

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

January 23, 2002

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

**Study Session
MINUTES**

Board Members Present: Pete Schlegel, Chair
 Dennis Polley, Vice-Chair
 Dan M. Offret, Member
 Jim Doyle, Member
 Marlene Wright, Member

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

I. Call to Order and Roll Call

Pete Schlegel, Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District), called the Study Session to order at 6:10 p.m. Pete Schlegel, Dan M. Offret, Jim Doyle, Dennis Polley and Marlene Wright were present.

II. Discussion of Legal Counsel Contract

Michael McNulty, Legal Counsel, provided the Board with materials and documents summarizing Brown & Bain's history with Metro Water. The District was formed in 1992 and shortly thereafter it was realized that the District required legal representation regarding contracts and water quality issues. Brown & Bain had previously assisted the District with specifications and other matters associated with the formation of the District. From that time until today, Brown & Bain has served as Legal Counsel for the District.

Mr. McNulty stated that during this time, the District has actually needed little in the way of litigation services from Brown & Bain. He believes this is due much in part to the management skills by District Board members and staff. At the beginning of the relationship between Brown & Bain and the District it was believed that there would be a greater need for legal services.

The rates currently charged by Brown & Bain, Mr. McNulty pointed out, are well below the normal rates in today's market, and have not increased during the last ten years. Mr. McNulty said Brown & Bain would like to bring the fees more current. He added that due to the strong and lasting relationship with the District they would be willing to offer the District a 15% discount off their normal rate. Mr. McNulty explained that this would be a better method rather than a base fee for the entire year. Mr. McNulty also explained that many companies use multiple law firms, which the District currently does also for such items as legislative issues. He encouraged the District to continue this practice if it remains cost effective to do so.

Mr. Polley mentioned that on other contract service items the District typically goes out for bid. However, based on the background knowledge, history, and expertise received from Brown & Bain, he believes an increase in legal service fees is acceptable. He pointed out that the District could risk ending up spending more money and receive less legal expertise with another law firm, though their fees may be less.

Mr. Offret said the District has been receiving excellent service from Brown & Bain and is agreeable to the proposed rate increase. However, he believes that in the interest of District customers, a bid or request for services process should be formulated for legal services. Ms. Wright agreed with Mr. Offret. Mr. Doyle also believed it would be prudent to seek bids; meantime however, Brown & Bain should be compensated at today's current market rate. He added that he has been pleased with the quality of service and work completed by Brown & Bain.

While he appreciates the need to manage the budget and dollars carefully, Mr. Stratton said it is difficult to seek bids and compare expertise and qualifications in the water utility industry from the legal counsel arena. Mr. Schlegel agreed with Mr. Stratton and added that Brown and Bain have done a substantial job for the District. He went on to say that he believes legal services should be viewed as a sole source situation due to the limited amount of firms experienced in the laws surrounding water business and issues. When considering bid applications, the low bidder is typically accepted or awarded the contract and if this were to happen it would not ensure the District was receiving top notch quality service. Considerations should not only encompass the financial factors, but water issue expertise as well. Mr. Schlegel believes that the District could become vulnerable without expertise counsel which makes the situation unique.

Mr. Offret questioned if the decision of legal counsel could be justified as a sole source situation, and if so, could it be documented for future reference. Mr. Schlegel replied that if the Board decided this was a sole source situation, it should be documented.

Mr. Wright mentioned that the District has not always gone with the lowest bidder, but has considered service levels and factored this into the decision. She agrees with the rate increase of 15% for present services provided by Brown & Bain. However, she would like to see a bid process take place for comparison to ensure and alleviate any question or doubt regarding fees and services. Ms. Wright believes that as a Board member, decisions should be based on doing

all the District can to ensure quality service at a fair price and does not believe decisions should be made without some type of research or additional knowledge.

Mr. Schlegel asked if there were options available for receiving a consumer report, so to speak, or a referral service. Mr. McNulty suggested publishing a reflective proposal outlining the District's role and legal requirements, notifying interested parties to submit their qualifications for consideration. Mr. Schlegel said he is in a unique position in that he is familiar with legal firms utilized by other water utilities in Southern Arizona. With this knowledge, he believes that Brown & Bain is superior in their representation and expertise. Mr. Schlegel reiterated the need for an expert in the field of water, and does not oppose going through the bid process.

Ms. Wright said that if the District were to solicit interested firms, the information could be examined and if Brown & Bain were to still be the top choice, the decision to remain with Brown & Bain would be substantiated. Mr. Offret agreed and asked that staff be directed to prepare the necessary paperwork to request bids for proposal regarding legal counsel representation and bring the information back to the Board for consideration.

Mr. Schlegel asked Mr. McNulty what he would need in the way of a retainer for current services. Mr. McNulty replied that Brown & Bain would offer the 15% discount off regular fees for services if they believed the District would continue to do business with them and there would be \$5,000 per month or more of steady work flow. Mr. McNulty also advised that the fees for services charged in Phoenix by Brown & Bain were considerably higher than those charged in Tucson.

Mr. Stratton will have a Request for Proposal (RFP) completed.

III. General Manager's Report

Mr. Stratton said he spoke with Susan Charlton and she reported speaking with Representative O'Halloran regarding the Governor's Water Commission Legislation and learned that it will not be ready until the week of January 28, 2002. Mr. Stratton asked what was the Board's pleasure in regards to a study session on legislative issues. Mr. Schlegel said he preferred to wait but added that he wanted to include Mr. Polestra to address the Board to provide an update on hard boundary issues.

Mr. Stratton said the District's legislation passed 8-1.

Regarding fire hydrant vandalism which occurred last year, Mr. Stratton attended juvenile court and the individual plead guilty to damaging the hydrants. The amount of restitution recommended by the presiding judge in the case was \$1,343. There is an adult who will be going to court shortly for the same incident.

IV. Future Meeting Dates; Future Agenda Items

The next regular meeting of the Board is scheduled for February 11, 2002 at 6:00 p.m. There will be a special study session to discuss legislative issues at 5:00 p.m. on February 11, 2002.

V. Adjournment

The meeting adjourned at 6:55 p.m.



Clerk of the Board

Dennis Polley, Chair of the Board