



COUNCIL MINUTES

February 20, 2003

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on February 20, 2003 at 7:30 a.m.

COUNCIL PRESENT

Mayor Keno Hawker
Dennis Kavanaugh
Rex Griswold
Kyle Jones
Janie Thom
Claudia Walters
Mike Whalen

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

1. Review items on the agenda for the February 24, 2003 Regular Council Meeting.

All of the items on the agenda were reviewed among Council and staff and no formal action was taken.

2. Discuss and consider a report on the Gila River Indian Community Water Rights Settlement Agreement.

Utilities Manager Dave Plumb addressed the Council and reported that the Gila River Community Water Rights Settlement is the largest water rights settlement in the country and that City of Mesa staff has been involved in this issue for several years.

Water Resources Coordinator Kathryn Sorensen stated that the Gila River Community is located just south of the City of Mesa on 372,000 acres with a population of approximately 29,000 that includes two tribes, the Maricopa and the Pima Indians. She noted that the legal conflict over water rights that is now being settled began in 1924, with the Indian Community contending that upstream users, including the City of Mesa, illegally diverted water flows. Ms. Sorensen advised that the Indian Community also contends that excessive groundwater pumping near the reservation resulted in damage to Indian water rights and reduced water quality. She added that historically courts have ruled that the presumption exists that Congress intended to provide the natural resources necessary to sustain the population when reservation lands were designated, commonly referred to as "Federal Reserve Rights." Ms. Sorensen noted that due to the fact that the Gila reservation was formed in 1859 with Federal Reserve Rights, a court decision could threaten Mesa's supplies of water.

Ms. Sorensen explained that the concept of the settlement is that non-Indian parties agree to provide the Indian Community with water and other resources and in exchange, the Indian Community will terminate all lawsuits regarding this issue. She stated that the non-Indian parties comprise a population of 2.8 million people who live upstream on the Gila River, and other rivers that flow into the Gila, such as the Verde, Salt, Santa Cruz and San Pedro Rivers.

Ms. Sorensen reported that the settlement, which is scheduled to take place in 2003, is only the first step in the process. She advised that the next step would be the introduction of Federal Legislation by Senator Kyl to enable aspects of the settlement that require Federal approval, and after that legislation is passed, the settlement agreement returns to the Adjudication Court for approval.

Assistant City Attorney Mary Wade noted that once the agreements and legislation are in place, the Adjudication Court is expected to proceed through the approval process in a prompt manner.

Ms. Sorensen estimated that the settlement would probably be finalized in the 2006 to 2008 timeframe. She reported that three major issues are involved in the settlement: 1) the final allocation of Central Arizona Project (CAP) water; 2) the payment to the Federal government for the cost of the CAP construction; and 3) the community claims for water.

Ms. Sorensen addressed the first issue by explaining the method used to allocate Colorado River water and the changes in distribution that will occur as a result of the settlement agreement. She stated that a significant aspect of the settlement to the City of Mesa is that new reallocations will provide for "permanent service," or service in perpetuity and the contracts are for a 100-year delivery term instead of a 50-year term. Ms. Sorensen advised that CAP water is prioritized in categories with "Indian Priority" and "Municipal and Industrial" water sharing the highest priority, followed by "Non-Indian Agricultural" water and the lowest priority is "excess" water. She noted that "Indian Priority" water cannot be sold, but the water can be leased for periods of approximately 100 years.

Ms. Sorensen advised that following court action, an agreement was reached regarding payment for CAP construction based on the Federal and non-Federal CAP water split. She stated that the Federal government would pay 47% and the non-Federal recipients would pay 53%. Ms. Sorensen noted that the State CAP water users' obligation is approximately \$1.646 billion.

Ms. Sorensen reported that the third item, community claims for water, is the most complex issue. She explained that in exchange for waiving claims to water rights in the Gila River Adjudication, the Indian Community would receive 653,500 acre-feet of water per year, 31% of their original claim, of which 190,000 acre-feet are new supplies. Ms. Sorensen noted that the Indian Community will lease back 50,000 acre-feet of water to other cities, and Mesa's part of the agreement will provide the Indian Community with 29,400 acre-feet of high quality reclaimed water in exchange for 23,530 acre-feet of high priority CAP water. She added that the settlement agreement provides the Indian Community with \$200 million in a trust fund from the Federal government to be used primarily for construction of the San Carlos Irrigation Project.

Ms. Sorensen advised that important aspects of the agreement for the City of Mesa are that the Indian Community waives their claims to water resources and water quality damages; that the City is able to exchange reclaimed water for potable water; that the City has the option to lease community CAP water in the future; that the City will receive permanent service and 100-year delivery terms on CAP contracts; and that a repayment reduction between the CAP and the Federal Government will translate into lower capital cost to the City for CAP water. She added that the agreement will also provide greater regional certainty regarding water rights in general and once the Adjudication Court approves the settlement, most of Mesa's water supplies will be assured.

Ms. Sorensen noted that litigation of water issues would continue in the future. She added that court approval of the agreement would provide confirmation of the Plan Six Appropriative Rights at Modified Roosevelt Dam, an agreement reached by 6 Valley cities with the Federal Government to appropriate water to raise the elevation of Roosevelt Dam.

Ms. Sorensen stated that an important aspect of the agreement was that the Gila Indian Community agreed not to take more land into trust status without Congressional approval. She explained that any Indian community can purchase a piece of land and petition the Secretary of the Interior to place the land in trust status, which would make the land exempt from State and local laws just as the reservation land is exempt.

Ms. Wade added that trust status was a topic of debate, and she clarified that the Gila Indian Community is now required to obtain Congressional approval in order to place any additional parcels of land in trust.

Additional discussion ensued relative to the fact that the issue of gambling was not a part of the agreement; that 96,000 acre-feet of non-Indian agricultural priority water will be available for reallocation in the future; that 67,000 acre-feet of water will be available to settle future Indian claims, such as with the San Carlos Apache, Hopi, Navajo and others; that the Gila Indian Community has waived their sovereign immunity with respect to the contract and when the waiver is approved by Congress, Mesa will be provided with greater security in the enforcement of the contract; that Mesa did not relinquish rights to CAP water due to the fact that the water was under the control of the Secretary of the Interior and therefore the water was not Mesa's to relinquish; that the amount of litigation on water issues will be substantially reduced in the future; that sometime between 2006 and 2010, Mesa will be required to pay for the reallocation of the 7,000 acre-feet of Municipal and Industrial water and the cost of the infrastructure to enable the reclaimed water exchange; that Mesa's share of the cost, as a member of a consortium, to retain the services of an attorney related to water issues has been substantially reduced through renegotiation of the contract; and that Mesa benefits from the attorney's influence due to the fact that he represents 4 cities for the settlement and 6 cities for the adjudication.

In response to a series of questions from Councilmember Whalen, Ms. Sorensen advised that the Gila Indian Community has a substantial allocation of CAP water; that the CAP canal in East Mesa continues south to the reservation; that the Indian Community has a large irrigation project, and a stated objective to become the "breadbasket of Arizona;" that staff is unaware of any plans by the Indian Community for underground storage to restore the water table; that the Indian Community is not subject to State groundwater laws; and that most of the high priority water that is important to cities will be sold before the water reaches the reservation.

Vice Mayor Kavanaugh thanked staff for the presentation and noted that water litigation has been an ongoing issue for many generations. He complimented staff on their efforts and noted that the water rights issue was the largest liability faced by the City. Vice Mayor Kavanaugh expressed the opinion that the resolution of this dispute is one of the most important landmarks in the history of Mesa and sets an example for the settlement of other disputes regarding water rights.

Councilmember Thom expressed appreciation for the presentation and noted that the water issue was important to the future of Mesa.

Councilmember Griswold recalled his father's comment that "the history of Arizona is written in blood and water and not necessarily in that order." He commended staff for their efforts in obtaining a peaceful court settlement.

In response to a series of questions from Councilmember Walters, staff advised that the last occurrence of reclaimed water failing to meet the required standards was several years ago; that an extended power outage at the Southeast Plant might result in a failure to meet standards; that the pre-treatment regulations, rules and information provided to industrial customers precluded an accidental dumping into the system; that the last process performed at the Southeast Plant was an ultraviolet treatment and, if a power outage occurred, the plant would be unable to perform that treatment; that the obligations of Chandler and Mesa are separate and distinct, and a failure on the part of Chandler would not impact Mesa or vice versa.

Further discussion ensued relative to the fact that the agreement for the exchange of effluent for CAP water was signed a year ago, but additional infrastructure must be constructed to enable the exchange; and that the executed agreement enables the City to go forward in the planning process.

In response to Mayor Hawker's comment regarding a possible future meeting with the Roosevelt Water Conservation District (RWCD), Mr. Plumb advised that when indemnification became an issue relative to the use of their canal, the City decided to construct a pipeline from the South Plant to enable deliveries, and that continues to be the City's current approach. He also noted that staff was not optimistic that an agreement could be reached to use the RWCD canal.

Additional discussion ensued relative to the fact that the City owns approximately 40% of the capacity of the Roosevelt canal from the northern end to Queen Creek, which provides a substantial delivery capacity; that the agricultural aspect of the RWCD Irrigation District would not exist in 30 years, but a much diminished system would continue to exist; and that \$200 million for the San Carlos Irrigation Project is a part of the proposed settlement agreement; that the San Carlos Irrigation Project was approved in 1924, but the Federal Government has failed to provide necessary annual appropriations for this project; that proposed funding for settlement of the agreement is through the Lower Basin Development Funds rather than annual funding; that staff anticipates that the Federal Government will object to funding through the Lower Basin Development Funds; that if annual funding is proposed by the Federal Government, the Indian Community is unlikely to accept which may necessitate the development of creative funding alternatives; and that the proposed legislation is the most significant Arizona water policy document since the Groundwater Management Act of 1980.

Ms. Sorensen noted that various entities will make small changes to the agreement and this document will likely come before the Council; that the bill is primarily focused on Arizona although New Mexico does receive some CAP water in the agreement; and that Arizona's legislators are focused on the bill, particularly Senator Kyl.

In answer to a question from Councilmember Walters, Ms. Sorensen expressed the opinion that Senator Kyl would emphasize the obligation made by the Federal Government to provide the resources necessary to sustain the reservation. She explained that the State Government was assisting the Federal Government in meeting that obligation.

Ms. Wade added that Senator Kyl would make the argument that the State of Arizona has better ideas regarding methods to manage the litigation of water rights.

City Manager Mike Hutchinson complimented staff for their efforts on this project and acknowledged the many people who contributed to the project over the years. He commended Dave Plumb and his staff for coordinating the project and thanked them for their hard work and diligence.

3. Discuss and consider Mesa's existing Median Islands Street program.

Traffic Engineer Alan Sanderson addressed the Council and stated that he was present to discuss median islands on arterial streets. He advised that the 1994 median islands map adopted by the Council for use as a planning tool was updated in June 2002 as part of the *Mesa Transportation Plan*. Mr. Sanderson noted that there are two reasons for utilizing raised medians: aesthetics and improved traffic operation. He explained that raised medians limit access points at major intersections, which reduces the potential for traffic accidents. Mr. Sanderson reported that studies indicate that streets with raised medians are safer, have fewer accidents and have improved traffic flow. He advised that the negative aspects of raised medians include the fact that emergency vehicles could experience difficulty in maneuvering around traffic and that less flexibility would exist to detour traffic around construction sites. Mr. Sanderson stated that raised medians are effective on busy arterial streets near the freeways and at major intersections. He added that newly developed areas often request medians from an aesthetics standpoint and that Phoenix, Scottsdale and Glendale use medians on their major arterial streets. Mr. Sanderson advised that staff's recommendation to the Council was that the existing policy, as adopted in 1994, be continued.

Discussion ensued relative to the fact that overall costs for streets with medians or without medians are similar; that fewer poles are required when streetlight are installed on the medians; and that landscaping the median could result in additional maintenance costs.

Councilmember Whalen, Chairman of the Council Transportation Committee, stated that he supported staff's recommendation, but Councilmembers Griswold and Thom were in favor of bringing the item forward for full discussion by the Council.

Councilmember Thom stated that several businesses closed in the area of the Gilbert Road and Baseline as a result of the prolonged construction. She also added that many businesses expressed concern that the medians would prohibit customer access to their business locations.

Mr. Sanderson commented that numerous public meetings were held regarding this project, and that most residents perceived the medians as improvements to the neighborhood. He noted that adding medians to an area where residents and businesses were established was a difficult process.

In response to Councilmember Thom's question as to whether the public meetings were well attended, City Engineer Keith Nath stated that six public meetings were held when the concept for Gilbert Road was being developed. He noted that there was fairly extensive public involvement and public comment regarding the project on Gilbert Road, but there was less public interest in the Baseline Road project.

Vice Mayor Kavanaugh commented that businesses may close for many reasons, and the City was not to blame for poor decisions made by the business owner.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

AYES - Hawker-Griswold-Jones-Kavanaugh-Walters-Whalen
NAYS - Thom
ABSENT - None

Mayor Hawker declared the motion carried by majority vote.

4. Hear reports on meetings and/or conferences attended.

The following members of the Council provided brief updates on various meetings/conferences they attended as follows:

Mayor Hawker	Valley Metro Rail Board Meeting Transportation Policy Committee (Region Council) Opening of US Customs Office at Williams Gateway Airport
Vice Mayor Kavanaugh	Scottish Highland Games scheduled for next weekend at Mesa Community College
Councilmember Griswold	Citrus Sub Area Design Standards Group Meeting
Councilmember Jones	Beall Park Neighborhood Meeting
Councilmember Walters	Neighborhood Day at the State Legislature
Councilmember Whalen	Salt River Project Briefing and Helicopter Tour of Reservoirs

5. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Monday, February 24, 2003, TBA – Study Session

Monday, February 24, 2003, 5:45 p.m. – Regular Council Meeting

Tuesday, February 25, 2003, 6:00 p.m. – Joint Meeting with SRP Board of Directors

Wednesday, February 26, 2003, 8:00 a.m. – General Development Committee

Thursday, February 27, 2003, 7:30 a.m. – Study Session

Monday, March 3, 2003, 3:30 p.m. – Utility Committee

Monday, March 3, 2003, TBA – Study Session

Monday, March 3, 2003, 5:45 p.m. – Regular Council Meeting

6. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

7. Items from citizens present.

None

8. Adjournment.

Without objection, the Study Session adjourned at 9:03 a.m.

KENO HAWKER, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 20th day of February 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK