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

May 29, 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 Jim Doyle, Member Judy Scrivener, Member
Board Members Not Present:	Richard Byrd, Member
District Staff:	Mark R. Stratton, General Manager Christopher W. Hill, Deputy General Manager Michael Land, Chief Financial Officer Charlie Maish, District Engineer Doug Metcalf, Legal Counsel Tullie Noltin, Recorder Warren Tenney, Clerk of the Board

Study 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 5:30 p.m. Bryan Foulk, Dan M. Offret, and Judy Scrivener were present. Jim Doyle arrived at 5:34 p.m. Richard Byrd was not present.

II. General Comments from the Public

There were no comments by the public.

III. Discussion and Possible Action for Sick Leave Pay-Out Policy

Mr. Stratton said after the last meeting's discussion about the sick leave pay-out policy, he had a conversation with Legal Counsel regarding potential legal liability associated with changes to the policy. A letter to the Board explained Legal Counsel's opinion.

Mr. Metcalf said a "vested right" means once someone has earned a right, it cannot be taken away. Looking at the current District policy, after 10 years an employee has the right to 50% of their accumulated sick leave, after 15 years an employee has the right to 75%, and after 20 years an employee has the right to 100%. Someone who has worked at the District for 11 years with accumulated sick leave can walk away with 50% of what they have banked right now if they quit tomorrow. There is no Arizona case that speaks specifically to the sick leave pay-out policy but case law suggests that once an employee is given the right to a check, the District cannot go back and erase that. This does not mean the policy has to be carried forever until all the employees retire. The Board can change the policy going forward; however, it must honor what is already on the books. For example, if the new policy establishes a cap on hours, there would be a concern if the cap is less than what someone has accumulated, because that action could be considered at attempt to take away a vested benefit.

Mr. Doyle arrived at 5:34 p.m.

Mr. Foulk asked a question about modifying the way existing hours are paid out. He gave an example from a local school district, in which employees were paid a flat rate of $125 per day on their banked leave. Mr. Metcalf said the District cannot make such a change to a vested right but employees who have worked for less than the 10 year benchmark have not qualified for any pay-out under that caveat.

Mr. Foulk said learning of a $677,000 liability for the sick leave pay-out makes him feel blindsided. He did not see this liability mentioned in past audit reports.

Mr. Doyle said he was part of the Board that established this benefit. He knew what was happening and wanted to provide this benefit to staff. Mr. Doyle expressed strong concern that sick time is protected and should not be taken away. Mr. Metcalf reiterated the exposure to litigation goes up tremendously if the District tries to take away those vested benefits.

Ms. Scrivener said based on the scenarios and the summary of employees currently vested, she believes the District should establish a threshold. A change in policy would lock-in those vested at the current threshold. Anything after the threshold would have to be accounted for separately. Mr. Metcalf said a change in policy could pose some accounting challenges but he feels the District is capable of handling this administratively.

Mr. Metcalf raised the issue of what would happen if an employee uses enough sick leave to take them below their established threshold. Sick leave is basically the right to continue salary during an illness, so if an employee is sick and uses sick leave, it would be the same as being paid during that illness.

Mr. Doyle said Pima County has a cap of 1920 hours. If employees leave, they get paid half (50%) of that. If employees use some and fall below 1920 hours, they can still accrue more up to 1920. Pima County has not taken away from employees and neither should the District.

Mr. Stratton asked Mr. Metcalf to address the staff recommendation to establish a requirement that a pay-out would occur only if the employee is entering the Arizona State Retirement System (ASRS). Mr. Metcalf said the current policy says employees with over 10 years have a vested right to pay-out as they leave the District. Adding the requirement of entrance into the ASRS onto the existing policy would be problematic because it would add another condition onto the already accrued benefit. The District would be making it more difficult to get the benefit the person has already accrued and that could be seen as lessening the benefit. Mr. Doyle said he is against changing the game for people who have been here for nearly 20 years. Mr. Metcalf said adding such a requirement to already vested employees would increase the District's exposure to litigation. Any issue involving failure to pay wages that are accrued in Arizona has the potential for large monetary pay-outs plus attorney fees and damages. Mr. Doyle mentioned several large pay-outs by Pima County for wrong fair wage and labor practices and he wants the District to be very careful to avoid that. Mr. Metcalf said whatever amount the District fails to pay out could wind up being three times that after litigation. He also encouraged the District to keep a close accounting of any policy transition from years of service to number of hours.

Mr. Tenney wanted to clarify that even employees with a vested benefit under the current policy would be subject to new policy rules moving forward. Mr. Metcalf gave an example of a 16 year employee accumulating hours at 75% would not lose that benefit but future hours would accrue at whatever new rate was established. Any new policy would apply to all employees but would not affect was has already vested, only what occurs in the future. Discussions established that if the new policy requires retirement as a condition of pay-out, an employee with a vested right will get the vested portion of their pay-out upon voluntarily or non-cause separation regardless of whether the new policy stipulates retirement. The benefits earned under any new policy would be paid out according to new policy guidelines, whether or not the leaving employee has any vested rights or not. Mr. Metcalf noted that under the current policy, employees with less than 10 years have no vested rights and if they retire or quit today they will have zero pay-out but it would be a good idea to allow that group to use their time toward the new policy. Mr. Foulk added that would apply also to vested employees; anything accumulated under the new policy is not to be paid out if that person does not retire from the District.

Mr. Doyle asked if employees in the ASRS before 1984 would be adversely affected by a new policy. Mr. Stratton said there are three employees who have been part of the ASRS since before 1984 but not as employees of the District, which was formed on October 2, 1992. Their retirement calculations may be affected by a new sick leave pay-out policy. Mr. Foulk said those three employees will be affected because their sick leave pay-out can be included in their last paychecks to increase their retirement checks for the rest of their lives. Mr. Metcalf said ASRS calculates retirement for those individuals pay based on their compensation plus sick leave but the employer can adjust sick leave. Employers can legally adjust sick leave and compensation in the State of Arizona even though it affects a person's retirement. Stagnant salaries can affect retirement and he feels the same analysis would apply in the computation of sick leave. As long as the employees' vested rights, such as previously accrued sick leave under the current policy are not taken, benefits can be adjusted in the future.

The discussion established that although some staff is locked in to their 10 year or 15 year vested benefit earned before this date, no employee has reached the 20 year benefit of 100%. The Board wanted to craft a new policy, effective immediately. Ms. Scrivener suggested the new policy deal in total hours accumulated rather than related to years of service.

Mr. Land said there are 31 employees with more than 10 years of service out of 52 employees. Their accumulated hours range from 10 to 1342, which totals $503,000. There is a thought to doing away with the policy after the vested $503,000 is paid and he said Billie Sue Morelli, Human Resources Specialist, had some very good points regarding that.

Ms. Morelli said she understands the current policy has to be honored as of today. She said younger staff looks at retirement differently. She does not want to bank sick hours for retirement but would rather see the sick leave pay-out policy go away. Sick leave would still accrue for when someone is ill but it would not be linked to compensation or retirement. The current benefit places a liability on the District that prevents the District from increasing base salaries, which have been stagnant for three years. ASRS bases retirement on final salaries. The Board ought to consider how merit increases can gradually be incorporated again, which will be a bigger benefit to employees. Employees with less than ten years have been affected the most by stagnant salaries. Ms. Morelli questioned the District continuing longevity pay. Those funds and sick-leave pay-out could be used to help bring back merit increases. A check for sick leave upon retirement is just a one-time check but staff needs to see movement in their base salary to be able to stay at the District and care for their families over the long-term.

Mr. Stratton said he agreed increases to salaries benefits staff more than any sick leave pay-out in the long run because it would increase the pay-outs by the ASRS.

Mr. Foulk also recognized Ms. Morelli's point. He said the problem is almost all municipalities have flat-lined. Although he would like all employers to be able to bump up merits, the budgets are not looking rosier. If the District continues to carry forward large liabilities for sick pay, it must begin setting aside monies in the budget, which does take away from merits and other things, to avoid being hit with large pay-outs.

Mr. Doyle said he disagreed with Ms. Morelli. The District has known about this benefit for employees for many years. He said he realizes what Ms. Morelli is looking at but there is never going to be a guarantee of merit raises, especially the way the economy is.

Mr. Doyle thought the District was required by law to be putting a certain percentage aside for those retiring. Mr. Land said the District has been recording the liability every year but has not banked those funds. Mr. Foulk said the District has a liability but has no money to pay for the liability, and that worries him. At the end of fiscal year 2013, that liability would be $677,000. Looking at the budget this year, the District has discussed ways to raise water rates and other fees to the ratepayers to pay for projects. This liability is one more thing that needs to be incorporated into a rate increase for the District to be able to cover it. Nobody is a fan of rate increases but this was not banked. Mr. Foulk disagreed with Mr. Doyle, in that he and others did not catch this liability and prepare for it. Mr. Doyle said the District is not going to have to pay this liability all at once because not everyone is retiring in the same year. He said ASRS requires that a certain amount be put away every year and Pima County does this. Mr. Foulk reiterated that the District has not set any monies aside. Mr. Land confirmed monies for sick leave pay-out have not previously been banked. Mr. Foulk said the number scares him and in the next couple of years several people are expected to retire, so the District needs to set aside a fairly substantial portion for that. The District needs to figure out how to pay for the existing liability and adjust this system now so that number does not start to balloon. Mr. Foulk said the District definitely needs to start setting money aside in the budget. Mr. Offret asked if a certain percentage of the total liability could be set aside every year. Mr. Stratton suggested the percentage should be higher in the first few years because of the employees who are close to retirement. Mr. Offret suggested the funds be spread out over 3-5 years. Mr. Land said 20% of the liability could be set aside every year over a 5 year period. Mr. Doyle pointed out that accumulated vacation time must also be paid to employees when they leave and that time ought to be funded as well. Mr. Foulk said the auditors should have pointed this out.

Mr. Offret asked for the hourly accrual rate of sick time. Ms. Morelli said employees gain 3.7 hours every pay period, or 12 days per year. Mr. Foulk asked for an explanation of the policy to transfer unused sick time into vacation days. Ms. Morelli said employees have the option to transfer the first 40 hours of sick time to vacation time every year. Vacation time is maxed at 240 hours and if it goes over and are not used by the anniversary date, the extra hours are lost.

Mr. Foulk said he likes the idea of sick pay as a reward for those employees who diligently show up to work every day because having staff at work benefits the District and the customers. However, the District cannot afford to pay out 100% of sick pay. The current policy is basically twice what the next best utility in Pima County is. He does not want a policy that cripples the District, so adjustments need to be made.

Mr. Offret said he feels the pay-out should not be more than 50% of yearly salary and should be capped. He does not think any sick leave pay-out policy should be tied to longevity; he prefers a tiered structure similar to Scenario 2 in the report.

Mr. Doyle restated he does not believe in telling employees they will have compensation and then taking it away. He does not mind changing policies if it is in the best interest of Metro Water but he does not want to compromise the employees. Employees about to reach their 20 years have been looking forward to a 100% pay-out. He wants to make sure nobody is affected detrimentally.

Ms. Morelli said a lot of employees are living paycheck to paycheck and they are not worried about what their sick leave pay-outs will be in 20 years, they are worried about what the District is doing now to affect their paychecks. Many employees, if given the choice, would stop contributing to ASRS now because they cannot afford to set aside that much. Ms. Morelli said she would like to see the District take care of both types of staff, those close to retirement and those who are new to the District. Incoming staff sees that there have been no merits and no COLAS, and employees with families cannot build up their salaries like other staff has been able to do. There are staff who want to stay here but are considering leaving because their salaries are not moving. She cautioned that the District will lose good people if the District does not make a plan or start working towards getting salaries moving again such as with modest merit awards.

Mr. Doyle said he struggled to pay into the ASRS when he was first starting his career too. He noted Pima County employees have gone without raises for 5-7 years. Staff can quit and try to go somewhere else but they will not find jobs.

Mr. Foulk said the Board has been trying to get raises back in the budget for staff but the sick leave pay-out policy is a stumbling block. The Board must consider a lot of things when rewarding staff and taking care of customers. The District has a funding problem that it must take care of this fiscal year. He wants to get this issue rectified and start setting monies aside but he thinks District employees still receive a lot more than what other entities offer. His wife has seen a 4% decrease in her salary every year for the past 5 years.

Ms. Scrivener said employees who are “capped out” do not suddenly lose their historic work ethic and longevity; they are not going to stay home if things suddenly change. She does not have any issues at all in recognizing a threshold of what is already vested and changing the policy moving forward. She favors a tiered pay-out program. The District cannot financially keep the 100% policy going.

Mr. Offret proposed a tiered policy as follows: 0-240 hours paid 0%; 241-480 hours paid 20%; 481-720 hours paid 30%; 721-960 hours paid 40%; and over 961 hours paid 50%.

Mr. Stratton said he sees 75% as more than generous for vested hours but the three people in the ASRS before 1984 will be affected the most. That final paycheck has the power to affect them financially in their retirement pension. Mr. Doyle asked if Mr. Stratton's employment contract differs from other staff on sick leave and Mr. Stratton said no.

Mr. Hill said it would be nice to get 100% pay-out but he understands the situation and is more than willing to take 75% to make things work for the District.

Mr. Land said there is still a nice pay-out for those who have been here between 10-19 years. He sees nothing wrong with stopping and going forward with a new policy.

Mr. Doyle asked if there was a way to make sure people who have been here between 15-20 years are compensated as an exception. Mr. Foulk and Mr. Metcalf warned against making exceptions for particular employees.

Mr. Foulk asked Mr. Land for his opinion as CFO whether it is financially wiser to stop the old policy. Mr. Land replied it is much wiser. Some employees could bank 3,000 hours by the time they retire.

Gary Burchard, Hydrogeologist, addressed the Board. He said the District could realize savings when someone retires because the new hire will be paid a lower rate. Mr. Foulk said he used to think that too, but the business publications he has been reading do not support that view anymore. That potential savings is dependent on many factors and can change over time.

Mr. Foulk and Ms. Scrivener examined the list of staff and their accumulated hours and determined the overall change in liability would be negligible if the new policy transitioned from years of service to hours banked. Ms. Scrivener spoke in favor of Mr. Offret's proposed tiers. Mr. Foulk also liked the tiers and the idea of a requirement of retirement for pay-out.

Ms. Scrivener asked where staff came up with the number 1440 hours, for the scenario based on the Pima County structure. Mr. Land said he doubled 720 hours and made sure the product did not penalize any current employee. There was a brief discussion about how the Pima County policy works, which established that once a tier is reached, all hours are paid at that tier's rate. If someone has 500 hours vested under the current policy, those 500 hours would count toward the cap of a new policy going forward. The County policy cap is 1920.

Mr. Offret made a motion that from this day forward, the Board shall adopt a modified Scenario 2, as in the report, as the policy for sick leave, payable only to employees entering the Arizona State Retirement System, along with a cap of 1920 hours, with modifications as follows: 0-240 hours will be paid 0%; 241-480 hours will be paid at 20%; 481-720 hours will be paid at 30%; 721-960 hours will be paid at 40%; and over 961 hours will be paid at 50% of pay.

Ms. Scrivener seconded the motion. Motion passed unanimously.

IV. <u>Discussion and Direction for Fiscal Year 2012-2013 Budget</u>

Mr. Tenney said the same draft budget was provided at the last meeting. Staff had included a $127,000 contingency for sick leave pay-out which will need another look, now that there is a new policy.

Mr. Offret said he would also like to see a contingency plan for setting aside funds to cover sick and vacation time in the next few years. Mr. Foulk likes the idea of modifying the numbers to make sure all payable sick and vacation time is funded.

Mr. Foulk asked if any rate increases are included in the draft budget under revenue and Mr. Tenney said the draft budget was prepared using the current rate structure.

Mr. Stratton talked about the continuing discussions regarding a COLA in light of recent increases to ASRS and the return to a 50-50 split on contributions. Last year, staff was given a 0.7% increase to cover the employee portion of the ASRS increase and this year another 0.4% has been suggested to absorb the next increase. Mr. Offret said he is mostly concerned with what staff will have in their pockets. Ms. Morelli explained the 0.7% already in place, plus another 0.4%, plus a proposed 2% COLA would equal a 3.1% increase. Mr. Offret would like that to be effective July 1, 2012. Mr. Land said a 2.0% COLA is now in the budget and an additional 0.4% would cost $14,600. Mr. Offret would like to see that included in the budget for consideration and adoption at the June meeting. Mr. Foulk said he would like to have all the numbers at the next meeting.

Ms. Scrivener asked that a financial impact report based on the new policy be prepared for the next meeting. She specifically asked for a summary sheet with a list of staff names and their respective annual and sick leave hours. She would like to know who will be impacted and what the dollar amounts will be according to the most recent payroll data. Mr. Doyle agreed and added he would like to see the present liability.

V. General Manager Update

Mr. Stratton said there was not much to report since the last meeting. He will be gone for approximately two weeks, starting Friday. Mr. Stratton will not be present at the June meeting.

VI. General Comments From the Public

There were no comments from the public.

VII. Adjournment

Mr. Doyle made a motion to adjourn. The meeting adjourned at 7:17 p.m.

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Bryan Foulk, Chair of the Board

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Warren Tenney, Clerk of the Board