

**MWRA ADVISORY BOARD MEETING
JANUARY 17, 2008
BRADLEY ESTATE
2468B WASHINGTON STREET, CANTON, MA – 11:30 A.M.
MINUTES APPROVED AT THE MARCH 20, 2008 MEETING.**

Forty-five people were in attendance, including twenty-six voting members: John Bean, ARLINGTON; E. A. Maguire, ASHLAND; John Sullivan, BOSTON; Timothy MacDonald, CAMBRIDGE; Michael Trotta, CANTON; Andrew DeSantis, CHELSEA; J.R. Greene, GUBERNATORIAL APPOINTEE; Edmund Demko, HINGHAM; Dennis Meehan, LEXINGTON; Jay Fink, LYNN; Bruce Kenerson, LYNNFIELD; Dana Snow, MARBLHEAD; Ben Lagman, MELROSE; Katherine Haynes Dunphy, MILTON; John Cosgrove, Jr., NEEDHAM; Lou Taverna, NEWTON; Brian Carlisle, QUINCY; Ted McIntire, READING; Richard Stinson, WAKEFIELD; Patrick Fasanello, WALPOLE; Walter Woods, WELLESLEY; Earl Forman, WESTON; Bob Angelo, WESTWOOD; Michael Chiasson, WEYMOUTH; Zig Peret, WILBRAHAM; Anthony Blazejowski, WOBURN.

Also present: John Carroll and Andrew Pappastergion, MWRA BOARD OF DIRECTORS; Barbara Stevens, LEXINGTON; Davis Proctor, MEDFORD; Ron Seaboyer, MELROSE; Ryan Ferrara, NEWTON; Mike Coffey, QUINCY; William Shaughnessy, WELLESLEY; Ed Bretschneider, WAC; Michael Hornbrook, Kathy Soni, Pamela Heidell, Rachel Madden and Carl Leone, MWRA STAFF; Joe Favaloro, Cornelia Potter, Matthew Romero, Christine Hevelone-Byler and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF.

A. WELCOME

Chairman Katherine Haynes Dunphy called the meeting to order at 11:41 a.m.

B. APPROVAL OF THE MINUTES FROM NOVEMBER 15, 2007

A Motion was made **TO APPROVE THE MINUTES FROM THE NOVEMBER 15, 2007 ADVISORY BOARD MEETING.** It was seconded and passed by unanimous vote.

C. REPORT OF THE EXECUTIVE DIRECTOR

MWRA Advisory Board Executive Director Joseph Favaloro stated beginning next week staff will meet with mayors within the MWRA District that have recently taken office. The meetings will begin on the South Shore with Mayor Sullivan of Braintree, Mayor Koch of Quincy and Mayor Kay of Weymouth. From there, staff hopes to meet with newly elected officials of other MWRA communities, as well as legislators.

Mr. Favaloro reported that Good Humor/Breyers will pay \$633,000 in penalties and fines to the MWRA; most importantly, a pre-treatment system is now in place to bring Good Humor/Breyers into compliance.

D. PRESENTATION: MWRA PROPOSED FY09 CAPITAL IMPROVEMENT PROGRAM / SETTING OF THE FY09-13 CIP SPENDING CAP – Kathy Soni, MWRA Budget Director

MWRA Budget Director Kathy Soni stated in December, the MWRA Board of Directors approved the transmittal of the MWRA's Proposed FY09 Capital Improvement Program (CIP) to the MWRA

Advisory Board for its 60-day review. Development of the FY09 CIP was a particular challenge because FY08 is the final year of the FY04-08 capital spending cap and is a basis going forward in establishing the new FY09-13 capital spending cap.

Huge capital investments through the years have resulted in huge capital debt, which the Authority is going to be paying for a long time to come.

The capital spending cap, created at the Advisory Board's urging, limits capital spending to a particular amount, plus or minus 20% in any given year, as long as it does not exceed the total five-year cap. The cap serves as a management tool. This approach has significant impact on the overall rate strategy, which is really the broader aspect of the program. The massive restructuring program done last year assures some sustainable and predictable rates for communities going forward. The cap concept also facilitated the Master Plan.

The FY04-08 cap was established at \$1.1 billion; spending is going to be \$907 million, which is approximately 20% lower than budgeted. MWRA has complied with the five-year spending cap and the annual cap restrictions of plus or minus 20%. Changes in schedules shift the budgets constantly. The Advisory Board has charged the Authority in the FY08 cycle to examine the changes and the reasons for the under-spending; that committee is in full force now and will prepare a report with detailed reasons for the under-spending.

MWRA Chief Operating Officer Michael Hornbrook stated the Braintree-Weymouth Replacement Pump Station is part of the MWRA's overall Braintree-Weymouth Relief Program with expenditures of about \$60 million in the FY04-08 timeframe. This project replaced a pump station that was close to 100 years old and is projected to be online in March 2008.

The \$54 million Upper Neponset Valley Relief Sewer was one of the most difficult construction projects that the MWRA has undertaken in the FY04-08 timeframe. It was extremely deep, had bad soils and traffic issues; the project is now complete and online.

MWRA spent \$45 million in FY04-08 on the Union Park CSO Treatment Facility, which is an existing BWSC pumping station. The project added screening, detention, chlorination and dechlorination so that discharges going to Fort Point Channel will be stored up to a volume of about 2.2 million gallons; anything beyond that will be chlorinated, dechlorinated, screened and discharged to the Fort Point Channel.

South Dorchester Bay Sewer Separation was designed and constructed by the Boston Water and Sewer Commission (BWSC) with MWRA funding of \$57 million during FY04-08. MWRA was able to close two CSO treatment facilities (Fox Point and Commercial Point) as a result of this project. Another CSO Program, where spending was just under \$30 million, was sewer separation in the Fenway and Jamaica Plain areas of Boston, again completed by BWSC with funding from the MWRA. These projects indicate that MWRA is moving toward completion of its CSO Program, with 75 of the numbered projects complete.

Mr. Hornbrook highlighted the Deer Island Wastewater Treatment Plant (DIWTP) Optimization Program, which focuses on optimization, rehabilitation and asset management at Deer Island. In the FY04-08 timeframe, the Authority spent about \$40 million for optimization/rehabilitation at DIWTP, including electrical upgrades. The Authority is now at a point where it must rehabilitate and replace some of the original DIWTP, which is over ten years old, either due to the harsh conditions

that exist on the island or because of technology obsolescence. There will be significant increases in the next five-year cap period for Deer Island maintenance.

The Little Mystic Storage CSO Project stores up to 700,000 gallons during storm events until after the storm and are pumped back to the Deer Island facility. Since March 2007 CSO has been stored many storms that normally would have went into the Mystic River.

FY04-08 spending for the John J. Carroll Water Treatment Plant (CWTP), online since July 2005, was \$90 million. The FY09-13 cap will have small increments for maintenance of the CWTP.

The Blue Hills Covered Storage Project generated environmental appeals before being approved by the court. During FY04-08, \$17 million has been allocated for this project, which is due for completion in 2009.

Ms. Soni said the FY09-13 spending cap is only slightly higher than the FY04-08 cap. The projected forecast for the capital projects is \$1.06 billion and resulted in a spending cap of \$1.16 billion.

With the CSO program nearing completion, the Authority will now focus on infrastructure improvements. Seventeen projects have been drawn from the Master Plan and will be incorporated into the FY09 Budget, equal to about \$23 million.

Mr. Hornbrook stated that staff has noticed excessive corrosion at the bottom of the clarifiers on Deer Island. The Authority plans to do primary and secondary clarifier rehabilitation, estimated at \$43 million, over three years. Any rehabilitation on the island is of large scope and, therefore, expensive. Electrical upgrades are projected at \$62 million in the FY09-13 timeframe. Transformers and cables on Deer Island have been in operation for 12 to 13 years in a harsh environment and are nearing the end of their useful life.

The egg shaped digesters on Deer Island are serviced by 16-inch duct-lined, glass-lined sludge lines. As part of asset management, staff has noticed corrosion of the glass lining system, which will cost approximately \$9 million to replace because of the amount of linear feet.

The \$70 million East Boston Branch Relief Sewer is part of the CSO Program and will be awarded this summer or late spring, per MWRA's court order. This project is located in very tight streets; MWRA will be micro-tunneling, pipe bursting and some other techniques to have less impact on the neighborhood. At the same time, BWSC will be doing sewer rehabilitation on one of the main bridges into East Boston. These are Authority owned pipes that in some cases are being made larger to convey more flow to Deer Island rather than go out to the harbor.

MWRA has accelerated the \$70 million rehabilitation of the West Roxbury Tunnel, which serves all of the water service area west of the Charles River and portions of Boston.

The Reserved Channel CSO Sewer Separation Project in South Boston will complement the tunnel project. It consists of sewer separation from Broadway toward the reserved channel and convention center; it is being implemented by BWSC with \$38 million in funds from the MWRA.

Cambridge Sewer Separation has had several delays due to environmental permit issues, which are being resolved. Staff anticipates coming to the Board to seek authorization to continue with cost sharing with the City of Cambridge. MWRA expects to spend \$30 million from FY09-13.

The Northern Intermediate High provides additional redundancy to northern intermediate high customers and provides additional storage. The project is in the planning stages now. The Southern Extra High Redundancy serves communities in the south system. MWRA is looking at ways to provide redundancy to the single branch.

Ultra Violet (UV) treatment is being added to complement the ozone treatment at the CWTP. MWRA is required, by federal statute, to have a second means of primary disinfection. The total budget on the UV treatment is approximately \$44 million in the FY09-13 timeframe.

Ms. Soni said to conclude and focus on the FY09 CIP, the proposed spending total is \$4.9 billion; however, this number will change in every cycle. Planned expenditures for FY09 are \$288 million, with 55% spent on North Dorchester Bay and Deer Island Asset Protection, East Boston, Morrissey Boulevard and the MetroWest Tunnel.

E. COMMITTEE REPORTS

Operations Committee – Jay Fink

❖ **UPDATE: REQUESTS FOR MWRA WATER / MWRA WATER MANAGEMENT ACT REGISTRATION STATEMENT AND CONDITIONS FOR 2008-2017** – Michael Hornbrook, Chief Operating Officer and Pamela Heidell, Policy & Planning Manager

Pamela Heidell, MWRA Policy & Planning Manager, stated that the Town of Ashland came to the MWRA in December for an emergency request of water. Ashland's well field is adjacent to the Hopkinton Reservoir and is very much affected by the reservoir levels. The reservoir is managed by the Department of Conservation and Recreation for recreational purposes.

The Town's emergency request is pursuant to the state regulatory scheme, as well as the MWRA's emergency policy for water. Requests are limited to six months at a time; Ashland received a six-month approval from the MWRA. Ashland will likely ask for more approvals in the future as the Town investigates possible long-term solutions, including MWRA membership.

Wilmington has been before the Advisory Board for emergency requests many times over the last number of years and has gone through the MEPA process and the Interbasin Transfer process for a more permanent connection to the MWRA of 1.7 million gallons per day (MGD). Wilmington still needs to get Town Meeting approval and legislation.

The Tri-Town Naval Air Station redevelopment located in Weymouth had originally identified MWRA as its preferred water supply option. They have done a draft and final EIR and had originally asked for 1.4 MGD but is now requesting 0.7 MGD because a biotechnology component may not materialize. They have now decided to phase the project. The milestone they are aiming for is to connect to MWRA by 2010.

Mr. Favaloro said some time ago individuals from DEP discussed the water conservation standards and all of the work that was going to lead to the registration. It was one of the most intense discussions that has occurred at an Advisory Board meeting. The Authority received the registration on January 3 and has 21 days to appeal or accept. The Executive Committee voted unanimously this past Friday to request that the Board of Directors and Mr. Laskey appeal the registration and conditions.

Mr. Hornbrook said the Authority received its new water registrations to make withdrawals from the Quabbin and Wachusett Reservoirs. In giving input to DEP on these registrations, one major goal was to maintain the 312 MGD registration. Going into the discussions, DEP was under pressure from watershed groups and environmentalists and their own staff to reduce the water registration.

MWRA's use last year was about 225 MGD. The new permit retains the 312 MGD; however, for the first time ever, DEP included conditions. Two conditions that were included were a residential 65 gallons per capita per day (gpcpd) water use and 10% unaccounted for water (UAW).

Mr. Hornbrook said the system-wide residential gpcpd is 59. Individually, 19 communities are above the 65 gpcpd. As a system, MWRA meets the criteria.

In using the information submitted by the communities, the level of UAW in the communities was about 14%. The UAW in MWRA's transmission system would add about 2 to 3%. That is a concern for the Authority and its member communities. DEP's response to that was this is a ten-year program. There is an interim milestone in 2010 where if the system is at 15% or below, it is alright; if the system is above 15%, a compliance plan must be submitted. It is not a DEP mandated compliance plan; it is the registrant's compliance plan. By the year 2012 or 2013, if the system is not at 10% UAW, a compliance plan must be submitted on how compliance will be achieved. In 2017, if the system has not made 10% UAW or progress has not been made, DEP would mandate best management practices (BMPs) to the registrants. The problem is DEP has not, at this point in time, identified what those BMPs or their conservation model are. That is one of the main reasons the Executive Committee felt the registration should be appealed.

Authority staff recommended that the appeal not occur for three reasons. The first reason is the Authority did get the 312 MGD allowed in its registration, which was important to the Authority; the second reason is the registration allows the Authority to use its Quabbin drought plan and triggers before the MWRA has to go to outdoor restrictions. Third, the registration allowed the system to act as a whole. Staff looked at what was gained in the registration process versus the negatives. If MWRA appeals, that appeal could be broadened and bring in other parties and those three issues that were important goals could be compromised; therefore, staff recommended not appealing.

After the Executive Committee vote of the Advisory Board, there was a heated discussion among the Board that focused on many items. One item was the clarity of the registration, which contains cover sheets that names the MWRA as the registrant and has the Authority's registration number and then has generic conditions that were applied statewide. The question was whether it clearly advocated that MWRA can use its drought management plan rather than statewide conditions or local downstream responses. There was also discussion on the BMPs and what would be required and if the MWRA loses its rights if it doesn't appeal now.

DEP Commissioner Laurie Burt attended the MWRA Board's afternoon meeting. She presented her thoughts on the registration. She believes that DEP was responsive to many of MWRA's needs and also thought DEP was being flexible in allowing a ten-year plan to allow people to come into compliance and she reaffirmed her position in regard to the 10% UAW and other conditions of the permit.

The Commissioner indicated she would be willing to issue a letter of clarification. The next MWRA Board meeting would not be held until after the appeal period was over so the Board asked the Commissioner of DEP to issue a letter of clarification on many of the points that were raised at the Board meeting. If that letter of clarification is satisfactory to the Board of Directors, then the MWRA would not move forward with an appeal. However, if the letter of clarification is not satisfactory, the Board would come back for an emergency Board meeting next Thursday to consider an appeal to reserve its rights.

MWRA staff entered discussions with DEP staff on the letter of clarification. The following items are areas of concern: 1) that MWRA get a letter from DEP that explicitly states that MWRA, because of

its multi-year storage, be able to use its current drought plan triggers to go into outdoor water restrictions; specific to MWRA, not public water supplier or a general statement.

2) MWRA is asking that any UAW not be further adjusted, or adjusted without discussions and input from the local communities. When the discussions were ongoing about the 65 gpcpd, prior to the registrations being issued, the communities submitted their information on UAW and gallons per capita per day. DEP adjusted those numbers and in almost all of those cases adjusted those numbers up and did not inform the member communities or explain the reasons why they adjusted those numbers up, particularly in the UAW.

3) Clearly state that the MWRA service area will submit its own compliance plan if the numbers are not reached (not a DEP plan or a DEP approved plan).

4) Letter must state there is no mandated DEP BMP plan until 2017.

5) If progress on a compliance plan is made, MWRA should be recognized for progress, even if the 10% UAW is not met entirely by 2017.

6) MWRA community systems will be treated as a whole, not individually, and in developing of the best management practices that it is an open process; it is not just an advisory group hand picked by DEP but there is an open process where MWRA and any member community that wants to can be part of the process.

7) This letter is good for the duration of the registration.

It is the MWRA's intent to submit this information to DEP in draft form by late today. DEP will review tomorrow and give us their feedback.

Mr. Favaloro asked if the letter would be relevant when the Commissioner is gone, when Ian Bowles is gone? Five years from now? What is the legal status of a letter as opposed to the registration and the missing of the appeal process? Mr. Hornbrook said a letter obviously does not carry the same weight as a registration. MWRA feels it is binding to the issuer of the letter, the Commissioner of DEP, but it is not the same weight as a registration, but it does carry a lot of weight, especially if they make the statement that it is their intent that this letter of clarification be for the duration of the registration.

Chairman Dunphy said she wanted to convey to Mr. Hornbrook the concerns of the Advisory Board. The first concern is that this is the first time that any conditions have been placed on the registrations. This is heading in the wrong direction; if there are conditions now and the MWRA goes for a renewal ten years from now, it is likely there will be these conditions and more. There may be a situation of a stepping up and adding conditions time and time again. Additionally, it is important that the communities and MWRA work together because we have a system that works. MWRA and the communities need to be partners; this is a sign that DEP wants the MWRA to become a regulator of the communities and that is a real worry.

Mr. Hornbrook stated the MWRA has fought in the past becoming regulators for its communities though in many aspects it is through industrial discharge and agreements. The Authority has fought in the past taking on the role of an enforcer with member communities who pay our rates. Staff does not view this as a heavy-handed stick enforcement going forward because the issues of UAW reduction and conservation have long been our principles, as well as protecting the Authority's rights

for system expansion and for outdoor watering. Outdoor watering is a huge issue; we have plenty of water to do that and to sell to member communities. Staff thinks this registration reinforces the ability to continue to do that. Is it a perfect registration? No. Are there important items within it that are in our favor? Yes. Has DEP shown flexibility? We think, yes. Ten years, no enforcement. Your plan, not theirs. Those are good things as well.

John Carroll said we ought to get from Commissioner Burt a substitute registration statement rather than a letter, specifically for the MWRA. If we get a separate registration statement from DEP that is to the MWRA, for the MWRA, it would make it clear that it is going to be followed by successor commissioners. The sense of the Board is that we should not appeal but we should do everything we can to get these points into the registration statement and that they are satisfactory to the Board.

Mr. Hornbrook said in response to Mr. Carroll that he would follow up with DEP staff; in initial discussions their response was to issue a separate substitution registration submittal statement that would require the issuance of a new registration, which they cannot or will not do. The letter of clarification was the farthest they could go.

Mr. Carroll said a letter of clarification that somehow ties itself into the registration statement and makes reference to it might suffice. Just a letter from the Commissioner could leave the Authority open in the future. Mr. Hornbrook said staff will push that as far as we can.

Andrew Pappastergion said there were three pieces of information. There were two withdrawal permits for the watersheds and the third piece was the general statement of conditions. Mr. Hornbrook said yes, there were conditions for each registration; they are the same general conditions. Mr. Pappastergion said he did not think the third piece was referenced by either piece number one or piece number two as part of the permit. Mr. Hornbrook said he would have to read it, although he thought it was. Mr. Pappastergion said if it wasn't, there is no reason why the actual withdrawal permits can't remain in affect and then reissue the third piece. Mr. Hornbrook said he would look into it.

John Sullivan said there is a widely accepted UAW methodology; the DEP Commissioner must incorporate those standards in their approach.

Mr. Favaloro said in preparation for this meeting staff got legal opinion on whether the Advisory Board could appeal. The Advisory Board does not have standing and cannot appeal. Cities and towns cannot appeal either, unless they have a registration.

Finance Committee – Bernard Cooper

❖ CIP/CEB UPDATES

Cornelia Potter stated capital spending for the first six months of this fiscal year continues to run 20% below the budgeted numbers, consistent with what the Authority has been assessing and reporting over the last cap period for a variety of reasons. Staff believes that spending on the capital program for the second half of this fiscal year will pick up as the North Dorchester Bay Project moves forward and other project contracts, such as East Boston and UV, are awarded.

On the Current Expense Budget (CEB) side, the Authority has spent \$271 million on current expenses this year including over \$150 million on capital financing expense in the first six months alone. Capital financing expense continues to dominate the spending budget. MWRA has gotten a little relief as the feds drop short-term interest rates on variable rate debt expense; however, investment income takes a hit.

To create an appropriate spending level for FY09, the Authority is going to be using information and projections that it develops on spending for the rest of this year. The Authority has some revenue from such sources as Breyers, as well as the Reading entrance fee, which had not been budgeted in the FY08 budget due to the uncertainty of the timing of the payment.

Executive Committee – Katherine Haynes Dunphy

❖ **LEGISLATIVE UPDATE / UNCERTAINTIES SURROUNDING THE FY09 MWRA CURRENT EXPENSE BUDGET**

Mr. Favaloro said next week the Governor will release his proposed budget for the coming fiscal year. In the final CEB planning projections, the next fiscal year would have approximately a \$31 million increase (5.8%), which assumes that the Commonwealth will use level funding of \$23 million for DSA; the Authority's share is \$17.25 million. If the Governor includes \$15 million, that is about a \$6 million hit for the MWRA that has to be made up over and above the \$31 million.

Administration & Finance has indicated that the Governor has concerns with the DSA program; he believes we should be helping those individuals least able to pay water and sewer bills. If DSA were not funded, the MWRA would be losing \$17.25 million, which would need to be made up through rate revenue.

The beginning increase is \$31 million and if up to \$17.25 million in DSA is lost, in addition to funding GASB 45 and fully funding the pension fund and compounding utilities costs, the Authority has to come up with a plan. There is the potential that the number could broach or surpass \$50 million and could be double-digit rate increase.

What is the GASB requirement? How much should we be putting in to get to 100% funding of the pension fund? Are there any restructuring opportunities available? Other defeasance opportunities? Prepay some of the debt. The Authority has allocated reserves over the next three plus years; should we continue to do that or use a little more now knowing that you will cause a catastrophic condition two years from now? The words that come out of the Advisory Board and the MWRA will give you a good indication of what is coming next.

Staff is scheduling meetings for next week with Representatives DeLeo and Mariano, Senator Petrucelli, and a meeting with Ian Bowles to send a strong message before the Governor's budget is released.

F. QUESTIONS AND COMMENTS

A portion of the fine that MWRA must pay for blending is known as a supplemental environmental project (SEP) where some of the dollars go back into doing improvements to the environment and for the communities. As a result of communities' survey responses, the Authority came up with a plan to utilize the SEP in three components. One-third of the funds will be used to take shopping carts out of the rivers, another third of the funds would be used to have boat pump stations in Boston Harbor and a third piece was to be used to purchase an additional camera for inspections of community sewer systems, with Authority training, as well as Authority staff going out working with the communities to inspect the pipes. The only component EPA rejected is the cameras to inspect the sewer systems.

Mr. Favaloro stated that he spoke to EPA Regional Administrator Bob Varney to share his frustration with that position. He indicated he was not aware that the Department of Justice and EPA – Washington had made those decisions. In a much later conversation yesterday Mr. Varney said he has asked all parties to meet to discuss the issue. If the purchase and use of a camera doesn't suffice, he will find a community project that does.

G. ADJOURNMENT

A MOTION WAS MADE TO ADJOURN THE MEETING AT 1:41 P.M. It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary