

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

September 15, 1992
5:00 P.M.
245 East Ina Road
Tucson, Arizona

MINUTES

ATTENDANCE: Members: Alex Jacome, Chairman
 Herb Johnson, Member
 Kate O'Rielly, Member
 Pete Schlegel, Member
 Jim Tripp, Member
 Jane S. Williams, Clerk
 Guests: Robert Logan, Consultant to MDWID
 Mike McNulty, Legal Consultant, Brown & Bain
 Walt Roberson
 Jim Peterson, Oro Valley
 Mark Taylor, WLB Group
 David R Furrey, Flowing Wells Improvement Dist.
 Bruce D. Kelly, Rauscher, Pierce, Refnes, Inc.
 Fred Rosenfeld, Bond Counsel
 Paul Cella, Cella Barr Associates

A. CALL TO ORDER AND ROLL CALL

1. The meeting was called to order by Alex Jacome, Chairman. The motion was made by Jim Tripp; seconded by Kate O'Rielly. The motion passed unanimously.
2. Jim Tripp moved that the Board approve the meeting notice and agenda for September 15, 1992. Kate O'Rielly seconded. The motion passed unanimously.
3. Herb Johnson moved that the minutes of September 8, 1992 be approved. Pete Schlegel seconded. The motion passed unanimously.

B. PRESENTATION OF INFORMATION AND DISCUSSION

1. Report and discussions on meetings and negotiations with Oro Valley.

Michael McNulty was to report on the negotiations between Oro Valley and the Metropolitan Domestic Water Improvement District, but in McNulty's absence, Robert Logan stated that there was very little to report. He added that the attorney's for Oro Valley are preparing the document and at this evening's meeting in Oro Valley they would receive a draft of the document.

2. Report on draft of Memorandum of Understanding with Arizona Department of Water Resources.

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Robert Logan presented a report for Michael McNulty on the Memorandum of Understanding with the Arizona Department of Water Resources, stating that the Department will not execute a letter of understanding with the Metropolitan Domestic Water Improvement District. The state does not want to commit to any particular course of action and have declined any letter of understanding as of this week.

3. Discussion of Tucson Mayor and City Council action at study session on September 14, 1992.

The Tucson Mayor and City Council meeting of September 14, 1992 produced a proposal for the purchase of the Metropolitan Water Company by the Metropolitan Domestic Water Improvement District. Robert Logan distributed a memo from Councilmember Janet Marcus. The memo contained the following conditions to be met for the sale:

- 1) That the town and the district would agree to close the purchase agreements on October 1, 1992. The full purchase price will be paid at the closing or a future date will be agreed with sureties acceptable to the city provided in the interim.
- 2) That the Metropolitan District will adhere to the Northwest Agreement, ie., that 80% of their water supply will be treated CAP water by May of 1995. They will be allowed to take this water directly and must maintain all water quality standards that apply. Further, that the Metropolitan District will agree to a take or pay provision.
- 3) That the Metropolitan Water District will meet with all ADWR requirements re: management of water resources int his Tucson Basin and that they will have mandated conservation programs and effluent utilization. This means that Metropolitan Water District must do its fair share to balance the basin.
- 4) That the Metropolitan Water District present for public review their cost analyses of the purchase and operation of the water system and that they will provide for a comment/protest period of specified length on this projection of costs.
- 5) In times of drought or long term water outages, it will be the responsibility of the Metropolitan Water District to provide its own emergency supply of water, covering those costs being a part of that district function.

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- 6) That Metropolitan District enter into an IGA concerning this purchase and these conditions with the Oro Valley District, excluding the Tucson water service already in existence.

Discussion of the above memo included concern in a few areas which were addressed by Robert Logan. He addressed Condition 3 stating it was not the City's intent to require the posting of a surety bond but clarification is needed as to what exactly will be required. Condition number 2 was essentially what was discussed previously with the City, except that the city has incorporated the word "treated" which the Board of Directors had excluded. Condition 3 would be worked out with the discussion of the final draft of the contract that would provide for the distribution of effluent. Condition 4 was anticipated and Mr. Rosenfeld suggested that the Financial Pro Forma and the engineering estimates be provided at the finalization of the sale so that the people may review it. Condition 5 is currently incorporated into the city charter. The board must decide if any points to this motion would be "deal breakers", but Logan believes that 95% of the items were anticipated. Peter Schlegel discussed effluent and the potential for profit. Logan suggested that a counter offer stating that neither would object to the other's sale of effluent would be desirable.

The city called this morning to state that they would not have a quorum on the September 28th meeting day and that it would not be possible to take the vote regarding the agreement. They have offered two options for the vote; 1. to extend closing date to an undisclosed period or 2. schedule the item for the September 21 council meeting. The latter would require that the entire document would have to be fully negotiated, discussed and reviewed by the Board of Directors before September 18. No Action required.

- C. 1. Forum for real estate , financial and title companies doing business in Metropolitan Domestic Water Improvement District - September 21, 1992 at 10 am at Oro Valley Town Hall.

Robert Logan stated that no action has been taken other than to tentatively schedule a meeting for September 21 at 10:00 a.m. at the Oro Valley Town Hall in conjunction with Mr. Rosenfeld personal schedule. An invitation needs to be sent to real estate professionals and financial community representatives. At this time this meeting may have to be rescheduled.

2. Review and possible action on organization of Metropolitan Domestic Water Improvement District.

Robert Logan requested to defer action on this item until next meeting.

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3. To receive affidavits of posting and publication pertaining to the posting of the notice of proposed improvement set forth in Resolution No. 1 and pertaining to the publication of Resolution No. 1.

Fred Rosenfeld addressed the board regarding the requirements for the affidavits of posting and publications pertaining to the posting of the notice and stated that the board had fulfilled its obligation. He also requested the Clerk forward one copy of the affidavit of posting be sent to John Bernal, Director of the Pima County Transportation and Flood Control Department.

4. To receive a report from the Clerk concerning protests against the improvement described in Resolution No. 1 (the Resolution of Intention to acquire property of the Metropolitan Water Company now serving portions of the Metropolitan Domestic Water Improvement District of Pima County).

Fred Rosenfeld addressed the 14 protests received thus far for the formation of the MDWID and stated that 14 was far short of the number need to reach a majority of property owners. He also felt that there is no legal requirement to have a public hearing for protests and objections but to publish a notice of intent. He advised the Board to adopt item number 7 of today's agenda and not address item number 6. He also advised that the Board of Director did not have the power at this meeting to set a comprehensive public hearing by virtue of the agenda. If during contract negotiations we are required to write the hearing into the contract, then at the regular meeting of September 21 a public hearing can be set for September 30.

5. To receive a report from the Clerk concerning objections to the extent of the Assessment District described in Resolution No. 1.

Mr. Rosenfeld stated that there were no objections to the extent of the Assessment District as described in Resolution 1.

6. To entertain, discuss and adopt (upon majority vote) a resolution setting September 28, 1992 as the date to hear all protests and objections so filed. (This action is required only if protests represent more than a majority of frontage of property within said Assessment District or objections have been filed to the extent of such Assessment District.) Discussion/action.

After direction from Fred Rosenfeld, no action was taken on this item.

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7. To entertain, discuss and adopt (upon majority vote) a resolution ordering the work described in Resolution No. 1 (acquisition of certain assets of the Metropolitan Water Company within the Metropolitan Domestic Water Improvement District of Pima County) and approving the form and authorizing the execution of a contract to acquire such assets. (This action may be taken if protests against the improvement described in Resolution No. 1 are insufficient and no objections to the extent of the Assessment District have been filed with the Clerk.) Discussion/action.

After presentation and explanation by Fred Rosenfeld it was moved by Jim Tripp; seconded by Herb Johnson, and unanimously carried to approve the following as amended:

RESOLUTION NO. 2

RESOLUTION OF THE BOARD OF DIRECTORS OF METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT, PIMA COUNTY, ARIZONA, ORDERING THE IMPROVEMENT DONE AS DESCRIBED IN RESOLUTION ON INTENTION NO. 1; RATIFYING ALL ACTS HERETOFORE TAKEN WITH RESPECT TO THE ADOPTION AND IMPLEMENTATION OF RESOLUTION 1.

D. COMMENTS FROM THE PUBLIC

1. No one appeared.

E. EXECUTIVE SESSION

Executive session pursuant to ARS §38-4331.03 (A) (3), (consultation for legal advice with the attorney or attorneys of the District) and/or executive session pursuant to ARS §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:)

1. Review and discussion of proposed agreement with City of Tucson on purchase of the Metropolitan Water Company.
2. Report on negotiations with City Attorney's Office.

On consideration, it was moved by Jim Tripp, seconded by Pete Schlegel, and unanimously carried, that the Board of Directors convene to executive session at 6:20 p.m..

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The Board of Directors reconvened at 6:30 p.m. Upon roll call those present and absent were as follows:

Present: Alex Jacome, Chairman
 Herb Johnson, Member
 Kate O'Rielly, Member
 Pete Schlegel, Member
 Jim Tripp, Member
 Jane S. Williams, Clerk

Absent: None

Without objection, Mr. Logan and Mr. McNulty were directed to proceed with negotiations on the acquisition agreement with the City of Tucson as discussed in Executive Session.

F. ADJOURNMENT

Without objection the meeting adjourned at 6:40 p.m.