

## **EXECUTIVE COMMITTEE MEETING**

**March 18, 2005**

Minutes Approved at the April 22, 2005 Meeting

Present: John Sanchez, ARLINGTON; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Ted McIntire, READING; Walter Woods, WELLESLEY.

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

### **I. Approval of the February 18, 2005 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting, held at the Advisory Board office, to order at 8:30 a.m. A Motion was made **TO APPROVE THE FEBRUARY 18, 2005 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

### **II. Review: Process to Elect an Advisory Board Representative to the MWRA Board of Directors**

MWRA Executive Director Joseph Favaloro said the three-year Board of Directors term of John Carroll expires in June; he has indicated that he wishes to serve another term.

The annual election process for this position is as follows: the deadline for submitting a letter of intent and a resume is April 15; the Executive Committee, acting as the Nominating Committee, will conduct interviews on April 22; and a vote will be held at the Advisory Board meeting in Newton on April 28 (if a quorum of 33 voting members is in attendance).

### **III. Action Item: Advisory Board's Comments and Recommendations to the Authority's Proposed FY06 Capital Improvement Program**

Cornelia Potter stated the Advisory Board's review this year of the Authority's Proposed Capital Budget for FY06 was somewhat different because the budget reviewed was significantly different from past budgets. Instead of seeing hundreds of millions of new dollars added to the budget, staff saw a budget that was dramatically reduced from the *Final FY05 Capital Improvement Program and Budget*.

Throughout the fall, the Authority had been discussing pressures on rates that were building as a result of several developments. At some point, the debt service on the Boston Harbor Project and other major capital programs must be paid back. The Authority has spent over \$6 billion to date and has over \$5.4 billion in outstanding principal and \$8 billion in outstanding debt service, including the interest.

The Authority had eased rates for a number of years through a number of tools; however, several important tools are running out. Rate stabilization reserves are projected to be used up in the next four years. The Debt Service Assistance program, with funding formerly at \$50 to \$60 million, is a shadow of its former self at best.

For a number of years, the Advisory Board has advocated that managing the capital program is a very important part of managing rates and that master planning is essential. With this proposed budget, the Authority has met the provisions of the cap.

The most recent cap was set two years ago at \$1.134 billion for the five-year period FY04-08. The proposed capital budget now totals \$3.6 billion in active projects; the Authority expects to have spent over \$2 billion through FY05, leaving \$1.2 billion for spending over the ten-year period, FY06-15. Approximately \$700 million will be spent in the next three years, the remainder of the cap period, with \$500 million now projected for the spending period FY09-13.

MWRA has pushed over \$100 million of CSO-related spending into the cap period. To stay within the cap, the Authority has reduced the budget by over \$770 million over the ten-year period by pushing other projects out or deleting them. MWRA has added \$195 million in new projects and revised costs, but deleted another \$605 million and did not include another \$165 million in new and expanded projects that were under consideration but were not included in this budget.

MWRA's debt service now is \$300 million. The speed of the annual increase and overall size of that debt service is significant. The Authority met the terms of the cap and included mandated requirements on CSO projects and kept funding to maintain the Deer Island plant; virtually everything else was reduced dramatically, specifically, all interceptor, pump station and water transmission projects were eliminated.

John Carroll noted, "That is what we want; the cap is to control capital spending. The Board will have to make major decisions to defer projects; this is not a bad thing." Mr. Favaloro replied that the Advisory Board supports the Authority's efforts. In all fairness, this was done by design; during peak spending years, the Authority back-end loaded its debt to avoid rate shock. The reason the Advisory Board was so active in advocating for "sustainable" and "predictable" and setting the cap is that the philosophy only works if the MWRA does not continue to borrow at the same pace.

Ms. Potter noted the Authority predicts that debt service, which is now at 60% of overall expenses, is going to continue to rise in the next several years as a proportion of total expenses. Furthermore, the Affordability Study, prepared by Professor Stavins as part of the CSO Program analysis, has demonstrated that sewer rates are already causing a significant economic burden, not just in the future, but now. Increased spending on capital projects, including CSO control, will exacerbate those burdens.

Even though the Authority has maintained its spending within cap levels and reduced spending in future years, accelerating the CSO Program has caused an increase of \$33 million in projected rates over the next five years. According to the Authority's projections, in two years rates will cross the \$500 million mark; rates will cross the \$600 million mark

just two years after that in part because the Authority projects that rate stabilization funds will run out.

With the changing face of the capital budget, master planning becomes even more important. With fewer resources, additional regulatory requirements and significant reductions of Debt Service Assistance resulting in rising rate revenue requirements, careful planning and scheduling of future capital projects is key. The Advisory Board has made a number of recommendations to expedite the master planning process.

Master Planning identifies project needs. Projects that are not in the capital budget need to be put somewhere to retain those ideas and to find a place for prioritizing them before future budgets can be justified with any new capital projects.

The dominant feature of the Capital Program is the CSO Program, encompassing 40% of the remaining dollars in spending. Project costs have increased by \$100 million in the last twelve months, particularly because of increases to, and the acceleration of, the North Dorchester Bay Project.

The Authority has talked for some time now about resolving the scope and reassessment of several key projects that have been unresolved, namely North Dorchester Bay, East Boston, Alewife and potential additional work at Cottage Farm on the Charles River. Despite the Authority's agreement to make the adjustments and accelerate South Boston's North Dorchester Bay Project, progress on reaching resolution regarding the other three projects has been slow at best. The Advisory Board is concerned that the Authority's acquiescence to the expansion of the North Dorchester Bay project will not be balanced by holding the Authority harmless for the other three receiving waters, which are, or should be, designated Bcso.

Staff is advocating that the Authority freeze spending on all four projects until that discussion is able to reach a consensus or conclusion, including the designation of the water quality standard for the Alewife and the Charles. Those are the two receiving waters for which variances have been extended for another three years, requiring the Authority to do additional modeling and monitoring and possibly carrying out additional studies and projects. The Authority wants to finalize its obligations with regard to the Clean Water Act and its final CSO plan. Because the North Dorchester Bay project has had such a dramatic impact on rate projections, staff is requesting that the Authority revisit their construction schedules.

Andrew Pappastergion noted there was an unwritten agreement with EPA that if the Authority were to move forward on an expanded North Dorchester Bay Project, the Authority would not be forced into additional levels of control/cost for the Alewife and Charles basins. Mr. Favaloro said that is the "holistic approach"; staff is trying to push the holistic discussion to closure. If the Authority continues to have a variance, how can closure be achieved? Most parties would agree that the proper designation is Bcso, but EPA has gone with the variance. The Authority agreed to pay for stormwater removal for one project and one project only.

At the last Board of Directors meeting, the Advisory Board's representatives (John Carroll, Andrew Pappastergion and Joseph Foti) pushed again for the letter on stormwater

precedence and the report to the court. A letter from the regional EPA as relates to setting precedents on stormwater was received and the court report now includes the Authority's position on the stormwater precedent, the holistic approach and not moving forward until there is a conclusion on all of the other projects.

Ms. Potter said not only did the Board note its serious concerns with the Authority's agreement to accept stormwater as part of the North Dorchester Bay project, the Board stated that "acceptance of stormwater in this case does not set a precedent for other CSO control projects. ...and wanted assurances from both EPA and DEP that the Authority would not be obliged to provide stormwater control for any of its other CSO projects. The Board of Directors also noted its concern over not having an agreement with EPA and DEP on all components of the overall CSO long-term control plan that will bring CSO discharges into compliance with water quality standards and the Clean Water Act."

The Authority cannot finalize its CSO plan until the holistic discussion is complete. The Board delayed its approval of the Section 61 findings for the North Dorchester Bay Project until they receive written confirmation from EPA and DEP on stormwater and an agreement on a final long-term CSO Control Plan is reached.

Mr. Favaloro said this past Wednesday Authority staff met with DEP and the EPA regional administrator for the next round of holistic discussions, which are ongoing. Staff believes the Advisory Board's comments will help the Authority as part of their negotiating process with the regulators.

Staff made a few dollar-related recommendations, primarily to update proposed budgets for contracts that have been awarded this spring. Some of those contracts were awarded at costs greater than what is assumed in the proposed FY06 CIP, such as the Upper Neponset and Boston 019 CSO projects, but other projects have come in lower than the budgeted estimates.

In addition, staff recommends that MWRA update its Residuals Project in the amount of \$400,000 to reflect that they have reached conclusion in some of their claims negotiations and do not need as much money in their legal services budget. Further, a reduction of several million dollars in regard to facilities planning and construction related spending was recommended. These studies haven't been completed yet; until they are complete, staff recommends that the budget not include construction-related costs. The total of those recommendations comes to \$9 million, but since the Authority is within just \$4 million of the cap, any dollar will make a difference in staying within the cap as the Authority moves from the proposed to the final budget.

John Sanchez stated that he does not agree that the standard for the Charles River and the Alewife Brook should be set to Bcso, but did agree to freeze the projects related to CSO because answers are needed before the Authority spends additional money.

In the absence of a quorum, a consensus vote of present members agreed to send the **ADVISORY BOARD'S COMMENTS AND RECOMMENDATIONS TO THE AUTHORITY'S PROPOSED FY06 CAPITAL IMPROVEMENT PROGRAM TO THE FULL ADVISORY BOARD FOR THEIR CONSIDERATION AND VOTE.**

### **III. Discussion: FY06 Current Expense Budget Review**

Ms. Potter reported that the Authority's Budget Office expects to have the proposed Current Expense Budget document on the web and mailed to members today.

Mr. Favaloro noted that the review process kicks off next week with a statutorily required Public Hearing, which will be held prior to the Advisory Board's meeting next week at the State House and will culminate with a vote at the Advisory Board's May meeting.

### **IV. Discussion: Legislative Update/Fringe Rate Assessed to MWRA from the Department of Conservation and Recreation**

Mr. Favaloro reported that staff met with both Senate and House Ways and Means during the last two weeks to outline a strategy for debt service. The strategy for FY06 Debt Service Assistance (DSA) is to seek \$20 million to try to get \$15 million; however, we expect the number will be no lower than \$10 million. If the DSA number is \$15 to \$20 million, the Authority's share would be approximately \$12 to \$16 million.

Since water projects cannot be added for eligibility under DSA, staff is working on solutions to offset water rate increases. Operating costs for the Clinton Wastewater Treatment Plant are approximately \$1 million; however, the Commonwealth only reimburses MWRA for \$500,000. Staff proposes to seek higher state support.

Further, MWRA pays approximately \$6 million as Payment in Lieu of Taxes (PILOT) to watershed communities. Staff has identified \$348,000 in PILOT payments for lands that are no longer critical parcels. Staff is seeking the easiest way to transfer the PILOT payments to the Commonwealth of Massachusetts through the Parks Department; however, the Authority pays 100% of PILOT payments while the state only picks up 50% of the PILOT payments. Communities will likely oppose this transfer.

The Authority pays a percentage of the overall line item of the watershed division for fringe rate, which includes health insurance, disability insurance and pension expense. The Advisory Board has questioned DCR (formerly MDC) and the comptroller's office through the years on why MWRA is paying a percentage as opposed to actual cost and were told that was the only way it could be done. Staff member Andrea Briggs discovered, through intense questioning, that both Massport and the Massachusetts Turnpike Authority are paying insurance/pension costs for the State Police that provide service to these Authorities and they are paying actual costs. Staff has scheduled a meeting with the State Comptroller for next week. It is worth approximately \$0.5 million.

John Carroll asked if the MWRA Board of Directors should vote to support this. Mr. Favaloro said the Board never voted on the fringe rate, but Authority staff is involved in discussions. If necessary, the Advisory Board will ask the Board to get involved. The Enabling Act does not say that MWRA has to pay a fringe rate. Now there is precedent that the Authority can pay actual costs.

#### **Status: Local Requirements Under Lead and Copper Rule**

The MWRA received informal notification that the Environmental Protection Agency (EPA) has altered its interpretation of the Lead and Copper Rule. EPA's revision would mandate public lead education and lead service replacements in communities that do not individually have two consecutive rounds of sampling below lead and copper action levels.

Lou Taverna noted that EPA has changed the 90<sup>th</sup> percentile. Mr. Pappastergion stated if 13.5 samples are pulled, EPA rounds the number up to 14.

Mr. Favaloro stated in an effort to control Sanitary Sewer Overflows (SSO), EPA is trying to add communities as co-permittees to the Authority's NPDES permit. The Authority has taken an aggressive stance to stop this from happening. Five years ago the Authority and the Advisory Board appealed the NPDES permit through the courts because of restrictive water conservation requirements, strict I/I requirements and arbitrary flow limits. In the next three to five months, MWRA and the Advisory Board may be required to take aggressive action to ensure that communities will not be co-permittees to the Authority's NPDES permit.

**V. Update: Water Sub-Metering Regulations**

Effective March 16, 2005, a new water sub-metering law allows landlords to charge tenants for their water usage, as long as certain conditions are met. A first draft of the regulations, prepared by the Department of Public Health, was provided to the Committee.

**VI. Approval of the Advisory Board Agenda for March 24, 2005**

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE MARCH 24, 2005 MEETING.** It was seconded and passed by unanimous vote.

**VII. Adjournment**

A Motion was made **TO ADJOURN THE MEETING AT 9:34 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary