

5/15/13

**Minutes of Special Meeting of the Board of Directors  
of the Wood River Valley Irrigation District # 45  
August 30, 2013**

The Special Meeting of the Board of Directors of the Wood River Valley Irrigation District # 45, noticed for August 30, 2013, was **called to order** by Director Wilson at 5:00 p.m. on August 30, 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. Director Gardner participated by telephone on speaker. The District's attorney, Andy Waldera, also participated by telephone on speaker.

**REPORTS**

**CHAIRMAN WILSON:** Announced that the purpose of the meeting was to announce whether or not the Petitioners had withdrawn their Petition for Partition, and if not, whether to consider a possible resolution authorizing litigation and other action. Mr. Wilson announced that the Petitioners had not withdrawn their Petition.

Mr. Wilson announced that he has worked with Steve Beevers to try to create a Memorandum of Understanding, which has been created in draft form, which Mr. Wilson will make available at the end of the meeting.

Mr. Wilson invited Mr. Stevenson to commence Public Comment time.

**PUBLIC COMMENTS**

John Stevenson provided comments as follows: he thanked Mr. Wilson and Mr. Beevers for their efforts; that he believed that Boards of Control are around and provide a usable model; that lawyers were not involved in creating the MOU; that positions tend to harden when lawyers are involved; that litigation will be at considerable expense to the District; that the Petitioners see no point in delaying their Petition and that was why they did not withdraw their petition; that there is

still time now for lawyers for both sides to review the MOU; that their legal work should not take months; that he cannot understand what the objection is to splitting the districts; that he thought the petition would be welcomed by the small users because the system needs lots of work; he said the ditches need to be deepened and that most of that work needs to be done in the southern reaches of the system; that it might be easier for the Petitioners to postpone the Petition if the Petitioners knew what the objections were based on; that animosities of old will just get worse if there is litigation; that the Petitioners are adamant on going ahead with their Petition and hearing on September 17, 2013 before the County Commissioners.

Pepin Corso Harris commented as follows; she recited what she understood was Mr. Wilson's comment at the last meeting that it was not a matter of "if" but only "when" the Petitioners will be able to split the district; that the costs to the District for litigation expenses will be significant; that the boards of the old and the new will work better separately; that the reason why the Petitioners need to go forward now has to do with the State Law and the scheduling of elections; she believes that with the next election being November 5, therefore the Petitioners cannot delay their petition.

Ray Goettsch commented as follows; that as to Mr. Stevenson's inquiries as to why many don't want two districts, Mr. Goettsch commented that there is a statute that has existed for a long time that allows a district to be split, but rather than use that statute, the Petitioners went to considerable effort and expense to have a new law created and passed, so, as Mr. Goettsch sees it, therefore they must want something more than just splitting the district into two; the new law provides for a joint board of control with power over both districts; that the new law is based on acreage weighted voting, so Mr. Goettsch concludes and hears echos of when the acreage weighted voting was soundly turned down years ago; Mr. Goettsch concludes that why many object to the Petitioner's Partition petition is that the motives of the Petitioners have more to do with regaining power than with any perceived real need to have separate districts; to provide for separate districts, Mr. Goettsch has prepared, circulated and wishes to present to the Board a petition under the long existing statute to call for an election of the electors to remove the Petitioner's from District # 45 so that the Petitioners for Partition can have what they claim they want, namely, their own district, which under Mr. Goettsch's petition they could have, but without the board of control over both districts,

which is what the new law provides for and which is what so many in District # 45 find so objectionable, given that so many of the Petitioners in support of Partition were on prior boards of the district and were officers and managers for the district and conducted themselves in illegal, and offensive manners.

Mr. Wilson said Mr. Goettsch's petition can be presented, but the board cannot act on it until the matter is brought up before the Board either at a Special Meeting or at a Regular meeting.

Mr White asked if copies of the MOU, which Mr. Wilson indicated he had brought with him, were to be passed out. Mr. Wilson indicated he was not going to pass out copies of the draft MOU until the end of meeting. Mr. Wilson stated that there are parts of the draft MOU that, in his opinion, simply don't work, but he feels it is a start on which to build.

Gary Frugard wanted to know how a special meeting is requested; Mr. Wilson indicated its up to the board to call for a special meeting.

Director Super commented that the draft MOU, as he reads it, has no protections for the smaller users in District 45 and no protections for small owners in even the new district; that the draft MOU is offensive because of the way the new law was created and passed so secretively and because the draft MOU is worse than the new law because under the new law, the Board of Control is created and exercises control in a bottom up fashion with both districts participating, but the draft MOU gives "top down" powers to the Board of Control dictating to District 45 in ways that even the new law does not provide for.

Director Wilson acknowledged, contrary to what Mr. Stevenson said, that the original draft of the MOU was written by the Petitioner's attorney, Tom Arkoosh. Director Wilson also acknowledged that the draft MOU provision about the Board of Control being a quasi public agency is not proper or even legal. Mr. Wilson acknowledged that the draft MOU is no-where near to what it needs to be.

Jan Super commented that not having the MOU to read, leaves members unable to comment intelligently and therefore makes her very uncomfortable about whether the Board has been fully informed by the member's as to their full concerns.

Director Wilson asked for support from members for the board to keep working on a draft MOU with counter-parties from the Petitioners' side.

Jim White, speaking as a member, commented that while he has seen the draft MOU, and although he did not wish to speak as to specific provisions, Mr. White believes that the draft MOU simply reinforced the perception that the Petitioners' motive are not to merely split into two districts, but to gain control of both districts and thus allow the Petitioners to put back in charge the very same people who had been in charge before and who had pushed extra costs onto the backs of the small users in ways that were illegal; that he had raised this issue time and time again and that therefore for the Bigs to claim now that they don't understand why there is such opposition to the petition rings hollow; that the draft MOU is poorly conceived because, from the standpoint of the small users, it merely allows the big users to put the same people who acted illegally in the past back in charge through the prospective Board of Control; he reminded all that at the last meeting it was made clear that if the Petition for Partition was not withdrawn by Tuesday by 5 p.m., the opportunity for meaningful negotiations would be past; that since the Petitioners have not withdrawn their Petition, Mr. White urged a resolution authorizing litigation and other steps to block the Petitioners' efforts and urged a "yes" vote on such a resolution and he urged other members to speak.

Gail Kearns commented she would like to know more about the Petition to spilt the district. Mr. Wilson advised her that Public Comment time was not the time for her to make inquiries or educate herself; that Public Comment time was only for comments.

Bette Gower commented that as to Mr. Steveson's role and the others on the board in the past, as she sees it, for her, it is not an issue of respect, it's a matter of trust; that if the Board of Control takes over with the same people who ran things before, who she does not trust, the same things will happen. She commented that those people did not treat her fairly in the past and she has no reason to believe they will treat her fairly in the future if they regain control; that she wants to see the board pursue litigation.

Judy Grigsby commented that this year and last with a new board and new ditch rider, she felt she was respected; but that the old regime had been very

disrespectful to her and they had made illegal threats against her; that her intake pipe was tipped by Mike Harris so as to prevent her from getting her water; that, simply put, she does not trust the members of the old regime.

Mark Gower commented that the way the new law came about was despicable and deceitful and he wants to see legal action taken, including against the old lawyer; that this new law and Petition are nothing but a circumvention of the May 2009 election; he urged a “yes” vote to pursue litigation against the parties involved.

Greg Bloomfield commented that if mediation cannot be pursued within the current deadlines, then absent the trust which is needed, he favors moving forward with the law suit.

Brett Stevenson commented by also referring to what she claimed were Steve Wilson’s comments about it not being a matter of “if”, but “when” the Partition takes place; that she sees the potential for a resolution through an MOU; that she wants to avoid expense; that the animosity is ridiculous;; and that if the District pursues litigation, everyone will be losers.

Dave Berman commented that he agreed with the majority of speakers who have spoken so far; that the district needs to file suit; that he favors Ray Goettsch’s petition and hopes it would be considered soon by the Board; that the litigation may buy time for Ray Goettsch’s Petition to be voted on by the Board and the members so as to remove the Petitioners for Partition from the district and thus allow a split of the district, but without the Board of Control provided for by the new law.

Sarah Gardner commented that she “ditto’ed” Brett Stevenson; that she didn’t want to see time and expense expended in pursuit of litigation.

Jan Super commented that for the two years, under the old board, she was appalled at the way they ran things; that she does not trust the Petitioners; that the same people who ran the old board would retake power and be as disrespectful to her as they were before; that she was disrespected and even called names by an member of the old board right after a meeting; that she “ditto’ed” Jim White’s comments; that the past board operated illegally in several respects; that to her it’s

a matter of trust and she doesn't trust the members of the old guard who are driving the Petition to Partition; that she urged litigation as a means to a resolution.

Bette Gower commented that she found it more than a little odd that the Petitioners bring up the "cost issue" considering the costs the petitioners spent on getting the new law past and the expense those same people put her to in the past with litigation against her and her husband; that if the Petitioners had a problem, they could have come to the Board, they could have participated in the By-Law committee; they should have been seeking negotiations and still could if they would withdraw their petition.

Jim White asked for another 30 seconds; he commented that he disagreed that the Petitioner for Partition was a "done deal"; he said that there are substantial grounds for challenging the new law on constitutional grounds and other grounds and that there is significant reason to believe that the Petition for Partition is defective in several material respects; that to assume the Petition for Partition will prevail is shortsighted and wrong; that he believes that there is good cause to believe that the Petition will fail for defects and that the law will be held to be unconstitutional.

Jim Super commented that the idea of entering into an MOU which gives away the District's defenses is shortsighted; that the draft MOU lacks a great deal of what needs to be discussed and is very late in the game; Petitioner's were offered multiple opportunities to participate in the by-law process and to negotiate weeks ago, but they chose not to do so; he finds it offensive that the Petitioners are now asking us to trust them; that the draft MOU is going down the wrong road; that the Board asked the Petitioner's to drop the Petition to give time for a fair MOU or contract to evolve, but the Petitioners chose not to do that; so in order to keep the confidence of those who elected him, he favors going forward with litigation.

Gary Frugard asked for information as to what the time frame is; Mr. Wilson informed him the county is set to hear the matter on September 17.

Mr. Wilson reiterated that the way to stop the expenditure of costs is for the Petitioners to withdraw the Petition and thereby create time and space for more

productive negotiations and a better draft MOU; Mr. Wilson addressed Ms. Harris's comment and indicated that the District's representatives had talked to the Secretary of State's office and that he has been told that there is no truth to Ms. Harris's claim that they Petitioner's must proceed with their Petition because of the State's election schedule; that if the Partition were to occur, they could elect their directors without waiting for the next election date of the state and, in any event, there was no reason why the new district, if formed, could not hold its election in February, which is the next state election date after November 5, so the idea that the Petitioners can't withdraw their petition is simply wrong; that there is no reason for Petitioners not to withdraw the Petition and give meaningful time for negotiations; that he and Mr. Beevers had already reached essential agreements on a proposed budget for next year; that Mr. Beevers understands the most recent assessment model, and sees it as proper but has some suggestions for some minor adjustment; that in a sense he believes splitting the districts may not be such a bad thing, but that the draft MOU has a lot of things missing; that without the Petitioners pulling their Petition, they have left no time for any meaningful further discussions; the overwhelming logic here is that there is lack of trust between the two sides; that he was troubled by the initial attitude of the Petitioners that they didn't want to talk and then their "on again" and "off again" attitude from the Petitioners as a whole towards discussions; that he was particularly dismayed that not a single large user who was involved in running the district in the past has ever bothered to acknowledge their errors and never bothered to provide any assurance whatsoever that if they regained control, they would conduct themselves with any different intent than what had been seen from them in the past.

Mr. Wilson then closed Public Comment time.

Director Super made the following motion:

That the District shall:

1. Proceed with a judicial complaint for declaratory relief challenging the constitutionality of the Partition Law (Idaho Code Sections 43-1314 thru 43-1325);
2. Proceed with a judicial complaint seeking injunctive relief against: (1) the Petitioners, freezing them from proceeding forward until the declaratory relief action is decided; and (2)

the County of Blaine and its Board of Commissioners, freezing any proceedings (including any hearing and decision) until the declaratory relief action is decided (with these claims for injunctive relief to be included in the declaratory relief action complaint itself);

3. Proceed with emergency proceedings, including a Complaint for TRO (temporary restraining order) and Preliminary Injunction, and Writ of Prohibition against the County of Blaine and its Board of Commissioners to freeze the County proceedings ASAP; and

4. Proceed with the District's challenge of the Petition for Partition at the County level through participation in the September 17, 2013 hearing and with a written submission to the County pointing out constitutional issues and other perceived petition-based flaws.

Director Wilson seconded the motion and called for the vote.

Director Gardner voted against the motion; Director Super voted in favor of the motion and Director Wilson voted in favor.

Director Wilson announced that the motion had carried and therefore

ON THIS DAY OF AUGUST 30, 2013 it is RESOLVED:

That the District shall:

1. Proceed with a judicial complaint for declaratory relief challenging the constitutionality of the Partition Law (Idaho Code Sections 43-1314 thru 43-1325);

2. Proceed with a judicial complaint seeking injunctive relief against: (1) the Petitioners who have brought a Petition for Partition under said Partition Law, freezing them from proceeding forward until the declaratory relief action is decided; and (2) the County of Blaine and its Board of

Commissioners, freezing any proceedings (including any hearing and decision) until the declaratory relief action is decided (with these claims for injunctive relief to be included in the declaratory relief action complaint itself);

3. Proceed with all necessary emergency proceedings, including a Complaint for TRO (temporary restraining order) and Preliminary Injunction, and Writ of Prohibition against the County of Blaine and its Board of Commissioners to freeze the County proceedings ASAP; and

4. Proceed with the District's challenge of the Petition for Partition at the County level through participation in the September 17, 2013 hearing and with a written submission to the County pointing out constitutional issues and other perceived petition-based flaws.

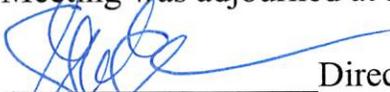
#### **NEXT REGULAR MEETING**

Director Wilson announced that the next regular meeting has been scheduled for September 9 at 5:00 p.m. and that notice and the agenda would be posted as usual.

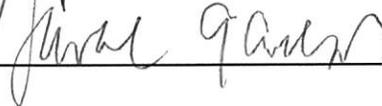
The Directors discussed whether or not to go into executive session and the Directors announced that there was no need to do so.

Whereupon, Director Super moved to adjourn. Director Gardner seconded the motion and the motion unanimously carried.

The Meeting was adjourned at 5:58 pm.

  
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Director Wilson

  
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Director Super

  
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Director Gardner