

## **CALL TO ORDER**

At 7:00 PM, Vice Chairman Bailey called the December 12, 2017, Regular Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all Directors were present except Chairman Foster, who attended via-telephone. 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)**

Vice Chairman Bailey called on the board members and the audience for discussion on any agenda items, and Clay Crook asked to be added to the agenda.

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

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

## **APPROVAL OF THE AGENDA**

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

## **APPROVAL OF CONSENT AGENDA**

Vice Chairman Bailey called on the board members to approve the consent agenda. The consent agenda consisted of the minutes from 11/14/17, the Bills/Checks #16429-#16471 and Voucher #1000195 totaling \$133,550.36. Director Dexter made a motion to approve the consent agenda. Director Teals seconded the motion. The motion was then carried unanimously.

## **MLIRD STAFF REPORTS**

General Manager, Chris Overland reported the following:

- Lake elevation was 1041.36 at 9:00 AM as of December 12, 2017.
- Financials continue to be strong with the current spend at 76% of the budget. General Manager, Chris Overland anticipates having the 2018 budget complete for review at the January Regular Board Meeting.
- General Manager, Chris Overland was advised that MLIRD missed a considerable CIAW rate increase this year due to another claims free year. The new rate is \$67,500.
- Everything is in place for a smooth payroll transition after the first of the year from the 26 to 24 pay cycles for DRS reporting purposes.
- MLIRD anticipates getting results for the 2016 Accountability Audit, expected to close soon.
- Recent correspondence with DNR suggests that they are very insistent MLIRD has within the plan of any new lease to replace the dock and pilings at the Parker Horn Pump Station.
- The Fountain Side Dredge Project bids have been reviewed, and recommendations have been made. The advertisement that went out for the project discussed the importance of the management of turbidity. None of the three bidders showed a realistic management

plan to address those concerns. General Manager, Chris Overland said there is so much at stake environmentally that it is hard to support moving forward with any of the three bids.

The spoils lease is secure for another year with Pamp Maiers property for MLIRD to continue dredging operations. The 2018 year could be used productively to remove dirt from the dredge site as there is a lot of dirt that needs to be hauled out. Director Dexter asked if any of the three bidders commented on turbidity. General Manager, Chris Overland said he had the sense that the three bidders were production oriented bidders but the environmental parameters are too defined to ignore, and if they do not have an active plan to manage turbidity or a problem-solving approach for managing the turbidity, then there will be issues. General Manager, Chris Overland added that none of the three bidders put together comprehensive plans on how they would manage the turbidity other than telling MLIRD that they would do it. One of the bidders had a line item for stand-alone time, so conceivably if there were issues with turbidity and production had to stop, their stand-by time kicked in rather than having to manage that part of the operation themselves. Given the lack of focus on managing turbidity, it is hard to support any of the three bids. The project started off as an RFP, however, since the project is public works and the dollar amount is so high, it pushed the project into a bid process. Legal Counsel, Brian Iller stated the District could also look again at the RFP process based on the bids received and the failure to address the technical requirements of the bid. He said there is an RFP non-bid process that can be used if there are technical requirements that can be addressed through a normal bidding process. Legal Counsel, Brian Iller said based on General Manager, Chris Overland's comments, he thinks MLIRD should take a look at those and see if that would fit under a non-bid process, but also that he wouldn't provide an opinion in an open session. Vice Chairman Bailey asked that General Manager, Chris Overland and Legal Counsel, Brian Iller look at the processes and meet with Chairman Foster and another designated Board Member prior to the January Regular Board Meeting to discuss the possibilities and ask questions so that a recommendation can be made to the Board. Director Teals believes that idea is fine and would like to see MLIRD moving ahead on this as quickly as possible.

- General Manager, Chris Overland then showed a quick video that was taken recently of both sides of the Alder Street Fill. Vice Chairman Bailey said it gives an amazing understanding of what has happened in the last 37 years. Director Teals added that he could certainly see where a lot of silt has been removed from the upper Parker Horn side of the Fill. Vice Chairman Bailey asked if the Bureau told MLIRD to open the Moses Lake North Dam gates and leave them open. General Manager, Chris Overland replied that the gates were opened as MLIRD normally does on the first Monday of November and they generally stay open until spring.

Director Teals mentioned that since the lake is so low this year, it gives MLIRD the opportunity to do some lake clean up. He said, for example, you can see a number of 55-gallon barrels that are mostly submerged in the lake bottom as well as a craft/boat, and out in front of his home there is a fairly large stump. Director Teals would like MLIRD to identify some of these items, mark them and when the water comes back up, get a boat out there to remove these items that can be dangerous. Vice Chairman Bailey wanted this topic added to be discussed during Executive Session.

## **EXECUTIVE SESSION**

The Board went into Executive Session at 7:20 PM to discuss with Legal Counsel pending litigation regarding the Hansen vs. MLIRD case as authorized by RCW 42.30.110 (1)(i) and to discuss with Legal Counsel the risks of a proposed action or current practice relating to the possible testimony in the Carpenter vs. Hansen case as authorized by RCW 42.30.110 (1)(i)(iii), also to discuss with Legal Counsel the legal issues regarding the dredging bids and the risks of lake cleanup. The expected time was 30 minutes, and the Board was to return at 7:50 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 7:50 PM.

Legal Counsel, Brian Iller asked to discuss authorization to disclose information protected by Rules of Professional Conduct 1.6 in providing testimony in the Carpenter vs. Hansen case. Legal Counsel, Brian Iller has been asked to provide a declaration in that case regarding the settlement to the District and Mr. Carpenter. He added that he is not asking for, and would never recommend that the Board weigh its attorney-client privilege which is a different issue. However, under the Rules of Professional Conduct, any information he gains in the course of his representation, the client is being confidential and is not to be disclosed and without authorization by the client. In order to get a proper declaration on this, Legal Counsel, Brian Iller asked the Board to authorize him to disclose confidential information but not waive attorney-client privilege in the course of providing the written testimony. Director Perry made a motion to authorize Legal Counsel, Brian Iller to disclose confidential information but not waive attorney-client privilege in the course of providing the written testimony. Director Teals seconded the motion. The motion was then carried unanimously.

Vice Chairman Bailey's thoughts on the lake cleanup that was brought up by Director Teals and discussed in Executive Session is that MLIRD Staff goes out, identify the items as best they can, mark them with GPS, develop a plan to remove the items, and dispose of them properly. Director Teals agreed and said that he was not sure a motion was needed, just a direct to do it. Vice Chairman Bailey agreed.

## **ACTION ITEMS**

Vice Chairman Bailey asked if General Manager, Chris Overland would go through the Dredge Bids. General Manager, Chris Overland explained his memorandum on the dredging bids is included in their Board binders along with Grette Associates report on the dredge bids. Both are supportive of rejection of all bids because of the uncertainty if they offer a full solution to MLIRD in terms of managing environmental turbidity to avoid consequences. He added that he believed all contractors could amply dredge the area without any problems, but left out how they would actively manage the discharge water with turbidity. This will essentially get MLIRD in trouble during dredging season which will cause the project to stop. Vice Chairman Bailey added that one contractor had written in "work stoppage" so they would still get paid while the project was stopped if needed be. Director Teals said he was concerned about the price of the project, and it seems to him that all of the bids were expensive and he doesn't believe MLIRD is in the position to spend those kinds of funds, even though he wants to see this project happen. Director Perry agrees with the expensive pricing and is also concerned about if DOE would have the opportunity to turn it down because of the turbidity issues. General Manager, Chris Overland said MLIRD's advertisement indicates MLIRD reserves the right to reject any and all submittals for any reason or no

reason at all and believes that these three bidders have given MLIRD the reasons to do so. Chairman Foster made a motion to reject all three bids and go back to the drawing board. Director Teals seconded the motion. The motion was then carried unanimously.

General Manager, Chris Overland asked to discuss the DNR lease renewal of the Parker Horn Pump Station. The deck materials and pilings are in good shape now. However, if the new lease was to run 10-15 years, MLIRD cannot speak for 10-15 years from now. DNR is insistent that MLIRD offers to replace the deck and pilings within any new lease. Director Teals mentioned he had seen one plank had been replaced here recently in the last year or so. He believes in a period of time MLIRD could make some changes there. Legal Counsel, Brian Iller asked if the suggestion was that DNR would accept a 15-year lease with the promise from MLIRD to replace the deck and pilings on the dock within that 15-year period. General Manager, Chris Overland answered yes and indicated that DNR had communicated their desire for MLIRD to replace the dock and pilings to completely mitigate any risk of creosote leaching into the lake.

Legal Counsel, Brian Iller said he would just note for the record that DNR never did provide any strong science that he read that suggests there is any significant creosote still leaching currently from the deck and pilings at this point in time based on the science they did provide. He did mention that on the other hand there are studies that show creosote is an environmental problem and sooner or later the dock is going to have to be replaced. Legal Counsel, Brian Iller said if the Board makes the decision as a policy matter, that it wants to continue the lease so it can continue to operate the pump, then a 15-year timeframe might be within reason.

Director Dexter asked how long the dock should last. General Manager, Chris Overland said with the existing dock, MLIRD does not have that information. Most people would probably think that by now, it would have significant wear as it was built in 1981, but it has held up very well, and the screens, pilings, and dock are in great shape. However, DNR is insistent MLIRD replace them within the next lease term, and MLIRD has a decision to make. Chairman Foster asked if the Parker Horn Pump Station could be operated without a dock there. Vice Chairman Bailey said the screens are underneath the dock which is what keeps the public from damaging the screens. Also, he added the housing for the pump, and all the equipment is in the lake as well so he would assume the lease covers that including the pilings. Chairman Foster said if the Board agrees to remove the existing deck and pilings sometime within the next lease term and it is discovered at that time to be cost prohibitive, what would the problems be in operating the pumps and screens, etc. General Manager, Chris Overland said the perceived problem is the creosote and the copper materials used to treat the decking and dock wood. Vice Chairman Bailey said the only issue then is MLIRD would need some sort of protection for the screens. Chairman Foster added that this may be less costly than replacing dock and pilings and that he doesn't want to burden any subsequent Board into doing something that will cost huge amounts of money. Vice Chairman Bailey says he believes if the Board agrees to remove the objectionable materials, MLIRD will still have the option to build, rebuild or to do away with. Chairman Foster said he would agree to that language, but not that MLIRD would replace any existing structure.

Director Dexter said that Legal Counsel, Brian Iller did point out that DNR did not provide any scientific information that there is a current problem. Legal Counsel, Brian Iller said to be clear, they did provide a huge amount of scientific information, and as he read it, he does not believe it supports their claim that there is an existing problem. Director Dexter thinks MLIRD is reacting to a non-evident claim and maybe MLIRD should insist that they have evidence before anything is done. Chairman Foster mentioned that General Manager, Chris Overland is concerned that not

addressing this matter may not help MLIRD in the future permitting processes with DNR. He believes if MLIRD gives DNR what they want and agree that in the next term to simply remove the offending materials, then the Board is not committing any subsequent Board into replacing a dock that will have to be to someone else's standards. Vice Chairman Bailey agreed. Legal Counsel, Brian Iller said the lease would have to come back to the Board for final approval so General Manager, Chris Overland can communicate with DNR and he and General Manager, Chris Overland will work on the "replace" language.

## **RESOLUTIONS**

Chairman Foster made a motion to approve resolution 2017-005 Re: District Bank Account as presented. Director Dexter seconded the motion. The motion was then carried unanimously.

## **PUBLIC COMMENTS**

Audience Member Clay Crook said that every summer his grass begins to grow better because he irrigates out of the lake. His grass is benefitting from the nitrogen in the lake every time he irrigates. He would like to know why every person that owns lakefront property is not encouraged to irrigate from the lake to get some of the nitrogen out to help benefit the lake as well as their own lawn. Vice Chairman Bailey said that the first reason is some lakefront landowners are not in the District, therefore are not entitled to irrigate from the lake. He mentioned that as a Board he would hope that at some time they do join and become ratepayers if they are not already. He said the second reason is he cannot begin to even think of answering why other landowners who are ratepayers do not take advantage of irrigating from the lake. Clay Crook said a thought may be to discount ratepayers that are irrigating from the lake because that may interest more people to join the district and would get rid of more fertilizer and nitrogen floating down the lake. Director Perry mentioned that they just moved into their home and had their irrigation system installed this summer and the salesman who installed it said it is not good to draw water from the lake for those with small emitters because they plug up so fast, so a good share of Director Perry's system is on city water because of that reason.

Audience Member Glen Zuger asked if the lake cleanup, in regards to identifying objects, marking them and removing them from the lake, is done as a District could be a possible legal issue if somebody hits an object in the lake that was not removed during the lake cleanup and gets a personal injury. Chairman Foster said he had wondered the same thing. Legal Counsel, Brian Iller said speaking hypothetically, because he would never give his legal opinion to the Board in an open session due to attorney-client privilege, he said you can't eliminate that risk, but if the project of removal of trash is just simply a cleanup and not a safety program, he does not think it is a very significant risk. Legal Counsel, Brian Iller believes he doesn't incur any significant risk of liability by just picking garbage up off of your property. Glen Zuger mentioned again that he meant if it was done as a District, not as a property owner. Director Teals said MLIRD, as a District, for a number of years, sponsored and supervised a cleanup of the lake and these items would be difficult for just any volunteer to come and cleanup. He thinks since MLIRD can see them, why not clean them up.

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

Chairman Foster asked Director Perry if it was her intentions to attend the January Regular Board Meeting. Director Perry said she could, but she understood there were people interested in her director position. Chairman Foster asked Legal Counsel, Brian Iller what can take place or

what cannot take place with Director Perry's involvement at the January Regular Board Meeting. Legal Counsel, Brian Iller said Director Perry's term will be up as of the January Regular Board Meeting and if Director Perry wants to be present, she should be and can act as Board Member unless someone objects.

Director Teals asked for an update on the replacement for Director Perry's Position. General Manager, Chris Overland said there are three people that the Grant County Commissioners will be interviewing. However, a timeframe has not been given on when MLIRD will know who the replacement is. Vice Chairman Bailey suggested the names of the three individuals not be disclosed.

**ADJOURNMENT**

The meeting was adjourned at 8:11 PM.

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Jeffrey B. Foster, Chairman

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Bill Bailey, Vice Chairman

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Mary Perry, Director

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Kris Dexter, Director

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Richard Teals, Director

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