

MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT

RESOLUTION NO. 2023-01

A RESOLUTION ESTABLISHING POLICY AND PROCEDURES FOR THE TRANSFERS OF AGRICULTURAL WATER ENTITLEMENTS TO NON- AGRICULTURAL USES WITHIN THE DISTRICT

WHEREAS the District is a party to that certain contract with the United States Department of the Interior Bureau of Reclamation - Boulder Canyon Project for delivery of water (No. 14-06-W-204) entered into on November 14, 1968.

WHEREAS the stated purpose of the BOR Contract is to provide water for irrigation and domestic use by and within the District.

WHEREAS "domestic use" is defined under the Colorado River Compact of 1922, as adopted and ratified by Congress in the Boulder Canyon Project Act (43 U.S.C. § 6171) as "the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power."

WHEREAS the District has entered into subcontracts with agricultural water users within the external boundaries of the District to permit the diversion of Colorado River water by such water users for irrigation uses on specific lands described within the subcontracts.

WHEREAS the subcontracts provide for the transfer of such entitlements to owners of other lands for use on said lands within the District, subject to the policies of the District and the consent of the District's Board of Directors.

WHEREAS, the District has long supported delivery of the maximum quantity of water allocated to the District under the BOR Contract if such quantities of water can be put to permitted beneficial uses, but the District is also mindful that it cannot authorize greater quantities of water for use within the District than the maximum amount that the District may divert under the BOR Contract.

WHEREAS, the District has, over the past year, undertaken a comprehensive inventory of water allocated to users within the District. That inventory shows that the District has allocated water very close to the maximum amount of water that the District may divert. In August, 2022, the District Board voted to suspend all new allocations of water within the District.

WHEREAS, there remains a steady, if not increasing, demand for additional water for domestic use within the District. Landowners wishing to develop land for domestic purposes continue to approach the District requesting access to water to support these developments and economic growth, but the District has no water to allocate.

WHEREAS, it appears to the District that water entitlements held by agricultural users for irrigation use may, in some circumstances, be better used for domestic use, but only with the consent and approval of the agricultural entitlement holder and the District. Informal polling of Agricultural Subcontract Entitlement holders indicates there may be a willingness on the part of some Entitlement holders to permanently retire what is now productive agricultural land and make the irrigation water available to domestic use within the District if a fair market price for the value of the retired land can be secured.

WHEREAS, while there exists no Federal or State statute, case, regulation, or policy prohibiting the transfer of entitlements within the District boundaries, the District did adopt Resolution 07-05 in 2007, which Resolution governs the proposed transfer of Agricultural Subcontract Entitlements. This Resolution needs to be updated to conform to current District contracts and policies but represents a foundation upon which this current Resolution is based.

WHEREAS, the District therefore wishes to establish new and explicit policies and procedures to provide for the orderly transfer of part or all of an Agricultural Subcontract Entitlement to domestic use.

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NOW THEREFORE BE IT RESOLVED THAT:

1. DISTRICT INTEREST. Upon consideration, it is the determination of the District Board of Directors that it is in the best interest of the District and its landowners residing therein to provide for the orderly transfer of Agricultural Subcontract Entitlements. It is further resolved that the existing District Resolution 07-05 be, and hereby is, repealed and replaced in its entirety by this new Resolution.
2. DEFINITIONS. In this resolution, unless the context otherwise requires, the following definitions shall apply:
 - a. Agricultural Subcontract shall mean an enforceable contract for delivery of agricultural irrigation water from the District.
 - b. Agricultural Subcontractor shall mean persons or entities having an effective, enforceable, Agricultural Subcontract for delivery of water from the District.
 - c. Assignees shall mean all persons or entities to whom an Agricultural Subcontractor proposes to transfer, attempts to transfer, or actually transfers any rights under an Agricultural Subcontract.
 - d. BOR Contract shall mean that certain contract with the United States Department of the Interior Bureau of Reclamation - Boulder Canyon Project for delivery of water (No. 14-06-W-204) entered into on November 14, 1968.
 - e. Boulder Canyon Project Act shall mean 43 U.S.C. § 617 et seq., sometimes cited as 45 Stat. 1057 (1928) §§ 1-21.
 - f. Compact shall mean the Colorado River Compact of 1922.
 - g. Domestic use shall mean the use of water for household, stock, municipal,

- mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.
- h. Entitlement shall mean the right to divert a stated amount of water set forth in an Agricultural Subcontract.
 - i. Transfer Instrument shall mean any agreement whereby a Subcontractor purports to transfer or is obligated to transfer, assign, grant, or set over all or any part of an Agricultural Subcontractor's rights under an Agricultural Subcontract to an Assignee or Assignees.
3. **SUBCONTRACT MODIFICATIONS AND ASSIGNMENT OF SUBCONTRACTS.** Upon application by an Agricultural Subcontractor or Assignee, the District will consider the transfer of all or a portion of an Agricultural Subcontract to a Domestic Use within the District and may permit the sale and transfer of the same to owners of other lands within the District if the proposed transfer meets all of the requirements of the District, including those within this Resolution, and is otherwise determined to be in the best interests of the District. If approved, the District will require an amended Agricultural Subcontract to be executed by the Agricultural Subcontractor reflecting the reduction in the irrigation Entitlement. The District will also approve a new subcontract to the Assignee (if appropriate, and based on standard District subcontract forms) or an allocation to a water utility operating within the District that will supply water to the new Domestic Use. The transfer of the Entitlement shall not be effective until all such new subcontracts are fully executed and delivered to the District.
4. **SURCHARGE REALLOCATION TO DISTRICT.** A provision of repealed Resolution 07-05 required that in any Agricultural Subcontract transfer, the District would impose an 8% surcharge on the volume of water transferred. After deliberation, the District Board of Directors has determined that this surcharge is in the best interests of the District and shall be retained in this new Resolution. Such surcharged water shall be returned to the District and held by the District for possible future reallocation at the District's discretion or held as a reserve against shortage, or for water demands within the District that may be charged against the District's BOR Contract.
5. **TRANSFER INSTRUMENT.** An application for transfer pursuant to this policy shall be accompanied by a fully executed Transfer Instrument. The Transfer Instrument shall be between the Agricultural Subcontractor and the Assignee or Assignees and may be of any commercially reasonable format, including a Memorandum of Transfer, but shall reflect, so far as the District is concerned, a willing buyer and willing seller transaction. It shall be specific to the Agricultural Subcontract from which the transfer is proposed, the specific name and legal status of the Assignee, the specific quantity of water proposed for transfer, expressed in acre feet per annum, taking into account the District 8% surcharge such that the volume of water transferred to the Assignee shall be 8% less than the gross volume transferred by the Entitlement holder. The transfer shall be for permanent service if the

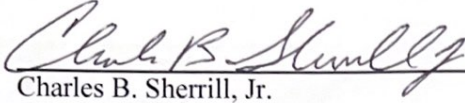
Assignee proposes to use the transferred water for residential development.

6. **REQUIREMENT OF BENEFICIAL USE.** Any water entitlement transferred under this policy is required to be for a bona fide new beneficial use within the District. Therefore, the entitlement to the Assignee must be dedicated to a new water use or to a final subdivision plat within two years from the date of approval of the transfer by the District. Extensions may be granted in accordance with District policies for extensions on District allocations, but if the new use is not commenced within the two year period (or extension thereof) the transfer will be voided and the water shall revert to the District.
7. **TRANSFER FEES.** Transfer fees shall be as provided in the District fee schedule in effect as of the date the transfer application is filed with the District, such fee schedule being subject to change from time to time.
8. **APPLICATION FORM.** The District has prepared the attached application form for proposed transfers. This form has been reviewed and approved by the District Board of Directors and is incorporated into this Resolution by reference. The form contains instructions and a summary of the policies resolved herein, and a sample Memorandum of Transfer form that may be used as the Transfer Instrument.
9. **REGULATION OF AGRICULTURAL SUBCONTRACT ASSIGNMENTS.** All Agricultural Subcontract assignments shall require the Agricultural Subcontractor and the Assignee(s) to comply with and acquiesce to the letter and spirit of the terms and restrictions of the Colorado River Compact, the Boulder Canyon Project Act, the BOR Contract, and the subcontract proposed to be assigned and the Assignee subcontract.

Passed, approved, and adopted the 7th day of February, 2023 by the following vote:

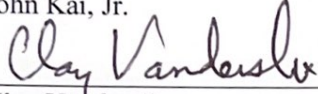
Signatures on Following Page:

Directors Voting IN FAVOR thereof:


Charles B. Sherrill, Jr.

Perry Muscelli

John Kai, Jr.


Clay Vanderslice

Vince Vasquez

Directors voting AGAINST thereof:

Charles B. Sherrill, Jr.

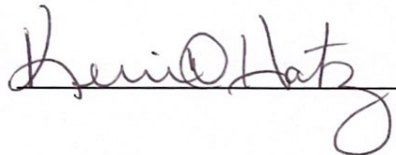
Perry Muscelli

John Kai, Jr.

Clay Vanderslice

Vince Vasquez

Attest:

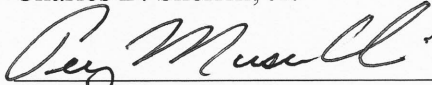


Date:

2/7/23

Directors Voting IN FAVOR thereof:

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Date: _____

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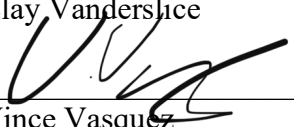
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