

**MOHAVE VALLEY
IRRIGATION & DRAINAGE
DISTRICT**

APPROVED: SEPTEMBER 11, 2012

**MINUTES OF THE REGULAR BOARD MEETING HELD TUESDAY,
AUGUST 7, 2012 AT THE OFFICES OF THE MOHAVE VALLEY
IRRIGATION & DRAINAGE DISTRICT ("THE DISTRICT")**

CALL TO ORDER: The meeting was called to order at 6:05 p.m.

PLEDGE OF ALLEGIANCE: Mr. Steve Buck led the Pledge of Allegiance.

ROLL CALL: Present: Charles B. ("Chip") Sherrill, Jr., Joseph Hancock, Clay Vanderslice, Perry Muscelli, Jamie Kelley (District Legal Counsel), and Cecily Preusser (Administrative Assistant)

Not Present: John Kai

WAIVER MOTION. Motion to waive the reading of full minutes and resolutions presented for approval or adoption.

A motion to waive the full reading of the June 5, 2012 Meeting Minutes was made by Mr. Hancock. Mr. Vanderslice seconded the motion. All were in agreement, motion passed.

1. REPORTS.

A. Niblack Engineering System Progress Report for July, 2012.

Chairman Sherrill stated that a spread sheet was the best way to present the water usage data. Mr. Vanderslice had a question as to the data contained in the spreadsheet as opposed to the data contained in Mr. Niblack's original report. Staff explained that she took Mr. Niblack's data and inserted it into the table, as Mr. Niblack's report did not contain ownership and/or location of the wells. Chairman Sherrill stated now that Mr. Clark, Mr. Niblack and Ms. Preusser are working on the reporting system, the District should be able to get wells within the District calibrated and then the information contained in the spreadsheet will be more clear and more accurate.

Mr. Vanderslice had a question as to how much water the District used in the month of July, 2012. Ms. Preusser advised that the data contained in the spreadsheet was for the month of July 2012. Ms. Preusser stated that the water usage for July 2012 was 1,358.18 acre feet for agriculture and 173.01 acre feet for municipal. The year to date total for agricultural water use is 8,368.26 acre feet and municipal water use is 1,066.77 acre feet, for a

combined total year to date use of 9,432.03 acre feet. Chairman Sherrill stated that he did not feel that total was correct. Ms. Kelley stated that the figure was probably not accurate as there were many water users who were not reporting. Chairman Sherrill stated that in the meeting with Mark Clark, the water companies either over-reported or under-reported the water use and the District now had that situation under control. The reported water use should be much more accurate in the future.

- B. Bureau of Reclamation Lower Colorado Water Supply Report for week of August 7, 2012.

Chairman Sherrill stated that last year the system content was 66% and this year, as of July 29, 2012, it is at 59%. Looking at Lake Powell, it is at 60% capacity and Lake Mead is at 51% capacity. Chairman Sherrill stated that we could be getting into trouble if we do not have a pretty good winter this year, we could be looking at drought conditions next year.

- 2. **AGENDA MODIFICATION.** Possible action to withdraw from, or move, any item on the Agenda, including the removal of an item from the Consent Agenda.

Mr. Muscelli stated that he could not approve last month's meeting minutes as he was not present at the meeting, and questioned District Counsel the best way to handle that. Ms. Kelley stated that a motion to withdraw Item 3A be made, and then approve Consent Agenda Items B through F. Mr. Vanderslice made a motion to withdraw Item 3A from the Consent Agenda. Mr. Hancock seconded the motion. All were in favor, motion passed.

- 3. **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.*

- A. Approve the July 10, 2012 Meeting Minutes.

Chairman Sherrill called for the approval of the July 10, 2012 Meeting Minutes, noting that Mr. Muscelli would abstain as he did not attend the meeting. Mr. Vanderslice made a motion that the July 10, 2012 Meeting Minutes be approved. Mr. Hancock seconded the motion. All were in favor, motion passed.

- B. Ratify payment of expenses for July, 2012.

- C. **Mohave Commerce Center, T19N, R22W, Sec. 22.** Request for extension of preliminary allocation request of 28.21 acre feet from July 10, 2012 to July 10, 2013.

- D. **Walmart, T19N, R22W, Sec. 26.** Request for extension of preliminary allocation request of 12.74 acre feet from August 10, 2012 to August 10, 2013.
- E. Ratification of Management Contract between QPC Management and the District providing for QPC Management to provide management services to the District for a six month term.
- F. Possible action to approve items withdrawn from Consent Agenda.

Chairman Sherrill went through Items B through F of the Consent Agenda and then called for a motion to approve the items on the Consent Agenda. Mr. Vanderslice made a motion that Items B through F of the Consent Agenda be approved. Mr. Hancock seconded the motion. All were in favor, motion passed.

4. **REGULAR AGENDA.**

- A. **Resolution No. 2012-01. Policy to Assess Fines for the Failure to Submit Monthly Water Usage Reports.** Discussion and possible action to approve Resolution 2012-01, policy to assess fines for the failure to submit monthly water usage reports.

Chairman Sherrill went through the proposed Resolution and stated fines as follows: First Offense: \$100.00; Second Offense: \$200.00; Third Offense: \$300.00, as well as a letter stating that by failing to submit the monthly water report, the water user is in breach of the Agreement For Water Entitlement, and continued failure to file a report could result in the contract being declared in default; and Fourth Offense: A letter advising the water user that the contract is in default, pursuant to Paragraph 11 of the Agreement For Water Entitlement which reads:

District may terminate this Agreement upon written notice of the breach of any term or condition hereof by Water User and failure by Water User to correct the same after 30 days, in the case of default in the payment of money, and after 60 days, in the case of all other defaults.

Mr. Muscelli asked if there was a time frame in which the penalties would be assessed, maybe a year. Ms. Kelley advised that it would be a time shorter than that and that the Resolution be revised. The Board needs to give staff guidance on the amount of the fines, and to add time frames for the penalties to be assessed as the regular contract does not specify. Ms. Kelley stated that if there is going to be an enforcement policy, it must be clear so that it may be uniformly enforced. Mr. Muscelli asked if Mark had

drafted or seen Resolution 2012-01. Chairman Sherrill stated that this would be within the realm of things that Mr. Clark could handle and that, between Mr. Clark and Ms. Kelley, Resolution 2012-01 could be properly revised. Mr. Muscelli made a motion directing staff to review Resolution 2012-01 with Mr. Clark for revision and re-submission to the Board for review and approval. Mr. Hancock seconded the motion. All were in favor, motion passed.

- B. **Los Lagos, The Greens, Tract 4186, T18N, R22W, Sec. 01.** Discussion and possible approval of the request made by Los Lagos to reduce its 2012-2013 water order to 400 acre feet and to implement a payment program to pay for its water.

Chairman Sherrill stated that allowing Los Lagos to make payments to pay for its water would be a dangerous precedent to set. It has not been District policy to accept payments for water usage. Chairman Sherrill read into the record a letter dated August 6, 2012 from Mr. Clark, wherein he states that the contract between the District and Los Lagos states that, in pertinent part, "Water User agrees to pay the District on the 1st day of August in each year commencing August 1, 1992 . . ." and that "Such amount will be paid in advance, regardless of actual use." Chairman Sherrill stated that should the District waive this requirement for Los Lagos, then the District would set a precedent, and the condition could be waived on all contracts. Mr. Hancock made a motion that Ms. Kelley write a letter to Los Lagos advising them that monthly payments would not be an option. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

Mr. Muscelli then questioned whether or not the letter to Los Lagos had to come from counsel. Ms. Kelley stated that, at the very least, the letter should come from Mr. Clark. Mr. Hancock then amended his motion that Mr. Clark, rather than District Counsel, would prepare a letter to Los Lagos. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

A question was then posed by Steve Buck, as to whether or not the Board would grant the water allocation reduction requested by Los Lagos from 1,000 acre feet to 400 acre feet. Chairman Sherrill stated that Los Lagos did not order 1,000 acre feet as allowed in its contract, but ordered 600 acre feet for the 2011-2012 fiscal year. Mr. Buck had a question as to the payment for the water, was is a "use it or lose it" type of proposition. Ms. Kelley stated that a change in the amount of water allocated to Los Lagos would be addressed under a beneficial use review of the Los Lagos contract.

- C. **Desert Lakes Golf Course, T19N, R22W, Sec. 36.** Discussion and possible approval of the request made by Desert Lakes Golf Course to reduce its 2012-2013 water order to 100 acre feet.

In a letter dated July 27, 2012, Danny White, General Manager for Desert Lakes Golf Company, stated that Desert Lakes GC is undergoing renovations and is currently in the process of eliminating approximately 60 acres of turf, including two lakes. Desert Lakes is currently watering only the greens and will use effluent from the existing lakes until the lakes are drained. Mr. White states that due to the renovation, Desert Lakes will require only 100 acre feet of fresh water for the 2012-2013 year. Because staff is unable to find a water order from Desert Lakes (checking records back 5 years), there is no way to know how many acre feet of water Desert Lakes GC ordered in 2011-2012. A check in the amount of \$3,000.00 (100 acre feet x 30.00 = \$3,000.00) was enclosed with the letter but has not yet been cashed. Chairman Sherrill stated that if the District reduces Desert Lakes' water allocation to 100 acre feet for 2012-2013, they will not be taking their full allocation. Chairman Sherrill questioned whether the present water allocation will remain in place, especially if Desert Lakes reduces their amount of turf, will they still need that full allocation. Ms. Kelley stated that the amount of allocation matter should be brought up in another agenda after the Manager conducts an official review of Desert Lakes' contract. Relative to that, Ms. Kelley stated that Desert Lakes water order probably could not be located because they do not use the regular water order form, they either requested their allocation in a letter or by telephone call. Ms. Kelley also stated that the billing for Desert Lakes and Los Lagos was a mess last year, that she believed they were billed for more than one year all at once. They are to pay for whatever they order in advance, and if they do not use all of the water requested, a reconciliation is performed and they are given credit for unused water. Ms. Kelley stated that, to the extent that the District has not required a water order from Desert Lakes, this year the District should require a proper water order. Relative to the beneficial review on this contract, it is coming due and it would appropriate to reduce their allocation at that time. Chairman Sherrill noted that the beneficial review was a different issue than the one currently being brought before the Board and then asked Ms. Kelley how this particular request be handled. Ms. Kelley stated that the Board should deny the request. She went on to state that, right now, the District has no policy in place as to non-use of water on an annual basis. The District has had discussions in the past relative to farmers being allowed to fallow fields for whatever reason, as Fincher is currently doing, so there would be no reason to treat Desert Lakes' request any differently. Ms. Kelley stated that this is the type of thing that Mr. Clark could look into and maybe prepare a resolution to cover this type of matter. She also stated that there was no reason not to approve the request, Desert Lakes has paid their money and is making an effort to comply with the contract in this particular instance. Relative to the beneficial review, when it occurs Desert Lakes will have to justify the amount of water it will be using based on what it has taken out because its historical use will not longer be accurate to reflect its needs because of the reduction in turf and the removal of two of its ponds. Chairman Sherrill stated that Desert Lakes will no longer need the amount of water previously used as the turf will be removed and will

be in conservation mode. Chairman Sherrill called for a motion approving Desert Lakes' request. Mr. Muscelli asked District Counsel if she saw no other side to this. Ms. Kelley responded that this policy was consistent with District practice in the past. Mr. Muscelli asked if this request pertained to their water allocation or their water order. Ms. Kelley stated that this request pertained to the water order only, that the contract contemplated two things: the entitlement up to 1,000 acre feet (which was reduced to 810 acre feet in February of 2007 when the allocation was transferred); and the placement of water orders. Mr. Muscelli asked if we were expecting Desert Lakes' orders to always be less than the allocation. Chairman Sherrill stated that the allocation will be addressed during the five year review of the contract. Mr. Muscelli made a motion to approve Desert Lakes' request. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- D. Discussion and possible action to approve Settlement Agreement, Delivery Contract for 4th Priority Water and Delivery Contract for Perfected Right Water.

Chairman Sherrill stated that the contract packages had been set before each Board Member at the beginning of the meeting. Ms. Kelley explained that, essentially, the Luveda Fincher Family Limited Partnership had surrendered two existing water use contracts in exchange for a 4th priority contract of 5,318.5 acre feet for, more or less, 990 acres, and a delivery contract for present perfected rights from the 4th priority contract, so they end up with an appropriate amount of water. There was a question as to whether or not Fincher was over-allocated with the two contracts that they have surrendered and the issue was resolved. Chairman Sherrill stated that the Fincher allocation contained present perfected water rights *and* the two water use contracts, thereby allocating too much water to the Finchers. The current contracts straighten that out and takes into consideration the present perfected rights *and* the water allocated, so there is no way that one can overlap the other. Mr. Vanderslice questioned whether these particular PPR's that are associated with these contracts are linked to the property. Ms. Kelley stated that it was all within decree described lands. The District may deliver water PPR's allocated to this property. Mr. Muscelli made a motion to approve the Settlement Agreement Delivery Contract for 4th Priority Water and Delivery Contract for Perfected Right Water. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- E. Discussion and possible action to change the time of the regularly scheduled meetings.

Chairman Sherrill stated that this matter would be tabled until the time constraints could be worked out with Mr. Clark, to maybe have the Executive session take place a little earlier so that Mr. Clark can attend and report to the Board on a quarterly basis.

- F. Discussion and possible action to move the September Regular and Executive Meetings from Tuesday September 4, 2012 to Tuesday, September 11, 2012, due to the Labor Day Holiday.

Mr. Muscelli made a motion to move the Regular and Executive Meetings from Tuesday, September 4, 2012 to Tuesday, September 11, 2012. Mr. Vanderslice seconded the motion. All were in favor, motion passed

- G. Discussion and possible action to authorize Chairman and/or District Manager to conduct beneficial use reviews of committed water with the terms of the contract.

Chairman Sherrill stated that this would allow he and Mr. Clark to review the water user contracts as needed and report their findings to the Board at the meeting. Mr. Hancock made a motion that the request be approved. Mr. Muscelli seconded the motion. All were in favor, motion passed.

5. PUBLIC INPUT

Suzanne Evans asked when the MVIDD website would be up and running. Ms. Preusser stated that the District was hoping for next month, but that forms needed to be changed before they could be uploaded to the website. Chairman Sherrill stated that now that Mr. Clark was on board, changes could be made to the forms which would make them more user friendly. Forms being uploaded to the site will be fillable PDF forms.

Marilyn Gabriel, on behalf of Los Lagos HOA, asked about whether or not the refusal to accept effluent water from EPCOR placed Los Lagos in breach of its contract. Chairman Sherrill stated that Los Lagos is not violating the District's contract. The District wants all amenity users to start using effluent water in 2017 or before, but that the amenity users do not have to use effluent until 2017. Chairman Sherrill stated that particular clause should not have been placed in the contract. Mr. Sherrill clarified that the business Los Lagos does with EPCOR is completely different than the business it does with the District. Los Lagos contract with the District is for fresh water and it shall remain that way until 2017, and will be subject to beneficial review to study and determine the water requirements of Los Lagos.

Mr. Steve Buck gave a brief update on the status of the water reclamation/effluent issue, advising that Bella Vista had signed a contract for 230,000 gallons per day, or about 21 acre feet per month with the Epcor plant, which is what the plant currently produces. Bella Vista is running a line from the junk yard on Lipan to take into the Bella Vista lakes, which will give Bella Vista about 230,000 per day. Mr. Buck had talked to Sara from WIFA, and the negotiations are looking good. They stalled in their efforts to work with MVIDD. They stalled because ostensibly, Bella Vista will need \$5 million the day construction is to begin, a portion of which can be raised through the HOA membership, and a construction loan. Mr. Buck advised

of discussions with Sara Conrad at WIFA. District Counsel advised that a legal impediment existed to obtaining financing from WIFA under the Conservation and Irrigation District statutes.

6. ADJOURNMENT

Mr. Hancock made a motion to adjourn the meeting. Mr. Vanderslice seconded the motion. Motion carried, the meeting was adjourned at 6:45 p.m.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the District. Requests should be made as early as possible to arrange the accommodations.