

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

May 14, 2012

**** Board Room ****

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

MINUTES

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

District Staff: Mark R. Stratton, General Manager
Christopher W. Hill, Deputy General Manager
Michael Land, Chief Financial Officer
Charlie Maish, District Engineer
Michael McNulty, Legal Counsel
Tullie Noltin, Recorder
Warren Tenney, Clerk of the Board

Regular Session

I. Call to Order and Roll Call

Bryan Foulk, 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. Bryan Foulk, Dan M. Offret, Richard Byrd, Jim Doyle and Judy Scrivener were present.

II. General Comments from the Public

There were no comments from the public.

III. Consent Agenda

- A. Approval of Minutes – April 9, 2012 Board Meeting.**
- B. Approval of Minutes – April 30, 2012 Board Meeting.**
- C. Ratification of Billing Adjustments.**

Mr. Tenney said the April 9th minutes distributed included a duplication of page 5. The extra page will be removed.

Mr. Offret made a motion to approve the Consent Agenda as corrected. Ms. Scrivener seconded the motion. Motion passed unanimously.

IV. General Business - Items for Discussion and Possible Action

A. Monthly Status of the District.

Mr. Stratton said the elation in March regarding water consumption was short lived. April usage was substantially less than the same period last year in all three service areas, which had an impact on metered sales for April. Metro Main used 40 million gallons less than the same time last year. Hydrology is working with Department of Water Resources (DWR) on obtaining a designation of Assured Water Supply for the Metro Southwest area; however, there could be some delays with that because the designation may change according to discussions regarding potential development in that area. Three road projects are underway: Magee Phase 2, La Cholla, and La Canada South. Work on Iberia Lane is nearly complete. A few projects will go out for bid soon, including the Orange Grove waterline relocation, Magee Phase 3, and Riverside Transmission Main. Improvements at Fruchthendler wells are slated for contracts soon. The District continues to have a fair amount of work associated with County road improvements and will for the foreseeable future.

Mr. Offret asked Mike Block, District Hydrologist, to clarify the report on drain holes at Avra Valley Recharge Project (AVRP) possibly beginning to clog. Mr. Block explained the basins have been running six months without a break and are expected to reach an equilibrium water level soon. Mr. Foulk asked if the bore holes could be blocked. Mr. Block said there could be some silt clogging the surface. Flow will be stopped while the gates are being replaced and that could rejuvenate the basins.

B. Financial Report.

Mr. Land said revenues continue to dwindle. The District is \$668,000 under budget through March. The first week of May continues the trend with \$26,000 down compared to May 2011. Expenditures are \$366,000 under budget so the net effect of \$302,000 below projected levels. On a positive note, spending is normally curtailed in June so the District could still wind up close to budget. Compared to last year, through March, revenues are down \$611,000. Water sales are down but there were two large revenue sources last year: a water rights sale and a IRS refund.

The District recently received about \$4,000 from a settled bankruptcy. Meter installations are still struggling. Solar energy costs are maintaining as we approach the one year mark.

Mr. Foulk asked if water sales to construction companies have been positively impacted by the reduction in the bulk water rate in the past year. Mr. Land said bulk water sales have not picked up thus far and are not a strong revenue source at this point. Mr. Block said bulk volumes are nowhere near historic levels. Mr. Land said this is not a large revenue source. Mr. Stratton said the road contractor for La Canada South has set up a tank with Tucson Water service at La Cima Middle School. Mr. Foulk asked about Ashton Company, who was expected to purchase bulk water up near the Old Magee Trail well. Mr. Stratton said Ashton Company has done a lot of their soil cement work in that area but they did not purchase as large a volume as anticipated. Mr. Offret thought he saw a contractor using District water near Las Lomitas and La Canada, and Mr. Stratton said that was the District's own contractor. The County's road contractor is starting today and has set up a tank and connection but they have not started yet.

C. Legislative Session Wrap-up.

Mr. Tenney said the Arizona Legislative session is over. There was no major legislation related to water or special districts. Arizona Department of Water Resources (ADWR) was fully funded without municipal fees. The bill supported by the Board, SB 1417, regarding exception to long term storage credits, was sent to the Governor for signature. Mr. Offret asked how much ADWR received, and Mr. Tenney said the amount is basically the same as last year but it will now be fully funded through the General Fund.

D. Consultant Selection for Miscellaneous Geotechnical & Material testing Services for Fiscal Year 2012-2013.

Mr. Offret asked if the process of evaluating and selecting consultants before negotiating a contract amount is in line with state procurement laws. Mr. Stratton said the process is actually required through state law. The engineering field, through their lobbying efforts, was able to get statutory language in their proposals to be selected according to performance and not cost. The District cannot ask for costs until after the consultant has been selected by the Board and after that, the District can negotiate with them.

Mr. Offret asked if the reviewers in the review process are rotated or the same people each time. Mr. Maish said staff generally rotates but each time there may be one of three who was involved in the prior process and two new reviewers. Contracts are reviewed every 3 years and are renewed the other two years. Mr. Offret wondered if it would be beneficial to have outside reviewers for a new perspective. Mr. Maish said it is possible but contract amounts are minimal, so it may not be justifiable to hire someone from the outside for a \$10,000 or \$20,000 contract.

Mr. Offret made a motion to approve the Engineering Consultant ranking, and direct District staff to proceed with developing an acceptable contract agreement (contract and salary rates) with the top ranked firm, Speedie & Associates, for Miscellaneous Geotechnical & Material Testing Services. If staff is unable to negotiate an acceptable contract agreement with Speedie & Associates, then staff has the authorization to negotiate with the next highest ranked firm, and continue the process, if necessary, until an acceptable contract agreement is obtained. Staff shall submit the final negotiated Miscellaneous Geotechnical & Material Testing contract agreement to the Board of Directors for approval. Ms. Scrivener seconded the motion. Motion passed unanimously.

E. Consultant Selection for Miscellaneous Design Services for Fiscal Year 2012-2013.

Mr. Offret made a motion to approve the Engineering Consultant ranking, and direct District staff to proceed with developing an acceptable design contract agreement (contract and salary rates) with the top ranked firm, Engineering and Environmental Consultants, Inc., for Miscellaneous Water Distribution Design Services. If staff is unable to negotiate an acceptable design contract with EEC, then staff has the authorization to negotiate with the next highest ranked firm, and continue the process, if necessary, until an acceptable design contract agreement is obtained. Staff shall submit the final negotiated design contract agreement to the Board of Directors for approval. Ms. Scrivener seconded the motion. Motion passed unanimously.

F. Consultant Selection for Miscellaneous Survey Services for Fiscal Year 2012-2013.

Mr. Byrd asked if contracts could be consolidated, or if there is an advantage to having separate survey and design contracts. Mr. Stratton said a lot of projects do not require design work, or can be designed internally. The District's surveyor is working on a lot of relocation projects, whereas the design consultant is currently working on well projects. There is usually a small amount of work. Mr. Maish said the District likes to give both types of contractors the opportunity to vie for contracts. If the District consolidated contracts, small companies could be pushed out of doing business with the District.

Ms. Scrivener made a motion to approve the Engineering Consultant ranking for Miscellaneous Survey Services, and direct District staff to proceed with developing an acceptable survey contract agreement (contract and salary rates) with the top ranked firm, Stantec, Inc. If staff is unable to negotiate an acceptable survey contract agreement with Stantec, Inc., then staff has the authorization to negotiate with the next highest ranked firm, and continue the process, if necessary, until an acceptable survey contract agreement is obtained. Staff shall submit the final negotiated survey contract agreement to the Board of Directors for approval. Mr. Offret seconded the motion. Motion passed unanimously.

G. Renewal of Interim Remedial Action Contract with the Arizona Department of Environmental Quality for the South Shannon Treatment System.

Mr. Offret made a motion to approve Amendment No. 21 of the Interim Remedial Action Contract at the South Shannon Facility between the Arizona Department of Environmental Quality and the Metropolitan Domestic Water Improvement District to renew the contract period from July 1, 2012 through June 30, 2013. Mr. Scrivener seconded the motion.

Mr. Offret asked how reimbursable personnel costs at South Shannon are tracked. Mr. Land said a labor distribution time sheet is kept for the one employee taking samples. The salary of the Water Quality Specialist is reduced for this project.

Mr. Byrd asked why the total laboratory costs for South Shannon have gone up from 6 years ago. Mr. Block explained that prior to 2006, the facility had an air stripper and staff only had to sample monthly. Now that the granular activated carbon (GAC) system is in place, weekly sampling must be done. Mr. Byrd asked which contaminate of concern is being monitored and Mr. Block replied sampling is done for volatile organic compounds (VOC).

Motion passed unanimously.

H. Annual Subsidence Monitoring Update.

Mr. Tenney said the District has been monitoring land subsidence since 2008 to see if it is occurring within District boundaries or in the region. There was no subsidence recorded in Metro Main this year.

Mr. Offret asked Mr. Block what the difference is between United States Geological Survey (USGS) and Arizona Department of Water Resources (ADWR) measurements. Mr. Block explained ADWR monitors land elevation and USGS monitors storage change; the two methods are totally different.

Mr. Foulk asked about a small unusual spot on the map on Oracle Road outside the greater Metro Main area. Mr. Maish said that small piece of property is part of Oro Valley Country Club and serviceable by the District. The original legal boundaries of the District included that property, which is up against a land bank and is undeveloped at this time.

I. Sick Leave Pay-Out Policy.

Mr. Stratton said the District is heading into an area of financial instability with the current sick leave pay-out policy. He was asked by the Board to come up with a more sustainable policy

without having dire financial effects on the District. Staff looked at other municipalities and provided their policies in the report. There seem to be two areas of thought: a cap on hours and a lower percentage than what the policy currently has. If a cap is placed on hours, the maximum liability can be understood and there would be a limit to what might be paid out, as opposed to allowing the percentage to continue to grow knowing there is a potential for employees to stay with the District for 20-30 years and accumulate a large amount of sick leave, making payouts rather substantial.

Today, the District has a total liability of about \$700,000 for all employees including vacation and sick time. Staff looked at putting a cap on sick leave payout at 750 hours for the same duration and the sick leave portion of the liability was reduced from \$502,000 to \$395,000, about \$107,000 difference. However, knowing that we are looking at next year's budget, Mr. Land provided a look forward, not knowing how many more sick hours would be added but using the current number of hours, the liability next year, because of having 8 employees with 20 years of service next year, increases the liability back up to \$491,000. So the indication is that 20 year mark is when the maximum amount will be hitting. Staff also compared the policy with the City of Tucson and Pima County and if the District's current number of hours were calculated according to those policies, the result would be \$130,000 more under the District policy. Staff is recommending a cap on the hours. If percentages were reduced to 50% for 20 years, the payout would roughly equal 100% of 750 hours at 23 years of service. It is up to the Board whether it would like more information on other alternatives or act on the recommendation of staff as provided.

Mr. Foulk said he realizes it was a different time back in 2003 but the District's generous policy does not match any other policy he can see. He asked if the employees have the ability to turn sick days into vacation days. Mr. Stratton said the first 5 days of unused sick leave can be transferred into annual leave every year on the anniversary date, according to a policy established in 1995. Several employees do this every year and just about every employee with a high number of sick hours has transferred in the past. Vacation time is capped at 240 hours on the employee's anniversary.

Mr. Foulk said he is not sure he totally agrees that as people retire, the new people coming in at a different pay scale are going to compensate for the payout. His experience has been that employees build up their salary and when they leave there is just a little drop in pay. He is not sure that a large drop in salaries can be assumed even though there are a lot of employees who have been here for the life of the District. Mr. Foulk said the policy is a nice golden parachute but it puts the District in extreme financial burden.

Mr. Foulk said he understands this has been mentioned in audit reports in the past but he does not remember it being referred to as a potential problem. Mr. Land said it has been reported and the auditors do book it as a liability based on payout but it was probably in the footnotes. Mr. Offret said that since the District pays to have these auditors do a management report, it would seem they would include this as a major factor on the well-being of the District. He is surprised this issue is coming forward just this year and does not understand why the auditors did not feel this was more important. Mr. Land acknowledged \$600,000 is a lot of money but the auditors were not looking at it as having a material impact to any one year because employees would retire at different times. Mr. Offret said he feels that it is having a material impact.

Mr. Offret asked Mr. McNulty if a function of this governing Board is to determine the policy of the District, and as such, would the Board be empowered to do anything to this particular system, including paying out nothing for sick leave upon leaving employment. Mr. McNulty confirmed. Mr. Offret said he feels that the Board needs to take this responsibility very seriously and he does not feel the staff recommendation goes far enough. He asked if this matter should be discussed in executive session because it is a labor negotiation. Mr. Tenney said there are no unions working at the District, and therefore no labor negotiations. Executive sessions can be called for personnel matters regarding a specific person but policies relating to staff as a whole are to be discussed in open session. Mr. Offret said another of the seven authorized executive session topics is discussions with legal counsel. Mr. McNulty said that an executive session had not been noticed for this meeting but if the Board felt there were legal ambiguities it could be done. Mr. Offret said he didn't think there were any legal ambiguities but perhaps legal ramifications. Billie Sue Morelli, Human Resources Specialist, said the sick leave pay-out policy is part of the employee handbook and any business can change its own handbook at any time. This is the District's prerogative. Mr. Foulk said the Board can model the policy after the most extreme example, it would be legal. Mr. Offret said he is not advocating any specific action. Mr. Stratton said the recommendation from staff is just a recommendation and can be altered in any way. That is the Board's prerogative and authority.

Mr. Offret suggested that because this issue has so many details, a study session would be helpful. Mr. Foulk agreed and suggested a session study be held in two weeks to discuss this matter further.

Mr. Foulk referred to the paragraph right before the recommendation proposing retirement as a condition of receiving payout. Mr. Stratton said basically, this says the District will only pay out if the employee actually enters retirement, and not if they leave for another job. Mr. Doyle added that an employee leaving for another job under ASRS should still get the payout.

Mr. Doyle said he gets a little emotional about this subject, as a Pima County employee. The District policy was established because there were conversations about municipal employees not being paid as well as others for many years. He thinks the Board would be doing a disservice to employees by not letting them being involved with this, and it would start to affect their retirement. Mr. Doyle urged the Board to be careful and continue to promote longevity. He does not agree with adjusting this.

Mr. Stratton noted three employees have been with the District since prior to changes to the ASRS in 1984, which allows them to include the accumulated sick leave in retirement calculations.

Mr. Foulk said he would like to see a study session too because there are so many sides to consider. Several municipalities have had to change policies for budgetary reasons. Liabilities have to factor into the budget and the Board has a responsibility to employees but also every water ratepayer. This policy needs to be seriously looked at and he feels it can be adjusted and still leave the employees with a fantastic retirement. There must be limits and the District should not be offering the best sick pay policy in the entire state of Arizona. It cannot get any better than unlimited hours paid at 100% after 20 years. Mr. Offret agreed.

Ms. Scrivener, Mr. Byrd, and Mr. Doyle agreed with having a study session too, and it was scheduled for Tuesday, May 29, 2012 at 5:30 p.m.

Mr. Tenney asked what the Board would like prepared for the study session. Mr. Foulk suggested alternative tiered structures be calculated and consideration be given to city and county policies. Mr. Offret said the District seems to be the only entity that ties the percentage to longevity and not actual hours and he would like to see that changed. Mr. Foulk said the Board can start with those options and discuss others.

- J. Discussion and Direction of Draft Fiscal Year 2012-2013 Budget.**
- 1. General Operating Costs.**
 - 2. Capital Equipment and Improvement Projects.**
 - 3. Revenue Generation.**

Mr. Tenney said staff prepared an updated report after the study session two weeks ago. The budget is broken down into three key areas for discussion.

Mr. Offret said he thinks the District will have to increase the base rate and implement a separate fee. Mr. Stratton said a fee could be put into a fund for a specific purpose rather than going to the

general fund. Oro Valley has a groundwater preservation fee of 95 cents per thousand gallons and Marana has a similar fee of 40 cents. Oro Valley's fee started at 21 cents and has been increased to 95 cents over time. Mr. Foulk would like to see a CAP Recovery fee. He agreed with Mr. Offret that the District needs to establish a way to fund District needs that have been put off for some time, before bigger problems develop.

Mr. Stratton said Water Infrastructure Finance Authority of Arizona (WIFA) may be able to finance the reclaimed water line, although there would be a slight increase in wage costs with Innova. Until that can be determined, the reclaim water line is in the draft budget at \$320,000. Mr. Offret said he is concerned about the liquidity ratio being affected detrimentally. Mr. Land said it would have very little effect.

Mr. Foulk said current revenues are down \$600,000 but expenses are also down \$300,000. He understands why revenues are down but asked what happened to make expenses go down. Mr. Land said some of that reduction in expense is because less energy is required to pump less water and another factor is the delay of well maintenance. Mr. Stratton said budgets are drafted with very conservative numbers to allow a little cushion. Mr. Foulk asked if anything extraordinary had happened to keep expenses low. Mr. Stratton explained that Utility division staff has been needed to address unforeseen circumstances with waterline relocations, delaying some of the other normal work. Staff reallocation to those resources has cumulatively helped keep the expense side down but that cannot be guaranteed every year.

Mr. Doyle asked if higher water sales are anticipated in May and June. Mr. Foulk said usually water sales pick up in the summer and the District could look better by the middle of summer. Mr. Stratton said normally usage rebounds in April, May, and June but so far this year it has not.

Mr. Foulk thinks it would be wise to look at some way to make up the \$600,000 in revenues the District is losing, plus more to make up for delayed capital projects. He would like to see the District back where it was, being able to do the things that need doing, and also keep reserve levels up. With the implementation of a CAP Recovery fee, he hopes to raise \$800,000-\$850,000. Mr. Stratton said a fee specifically designated for CAP Recovery would not help the operational side of the budget. Mr. Foulk clarified that the fee would free up money that would otherwise be needed. Mr. Stratton noted a new fee implemented according to the normal rate increase timeframe would be effective in November and would accumulate for seven months of its first fiscal year.

Mr. Byrd asked what portion of budget pays for South Shannon remediation work. Mr. Stratton said the District receives 100% reimbursement from ADEQ. In recent years, the District has developed contingency plans with Malcolm Pirnie to maximize efficiency there. Not knowing

what the state budget will look like each year, the District has to be ready to continue operations if ADEQ ever says cannot reimburse anymore.

Mr. Stratton said Mr. Offret brought up the COLA at the last meeting, and he asked if Mr. Offret has thought more about that or changed his position based on what is included in the budget. Mr. Offret said his thoughts have not changed. Mr. Stratton said the District has received more information on the ASRS settlement. Employers are to return to the even contribution split retroactively to July 1, 2011. All District staff has been reverted back to 50% - 50%. ASRS states it is the employers' obligation to refund the difference to their employees, but because the District implemented a 0.7% salary increase to offset the change last year, so the District does not owe staff any type of refund. Staff still has that 0.7% on their base salary, and the Board needs to decide whether to keep it or remove it. If a 2% COLA is approved in the new budget, staff will effectively have a 2.7% pay increase. Mr. Doyle said he thought there were funds allocated by the state to ASRS for refunds but Ms. Morelli said the email she received indicated ASRS is not giving any refunds. Ms. Scrivener said the upper echelon at Pima County is looking at ways to factor the significant cost of refunds to County employees. Ms. Morelli said the District will be required to submit an accounting of contributions to the state. She is thankful the District was proactive last July because we are not in the same difficult situation most entities are now. Mr. Offret said he would like to withhold further comment regarding COLAs until after the May 29th study session.

V. General Manager's Report

Mr. Stratton said the proposal by Mr. Zagorsky from the April 30th study session has been passed on to legal counsel. The matter is expected to be on the June agenda. Developers are starting to show interest in land acquisitions at Metro Southwest. The meter program is moving along at Metro Southwest and the server and communication systems will be installed soon. The meter manufacturer plans to work out the glitches on their own servers before transferring it to the District's. Mr. Stratton will be on vacation the first week of June and then will be traveling to the AWWA annual conference the following week to raise money for Water For People.

VI. Legal Counsel's Report

Mr. McNulty said that Keri Silvyn has decided to form her own boutique law zoning law firm with her father, an attorney in the Scottsdale area. Mr. McNulty will be talking with Mr. Stratton about selecting another lawyer to attend the Metro Water District Board meetings.

Mr. McNulty had a conversation with a Civil Deputy regarding the proposed land exchange, who said such an exchange is very rare. Fred Rosenfeld of Gust Rosenfeld said the District has the

right to acquire property and according to statutes, there are various ways to do so. Acquisitions must be necessary or convenient for the District but the rationale for acquiring property does not have anything to do with the purpose. Mr. Zagorsky did mention taxes and Mr. Land found that a land exchange with a state or government entity may pose serious impediments to Mr. Zagorsky, so he should know that if this is pushed forward, the District should insist that he consults with an attorney so that he understands how it will pan out. Practical considerations must be made, appraisals would be needed, and current leases would need to be reviewed. Mr. Stratton said the District must consider what is in best interest of District. A full report will be made in June.

VII. Future Meeting Dates; Future Agenda Items.

Mr. Tenney said the next regularly scheduled session of the Board of Directors will be held on June 11, 2012. There will be a Study Session on May 29, 2012 at 5:30 p.m. to discuss Sick Leave Pay-out further, and he suggested the budget also be placed on that agenda; the Board agreed.

VIII. General Comments from the Public.

There were no comments from the public.

IX. Adjournment.

The meeting adjourned at 7:19 p.m.

Bryan Foulk, Chair of the Board

Warren Tenney, Clerk of the Board