



January 3, 2017

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**Re: Revisions to Bylaws of the Walker River Irrigation District  
 Our File No. 1709.0189**

Dear Members of the Board and Manager Bryan:

The purpose of this letter is to provide you with an explanation of our suggestions for revising the Bylaws of the Walker River Irrigation District (the "District"). The original Bylaws of the District were adopted on July 5, 1920. They were amended in 1986.

Article VIII of the Bylaws states that the Bylaws can be amended at any regular monthly meeting by unanimous vote of the Board of Directors or by a majority vote of the Board at a meeting held one month subsequent to the proposal of an amendment or amendments in writing. That article implies that the provisions in the Bylaws can effectively be changed simply by Board action. However, in reviewing the Bylaws, we found that, to a large extent, the Bylaws are either a paraphrase or a verbatim statement of various provisions which are in N.R.S. Chapter 539. In those cases, the provisions in N.R.S. Chapter 539 will control, and an amendment to the District Bylaws which is not consistent with the provisions of N.R.S. Chapter 539 would not be effective. As you consider our suggestions for revision, please keep that in mind.

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Attached with this letter are our suggestions for revisions. The attachment shows changes to the current Bylaws.

**Article I.**     **Name.**

The name of the District was established when it was organized in 1919, and can only be changed as provided in N.R.S. 539.060.

**Article II.**     **Divisions.**

The divisions in the District were established when it was organized in 1919. The provisions of N.R.S. 539.110 set forth the process which must be followed to change the number of divisions. That cannot be changed by a Bylaw revision.

**Article III.**     **Directors and Officers.**

The number of directors of the District was established when it was organized in 1919 consistent with N.R.S. 539.045(2) and N.R.S. 539.063. The number can only be changed as provided in N.R.S. 539.110.

In addition, N.R.S. 539.063 requires a president and vice-president to be elected from the Board, and also a secretary and treasurer. N.R.S. 539.075 provides for the appointment of a secretary and treasurer by the Board, and that those persons need not be members of the Board.

**Article IV.**     **Vacancies.**

N.R.S. 539.070 sets forth what is to happen when there is a vacancy in the office of director.

**Article V.**     **Office.**

N.R.S. 539.083 allows the Board to designate someplace within the county where the organization of the District was affected to be the office of the Board. So long as the District office is in Lyon County, the Board could provide for a new location without violating that statute.

**Article VI.**     **Monthly Meeting.**

N.R.S. 539.085 requires a regular monthly meeting in the District office on the day of the month fixed by resolution of the Board entered in the minutes. Once that date is fixed, it cannot

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be changed for 12 months, and it can only be changed by resolution passed at least two months prior to the time such change is to take effect after publication in a newspaper of general circulation in the District for at least two weeks prior to the change. It also requires that if the regular meeting falls upon a non-judicial day, the meeting is to be held on the first judicial day thereafter.

The current Bylaw is consistent with that statute. It requires the Board meeting to be on the 7th day of the month. If the 7th is on a weekend or legal holiday, then, technically, the meeting needs to be on the very next business day. It is somewhat unfortunate that the statute is so strict with respect to the day for the regular meeting when the regular meeting date is a weekend or a legal holiday. Under the statute and, technically, under the Bylaw, the regular meeting must be on the next business day after the 7th of the month. It could never be before the 7th of the month, and if the 7th of the month is a weekend or holiday, the meeting must take place on the very next business day. At this point, there is not much we can do about any of that because the timing of the meeting when the regular date is a non-judicial day is in the statute.

**Article VII. Quorum.**

Article VII is a paraphrase of the provisions of N.R.S. 539.095. Those requirements may not be changed by an amendment to the Bylaws.

**Article VIII. Amendments.**

This Bylaw has been revised to provide that only provisions of these Bylaws which are not controlled by a relevant Nevada statute may be amended by Board action. In all other cases, the Bylaws may only be amended to conform to the provisions of a relevant statute.

**Article IX. Order of Business.**

This Bylaw is not dictated by any provision in the Irrigation District Act. However, although Nevada's Open Meeting Law does not require a particular order of business, it does include requirements concerning public comment, and its requirements could change in the future. Flexibility suggests a less detailed and less restrictive provision concerning the order of business than is in the current Bylaw.

**Article X. Duties of Officers.**

To a certain extent, your authority to modify this Bylaw is flexible. The Irrigation District Act does not contain a section which lists the precise duties of the officers. There are a number of sections which discuss certain duties of the president, secretary and the treasurer. The

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revisions here are intended to comply with Nevada law and to allow the Board flexibility in its delegation of additional duties to officers.

**Article XI. Bonds.**

The current provisions simply authorize what the statutes authorize. Subparagraph (a) is actually a quote from N.R.S. 539.480, but it has been amended, and this provision is out of date. Subparagraph (b) is also taken from N.R.S. 539.480. We suggest eliminating this Bylaw completely, and renumbering the remaining Bylaws accordingly. If bonds are to be issued in the future, compliance with the then existing statutory provisions will be required.

**Article XII. Engineer.**

The current provision of the Bylaws is narrowed from the provisions of N.R.S. 539.193, which authorizes the Board to employ and appoint such agents, officers and employees in the interest of the District as may be required. We propose expanding the content of this Bylaw to cover more than just an engineer.

**Article XIII. Assessments and Tolls.**

The first paragraph of this Bylaw is a paraphrase of N.R.S. 539.670(1). The remaining portions of this Bylaw come from N.R.S. 539.513. The provisions are a paraphrase of that section of the Irrigation District Act.

**Article XIV. Irrigation Season.**

This is now provided for in the Rules and Regulations for the Distribution and Use of Water.

**Article XV. Distribution of Stored Water.**

We have not suggested any changes here.

**Article XVI. Revision of Apportionment of Benefits.**

This Bylaw is a paraphrase of the requirements of N.R.S. 539.680.

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**Bylaw Regarding Payments From General Fund.**

In the last three audits of the District, the auditors have questioned whether the District has complied with the posting and publication requirements of N.R.S. 539.483 through 539.487. An irrigation district is deemed in compliance with the budgeting, filing and publication requirements of N.R.S. 354.470 through 354.626 if it complies with the publication of claims and annual financial statements as required by N.R.S. Chapter 539. The issue relates to whether the District is required to post and publish all of the "bills" approved at each of its regular monthly meetings. More often than not, those bills are incurred as a normal and regular operating expense of the District, and in many cases have already been paid by the time the Board approves them.

The requirement for posting and publication is set forth in N.R.S. 539.485, and it requires that the Board post in three public places of the District and publish one time in a newspaper of general circulation in the county a list of the "claims allowed by the Board for the preceding month." In our judgment, the use of the word "claims" in that section is intended to be a reference to something that is incurred outside the normal course of the District's business. We find support for that conclusion in the provisions of N.R.S. 539.525, which allows the Board to establish by regulation the conditions under which the treasurer can disburse from the general and operation and maintenance funds, without prior Board approval. As near as we can learn, other irrigation districts in Nevada do not publish all of their individual bill payments. We suggest consideration be given to a bylaw which allows for payments from the general fund of bills incurred in the ordinary course of business without prior Board approval so as to narrow down what may need to be posted and published. That, of course, would not preclude the Board from reviewing all bills, as it does now.

At the January 9, 2017 meeting, the Board will have the opportunity to consider all of the Bylaws and to make any deletions, changes or additions the Board sees fit before taking final action on them. If you have any questions, please do not hesitate to call.

Best regards.

Sincerely,



Gordon H. DePaoli

GHD:hd

Attachment

cc: Dale Ferguson (dferguson@woodburnandwedge.com)