

MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

APPROVED: JANUARY 7, 2014

MINUTES OF THE REGULAR BOARD MEETING HELD TUESDAY, DECEMBER 3, 2013 AT THE OFFICES OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT ("THE DISTRICT")

CALL TO ORDER.

The meeting was called to order at 4:13 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
Perry Muscelli, Treasurer, Director At Large
Jamie Kelley, District Counsel
Mark R. Clark, Manager
Cecily ("CeCe") Preusser, Administrative Assistant
Clay Vanderslice, Director At Large

Absent: John Kai, Jr., Director, Division I

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

Mr. Muscelli 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 reported that water use in the District is, again, below what we ordered for the year 2013. Mr. Clark also advised that there had been a change to the MVIDD Monthly Water Use Graph, that a graph showing water used in 2011 had been added to the graph. Mr. Clark advised that water usage in 2013 was going to be lower than the water used in either 2011 or 2012. Chairman Sherrill noted that would likely change in 2014 as more farms are coming into production, which will use much more water.

- B. Bureau of Reclamation Lower Colorado Water Supply Report as of November 29, 2013, Snowpack Report and Lake Powell Water Data Graph.

Chairman Sherrill noted that the report was still showing a total system content of 50%, which is 6% less than last year at this time. Capacity of Lake Powell is at 44%, Lake Mead is 47%, and Lake Mohave and Lake Havasu are at 82% and 96% respectively. Rain and snow has come early in Colorado this year and hopefully that will continue for the next few months.

- C. USDA National Agricultural Statistics Service: Arizona Agri-Weekly for the month of November 2013; Cotton Ginnings News Release November 1, 2013; and News Release Regarding November Farm Prices.

Chairman Sherrill stated that these particular reports give the cotton, crop conditions, which are pretty much the same as 2012, with very few changes. The reports also provide the high and low temperatures and averages. The departure from normal, believe it or not, we are actually behind in some counties as far as precipitation.

- D. Arizona Meteorological Network Monthly Summary for November, 2013.

Chairman Sherrill stated that this report shows the highs and lows and averages are. Chairman Sherrill added that the thought we might get a little higher average.

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.

After some discussion, it was decided to remove Regular Agenda Item 4-I from the Agenda. Chairman Sherrill asked if this action needed to be addressed as a motion for approval. Mr. Clark said that it was not necessary.

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 November 5, 2013 Meeting Minutes.
- B. Approve the November 18, 2013 Special Meeting Minutes Canvassing Election Results.
- C. Ratify payment of expenses for November, 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. **Chesney/Mohave Valley Farms, T9N, R23E, SEC. 33 and 34.** Hearing for consideration and possible approval of the Boundary Change Impact Study and Petition for Inclusion of Lands for Mohave Valley Farms, LLC.

Mr. Clark advised that the staff was recommending that this item be approved. All publishing has been properly completed, everything necessary to move forward with this project has been done. We are now ready for the final step, which is to bring this parcel within the District. This parcel of land is within the District's contract service area now, but with this formal action this parcel will become a part of the District. Mr. Muscelli asked for clarification that the publication requirements had been met, and was assured that they had been.

Mr. Muscelli made a motion approving the inclusion of this parcel in the District. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- B. **Mohave Crossing Shopping Center, T19N, R22W, SEC. 22.** Discussion and possible approval of the water allocation extension request in the amount of 50.55 acre feet made by Kaplan Real Estate.

Mr. Clark advised that staff was recommending that this request be denied. Mr. Clark stated that Kaplan made a request for an extension the water allocation six (6) months ago and was advised at that time that "effective marketing" would not be considered as forward progress. Kaplan Real Estate is again making a request for an extension of their allocation, however, no forward progress on this property has been made, other than new types of marketing the property for sale.

Mr. Muscelli requested clarification that there was actually no development whatsoever on this property. Mr. Clark advised that there was no development in the planning stages.

Mr. Muscelli made a motion that the request for an extension of the preliminary water allocation in the amount of 50.55 acre feet be denied. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- C. **Mohave Commerce Center, T19N, R22W, SEC. 22.** Discussion and possible approval of the water allocation extension request in the amount of 28.21 acre feet made by Kaplan Real Estate.

Mr. Clark advised that this request is much the same as the request for Mohave Crossing. This is also a Kaplan property. What Kaplan has been doing with this property is much the same as what they have been doing with

the Mohave Crossing property, which is marketing it for sale. They have made no forward action in that they have filed no plans with the County, they are just marketing the property. Again, Kaplan was told when they made this same request six (6) months ago that the District would not consider “effective marketing” to count as forward progress. Staff is recommending that this extension of the preliminary allocation request be denied.

Mr. Muscelli made a motion that the request for an extension of the preliminary allocation in the amount of 28.21 acre feet be denied. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- D. **El Rio Litigation.** Discussion and possible approval to engage the law firm of Robert S. Lynch & Associates to represent the District in Federal Court in its suit against HCJM, Inc., El Rio Recreation, LLC and El Rio Holdings, LLC, which was originally filed in the Mohave County Superior Court.

District Counsel requested that the Board approve the engagement of Robert S. Lynch & Associates to represent the District in the ongoing federal litigation of this matter.

Mr. Hancock made a motion to approve the engagement of Robert S. Lynch & Associates to represent the District in Federal Court. Mr. Vanderslice seconded the motion.

Mr. Muscelli then had a question with respect to the costs of litigation. Mr. Muscelli requested that a report be made to the Board at its next Regular Meeting which would address the issue of costs of the litigation. Mr. Muscelli felt that there should be a cap of some kind with regard to costs. District Counsel advised that there should be no conditions placed on this representation. As we are coming into the holiday season, there are roughly two (2) weeks for Mr. Lynch to become familiar with the litigation and to complete the requisite filings. Mr. Lynch is planning to attend the District meeting in January and the issue of costs can be addressed at that time.

Chairman Sherrill advised that, since Mr. Lynch was planning to attend the January meeting, the Board allow him to complete the projects that need to be done at this time. At the next meeting, the Board can review what progress has been made to date, what has been charged for services to date, and ask Mr. Lynch how difficult and extensive this litigation may be and what the costs will be. At that time, the Board can either rescind the approval of the representation or vote to move forward with the representation. Mr. Muscelli questioned whether or not we were going to approve two (2) years of litigation. Chairman Sherrill and District Counsel both stated that strategies needed to be discussed before agreeing to pursue a lengthy litigation of the matter.

Mr. Muscelli stated that he was not sure of what the Board was approving at this time. District Counsel advised that the Board was approving retaining Robert Lynch, attorney at law, to represent the District in the Federal Court action. She also stated that counsel takes its direction from the client. As counsel in this matter, Mr. Lynch will be required to present to the District all relevant options in moving forward with the litigation.

Chairman Sherrill reiterated that the strategies, options and costs of the litigation will be addressed with Mr. Lynch at the January meeting. At that time, the Board can decide to either rescind or go forward with Mr. Lynch's representation.

Mr. Hancock previously made a motion to approve the retention of Robert S. Lynch to represent the District in Federal Court, which had been seconded by Mr. Vanderslice. Chairman Sherrill asked for approval of the motion, all were in favor, motion passed

- E. **Policy Requiring Lined Irrigation Ditches, Resolution No. 2008-09 - Anthony and Cherie Vackar, Water Entitlement Agreement (Agricultural-Term Certain) No. 2013-02.** Discussion and possible action to extend the deadline for Mr. and Mrs. Vackar to line their irrigation ditches, as they are part of the consortium of property owners that are working with Wayne McKellips to bring all irrigation ditches in compliance with Resolution No. 2008-09, all of whom were given an extension at the November 5, 2013 meeting.

Chairman Sherrill stated that the Mr. and Mrs. Vackar were not given an extension as they had been mistakenly left off the list of last month's meeting. Staff responded that was correct. Mr. Clark advised that they were left off the agenda of the November meeting by mistake, and that staff was recommending that Mr. and Mrs. Vackar receive the same extension that was given to the other property owners at the November 5, 2013 meeting, which was a 60 day extension expiring on January 5, 2014.

Mr. Hancock made a motion that Mr. and Mrs. Vackar's extension request to and including January 5, 2014 be approved. Mr. Muscelli seconded the motion. All were in favor, motion passed.

- F. **Los Lagos' Request to Make a Sale/Gift of Water.** Discussion and possible action to approve Los Lagos' request to provide between 70,000 and 80,000 gallons of water to a weekend recreational gold miner who is prospecting off Boundary Cone Road near Oatman. Los Lagos is requesting that they be allowed to either sell the miner the water or, in the alternative, make a gift of the water.

Mr. Clark advised that the staff was recommending that this request be denied. He stated that there were number of different issues, the least of which is that the individual whom would receive the water is outside the District. According to the description given, the miner is working up near Oatman, which would be outside the District boundaries and we have a policy of not giving entitlements to projects outside the service area. Chairman Sherrill stated, besides that, Los Lagos is not a water company so how could he sell or transfer water either in or outside of the District. Mr. Clark reiterated that there were a number of different reasons that this practice would be prohibited. Staff also stated that it would most likely be in violation of the contract. Mr. Clark stated that if this individual needed water, he could go to the appropriate utility company and make a request for a construction meter and obtain water in that manner.

Mr. Muscelli made a motion that the request be denied. Mr. Vanderslice seconded the motion. All were in favor, motion carried.

- G. **Certification of Election Held on November 12, 2013 for the District Board Positions of Director of Division II and Director-At-Large.** Discussion and possible action to approve the election results of the November 12, 2013 election.

Chairman Sherrill asked if we were going to certify the election now or in January. Mr. Clark clarified that we would certify the election now and that the oaths would be taken in January.

Mr. Hancock made a motion that the November 12, 2013 election results be certified. Mr. Vanderslice seconded the motion. Mr. Muscelli abstained. Majority was in favor, motion passed.

- H. **Adoption of Resolution No. 2013-03, A Resolution Canvassing Returns and Declaring Result of Regular District Election Held Tuesday, November 13, 2013.** Discussion and possible action to approve the adoption of Resolution No. 2013-03.

Mr. Hancock moved o approve the adoption of Resolution No. 2013-03. Mr. Muscelli seconded the motion. All were in favor, motion passed.

- I. **Oath of Office.** Chairman Sherrill to swear in the newly elected members of the Board pursuant to the November 12, 2013 election.

Removed from Agenda.

5. PUBLIC INPUT.

There was a question from the audience as to whom had been elected. Chairman Sherrill advised that Perry Muscelli had been elected to retain his Director-At-Large position on the Board and Vince Vasquez had been elected to take over the Division II Director position in place and instead of Joe Hancock.

Chairman Sherrill went on to recognize Mr. Hancock's 40 plus years of service to the District, and to thank him for his service. The Chairman went on to state that the MVIDD building was going to be renamed to reflect the names of the founders of the District, Gordon McKellips, John Vanderslice and Joe Hancock.

Mr. Hancock spoke briefly about the forming of the District and the formal signing of the BOR contract in 1968.

Mr. Vackar then posed a question with regard to the revoking of the water allocations for the Mohave Crossing and Mohave Commerce projects. He wanted to know when the preliminary allocations were granted. Chairman Sherrill answered that the allocations were first given in 2007. The Chairman went on to explain that a few more extensions were given on the properties as forward progress in developing the properties was being shown. However, when the bottom fell out of development in 2008 and 2009, the District kept granting preliminary allocation extensions to developers who were having a hard time developing their property due to the economic situation. The Chairman also stated that if no forward progress is shown by the developer to develop the property, the District cannot continue to approve extensions of preliminary allocations.

Mr. Vackar then asked how the developer of Mohave Crossing and Mohave Commerce obtained their allocations in the first place. Chairman Sherrill explained that, like anyone else who applies for an allocation, the developers of the properties came to the District with site plans in hand that had been approved by the County. Preliminary water allocations for the developments were approved. However, after switching hands at least a couple of times, the properties in question have not moved forward. The old site plans have expired and no new development plans have been presented, therefore the allocations were revoked.

Mr. Hancock asked Mr. Vackar if he still owned the Willow Valley Golf Course, as he had heard that Mr. Vackar had sold the golf course. Mr. Vackar replied that he did, indeed, still own the golf course.

There was then discussion with regard to the old McKellips house that remained on the property. And the good old days when all the roads were dirt and the McKellips house was the only house on the main road for miles.

Mr. Muscelli then brought up that in Regular Agenda Item No. H there was a typographical error with regard to the Resolution number. The Resolution number listed in Item H was 2013-03 when it should have been listed as Resolution No.

2013-09. Chairman Sherrill noted that staff would fix the error and as the Board was still in session, the error could be corrected.

Mr. Hancock made a motion to correct the error in Regular Agenda Item No. H changing the Resolution number from 2013-03 to 2013-09. Mr. Muscelli seconded the motion. All were in favor, motion passed.

6. ADJOURNMENT.

There being no further business to be considered by the Board, Mr. Hancock made a motion that the Meeting be adjourned. Mr. Muscelli seconded the motion. All were in favor, motion passed. The Meeting adjourned at 4:39 p.m.