

**EXECUTIVE COMMITTEE MEETING  
NOVEMBER 10, 2005  
Minutes Approved at the January 13, 2006 Meeting**

Present: John Sullivan, BOSTON; Ed Sullivan, CANTON; William Hadley, LEXINGTON; Jay Fink, LYNN; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD.

Also in attendance: John Carroll, Andrew Pappastergion and Joseph Foti, MWRA BOARD OF DIRECTORS; Nan Crossland, DEDHAM/WESTWOOD WATER DISTRICT; Jeff Diercks, CAMP DRESSER & MCKEE; Randall Davis, DANIEL DENNIS & COMPANY LLP; Joseph Favaloro, Cornelia Potter, Ryan Ferrara, Andrea Briggs and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF.

**I. Approval of the October 14, 2005 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting to order at 8:34 a.m. A Motion was made **TO APPROVE THE OCTOBER 14, 2005 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

**II. Update: DCR Fringe Rate Assessment – Randall S. Davis, CPA, Partner – Daniel Dennis & Company LLP**

Certified Public Accountant Randall Davis, a partner with the firm of Daniel Dennis & Company LLP (DDC), was engaged by the Advisory Board in May 2005 to review the methodology the Commonwealth uses to assess the fringe rate the state charges the Water Supply Protection Trust (Trust), for which the MWRA reimburses the state. The goal was to determine the actual fringe cost associated with the Trust and compare that to the charge the Trust is currently being assessed. After talking with the Comptroller's Office, there was an agreement that this effort could be undertaken.

The first phase was information gathering to ascertain if the data exists to accomplish this task. Assuming the data did exist, DDC would perform the analysis and report back to the Executive Committee. Unfortunately, DDC is still in the information gathering stage.

An initial meeting with Eric Berman and Fred DeMinico of the State Comptroller's Office on May 31 was successful. Discussion focused on what information would be needed in the DDC analysis to ensure that the study was reasonable to the Comptroller's Office. A large component was administrative charges that the state built into the rate; those charges were captured.

Since the state used FY04 information to develop its FY06 rate proposal, Fiscal Year 2004 was chosen for the analysis. FY04 data should have been readily available and DDC could match those two periods; the Comptroller's Office agreed.

Prior to 1985, MWRA had no obligation to reimburse the state for health insurance for retirees; between 1985 and 1994, MWRA reimbursed 50% and from 1994 forward MWRA's obligation was 100%. DDC began an effort to obtain from the Department of Conservation & Recreation (DCR) a list of Trust employees and retirees participating in the health insurance plan to determine the state's actual payment for those employees. The state does not consider the phased in obligation of the MWRA for retirees in formulating the rates.

Further, DDC had to obtain the cost of administering the benefit program and determine a reasonable basis to allocate a portion of the cost to the Trust. That goal was accomplished on May 31 through an agreement with the State Comptroller's Office on a methodology to allocate a portion of those costs to the Trust once the necessary data was gained.

The required data must be obtained from DCR, the Group Insurance Commission (GIC) and the Retirement Board. Initial contact was made with Marianne Fleckner, the Deputy Commissioner of Administration and Finance at DCR, on June 6<sup>th</sup> who informed DDC that a formal request must be made through the Commissioner; DDC made the official request. A response was not received until late August and it contained the wrong data and the wrong year.

DDC contacted GIC and the Retirement Board. GIC staff said if a list of employees and their GIC numbers could be provided, they could provide all the payments made on behalf of the employees. DDC tried to impress upon the outside agencies that this was not an audit, the details were not important, but rather a total number that the state paid on behalf of the Trust employees. The outside agencies had concerns with privacy issues and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) laws. DDC suggested inter-agency requests would mitigate the HIPAA issues because both agencies have the same information. DCR legal counsel Mary Griffin cited privacy concerns and would not provide the information; as a result, DDC was not able to get a list in the necessary format.

GIC required the "GIC number", rather than just a list of employees; however, the GIC number is the employees' social security number and DCR was not willing to send a list that contained social security numbers. DDC requested that the list be passed along to GIC, which already has that information anyway. DCR was not willing to do that, but provided a list of names. The system manager at GIC said they cannot produce a list that would suit DDC's efforts because there is no way to tell how many people in the Commonwealth's system share the same name. GIC's legal counsel sent the request back Monday saying due to a lack of resources, they cannot fulfill the request.

The State Retirement Board Executive Director Nick Favorito said he would provide the data DDC needed if a list of retirees were provided. Unfortunately, DDC has been unable to obtain the list of retirees it requested from 1985 to June 30, 2004. DCR provided a list of three or four retirees beginning in October of 2005. DDC clarified that

it wanted retirees prior to June 30, 2004 and received a response saying it changed the initial request and due to a lack of resources DCR does not know when it can fill this request, if at all.

DCR charges all seasonal employees to a particular object code on which the fringe rate is applied. Under state law, seasonal employees who work more than 26 weeks are eligible for benefits; however, not all of the seasonal employees within the Trust worked 26 pay periods. As a result, the base included all seasonal employees causing the Authority to pay more than it should have. DDC requested a list of those employees and the total pay for the year to compare it against the invoice that went to the Authority; a list of four or five names with no dollar amounts was provided. DDC again emailed a requested for the gross salaries; DCR said DDC had not previously requested salaries. (The request sent to Mr. Pritchard says please include a total dollar value of these individual salaries.) A conference call also proved to be unsuccessful in obtaining the data needed. It has come to a point where money is being thrown out the window.

Mr. Favaloro said the Advisory Board and DDC have aggressively pursued this data, but perhaps it is time to pull back and determine the next step. The fringe rate cost to the MWRA is nearly \$2 million and is swept off the top by the Comptroller. If MWRA withheld payment, the fringe rate would be paid first and the work would not get done within the watershed division.

The Advisory Board has established relationships with GIC and the Retirement Board and has strengthened its relationship with the Comptroller's office. Those are the victories from this process.

One real dollar victory has also occurred. The Comptroller's Office summoned DCR staff and made it clear to them that by the end of November DCR must take steps to segregate seasonal employees that do not qualify for benefits. Further, DCR must remove the charges for seasonal employees for this fiscal year and put in place a procedure for them for ongoing years. The value of this change could be from \$15,000 to \$20,000 up to \$70,000 to \$80,000<sup>1</sup> depending on how seasonal employees are treated.

To date, the Daniel Dennis & Company engagement is approximately \$5,900<sup>2</sup>; the Advisory Board will get that back three-fold from the seasonal employees, but it does not change the level of frustration regarding the review process.

John Sullivan asked if a Freedom of Information Request has been made. Mr. Davis said this request was specifically made under a public records law; DCR is saying they cannot honor the request. Mr. Favaloro clarified that DCR believes it only needs to provide information in a way and format that they can provide it.

John Sullivan noted that a computer can be programmed easily to produce the information needed; the Advisory Board could offer to pay to have the data formatted in the necessary manner and see what response it gets from DCR.

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<sup>1</sup> Comptroller's Office, to date, has credited \$10,450 for summer lifeguards.

<sup>2</sup> Since this meeting, invoices have totaled \$7,600.00.

Ed Sullivan asked if staff has an idea of how much the MWRA is overpaying out of the \$2 million line item. Mr. Favaloro said without knowing the mix of employees and whether they have single or family plans, staff has no idea, but believes it involves 140 to 150 people. MWRA could be paying for retirees that retired in the 1960s and 1970s, but the base can go back to the beginning of the system. The Authority's exposure should not have started until the mid 1980s and not in full until the mid 1990s; this is probably at least \$300,000 to \$500,000.

Staff will explore John Sullivan's concept.

### **III. Action Item: Application of the Dedham-Westwood Water District to join the MWRA Waterworks System**

Jeff Diercks, a Camp Dresser & McKee (CDM) consultant, made a presentation on behalf of the Dedham-Westwood Water District (District). The District operates one of the largest groundwater supply systems in the Commonwealth of Massachusetts. The wells that they operate are located both in the Charles and Neponset River Basins; both rivers are medium-stressed basins and there are environmental concerns associated with low flows.

The Massachusetts Water Resources Commission has indicated that there will be no further withdrawals during lower flow periods from either of those basins. The District's Inter-Basin Transfer Permit includes conditions that the well has to be turned off during certain conditions, including when the river drops to a certain level in summer or fall, requiring the well to be shut off. It is difficult for the District to shut off its largest well during the time it is needed the most, prompting the District to look to other communities and speak to the Authority about becoming a member. DEP established in writing that there were no other supply options available to the District; the District pursued the formal application process to join the MWRA Waterworks system.

To determine how much water the District would need to purchase from the Authority, two modeling studies were done. There was a hydrologic model of the Neponset River flows to predict how often the low flow events would occur and how long they would extend; also, CDM needed to know what the District's demand would be during those periods to predict whether the demands would be such during those periods that they actually would need to purchase water. Those studies were combined resulting in a recommended average purchase of about 30 million gallons per year as a limit, that rounds off to about 0.1 million gallons per day. The Authority also wanted to know what the maximum amount would be in any one 24-hour period and a value of 2 MGD was set.

On September 16, the Secretary of the Executive Office of Environmental Affairs issued a certificate to the District indicating the District has complied with the MEPA process.

Compared to the various performance standards the District has done well. The District meets the 65 gallons per capita per day (gpcpd) for residential standard with average use in the mid 50 gpcpd. The District also meets the standard of summer consumption no more than 20% greater than winter consumption.

Ryan Ferrara said Advisory Board staff has had the opportunity to review the application, which meets all the criteria of Op.10; staff supports approval. The entrance fee is \$548,000+ based on 100,000 gallons per day average throughout the year, although most of the use will be during low flow periods during the summer.

The following Motion was made: **Whereas the Dedham-Westwood Water District 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 Dedham-Westwood Water District to become a member of the MWRA water distribution system be approved subject to the following conditions:

1. The Dedham-Westwood Water District must continue to protect and maintain all local sources of supply.
2. The Dedham-Westwood Water District will continue to maintain all reasonable conservation measures 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 an estimated amount of \$548,748.
4. Annual usage will be capped at 36.5 million gallons.
5. That the Dedham-Westwood Water District and the MWRA develop an enforceable water supply agreement stipulating appropriate terms and conditions of service.
6. Upon acceptance of the Dedham-Westwood Water District application to join the MWRA Waterworks System by the MWRA Advisory Board and the MWRA Board of Directors, the Dedham-Westwood Water District will be eligible for funding through the Local Pipeline Assistance Program. The Dedham-Westwood Water District 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 the Dedham-Westwood Water District to join the MWRA Waterworks system

**shall include a separate section that establishes the level of funding the Dedham-Westwood Water District will be eligible for under the Local Pipeline Assistance Program.** It was seconded and passed by unanimous vote.

#### **IV. Reconvening the System Expansion Committee**

Mr. Favaloro said with discussion going on now about expanding the Waterworks system, there have been requests to reconvene the System Expansion Committee. Issues that should be reconsidered include: 1) What constitutes a standby fee? Should there be a right to use charge explored as part of the expansion of the system? 2) When calculating the entrance fee, the total amount of water to be withdrawn is divided by 365 days, therefore the customer is paying the same price for water in January as August. Most of the communities coming forward want to use the water at peak times; should entrance fees be based upon when that water is utilized? 3) Should entrance fee payments be spread out or paid upfront? These are some issues staff has identified that the System Expansion Committee may want to address.

Mr. Carroll noted that communities can borrow money right now at a low rate. The entrance fee money in hand could help the Authority now. Mr. Favaloro said reconvening the System Expansion Committee now can serve as a forum to discuss these issues.

A Motion was made to **RECONVENE THE SYSTEM EXPANSION COMMITTEE.** It was seconded and passed by unanimous vote.

#### **V. Legislative Update**

Mr. Favaloro reported that the waiver of the Administrative & Finance (A&F) fee for the Department of Conservation & Recreation was included in the final version of the supplemental House Budget. The waiver is also included in the Senate version, which will be coming out next week making the item non-conferencable. Final action probably will not be until January. The Governor will likely veto the waiver and an override would be needed.

Administrative fees and fringe are swept off the top by the Comptroller's Office; thus, the waiver language contains two components: 1) to reimburse the MWRA the \$1.4 million it paid in FY05 for the A&F fee; 2) no further payments from this point forward.

The Authority and the Advisory Board have scheduled a meeting with Senator Thomas McGee and the Town of Saugus to see if common ground can be found regarding Saugus' desire to have the MWRA provide a 20-year interest-free loan to replace local pipes under Route 1. The language is working its way through the legislature.

Two years ago, Saugus estimated the project would cost \$4 million, but it turned out to be \$22 million in FY05. CDM has updated the number to \$24 to \$25 million. Even with a 2.5% interest rate, that \$25 million would cost every community cumulatively about \$8 million. At a 5% interest rate for the MWRA borrowing, it would cost every community approximately \$14 million over the 20 years and would be included in the MWRA's capital spending cap as it stands now.

Mr. Pappastergion asked if the Authority is lobbying against this language. Mr. Favaloro said the MWRA and the Advisory Board have a joint effort in opposing this language.

Staff has traveled to 30 communities and will visit another ten over the next two weeks meeting with CEOs and Commissioners to muster support for bringing back a formula driven methodology for the Sewer Rate Relief Fund (also known as Debt Service Assistance [DSA]). Staff has gotten a strong response from mayors and administrators and commitments to work with the Advisory Board on the Sewer Rate Relief Fund. A resolution and fact sheet will be sent to each community as a means of support that will be signed and returned to provide to the legislature at the January 19<sup>th</sup> Advisory Board meeting/Legislator/Media Day. The goal is to try to get the DSA number to at least \$25 million for FY07 and, ultimately, to get back to the formula driven methodology tied to eligible debt.

Further, staff plans to send the resolution to other communities that have received funding for their support as well because there is power in numbers.

## **VI. CIP/CEB Update**

Cornelia Potter stated each month staff reports on where the Authority is on producing its documents for FY06; the documents are still not finished and there is no date set for completion. MWRA says it is short staffed. Advisory Board staff has suggested the Authority pull together an ad hoc team to complete the documents because an agency of this size should have a budget document available.

MWRA continues to monitor Current Expense Budget spending as it reported in September to the Board that it may be facing a budget gap of at least \$3.5 million due to increased energy, chemical and health insurance costs. That number will be updated for next week's Board meeting. The higher the number, the more difficult it will be to close the gap. Advisory Board staff is looking at a number of options that MWRA may be able to draw on from debt service reductions that might contribute to closing that gap.

The Authority is continuing to develop the FY07 Capital Budget and usually authorizes the transmittal of the proposed budget to the Advisory Board at its December Board meeting. This budget will also have a proposal for the next five-year cap period, which is FY09-13.

The process for preparing the FY07 Current Expense Budget is also underway with efforts to remain within the 2.5% increase (plus the cost of new facilities) guideline; however, additional costs of new facilities and pressures from outside factors like energy, health insurance and chemicals costs may challenge the budget preparation process. Further, interest rates for both the short and long term will increase debt service payments and create another challenge for next year's proposed budget.

A special discussion on rates management, the Authority's single most challenging issue, is scheduled for the December Board of Directors meeting.

## **VII. Status of Framingham and Unilever**

Mr. Favaloro said Steve Ferrey, an expert on high strength user fees, had planned to come before the Executive Committee to make a presentation. Mr. Ferrey had previously made a presentation before the Operations Committee. This is a fight between the Town of Framingham and Unilever/Breyers Ice Cream (Unilever).

Unilever unilaterally determined the rate it would pay Framingham and deducted monies from what it believed was an illegal high strength user charge; it was headed toward litigation and still may be. A series of meetings between Unilever and Framingham and the MWRA has attended all of them. As of two days ago, Unilever decided its approach was probably not legally sound and forwarded to Framingham all of the outstanding monies it had been holding back. With that, Mr. Ferrey decided this was not the ideal time to come forward to have a discussion on high strength user charges.

MWRA legal counsel laid out very clearly their intentions via a letter to Unilever that may have helped resolve the issues between Framingham and Unilever.

## **VIII. Approval of the Advisory Board Agenda for November 17, 2005**

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE NOVEMBER 17, 2005 MEETING**. It was seconded and passed by unanimous vote.

## **IX. Adjournment**

A Motion was made **TO ADJOURN THE MEETING AT 10:00 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary