

MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

APPROVED: JUNE 4, 2013

MINUTES OF THE REGULAR BOARD MEETING HELD TUESDAY, MAY 7, 2013 AT THE OFFICES OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT ("THE DISTRICT")

CALL TO ORDER.

The meeting was called to order at 4:20 p.m.

PLEDGE OF ALLEGIANCE.

Mr. Steve Buck led the Pledge of Allegiance.

ROLL CALL.

Present: Charles B. ("Chip") Sherrill, Jr., Chairman, Director District III
Joseph Hancock, Director Division II
John Kai, Jr., Director, Division I
Clay Vanderslice, Director At Large
Perry Muscelli, Treasurer, Director At Large
Mark R. Clark, Manager
Jamie Kelley, District Counsel
Cecily ("CeCe") Preusser, Administrative Assistant

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

Mr. Hancock made a motion to waive the reading of full minutes and resolutions presented for approval or adoption. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

1. REPORTS.

A. Staff report on water use.

Mr. Clark discussed the water usage for March 2013, which totaled approximately 779,091,806 gallons or 2,391 acre feet, which breaks down as follows:

Utilities	72,600,799 gallons
Agricultural	651,048,527 gallons
Other	17,403,750 gallons
Amenities	38,038,730 gallons

Mr. Clark stated that agricultural usage had changed substantially in the month of March and that water usage in April should be substantial as well.

- B. Bureau of Reclamation Lower Colorado Water Supply Report dated January 27, 2013.

Chairman Sherrill reported as to the total system contents of as of April 29, 2013, stood at 52% which is 10% lower than last year. Chairman Sherrill also discussed the Upper Colorado River Basin Snowpack Report and Graphical View of Lake Powell Water Data, both of which show that we are well below the normal graph.

- C. USDA National Agricultural Statistics Service: Arizona Crop Report for month of April, 2013; Arizona Agri-Weekly for month of April, 2013.

Chairman Sherrill reported that Arizona is growing less cotton acreage.

- D. Arizona Meteorological Network Monthly Summary for March 2013.

No discussion.

- E. United States Department of Agriculture Letter to Nevada Governor Brian Sandoval, dated April 24, 2013, regarding designation Lincoln County, Nevada as natural disaster area due to recent drought.

Chairman Sherrill read aloud the April 24, 2013 letter from the United States Department of Agriculture (USDA) to Nevada Governor Brian Sandoval. The letter states that the USDA was declaring Lincoln County, Nevada as a primary natural disaster area due to a recent drought in accordance with 7 CFR 759.5(a). In addition, three other Nevada counties have been named as contiguous disaster areas in accordance with Section 321(a) of the Consolidated Farm and Rural Act. Those counties are: Clark, Nye and White Pine. The letter states that counties in adjacent states were also being named as contiguous disaster areas in accordance with Section 321(a) of the Consolidated Farm and Rural Act. Those states are: Utah (Beaver, Iron, Millard and Washington Counties); and Arizona (Mohave County).

Farm operators in the primary counties and those counties contiguous to the primary counties are eligible to be considered for certain assistance from the Farm Service Agency if eligibility requirements are met, including emergency loans. Those farmers in the eligible counties have 8 months from the date of the disaster declaration (April 24, 2013) to apply for emergency loans, each of which shall be considered on its own merit.

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Chairman Sherrill stated that he and Mr. Hancock were discussing earlier that the drought summary for Colorado covered about a 10 year period, and that we are in that period right now. The year of 2002 was a terrible year of drought in Colorado, but 2003 was an excellent year. At this time it is hard to say what is going to happen, but it's pretty discouraging.

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.

No discussion.

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 April 2, 2013 Meeting Minutes.

B. Ratify payment of expenses for April, 2013.

Mr. Muscelli made a motion to approve the Consent Agenda in its entirety. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

4. **REGULAR AGENDA.**

- A. **MVIDD Revised Fee Schedule.** Discussion and possible action to approve the MVIDD Revised Fee Schedule.

Mr. Clark advised that there had been changes to the original Comprehensive Fee Schedule which had been previously provided to the Board. The first change was to move the Contract Transfer Application Fee to the appropriate place on the schedule. A \$10.00 per acre foot fee to new contracts and an Allocated But Unused Contract Fee of \$50.00. Under Allocation Administration Fees, we are increasing the Agricultural Entitlement Fee from \$2.30 to \$3.00 per acre foot of agricultural water. We are adding an Out of District Agricultural Water Entitlement Fee of \$6.00 per acre foot, as well as an Agricultural Water Supplement Fee of \$6.00 per acre foot. The Agricultural Water Supplement fee is for those users who use more water than is allocated to them. Mr. Clark advised that there were to be no other changes to the established Fee Schedule at this time and there was no change to the District Payment Rules.

Mr. Muscelli made a motion to approve the Comprehensive Fee Schedule as presented. Mr. Kai seconded the motion. All were in favor, motion passed.

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- B. **MVIDD 2013-2014 Fiscal Budget.** Discussion and possible action to approve the MVIDD 2013-2014 Fiscal Budget.

Mr. Clark stated that the 2013-2014 Fiscal Budget as presented for consideration included all of the fee increases set forth and approved in the Comprehensive Fee Schedule. Those fee increases were used to create the 2013-2014 Fiscal Budget. Chairman Sherrill clarified that the 2013-2014 Budget matched the fee increases and additions to the Fee Schedule previously discussed and approved. Mr. Clark advised that was the case. Mr. Muscelli inquired as to what the projected surplus will be. Mr. Clark replied that the surplus would be right around \$6,000.00, which is budgeted in the contingency account.

Mr. Muscelli moved to approve the MVIDD 2013-2014 Fiscal Budget as presented. Mr. Kai seconded the motion. All were in favor, motion passed.

- C. **Declaring Default Under MVIDD Contracts.** Discussion and possible action to declare the following contracts in default due to monetary breach:

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| 1. | APN Investments | Contract No. 2010-10 |
| 2. | Dinkin, Steve | Contract No. 2007-06 |

Mr. Clark advised that the Board would find within the Board documentation packet the numerous communications that have been attempted and were not responded to by either APN Investments or Mr. Dinkin. Mr. Clark stated that both parties were two years behind in their payment of agricultural water use fees. Staff is recommending that both contracts be declared in default and that both parties be advised.

Mr. Kai made a motion that the contracts for APN Investments and Steve Dinkin be declared in default and directed District Counsel to notify the parties of the action.

Mr. Muscelli had a question as to the default process. Chairman Sherrill advised that the parties would be advised by District Counsel that their contracts were in default. Each party would have 30 days to cure the default. If the parties do nothing to cure the default within the 30 days, both contracts would be terminated. Mr. Muscelli and Chairman Sherrill asked if that fact needed to be part of the motion. District Counsel advised that it did not.

Mr. Kai reintroduced the motion. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

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- D. **El Rio Golf Course and Country Club.** Discussion and possible action to approve legal action to enjoin the uncontracted for use of Colorado River water at the El Rio Country Club.

District Counsel advised that she was seeking approval of the Board to proceed with a lawsuit against El Rio Golf Course and Country Club to enjoin the uncontracted for use of Colorado River water. Mr. Muscelli questioned if there were any other options to deal with the matter other than legal action. District Counsel advised that negotiations have failed. She also advised that this would be the first time a lawsuit of this nature had been initiated by the District as it had never been necessary in the past.

Mr. Muscelli asked if District Counsel could provide an estimate of what the litigation would cost the District. District Counsel advised that she could not, but offered that the action would entail over ten years of communications between Mr. Hoover and the District. District Counsel offered to provide to the Board a copy of her timeline memo, which details what has transpired between the District and Mr. Hoover, and just what a convoluted matter this is. The basic point is that the District never provided an allocation and Mr. Hoover went forward without an allocation. The District told Mr. Hoover that he could use his PPR's, and from what she has been able to determine from reviewing the records is that the Bureau told him to use the PPR's. District Counsel advised that she was unable to give an estimate of the cost of the litigation.

Chairman Sherrill also added that the PPR's in question were not attached to the golf course property, so the only water that Mr. Hoover would have been entitled to would be 4th priority water from the District. Chairman Sherrill stated that the District needed to move forward with the litigation in order to obtain a judgment and shut down the water to the golf course until Mr. Hoover agrees to pay for his water as all of the other amenities are required to do.

Mr. Muscelli questioned whether or not the District would be able to recover any of its attorneys' fees and costs. District Counsel advised that she would look into the issue and that there was an argument that the District could recover some of its fees and costs. Under Arizona law, a prevailing party is allowed to recover fees and costs when implied contracts are involved, certainly if it is considered a derivative of the contract with the Bureau.

Mr. Kai made a motion to approve District Counsel initiating litigation against El Rio Golf Course to enjoin the uncontracted for use of Colorado River water. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- E. **Hancock Family Trust, T17N, R21W, Section 07.** Discussion and possible action to approve the transfer of the water entitlement agreement in the amount of 945.0 acre feet for 146.08 irrigable acres represented by Water Entitlement Contract Agreement (Agricultural) No. 2007-08, dated March 17, 2011, from the Hancock Family Trust to WPI-919 Farm AZ, LLC ("WPI-919"), a Delaware limited liability company.

District Counsel stated that what the Board needs to determine is whether or not the District is assessing the 8%. WPI-919 submitted as a part of their application an ALTA / ASCM Land Title Survey and the acreage stated is from the ALTA Land Survey and has never been hit with the 8% deduction before. Chairman Sherrill stated that it has always been a District rule that if there is a change in the contract, 8% of the acreage has to be removed for ditches, roads, etc. Mr. Clark then submitted that the 8% had been removed. District Counsel stated that, in the past, when the District implemented the 8% it was not done from an ALTA Survey. Chairman Sherrill stated that the District always used the Farm Service Agency's acreage, the Farm Service Agency being a government entity that has measured every single field. Mr. Sherrill questioned if the acreage in question was being measured by County records. District Counsel advised that the land was measured by an ALTA Land Survey. District Counsel also added that she did not know what the difference was between an FSA Survey and an ALTA Land Survey.

Chairman Sherrill turned the discussion over to Vince Vasquez, a representative on behalf of WPI-919. Mr. Vasquez stated the surveyor determined that the acreage figures that were transferred were approximately 146.08 acres. Whether or not the FSA would determine more or less acreage, he did not know.

After further discussion, it was determined that the required 8% had been assessed and that the requested transfer of water entitlement was correct.

Mr. Perry moved to approve the water transfer of 945.0 acre feet for 146.08 irrigable acres from the Hancock Family Trust to WPI-919 Farm AZ, LLC. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

5. PUBLIC INPUT.

Mr. Steve Buck had a question as to the District's billing of Bella Vista through the Mohave County Water Authority ("MCWA"). He had questions relative to the administrative fees charged by the District and by MCWA. He questioned as to whether or not the administrative fees were on the District's Comprehensive Fee Schedule and were the fees determined in accordance with the \$30.00 per acre foot per year charge. Mr. Buck was advised that the administrative fees charged to Bella Vista were a part of the contract between Bella Vista and the MCWA and Bella Vista

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and the District. The District's administrative fee was \$1,900 per year as set forth in the contract.

Mr. Buck also had a question with regard to the Allocated But Unused Water ("ABU") Fees. He questioned whether or not the graduated scale for ABU water started at \$75.00 per acre foot as it was not set forth on the District's new Fee Schedule. Mr. Clark explained that there was now one charge for ABU water, \$150 per acre foot.

Mr. Buck also stated that there was nothing new on the Board's Agenda with regard to the reclaimed water contract. Chairman Sherrill advised that the District is working to get a reclaimed water deal going. Chairman Sherrill reiterated how much the District appreciated the cooperation shown by Bella Vista and that he wished all of the other amenities would get on board as Bella Vista has. Chairman Sherrill advised Mr. Buck that, although he was not free to discuss what actions were being taken, that Bella Vista should rest assured that the District is working on this matter.

Marilyn Gabrielle had a question as to the Colorado River Indian Tribe's ("the Tribe") purchase of the Desert Lake Golf Course and where they would get their water. Chairman Sherrill advised that they would have the same contract as all of the other amenities. The main difference with the Tribe purchasing Desert Lakes would be that they would most likely put it into the trust, and at that time would no longer need an allocation from the District. Whether or not they will get the golf course into the trust before 2017 is another question. At this time, it is not known if the Tribe has formally purchased the golf course.

Chairman Sherrill questioned as to whether or not Bella Vista is happy with their lakes. Ms. Gabrielle stated that there was a problem with some dead fish and plankton. Chairman Sherrill advised that there was a non-toxic herbicide that could be applied to the lake to take care of the plankton.

6. ADJOURNMENT.

Mr. Muscelli made a motion to adjourn the meeting. Mr. Kai seconded the motion. All were in favor, motion passed. The meeting adjourned at 4:50 p.m.

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