

**EXECUTIVE COMMITTEE MEETING  
OCTOBER 14, 2005  
Minutes Approved at the November 10, 2005 Meeting**

Present: William Hadley, LEXINGTON; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Ted McIntire, READING.

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

**I. Approval of the September 9, 2005 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting to order at 8:35 a.m. A Motion was made **TO APPROVE THE SEPTEMBER 9, 2005 MINUTES OF THE EXECUTIVE COMMITTEE.** It was seconded and passed by unanimous vote.

**II. Community Meetings Update**

MWRA Executive Director Joseph Favaloro said staff kicked off a strategy to increase Debt Service Assistance (DSA) beginning with the creation of community profiles that show the progression of water and sewer rate increases for the next five years. The profiles were sent to the leadership of the Legislature and MWRA Caucus members and to CEOs and designees of the communities.

Mr. Favaloro said that he and Government/Media Coordinator Andrea Briggs have begun meeting with the Mayors, Chairmen of the Board of Selectmen (BOS) and Town Managers to discuss the implications of the community profiles and to outline the Advisory Board's legislative strategy.

Since losing DSA entirely, the Legislature has provided \$5 million, \$10 million and \$12.5 million respectively over the last three years. However, the Sewer Rate Relief Fund is a formula driven number based on eligible debt. Staff believe it is necessary to change the mind set of the Legislature that DSA should be based on a need-driven formula rather than an arbitrary number. The MWRA will not get back to \$60 million in the foreseeable future but that needs to be the overall goal. Staff is focusing on seeking a minimum of \$25 million for FY07, which would provide the Authority with over \$20 million.

Mr. Favaloro noted that the January Advisory Board meeting is at the State House, which coincides with the kick off of the state budget process. Thus far, of the fourteen communities visited, all the CEOs have agreed to participate in seeking an increased DSA number. Staff will be meeting with more communities over the next two weeks. Additionally, staff has also met with the Massachusetts Municipal Association (MMA), which has agreed to work cooperatively with the Advisory Board.

Mr. Favaloro noted that Mayor McGlynn (of Medford), who is a member of the Metro Mayors' Association and is the past president of MMA, said that although it is under the radar screen, rates are a bigger issue now than they were five years ago; he wants an even more aggressive stance from the cities and towns to put pressure on the Legislature and the Governor. Mayor McGlynn suggested the Mayors do some press in January to try to build the pressure on the Legislature to put more DSA in the State Budget.

### **III. Legislative Update/Emerging Legislative Strategies**

Mr. Favaloro stated as of yesterday, in discussions with House Ways and Means Chairman Robert DeLeo, the waiver of the Administration & Finance Indirect fee for the Water Supply Protection Trust is in the supplemental budget, which is due out next week. The cycle includes the Senate, the Governor and most likely a veto and override.

On behalf of the Advisory Board, Mr. Favaloro testified at a Legislative Hearing in opposition of legislation that would give Saugus an additional \$20 million interest-free loan from the MWRA to repair local water lines located under Route 1.

Mr. Favaloro stated at last month's Water Supply Protection Trust meeting, Department of Conservation & Recreation (DCR) staff were unable or unwilling to answer the most basic of questions about past and current budgets. In FY05, DCR under-spent by nearly \$3 million, predominantly for personnel; when pressed on how the lack of personnel affected DCR's work plan and what did not get done, staff's response was "a lot of things" and they would not give an answer beyond that.

In May, the Executive Committee authorized staff to hire Daniel Dennis & Company LLP to determine if there is a better way to assess the fringe rate for the DWSP. It is now October and DCR has not supplied even basic information. Mr. Favaloro said he is managing Daniel Dennis & Company LLP as tightly as possible; however, money is being spent just trying to get the information that would allow staff to take this argument to the Group Insurance Commission and State Board of Retirement and to re-categorize seasonal employees to assess fringe rates fairly.

Seasonal employees work for a series of weeks in the summer and are not entitled to benefits. DCR has included nearly \$300,000 for seasonal employees in the DWSP line item. The State Comptroller multiplies the employee line item to assess the fringe rate, charging the MWRA for employees that don't get health and retirement benefits.

Andrew Pappastergion asked if Secretary Pritchard was in the room at the Trust meeting when these answers were given by DCR. Chairman Dunphy replied in the affirmative stating that she had staff prepare a timeline of when the Advisory Board had asked for this information. The Secretary didn't respond; however, all the Trustees received a packet of the correspondence that went back and forth.

As part of the creation of the Water Supply Protection Trust (Trust), a January 2007 sunset provision was included. In the event staff is unsuccessful in achieving the waiver or creating accountability, the Advisory Board would seek to move the sunset provision up or to move the DWSP back to the General Fund. The Trust was created to gain accountability and to provide the DWSP with the resources it needed to get the job done. Thus far, the only thing the Trust is getting for the MWRA is an additional charge of 22%, on top of the overall bill.

Mr. Pappastergion asked what has been the benefit of creating the Trust. Chairman Dunphy said they have hired more seasonal employees in the watershed. Mr. Favaloro added, at the Quabbin, for the first time in years, people are working in areas that had not been staffed because employees were not hired. Further, DWSP staff finally has vehicles to get from Point A to Point B. As a side note, the Commonwealth does not buy vehicles, it leases them. Now the MWRA has to pay outlandish amounts of money to lease vehicles because DCR will not request a waiver of the State rules on leasing. If a truck could be purchased, it could provide up to fifteen years of use.

Chairman Dunphy added that at the Trust meeting, Secretary Pritchard noted that the Executive Office of Environmental Affairs bought vehicles outright by applying for the waiver; she questioned whether the Advisory Board could apply legislatively for a waiver for DCR. Mr. Favaloro replied in the affirmative, but without the support of the Department it is being done for, it may be difficult.

Bernie Cooper asked if there are any potential allies in the environmental community. Mr. Favaloro said the Trust was created because the state feared there was enough of a coalition to take over the DWSP. Staff had received the support of the Environmental League of Massachusetts and Massachusetts Audubon, as well as support from environmental groups, including the Water Supply Citizens Advisory Committee. However, there was still one major obstacle; as an advocate for his District, Senator Brewer would not be an easy nut to crack under any scenario.

#### **IV. Action Item: Application of the Town of Reading to join the MWRA Waterworks System**

Camp Dresser & McKee, Inc. Consultant John Gall made a presentation in support of Reading's application to join the MWRA Waterworks System. In 1999, Reading faced the need to upgrade its water treatment plant to meet emerging Safe Drinking Water Act requirements and began the process to determine how best to meet their needs.

In 1992, a gasoline tank truck spilled its entire contents and contaminated Reading's well field. The Town utilized emergency connections and did some immediate cutbacks and restrictions on water use.

The Town voluntarily wanted to lessen its impacts on the Ipswich River. Reading is one of two communities in the Ipswich Basin that have a Massachusetts Water Management Permit registered amount that is far in excess of its current demand.

Several alternatives were considered before applying to the MWRA including the Ipswich River, an inter-connection with Andover through a wholesaler that supplies several communities on the North Shore, a bedrock well investigation and an aggressive conservation program, which was treated as an alternate source of supply. The end result was a proposal to use a combination of the existing Ipswich supply, the MWRA and a relatively aggressive Water Conservation Program.

The current average annual demand is approximately 2 MGD. A small amount of growth is predicted; however, Reading is a mature community and the growth can be offset by the conservation program, which is expected to save 190,000 to 200,000 gallons per day. Virtually all the demand is residential and commercial; there are no large industrial users.

As part of the MEPA process and going through the Inter-Basin Transfer Act, it was determined that Reading will receive 1 MGD of water from the Ipswich River Basin and the rest of the demand from the MWRA, from May 1 to October 31, up to a maximum of 219 million gallons a year. Outside of the May to October timeframe, the Town well field will be used for the full supply.

Mr. Gall said in terms of construction, there already is a connection. When the gasoline spill occurred, an inter-connect was built between the Reading and MWRA systems with a tie in at Meter 240 in Woburn. It is closed; it has never been operated. The only thing required to bring the connection online is an altitude valve to control it and telemetry back to Reading's SCADA system. Reading is in discussions with the MWRA, Wilmington and Woburn about bringing the connection online in a single event.

Reading does not have an inclining block rate, but is one of the highest priced water utilities in eastern Massachusetts at a rate of \$4.65 per HCF. The total cost of the water and sewer bill combined in Reading averages \$1,200, which provides a strong incentive for conservation. Reading does leak detection and repair on an annual basis and has retrofitted every town building with low-flow toilets and water faucets that automatically close. Mr. McIntire added the Town does water audits in houses and businesses and has contracted Energy New England to install low-flow showerheads, aerators and tank flanges for the toilets. Reading schools include an educational program on conservation. The Town has authorized a \$1 million multi-year Conservation Program and has a rebate program in place for citizens that install low-flow toilets, high efficiency washing machines or irrigation sprinklers with sensors that tie the irrigation system into the water readings.

Mr. Gall said the Inter-Basin Transfer Act was originally approved in December, but was appealed; it was approved again in June, both times on a 7 to 3 vote. The Ipswich River Watershed Association (IRWA) sued the WRC on that approval based on four basic issues: 1) that there was improper evaluations with respect to the recipient basin; 2) failure to have flow triggered limits or limits on outside water use; 3) failure to have inclining water rates; 4) certain problems with meters on individual wells. Reading has high iron content in its water that causes problems with the town meters on individual wells. The master meter and the final meter are well maintained and calibrated so the Town pays lesser attention to individual well meters; that is part of the lawsuit.

Chairman Dunphy asked if Reading will be able to go ahead with construction and operation with this lawsuit pending. Mr. Gall said thus far no one has asked for an injunction against Reading. Although these are the points of the complaint, CDM believes IRWA wants Reading to take more water from the MWRA rather than less.

Mr. Carroll asked what the basis of the IRWA's suit is. Mr. Gall said IRWA believes the Ipswich River should have been evaluated the same way the Swift River was, arguing that the same analysis should be done for the recipient basin. The Inter-Basin Transfer Act is to make sure the donor basin can give what you are proposing to transfer. In this case, the water comes into Reading and it doesn't go into the Ipswich, it goes to Boston Harbor. All of the permits written for the other communities in the Ipswich, written in 2003, have limits on outside water use that are tied to the flow in the River. All of the permits have been appealed, but this suit claims there is no such thing in Reading's Inter-Basin Transfer Act approval. Reading does tie outside water use to the flow in the Ipswich. Mr. Gall said outside water use restrictions triggered by flow in the Ipswich would actually serve to put a cap on the amount of water bought from the MWRA and wouldn't affect the Ipswich at all.

Mr. Favaloro said the inclining block rate is put in place to make individuals and businesses want to use less. Reading's uniform block rate is higher than most communities' highest tier and meets the criteria that have been established by the WRC.

Mr. Gall said using the 2004 Water & Sewer Retail Rate Survey, CDM determined if any user in Reading bought water from any of the MWRA communities that have an inverted block rate, their water bill would go down.

Lou Taverna asked if MWRA water will be blended with the well water. Mr. Gall said the whole town is looped so there is going to be some blending, but parts of town will get mostly MWRA water and parts of town will get mostly Ipswich water.

Ryan Ferrara said a checklist Authority staff put together outlining the various pieces that Reading had to meet in terms of System Expansion Policy Op.10 have been summed up in a Motion. The

Authority estimates an entrance fee of \$3.3 million. The MEPA review and inter-basin transfer approval are in hand. On average, the MWRA system uses 225 MGD so this application is essentially equivalent to one day's use for the entire system. As far as the Advisory Board staff is concerned, the application is complete and meets all of the requirements of OP#.10.

Chairman Dunphy asked what the schedule for payment of the entrance fee is. Mr. McIntire said all of Reading's financing plans have included a 20-year payment schedule. Mr. Ferrara added there was some discussion at the last Board meeting about what the timeframe would be for payment. Stoughton had a 20-year payment schedule so the assumption for Reading was that it would also be a 20-year payment schedule. It would be unfair to change the assumption for Reading at this point; however, there is nothing within the policy stating there is a 20-year payback period; it is really by precedent that we are looking at the 20-year standard.

Mr. Favaloro said you can make a case for Reading and Dedham/Westwood Water District being grandfathered, but less of a case for Wilmington because there is enough time to let them know. The policy needs to be revisited; 20 years is too long. Perhaps it should be five or ten years or an upfront payment. Mr. Carroll said the MWRA is essentially loaning the towns the money at an interest rate of 5%; towns can borrow the money at that rate. The MWRA would have the money upfront and could do what it wants to do with it.

Mr. Ferrara said in terms of the approval, as a result of the work of the 2002 System Expansion Committee, staff wanted to ensure that Reading is now brought onto the Local Pipeline Assistance Program since it is now going to be a member of the Authority system and will have the right to take advantage of that program. As part of the approval, staff would encourage the Authority to make a provision so that Reading can utilize this program through an allocation made by the MWRA, over and above the \$250 million that is already allotted. This Motion was approved at the Operations Committee.

The following Motion was made: **Whereas the Town of Reading meets the admission criteria set forth in MWRA Policy #: OP.10: 'Admission of New Community to Waterworks System' including but not limited to the safe yield of the watershed system, on the advice of the Department of Conservation and Recreation, is sufficient; that no existing or potential water supply source for the community has been abandoned; effective demand management measures have been implemented; adoption of a water management plan; and, the proposed expansion provides for no negative impact on the interests of the current forty-seven user communities, water quality, the interests of the watershed communities and achieves economic benefit for existing user communities.**

**Therefore, the MWRA Advisory Board recommends the application of the Town of Reading to become a member of the MWRA water distribution system be approved subject to the following conditions:**

- 1. Reading must continue to protect and maintain all local sources of supply.**
- 2. Reading will continue to maintain all reasonable conservation measures, abide by all applicable conditions as stipulated within the Water Resources Commission approval of Reading's request under the Inter-basin Transfer Act to join the MWRA Waterworks System and abide by MWRA regulations for leak detection.**
- 3. Payment of an entrance fee will be made to the MWRA consistent with MWRA policies and procedures in the amount of an estimated \$3,285,242.**

4. **Annual usage will be capped at 219 million gallons.**
5. **That Reading and the MWRA develop an enforceable water supply agreement stipulating appropriate terms and conditions of service.**
6. **Upon the acceptance of the Town of Reading application to join the MWRA Waterworks System by the MWRA Advisory Board and the MWRA Board of Directors, Reading will be eligible for funding through the Local Pipeline Assistance Program. Reading is qualified for program funds based on 1) said community's percentage of MWRA water use as a portion of total community use 2) proportional share of total MWRA community based unlined pipe and 3) prorating available funds to the number of years remaining in the program. The provision of interest-free loans through the Local Pipeline Assistance Program shall be in addition to the \$250 million currently allocated within the MWRA Capital Improvement Program. Existing community allocation levels will remain unchanged. The MWRA staff summary seeking approval for Reading to join the MWRA Waterworks system shall include a separate section that establishes the level of funding Reading will be eligible for under the Local Pipeline Assistance Program. It was seconded and passed by unanimous vote.**

#### **V. Status of Comprehensive CSO Plan**

Mr. Favaloro expressed his dismay at the unraveling of the "holistic" agreement with the regulators; yet the Authority continues to march forward with Pleasure Bay, BWSC is designing stormwater controls for Morrissey Boulevard and MWRA has inserted \$20 million for the Charles River in its budget. The Authority has complied with schedules and all the other parties are saying "what comprehensive plan?"

The Authority believes it has to move forward because it is part of the court proceedings; however, the judge has never responded to the Authority's new schedule. The budget for North Dorchester Bay is now \$372 million, up from \$220+ million. The project budgets for the other basins have also grown. At what point in time will the Authority say let's live by that agreement?

Mr. Carroll said I am confused about the agreement, but not about the votes the Board has taken to honor certain contracts. The Board was advised by outside counsel to proceed with those projects. Mr. Favaloro said the Authority sent in its motion that was quickly followed up by the Justice Department saying there is no agreement, followed by DEP and the Conservation Law Foundation. The judge has yet to respond. Mr. Carroll said currently the regulators are claiming they have an agreement but they have to do a 30-day public comment period. The Board is asking EPA Regional Administrator Bob Varney to come in to explain their position in Executive Session.

Mr. Cooper asked when the 30-day comment period will be up. Mr. Favaloro said the comment period hasn't started yet. Every three years, for the next 15 years, there will be another 30-day public comment period.

Mr. Pappastergion said he shared Mr. Favaloro's frustration, stating that he sat in the meeting with Mr. Varney too and will swear that there was someone from the Department of Justice sitting in that room. To read the court response where Justice is appalled at this whole thing was insulting to Mr. Pappastergion.

Mr. Favaloro said he supports the cap, but the CIP will have CSOs and two other projects. What CSOs are doing to the MWRA's ability on many of the water and wastewater projects is ridiculous.

Projects are just falling off the list. Mr. Favaloro asked if the Board questioned the last filing of the MWRA that the number increased to \$372 million. Mr. Carroll said if it is beyond the five-year cap, we can't do it.

Cornelia Potter noted there was some confusion where staff said the executive review period would be initiated by EPA. The review period is a review period for the Charles; it is the extension of the variance that triggers the need for this review. That is what DEP is concerned about. The question is what is it that the 30-day comment period will be reviewing. MWRA staff said they didn't know. Ms. Potter said is DEP drafting a new variance document. The clock starts anew with each new variance with new conditions. Is it reasonable to presume that a review period will result in no changes?

**VI. Request by Professor Steven Ferrey to Make a Presentation Regarding High Strength Component of the MWRA Wastewater Wholesale Rate**

At the last Operations Committee meeting, Steven Ferrey, a full time Suffolk University Professor and part time water and sewer rates consultant, spoke about his investigations internationally relating to high-strength user charges. Mr. Ferrey requested to make a presentation before the Operations Committee, as well as the full Advisory Board. Mr. Ferrey presented his points to the Operations Committee and made a presentation to MWRA staff and Framingham as well. Before putting him on the Advisory Board agenda, staff wanted to update the Executive Committee.

Unilever/Breyers Ice Cream (Unilever) is a company in Framingham that has raised concerns about the high-strength user charge. To date, Unilever has not done anything to alter the amount of BOD it puts into the system. Mr. Ferrey is a consultant to the MetroWest Chamber of Commerce; his job is to look at user charges, as well as high-strength charges. He is not employed by Unilever even though one could argue that some of the work he is doing complements some of the issues Unilever has raised.

Unilever is in the midst of an exchange of letters and actions with Framingham; specifically, Framingham has a three-tier inclining block rate and Unilever does not believe it should pay at the highest tier rate. Instead, Unilever has told Framingham the rate it believes it should pay and has held back on paying the remaining fee. Unilever has specifically said it should have a declining block rate.

At the Operations Committee, Mr. Ferrey raised questions about revisiting the high strength user charge; his principal argument said even though Unilever puts a lot of BOD in the system, by the time it gets to Deer Island it is dissolved, therefore, Framingham never goes over the BOD levels.

Chairman Dunphy said one point Mr. Ferrey made was when the Advisory Board developed the rate methodology the minutes said there was an intention to come back after two years to revisit the methodology, which didn't happen.

Mr. Cooper said if Mr. Ferrey is going to argue or advocate, it would be best to go before the Executive Committee first.

Mr. Ferrara said currently it looks like Unilever and Framingham will be going to court. Unilever sent a letter to Framingham saying they are withholding payments based on three things: 1) the tier three charge; 2) they are stating they are not a high strength user; 3) the water that comes into the plant isn't their total discharge. Framingham will have to stop providing water to the plant and will have to put a lien on their property prompting the community to take Unilever to court.

## **VII. CIP/CEB Update**

Ms. Potter said at the last Board of Directors meeting Authority staff reported early projections for net greater than budgeted spending are around \$3.5 million, due to increased energy, chemical and health insurance costs. Staff said their goal is to wait until the September variance reports are available to prepare a staff summary for the Board for the November meeting on the status of spending for the year and review again what the outlook is for this shortfall. Ms. Potter believes a budget amendment will be required.

Preparation for the FY07 CIP and CEB budgets are well underway. Authority staff begins the process early to give themselves time to shape the capital budget. Early directives for the CEB have a 2.5% growth guideline, which will be a challenge for the staff with the shortfalls in this year being an important predictor of budget pressures for FY07.

At last month's Board meeting, the Authority agreed to hold a Rates Management Forum but did not initiate a survey to members of the Board on what they wish to consider until this week's meeting; therefore, it is not likely that the Rates Management Forum will be held before the end of November. To understand the dimension of the rates management discussion, over the last five years rate revenue increased by \$100 million, or roughly 20%. For the next five years it doubles; the Authority projects rate revenue increases at \$200 million over the five-year period between now and 2011 for a multi-year rate increase of 44%. Projections do not include DSA receipts.

Ms. Potter stated that the Authority is in the process of interviewing candidates for Carl Erickson's Budget Director position, which was vacated in August.

## **VIII. Process to Evaluate Executive Director**

Chairman Dunphy said the process to evaluate the Executive Director is done on an annual basis and invited members to serve on a Sub-Committee to conduct the evaluation of Executive Director Joseph Favaloro. Copies of Mr. Favaloro's contracts, goals and objectives will be provided to members of the Sub-Committee.

Mssrs. Hadley, McIntire and Taverna volunteered to be on the Sub-Committee.

Chairman Dunphy directed staff to poll Executive Committee members that were unable to attend the October meeting to see if they would like to serve by the next meeting.

## **IX. Approval of the Advisory Board Agenda for October 20, 2005**

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE OCTOBER 20, 2005 MEETING**. It was seconded and passed by unanimous vote.

## **X. Adjournment**

A Motion was made **TO ADJOURN THE MEETING AT 10:30 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary