

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

August 16, 1995  
7235 North Paseo del Norte  
Tucson, Arizona 85704

**MINUTES**

Board Members Present:           Barbara Johnson, Chair  
  Marty Cramer, Vice-Chair  
  Jim Doyle, Member  
  Pete Schlegel, Member

Board Member Not Present:       Herb Johnson, Member

District Staff:                   Mark Stratton, General Manager  
   Phil Higdon, Legal Counsel  
   Warren Tenney, Clerk of the Board

**I.     Call To Order and Roll Call**

The special meeting was called to order at 7:32 a.m. by Ms. Barbara Johnson, Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District). Ms. Marty Cramer, Mr. Jim Doyle and Mr. Pete Schlegel were present. Mr. Herb Johnson was out-of-town.

Three people were in the audience.

Ms. Johnson explained that the emergency special meeting was deemed necessary due to recent events and based on the advice of Legal Counsel to discuss and possibly take action regarding the agenda item, which is the Asset Purchase Agreement with the City of Tucson.

**II.    Executive Session**

Ms. Cramer moved that the Board of Directors goes into Executive Session. Mr. Schlegel seconded the motion and it passed unanimously. The Board went into Executive Session at 7:35 a.m.

Executive Session pursuant to A.R.S. § 38-431.03 (A)(3) (consultation for legal advice with the attorney or attorneys of the District) and/or executive session pursuant to A.R.S. § 38-431.03 (A)(4), (to consider the Board's position and instruct its attorneys in pending or contemplated negotiations or litigation) regarding the following:

A.     Asset Purchase Agreement with the City of Tucson.

The Board returned from Executive Session at 7:58 a.m.

### **III. Asset Purchase Agreement with the City of Tucson -- Discussion and Possible Action**

Ms. Johnson requested Mr. Mark Stratton, General Manager, to provide a staff report.

Mr. Stratton reported that staff and Legal Counsel have been working with the City of Tucson on many issues relevant to the Asset Purchase Agreement. Knowing our concern about the quality of treated CAP water being delivered, the City did offer to provide us groundwater. The City's legal counsel publicly stated that the City could pump and deliver groundwater far cheaper than treated CAP water.

Ms. Cramer asked if the groundwater then would be less expensive for the District. Mr. Stratton said that the District had requested that if there was cost savings to the City for delivering groundwater rather than treated CAP water, the District should be able to pay less for the groundwater. The City responded that the contract states \$348 per acre foot regardless if water is treated CAP water or not.

Mr. Stratton said that the District has tried to have the City acknowledge the liability issues regarding the potential damages to the District's infrastructure based on the quality of the treated CAP water delivered. The District's infrastructure is similar to Tucson Water's infrastructure, which experienced serious damage due to the treated CAP water. The City has refused repeatedly to accept the liability to any potential damage caused to our infrastructure. Additionally, another quality issue is whether the treated CAP water meets all governmental quality standards before it is contemplated to deliver to District customers.

Mr. Stratton noted that in addition to quality issues, the City has only provided one point of delivery to our system, the District's A-Zone elevation, which is approximately the lower half of our overall service area. Under the Northwest Area Agreement, the City was to extend the Northwest Supply System to Oro Valley to provide service to the northern portion of the District as well as to private water companies. The City has chosen not to complete that delivery system. The District asked the City to reduce the amount of water required under the Asset Purchase Agreement based on their nonability to deliver to all of the area, but the City stated that they did not have to reduce the amount. This means a substantial financial impact to the District because the District would need to construct some major booster facilities throughout our area to get the water to a higher elevation to meet the pressure needs of our customers in that area. Those facilities would then become obsolete once the City met its obligation to extend the delivery system.

Mr. Stratton stated that based on the discussions with the City of Tucson and their unwillingness to reach a compromise regarding the Asset Purchase Agreement, staff also began to explore other potential uses for the treated CAP water. However, nothing has developed in that area at this time.

Ms. Cramer asked if the District was in current negotiations with the City of Tucson. Mr. Stratton said no future meetings have been set; however, District Legal Counsel and the General

Manager have been in contact with the City's legal counsel and the Director of Tucson Water. The lines of communication are still open; however, the issues appear to be at a standstill. Ms. Cramer said that District staff should continue with negotiations with the City and continue to seek acceptable uses for treated CAP water to our customers.

Ms. Cramer said that the District appears to have reached an impasse. The City is holding the District to an agreement that they have not fulfilled themselves. The City cannot supply water that is of an acceptable quality to the District. The City has not completed a supply system that they have agreed to construct. Based on the current situation, Ms. Cramer made the motion to instruct Legal Counsel to file a declaratory judgment that states that since the City cannot meet its obligations of the Asset Purchase Agreement, then the District should be released from its obligations. Mr. Schlegel seconded the motion.

Mr. Doyle noted that the CAP treatment plant is not in operation. Mr. Stratton said that the City is not treating any CAP water at this time. Mr. Doyle asked if the City plans to start up the plant in the near future. Mr. Stratton said that based on the reports given in public and in the media, the City has no intention to turn on the treatment plant unless there is an emergency based on water demand. The City's capital improvement plans indicate that nothing is planned for the treatment plant or the CAP system for the next five years.

Ms. Cramer noted that the \$348 per acre foot of water that the District is to pay according to the Asset Purchase Agreement is for the CAP treatment plant that the City has shut down.

Mr. Schlegel said that the Northwest Area Agreement called for the City to sell the water at cost. He asked if staff reminded the City that they would save a substantial amount based on the difference saved in delivering the District groundwater versus treated CAP water. Mr. Stratton said that the cost savings were noted to the City and that those cost savings should not be at the benefit of the District subsidizing the rest of Tucson Water's system.

Mr. Stratton noted that though the City offered to supply groundwater, there is an interruptability clause within the Asset Purchase Agreement. Based on the high water demand that Tucson Water experienced at the end of July 1995, should that happen again, the District would be cut off from any delivery of that water. This would require the District to turn back on all of its wells to meet the demands of its customers within a short-time frame. The City came close to declaring a water emergency at the end of July 1995. Ms. Cramer noted that was at the same time that Tucson Water was offering to sell us between six to nine million gallons a day.

Ms. Johnson said that she understood that the City has officially taken a stand that they will not deliver CAP water to their customers.

Ms. Cramer said that the District does not want to be caught up in litigation. If the Board decides to vote in favor of the motion, the District should still continue to attempt to negotiate with the City in order to reach a reasonable agreement regarding these issues. District staff should continue to explore uses for treated CAP water short of direct delivery to our customers.

The District feels that it must take this action at this time, but still pursue other avenues that could resolve the issues.

Ms. Johnson called for a vote for the motion regarding the filing of declaratory judgment against the City of Tucson regarding the Asset Purchase Agreement. The motion passed unanimously.

**IV. Adjournment**

The Board adjourned at 8:09 a.m.

  
Barbara L. Johnson, Chair

ATTEST:

  
Clerk