

**Metropolitan Domestic Water Improvement District  
Board of Directors Meeting**

**November 14, 2011**

**Renewal of Right of Entry Agreement for Monitoring Access by  
the Arizona Department of Environmental Quality with the District**

**Synopsis**

The Board of Directors is requested to approve a renewal of an Access Agreement between the Arizona Department of Environmental Quality (ADEQ) and the District completing water quality monitoring work at District wells as part of the Remedial Investigation work in the Shannon Road-Rillito Creek WQARF site. The Board approved a monitoring access agreement with ADEQ on March 11, 2002 and a renewal on November 5, 2005 but the agreement expired on December 31, 2010. The District has provided access to ADEQ since the expiration without a contract until staff received the proposed renewal agreement in August 2011. ADEQ would like to renew the agreement until December 31, 2020 but staff recommends the agreement be annually renewed by the District and only after ADEQ's WQARF budget has been adopted by the Legislature.

**Background**

In 1997, the District initially installed a wellhead treatment system at South Shannon after two volatile organic compounds (VOCs) were found. The Arizona Department of Environmental Quality (ADEQ) (responding to the District's request) designated the Shannon Road-Rillito Creek area as a State Superfund Site on April 23, 1999. The District prior to the monitoring agreement with ADEQ had voluntarily granted permission to ADEQ for monthly monitoring of VOCs and water levels at South Shannon, Latamore South, Wildwood, Deconcini, Moore, and Estes wells as part a regional investigation of the Shannon/El Camino Del Cerro WQARF site. The purpose of the monthly monitoring has been to track and understand the movement of VOCs within the aquifer in the project area and to help plan future cleanup efforts. ADEQ's monitoring involves collecting static water levels at the above mentioned District wells, City of Tucson wells, Pima County monitoring wells and some private wells.

**Issues**

The purpose of the monitoring access agreement is to ensure ADEQ is responsible for any damages to the District well sites being monitored, that copies of collected data are transferred to the District in a timely manner, and that ADEQ has reasonable access for the duration of the remedial investigation and clean up. The monitoring data from District wells and the other affected wells will be useful to ADEQ in determining if other nearby District wells are at risk from contamination. The ADEQ monitoring program may also provide documentation on the likely origin of the source of the

contamination affecting the wells. Control of the source could eventually help alleviate the need for on-going treatment at our South Shannon well. The ADEQ's monitoring efforts of the District wells has eliminated the need for District staff to frequently monitor some of the District wells. ADEQ uses water level monitoring procedures consistent with data collection efforts by the District.

A copy of the original access agreement along with the amendments are attached for reference. ADEQ's performance regarding the contract terms to date has been acceptable. Legal Counsel has reviewed the indemnification language on the second page of the amendment and found it acceptable. Most importantly, staff and counsel stipulated that the amendment be renewed annually since ADEQ must abide by a State statute that does not require ADEQ to fund Property restoration to substantially the same condition as existed prior to the conduct of ADEQ's monitoring activities if ADEQ does not have an approved budget from the Legislature.

By the Board approving the access agreement, the action keeps ADEQ as the entity responsible for their consultant's work while on District property. At this time, staff believes it more cost efficient to District customers to have the ADEQ complete the regional groundwater contamination investigation work. Upon the completion of the remedial investigation and feasibility study, the District has the option from ADEQ to complete any water system improvements recommended under the remedial action plan. Staff has reviewed the regulations and these costs are directly reimbursable on a time and materials basis since the ADEQ will have approved the design and construction plans. Lastly, the District's renewal of the access agreement with ADEQ provides a positive image to our customers in cooperating with the investigation clean up.

### **Recommendation**

Staff recommends that the Board of Directors approve Amendment No. 2 of the Access Agreement between the Arizona Department of Environmental Quality and the District with an expiration date of June 30, 2012.

### **Suggested Motion**

I move to approve Amendment No. 2 of the Access Agreement between the Arizona Department of Environmental Quality and the District with an expiration date of June 30, 2012.

Respectfully submitted,

I concur with staff's recommendation.

Respectfully submitted,

Warren Tenney  
Assistant General Manager

Mark R. Stratton, P.E.  
General Manager