

CALL TO ORDER

At 6:00 PM, Chairman Foster called the March 08, 2018 Special Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all Board of Directors were present except Director Teals. General Manager, Chris Overland was also present. Legal Counsel, Brian Iller attended via-telephone. 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 nothing was brought forward.

APPROVAL OF THE AGENDA

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

EXECUTIVE SESSION

The Board went into Executive Session at 6:05 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 MLIRD assessment issues as authorized by RCW 42.30.110 (1)(i)(iii) and 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 litigation that has been specifically threatened as authorized by RCW 42.30.110 (1)(i)(ii). The expected time was 25 minutes, and the Board was to return at 6:30 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.

Chairman Foster entered back into the boardroom at 6:30 PM to extend Executive Session another 10 minutes. They were to return to Regular Session at 6:40 PM.

The Board entered back into Regular Session at 6:40 PM.

ACTION ITEMS

Legal Counsel, Brian Iller gave some background on the MLIRD assessment issues that is not privileged or confidential. He said as of this time, the Grant County Treasurer has indicated through the Grant County Deputy Prosecutor Jim Mitchell, that the Treasurer is not going to issue notices for MLIRD assessments that the MLIRD Board adopted back in January. Since the assessments become delinquent on May 1st, 2018 by statute, MLIRD needs to act quickly if MLIRD wants to go to court to get a court to order the Grant County Treasurer to issue the notices of assessments. The action that would need to occur would be what is called an action for a writ of Mandamus. Mandamus is a way of saying mandate. MLIRD will seek a court order mandating that the Treasurer send out the notices of MLIRD assessments as they were adopted in January 2018. The statute regarding the issuing of the notices is clear and uses the words "the Treasurer shall issue the notices." The claim to the court would be that the Treasurer does not have the discretion to refuse to issue the notices of assessments. He added that the question for the Board, is

whether or not to direct himself, Brian Iller, as the Attorney for the Moses Lake Irrigation and Rehabilitation District, to proceed with the action to seek a writ of Mandamus ordering the Treasurer to issue the notices of MLIRD assessments as based on the assessment roll that was adopted by the MLIRD Board. He also noted that he has provided authorities to the County, the Deputy Prosecuting Attorney who undoubtedly has forwarded them to the Treasurer which steps forth all of the case law that says the setting of the assessments and rates is a legislative act, and the legislative body of the irrigation district is the MLIRD Board of Directors, not the Treasurer or the Ex-Officio Treasurer. Therefore, Mr. Darryl Pheasant does not have authority to refuse to issue the notices of assessments. Legal Counsel, Brian Iller said at this point if the Board wants him to proceed to file a petition for a writ of Mandamus to have the court order Mr. Pheasant to issue the notices of assessments that he is required to issue under the statute he would need a motion. The appropriate motion would be “I move that we direct Legal Counsel, Brian Iller to proceed with a petition for writ of Mandamus requiring the Treasurer and Grant County to proceed to issue notices and collect the MLIRD assessments as required by statute.” Director Dexter said he so moved. Vice Chairman Bailey seconded the motion. Director Dexter said with this situation of not having funds, based on the legislative direction to provide funds that MLIRD is in a position to have to have this mandate and MLIRD has no choice. He also added that MLIRD does not have time to do anything else, so he thinks MLIRD is forced to do something quickly, and he is for this motion. Legal Counsel, Brian Iller also noted for the record that General Manager, Chris Overland and himself have had conversations with the Grant County Treasurer, the Grant County Assessor, and the Deputy County Prosecutor and there has been no movement and he thinks MLIRD is at an impasse and that the statement by Director Dexter just made is a very accurate reflection of where MLIRD is at right now. Chairman Foster then called for a vote on the motion. Chairman Foster, Vice Chairman Bailey and Director Dexter were all for the motion. Director Selmann abstained from voting. Legal Counsel, Brian Iller said he can always abstain; the Board needs three affirmative votes to take action. Director Dexter mentioned that at one time he tried abstaining and it was said that you either had to say “yay” or “nay,” and you couldn’t abstain. Chairman Foster asked if at that time if Director Dexter was abstaining went with another issue. Legal Counsel, Brian Iller recalled there was something discussed on abstaining, but he can’t remember the context. Chairman Foster said the votes cast for the motion was three in favor, none opposed and one abstention. Legal Counsel, Brian Iller said the three in favor is what the Board needs to act on a motion. The motion was then carried. Legal Counsel, Brian Iller said he would take action and get it out as soon as he could.

ADJOURNMENT

The meeting was adjourned at 6:49 PM.

Jeffrey B. Foster, Chairman

Bill Bailey, Vice Chairman

Kaj Selmann, Director

Kris Dexter, Director

Richard Teals, Director

By: _____
Secretary to the Board of Directors