

MEETING MINUTES OF THE PUBLIC MEETING OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

Held December 10, 2018

2:00PM

Mohave Valley Irrigation & Drainage District
1460 E. Commercial Street, Mohave Valley, AZ 86440

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Mohave Valley Irrigation and Drainage District and to the general public that the Mohave Valley Irrigation and Drainage District will hold a meeting open to the public on **Monday December 10, 2018 at 1460 E. Commercial Street, Mohave Valley, AZ 86440.**

Pursuant to A.R.S. § 38-431.03(A)(3), the Mohave Valley Irrigation & Drainage District may vote to go into executive session, which will not be open to the public, to obtain legal advice from the District's legal counsel on any matter listed on the agenda. *[The discussions and minutes of the executive session shall be kept confidential. The executive session of the Board is not open to the public.]*

****NOTE: Some board members may appear telephonically****

CALL TO ORDER. Chairman, Charles B. Sherrill, Jr., (Chip) called the meeting to order at 2:04pm.

1. ROLL CALL.

Present: Charles B. Sherrill, Jr., Chairman/Director Division III
Vince Vasquez, Director Division II
Clay Vanderslice, Director at Large
Perry Muscelli, Treasurer/Director at Large
Kerri Hatz, Administrative Assistant
Michael J. Pearce, District Counsel

Phone: John Kai, Jr., Director Division I, did not participated in any conversation or approvals.

Absent: None

2. OPEN SESSION.

If the public wishes to address the Board regarding Regular Agenda Items, they may fill out the Request to Speak Form located in the back of the room. The form should then be given to the Administrative Assistant of the Board prior to the meeting. The time limit rule of 3 minutes maximum will be enforced.

3. PLEDGE OF ALLEGIANCE. Perry Muscelli led the Pledge of Allegiance.

4. WAIVER MOTION. Motion to waive the reading of full minutes and resolutions presented for approval or adoption. Perry Muscelli made a motion to waive the reading of full minutes, Vince Vasquez seconded the motion. All in favor motion passed. Kai – A; Muscelli – Y; Vanderslice – Y, Vasquez – Y; Sherrill – Y.

5. AGENDA MODIFICATION. Possible action to withdraw from, or move, any item on the Agenda, including the removal of an item from the Consent Agenda. Perry Muscelli made a motion to move item c for the expenses off of the consent agenda for a separate discussion, Clay seconded the motion. All in favor, motion passed. Kai – A; Muscelli – Y; Vanderslice – Y, Vasquez – Y; Sherrill – Y.

6. CONSENT AGENDA. The items listed below will be considered as a group and acted upon by one motion with no separate discussion of said items, unless a Board Member requests an item or items be removed for separate discussion and action. Perry Muscelli made a motion to approve the consent agenda, Clay Vanderslice seconded the motion. All in favor, motion passed. Kai – A; Muscelli – Y; Vanderslice – Y, Vasquez – Y; Sherrill – Y.

- a. Approve the November 06, 2018 Regular Meeting Minutes.
- b. Approve the November 19, 2018 Special Regular Meeting Minutes.

Moved for separate Discussion:

- c. Ratify payment of Expenses for November 2018. Staff reported one item that is not normally on the expenses is that staff was directed to have Baron Pest control come and put up wire mesh under the solar panels to help abatement of the pigeons and installed two solar motion owls and now there are no more pigeons. This expenses was about \$2500.00. Perry asked where that came out of and staff responded the general maintenance of the building. The other new thing you will see is a nominal fee for direct deposit for payroll. Perry Muscelli made a motion to approve, Clay Vanderslice seconded the motion. All in favor, motion passed. Kai – A; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

7. REPORTS.

Water:

- a. Staff report on District water use. Staff reported 10 months ending water usage.
- b. Bureau of Reclamation Lower Colorado Water Supply Report. Staff reported current levels of Lake Mead and Lake Powell.

Financial: Staff summarized the financial statements to the board.

- c. Profit & Loss Budget vs. Actual year to date November 30, 2018
- d. Profit & Loss Statement for November 2018.
- e. Balance Sheet as of November 2018.

Other:

- f. Meeting in January will be on the 8th due to holiday. Staff reminded the board of the next meeting date.

8. REGULAR AGENDA

A. Update on DCP. Discussion and possible action on recent updates to DCP planning efforts as may involve MVIDD. Chip stated we did have a call this morning with the BOR and there were several parties on the call. They want to fast track this to tie it to DCP and they want all the parties to come together and to see how much water is available for ICS. Vince asked if they have our exhibit and Chip confirmed that they do and there is not much more to report. Michael Pearce commented that they want to reach out to the individual parties' one on one and don't call us, we will call you and they are going to apparently schedule a phone conference if not a meeting in person and go over any exhibits if they have one and make suggestions and work through it. Their goal is to have a fairly unified format for the ICS Exhibits to be submitted to the eight signatory parties of the forbearance agreement for adoption of formal exhibits to the forbearance agreement. That is what they are striving for. Vince Vasquez asked if they mentioned if this was part of the 100,000 acre feet that the Bureau needs to secure as part of the DCP. Mr. Pearce stated that they did not talk about numbers at all only about formatting and what it takes to qualify as an ICS contributor. No Action taken.

B. Update on Mohave County Well Tax. Discussion and possible action on proposed taxation of water wells by Mohave County. Chip stated that we are going to watch a video from Mohave County's board meeting for the board to understand about this well tax. Staff played the video from November 19, 2018 Mohave County Board of Supervisors meeting regarding a presentation done by Jeanne Kentch of the Assessors division. This is the link to the video <https://youtu.be/vfPplsM0cCw>. The presentation starts at approximately 23.41 minutes into the video for about 17 mins. Chip started the discussion and stated that first, the taxation on these wells in our area and the Hualapai basin would break the farmers and you won't have any farming. Number two, it has been fought for many years in Arizona that the well is part of the land period. You cannot just come along and tax that well because it is a well because you are having problems in the northern part of Mohave County or because you want to retaliate against those guys and tax them out of business. And thirdly, who is the county to talk about inefficient farming. Ron Gould spoke up and stated this was the assessor not the Board of Supervisors that did this. Chip asked if the board would be the ones to decide on this and if so we better share our viewpoints with the board. Chip stated he hopes the board would not back this because it would be destructive for agriculture. The assessor has no idea what farming is all about, and water restrictive crops, so the assessor is going to tell the farmer what he can farm. Vince Vasquez stated that farmers have hundreds of thousands of dollars' worth of equipment to grow that certain crop that you don't like. If I tell you that you cannot grow that crop because I dislike it, what you are

going to do with all that equipment and all of the equipment leases? What is that going to do to the businesses? Chip continued to express absolute opposition to this and asked that the Board of Supervisors not support something like this. There were additional comments from the general public and the board regarding the taxation on agricultural wells. No Action taken.

C. Letter of Intended Action from Ryley Carlock / Mohave County dated November 19, 2018. Discussion and possible action to direct District counsel and or staff on how to respond to this letter. Mr. Pearce stated this letter is very similar to three previous letters we have received. The general intent is to challenge the propriety of the adoption of resolution 2018-04. It cites various legal arguments and the ultimate request is for the board to retract or modify the resolution to the county's suggestions. They indicate if we do not do that than they are considering filing a lawsuit or again notifying the Attorney General's office of these alleged improprieties. They have requested a response and certain records from the District. Mr. Pearce stated that upon review of the requests, we do not have any records relating to defense of the individual board members. We do have records relating to the request for financial records. Mr. Pearce stated we do have a packet together of records and with the board's approval he will respond to this letter and send on the records. Perry Muscelli asked if we had any responses from the Attorney General regarding the other complaints, Mr. Pearce stated that we have not. The board directed Mr. Pearce to send on the public records request and not respond to the letter. Perry Muscelli made the motion to have Mr. Pearce respond to the records request, Vince Vasquez seconded the motion. All in favor, motion passed. Kai – A; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

D. Indemnification of MVIDD Board Members. Discussion and possible action to approve indemnifying and holding harmless MVIDD board members against any losses, liabilities, and claims arising out of managing and conducting the affairs and business of the District. Mr. Pearce stated this is somewhat related to the letter. The letter expresses the opinion that any defense or monies expended by the District in defense of individual board members is not justified. They cite a statute that is part of the public officials Title 38, which says no monies shall be expended in the defense of individual board members unless otherwise provided by law. We have always operated under the impression as an irrigation district we are covered by title 48, which is special taxing districts under chapter 19. A.R.S. 48-187 provides specifically for the indemnification of directors of irrigation districts while acting in the course of their employment or duties. We believe that statute does provide the foundation for otherwise as provided by law under title 38. Title 38 does require that any action to indemnify any board members be conducted by

public vote in an open meeting of this district board. As of today we do not have anything to indemnify. There has not been any action taken against any individual board member except allegations made in letters. If the county were to file a lawsuit and follow through with their threat to name the board members individually and accuse them of crimes in an individual capacity for things that they have done while sitting on this board, I think it would be appropriate for this board to consider whether that was within the indemnification provision in title 48 and to take action to see that indemnification is made, but we don't face that today. I don't know that action is required today. Perry Muscelli asked that if the county did do that and file a lawsuit, how much time we would have to respond. Mr. Pearce stated 20 days from the service of summons. Perry's concern was it could happen between meetings. Mr. Pearce stated we could take pre-emptive action today but without a lawsuit to defend it may be premature. We really do not know what the specific allegations against the directors are, but we do have these four letters that speak to the issue of the board members having a conflict of interest because they are acting for the benefit of agricultural land in some of these activities. We have responded in writing previously, that this is an irrigation district. It was created for the benefit of agricultural users. The Arizona Supreme court has twice reaffirmed that the only qualified electors for the district are agricultural water users so anything this elected board does necessarily effects and benefits agricultural water users. We have consistently thought that was clearly within the exceptions provided in the conflict of interest statutes in Title 38. We do not know what the specific allegation would be against an individual director, other than they were acting as a farmer within an irrigation district. Vince Vasquez asked if we had heard anything back from the Attorney General in response to our response to the claims against MVIDD. Mr. Pearce stated we have not heard anything or have had any response from the Attorney General's office. Vince said the issue is do we do anything pre-emptive rather than wait until something occurs then we can reconvene if that happens. Perry is concerned that if that happens then there is not enough time to post meetings, have meeting, and then respond. Perry talked about possible putting a policy in place now. Vince Vasquez stated that if we are acting in the capacity of statute 48-187 then we are indemnified. There was discussion back and forth between the board members if a policy was needed. Mr. Pearce believes there is no policy to change. The statutes say what they say and the board of directors shall be indemnified. I don't know how to reconcile 48-187 with the title 38-431.07(B) statute, which seems to act as though a voluntary action was required but as I read 48-187 there is no voluntary action required at all--it is automatic. Vince stated he would like to see a special executive meeting to discuss this. Mr. Pearce stated we do not need to do that today. There was more talk between the board whether a policy would even be needed. Mr. Pearce said the statute that has been cited is 38-431.07(B) and states that "unless the public body has authority

to make the expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving the expenditure before incurring any obligation or indebtedness.” That is why I thought it was appropriate for this agenda since the threat has clearly been made and I think this letter goes out of its way to indicate the County is threatening litigation against the individual board members. I don’t think it could be interpreted fairly any other way. Perry Muscelli made a motion to defend our individual board members against these threats that have been made by Mohave County, Vince Vasquez seconded the motion. All in favor, motion passed. Kai – A; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

- E. Farm Consortium on Section 27.** Discussion and possible action on understanding history and use of agricultural water in Section 27. Mr. Pearce stated this came up because when Mohave County purchased fifteen (15) acres of land within the district, it was in agricultural production. The county also registered for elector status based on the ownership of agricultural land. Mr. Pearce gave a little history on determining agricultural status and adopting a policy. The issue at hand is the water allocation of 2 acre feet of water on that property is not enough to farm at the level it is being farmed. There is a lot of history that we did not understand so at an administrative level we sent a letter to all of the consortium members stating our understanding that all of the property was under lease until December of 2019. We were not going to do anything until after that time frame and were putting them on notice that we are going to take a very close look at where this water is coming from and why it as being used in the fashion that it was. Since that time, it’s come to our attention that the lease was not through the end of 2019, rather it ends at the end of January 2019. The county has been presented with a new lease for calendar year 2019 and they are at a quandary as to what to do with it because of this 2 acre foot issue. My take on this is that there is a lot of history here, but there are two points. The water that is allocated to those various owners is allocated to a specific land base. The water is appurtenant to that land and cannot be used off that land, or loaned to somebody or spread to other acres. The other issue is they share a common well and I don’t contest the ability of farmers sharing a common well so long as the well is an authorized point of diversion under the district’s Bureau contract. As many people who want to participate, can get together and share expenses and share that well and draw that water out. It’s the use of the water on the land, and I will say that I don’t think that Mohave County or its predecessor is the party necessarily at fault here. Their land may be receiving more water than it’s entitled, but that water is coming from somewhere and that coming from somewhere that is more of the issue that I would like to get to the bottom of. To the extent that this arrangement allows water to be moved off of the appurtenant acres without formal consent is contrary to district policy, district contract,

reclamation law and state water law. It's a situation that needs to be corrected, if it means that someone receives less water, that is the way it has to be, but there may be ways to mitigate that. I asked to put this on the agenda so that I can make the request that the board agree to direct the staff and myself to explore the history of this over the next few months to make specific recommendations of how the situation may be resolved. Furthermore, to agree to whatever the resolution may be that we do not interrupt farming operations within calendar year 2019, which is something we sort of agreed to already and people have already made commitments. Chip stated that in defense of that he can call on Jamie Kelley that over the last 10 years there have been some mistakes on some of these allocation or use of water and we have been trying to clean these up over the last couple of years and this is one of them. This slipped through the cracks and we are more than willing to work with you to not interrupt your farming operation but we have to make this right and change this. You cannot farm alfalfa with 2 acre feet of water, we have to figure out a solution. We know the county has applied for more water and as it comes available then that will help fix the problem. We want to get more history on this in the next few months. Mr. Pearce wants to know where the water is coming from, and whoever it is coming from is the party that is exceeding the bonds of their contract. It could be Vince. There was discussion between the board all at the same time, inaudible. Vince stated nobody wants to interrupt Vic Wakimoto's farming operation. Giving them through 2019 is what we should do and there is ABU water available, it is expensive and you cannot sustain long term. The county can purchase more water from another agricultural land owner via our transfer policy that allows for intra district transfers among agricultural entitlement holders. No matter what the history lesson comes out to, we are not going to be able to true up their water out of thin air. Mr. Pearce stated as a whole the allocations of the combined water entitlements are not being exceeded so somebody is not using all of their water. Until today I did not know that this parcel is right in the middle and that is why it is being farmed. Somewhere in that greater consortium there is land not being irrigated or they couldn't be within their overall entitlement. Vince stated they rotate some vegetable over there and we should talk to them. Chip stated it doesn't change the fact they only have 2 acre foot of water over there, but we are trying to mitigate the problem and be reasonable and work it out so you have another year. Mr., Pearce asked to be clear, is it January of 2020 the lease you are contemplating? Mike Hendrix said it would be January 31, 2020. There was talk amongst the board over the matter and researching history. Patrick Cunningham address the board. They have documents that they will get to Mr. Pearce regarding the lease agreements. The reason it is farmed jointly because the laterals crisscross among these three parcels and he believed they had to be combined to farm at all and that was in 2007. We thought that the 2007 agreement came to the board and was approved by the district that may

not have been formal. The joint agreement said these folks who are farming the common property can consent to their water going from one property to another as long as it is adjoining. So that is how we thought the water got there with their consent. Secondly, how can you get that water from one property to another, your standard contract, which is now our standard contract, allows you to approved transfers within the district. You allow that all the time, and so this would be a transfer that is a pretty short transfer, based on the lateral of the adjoining property. So those are our two theories that we want you to think about as you do your research. Can and did these appurtenant properties consent that the water would be used jointly and then will you guys approve the transfer if we formally ask for that through 2019. Those are the ways we thought would lead us out of the wilderness because we don't want to uproot the Wakimoto family or harm the local folks because we purchased this property. Vince stated that the transfer policy is written currently to establish permanent transfers between one party to another. It doesn't accommodate this kind of year to year transfer, but this may be a solution, that on a year to year basis we may be able to do this. There was more conversation between the board and Mr. Cunningham and Mike Hendrix. Mr. Pearce suggested that if the county had more information of history or documents then please send them to him. Chip stated we are trying to work with you but that we do need to correct this issue. The board talked back and forth about potential options. No Action was taken.

9. **CALL TO THE PUBLIC.** *Those wishing to address the Board at the Call to the Public regarding matters not on the Board agenda must fill out and submit to the Administrative Assistant a Call to the Public – Request to Speak Form located in the back of the room prior to the meeting. Action Taken as a result of public comments will be limited to responding to criticism, referral to staff, or placing a matter on a future Agenda. Comments are restricted to items **NOT** on the Regular Agenda, and must relate to matters within the jurisdiction of the Board. There were no members of the public who wished to speak.*
10. **ADJOURNMENT.** Perry Muscelli made a motion to adjourn, Vince Vasquez seconded the motion. All in favor, motion passed. Meeting adjourned at 3:30pm. Kai – A; Muscelli – Y; Vanderslice – Y; Vasquez – Y; Sherrill – Y.

Voting Reference: A – Abstained; Y- yes; N- No.