about the prospects for a mediation.

### **PUBLIC COMMENT TIME**

Director Super announced that the board invited public comment.

Comments offered included the following;

Mr. White, the District's Secretary and Treasurer observed and commented that unless additional funds are received – primarily from the large landowners who have signed the petition and who in the past have boycotted paying their first installment timely – that the district will not have sufficient funds on hand to service the current burn rate of \$8,000 a month to the projected end of the delivery season in September; that the second installment becomes delinquent if not paid by June 20, which is three days after the county is set to act on setting a date for a hearing on the petition which by statute will be not less than four nor more than eight weeks from the presentation date of June 17; that we are in the middle of a water season and that the prospect of a partition of the district under the petition for partition, if approved by the county for a partition of the district during a delivery season, would grossly and unjustly interfere with the ability of the district to perform its obligation to provide a system for the delivery of the water rights of our members thru the end of the delivery season; that there is no justification whatsoever for the petitioner's timing of their petition during the middle of a delivery season other than to inflict maximum damage to the district and the maximum disruption to the district and its members and that the directors should take all steps possible to protect the district and its members from this gross assault on the existence of the district.

Ralph Lapham commented that, as a district, we should say we don't agree with the petition for partition and that he is circulating a petition on which he has many signatures to present to the board to encourage the board to financially support a challenge to the constitutionality of the law on which the petition for partition rests; that he has many signatures already and he will be gathering many more; that the district needs to do whatever can be done to forestall the petition for partition and prevent the petitioners from destroying the district.

Raymond Goettsch commented that he wanted to know if there was an issue with the numbers of acres claimed by the petitioners (to which, Director Super commented that it could be an issue); that his review of the petition reveals a number of technical flaws and that the district should oppose the petition on all grounds available, including the acreage issue grounds; that if this sort of conduct by the same people (*i.e.*, serial petitions to partition the district) is going to be done, then he wanted the board to know he will be circulating and presenting a

petition to modify the district by narrowing the landowners who are to be excluded under a petition for modify and for the board to call for an election so the matter (of serial petitions to partition) can be brought to an end by a modification of the district (to exclude certain landowners who have signed serial petitions for partition, but to allow alternative ways for excluded lands to receive water thru the district's system); that the alternative method of dealing with the problem is to litigate, and he has no problem with that methodology, although he understands some reluctance on the part of some members because of the costs involved; that a modification process would not be as costly as litigating (the constitutionality of the law) and the modification would be potentially more expeditious because there could be an election on the petition to modify in August or sooner.

Pepin Corso Harris commented that she believes that Attorney Arkoosh and Attorney Walera have been in further discussions about a possible mediation.

Jan Super commented that she would hope that Director Gardner (who has signed both petitions for partition) would act in the interests of all members, not just the petitioners and recognize that a large majority of the members are opposed to the partitioning of the district.

Ralph Lapham commented that Director Gardner should recuse herself from matters related to the petition for partition since she has signed both petitions for partition; that her involvement in the petition for partition process needs to be examined closely by the board.

Judy Grigsby commented that splitting the district is going to make operating the system much more difficult and as far as she is concerned the petition for partition is just a power play; that, if possible, we should mediate the dispute.

Poppy Englehardt commented that in the meetings she has attended she sees such dissension and unhealthy atmosphere, that something has to change, if not the petition for petition, then something else has to be tried.

Raymond Goettsch commented that he observed that Mr. Beevers is not a party to the current petition and that suggest he has changed his mind and is an indirect indication that Mr. Beevers now approves of the way the board has been operating the district.

Mark Gower commented that if the large landowners would cooperate and explain specifically what it is that they want and be good neighbors, rather than acting like overlords, they could work themselves back into a position to be trusted sufficiently to be elected to the board to represent their districts (*sic*, divisions); that he voted against the proposed new 15 mile rule, solely because of what he

considers to be the disgraceful behavior of some of the large landowners over the last 8 to 10 years; that the board should do everything possible to forestall the petition for partition and go to court to challenge the Senate Bill 1156; that he does not want to have to do that; that he would rather see the Stevensons, the Gardners and the Bashaws come back and take up a responsible roll and rightful place in running the district in a responsible manner without abusing the rest of us.

Director Frugard inquired if Mr. Gower would be willing to double his assessment costs for a couple of years (either, or both because of infrastructure improvements or litigation). Mr. Gower responded that if a doubling of costs for a couple years would rid us of the problem (of serial petitions for partition), then he would consent to such an increase for either purpose. Director Frugard commented further that he is 100% in favor of keeping the district together and that it is unfortunate that John Stevenson is not at this meeting nor that John send Gary Beck, his manager, to clearly state John's positions; that it is sad that there is not someone here with a clear list of what the partitioning petitions want done that are not being done; that and the old animosities is, as he sees it, the core problem; that if large landowners want to spend their money to improve the system, then that view ought to be considered.

Mark Gower commented that Director Frugard is mistaken in his assertion that the large landowners have ever indicated they want to spend their own money to improve the system; that in that under the expected board of control, there is no indication that the large landowners will spend their own money to improve the system, rather, by the Petition for Partition and the resulting Board of Control, all the large owners have done is hijack control of the system.

Director Frugard commented that it's a "matter of trust".

Mark Gower commented that "trust" of the large landowners cannot be restored unless and until they come back to the table and act responsibly like neighbors.

Director Frugard commented that he agreed with Mr. Gower on that.

Director Super intervened (at length) ... [tape to be reviewed again in order to summarize comments without use of "transcript" format].

Mark Swenke commented that if there are infrastructure improvements that the large landowners want, then they have to bring them out from behind the curtain and tell the rest of us what it is they want; that improvements paid for by the

district at large should benefit the district as a whole, and if large landowners want to pay for improvements that benefit just them, then tell us what you want to do; that there has been too much of a black curtain pulled over their ideas and the lack of trust factor continues to loom large in his mind.

Director Super intervened again (at length, including comments about “Ed’s drop”) ... [tape to be reviewed again in order to summarize comments without use of “transcript” format].

Bette Gower commented that infra-structure discussion does not address the petition for partition; that she doubts that mediation will occur; that as long as the Senate Bill is not challenged and continues to hang over the head of the district, we will not get to a resolution, so we need to challenge the constitutionality of the Senate Bill; that we need to oppose the matter at the county level and by litigation if we are ever going to bring the dispute to an end.

Director Super asked for further comments about the petition

Ralph Lapham commented that he felt the board has done a very bad job of dealing with the problem; that it’s the board’s responsibility to deal with it and not just come to meetings to hear that the board can’t do anything; its not the members job to protect the district, it’s the board’s job, so the board should get in gear and do something as opposed to continuing to do nothing and let us continue to be pushed around.

Mark Gower commented that on a visual check of the map attached to the latest petition, to his eye the split is about even; that his main opposition to the petition is the make-up of the control board, that some modification to that structure could be considered; that being under the thumb of a control board is what bothers him the most.

Director Super, seeing no hands, closed public comment time.

Director Super indicated he would entertain a motion.

Director Frugard commented at length on his disappointment that a representative of the large landowners is not here to present in a very clear list of what it is they want to see done in the operation of the district or its infra-structure; that if that is not forthcoming, then we should consider taking action, but he believe litigation would be a disaster for the district and he does not see a litigation route that will get us where we want to be; that without a clear statement of what is wanted by the large landowners, then the district’s back is against the wall; that if such a statement (which we have been asking for such a statement for months) is not forthcoming by the next meeting on June 9, 2014, then litigation using district 45 funds is an option and a petition to modify the district is

another option to get some of these things done; [tape to be reviewed again in order to summarize comments without use of "transcript" format].

Director Super suggested that board go into executive session.

On motion made by Director Frugard, seconded by Director Gardner, and unanimously passed, the board went into executive session, at which time the room was cleared.

### **EXECUTIVE SESSION**

After extensive discussion in Executive Session attended by Directors Super, Gardner and Frugard and the Secretary/Treasurer, Mr. White and the district's counsel, Andy Waldera, participating by speaker phone, the board emerged from Executive Session and the public was invited to return to the meeting room to proceed with the open public meeting.

### **MOTION RESPECTING THE RECENTLY FILED PETITION FOR PARTITION AND THE DISTRICT'S POSSIBLE RESPONSES THERETO**

On motion by Director Frugard, seconded by Director Super, the board passed the following six part resolution, *subject to the condition that work by Attorney Waldera (and related billing for time) on part (4) of the resolution not commence prior to June 4, 2014* with Directors Super and Frugard voting in favor and Director Gardner voting against:

- (1) that the district acknowledges the receipt of a new petition for partition signed by certain landowners in the district and that the board is informed that the petition will be presented to the county commissioners on June 17 and that the board understands that at the time of the presentation on June 17, the county commissioners are expected to set the matter for a full hearing not less than four and not more than eight weeks after June 17;
- (2) that at the present time the board does not agree with nor consent to the petition as presented;
- (3) that at the present time the board does not agree to the partition as proposed;
- (4) that the board authorizes attorney Waldera to prepare a memo -- for delivery prior to the June 9, 2014 next regular meeting of the board to those directors voting in favor of this resolution -- outlining the district's range of possible responses to the petition, the apparent timing issues as to each possible response, and a preliminary estimate of the range of costs likely to be incurred in the pursuit of the identified response;
- (5) that the memo include a report on the response received, if any, to the previously authorized proposal for mediation which our attorney proposed to

Attorney Arkoosh; and

(6) that our attorney send a letter forthwith to Attorney Arkoosh reinforcing the board's continued willingness to mediate the disputes with the petitioners.

### NEXT REGULAR MEETING

The Board then confirmed that the NEXT REGULAR MEETING DATE is set for June 9, 2014 at the office of the district located at **Unit 4B, 1411 S. Main Street, Bellevue, Idaho.**

### ADJOURNMENT

The meeting was adjourned.

  
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Director Super

  
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Director Gardner

  
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Director Frugard