

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

September 23, 1993
5:00 P.M.
7493 North Oracle Road, Suite 219
Tucson, Arizona 85704

MINUTES

ATTENDANCE:

Members: Herb Johnson, Chairman
Jim Tripp, Vice-Chairman
Pete Schlegel, Member
Kate O'Rielly, Member
Alex Jacome, Member

Others Present: Mark Stratton, MDWID Engineer
Sheila Lewis, MDWID Employee
Dave Tanner, MDWID Employee
Scott Eisenfeld, MDWID Employee
Steve Shephard, MDWID Employee
Kathy Tanner, MDWID Employee
Tom Parsons, Stubbs & Schubart
Julie Johnson, MDWID Employee (recording
secretary)
See attached sign-in sheet

A. CALL TO ORDER AND ROLL CALL

1. The meeting was called to order at 5:00 p.m. by Herb Johnson, Chairman of the Board of Directors. Herb Johnson, Jim Tripp, Pete Schlegel, Alex Jacome and Kate O'Rielly were present.
2. Jim Tripp moved that the Board approve the meeting notice and agenda for September 23, 1993, Kate O'Rielly seconded and the motion passed unanimously.

B. COMMENTS FROM THE PUBLIC

Board Chairman Herb Johnson asked members of the audience to sign the sign-in sheet so that copies of the meeting results could be mailed to them. At this time, members of the audience addressed the Board.

Mr. L.J. Bianchetto, Sun City resident. Represents a group of concerned citizens in Sun City. They are very satisfied with their water company, because it provided good water at the most reasonable rate around. They feel that with the condemnation, they have everything to lose and nothing to gain. He questioned the District's authority to go to Sun City, which is entirely out of its area, and what are our reasons for proceeding with this condemnation.

Mr. Johnson explained that the Board is not in a position to be answering questions at this time, but that we will list the questions for consideration at a future meeting. Several unidentified members of the audience questioned when the above-referenced meeting would take place, to which Mr. Johnson responded that a date had not been determined. An unidentified woman asked if the Board would be taking any action prior to the District answering the questions. Mr. Johnson directed the meeting back to Mr. Bianchetto, who still had the floor.

Mr. Bianchetto questioned the rush to condemn, what is to be gained by going into condemnation proceedings at this time, and why the issue can't be adequately studied. He criticized the District and Oro Valley for the short notice given on the meetings. He would like more information on the reasons for the action, when action may take place, what would happen to their rates and their taxes, and what method the District proposes to take the company. He feels our motivation is partially political, partially economic, and not sure what else.

Mr. Johnson stated that the Metropolitan Domestic Water Improvement District Board is composed of members with no political interests and who get paid \$15.00 per meeting. The Board has no interest other than protecting the region's ratepayers. He reiterated that the Board is trying to get the questions from the audience together so that the Board can formulate answers for each of the questions. He indicated that condemnation proceedings must be started due to the auction on Monday, September 27, 1993, in order to avoid having to pay a higher price.

Mr. Bianchetto questioned why the bankruptcy proceeding is so necessary to hurry it at this time, and why that rate would go up for the company. He asked why the District does not purchase outright rather than condemnation.

Mr. Tom Parsons indicated that was not necessarily the case. He indicated that the bankruptcy judge has not permitted the acquisition of the Rancho Vistoso Water Company separate from the bid on the 6000 acres and the concern is that it is unknown who will ultimately acquire the property. The key is that someone could step in on Monday morning, buy it for an astronomical price, take away our ability to acquire the

property, as well as the customers' ability, and control the property, possibly even bringing in CAP water. If nothing is done, there is a possibility that the price of the water company will be the only reason necessary to raise rates because there is an existing contract to use CAP water from the City of Tucson. The District is taking a prudent step to protect the northwest side.

Mr. Bianchetto feels that everyone is in a panic over something which may happen. He feels that with the ACC monitoring rates, companies must prove rate increases are necessary. He feels that rates would be raised if the District takes over. He feels that they would be giving up regulations on private companies and accepting domination by another company where they won't have a voice. He equated it to the old saying "marry in haste, repent at leisure." He would "prefer to take my time and look at the marriage."

Board Member Kate O'Rielly explained that all five Board members live in the Metropolitan Domestic Water Improvement District, and stressed again that she has no financial interest in this matter. She explained that what motivated the District was the concern that Tucson Water was going to buy this company, which could very well happen to the Rancho Vistoso Water Company. She indicated that the Board is simply attempting to provide a safety outlet for the customers, that the Board is very interested in everything the audience has to say, and will tell the audience why they did this. The District has improved the company since they took it over. She acknowledged that the District is not regulated by the Arizona Corporation Commission, but that we serve 13,000 hook-ups and many very vocal customers who would "run us out on a rail" if the rates are raised significantly. She indicated the Board has been very responsive to people and held public hearings to receive their input, and that is what they are doing at the meeting. She explained that the Board is simply attempting to safe-guard against "legal maneuvers" that the Board could not have dealt with when they started the process and that the Board has learned much and does not want Rancho Vistoso Water Company's customers to be in the position of being stuck with a huge price and a situation that they cannot control.

Mr. Bianchetto stated that we do not know who might purchase the company, and that it may turn out to be a very benevolent company and they could stay the same as they are. That is what they would like to do. He indicated that many of the customers bought at Sun City because the water is good, it is cheap, and it's a steady supply. He stated that the aquifer has never been drawn down. He questioned where we got our water. Ms. O'Rielly answered that we get our water from our wells, and Mr. Jacome indicated that we get our water from the same place as Rancho Vistoso. Mr. Bianchetto asked if we are receiving any water

from Tucson Water, to which he was told "no" by Mr. Johnson. He asked how our groundwater supply and aquifer are.

Board Member Alex Jacome explained that he understood their concerns, stating that the reason the Board got into this is because they are concerned about it also. He indicated the Board had no control over when the RTC said they were going to have the auction, which is the reason for the meeting, so that the Board will know how to react. He stated that if a private company purchases the Rancho Vistoso Water Company and goes into business, they can go to the Corporation Commission requesting a rate increase based on the purchase price, saying that they want a fair return on their money. Mr. Jacome also stated that if a private company spends a lot of money for the company, the rates are going to go up. He explained that what prompted the Board to do what they did to purchase this water company was to protect our water resource, to keep the rates down, and to have a say in what's happening with the resource. He indicated that "unfortunately there's not very many places that you can go for help, number 1, and number 2, there is nothing that we can do at this point anyway, there may be something that the attorney can do that's going to help us perhaps delay the auction or begin some kind of process that's going to stop that water company from being sold to a private company."

Mr. Bianchetta explained that when Oro Valley showed the rates of the various companies, their rates were about half of the municipal company rates. It shows that a public company does not operate as efficiently or effectively as a private company.

Ms. Jean Maddox, Sun City resident. She disputed the point that the Corporation Commission would allow such increases. She lived in Sun Lakes, and Mr. Robson continually tried to raise the rates. The Corporation Commission could not have been better in getting honest and fair increases. She agrees that rates will go up, but not as much as in a municipal set-up.

Mr. Joe Shuman, Sun City resident. Requested that the Board of Directors give a presentation to the residents of Sun City at a larger location in their area. He criticized our method of posting a meeting 24½ hours in advance to meet the law, hiding them in different places, and holding a meeting with 12 chairs.

Mr. Johnson acknowledged he thought the suggestion of having a meeting at Sun City Vistoso is a good one and explained that the questions being asked at the meeting would enable the Board to formulate information for that meeting. Mr. Johnson indicated that the Board would post a notice for any length of time required. A man from the audience offered to provide Sun City Vistoso's recreation center.

Mr. Parsons alluded to the comment about repenting the marriage at your leisure. He brought up the issue of missed opportunities and that come Monday, if nothing is done, we will have missed the opportunity. After Monday, nothing will change what has happened. Mr. Shuman understood that we would be coming to them after the fact, to which Mr. Parsons answered that we may not be coming to them at all.

Mr. Carl Graham, Sun City resident. He questioned why, when the Board has known about it for months and when the customers have known about it for months, has it come down to two days before the deadline before the Board has done anything about it.

Mr. Parsons indicated that there was a willingness to address this issue at the Oro Valley hearing. He acknowledged that the issue was not addressed as quickly as it could have been, but questioned if that relieved us of the responsibility of addressing it now.

Mr. Graham admitted that no, it did not, but it certainly doesn't help our position as far as community involvement. Mr. Parsons asked if they would have the District stop, to which the audience gave a resounding yes.

Mr. Johnson commented that this Board has taken the position that in-as-much as the area is within the Town of Oro Valley, we were not going to act unless Oro Valley did not want to proceed with the creation of an Oro Valley District No. 2 to serve Rancho Vistoso and as a result we did not do anything until the meeting last week at Oro Valley where Oro Valley decided not to take a vote on the issue. The Board did not know of the decision until two days ago. The deadline is next Monday. He stressed that the Board is trying to protect the Sun City customers.

Ms. O'Rielly clarified with Mr. Johnson that once the Board takes this step, it gives the Board the opportunity to get feedback and to educate the customers who are concerned with the reasons the Board is taking these actions. She further clarified that the process could be stopped at any point once the first step has been taken. Mr. Johnson confirmed that he had been told that by several attorneys.

Mr. Parsons indicated that any actions taken at the meeting simply maintain the status quo. The District will not own the company for a long time, if ever. It just preserves the status quo and allows the customers to give their viewpoints. He stressed that the customers should not be under the impression that something is going to happen on Monday that will change everything in their rates, because that could only happen if we do not take action.

Mr. Bob Maddox, Sun City resident. Mr. Maddox asked Mr. Parsons if condemnation proceedings are started, could that be countersued by the residents of Sun City or the Town of Oro Valley, and would the statute permit that for precedence court cases? Mr. Parsons answered no.

Ms. Phyllis Cutcher, Sun City resident. She asked why, if we could start condemnation proceedings now and it's a private water company, can't we start condemnation proceedings against another private water company or private individual who would buy the water company next week. Mr. Johnson indicated that we could, but would not do so unless we felt we were protecting the people in that area, not for gain to the District.

Mr. Dick Farrar, Sun City resident. He felt the only reason we were contemplating these actions today and not later is that the price could be higher, so pay now to avoid paying a little more later. He doesn't feel that's a very good argument. He would prefer to stick with a private company as long as he can and if things went sour, then we could step forward. He doesn't feel it's a foregone conclusion that a private company that buys 5,000 acres and the water is not going to have in their best interests to keep that water company just as good as they can.

Mr. Johnson agreed that to keep the status quo would be wonderful, but there is a problem in that the developer went bankrupt. There is no choice now, there will be a different owner of a private company. The Board wants to ensure that it's an owner who does not pay too high a price. We can show where a public utility can save on not having to pay income taxes. There are many grants available for public utilities that are not available for private companies. We are attempting to get this package together so that we can answer these questions and show the customers where we can actually save the customers money for their water. He stressed that we will not own the utility, but that the users own it. We just want to prevent the customers from having to pay a high price on Tuesday after a different owner owns the company.

Ms. Anita Hawkins, Sun City resident. She questioned if the Board is familiar with Citizens' Utilities Company that may take over the company, and if we could tell her something about them. Mr. Johnson answered that they are a national concern with 500 to 600 different utilities, are very capable, and are in the business of making money.

Mr. Bing Sherwood, representing a group that yesterday made an offer on the property for approximately \$26 million. He questioned the Board if they were aware that there is approximately \$4 million in contingent liability attached to the water company? He acknowledged that their primary concern is in selling lots and all they care about is that the water company

give good service to their customers. He indicated that through condemnation we would have to go through the courts, it would have to be appraised, the value is going to have to be set, and we will have to pay whatever that value is. He suggested that we should approach the winning bidder, for example if it was his group, they would probably sell to the right person who could give them the service they want and guarantee that they would be there for their customers. He doesn't understand the emergency.

Mr. Johnson commented that our concern is what the asking price is going to be for the water utility. Mr. Sherwood indicated it would be a fair value. After Mr. Johnson said that we would like to do business with them, Mr. Sherwood said that that's what everybody is going to want to do. He feels it's a lot of concern with no time to do anything and that the District is getting stirred up over issues that have no meaning to us today. He suggested that we reconsider it in 4 to 5 months after we can evaluate what we are going to get. Mr. Johnson acknowledged that this is what we have to do.

Mr. Dick Maes, Rancho Vistoso Water Company. He expressed curiosity as to the legality or the right that the District, being an improvement district, has to condemn areas outside of our boundaries. Mr. Parsons indicated that the District can condemn outside its boundaries. Mr. Maes then questioned if we would have to have Oro Valley's permission. Mr. Parsons indicated he did not know. Mr. Maes indicated that Rancho Vistoso is presently offered as one block, including the stock of the water company. There has been no separation of values ever published. How do we determine that we can buy cheaper by the condemnation when we do not have any differentiation between what value the water company is representing of the total sale. The judge has ruled that it is being sold as one block, not separately. Mr. Johnson reiterated that we must have time to answer the questions.

Mr. Maes then questioned if the object was to stop the sale. Mr. Johnson indicated that the object is to get an understanding of what the price is going to be for this private utility. Mr. Maes expressed his confusion as to where we get that determination. The judge will not be prepared to rule that the water company is worth X number of dollars in court on Monday. He feels the only way to get that ruling is to stop the sale and put everything on hold. Mr. Johnson indicated that the judge's decision to combine the two put the District in a very awkward position because we do not know what the sale price is going to be that will be charged to the customers and we want to stop the sale until we find out what the cost is going to be for the people in the area to buy that utility.

Mr. Art Sprinkle, Rancho Vistoso. He asked Mr. Sherwood if he felt an action like this would scare some people away or lower

some people's bid at auction. Mr. Sherwood indicate he is not real clear on condemnation, but that usually condemnation has to be done in a public interest, showing there is some compelling interest for condemnation to occur. Why is there a compelling interest for Metropolitan Water to give service to an area where there is already adequate service going on? His experience with condemnation has been that the guys that sell in condemnation always get more money and larger deals. Mr. Sprinkle indicated he posed that question to Mr. Sherwood because he was wondering if the Board has considered the possibility of litigation expenses if a potential bidder was there and lowered their bid, or backed out, because of these actions. Would there be grounds for litigation that could hurt the Metro District? Again, Mr. Johnson indicated that we would be researching the questions brought up at the meeting, and acknowledged that there was not sufficient notice, but that with September 27, 1993, coming up next Monday, we have no alternative.

Ms. Terri Spurr, Rancho Vistoso Water Company employee. She does not think the Board understands how adamantly the residents are opposed to this kind of action. She indicated she speaks with them on a regular basis and they are furious, and they are thousands. This is just people, by word of mouth, in three hours today. Mr. Johnson told her the Board does not think those people should be subjected to having to raise millions of dollars to purchase their water utility. Right now the water utility is owned by someone else, not the customers. The people who own the utility have put money into it and expect to get it back. Mr. Johnson indicated that the customers must pay for the water utility in the rates that are charged to them every month. In order to maintain "status quo," the customers would have to go out as a group and raise millions of dollars to purchase the utility.

Mr. Bob Leshner, Vistoso resident. He simply clarified that the Metro Water District and the Vistoso water district are not connected in any way, and Mr. Johnson confirmed that. He then asked how the District would connect them and how our water would be augmented with their water, or if we would, at their request, leave them separate and bill them the way they are from the operation of their company, but do not connect them with our system. Mr. Johnson told him that is exactly what we propose to do. He indicated we have two alternatives. Their district would be called Oro Valley District No. 2, in order to retain a good relationship with Oro Valley. The Town of Oro Valley has elected not to take over the Company. The water company can become part of the Metropolitan District, or it can be left as a separate district, which would have a Board or some sort of governing body, a management group, that would hire us, if desired, to supply the services necessary. He indicated there is more than the individual who reads the meter or ensures that the water pressure is okay. There are management problems, and

the problems of getting appropriations from the State so that development can occur in the area. Somewhere along the line, maybe not right now, but possibly in the near future, you may have to rely upon getting credits for recharge. The District is heavily involved in the recharge credits that are required by State law. There is a possibility that many water users are not aware of the many ramifications that have been set up by the State through Federal demands. We must comply with them and have people on our staff who are experts at answering these questions and obtaining these recharge credits. The water we use must be replenished and that water must come from some place. The District must provide for that.

Mr. Leshner came back to the Federal regulations, asking if the District is in compliance with all of them. Is there anything that is going to cost a lot of money to upgrade the District's system to comply with all of the regulations? Mr. Johnson responded that to the best of our knowledge we comply completely or there wouldn't be any water service here.

Mr. Sherwood questioned if the District can legally move water from one area to another and if it would be through a pipeline. Mr. Johnson responded that the statutes permit us to do that. He also asked if the District was familiar with what the water rights are for Rancho Vistoso. He indicated the area has a 100 year assured supply for its entire development area. He also asked why we want to do this. He contends that the company who is there right now has done a good job over the years and it has worked out real well for the developer. He realizes there will be a new developer and it may or may not be them. He can't believe we want to do this unless we want to make money on it. Mr. Johnson reiterated again that the Board is composed of five residents in the area and do not have any plans for making a dollar on this. Mr. Johnson indicated the Board has many reasons for taking these actions.

Mr. Ed Moore, Pima County Supervisor. Mr. Moore indicated that one of the issues involved is that if the City of Tucson acquires the Rancho Vistoso Water Company, the company would go off groundwater and go to CAP water. That is in the agreement as the 100 year assured supply. Metro Water is taking a different approach and if they are forced to buy CAP water they will recharge it.

Mr. Gary Kidd, Town of Oro Valley. He told the audience that Oro Valley is having a meeting the next day at 3:00 p.m. to consider the actions the District Board has taken, to consider water issues that are basic to the Town, and also to review action by the Town. Oro Valley's Council has not had the opportunity to address these issues and intends to do that the next day at 3:00 p.m. He invited the audience to attend.

Mr. Dave Kay, Manager of Land Development for the Del Webb Sun City Vistoso Project. He pointed out that there were at least two bidders in the room, possibly more, and he agrees with the other bidder's comments. Their concern is the same, a water company that is going to serve the customers, maintain a competitive rate base, and protect the assured water supply. He wants the Board to consider the ramifications if it blocks the sale on Monday morning. He would like the Board to reconsider that and explore the ramifications and some of the problems that would create.

Ms. Frances Staley, Sun City resident. She pointed out that they are approximately 2,700 individuals. They all like their private water company. They are not worried about raised water rates and prefer to stay the way they are now.

Ms. Jean Maddox, Sun City resident. Is concerned at the Board's lack of knowledge of the whole procedure that we should wait until Thursday afternoon to present this to the customers. She doesn't believe we have to do this right away. She made the comment that their water company shows a profit, and yes, they pay income taxes on their water company. She indicated that at their meeting last Thursday they were informed there are many complaints about the District's water, and that there are very few complaints against the water in Sun City. She contends they have excellent water and good employees. She doesn't think our District runs like that. They're going to fight the District as much as they can.

Mr. Clint McBride, Sun City resident. Their objections are because: 1) they believe they want to maintain a private company because that gives them ready access to ACC rate control, whereas a municipality voids that access and his desire is to see it remain a private company; 2) they would like to avoid CAP contamination of their water, particularly based on what has been going on in Tucson for the last several months. They would like to maintain a private company, have ACC access control, and avoid CAP contamination, and they feel the only way to do that is to avoid municipality condemnation. Mr. Johnson asked for his telephone number, telling him he seems very well informed and that the District would like to have the opportunity to talk with him.

Mr. Joe Shuman, Sun City resident. He felt the Board has been telling them that the Board does not think the residents have the capability of handling their own affairs. He indicated it might come as a shock, but the average intelligence of the people who live and bought in Sun City would surprise the Board, and they are fully capable of making their own decisions. He referred to the Oro Valley Town Council agenda for September 24. Item No. 3 refers to discussion and possible action relating to the Town of Oro Valley filing condemnation action against the

Rancho Vistoso Water Company. He was curious if the two entities are going to be condemning each other or if we are going to override the Town of Oro Valley. Mr. Johnson stated that all of these questions would be taken under consideration and that the Board would be in touch with the residents.

Ms. Terri Spurr, Rancho Vistoso Water Company. Ms. Spurr asked how many employees the District has, and Mr. Johnson answered that there are five Board members and 22 employees.

At this time, the Board took a short recess while the audience was leaving. The meeting resumed at 6:10 p.m.

OLD BUSINESS

C. ITEMS FOR DISCUSSION AND POSSIBLE ACTION

1. Insurance Coverage for the Metropolitan Domestic Water Improvement District - October 1, 1993, Through September 30, 1994.

Mark Stratton reported a number of things that happened in regard to the insurance coverage. Bids were to be accepted on September 21, 1993, by 4:00 p.m. No bids had been received as of that date. Mueller & Associates submitted a bid on September 22, 1993, at approximately 11:30 a.m. In reviewing the Intergovernmental Agreement between the Town of Oro Valley and Metropolitan Domestic Water Improvement District there is a clause that requires that coverage should not be lowered without joint discussion and concurrence with Oro Valley; therefore, staff's recommendation is to maintain the umbrella coverage in the amount of \$15 million. The total cost of insurance will be \$66,831, compared to \$77,512 for last year for basically the same coverage.

Mr. Jacome made the motion to accept staff's recommendation as presented by Mark Stratton, including that the issue will be discussed with the Town of Oro Valley. Mr. Tripp seconded the motion and it passed unanimously with all members present.

Mr. Jacome made a motion to authorize the chairman to sign the contract between Metropolitan Domestic Water Improvement District and Mueller & Associates, Inc. Mr. Tripp seconded and the motion carried unanimously.

2. Ordinance #1993-1, Adoption of Backflow Prevention Control Ordinance.

Mark Stratton informed the Board that he has a list of the potential users, approximately 600 accounts. Further information about financing is still in the developing phase. However, in order for Metro Water District to begin certain activities the Ordinance should be adopted, i.e. approval of the initial letter that will be mailed to the 600 customers regarding the issue.

Mr. Jacome made the motion to accept staff's recommendation as presented by the District's Engineer. Kate O'Rielly seconded. Mr. Johnson pointed out that if the Board passes the resolution, anyone that revises this resolution would have to document it in a formal process. The motion passed unanimously.

NEW BUSINESS

D. ITEMS FOR DISCUSSION AND POSSIBLE ACTION

1. Retain Counsel with respect to the acquisition or condemnation of the Rancho Vistoso Water Company.

Mr. Parsons, recommended legal representative for the Metropolitan Domestic Water Improvement District, prepared a draft resolution and contract for his services.

Kate O'Rielly made the motion to retain Mr. Parsons as counsel in respect to the acquisition or condemnation of the Rancho Vistoso Water Company. Mr. Jacome seconded the motion.

Pete Schlegel clarified that his services would be retained for this issue only, which Mr. Parsons confirmed. During further discussion Mr. Johnson reported that Metropolitan Domestic Water Improvement District had a proposed contract that was drawn up for this issue. He had Mr. McNulty review the contract after he learned that Mr. McNulty could still represent the District until other counsel was obtained. According to legal codes of ethics, once new counsel has been retained Mr. McNulty will no longer be able to represent the Metropolitan Domestic Water Improvement District on this issue because of conflict of interest.

Mr. Schlegel asked if Mr. Parsons was recommended by Michael McNulty. Mr. Johnson confirmed that Mr. McNulty recommended that Mr. Parsons represent the District in the acquisition or condemnation of the water company.

The motion carried unanimously.

Jim Tripp moved that the chairman be authorized to sign the contract between the counsel and Metropolitan Domestic Water Improvement District. Pete Schlegel seconded and the motion passed with all members in favor of it.

2. Acquisition by purchase or condemnation of the Rancho Vistoso Water Company.

Mr. Parsons reported that bond counsel had requested that he submit the proposed reimbursement resolution for federal income tax purposes. Bond counsel wanted to make it clear that the Board can make expenditures without having to meet to resolve any planned financial expenditures such as writing checks for reimbursements.

Regarding the Board item on acquisition by purchase or condemnation of the Rancho Vistoso Water Company, he suggested that a motion be made to withdraw to an executive session. Ms. O'Rielly indicated that it is not on the agenda. Ms. Jacome questioned if the Board could legally go into executive session without it being noticed on the agenda, to which the attorney answered that they could not.

Mr. Parsons reported that there will be a bid on Monday to acquire approximately 5,000 to 6,000 acres of land and the shares held by WGI, which are listed as an asset in bankruptcy. By acquiring the shares, control and ownership over the Rancho Vistoso Water Company will be also be acquired. There is at that moment a power by whoever is the successful bidder to apportion the acquisition price, any way it deems fit, which could be a price that is contrived. They could allocate a price far in excess of its market value. With the condemnation setting at this time we have an advantage. Contrary to what was heard earlier at the public hearing the company has operated at a loss for two years. A number of the contingent liabilities are things that we may able to dispose of through the bankruptcy and the condemnation or by ownership as a County District.

Mr. Parsons explained that in order to have a successful condemnation suit such that the Board would be in a position to decide to acquire the property nine months to one year down the line, he would need to be directed to prepare a lawsuit, file the lawsuit tomorrow and either bring that to the bidders' attention, refrain from serving them or file a lis pendens or not filing a lis pendens in a manner such that the District's advantage in a condemnation case or in acquisition is not compromised by some artificial apportionment that could take place after a successful bid on Monday. He referred to the resolution he drafted. He emphasized that through the power of condemnation, the District has the right to take land and hold it immediately.

The District would also have the right to have the court set the price and if the price is not right, the District doesn't have to take the land or put up any money. He also indicated that if it is the Board's wish to let things go on as "Status Quo" during the time the judge is considering the evidence of its value, that is exactly what will happen. If the judge makes a decision as to its value and the price is excessive, the District may abandon/withdraw the complaint of condemnation and proceed accordingly. In requesting the attorney to proceed with filing the condemnation case, there is no commitment which binds the Board to take possession and undertake the immediate operation responsibilities of Rancho Vistoso Water Company. As the resolution is drafted right now, the attorney is instructed only to file the case and proceed in the acquisition either by negotiation or by condemnation until he is directed otherwise.

Mr. Schlegel asked if the resolution stated when action would occur, and Mr. Parsons answered no. Mr. Schlegel then asked if that was open to discussion and if that is direction the attorney needs from the Board, and Mr. Parsons answered yes.

Mr. Jacome noted where the resolution states "by purchase or condemnation." He asked if there was some way we could negotiate a purchase and separate the water company from the entire package. Mr. Parsons indicated that it is always to our advantage to acquire the property by negotiation rather than condemnation. Mr. Jacome expressed his concern about condemnation. He wanted to ensure that if the District acquires the Rancho Vistoso Water Company, it does not burden District users to pay for anything related to the acquisition of the water company. If the water company is acquired, the price of the acquisition should be borne by the users of the water company so current District users will not be burdened with financing of the Rancho Vistoso Water Company.

Another issue of concern Mr. Jacome expressed regarding condemnation is that the court sets the price. He feels the auction should be delayed, maybe by political influence. Mr. Parsons indicated that political influence is probably not possible or correct.

Mr. Johnson pointed out that the District is not attempting to condemn in order to block the sale. That is only considered as a last resort. The District is attempting to purchase the water company at a reasonable price in the interest of the people belonging to it. The District's main interest in this issue is to see that someone does not buy the combined package and have a resale at an inflated price. The condemnation to block the sale would be the last recourse. Mr. Parsons indicated it his understanding that the condemnation would not operate to block the sale.

Ms. O'Rielly clarified that it was correct that there were a number of places along the process where the Board could stop the process without causing expense to those people. Mr. Parsons confirmed Ms. O'Rielly's clarification as correct. Ms. O'Rielly commented that the big flaw in the process is the education and information for the people in the area. At this time, 6:35, Mr. Jacome had to leave the meeting.

Ms. O'Rielly questioned that if the District moves ahead with this action, will it limit or decrease the options of the people living at Rancho Vistoso. Mr. Parsons indicated he did not believe so. Mr. Johnson referred to the resolution where it states that the public interest and convenience require the acquisition of Rancho Vistoso Water Company by purchase or condemnation together with Rancho Vistoso Water Company's waterworks, lands, improvements, etc.

One of Mr. Schlegel's concerns is the potential of liability to the District for a lawsuit, hence his question as to whether the resolution stipulated when the District would serve the condemnation notice. He asked the pros and cons of serving before the sale, or at the instant the gavel goes down. He feels there is a potential lawsuit situation because if we condemn before the sale, it could be deemed to cloud the sale and impact the sale price. He questioned if the District would be better off staying out of the picture until the gavel comes down and we serve the successful bidder. Mr. Parsons said that it would be the successful bidder's response, at that time, that they have allocated \$9 million to the water company shares and that if anyone is going to acquire the water company via purchase or condemnation, they will have to pay that price. He felt it might be the bidder's purpose at that time to go before the ACC and say this is what I paid for it, this is what losses we have had, increase the water rates. He also felt it might be the bidder's intent at that time to enter into negotiations to complete their contract obligations to serve the area with Central Arizona Project water. He felt there are too many ramifications involved with waiting. The advantage the District would have in taking action prior to the bid is that the ultimate bidder would know how much he would have to sell to the District for, and knowing that, he would know how much he will get back from us and he can factor that into his bid. There is an advantage for both the bidder and the District to engage in negotiations now, but only as long as the bidder knows that the condemnation will go forth before the bid.

Mr. Schlegel asked if the Board should also address the issue of a proposal for an offer. Mr. Parsons affirmed that it would be in order to do that. Mr. Parsons commented there was word that the R.T.C. had several appraisals done. He

indicated he had researched many documents in order to assist the Board in making an offer.

Mr. Tripp made a motion that the resolution be adopted as presented by counsel, Kate O'Rielly seconded and the motion carried unanimously with all members present. Alex Jacome had left at 6:35 p.m. and therefore was not part of the motion.

Mr. Tripp made a motion to authorize the Chairman to sign the resolution, Kate O'Rielly seconded and the motion carried unanimously with members present.

3. Formation of an Arizona non-profit corporation to act for and on behalf of the District to aid in financing the acquisition of the Rancho Vistoso Water Company.

Mr. Schlegel suggested continuing this item to the next meeting in order to meet in executive session, but it was decided to address it that evening. The only thing this Board action does is authorize an attorney to prepare the necessary documentation for approval by the Board at a later date.

Ms. O'Rielly moved that the Board of Directors give direction to Gust & Rosenfeld to prepare the documentation necessary to incorporate a non-profit municipal corporation and that the Board be authorized to execute such documents as may be required in connection therewith, Jim Tripp seconded, and the motion passed unanimously with members present.

4. Adopt a reimbursement resolution for federal income tax purposes.

Jim Tripp moved to adopt the resolution as presented and authorize the Chairman to sign, Kate O'Rielly seconded, and the motion carried unanimously with members present.

Mr. Johnson explained to the audience that this is a resolution that authorizes the District to proceed with respect to the reimbursement from borrowing pursuant to Treasury Regulation Section 1.150-2.

At this time Mr. Parsons stated that the Board of Directors is enabled to go into executive session in accordance with A.R.S. §38-431.02 and .03. Mr. Johnson pointed out that the special emergency meeting is deemed necessary because of the time restrictions with regard to the auction being held on Monday, September 27, 1993.

Mr. Tripp made a motion to declare an emergency and move into executive session.

Mr. David Kay requested that copies of the minutes be distributed as soon as possible to those in the audience. Mr. Larry Folks also requested copies of the minutes, in addition to copies of the resolutions passed by the Board that evening. Copies of the resolutions were distributed that evening.

Mr. Parsons stated a notice would have to be posted within 24 hours indicating an emergency executive session had been held.

Kate O'Rielly seconded the motion to declare an emergency session and move into executive session. Mr. Johnson clarified that the emergency meeting is deemed necessary because of the time element and there would not be proper time to notice the meeting and please note that there are members of the public present knowing that there is going to be an emergency session and following the emergency session the Board will meet again. The Board will not be citing the minutes of the emergency session, but they will be meeting simply to adjourn the meeting.

Mr. Schlegel did not question the legality of moving into executive session, but questioned whether it was in the Board's best interest to go into executive session at this time. He suggested having an executive session at a later time after they have more information. Mr. Johnson explained that the reason he feels an executive session would be in order is because legal counsel is here at the meeting right now.

The motion carried unanimously with members present.

The Board of Directors moved into executive session at 7:20 p.m.

The Board returned to open session at 7:50 p.m. When the Board returned to open session Mr. Johnson again stated the reasons for an emergency executive session, that being the short time period between posting the notice of a meeting and the impending sale of the water company on Monday, September 27, 1993, and the time necessary to consider this issue, post and hear it, was not sufficient.

The Board decided to hold another meeting on Saturday.

Mr. Ed Moore congratulated the Board for taking actions that are going to be tremendously beneficial to the community as a whole and, in particular, the northwest side. The other issue he brought up was that maybe there was someone trying to forestall or stop the Board from doing anything prior to the sale. He felt this was the reason for wanting copies of the resolutions. He also felt that if the Board files an action through all the proper procedures, we may set, in concrete, the value prior to the sale, not interfering with the sale in any way whatsoever, but simply establishing a value. If the sale takes place without doing this, then the value would be debatable. It might be a \$12 million water company on Monday

afternoon by artificial prices whereas if the condemnation is effected prior to the sale, the value is set as of the time the condemnation action is filed. Mr. Parsons confirmed that the date of the summons is the date of valuation, so that if the summons is issued on Friday, there would be an additional ground for excluding an offer made in a bankruptcy court after that date. He also stated that he is unsure as to whether the offer in bankruptcy court would have that much value. If it does, think of the value our option price might have. Mr. Moore commented that there was approximately \$1.7 million in shareholder debt. He indicated there are many considerations in ascertaining the real value of a company.


E. ADJOURNMENT

As there was no further business to discuss before the Board of Directors, Jim Tripp moved to adjourn the meeting, Pete Schlegel seconded and the motion carried unanimously. The meeting adjourned at 8:15 p.m.



Herb Johnson, Chairman

ATTEST:



Clerk