



# City Council Report

**Date:** February 11, 2019  
**To:** City Council  
**Through:** Kari Kent, Assistant City Manager  
**From:** Jake West, Water Resources Department Director  
**Subject:** Formation of Green Acres Irrigation Water Delivery District,  
Council District 4

## Purpose and Recommendation

The purpose of this report is to discuss and consider a request received from the Green Acres neighborhood 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 December 14, 2018, the Green Acres neighborhood held a meeting with approximately 20 people in attendance to discuss the formation of an IWDD. During the meeting there was consensus among attendees to proceed with the formation of the IWDD for the benefit of the neighborhood. There are approximately 130 lots affected by the proposed Green Acres IWDD.

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 Green Acres 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 Green Acres 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:

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- 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 an impact statement for submission to the County Board of Supervisors (A.R.S. § 48-263). The impact statement must include a legal description of the district boundaries, a list of the taxable properties, an estimate of the assessed valuation within the proposed district, and other relevant information. The law also specifically provides that if a proposed district includes property located within an incorporated city or town, the Board must also be presented with an ordinance or resolution by the city or town endorsing such creation. A.R.S. § 49-261(E). The Board will set a public hearing on the impact statement. Notice is provided by the County Clerk to property owners within the district boundaries. At the hearing, the Board hears from those persons who appear for and against, and then determines whether the creation of the district will promote the public health, comfort, convenience, necessity and welfare. If the Board approves the impact statement, the persons proposing the district may begin circulation of petitions to the property owners within the proposed district.

Assuming the County Board approves the impact statement, to continue with the process to organizers must return to the county with a completed petition. The petition must be signed by a majority of the owners of acreage within the proposed district. Each signer must set forth the description and approximate acreage of owned land and verify the signature with an affidavit. The petition must also include the names of a three-member committee representing the petitioners in organizing the district. If the land is already within an existing electrical, irrigation, or agricultural improvements district, such district must also consent to inclusion of the land in the proposed IWDD. When a petition of signatures is filed, the Board examines it and the signatures thereon. If the petition is in order, the Board fixes the expenses to be incurred in organization of the district, and the committee members post a bond. Then the Board sets an additional hearing on the petition.

At this second hearing, “any owner of land within the proposed district may appear and object to the organization thereof, or to the proposed boundaries thereof, or to the inclusion of his land therein.” A.R.S. 48-3424. The Board hears and considers the matter, and at the conclusion of the hearing makes written findings regarding organization of the district, which may include modification of the district boundaries. If it decides to proceed, the decision is published and posted. Thereafter, a majority of the landowners in the proposed district still have one last opportunity to file a protest of the final formation, which would end the process. If no protest occurs, the Board enters an order declaring the district organized.

Once formed, the management and control of an irrigation water delivery district is vested in a board of trustees, which consists of three persons who are landowners within the district. Trustees are elected biennially, with the election held “at a

convenient place within the district.” Each landowner in the district is qualified to vote and can cast one vote for each one-fifth acre of land owned. The trustees have two-year terms, serve without compensation, and must post a one thousand-dollar bond. Two board members constitute a quorum. The IWDD Board may employ personnel necessary to conduct the affairs of the district. However, attorneys and engineers may only be hired to perform specific services – not salaried. Contracts and other documents that bind the district or involve the payment of money must also be signed by two board members. The IWDD Board annually estimates taxes necessary to defray expenses and certifies the estimate to the County Board of Supervisors, which levies the taxes. Costs of distributing and measuring water are paid through service charges.

Attachments to this report include a Citywide map showing all IWDD's in Mesa, a boundary map and list of properties in the proposed IWDD, written request for resolution from the Green Acres neighborhood, SRP's consent to the formation of an IWDD, and the neighborhood meeting notification from SRP.

## **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 Green Acres 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 Green Acres IWDD.

### **Fiscal Impact**

There is no direct cost to the City in approving a resolution for the formation of an IWDD for Green Acres. 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, Salt River Project, and Green Acres neighborhood representatives.