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Water District 43C-Advisory Board Meeting
March 16, 2002
Minutes

Alvin Carpenter chaired the meeting at Stan Lloyd's request and called the meeting to order at 11:00 am. Those in attendance included:

Advisory Board Members

Paul Ward
Stan Lloyd
Tom Ward
Tom Ottley

Invited Guests

Stephen Freiburger
Norm Young, IDWR

District 43-C Water Rights Holders

See attached roster

Alvin then turned the time over to Stan Lloyd to present the Advisory Board's Report.

Stan started with a recap of the assignment presented to the Board at the Water District 43-C annual water meeting to:

- Evaluate forming an Irrigation District or other organization to develop Cassia Creek's resource potential and to protect the existing facilities and water rights in District 43C.
- Evaluate the organization's utility in addressing existing legal matters.
- Evaluate the organization's utility in protecting water right holders in future legal matters.

He then presented the options considered by the Advisory Board

1. Continuing with a Water District
2. Forming an Irrigation District
3. Forming a Water District
4. Forming another Type organization (non-profit, users association, management district, etc)

The presentation then moved on to the Status of the Gardiner Filing regarding the Bar-M Water.

- a) Read Bud Tracy Memo (attached), which presented finding from discussion with Dave Tuthill, IDWR regarding the adjudication process.
- b) There will be a Special Master, Terry Dolan (SP?) who will basically act as a trial judge hearing both sides of the argument and rendering a decision

The Court

- c) IDWR will try to set up a conference to resolve the matter between the parties
- d) Just need to wait to hear about conference
- e) There are other objections from state and federal agencies

Norm Young Comment-Norm has list of all objections—Matt Gardiner Filling is in there but not respondents are not on his list. Response deadline is April 12, 2002. Individuals need to verify that responses were submitted and anyone else that wants to respond needs to submit prior to the 12th.

The recommendations of the Advisory Board on their assignment were presented as follows:

- *Evaluate forming an Irrigation District or other organization to develop Cassia Creek's resource potential and to protect the existing facilities and water rights in District 43C.*

The Board recommends that the Water District actively pursue forming either an Irrigation District or a Ground Water District within the boundaries of Water District 43C. It is further recommended that this new organization's bylaws:

- Maintain individual water rights
- Provide an on-going management function
- Contain year-round Board with specific powers of authority
- Provide local control of Cassia Creek basin
- Provide ability to improve diversions & works
- Provide an escape clause
- Obtain and maintain records of the defunct Cassia Irrigation & Cassia Reservoir Companies

Before making a final recommendation the Advisory Board will need to find some existing organizations to evaluate and use as a model for use in Water District 43C.

- *Evaluate the organization's utility in addressing existing legal matters.*

Based on information presented by Stephen Freiburger, it was estimated that it could take as long as four to six months to form either an irrigation or ground water district. Therefore, neither of these organizations will be in a position to assist the Water Rights Holders in Water District 43C in immediately addressing existing legal matters.

The Advisory Board recommends that those interested in pursuing this item form a non-profit organization or association—"Water District 43C Legal Defense Fund" was suggested.

- *Evaluate the organization's utility in protecting water right holders in future legal matters.*

The Advisory Board's review concluded that Title 42, Chapter 52 §42-5224 (6) provides for a Ground Water District "to represent district members, with respect to their individual water rights..." and review of Title 43 and discussions with Southwest Irrigation District indicated that Irrigation Districts have similar and possibly broader powers than a Ground Water District.

Before a final conclusion can be reached, the Advisory will need to confirm these conclusions with a Water Attorney and/or IDWR.

Alvin asked what the difference between an Irrigation District and a Groundwater District:

Norm Young presented the answer as Follows:

There are three general types of water organizations in Idaho, including

Management Areas (three levels)

- Critical Ground Water Areas-Like Raft River Valley since 1962
- Groundwater Management
- Moratorium-State of Idaho since 1992 and until end of adjudication

Regulatory Districts (under IDWR Director)

- Water Districts-formed by State (e.g. WD-43C), required in adjudicated basins
- Measurement Districts, example is snake river plain—these are for basins that have not been adjudicated, but need some regulation

Service Districts

- Irrigation Districts-traditionally build facilities and works (i.e. canals and works)
- Groundwater Districts
- Groundwater measurement Districts

Additionally, Norm indicated the regardless of Gardiner claim, anyone you picked up ground through water right expansion (after '63-before '87) need to bring basin into balance or shut down within two years of adjudication—Norm says that's after partials are issued, not entire adjudication process.

Stan provided additional background on boards reasoning for the board's recommendation and read Matt Gardiner's position related to the Irrigation District (see attached letter).

Discussion regarding the background of the Gardiner claim and Bar-M water was pursued for those who didn't know the history of the issue.

Larry Kincaid described water happened to the people in Nevada, where he's from, basically subdivisions started coming in and blocking the irrigation facilities and there were lots of lawsuits to get the facilities re-established. Then an irrigation district was formed to protect the facilities—subdividers and developers were required to get district approvals for projects and districts was able to require easements to protect and maintain access to facilities.

Arden Wickel—how does government buyouts and set asides affect water rights?

Tom Ward—How does Voting work? Concerned about one person-1 vote, instead of shares or inches.

Norm Young—Groundwater District votes cfs of groundwater in district.

Spence Gardiner—What about expenses of full time board?
Condemnation Powers?

Tom Hutchison—said water was cheap compared to other sources and was worth the added expense.

Don Johnson—thought water from 43C as currently provided was expensive because of waste and under-utilization.

Bud Tracy—Are surface and Groundwater going to be combined in organization? What is the geographic scope of organization? What is the Scope compared to the needs?

Norm Young Comments—IDWR is not going to go through special master process, as it is apparent that they won't get any resolution on Gardiner issue. BLM is separate sub-case and will have it's own response period. Even with Irrigation District still need watermaster function for Water District—one does not necessarily replace the other.

Tom Hutchison made motion for Advisory Board to continue to evaluate Irrigation district and address the questions presented at the meeting.

Motion was seconded by Don Johnson.

Passed unanimously, except for Spence Gardiner.

Tom Ottley invited all to attend Advisory Board Meetings

Spence asked if Elba and Malta were going to Cooperate on formation of district. Response was that would be determined as group goes through the formation process.

Don Johnson asked if the District needed legal representation at the special meeting related to the Gardiner claim. Consensus was that water district couldn't represent itself or individual in district—respondents would have to go in together or form association to represent district.

Spence Gardiner asked why a survey wasn't sent to see if there was support for irrigation district—answer was board was tasked to investigate and report on options, so that users from 43C could then make informed decision.

Bill Wickel suggested that written report be distributed prior to future meetings so people had time to review and digest information prior to meeting. Board Agreed.

Tom Ward motion to Adjourn
Bill Wickel Seconded
Unanimous.

CASSIA CREEK 43-C

THIS MEMO IS BEING PREPARED AT THE REQUEST OF STAN LLOYD WHO HAS BEEN WORKING WITH THE ADVISORY COMMITTEE.

THE COMMITTEE HAS BEEN FOCUSED ON BASICALLY TWO ISSUES THE FIRST IS THE OBJECTION AND THE SUBSEQUENT RESPONSES MADE RELATIVE TO THE BAR - M WATER , THE SECOND ISSUE HAS BEEN ENTERTAINING A POTENTIAL ORGANIZATIONAL STRUCTURE FOR FUTURE OPERATIONS.

ISSUE #1— WITH THE OBJECTION HAVING BEEN FILED BY GARDINER AND A NUMBER OF RESPONSES HAVING BEEN FILED BY SEVERAL RIGHT HOLDERS ON CASSIA CREEK , WHAT ARE THE NEXT STEPS AND IS THERE A SPECIFIC TIME LINE THAT MUST BE ADHERED TO?

TO MAKE SURE OF THE EXACT STATUS I CONTACTED MR. DAVE TUTHILL (IDWR) (208)327-7931 BY TELEPHONE MARCH 12, 2002.

HERE ARE MY FINDINGS:

1) WHEN THE OBJECTION WAS FILED BY GARDINER THE CLAIMS WERE TAKEN OUT OF THE MAINSTREAM CASE AND ASSIGNED TO A SUB-CASE WHICH ALSO INCLUDES THE RESPONSES FILED BY THE OTHER WATER RIGHT HOLDERS WHO FILED SUBMISSIONS .

2) NORMALLY , THE DEPARTMENT ATTEMPTS TO MITIGATE SUCH ISSUES BUT IN THIS CASE IT VERY

LIKELY WILL BE ASSIGNED TO A SPECIAL MASTER BY THE JUDGE OF THE SRBA COURT. BASICALLY, DAVE FELT AS THOUGH THE AMOUNT OF EFFORT TO DATE ON THIS ISSUE HAS NOT PRODUCED ANY RESOLVE, THEREFORE, HE FEELS IT WILL FOR ALL PRACTICAL PURPOSES BE ASSIGNED DIRECTLY TO A SPECIAL MASTER.

3) ONCE THE SUB-CASE HAS BEEN ASSIGNED THE SPECIAL MASTER WILL NOTICE ALL PARTIES.

- A) THE ONE OBJECTING
- B) THE ONES RESPONDING
- C) THE DEPARTMENT

THE NOTICE WILL INCLUDE THE SETTING OF A CONFERENCE WHICH WILL BE FOR THE PURPOSE OF ATTEMPTING TO SETTLE THE ISSUE.

4) DAVE, ADVISED THERE IS NOTHING MORE THAT NEEDS TO BE FORMALLY DONE UNTIL YOU RECEIVE NOTICE OF THE CONFERENCE. JUST WAIT TO HEAR.

ISSUE #2

I HAVE CALLED AND ARRANGED WITH NORM YOUNG OF THE (IDWR) TO EITHER BE HERE PERSONALLY OR ASSIGN SOMEONE TO BE AT THE SCHEDULED MEETING OF THE CASSIA CREEK WATER 43-C TO BE HELD ON SATURDAY THE 16TH OF MARCH 2002. HIS PRIMARY PURPOSE WILL BE TO DISCUSS ORGANIZATIONAL ISSUES (FOR

DIFFERENT DISTRICT TYPES)

IN A RELATED ITEM TO ISSUE #1 THERE WERE ALSO OTHER OBJECTIONS FILED WITH IN THE DISTRICT PRIMARILY BY STATE AND FEDERAL AGENCIES . DAVE INDICATED THAT WE MIGHT EXPECT THESE ALONG WITH THE BAR-M ISSUE TO SURFACE LATE THIS SPRING OR EARLY SUMMER .

To: Cassia Creek Water District Advisory Board
From: Matt Gardiner
Date: February 8, 2002
Subject: Information and opinion about forming an Irrigation District

Because I cannot meet with you before the March meeting, I am submitting my thoughts in this memo. I will try to attend the meeting in March. If we need to discuss anything you can call me during the day at 435-674-6080 and in the evenings at 435-673-7210.

Formation of a Cassia Creek Irrigation District

Cassia Creek is a largely untapped resource. Most streams have been better controlled and utilized. The underdevelopment of the area is unique. It is not uncommon for much of the annual flow of the stream to go down the creek before irrigators are prepared to use it. If the water was stored until needed, much more beneficial use could be made of the flow of the stream. Organization of an irrigation district would facilitate the development of the stream. The irrigation district is part of local government and as such would qualify for subsidized loans and may qualify for non-taxable municipal bond status at lower rates, in addition the irrigation district would have the power to obtain necessary property to improve the water system. Many other water districts have successfully built pipelines to pressurize the water from their reservoirs. The previously approved location for the reservoir, near the Conner Creek Store, would be high enough above the majority of the farms to allow for gravity pressurization of the irrigation water. Although building a dam and installing pipe will be extremely expensive, it may not cost any more over 40 years than we will pay to either pump groundwater or pressurize creek water. A major reason many of the farmers in Malta started using sprinklers instead of flood irrigation is that after the water table started dropping significantly, in some locations, it didn't matter how big your stream of water was, it would not reach the end of the field. This situation was most severe where the water table had previously been the best. Jack Pierce was the first to use sprinklers because where he previously had springs, the flood irrigation stream would disappear into the ground before it had traveled very far down the furrow. Many of the farmers in Malta can no longer use flood irrigation even if they wanted to. Therefore, most of the farmers in Malta have to pump water either out of the ground or out of the creek. With electricity rates likely to continue to increase, it may be cheaper over the long run to develop Cassia Creek with a reservoir and pressurized pipe system than it will be to continue as we are doing. Last year it cost over 11,000 dollars to run a 125 hp pump throughout the irrigation season. The pipe system would save all of the transfer loss water as well. Some of our groundwater rights may also be curtailed soon, so our only source of water may be to develop Cassia Creek. The value of our land, if inside of the irrigation district with gravity pressurized water, should increase based upon the value of lands in Malad which are irrigated with gravity

sprinkler systems. In addition, having a reservoir in the area will help develop the tourism industry in our area and may allow some of us or our children some opportunities we do not now enjoy. I think that an Irrigation District makes sense for the irrigators in Malta, but it will only lead to increase costs for the farmers in Elba. The flood irrigation water does not disappear so readily in Elba. Many of the potential benefits of the Irrigation District obviously do not apply to the Elba farmers. Flood irrigation still works well in most, if not all of Elba. Very little water is pumped in Elba. Any significant cost for using the water, which will be assessed to all the members of the Irrigation District if the district undertakes construction projects, would be an immediate loss of income for most of the farmers in Elba. The Elba farmers may well benefit significantly through real estate values if the reservoir was built by the irrigation district, but I doubt if very many Elba landowners would want to pay a pro-rata share of the expense of a reservoir which is downstream from his farm. I have heard of a smaller reservoir being planned in Elba, but I do not believe that a majority of the landowners will reap enough benefit from its construction to warrant the cost, but I do believe that a majority of the landowners in Malta would significantly benefit from and support a reservoir near Conner Creek because they are already paying pumping bills, which could be eliminated by the construction of a reservoir and pipeline. My recommendation is that if a cost/benefit analysis of the costs of constructing such a system looks favorable, then an Irrigation District should be formed for the flat lands below the Conner Creek Store, those in the canyon may well have interest more in line with the water users in Elba. The cost and red tape of creating an Irrigation District is not worth it, unless a reservoir and other improvements are made by the district which will benefit the members of the District. I think that perhaps there should be two Irrigation Districts, if there is some compelling reason, of which I am not aware, for Elba to be part of an Irrigation District. The water situation in Elba is much different from Malta and most likely always will be, and a combination of the two areas into one Irrigation District will only hamper decisions and progress for both areas because of the widely diverse needs and potential benefits to the areas. Every potential member of the Irrigation District should read the statute regulating the formation and operation of Irrigation Districts before a vote is held if the process gets to that point. The statute is available on the IDWR web site and the state of Idaho web site. The far reaching nature of the powers of an irrigation district should be understood by all of the members of the irrigation district before voting whether such a district will be formed. A level of unity and common interests and understanding should exist among the members of the irrigation district for it to be worth forming, as it may represent a major financial investment and a long term commitment of time and effort for its members. Gaining the needed consensus will be impossible if the current water district boundaries are used for the new irrigation district.