

MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

Approved
07-18-17

MEETING MINUTES FOR THE REGULAR BOARD MEETING HELD MAY 02, 2017 AT THE OFFICES OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

CALL TO ORDER. Chairman, Charles B. Sherrill, Jr., called the meeting to order at 4:04 PM.

PLEDGE OF ALLEGIANCE. Perry Muscelli led the Pledge of Allegiance.

ROLL CALL.

Present Charles B. Sherrill, Jr., Chairman/Director Division III
Vince Vasquez, Director Division II
Clay Vanderslice, Director at Large
Perry Muscelli, Treasurer/Director at Large
John Kai, Jr., Director Division I
Mark R. Clark, CCM, Manager
Michael J. Pearce, District Counsel
Kerri Hatz, Administrative Assistant

Absent None

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

1. REPORTS.

- A. Staff report on water use. Manager Mark Clark reported that the water use for the month of March was 3,205 acre feet of water compared to 3,336 acre feet last year. We are still a little behind by about 1,000 acre feet because January and February were so wet, however March and April have been dryer than normal. We are still showing record snow packs and expect a really good spring.
- B. Bureau of Reclamation Lower Colorado Water Supply Report. Mark reported the water elevation at Lake Powell as of April 24, 2017 is 3,601 and 49% full, it has come up 3 feet in the last week. Lake Mead is at 1,085 and 40% full, we should start seeing some release from Lake Powell into Lake Mead so we should see the elevation rising a little bit.

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.

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. Perry Muscelli

made a motion to approve, John Kai, Jr., seconded the motion. All in favor, motion passed.

- A. Approve the April 04, 2017 Executive Meeting Minutes.
- B. Approve the April 04, 2017 Regular Meeting Minutes.
- C. Ratify payment of expenses for April 2017

4. **REGULAR AGENDA.**

- A. **CY 2016 Crop Report.** Discussion and possible action to ratify CY 2016 Crop Report. Mark Clark reported that the crop report wasn't available at the last Board Meeting but was due prior to this meeting so the Crop Report has been submitted to the Bureau of Reclamation. Staff is asking the board to ratify the Calendar Year 2016 Crop Report. Mark stated that he was advise to check on a couple of items that may need to be revised, if that is the case, the revision would be ratified at the next Regular Board Meeting. John Kai, Jr., made a motion to approve, Perry Muscelli seconded the motion. All in favor, motion passed.
- B. **July 01, 2017 Comprehensive Fee Schedule and Payment Rules.** Discussion and possible action to approve the 2017 Comprehensive Fee Schedule and Payment Rules. Mark Clark reported the fee schedule this year only has a couple of adjustments, they are basically the Interim Water Entitlement Fee and the Industrial Water Entitlement Fee. The reason for this is to coincide with the Settlement Agreement that was signed, so next year those fees go to \$50 an acre foot. The general public asked if the fee schedule was to break even or for profit? Mark replied to break even and Chip said if there is excess, those monies go to purchase future water if it is available to the District. Mark continued to explain that the Water Utility Administrative Fee is also being raised. Payment Rules are being changed by adding the verbiage for the Interim Water Users. John Kai, Jr., made a motion to approve, Clay Vanderslice seconded the motion. All in favor, motion passed.
- C. **July 2017-June 2018 Budget.** Discussion and possible action to approve Fiscal Year 2017-2018 Budget. Mark stated the District does not budget for allocation fees because we do not know how many people may come in to apply for an allocation so any applications will be above and beyond any revenue that is needed to run the operation so any additional monies would go to purchase water if available. We do have a balanced budget here and two items to point out, we have an item under reimbursements that will be the assistance agreement that was approved for us by the Bureau of Reclamation and also shows the dollars going out for preliminary engineering for the River Pump Station which would be \$70,000.00 so those are the two items. Vince Vasquez made a motion to approve, John Kai, Jr., seconded the motion. All in favor, motion passed.

- D. **Special District Annual Budgets and Tax Levies & Rates Certification for Fiscal Year 2017-2018.** Discussion and possible action to approve the Special District Annual Budget and Tax Levies & Rates Certification. Mark Clark stated this is basically taking the budget you just approved and providing it in Mohave County's format for reporting purposes as required each year and part of this item is the Rates Certification per acre and staff is recommending that we leave that rate at \$1.50 per acre. Clay Vanderslice made a motion to approve, Perry Muscelli seconded the motion. All in favor, motion passed.
- E. **Mohave Landing Tract 4213B & 4213C; T18N, R22W, Section 23; Extension Request of Preliminary Water Allocation.** Discussion and possible action to approve the extension request of Preliminary Water Allocation for 21.42 acre feet of water for Tract 4213B and 17.64 acre feet of water for Tract 4213C. The current extension expired April 03, 2017, if the new extension is approved, it will expire April 03, 2019. Mark stated that we finally did get a hold of Mr. Sayles, we had tried numerous times before April's meeting and never did get a response. Mr. Sayles had some personal issues with his mother that prevented him from responding, he has provided documentation that shows he is making forward progress with the County so staff is recommending approval of the extension. John Kai, Jr., made a motion to approve, Perry Muscelli seconded the motion. All in favor, motion passed.
- F. **Freeman; T17N, R21W, Section 07; APN: 224-07-030. Application for an Industrial Water Contract for 30 acre feet of water.** Discussion and possible action to approve the application for an Industrial Water Contract for 30 acre feet of water. Charles B. Sherrill, Jr., stated that it has been suggested to table items F and G and J for further clarification of some of these contracts that need a little more work, so we will continue with item H. TABLED
- G. **Becknell Contract 2007-02; T17N, R21W, Section 07; APN: 224-07-031. Reduce Water Contract to 848.40 acre feet of water.** Discussion and possible action to approve reducing the Agricultural water allocation from 966.00 acre feet of water to 848.40 acre feet of water returning 117.60 acre feet of water to the District's water inventory for Agricultural use. TABLED
- H. **Los Lagos Amenity Contract 1992-03; T18N, R22W, Section 01; APN(s): 225-71-388, 225-71-389A, 225-71-390B, 225-71-391C, 225-71-392A.** Discussion with Board members regarding Contract 1992-03. Mark stated this is a discussion item only with Los Lagos regarding their Contract 1992-03. MVIDD did provide Los Lagos with a new contract that they are not too enthused about and this a discussion item being turned over to Angelo or Dewey. Angelo stated they believe their contract is still in full effect and the new contract omits several of the provisions that are called out in the old contract. We agree with everything you are offering to the other Amenity Users price for the next ten (10) years or more. We will gladly accept that and make that part of our contract. That is basically it. Chip spoke up and asked so you want to keep your old contract and the new contract tied to the

old contract? Angelo then stated that they wanted an addendum for pricing from 2018 forward because their contract only priced water through 2017 and you are offering water to the adjoining golf courses and amenity users at a stated water fee for the next ten (10) years. Chip stated that we did that to create some type of stability for the market and Angelo replied that it was a fair price and that there is a formula stated in their contract that determines the price of water and they need to establish that when you are charging these other guys those fees and we just want to be treated like everyone else and pay the same amount over the next ten (10) years. Angelo stated that in his current contract MVIDD has given Los Lagos a guaranteed water source, whether fresh water or water replaced by effluent which ever comes first. At the end of 2017 it will be Allocated subdivision water but unused so if there is ten or twenty thousand undeveloped subdivision lots, the theory is that once those lots get developed and create effluent then we get our water resources there. You are aware that we built a sewer treatment plant for reclaimed water to water the golf courses. We have probably developed over 2,000 lots connected to that and probably another 2,000 lots where the sewer is in the ground to create more effluent. We have tried to get the board on several occasions to push hooking up to the sewer plant to create more effluent but unfortunately the board did not do it. We came to the board before we started and got a contract based on that assurance, no one knowing back then how long it would take to get effluent, so that vow was put into place that we would eventually get effluent and until all these lots get built upon to create the effluent we get to use their unused water. Chip stated so I understand that you don't want to sign this new contract, you want an addendum to your old contract. Angelo replied that his contract is a guaranteed source of water and the new contract is only for ten (10) years and we have some people that are interested in buying our golf course right now but they can't buy a business that has no water in ten (10) years. Chip said that you're telling me you will have effluent in the next ten (10) years so that should not be a problem. Angelo stated he did not say that...everyone started laughing. Angelo stated he has a guarantee from The Arizona American plant that they would provide them with the amount they need plus when they sold the sewer treatment plant they retained the first right of any effluent that goes out of there. Chip stated we are trying to establish a ten (10) year contract that will hopefully give you guys time to change over to effluent that is why this new contract was put in place. The ABU water at one time was being sold at \$150.00 an acre foot, it was priced lower than that when Mohave County Water Authority set a price to Bella Vista at \$116.00 an acre foot for that water so Bella Vista decided they wanted to go with that. We came back and offered them a contract for ten (10) years and MCWA was only for five (5) years. They liked the ten (10) year contract and the stability of it and the price of it. Just like you said you like the price of what we are doing. I will have to defer to counsel on putting an amendment with a contract when we have a new contract. Angelo said he just wants the water price extended from 2018 for ten (10) years, that is all we are asking for is the price of water like everyone else. If you can tell me how you are coming up with that price, I would like to know. Vince Vasquez stated that you know it builds up right? Angelo said yes. Vince replied you know there is some conception involved in trying to solve this larger issue, we are selling

this at below of the current market price based on the transaction with MCWA and we allowed it on a ramping up to that price. Angelo asked if that price has changed in the last three (3) months, because what you are offering is 3 ½ times the price of that water. Angelo stated that you probably were not here but we have been to court three (3) or four (4) times with these guys on this contract and we have a judgement since 2008 and our contract is good and we have a permanent injunction on this and you have to accept our water orders and the only thing that is not in this is the price of water from 2017 going forward. Now we didn't invest two million dollars to have no more water and go from a guaranteed water contract to a short ten (10) year deal. We also want to be priced like everyone else, and if we have to go back to court and have the courts price the water. Dewey stated we don't want to do that, we just want the same treatment that both property owners on both sides accept. Chip stated that except you want it to be forever, Angelo said no we just want you to honor the contract and the last time we had to go to court. Chip stated that again I will defer you to counsel. Mark Clark stated looking at your contract, in section 16, it says you are going to pay the market price for Allocated but unused water (ABU). Angelo wants to know how we are pricing the water on the ten (10) year deal. Mark replied it was the negotiated price during the settlement for the El Rio Golf course, Angelo asked if we gave that to this golf course and to the other two lake properties? Mark said we offered to the other golf courses as well and we offered it to you. Chip stated that everyone signed up except for yourself. Dewey stated they do not want to tear up the old contract. Perry Muscelli stated you want the pricing but not the terms. Angelo stated we have a water contract. Perry said let me clarify, you like the price but not the terms that come with that price. Angelo stated we don't see the reason, we have a contract, why would we abandon our contract. Perry stated because you don't like the price. Chip stated that after ten (10) years what is going to happen to ABU water when those lots are developed and there is no ABU water left. That's the dilemma we are in. Angelo said but then we have effluent. Chip stated that's what we thought was going to happen five (5) years ago and it didn't, that is why we were banking on effluent coming along in the next ten (10) years. Dewey stated they have tried their best, they have built 2,000 lots, we are responsible for hundreds of homes, I don't know what else we can do. Chip stated he knows they have and have invested huge money in this valley and this valley would not have been the same without them. They have helped increase the value of this valley, there is no question about that. I defer to counsel on the thought of never ripping up your contract and going forever, it can't go forever. Mark stated that in the new contract it states that it is renewable in the last 24 months of the contract that we can renegotiate the price for the next ten (10) years. Angelo stated he guesses he cannot make it more clear that they do not need a new contract, we have a contract. Why do we need a new contract? We just need the pricing for the next ten (10) years like everyone else. We do not need a new contract. We have gone to court on this contract. Mark stated, we said you can keep your contract, it's just what the pricing is and it will be what the market price is. Angelo interrupted and stated how did you price that water and how did you price the new water? What is the criteria?, is it 50% off? You have to figure out the same way charged to them to charge us. Mark stated Allocated but unused water

is specified as the water you get under your contract. Angelo asked if anyone else was using that water? Mark stated not currently, last year there was though and that was Marina Coves and it was Allocated but unused water and they paid \$116.00 an acre foot, and if you want to pay \$116.00 an acre foot. Angelo interrupted and said no, they want to pay what Marina Coves is paying in 2017. Mark stated that they signed the new contract because they were using allocated but unused water. Mark said he has to turn this over to counsel. Mike Pearce stated he understands that Angelo and him have spoken before and that he has a lot invested in his existing contract, it means a lot to him, it's perpetual and long term, but there is a couple of things about it. First, it is very specific with the water you are entitled to, it is allocated to subdivisions but not in use water. That's what most people call spot market water. The contract you hold is only good year to year, it gets priced every year and is defined at what market price is at. Bulk water in a comparable market and for a substantially similar use, if we look at orders in the context of water allocated for subdivisions but not use, we only have one comparative and it is \$116.00 dollars. Angelo said they are the only ones that hold this contract, they developed this contract as a lifetime contract, these other guys did not have this contract. El Rio did not have a contract, this other little golf course did not have a contract, Mohave Valley Golf did not have a contract. Perry Muscelli stated he believed there was others that turned in their contracts. Mark stated that Bella Vista and Huukan did. Angelo stated that Bella Vista didn't turn in their contract, and asked Mark if we told Bella Vista their contract would end at the end of 2017? Mark said we did not make a deal with Bella Vista. Again Angelo asked if they were told that their water contract ended in 2017? Chip stated that was a determination they made on their own and we did not tell them it would terminate. Dewey stated that he has heard Mark Clark say, Dewey did not finish his statement and then Angelo started to read something regarding the board of the District regarding Steve Buck and Jaime Kelley. Chip and Angelo spoke back and forth regarding the general public not really understanding about water allocations in this area and water rights as well as some Realtors. They spoke about new buyers being told that there was no water available for developments in our area, Chip said that did not come from this district. Angelo talked about the cost of golfing and not making money due to having to pay for the water, Chip stated we are not trying to cause hardship on the golf courses, subdivisions or any other party. Chip stated again that this valley would not have grown if not for the projects Angelo and Dewey have developed to the potential that it has today, but the District does have a responsibility to this entire district to ensure there is water available for everyone down the road, and we have allocated that water out. We have talked about effluent and everyone thought by now we would have effluent and it shouldn't have been a problem and we wouldn't have to use fresh water but that did not happen. Is it going to happen in the next ten years? I don't know. Vince Vasquez and Chip stated that we need to talk to our legal counsel and hope that we can come to a common ground. Angelo said he could go find water somewhere else cheaper than that by 1/4th, Vince asked where?, Angelo replied can you tell me how you figured out the price for the other 5 contracts that we handed out? Mark replied we did, it was the negotiated settlement with El Rio. Angelo stated so you gave out water

less than what it's worth? Mark stated well if you want to sign one of that contract then we will be happy to honor that price. Dewey spoke up and asked Mark why he is taking the position that they have to sign a new contract? Mark stated they are different buckets of water, Allocated but unused water is a separate type of water, it's water that has been allocated so it's assigned to some of your lots. Angelo said you can say whatever you want but our contract specifies how you determine the price, it doesn't say it is allocated but unused water price. It says for other similar uses. Chip interrupted and said that Mike needs to get with you guys (Angelo and Dewey) and explain our position and talk to you, tell you why we have that position and why we have offered a contract for ten (10) years with another extension on top of it, if allocated but unused water is not available. Which will give you longer then ten (10) years. Chip said he understands their position and he just stated the boards position, but the best thing to do as to not get into a match here is to talk to Mike and see if we can come to an agreement. We are offering you a contract at a reduced rate of \$30.00 and escalates up from there and we felt that was a fair contract on the basis that we negotiated these contracts so there would not be any hardship on anyone. There was another entity that was paying \$116.00 back then, we figured that is an expense that would probably break you guys and we understand that, so we negotiated it down to try and make it so everyone could have a lower rate that is why I am referring everything to Mike. Let's see if we can get this thing negotiated and get some common ground on it. Angelo said that's fine. He stated that was fair enough. Chip stated we brought this to the Board Meeting to get the thoughts from everyone that this was not an action item today. Mrs. Angelo stated she doesn't understand this as much but they are trying to sell the golf course to some really great people and they are not golf course people even though they have built a couple of courses, they do the lots and bring together a community, that's their goal. Chip stated he believes they are golf course people, everyone chuckled. Mrs. Angelo stated so when we are looking to offer someone this and they've heard there is no water here, it scares them away. There was a terrible rumor that's why. We are trying to bring people here to build a community and build more houses. We want to be honest and be fair to them that want to buy the golf course, but if there is a contract for water for only ten (10) years, what happens then? I can't just tell them I don't know, it kinda makes it so no one wants to buy it. Chip said keep in mind it's a ten (10) year contract with an extension. Keep in mind we are working with everyone to try and establish effluent as well, once effluent comes on line this is a mute point, because the effluent will be used on golf courses. You will not ever use fresh water except to flush. Go around the country and look at any other golf courses in Arizona especially that runs off of fresh water, your not going to find many except in rural areas like ours. The standard is that golf courses run off of effluent and not fresh water. I understand what you are saying about uncertainty. Mrs. Angelo stated it's the fear of what has already happened to us and we have had to go to court to get this water. Dewey stated we have not had very good luck, I mean three (3) times to court over twenty-five (25) years is not a fun experience. It's not fun for you guys, we just want to be reasonable. The price is the only thing we are talking about. The property to the south touches our property, the property to the north touches our property, we

would just like that same price, same deal and at the end of ten (10) years, if we have to renegotiate or if we have to do this again...hey we are available. Chip said we are half way there, talk to Mike and see if we can come all the way. Everyone agreed, Chip asked if that was fair.

- I. **Industrial Water Allocation Contract Master.** Discussion and possible action to approve the Master Industrial Water Allocation Contract. Mark stated this is the Industrial Contract Master that we would be using, there is only one entity that would be receiving this, you have already approved their contract, we did not have contract in place yet. Mike's comments are included in this contract, you saw this at the last board meeting, it has minor adjustments that Mike made to it. Staff is recommending approval of this Master Contract. Vince Vasquez made a motion to approve, John Kai, Jr., seconded the motion. All in favor, motion passed.
 - J. **Douglas and Trudy Bay Contract 2013-08; T18N, R22W, Section 15; APN: 225-22-030.** Discussion and possible action to approve transferring the Agricultural Contract to an Industrial Contract. **TABLED**
 - K. **John Kai & Jihong Trustees; T18N, R22W, Section 23; APN(s): 225-24-044, 225-24-025. Application to transfer Agricultural water.** Discussion and possible action to approve the application to transfer 283.5 acre feet of water from Contract 2008-06C which currently has 1388.80 leaving 1105.3 acre feet of water in Section 27. The new AG Contract 2017-01 in Section 23 will be for 283.5 acre feet of water. Mark Clark stated that John Kai will need to abstain from this one. He is requesting to transfer water from his existing contract in section 27 to property across the Highway in section 23. He is going to fallow a field in section 27 and he has four (4) FSA fields in section 23 that are going to be farmed. Chip asked if he would be paying the transfer fees, Mark replied that he would have to at \$15.00 an acre foot and the application fees. Vince Vasquez made a motion to approve, Clay Vanderslice seconded the motion, John Kai, Jr., abstained. All in favor, motion passed.
5. **PUBLIC INPUT.** Charles B. Sherrill, Jr., asked if there was any public input. Angelo asked who was in the pictures on the wall behind them. Chip said Gordan McKellips, one of the founders of the irrigation district and they are the ones that got the 41,000 acre feet of water allocated to us, and Mark stated 51,000 with Bullhead City. Chip stated he was well ahead of his time and really thought about water for this valley, back in the day it was nothing but a dirt ball. Thanks to him we have water for this valley. The Family still owns land in Willow Valley for the most part I believe they have liquidated most of their property. It use to be Sherrill/ Lajolette and McKellips back in the day and they got in an argument and they split off and came to a conclusion the best thing to do was split it and Gordan took Willow Valley Estates and Sherrill/ Lajolette took all the other grounds, it was definitely interesting times back then. There was a tax levy on everybody within the irrigation district I think it was little, maybe like 10 cents and the up roar over that was unbelievable. But since then you can see we have come a long way, we have been able to acquire water for

the district here in the last couple of years which is a good thing. We are always looking for new sources of water to try and bring water back into this valley. There is a lot of AG water here, industrial/commercial water, and subdivisions. Vince spoke up and said don't let people perpetuate the rumor that there is no water here. Chip suggested that maybe the district should do a little PR and get a hold of the paper and explain the water situation so this panic does not exist, because there is water here and that is a negative thing to say because who then would want to buy a business, house or anything here. This place needs to be developer friendly, it benefits everyone here, and creates more effluent. Golf courses attract a lot of people. Chip commended Los Lagos for their vision just like the farmers had a lot of vision for this area and thank goodness because Bullhead City would not have become what it is today, we would not have all the commercial and industrial and anything else.

6. **ADJOURNMENT.** Perry Muscelli made a motion to adjourn, John Kai, Jr., seconded the motion. All in favor, meeting adjourn at 4:46 PM.