

MEETING MINUTES

2021 Annual Meeting

February 1, 2021

7:00 pm

Syringa Hall

ATTENDEES:

Board members: Roy Moses(95) -- President, Eric Fuller -- Vice President, Tom Carlsen, Anjie Waldner taking ~~notes~~ minutes. Rick Link -- ditch rider.

Shareholders: Joyce Arthur & Rick Link(75), Ralph Barker(5), Art Beal(4), Levi and Lane Russell for Don Betzold(32), Kahn Borge 9950 Darnell Ln (5), Leann Carlsen(111.5), Mario Cefalu(13), Teresa Dalrymple(4), Marshall & Melanie Davis(2), Greg Drake(75), Paul Drake(30), David Furst(4), Dave Gorley(5), Bill Hale(28), Mel & Georgia Hale(27), Bruce Hamilton(5), Cyndi Hall(5), Mary Johns(10), Maryann Kirkpatrick(13), Thomas & Tracy Monticelli(5), Bryan Moses(2), Blake Probst(5), Richard Rex(2), Steve Wilfong(6.5)

Proxies: Anjie Waldner and Eric Fuller (Nancy Waldner 120)

Visitors: Andy Walldera, Levi and Lane Russell for Don Betzold

Meeting was called to order by Roy Moses. The pledge of allegiance was recited. A moment of silence was taken.

Anjie Waldner read the minutes from the 2020 annual meeting. Sarah Thomas/ Albert and Marshall Davis have never received certificates of shares. Annie Kirkpatrick stated that her headgate was taken out a few years back while the ditch was being cleaned. She would like it to be replaced. It was stated by the company that if the headgate(s) was not taken care of the ditch company has the authority to remove it(them). It is up to the owner to replace under the supervision of the ditch company. The ditch company's Lawyer, Andy Walldera, stated that it is not up to the ditch company to replace broken or not taken care of headgates. Bruce Hamilton made a motion to approve the minutes. Paul Drake seconded. A vote was taken. The motion passed.

Rick Link gave the Ditch rider's report for the year. Moss was really bad again but it was taken care of. There was a slide this past fall that has been partially repaired to provide livestock water. It is too muddy at the present time to finish repairing that area. Art Beal reported that he had a problem with moss this year.

Tom Carlsen gave the secretaries report for Jenny Furst since she was not able to be present for the meeting.

Tom Carlsen gave the treasurer's report for 2020 and read off the 2020 financial report. A loan was taken out for the company and guaranteed by Roy Moses for \$15,000.

Sarah Thomas asked how to clean out the waste water culvert that runs under the road. Rick Link suggested to notify the county road department.

Tom Carlsen continued on with explaining the 2020 expenses review. It explains what was proposed for 2020 and what was actual. It also states what's proposed for 2021.

Roy Moses gave the President's report:

Article 1 paragraph 2 of Squaw Creek Ditch company By-laws state: "The company's primary purpose is to deliver irrigation water via the Squaw Creek Ditch to the headgates of its stockholders located in the Company's service area."

Over the last decade we have struggled to do that.

Our assessment base is small, only 1327 shares, but our canal has some big challenges. With a very small budget we have been trying to fix up some of our biggest challenges.

Examples:

- The diversion dam. We have finished two phases and only have the top phase left.
- Several bridges need repairs, one of which a dump truck fell through this past year because the boards are rotten. Thankfully no one was hurt.
- 9 flood gates: one is rusted. Another sits on a steep cliff with a rotten wood bridge across it that needs replaced and upgraded. Several of them leak and need repair.
- Close to 2 miles of canal that runs nest to Squaw Creek (often referred to as "the canyon") and continually gets under-cut by the creek in various spots. With steep rocky mountain on the other side that continually slides. A few years ago, one slide cost us \$11,000 just to dig out. Because we lacked sufficient funds we were unable to shore up the sides.
- There is also a good sized wooden flume over Coon creek that is approximately 300 ft long and 40 ft tall that requires constant maintenance.
- We have close to 7 miles of canal to maintain. Because of low budgets the company has dug the bottom out of the canal instead of acquiring dirt from the other side to build up and patch the bank side. Our canal is now a series of ponds, creating a good environment for obstructive moss and water loss.

Sandbag project (a critical part of the Canyon project):

Because we had some cost share money available from area 65 we took on the sandbag project. This has been as area of concern for a long time. It was made substantially worse in the flood of 96-97 New Year's Eve; it was over 60 degrees at midnight and the flood waters undercut the canal. What was left of the canal was a rock shelf 10' wide and about 60' up the cliff from Squaw Creek. The bank of the canal was mostly gone and we filled sand bags and laid them in sideways and put plastic over them to make a bank. The company has had NRCS and several different agencies and contractors look at the area and give us bids, etc. in the last 25 years. We have never been able to afford to fix it.

This year we have moved the wall in about 40' and it feels so good to be that far away from disaster after all these years of concern. Although we went slightly over our \$50,000 budget and

had a few tense moments I know we saved the shareholders hundreds of thousands of dollars by doing it ourselves.

We owe a big thank you to the Gibbons, Harvey Church, Jeff Biggers, Ron Shurtliff (65 water master), Paul Drake, the Squaw Creek Ditch Board and especially the ditch rider, Rick Link, without whose push the project would have failed.

Growing pains:

Critical access points: In the last couple of decades the company, as the budget allowed, has tried to obtain surveyed recorded easements on our critical access points and old handshake deals. The company needs to thank the Turners. The road that goes to the flume goes right through their yard. There are several more critical access handshake deals that need to be surveyed and recorded as we get the budget to do it. Sweet is growing and it's just not the same old 12 farmers that it used to be.

Laterals: Many of the new people moving in along the canal have no idea what the top end of the canal looks like, or the challenges involved in getting water to all the headgates on the ditch. Many of them move in with no knowledge of water delivery, they don't know what a Lateral is or even how a Lateral functions as its own entity and is not the responsibility of the Ditch Company. It can't be stated enough that the ditch company's responsibility is to deliver water to the headgates only. The headgates and everything from that point down the lateral is the responsibility of the lateral owners and any disputes that arise are theirs to resolve. It is important to note, however, that the company has the right to fix leaky or otherwise poorly maintained or dysfunctional headgates at the expense of the lateral owners.

Additional growing pains:

- From Kirkpatrick Road and through Darnell subdivision there are 18 headgates, 3 checks, 4 floodgates and 10 crossings. All of this where there used to be 8 headgates, 1 check, 3 floodgates and 2 crossings.
- Checks and crossings or culverts in the area have been used to manipulate water.
- 8 of the 10 crossings in this area have been involved in flooding properties. Four of which involved flooding houses creating liability to the company.
- Since they divided the Butler place and the Darnell place most of the company issues have been in this area. Any of the previous board or ditch riders could attest.
-18 headgates where there used to be 8. These **obstructions** are the root of the issues we are now having. An area that used to basically monitor itself now requires honest people or much more ditch rider time to keep water delivered.

Obstructions to the flow of water in the ditch have become a major area of concern for the ditch company. The members are very reluctant to serve on the board of a company who does not have enough control of their easement to accomplish its purpose and liability of delivering water.

Ditch Obstructions:

Trees: Obviously trees have been part of the company's yearly maintenance for over 100 years. Everybody loves their trees. But because of poor access and low budget the trees and brush have grown substantially in some places making it nearly impossible to access. About 6 years ago we started fighting back in earnest against that growth. Under Creek Walker's management (and to

the chagrin of many of us, including our own beautiful row of cottonwoods along the canal), a large majority of trees and overgrowth have been cleared up and down the ditch and given us much better access than we had.

Other Obstructions: In addition to trees, other obstructions have caused a lot of crop damage to many of our shareholders because the company has not been able to deliver water.

The previous ditch rider said in frustration that he did not have time for this and there is no way to deliver water to the end of the ditch. What he said is true if the company continues to allow obstruction issues and votes on low assessments instead of taking care of the issues (physical, legal, or otherwise) that come up. Creek was a good ditch rider who understood the problems and how to deliver water. The company lost a valuable asset because we wanted cheap water and were unwilling to support him.

The good news is the current ditch rider has been able to deliver water fairly well for the last part of 2019 and the 2020 season. The bad news is, because of a few individuals, it has been delivered at a huge price. Both to the company and to the board and officers personally. This will be further discussed in the next section of this report.

Explanation of "over budget":

Because the ditch company has gone over budget, has taken out a loan and still some outstanding bills, I feel we owe the shareholders an explanation.

The company has been unable to appropriately deliver water downstream of the Butler and Darnell lane subdivision because of locked gates, threats of violence from a man with a gun and dogs, blocking the easement with vehicles, fences, junk, tress, tec. Manipulation of water, abuse and assault on our ditch company personnel and shareholders. This is the subject of a large and continually mounting legal expense to the Ditch Company as the owner continues to allow his tenants to obstruct our easement, manipulate our water and interfere with ability of ditch company to properly maintain the ditch and deliver water.

The following is an explanation of the situation:

The company has offered the land owner of 10050 Darnell Ln a variety of solutions starting a year ago. At first, we thought he wanted a solution and was willing to help control his tenants. He accepted a solution and agreed to control his tenant if we let him know when his tenant abused us. After much time, money, and effort put into this solution, and letting him know, he backed out and said he didn't want to hear about the bad actions of his tenant anymore because he had a real job and it was happening too often. These stall tactics happened several times costing the company time and money.

Because of the violent threats, the company has had to send two and three people at a time to do regular business in the area.

The company has had to have the area 65 water master, an attorney, two board members, track hoe operator, arborist and ditch rider just trying to get maintenance done in the area last spring. We were still unable to do the maintenance required to allow free flow of water to shareholders, not to mention prevent home flooding in the area, which could both result in company liability.

We have been threatened to pay for septic issues around the house and damage to the field. We've been turned into OSHA on bogus claims costing more time and money.

We've had verbal threats given at 3 inches from the face to multiple people, and at decibels that injure ears and leave spit on faces.

We've been physically assaulted with fists and bodily shoving. We've been rammed by cars while trying to work along the ditch right-of-way. All of this with multiple witnesses. And, yes, criminal charges have been pressed.

Yet still, the landowner supported his tenants in these actions. And, in addition, has threatened legal action against the company for trying to clear and use our legal easement.

All shareholders have been damaged because of the loss of control of the company easement in this area. It has been mentioned by several shareholders that the company should file for injunctive relief. The sheriff wants us to get a court order so they can protect us. The attorney said we should not set the precedence that we need a court order to remove obstructions within the ditch easement. This would cost the ditch company another \$20,000 for this instance and possibly set the precedence that a court order is also needed every time someone decides to block the company easement.

In the latest development in early January of this year, the company gave the landowner one last chance to keep his obstructions and move the ditch farther to the east, which solution we all liked and had originally agreed on in the spring of 2020 before the landowner reneged because of expense. He did email back on the most recent deadline we gave him and said he had decided not to move the ditch and his tenant would be moving out in February and we could remove the obstructions after the tenant is gone. Sounds good but we hope it's not another stall tactic.

Legal counsel has made it clear that the company needs to maintain a clear and unobstructed ditch bank up and down the canal, with access to both banks, in order to properly maintain the canal as well as protect our continual rights to do so. This sets the proper precedent so that the future of water delivery will be better for all shareholders in the company.

Learning from the past:

When the Darnell subdivision was being proposed, the Board went to an attorney and spent about \$800 to try to avoid some of these issues. When we came to the next annual meeting we took a real butt chewing for spending that money. We were headed in the right direction to avoid some of the issues we are now faced with and had we been allowed to continue down that path we could have saved the ditch company a lot of time and money.

My point in bringing this up is not to dredge up the past but to learn from it. Some investment is needed to function. These are good things that are happening. The dam project, bridge project, canyon project and others have solidified our ability to divert and deliver water to shareholders. Similar to these physical projects there are legal projects that, especially in our era of growth and legal murkiness, need to be addressed. If we'd have been more willing to spend a little money on an attorney at that time there's a good possibility we wouldn't be spending so much money on legal fees now.

Our attorney has said that most of the issues facing the ditch company would have been non-issues if the company would have required written license agreements paid for by the

applicant/landowner (article 2 paragraph 5) on all obstructions placed in or on our easement in the past. Unfortunately, we have paid dearly for the company's handshake deals of the past. The company should strive to abide by Idaho code and our by-laws by making sure that any future obstructions in the ditch are accompanied by a written license agreement rather than just a handshake.

Laterals should pay for their repair and a list of shareholders on each lateral should be presented to the ditch board.

New business:

65A will only cost share every other year. Since the ditch company did the cost share in 2020 the next available cost share will be in 2022.

The moss has become a major problem because of not cleaning the ditch properly with machinery and pulling soil out of the bottom instead of pulling from the inside wall. Providing stock water in the fall and winter has made it difficult to fix problem areas.

A survey company has stated to Roy that they could fly the ditch with a drone to survey it but the ditch would need to be completely dry and the banks all clear.

Roy and Jeff Biggers lasered a section of the ditch for grade. Roy explained that by digging the ditch too deep it has caused losing water through the bottom. If the bank side needs to be filled in the dirt from the east side should be used.

With the sale and division of property now the new owners do not know what their shares are. In the ditch company service area not every acre has water shares to it. Roy feels the ditch company needs to have a professional survey and description so the shares are accurate.

There are 1493 acres in the service area and only 1327 shares. It was mentioned that the property owner should be responsible to have property for sale surveyed for water shares. Andy Waldera stated that it is the legal burden for the seller to allocate what shares go to which acres when selling off property. Andy also stated that each property owner could provide the ditch company with a footprint of irrigatable acreage of their property.

Annual Budget and assessment:

Tom Carlsen continued on with the 2020 budget, 2020 actual and 2021 proposed which can be found on the website.

LeAnn Carlsen motioned to reduce legal budget to \$5000 and repairs and maintenance to \$5000. Steve Wilfong seconded. The motion was discussed. Roy explained that the proposed motion will not pay for what the ditch company currently owes. Steve Wilfong suggested to keep budget low and call a special meeting if additional funds are needed. Rick Link stated that the lawyer fees are necessary to be paid to defend the shareholders rights. Roy explained that if the ditch company does not get the legal house in order the company is going to be liable for loss of water, crops, and pasture. Roy called for a vote. Motion did not pass.

Art Beal motioned to accept the company's proposed budget. Bruce Hamilton seconded. Motion passed.

Roy opened a discussion on the landowner fee and the assessment. Roy proposed a \$400 landowner fee and \$30 assessment fee per share. Vote taken. Motion passed.

Nomination of directors:

Tom Carlsen stated that he has resigned. Bruce Hamilton nominated Mario Cefalu for a board member. Paul Drake nominated the rest of the board members to stay the same. Steve Wilfong nominated LeAnn Carlsen. LeAnn Carlsen declined nomination. Roy Moses, Eric Fuller and Mario Cefalu are board members for 2021. Rick Link will remain ditch rider.

Paul Drake motioned to adjourn. Art Beal seconded. Meeting adjourned at 10:12pm.

Follow up:

2 days after the annual meeting Mario Cefalu resigned for lack of time.