

**MINUTES OF THE BOARD OF DIRECTORS OF THE WOOD RIVER VALLEY
IRRIGATION DISTRICT #5**

DECEMBER 8, 2015

1. CALL TO ORDER: Director Jim Super called the meeting to order at 6:32 PM, December 8, 2015, at the meeting place, 24 Gannett Road, Bellevue, ID.

2. ROLL CALL TO ESTABLISH QUORUM: All the directors, Super, White and Sawrey were present.

3. READING AND CORRECTION OF MINUTES FOR APPROVAL – 10/13, 10/22, & 11/10/15: Minutes for 10/13 & 10/22/15 were approved. Minutes for 11/10/15, were not ready for approval.

4. PUBLIC COMMENT: There was no public comment.

5. BOARD OF CORRECTIONS: The annual Board of Corrections was convened by director Jim Super. He explained the Idaho Code requiring such a meeting: Pursuant to Idaho Code section 43-703, the Board of Directors, pursuant to statute, is constituted as a Board of Correction and, notice having been duly published in the Idaho Mountain Express, will meet as a Board of Corrections to review, upon the request of any interested person, and correct, if necessary, the assessments heretofore levied under section 43-701.

Mike Lovas, Cove Ranch, announced that he was there to address the Board of Corrections. Director White asked if there was any one else there to address the board - there was none. Mr. Lovas distributed a prepared presentation with his concerns and questions (**see attached**). Dir. Sawrey read the findings/opinion from the District Attorney, Andy Waldera, supporting our formulation of the assessment. There was a lengthy discussion amongst Mr. Lovas and the Board of Corrections. Upon conclusion of Mr. Lovas' presentation, Director Super stated that we (District #45 Board of directors) have done due diligence. The assessment model is fair. Mr. Super concurs with Director White and Sawrey about not willing to change the model. Mr. Super is willing to work with Mr. Lovas regarding revising the model next year. Director Super stands behind his Board and this model. Mr. Super called for a motion to deny Mr. Lovas' request for corrections. Director White expressed great appreciation for Mr. Lovas' concern and presentation. Director Sawrey joined in the motion to deny the correction request, and Director White seconded. Motion passed unanimously to deny the request for corrections from Mr. Lovas, Cove Ranch. Subsequent to the meeting, Dir. Sawrey sent a letter to Mr. Lovas summarizing the above. (**See attached letter to Mr. Lovas from Dir. Sawrey, summarizing his request for corrections**).

6. OLD BUSINESS:

Jolyon Sawrey:

a. Lead discussion about new meeting place: Dir. White feels that a move is premature at this time to any of the locations (arena, Cove Ranch, old meeting suite). He likes the "rent free" situation we have at the current bank office location. The matter will be evaluated further.

b. Update on WRVID#45 General Info Packet: It has been completed and should be ready to up-load to the web-site.

c. BOC proactive management plan discussions with Cade and Justin: This is in progress, with more to discuss and bring to the D45 Board.

7. REPORTS

D-45 Designated Representatives to the Board of Control Status Report:

Cade Seibold, BOC Water Master, attended to make a report and request. John Stevenson has a truck for sale, 2008 F150. It has good gas, and ow miles. It is valued at \$11,000, but Mr. Stevenson will sell it to BOC for \$8,500. The old truck is done. Cade has been driving the Stevenson truck. Dir. White asked Cade to get a written letter from Mr. Stevenson to use the truck (for the record). **Mrs. Super:** We and TID don't have the money yet. Next BOC meeting is 1/18/16. Let's wait until then. Question to Cade: Has Meyers done any debris removal? Has any money been set aside to do this? Cade needs to look at the budget.

Dir. Sawrey: Walker's Property Visit: Re: trees. There is no money budgeted. The plan is for the BOC staff to deal with large leaning and dead trees. Long term plan will deal with saplings.

Dir. Sawrey suggested that we get a project report form Justin/Cade in time for D45 to evaluate.

Dir. White will look towards Mrs. Super and Dir. Sawrey to manage what has been budgeted to not over spend.

Mrs. Super: Presented the BOC budget vs. actual. She will make monthly report to D45. **Dir. White** is concerned about the financial process with the BOC. He feels it has not been well thought out and documented. He is not willing to pre-fund anything without proper documentation from BOC. However, he is concerned about funding Cade's wages. Mrs. Super and Mrs. Spinelli estimated the wages for the upcoming month. Dir. White motioned to approve an expenditure for \$2,000 to cover the wages, and seconded by Dir. Sawrey. Motion passed unanimously.

Secretary Report: Currently working on set of procedures and protocol for meetings.

Treasurer Report: There were only a few account payables due to only a few coming in from BOC, \$14, 000 in from current assessments so far, and most are paying their back penalties and interest.

8. NEW BUSINESS AND TOHER ITEMS THE BOARD DEEMS PERTINENT

Dir. Sawrey: Discuss the creation of a Bylaws for the District – **Dir. Super** stated that a District by-laws are not legally binding. He recommended that we create a Standard Operating Procedures document instead. Dir. Sawrey said he would research. **Dir. White:** Previously D45 tried to create such a document for over a year. Then it was side-tracked by the district partition. He mentioned that the State Statutes control our actions. He started with an S.O.P. by creating job descriptions and details as Secretary/Treasurer. **Mr. Lovas** would like to see a document that described how we do business: assessments, due dates, changing processes, voting, etc. **Mr. Super** repeated that we are driven by Idaho Codes.

Dir. White: He requested to defer the following items until next meetings:

- a. Discussion of legislative committee opportunities regarding IWUA
- b. Discussion of SmartWater grant opportunities
- c. Discussion of opportunities for coordination Galena ground water district.

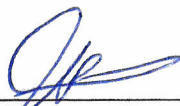
Dir. Super: Consideration of Dion Water Bank Application – Dir. Super said that there should be a 20% hold back. Both districts have to approve, and must go to IDWR. Dir. White **motioned** to approve the application, Dir. Sawrey seconded, and motion passed unanimously.

9. SETTING DATE FOR NEXT MEETING – January 12, 2016

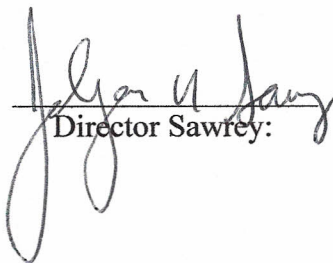
10. NO EXECUTIVE SESSION

11. MEETING ADJOURNED AT APPROXIMATELY 8:10 PM

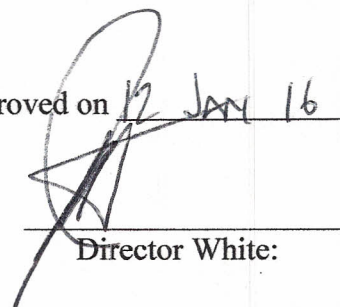
On a motion by Mr. Super, these minutes are unanimously approved on 12 Jan 16.



Director Super:



Director Sawrey:



Director White:

Wood River Valley Irrigation District 45



Board of Corrections Appeal – 8 December 2015

Michael Lovas, Cove Ranch, The Lovas Trust

The Lovas Trust contests the 2016 assessment by the Wood River Valley Irrigation District 45.

Summary:

- Assessment includes charge of \$30,565.08 for water not delivered in the D45 canal to Cove Ranch and for which it received no beneficial use
- Issue with all charges being considered Operations and Maintenance and no charges associated with administration per Idaho statute
- Budget items not justified based on the charter of the district

Contact data: mjlovas@gmail.com; 925-577-0293 cell

1902 Water Right Not Delivered

- 1 Cove has a 1902 water right of 68 cfs, 3400 inches. It has been assessed \$30,565.08 for this water. The total amount of 1901 and Junior Rights in the district is 3585 inches.
- 2 Through the adjudication process Cove has been limited to 28.7 CFS (1435 inches) at headgate. Senior rights to our 1902 rights allow 30.04 CFS (1505 inches). Meaning 1902 water will not get delivered to Cove. Per statute you can only charge for water for which there is beneficial use.
- 3 The district should allocate costs for 1901 and JR rights based on delivery of 185 inches and assess accordingly
- 4 Cove Ranch has delivery records/head-gate measurements for 2015 season documenting water volume consistent with the above.

Right 37-0483B notes

- The 68 CFS/3400 inch surface water right is 37-0483B owned by The Lovas Trust. Notes below are attached to **all** the water rights owned by Cove/The Lovas Trust. Note 7 limits the water that can be delivered to the head-gate for Cove.
- Notes below are taken from IDWR water rights decree, not all notes shown...
- 6. X27 This right is limited to the irrigation of 1079.0 acres within the place of use described above in a single irrigation season.
- 7. Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463, and 37-22155 shall not exceed a total instantaneous rate of 28.7 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1,435.1 acres).
- 8. Total volume of water delivered to the field from this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463, and 37-22155 shall not exceed 5,022.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1,435.1 acres).

Summary of Cove Water Rights

Cove Water Summary

Cove Ranch Water Volumes

POU 1,435.1 acres

Surface Water

		CFS	Cum CFS	Miner's Inches	Cum Miner Inches	Cum M Inch/AC
37-481B	8/1/1882	13.670	13.670	683.5	684	0.48
37-482G	8/1/1884	10.870	24.540	543.5	1,227	0.85
37-665K	10/15/1884	2.060	26.600	103	1,330	0.93
37-666J	6/12/1886	1.100	27.700	55	1,385	0.97
37-667N	6/15/1891	2.340	30.040	117	1,502	1.05
37-483B	8/1/02	68.000	98.040	3400	4,902	3.42
37-22155	4/1/22	1.860	99.900	93	4,995	3.48
Total combined diversion		99.90			4,995	3.48 per acre
Total combined diversion limit		99.04				

Ground Water

		CFS	AFA	Cum AFA	Cum AFA/ Ac
37-2675A	11/13/59	7.960	1,396.500	1,396.500	0.9731029
37-2638	8/1/60	4.010	1,498.000	2,894.500	2.0169326
37-2700	8/20/64	9.880	1,482.000	4,376.500	3.0496132
37-21463	4/1/84	2.950	679.000	5,055.500	3.5227510
Total combined diversion		24.80		5,055.500	3.52 per acre
Total combined diversion limit		21.85			

Total combined delivery at field headgate for surface and diversion at wellhead for ground

28.7
cfs 1,435.1
0.020 cfs/acre

Admin vs. O&M costs

Idaho Statute 43-701, extraction from paragraph 4

...The Board of Directors are authorized to apportion the total amount of assessment expense fund against the several tracts of land as shown on the assessment book, so that each tract shall pay its proportionate share of the cost of making assessments and collections thereof. The amount of said assessment designated operation and maintenance fund shall be spread upon all the lands in the district and shall be proportionate to the benefits received by such lands growing out of the maintenance and operation of the said works of said district....

The District 45 budget distributed to members for 2016 shows what appear to be all administrative costs that benefit all members of the district equally: attorney fees, rental, secretary costs, insurance, treasurer costs, postage, office expenses. These costs benefit all district members equally and should be allocated across all the members – in total 121. If the current budget was so allocated, the fee for each member for the administrative costs would be \$569.67 (\$68,930/121). ^{7.104}

Question: the assessment docs indicate 121 members of the district but the decree book only shows 104 users in the list. Are there 17 district members that pay nothing at all? Other districts mandate a minimum charge for members with little or no water rights. What is District 45 policy?

The BOC costs are more properly the O&M costs for district to maintain and manage the water delivery and should be allocated by usage per the current spread sheet process.

Specific Budget Line Items

Two budget line items need justification:

- Attorney Fees of \$30,000 for 2016. I believe the justification was water call issues associated with ground water. Ground water is not the purview of this district, only surface water. There are two ground water districts in place, the SVGWD assess members for legal costs associated with ground water calls and users should not have to pay twice for the same service. The board needs to make it clear why this amount of budget is needed for legal expenses. It appears to me that having a \$5K budget for legal expenses is more than adequate unless there is some major legal issue affecting surface water delivery by D45 that I am not aware of.
- Rent for office of \$12,000. The board has rent free space now. I have offered rent free space in the future should the current space no longer be available. This item could be zeroed out.
- 62% of the budget for D45 is going to administrative costs; 38% is associated with canal maintenance and water delivery. I would hope the goal of the board is to minimize admin expenses in favor of making expenditures that support improved water delivery and upkeep of the canal infra-structure. The whole purpose of the irrigation district is to support water delivery in a timely and efficient manner to the benefit of all users in the district.

11 December, 2015

Michael Lovas
Cove Ranch
Blaine County, Idaho

RE: 08 December, 2015 Board of Corrections Meeting- Michael Lovas 2016 Assessment Topics Summary

Michael,

As a director of your irrigation district and as your division representative, I write to summarize my views on the following topics you raised and the actions taken at the meeting of the Board of Corrections (BOC) for District # 45 on December 8th, 2015 in connection with your application for an adjustment to the 2016 Water Year Assessment for the Cove Ranch.

TOPICS

1. Cove's 1902 water rights: In your presentation, you point out that your decree relating to your 1902 rights has a "*combined use limitation*" to be determined *at your field head-gate*. The assessment model that this District currently has elected to use is based on assessing each property owner with water rights a proportionate amount of the annual budget for the District based on their respective decreed rights. The decreed rights which the District uses are the rights as determined and issued in 2010 in the course of the Snake River Adjudication process and on file with the Idaho Department of Water Resources. The decreed rights, used by the District, are expressed by a combination of two concepts: first, the *maximum* "amount" of water which is allowed to be taken from the Wood River *at the main head-gates in Bellevue* to satisfy the particular right, and a "priority year", which relates to a period of time when the particular right is allowed into the system until it is subject to being restricted due to a more senior "call" or "cut".

At the meeting, I read from a memo provided to the Board by the District's attorney. I provide the following language from that memo for your further consideration and understanding.

"Scope and Procedure of the Board of Correction

The D45 BOD is sitting as a Board of Correction tonight as required under 43-703. An irrigation district board of correction is analogous to a county Board of Equalization. See, e.g., Brown v. Shupe, 40 Idaho 252 (1924). Some key points as I see them under the statute:

1. *There is nothing requiring you to make a decision tonight; rather, if a correction is to be made, it must be made within 5 days of the close of the session.*

2. *Whether to make "corrections" is within the discretion of the BOD. The statute does not require "corrections."*
3. *Changes or corrections, if deemed necessary, are deemed necessary because something in the assessment being reviewed does not "conform to the facts" underpinning the challenged assessment. So, what are the "facts" that D45 fails to consider or account for, and does the district have a body of "facts" under which it can justifiably change its formula?"*

...

"Now to address the crux of Cove's complaint: the failure to consider the combined use limitation contained in its water rights . . ."

"Water rights are measured at their diversion from the natural source (in this case the Big Wood River), not their place of use. See, e.g., 42-110; see also, Zingiber Inv., LLC v. Hagerman Highway Dist., 150 Idaho 675 (2011). Therefore, Cove Ranch's diversion entitlement into the D45/TID canal system is 99.9 cfs, not just the 28.7 cfs it is limited to at its field headgates. Consequently, Cove's objection under the combined use limitation it agreed to in the adjudication is not a basis for Water District 37 administration of diversions from the river itself."

...

READ OUTLOUD AT THE BOARD OF CORRECTOINS MEETING (noted in green below)

"In the case of D45, its assessment model seemingly does the best it can to treat everyone equally. The assessment model is predicated upon adjudicated water rights entitlement out of the river regardless of what water rights use restrictions might (or might not) be present at the place of use. This is consistent with Idaho Code Section 42-110, which administers/measures water rights at the point of diversion from the natural source (and Idaho Code Title 42, Chapter 6 that sets up water district administration accordingly). The D45 model also attempts to credit people for availability in a typical season (over an available period of record) through its priority date cuts analysis. Again, this credit is applied equally against all water right holding patrons as a simple function of whether they have more senior or more junior rights. If one has more junior rights, their burden on the system is comparatively less because of the shorter season of use available based on junior priority. Conversely, those who are lucky enough to have more senior portfolios pay more because they enjoy a longer season of use (and, therefore, longer use of/burden on the district's ditch system)."

...

"[I]n the context of decisions of an irrigation district Board of Correction, those decisions are deemed valid and conclusive absent proof of fraud or intentional, systematic discrimination. See, e.g., Lundy v. Pioneer Irr. Dist., 52 Idaho 683 (1933). It seems to me that the District's model treats everyone the same by looking at entitlement and priority at the river—there is no fraud or intentional, systematic discrimination against anyone. And, considerable effort went into the District's formula, with patron input (for those who cared enough to comment)"

...

"My suggestion re Cove, is to suggest a willingness to review the assessment model going forward prior to the next cycle through the development of ditch loss data and other facts should Cove want to proceed in that manner. But, the field headgate restriction it holds up as a basis for assessment adjustment is a combined use restriction that the district played no role in negotiating in the adjudication, and is a restriction applies at the field headgate, not the river (i.e., it does not otherwise control what Cove could demand for delivery into the ditch system from the WD 37 watermaster, regardless of whether Cove is permitted to then re-divert that quantity onto its land). Translation, I am sensitive to Cove's concern, but do not feel that Cove has brought forward sufficient "facts" justifying tweaking of the assessment model at this late date. The "demand" that Cove could theoretically impose on the system upstream of its property is the full diversion of 99.9 cfs from the river, and that is what the District assesses Cove for (less adjustments for priority date stepping). In this regard, Cove is treated no differently than any other D45

patron.”

Based on the currently used model, and the advice of counsel, the Board found that you are being assessed in the exact same manner and on the exact same basis as every other member, and thus, the Board found no basis to change the assessment. Moreover, and as was expressed by the Board of Directors at the Board of Control meeting on December 8, 2015, we are willing to work with you and investigate if there is another, better assessment model which might be used in the future.

WRVID#45 Finding- No change to the Michael Lovas/Cover Ranch 2016 Assessment amount .

2. “Administration Costs” and the distribution amongst members:

A fundamental problem here, as the Board noted, is a misinterpretation of the language in the statute (see, attached). I have highlighted the key clause in the Statute that addresses this issue. This is the same document that was presented at the BOC meeting. I am also providing below the attorney’s comments. The matter you present is more relating to only a portion of the actual costs associated with the creation of the assessments and their distribution/collection. Historically this has been considered, tried and was not found a cost effective/ efficient practice. This BOD however is willing to reconsider this practice at the upcoming next budget creation cycle as well as further discussing the assessing of dry lot owners.

The BOC meeting is to address an individual’s assessment not a forum to address or participate in the establishing of the budget. The budget creation was addressed over several months during the late summer and the fall, with numerous public meetings and workshops, all properly noticed for which the public/ members could have further voiced their opinions for the BOD consideration. The time to express opinions on the budget were in the course of those meetings. Essentially, once the budget is set, as it has been, we cannot realistically go back and re-debate the issues which were fully discussed in the course of setting the budget.

Excerpt from WRVID#45 Attorney’s Memo:

“I do not see the BOC as being an opportunity to re-open/revisit budget items. Setting the budget is within the discretion of the BOD under 43-304, 43-316, 43-701(4). It is for the BOD, under its good faith and trust obligations to “determine the aggregate amount necessary” to operate and maintain the district. See, e.g., Coburn v. Wilson, 24 Idaho 94 (1913) (noting that the applicable statutes “specially confer[] jurisdiction on the board to act upon its own judgment” when levying assessments; i.e., just because a budget or assessment may prove excessive in any given year does not make the same illegal . . . saved funds go into defraying costs the next budget cycle and so on . . . taxing authorities generally budget/cut long (within reason) so as not to get caught short).

The Application of 43-701 (Including “Assessment Expense Fund” vs. O&M Assessment)

First, I note from tonight's PowerPoint that there is confusion amongst perceived administrative charges and those that are strictly operation and maintenance (i.e., shovel-related on the ditches themselves). Cove Ranch complains that 62% of the district budget is really administrative and not properly O&M-related.

43-701 authorizes two assessment components: (1) the "assessment expense fund"; and (2) the O&M expense. The AEF is strictly related to assessment-related activities only—paper costs, ink costs, postage, man hours devoted to delinquency chasing, notice publication charges, etc. All other expenses incurred by the district are properly considered system O&M (including legal expenses). See, e.g., Nampa & Meridian Irr. Dist. v. Bond, 283 F. 569 (1922) (by analogy under the federal Reclamation Act, the words "operation and maintenance" are broad and include the costs of self-preservation from ordinary and necessary incidents of operation and not merely the maintenance of the physical plant of the ditch system); see also, Idaho Code Section 43-304 (authorizing the BOD to "do any and every lawful act necessary to be done that sufficient water may be furnished" to district landowners).

If the District charges an AEF, that aggregate expense is charged equally against each assessment account so that every patron pays the same proportionate share of the AEF. The O&M expense, on the other hand, is levied on a "benefits received" basis, and is usually equal per acre so those with more acres pay more. It seems to me that Cove is suggesting that the AEF be used in a manner that spreads costs inequitably by diluting somewhat what large landowners pay (i.e., lump as many operating costs as you can into AEF, so that the portion of the budget remaining to be picked up by O&M is smaller). This is not correct, and is an abuse of the AEF (whether intended or not).

WRVID#45 Finding- No change to the Michael Lovas/Cover Ranch 2016 Assessment amount nor modification to the budget.

3. Budget related items- Legal fees, Rent etc.

The BOC meeting is to address an individual's assessment not a forum to address or participate in the establishing, or second guessing the steps taken to establish, the budget. The budget creation topic was addressed over several months during the late summer and fall, with numerous public meetings and workshops, and properly noticed for where the public/ members could have further voiced their opinions for the BOD consideration. As was stated at the meeting, if dollars in a category as approved within the 2016 budget are not used, the BOD at their discretion has numerous ways to benefit the members in how that "carry over" funds may be used: options included lower 2017 assessment values, supplement for an "emergency fund" etc.

The BOC findings on this matter follow the same summary as item #2 above

WRVID#45 Finding- No change to the Michael Lovas/Cover Ranch 2016 Assessment amount nor modification to the budget.

Lastly, I address one other matter. As I/we continued to perform research in all matters that I could think of regarding your current matters as presented, I discovered that your 2015 assessment did not include being assessed for the 1902 water rights. Before addressing what to do about that issue, I wanted to first make sure the water was delivered. I can and did report at the December 8 meeting that I had confirmed with District 37 that over the past 6 years + that the 1902 and junior water were in fact put into the WRVID#45 system. Therefore, I was compelled to find out if we were obligated to

reassess Cove for the 1902 rights it was NOT assessed in the 2015 Water Year Assessment. I have learned that since the assessed amount was paid that no further collection was allowed. I share this to show the degree of which fairness is evaluated. I also present this to show that for comparison purposes your 2015 assessment should have been higher.

I hope that you can see that we are working in every member's best interest, using funds wisely, and provide above and beyond the minimum required statutory opportunities for public/ member participation. I look forward to you continuing attendance at our meetings and your constructive participation going forward.

Sincerely ,

Jolyon H. Sawrey
Director, WRVID45
(208) 720-6315