

## **CALL TO ORDER**

At 7:00 PM, Chairman Foster called the February 13, 2018 Regular Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all Board of Directors were present. Legal Counsel, Brian Iller and General Manager, Chris Overland was also present. The record indicates that this meeting was recorded. The Pledge of Allegiance was then recited.

## **DISCUSSION OF AGENDA ITEM(S)**

Chairman Foster called on the board members and the audience for discussion on any agenda items and John Enright asked to speak on an agenda item. Chairman Foster noted that Mr. Enright was scheduled to speak under Item 6a.

## **DISCUSSION OF NON-AGENDA ITEM(S)**

Chairman Foster called on the board members and the audience for discussion on any non-agenda items, and Todd Lengenfelder asked to speak on canal maintenance in the Laguna area. Chairman Foster stated the Board would fit him into the agenda.

## **OATH OF OFFICE**

Chairman Foster administered, and Director Selmann then recited the Oath of Office welcoming him in as the newly appointed MLIRD Director.

## **APPROVAL OF THE AGENDA**

Chairman Foster then called on the board members to approve the agenda as amended. Vice Chairman Bailey made a motion to approve the agenda as amended. Director Teals seconded the motion. The motion was then carried unanimously.

## **APPROVAL OF CONSENT AGENDA**

Chairman Foster called on the Board of Directors to approve the consent agenda. The consent agenda consisted of the meeting minutes from 01/09/18, the Bills/Checks (#16499 - #16536) and Voucher #1000197 totaling in \$77,253.15. Director Dexter made a motion to approve the consent agenda. Vice Chairman Bailey seconded the motion and abstained from voting on anything related to Basin Property Management, Inc. The motion was then carried unanimously.

## **MLIRD STAFF REPORTS**

General Manager, Chris Overland reported the following:

- Lake elevation was at 1043.66 feet as of February 13, 2018 at the Hallmark gauge station.
- MLIRD has the option to renew the Aquatic Weed Treatment contract with Aquatechnex again each year for three consecutive years. General Manager, Chris Overland would like to treat nuisance weeds and Phragmites around the lake early this year. Legal Counsel, Brian Illers' recollection was the contract was for one year, and MLIRD could renew it for up to three years, each year as an independent contract. General Manager, Chris Overland said he

would like to keep the contract fairly consistent with last years, basically with the surveying and the two treatment phases. Director Dexter asked if the Alum Treatment was a separate issue. General Manager, Chris Overland agreed and said MLIRD did Alum Treatments under the same contract last year, however, is not in the plans for 2018. Legal Counsel, Brian Iller mentioned the contract allows MLIRD to determine what treatments are needed for each particular year based on the surveys. General Manager, Chris Overland said MLIRD could either extend the contract with Aquatechnex another year or go back out for an RFP or bid process. Chairman Foster said that was a call that himself as the General Manager needed to help make. Chairman Foster recalls that in MLIRD's 2018 Budget, there has already been allotted funds for the treatment and if General Manager, Chris Overland sees a need to change the contract with the provider then he can. General Manager, Chris Overland said the main content of the contract would stay the same. Last year, MLIRD only did a late phragmites treatment and received feedback that it was not as effective as if an early and late treatment had been done. This is why General Manager, Chris Overland would like to implement both, an early and a late phragmites treatment and renewing the contract with Aquatechnex would allow MLIRD to do so. Vice Chairman Bailey said that if MLIRD agreed that the contract could be renewed each year for the next three years and MLIRD is happy with Aquatechnex's work, then he believes MLIRD should do so and renew the contract. Director Teals made a motion to renew Aquatechnex's Aquatic Weed Treatment contract again for the year 2018. Vice Chairman Bailey seconded the motion. Director Selmann asked how early General Manager, Chris Overland is planning on doing the first Phragmites treatment. He answered with by the end of this month committing and the actual treatment would begin next month. Director Dexter asked if General Manager, Chris Overland has changed the chemical used for Phragmites or if they were still going to use Round-Up. General Manager, Chris Overland said the active ingredient in Round-Up is Glyphosate. However, they might continue to use Glyphosate. General Manager, Chris Overland has had the conversation with Terry McNabb with Aquatechnex about using Imazapyr and has been told Mr. McNabb has concerns about the soil residual buildup with Imazapyr and its potential to carry-over and affect other plants or trees. The safest approach seems to be in using Glyphosate. Director Dexter said he has personally treated with Round-Up for years and has found that Imazapyr is much more effective and longer lasting than using Round-Up (Glyphosate). General Manager, Chris Overland mentioned that one thing him and Mr. McNabb talked about trying was Imazapyr early on in the year and Glyphosate later on. General Manager, Chris Overland said he would let the Board know what Mr. McNabb and himself come up with. The motion was then carried unanimously.

- The 2016 accountability audit closed with no findings. MLIRD is now back on a 2-year audit cycle. Chairman Foster mentioned how this would be a savings of approximately \$10,000 for the District. Chairman Foster thanked General Manager, Chris Overland and MLIRD Staff for getting MLIRD back on a 2-year audit cycle.
- General Manager, Chris Overland is still working with Legal Counsel, Brian Iller on a response for the DNR lease for the Parker Horn Pump Station. The original 5-page lease was from October of 1981 to October of 1993 and has not been renewed since then. The new documents are considerably more complex with over 30 pages. Chairman Foster asked Legal Counsel, Brian Iller if he had determined if the new language is an easement or a lease and he replied he had not determined that just yet and would be prepared to discuss that next meeting.

- Dredging operations were then discussed. There is a tentative plan to dredge the Fountain side of the lake in 2019, with the possibility of 2018 being doable, but rushed. General Manager, Chris Overland went to the permit renewal meeting with Ryan Walker with Grette Associates, and there was a conversation on what MLIRD is doing to manage what has already been accomplished regarding spoils. 2018 will give MLIRD an opportunity to clean the slate where spoils are concerned and perform maintenance on the dredge site before moving on to the next step. MLIRD Staff Member, Chris Wilson and Ryan Walker with Grette Associates attended the meeting to answer any questions the Board of Directors may have and to meet the newly appointed Director, Kaj Selmann.

The current dredging projects being looked at consist of mechanical dredging for the Walmart corner, hydraulic dredging for the fountain side, the grading permit for Connelly Park which is nearly finished, and the Pelican Horn Railroad Trestle Causeway excavation permit. Director Teals asked what was found out for dredging behind the Walmart area. General Manager, Chris Overland said the permit process had been started, and it will be easier to get a mechanical permit since hydraulic dredging had already been attempted. Ryan Walker with Grette Associates added they are writing the applications now and then will schedule a pre-application meeting with the City of Moses Lake. The strategy would be to combine the three upcoming projects with the one meeting and invite in all the agencies. Director Selmann asked what the timeframe is for the projects. Ryan Walker said with the City of Moses Lake, they have certain dates and times for their pre-application meetings and he would expect that would be coming up in March. Concurrently, one of the applications will also be submitted to the Railroad. The permitting timeline is a hard question to answer because you have the City of Moses Lake, Department of Fish and Wildlife, Department of Ecology, Army Corps of Engineers, etc. to take into account. Director Selmann asked if it would be well after the lake level comes back up for 2018. Ryan Walker agreed and said for the two dredge projects, 2018 is the best case scenario; however, it could be 2019. The fountain side dredging project is different because the submerged property is owned by the Department of Natural Resources. Similar to the Pump Station, MLIRD has to apply and be granted the right of entry which may take weeks to get. DNR also goes last in the order of all the other agencies and DNR does not start the process of renewal until you have gone through all the other agencies first and received your permits. Also, with the Pelican Horn Railroad Trestle Causeway project, you have to worry about cultural resources where federal permits will be needed. Anytime the tribes are allowed to comment they can ask for a cultural resource survey which will take time. There are many things that will potentially add extra time to the permitting process.

- Lakeshore Cleanup is scheduled for March 24<sup>th</sup>, 2018.
- 2017 financials finished strong and General Manager, Chris Overland requested an increase to the authorized balance for the checking account from \$100,000 to \$150,000 on a new resolution. This increase will cover the occasional large payments such as aquatic treatments or insurance payments. Chairman Foster added to request that Kelly Buche with J.R. Newhouse is on the calendar to present the year-end report in April.
- There will be a Public Official Liability & Behavior Training session on March 13<sup>th</sup>, 2018 @ 5:30 PM in the MLIRD Boardroom.
- John Enright with Sun Ranch, LLC submitted a land petition for 6 of his parcels. Mr. Enright wants to give MLIRD his water right when he petitions his parcels into the District. Legal Counsel, Brian Iller stated MLIRD could certainly accept the water right, however as far as the land petition; MLIRD will need to follow the normal

addition of land petition process. Mr. Enright said the water right is very unusual, covers 93,000 acres and his parcels only have 110 acres within those 93,000 acres. Mr. Enright added that this water right adjudicated in 1924 which gave the District the right to draw water from the lake. It's one of the nine classes of water rights, and his is class 8 which allows drawing one second foot of water per 75 acres. Chairman Foster said he sees this as two separate issues; one the annexation of his parcels into the District and two, the acceptance of the water right. Chairman Foster asked Mr. Enright what he was looking for in exchange for this water right. Mr. Enright explained that his land has never been irrigated and knows that the water right he has is a valid water right but questions how he gets to use the water. Mr. Enright said he has a permitted well on his property that the Department of Ecology has permitted and allowed him to drill but it doesn't say he can pull water out of it. Mr. Enright wants to be able to be in the District and pull water from his well that Mr. Enright believes is lake water. Legal Counsel, Brian Iller stated that if the Board would like to discuss the legal risks of this, they would need to go to Executive Session. Chairman Foster shared with Mr. Enright that a few years ago a gentleman felt like he had a well permitted on his property and tried to make the case that he was pulling lake water from his well and what MLIRD determined was that the Board of Directors couldn't give him, or anybody the okay to draw water from a well. Chairman Foster said MLIRD can give Mr. Enright the ability to draw water from the lake if he constructs his own delivery system and as long as his property is in the District, however, does not have any power or authority to give him the ability to draw water from a well. Legal Counsel, Brian Iller said just speaking in general and not giving legal advice, if you are a ratepayer of the District you would have the authority to take lake water, whether there is a sufficient hydrological connection between your well and the lake water is a question that you would have to get approval from the Department of Ecology, not MLIRD. Mr. Enright said there is because the level of the well goes up and down with the lake level. Chairman Foster said the last time MLIRD researched this topic, what he just explained is what came of it and that Mr. Enright doesn't have to prove that he is pulling lake water from his well to MLIRD, he needs to prove it to those powers that oversee the well which would be DOE. Legal Counsel, Brian Iller said this needs to be discussed in Executive Session. Chairman Foster asked if these were two separate issues and Legal Counsel, Brian Iller said he thinks they are connected because he doesn't think Mr. Enright wants to give up his water right without annexation into the District. Chairman Foster informed Mr. Enright that the Board is going to need some more time to look into the matter. Mr. Enright said he probably still wants to petition his properties into the District anyway and if the water right can be beneficial to the District then that's a plus. Legal Counsel, Brian Iller said whether or not the water right has value and can be accepted, MLIRD can still follow the process and schedule a hearing for annexation of his parcels and everyone agreed. General Manager, Chris Overland said he would run the advertisements and proceed with the addition of lands process.

## **EXECUTIVE SESSION**

The Board went into Executive Session at 7:55 PM to discuss with Legal Counsel potential litigation in the form of the legal risks of a proposed action or current practice as it relates to assessments, acceptance of Mr. Enright's water right, Parker Horn Pump Station agreement and Board Member Training as authorized by RCW 42.30.110 (1)(i)(iii). The expected time was 30 minutes, and the Board was to return at 8:25 PM. Legal

Counsel, Brian Iller indicated that there may or may not be further action taken as a result of the discussion in Executive Session.

The Board entered back into Regular Session at 8:25 PM.

## **RESOLUTIONS**

Resolution 2018-001 is to increase the authorized limit to \$150,000 in the MLIRD checking account to cover occasional large payments such aquatic treatment or insurance payments as needs arise. Legal Counsel, Brian Iller mentioned the checking account balance had exceeded on one occasion the \$100,000 limit that was stated in the previous resolution by how the vouchered money happened to come in one month which is the reason for the increase to \$150,000. Chairman Foster asked when something like this occurs, is this something where a note needs to be made because the checking account exceeded the limit on a such and such date for a period of time to satisfy auditors. General Manager, Chris Overland said MLIRD wouldn't know until another audit was underway and this request was in part, to address that concern. Legal Counsel, Brian Iller said he didn't know if that would be needed. However the Board could go back into Executive Session to talk about legal risks, but at this point, at the very least the Resolution would increase the amount. General Manager, Chris Overland said this resolution is consistent with what was discussed with the Auditor and MLIRD Resolution 2017-005 that was passed to satisfy the audit requirements and now to mitigate future risks, the increase will provide a buffer. Director Teals moved to accept Resolution 2018-001. Vice Chairman Bailey seconded the motion. The motion was then carried unanimously.

## **PUBLIC COMMENTS**

Todd Lengenfelder would like to get part of the Laguna area cleaned or dredged out for better passage for boats as it is becoming very shallow. Director Dexter asked if Mr. Lengenfelder has tried to get a permit and do it himself. Mr. Lengenfelder said he has talked with the City of Moses Lake but, they aren't interested in getting a permit. He said he could probably do it himself, but it would be real cumbersome. Chairman Foster asked if these parcels were in the District and Mr. Lengenfelder said he assumed they were. Chairman Foster said he knows there is a large area of Laguna that is not in the District. Director Teals said ten years ago the District did take quite a bit of sediment from that area. Vice Chairman Bailey informed everyone that the ends were not done when the District did take some of the sediment out ten years ago. Chairman Foster said it was a little late for MLIRD to pull anything off for it to be done this year. Director Teals said that there are many people in the Laguna area that are in the District like Mr. Lengenfelder is. However, there are a lot of people that are taking water out of the lake in the Laguna area that are not in the District and that he thinks are stealing MLIRD's water. Director Teals is not interested in making it easier for the people that are not contributing ratepayers of the District to help them out. He also said he knows that the area is built on a sand dune and is silting up and is getting shallower and doesn't like that and would like to see somewhere down the line, work done in that area, but not if more people are not willing to contribute. Chairman Foster said MLIRD has had many of the Laguna residents approach us wanting help with weed and algae control and they aren't even ratepayers. Chairman Foster said it's tough for MLIRD to focus energy and efforts on that area where he thinks it's a small percentage that is actually ratepayers. General Manager, Chris Overland said if you look at these numbers you can see that MLIRD has taken pretty good care of that area with aquatic weed control. Director Selmann asked if the Board would like to talk about participation rates that would warrant the District feeling like that's an appropriate step to take. Legal Counsel, Brian Iller said adding lands to the District statue requires one half or more of any body

of lands to file with a petition. Once a petition is filed if you get more than 50% of the lands within the area, then the Board can proceed to a hearing with adding those lands. Legal Counsel, Brian Iller clarified that it would have to 50% of the acreage. He added that each lot could individually petition or they could petition together and then as a group; they would need 50% of the acres that are proposed to be joined. Chairman Foster told Mr. Lengenfelder that it isn't that MLIRD doesn't want to help; it's that MLIRD also needs some help from that area. Director Teals said that any of the Board Members would be willing to come to HOA Meeting and speak about what MLIRD does and how important it is to keep the lake as clean and as healthy as we can keep it.

#### **WORKSHOP/DIRECTOR QUESTIONS and/or COMMENTS**

Director Selmann asked if General Manager, Chris Overland has been in contact with the Bureau of Reclamation to see if they have any estimation on what flows will be coming into Moses Lake for 2018. General Manager, Chris Overland said when he had spoken with them the other day they think it's too early to predict what the flows might look like for this upcoming year. General Manager, Chris Overland said he would make contact with them in the near future and let Director Selmann know what his findings are.

Director Dexter asked with the water coming back in from the O'Sullivan Dam technically the Bureau could raise the Dam so the water wouldn't come and raise the lake so quickly but they want to maximize the amount of water they have. Vice Chairman Bailey said the water level is pretty normal for this time of year, and now that the MLIRD Dam is a foot and a half lower, it is just more obvious. General Manager, Chris Overland said the Bureau probably had no place to go with the water. Chairman Foster said he hasn't heard of any structure damage that they may have south of the Dam, they probably have their pipeline filled and this is how they are going to store the extra water.

Director Dexter also asked if MLIRD staff had cleared the Pelican Horn Railroad Trestle Causeway by hand. General Manager, Chris Overland said yes, all of the rocks were cleared out. Director Dexter also asked if it seemed to help and how many times did MLIRD staff have to clear the rocks out. General Manager, Chris Overland replied that clearing the rocks did help and staff had to move the rocks out twice as it seemed someone would be putting the rocks back in over the weekend.

#### **ADJOURNMENT**

The meeting was adjourned at 8:32 PM.

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Jeffrey B. Foster, Chairman

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Bill Bailey, Vice Chairman

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Kaj Selmann, Director

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Kris Dexter, Director

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Richard Teals, Director

By: \_\_\_\_\_  
Secretary to the Board of Directors