

## MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT

### RESOLUTION NO. 2023-03

#### A RESOLUTION ESTABLISHING POLICY AND PROCEDURES FOR THE TRANSFERS OF PRELIMINARY ALLOCATIONS OF WATER FOR DOMESTIC USE 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 ("BOR Contract"). The District is also a party to that certain Subcontract of Water from Mohave County Water Authority 09-101 (MCWA Subcontract) for water used and to be used for Domestic Use within the District. Together, these contracts authorize the diversion and use of up to 42,500 acre feet of water per year within the District.

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

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, over the last many years, allocated water to Domestic Use within the District. These allocations can, according to District policy, be a "Preliminary Allocation" wherein the allocation reserves the water for a future intended use, which can be relied upon by the intended user until the land use planning and land entitlement process is complete. The Preliminary Allocation may then, upon payment of applicable fees and compliance with District policies, become a "Final Allocation" which may, in some cases, and particularly in the case of subdivided land, be pledged to a Water Adequacy Report issued by the Arizona Department of Water Resources, and may become irrevocably tied to a subdivision land plat approved by Mohave County and recorded in the Mohave County Recorder's Office. Traditionally, the District has viewed a Final Allocation as irrevocable, intended to be a permanent supply for the Domestic Use so long as there is water available to the District to support that use. This policy does not apply to a Final Allocation.

WHEREAS, the District has long supported delivery of the maximum quantity of water available to the District under the BOR Contract MCWA Subcontract 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. That limit may also be affected by Shortage Conditions imposed by the United States Department of the Interior.

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 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 unallocated water to allocate.

WHEREAS, it appears to the District that some Preliminary Allocations of water are held by individuals or entities that have, for a variety of reasons, been unable to bring the development project to fruition. The District recognizes that, for some of these projects, the land entitlement process or the development plan may never be achieved. Preliminary Allocations are temporary and, under District policies, may lapse due to non-use. In such cases, the Preliminary Allocation reverts to the District and any and all fees paid to the District for that Preliminary Allocation are forfeited.

WHEREAS, while the District could wait until any given Preliminary Allocation lapses, and recover that water to the District, the District also recognizes that there is a current demand for new allocations of Domestic Use water for new projects. The District also recognizes that, in many instances, the Preliminary Allocations representing projects that have not come to fruition were obtained in good faith and with the expectation that the water would in fact be used. The District also recognizes that if these Preliminary Allocations lapse, the fees paid would be forfeited.

WHEREAS, the District has adopted a policy, District Resolution No. 2022-03, that allows a Preliminary Allocation to be reallocated to a different portion of the original project, or to another project owned by the same person or entity that holds the Preliminary Allocation. This District has not yet approved transfers of Preliminary Allocations to third parties.

WHEREAS, the District, recognizing the facts recited above, now wishes to establish a new and explicit policy and procedures to provide for the orderly transfer of part or all of a Preliminary Allocation within the District, if the holder of that Preliminary allocation desires to transfer it to a third party for a new 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 allow Preliminary Allocations to be transferred by the holders thereof to third parties, and to provide for the orderly transfer of such Preliminary Allocations within the District.

2. **DEFINITIONS.** In this resolution, unless the context otherwise requires, the following definitions shall apply:
  - a. Assignee(s) shall mean all persons or entities to whom a Preliminary Allocation holder proposes to transfer, attempts to transfer, or actually transfers any rights under Preliminary Allocation.
  - b. 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.
  - c. Holder of a Preliminary Allocation shall mean the person or entity that was granted a Preliminary Allocation for Domestic Use by the District.
  - d. Preliminary Allocation shall mean an allocation of water issued by the District under the BOR Contract or MCWA Subcontract for Domestic Use within the District, which Preliminary Allocation has not lapsed by passage of time since its issuance, has not been converted to a Final Allocation, has not been pledged to a Water Adequacy Report issued by the Arizona Department of Water Resources and has not be pledged to a final subdivision plat recorded in Mohave County.
  - e. Transfer Application shall mean the application whereby a Holder of a Preliminary Allocation seeks to transfer, assign, grant, or set over all or any part of the Preliminary Allocation to an Assignee or Assignees.
  
3. **ASSIGNMENT OF PRELIMINARY ALLOCATION.** Upon submission of a Transfer Application by a Holder of a Preliminary Allocation and Assignee, the District will consider the transfer of all or a portion of the Preliminary Allocation to a new Domestic Use within the District and may permit the sale and transfer of the same to different 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 a written relinquishment of the Preliminary Allocation by the Holder of the Preliminary Allocation to be executed and delivered to the District, to be effective upon approval of the transfer. The District will also consider, and may approve, a new Preliminary Allocation to an Assignee or to a water utility operating within the District that will supply water to the new Domestic Use. The transfer of the Preliminary Allocation shall not be effective until all such documents are fully executed and delivered to the District.
  
4. **SURCHARGE REALLOCATION TO DISTRICT.** Consistent with the District's approved policy on the transfer of an Agricultural Subcontract Entitlement transfer, the District shall impose an 8% surcharge on the volume of Preliminary Allocation water transferred. 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 other water demands within the District that may be charged against the District's BOR Contract or MCWA Subcontract.

5. **TRANSFER INSTRUMENT.** A proposed transfer pursuant to this policy shall be made by an Application to Transfer Preliminary Allocation, fully executed by both the Holder of a Preliminary Allocation and the Assignee(s). The form of the Transfer Application is attached to this Resolution. The Application must be complete in all details, or it will not be considered by the District. The Transfer Application shall constitute, so far as the District is concerned, a willing buyer and willing seller transaction upon whatever terms are agreed to between the buyer and seller. The Transfer Application shall be specific to the Preliminary Allocation from which the transfer is proposed, contain 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 Holder of the Preliminary Allocation. 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 Preliminary Allocation transferred under this policy is required to be for a bona fide new beneficial use within the District. Therefore, the transfer 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 transferred Preliminary Allocation will lapse 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. **TRANSFER 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.
9. **REGULATION OF PRELIMINARY ALLOCATION ASSIGNMENTS.** All Preliminary Allocation assignments shall require 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, the MCWA Subcontract and the assigned Preliminary Allocation.



Passed, approved, and adopted the 5<sup>th</sup> day of September, 2023 by the following vote:

Directors Voting IN FAVOR thereof:

Charles B. Sherrill, Jr.  
Charles B. Sherrill, Jr.

Perry Muscelli  
Perry Muscelli

John Kai, Jr.  
John Kai, Jr.

Clay Vanderslice  
Clay Vanderslice

Vince Vasquez  
Vince Vasquez

Attest: \_\_\_\_\_

Directors voting AGAINST thereof:

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Charles B. Sherrill, Jr.

\_\_\_\_\_  
Perry Muscelli

\_\_\_\_\_  
John Kai, Jr.

\_\_\_\_\_  
Clay Vanderslice

\_\_\_\_\_  
Vince Vasquez

Date: \_\_\_\_\_