

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

September 11, 1995
Wilson Room
Tohono Chul Park
7366 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
 Michael Land, Chief Financial Officer
 Warren Tenney, Clerk of the Board

I. Call To Order and Roll Call

Ms. Marty Cramer, Vice-Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District), called the regular Board meeting to order at 5:00 p.m. Mr. Jim Doyle and Mr. Pete Schlegel were present. Ms. Barbara Johnson, Chair, arrived at 5:14 p.m. Mr. Herb Johnson was out-of-town.

II. Comments From The Public

Seven people were in the audience.

Mr. Scott Eisenfeld, District Development Supervisor and District resident, noted that he is vice-chair of the Linda Vista Homeowners Association. At the association's most recent meeting, the Linda Vista Reservoir was discussed and received a favorable response from those at the meeting.

III. Financial Report

Mr. Mark Stratton, General Manager, noted that the financial report now includes the report of the billing adjustments and the updates regarding revenues, checks and warrants.

Mr. Michael Land, Chief Financial Officer, explained that the annual projections still match the 1995-1996 budget because only two months of data exist. Daily deposits indicate that cash on hand has increased by \$20,000. The monthly check register shows that 201 checks were

written. A discrepancy between that amount and the amount of actual funds dispersed have been reconciled. In August 1995, 28 meters were installed in comparison with 69 installed in August 1994.

IV. Consent Agenda

- A. Approval of Minutes - August 14, 1995 Board Meeting.**
- B. Approval of Minutes - August 16, 1995 Special Board Meeting.**
- C. Approval of Minutes - August 27, 1995 Study Session.**
- D. Approval of Bill of Sale - Northern Hills Estates Water Line Extension, Lots 1-5.**
- E. Approval of Water Service Agreement - Desert Springs Church Water Line Extension.**
- F. Ratification of Contract Amendment with ADWR for a Time Extension on CDO Recharge and Recovery Project.**

Mr. Schlegel made the motion to approve the consent agenda. Mr. Doyle seconded the motion and it passed unanimously.

V. Old Business -- Items for Discussion and Possible Action

A. Northwest TAMA Replenishment Program.

Mr. Mark Myer, Consultant for the Northwest TAMA Replenishment Program (NRP), reported that the Bureau of Reclamation is interested in expanding its overall assistance to larger regional water management efforts. The Bureau is interested in further involvement, which means additional funds for the various regional projects. Ms. Suzanne Ticknor of Central Arizona Water Conservation District (CAWCD) has indicated that the Arizona Department of Water Resources (ADWR) accepted the permits to the applications for the Avra Valley Pilot Recharge Project as completed. The public comment process will now begin on the project. The State Land Department needs to still conduct its site appraisal. A grant from the Arizona Water Protection Fund is still anticipated for the High Plains Demonstration Project. Data has been received on the habitat and wildlife study for the NRP feasibility study. Water quality data should be received in October. The geohydrology contract for the feasibility study with Montgomery and Associates should be signed soon and will take twelve months to complete the study.

B. September 21, 1995 Public Hearing - Proposed Rate Structure.

Mr. Stratton explained that based on the Board's comments at the August 28, 1995 study session, Mr. Land examined different rate alternatives. Mr. Land provided some interesting information from his analysis. The proposed rate structure along with previous rate increases is similar, except timing of the implementation, to the recommended rate increases done by Cella Barr & Associates. Some rate alternatives were included in the staff report that the Board may want to consider if many complaints are given at the public hearing. With more than sixty percent of the billings sent with the insert explaining about the proposed rate structure, the District has received only a few comments.

Ms. Barbara Johnson arrived at the meeting at 5:14 p.m.

Mr. Stratton noted that some residential customers have a 1" meter. This means that they pay a higher base rate. Currently, to change a 1" meter to a 5/8" meter costs \$75.00. The Board may want to consider a limited time to allow the change out at no cost. Ms. Cramer asked how many customers have a 1 inch meter. Mr. Stratton answered about 300 customers. Most of them had the larger meter due to needing higher pressure, though changes staff has made to the infrastructure have corrected many of those problems. Staff would prepare a report on how to such a change-out could be done for a limited time. The Board may want to consider the issue at the public hearing.

Ms. Cramer asked about the status of the presentation for the September 21, 1995 public hearing and who would be making the presentation. Mr. Stratton said that he planned to make a presentation regarding the proposed rate structure and then open it to comments by the Board. Although attendance may be low, the high users whom the proposed rate structure will impact most may be more vocal. Visual displays regarding the District's accomplishments and plans will show residents how the District has spent money according to their wants.

Mr. Schlegel noted that under service charges of the proposed rate structure, the policy for delinquency is after 60 days the customer's water is turned-off. Besides the water bill, the District charges a reconnection fee of \$25.00 plus the deposit. Mr. Schlegel questioned if that were the best policy considering the customer may come home on a summer day to find the water turned off and have to then pay a \$50.00 fee for an after hours reconnection. Mr. Stratton said that he understood the concern and staff has explored installing some flow restrictors rather than turning off the water completely as a way to remind the customer that they are delinquent. Installing a flow restrictor does take more staff time.

Ms. Johnson said that the format for the public hearing would be most appropriate for staff to make the presentation and the Board's role to be supportive of staff. Mr. Stratton said similar hearings done by the City of Tucson or Pima County usually have a presentation made by staff, then have comments from the public, and then the Board closes the meeting. People will probably have questions also about different recent events. Mr. Schlegel suggested that the Chair of the Board open the meeting with a welcome and introduction before staff began the presentation.

Mr. Stratton noted that in discussions with staff, it was decided to rely primarily on large charts and handouts rather than using an overhead projector.

Ms. Cramer said that it would be less confusing to present only the proposed rate structure and then discuss alternatives if related issues arise.

Mr. Stratton said that if the Board choses to act that night, the Board can alter the resolutions according to how it decides to act. The system development fee has been recommended to increase by 50 percent though that figure can be changed.

Ms. Cramer turned the chairmanship of the meeting to Ms. Johnson.

VI. New Business -- Items for Discussion and Possible Action

A. Policy for Bid Openings.

Ms. Johnson noted that staff had recommended that this issue be continued until next month to ensure that the proper information has been collected.

Mr. Schlegel noted that Pima County is reviewing its bidding and procurement process and may have some useful information.

Ms. Cramer questioned if a Board member would be necessary at a bid opening if the actual bid opening was tape recorded.

Mr. Stratton explained that the statutes are unclear about the bidding process for a county improvement district that generates revenue, rather than funded through assessment as generally assumed by the statutes. If an assessment is being placed on the property, the bidding process is quite complicated and lengthy. Legal Counsel suggested that the statutes be evaluated closely to determine how they apply to the District.

Mr. Schlegel noted that the original Board of Directors had initiated the policy of having two Board members present at bid openings to ensure that no liability questions could arise especially regarding bids that may involve a high amount of money.

Mr. Stratton said that staff will prepare a report for the October 11, 1995 Board meeting that recommends a policy that addresses the concerns noted in this discussion.

B. Award of Contract - Insurance Coverage for the District.

Mr. Stratton reported that the Business Administration Board Member Committee met to review the insurance proposals submitted to the District. The Committee wanted to examine the possibility of reducing expenditures by receiving partial coverage from one firm versus using another firm. Mr. Stratton noted that Ms. Sheila Willis, Administration Manager could provide more detail. Mr. John Davis of Mueller & Associates was present at the meeting. The representative from the Mahoney Group was unable to attend at the last minute.

Ms. Willis said that the Mahoney Group indicated a possibility of having one part of their proposal removed. They would have to submit it to their underwriters for final approval to determine if it would cause any adjustments to the actual bid they submitted. Mr. Davis of Mueller & Associates did not think pulling out the vehicle policy would cause any problems. The other issue raised by the Committee was placing a cap on the percentage of increases for a three year period. The insurance companies indicated that there is not any cap they can use for three years; however, insurance rates for water utilities have not seen any significant increase recently.

Ms. Cramer asked when the Mahoney Group could provide an answer. Ms. Willis said actual details had to be submitted before they could provide an answer, but the Mahoney Group knew that a decision had to be made before September 30, 1995.

Ms. Cramer questioned if the District could award part of the policy and leave open the automobile coverage. Ms. Johnson noted that removing the vehicle coverage may actually increase the insurance proposal and that the District may not save the \$6,000 difference between the two proposals.

Ms. Schlegel asked if representatives of the insurance companies submitting proposals had made a presentation to the Committee. Ms. Cramer said that the Committee reviewed the written proposals. Mr. Schlegel asked Mr. Davis if the liability coverage for directors and officers would have to pay for defense cost if a suit is brought against the Board. Mr. Davis said that is correct. The liability coverage would first pay for defense cost and then pay up to the amount covered for the Board of Directors. Mr. Davis noted that the directors and officers' policy is rarely an issue. If someone is injured at a storage tank, for example, that is paid through the general liability policy. Mr. Schlegel asked what is general coverage for directors and officers' policy by other utilities. Mr. Davis said it is a personal preference and dependant upon the nature of the operation. Mr. Schlegel asked why \$3 million was included in the Mueller & Associate's proposal. Mr. Davis said that the Board had chosen \$3 million from a range provided by Mueller & Associates for last year's coverage. Ms. Johnson noted that the Mahoney Group had proposed \$11 million for the directors and officers' policy.

Mr. Schlegel asked if the insurance provider had done studies to determine if the District's sites are properly insured. Mr. Davis said that insurance companies were not responsible for determining risks though some insurance proposals include it. Mr. Schlegel said that the District may be wise to investigate risk management to determine if any of the District's sites or facilities are vulnerable. The Escondido pressure tank that blew last year indicated that the District and the Board could have been at risk if someone had been injured because the insurance company did not cover the tank. Ms. Cramer said that the cost to conduct a risk management analysis should be investigated. Mr. Stratton said that staff could investigate that issue.

Mr. Doyle inquired about the Escondido pressure tank situation. Mr. Stratton explained the problems and damages caused by the Escondido pressure tank. Mr. Doyle asked if the Business Administration Board Member Committee would still look at this issue regarding the insurance coverage. Mr. Stratton said that due to the short time frame, staff would examine the matter and then present it to the Board.

Mr. Doyle said that as a member of the Business Administration Board Member Committee, he was concerned about some confusion involving the procurement of the insurance proposals due to the independent involvement of a Board member not on the Committee. He did not feel that becoming involved in the procurement process was appropriate for individual Board members. Since the Board has established Board Member Committees, they should be able to carry forth their role without other Board members becoming involved.

Ms. Johnson asked if insurance companies had typical liability issues or standards applied to utilities without evaluating a utilities' entire operation. Mr. Stratton said that public utilities provide their own coverage and the coverage for directors and officers policy differs. The actual amount of coverage is dependent upon what the Board wants to set. A risk management assessment may provide information in addition to the Arizona Department of Environmental Quality's inspection of the District. As stated previously, staff could examine what would be

involved and the cost for a risk management assessment so that the Board can decide the benefits for conducting one.

C. Resolution 1995-3 - Authorization for Reimbursement of Attorney Expenses Incurred by the Town of Oro Valley.

Ms. Cramer said that the District has set aside \$500,000 for legal expenses regarding the lawsuit with the City of Tucson. District's legal counsel also represents District customers living in Oro Valley. However, the Town of Oro Valley wants to be represented individually in the lawsuit and has requested that 6.83 percent, the percentage of the District that makes up Oro Valley Domestic Improvement District #1, of the District's legal expenses for the lawsuit be used to pay for the Town's attorney. The Town's request for payment may be a duplication of effort. The General Manager or the District's legal counsel could provide the Town Council with any information they request.

Mr. Schlegel explained that he and Mr. Doyle met with two Town Council members to discuss this issue. Since the District's inception, Oro Valley has expressed concern about not having representation on the Board and fearing that the District might take advantage of Oro Valley. This concern remains with the lawsuit against the City. The Town wants legal representation to ensure that the Town's interests are fairly handled and represented. The amount of money stipulated in the resolution is to set a cap, a fair amount that should most likely not be exceeded. In verbal discussions, it is doubtful that the complete \$34,150 will be reached. Another point is that the Town's water attorney appears to be a good asset to the lawsuit.

Mr. Phil Higdon of Brown & Bain noted that Mr. Larry Robertson, the attorney for the Town, is reviewing the draft response to the City's counter claim. Mr. Robertson has provided a supportive role to the District's legal counsel and his services have removed some time constraints placed on District's legal counsel. For example, Mr. Robertson can do the disclosure statement for the Town of Oro Valley. Mr. Robertson's work should not duplicate the District's efforts. So far, Mr. Robertson has provided a secondary supportive role.

Ms. Cramer questioned if the resolution should be more specific regarding what the District is paying for. Mr. Higdon and Mr. Stratton noted that the resolution specifies that it is for legal fees regarding the lawsuit with the City of Tucson about the Asset Purchase Agreement for up to \$34,150.

Ms. Johnson said that she initially had similar concerns as Ms. Cramer. However, supporting this resolution helps to secure stronger participation from the Town of Oro Valley with the lawsuit. A cap is in place on the amount to be paid to the Town. She thought Mr. Schlegel and Mr. Doyle did well in developing the concept for the resolution.

Mr. Higdon suggested that in the eighth paragraph of Resolution 1995-3 that the words "and underlined invoices" be inserted following the phrase "...upon receipt of documents evidencing payment..." The insertion of that phrase should clarify exactly what the District is paying for.

Mr. Doyle made the motion to adopt Resolution 1995-3, a resolution to authorize reimbursement of attorney expenses incurred by the Town of Oro Valley, with the words, "and underlined

invoices” be inserted in the eighth paragraph following the phrase “...upon reception of document evidencing payment...” Mr. Schlegel seconded the motion and it passed unanimously.

D. Amendment to Sales Agreement with TNR&S Acquisition, Inc.

Mr. Stratton explained that Mr. Albert Caldwell of TNR&S Acquisitions, Inc. had requested an amendment to the sales agreement that the Board of Directors approved at the August 11, 1995 meeting. The amendment deals with a timing issue with the proposed construction of the new developments. The amendment does not affect the cost to purchase the property, but modifies the reimbursement of the system development fees.

Ms. Cramer made the motion to approve the amendment to the sales agreement with TNR&S Acquisition, Inc. Mr. Schlegel seconded the motion and it passed unanimously.

E. Approval of Change Order No. 1 for NAC Construction regarding Site Preparation and Grading for Magee/La Cholla Reservoir.

Mr. Stratton noted that the staff report had stated that he would be receiving more information from Pima County regarding the possibility of using their bid process to include this work necessary at the Ina Road and Mona Lisa intersection. Pima County was not forthcoming with the necessary information. Staff indicated that a problem with the Pima County bidding process is that the low bidder may not have necessarily bid low on the project that the District is to complete. Therefore, staff suggested that the District continue to bid separately from the County on such projects to ensure that the District controls its own contracts.

Mr. Stratton said that the intersection at Ina Road and Mona Lisa requires a lowering of service lines. Since various utilities have service lines throughout that intersection, District staff recommended that due to potential liabilities and the complexity of the work, a contractor should be hired despite the expenses involved. The District had hoped that B&M Construction could do the work through a change order on their contract for the 12" transmission line on Ina Road. However, B&M Construction declined to do that change order. Since the District entered a contract with NAC Construction regarding the site preparation and grading for Magee/La Cholla Reservoir, the District requested a proposed cost for them to complete the work at Ina Road and Mona Lisa intersection. A change order was completed for NAC Construction.

Mr. Schlegel asked why B&M Construction declined to do the work. Mr. Stratton said he was not certain but it may have been because the work required more expertise than B&M Construction had originally contemplated.

Ms. Cramer asked if staff recommendation was then to approve a change order for NAC Construction's contract. Mr. Stratton said that was correct since the County's bidding process was not receptive to the District.

Ms. Cramer made the motion to approve Change Order No. 1 to the contract with NAC Construction for the site preparation and grading for Magee/La Cholla Reservoir in the amount of \$19,695. Mr. Schlegel seconded the motion and it passed unanimously.

F. Ratification of Contract - Wellhead Vulnerability Assessment Project.

Mr. Stratton reported that the wellhead vulnerability assessment project had proven beneficial with the District's previous participation. The District saved approximately \$60,000 from receiving waivers on certain constituents to be sampled.

Mr. Schlegel agreed that the project was a good one. He noted that at a recent seminar, it had been suggested that water providers have a wellhead vulnerability committee to be responsible.

Ms. Cramer made the motion to ratify the contract with Pima Association of Governments for wellhead vulnerability assessment project. Mr. Schlegel seconded the motion and it passed unanimously.

VII. Executive Session

Mr. Doyle moved that the Board of Directors goes into Executive Session. Ms. Cramer seconded the motion and it passed unanimously. The Board went into Executive Session at 6:20 p.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.
- B. Service Area Boundaries between District and the City of Tucson.

The Board returned from Executive Session at 7:18 p.m.

VIII. Asset Purchase Agreement with the City of Tucson -- Discussion and Possible Action

No discussion occurred at this time.

IX. Service Area Boundaries between District and the City of Tucson.

No discussion occurred at this time.

X. General Manager's Report.

Mr. Stratton reported that his most recent activities have focused upon legal issues confronting the District. Staff has been given specific direction to ensure that the day-to-day operations continue to be carried forth properly. Mr. Stratton noted that he would be out of town for three working days at the end of September. He planned to make a presentation at a rate symposium held at the Town of Oro Valley.

Ms. Cramer noted that she had received a memorandum from Warren Tenney through the General Manager that provided a report regarding the most recent Groundwater Users Advisory

Council's meeting. The report was detailed and beneficial for informing the Board about the meeting. She suggested that staff continue to provide such information, which may preclude the need for Board members to attend different such meetings.

Mr. Schlegel noted that when he attended different water meetings, he provided Mr. Stratton with any pertinent information, though most of the discussion at such meetings is not germane. Ms. Johnson said that having a written report was helpful.

Mr. Stratton said that he had distributed the Board a performance appraisal for the General Manager as required under his contract with the District. He said that he was a strong proponent of performance appraisals and believes they are beneficial to the employee and employer.

Ms. Johnson said that the performance appraisal for the General Manager should be scheduled for the October 11, 1995 Board meeting. She suggested that each Board member complete the written appraisal and then she would make copies of each member's appraisal for each other so that the Board as a whole could provide a more concise appraisal for Mr. Stratton. She requested the written appraisals by September 25, 1995.

Mr. Schlegel suggested that a brief background summary about each employee would be helpful to have so that the Board knows a little more about the employees.

XI. Legal Counsel's Report.

Mr. Higdon said that he had no report to provide.

XII. Future Meeting Dates; Future Agenda Items

Mr. Stratton noted that the agenda for the October 11, 1995 Board meeting will have many items included on it.

XIII. Adjournment

The Board adjourned at 7:29 p.m.


Barbara L. Johnson, Chair

ATTEST:


Clerk