

**MINUTES  
MOAPA VALLEY WATER DISTRICT  
SPECIAL BOARD MEETING  
HELD  
THURSDAY, JANUARY 19, 2012**

**PRESENT:** Kenneth Staton  
Scott Carson  
  
Joe Davis  
Bryan Mortensen  
  
Byron Mills  
  
Vernon Robison, MV Progress

Lindsey Dalley  
Randy Tobler  
  
Susan Rose

**ORDER OF BUSINESS:** At 4:05 p.m., Chairman Ken Staton called to order the special meeting of the Moapa Valley Water District Board of Directors. The agenda items were addressed in the following order:

**1. Public Comment (May be limited to five minutes)**

None

**2. Review of Water Resources (for discussion only)**

The two agreements that Joe wanted to go over at this meeting were started back when Van Robinson was General Manager.

Joe explained that he felt that some of the mind set to some of these agreements was driven by the rapid growth that was expected, the anticipation of receiving free water from Coyote Springs, and Vidler Water's filing on water that wasn't proved on for five years. The anticipated water we are talking about is 2,001 af which is equal to 1,240 gpm which is a lot of water. All of the minutes say one for one that these contracts were talked about in leave Joe to believe that the Directors thought that if they had 50 af they could trade it for 50 af and that no money would be involved. He doesn't think that they really understood that they would be trading one for one but then they would have to pick up all of the power costs, all the operation and maintenance costs plus throwing in on top of that, capital funds. He doesn't know why that was never picked up on. For him, as he keeps looking through these contracts, it makes any water that we trade for Coyote Springs water very expensive.

Chairman Staton asked Joe what his biggest concern is right now.

Joe said the in the Cooperative Agreement between SNWA and MVWD defines our right to use the Church water. It says that out of the 2,001 af SNWA has the right to use 1,000.5 af and MVWD has the right to 1,000.5 af. It also says that in any given year that a party does not use the entire quantity it's entitled to use, the other party gets to use that water at no cost. That means that if we don't use our water and it stays in the river, it's going to be dumped in Lake Mead and SNWA will be able to get credit for it. When it gets down to the rental costs, it says that MVWD and SNWA will pay \$130 an acre-foot. The original cost in 2008 was \$260,000. There is a CPI escalator so the costs this year is over \$310,000. SNWA has agreed to pick up the entire costs of the rental if MVWD used under 500 af in a year. We haven't used one drop of the water. The Church was really concerned about this water and they wanted to make sure that it stayed in the valley; they didn't want it to be used anywhere else. If it did get used somewhere else, the Church is going to add a \$100 an acre-foot surcharge to it. That way it will make the water so expensive that people won't want to move it out of the valley.

In Section 3 (b) it says "Subject to MVWD's obligation to share in the cost of any Surcharge assessed in any year, in any year in which MVWD uses 500.25 afy of Church Water or less, SNWA

shall pay the entire amount due to CPB under the terms of the Lease that year". This means that we can use up to 500.25 af and SNWA is still going to pay the whole lease charge. This makes it sound like we have free water.

Section 3 (c) says, "In any year in which MVWD uses any quantity of water in excess of 500.25 af, then MVWD will reimburse SNWA for each additional acre-foot of Church Water used that year by MVWD at the same per acre-foot charge paid by SNWA to CPB in that year". If we use any water over the water 500.25 af, we have to start paying for it.

In Section 3 (d) it says: "If a Surcharge is assessed by CPB in any year during the term of the Lease, MVWD will pay 50% of such assessed Surcharge and SNWA will pay 50% of such assessed Surcharge". This is saying that if we don't use any water and SNWA is putting it all in the river and getting credit for it, we are supposed to pay 50% of the surcharge.

Lindsey asked if that is only if we use over our allotted 500.25 af. Joe and Byron both said no. Anytime that a surcharge is paid MVWD is suppose to pay half of it. Byron said it would be better if we took the 500.25 af or even more.

We haven't paid anything yet because the river commission is so far behind. SNWA just received the credit for 2008. SNWA cut a check for the 2,001 af they got credit for in 2008. This raised a red flag for Joe because we could pull the 500 af out and put it to use so we only have to pay \$75,000. The hard part is that all of this water is in the river and it's extremely difficult to get it out of the river.

Joe just received a letter from SNWA saying that they paid the money to the Church for the assessment. Attached to the letter was a copy of the check. When Joe received the letter he called Jeff Johnson at SNWA and asked what was going on with it. Jeff told Joe that he doesn't really understand it either so Joe has setup a meeting on January 31<sup>st</sup> with John Entsminger who wrote the contract. He's going to take Bryan and Byron with him to the meeting. They're going to get John's interpretation of the contract. Joe thinks the original intent of the contract was that as long as we use 500.25 af or less we don't pay for anything but if you read it the way that it is written we are obligated to pay 50% of the surcharge.

Byron says that it does give us a little wiggle room with SNWA because they're not going to want us to do what Joe suggested we do which is to put the 500.25 af to use so we don't have to pay for it. They may be willing to negotiate so we don't do that.

Bryan thinks that a lot of the contracts were entered into with the ideas that we would trade Twin Springs water for Coyote Springs water. It's in the 340A O & M agreement. Joe explained that it's also in the agreement he's been talking about.

Nothing covers what they have to pay for a wheeling fee. In going back through the minutes Joe found at the March 9, 2006 meeting that the Board approved the Agreement for the Lease of Water Rights between MVWD, SNWA, and the LDS Church. They also approved the Cooperative Agreement for the use of that water between MVWD and SNWA. Some of the items pointed out in the minutes regarding the lease of the water rights were:

- The lease would be for 2,001 acre-foot of water per year.
- The term of the lease would be for 20 years with two 10-year renewal periods.
- The unit lease cost is \$130/acre-foot, with a CPI escalator.
- The lease is on a "take or pay" basis.
- The water may not be subleased to any other entity without Church approval and any profits gained by a sublease will be divided on a 50/50 basis with the Church.
- Because the Church wants as much of the leased water used within the MVWD service area as possible, any water used outside of the MVWD service area is subject to a \$100/acre-foot surcharge.
- MVWD and SNWA have "right of first offer" to outright purchase of the water.

Some things that were pointed out in the minutes regarding the Cooperative Agreement were:

- The water will be shared on a 50/50 basis.
- SNWA will pay the lease charge for the water.

- MVWD is entitled to use to 500.25 acre-foot of water without reimbursing SNWA any monies.
- In the event that MVWD uses over the 500.25 acre-foot threshold, MVWD will reimburse SNWA for each additional acre-foot of water used at the prevailing lease rate.
- All taxes will be paid on a 75%/25% basis with SNWA paying the 75%.
- In the event that a surcharge is assessed, the surcharge will be split on a 50/50 basis.

It's mentioned again in the February 12, 2009 minutes. What Brad was proposing at that time was to pull back all the MVIC shares that we are leasing out and lease them to SNWA for \$1800 an acre-foot so we would be able to earn money from that. If we decide to use the 500 af that's in the river we will have to pay MVIC a wheeling fee so the District would still be out money.

Randy asked about the capital costs. Joe explained that that's where the jumping forth between the different agreements comes into play. All of the capital costs are clearly defined in the 2009 O & M agreement. That agreement makes reference to the other contracts. If we decide to take the 1000 af, the only way we can use it is to trade it for Coyote Springs water. Then we would have to pay capital costs for it and we still don't know what those cost are. Staff has sent SNWA an email and a letter requesting that information and haven't received a response back from them yet. Monday Staff is going to send them a certified letter requesting that information. We know what our capital costs are because they have to pay us for them but we also need to know what their capital costs are because they get put on top of the O & M costs. If it comes in at \$750 af we can't afford to use that water. Joe got the \$750 af from the original estimate of what the project was going to cost. Our cost is between \$650 and \$750 which includes wages, benefits and all other cost to produce the water and we would still have the costs to distribute it through our system.

John Entsminger will be at the meeting on the 31<sup>st</sup> and Joe's going to let him know that we haven't been able to get the capital costs from his people. John's spearheaded most of these agreements and when he's involved things get done.

Since growth has really gone down, and a lot of the parcel maps that we were holding water on were never recorded, that water will come back to us so we actually have more water than we originally thought. We might not even need to use the Church lease water for twenty years or more.

Joe explained that one good thing is if we have spring water that goes through the box we get a 100% credit. If we turn around and put it in the river, the State Engineer will shave 10% off the top. For some reason the Bureau of Reclamation gave SNWA 100% credit. That's something Joe is going to argue because if they would shave 10% or even 20% off the top, that would save us some money. With the Jones Spring agreement we left our water in the river and the State Engineer took 10% off the top. It doesn't make sense to Joe that our Jones water which is in the same place as SNWA's water, took a haircut so why don't they have to take a haircut.

The general consensus was that that we need to renegotiate the agreement.

Joe has been able to find correspondence between Brad and Bob Marshall or Van and Bob Marshall on everything but these agreements. It looks like Brad is the only one that had anything to do with these two agreements. Maybe Brad felt comfortable enough with it that he felt he didn't need Bob's opinion.

Bryan said that SNWA has been paying the lease since 2006 but they have only paid one surcharge because they just barely received the information from the Bureau of Reclamation so we may be getting a bill for our portion.

Lindsey asked if we are going to have to raise rates to cover this surcharge. Byron reminded him that we were spending at least \$250,000 a year to buy MVIC shares but we haven't purchased any the last couple of years. There's no longer money budgeted for that so we at least have that money we could use to pay it.

Joe explained that there are a couple of caveats in the 2009 agreement which brings the whole thing to a head. One is that we're supposed to bill SNWA after one full year of operation which has

just passed. We are suppose to bill them for our capital improvement costs for the dechlor facility so there's an \$89,000 check they're going to be sending to us for the next 25 years.

The next part is that we can bill them for a wheeling fee. That's why he and Bryan are trying to find out the exact intent of the wheeling fee. Come to find out, Bob Marshall is the one who put the wheeling fee in the agreement. SNWA wasn't happy about it. It gives us a way to recoup some of our money. Joe, Bryan and Bob came up with a good concept of how we are going to do the wheeling fee so we can get some more money from SNWA.

Scott Carson asked what Joe was basing it on. Joe explained that SNWA has tied up 2/3's of the capacity of our 24" pipeline that runs from the 3 MG tank down to the lower valley. We guaranteed them that they could put their water in our system but they have to pay a wheeling fee to get it through there.

Bryan explained that our O & M costs are based on the costs of our main line for the lower valley and those can be defined. Those costs have pulled out of the budget so they can be defended. We have history on them and we can show that the costs haven't varied throughout the years. The costs that have gone up are treatment and arsenic costs and we pulled those out.

Byron said that we will most likely be writing a check to SNWA but we should have money coming our way. Maybe it will help us break even.

It really bothers Lindsey that we've been tightening up our belts and doing great things and all of that is for naught because we're going to have to negotiate away the assets we've developed just to keep whole on this contract. We were thinking that we're going to start getting ahead and start producing revenue for our rate payers and all we're doing is just subsidizing SNWA so actually we're just treading water.

Joe can't say that that's the way it is until he sits down with SNWA and talks to them about what their intent was.

Chairman Staton asked if there was a chance of our being able to renegotiate the contract.

Byron said it depends on what their interpretation is. They haven't actually asked for any money yet so they might not think that we have to pay them anything.

Joe hopes to be able to sit down with the Directors in the next few months to go over the rest of the agreements.

He also said that all of these contracts were only looked at by Bob Marshall. Byron never had a chance to look at them and make any comment on them. He was never part of the negotiations or asked to attend any of the meetings.

Byron feels that we need to renegotiate with SNWA to see if we can get SNWA to pay all or at least part of the surcharge. That was the general consensus of the Board also.

Lindsey asked if we are just trying to put this thing to bed so it doesn't cost us anything or what is the Board's long term strategy.

Joe said that \$45,000 was thrown out there to run a pipeline from Twin Springs to Baldwin. We know it's going to be more expensive than that. Everything's gotten more expensive. A conservative estimate would be \$50,000 not counting man time or anything else. If we don't use that water and don't have to pay anything it might not be viable to install that pipeline. We can wait to do it but if we have to pay then that's the only way we can get 260 gpm out of there and over to Baldwin. At least that way we can use some of the 500 af of water.

Joe would recommend getting the license in place, getting them to sign it and then wait as long as we can to put the pipeline in. If we're on the hook for 50% of the surcharge we need to come up with some way to get our water out of there even if we push it over to Jones Springs. We need to come up with something because in the 2002 monitoring plan, we have arrangements with USFWS so that we can augment some of the stream flows.

Lindsey thinks we need to come up with a strategy right now of what we're going to do. He asked if we could put in a pipeline to Jones Spring?

Joe explained that we don't have to put a pipeline in at Jones Springs; it's already there. We would just need to turn the pumping schemes around to pump from Baldwin to Jones. It would take a little plumping but it could be done.

Lindsey wanted to know if we did that, could we go to FWS and get them to help us get some leverage with SNWA to nullify the agreement.

Joe said if they nullify it then they don't get the water.

Lindsey said maybe we could modify it instead.

Byron asked if Lindsey was trying to take the financial responsibility off of the District.

Lindsey wants to do something to make it a win for us not just neutralize it.

Bryan thinks we can just do some little things to maintain some sovereignty.

Lindsey thinks it's something that needs to be worked on now.

Bryan said that because the water is so expensive up there and SNWA doesn't need it. They want us to take as much as we can and they'll send the rest down the pipeline. If the water doesn't prove up then we'll lose Arrow Canyon.

SNWA & Coyote Springs have already been permitted to use 9,000 af. Now they have bumped the pumping up.

Randy is still upset about us losing Jones Springs. Joe said that if we ever trade any of our water for Coyote Springs water, we have to pay for the Jones Springs 724 af. That agreement was signed by Van. Brad made sure that there was one little caveat in the agreement that said that if they can't ever run the Coyote Springs pipeline, we get our water back. If the State Engineer caps them at 9,000 af and it costs them \$900 - \$1,000 af in order to push that water through the system, it's too expensive for them to run it so they'd have to shut it down. The only way that they can keep it running is if we start trading water and using their water.

Lindsey thinks that that's a motivation not to use their water.

Scott said that we should charge them a high wheeling cost. Joe said that it has to be a justified cost. You can't just arbitrarily pull a number out but we do need to justify it as high as we can.

Randy asked if we could pump at full capacity so the 16,000 af doesn't get approved. Joe said that if we were hurting for water, we would want the pump test to go great but the problem is the pump test isn't going great and it's not free water to us.

Scott asked if we know how much water we really do have. Randy said that the Board was told when they first started that we had enough water for 45,000 people but it's actually less than that. Joe said that we could double in size. They were looking at the block of irrigation water that we own. They thought that we would give it to Coyote Springs and we would get it back. That's where the 45,000 came from.

Bryan said that the original pump test was supposed to go for five years and then the parties agreed to drop it to two; the parties then agreed to not require SNWA to pump the full 50% of the shares. With the pump test not going so well, and their system being off a lot because of their issues not ours, he was wondering if we could protest or petition the State to extend it 6 months or a year and say that they've been down for three months.

Before the Board makes any kind of decisions, Joe wants to go through all of the agreements with them to make sure that they thoroughly understand all of them.

**3. Public Comment (May be limited to five minutes)**

None

**4. Adjournment**

The meeting adjourned at 6 pm.