

**BOARD OF DIRECTORS
METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT
PIMA COUNTY, ARIZONA**

January 12, 2015

**** Board Room ****

**Metropolitan Domestic Water Improvement District
6265 N. La Cañada Drive
Tucson, AZ 85704**

MINUTES

Board Members Present: Judy Scrivener, Chair
Bryan Foulk, Vice-Chair
Jim Doyle, Member
Helen Ireland, Member
Dan M. Offret, Member

District Staff: Joseph Olsen, General Manager
Diane Bracken, Chief Financial Officer
Charlie Maish, District Engineer
Tullie Noltin, Recorder
Steve Shepard, Utility Superintendent
Warren Tenney, Assistant General Manager
John Hinderaker, Legal Counsel

Regular Session

I. Call to Order and Roll Call

Judy Scrivener, Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District), called the Board Meeting to order at 6:00 p.m. Jim Doyle, Bryan Foulk, Helen Ireland, Dan Offret, and Judy Scrivener were present.

II. Election of Chair and Vice-Chair for the Board of Directors

Mr. Doyle nominated Judy Scrivener for Board Chair. Mr. Offret seconded the motion. Motion passed unanimously.

Mr. Doyle nominated Bryan Foulk for Board Vice-Chair. Mr. Offret seconded the motion. Motion passed unanimously.

III. General Comments from the Public

Ingrid Saber, a resident of the District, asked why the Board did not ask for other nominations or engage in more discussion. Ms. Scrivener explained that a motion and a second were made, followed by an opportunity for discussion. Mr. Foulk said that if anyone else had been interested in running or nominating others, they were free to speak up.

IV. Consent Agenda

- A. Approval of Minutes – December 8, 2014 Board Meeting.**
- B. Ratification of Billing Adjustments.**
- C. Approval of Water Service Agreement – Encantada at Tucson National.**
- D. Approval of Water Service Agreement – Estates at San Joaquin, Lots 1-10.**
- E. Approval of Water Service Agreement – Mattress Store at Ina & Oracle.**

Mr. Offret made a motion to approve the Consent Agenda. Mr. Foulk seconded the motion.

Mr. Offret said the billing adjustments seem lower this month, which is good for the District.

Mr. Foulk asked when Encantada at Tucson National will be completed and if the roads will be widened in the surrounding area. Mr. Maish said it expected to be completed late this year. The builder is required to widen Shannon Road to Club Drive but that should not impact the District's lines.

Motion passed unanimously.

V. General Business - Items for Discussion and Possible Action

A. Monthly Status of the District.

Mr. Olsen said the 2014 calendar year demand for Metro Main was 4.3% lower than 2013, and Metro Hub demand was 1.7% lower over the same period. The 2014 demand for Metro Main was the lowest on record dating back to 1996. There continues to be significant declines in the water system demand. Mr. Olsen highlighted the fact there needs to be discussion with the Finance Oversight Committee (FOC) in March regarding options for revenue stability, including balancing the fixed and variable revenues with the fixed and variable costs.

Vessels No. 2 and 3 of the Arsenic treatment system at Hub well No. 3 have been replaced. The annual round of static water level measurements and capacity testing of the District's wells is approximately two-thirds complete. Regarding the Cortaro-Marana Irrigation District (CMID)

effluent groundwater savings facility project, the Bureau of Reclamation (BOR) is moving towards completion of the draft agreement review. Once the District receives BOR comments, the final form will be forwarded to Pima County and the project can proceed.

Applications for Designation for Assured Water Supply (DAWS) for Metro Main and Metro West were submitted on December 29, 2014. The Board approved both DAWS at the November Board meeting. Staff is working with Arizona Department of Water Resources (ADWR) to provide additional information on the modification application for the DAWS for Metro Southwest – Diablo Village. The final draft of the Long Range Water Resources Plan for the District's six service areas is complete and will be brought to next month's Board meeting. Excavation for the Ranch House Estates waterline project commenced on January 7, 2015 and construction is ongoing.

B. Financial Report.

Ms. Bracken said revenue and expenditures through November were both favorable with revenue of \$581,911 over budget using a straight line projection. Increases are largely attributed to water sales and other income. Water sales are ahead of budget on a straight line projection but after averaging the monthly consumption over a five and ten year period, in November, the District should have clocked at approximately 46% of the budgeted water revenue but is currently at 44%. Historically, February and March would be the two lowest water consumption months followed by December and January with above average consumption resuming again May through October. Operating expenditures are under budget by \$560,183 using a straight line comparison. Revenue in excess of operating expenditures is favorable, when compared to the budget by \$1,142,093 for the first five months of the fiscal year. During the prior fiscal year comparison, revenue for November is \$38,028 ahead of November of 2013. Operating expenses this fiscal year when compared to the prior fiscal year are lower by \$175,543. The largest reduction is in salary and benefits, which are \$113,351 lower and consulting and contracted services with are \$77,031 lower. There is a projected increase in CAP water purchases of \$71,371 with a straight line comparison. Expenditures to date for capital improvement programs funded with 2007 Water Infrastructure Authority of Arizona (WIFA) funding are \$12,185,765 pending the final completion of the vessels at Hub wells 1A and 3.

A total of 7 meter applications were received in December compared to 97 meter applications received in November prior fiscal year. Meter applications so far this fiscal year total 44, compared to 197 in December 2013. With 127 meter applications budgeted in Metro Main and 37 applications received, 29% of the budget has been realized. With 65 new connections budgeted in Metro Southwest and 7 applications received, only about 11% of the budgeted

connections have been realized. With the reduction in meter applications, development revenue is currently under budget by \$34,913 on a straight line projection.

The office solar continues to generate a savings. Electric costs for the first six months total \$16,427, compared to \$20,019 last fiscal year and \$21,342 for the same period in fiscal year 2011, for a year to date cost reduction of \$4,915 when compared to 2011 and a reduction of \$3,592 compared to 2013.

C. Approval of Professional Auditing Services Contract.

Mr. Olsen said the District utilizes an outside professional auditor to annually audit the District's financial records. Proposals for new auditing services were due December 18, 2014 and five proposals were received. Staff recommends that HintonBurdick PLLC perform the professional auditing services due to their experience with auditing governmental water providers as well as experience with customers using the same Caselle billing and accounting software in use by the District. HintonBurdick will save the District over \$10,000 annually from the previous professional auditing services contract.

Mr. Offret made a motion to approve the Professional Auditing Service contract with HintonBurdick PLLC to perform the District's Fiscal Year 2015 audit at a not-to-exceed amount of \$22,500, the Fiscal Year 2016 audit at a not-to-exceed amount of \$23,100, and the Fiscal Year 2017 audit at a not-to-exceed amount of \$23,700 including an annual single audit if required. Mr. Foulk seconded the motion.

Mr. Offret asked who among staff evaluated the proposals. Ms. Bracken and Sheila Willis, Accounting Supervisor, evaluated the proposals. Mr. Offret asked about the difference in total audit hours proposed by HintonBurdick versus other agencies. Ms. Bracken said she asked about the total hours and HintonBurdick responded that they can offer a higher level of professional staff that are more experienced and organized, reducing the time to accomplish the work. Mr. Offret noted their experience with Caselle software will be a great help. Ms. Bracken agreed and added the proposal also include recommendations for improvements and suggestions as part of their process. Mr. Offret had noticed and appreciated that.

Motion passed unanimously.

D. Approval of Oracle Jaynes Station Road Property Acquisition.

Mr. Olsen said one of the capital infrastructure initiatives the Board approved in the current fiscal year budget is to begin the coordination and design efforts to redrill the Oracle Jaynes Well, which is over 40 years old and has continued declines in production capacity. During

initial coordination activities, it was determined the existing site is too small to enable the well to be redrilled. The property immediately adjacent to the existing site is for sale. The property was listed at \$250,000 and staff was able to negotiate the property down to \$185,000. The current fiscal year budget for this initiative is approximately \$178,000 and adequate funds are available in the budget to cover the difference to purchase this property this year. Should the Board approve the purchase agreement, staff would coordinate a feasibility study and site investigation to ensure the property meets the needs of the District. If the feasibility study finds no unexpected issues, the purchase would proceed, although it is important to point out the sale process could take up to a year due to provisions in the Arizona Mobile Home Parks Residential Landlord and Tenant Act, which stipulates time frames for allowing the three tenants on the property to relocate.

Mr. Offret said this is a big piece of land with over 5 acres. He asked how the District plans to secure the property if it is purchased. Mr. Olsen said there are secondary benefits to this property that go beyond the ability to increase lost production capacity. The District is also in need of additional secure, outdoor storage to free up space at another District site that has become crowded. The purchase is over 5 acres but for the District's needs including well redrilling and outdoor storage only about half of this parcel is required. If the Board moves forward with this purchase, once the well redrilling is completed, the discussion would then come back to the Board about a potential lot split, placing the southern portion up for future sale. Furthermore, the top half of the property could be adequately secured for outdoor storage with fencing, cameras, and other security measures. Mr. Offret asked if securing the site will be an extra expense and Mr. Olsen said yes. Immediately after redrilling, securing the infrastructure itself will be a priority, followed by an assessment analysis of the proper long-term configuration for storage. As the District proceeds, the exact area needed will be better understood.

Mr. Offret made a motion to approve the purchase agreement for the property located at 2227 W. Oracle Jaynes Station Road in the amount of \$185,000. The property is ideally located adjacent to the existing Oracle Jaynes well and would provide a good site for a replacement well. Ms. Ireland seconded the motion. Motion passed unanimously.

E. Approval of Contract with Tierra Right of Way Services for Land Acquisition Services for the CAP Recharge, Recovery and Delivery System.

Mr. Olsen said on November 10, 2014, the Board authorized staff to proceed with developing a contract with Tierra Right of Way Services to perform initial site and property investigations relating to the CAP Recharge, Recovery and Delivery System as the first step of implementing this key initiative. In the current fiscal year budget, \$100,000 is allocated to perform the necessary property investigation along the proposed and potential routes to determine feasibility

and willingness of any property owners to sell. No properties are envisioned to be purchased under this effort until next fiscal year and any individual purchases or acquisitions would be brought to the Board. There were a couple of clerical errors found in the maps and scopes of work, which have been corrected and provided to the Board.

Mr. Offret said the scope of services was excellent, well thought out, well designed, and gives him confidence in what staff is doing.

Mr. Foulk made a motion to award the Land Acquisition Services for the CAP Recharge, Recovery and Delivery System contract to Tierra Right of Way Services, for a not-to-exceed amount of \$100,000 and a contract completion date of June 30, 2015. Mr. Offret seconded the motion. Motion passed unanimously.

VI. General Manager's Report

Mr. Olsen said final reallocations for Hoover Power were published by the Western Area Power Administration (WAPA) and the District will receive 179 kilowatts, an approximate 70% increase over previously published numbers. Later this week, District staff will also attend an Arizona Power Authority (APA) workshop to identify how their pool of Hoover Power will be reallocated. Power from either of these reallocation pools is financially beneficial to the District, though power would not be delivered until October 1, 2017.

The Metro Water Municipal Property Corporation (MPC) held its final meeting on December 9, 2014 and dissolved. The paperwork has been submitted to formally complete this process and the only remaining item is final processing by the Arizona Corporation Commission (ACC).

The Finance Oversight Committee (FOC) will hold its next meeting January 26, 2015 to discuss the mid-year budget review and potential updates to the procurement policy. Both items will then be brought to the February Board meeting. Board members are always welcome to attend.

VII. Review of Open Meeting Law

Mr. Olsen said the District must comply with provisions of the Arizona Open Meeting Law (OML). While staff, legal counsel, and the Board are all well versed in the OML, Mr. Olsen felt it was important to refresh this critical knowledge on a regular basis. Jeff Matura of Graif, Barrett & Matura has offered to give a presentation. Mr. Matura provided a booklet titled, "Arizona Open Meeting Laws" including OML State Statutes to Board Members and staff.

Mr. Matura started by defining a public meeting. An open public meeting requires three things: 1) a gathering of a quorum of members, 2) discussing in person or by technological means, and 3) discussing, proposing, deliberating, or taking legal action. Not every meeting is an open

meeting. For example, if a quorum of the Board meets to watch football, it is not an open meeting because they are not discussing, proposing, deliberating, or taking legal action. If those three requirements are not met, it is not an open meeting subject to OML.

Meetings could occur via technological means such as phone calls, text messages, emails, or any of the many communications available today, including social media or facetime. If a discussion of Board Members is taking place, it is potentially subject to OML. Mr. Matura said email communications are a minefield for OML. If an email from one member to another about a topic is then forwarded to other members, an OML violation has occurred because they have now reached a quorum. An email from one member to all other members asking to put an item on the agenda is not a violation because it is not a discussion or action; however it could easily lead to a discussion and Mr. Matura recommends never sending email to all members. Suggestions to place an item on a future agenda should go to the General Manager instead. He gave an example of the kind of rare email to all Board Members that would not violate OML, wherein one Board Member won the lottery and the others are sending congratulations. Mr. Matura strongly cautioned against Board Members emailing other Board Members. A general rule of thumb is if a topic is important enough to email to everyone, it is important enough to be discussed in person at a properly noticed open meeting and not through email.

Meeting minutes are to be available within three working days after a meeting. The public can record or videotape an open meeting, as long as they are not creating a distraction or interfering. The reason for an agenda is to give the public fair notice on what will be discussed to give them an opportunity to know what is taking place. The open call to the public allows the public to make comments and ask questions. If a topic not on the agenda is raised, it is okay to identify the concern for a future agenda but it would not be correct for the Board to engage in discussion on a new topic not on that meeting's agenda. In the event that a personal criticism is directed at a Board Member during a call to the audience, the Board Member may respond directly so long as no official action takes place, except for placing the item on a future Board meeting agenda. Each item discussed at an open meeting must be on the agenda. The public body may not try to avoid a quorum, for instance, by taking turns leaving the room.

Mr. Offret asked if it would be appropriate for the Board to ask the General Manager to respond to concerns raised in the call to the public. Mr. Matura said that would not be appropriate if the item is not on the agenda; however, the General Manager or other staff can respond to questions on their own volition, as they are not members of the body. Mr. Foulk used an example of a customer complaint raised during the call to the public. Mr. Olsen would be able to answer because it is his responsibility to manage those situations, even though it is not a Board item. Mr. Matura confirmed there would be nothing wrong with Mr. Olsen doing that as long as the Board was not directing him to answer.

Mr. Matura said there is an exception clause in the OML for true emergencies. Ms. Ireland asked for the specific Statute, which Mr. Matura noted was located in the back of the book provided: A.R.S. §38-431.02, "Notice of Meetings," subsection J.

Mr. Matura said executive sessions require a quorum to be present, and a majority of those present to vote to go into executive session, and it must be for an acceptable topic. Executive sessions allow discussion of certain topics, such as employment issues, legally protected records, consulting an attorney, discussing pending litigation, or discussing negotiations with employee organizations or Indian reservations, or discussing the purchase, sale, or lease of real property. Board members do not vote in executive session, they only discuss the topic. The public is entitled to hear the vote so votes are only conducted in open public session. Minutes are required for executive session meetings and must include the date, time, who is present, and a general description of topics discussed. Nothing in state law requires detailed executive session minutes, which are not recommended. Executive session discussions and minutes are confidential and nothing discussed in executive session can be shared with others. By law, an executive session exists to allow members to discuss a topic that is exempt from public view. The public body is entitled to executive sessions and if confidential information is leaked, the consequences could include waiver of attorney-client privileges, fines, and lawsuits. In extreme cases, the court can remove a member of the public body for OML violations.

If a mistake is made, such as leaving an item off the agenda or not giving proper notice, there is a way to correct it. Every decision made during a meeting that was not properly noticed is null and void but another meeting can be scheduled with proper notice, and the actions can be ratified to fix the prior mistakes. If one item is improperly handled or voted on that did not appear on the agenda of an otherwise properly noticed meeting, the whole meeting is not thrown out; only the one issue would require ratification at the next meeting.

Mr. Matura said individual opinions expressed outside of meetings, such as statements made to the media, are not subject to OML.

There are mechanisms to investigate OML violations through the Attorney General's office or the County Attorney's office. Mr. Matura advised if a mistake is made, it is better to self-report. Some boards self-report often. There is nothing wrong with self-reporting but if there are consistent OML violations, the State may take action to enforce the pertinent OML provisions.

Mr. Olsen asked about instances where the General Manager sends an update email to the entire Board. Mr. Matura said such instances are acceptable because the General Manager is not a member of the public body and it is part of his or her job to inform the Board. Mr. Matura suggests using the blind carbon copy (BCC:) email feature, so that Board members can reply only to Mr. Olsen and not the other Board Members.

Ms. Scrivener asked when a public vote is required on an item discussed in executive session. Mr. Matura explained a situation where a lawsuit is pending against the District and a lawyer is present or on the phone in executive session. Depending upon the discussion, the Board may decide to settle the lawsuit, in which case it would need to come back to public session and vote on approving or adopting that settlement. If the purpose of the executive session is merely an update or strategy discussion on a lawsuit that does not require a decision or action, a vote is not required. This can be a little tricky, so rely upon Legal Counsel to know when a vote is required.

Mr. Matura invited the Board to direct any OML questions that may arise after this meeting to Mr. Olsen, who will relay them to Mr. Matura.

VIII. Legal Counsel's Report

Mr. Hinderaker said he had nothing further to report. He commended Mr. Matura on his presentation and endorsed Mr. Matura's recommendations on OML.

IX. Future Meeting Dates; Future Agenda Items

Mr. Tenney said there will be an FOC meeting on Monday, January 26, 2015. The next regular Board meeting is scheduled for February 9, 2015.

X. General Comments from the Public

Ingrid Saber, a resident of the District, asked if meeting notices that included a minimum quorum of Board Members and excluded others would be fair. Mr. Olsen said that meetings must be publically announced, so all Board Members are aware of meetings. Ms. Saber asked for clarification on meeting by phone. Mr. Tenney explained that if a Board Member cannot attend a meeting in person and would like to instead call in to the meeting, it is noted at the start of the meeting that the Board Member will participate with use of an electronic device. The Board Member is connected by speakerphone, so that everyone at the meeting can hear their comments. Ms. Saber asked if a violation of OML is made, would Metro Water pay damages. Mr. Olsen said the reason Legal Counsel is present at Board meetings is to advise and consult on issues as they arise in order to remain compliant with OML.

XI. Adjournment

The meeting adjourned at 7:09 p.m.

Judy Scrivener, Chair of the Board

Warren Tenney, Clerk of the Board