

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

November 8, 1999

**** Board Room****

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

MINUTES

Board Members Present: Sam Ray, Chair
Marlene Wright, Vice-Chair
Jim Doyle, Member
Dennis Polley, Member
Pete Schlegel, Member

District Staff: Mark R. Stratton, General Manager
Lisa Chase, Legal Counsel
Warren J. Tenney, Clerk of the Board

I. Call to Order and Roll Call

Sam Ray, Chair of the Board of Directors of the Metropolitan Domestic Water Improvement District (District), called the Board meeting to order at 6:06 p.m. Jim Doyle, Dennis Polley, Pete Schlegel and Marlene Wright were present.

II. General Comments From the Public

There were no comments from the public.

III. Consent Agenda

Mr. Polley made a motion to adopt the consent agenda. Ms. Wright seconded the motion.

Ms. Wright requested information regarding Mr. Kittell's account. Mark Stratton, General Manager, answered that Mr. Kittell was a customer who had a vacant house that had an excessive amount of water usage and no determination could be made as to the reason for the high consumption. The District and Mr. Kittell agreed to a settlement based on his past meter usage. The District's new pro-active notification stance on high consumption users has helped to minimize the occurrence of similar situations..

Mr. Schlegel asked if the billing adjustments could be listed alphabetically in future reports. Joyce Osborne, Administrative Services Manager, indicated they would be alphabetized in the future.

Mr. Ray called for a vote on the motion to adopt the consent agenda. The motion passed unanimously.

IV. General Business – Items for Discussion and Possible Action

A. Presentation by United States Geological Survey on the Lower Cañada Del Oro Basin Aquifer Storage Change Monitoring Project.

Don Pool with the United States Geological Survey (USGS) made a power point presentation to the Board on groundwater storage monitoring in the Lower Cañada Del Oro (CDO) sub basin for the years 1995 –1999. The funding partners for this project are the District, Oro Valley, ADWR and USGS. One of the objectives of this project is the quarterly monitoring of groundwater storage and regional monitoring throughout the basin to estimate groundwater deficit. Another part of the project is to monitor near the CDO wash for estimates for the distribution of natural recharge so it can be determined where recharge is occurring naturally. He indicated that during the winter of 1998 about 4,000 acre feet was recharged along the CDO wash, but that amount can change based on seasonal activities. Mr. Pool indicated that USGS would be meeting with the three entities' staff within the next few weeks to determine if this project needs to continue.

B. Financial Report.

Mike Land, Chief Financial Officer, informed the Board that staff has been entering information into the MIP accounting software conversion and are awaiting the final trial balance from the audit to open the general ledger. He stated that the cash balance level has been around \$1.5 million for the past few months. Mr. Land said that meter installations have decreased.

C. Financial Audit for Fiscal Year 1998-1999.

- 1. Resolution 1999-8 – Recording of the City of Tucson Settlement Balance as a Regulatory Asset.**
- 2. Approval of Audit for Fiscal Year 1998-1999.**

Mr. Land introduced Tom Johnson, of the accounting firm of Cotton, Parker & Johnson. Mr. Land gave the Board a brief summary of the District's assets and liabilities. He indicated they increased considerably due to the purchase of the Hub Metro service area and sale of new bond monies. Mr. Land explained that the adoption of Resolution 1999-8 would give the District the authority to record the City of Tucson settlement balance as a regulatory asset.

Mr. Schlegel made a motion to approve Resolution 1999-8 to record the City of Tucson settlement balance as a regulatory asset and to approve the Consolidated Finance Statements for the Fiscal Year 1998-1999 audit. Mr. Polley seconded the motion and it passed unanimously.

D. Approval of Procurement Policy.

Mr. Schlegel made a motion to approve the procurement policy dated November 9, 1999 for all District purchases. Mr. Polley seconded the motion.

Mr. Ray pointed out a typographical error on page 7, item A-1. Mr. Land indicated that it would be corrected.

Mr. Ray called for a vote on the motion to approve the procurement policy and it passed unanimously.

E. Approval of Water Service Agreement with New World Homes for the Rosevale, Lots 1-127 Subdivision.

Mr. Doyle made a motion to approve the Water Service Agreement with New World Homes for the Rosevale, Lots 1-137 subdivision. Ms. Wright seconded the motion.

Mr. Ray and Mr. Schlegel asked the location of these lots and expressed their concerns with getting water to the proposed Pima Community College site. Mr. Stratton responded that the subdivision is opposite the Tucson National. The new transmission lines would go along the east side of the CDO wash and Pima County is currently investigating realigning Shannon Road.

Mr. Ray called for a vote on the motion to approve the water service agreement and it passed unanimously.

F. Approval of Canyon Ranch Construction Project.

Ms. Wright made a motion to ratify the agreement with Canyon Ranch for the construction of an automatic emergency interconnect system for the purpose of having a source of back-up water supply. Mr. Polley seconded the motion.

Mr. Ray noted that the agreement for this construction project had no start date and end date. Mr. Stratton explained that the timeframe would depend upon when Canyon Ranch made the down payment and the District acquired materials. It would probably be at least two to three weeks before staff could start on the project.

Mr. Ray and Ms. Wright asked legal counsel if any beginning and expiration date was necessary. Lisa Chase, legal counsel for the District, stated that the agreement has two components, namely the District's obligation to construct and ongoing water service. She said it was possible to add language to further clarify the District's and Canyon Ranch's obligations; however, she believed this agreement was adequate in its wording including the section under payments terms was an estimate.

Mr. Ray called for a vote on the motion to approve the agreement with Canyon Ranch and it passed unanimously.

G. The Sale of the Motorola Intrac Telemetry System.

Mr. Stratton told the Board that the Motorola Intrac system was the telemetry system used when the District was first formed and since they no longer manufacture parts for this system coupled with the fact that the District has implemented a more efficient telemetry system, the Motorola Intrac system is of no use to the District. He indicated that Mount Lemmon Co-op feels that the Motorola Intrac system could help keep their small system operational.

Mr. Schlegel made a motion to approve the sale of Metro Water District's Motorola Intrac telemetry system to Mt. Lemmon Co-op for the sum of \$2,500. Mr. Polley seconded the motion.

Mr. Ray pointed out that the Board previously gave a storage tank to Marana rather than selling it to them and he sees no difference in donating this telemetry system to Mt. Lemmon Co-op. Mr. Stratton stated that the District estimated the cost of moving the storage tank versus donating it to Marana and decided it would be financially prudent to donate. He indicated that the Board did have the authority to donate equipment that was no longer usable within the District. Mr. Polley and Ms. Wright agreed that the donation of this equipment was feasible.

Mr. Schlegel asked what the cost would be if Mt. Lemmon Co-op went out and bought new telemetry equipment. Steve Dean, Utility Superintendent, responded that it would be about \$10,000 per site or about \$20,000 total. Mr. Schlegel expressed his concerns that the Board may be setting a precedence.

Mr. Polley inquired if this property had depreciated out. Mr. Dean answered that this telemetry equipment was in use until two and one-half years ago. Mr. Land added that the equipment was fully depreciated and had no value. Ms. Wright noted that the District gave away its old computers recently and she saw no difference with donating telemetry equipment.

Mr. Doyle expressed that he thought the donation of well storage equipment to Marana and donating telemetry equipment to Mt. Lemmon Co-op were different. He stated he felt that at \$2,500, the Mt. Lemmon Co-op was still receiving a great deal.

Mr. Ray called for a motion to approve the sale of Motorola Intrac telemetry system to Mt. Lemmon Co-op for the sum of \$2,500. The motion failed 2-3 with Mr. Schlegel and Mr. Doyle voting for the motion and Mr. Polley, Ms. Wright and Mr. Ray voting against the motion.

Ms. Wright made a motion to donate the Metro Water District's Motorola Intrac telemetry system to Mt. Lemmon Co-op and Mr. Polley seconded the motion. The motion passed 4-1 with Mr. Polley, Mr. Ray, Ms. Wright and Mr. Schlegel voting for the motion and Mr. Doyle voting against the motion.

H. Consultant Selection for Hub Service Area Hydrology Study.

Charlie Maish, District Engineer, told the Board that the District received several proposals, but two firms stood out in the selection process. He stated that staff felt both firms would conduct a good study, but since Groundwater Resource Consultants has a current contract with the District, the selection committee recommended Hargis + Associates be awarded this contract.

Mr. Ray asked what the costs for this contract would be. Mr. Polley indicated the contract was estimated to be \$50,000. Mr. Maish stated that Groundwater Resources Consultants estimated the cost of this contract to be between \$30,000 to \$50,000.

Mr. Polley made a motion to approve the selection of Hargis + Associates, Inc., for the Metro-Hub Water Hydrology Study and direct staff to negotiate a contract for Board approval. Ms. Wright seconded the motion.

Mr. Schlegel asked when the contract would be presented to the Board for approval. Mr. Maish replied if negotiations went well, the contract would be on the agenda for next month's meeting.

Mr. Ray called for a vote on the motion to approve the selection of Hargis + Associates for the Metro-Hub Water Hydrology Study and the motion passed unanimously.

I. Consideration of Joint Appraisal with Town of Oro Valley for Audit of Tucson Water Service Area in the Northwest.

Mr. Stratton told the Board that he discussed the joint appraisal proposition with David Hook, Water Utility Director for the Town of Oro Valley. They determined that since they did not know which entity would get what property and how many customers if negotiations are successful, it would be difficult to prorate the amount of monies each entity would need to contribute at this time. Mr. Stratton stated that he and Mr. Hook felt it would be most appropriate to split the cost of a joint appraisal 50/50. If the Town of Oro Valley and the District were successful in negotiating a settlement with the City of Tucson, they would revisit the issue for any possible reimbursement based on the amount of connections and property acquired. Mr. Stratton said that the Town of Oro Valley received two proposals for this audit and they would probably accept Camp, Dresser & McKee's proposal as it was lower and that the total cost of the appraisal would be no more than \$25,000.

Mr. Schlegel asked if the District would only be accepting 50% of the appraisal costs. Mr. Ray stated that based on the results we could even end up absorbing the total cost. Mr. Stratton replied that if we were not successful in any negotiations, the District would still be responsible for 50% of the costs.

Mr. Schlegel asked if the District has looked at the financial potential of acquiring any of this area and if it was worth the risk. Mr. Stratton replied that based on what Tucson Water feels the appraised value of this property to be, he would recommend to the Board to not even consider acquisition of any or all of the service area as it would be too cost prohibitive. However, based

on this new appraisal, if Tucson would negotiate, the acquisition may be beneficial. He stated that there is some risk involved in proceeding with the appraisal.

The Board took no action on this agenda item. Mr. Ray directed the Clerk of the Board to put this item on next month's agenda.

J. Approval of Membership in Southern Arizona Water Users Association.

Ms. Wright inquired if the Southern Arizona Water Users Association (SAWUA) had achieved non-profit status. Mr. Stratton replied that it had not. He stated that the articles of incorporation are being drafted and the by-laws have been adopted. The Board could make this approval contingent upon the adoption of articles of incorporation. Mr. Stratton said that the Board was being asked to approve membership in hopes that the Board's commitment will encourage others to join. He stated that the District has been one of the primary entities promoting the formation of this organization along with Brad DeSpain and the Town of Marana. It is similar to the Northwest Alliance, but was intended to be more pro-active. He said that 20 formal invitations to join had been mailed.

Ms. Wright asked if the Northwest Alliance has dissolved. Mr. Stratton replied that it has not; however, he does not believe they have met their incorporation status because it has not held any meetings. He said that there were monies on deposit with the Northwest Alliance and they would ask all entities involved to have those funds transferred to SAWUA.

Mr. Schlegel expressed his support of Mr. Stratton and the District's involvement with this association and the need for its existence. He said the region is in need of an effective organization that can discuss issues in common and have a unified voice in Phoenix. Mr. Polley asked if a contingency of non-profit status provision were included in the motion, if it would diminish its effectiveness. Ms. Chase replied that it would not.

Ms. Wright made a motion to approve the District's membership in the Southern Arizona Water Users Association and to pay the initial fee of \$2,800 and the annual due of \$6,200, with the first half of the annual due paid this fiscal year, contingent upon achievement of non-profit status and adoption of articles of incorporation. Mr. Polley seconded the motion and it passed unanimously.

K. Direction to Staff for Notice of Non-Compliance by Arizona Department of Water Resources.

Mr. Stratton told the Board that staff has prepared a report detailing discussions with Arizona Department of Water Resources (ADWR) about the District's notice of non-compliance in GPCD conservation requirement.

Mr. Schlegel made a motion to suspend the Robert's Rules of Order to allow discussion of the options provided by staff. Ms. Wright seconded the motion and the motion passed 4-0 with Mr. Doyle abstaining from the vote.

Mr. Ray stated that he felt Options 1 and 2, which involve retiring long-term storage credits, should be eliminated from consideration. Mr. Polley expressed his frustration with ADWR appearing to use numbers as it so chooses without a sound basis. Mr. Stratton explained that the first three options were those proposed by ADWR, option number 4 described the District's actions if it does not accept ADWR's options. Options 5A and 5B were presented as a result of discussions between legal counsel and staff as alternative options.

Ms. Wright asked if ADWR was willing to entertain options. Mr. Stratton responded that he did not know as he does not know if anyone has ever proposed an alternative to ADWR. Mr. Polley reiterated that he feels ADWR does not have "hard numbers" to back up its claims of non-compliance.

Mr. Stratton pointed out that in 1995 audit ADWR made statements that the District was proactive with conservation methods and had consistently cooperated with ADWR. In the 1996 audit, ADWR again noted the District's proactive conservation activities, but like 1995 ADWR did not take any action, and also lost the file and did not complete the audit. Mr. Stratton said that the audit for 1997 was just done in July of this year. It appears odd for ADWR to take action against a municipal provider with a proactive conservation program as the District.

Ms. Chase explained that if ADWR chose to take action regarding non-compliance, ADWR could assert penalties. She said that she is led to believe that the infractions are based on internal operating guidelines, not state statutes. Ms. Chase told the Board that the District would have the right to present its case before a hearing officer. The hearing officer would then make a recommendation to the Director of ADWR who could accept, reject or modify that recommendation. The District would then have the right to appeal its case to the Superior Court. She stated that the statutory base is broad and if ADWR believes the District is not in compliance with the statute, it can bring a cease and desist action.

Ms. Wright said that ADWR's methods do not appear firmly sound so the District could challenge them and perhaps be successful. Ms. Chase responded that the District could challenge ADWR and require them to formally bring these charges to a hearing process. She stated that ADWR would be required to prove the District was not in compliance and the District could provide rebuttal based on discrepancies of the Second Management Plan and the Third Management Plan figures.

Mr. Ray stated that the District would be basically attacking the basis of the non-compliance numbers. Mr. Polley asked if there had ever been an appeal on any ADWR enforcement action. Ms. Chase indicated she was not aware of any appeals. She further stated that the first three options were at ADWR's discretion, there was nothing in the statutes that could require the District to enter into a stipulation and order or any pre-litigation settlement.

Warren Tenney, Assistant to the General Manager, said that one of the reasons for suggesting Options 5A and 5B was to send ADWR a "compromise" of what the District would like to do

and try to work with ADWR. Mr. Ray said Options 5A and 5B appeared to be only stalling tactics.

Mr. Polley stated he saw this as an opportunity to tell ADWR that its assumptions were fallacious, they are not based on scientific data. Mr. Ray stated that Options 5A and 5B are compromises to this.

Mr. Schlegel asked if another option might be to instruct staff to consider filing a class action lawsuit with other entities. Mr. Stratton this would not be a viable option as other entities' violations would be based on different GCPD numbers and they all have different conservation programs. Ms. Chase stated the time to have filed a class action suite was at the beginning of the Second Management Plan and that the District's intervention would only have standing if we were going to be legally and directly affected by ADWR's actions against us. It may be appropriate to file Amicus Briefs.

Mr. Polley asked if action by the Board was needed on this matter today. Mr. Stratton replied that staff needed direction by the Board because ADWR had inquired as to our status. He indicated that the District should provide a response, whether to do anything, recommend an alternative or accept ADWR's offer. There was a continued discussion amongst the Board members and staff as to the options and the perceived willingness of ADWR to enforce these violations.

Ms. Wright made a motion to direct staff to reject Options 1, 2, and 3 as presented by ADWR concerning non-compliance. Mr. Polley seconded the motion and it passed unanimously.

L. November 18, 1999 Public Meeting for Hub Service Area.

Mr. Ray asked if the Board wanted to consider the public meeting with Hub customers as a study session since in effect it would only be for Hub Metro service area customers. The meeting is considered a special meeting of the Board of Directors. Ms. Wright wanted to know if there was a need for a study session with the advent of the holiday season. Mr. Stratton answered that the only item staff thought might be appropriate for a study session was an update on the management information system issues that were ongoing, but it could be postponed.

Mr. Ray requested that the November 18, 1999 meeting be restricted to Hub Metro water issues and items of interest to those customers. Mr. Stratton indicated that there would be displays and handouts available for that meeting.

Mr. Ray asked if there was progress on obtaining property for an office site in the Hub service area. Mr. Stratton replied that staff has met with homeowners associations and they seem willing to provide property, but staff felt there might not be a need for an office site in that service area. He said that staff was determining if an office was needed before expending money to purchase a site.

Mr. Schlegel stated he wanted to use the opportunity of this meeting to describe the District, its history, goals, and its staff. He further directed staff to prepare biographies of the Board members and staff.

Mr. Ray asked if there has been a drop box for customer payments installed in the Hub service area. Mr. Stratton stated there had not been one yet and suggested that be addressed at the meeting. Mr. Ray directed staff to prepare an overview of items of interest and topics of concern for the Board to address. Mr. Schlegel requested a rate comparison chart.

V. General Manager's Report.

Mr. Stratton updated the Board on the legislative committee to which he was appointed. He said there did appear to be some movement to create some legislation to allow for some type of financial district for infrastructure for CAP water.

Mr. Stratton stated that Dennis Rule of Tucson Water had indicated the City of Tucson was willing to work with other entities and letting them have the effluent from their service areas. He further said that Ms. Chase had provided him with draft copies of agreements between the City of Tucson and Marana and Sahuarita and he found nothing negative in them and there was some potential to acquire rights to effluent. He stated that the City of Tucson was willing to turn over effluent for a time commitment for 50 years of use which would help in assured water supply issues.

Mr. Stratton told the Board that the approximately 30 residents attended and participated in the demonstration garden workshop on November 6, 1999. Mr. Tenney mentioned that the demonstration garden was a collaborative effort from both District staff and outside resources. He commended the Utility crews for their help, Desert Trees Nursery who donated the plants, Rain Bird and Irrigation System Supplies who supplied all the parts, saving the District about \$2,500 - \$3,000. Mr. Tenney indicated that the residents who attended asked a lot of questions and the District received many compliments. He stated that the remainder of the garden will be installed in the Spring.

Mr. Stratton informed the Board that it appeared that Hub Water Company was negligent in monitoring for lead and copper in an appropriate time frame. The District has since monitored the situation and everything is fine. He stated that a violation notice needed to be posted and that the violation needed to be attributed to the Hub Water Company, not the District and they should be the ones to do the violation notice.

Mr. Ray asked if the District addressed the issue of non-compliance in the agreement it entered into to buy Hub Water Company? Ms. Chase responded that she believed that the District acquired the assets of the company, not the liabilities.

VI. Legal Counsel's Report


Ms. Chase informed the Board that the mediation hearing scheduled for the dispute with Lang was vacated and needs to be rescheduled because Fast Fab had a conflict with the date. She further stated that Mr. Higdon indicated that he has received no phone calls from NAC and this issue is on hold until all issues are identified by NAC. Mr. Higdon is waiting to see if all complaints and/or claims have been received.

VII. Future Meeting Dates; Future Agenda Items

The next scheduled Special Board Meeting is November 18, 1999 at 7:00 p.m. at Frutchthendler Elementary School, 7470 E. Cloud Road. The next regular scheduled Board Meeting is Monday, December 13, 1999 at 6:00 p.m.

VIII. Adjournment

The meeting adjourned at 8:13 p.m.



Clerk of the Board



Sam E. Ray, Chair of the Board