

**EXECUTIVE COMMITTEE MEETING**  
**November 12, 2004**  
**Minutes Approved at the January 14, 2005 Meeting**

Present: John Sanchez, ARLINGTON; John Sullivan, BOSTON; Tim MacDonald, CAMBRIDGE; Ed Sullivan, CANTON; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Barbara Stevens, SOMERVILLE.

Also in attendance: John Carroll and Andrew Pappastergion, MWRA BOARD OF DIRECTORS; Joseph Favaloro, Cornelia Potter, Ryan Ferrara and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF.

**I. Approval of the October 15, 2004 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting, held at the Advisory Board office, to order at 8:35 a.m. A Motion was made **TO APPROVE THE OCTOBER 15, 2004 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

**II. Action Item: 2005/2006 Legislative Initiatives**

MWRA Advisory Board Executive Director Joseph Favaloro stated the legislative initiatives went before the MWRA Board of Directors on Wednesday.

For Debt Service Assistance, it does not make sense to increase the percentages or add to the program with the Commonwealth having a \$1 billion deficit. For the State Revolving Loan Fund, the Advisory Board will support changes sponsored by other parties.

In regard to the Water Supply Protection Trust (Trust), the Advisory Board will file two bills. MWRA staff has decided not to file or support this legislation at this time because the Executive Director is in discussions with the Secretary of the Executive Office of Environmental Affairs (EOEA).

The first initiative reflects changes to the Board of Trustees of the Trust to include the MWRA Advisory Board Chairman and the President of the Swift River Valley Historical Society or his/her designee to join the three present members, the Executive Director of the MWRA, the Secretary of EOEA or his/her designee and a member jointly selected by the North Worcester County Quabbin Anglers and the Quabbin Fishermen's Association. This language will likely move forward before the end of the year, having already passed the Senate and being in third reading in the House. [Since the last Executive Committee meeting, the language has been signed into law.]

The second Trust initiative pertains to the costs of watershed land acquisition and other capital costs. Absent this change, the only way land can be purchased is with cash from the MWRA. This language was worked on by all parties. The Secretary of EOEPA has suggested the Authority provide \$4.5 million of its operating budget to buy land, which is roughly equivalent to a 1% increase in MWRA retail rates.

The Advisory Board will file legislation regarding the fringe benefit rate assessment for the Division of Water Supply seeking to pay the actual costs for health and retirement costs for eligible employees of the Division of Water Supply, rather than a percentage of a line item. MWRA is withholding its support for this initiative even though they supported it in the last three sessions.

An Act relative to the Clinton Wastewater Treatment Plant will be jointly filed by the MWRA and the Advisory Board seeking to charge the Town of Clinton for the actual costs of additional flows as the Town allows new connections. Currently MWRA receives no compensation for managing the treatment facility beyond the \$500,000 from the Commonwealth.

An Act to limit the liability of the Massachusetts Water Resources Authority to \$100,000 will also be jointly filed.

An Act relative to the composition of the MWRA Board of Directors allowing the mayor of the City of Quincy and the Board of Selectmen from the Town of Winthrop to appoint a member to the MWRA Board of Directors will be filed.

Staff is working on final language for two versions of a jointly filed (MWRA/Advisory Board) initiative to establish a Lead Service Replacement Program. One version would have lead service replacements through a grant program and the other version would include working with the Department of Health for a loan program for lead services into homes.

The final bill seeks reimbursement from the Commonwealth for the Infiltration/Inflow Reimbursement Program.

### **III. Discussion: Upcoming Water Supply Continuation Agreements with Communities**

Mr. Favaloro stated MWRA has member communities and contract communities. Per the Enabling Act, contract communities must meet certain requirements to purchase water. Eleven contracts will be in negotiations over the next few months; however, MWRA wants to eliminate contracts. Should there be distinctions between contract communities and member communities?

Because the Enabling Act lays out the differences between contract versus member communities, the Enabling Act would have to be amended. Further, MWRA would have to work with regulators and other interest groups that might have a different opinion.

Andrew Pappastergion asked who is driving this change. Mr. Favaloro said there is an internal debate within the Authority regarding the elimination of contracts.

Mr. Pappastergion stated one of the primary benefits of being a member community is unlimited access to service; contract communities do not have that access. Mr. Favaloro stated that contract communities are limited by what their contract says and member communities have paid for the full asset value of the system. If a contract community was allowed to use 1 MGD every day and all of a sudden uses 2 MGD, that community would not have paid a dime of the asset value for the additional amount of water. This could be addressed by assessing entrance fees.

Ryan Ferrara said while the contracts do limit the amount of water that contract communities are supposed to be using; in fact, many contract communities have gone over their contractual limit. Mr. Favaloro stated the reality is the Authority does not enforce the contracts. To be fair, it has been the long standing position of the MWRA. On those who have been over, versus under, on their contractual amount, it is almost a 50/50 split on communities using more water and those using less.

Barbara Stevens asked if these communities pay for the water usage. Mr. Favaloro replied that contract communities pay a prevailing rate.

Tim MacDonald noted that Cambridge is a contract community. Cambridge staff looks at the contract as just another regulation.

Mr. Favaloro stated in the first twenty years of MWRA's existence, contract communities could only draw water based on a contract. Under this proposal, communities would just get water from the MWRA as they wanted it, without any contracts.

Ed Sullivan asked where this initiative is coming from. Ryan Ferrara stated that ten-year water agreement contracts are coming due and MWRA is trying to determine if they should go through the effort to develop new contracts or just incorporate contract communities into the system.

Mr. Carroll noted that a change in legislation would be required. Mr. Carroll asked, "How can we propose something that nobody understands? What positive benefit is there for original member communities and other communities? Is there some benefit to the MWRA?" Mr. Favaloro stated contract communities have raised the concern in the past that they do not want to be treated differently and the MWRA, to some degree, has agreed.

Bernie Cooper asked if there are partial communities that are consistently blowing their alleged maximum and what is the difference in entry fees that Norwood has paid as opposed to a contract community? Mr. Pappastergion added, in other words, are these communities going to be willing to buy into the system as a full member? Mr. Favaloro stated he did not know if that is going to be on the table, but assumed it would be. Some contract communities paid entrance fees, some did not.

Mr. Carroll asked if this language is changed, what would happen to Stoughton. Mr. Favaloro said Stoughton is a contract community, but has paid an entrance fee. If the language changes, Stoughton would not have a maximum daily amount and would be

able to draw as much water as they want. Mr. Pappastergion noted the entrance fee that Stoughton paid was based on the amount of water they planned to draw. Mr. Carroll noted MWRA would have to go back to Stoughton and say we are going to make you a full member, but you have to pay more money. Ms. Dunphy noted the communities can say “who says we are going to use more water.”

Mr. Favaloro stated he wanted the Executive Committee to weigh in on the subject. If the message is keep it the same, then that is the message that will go back to Authority staff.

Ryan Ferrara added some of these communities did pay entrance fees and others did not.

Joe said the options are: 1) Continue to pursue the discussion; 2) Keep contract versus member status quo; 3) Make changes and go directly to all member communities. Mr. Carroll stated that he and Mr. Pappastergion would never support this, stating “If I were on the Executive Committee, I would kill it now.” It is a wasted effort with political ramifications.

Ryan Ferrara said one point to raise to the Executive Committee is we do have these contracts. The crux of why we are here is essentially because the Authority has not enforced these contracts. Limits have been exceeded on a regular basis. The Executive Committee may want to suggest to the Authority that these caps be enforced.

Mr. Pappastergion said if a community has contracted for 1 MGD and they consistently use 5 MGD and MWRA is not doing anything about it that is a problem. Mr. Favaloro added if MWRA goes through a process of creating contracts for communities, it should be enforced. It is the incremental increase that they would have paid no asset value for.

#### **IV. Discussion: Draft Letter on Stormwater Precedent**

Cornelia Potter stated for quite some time in the process of looking at the South Boston North Dorchester Bay CSO Project, the Advisory Board has been raising concerns that the Authority’s willingness to absorb a limited portion of stormwater control in that project would create a precedent, which would be difficult for the Authority to avoid in other CSO or wastewater projects.

In the last year, MWRA’s willingness to take on stormwater contributed to not only the enlargement of the project to a 17-foot tunnel project that would take on higher level wet weather control, it also resulted in the inclusion of the Morrissey Boulevard project, which is the transfer of some stormwater to another receiving water.

Members of the Board of Directors had asked the Authority to seek formal assurances from the Court and the Court parties that stormwater control in the South Boston project would not constitute a precedent for future stormwater control projects. The Authority has yet to seek these assurances.

Advisory Board staff has drafted a letter requesting the Board of Directors to direct Authority staff to seek those assurances in writing. Ms. Potter highlighted a portion of

the Secretary's certificate on the South Boston project addressing the fact that a number of people had commented on the concern about mission creep as a potential for additional stormwater control. There is an interesting dance of the language where the words "primary" and "secondary" enter into the discussion. "I remain cognizant of the proponent's primary responsibility for water supply and wastewater, and disfavor the proponent's wholesale assumption of stormwater management responsibilities. However, I believe that a secondary emphasis by the proponent on stormwater runoff can be appropriate when some measure of stormwater management is integral to the execution of the proponent's statutory responsibilities for wastewater management." In other words, seeking such assurances in writing becomes even more important when you see language of this kind.

In this past week we have been seeing articles in both the *Boston Globe* and the *Herald* about a person who has been swimming the Charles, gaining increasing publicity. What caught staff's eye in the article earlier this week was at the very end "...he expects the last 10 miles of the trip through Watertown, Cambridge and Boston to be the most difficult. Boat traffic will increase as he enters the river's basin. And there, he will swim through stagnant water, loaded with chemicals, fertilizers and waste." Yet, every month the Charles River Watershed Association publishes test results of samples where, for the most part, it is the upper regions of the river that have been most problematic. Below the Watertown Dam there have been measurable improvements in water quality. This kind of publicity creates an impression that the lower end of the Charles is problematic.

Two days later there were articles in both the *Boston Globe* and the *Herald* about EPA having issued an order to further remove illicit connections, yet crediting Boston and Cambridge for spending hundreds of millions of dollars tackling illicit connections.

Mr. Pappastergion said in 1995 John DeVillars came up with the "Charles River 2005" initiative to make the Charles River fishable and swimmable by the end of 2005. Six communities (Boston, Brookline, Cambridge, Newton, Watertown and Waltham) have been working with EPA since 1995 and all agreed to remove illicit sanitary connections that are tied to a storm drain, do water sampling, clean the drainage system, ramp up catch basin cleaning, ramp up street sweeping among other things to keep as much contaminants out of the storm drain system as possible.

Brookline has put in storm ceptors, which are mini treatment plants on a lot of the drains. Everyone was ahead of schedule. The six communities committed to EPA to spend a minimum amount of money on these projects and Brookline spent 20 times that amount, spending over \$2 million to do this program alone.

On Tuesday, EPA hit four of the six communities with an order that laid out specific conditions that had to be met, requiring a certain number of dollars to be spent by December. The four communities had to appropriate money by the end of December for removing illicit connections and had to agree to a sampling program, all of the things the communities had already agreed to and had been doing for the past ten years. There was no discussion, no phone call – just an order.

Mr. Pappastergion stated he did not know why Boston and Cambridge were excluded from the order, other than the CSO projects, but they have not put in any more effort than the other four communities. Brookline plans to fight EPA because every condition that was given in the order had already been complied with. It is just publicity.

Lou Taverna added that Newton received a letter from EPA in March stating that EPA had taken some samples of Newton's outfall into the Charles River at certain periods of time that came up high with coliform. Newton asked EPA how the samples were taken and whether it was in dry or wet weather; EPA did not answer.

Newton met with EPA and a schedule was planned of things to do to correct the situation. There were four locations that Newton knew had a problem with the under drain system and staff told EPA those four situations would be corrected. EPA kept insisting that Newton be proactive and evaluate the entire system and correct all problems by December 31 of this year. Newton has 300 miles of sewer, 300 miles of storm drain, and 300 miles of under drain below the sewer, that would be an impossible task to do. Staff met with EPA two or three times and had a meeting scheduled for Wednesday to go over the strategy. Late Tuesday, Newton received a call from EPA saying the meeting was cancelled and an order was being issued. Staff believe Newton has met, or is meeting, all of EPA's requirements and will fight the order.

John Sullivan stated because stormwater control could also be called separation, taking stormwater out of the sanitary sewer and putting it into a body of water (which is pure separation) is stormwater control. Perhaps the letter could be as blunt as saying we recognize separation to control CSOs has been approved by EPA and we do not have a problem with that.

John Sanchez noted when he read the letter, he did not know if it was referring to storage or detention of combined sewers or storage and detention of pure stormwater. It should be clear.

Ms. Dunphy said the real issue is to get this letter off. In March the Board of Directors told Authority staff to get this response from the court parties and the regulators in writing and staff has not asked for it.

#### **V. Outstanding Questions for Community Support Programs**

Mr. Favaloro stated last month Walter Woods posed a question about changing the Local Pipeline Assistance Program (LPAP) to include a grant element. Staff identified questions for the next Operations Committee meeting to put to rest any outstanding issues.

Mr. Favaloro noted there would be a significant impact in including a grant component to the current loan only program.

#### **VI. Status Report: Initial Meeting – CEB Rate Cap Committee**

Mr. Favaloro reported that the Cap Committee met about limiting increases to 2.5%. John Carroll noted although no decisions were reached on this complicated subject, a

lot of information regarding the budget was discussed in a macro way. A lot can be gained from having these discussions early in the process.

#### **VII. Highlights: Initial Meeting of Water Supply Protection Trust**

Mr. Favaloro reported the Board of Trustees of the Water Supply Protection Trust (Trust) finally held their initial meeting, one and one-half month after the statutory date. Currently, there are only three members on the five-member Board.

Two parcels of land that would be important for watershed protection have become available for \$4.5 million. Unfortunately, because of Conference Committee language, currently there is no vehicle to purchase land. The Authority cannot purchase the land unless they pay cash. Staff is working to resolve that issue.

There is ongoing dialog between the Authority, DCR and the Advisory Board on making the MOU and the relationship with the Division of Water Supply Protection work more smoothly.

One outstanding issue the Advisory Board took an aggressive stance on is the Division of Water Supply Protection's fourth quarter bill (April, May and June 2004). There are still \$300,000 to \$400,000 in questionable expenses that the Division has not supplied answers for. The expenditures may turn out to be correct, but the questions have gone unanswered. The Advisory Board feels strongly that MWRA should not pay the fourth quarter bill until all the questions are answered. Staff has identified positions in that budget that were not in the Division of Water Supply Protection.

#### **VIII. Update on Shaft C Leak/Wachusett Aqueduct Reactivation**

There was a full presentation at the Advisory Board meeting on Thursday on the leak at Shaft C. Community advisories were distributed earlier this week.

Ryan Ferrara said Shaft C is the connection between the Cosgrove Tunnel and the Walnut Hill Water Treatment Plant (WHWTP) in Marlborough. When the grade line was raised to bring water into the plant, a 1 MGD leak was noticed. The MWRA shut the Cosgrove off to send a diver in to determine the extent of the issues. Three separate leaks were identified. Authority staff believe the leaks are around the joint seals. The extent of the problem will be determined when the Cosgrove is completely shut down to fully examine the connection.

In the interim, the Authority has disinfected the Wachusett Aqueduct and subsequently turned on the upper Hultman and the MetroWest to bring in water from Wachusett. Staff will have a better sense of the problem and length of time to repair in the next two weeks.

#### **IX. Wastewater Meter Replacement Program Update**

Mr. Favaloro provided members with an update on the Wastewater Meter Replacement Program. MWRA is getting closer to being on schedule, with 94 meters accepted out of 170 installed. Of the meters accepted, nearly 24% have greater than +/- 10% on the flow. If the trend continues, this could have significant impacts for communities. Staff is careful to say many of the meters running +/- capture a small percentage of the flow;

however, any changes for communities, up or down, will have impacts. Advisory Board staff will continue to monitor this situation closely.

John Sullivan asked if communities can challenge the findings. Mr. Favaloro said no. As part of the ongoing discussion with communities before MWRA started the program, it was agreed upon by all communities that changes in flow would not be subject to an appeal. It would have to be a structural problem that impacted the flow.

John Sullivan asked if data would be supplied to communities with changes. Mr. Favaloro said that is a given. Communities that are not monitoring this closely could be doing real damage to themselves. John Sullivan noted even if your community does not change, there are enough communities with changes that might impact you.

**X. Approval of the Advisory Board Agenda for November 18, 2004**

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE NOVEMBER 18, 2004 MEETING.** It was seconded and passed by unanimous vote.

**XI. Adjournment**

A Motion was made **TO ADJOURN THE MEETING AT 9:49 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary