

## **CALL TO ORDER**

At 7:00 PM, Chairman Foster called the December 11, 2018 Regular Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all Board of Directors were present except Director Selmann. Legal Counsel, Brian Iller and General Manager, Chris Overland was also present. The record indicates that this meeting was recorded.

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

Chairman Foster called on the board members, and the audience for discussion on any agenda items and Norm Estoos asked to discuss the matter regarding assessments.

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

Chairman Foster called on the board members, and the audience for discussion on any non-agenda items and nothing was brought forward.

## **APPROVAL OF THE AGENDA**

Chairman Foster called on the board members to approve the agenda. Vice Chairman Bailey made a motion to approve the agenda as amended. Director Dexter seconded the motion. The motion carried unanimously. The record indicates that Director Selmann joined the meeting.

## **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 11/13/18 Regular Board Meeting and 11/13/18 Special Board Meeting, the Bills/Checks (#16922-#16959) and Voucher #1000207 totaling \$139,813.21. Director Teals asked that “qualified” be stricken from page one of the 11/13/18 Regular Board Meeting minutes as it implies that there were people that applied to run for the Director positions however were not qualified which was not the case. Director Teals made a motion to approve the meeting minutes of the 11/13/18 Regular Board Meeting as amended and the meeting minutes of the 11/13/18 Special Board Meeting. Vice Chairman Bailey seconded the motion. The motion carried unanimously. Director Teals made a motion to approve the Bills/Checks (#16922-#16959) and Voucher #1000207 totaling \$139,813.21. Director Selmann seconded the motion. Vice Chairman Bailey abstained from voting on any items related to Basin Property Management, Inc. The motion carried unanimously.

## **PUBLIC HEARINGS**

Legal Counsel, Brian Iller announced that Richard Price sent a protest letter on July 27, 2018 to Darryl Pheasant and copied MLIRD. General Manager, Chris Overland sent Mr. Price a letter on December 4, 2018 stating the MLIRD Board would be considering his protest in a hearing on December 11, 2018 at its Regular Board Meeting and if he wished to provide any further evidence or argument regarding to protest to do so no later than December 10, 2018. Mr. Price did not provide anything else and was not present for the hearing at the December 11, 2018 Regular Board Meeting. Stated in the letter Mr. Price sent, he does not believe he receives any direct benefit from the Moses Lake Irrigation and Rehabilitation

District. Legal Counsel, Brian Iller stated it has been the law since 1923 that the availability of water for a property constitutes a benefit to that property whether or not the property owner takes steps to access the water and use it. This is referenced under case Otis Orchards Company vs. Otis Orchards Irrigation District #1. According to the case, there is benefit to all the lands within the District who share the District's water right. Legal Counsel, Brian Iller also referenced another case law that states the benefit to the property from an irrigation district is conclusively established at the time, that an irrigation district is formed. It is too late, almost 100 years later, to come in and claim that your property is not benefited by the availability of water on an irrigation district water right. Mr. Price's second argument is "taxation without representation." Every property owner in the Moses Lake Irrigation and Rehabilitation District has a right to vote, which is representation. Therefore there is no validity to his claim that he is being taxed without representation. Mr. Price then states the lake represents a traffic problem in which MLIRD certainly has no control over a traffic problem created by a lake. Mr. Price also states his belief that the state legislature should look into the law that gives an irrigation district the ability to level an assessment on property owners that do not receive a direct benefit from that irrigation district (i.e., Irrigation Water). Legal Counsel, Brian Iller stated again that the statement made by Mr. Price was not true; that the land does not receive a benefit from the availability of water. Historically, the MLIRD Board has determined to maintain the lake as a reservoir and has historically decided not to pay the expense of building any delivery infrastructures to all the properties within the District. Instead, this has been left up to the property owners who can build their own systems individually or collectively. There is also a local improvement district process under RCW Chapter 87.03 where a group of property owners can petition the district to form a local improvement district to build those kinds of structures. The water is available to all property owners in the District; therefore there is a benefit to each property. Under Washington laws established, there is no basis for this protest. Legal Counsel, Brian Iller said Mr. Price certainly can petition to the State Legislature, same as anyone else can, and see if the State Legislature is interested in changing the law. Vice Chairman Bailey made a motion to reject the protest submitted by Richard Price on July 27, 2018. Director Selmann seconded the motion. The motion carried unanimously.

## **MLIRD STAFF REPORTS**

General Manager, Chris Overland reported the following:

- Lake elevation was at 1041.35 feet as of December 11, 2018. The Potholes elevation was reported at 1039.10 feet.
- MLIRD has been approached by a property owner named Tracy Miller regarding her property located at 9036 McConnell Drive, Moses Lake, WA asking for a refund as she was not supposed to be assessed and was. MLIRD has confirmed errors with the Grant County's GIS data vs. the Grant County Assessor's roll data. Legal Counsel, Brian Iller stated that these are parcels that are not within the MLIRD boundaries that were assessed using the Grant County GIS data. General Manager, Chris Overland agreed and said these parcels were within the Grant County GIS information; however, they did not agree with what is in the Grant County Assessor's Office on their master roll. The data in TaxSifter appears to show that in fact, Tracy Miller's mortgage company did pay an MLIRD assessment on her behalf. General Manager, Chris Overland has requested opportunity to refund cases like this such as under Resolution 2011-031 that established a procedure for refunds of erroneous district assessments. General Manager, Chris Overland wanted to discuss the issue with the MLIRD Board before proceeding to tell Tracy Miller to fill out any paperwork. Chairman

Foster stated that once a resolution has passed, it doesn't expire. Vice Chairman Bailey expressed he felt MLIRD should contact Tracy Miller and have her fill out the form. The resolution at this time gives the General Manager the authority to grant the refunds. Legal Counsel, Brian Iller stated that for now, any property owners who raise an issue should fill out a refund form and submit it to the MLIRD Office. Director Selmann asked that this issue be discussed in Executive Session as he has questions regarding it. Chairman Foster stated MLIRD does not have a written request from Tracy Miller. General Manager, Chris Overland advised it has only been an oral request so far. Vice Chairman Bailey stated that she was advised not to do anything until the General Manager got back to her. It was decided by Legal Counsel, Brian Iller that the Board go into Executive Session and discuss the issue before the Board takes any action.

- There is an advertisement currently running for the fountain-side dredge project. Bids are due on 1/3/19. The entities involved in the permit include DNR, City of Moses Lake, Army Corp, Department of Ecology, and Washington State Department of Fish and Wildlife.
- The \$50K Freshwater Algae Program grant was submitted on 11/14/18. The desired goal is to conduct a study to compare current nutrient loading sources/rates with those in the past. This will help determine a viable path moving forward. Focus areas to be considered are the Larson Wastewater Treatment Plant, creeks, septic systems around the lake, and lower Columbia River Water dilution rates. Suggested entities to conduct this study might be the Department of Ecology, Lake Advocates, or Water Quality Engineering, who did the 2006 study of Moses Lake. The determination on which applicant might receive the grant will take place in the middle of January. MLIRD has another opportunity on 1/2/19 for a similar grant to go toward improving water quality. Chairman Foster stated before MLIRD accepts any grants, he wants it reviewed by Legal Counsel, Brian Iller. Chairman Foster mentioned that in taking grant money, you do what they say, which may cost the District extra to follow through with any of their demands. He also said General Manager, Chris Overland should show Legal Counsel, Brian Iller the grant before it gets much further in the process in case there is something with just submitting the grant MLIRD has already agreed to.
- A tentative budget for 2019 includes \$1.5M to dredge the fountain side of the fill and \$300K for additional lake treatments with assessments set at \$1.00 per thousand of total assessed value. General Manager, Chris Overland let the Board know there was enough information for the Board to approve the budget tonight; however, suggested that the approval of the 2019 Budget wait until the January Meeting when all of the December 2018 expenses were finalized, and dredging bids were in. Vice Chairman Bailey suggested the Board wait to approve it as well. Chairman Foster asked that there be a finance meeting before the January Regular Board Meeting. Chairman Foster suggested the addition of footnotes for any of the significant expense differences from 2018 to 2019 year to date which would help the Board better understand and to schedule a meeting before the end of the 2018 year. With the \$300K, General Manager, Chris Overland hopes to do some aquatic treatments on the north end of the lake and believes the case could be made for doing treatments on the north end of the lake before problems hit south of the lake. Vice Chairman Bailey mentioned that when MLIRD thinks of treating the lake, not only does acres need to be thought of, volume does as well. Chairman Foster believes all of the vendors have charged MLIRD based on surface acres. Vice Chairman Bailey said when treating for algae; if the algae are truly throughout the water column, then it may be something MLIRD should discuss with the vendors or contractors.

Chairman Foster also believes he wouldn't want to go out trying something before MLIRD gets any results from the research study MLIRD is hoping to get done. There has been a lot of input from Gene Welch saying it might take multiple treatments over the entire lake as in, 4-6 times a year, and if Chairman Foster remembers correctly, Gene Welch is not convinced treating the lake that many times will do what everyone wants it to do. Chairman Foster stated that while he hears that General Manager, Chris Overland wants to add the \$300K for additional aquatic treatments into the budget, he would hold off on doing so until MLIRD has more info on future studies. Director Selmann stated the Columbia River water basically affects the water quality up until where General Manager, Chris Overland is suggesting the treatments. This is why the north end is a particular part of the lake that is more problematic than the rest because that is about as far as the Columbia River water moves up. This means you are starting with a much heavier nutrient load in that part of the lake which is why that is where the algae blooms are going to flourish the most and travel down affecting other areas of the lake. Vice Chairman Bailey said the nutrient load is sustained by Rocky Ford Creek. Both Director Selmann and General Manager, Chris Overland agreed with saying there are high rates of nutrient loading coming in from Rocky Ford Creek. Director Dexter mentioned looking for the nutrients that are coming into the lake and alter them because if you aren't changing the nutrients coming into the lake, and are treating the lake, you still have the same problem. Director Dexter believes MLIRD should focus on the high nutrient loading coming into the lake and get it altered to make a long-lasting effect. Vice Chairman Bailey agreed with Director Dexter and said MLIRD should consider looking at the Rocky Ford discharge as an effective place to begin treatment because that, in essence, will begin to affect everything. Director Selmann suggested rather than trying to take the phosphorus out of all the lake water if MLIRD could have something feeding the Rocky Ford Creek as it was discharging into the lake. Director Dexter also mentioned that General Manager, Chris Overland has been doing testing along the lake for nutrients coming into the lake and is seeing some areas that are higher than others and those will be the areas that MLIRD should try and focus on to get the nutrient loading to stop or lower the levels to a reasonable rate to see how much that effects the lake. General Manager, Chris Overland and Vice Chairman Bailey are set to meet with the Grant County Department of Health and Department of Ecology on December 19, 2018 to discuss improving the water quality of Moses Lake. Vice Chairman Bailey said he would call Tom Dent and Judy Warnick and invite them to join in on the meeting as well.

- Financials are at 91% of the budget. Total expenses are at 50%.

## **PUBLIC COMMENTS**

Norm Estoos believes MLIRD is really two separate entities, the Moses Lake Irrigation District and the Moses Lake Rehabilitation District. His opinion is there are two assessments for the District and should be charged on land only. Chairman Foster respectfully disagreed and said based on his understanding of the RCW's, MLIRD is one organization charged to act under two RCW's and that MLIRD does not have the authority to just asses on land based on the interpretation from current Legal Counsel, prior Legal Counsel, and at least two Washington State audits that says MLIRD is assessing correctly. Chairman Foster stated it is well known that this issue is currently in litigation and will soon be decided. Legal Counsel, Brian Iller stated the Districts position is that it clearly does have authority to assess and historically has assessed against the total value of the land and the improvements. He said it has only been within the last few years that the authority has been challenged. Legal

Counsel, Brian Iller said sooner or later the Grant County Superior Court is going to decide the right and wrong of the issue. Legal Counsel, Brian Iller also pointed out that the last assessment notice was not drafted by MLIRD. MLIRD has never distinguished its assessments between the two different RCW Chapters. The last assessment notice was drafted by Grant County Treasurer, Darryl Pheasant. The Districts funds go into the same account and are spent out of that account to fulfill the Districts purposes. For assessment authority, the District was advised by the State Auditor to make it clear when it assessed which authority is exercised. MLIRD is not two separate Districts. Legal Counsel, Brian Iller stated his opinion is this is another example of the Grant County Treasurer doing something to make MLIRD look bad in the hopes that he won't have to do his job which is to be the ex-officio treasurer of MLIRD.

Glen Zuger said he was curious as to why the water flowing in Rocky Ford Creek looks clean, however when it gets into Moses Lake it changes. Vice Chairman Bailey said it is the phosphorus coming from Rocky Ford Creek. He said it looks clear. However, it is not clean. Chairman Foster also included its all the input along the way from the time the water leaves Drumheller Dam until it enters Moses Lake both natural and man-made. Moses Lake has the benefit and the unfortunate of the high temperatures and lack of movement. Director Selmann mentioned that Rocky Ford Creek has a lot of nutrient loading; however, when the water is flowing, the growth is a lot different than when the water is still.

MLIRD Staff Member, Beth Yonko asked Vice Chairman Bailey, Director Dexter and Director Selmann which day of the week would be best for their schedules to arrange the swearing in of their Director positions at the Grant County Courthouse in Ephrata, WA. It was decided to try and schedule it for January 7, 2019.

### **EXECUTIVE SESSION**

The Board went into Executive Session at 7:45 PM to discuss with Legal Counsel pending litigation as authorized by RCW 42.30.110 (1)(i) and to discuss with Legal Counsel potential litigation in the form of the legal risks of a proposed action or current practice as authorized by RCW 42.30.110 (1)(i)(iii). The expected time was 15 minutes, and the Board was to return at 8:00 PM. Legal Counsel, Brian Iller indicated that there may or may not be further action taken after as a result of the discussion in Executive Session.

Chairman Foster entered back into the boardroom at 8:00 PM to extend Executive Session another 10 minutes. They were to return to Regular Session at 8:10 PM.

The Board entered back into Regular Session at 8:10 PM.

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

Vice Chairman Bailey said General Manager, Chris Overland is working on the JARPA for the new picnic shelter at Connelly Park. The Rotary Club is going to pay the \$350. The picnic shelter is planned to be approximately 32 feet away from the lake which creates a lot of paperwork.

### **ADJOURNMENT**

The meeting was adjourned at 8:16 PM.

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Jeffrey B. Foster, Chairman

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Bill Bailey, Vice Chairman

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Kris Dexter, Director

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Richard Teals, Director

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Kaj Selmann, Director

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