



The ADVISORY BOARD

NEWSLETTER

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Advisory Board Workshop at MMA Conference

The Advisory Board sponsored a workshop and panel discussion on Saturday, February 1, 1992 at the Mass Municipal Association's 1992 Annual Meeting and Trade Show. There was a full house on hand to take part in the forum along with abundant media coverage. The panel discussion was part of a workshop entitled: **BOSTON HARBOR CLEANUP: BALANCING ABILITY TO PAY AND ENVIRONMENTAL GOALS.** The Advisory Board workshop was a great success due in large measure to the outstanding quality and character of the participants. John Carroll, Town Manager of Norwood and an Advisory Board appointee to the MWRA Board of Directors, mediated the discussion in a simple question/answer format which resulted in a lively, interesting, and informative discourse. The panelists included: Julie Belaga, Regional Administrator of the EPA; Douglas MacDonald, Executive Director of the MWRA; Robert Ciolek, Executive Director of the Boston Water and Sewer Commission and a member of the MWRA Board of Directors; Emmet Hayes, Executive Vice-President of Mass Bays Associates and Jonathan Kaledin, Executive Director of the National Clean Water Council; and Joseph Favaloro, Executive Director of the Advisory Board.



Opening up the discussion, John Carroll explained that the cost of the \$6 billion Boston Harbor cleanup will be paid almost entirely (96%) by the MWRA ratepayers. He asserted that new and innovative funding mechanisms must be developed at all levels of government and cooperation by all parties - communities, MWRA, State and Federal officials - the Governor, and the General Court - is necessary so that

the goals of the Federal Clean Water, Safe Drinking Water, and The MWRA Enabling Acts are achieved and avert an otherwise inevitable ratepayer revolt. He then asked the panelists, "Do you think the interests of the environment supersede the concerns of ratepayers?"

Julie Belaga responded, "It is not appropriate to ask for an either/or commitment to clean up the harbor. We must make it a jewel again. It must be done with fiscal constraints and the belief not to spend money unwisely."

Mr. Ciolek illustrated the inequity in the federal government's funding and priority system in that the

"Big Dig" is receiving a 90:10 share to, "Move a car three miles - fifteen minutes faster. While the Boston Harbor project receives less than 4%." Ms. Belaga responding to the comparison stated, "The Transportation Act which is paying for the "Big Dig" is

a different phenomenon, it is generated from the gas tax, which is a self contained pocket of money." She continued to speak about the historical funding of the Clean Water Act, "Massachusetts used every dollar available to it; however, they used the money for other harbors within the state. The federal government has been inordinately generous with money, time, and staff commitment. We have to try and work collaboratively to get intelligent uses of that money."

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Emmet Hayes disagreed with her assertion relative to the generosity of the federal government and said, "Without increased federal and state aid what is the strategy? You will face a ratepayer revolt and Doug (MacDonald) will be fending off skirmishes on Beacon Hill forever. Neither a federal or state commitment is there. The \$100 million recently allocated is helpful. The federal program, however, is woefully inadequate. Regarding domestic programs we only hear about roads and bridges not about the crumbling infrastructure below us." He continued to assert, "There is a window of opportunity of the federal level with the fall of communism and other major events. Now there exists an opportunity for us to mobilize and bring the issue to the forefront. We are not getting our fair share."

"The Big Dig is receiving a 90:10 share to move a car three miles, fifteen minutes faster while the Boston Harbor project receives less than 4%." --Robert Ciolek, MWRA Board

of Directors and Executive Director of the Boston Water and Sewer Commission

Jonathan Kaledin noted that the federal government must change its thinking, "We must not allow mandates without money to continue to be passed, we need strong officials to carry our message." He also addressed the issue of how water and sewer rates are impacting economic growth, "The economics of the harbor cleanup don't receive much focus. The flip side of a rate spike is the pernicious impact on the economy. Companies are not moving to Boston because of the rate hike anticipated in the next ten years."

Doug MacDonald explained his philosophy regarding the rates, "Three things must be in the mix; they are interdependent. And of course the anxiety and anger out there must be addressed. First, \$300-\$400 million of federal money is needed, we need more money and we have to show why. Secondly, we must lower the cost of the project." He also alluded to restructuring rates and he explained, "We don't have the answers just yet but I know one answer is, don't tax the rich. A broader discussion is needed."

Ms. Belaga addressing the point about revisiting certain aspects of the secondary schedule explained, "Secondary treatment is critical to moving

ahead, however, there may be a window of opportunity to look at some aspects of it. Interest rates are now low so I believe now is the time to go forward. There are potential enormous savings for the public."

Doug MacDonald agreed with Mr. Ciolek and Ms. Belaga, "We have to do secondary and we must focus on pressing ahead. Yet, we have to understand the real level of feeling out there. Let's go slower and lower."

Joe Favaloro spoke about the need for regulators to have an open mind. Mr. Favaloro pointed out that the model which the whole system was built on was based on 1985 information and assumptions which were less than thorough given the urgency of the matter. However, in 1992 there are volumes of new data which suggest that the problems in the Harbor may be less than previously imagined. Joe expressed a hope that the facts of 1992 would take precedent over the "guesstimate" of 1985. Ms. Belaga retorted, "I do believe people are coming to the table with an open mind. However, there is an enormous amount of misinformation out there." She then went on to encourage Mr. MacDonald to, "Beef up the entire effort to educate the public."

On the whole, the workshop was a shining success. Many of the participants had never before had the opportunity to sit down in the same room and listen to each other's concerns. The panel members also had a chance to meet Douglas MacDonald in his new capacity as MWRA Executive Director. The workshop's approach down-played confrontation and focused on workable solutions to the complex problems involved in balancing the ability to pay with the environmental goals of the Boston Harbor Project. The forum served as the beginning of a process that will forge a covenant of cooperation between those who make policy, those who execute the policy, and those who pay for it.

--TOD

The Advisory Board NEWSLETTER is published on a monthly basis for the purpose of informing our readers of the public policy, operational, and financial issues that impact the 2.5 million people served by the MWRA. The NEWSLETTER is written, edited, and produced by Advisory Board staff.

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MWRA PLANS TO BORROW IN LATE MARCH

Speaking to the Advisory Board at its February 20 meeting, Phil Shapiro, the Authority's Chief Financial Officer, announced updated plans for issuing the MWRA's third major borrowing. The new revenue bond issue is scheduled for the week of March 23.

The Authority is considering a borrowing on the order of \$800 million, which would cover planned spending for the next year. A variable rate component is no longer planned in light of current long-term rates, now at an historic low level. The next borrowing is planned for the spring of 1993 and is presently estimated to be about \$500 million.

During the next several weeks, the Authority will be meeting with rating agencies and potential investors in preparation for the issue. The actual amount of the borrowing will be determined during this period. In accordance with the recent recommendations of the Ad Hoc Budget Review Committee, the Advisory Board staff is working closely with the Authority staff and members of the Board of Directors to ensure that ratepayer interests are considered, especially since debt service is the single largest item in the Authority's annual budget.

On February 21, Senators Edward Kennedy and John Kerry filed legislation which would authorize the appropriation of \$1 billion over the next five years for Authority wastewater projects. Senator Kerry was quoted as saying, "While we appreciate the \$100 million requested in the President's budget, it just begins to scratch the surface."--CP

"STRADDLE POLICY"

The Advisory Board has submitted recommendations to the MWRA regarding its proposed policy governing water supply for property located on the border of MWRA and a non-MWRA communities. There is currently no policy governing situations where a potential user straddles the boundaries of the MWRA service area.

The Advisory Board recognizes a need for a policy that makes a strong statement, taking into the consideration long-range water supply concerns and financial fairness. The policy recommended by the Advisory Board provides that NO extension of water service, outside of the present service area, will be granted without a full review, by the Advisory Board and the MWRA, on a case-by-case basis, pursuant to certain requirements set forth below.

The Advisory Board's recommended policy acknowledges the possibility that extraordinary situations may arise where special consideration must be given to a proposed extension before withdrawal is granted or denied. In order to properly evaluate a proposed withdrawal, the project must submit specific information to both the Advisory Board and the MWRA. The following information must be included in any application for extension:

1. Description of the project and its intended use.
2. Size and location of the project, including schematic drawing.
3. The amount of water required by the project, along with a 30 year projection of total demand on an annual basis.
4. Justification why the water must be supplied by the MWRA source.
5. Statements of approval by the community that hosts the project and the supplying MWRA community.
6. Description and status of all other permits or approvals required by the proposed project.

Once the proper information has been submitted, the application will be evaluated pursuant to the following regulations:

1. The project must agree to be bound by any regulations enforceable by the supplying community, which may require the project to replace the amount of withdrawal by contributing to a leak detection program, community conservation program, or infrastructure repair.
2. The proposed withdrawal must in no way jeopardize the delivery of water to the existing MWRA communities.
3. The project must incorporate all water conservation and demand management programs required by the MWRA.
4. The owner of the project must assure that no additional connections will be extended from the initial facility.
5. Any water sold under the agreement must be done so at the prevailing rate.
6. The project owner must demonstrate the viability or need of the project.
7. The proposed project must meet all regulations and related environmental requirements.

In addition, each proposed extension will be reviewed in light of the water supply needs of contract communities at the time of the request.

The full Advisory Board voted in favor of the "straddle" policy at the meeting on February 20th. The MWRA Board of Directors is scheduled to vote on the policy at their meeting on March 11th.--JN

March 8 - April 18

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 8	Mar 9	Mar 10 10:30am AB Legislative Package Hearing - State House RM A2	Mar 11 Board of Director's Meeting	Mar 12 8:00am Community Coffee & Conversation Meeting - Norwood 10:30am WSCAC - Boston 1:30pm Nom. Com. - Woburn	Mar 13 8:15am Executive Committee Meeting 10:30am Budget Review Meeting #3	Mar 14
Mar 15	Mar 16	Mar 17	Mar 18 8:00am Community Coffee & Conversation Mtg. - Arlington	Mar 19 7:00pm Advisory Board Public Hearing on the CEB 7:30pm Advisory Board Meeting - Wakefield	Mar 20 8:30am Budget Review Meeting #4	Mar 21
Mar 22 9:00am Environmental Conference - Tufts/Filenes Center	Mar 23 8:00am Community Coffee & Conversation Mtg. - Wakefield	Mar 24 9:00am Water Conservation Meeting	Mar 25 MWRA Board of Director's Meeting	Mar 26	Mar 27 8:00am Community Coffee & Conversation Mtg. - Northboro 8:30am Budget Review Meeting #5 10:00am Law Suit Hearing - State Supreme Judicial Court	Mar 28
Mar 29	Mar 30	Mar 31	Apr 1	Apr 2	Apr 3 8:30am Budget Review Meeting #6 11:00am Wastewater Advisory Committee Meeting	Apr 4
Apr 5	Apr 6 7:00pm MWRA CEB and Rates Hearing, Somerville	Apr 7 7:00pm MWRA CEB and Rates Hearing, Norwood	Apr 8 MWRA Board of Director's Meeting	Apr 9	Apr 10 8:30am Budget Review Meeting #7 Mail Draft Comments to Executive Comm.	Apr 11
Apr 12	Apr 13	Apr 14 8:30am Operations Committee Meeting	Apr 15 10:30am WSCAC - Quabbin	Apr 16	Apr 17 8:15am Executive Committee Meeting: Review Draft Comments Mail Draft Comments to Advisory Board	Apr 18

Advisory Board Begins Review of Proposed CEB for FY93

On February 25th the MWRA officially transmitted to the Advisory Board the Proposed Current Expense Budget for fiscal year 1993. This marks the beginning of the Advisory Board's 60-day review period to compile comments and recommendations on the proposed budget. As part of the Advisory Board's review process, there will be seven weekly Budget Review meetings beginning on Friday, February 28th. These weekly meetings are open to all Advisory Board members and serve as a forum to discuss a variety of topics, policies, and proposed expenses.

The proposed \$381.4 million Current Expense Budget for FY93 represents an increase of \$108.5 million over the FY92 budget. In order to meet this level of expenditure, the Authority must raise rate revenue in the amount of \$331.5 million, an increase of \$88.2 million from FY92. Additional non-rate revenues, coming primarily from increases in investment income, will offset the remaining \$20.3 million. The sewer system rate revenue requirement is projected to increase by 46.6%, while the water rate revenue requirement is projected to rise by 3.5%, for a combined increase of 36.3% in FY93. Most of this increase is traceable to increased debt service costs which now total 51% of the Proposed Current Expense Budget. Other major budget increases are attributable to the operating costs of new facilities and continuing improvements to the water and sewer infrastructure.

Proposals for large increases in direct expenses are included for the full-year operation of the new pelletizing plant, I/I grant program, water pipeline valve replacement, MIS operations and maintenance, and expanded monitoring of the outfall site in Massachusetts Bay. The Authority has also proposed a net increase of 57 new positions, of which 41 are in preparation for the start-up of the new Deer Island Treatment Plant and laboratory. The Advisory Board will be examining the budget closely to make sure every expenditure is justified.

The MWRA will hold two public hearings on the proposed budget and rates; both are at 7:00pm, on April 6th in Somerville and April 7th in Norwood. The Advisory Board plans to submit comments to the Authority on April 24th. Shortly thereafter, the MWRA will hold its own review of the CEB using the Advisory Board's Budget Review Document as a guide. The budget review meeting before the MWRA Board of Directors is scheduled for mid-May. The budget will be finalized in late June. --DG

FULL COURT PRESS !

STANDING: A position from which one may assert or enforce legal rights and duties.

On February 19th the Advisory Board made its first court appearance in front of Justice Herbert Wilkins of the Massachusetts Supreme Judicial Court. The purpose of the hearing was to determine the validity of the Commonwealth's Motions to Dismiss filed against the Advisory Board, the member communities, and the individual ratepayers. This much anticipated court appearance came after four months of foot-dragging by the state Attorney General's office.

Justice Wilkins was well prepared for a discussion of the issues in this case. In dealing with the questions of whether the various plaintiffs had standing, he was obligated to examine the facts of the case in a light most favorable to the plaintiffs. Justice Wilkins questioned the assistant Attorney General, Pierce Cray, asking, "What would happen if the request for the \$120 million were later determined to be illegal and the Motions were dismissed?" His Honor continued, "these people [the plaintiffs] aren't going away. If I dismiss the case and you try through the courts to enforce the statute, they are going to challenge that and it is going to end up back in front of the court where it is right now. Shouldn't we try and take care of this thing now?"

The Justice seemed very concerned about the implications of issuing bonds for such a legally dubious purpose. If the prepayment scheme were found to be unlawful the court may have right to invalidate the bond issue which would severely impact those bondholders, and subsequently, the MWRA's bond rating and in that way it would significantly and directly cause harm to ratepayers. The Justice's remarks in this regard were based on a recent appellate court decision.

Justice Wilkins seemed to recognize, without much dispute from the state, that ratepayers have a strong argument in favor of their standing to sue. His remarks seem to recognize ratepayer standing as existing on a continuum between taxpayers, who have very questionable standing in most cases and bondholders, who have very strong standing in general.

Justice Wilkins did not feel pressed to quickly issue a decision on standing in such a complicated and politically charged case. His Honor instead opted for a strategy that would require the parties involved in the

litigation to provide a statement of facts to which all opposing parties agree. Based on the number of conforming factual issues, the Justice will determine the appropriate avenue of adjudication. One possibility would be to pass the entire case on to the full bench of the Supreme Judicial Court. Another alternative would remand at least part of the case to Superior court for a determination of the outstanding factual issues. Justice Wilkins has the option to decide the Motions to Dismiss for all or some of the plaintiffs or reserve those questions for consideration by the full bench along with the substantive issues of the case. One final scenario could have the Court appointing a special master to evaluate the factual issues and report back to the Court.

Wilkins' decision about the future of the suit will be made on March 27th when the Advisory Board and the other parties to the suit are scheduled to be back in court. Each of the scenarios mentioned above has a different time period associated with it.

The Governor filed his budget in January and included as his first line item in non-tax revenue the \$120 million from the MWRA for

the alleged prepayment of MDC debt obligations. We assume that the Governor has given up hope of receiving this revenue in Fiscal Year 1992. The inclusion in the Fiscal Year 1993 budget may give the legislature one more chance to do the right thing and remove it. At this point a legislative solution to the problems that have caused this litigation would be the most expedient solution. --PN

POSTSCRIPT

To add insult to injury the Attorney General's office has notified the Advisory Board that the state still intends to collect \$1.3 million for payment in lieu of a furlough program despite legislation passed and signed in November that reimbursed those state employees who were furloughed.



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