

# MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

APPROVED: \*\*

## MINUTES OF THE REGULAR BOARD MEETING HELD TUESDAY, NOVEMBER 4, 2014 AT THE OFFICES OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT ("THE DISTRICT")

### CALL TO ORDER.

The meeting was called to order at 4:10 p.m.

### PLEDGE OF ALLEGIANCE.

The Pledge of Allegiance was led by Steve Buck.

### 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 advised that the District has used more water in the first nine (9) months of 2014 than for all of 2013. Mr. Clark stated that it is expected that the District should use from 36,000 to 37,000 acre feet of water for the calendar year 2014. Approximately 83% of the water use is for agriculture, 17% is being used for M&I purposes. Year to date the District has used 1,460 acre feet of PPR water.



Mr. Perry Muscelli asked that year to date, 2013 versus 2014, by what percentage is use higher? Mr. Clark advised that he had not calculated that number but could get back to Mr. Muscelli with an answer. Mr. Muscelli asked if there was a year to date total. Mr. Clark advised that he would have to calculate that number and get back to him with an answer.

- B. Bureau of Reclamation Lower Colorado Water Supply Report for the month of October, 2014; Upper Colorado River Basin Snowpack Report; Lake Powell Water Data Graph; and Lake Mead Water Data Graph.

Chairman Sherrill reported that the Upper Colorado Basin Snowpack for 2014 is at a higher average than in previous water years. The Lake Powell daily water level for 2014 was less than 2011 and 2012, but better than that of 2013. The Lake Mead daily water level for 2014 was less than 2013 and the projection for 2015 is just above the trigger point.

Chairman Sherrill stated that it appears that, with the equalization, 2015 most likely will not be a drought year. A shortage will likely be declared in 2016 unless we get a phenomenal snow pack this winter.

- 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, no action.

- 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 October 7, 2014 Meeting Minutes.
- B. Ratify payment of expenses for October, 2014.
- C. Approve the Snell & Wilmer Billing Statement for the month of September, 2014.

Mr. Vasquez made a motion that the Consent Agenda be approved in its entirety. Mr. Kai seconded the motion. All were in favor, motion passed.

- 4. **REGULAR AGENDA.**

- A. **Resolution No. 2014-03.** Discussion and possible action to approve the adoption of Resolution No. 2014-03, which establishes procedures for obtaining water allocations for commercial, industrial and residential development.



Mr. Clark advised that this is a resolution concerning a matter that the Board has discussed a number of times. The prior resolution had a stipulation that provided one (1) year for initial applicants and subsequent extensions of time of six (6) months. This Resolution provides an applicant with an initial water allocation for 36 months, with a provision for extensions of the allocation of up to 24 months. This gives the Board some flexibility in approving the time for an extension, taking into consideration how much forward progress a development is making. If a development is making a great deal of forward progress, the Board will have the ability to give that development a little more time. If a development is only making enough forward progress to keep itself going, the Board may want to give that project a little less time.

Mr. Clark stated that the way the current resolution is set up, it really does not allow enough time because, even under the best of circumstances, the County is not going to issue a final plat within one (1) year. Mr. Clark stated that the 36 month initial preliminary allocation and extensions of time of up to 24 months are reasonable time frames for the developer.

Chairman Sherrill asked for a motion. Mr. John Kai made a motion to approve Resolution 2014-03. Mr. Muscelli seconded the motion. All were in favor, motion passed.

- B. **Resolution No. 2014-04.** Discussion and possible action to approve the adoption of Resolution No. 2014-04, which establishes a policy regarding the quantity of water allocations.

Mr. Clark stated that the Board has previously approved the revision to the water allocation required for a single family residential unit. It was approved to bring the amount of the allocation down from 375 gallons per day per household to 303 gallons per day per household, and the Arizona Department of Water Resources ("ADWR") has agreed that that is a reasonable number for the District to use. This Resolution finalizes that revision to the residential allocation. The condo/apartment and commercial allocations will remain the same.

Mr. Muscelli asked if this set a cap on residential allocations. Mr. Clark replied that this was setting an allocation of 303 gallons per day per household for residential use.

Mr. Steve Buck then asked if this Resolution had the effect of becoming the adopted use for all calculations. Mr. Clark stated that was correct. If a developer comes to the District for a water allocation for a subdivision project, the developer would use the 303 gallons per day per household as opposed to the 375 gallons per day per household.



Mr. Muscelli asked what would happen if the developer stated he only needed, say, 250 gallons per household per day of water. Mr. Clark stated, that at this point, ADWR would have to approve moving the allocation number any lower than the 303 gallons per day. Mr. Clark went on to say that, until the District can gather the information which proves that a lower number would be sufficient, the District will have to use the 303 number. Mr. Clark stated that other Districts which tried to gain approval to use a lower number were refused by ADWR.

Mr. Muscelli asked if the language of the Resolution should be changed from "shall not exceed" to "shall be". Chairman Sherrill referred the question to District Counsel. District Counsel stated that Mr. Muscelli was correct, that the Resolution should read "will be" or "shall be". Ms. Kelley went on to say that the "not to exceed" language was probably picked up from the old resolution.

In addition, District Counsel stated where the flexibility and the "shall not exceed" pertains to the industrial and commercial allocations, as there was extensive discussion with ADWR as to how they calculate their allocation amounts. ADWR calculates the allocation for the entire commercial or industrial site, and this District has been of the opinion that asphalt does not use water.

Mr. Clark stated that another thing that has been considered here is, based on the commercial or industrial development's actual usage at the site, the allocation could be reduced.

Mr. Muscelli requested a motion be made striking the "shall not exceed" language. Chairman Sherrill told Mr. Muscelli to hold off on the motion.

District Counsel stated that the "shall be" language worked for the residential allocation of 303 gallons and for the condo/apartment complex allocation of 157 gallons per day, however, she wondered if the language works for the industrial/commercial allocation. She then stated that it should work because the District had the 2.25 acre foot allocation tied to the footprint of the building. Mr. Clark stated that, even if using the footprint of the building their usage is less, the allocation should be less. District Counsel stated that the Resolution combined the two into one. Mr. Clark replied that the original resolution was set up that way and staff merely copied the format.

District Counsel stated that commercial/industrial use should not be the 2.25 because it is possible, even with the 2.25 and using the footprint of the building, the District found that the commercial was not using all of the water allocated. District Counsel suggested that the allocation amounts should be



divided into two separate parts, with part 1 being for residential and condo/apartment allocations, and part 2 for industrial/commercial use.

It was decided that Resolution 2014-04 would be tabled until next month. Staff will make the necessary revisions and bring back the Resolution next month for consideration and approval.

Mr. Steve Buck asked about the subdivisions that had already received their allocations. Would this change to the residential allocation amount be retroactive? Mr. Clark stated that it would, because the residential subdivisions are not using the 375 gallons per day. Mr. Clark went on to say that this Resolution would not really change anything for those subdivisions because they were not using their full allotment of 375 gallons per day.

Mr. Ron Vackar asked if the Resolution was going to be retroactive to developments with final allocations in place. District Counsel responded no, that we were not going back. What the District has done is issue water allocations assuring that there is sufficient water to "meet the needs of". This is more of an accounting than anything. She further added that if we are moving into the Water Adequacy Statement and that will be problematic for a number of reasons moving forward.

Mr. Muscelli made a motion to direct staff to make the revisions to the Resolution. Mr. Clark stated that we would just table the Resolution until staff can make the suggested changes.

- C. **MVIDD Fee Schedule Revision.** Discussion and possible action to approve the revision to the MVIDD Fee Schedule to add a fee for the administration of inter-governmental agreements.

Chairman Sherrill advised that MVIDD currently has an administration fee of \$1,900.00, plus \$1.00 acre foot per year to handle the costs of administration of inter-governmental agreements. This fee was not previously included in the MVIDD Fee Schedule and was now being added.

Mr. Clark added that there was a second revision to the Fee Schedule to add a *Water Allocation Extension Administration Fee* in the amount of \$250.00 per extension request. Chairman Sherrill went on to explain that when applying for an extension request of a water allocation, the developer would be required to pay a \$250.00 fee to cover the District's cost to administer the extension.

Mr. Muscelli made a motion to approve the revision to the MVIDD Fee Schedule to include the *Intergovernmental Agreement Extension Fee* in the amount of \$1,900.00 plus \$1.00 per acre foot, as well as the *Water*



*Allocation Extension Administration Fee* in the amount of \$250.00. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- D. **Nancy Vanderslice, Trustee, Contract No. 1989-06; T18N, R22W, Sec. 25.** Discussion and possible action to approve the termination of Contract No. 1989-06 for non-beneficial use of water.

Mr. Clark advised that, during the Beneficial Review of the contract it was determined that the water had not been used within the five (5) year beneficial review period and that there is no intent to use this water allocation going forward. Mr. Clark stated that staff was recommending that Contract No. 1989-06 be terminated for non-beneficial use of allocated water.

Mr. Muscelli asked the amount of the water allocation provided in Contract No. 1989-06. Mr. Clark responded that the contract provided 162 acre feet of water and that the water would be returned to the District's inventory.

Mr. Muscelli made a motion to approve the termination of Contract 1989-06 for non-beneficial use of water. Mr. Vasquez asked for confirmation that the 162 acre feet of water would return to the District's water inventory and would be available for allocation for either agriculture or commercial development. Mr. Clark affirmed that to be the case. Mr. Kai seconded the motion. Mr. Vanderslice abstained. The motion passed by a quorum of affirmative votes.

- E. **Village Estates, Tract 4198, Phases B-F AND Parcel A, T18N, R22W, Sec. 3.** Discussion and possible action to approve the developer's request for an extension of the conditional final water allocation for Phases B-F and Parcel A in the amount of 148.84 acre feet from November 10, 2014 to and including \_\_\_\_\_.

Mr. Clark stated that staff was recommending that this development receive and 24 month extension of the conditional water allocation in the amount of 148.84 acre feet from November 10, 2014 to November 10, 2016. Mr. Clark added that it is possible for the Board to approve the 24 month extension pursuant to Resolution No. 2014-03 which the Board approved earlier in the meeting.

Mr. Vasquez asked what progress the developer had made to merit the 24 month extension. Mr. Clark responded that the developer was actively constructing the site, which was referred to in the September 30, 2014 letter provided by Fairway Constructors, Inc. ("Fairway"), as well as their letter dated November 4, 2014 provided to the Board prior to the meeting.



District Counsel added that Fairway was in the process of executing contracts with Mohave Electric and Bermuda Water. Mr. Clark added that Fairway was in the process installing the underground utilities.

Mr. Kai made a motion to approve the conditional water allocation request for a period of 24 months, to and including November 10, 2016. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- F. **Twin Palms Estates, Tract 4189, T19N, R22W, Sec. 36.** Discussion and possible action to approve the developer's request for an extension of the preliminary water allocation of 19.74 acre feet from November 10, 2014 to and including \_\_\_\_\_.

Mr. Clark stated that this project has been moving forward and he believed that the project was ready for final plat approval. Mr. Raymond Stadler, engineer for the project, stated the final plat and plans for the project were essentially complete. Mr. Stadler advised that the only delay was due to a change of the flood plain designation by FEMA, which has really caused some problems with the subdivision. There are currently 25 homes constructed in the subdivision and now the County has come in and built a new channel behind the subdivision. FEMA has accepted the new channel and this subdivision will now be removed from the flood plain. However, FEMA will not issue the new map for a year, or until November of 2015. The developer is holding off completing the subdivision until FEMA issues the new map.

Chairman Sherrill stated that this was another project that should have its allocation extended until November 10, 2016. That would give the developer the whole year plus another year to accomplish the completion of this subdivision.

Mr. Stadler stated that as soon as FEMA issued the new map the subdivision could move forward. Mr. Muscelli asked about whether or not they had performed a CLOMR. Mr. Stadler responded that a CLOMR had not been performed, but that the County had actually built the channel and had submitted all the hydrology reports to FEMA and the new mapping and that FEMA had approved all of that but, for whatever reason, they are not issuing the new map until next November. Chairman Sherrill stated that the reason for that was FEMA had other projects that they were also dealing with.

Mr. Vasquez asked Mr. Stadler if he would update the District when he had received the new mapping. Mr. Stadler affirmed he would.

Mr. Kai made a motion to approve the request for extension of the preliminary allocation request in the amount of 19.74 acre feet for a period



of 24 months, or to and including November 10, 2016. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- G. **Mohave Valley Commons, Tract 4212; T19N, R22W, Sec. 22.** Discussion and possible action to approve the developer's request for an extension of the preliminary water allocation in the amount of 43.88 acre feet from November 10, 2014 to and including \_\_\_\_\_.

Mr. Clark advised that, again, this project was showing ample forward progress to merit a 24 month extension, and staff is recommending approval of the request for an extension of the preliminary water allocation to and including November 10, 2016.

Mr. Kai made a motion that the request for an extension of the preliminary water allocation in the amount of 43.88 acre feet be approved for a period of 24 months, or to and including November 10, 2016. Mr. Vanderslice seconded the motion. All were in favor, motion passed.

- H. **Allan and Sandy Pompa, T18N, R22W, Sec. 35; Contract No. 2012-03-SU.** Discussion and possible action to approve declaring the above-referenced contract in default for failure to report water usage and failure to pay MVIDD Invoice No. 3410 in the amount of \$73.69.

Mr. Clark advised that staff is recommending that this contract be found in default. Mr. Clark stated that both he and CeCe Preusser had spoken with Mr. Pompa and that he had stated that he had no desire to continue with this contract and was going to let the land go back to the previous owner. Mr. Clark stated that staff was recommending that the contract be declared in default and, assuming Mr. Pompa did not come in to take care of the outstanding balance owed to the District, the contract would be placed on the December agenda for termination.

Mr. Muscelli made a motion that the contract be declared in default. Chairman Sherrill asked for discussion. Mr. Muscelli asked how much water would be coming back to the District. Mr. Clark stated that the amount of water was 11.44 acre feet. There was also discussion as to the location of the property. Chairman Sherrill stated that the land was a pecan tree grove that had been abandoned. After the discussion, a motion was called for. Ms. Preusser stated that Mr. Muscelli had made the motion, and that a second was required. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- I. **Mohave Sunrise Solar I, LLC, T19N, R22W, Sec. 31.** Discussion and possible action to approve the *Application for a Preliminary Allocation* submitted by Seth Kagan of Mohave Sunrise Solar I, LLC, and McCarthy



Building Companies, Inc., for a preliminary water allocation in the amount of .34 acre feet.

Mr. Clark advised that this request was for a solar project that was going in just off of Boundary Cone Road. Mr. Clark stated that the developer was asking for the water allocation for cleaning of the solar panels, that this was not a water based solar project. Mr. Muscelli asked how the project was going to obtain their water. Mr. Clark responded that they would actually receive their water from Utilities, Inc.

Mr. Kai made a motion that the request for a preliminary water allocation in the amount of .34 acre feet be approved. Mr. Vasquez seconded the motion. All were in favor, motion passed.

- J. **Sherrill Ventures, T17N, R21W, Sec. 31.** Discussion and possible action to approve the ratification of the PPR Agreement between Sherrill Ventures, Green Acres Mohave and WPI-919 Farm AZ.

Chairman Sherrill stated that he, Mr. Muscelli and Mr. Vasquez would all have to abstain from voting in this matter.

Mr. Clark stated that staff was recommending ratification of the PPR Agreement. District Counsel added that this was a PPR Agreement among the landowners dividing up the PPRs allocated to the land by Arizona-California agreement. District Counsel advised that it was a courtesy that the landowners brought the contract to the District for ratification. The District has no control over the PPRs, but the ratification of the agreement by the District will benefit the PPR holders in going forward with the Bureau of Reclamation.

Mr. Vanderslice moved for ratification of the PPR Agreement between Sherrill Ventures, Green Acres Mohave and WPI-919 Farm AZ. Mr. Kai seconded the motion. There being no objections, the motion passed.

Mr. Clark advised that, in response to Mr. Muscelli's question regarding the percentage of water usage in 2014 compared to 2013, the District's used 40% more water year to date than in 2013. Chairman Sherrill added that was due to more farm ground being in production. Mr. Clark stated the District has more than double the land in production in 2014 than in 2013.

## 5. **PUBLIC INPUT.**

Mr. Steve Buck advised that the Bella Vista contract process was moving along and that there were just some minor details that still needed to be worked out.

## 6. **ADJOURNMENT.**



There being no further business to discuss, Mr. Kai made a motion that the meeting be adjourned. Mr. Muscelli seconded the motion. All were in favor, the meeting adjourned at 5:10 p.m.