

# MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

APPROVED: FEBRUARY 4, 2014

## MINUTES OF THE REGULAR BOARD MEETING HELD TUESDAY, JANUARY 7, 2014 AT THE OFFICES OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT ("THE DISTRICT")

### CALL TO ORDER.

The meeting was called to order at 2:10 p.m.

### ROLL CALL.

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

Absent: Clay Vanderslice, Director At Large

**OATH OF OFFICE.** Chairman Sherrill to swear in the newly elected members of the Board pursuant to the November 12, 2013 election.

Chairman Sherrill swore in newly elected members Perry Muscelli, as Director At Large, and Vince Vasquez, as Director of Division I, pursuant to the November 12, 2013 election.

**ADJOURN TO EXECUTIVE SESSION MOTION.** Motion to adjourn to Executive Session.

Mr. Kai made a motion to recess to Executive Session. Mr. Muscelli seconded the motion. All were in favor, motion passed.

### RECONVENE REGULAR SESSION.

### CALL TO ORDER OF RECONVENED REGULAR SESSION.

The meeting was called to order at 4:15 p.m.

### PLEDGE OF ALLEGIANCE.

The Pledge of Allegiance was led by Mr. Steve Buck.

After the Pledge of Allegiance, Chairman Sherrill introduced Perry Muscelli and Vince Vasquez as newly elected Board Members.

## ROLL CALL.

Present: Charles B. ("Chip") Sherrill, Jr., Chairman, Director District III  
Vince Vasquez, Director District II  
John Kai, Director District I  
Perry Muscelli, Treasurer, Director At Large  
Clay Vanderslice, Director At Large  
Mark R. Clark, CCM, 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. Muscelli made a motion to waive the reading of full minutes and resolutions presented for approval or adoption. Mr. Kai seconded the motion. All were in favor, motion passed.

### 1. REPORTS.

#### A. Staff report on water use.

Mr. Clark stated that water use for the year to date ending November 30, 2013 was about 24,000 acre feet of water. In 2012 water usage was 20,000 acre feet, and in 2011 water usage was 30,000 acre feet. We are ahead of last year by a good number but still well behind the District's 2011 numbers. Mr. Clark stated that in 2013 we are looking at about 5.7 billion gallons of water being used for agricultural purposes. In 2012 that number was about 4.5 billion gallons; and in 2011 it was approximately 8.1 billion gallons. We have dropped quite a bit from 8 billion to 5 billion gallons of water. We are seeing more water usage this year due to more land being in production, with WPI coming on line. So we are seeing a lot more water being used in 2013, which will be a big help in getting our water usage numbers up.

#### B. Bureau of Reclamation Lower Colorado Water Supply Report as of December 31, 2013, Snowpack Report and Lake Powell Water Data Graph.

Chairman Sherrill stated that the numbers are even worse than last month. Lake Powell system contents at this time are 43%, down from 56% for this time last year. The total system content of all four lakes (Powell, Mead, Mohave and Havasu) is 49% at this time, down from the 53% this time last year. These numbers are incredibly bleak, and we need a good snowpack in the Colorado Rockies.

#### C. USDA National Agricultural Statistics Service: Arizona Agri-Weekly for the month of December 2013; Farm Price Index for December 2013.

Chairman Sherrill stated that the these numbers are pretty much in line with last year. Prices have come down.

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

Chairman Sherrill stated that there are no real anomalies in November's summary, that the weather has stayed pretty much on an even plain.

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.

Item 4A, Technical Corrections to MVIDD By-Laws, was removed from the Regular Agenda. The Board was not prepared to discuss or take action on that Item at this time.

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 December 3, 2013 Meeting Minutes.  
B. Ratify payment of expenses for December, 2013.

Mr. Muscelli moved to approve the Consent Agenda as presented. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

4. **REGULAR AGENDA.**

- A. **Technical Corrections to MVIDD By-Laws.** Discussion and possible action to make technical corrections to Paragraph 3.11.1 of the MVIDD By-Laws.

Removed from Agenda.

- B. **Finalized Financial Review Report Prepared by Heinfeld, Meech & Co., P.C.** Discussion and possible action to approve the Financial Review Report for the year ending June 30, 2013.

Mr. Clark advised that the report had been provided to the Board in draft form at the December Executive Meeting. Mr. Clark read the following excerpt from the Heinfeld, Meech report:

Based on our review, we are not aware of any material modifications that should be made to the accompanying Schedule of Cash Receipts and Disbursements prepared in conformity with

the cash basis of accounting as described in Note 1.

Mr. Clark explained that Heinfeld, Meech found no problems with the accounting and the District got a clean bill and the Report is now being presented to the Board for its approval.

Mr. Vanderslice made a motion that the Review Report be approved. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- C. **Sun Valley Unit II, Tract 4185E, T18N, R22W, Section 1.** Discussion and possible action to approve the request for an extension of the preliminary allocation for Sun Valley, Unit II, Tract 4185-E from January 20, 2014 until July 19, 2014, consistent with Resolution 2008-02.

Mr. Sherrill stated that staff has recommended that this extension be approved. Mr. Clark advised that this is a 23 lot subdivision. All fees have been fully paid. Drainage work has been performed pursuant to their grading plan since the last approval. Sewer line relocation work is hopefully soon to be resolved. There was some litigation in connection with this project that has settled, however, there are still some adjustments that need to be made before they can continue their efforts to complete the subdivision.

Mr. Muscelli made a motion to approve the request for extension of the preliminary water allocation to and including July 19, 2014. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- D. **Policy Requiring Lined Irrigation Ditches, Resolution No. 2008-09.** Discussion and possible action to declare the following contracts in default for failure to comply with District Resolution 2008-09, a conservation rule adopted by the District in accordance with its rule making authority as provided in the contract:

APN Investments	Contract No. 2010-01
Desert Land, LLC	Contract No. 2012-03
Steve Dinkin	Contract No. 2007-06
Wayne McKellips	Contract No. 1993-01
Anthony Vackar	Contract No. 2013-02

Mr. Wayne McKellips advised that, while he is not representing this group of water users, he is spearheading the effort to bring all properties in compliance with Resolution 2008-09. An agreement has been reached with all the parties as to compensation to putting in the pipeline. The group met with Mr. Clark on Monday, December 30, 2013 to discuss the current plan for installing the irrigation pipe. Mr. McKellips stated that since that time, the

plan has been modified slightly because the plan involved two pipelines, one which followed the existing ditch and one that went across the middle of another property and they wanted it more on the property line and so did the tenant farmer because he irrigates to the north of that. Mr. McKellips advised that they have a survey of the whole property, and a surveyor putting stakes in. They have a contractor who has agreed to the price of installation of the pipe, so we have a contract for each parcel within the group and they are underway. All pipe for the project has been secured as a contribution from the farmer and the contractor, which amounts to a lot of money. They are moving ahead and have a contract circulating for everyone to sign, but since the prices have been changed, the contract will be revised as needed and again passed around for signature by each of the participating water users. Mr. McKellips advised that another extension is needed to get the project completely underway and finished.

Chairman Sherrill asked District Counsel how much time could be extended to the group. Mr. McKellips advised that the contractor estimated a 60 to 90 day timeline. District Counsel advised that the extension of time was up to the Board. The Board could allow for a 60 day extension and, if the project was proceeding to the Board's satisfaction, another extension could be given to allow for the completion of the project.

Chairman Sherrill asked the Board Members how many days they wished to extend to the water users. Chairman Sherrill advised that the group had completed the engineering plans, ground has been broken and the pipe is on site. Chairman Sherrill stated that he has personally seen the work currently in place and feels that this project is moving forward as sanctioned by the Board.

Mr. Muscelli made a motion that a 90 day extension be approved. Mr. Kai seconded the motion. All were in favor, motion passed.

- E. **SMK Limited Partners Agricultural Contract No. 2010-01, T18N, R22W, SEC. 27. Policy Requiring Lined Irrigation Ditches, Resolution No. 2008-09.** Discussion and possible action to declare Contract No. 2009-05 in default for failure to comply with District Resolution No. 2008-09, a conservation rule adopted by the District in accordance with its rule making authority as provided in the contract.

Chairman Sherrill advised that SMK Limited Partners was actually a part of the McKellips Group and working with the other water users to bring the property into compliance with Resolution 2008-09.

Mr. Muscelli made a motion to grant a 90 day extension for SMK Limited Partners. Mr. Kai seconded the motion. All were in favor, motion passed.

- F. **Revocation of John Kai Contract Nos. 2008-05 and 2008-06.** Discussion and possible action to approve the revocation of John Kai Contract Nos. 2008-05 and 2008-06 for failure to comply with Resolution 2008-09, a conservation rule adopted by the District in accordance with its rule making authority as provided in the contracts.

Chairman Sherrill asked Mr. Kai if he had any additional information to offer to the Board. Mr. Kai stated that he has been working with NRCS to get approval of the plans that he had previously submitted to the District. Mr. Kai advised that until approval was received from NRCS, work could not go forward. Once approval was received from the State the work on Section 27 could go forward. On Section 23, as soon as the well driller gets onsite, they can get the well drilled. Mr. Kai went on to say that NRCS advised that as soon as Section 27 had been successfully completed, he could start working on Section 23.

Mr. Kai further stated that he had talked with the bank regarding funding, and presented to the Board a Letter of Interest from Alliance Bank with regard to a loan to enable the project to be started. The letter from Alliance Bank was a proposal and not a loan commitment, however.

Mr. Kai stated that he had started this project with NRCS when Resolution 2008-09 was first adopted, but that NRCS did not move forward with it until Erin Matthews came on board a year ago. Mr. Kai explained that NRCS would not approve any engineering plans that had not been prepared by NRCS. Chairman Sherrill asked why NRCS would not approve Mr. Kai's engineering plans. Mr. Kai answered that NRCS has its own criteria and design standards that must be included in the engineering plans in order to obtain approval. Chairman Sherrill stated that if Mr. Kai wanted to engineer his own design, he could do that, and NRCS would have to accept it. Mr. Kai answered that he had spoken to Erin Matthews about that and she told him that NRCS would do the design and those plans would go from the Kingman office to the Flagstaff office for approval and that the final approval would come from Phoenix. Mr. Kai stated that Erin Matthews told him that NRCS would not accept any designs that he would submit. Mr. Kai went on to explain that when you apply for NRCS funding, the plans must be prepared by NRCS.

Chairman Sherrill then turned the conversation over to the other Board Members for questions. Mr. Muscelli asked what Mr. Kai had to do to comply at this point. District Counsel advised that on October 14, 2013, Mr. Kai was advised by letter, just as the other water users were, that if he was not going to have the ditches installed in time he could request an extension of time, however, he would have to supply the Board with an irrigation plan. There was no requirement that the plan be prepared by an engineer. The irrigation

plan would have to set forth sufficient detail to allow the District to evaluate whether or not the plan would meet the District's conservation goal. In addition, Mr. Kai would have to submit that the project had been financed or paid for and that a contract had been entered into with a licensed contractor for the installation of the type of the lining for the ditches, which establishes a commencement date and a completion date within the time frame. In addition, Mr. Kai needed to submit certification the well registration or point(s) of diversion information on file with the District is correct. Finally, Mr. Kai needed to submit certification that the well pumping the water is in good repair and operating condition.

Mr. Clark advised that Mr. Kai had submitted some plans to the District. Mr. Kai explained that the plans that were submitted were for Section 27 (Contract No. 2008-05). District Counsel clarified that there were two contracts in question, and asked Mr. Kai if there were different time frames for the different sections covered by the two contracts. Mr. Kai answered that Erin Matthews wanted them to complete Section 27 first. Section 27 has been engineered, and they come out and stake the property, send the plans to the Flagstaff office for approval and then it would go onto Phoenix for final approval. Mr. Kai stated that he had a memorandum from Erin Matthews saying that she believed the project plans would be approved by the end of January. Mr. Kai stated that NRCS would specify the size of the pipe and all other specifications of the project and that he would have to go by their specifications in order to participate in the NRCS program.

Mr. Kai stated that on Section 23 (Contract No. 2008-05), the well permit has been obtained from the State to re-drill the well. The well casing is onsite and waiting for the well driller to drill the well. Mr. Kai stated that he had expected the well to be re-drilled by Christmas, but it had not yet been re-drilled. The pipe is onsite and ready to go.

Mr. Kai advised that as soon as Section 27 was finalized, then NRCS would work with him on Section 23.

Chairman Sherrill then asked whether or not there were any engineering plans prepared for Section 23. Mr. Kai responded that preliminary plans called for a pipeline from the well going east and west, which he believed he submitted a drawing for. Mr. Kai stated that it was necessary for NRCS to prepare the engineering schematics in order to qualify for the funding. Chairman Sherrill asked if Mr. Kai was planning to use the existing ditches. Mr. Kai answered it was his plan to lay the pipe in the existing ditches unless NRCS came up with a different plan.

Chairman Sherrill asked if Section 23 was the property over by the Gas Plant. Mr. Kai answered that it was. Chairman Sherrill asked Mr. Kai how

many acres were contained in Section 23. Mr. Kai answered that there were approximately 198 acres. Chairman Sherrill then asked that, of the 198 acres, how many acres had been farmed in the past. Mr. Kai answered that approximately 100 acres or less had been farmed. Chairman Sherrill then asked how long it had been since the remaining acres had been farmed. Mr. Kai answered it had been 2 or 3 years. Chairman Sherrill commented that there was brush growing on the remaining acres, so it must have been longer than that. Mr. Kai answered that the property where the brush was growing was not his property, and that the property that had been cleared was his. There was then discussion between Chairman Sherrill, Mark Clark and District Counsel to determine which property was covered with the brush. Chairman Sherrill stated that he was talking about the south end of the property along King Street, that was the property covered with brush. Chairman Sherrill then asked Mr. Kai how long it had been since that ground had been farmed. Mr. Kai answered it had been about 3 or 4 years. Chairman Sherrill stated that if it had been 3 or 4 years since that ground had been farmed, Mr. Kai was putting the District at risk of losing water that is not being used. Chairman Sherrill stated that the Bureau of Reclamation has taken a staunch stand that for farming to be farming, the ground had to be watered and farmed.

Mr. Muscelli then asked if there were two contracts. Chairman Sherrill, referring to maps provided by Mr. Kai, asked which was Section 27 and which was Section 23. Mr. Kai showed on a map where Section 23 was. In Section 23, there were three fields, approximately 45 acres, that had not been farmed. Chairman Sherrill asked if there were separate contracts for those fields. Mr. Kai answered that Contract No. 2008-05 included all of Section 23. Mr. Kai stated that Section 27 was at the south end of the properties that Wayne McKellips was developing.

Mr. Clark then clarified that Contract 2008-05 for Section 23 contained approximately 75 acres and about 529 acre feet of water. Mr. Clark said that Section 27 (Contract 2008-06) was for approximately 199 acres and 1,397 acre feet, he would have to check on the acreage amount.

District Counsel asked if there was a well in operation on Section 27. Mr. Kai responded that there was. Mr. Kai stated that Section 27 had a well that was right next to, on the west side. Chairman Sherrill asked that Mr. Kai show him where the well was located on the map. Mr. Clark stated that Section 27 contained 199.70 acres and 1,397.90 acre feet of water.

Mr. Kai stated that there were some other maps that showed Section 23. Mr. Clark answered that the maps contained in the Board Packet were the only ones that were provided. Mr. Kai then located the NRCS map which showed Section 27 and the engineering schematics. Section 27 is the property south

of Willow Valley Golf Course. There was then discussion and clarification of the two sections, Section 23 was 75 acres and Section 27 was 199 acres.

Chairman Sherrill offered that Mr. Kai had placed the District Board in a precarious position by requesting an exception and have the Board grant an extension of time to complete the required work on Sections 23 and 27. Chairman Sherrill stated that Mr. Kai has had five (5) years to complete the work on the properties in question. Chairman Sherrill stated that Mr. Kai had not shown forward progress, that Mr. Kai provided information to the Board at the last minute. Mr. Kai had received several notices from District Counsel advising that he was not in compliance with Resolution 2008-09 and, as things stood right now even without the vote of the Board, Mr. Kai was in default on both contracts.

Mr. Muscelli asked District Counsel if the October 4, 2013 letter was the Board's policy. District Counsel responded that Mr. Kai was advised of the default and of the four (4) items that needed to be completed in order to ask the Board for an extension of time. Mr. Kai's contracts were declared in default in November 2013. District Counsel stated that if the Board took action on this matter, it would either be to reinstate the contract or to take no action. Mr. Muscelli then asked if there was any kind of performance under the contracts. District Counsel answered there was not. District Counsel then said that perhaps it could be said that Section 27 was further ahead in the process because it was in the review process. District Counsel said that the problem and her main concern was that the McKellips consortium was not given the opportunity to try and go through NRCS. The consortium did not go that route because this Board took the position that the ditches had to be completed or the Board would terminate the contracts. Counsel stated that Mr. Kai, by his own admission, was at least 30 days from being ready to proceed and that was just for the approval of the engineering design. Mr. Kai has provided no information to the Board as to when NRCS was going to fund the project. Mr. Kai confirmed that he was going to have to fund the project, which was why he provided the proposal letter from Alliance Bank. District Counsel stated that she was very concerned that the Board treat Mr. Kai exactly the same as the other water users. Mr. McKellips group complied with the requirements contained in the October letter, and are underway.

Chairman Sherrill added that there was much concern that part of Section 23 had not been farmed in four (4) years. If Mr. Kai is not using his water allowance, it sets a bad precedence. Chairman Sherrill went on to say that if Mr. Kai is not using his water allotment to farm the property in question, it constitutes a dereliction of duty as a Board Member.

Wayne McKellips then asked if the District had a policy on place as to how long a farm could lie fallow. Chairman Sherrill answered that there was no

formal policy, but that the District asked for Crop Reports so that the District may substantiate with the Bureau of Reclamation that those crops are being planted and the water is being used. District Counsel clarified that it has been an informal policy, and that there is a policy that speaks to “in production” and it is generally accepted that ground should be farmed three (3) out of five (5) years.

Newly elected District II Director Vince Vasquez stated that his employer, WPI, was interested in working with Mr. Kai and though no agreements had been reached, there had been some negotiation. Mr. Vasquez stated that he hoped the Board would elect to give Mr. Kai an extension of time in order for a deal to be worked out so that the properties in question could retain their water allocations. Mr. Vasquez acknowledged that he had a conflict of interest in this matter and would abstain from voting or making any kind of motion with regard to an extension.

Mr. Muscelli, referring to the stipulations contained in District Counsel’s October 4, 2013 letter, asked if Item No. 1 had been complied with as there were several engineering schematics that had been provided by Mr. Kai. District Counsel acknowledged that it could be determined that Item 1 had been complied with. Then referring to Item 2 of the October 4 letter, Mr. Muscelli asked if evidence had been provided that the project had been paid for. District Counsel responded that there was an invoice for pipe, but there were no prices included on the invoice. Mr. Muscelli then asked if Item 3 of the October 4 letter, which requires certification of the well registration and point(s) of diversion information, had been complied with. District Counsel responded that she did not believe Item 3 had been complied with. Mr. Kai advised that the District was requesting him to obtain the well registration from the State, and added that the State did not have that well registered. Mr. Kai stated that he applied for a new well and the State gave him a number for a new well for Section 23. District Counsel interjected that we were currently speaking about Section 27. Mr. Muscelli then referred to Item 4 of District Counsel’s October 4 letter, which refers to certification that the well pumping the water is in good repair and operating. Mr. Muscelli wanted to know how that would be certified. District Counsel answered that Mr. Kai would submit a sort of affidavit affirming that the well was in good repair and working condition.

It was determined that the well on Section 27 was working, but the well on Section 23 was not. District Counsel cautioned Mr. Muscelli about setting different performance criteria. Mr. Muscelli replied that he was not setting criteria, he was just asking questions as to what had been complied with. Mr. Muscelli then stated that the standards had not been met by Mr. Kai and he was unsure as to what to do.

Chairman Sherrill stated that the Board did not need to take any action at all. The contracts would go into revocation as notices had been sent out to Mr. Kai setting forth the timeline in which he had to comply.

Mr. Muscelli asked District Counsel about notification of Mr. Kai's default. District Counsel responded that the October 4 letter clearly stated that the letter plainly set forth that all water entitlement contracts for agricultural lands with unlined ditches would be declared in default at the District's November 5, 2013 meeting unless the requirements for obtaining an extension of time were met. Mr. Kai's contracts were declared in default at the November 5, 2013 meeting and Mr. Kai was present for that meeting.

Chairman Sherrill asked the Board Members what they wanted to do. Mr. Muscelli responded that the Board's choices were either that Mr. Kai did or did not comply. Mr. Vanderslice suggested that the Board find a way to grant an extension as Mr. Kai was trying, he just hadn't made much progress.

Chairman Sherrill stated that if the Board granted Mr. Kai an extension when he clearly did not deserve one, it would be setting a bad precedent for this District. If the Board did not abide by its own Resolutions, then any Resolutions passed would have no teeth, thereby making them useless.

Mr. Richard Park then spoke up with regard to his dealings with NRCS. He stated that he applied for a grant from in NRCS in 2011 and still hasn't heard back from them. Mr. Park stated that you might wait 2-3 years before funding becomes available from NRCS. Mr. Park stated that you have to be prepared to fund your projects on your own. Mr. Kai stated that NRCS told him that his plans were in Phoenix for approval and as soon as they were approved, Mr. Kai would be able to buy the material according to what the NRCS recommendations were and that was what he was waiting on.

Chairman Sherrill asked Mr. Kai when he had applied to NRCS for this project. Mr. Kai said he applied five (5) years ago. Chairman Sherrill asked when he had applied for *this* project. Mr. Kai stated that it had been five (5) years since he first applied and that NRCS had basically given him the run around for the entire time. Chairman Sherrill asked Mr. Kai why he didn't proceed on his own after being stalled for such a long time. Chairman Sherrill stated that Mr. McKellips didn't wait for the NRCS, he got the land owners together, got funding in place and got the project going. Chairman Sherrill stated that he wasn't trying to make an issue with Mr. Kai but, as a farmer, Mr. Kai knows he needs his water. Mr. Kai hasn't farmed or used his water for 3 or 4 years, he lost his well in Section 23 and hasn't drilled another well. Mr. Kai stated that the issue was getting a well driller up here. Mr. Sherrill stated that WPI had a well driller up here in 2 weeks. Mr. Kai wanted to drill using the cable tool method.

Mr. Muscelli asked if Mr. McKellips' group had tried to work with NRCS, would they have qualified. Mr. McKellips responded that qualifying with NRCS was difficult because there are different conditions for each party. Mr. McKellips stated that he did look into several of the grants available, and NRCS told him that he couldn't start until they approved all his plans. So, the group went ahead with designing and funding the project on their own.

Mr. Muscelli asked District Counsel to clarify again that the only two choices were to reinstate the contract and grant Mr. Kai an extension or take no action at all. Chairman Sherrill stated that if the Board reinstated Mr. Kai's contract and granted additional time even though Mr. Kai was not in compliance with Resolution 2008-09, it would set a bad precedent.

Mr. Vasquez asked Mr. McKellips if he would take legal issue with the District if the District were to grant Mr. Kai a narrow window of time in which to get the project started. Mr. McKellips stated he would not. District Counsel reiterated to Mr. Vasquez that he had a conflict of interest on this issue. Mr. Vasquez nevertheless stated that he thought the Board should grant Mr. Kai a very narrow window of time to allow him to get some financing in place to get the project started. Mr. McKellips suggested that maybe Mr. Kai could draft a letter to the Board in the same manner that he had. Mr. Kai then stated that if the Board decided to revoke his contracts that he would still move forward to bring his properties in compliance.

Mr. Muscelli asked District Counsel again if there were any other options than the ones previously stated. District Counsel answered that there may be another solution; that in her time as District Counsel there had been one incident where an amenity contract had been terminated and, after the cure period the District allowed reinstatement of the contract. Chairman Sherrill asked how long that cure period was. Counsel stated she believed it was one week. District Counsel stated that any application for reinstatement of the contract would have to address the concerns of the Board. Counsel stated that of all the criteria she would look most stringently at the financing portion of the criteria to be met. Reimbursement of costs may be a year or two down the road and this Board cannot be concerned as to whether or not Mr. Kai gets reimbursed his costs for the project. The Board could grant the time to get the approval. She further stated that the contract for Section 27 could perhaps be reinstated. Section 23 had too many problems and that contract would most likely not be subject to reinstatement. Counsel stated that the deadline was not new and not unexpected. She stated that perhaps what was unexpected was that Board would require strict compliance.

Mr. Kai stated that when he had finished the project he would just have to come in and request a water allocation. District Counsel stated that it might

be more prudent to get moving and get financing in place and apply for the reinstatement of the contract.

Mr. Muscelli then entertained an idea of Mr. Kai putting up a quarter million dollar bond. District Counsel answered that, at this point, Mr. Kai should propose an action. The Board has discussed at length the concerns it has. It should be up to Mr. Kai to address the issue of whether or not to reinstate the contract. Mr. Muscelli stated that the contract would not be reinstated at this meeting, so he didn't see any other option for the Board except to take no action. Mr. Muscelli also stated that he was just trying pave the way to help Mr. Kai keep his contract. Of course, substantial forward progress would have to be shown. Chairman Sherrill stated that he was not sure that a performance bond would do a whole lot of good. Chairman Sherrill stated that invoices showing that pipe had been purchased and funding was in place for completion would be proof of forward progress. Mr. Kai stated that he had started this process with NRCS and now had to follow through with their engineering recommendations. Chairman Sherrill stated that Mr. Kai should be able to determine what size of pipe he would need without the approval of the NRCS. Mr. Kai stated that if he doesn't abide by the recommendations of NRCS, he may not be reimbursed his costs for the project.

Chairman Sherrill stated that Mr. Kai would have to show sufficient forward progress in order for reinstatement to be considered. He set forth that different subdivisions were given extensions because they showed forward progress, however, those subdivisions that did not move forward got their allocations revoked.

Chairman Sherrill stated that the Board would not take a vote unless one of the members made a motion. He asked if any of the Board Members wished to make a motion. No motion was made, no action was taken.

- G. **El Rio Litigation.** Discussion and possible action to approve the engagement of new counsel to represent the District in *MVIDD vs. El Rio*.

Chairman Sherrill stated that District Counsel had recommended the District to retain the services of William Staudenmaier of Snell & Wilmer to represent the District in its litigation with El Rio.

Mr. Kai made a motion that the District approve the recommendation of District Counsel to retain the services of Snell & Wilmer to represent them in its litigation with El Rio. Mr. Muscelli seconded the motion. All were in favor, motion passed.

- H. **Arizona Municipal Power Association (“AMPA”)**. Discussion and possible action to approve the District joining AMPA. This item placed on the Agenda at the request of John Kai, Jr.

This matter was tabled until next month.

- I. **Networking and Upgrade of District Office Computers by The Computer Shop**. Discussion and possible action to approve the estimate provided by The Computer Shop to network and upgrade the District Office Computer system.

Discussion took place with regard to the estimate provided by The Computer Shop to network and upgrade the District Office computers.

Mr. Muscelli made a motion to approve the estimate provided by The Computer Shop. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

**5. PUBLIC INPUT.**

Mr. Steve Buck, on behalf of Bella Vista, gave a report regarding the ongoing negotiations with Tom Sockwell, Chairman of the Mohave County Water Conservation District, to obtain fresh water for the Bella Vista lakes after 2017.

**6. ADJOURNMENT.**