



# City Council Report

**Date:** December 5, 2016  
**To:** City Council  
**Through:** Kari Kent, Assistant City Manager  
**From:** Dan Cleavenger, Water Resources Department Director  
**Subject:** Formation of Sherwood Mesa Irrigation Water Delivery District, Council District 4

**Strategic  
Initiatives**



## **Purpose and Recommendation**

The purpose of this report is to discuss and consider a request received from the Sherwood Mesa Irrigation, LLC to form an Irrigation Water Delivery District (IWDD) within the Salt River Project canal system and take action on a resolution forming such district.

On October 25, 2016 the Sherwood Mesa neighborhood held a meeting with approximately 50 households in attendance to discuss the formation of an IWDD. During the meeting there was a unanimous vote to proceed with the formation of the IWDD for the benefit of the neighborhood.

Water Resources Department staff have reviewed the conditions of the request. Staff believes it is in the City's best interest to allow the residents of Sherwood Mesa greater control of their irrigation infrastructure and recommends that the Council issue a resolution of approval of the proposed IWDD. This action would set in motion the process for Maricopa County to create the Sherwood Mesa IWDD to allow residents to improve the maintenance and operation of their irrigation system.

## **Background**

An IWDD is a special taxing district authorized under Chapter 20 of Title 48 of the Arizona Revised Statutes. An IWDD may be formed when the owners of a majority of the acreage of lots or parcels of land entitled to or capable of receiving irrigation

water from the same ditch system, pipe line or system of pipes desire to provide for the delivery of irrigation water to their lands. IWDD's are "bodies corporate" but not municipal corporations. An IWDD has perpetual succession and may:

- Exercise the power of eminent domain;
- Contract and be contracted with;
- Sue and be sued in its corporate name;
- Acquire, hold and dispose of real and personal property; and
- Do all things lawful and reasonably useful in carrying out its purposes.

Anyone proposing to create an IWDD must first prepare and submit an impact statement for submission to the board of supervisors of the county in which the district is to be located in accordance with state law. The county board then sets a public hearing and if it subsequently determines that the creation of the district will promote public health, comfort, convenience, necessity and welfare, it will approve the impact statement and authorize the persons proposing the district to begin circulation of petitions. If a proposed district includes property located within an incorporated city or town, the board shall approve the creation and authorize the circulation of the petitions only if the governing body of the city or town has, by ordinance or resolution, endorsed such creation.

A map showing each IWDD in Mesa is attached.

## **Discussion**

### Water Rights

Formation of an IWDD does not appear to have any impact on Mesa's water rights, as landowners in Salt River Project and Roosevelt Water Conservation District receive irrigation water in accordance with the historic surface water rights regardless of the formation of an IWDD. However, formation does appear to have other potential impacts on the City. These impacts relate mainly to taxation, use of public roads and the power of eminent domain.

### Taxation

Property owned by IWDD's is exempt from taxation including a primary or secondary property tax when used for district purposes. The exemption applies only to district owned property, not property owned by people within the district. In this case, there would unlikely be an impact to the City as the district is unlikely to purchase significant amounts of real property.

### Use of Public Roads

Any IWDD may use the public highways, roads, streets and alleys in or outside the district for right-of-way. This use is subject to reasonable restrictions imposed by the City. Generally, the City has control of its streets under A.R.S. § 9-276. However, if a controversy arises over the exercise of right-of-way between the IWDD and the City, it is resolved at the Arizona Corporation Commission (ACC) (A.R.S. § 48-3448). This removes some authority over the public thoroughfares from the City and places it in the hands of the ACC. This is an unusual and significant statutory provision, as in

almost all other contexts the ACC has no jurisdiction over the City of Mesa under Article 15, Section 2 of the Arizona Constitution.

#### The Power of Eminent Domain

State law provides that an IWDD “may condemn rights-of-way for the purposes of this chapter.” Any condemnation action by an IWDD is thus limited by the requirement that it be consistent with or incidental to the primary purpose of the IWDDs – delivery of irrigation water. It is unlikely based on the existing law that an irrigation related use would be found to be more necessary than an existing municipal use, and therefore, it is unlikely that an IWDD could condemn property belonging to the City. Other property in the district may be subject to condemnation.

#### **Alternatives**

Not approve the request for resolution: Council could choose not to approve the request for resolution. Doing so would result in the County not moving forward with the process to create the Sherwood Mesa IWDD.

Take no action: Council could choose to take no action or table the item until a future date. This would result in a delay of the formation of the Sherwood Mesa IWDD.

#### **Fiscal Impact**

There is no direct cost to the City in approving a resolution for the formation of an IWDD for Sherwood Mesa. However, any property owned by an IWDD could potentially be exempt from taxation. In addition, the formation of an additional political subdivision within City boundaries could result in costs related to disputes over eminent domain and use of public roads.

#### **Coordinated With**

This proposal was coordinated with the Water Resources Department and the Sherwood Mesa Irrigation, LLC.