

**MWRA ADVISORY BOARD MEETING
MAY 20, 1999
WILMINGTON TOWN HALL
121 GLEN ROAD, WILMINGTON, MA**

MINUTES APPROVED AT THE SEPTEMBER 16, 1999 MEETING

Nineteen members were present: E. A. Maguire, ASHLAND; Ed Sullivan, CANTON; Al Renzi, FRAMINGHAM; Bill Hadley, LEXINGTON; Bruce Kenerson, LYNNFIELD; Joseph Peluso, MALDEN; Dana Snow, MARBLEHEAD; Peter Hersey, MELROSE; Katherine Haynes Dunphy, MILTON; Jay Fink, NEWTON; Ed Nelson, QUINCY; Ted McIntire, READING; Joe Foti, SOMERVILLE; Steve Casazza, WAKEFIELD; Walter Woods, WELLESLEY; Jean Thurston, WESTON; Gary Peters, WEYMOUTH; Michael Woods, WILMINGTON; J. R. Greene, GUBERNATORIAL APPOINTEE.

Also present: Norman Jacques and Andrew Pappastergion, MWRA BOARD OF DIRECTORS; Ken Moraff, EPA; Steve Lipman, DEP; Douglas MacDonald, Thomas Powers and Stephen Estes-Smargiassi, MWRA STAFF; Joe Favaloro, Cornelia Potter, Ryan Ferrara, Craig Sanderson and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF.

A. WELCOME

The meeting was called to order at 7:45 p.m. by Chairman Joe Foti.

B. APPROVAL OF THE MINUTES FROM MARCH 18, 1999 AND APRIL 22, 1999

There were no minutes for approval.

C. REPORT OF THE EXECUTIVE DIRECTOR

Joe Favaloro, Executive Director of the MWRA Advisory Board, reported that the Operations Committee, as well as the Advisory Board, had discussions with the community development organization, Westmass requesting water for a parcel of land which it is developing that is 95% in Chicopee and 5% in Springfield. Based on the straddle policy of the MWRA, this would require a vote of both the Operations Committee and the Advisory Board at their June meetings.

D. PRESENTATION - NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Mr. Favaloro reported that the final version of the National Pollutant Discharge Elimination System permit was released today. The permit process took seven years.

Ken Moraff of EPA stated that most of the conditions that were listed in the draft permit have not significantly changed. Environmental groups requested that the permit should have more requirements to protect Massachusetts and Cape Cod Bays, including the protection of endangered species, water quality and fisheries. EPA and DEP had discussions with the MWRA regarding costs; burdensome provisions; and what is appropriate to be included in the permit.

The draft permit included a general requirement to minimize Inflow and Infiltration (I/I). The final permit has more extensive I/I requirements. The permit was written with the idea that the requirements would coincide with the work of the I/I Task Force that the MWRA has already established, and that the results of that process will satisfy the permit requirements. EPA and DEP representatives on the task force worked on the permit.

EPA and DEP established a Science Advisory Panel (SAP) to give independent advice and expert opinions to the agencies on MWRA monitoring issues. The most useful role of this panel will be to answer questions about whether MWRA discharge is causing a problem in the receiving waters. Dana Snow stated, "If we're going to have a Science Advisory Panel, blue collar people should be involved too." Mr. Lipman stated there is a wide group of individuals and agency groups that provide information to the advisory group. All meetings are open.

Mr. Moraff stated that the Contingency Plan is a big issue for EPA. Cape residents requested that EPA create a list of particular problems, and a list of responses to each of those problems, and mandate the responses in the permit with time lines for completion. The agency refused that request, stating that specific circumstances should be resolved with a specific solution.

Cape residents asked that if there is a problem in Massachusetts or Cape Cod Bays, any exceedance of effluent limit, or any problem with the Deer Island treatment process, then the permit should mandate that the outfall immediately be shut down and the discharge returned to the harbor until the problem is resolved. EPA felt that it didn't make sense to mandate in advance that diversion is the answer to every problem. The permit keeps diversion as an option and requires the MWRA to develop a diversion plan; and to maintain the facilities needed to implement it. The diversion plan would be considered part of the Contingency Plan.

Several restrictions in the permit address flow limits. There is an overall limit on average dry day flow, which is about 10% above the current average; a prohibition on the addition of new communities into the MWRA sewer system; and a limit of 1.4 million gallons on the total discharge from new individual sources outside the MWRA service area. EPA and DEP concluded that the permit would need to be reopened for public review if there were significant expansion because the state and federal environmental reviews of discharge and the treatment plant were based on assumptions about flows from the current service area, with some projection of growth.

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Peter Hersey asked, "Is 1.4 million gallons an arbitrary figure for outside the service area?" Mr. Moraff replied, "The MWRA said that the actual wastewater flow in the system, excluding I/I and other sources, is approximately 140 mgd. We allowed no more than 1% of the total flow from the entire service area to be added from outside the service area."

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Mr. Hersey asked, "Did you give any regard as a regulatory agency to the fact that the MWRA has their own restrictions in place?" Mr. Moraff stated, "After a number of discussions with the MWRA, we thought that the restriction on adding new communities would not be an issue. The MWRA argued that there was no need for this permit requirement because the MWRA has decided not to add any new communities. One of the reasons it was included was that the MWRA is not the only decision maker, legislators may require an addition."

Joe Favalaro stated, "The Advisory Board and the Authority spent a year putting a comprehensive System Expansion Policy together for the permit. It is clearly not a pro-expansion policy. For example, at last month's meeting we discussed Regis College. After two years, five meetings and 16 conditions, Regis got tentative approval from the Advisory Board and still has to be voted by the full MWRA Board of Directors. Yet, the MWRA system is penalized in the permit. The final permit is arbitrary, capricious and ridiculous. We will fight this permit through the appeals process."

Mr. Favalaro stated, "The 1.4 million gallon limit is not about communities, because no community wants to join, they can't afford to. This is about individual connections. Why should this decision be made by John DeVillars, and not by the MWRA, its ratepayers, and guided by its System Expansion Policy. Average daily flows were 150 million gallons less than the plant is capable of accepting. Now you are going to tell us we can only use 1.4 million gallons of it over the next five years. That makes sense? That's environmental policy? We'll fight it today, we'll fight it tomorrow, and in the end, shut the system down because we are not going to obey it."

Mr. Nelson stated, "We're 150 mgd lower than what was permitted or required to be built, yet you will not allow others into the system. We have the capacity, and it would help bring the rates down. Through further permitting requirements for I/I, which will further reduce that number in theory, we increase the costs to the ratepayer." Mr. Moraff responded, "Although there are three Secondary Batteries, and you can run 700+ million gallons through them, that doesn't mean you can increase the dry day flows to 700 or 800 mgd and still meet all of your permit limits."

Mr. Nelson asked, "If there is a reduction in gallons on the system through the I/I Program, why can't we have "X" number of gallons to allow a small community in to offset that reduction?" Mr. Moraff stated, "If there are reductions in I/I that reduce the flow, allowing more room for growth within the service area, there is logic to that. Your issue would be why aren't we allowing that to be credited outside the service area."

Mr. Nelson responded, "There is a number that's acceptable, why not have the number, without having to go back with hundreds of hours of unnecessary time?" Mr. Moraff stated, "The reason we didn't pick one flow limit is it is a more sensitive and difficult thing to say you hit your limit, no new buildings in the 43 communities that are part of your district. We did treat the new community/source issue much more tightly than the existing service area because we were trying to balance, allowing for economic growth versus allowing uncontrolled increases in the district."

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Mr. Moraff stated that there are two appeal processes because this is a State and Federal permit, both have a 30-day appeal period. The first step in the federal process is to ask the EPA for an evidentiary hearing, and if you have raised a factual issue that is relevant to the permit, EPA is obligated to grant an evidentiary hearing. Many appeals do not raise evidentiary issues, they raise legal and policy issues, so we would deny the request for an evidentiary hearing and then you would appeal to EPA's national appeals board.

Douglas MacDonald, Executive Director of the MWRA, stated that he planned to recommend that the Board of Directors appeal up to three provisions of the NPDES permit. "The most egregious is the I/I provision. The real problem is not how to hold down the costs after the limits are set. The problem is, 'Are we there when the limits are being set, and the program is being designed?' If you agree to play by those rules, you may be able to save \$300,000 in 2004, it's the \$300 million that you are going to have to spend. The game was over the day the rules were set, and some of the rules are set in this permit in a fashion which is so antagonistic than the direction we should and have been going in this system, that we simply have to object."

Mr. MacDonald stated that this permit is going to drive costs up for ratepayers. Most communities have been involved, either directly or indirectly, in the I/I Task Force to do sensible things to deal with I/I. He stated that there is no more professional, workmanlike, and committed person at the MWRA than Mike Hornbrook, who is running those programs with the cooperation of the communities. Mr. MacDonald quoted statements made by Mr. Hornbrook in regard to the permit: "This is unbelievable. This far reaching program, how could anyone respond. I feel betrayed. They came to every meeting of the task force and they didn't say boo." This is what has come from EPA and DEP, who watched the process of getting this task force idea in motion so we could get accessible cost effective programs that worked for our communities.

Mr. MacDonald continued, "The regulators give us notice that we are going to remediate I/I and SSOs. Each community is going to have to identify SSOs which occur as a result of maintenance deficiencies in the plan for improved maintenance to prevent recurrence. This is going to be a plan that the MWRA has to develop, but we don't have the staff to do this in the next year.

Katherine Haynes Dunphy stated, "Milton's sewer rate is up \$600,000 this year due to I/I. The incentives you have now are so onerous that they become a disincentive. We can't afford to do what we need to do, now you want to make us report on restrictions." Mr. Moraff said, "It is not a requirement, it asks to consider." Mr. MacDonald said, "We will come back to what consider means."

The permit says establish minimum I/I requirements in each community's municipal permit. Per Mike Hornbrook, the task force agreed not to prioritize one community against the other, but rather come up with a regional plan that could be implemented by all of the communities because any removal helps all.

MWRA will have to submit a plan which will go through a variety of levels of review. When you ask how much this is going to cost, one reason no one can answer is because the EPA doesn't have an SSO limitation policy in this country. EPA and the Massachusetts DEP will monitor the effectiveness of the program and, when necessary, may modify the program or delete I/I or SSO requirements. Mr. Nelson stated, "It sounds like a mandate." to which Mr. MacDonald replied, "Doesn't sound like consider to me. I don't think this has anything to do with what this permit is supposed to do which is drive the outfall limits and the way this plant is maintained." EPA and DEP federalize the question of how we are going to handle I/I and SSOs. This provision never

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saw the light of day until this morning at 8 o'clock. No review from the MWRA or the Advisory Board, that's the public process over seven years by which it has been formulated.

The MWRA and these communities have to have the most significant water conservation program of any community in the country. Yet, here are some of the provisions we must include: "The plan shall be designed to achieve continued reduction in wastewater volume per capita over the life of the permit." Where is that coming from?

MWRA can "consider" Operation Water Sense, which is to develop and implement a program that will require every MWRA community to achieve 100% metering to all service connections and perform ongoing meter coverage. Where does it come from in this water permit for this treatment plant? EPA will say don't worry, MWRA won't have to do these things. Except at the top of the permit it says, "The permittee shall implement the plan along with any modifications required by EPA or Massachusetts DEP." If that's what it says, that's probably what it means. When did the Authority abdicate the ability to have this system be run properly by the communities that are paying for it.

Mr. MacDonald noted, "Joe could not put more eloquently the benefits of the System Expansion Policy. Why the permit? They could have adopted the System Expansion Policy that the people in these communities put together. I heard the explanation of how the 1.4 was not arbitrary, It just happens to be 1% of some number."

The Authority and the Advisory Board have worked hard in these communities to get the I/I and SSO issues on some sensible course reflecting what is really going on in our communities and what we need. If we let this permit take effect, then shame on us. If we don't take a stand on the action we are going to lose big time and spend hundreds of millions of dollars.

Ed Sullivan made a Motion **TO EMPOWER THE ADVISORY BOARD STAFF TO TAKE STEPS NECESSARY TO APPEAL THE NPDES PERMIT.** It was seconded and passed by unanimous vote.

E. COMMITTEE REPORTS

Finance Committee - Phil Farrington/Katherine Haynes Dunphy

ACTION ITEM: Advisory Board Comments and Recommendations on the MWRA's Third Proposed Amendment to the FY99-01 Capital Improvement Plan (CIP)

Ms. Potter stated that a third Capital Budget Amendment was received from the Authority relating to the Other Capital Projects Contingency Fund. This request is for \$9.5 million, primarily the result of the receipt of greater than estimated bids for the Braintree-Weymouth Tunnel Project, accounting for more than 90% of this amendment.

The remaining 10% stems from several adjustments to the Authority's assumption about spending, including additional costs related to the pellet plant fire in December; nearly \$.5 million for the City of Quincy Pump Station Project. A number of other reductions offset a series of increases.

Staff's first recommendation is to strengthen the process between the budget office and the divisions. Three budget amendments tell us that there isn't a strong and consistent line of communication or basis for establishing their contingency fund needs. The Authority budget assumes the design or 100% design estimate whereas the bidding goes on around the

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numbers that are related to the cost to complete which reflect inflation when you have a multi year contract. The budget office and the contingency forecast need to reflect this.

Staff recommends that the Authority take a closer look at what they need to get through this year. Staff of both the Waterworks and Sewerage Divisions tell us that the Authority may need a few hundred thousand dollars more in each division. Furthermore, there was an under recognition of a transfer of costs from the direct expense budget to the capital budget due to the fire at the pellet plant. It is appropriate to call these costs capital, but they weren't included in the contingency fund amendment forecast.

The third recommendation is for the budget staff to make a clear report to the Board about the implications of all these changes. These changing numbers reflect increases, unexpected costs, and modifications in project scope.

A Motion was made **TO APPROVE THE ADVISORY BOARD COMMENTS AND RECOMMENDATIONS ON THE MWRA'S THIRD PROPOSED AMENDMENT TO THE FY99-01 CAPITAL IMPROVEMENT PLAN.** It was seconded and passed by unanimous vote.

ACTION ITEM: Advisory Board Comments and Recommendations on the MWRA's Proposed Amendment to the MWRA's FY99 Current Expense Budget (CEB)

Ms. Potter reported that the Authority absorbed more risk into the FY99 budget last year because the MWRA has more than \$4.25 million of additional Special Operating Reserve set aside for Deer Island related uncertainties. The Authority made a decision about what direct expenses were likely to be regarding Deer Island Operations and residuals processing at Fore River. The budgeted amount fell short of the actual amount of solids processed. The Authority has estimated that they will be short about \$2.5 million on June 30th. Spending on the direct side will be offset by lower than budgeted spending on the indirect side, mostly for some savings or less than budgeted spending in capital finance, leaving them \$2.473 million short. The Authority has recommended these funds come from the greater than budgeted income from investments, most notably the swap investment.

Staff recommends that the Authority check that \$2.5 million is really needed. In addition, the MWRA should actively manage their spending and some opportunities for revenue receipts for the rest of the year. If a commitment to pursue some differences in their spending were made, spending could be lowered. Several recommendations include: No more funds for watershed reimbursement; limit additional discretionary spending; use more barging of filtrate to Deer Island.

A Motion was made **TO APPROVE THE ADVISORY BOARD COMMENTS AND RECOMMENDATIONS ON THE MWRA'S PROPOSED AMENDMENT TO THE MWRA'S FY99 CURRENT EXPENSE BUDGET.** It was seconded and passed by unanimous vote.

UPDATE: CEB and CIP Budget Process

Mr. Favaloro noted that the Advisory Board has been successful in keeping alive an ongoing discussion relating to the active management of the capital budget. A task force has been developed which includes members of the Board of Directors, Authority and Advisory Board staff.

At the last Board hearing, the Authority preliminarily accepted and rejected Advisory Board recommendations bringing the increase down from 7.33% to 5.8%, absent the rate stabilization discussion which would further reduce overall increases to 4.18%. The next series of discussions will occur at next Wednesday's Board meeting as relates to the use of reserves, rate stabilization, and other outstanding issues.

Executive Committee - Joe Foti

PRESENTATION: STATUS - LOCAL PIPELINE TASK FORCE - Steve Casazza, Chairman, Local Pipeline Task Force

Steve Casazza, Chairman of the Local Pipeline Task Force (LPTF), reported that the LPTF began work in December to design a program that targets distribution systems with problems that effect public health. Eligibility to access this zero-interest loan program is going to require that communities meet baseline requirements for a maintenance program on their water system. A guidance document is being prepared by MWRA staff to help communities with the application.

This is a joint effort between the MWRA (\$60 million over seven years) and the Commonwealth of Massachusetts. In perpetuity, it would generate loans for MWRA water communities with the interest being subsidized by the Commonwealth every year. Over the first 20 years of the program, it will generate \$550 million in loans.

Bill Hadley of Lexington asked, "What happens to communities that have been doing work, will they get a share of the money?" Mr. Favaloro answered, "The principle behind the program was to avoid the building of a filtration plant. For the greater good to be accomplished, infrastructures need to be addressed based on the systems that need it most first. The Commonwealth's participation in providing the debt assistance is based on a targeted program, but they have made a major concession that after the first \$20 million from the MWRA, they will go back with the committee to review the program and determine if targeting has worked. With \$550 million known in loans available in the course of 20 years, all communities should qualify at some point for a loan."

Mr. Favaloro stated that the committee wanted to bring every system to a certain level with good management practices that included flushing, valves, operating and leak detection. MWRA developed a program to do leak detection through the Authority, paid back through community assessments. The Authority plans to develop a program for flushing programs and all of the other components within the established baseline criteria. Once communities are doing these programs, their applications for the actual loan can be submitted.

Ed Nelson asked, "Who is going to determine which project will be completed first?" Mr. Favaloro replied, "One thing the Authority felt very strongly about, as did the Advisory Board, is we shouldn't be in judgement of one community versus another community. The agency that will do it is DEP."

Steve Casazza noted that A & F strongly encouraged a targeted rehabilitation program.

Legislative Update

Mr. Favaloro noted that the House Budget includes the continuation of debt service assistance. Staff is pleased that an amendment brought forward by the Advisory Board

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through the efforts of the Caucus, specifically Representative Mariano, to include the Walnut Hill Treatment Plant as an eligible expense under debt service assistance was successful. It could potentially bring in an additional \$40 million as an offset against debt to the MWRA over the life of the Walnut Hill Treatment Plant Project. Additionally, the House Budget included language providing the Advisory Board review of the MDC Watershed Division Budget.

Staff hopes to include language on the Senate side stating that the Commonwealth of Massachusetts' buildings go back to the state once declared surplus by the MWRA, eliminating any loop holes and forcing DCAM to take possession of these buildings.

Upcoming Election to the Board of Directors

Mr. Favaloro noted that the term currently held by John Carroll as the Advisory Board Representative to the MWRA Board of Directors will expire on June 30, 1999, and reported that two notices have been sent to Advisory Board members.

The election schedule is as follows: June 3rd is the deadline for interested candidates to submit a letter of intent (one letter has been received, thus far, from John Carroll); on June 11th, the Executive Committee will serve as the Nominating Committee to interview John and other candidates; and on June 17th, all candidates will have an opportunity to address the Advisory Board, and an election will be held. A quorum of 33 voting members is needed to validate the election.

Operations Committee - Andy DeSantis

UPDATE

A meeting regarding the Consumer Confidence Report was held in lieu of the Operations Committee Meeting in May. The next meeting will include discussions on local limits, Westmass admission to the CVA system, and updates on the Consumer Confidence meetings.

F. QUESTIONS AND COMMENTS - No questions or comments.

G. ADJOURNMENT

A Motion was made **TO ADJOURN THE MEETING AT 10:08 P.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary