

2013 OCT 16 PM 2 54

FILED BY _____
CLERK/DEPUTY

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8 Attorneys for Jocko Valley and Mission Irrigation Districts
9

10 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

11 MISSION IRRIGATION DISTRICT and
12 JOCKO VALLEY IRRIGATION DISTRICT,

13 Plaintiffs,

14 v.

15 LAKE COUNTY,

16 Defendant.

Case No. DN-13-266

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

17 Plaintiffs, Mission and Jocko Valley Irrigation Districts (the "Irrigation Districts"), by
18 and through counsel, Browning, Kaleczyc, Berry & Hoven, P.C., for their Complaint allege as
19 follows:

20 **PARTIES**

- 21 1. Plaintiffs are irrigation districts organized under the laws of the State of Montana and
22 operating in Lake County. Mission Irrigation District operates solely within Lake
23 County. Jocko Valley Irrigation District operates within Lake, Missoula, and Sanders
24 Counties.
- 25 2. Defendant is Lake County, a political subdivision of the State of Montana. The Lake
26 County Election Administrator is in the process of conducting the FJBC's requested
27 mail-in ballot election.

- 1 11. The Resolution further seeks to place additional requirements upon the Irrigation
2 Districts, above and beyond those required by statute, to exercise their right of
3 withdrawal. *Id.*
- 4 12. During the FJBC meeting held on September 5, 2013, the FJBC stated that it intends
5 to use the mail-in ballot referendum for advisory purposes only. *See* Transcript of
6 FJBC Meeting Minutes (September 5, 2013), attached hereto as Exhibit C.
- 7 13. On or about September 9, 2013, the Irrigation Districts voted to exercise their
8 statutory right to withdraw from the FJBC. *See* Letters from Mission Irrigation
9 District and Jocko Valley Irrigation District to FJBC (Sept. 12, 2013), attached
10 collectively hereto as Exhibit D.
- 11 14. On or about September 12, 2013, the Irrigation Districts provided the FJBC with
12 written notice that the Irrigation Districts would be withdrawing from the FJBC in
13 ninety (90) days. *Id.*
- 14 15. On or about September 23, 2013, the Irrigation Districts provided to the County
15 written objections to the proposed referendum vote. *See* Letter from Steve Wade to
16 Lake County (Sept. 23, 2013), attached hereto as Exhibit E.
- 17 16. Despite the Irrigation Districts' objections, the County has indicated it intends to
18 proceed with the referendum vote at the FJBC's request. *See* Letter from Lake
19 County to Steve Wade and John Tietz (Oct. 2, 2013), attached hereto as Exhibit F.
- 20 17. The FJBC and the County have indicated mail-in ballots will be sent to constituents
21 on October 25, 2013 with an election day of November 19. *See* Exh. G.

22 **COUNT I: REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF TO BAR**
23 **THE COUNTY FROM CONDUCTING A MAIL-IN BALLOT REFERENDUM.**

- 24 18. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.
- 25 19. The FJBC's request of the County to conduct the mail-in ballot referendum is outside
26 of the statutory powers of the FJBC, and thus the FJBC is not authorized to make
27 such a request.

1 20. There is no valid request before the County to conduct the mail-in ballot referendum,
2 and thus, the County's actions in calling for the referendum vote are unlawful.

3 21. Pursuant to Montana Code Annotated § 27-8-101, *et. seq.*, the Irrigation Districts are
4 entitled to declaratory judgment holding that the County's actions in calling for the
5 referendum vote are unlawful.

6 22. If the County conducts the mail-in ballot referendum vote, the Irrigation Districts'
7 statutory rights will be divested, and the referendum vote will further result in
8 immediate, great, and irreparable harm to the Irrigation Districts.

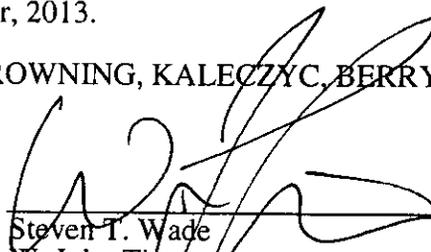
9 23. Pursuant to Montana Code Annotated §§ 27-19-201 and -314, the Irrigation Districts
10 are entitled to injunctive relief precluding the County from conducting a referendum
11 vote.

12 WHEREFORE, Plaintiffs respectfully request the Court enter judgment against the
13 Defendant as follows:

- 14 A. For a declaration that the County is not authorized to conduct a referendum vote that
15 serves to divest the Irrigation Districts of their statutory rights;
- 16 B. For injunctive relief barring the County from conducting the mail-in ballot
17 referendum;
- 18 C. For attorneys' fees and costs; and
- 19 D. For such other and further relief as the Court deems just.

20 DATED this 16th day of October, 2013.

21 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

22
23 By 

24 Steven T. Wade
25 W. John Tietz
26 Daniel J. Auerbach
27 Chad E. Adams

Attorneys for Jocko and Mission Irrigation Districts

1 VERIFICATION

2 STATE OF MONTANA)
3 County of LAKE : ss.

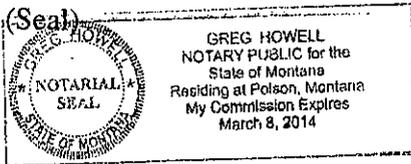
4 Paul Wadsworth _____, being first duly sworn upon his oath, deposes and
5 says:

6 That he is the COMMISSIONER of THE TULSA IRRIGATION DISTRICT, one of the Plaintiffs
7 in the above entitled action, that he has read the foregoing Verified Complaint and knows the
8 contents thereof, and that the matters stated herein are true and correct to the best of his personal
9 knowledge.
10

11 DATED this 16 day of October, 2013.

12 Paul Wadsworth
13
14

15 This instrument was acknowledged before me on the 16TH day of OCT,
16 2013, by PAUL WADSWORTH, authorized agent of TULSA IRRIGATION DISTRICT



Greg Howell
Notary Public for the State of MT
Print Name: GREG HOWELL
Residing at: Polson
My commission expires: 3-8-14

June 14, 2013

Wayne Blevins, Chairman
Flathead Irrigation District
PO Box 639
St. Ignatius, MT 59865

Kerry Doney, Chairman
Jocko Valley Irrigation District
PO Box 639
St. Ignatius, MT 59865

D. Boone Cole, Chairman
Flathead Joint Board of Control
PO Box 639
St. Ignatius, MT 59865

In Re: Mission Irrigation District Withdrawal from Joint Operations

Dear Chairman Blevins, Chairman Doney and Chairman Cole,

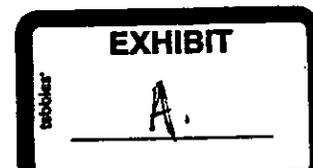
This letter is to inform you that the Mission Irrigation District met on June 14, 2013 and approved a motion pursuant to MCA 85-7-1603 to withdraw from joint operations with the Flathead Irrigation District and the Jocko Valley Irrigation District under the Flathead Joint Board of Control. This withdrawal will be effective as of September 16, 2013. The Mission Irrigation District will not pay any extraordinary costs, expenses, or charges incurred by the Flathead Joint Board of Control after the date of this letter.

Unless otherwise directed by the Mission Irrigation District, the Flathead Joint Board of Control is expected to keep all files of the Mission Irrigation District secured and safe from removal of any information and documents contained in those files. As the date for withdrawal approaches the Mission Irrigation District will contact you regarding the disposition of those files and their removal to another location.

Sincerely,


Jerry Johnson, Chairman


Paul Wadsworth, Secretary



Flathead Joint Board of Control

Resolution 2013-5

Be it resolved by the Flathead Joint Board of Control, that:

Whereas, The FJBC adopted Resolution 2013-3 May 24, 2013 (attached) stating its desire to reach a negotiated resolution of conflicting and competing water rights claims related to the Flathead Project that secures irrigators' property rights in land and water and their rights of participation;

Whereas, The FJBC also stated in Resolution 2013-3 support for many aspects of the current Proposed Water Use Agreement dated January 17, 2013;

Whereas, Since adoption of Resolution 2013-3, the FJBC has conducted a detailed internal and public review process consisting of approximately a dozen meetings; at most of which public comment was taken on this issue to determine which valid concerns it continues to wish to discuss on behalf of irrigators with the Flathead Tribes and the United States, the two other parties to the proposed WUA;

Whereas, That process has resulted in the FJBC voting to request additional discussions on three concerns relating to: 1. the ownership of the irrigation water right, 2. the amount of irrigation water that would be delivered under the WUA, and 3. details regarding the Water Management Board;

Whereas, While the opportunities for divisiveness and disunity among irrigators are evident and some have attempted to exploit them, the outweighing benefits of unity to irrigators of unity are compelling and can be secured by uniting in support of acceptable revisions to the WUA;

Whereas, Some interested parties have worked to divide irrigators by a variety of means, but most obviously by dissolution of the FJBC, without conducting a vote of their irrigators;

Whereas, The FJBC respectfully asks all participants to pause and consider the best, long-term interests of irrigators;

Whereas, The FJBC, respecting the democratic process as well as the fundamental constitutional rights of irrigators to know what their governments are doing and to participate in it, desires to ensure irrigators have an effective voice in their future on this and all related questions;

Resolved, that the question of whether each Irrigation District it is comprised of, the Flathead, Mission, and Jocko Valley Irrigation Districts, should remain a part of the FJBC should be decided by a vote of that district's landowner-constituents and;

Resolved, therefore, to conduct a mail-in ballot referendum conducted in accordance with the law of the State of Montana to decide that question, in the event a majority of a District's commissioners vote to withdraw from the FJBC without approval obtained by a referendum of their landowner-constituents conducted in accordance with Montana law.

Adopted this day September 5, 2013

Approved Daniel Boose, Col.

Attested Wayne E. Blewett

EXHIBIT

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B.

Partial transcript of the September 5, 2013, special meeting of the Flathead Joint Board of Control at the FJBC office in St. Ignatius, Montana.

4:25

Boone Cole: Agenda number two, considering taking action on a Resolution 2013-4, recounting Resolution 2013-3 in support of many aspects of the proposed water use agreement as we did back in May or June. This Board supports many aspects of the proposed water use agreement and additional consideration describing the process that this Board has conducted this summer to determine its direction of the proposed water use agreement, calling for irrigator unity in light of the importance of this issue, and holding a referendum asking irrigators whether they support or oppose their district leaving the Joint Board of Control. And I think I can probably head off or answer a lot of questions—questions that I've received through phone calls. First of all, it is not a binding referendum. We would hope that the districts, and I think it's a reasonable assumption on our part, that at their meetings Monday night, in light of the settlement to rescind their previous decision; and then it's also on the agenda to decide whether the districts are going to withdraw—again, on Monday night. Maybe it's a reasonable assumption that they will indeed do so, and we as a Board would hope that irrigator input in the form of a referendum will take place on a decision this monumental... however, if they choose not to, I think we as a Board...and, you know, it's not legally binding, it's not required by law—we as a Board want to know where the irrigators of our respective districts are, and where the majority lies, and how they believe, and I believe that, though not legally binding, I think, and certainly hope, that both sides would want to represent the majority of their irrigators, and this is just a gauge for us. It's a great, it's a risk for us, granted, I mean we believe irrigators, the majority, agree with us, but it's also a risk if they don't, so, you know, and...but once the referendum is done, everybody will know.

11
tabbles
EXHIBIT
C.

HAND DELIVERED TO THE OFFICE OF THE FLATHEAD JOINT BOARD OF CONTROL
WITH RECEIPT REQUESTED, SEPTEMBER 12, 2013

September 12, 2013

Wayne Blevins, Chairman
Flathead Irrigation District
PO Box 639
St. Ignatius, MT 59865

Kerry Doney, Chairman
Jocko Valley Irrigation District
PO Box 639
St. Ignatius, MT 59865

D. Boone Cole, Chairman
Flathead Joint Board of Control
PO Box 639
St. Ignatius, MT 59865

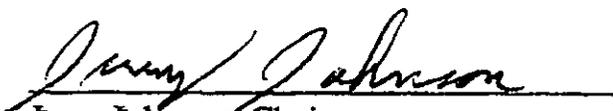
In Re: Mission Irrigation District Withdrawal from Joint Operations

Dear Chairman Blevins, Chairman Doney, and Chairman Cole:

This letter is to inform you that the Mission Irrigation District met on September 9, 2013, and approved a motion pursuant to MCA 85-7-1603 to withdraw from joint operations with the Flathead Irrigation District and the Jocko Valley Irrigation District under the Flathead Joint Board of Control. This withdrawal will be effective as of December 12, 2013. The Mission Irrigation District will not pay any extraordinary costs, expenses, or charges incurred by the Flathead Joint Board of Control after the date of this letter. This is also a reminder that the Mission Irrigation District is self-governing and autonomous, and the Flathead Joint Board of Control cannot interfere with the Mission Irrigation District's business or self-governance.

Unless otherwise directed by the Mission Irrigation District, the Flathead Joint Board of Control is expected to keep all files of the Mission Irrigation District secured and safe from removal of any information and documents contained in those files. As the date for withdrawal approaches, the Mission Irrigation District will contact you regarding the disposition of those files and their removal to another location.

Sincerely,


Jerry Johnson, Chairman

9-12-13
Date



9/12/13

EXHIBIT
D.

**Receipt of Letter of Notification
September 12, 2013**

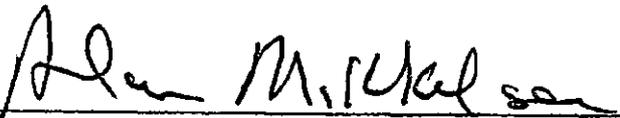
I, Johanna Clark, office manager for the Flathead Joint Board of Control of the Flathead, Mission, and Jocko Valley Irrigation Districts, hereby acknowledge receipt of a letter from the Jocko Valley Irrigation District to the Mission Irrigation District, the Flathead Irrigation District, and the Flathead Joint Board of Control issuing 90-day notice of withdrawal from joint operations with the Mission Irrigation District, the Flathead Irrigation District, and the Flathead Joint Board of Control



Johanna Clark, Office Manager

9-12-13

Date



Delivered and Attested

9-12-13

Date

HAND DELIVERED TO THE OFFICE OF THE FLATHEAD JOINT BOARD OF CONTROL
WITH RECEIPT REQUESTED, SEPTEMBER 12, 2013

September 12, 2013

Wayne Blevins, Chairman
Flathead Irrigation District
PO Box 639
St. Ignatius, MT 59865

Jerry Johnson, Chairman
Mission Irrigation District
PO Box 639
St. Ignatius, MT 59865

D. Boone Cole, Chairman
Flathead Joint Board of Control
PO Box 639
St. Ignatius, MT 59865

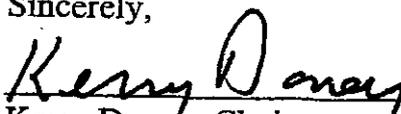
In Re: Jocko Valley Irrigation District Withdrawal from Joint Operations

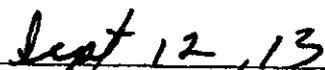
Dear Chairman Blevins, Chairman Johnson, and Chairman Cole:

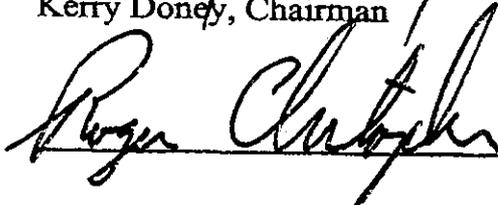
This letter is to inform you that the Jocko Valley Irrigation District met on September 9, 2013, and approved a motion pursuant to Section 85-7-1603, Mont. Code Ann. to withdraw from joint operations with the Flathead Irrigation District and the Mission Irrigation District under the Flathead Joint Board of Control. This withdrawal will be effective as of December 12, 2013. The Jocko Valley Irrigation District will not pay any extraordinary costs, expenses, or charges incurred by the Flathead Joint Board of Control after the date of this letter. This is also a reminder that the Jocko Valley Irrigation District is self-governing and autonomous, and the Flathead Joint Board of Control cannot interfere with the Jocko Valley Irrigation District's business or self-governance.

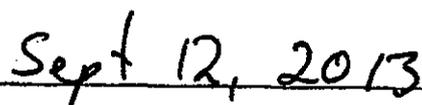
Unless otherwise directed by the Jocko Valley Irrigation District, the Flathead Joint Board of Control is expected to keep all files of the Jocko Valley Irrigation District secured and safe from removal of any information and documents contained in those files. As the date for withdrawal approaches, the Jocko Valley Irrigation District will contact you regarding the disposition of those files and their removal to another location.

Sincerely,


Kerry Doney, Chairman


Date

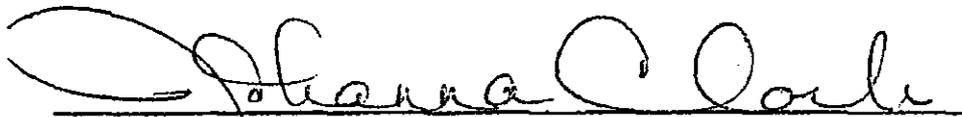




Receipt of Letter of Notification

September 12, 2013

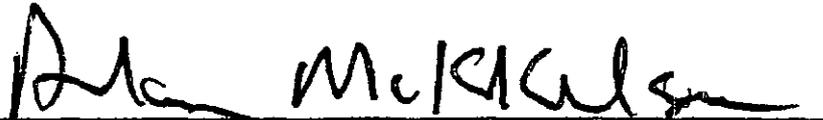
I, Johanna Clark, office manager for the Flathead Joint Board of Control of the Flathead, Mission, and Jocko Valley Irrigation Districts, hereby acknowledge receipt of a letter from the Mission Irrigation District to the Jocko Valley Irrigation District, the Flathead Irrigation District, and the Flathead Joint Board of Control, issuing 90-day notice of withdrawal from joint operations with the Jocko Valley Irrigation District, the Flathead Irrigation District, and the Flathead Joint Board of Control.



Johanna Clark, Office Manager

9.12.13

Date



Delivered and Attested

9-12-13

Date

G. ANDREW ADAMEK
CHAD E. ADAMS
DANIEL J. AUERBACH
LOGAN L. BAKER
KIMBERLY A. BEATTY
TROY L. BENTSON
SARA S. BERG
LEO BERRY
CARLO J. CANTY
KIMBERLY P. DUDIK
MARK D. ETCHART
OLIVER H. GOE
J. DANIEL HOVEN
JUDD M. JENSEN



**BROWNING KALECZYC
BERRY & HOVEN P.C.**
ATTORNEYS AT LAW
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STANLEY T. KALECZYC
CATHERINE A. LAUGHNER
JESSIE L. LUTHER
CHRISTY SURR MCCANN
DAVID M. MCLEAN
ERIC D. MILLS
MARK R. TAYLOR
EVAN THOMPSON
W. JOHN TIETZ
STEVEN T. WADE
LAURA E. WALKER
LEO S. WARD
MORGAN WEBER
RYAN C. WILLMORE
R. STEPHEN BROWNING - RETIRED

September 23, 2013

Kathie Newgard
Lake County Election Administrator
106 4th Ave East
Polson, MT 59860

RE: *Flathead Joint Board of Control Request for Election*

Dear Ms. Newgard:

We write this letter on behalf of our clients, the Jocko Irrigation District and the Mission Irrigation District concerning a mail ballot election requested by the Flathead Joint Board of Control ("FJBC"). It is our understanding that the FJBC has requested a mail ballot election on the question of whether the Mission Irrigation District and the Jocko Irrigation District may withdraw from the FJBC. It is our further understanding that you submitted and the Secretary of State approved the written plans to conduct this election. The ballots for the election are scheduled to be mailed to the members of the Flathead Irrigation District, the Jocko Irrigation District, and the Mission Irrigation District on October 25, 2013. The election is scheduled for November 16, 2013.

The FJBC's request for the election is problematic in several respects. First, no election is required to approve withdrawal from the FJBC. Statute requires only a 90 day written notice be submitted to the FJBC. Mont. Code Ann. § 85-7-1603.

Second, and most importantly, the FJBC is without the statutory authority to request an election be conducted. Montana Code Annotated § 85-7-1612 contains the powers specifically granted to joint boards of control, and absent from this list of granted authority is the ability to request an election. The power to call for an election rests solely with the irrigation districts themselves. Mont. Code Ann. § 85-7-1712. Joint boards of control have no self governance powers meaning they cannot invent authority or determine that they should have authority to take an action. Joint boards of control have only those powers specifically granted by the Legislature.

Joint boards of control lack explicit authority to request elections be conducted, making the election requested by the FJBC to be held on November 16 contrary to law. Individual irrigation districts are specifically granted authority to request mail ballot elections; however the

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EXHIBIT

E.

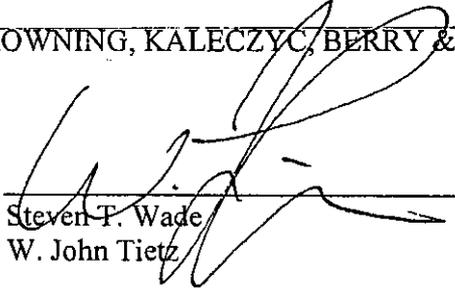
Kathie Newgard
RE: Flathead Joint Board of Control of the Flathead, Mission and Jocko
September 23, 2013
Page 2

request for this election did not come from the irrigation districts. Mont. Code Ann. § 85-7-1712. The Jocko Irrigation District has not requested this election, nor has the Mission Irrigation District.

There is no legal authority under which this election may be conducted, and we request that any further efforts taken by your office to further the election cease. Please respond to this letter by October 3, 2013 so a determination can be made as to whether court action is needed to prevent this unlawful election.

Sincerely,

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 
Steven T. Wade
W. John Tietz

cc: Mitch Young, Lake County Attorney

OFFICE OF THE LAKE COUNTY ATTORNEY

LAKE COUNTY COURTHOUSE

106 Fourth Avenue East
Polson, Montana 59860-2183
Phone (406) 883-7245
Fax (800) 878-9735

MITCHELL A. YOUNG
COUNTY ATTORNEY
MARK A. RUSSELL
CHIEF DEPUTY LAKE COUNTY ATTORNEY

DEPUTY COUNTY ATTORNEY
J CORY ALLEN
JESSICA COLE-HODGKINSON
JAMES LAPOTKA

October 2, 2013

Steven T. Wade
W. John Tietz
Attorneys at Law
Browning, Kaleczyc, Berry, and Hoven, P.C.
P.O. Box 1697
Helena, MT 59624-1697

RECEIVED

OCT - 4 2013

BROWNING, KALECZYC,
BERRY & HOVEN, PC

RE: Flathead Joint Board of Control Request for Election
Response to letter dated September 23, 2013

Dear Attorneys Wade and Tietz,

The Lake County Attorney's Office has reviewed your letter to the Lake County Elections Administrator Kathie Newgard, dated September 23, 2013, wherein you stated your concerns to the mail ballot election requested by the FJBC. Administrator Newgard and I have reviewed your specific points of contention and the supporting statutory authority. However upon further reading of Title 85, Chapter 7, Part 16 MCA, it is the opinion of the Lake County Attorney's Office that the FJBC does have the authority to direct Lake County to conduct a mail ballot to fully carry out their powers and duties in accordance with MCA 85-7-1612 and Resolution 2013-5 of the FJBC. Therefore the Lake County Elections Administrator will continue to prepare the mail ballot in accordance with the laws of the State of Montana.

I have attached the following for your information:

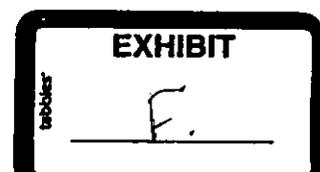
1. Flathead Joint Board of Control Resolution 2013-5
2. Letter from Metropoulos Law Firm, dated October 2, 2013

Sincerely,



Mark A. Russell

cc: Kathy Newgard, Lake County Elections Administrator
Johanna Clark, FJBC secretary
John Metropoulos, FJBC attorney



Flathead Joint Board of Control

Resolution 2013-5

Be it resolved by the Flathead Joint Board of Control, that:

Whereas, The FJBC adopted Resolution 2013-3 May 24, 2013 (attached) stating its desire to reach a negotiated resolution of conflicting and competing water rights claims related to the Flathead Project that secures irrigators' property rights in land and water and their rights of participation;

Whereas, The FJBC also stated in Resolution 2013-3 support for many aspects of the current Proposed Water Use Agreement dated January 17, 2013;

Whereas, Since adoption of Resolution 2013-3, the FJBC has conducted a detailed internal and public review process consisting of approximately a dozen meetings; at most of which public comment was taken on this issue to determine which valid concerns it continues to wish to discuss on behalf of irrigators with the Flathead Tribes and the United States, the two other parties to the proposed WUA;

Whereas, That process has resulted in the FJBC voting to request additional discussions on three concerns relating to: 1. the ownership of the irrigation water right, 2. the amount of irrigation water that would be delivered under the WUA, and 3. details regarding the Water Management Board;

Whereas, While the opportunities for divisiveness and disunity among irrigators are evident and some have attempted to exploit them, the outweighing benefits of unity to irrigators of unity are compelling and can be secured by uniting in support of acceptable revisions to the WUA;

Whereas, Some interested parties have worked to divide irrigators by a variety of means, but most obviously by dissolution of the FJBC, without conducting a vote of their irrigators;

Whereas, The FJBC respectfully asks all participants to pause and consider the best, long-term interests of irrigators;

Whereas, The FJBC, respecting the democratic process as well as the fundamental constitutional rights of irrigators to know what their governments are doing and to participate in it, desires to ensure irrigators have an effective voice in their future on this and all related questions;

Resolved, that the question of whether each Irrigation District it is comprised of, the Flathead, Mission, and Jocko Valley Irrigation Districts, should remain a part of the FJBC should be decided by a vote of that district's landowner-constituents and;

Resolved, therefore, to conduct a mail-in ballot referendum conducted in accordance with the law of the State of Montana to decide that question, in the event a majority of a District's commissioners vote to withdraw from the FJBC without approval obtained by a referendum of their landowner-constituents conducted in accordance with Montana law.

Adopted this day September 5, 2013

Approved Daniel Boone Coly

Attested Wayne E. Blewett

Metropoulos Law Firm, PLLC

Jon Metropoulos, Attorney

50 South Last Chance Gulch, Suite 4

Guardian Building

Helena, Montana 59601

Phone: 406-442-0285

Mobile: 406-461-4296

Email: jon@metropouloslaw.com

October 2, 2013

Kathie Newgard
Lake County Election Administrator
106 4th Ave. East
Polson, MT 59860

Dear Ms. Newgard:

Thank you for forwarding me the letter of September 23 from Mr. Steve Wade, the attorney for the Mission and Jocko Valley Irrigation Districts, in which he questioned whether the Flathead Joint Board of Control has the authority to request the mail-in ballot referendum now in process. By way of background, earlier in September his clients, by 2-1 votes of their elected commissioners, decided to withdraw from the FJBC, citing 85-7-1603, MCA. They then provided a 90-day notice of that decision, stating that they would withdraw on December 11. Prior to that, the FJBC had adopted a Resolution, number 2013-5, calling on those Districts' commissioners, if they desired to withdraw from the FJBC, to conduct a referendum to ask their constituents whether they should or should not withdraw. Lacking that, the Resolution authorized the FJBC to ask that question by way of referendum. Since four of the six Mission and Jocko Valley District Commissioners did vote to withdraw but did not ask for a referendum to get their landowner-constituents' opinion on that question, the FJBC requested that Lake County proceed with a mail-in ballot referendum on the issue.

The FJBC represents all the fee-owned irrigated land served by the Flathead Project. This totals approximately 111,200 acres. The three Districts cover 88,000 acres (Flathead), 16,000 acres (Mission), 7,200 acres (Jocko Valley). Of the 12 FJBC commissioners, 5 from Flathead, 3 each from Mission and Jocko Valley, and one at-large appointed by the eleven elected commissioners, only a minority of 4, representing a minority of the acres, voted to withdraw from the FJBC.

Kathie Newgard
October 2, 2013
Page 2

My review of Mr. Wade's letter to you indicates he has misapprehended both the facts and the law relevant to the referendum the FJBC requested. Factually, it is clear from Resolution 2013-5 that the FJBC has not asked for a referendum on whether his clients "may withdraw from the FJBC," as he stated it in his letter. Rather, the resolution calls on them to ask their constituents whether they should or should not withdraw and, lacking that, it authorizes the FJBC to ask that question by way of referendum. The factual difference between the words "may" and "should" is critical.

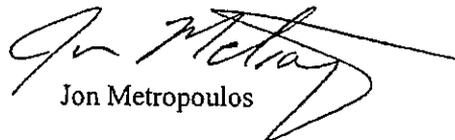
Moreover, it is difficult to see why these Districts would not want to hear from their constituents on this important issue. It is the FJBC's position that it is not only authorized to ask the question in a referendum, but it is clearly the right thing to do. When it was formed in 1981, a referendum, according to the statute, had to authorize that. See 85-7-1602, MCA. Referendums may be held on issues proper to be submitted to a popular vote, and since the FJBC was formed based on such a vote and has operated without intra-District controversy for 32 years, it cannot be doubted that the affected landowner-electors can and should, at least, be consulted on the issue by referendum.

As for the FJBC's legal authorities, the pertinent provisions of the Montana Code Annotated from Title 85, Chapter 7 plainly provide the necessary authority and discretion. These sections include but are not limited to: 85-7-1601, Authority for Joint Operations; 85-7-1602, Election on Joint Operations; 85-7-1603, Withdrawal from Joint Operations; 85-7-1605, Purpose of Part 16; 85-7-1612, Powers and Duties of Board of Control; and 85-7-1712, Special Elections. In addition, even if not specifically applicable, 7-1-106, MCA requiring a liberal construction of such statues supports the conclusion that the FJBC possesses the necessary authority.

As the FJBC was created by a vote of affected landowners and has operated without intra-District controversy for 32 years, it certainly seems fair, equitable, and proper, even if not legally necessary, that the affected landowners be consulted by referendum as to its dissolution. Since the FJBC may institute any and all actions and proceedings necessary or proper to carry out the provisions of Chapter 7 of Title 85, it clearly has the authority to request this referendum. See 85-7-1612 (3) and (5), MCA.

Thank you for your work on this issue and the upcoming referendum.

Respectfully,



Jon Metropoulos



The lawyers for the Mission and Jocko Valley majority Commissioners recently challenged this Referendum, (See that letter here: [\(MID JVID lawyers against referendum\)](#)) but Lake County rejected that challenge. (See that letter here: [Lake County Attorney Letter 10-2013.](#)) However, they have threatened legal action to stop the Referendum. Additional information on that will be posted here.

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Mail Ballot Written Plan, Timetable and Instructions

MUST BE RECEIVED BY SECRETARY OF STATE NO LATER THAN 60 DAYS BEFORE ELECTION DAY. COMPLETE, SAVE AND EMAIL THIS FORM TO SOSELECTIONS@MT.GOV

Written Plan	Response
1 Legal Name of Jurisdiction	Flathead Irrigation District
2 Name of County or Counties Involved	Lake & Sanders
3 Estimated # of Electors	2300
4 Type of Election (e.g., creation, bond, trustee/director/governing body, levy, etc.)	Other: Withdrawal from FJBC
5 Return postage paid by: elector, or by election office (and if insufficient, who pays)	Election Office
6 Describe procedures you will use to ensure security of ballots	Ballots will be deposited in locked ballot box and secured in locked area.
7 Ballots will be printed based on: precinct, ward, or district	District
8 For school elections, list procedures for transportation for signature verification	Choose or enter a response.

Timetable	Date
1 Date applicable documents sent to the governing body ¹	September 13, 2013
2 Actual date of submission of plan, timetable, and instructions to Secretary of State (Must be received by Secretary of State at least 60 days before election.)	September 20, 2013
3 Last day for governing body to opt out of mail ballot (within 55 days of election)	September 25, 2013
4 Approval by Secretary of State	Within 5 days of SOS receipt of plan.
5 Publish notice specifying close of voter registration (Published at least 3 times in the 4 weeks preceding the close of registration, once per week. Publication is completed with the 3rd notice. Publication is <u>not</u> required for school elections.)	October 3, 2013 October 10, 2013 October 17, 2013
6 Publish notice of election, if applicable (Not required for municipal elections. Required for: Special Elections: 13-1-108 ; Regular Non-Municipal: 13-1-401 (4); School: 20-20-204 .)	October 31, 2013 November 7, 2013 November 14, 2013
7 Close of voter registration (30 days before election; move to 29 days before election when 30th day falls on a Sunday.)	October 21, 2013
8 Specific date on which ballots will be mailed (No sooner than 25 days or later than 15 days before election.)	October 25, 2013
9 Election Day	November 19, 2013

Additional Information:

Irrigation (85-7-1710). Each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre of irrigable land owned by the elector with-in the district. Any elector owning any less than 1 acre of irrigable land with-in the district is entitled to one vote. 85-7-1710(1)(b) and (c) must be guardian, executors, administrator and trustees; domestic corporations, by their duly authorized agents.

Affirmation:

By entering my name on the line below, I affirm that I will conduct the election according to the written plan and timetable for conducting the election. I understand that any undeliverable ballots must be filed securely, retained and available for electors to vote and that I must attempt to contact electors whose ballots are undeliverable. If such electors cannot be contacted otherwise, electors will be mailed a notice and the guidelines in [13-19-313](#), MCA and ARM [44.3.2710](#) will be followed.

Kathie Newgard

Name(s) of Election Administrator(s) Conducting Election

Complete the above plan and timetable and the instructions below, and save and email this form to soselections@mt.gov.



¹ No date set by law, but should be no later than 60 days before election. Documents include: 1) written plan; 2) statement informing governing body of decision to conduct election by mail; 3) list of reasons for decision; and 4) statement regarding right of governing body to object under [13-19-204](#).



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MUST BE RECEIVED BY SECRETARY OF STATE NO LATER THAN 60 DAYS BEFORE ELECTION DAY. COMPLETE, SAVE AND EMAIL THIS FORM TO SOSELECTIONS@MT.GOV.

Written Plan		Response
1	Legal Name of Jurisdiction	Mission Irrigation District
2	Name of County or Counties Involved	Lake
3	Estimated # of Electors	500
4	Type of Election (e.g., creation, bond, trustee/director/governing body, levy, etc.)	Other: Withdrawal from FJBC
5	Return postage paid by: elector, or by election office (and if insufficient, who pays)	Election Office
6	Describe procedures you will use to ensure security of ballots	Ballots will be deposited in locked ballot box and secured in locked area.
7	Ballots will be printed based on: precinct, ward, or district	District
8	For school elections, list procedures for transportation for signature verification	Choose or enter a response.
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1	Date applicable documents sent to the governing body ¹	September 13, 2013
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5	Publish notice specifying close of voter registration (Published at least 3 times in the 4 weeks preceding the close of registration, once per week. Publication is completed with the 3rd notice. Publication is <u>not</u> required for school elections.)	October 3, 2013 October 10, 2013 October 17, 2013
6	Publish notice of election, if applicable (Not required for municipal elections. Required for: Special Elections: 13-1-108 ; Regular Non-Municipal: 13-1-401 (4); School: 20-20-204 .)	October 31, 2013 November 7, 2013 November 14, 2013
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9	Election Day	November 19, 2013

Additional Information:

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Affirmation:

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Kathie Newgard

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MUST BE RECEIVED BY SECRETARY OF STATE NO LATER THAN 60 DAYS BEFORE ELECTION DAY. COMPLETE, SAVE AND EMAIL THIS FORM TO SOSELECTIONS@MT.GOV.

Written Plan		Response
1	Legal Name of Jurisdiction	Jocko Irrigation District
2	Name of County or Counties Involved	Lake, Missoula & Sanders
3	Estimated # of Electors	350
4	Type of Election (e.g., creation, bond, trustee/director/governing body, levy, etc.)	Other: Withdrawal from FJBC
5	Return postage paid by: elector, or by election office (and if insufficient, who pays)	Election Office
6	Describe procedures you will use to ensure security of ballots	Ballots will be deposited in locked ballot box and secured in locked area.
7	Ballots will be printed based on: precinct, ward, or district	District
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Additional Information:

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Affirmation:

By entering my name on the line below, I affirm that I will conduct the election according to the written plan and timetable for conducting the election. I understand that any undeliverable ballots must be filed securely, retained and available for electors to vote and that I must attempt to contact electors whose ballots are undeliverable. If such electors cannot be contacted otherwise, electors will be mailed a notice and the guidelines in 13-19-313, MCA and ARM 44.3.2710 will be followed.

Kathie Newgard

Name(s) of Election Administrator(s) Conducting Election

Complete the above plan and timetable and the instructions below, and save and email this form to soselections@mt.gov.

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INSTRUCTIONS FOR VOTING A **MAIL BALLOT** – PLEASE READ CAREFULLY
Irrigation District Special Election
November 19, 2013

Based on MCA 85-7-1710(3) which in part says, "each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre" "but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote". Therefore, you will notice your ballot indicated the number of irrigable acres which will equal $\frac{x}{y}$ number of votes. If you feel there is an error in number of **irrigable acres**, please contact Flathead Joint Boards of Control at 745-2090.

IF YOU OWN MULTIPLE PARCELS: you will receive a voting packet for each parcel. The ballots **MUST** be returned in the envelope provide for that parcel. **DO NOT** place more than one secrecy envelope in an affidavit envelope as it will invalidate all ballots returned in that affidavit envelope.

ITEMS ENCLOSED FOR ELECTION:

- Ballot(s)
- Secrecy Envelope for Voted Ballot(s)
- Signature Envelope with Affirmation to be completed & signed
- Elector ID Form (IF included – see separate instructions)

1. To Vote – mark the designated voting area as instructed on the ballot using a black or blue pen. Do not use a marker or felt tip pen or red ink pen. Vote both sides of ballot(s) if applicable.

2. Review your ballot. Before you place your ballot into the secrecy envelope, double check your votes.

- Do not cross out, erase or use correction fluid.
- If your ballot is destroyed, spoiled, lost or not received or if you make a mistake or change your mind before your ballot is turned in, you may request a replacement ballot at the election office.
- Some races allow votes for more than one person or ballot issue choice; the number appears just below the name of the office. Make sure you do not mark more votes than that number. You may choose to vote for fewer, or you can skip any race.
- If a ballot contains too many votes in one race, votes for that race will not be counted. Other races will still be counted.
- To write in a candidate's name, mark the designated voting area to the left of the line provided and write in the name in the blank space.

3. Place voted ballot in the SECRECY ENVELOPE and seal it.

4. SIGN the voter affirmation on the back of the Signature Envelope. Failure to sign may invalidate your ballot!



If the signature on the affirmation does not match the signature on file, the ballot may be rejected.

5. Place the secrecy envelope into the Signature Envelope. Seal the signed Signature Envelope.

6. Return your ballot by mailing it to or dropping it off to the location(s) below. The place(s) of deposit and the days and times when ballots may be returned to the places of deposit before election day and on election day are:

Lake County Election Office
106 4th Ave E
Polson MT 59860
8 am to 5 pm Monday – Friday

7 am to 8 pm Tuesday November 19, 2013 – after 5pm,
use door on southeast side of Courthouse (doors facing
Linderman Gymnasium)

This election is by mail ballot only -- regular polling places will not be open. In order to be counted, ballots must be **received at the election office by 8:00 p.m. on Election Day, November 19, 2013.**



Do not forget postage:

46 cents postage required if mailing ballot.

FOR QUESTIONS CONTACT THE ELECTIONS OFFICE AT:

Phone: 406-**883-7268** or **883-7269**

Fax: 406-**883-7230**

Email: knewgard@lakemt.gov

