

# MEETING MINUTES OF THE PUBLIC MEETING OF THE MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

Approved:  
11-06-18

Held October 02, 2018

4:00PM

Mohave Valley Irrigation & Drainage District  
1460 E. Commercial Street, Mohave Valley, AZ 86440

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Mohave Valley Irrigation and Drainage District and to the general public that the Mohave Valley Irrigation and Drainage District will hold a meeting open to the public on **October 02, 2018 at 1460 E. Commercial Street, Mohave Valley, AZ 86440**. Pursuant to A.R.S. § 38-431.03(A)(3), the Mohave Valley Irrigation & Drainage District may vote to go into executive session, which will not be open to the public, to obtain legal advice from the District's legal counsel on any matter listed on the agenda. *[The discussions and minutes of the executive session shall be kept confidential. The executive session of the Board is not open to the public.]*

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

## 1. ROLL CALL.

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

Phone: Michael J. Pearce, District Counsel

Absent: Clay Vanderslice, Director at Large – Excused medical

## 2. OPEN SESSION

**If the public wishes to address the Board regarding Regular Agenda Items, they may fill out the Request to Speak Form located in the back of the room. The form should then be given to the Administrative Assistant of the Board prior to the meeting. The time limit rule of 3 minutes maximum will be enforced.**

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

**4. WAIVER MOTION.** Motion to waive the reading of full minutes and resolutions presented for approval or adoption. John Kai, Jr., made a motion

to waive the reading of full minutes and or resolutions presented for approval, Vince Vasquez seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.

- 5. AGENDA MODIFICATION.** Possible action to withdraw from, or move, any item on the Agenda, including the removal of an item from the Consent Agenda. Perry Muscelli made a motion to move item d. for a separate discussion off the consent agenda, John Kai, Jr., seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.
- 6. 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 the consent agenda with moving item d. for a separate discussion, John Kai, Jr., seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.
- a. Approve the August 31, 2018 Special Executive Meeting Minutes.
  - b. Approve the September 04, 2018 Executive Meeting Minutes.
  - c. Approve the September 04, 2018 Regular Meeting Minutes.
  - d. Ratify payment of Expenses for September 2018. – moved to a separate discussion.
  - e. Ratify Employment contract for Kerri Hatz, approval of Resolution 2018-06

d. Ratify payment of Expenses for September 2018. Perry Muscelli asked Mark Clark to go over the expenses for September 2018. Mark Clark discussed the expenses and stated there is an odd item on page 2, there is a check made out to the Mohave Valley Irrigation and Drainage District for one million dollars and then it is credited and voided. The county treasurer's department bank has changed the way the checks are done. We had to send their bank, Wells Fargo, a check with seven digits in it. The check was made out to MVIDD just in case something weird happened it would go back into our account. Perry asked if our account was with Wells Fargo, Mark replied that the treasurer's account is with them, not MVIDD. This is the account the county deposits our taxes that are collected then we transfer the funds from Wells Fargo into our Chase Account. In order to do that we have to write a check on the Wells Fargo Account to transfer it to our Chase Account which is our operation account and a savings account. Perry asked what C.A.T.S. payment was? Mark replied that it is our alarm company. Perry asked if we owned the security system here and did we pay to have them replace the mother board. Kerri Hatz and Chip replied yes that the mother board and battery were replaced. Perry asked about the AT & T Teleconferencing payment. He asked if we had \$70 in conference calls. Kerri replied it was for the

special meeting when John was out of town, which was the last special meeting. Perry asked how the charges come about and Mark replied it depends on how long the call is. Kerri stated it was a couple of hours long. Mark explained the charges are a per use charge, we are not charged monthly for this service. Perry Muscelli made a motion to approve the expenses, John Kai, Jr., seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.

## **7. REPORTS.**

Water: Mark Clark read the staff reports on water usage of the district ending August 1, 2018 and current levels of water from Lake Mead and Lake Powell.

- a. Staff report on District water use.
- b. Bureau of Reclamation Lower Colorado Water Supply Report.

## **8. REGULAR AGENDA**

- A. AZ Drought Contingency Planning Program. (Discussion Only)**  
Discuss District participation in Drought Contingency Planning and ICS Programs. Mark Clark stated we talked about this item a couple of months ago and that ICS is Intentionally Created Surplus and it is a program that the lower basin states have, and the Metropolitan Water District, Imperial Irrigation District, Palo Verde Irrigation District, and Central Arizona Project have created Intentionally Created Surplus. That means they have left water behind the dam to try and shore up the level of Lake Mead. If this program along with other programs had not been implemented when they had, we would have been in a shortage in 2015. These programs have helped to keep us out of shortages since 2015 but we need to do more, the lake is still dropping because we are using more water than we are getting from the upper basin and what we are getting from Mother Nature. Mark stated he has been having discussions with the BOR and ADWR and from his conversations with them, they say that MVIDD would be a prime candidate for additional ICS and we could put a program together. Our program would be a straight fallowing program and those are easier to approve. We would work with ADWR and the BOR because we are a direct section 5 contract holder. That means since we are on the mainstream we have our own section 5 contract directly with the Bureau of Reclamation so we could contract through ADWR to create some Intentionally Created Surplus and leave some of our water behind the dam by fallowing land here within the district. The problem with this is that we have always had enough water here for the farmers and we do not need to create Intentionally Created Surplus. If we could find somebody that would be willing to pay some of the farmers to bank some water behind the dam that would be a good thing. Mark stated that he has started drafting a template that the district could use as a place holder for the district to be able to do this some point in the future. These would be

on a year to year basis and we would not be locked into any long term program. Let's say next year one of the farmers in the district wanted to fallow some land, and the price they were able to get from some outside party was enough to make it economical for that farmer not to farm that land, then we could go into this program. This is why it is important to get this template in place so that the district could at least have a place holder for us in the program. The district would still have to go through all of the approval processes, because all of the current members would have to sign off on that. Perry Muscelli questioned members? Mark replied participants, the participants like Metropolitan Water District, Palo Verde, Imperial Irrigation District, then there is a list of others. Perry questioned if they had to sign off on it and Mark confirmed that they would. John Kai asked if we had to sign off on their participation and Mark replied no because the district is not a participant of the original forbearance agreement so we would not have to sign off. Mark said what the district would be doing is an additional exhibit to the original forbearance agreement. The forbearance agreement is already there, we would want to become additional participants and the district would do this through ADWR that is the way all of Arizona's participants do it. Vince stated there all a whole bunch of options we should look at. Vince stated that there are things outside of the strict ICS process that the district could do through DCP and do something similar without all of the complexities of the ICS Program. We should be looking at short term and long term. Perry Muscelli asked Mark if he knew what districts were doing this. Mark replied that there are not any in Arizona right now. He went on to say that the only one participating in an ICS program is CAP, Central Arizona Project. John Kai commented that he thinks that it is important for state that we be involved and of course we would need approval from the BOR as well. Chip Sherrill added that if we could be a part of that program we could help raise the elevation of the dam and every time you can raise the elevation of the dam you delay the shortage; that in the future we will all be paying the price for a shortage. If we can avoid that shortage, it would be a great thing for everybody up and down the system and all seven basin states for that matter. Mark reminded everyone that this was for discussion only and he would continue to get the exhibit template put together and then go over it with Mike Pearce and Chip and then bring it back to the board in a future meeting for approval from the board. Mark stated that right now he was looking to see if the board was interested in such a program and that this is not the only program because through DCP there may be other programs that come out. This program is what they have said would definitely be part of the DCP. Mark stated he believes it would behoove us to at least get us a place holder, that it does not commit us to any amount of water, it just gives us the ability to use the program should the board desire to do that. Perry asked Mark if this program was being used in California right now. Mark stated it has been being used throughout the lower basin but the participants so far have

been southern California entities and the Central Arizona Project. Perry asked Mark if there were other programs being used in California that would be something we could use. Mark said they are all a little different and what he has done is look at the exhibits that have been prepared for California entities and the only one that has come close is IID. IID has a following program, the other ones are not just following programs they have little nuances to them so that is why he is following the IID one for the most part. Mark stated he has been pulling some pieces off of some of the other ones as well. Vince Vasquez stated that central Arizona AG was following, and the majority of the Arizona ICS came from following the central Arizona agriculture that's on CAP so preemptively, those in Pina County are receiving compensation to not farm. Vince stated he does not know if that is done through the district or the individual land owners but he suspects that it is done through the district since they are so large and there are so many individual parties but he does not know the answer to that. Vince asked Mike Pearce if he knew the answer to that. Mike did not hear the question so Vince stated that Perry Muscelli was asking if the compensation that was given for the central Arizona AG guys through CAP's ICS efforts, if those funds with administered through the district and then circulated among the participants and land owners or was there direct agreements with the land owners in CAP. Vince stated he suspected they went through the districts given how large the districts are. Mike responded yes, because in that case only the districts have direct relationship with CAP, the individual farmers did not have a direct allocation of water that was conserved so any benefit there would go to the district as a whole. Mark stated that is how California has done theirs as well, the district receives the compensation and then they pay back to the farmers. Mark stated that is how he has ours blocked out at the moment, that the district would receive the funds and we would pay it back to the farmers. Vince stated he believes the Indian tribes that are part of the Gila Indian Community as well as the Colorado River Indian Tribe have committed water to that program, it is a well-supported program and the DCP efforts are bolstering it and we should keep involved and keep our heads in it. Mark stated again that this does not commit us to any certain amount or any amount once you get into it, it would just give us an opening to use it should you desire and if the compensation is high enough to make it economical. Perry stated then it would be something then the district would need to approve, Mark replied correct. Perry stated the district would say this is the program, we are approving it then the farmers would be able to opt in, Mark replied correct. Mark stated it would all be voluntary. Mike Pearce stated that in MVIDD's case there would be that additional step because the water allocation entitlements have been contracted out to the individual farmers. So to impair that contract you have to have the voluntary consent from the contract holder.

Lois Wakimoto addressed the board and stated her views on ICS and

DCP programs and discussion occurred regarding Tribal and non-Tribal water participation in ICS Programs. Lois was in favor of supporting the place holder option for the district. Lois was not in favor of following programs, but stated it is necessary and each program should be on a case by case basis. Vince Vasquez would like to have another conversation in the future with Lois Wakimoto with her being our local representative. Chip Sherrill expressed his view that farmer participation in times of shortages is key. The board was in agreeance with Lois that this conversation needs to continue going forward with her about DCP and her representation of the district.

Karen Summit also addressed the board on fallowing concerns and who would be compensating the farmers to fallow the land. Discussion occurred about the necessity of fallowing and the options that are there for the board to look at. Karen's concern was the possibility of creating dust bowls in our area and that the lands need to be policed as part of the fallowing program. The board assured her that the farmers don't want to destroy their farm land and policies will be put in place and they will be responsible and the program will be well structured.

Mary Schram address the board regarding concern about the possibility that the compensator of these programs tends to take ownership. She came from an area of California where this occurred and knows of the problems there and she does not want to see the same happen here.

- B. Approve the 2018 Annual 417 Report.** Discussion and possible action to approve the Annual 417 report. Mark Clark reported this is our annual report to the Bureau of Reclamation. When we turn in our water order to them, this report is for our meeting with them per rule section 417 and that is why it is called the 417 Report. They send us a list of questions that we respond to and once we do there is a meeting set up here at the district to go over our responses and ask any additional questions they may have. Our report is pretty thorough, so we usually have very few questions during the actual meeting. Perry Muscelli asked if this had changed since last year. Mark stated this this one this year did ask the same questions as last year but usually there are different questions. Perry asked if our answers were the same as last year and Mark replied they are not that the annual data is updated each year. Chip Sherrill stated that most of it is conservation and what we have done to comply with conservation and we report our water usage and crop reports. Perry asked when the meeting will be held and Mark replied next Tuesday here at the district office. If this is approved at the meeting today then we will file it tomorrow with the BOR by email and then they will have all the information that they need for the meeting. Perry Muscelli made a motion to approve, John Kai, Jr., seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.

- C. **Powers-Leavitt Insurance Agency, Inc.** Discussion and possible action to approve the Insurance Proposal for November 08, 2018 to November 08, 2019. Mark Clark explained this is the exactly the same coverage and exactly the same price as last year. There are no changes. John Kai, Jr., made a motion to approve the policy, Vince Vasquez seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.
- D. **Lower Colorado River Multispecies Conservation Program.** Discussion and possible action to approve Resolution 2018-07 to designate Charles B. Sherrill, Jr. to be the steering committee representative for MVIDD. Chip Sherrill, Jr., asked that Vince Vasquez be named as an alternate on this steering committee, Mark Clark replied sure. Mark said we could add that to the resolution that Vince Vasquez be the alternate. Kerri Hatz asked if after the change, did the resolution need to come back to the board for approval? The reply back was no that change would be part of the approval. Mark explained this resolution came about because Maureen George was our representative on the MSCP board and she represents the various entities that are part of the Mohave County Water Authority. She represented Bullhead City, Mohave Water Conservation District, Golden Shores and MVIDD. She retired on September 30<sup>th</sup> and we need to designate a representative to replace her. John Kai, Jr., made a motion to approve the resolution with the change to include Vince as the alternate, Perry Muscelli seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.
- E. **Village Estates, Tract 4198 C-G (previously C-F) Preliminary Water Allocation Extension Request; T18N, R22W, Sec. 03;** Discussion and Possible action to approve the extension for Phase C for 63 Lots, Phase D for 29 lots plus the Clubhouse and Pool, Phase E for 46 lots, Phase F for 63 lots and Phase G for 92 lots. This subdivision has been re-platted to the above referenced phases and lots, there were no additional lots added with the re-plat of this subdivision. This new extension would expire on November 10, 2020 if approved today. Chip Sherrill stated that Village Estates has paid for all of their lots in full, where they would normally pay for them in a series. They paid up front many years ago in the beginning and these are the changes they need with the economy. Mark Clark stated the reason this is before the board today is to request an extension, and they have been moving forward. In Phase A and B they are building homes and C-G are future phases and normally what would happen when they are ready for phase C is they would come in for their water but because they came in for all of it way in the beginning, the future phases need the extension. They took Phase C and broke it into two separate phases, then the progression changed phases down the line. They have been working diligently building and progressing. Perry Muscelli asked if the first Phase was completed, Mark stated that Phase A phase B have been finalized. The extension is only for C-G now. John Kai, Jr., made a

motion to approve the extension, Vince Vasquez seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed.

- F. Update on Herb Kai Farm in section 13; Contract 2008-08.** Discussion only to hear an update on the well rehab progress. John Kai, Jr., reported that the well that was being drilled sank and they are continuing to drill. Chip stated he spoke to the well driller and they were about 200 feet down, Vince asked if they were using steel and John confirmed that they were. John reported it was coming along. Chip asked that we get an update next month with a representative on the well rehab. Chip directed staff to get ahold of Herb Kai to have someone here at the next meeting. No action taken.
- G. Update on John Kai Farm in section 27; Contract 2008-06C.** Discussion only to hear an update on the field preparations for planting. John Kai, Jr. reported that the fields are getting ready to be laser leveled and he had a meeting with Mr. Wakimoto this morning. Chip asked about section 23. John said the sprinklers and well are in and MEC has power there and they should be planting pretty quickly. Chip asked if they would be pre-irrigating. John stated he believed so. Chip stated his concern is that the water is not being beneficially used and time keeps just going along and it needs to be planted and start using the water. Perry asked if he would be irrigating by this time next month and John said yes. Perry and Chip asked that there be some pictures taken and bring into the district. Chip did confirm he saw MEC hooking up power over there. Chip asked that a report be brought back to the next meeting. No action taken

Mike Hendrix address the board and reminded them that there is a list with people waiting for water and they really need the water and is hoping that the rumors of the water not ever being used are not true and hoping that the board is not allowing the improvement on this well to tie up water that should have been taken away a long time ago and given to people that need it. He stated he is not making any allegations. Chip stated that water has been used on that farm and he has seen cotton and alfalfa on it and yes it has been a long time. We are on John and Herb that if they do not use it they will lose it and the water will come back to the district to be allocated to someone else. Chip asked John about the sprinkler system and being a full circle and the corners are not going to get water. John said on the main line they will flood the corners. Chip said we need to get this done. Mike Hendrix stated the other concern is that Kai's water allocation is considerable and that the water that is being preserved and the land has not been utilized and watered and farmed in a long time and that we are not preserving the allocation so the land can be later fallowed and that water be utilized someplace else and what Mohave County opposes is that the water not be transferred to Central Arizona, we do not oppose it going behind the dam.

- 9. CALL TO THE PUBLIC.** *Those wishing to address the Board at the Call to the Public regarding matters not on the Board agenda must fill out and submit to the Administrative Assistant a Call to the Public – Request to Speak Form located in the back of the room prior to the meeting. Action Taken as a result of public comments will be limited to responding to criticism, referral to staff, or placing a matter on a future Agenda. Comments are restricted to items **NOT** on the Regular Agenda, and must relate to matters within the jurisdiction of the Board.*

Mike Hendrix address the board regarding the consortium letter that was sent to the county and not allowing the consortium to use the excess water to farm individual areas. This is going to hurt this one farmer in particular and what his future is in this valley. I'm concerned about what the group did. I know it has been a practice of yours to allow that type of activity to occur for quite some time but since Mohave County has come into the picture and has disagreed with some of the positions and direction that MVIDD has gone, we have received a letter that this practice is going to be discontinued. I have not seen any advertisement of that type of action, or written policy brought before the board to address that and am concerned that possibly this should have gone before a public hearing process and a determination made before that knee jerk reaction. Chip Sherrill stated that he does not believe that was a knee jerk reaction. The consortium was allowed to go on but as time goes on we have cleaned up a lot of things. We have cleaned up subdivisions and changed things over the years that was done in the past. It takes a lot to bring things together. We are not trying to pick on Mohave County. If we were we would have told you that you did not have enough water and that you would not be able to water it now, period. We are not trying to pick on Mohave County, we are trying to make everything work so that we give you enough time to 2019 so we can get more water back so we can get you an allocation so you don't have to worry about that. That is our position. We have no intention of shorting you water or taking a position that we are trying to take water from you or shutting down your farm. We don't want to do that. We do not care what position you take against us as far as a county that is why we made this consideration to extend it to 2019 at the term of the lease. Chip stated he believes that between now and the end of 2019 we will have water back and you are in line for water and we will be able to make an allocation to you so that you will be whole. That is our intention. Vince Vasquez stated that Mike could buy water, that there are farmers that have water. Mike stated he believes that the contract with the department of the interior is with MVIDD and that it is not farmers. He believes unless you are talking about priority 1 water rights they don't run with the land. I believe the only way we can get additional water is the exact process that we have applied for. The farmer does not have a right to give me or the county or anybody else in the MVIDD district anything. It's your contract and is not transferable, that is what your contract says. Chip asked for clarification. Mike stated he believes that Perry could not give him any water. Vince stated we have a transfer policy that allows that, and we sanction it. (Too many talking at once) Vince stated we have a remedy. Mike stated that Mohave

County did not get into this and try and get into standing to damage Mr. Wakimoto or anyone else that was not our intent. A farmer was legitimately farming the land and that is what it is looks like we did. I was surprised that we received a letter without any process. I thought that if policies were made or changed or whatever, even if it was a practice policy, that it would have gone through some formal process to make a decision to change how you all handle the consortium and let alone because it has been handled that way for 20 years. Perry Muscelli stated he has been on the board for over 10 years and he is not aware of any arrangement or action to approve or condone what was going on on that property. As soon as it came to light I was pretty adamant that I wanted to make sure that we make this straight and correct it. I want to point out that you bought the property without ever coming to us. It is highly unusual for anyone to purchase agricultural property in this district and not actually check with the district or the district manager of what rights were coming with the property. You chose to do it and approach it that way, that's your right to do it that way. Mike stated absolutely it is, and we did not break any laws....(everyone talking over each other) Vince stated you purchased a farm with 2 acre feet, and you did not do your due diligence and determine that before you bought it. Mike Hendrix stated they have followed the process to apply for additional water. Chip stated that we will facilitate that extra water for you and this is a way to be able to do it and make sure that Mr. Wakimoto and your farm is farmed through 2019 and between now and then there will be additional water. You have already applied for additional water and I am also waiting for water. Those things are going to get settled out between now and 2019, we are diligently working on that and are more than happy, and then he referred to Legal counsel on legal advice of what Mike said. Chip stated we are trying to mitigate this thing to benefit you and not to harm you. Mike suggested they talk off line. Chip stated this board is trying to help everyone and we do not want to penalize the county for not doing their due diligence. Mike Hendrix stated they did their due diligence and we don't have to be farmers to have standing. Vince stated there are a couple of remedies. One is to buy year to year allocated but unused water, number two you can purchase water in a sanctioned transaction with a district approval. That is a remedy to you and I encourage you to pursue those while you are waiting in line for a supply that may or may not come. As far as the process we went through to issue you a letter, I don't know if it was correct or not, we will confer with our legal counsel on that. However, the constant bombardment and threats and different attacks on our processes is completely inappropriate, now that you are among us you are a member of this district. I would hope that you would be engaging us with a little more civility than the constant thing that is going on now. Chip Sherrill said that he will reiterate that we are not taking, because of all the threats that Mohave County are making, we are not trying to take away your water or make sure you are not getting an allocation of water... be very clear about that. We trying to allow plenty of time to come around the horn and get an allocation to make you whole.

There was another member of the public that wanted to speak, Chip asked that he fill out a speaker card. The member wanted something on the agenda for next month regarding his extension. The member was advised to just turn the request into Kerri for next month.

**10. ADJOURNMENT.** John Kai, Jr. made a motion to adjourn, Perry Muscelli seconded the motion. Kai – Y; Muscelli – Y; Vasquez – Y; Sherrill – Y. Motion Passed meeting adjourned at 5:03pm.

Agendas are available on our website [www.mvidd.net](http://www.mvidd.net), as well as posted outside the District office bulletin board outside the office door located at 1460 E. Commercial Street, Mohave Valley, AZ 86440. To subscribe to agenda notifications please visit our website.

Pursuant to the Americans with Disabilities Act (ADA), Mohave Valley Irrigation & Drainage District endeavors to ensure the accessibility of all its programs, facilities, and services to all persons with disabilities. For an accommodation please contact the District office at 928-768-3325. Requests should be made 48 hours prior to the meeting to arrange the accommodation.