

CALL TO ORDER

At 7:00 PM, Vice Chairman Bailey called the December 08, 2015 Regular Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all Board Members except Chairman Foster were present. General Manager, Chris Overland and Legal Counsel, Brian Iller was present as well. The record indicates that this meeting was recorded. The Pledge of Allegiance was then recited.

DISCUSSION OF AGENDA ITEM(S)

Vice Chairman Bailey called on the Board of Directors and the audience for discussion on any agenda items, and nothing was brought forward.

DISCUSSION OF NON-AGENDA ITEM(S)

Vice Chairman Bailey called on the Board of Directors and the audience for discussion on any non-agenda items and Lloyd Peterson asked to be added to the agenda to discuss the Spillway Recreation Water Access (Boat Launch at the Moses Lake North Dam).

APPROVAL OF THE AGENDA

Vice Chairman Bailey called on the Board of Directors to approve the agenda. Director Dexter then made a motion to approve the agenda. Director Perry seconded the motion. The motion was then carried unanimously.

APPROVAL OF THE CONSENT AGENDA

Vice Chairman Bailey called on the Board of Directors to approve the meeting minutes from the 11/10/15 Special Meeting and the 11/10/15 Regular Meeting in the consent agenda. Director Teals then made a motion to approve the meeting minutes from the 11/10/15 Special Meeting and the 11/10/15 Regular Meeting. Director Dexter seconded the motion. The motion was then carried unanimously.

Vice Chairman Bailey called on the Board of Directors to approve the Bills/Checks and Vouchers in the consent agenda. The items being approved consisted of the Bills/Checks (#15354 - #15383) and Vouchers (#1000145 - #1000147) totaling in \$114,121.21. Director Perry then made a motion to approve the Bills/Checks and Vouchers in the consent agenda. Director Teals seconded the motion. For the record, Vice Chairman Bailey abstained from voting on any items related to Basin Property Management, Inc. The motion was then carried unanimously.

PUBLIC COMMENTS

Lloyd Peterson, who resides at 1700 Marina Drive in Moses Lake, spoke on how he has attended previous MLIRD Board Meetings and discussed how a primitive boat launch or water access has not been re-installed at the Spillway (Moses Lake North Dam). At the previous Board Meetings, Mr. Peterson had been told that it would be kept in consideration and that the General Manager would talk with other agencies to see if they would take the lead on the project. General Manager, Chris Overland had reported earlier to Mr. Peterson that there were complications in finding a lead agency and that MLIRD was not likely going to proceed with any further actions and was treating it as a low priority. Mr. Peterson said that

he understood one of the reasons was because of the liability issue. He asked if he could get further clarification on why modifying the area to make it more useable as a water access, would be any more of a liability than a slip and fall off of the Spillway (Moses Lake North Dam), or something happening at Connelly Park. Vice Chairman Bailey said that General Manager, Chris Overland had made contact with USBR and WDFW with the idea that MLIRD would be “supportive of the project” but not the lead agency. Both entities did not have any interest in doing so.

General Manager, Chris Overland then showed a recent video he had taken that showed a boat in the water at the Moses Lake North Dam. General Manager, Chris Overland said he had also gone out to the Moses Lake North Dam that day and noticed that someone had backed down the path with a vehicle and had made it back out in the much discussed boat launch path. Mr. Peterson said whoever had taken the path down to the water had gone down there with extreme difficulty and believes that it wouldn't be a huge job to do some additional work to the path, making it more useable as a water access. Vice Chairman Bailey said the thing that Mr. Peterson needs to realize is that anytime you are modifying property that close to the water, there are a lot of rules that come into play. This was the reason why MLIRD was hoping that either USBR or WDFW would agree that a lot of people would benefit to having that water access and take the lead on the project. Mr. Peterson wanted to know why MLIRD wouldn't be interested in taking the same approach. Vice Chairman Bailey said that it brings it back to the liability issue, and MLIRD needs to be extremely cautious in their relationship with their insurance carrier.

Legal Counsel, Brian Iller then explained just as a general principle, that whenever anybody authorizes access to their property for any use, there are liability risks associated with it. Those risks are magnified if you do anything at all to improve the property. Under the law of the state of Washington, when a property is in its natural condition, you have less of a risk than if you went in there with a piece of equipment and modified it to encourage people to use it. Legal Counsel, Brian Iller said that while MLIRD does have insurance coverage, the more claims an entity has, the more its rates go up. When insurance boards look at entities risk profile, insurance companies can say no to insure them because of having too many claims. He expressed that it is risky for any entity to modify property in any way to encourage people to use the area. Mr. Peterson thanked the Board for their time.

MLIRD STAFF REPORTS

General Manager, Chris Overland reported the following:

- Lake elevation was at 1041.93 feet as of 1:00 PM on December 8, 2015. General Manager, Chris Overland has looked through records and has not found if the lake level has ever been this low before and it looks as if it is going to drop lower. Last year and the year before the lake level only dropped to approximately 1042.80.
- Last year's assessment roll value was \$1,693,775 and this year's assessment roll value is approximately a 3.4% increase over last.
- The 2016 budget is nearly ready for approval.
- The Dahl Road ILA with Grant County expires on December 31, 2015. Discussion on this took place because it appears that in the recent past, MLIRD has only used this location once before, and that was to pull a harvester out of the water a few years ago. General Manager, Chris Overland said that this has also been an annual clean-up location during the Lakeshore Clean-up and asked if there was any value added in renewing the agreement. The lease requires MLIRD to have a \$2 million insurance policy for the property.

Director Teals said that the property was originally used to put MLIRD's harvesters in and out of the lake as well as a harvester unloading location in 2003. He also said that MLIRD was considering developing the area into a park. Director Teals believes that MLIRD does not need to renew the Dahl Road ILA with Grant County. Vice Chairman Bailey asked if the County would object to MLIRD's continued use of the Dahl Road access if the need arises. Vice Chairman Bailey agreed that MLIRD should not renew the ILA, so MLIRD does not have any responsibility associated with the Dahl Road area. General Manager, Chris Overland said that he is inclined to let the ILA expire and if the need to use the Dahl Road access arises, MLIRD will approach the County when it does.

- The five-year permit renewal process for dredging operations is ongoing. However, the City of Moses Lake has recently asked MLIRD what the plan is for the spoils pile as that area is not zoned as a permanent storage site. The dredging permit renewal process is now pending until this matter is resolved.

Vice Chairman Bailey said MLIRD has leases that designate several people as having ownership of the spoils pile. He asked the question if the leases were legal and if MLIRD knows how much dredge spoils material is actually there. Vice Chairman Bailey advised that MLIRD should have an engineering company measure the spoils pile and get an accurate estimate of what is there. He believes MLIRD should then contact the other parties on the lease and let them know that MLIRD needs to have that material moved.

Vice Chairman Bailey said part of the issue is that MLIRD still owns a third of the spoils pile and believes MLIRD needs to get prices on what it will cost to get MLIRD's share of the spoils pile moved to Connelly Park or to sell so the issue can be resolved. Legal Counsel, Brian Iller is going to look through the leases and see who exactly owns the spoils pile.

Vice Chairman Bailey also said it is to his understanding there are property owners that own the lake bottom who may also be interested in some of the spoils pile. Legal Counsel, Brian Iller had recalled at one point under the retired staff that they were approached by someone that did want to purchase the spoils pile, but the issue got wrapped up in the statutory requirements for advertising and the sale of personal property. Vice Chairman Bailey thought a resolution was put together to sell part of the spoils pile. Legal Counsel, Brian Iller knows a resolution was drafted, however, does not recall if it was ever passed. Vice Chairman Bailey believes the resolution was passed, and MLIRD advertised the spoils pile for sale and nothing happened.

Director Teals had heard both parties on the lease had previously asked to take some of the spoils pile. General Manager, Chris Overland said that was correct, and each of them requested and then removed a few truck loads. Director Teals said he sees this as not being a big problem as both parties to the lease seem anxious to take some of the spoils pile and thinks MLIRD should move ahead with letting them know their portion needs to be removed. Vice Chairman Bailey said that ownership needs to be determined, and if the spoils pile belongs to only them, then it needs to be moved. Legal Counsel, Brian Iller assured the Board that he would look through the leases to determine ownership. He said the next question would then be if the advertisement that ran over a year ago would be sufficient for a sale now.

Vice Chairman Bailey said one scenario may be that the spoils pile is already owned by someone else, and it needs to be moved and Legal Counsel, Brian Iller will let the General Manager know that or two,

being if MLIRD does own part of the spoils pile, and then MLIRD needs to determine whether or not the previous resolution is still good and if not a resolution needs to be drafted for the January Board meeting to get the spoils pile moved as soon as possible.

Director Dexter asked if MLIRD has renewed a lease with Pamp Maiers & Rick Penhallurick. General Manager, Chris Overland said MLIRD is currently covered under a lease. Director Dexter thought a possibility may be to amend the current lease or to draw up a new lease saying any material taken out of the lake is theirs and for them to remove so MLIRD won't have this problem. Legal Counsel, Brian Iller said he would like to confer with the Board in executive session about the potential risks of that type of an action after he researches the issue. Director Dexter brought up that he believes it would be more cost effective for MLIRD to sell their portion of the spoils pile instead of MLIRD handling it again and moving it to Connelly Park. General Manager, Chris Overland agreed and added that there is a potential risk management concern as well as, the real cost. Vice Chairman Bailey said he had recently talked with General Manager, Chris Overland and they came up with approximately \$10 a yard for the cost of dredging based on estimated production but not counting the equipment depreciation. Vice Chairman Bailey suspects that the costs of moving the spoils pile to Connelly Park will more than double the cost of dredging.

- The J. R. Newhouse Financial Statement Engagement Request was then brought up for discussion. Vice Chairman Bailey is satisfied with the system that has been developed. Director Perry moved to approve the J. R. Newhouse Financial Statement Engagement Request. Director Dexter seconded the motion. The motion was then carried unanimously.

WORKSHOP/DIRECTOR QUESTIONS AND/OR COMMENTS

Legal Counsel, Brian Iller announced that the Hansen Lawsuit is in the Discovery phase. He has exchanged emails with Jerry Moberg's office, and they have confirmed that the case is still in the discovery phase, and they are working currently on the summary judgment motion and then the discovery is sufficiently complete. He has attempted multiple times to contact MLIRD's water right consultant and he hasn't gotten back to him but will hopefully be able to report on that in January. Director Teals asked Legal Counsel, Brian Iller to explain what is involved in the term "discovery". Legal Counsel, Brian Iller said, "discovery" is the pre-trial process where each side gets to find out what the other side is going to claim or use as their defense. In the federal courts where that case is pending, there is an initial disclosure required where each side is supposed to give up its evidence that supports its side of the case. Then the parties also submit written questions that are called interrogatories, a written request for production of documents. They can also do requests for admission, but he said those are not typically used. He explained that there are then depositions that are where they put witnesses under oath and ask them questions that can then later be used in trial if the witness changes what they say in the trial. Legal Counsel, Brian Iller said he has not been advised of any depositions at all in the Hansen case at this point, and the comment of the legal assistant was that the plaintiff, Mick, did not seem to be pushing the case at all. Legal Counsel, Brian Iller said he would say from MLIRD's perspective that no news is good news.

Vice Chairman Bailey said that the 2016 Budget has not been discussed. He is assuming that the finance committee will meet to prepare the operating budget for next year. General Manager, Chris Overland indicated that he had the 2016 Budget Overview ready for the Board of Directors to look over, and copies were provided for their review. Vice

Chairman Bailey thinks the Board expects the finance committee to review the 2016 Budget and make a recommendation to the Board.

ADJOURNMENT

The meeting was adjourned at 7:49 PM.

Jeffrey B. Foster, Chairman

Bill Bailey, Vice Chairman

Mary Perry, Director

Kris Dexter, Director

Richard Teals, Director

By: _____
Secretary to the Board of Directors

Transcribed By: _____