

**MWRA ADVISORY BOARD MEETING
JUNE 17, 1999
WELLESLEY TOWN HALL
525 WASHINGTON STREET, WELLESLEY, MA**

MINUTES APPROVED AT THE SEPTEMBER 16, 1999 MEETING

Twenty-six members were present: Mark Shea, ARLINGTON; Edward Maguire, ASHLAND; Pete Peters, BURLINGTON; Timothy MacDonald, CAMBRIDGE; Ed Sullivan, CANTON; Christopher Golba, CHICOPEE; David Ravanese, EVERETT; Al Renzi, FRAMINGHAM; Bill Hadley, LEXINGTON; Bruce Kenerson, LYNNFIELD; Peter Hersey, MELROSE; Katherine Haynes Dunphy, MILTON; Jay Fink, NEWTON; Bernie Cooper, NORWOOD; Paul Connors, RANDOLPH; Joseph Delaney, READING; Joe Foti, SOMERVILLE; Michael Hirsch, STOUGHTON; Steve Casazza, WAKEFIELD; David Savoy, WALTHAM; Gerald Mee, WATERTOWN; Walter Woods, WELLESLEY; Jean Thurston, WESTON; Phil Caruso, WESTWOOD; Robert Antico, WILMINGTON; J. R. Greene, GUBERNATORIAL APPOINTEE.

Also present: John Carroll, Norman Jacques and Andrew Pappastergion, MWRA BOARD OF DIRECTORS; Walter Armstrong, Ralph Wallace, Thomas Powers and Stephen Estes-Smargiassi, MWRA STAFF; Steve Goldberg, MWRA ADVISORY BOARD LEGAL COUNSEL; 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 7:37 p.m. by Chairman Joe Foti.

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

A MOTION WAS MADE TO APPROVE THE MINUTES FROM THE MARCH 18, 1999 AND APRIL 22, 1999 ADVISORY BOARD MEETINGS. It was seconded and passed by unanimous vote.

C. REPORT OF THE EXECUTIVE DIRECTOR

Joe Favaloro reported that August 19, 1999 is the date selected for the annual field trip of the Advisory Board. The Deer Island Treatment Plant, which is 96% complete, is the tentative field trip location.

The Advisory Board has taken a strong position during the disposition process discussion that the Chestnut Hill Pump Station should not be the responsibility of ratepayers, especially when the building will be taken out of service with the transfer of pumps to the outside of the structure. Today was the beginning of a process to try to turn the building over to its rightful owner.

D. PRESENTATION - Deer Island Update - Walter Armstrong, Director of the Program Management Division (PMD)

Walter Armstrong, Director of PMD, announced his plans to leave the MWRA at the end of August. He stated that he will work to bring the Outfall Tunnel and Battery C as close to completion as possible. Mr. Armstrong thanked Advisory Board members for their support and advice.

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Chairman Foti presented a plaque to Mr. Armstrong which will be inscribed: To Walter Armstrong in Appreciation for Your Efforts on Behalf of the Environment and Ratepayers, MWRA Advisory Board, June 17, 1999. Mr. Armstrong thanked the Advisory Board staff, as well as Chairmen Foti and Pappastergion. He then introduced his successor. As of August 27, 1999, Ralph Wallace, will be the Director of the Program Management Division, having served as Deputy Director of PMD for the past five years.

Mr. Wallace noted that construction on the Boston Harbor Project (BHP) is on schedule. Two milestones remain--the Effluent Outfall Tunnel, expected to be complete in September 1999; and Secondary Battery C, scheduled for completion by November 1999.

The construction of the Nut Island Headworks is complete, but site work remains to complete a public park for the community. All of these facilities are due for completion in September 2001. Of the \$178 million remaining in the Capital Improvement Program for the BHP, \$134 million will be spent in the coming fiscal year. After construction is completed, PMD will close out the job and will have to mitigate claims of contractors, pursue claims against contractors, vendors and designers, and maintain the facility. At one time there were 51 employees and consultant staff of 500+ people working on the BHP. Now the PMD will have 29 employees and less than 200 consultants. Over the next several years, the PMD will continue to eliminate positions with the eventual goal of eliminating the division.

E. COMMITTEE REPORTS

Executive Committee - Joe Foti

- **ACTION ITEM:** Nomination and Election as an Advisory Board Representative to the MWRA Board of Directors - Postponed due to lack of a quorum.
- Status of Advisory Board Appeal of the NPDES Permit

Mr. Favaloro reported that both the MWRA and the Advisory Board have engaged legal staff to appeal components of the NPDES Permit in response to an Advisory Board Motion at last month's meeting. In the past week, the Advisory Board mailed a letter to communities stating that all wastewater communities will be included as part of the appeal, and that if the community had concerns, they should inform the Advisory Board staff to be removed from the appeal.

Steve Goldberg, Legal Counsel for the Advisory Board, stated that the NPDES appeal has to be filed within 30 days after the permit was issued. The three areas that the appeal will focus on will be the 1.4 MGD limitation, I/I requirements, and water conservation. The MWRA will appeal the same issues. The basis for the appeal by the Authority and the Advisory Board are essentially the same.

The appeal is a multi-level administrative process. The first stage is requesting an Evidentiary Hearing before EPA Region One; the second stage is an appeal through EPA Washington; and, third, an appeal to the U. S. Court of Appeals at the First Circuit in Boston.

The Evidentiary Hearing, if granted, is narrow and limited to resolving factual disputes. The evidence must relate to factual issues about the studies that were conducted and the scientific basis for decisions. Administrative hearings are difficult because agencies are reluctant to make changes. There are two grounds to attack the permit. First is that the agencies have exceeded their legal

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authority and secondly that they have acted in an arbitrary or capricious manner. We have to show that EPA has no sound basis for the requirements in question. It is a difficult challenge to make, but in these three areas we do have good arguments to make.

The appeal notice is a simple document informing EPA regarding the grounds for the appeal. Parties may have an opportunity for discussion to see if there is a possibility for resolution. If no resolution can be made, then EPA will consider whether there are factual issues that require a hearing.

Tom Powers added that the Board voted unanimously to appeal. This is not a war between the MWRA and Cape Cod where we are challenging the restrictions that are going to protect Massachusetts Bay, which the Authority agrees is a sensitive resource that deserves protection.

Walter Woods asked, "If something happens relative to the outfall output, the permit wants us to release the effluent into the harbor. If it is not good for a tremendous body of water, why is it okay for a smaller body?" Mr. Powers stated, "The permit requires MWRA to maintain the existing outfall so that in a hypothetical situation where EPA decided there was a problem in Massachusetts Bay, the power could be shut off and flow could be put back to 1/4 mile off of Deer Island. EPA staff have said they can't envision any circumstance where that would be sensible because anything in Boston Harbor is in Massachusetts Bay 24 hours later. They require us to keep the ability to release effluent to the Harbor just in case circumstances nobody foresees might happen."

Bill Hadley asked, "Where do Advisory Board members stand on the appeal?" Mr. Favaloro responded, "At last month's meeting, the Advisory Board voted to appeal. No community has asked to be removed from the appeal."

David Savoy asked, "What obligation would communities have if they do or don't take their name off?" Mr. Favaloro stated, "Either way there would be no financial obligation. The Advisory Board has a Legal Fund which can only be used at the authorization of the Executive Committee, which has authorized the use of funds to hire Mr. Goldberg. All financial obligations will be borne by the Advisory Board's Legal Fund."

- Legislative Update

Mr. Favaloro reported that language was included in the House Budget making the Walnut Hill Treatment Plant eligible for Debt Service Assistance, but was not included in the Senate Budget. It will be part of Conference Committee. Language for a Pipeline Assistance Program was not included in the House or Senate Budgets.

One piece of Advisory Board-supported legislation that did move forward on the Senate side was the changes for the Low Income Assistance Program, which provided language to allow assistance to be based on need rather than community basis.

Operations Committee - Andrew DeSantis

- **ACTION ITEM:** Under the MWRA's Straddle Policy, An Application By Westmass Area Development Corporation To Connect Into the MWRA System Through Chicopee for a Project Partially Located in Springfield
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- A representative of Westmass Area Development Corporation stated that a business park is being developed in Chicopee and Springfield. The project is surrounded on the north by the Chicopee River, to the east by Interstate Highway 291, and south by a perennial stream/brook.

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- The reason for the application under the Straddle Policy is that ten of the 11 buildings will be located on the Chicopee side of the municipal boundaries, with one building located in Springfield. It has been determined that it is infeasible and environmentally damaging to provide water service to the Springfield building from the City of Springfield, primarily because of I-291, the perennial stream and the extensive wetlands. The application asks for approximately 19,000 gallons of water per day to serve that building. Over time, Westmass has committed to pay an entrance fee related to the expenses affiliated with that request, as well as to enforce water conservation measures for the MWRA and the City of Chicopee.
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- Ed Sullivan asked, "Have you considered the possibility of using recycled effluent for irrigation since you're going to be laying pipes?" Westmass replied, "With limited funds to develop this project, the funding goes to construct the roads and utilities. The project will have efficient plantings."
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- Joe Foti noted that both the Operations Committee and the Executive Committee voted unanimously in favor of the connection.
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- Ed Sullivan made a Motion TO APPROVE, UNDER THE MWRA'S STRADDLE POLICY, AN APPLICATION BY WESTMASS AREA DEVELOPMENT CORPORATION TO CONNECT INTO THE MWRA SYSTEM THROUGH CHICOPEE FOR A PROJECT PARTIALLY LOCATED IN SPRINGFIELD. It was seconded and passed unanimously.

- UPDATE

Steve Estes-Smargiassi stated we haven't had any substantive rain in 3 ½ weeks. MWRA charts show the demand between 5:30 to 7:30 a.m. is at historic highs. Peaks inside Norumbega for the metropolitan area approached 400 million gallons several days last week, creating pressure problems in a few spots where a development is close to the top of a hill. The Authority is doing everything possible, checking valves, opening by-passes to get as much pressure in during those key hours. MWRA has asked consumers to shift water use out of the 6 to 10 a.m. period. Typically the dry weather peaks occur in July and August when 20% of people aren't in town and factories are producing and using less.

Mr. Powers noted that the reservoirs are full, so it is not a water supply problem. The issue is the distribution pipes. It is why we need to keep doing the maintenance to upgrade the pipe system. Mr. Estes-Smargiassi noted that in 2002, when MetroWest is online, there will be the capacity to transport sufficient water from the reservoirs. The reservoirs as of yesterday were 94% full, well within normal operating range.

Mr. Estes-Smargiassi stated that the court date with EPA is upcoming over whether public health demands that we ozonate, chloramine, repair pipes, protect the watersheds or that MWRA filter the water. The Judge ruled to essentially discard all of the historic arguments and disagreed with EPA that he was mandated to require MWRA to filter. The real question is what is the appropriate treatment? Our legal and technical teams are happy to argue the question of what is the appropriate decision. The Board of Directors, through a long process, came to a decision which makes sense. Tuesday of this week MWRA submitted a disclosure of what our experts are likely to say in court, as did EPA. The next stage is to determine if additional experts or opinions are needed. The remainder of the summer will be spent taking depositions from experts and the court date is scheduled for October.

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On the Southern System Expansion Proposal, the legislature asked the Authority to prepare a study examining the expansion of the MWRA system. The study was recently completed and staff mailed reports to the communities. Communities can review that information and use it for local decision making. MWRA tried to be factual with their presentations.

Mr. Favaloro noted that since the Local Pipeline Loan Program was not included in the House and Senate Budgets, it will provide the Advisory Board an opportunity to continue discussing the program. There is clearly a need for further review on what the role of the Pipeline Program should be as was evident at the Executive Committee meeting. The discussion on targeted versus proportional still hasn't come to closure.

Finance Committee - Phil Farrington/Katherine Haynes Dunphy

- **UPDATE:** MWRA CEB & CIP Budgets

Cornelia Potter stated that the Board of Directors voted yesterday on responses to the Advisory Board comments on both the Capital and Current Expense Budgets. On the capital side, the Authority states that its ten-year budget for the Capital Improvement Program will be \$6.8 billion, an increase of just over \$100 million from what was sent for review. The number is \$200 million higher than the Advisory Board recommendations. The \$107 million adjustment reflects decreases of \$74 million, but increases of over \$180 million.

Spending for next year is \$25 million higher than the proposed budget; the FY2000 budget is \$562 million and includes other claims and other contingency allowances of over \$90 million. The new total for next year also includes the Authority's payment of the first \$20 million of the Local Water Pipeline Improvement Loan Program. Three-year spending is at \$1.4 billion, as compared to the \$1.35 billion in the proposed budget, an increase of over \$60 million. The Authority concurred with 55 of the Advisory Board's over 80 comments and agreed with nearly \$66 million in reductions.

On the Current Expense Budget, the response to the Advisory Board settled on a rate revenue level 5.3% over the current year's budget. The budget will be just over \$430 million, net of the \$48 million in anticipated state debt service assistance, and a rate revenue requirement of over \$353 million. This is a reduction to the proposed rate revenue requirement of nearly \$7 million, but still well under the Advisory Board's recommendation of \$10.8 million, for a difference of just under \$4 million.

Norman Jacques stated, "I was very surprised to hear the Secretary of Environmental Affairs say that the Governor was comfortable with a 5.3% increase. I thought that the process is how we arrive at the rate increase, not what some individual or group of individuals feels comfortable with. It begs the question, was it pre-arranged or did it happen as a result of the process? The Advisory Board recommended a 4.18% increase, and we are getting a 5.3% increase. As I understand it, that is more money than we need. I don't think that is the way we should be handling the process and I was very disappointed."

Mr. Favaloro stated, "For the record, I want to applaud the efforts of the three Advisory Board appointees to the Board of Directors. The vote of the Board on the budget was 7 to 3, with one member absent. The three votes in opposition to a 5.3% rate increase were the three Advisory Board members seeking to work to lower that number, unsuccessfully, because, as Mr. Jacques has stated, the deck was stacked long before yesterday's meeting. In fact, many of you received phone calls before the Advisory Board recommendations were presented to this Board suggesting what the rate increase should be for FY00. That doesn't bode well for a process that is supposed

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to be a give and take exchange of ideas and thoughts, agreements and disagreements, but getting to a bottom line that minimally represents what the Authority needs and not in excess of what communities ought to be paying in any given fiscal year. Staff has put together a letter that, with input from members, will be sent to the MWRA Executive Director and Board members expressing our concerns.”

Katherine Haynes Dunphy stated, “I also would like to thank the three Advisory Board members on the Board of Directors for standing up for ratepayers. To put this increase into context, the annual rate of inflation felt by consumers so far this year is at 2.6%, so this is more than twice the rate of inflation. Perhaps more important, the increase that Social Security beneficiaries received on January 1 was only 1.3%, so this is a full 4% of what retired senior citizens on limited incomes are receiving in the Boston area. It is a high rate increase in a time of low inflation. Additionally, I have problems with the process. The Advisory Board had asked the MWRA to look at their reserves which are over \$400 million. There is \$49 million in the rate stabilization fund and \$46 million in the bond redemption fund which could be used to reduce our rate increase. It surprises me that the MWRA did not take advantage of those reserves, which are the ratepayers money, and unless there is some rational reason why they need to be preserved for future years, they ought to be used to reduce rate increases.”

Ms. Potter stated, “The proposed letter would capture two points--1) the rate increase is too high and does affect the communities; 2) the process. The 5.3% rate increase is the highest since 1993, both in the percentage increase and the dollar figure. Staff believes it is more than what the Authority needs and have pointed out a number of areas where we disagreed with the Authority’s conclusions. What was missing was an inclusive discussion about the options for utilizing some additional rates management funds, a key element of the Advisory Board recommendation. That the Authority was unwilling to pursue a discussion that was still available to moderate the rate increase raises serious questions about the process.” Mr. Favaloro stated that the letter will be sent to the MWRA, as well as local and Boston press.

John Carroll commented, “In 14½ years on the Board, it was the worst stacked deck I have seen. When the Mayor of Boston and the Governor of Massachusetts want control of the Board, they can do so. People on the Board that would ordinarily be thoughtful and ask questions didn’t, as though they had been told what to do.”

Mr. Favaloro stated that there is no guarantee the \$3 million of additional rate stabilization money that is not going to be needed to cover the potential shortfall in the FY99 budget will be utilized next year. There should be an opportunity to have a discussion and allow for a process regarding the rate increase, not a political whim. John Carroll noted that Norman made the motion to use the \$3 million SWAP funds to reduce the rates and lost on a 7 to 3 vote.

F. QUESTIONS AND COMMENTS - No questions or comments.

G. ADJOURNMENT

A MOTION WAS MADE TO ADJOURN THE MEETING AT 8:52 P.M. It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary