

CALL TO ORDER

At 7:00 PM, Vice Chairman Bailey called the August 13, 2019 Regular Board Meeting of the Moses Lake Irrigation and Rehabilitation District to order. The record shows that all current 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)

Vice Chairman Bailey called on the board members and the audience for discussion on any agenda items and Carey Tabert asked to discuss water quality.

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 called on the board members to approve the agenda. Director Selmann stated during Action Items, he will be introducing a new resolution. Director Dexter made a motion to approve the agenda with the amendment. Director Selmann seconded the motion. The motion carried unanimously.

APPROVAL OF CONSENT AGENDA

Vice Chairman Bailey called on the Board of Directors to approve the consent agenda. The consent agenda consisted of the meeting minutes from 07/09/19 Regular Meeting and 07/30/19 Special Meeting, the Bills/Checks (#17221-#17267) and Voucher #1000215 totaling in \$96,129.71. Director Teals made a motion to approve the consent agenda. Director Selmann seconded the motion. Vice Chairman Bailey abstained from voting on anything related to Basin Property Management, Inc. The motion carried unanimously.

Vice Chairman Bailey let the record know that Chairman Foster was not currently seated on the Board at tonight's meeting. Chairman Foster recently sold property that was in the District that qualified him to be a Director. At tonight's Board Meeting, the Board will be reviewing and approving Mr. Foster's land petition. Mr. Foster felt it would be best to sit in the audience until his land petition was approved by the Board.

PRESENTATIONS/SCHEDULED GUESTS

Director Selmann gave a presentation on the W-20 extension project. Director Selmann stated that on June 5, 2018, he was authorized by the Board to meet with General Manager, Chris Overland, Toni Turner and Alexis Mills with the USBR, and Gene Welch, a Consulting Limnologist and Prof. Emeritus at the University of Washington that has been studying Moses Lake for more than 40 years. During that meeting, ways to improve the water quality of Moses Lake was discussed. Since the meeting, Director Selmann stated that he has been researching the W-20 extension project. Areas in the lake as far up as Connelly Park has tested to show the positive dilution effects when Columbia River dilution water

flows through Moses Lake. Director Selmann reported that the USBR decided the W-20 extension project was not going to be cost-effective for them and the USBR's objective is getting water to their irrigators and would only be able to push approximately 50,000 acre-feet thru the W-20 extension if it was implemented. Gene Welch has stated that the 50,000 acre-feet would dilute the north end of Moses Lake to help with the high phosphorus levels in that area. Dilution water helps with the mixing of the low phosphorus Columbia River water (6 ppb) with the higher phosphorus water in Moses Lake. This dilutes the lake water, which in turn makes the water a less conducive environment for the blue-green algae to grow. The goal is to keep toxins out of everybody's water. The north end of the lake is fed by Rocky Ford Creek. Director Selmann said the RFC feed is subterranean and travels through 3-4 miles of alkaline salt. The watershed that feeds Rocky Ford Creek has a lot of agricultural land which introduces fertilizer into the creek along with a fish hatchery located upstream. Rocky Ford Creek's phosphorus concentrations have been running at 120-180 ppb when a healthy lake should be at 30 ppb. Moses Lake's natural phosphorus level is at 50 ppb. In 2018, the concentration phosphorus levels at the north end of the lake were approximately 80 ppb while Parker Horn was at approximately 42 ppb. Even with the Columbia River water flows showing a positive effect on the lake, by August, the north end of the lake has started to form blue-green algae blooms, and the blooms have started working their way toward the outflow dams. Fresh water options for the north end of the lake include piping water across from Crab Creek, flowing more water through Crab Creek, or the W-20 extension project. Director Selmann said that the USBR controls the water and also does not have a mandate for water quality. The Quincy Columbia Basin Irrigation District controls the current W-20 infrastructure and does not have a mandate for water quality. Director Selmann stated that one way to make all interests align would be the W-20 extension project. The Quincy Columbia Basin Irrigation District's current W-20 infrastructure would be upgraded, and the USBR would receive a different flow option into Moses Lake. The steps to take to get funding for the W-20 extension project would be to submit a budget request with the state legislators in 2020 for the capital funding budget. Water quality is Washington States purview and is their responsibility. Given the size of the economy, the size of the project and a +/- 1% growth rate to Moses Lake and the surrounding areas economy due to improved water qualities, Director Selmann believes the growth rate would completely pay for the bond of the project. Conversely, he said the economic impact of non-action and any loss or decline in growth rate would actually cost the state money. The next step is to meet with the USBR and the Quincy Columbia Basin Irrigation District to learn both their policies and limitations to develop a winning strategy that would deliver the 200,000 acre-feet of Columbia River dilution water from Crab Creek through Moses Lake and 50,000 acre-feet of Columbia River dilution water from the proposed W-20 extension into Moses Lake. The next step would be getting one of the state legislators to submit a budget request from the 2020 funding cycles for planning and permitting. Another step would include securing state funding and to provide a grant to the Quincy Columbia Basin Irrigation District to construct the necessary infrastructure. The result of this could make Moses Lake one of the most attractive lakes in the region being warm, accessible, and clean. Vice Chairman Bailey asked General Manager, Chris Overland if a meeting had been scheduled with the USBR. General Manager, Chris Overland stated the meeting with the USBR and MLIRD is scheduled for Thursday, August 15, 2019. Director Teals stated he had looked over Director Selmann's information and believes it could work. Director Dexter said he also looked over the information and stated it's going to be a challenge; however, Moses Lake needs to have Columbia River dilution water. Director Selmann added when the USBR first looked at the W-20 extension project, the estimated cost was approximately \$16 million and is estimated at approximately \$20 million now.

Director Teals said he does not see much difference in the lake and has lived in Moses Lake since 1962. The difference now is the Grant County Health District has taken samples and found toxicity in the water. He suggested that Moses Lake has always been that way; he stated he is comfortable jumping in the lake and swimming laps. The issue has now been promoted and enlarged because the Grant County Health District takes samples where in years past, they did not. Vice Chairman Bailey stated the best part is a lot more people are cognizant of the issue which is important.

MLIRD STAFF REPORTS

General Manager Chris Overland reported the following:

- Lake elevation was at 1046.81 feet as of August 13, 2019.
- Potholes water elevation was 1033.59 feet. Discussion followed with a slide showing Rocky Coulee Wasteway flows at 105,758 acre-feet for 2018, Lind Coulee Wasteway flows at 41,410 acre-feet for 2018, Frenchman Hills Wasteway flows at 40,749 acre-feet for 2018, and Winchester Wasteway flows were at 5,631 acre-feet for 2018 with the question being, what would it take to redirect flows going 'around' Moses Lake to dilution flows going 'through' Moses Lake? General Manager, Chris Overland is reaching out to ECBID for help and ideas on this matter.
- Kayden Industries is tentatively scheduled to begin dredging the fountain side of the fill starting the week of August 19. Vice Chairman Bailey asked that General Manager, Chris Overland set up a tour for the Board of Directors once the dredging operations begin.
- The swim barrier has been placed at Connelly Park and has been chemically treated twice to help with water clarity. Algae control of the newly curtained off area is considered a work-in-progress.
- Assessment income is at 104% of budget and expenses are at 39% of budget.
- At the July 9, 2019 Regular Board meeting, it was reported that mechanical dredging was fully permitted. Correction: The permits are not final yet as the Army Corp of Engineers has not signed off.
- Resolution 2019-002 is a land petition for parcel number 120109000, Jeffery B. and Sally Foster. Notice was published on July 15, July 22, and July 29, 2019 in the Grant County Journal.
- The Grant County Assessor's Office would like to implement a new process with MLIRD for the upcoming 2020 tax year.
- More information on a new Parker Horn Pump Station Lease with DNR will potentially be available at the next board meeting.

Mr. Tabert asked if there had ever been talk on dredging the north end of the lake to help with flow. General Manager, Chris Overland stated dredging at the Drumheller Dam has been discussed in the past; however, Limnologist Gene Welch has stated that he does not believe dredging the area would be beneficial as it relates to phosphorus control.

EXECUTIVE SESSION

The Board went into Executive Session at 7:45 PM to discuss with Legal Counsel potential litigation in the form of the risks of a proposed action or current practice. The expected time was 15 minutes, and the Board was to return approximately at 8:00 PM.

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

Vice Chairman Bailey entered back into the boardroom at 8:10 PM to extend Executive Session 10 minutes. They were to return to Regular Session approximately at 8:20 PM.

The Board entered back into Regular Session at 8:20 PM.

ACTION ITEMS

Director Teals made a motion to approve Resolution 2019-002, parcel number 120109000, Jeffery B. and Sally Foster's land petition. Vice Chairman Bailey seconded the motion. Director Teals stated it has always been MLIRD's position as an irrigation district to enlarge the boundaries whenever possible and believes it is only appropriate to accept land petitions when someone asks to join. Vice Chairman Bailey agreed with Director Teals and said he does not believe MLIRD has ever declined a land petition. Director Selmann believes it would be appropriate to have a discussion about whether the Board can come to a decision in regards to the vacancy on the Board.

Director Dexter made a motion to table the motion to approve Resolution 2019-002 parcel number 120109000, Jeffery B. and Sally Foster's land petition until the board has discussed the vacancy issue. Director Selmann seconded the motion. The motion carried unanimously.

Director Selmann made a motion to discuss the potential vacancy issue. Director Dexter seconded the motion. The motion carried unanimously.

Legal Counsel, Brian Iller stated a motion could be made to recognize that Jeff Foster is qualified for his position on the Board upon approval of the addition of his land into the District. Legal Counsel, Brian Iller said the concerned question is whether there is a vacancy on the Board if the petition for adding lands to the District is granted. Legal Counsel, Brian Iller said a board member should make a motion either for the proposition that there is a vacancy on the Board whether or not the petition for adding lands to the District is granted or there is not a vacancy on the Board if the petition for adding lands is granted.

Director Selmann made a motion that the vacancy is cured if the property is petitioned into the District. Director Teals seconded the motion. Director Dexter said his take on the motion is if one of the Directors does not own property in the District they are vacated from their position. Director Dexter believes the Board is bonding over the RCW that states there is a vacancy. The Board's motion is stating there is not a vacancy because it will be cured once the petition to add his lands into the District is approved. Director Dexter believes there is a vacancy on the Board and is concerned about the issue of curing the vacancy over the RCW. Legal Counsel, Brian Iller reminded the Board and the audience that there had been no decision by the Board to waive attorney-client privilege. The advice Legal Counsel, Brian Iller gave in Executive Session on any of the subjects was not to be disclosed unless the Board makes a motion and the majority decide to waive attorney-client privilege. Legal Counsel, Brian Iller stated that RCW 42.12.010 (4) - Causes of Vacancy does not read the way Director Dexter said it does. RCW 42.12.010 (4) Causes of Vacancy reads "his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi-municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed." Director Dexter is concerned that with Mr. Foster not owning land in the District, he caused a vacancy and believes it is a risk for the Board to petition Mr. Foster's land into the District to cure the vacancy. Legal Counsel, Brian Iller said he would like to discuss the matter further, however, stated he cannot

provide legal opinions to the Board in an open public session. Director Teals said Mr. Foster was in good faith and has done nothing underhanded. He stated everyone is aware of the particular situation where if time had worked differently, it would not be an issue. Director Teals believes the good faith of both Mr. Foster and the Board should be paramount with the issue. Vice Chairman Bailey agreed with Director Teals and mentioned that the same issue happened at least once before years ago and was cured in a short time and the Director was never unseated from his position. He believes there is little to no risk associated with the issue. Director Selmann stated he believes Mr. Foster operated in good faith, however, is not completely satisfied Mr. Foster operated with appropriate due diligence and is conflicted. Legal Counsel, Brian Iller said without waiving attorney-client privilege, he pointed out that this question is different from one that might arise in the future if someone was to challenge Mr. Foster being legally on the Board. If that were to arise, the Board would need to decide at that point whether or not they would want to defend that type of a claim at MLIRD's expense. Legal Counsel, Brian Iller stated this decision with the risk that has been discussed is whether or not the Board incurs some litigation expense should someone sue in the future, does not follow necessarily from this decision. The Board would have to make a decision should that happen whether or not to expend the funds to defend that type of a claim.

The motion was reread again as the vacancy is cured if the property is approved and petitioned into the District. Vice Chairman Bailey called for a vote. Vice Chairman Bailey and Director Teals voted in favor of the motion whereas Director Dexter and Director Selmann voted against the motion. No action was taken.

Director Teals made a motion to remove the motion to approve Resolution 2019-002 parcel number 120109000 Jeffery B. and Sally Foster's land petition from the table and bring it to a vote. Director Selmann seconded the motion. The motion carried unanimously.

Vice Chairman Bailey stated the motion that is back on the table is for the approval of Resolution 2019-002 parcel number 120109000 Jeffery B. and Sally Foster's land petition. Director Selmann asked that the petitioner confirm that his position is to still move forward with adding his lands to the District. Vice Chairman Bailey said he believes when a person goes through the process to petition their property into the District, their intent is very clear. Director Selmann asked if Mr. Foster had any objections, and Mr. Foster stated he did not. The motion carried unanimously.

Norm Estoos stated if Mr. Foster wants to be on the Board, the County Commissioners could appoint him and then run for election again at the end of the year. Director Teals agreed and said if Mr. Foster wishes to continue on the Board, he would need to go through the correct procedure.

Director Selmann stated the resolution language he brought to the table still needs some work, however, because there are impending negotiations and representation to both the Moses Lake Watershed Council and the USBR, he moves that pending the final proper language of the resolution that the Board would affirm the principal of the resolution to form negotiations with the USBR and the Moses Lake Watershed Council related to the W-20 extension. Director Dexter seconded the motion. The motion carried unanimously.

WORKSHOP/DIRECTOR QUESTIONS and/or COMMENTS

Director Teals stated the MLIRD office received a phone call from a Mr. Greg Eiffert from LG Sonic asking for Director Teals. He would like MLIRD

Staff to contact Mr. Greg Eiffert and find out what LG Sonic can offer MLIRD.

ADJOURNMENT

The meeting was adjourned at 8:47 PM.

Jeffrey B. Foster, Chairman

Bill Bailey, Vice Chairman

Kris Dexter, Director

Richard Teals, Director

Kaj Selmann, Director

By: _____
Secretary to the Board of Directors