

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

April 14, 2008

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

MINUTES

Board Members Present: Judy Scrivener, Chair
Dan M. Offret, Vice Chair
Jim Doyle, Member
L.G. Ovsevitz, Member
James Tripp, Member

District Staff: Mark Stratton, General Manager
Michael McNulty, Legal Counsel
Warren Tenney, Clerk of the Board
Alice Stults, Recorder

Executive 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 5:03 p.m. Judy Scrivener, Dan M. Offret, Jim Doyle, and James Tripp were present. L.G. Ovsevitz was not present.

Mr. Tripp made a motion to adjourn into executive session. Mr. Offret seconded the motion. Motion passed unanimously.

Executive Session pursuant to A.R.S. § 38-431.03 (A)(1) (discussion or consideration of personnel matters), regarding the following:

A. General Manager's Quarterly Review.

II. Adjournment

The executive session adjourned at 5:45 p.m.

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. Judy Scrivener, Dan M. Offret, Jim Doyle, and James Tripp were present. L.G. Ovsevitiz was present; however, she sat in the audience.

II. General Comments from the Public

Mr. Tripp thanked the Board of Directors and staff for the Dedication Ceremony in which the Northeast Reservoir was officially named the James M. Tripp Reservoir. Mr. Tripp thought the ceremony went well, and is honored that the reservoir is named after him.

Ms. Scrivener asked Mrs. Ovsevitiz who was seated in the audience if she wanted to speak. Ms. Ovsevitiz indicated no by shaking her head. Ms. Scrivener noted that Mrs. Ovsevitiz had given Ms. Scrivener a speaker card which Ms. Scrivener said she would include in the file for the Board's record. Mrs. Ovsevitiz also signed the 'Sign-in Sheet' generally signed by customers, vendors, or others wishing to hear the Board's opinion on certain items, or speak directly to the Board.

Arnold Mullenbach, Sun Western Contracting, asked what the Board members feelings were on the contract that was sent out by the District regarding improvements to District facilities when looking at liquidated damages that Sun Western believed were punitive damages. Mr. Mullenbach said that he had done work for the District and the damages that were written in the contract seemed to be more punitive than anything else. He said it was difficult to bring the contract to an end because he believed the District's contract was very open-ended, and did not have substantial completion to it. He said that when the project gets down to wiping the dust off levers, or paint drops on the floor, and other similar items it is very hard to get them all done. Mr. Mullenbach said that Sun Western had a couple of major suppliers that did not meet their schedules. He said that one of the suppliers did not deliver until one month after the project completion date, and another supplier was in a similar circumstance. Mr. Mullenbach said that it was not Sun Western's fault the project was not done on time, but was a matter of the contract and how it was administered to be completed. He asked that someone take a look at the contract because liquidated damages are included in the contract for a reason, and when they turn into something punitive towards the contractor versus what they are intended for, he believed they should be looked at, especially since the project could have been started up and operational last September or October 2007, and it wasn't started up until about 1½ weeks ago. Mr. Mullenbach said that one of the suppliers had some parts left open in the bottom of the pumps which decreases the efficiency; however, it was not detrimental to the running of the pumps which could have continued to pump water during the past months. Sun Western offered to take off all the pumps at once which would have left them inoperable; but said it made more sense to have taken the pumps out one at a time versus not accepting them because they were wrong.

Ms. Scrivener explained that since this item was not on the Board's agenda, the Board cannot respond to comments or take any action. Mark Stratton, General Manager, said District staff and Legal Counsel will make sure there is a reasonable resolution to the issues mentioned by Mr. Mullenbach.

III. Consent Agenda

- A. Approval of Minutes – March 10, 2008 Board Meeting.**
- B. Approval of Minutes – March 24, 2008 Study Session.**
- C. Ratification of Billing Adjustments.**
- D. Approval of Water Service Agreement – Sonoran Science Academy, Revision #1.**

Mr. Tripp made a motion to approve the consent agenda. Mr. Offret seconded the motion. Motion passed unanimously.

IV. General Business – Items for Discussion and Possible Action

- A. Monthly Status of the District.**

Mr. Stratton said with April 2008 starting out being quite warm, the District could see an increase in water production for the month. He explained that the District continues to be on target with its revenues.

The James M. Tripp Reservoir and Northeast Booster station are now both complete. Mr. Stratton said it is anticipated that the Board will award the bid for the Oracle Road Mainline Replacement Project during this meeting.

The Paseo del Norte Transmission Main pavement overlay has been completed, which brings this project to a close. Mr. Stratton said neighbors in the area gave positive responses and feedback regarding how the project was conducted.

- B. Financial Report.**

Mike Land, Chief Financial Officer, noted that water revenues are approximately \$6,000 over budget, and expenditures continue to be approximately 4% under budget. New meter installations continue to be down from the same time period last year.

- C. Approval of Resolution 2008-1 – November 4, 2008 Board of Directors Election.**

Mr. Tripp made a motion to approve Resolution 2008-1 to call an election for November 4, 2008 for the purpose of electing members of the Board of Directors to fill the seats currently held by Dan M. Offret and Judy Scrivener. Mr. Offret seconded the motion. Motion passed unanimously.

D. Discussion and Direction for Legislative Issues 2008.

Warren Tenney, Assistant General Manager, said the 2008 legislative session continues to be dominated by financial budget issues. Nothing new is occurring at this time on water issues.

SB 1491 was a strike-all bill that was introduced late last week. Mr. Tenney said the bill is trying to resolve an issue in the Cave Creek area and there were concerns about it from the House Rules Attorney that the bill may take on a statewide implication. Susan Charlton, District Lobbyist, worked to oppose the bill, and said the sponsor is working to change the bill so that it does not have a statewide implication.

E. Approval of Resolution 2008-2 – Policy for Board members Unable to Attend a Meeting.

Mr. Tripp made a motion to approve Resolution 2008-2, as amended, which establishes a policy to allow Board members to participate in a Board meeting by telephone or video conferencing when a Board member is unable to physically attend the meeting. Mr. Offret seconded the motion for purposes of discussion.

Mr. Offret asked if there was anything in the statutes that states how many meetings an elected official to the Board of Directors must attend each year. Mr. Stratton replied that there is nothing that requires a particular number of meetings to be attended by a Board member. Mr. Offret asked if this proposed policy and resolution would be for the convenience of particular Board members. Mr. Stratton replied yes.

Mr. Tripp said the intent of his motion was to amend Item No. 3 in Resolution 2008-2 to read "Board members may participate by telephone or video conference whenever it is deemed necessary" rather than "No Board member may participate in more than three meetings by telephone or video conferencing during any calendar year."

Mr. Tripp recalled a particular issue, shortly after the District was formed, which required the vote and approval of all five Board members. Board member Herb Johnson was back east at the time and was allowed to render his vote via the telephone.

Ms. Scrivener and Mr. Offret noted that they disagreed with the motion to change Item No. 3 of the Resolution. Mr. Offret asked who would determine the 'whenever it is deemed necessary' statement in the proposed Resolution. Mr. Tripp answered that the other Board members as a whole could make this determination. Mr. Tenney asked how the Board would deem it necessary prior to a meeting.

Ms. Scrivener said she is concerned that the Board may be adopting a policy that means a Board member never has to attend a meeting. She believes the policy needs to be clearer, and that Board members should be present whenever possible. Ms. Scrivener said she would also like to be able to participate if there is an item of particular concern whenever she needs to be out of town. Ms.

Scrivener said there is a need to have phone/video conferencing under certain circumstances, but not all the time. She indicated that she wants a definite number of meetings a Board member is allowed to miss in any given year to be put back into the resolution. Mr. Offret agreed.

Ms. Scrivener called for a vote on the motion. Mr. Tripp voted in favor of the motion as amended. Ms. Scrivener, Mr. Offret, and Mr. Doyle voted against the motion. Mrs. Ovsevitz stood in the audience with her thumbs pointed down and did not speak. Ms. Scrivener said the motion did not pass 3 to 2.

Mr. Offret made a motion that Resolution 2008-2 be approved as originally presented in the staff report which states in Item No. 3 that "No Board members may participate in more than three meetings by telephone or video conferencing during any calendar year". Mr. Doyle seconded the motion. Ms. Scrivener, Mr. Offret, and Mr. Doyle voted in favor of the motion. Mr. Tripp voted against the motion. Mrs. Ovsevitz stood in the audience with her thumbs down. Ms. Scrivener said the motion passed 3 to 2.

F. Possible Sale of Oracle Road Property.

Mr. Tripp made a motion to direct staff to negotiate with Auto Executive the sale of the District's property adjunct to 7493 N. Oracle Road. Mr. Offret seconded the motion.

Mr. Offret said he hoped the District could get at least \$50,000 for the property.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitz stood in the audience with her thumbs down and did not speak. Ms. Scrivener said the motion passed 4 to 1.

G. Status of Metro-Hub Water Supply Exploration and Land Acquisition Programs and Possible Approval of Land Acquisition.

Mr. Tripp made a motion to approve the purchase agreement from TUSD for real property in the Hub service area for the amount of \$38,000 and subject to Legal Counsel's review. Further, that the Metro-Hub Water Resources Property Project account be used to fund the purchase and that the General Manager be authorized to also expend up to \$25,000 for the same account for due diligence to complete Phase II of the Metro-Hub Water Supply Exploration Program. Mr. Offret seconded the motion.

Mr. Offret noted that the amount of property thought to be needed had been decreased by ½ acre. Christopher Hill, Deputy Manager, said the exploration could be completed with just 8/10 of an acre. Mike Block, District Hydrologist, said the District did have a permit to use the approach to the property. Mr. Offret asked if neighbors in the area were advised of the proposed exploration project. Mr. Block replied no; however, the neighbors will be contacted later in the process.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitiz stood in the audience with her thumbs down and did not speak. Ms. Scrivener said the motion passed 4 to 1.

H. Approval to Re-Roof the Office Building.

Mr. Tripp made a motion to approve the re-roofing of the District office roof by Eagle Roofing, L.L.C. for a cost of \$62,245 plus tax and the Repair and Replacement Fund should be used to pay for it. Mr. Offret seconded the motion.

Mr. Tenney apologized and said the attachments were out of order in the Board report packets. He briefly explained the proposals.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitiz stood in the audience and held her arms straight out from the side. Ms. Scrivener asked what Mrs. Ovsevitiz meant. Mrs. Ovsevitiz did not respond but continued to hold her arms out. Ms. Scrivener said the motion passed 4 to 1.

I. Award of the Construction Contract for the Oracle Road Corridor Mainline Replacement.

Mr. Tripp made a motion to award the construction contract for the Oracle Road Corridor Mainline Replacement project Alternative A to Trinity Southwest Contractors, L.L.C. in the amount of \$991,926.00. To further authorize the General Manager to approve the following changes to the construction contract: 1) allocate additional funding a cumulative amount not to exceed \$30,000.00 and 2) increase the original construction contract term a cumulative amount not to exceed sixty (60) calendar days. Any changes in excess of the above limits will be submitted to the Board of Directors for approval. Mr. Offret seconded the motion.

Mr. Offret noted that the motion was for the next to the lowest bidder due to their quality of work. He added that he would not feel comfortable voting on the lowest bidder due to some of their recent problems and safety issues.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitiz stood in the audience with her thumbs down and did not speak. Ms. Scrivener said the motion passed 4 to 1.

J. General Manager's Annual Evaluation and Possible Merit Award.

Mr. Tripp made a motion to award the General Manager a merit increase of 4% in accordance with the rating by the Board. Mr. Offret seconded the motion.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitiz stood in the audience with her thumbs down and did not speak. Ms. Scrivener said the motion passed 4 to 1.

K. Approval to Amend Legal Services Fees.

Mr. Tripp made a motion to approve amending the fees for legal services with Lewis and Roca as presented in this report. Ms. Offret seconded the motion.

Michael McNulty said he appreciates the support of Metro's Board and staff. He added that staff at the District has done such a good job over the past ten years that legal counsel has not had a large amount of issues being generated by the District.

The motion passed with Ms. Scrivener, Mr. Offret, Mr. Tripp, and Mr. Doyle voting in favor. Mrs. Ovsevitiz stood in the audience with her thumbs down and did not speak. Ms. Scrivener said the motion passed 4 to 1.

V. General Manager's Report

Mr. Stratton said the District recently received a proposed ordinance establishing regulations for the use of public right-of-ways from Pima County. It appears from the license agreement that the County will get what they wanted without waiting for signatures from all the involved utilities. This item has been put on the Pima County Board of Supervisors agenda for May 2008. Mr. Stratton explained that the District's chances of getting this agreement changed at this point in time do not look good. Mr. McNulty said Legal Counsel could state for the Supervisors what the District's concerns are, but the County can treat the District differently than other utilities. Other utilities feel like there is little chance for them to get the agreement changed also. It should be noted that there is no place on the agreement for other utilities to sign or approve the document.

Mr. Stratton said additional security measures at the District office complex have been expedited to get the additional security items in place and functional. There are still a few remaining issues to be considered.

The 2008-2009 Capital Items draft budget is ready for the Board's perusal prior to the next study session.

Mr. Stratton said the Pima County / City of Tucson Oversight Committee is just getting off the ground. Mr. Stratton indicated that he is a member of the Committee. Stakeholders will provide written and verbal responses for the Committee to review.

Mr. Stratton said that the Northwest Managers continue to meet on the Northwest CAP Treatment and Delivery System. There has been some positive progress and the partners appear to be close to determining an alignment route for the transmission main.

Mr. Stratton noted that the Arizona Water and Pollution Control Association (AWPCA) is having its annual conference at the end of April, first of May 2008. Several District staff will be attending.

Mr. Stratton will be out of the office and on vacation April 21-25, 2008.

Mr. Tenney explained that the District held a graywater workshop at the District office on March 15, 2008 and it was well attended and received. Due to such a good turnout, staff will schedule another workshop in the near future.

Mr. Stratton said the Arizona Water and Wastewater Response Network (Az-WARN) has now been established. The participating members at this time are City of Phoenix, City of Tempe, and Metro Water. It is anticipated that the approvals for the agreement will be completed by May 2008. This agreement is between Arizona utilities that are interested in having in place a document that would provide for emergency services from other entities in the event of a catastrophic incident. Mr. Stratton noted that the American Water Works Association (AWWA) is also working on an inter-state agreement to see who might be interested. There has been much positive feedback from the other utilities that have indicated an interest in participating in the agreement.

VI. Legal Counsel's Report

Mr. McNulty briefly mentioned strategic issues involving the District's possible acquisition of assets and noted he is working on a report that will be presented to the Board.

VII. Future Meeting Dates; Future Agenda Items

The next regular meeting of the Board of Directors is Monday, May 12, 2008 at 6:00 p.m. A study session has been scheduled for April 28, 2008 at 5:30 p.m.

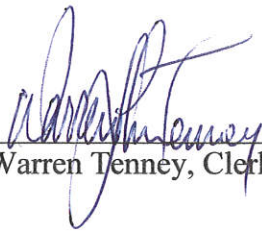
VIII. General Comments from the Public

Mrs. Ovsevitiz approached the Board and without speaking a word, showed each Board member comments that were written on a large manila envelope that were apparently written by herself. Ms. Scrivener asked if Mrs. Ovsevitiz wanted this manila envelope with the written comments to become part of the written record, and if so, it had to be provided to the Clerk of the Board. After much confusion and hand gesturing, Mrs. Ovsevitiz gave the manila envelope to the Clerk of the Board. Then Mrs. Ovsevitiz gave the Board Chair comments typed on two small pieces of paper and using hand signals indicated that she wanted the Board Chair to read the comments verbally. Mrs. Ovsevitiz used only hand signals and body motions and would not speak verbally. Again, after much confusion, the Board Chair read the items that Mrs. Ovsevitiz gave to her. The notes indicated on the manila envelope stated "no confidence to the Board, thank you" and "gross incompetencies of District personnel, and obfuscation of one Board member's free will exercise of due diligence". The language on one of the smaller pieces of paper read: "Whether the economy is booming or faltering, one thing is certain: There are always people who take advantage of others under the guise of being helpful." The language on the other piece of paper read: "To avoid becoming a target if

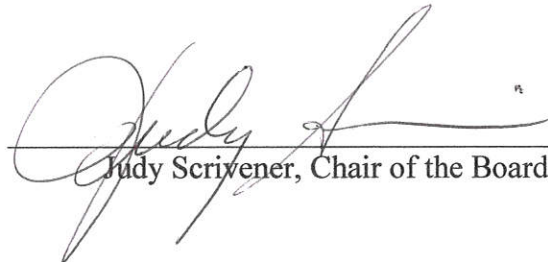
you are buying property, refinancing a mortgage, or trying to eliminate debt, remember: Never sign any legal documents without taking time to carefully review them. Hire a lawyer who represents you to review them, too. Make copies of all paperwork that you sign. Walk away if you are feeling pressured into making a decision”.

IX. Adjournment

The meeting adjourned at 6:43 p.m.



Warren Tenney, Clerk of the Board



Judy Scrivener, Chair of the Board