

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

October 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
 Herb Johnson, Member
 Pete Schlegel, 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. Barbara Johnson, Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District), called the regular Board meeting to order at 5:02 p.m. Ms. Marty Cramer, Mr. Jim Doyle, Mr. Herb Johnson and Mr. Pete Schlegel were present.

II. Comments From The Public

There was no comment from the public. Ten people were in the audience.

III. Financial Report

Mr. Mark Stratton, General Manager, noted that due to the timing of Board meetings, staff does not always have the pertinent bank statements to provide exact monthly budget summaries. Staff will provide a detailed quarterly report so that the Board will have a more specific accounting of the budget and can make any minor adjustments that may be necessary.

Mr. Michael Land, Chief Financial Officer, distributed to Board members copies of the September budget summary report. He apologized for the delay in providing the report, which was because of a problem with the water sales from the billing program transferring to the general ledger. The summary report includes projections based on three months of data. Based on the new rate structure, the District anticipates revenues to be \$717,000 over budget for the year. Expenditures are expected to be over budget in supplies and consultant/contract services.

Supplies include materials, parts and chlorine used in the District's continuing maintenance program. Additional attorney fees due to litigation with the City have caused the over budget in consultant/contract services.

Mr. Schlegel asked by what percentage the expenditures were over budgeted. Mr. Land said that it is about two percent. Mr. Stratton noted that while funds for the extra consultant/contract services appear over budgeted, monies set aside for CAP water last year are being used.

IV. Consent Agenda

- A. Approval of Minutes - September 11, 1995 Board Meeting.**
- B. Approval of Minutes - September 21, 1995 Public Hearing.**
- C. Approval of Minutes - September 21, 1995 Special Meeting.**
- D. Approval of Minutes - October 4, 1995 Special Meeting.**
- E. Approval of Bill of Sale - Amphitheater Public Schools CDO Satellite Campus Water Line Extension**
- F. Approval of Water Service Agreement - The Bluffs, Phase I.**

Ms. Cramer made the motion to approve the Consent Agenda. Mr. Schlegel 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 character of the NRP has been changing due to an increase in Pima County involvement. This increased activity has expanded the scope of the Lower Santa Cruz replenishment project. The County Administrator wants the project to move quickly so that construction for Marana's flood control, a part of the project, can begin in a year. Originally, the District had hoped others would become involved so that the District did not solely shoulder the cost. Larger options for recharge are developing for the whole NRP. Mr. Myers noted that he is making certain the issues most important to the District remain in the forefront. He noted that he has a good working relationship with Sharon Megdal, who is under contract again with Pima County for this project. The NRP appears to be progressing well for the long run.

Ms. Cramer suggested that a time line be created to assist the Board in understanding the various issues that are merging with the NRP. Mr. Myers said he will try to develop some type of visual display of the various activities occurring with the NRP but can be quickly updated when the status changes.

Mr. H. Johnson asked to what extent the scope of the project has changed. Mr. Myers said that main change has been an expansion in the concept of the size of the Lower Santa Cruz recharge project. The County Administrator is determined to see if recharge is possible on a large scale and is advancing the Marana flood control aspect and other possibilities. The feasibility study for the Lower Santa Cruz and the Cañada del Oro recharge projects is proceeding with most of the investigations in draft form. Additionally, two other pilot projects are occurring on the

Lower Santa Cruz. A pilot recharge site for effluent, which originally was be planned for the Rillito, has been selected in the Lower Santa Cruz and a grant proposal was submitted for this project. The County has begun the process of having an inflatable dam structure at Cortaro Road and the Lower Santa Cruz to retain effluent for potential recharge along the banks above the low flow channel without diverting a substantial amount of water down the river.

Ms. Cramer asked about the inflatable dam. Mr. Michael Block, District Hydrologist, and Mr. Myers explained that the inflatable dam is like a big inflated innertube that holds back the flow about one to three feet deep. When a threat of a flood occurs, the dam is deflated.

Mr. Stratton said that these multi-agency projects will create a series of different CAP water and effluent recharge projects from north of Ina Road to the County line. Mr. Myers likened the projects' concept to "a string of pearls" that are falling in place to benefit the region. The District sowed the seed money to bring it forth, which means various policy and technical options will be available.

Mr. Schlegel said that he was concerned that the City of Tucson will try to steal the "string of pearls" by claiming to be sole proponent of recharge as described in the final Dames & Moore study. The City should not be allowed to take credit nor be able to recharge in the CDO Basin. With 150,000 acre feet of CAP water, the City will want to recharge water anywhere and receive credits. Mr. Myers said that he and others working with the NRP are cognizant of the potential problem that Mr. Schlegel described and have discussed how to prevent it. While the City has a history of trying to obtain control and has yet to ascertain that the NRP is a regional project, the NRP was designed without the City and so it cannot take control. The District has first right of refusal on the capacity for the Avra Valley project. The City needs to be participant, but they will not be an owner of the projects.

Ms. Cramer noted she had received a mailer from Tucson Water that claimed credit for all recharge projects. Since perception can become truth, the District should promote the correct story for our customers and the region. Mr. Myers said that he would be pleased to work with a public relations firm to be certain that correct credit is given.

B. Policy for Bid Openings.

Mr. Stratton reported that attached to his staff report are the findings of Mike Butler of Brown & Bain regarding the District's procedure for obtaining bids. Since the District is not seeking to place an assessment on property when it goes out for bids, then the Board can decide its own policy. While investigating this issue, it was noted the bid policy was included with the District's procurement procedure that was adopted in May 1993. Both the General Manager and the Chief Financial Officer recommend that staff examine that procurement procedure and determine how it can be revised to best meet the District's needs. The appropriate Board Member Committee will be asked to assist in the revision process, similar to revising the personnel manual, to be certain that the new procurement procedure will be suitable for the present and future. In the mean time, the District can function according to the existing policy for bid openings.

Ms. B. Johnson noted that she had requested this agenda item and hoped for such a recommendation from staff. Examining the matter is appropriate for staff, legal counsel and the Board Member Committee and then bring forth a recommendation to the whole Board.

Mr. Schlegel asked if staff had acquired a draft copy of Pima County's new procurement procedure. Mr. Land said that he does have a copy. Mr. Stratton said he envisioned that they may use a major portion of the County's procedure as appropriate for the District.

C. Waiver of Service Charge for Change-out of 1" Meter to 5/8".

Mr. Schlegel said that the waiver appears to be a requested exception to a policy the Board has set. He noted that he was initially concerned that a variety of exceptions would then be requested if the Board approved this waiver. However, the District has tried to be approachable and maintain a people-oriented attitude and so he viewed such a waiver as a good policy.

Mr. Stratton said that many customers do not know they have a one inch meter. The recommended waiver of the service charge for changing a one inch meter to a 5/8 inch meter is an opportunity to encourage customers to convert to a smaller residential meter where it is feasible based on pressure in the system.

Mr. Schlegel noted that the District had tried to replace all meters as a means to have more accurate recordings of water usage.

Mr. H. Johnson asked if the field workers have time to be able to accomplish these change-outs. Mr. Stratton said the waiver was recommended to be effective until May 1, 1996 to provide staff time to make the change-outs. Three-hundred customers are on a one-inch meter and probably not all will want to change. With a slight decline in new building construction, staff has not been installing as many new meters and can use that time to be able to accommodate the anticipated change-out requests.

Mr. Schlegel made the motion to authorize a waiver of the service charge for change-out of a 1" meter to a 5/8" meter from the period of November 1, 1995 to April 30, 1996. Mr. Doyle seconded the motion. Ms. Cramer abstained from the vote because her home has a one-inch meter. The motion passed four to none.

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

A. Request by Brent Cluff for Participation in Pilot Plant at Lake Mead.

Dr. Brent Cluff explained he has been researching for a number of years slowsand filtration and has received favorable results from two pilot projects. The pilot plant at Lake Mead is to determine the feasibility of conducting a slowsand filtration on surface water, which would have application to CAP water. Critics of slowsand filtration have said that it requires too much room and is too labor intensive. This criticism should be dismissed based on that they would need only 15 acres to do all of Tucson and that computers and five people operate slowsand filtration used in London. A pilot plant was established in Las Vegas and despite positive results, the plant was aborted. The National Park Services at Lake Mead were contacted and

the pilot plant is being established to consist of a slowsand filter and three stage nanofilter. Dr. Cluff explained some technical aspects of slowsand filtration.

Ms. B. Johnson asked if the requested \$5,000 contribution is for one year. Dr. Cluff said that is correct and that the Lake Mead pilot plant has received a \$5,000 donation from the John F. Long Foundation. He is seeking additional cosponsors. Cosponsors would receive bimonthly reports on the pilot plant's results. Members of the Board are welcome to visit the plant.

Ms. B. Johnson asked about Clean Water Products, Dr. Cluff's company. Dr. Cluff said that upon retiring from the University of Arizona, he established a private company to manufacture nanofiltration systems that can be used in homes and pools. In fact, Patio Pools is using one system so that pools do not have to be drained, another issue he would like to discuss at a future time with the Board. Clean Water Products is working with other small water providers.

Ms. Cramer asked how Lake Mead water compared to the CAP water received in Tucson. Dr. Cluff said that the inorganic analysis is very similar. Ms. Cramer asked if the pilot plant at Lake Mead would lead to a pilot project in the Tucson area. Dr. Cluff said if a pilot plant is done here, the District would be credited for the Lake Mead pilot plant. Metro Water would receive many lauds from the industry as people shift to this treatment. The District should already be applauded for its efforts to promote recharge.

Ms. B. Johnson said she did not feel that the District should be involved in the treatment business and that it would not be in the best interest of our customers at this time.

Mr. H. Johnson said that despite the District's temporary differences with the City of Tucson, the District is willing to work with the City as it does research about the treatment of CAP water according to the Dames & Moore report. He noted that the report objected to nanofiltration and reverse osmosis because of the ten to fifteen percent of water rejected due to the heavy salt content. Disposing of the salt becomes a problem. The report proposed a pilot project in the Tucson area. While the District has temporary differences with the City, we have to look at the overall cost and realize that conducting tests here would rather be better than involve staff time and District resources on a project at Lake Mead. We are not a philanthropic organization.

Mr. Schlegel noted that the District has financially supported other projects, particularly conservation activities. The District has not been against spending money to help our customers. However, he agreed with views expressed by other Board member that it would be better to support a local project. He was impressed with another proposal to do a pilot plant at the Avra Valley Pilot Recharge Project site, which may be more of a possibility now that the project will soon be constructed. Addressing that type of project would be better for the Board.

Dr. Cluff noted that the treatment process would remove salt impurities before sending the water to residents. The wastewater would be mixed with effluent to be recharged down the stream. The amount of salt introduced in the region remains the same either way water is treated. Mr. H. Johnson questioned the environmental soundness of placing high amounts of salt with effluent. Dr. Cluff said that the quality of the water used by people should be the main emphasis.

Mr. H. Johnson said that the Board meeting was not the best format to discuss these technical matters. While the concept has merit, staff should research the issue and provide a report to the Board.

B. Resolution 1995-6 - Membership in the Central Arizona Groundwater Replenishment District.

Mr. Stratton explained that membership in the Central Arizona Groundwater Replenishment District (CAGRD) is part of the application process for receiving an assured water supply designation. The Arizona Department of Water Resources requires membership with the CAGRD signed by end of November 1995.

Ms. Cramer made the motion to authorize the Chair to sign the application to join the Central Arizona Groundwater Replenishment District, direct staff to draft a check for \$50.00 to cover the application, and to adopt Resolution 1995-6 to join the CAGRD and permit the Chair to sign the Member Service Area Agreement once it has been received from the Central Arizona Water Conservation District and the appropriate public notification has been completed. Mr. H. Johnson seconded the motion.

Mr. Jim Peterson of Oro Valley asked if the District had received approval of its hydrological study. Mr. Block said that yesterday he received notice that ADWR has approved the hydrological study. To apply for CAGRD membership, the District must supply a copy of its application to ADWR for an assured water supply, which also includes the hydrological study. A letter will be sent with the CAGRD application stating that the hydrological study has been accepted. Mr. Peterson noted that the Town of Oro Valley had requested that the letter from ADWR specifically include Oro Valley Water Improvement District #1 (OV#1). Mr. Block said that the letter notes it is for the District's entire service area and that the report itself states OV#1. Mr. Peterson was concerned because the letter does not refer to OV#1.

Ms. B. Johnson noted that Mr. Michael McNulty had expressed concern about membership in the CAGRD. Mr. Stratton said the concern regarded the amount paid to the CAGRD for the long-term water supply increased by three percent annually, which may discourage the acquisition of effluent and other renewable sources. Since the District is obligated under the CAGRD, there is no need legally to purchase other water supplies.

Mr. Schlegel said that the District should send a cover letter with the application to make clear the District's intent, so that the District's joining with the CAGRD is not questioned in the current litigation. Mr. Phil Higdon of Brown & Bain noted that the District filed two alternatives for an assured water supply, one with the CAGRD and one based on the Asset Purchase Agreement with the City of Tucson and the remainder with the CAGRD. Mr. Schlegel said that he would prefer a cover letter stating our intent so that no question can be raised and used against the District. Mr. Stratton said that staff would draft a cover letter to state clearly the District's position.

Ms. B. Johnson for a vote for the motion regarding membership in the CAGRD. The motion passed unanimously.

C. Storage Permit for Avra Valley Pilot Recharge Project.

Ms. Cramer made the motion to direct staff to submit the application for a water storage permit to the Arizona Department of Water Resources. Mr. Doyle seconded the motion and it passed unanimously.

D. Award of Contract - Miscellaneous Survey Services.

Mr. H. Johnson made the motion to award a contract for miscellaneous survey services to Alpha Engineering in an amount not to exceed \$25,000. Ms. Cramer seconded the motion and it passed unanimously.

E. Award of Contract - Geotechnical Services.

Mr. Doyle made the motion to award a geotechnical services contract to Terracon Incorporated in an amount not to exceed \$17,000. Mr. Schlegel seconded the motion and it passed unanimously.

F. Discussion of Schedule for District Bond Election.

Mr. Stratton said that he would like the Board to discuss its opinions and concerns regarding a bond election. The staff report suggested the formation of a Bond Advisory Committee to develop the bond issue and promote it to our customers. District staff can cover the financial information.

Mr. H. Johnson said that a time frame should be discussed. Mr. Stratton said that the Board does not need to take official action, but can express its opinion. He suggested that an election in May 1996, which would need to be called in January 1996, would provide time to know the outcome of the hearing on the lawsuit and to list projects and their cost targeted by the bond, prepare maps, and to have the Bond Advisory Committee established prior to the call for election. An election in March 1996 would probably be too soon to prepare for. Since this will be the first bond election since the District's formation, we want to be certain that we have a clear, winning strategy.

Mr. Stratton said he wanted also to discuss the concept of a Bond Advisory Committee and the Board's perception of such a committee's role. The Committee would provide more exposure, along with staff and the Board, to promote the bond. Perhaps two Board members can assist in developing a list of potential committee members.

Mr. Johnson said that the bond issue will affect the whole Northwest area. The District should involve people from Rancho Vistoso and Cañada Hills Water Companies to benefit from their talents and gain more positive exposure.

Ms. Cramer said that in scheduling the bond election, it would be helpful to know if other issues may be on the ballot. Not being associated with a negative ballot issue would be prudent. Mr. Stratton said that in discussion with the County Administrator, it is doubtful that Pima County will have an election in May 1996. Other special districts could be contacted to determine if

they plan to have an election. Mr. Peterson noted that the Town of Oro Valley will probably have an election in March 1996.

Mr. Schlegel said that the staff report indicated a \$16 million bond. He did not remember the Board agreeing to such a figure and questioned if \$16 million is the exact needed amount. Since the bond will be difficult to promote, the amount should be real and justifiable. Mr. Stratton said that the \$16 million was used with the financial projections for the new rate structure. The District needs to first define in detail the projects for the bond and their cost estimates. Mr. Schlegel asked if \$16 million becomes the agreed amount for the bond issue, if rates will not need to be raised next year. Mr. Land said that is correct. Mr. Stratton said that the District could delay the sale of bonds for future projects if staff is unable to keep up with the projects.

Mr. Schlegel noted that there is little time before an election. Staff should investigate what monies the District can spend, if any, to educate and to promote the bonds. If we are unable to spend money, we may want to get some business people to help promote the bonds.

Ms. Cramer suggested that Mr. Stratton contact each Board member for possible names for the Bond Advisory Committee. Mr. Stratton said he would provide the Board with a copy of the list of the original advisory committee for the District's formation as a starting point.

Ms. B. Johnson said that the two Board members should also be on the Bond Advisory Committee.

Mr. H. Johnson said that Mr. Schlegel would be helpful in obtaining names for the Committee as well as working with the Committee.

VII. General Manager's Report

Mr. Stratton said that his report covered most relevant issues. He did want to mention that he attended a Southern Arizona Water Resources Associations (SAWARA) meeting that morning that discussed SAWARA's reorganization. SAWARA is attempting to remove any appearance that the City or County, through their financial contribution, is influencing SAWARA's decisions. SAWARA will limit contributions to \$5,000 and will attempt to involve the business community at a greater level. Buck O'Rielly has agreed to be president for the first year. Mr. O'Rielly noted that he is concerned that Tucson should not be portrayed as the regional entity and that SAWARA should promote regional issues. SAWARA will be asking the District for a \$5,000 contribution, which will be placed on the November 13, 1995 agenda.

Mr. Myers noted that he has been involved with SAWARA's reorganization. SAWARA will remain a nonprofit entity, but become more of an activist on issues. SAWARA is aware of not wanting to be perceived of only now promoting business. SAWARA is to hold three fund raising breakfasts between now and November 15, 1996, and if they do not raise adequate funds, then the District will not be asked to make a contribution.

Mr. Schlegel asked if the District will retain a position on SAWARA's board. Mr. Myers said the District will be on the board. Only one representative will be allowed from an entity so that no single entity dominates the board.

Mr. Stratton noted that in the general manager's report, he referred to the proposed Northeast Reservoir and the concerns of a property owner who appears to be unable to sell his home because of potential buyers' worries about the reservoir. Mr. Stratton would be contacting Board members to ascertain their thoughts regarding this matter to see if they can devise some solution. Mr. McNulty is examining the CC&R for the homeowners association where the reservoir is to be located to determine any legal issues that may involve the District.

VIII. Legal Counsel's Report

Mr. Higdon noted that legal counsel has been devoting most of its time to the two lawsuits with the City of Tucson. The District filed a lawsuit for declaratory judgement to settle the issue of which water provider will service the Rancho Arboleda subdivision. The City filed a motion to dismiss it, which the judge denied. The City then filed their answer and a counterclaim, which is identical to the counterclaim they filed on the Asset Purchase Agreement lawsuit. Mr. Marvin Cohen, Attorney for City of Tucson, wants to file a motion to consolidate the two lawsuits, which would delay the whole matter much longer. If Mr. Cohen files such a motion, we will oppose it. The District's reply to the City's counterclaim is due October 23, 1995. Disclosure statements are to be made December 4, 1995.

Mr. Higdon said that regarding the lawsuit with the City of Tucson about the Asset Purchase Agreement, a hearing was held September 22, 1995. The judge was asked to set a hearing date, which will be February 5, 1996. We want the hearing to focus on our complaint, but Mr. Cohen thinks the hearing should be only a preemptive injunction. The District has filed a reply to the City's counterclaim. In the counterclaim, the City wants the District to pay for 10 months of CAP water, and to pay as long as the City has an allocation, and if not, then the City should have the water company returned to them. The District has moved to dismiss Tucson's first two claims regarding returning the water company and blocking construction of the Linda Vista Reservoir. The City's response to the motion to dismiss is due on October 17, 1995. The hearing on the motion is for October 30, 1995, which the judge will probably take under advice.

Mr. Higdon said that the request for written discoveries, admitting whether a statement is true or not, was issued to the City and due November 1, 1995. Disclosure statements are due in two weeks on October 25, 1995. Disclosure statements include a narrative statement justifying whether our claim is justified or the counterclaim is not justified. We must also identify relevant documents and trial witnesses. The City must do the same. District staff has been cooperative in obtaining various documents. Mr. Cohen will try to request a summary judgement after disclosure statements are made to try to dismiss the case without a trial.

Mr. Schlegel noted that at a joint meeting of City Council and CAWCD's Board, Councilmembers stated they would not deliver treated CAP water until problems were resolved. Mr. Higdon noted that he has obtained many similar statements by City officials.

IX. 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 6:53 p.m.

Executive Session pursuant to A.R.S. § 38-431.03 (A)(1), (discussion or consideration of personnel matters) and 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. Litigation with the City of Tucson.
- B. Performance Appraisal for General Manager.

The Board returned from Executive Session at 8:15 p.m.

X. Litigation with the City of Tucson - Discussion and Possible Action.

No discussion occurred at this time.

XI. Performance Appraisal for General Manager - Discussion and Possible Action.

Ms. Cramer noted that the members of the Board did a performance appraisal of the General Manager. Each appraisal noted his performance to be positive or outstanding. Based on that assessment, Ms. Cramer made the motion to implement a merit raise for the General Manager at five percent retroactive to July 1, 1995. Mr. Doyle seconded the motion and it passed unanimously.

XII. Future Meeting Dates; Future Agenda Items

The next regular Board meeting is November 13, 1995.

XIII. Adjournment

The Board adjourned at 8:18 p.m.


Barbara L. Johnson, Chair

ATTEST:


Clerk