EXECUTIVE COMMITTEE MEETING
FRIDAY, JANUARY 11, 2008
ADVISORY BOARD OFFICE
8:30 A.M.

MINUTES APPROVED AT THE FEBRUARY 15, 2008 MEETING.

Present: John Sullivan, BOSTON; John Sanchez, BURLINGTON; Tim MacDonald, CAMBRIDGE; Jay Fink, LYNN; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Brian Carlisle, QUINCY; Ted McIntire, READING; Carol Antonelli, SOMERVILLE; Walter Woods, WELLESLEY; Zig Peret, WILBRAHAM.

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

I. Approval of the November 9, 2007 Minutes of the Executive Committee

Chairman Katherine Haynes Dunphy called the meeting to order at 8:38 a.m. A Motion was made **TO APPROVE THE NOVEMBER 9, 2007 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

II. Preview/Schedule: MWRA Proposed FY09 Capital Improvement Program

MWRA Executive Director Joseph Favaloro stated MWRA staff received authorization at the December Board of Directors' meeting to transmit its Proposed FY09 Capital Improvement Program (CIP) and Budget to the Advisory Board for its review, which is now underway.

Kathy Soni, MWRA Budget Director, will be at the next Advisory Board meeting to outline the Proposed FY09 CIP, as well as the next five-year spending cap for FY09-13.

Cornelia Potter stated the Authority has proposed a ten-year spending plan for the capital program of about $1.7 billion from FY09-FY18. The focus will be on the next five years, for which the Authority is proposing spending, according to the cap calculation, of $1.16 billion for the five-year period FY09-13.

The Advisory Board's official 60-day review period will not begin until members receive the final proposed document, which is scheduled to go to the printer on January 25; therefore, the document will not get to Advisory Board staff in time for a March vote so the vote for the *Comments and Recommendations* will be scheduled for April.

III. Legislative Update

MWRA Advisory Board Executive Director Joseph Favaloro stated for the first time in many years, Advisory Board staff has no idea what the Governor's budget is going to include for Debt Service Assistance (DSA). The budget is scheduled to be unveiled on January 23.

The House, Senate and the Governor have agreed upon a growth number of approximately $700 million from FY08 to FY09; however, the Commonwealth already has a structural deficit of $1.5 billion, which means some difficult budgetary decisions will need to be made.

Staff has talked at length with Administration and Finance (A&F); however, these discussions have left staff even more uncertain about what the future will look like. The range for DSA could be anywhere between zero and $23 million. Most likely, the number will be $15 million. A&F Secretary Leslie Kirwan has stated that the Governor does not like DSA as it currently exists. Staff continues to work with Representative Ron Mariano, the MWRA Caucus Chairman, and has been in communication with Representative Bob DeLeo, Chairman of House Ways and Means to continue to push for DSA.

Additionally, there are more uncertainties this year in the Authority's budget as well. The Commonwealth has significantly increased the fringe rate, which will add between $500,000 and $600,000 of cost to the MWRA to reimburse the Commonwealth for healthcare for watershed employees. The Advisory Board has consistently filed legislation to try to pay actual costs for this line item.

Further, legislation has been filed by the Advisory Board to stop double payments for Payments in Lieu of Taxes (PILOT) to communities around the Quabbin, which would result in a savings of approximately $400,000 to $500,000. Most recently, the community of New Salem has reclassified its watershed lands to be considered commercial, which then puts them in the highest tax bracket and adds $80,000 to $84,000. Since New Salem has reclassified its lands, it is likely that the other watershed communities will begin to change how watershed lands are assessed as well. The legislation pending acknowledges that MWRA does have a commitment to New Salem and the five other communities; however, PILOT payments should only be made once.

IV. Uncertainties Surrounding FY09 Current Expense Budget

Mr. Favaloro stated the rate revenue requirement increase from FY08 to FY09 is $30 million, which translates to a 5.8% increase based upon the Authority's final FY08 planning projections. If statewide DSA is at $15 million, which is the most likely scenario, it will add another 1.2% onto the 5.8% rate revenue increase, which would be equivalent to $6 million. If DSA is not funded at all, it would add a potential 3.3% increase, adding $17 million on to the $30 million starting point for FY09. This is not the only area of uncertainty.

Last year changes in the Governmental Accounting Standards Board Statement No. 45 (GASB 45) on how to account for health insurance costs for retirees on the balance sheet were put into play. Advisory Board and Authority staff met to develop an overall plan for how GASB 45 should be implemented. Last year the Authority set aside $7+ million, with plans to increase that number every year and funding to be potentially placed in an irrevocable trust. The Advisory Board believes an irrevocable trust is not the best vehicle because somewhere down the road health insurance in the United States could change or premiums increase. Many factors could influence that number.

The MWRA Retirement System recently had an actuarial study completed. Their investment portfolio did not meet the goals they had projected; the bottom line is the retirement system is not funded at 100% anymore, but rather at 87%. The MWRA Retirement System Board of Directors must develop a plan to get to 100%. In October/November, at their Board of

Directors' meeting, they developed a plan to get to 100% funding over ten years, which would mean an additional $4 million payment over and above what the Authority has already allocated for retirement. There is no requirement to get to 100% over that short of a horizon. The Advisory Board immediately contacted the five members of the Retirement Board and got the issue back on the agenda. Advisory Board staff has spoken to the Public Employee Retirement Administration Commission (PERAC), which agreed that it was not necessary to fund this line item over ten years; a 15 to 17-year plan would minimize the additional contribution from year to year and still get them to 100%.

The changes to the fringe rate and reclassification of watershed lands alone are likely to add about $1.2 million of additional costs that are not part of the MWRA's budget; the Authority has no control over either of them. For other areas, such as electricity and chemicals, the market determines the price, which could add an additional layer of cost onto the Authority. When all of the uncertainties are added up, the potential is out there for an additional $10 to $12 million, or up to 2.3%. In reality, the $30 million increase from FY08 to FY09 has the potential to be anywhere from $46 to $59 million, or a 5.8% to 11.4% rate increase.

Advisory Board staff believes solutions to these potential increases could begin with minimizing the funds set aside for GASB 45, which would allow the Authority to have funds at its disposal to help reduce its structural deficit. Further, though it would be nice to get to 100% funding of the Retirement System within ten years, spreading the duration to get to 100% over a longer period of time makes more sense. Additionally, entrance fees from the Town of Reading can be utilized. Later in the fiscal year there is the potential for more entrance fees from Wilmington; however, Wilmington has the right, because they were grandfathered, to opt for a twenty-year payment schedule. Other surplus dollars coming in this year include fines in the $600,000 range from Breyers for not being in compliance. Perhaps the strategy for use of rate stabilization funds should be looked at again. Over the last couple of months Advisory Board staff has seen three or four proposals for restructuring that are safe and would provide significant relief. All of these items can significantly impact the bottom line.

Jay Fink said in relation to GASB 45 and retirement, has staff looked at what the MBTA or the Massachusetts Turnpike Authority are doing since these entities fall under the Governor. Mr. Favaloro said at our last meeting, the Authority's financial advisor gave some information on what other entities are doing; however, it did not include the MBTA, Massport or any other quasi-authority in Massachusetts. There isn't any one right answer. Mr. Favaloro noted that one of last year's CEB comments was to wait and see what the Commonwealth will do.

Chairman Dunphy noted that the state fringe rate, which affects the watershed employees, has increased from approximately 30 to 40%, relating to the GASB 45 post-employment benefits so the Commonwealth must have a number or may have actually made a decision on how it is going to fund this line item. Certainly that is one point of comparison.

Mr. Favaloro said the Authority, logically, puts on the table the argument that if you create a vehicle early enough and make it irrevocable then you can invest it at the highest rates and, therefore, reduce your need for future contributions because it is accruing at a much higher rate. Mr. Fink agreed with the logic; however, countering that is the amount of debt that the Authority has so it puts the Authority in a unique situation.

Mr. Favaloro said to reduce the impacts of what could be a double-digit rate increase, tough decisions have to be made. Ideally this isn't what staff would do but reality says this is what we have to do to bring the rate increase down.

V. Water Management Act Registration

Mr. Favaloro said many months ago representatives from the Department of Environmental Protection (DEP) came before the Advisory Board to talk about the Water Management Act and Conservation Standards, which have evolved to the Authority's draft Water Management Registration and Conditions. The Authority received the registration on January 3 and has 21 days to appeal.

A critical piece of the registration is that the Authority sustained its withdrawal of 312 million gallons per day (MGD). There had been some discussion that the state was going to look at withdrawals over the last decade and then set a number that was lower than the 312 MGD because they no longer needed to draw that amount of water.

The gray area comes in what the conditions are and the words behind the conditions. One of the reasons the Authority began to discuss with DEP what the registration/conditions should look like was a secondary discussion on the system expansion process. It took Reading five years to get through the process. The Authority has been working diligently to try to have the discussion of the registration coincide with the discussion of the System Expansion Policy. One major trigger for the System Expansion Policy, if you are an environmentalist, would be releases into the Swift and Nashua Rivers, etc. and at what levels. The Authority had wanted this tied into one package. If the Authority acquiesces and doesn't lead the charge for the appeal processes and accepts reasonable conditions as relates to the registration, it would be without a final expedited System Expansion review process and release policy that would allow future Readings to go through in a process that isn't as time consuming.

Mr. Favaloro noted that John Sullivan brought up a great point. In the avoidance of filtration discussions, the state came to the table and said if the MWRA goes down the avoidance of filtration road, the state will put together a low-interest loan program and will pick up the funding for it. The Authority signed on the dotted line to avoid filtration and the state has not put one dime forward on the water loans. When you have something combined, and it gets separated, the chances are you don't get the piece that you want because there is no leverage anymore.

Included in the conservation conditions is a requirement of 65 gallons per capita per day (gpcpd), as well as unaccounted for water (UAW) of 10%. These are trigger points that are part of the conditions. The good news is the MWRA is going to be looked at as one system. So for the 65 gallons, for instance, many of the suburbs benefit from the fact that Boston and Somerville and urban communities are significantly under the 65 gallons and that allows a community that is significantly over to balance out because all that matters in the end is 65 gpcpd system wide.

For UAW, there are specific triggers. The system must be at 15% by FY09 or have a plan to get to 15% and by FY12 it must be at 10% or have a plan to get to 10% district wide.

Recently, DEP changed the equations for UAW. The Authority thought their system-wide number was 11%; because of the change to the equation, it is now over 15%. In addition, the Authority has an additional 2% to 3% on their own lines so currently the Authority system-

wide has 17 to 18% in UAW. The trigger point for next year is 15% and 10% for FY2012. If the MWRA is not at the 15% or 10%, DEP's conservation plan or Best Management Practices (BMP) will have to be followed; however, the BMPs have not been written yet. Ultimately it will be up to the state to decide what the conditions are going to be. It does not make a lot of sense to sign off on the registration when the Authority doesn't know what the conditions are going to be.

John Sullivan said the problem is the UAW. BWSC uses standard numbers. The American Water Works Association uses 1%. DEP can say your entity studied this thing to death and spent a lot of money, but we don't believe it so we are changing it; that is a real hole. Getting down to 10% is tough. DEP can say they don't believe you when you tell them you are down to 10% and can change it to 14 or 15% and then require you to follow its conditions. Now the Authority has to spend money on towns to make things work or order the town to start spending to fix it. Mr. Sullivan stated that BWSC does not want to pay 40% of re-metering someone else's town. Communities will sit back and not re-meter knowing that the Authority will have to do it.

Mr. Favaloro said to be fair, DEP says they will continue to talk to the cities and towns, Massachusetts Water Works Association (MWWA) and MWRA to come up with the BMPs and the Conservation Plan.

Executive Office of Energy and Environmental Affairs Secretary Ian Bowles is one of the drivers of this plan. Based on discussions with MWRA Chief Operating Officer Mike Hornbrook, it is fair to say the Authority believes the details of the registration will be acceptable; the MWRA believes it is a significant win to have a 312 MGD registration. Further, when the state calls for a ban on outside watering, the Authority is exempt from that. Internal triggers regarding levels at the reservoir control the MWRA. That too is an important piece to consider.

John Carroll stated it is crazy to try to regulate the amount of water on an average per capita per day basis for towns and cities that receive MWRA water. The Authority has enormous amounts of water. DEP is trying to solve a problem that does not exist. What's the difference if we use 100 gpcpd as long as we maintain the reservoir and the rivers?

Andrew Pappastergion asked if the three Advisory Board representatives to the MWRA Board of Directors should push to appeal this on Wednesday. Mr. Carroll said, "We have to appeal it; yes, absolutely."

Lou Taverna asked if this is statewide and if so, what does Cambridge plan to do? Mr. MacDonald said Cambridge is planning to appeal because of the uncertainties of agreeing to conditions that have not been established yet.

Chairman Dunphy noted based on an article she read that it is likely that there will be appeals from watershed associations; they feel there should be stream flow triggers. Should the MWRA appeal? Should the MWRA send a comment letter saying it is uncomfortable being held to limits that have not been explained or written yet.

Walter Woods used the analogy that it was like DEP wants the MWRA to sign a blank piece of paper. Mr. Favaloro said it is not blank but it has significant missing points that you don't

know exactly what you are walking into. Mr. MacDonald said there are lots of future opportunities for further regulations that you are not going to have the ability to negotiate.

Mr. Favaloro said the state is not moving off of numerical approaches to the solution. Everyone's greatest fear is a "one size fits all" approach.

Mr. MacDonald made a **MOTION TO HAVE THE EXECUTIVE COMMITTEE RECOMMEND THAT THE MWRA BOARD OF DIRECTORS MOVE ON AN APPEAL TO THE WATER MANAGEMENT ACT REGISTRATION.** It was seconded and passed by unanimous vote.

Mr. Sanchez asked if there were any conditions placed on the registration issued ten years ago, stating that his understanding was the water was by right, who can take that away? Mr. Sullivan said there were laws passed that put it in state control because of stressed basins.

Chairman Dunphy asked if members would want to consider drafting a letter that the Advisory Board might also send to express its concerns. Mr. Favaloro said first staff will inform the Authority and the Board that a formal vote of the Executive Committee requests that the Authority appeal. A letter to DEP to raise the concerns of the communities or joining with the Authority in a formal appeal may be the second step. Not knowing what the Board will do on Wednesday, at least we have done enough homework that on Thursday we could request of the whole Advisory Board that we have an appeal to the registration. Mr. Favaloro stated that he did not know if the Advisory Board has any standing.

Zig Peret asked what is driving this. Mr. Favaloro said the reason this is difficult is there isn't any solid reason to create these numerical relationships. For instance, UAW is a phony number; it could be set it at 2% or 96%. You can't make a case for either one. The 65 gallons, as Mr. Carroll indicated, is arbitrary. In the last twenty years the Authority has gone from using 340 MGD down to the low 200s because of regular leak detection, fixing of leaks, and modernization of systems. Isn't it all about the result? The concern is with adding another layer of regulation, especially without any real guidance.

Chairman Dunphy said this goes back to the issue that if MWRA is required under their permit to reach these goals of 65 gpcpd and 10% UAW and the way to do it is to require communities to make repairs it could break the close relationship between the MWRA and the communities in terms of working cooperatively; that is not a good direction to be going in. Ultimately the cost will be borne by the communities.

John Sullivan said the ironic part is we have plenty of water; if DEP would let us sell the water, we could make the money to fix the system.

VI. New Audit Standards

Mr. Favaloro stated every year the Advisory Board has an audit done of financial records of the office and has gone twenty years without a finding. Beginning with the audit that comes next July or August, the standards for non-profits have changed significantly. Staff has met with our audit firm, Daniel Dennis & Co., and must provide the Executive Committee with due diligence. The reality is the standard that is now going to be enforced and in place, which will be reflected on our next audit, is a standard that no small non-profit can meet. The one thing that will change for the next audit is that there will be findings that every non-profit will have to endure.

The audit isn't an audit anymore. Daniel Dennis and Co. will come in, as they have done for many years, and would normally review the Advisory Board's books and pull out different tests to check the numbers and the processes that go along with it. Then they would finalize the audit with closing entries for the accounting year; they don't do that anymore. Their job is to investigate thoroughly each of your procedures and that you have met financial standards. One of the first findings will be a segregation of responsibilities. The only way to meet the standard is to have a separate and distinct individual just doing financial records. For example, Mary Ann orders the pencils; therefore, she can't do the financial transaction that relates to the purchase of the pencils. We would have to hire a separate accounts payable person, which makes no sense so it will be a finding.

Secondly, right now final reconciliations, such as depreciation on equipment, which in the past have been done at the conclusion of the audit, now require a separate Certified Public Accountant (CPA) to make the final reconciliations. To be in compliance with these standards, the Advisory Board would have to hire an accounts payable person and a CPA to do the books, which for the last twenty years have been done expertly and without finding.

Though Daniel Dennis and Co. are going to be doing 70 to 80% less work, the price is going to go up between 40 and 50%. No matter what happens there will be findings as part of the next audit and we will have to put another $3,000 to $4,000 into the budget for the auditor.

Members of the Executive Committee have to be comfortable that there are going to be findings because of the new standards.

Walter Woods asked if there will be fines. Mr. Favaloro said no, there will not be fines; it will be in the report and the new standard requires that the auditor communicate directly with the Executive Committee.

Chairman Dunphy said we will move ahead and accept the findings. Mr. Favaloro said staff will work to mitigate the items we can correct with minimal dollars and work.

VII. Process for Executive Director Evaluation

Chairman Dunphy said the process for the Executive Director's evaluation is usually in two parts. Joe will make a presentation at our next meeting on what he has accomplished in the last year for the performance review part of the evaluation. If there is a favorable review, the Executive Committee has the option to vote an extension of Joe's contract for an additional year and for compensation.

When the Committee voted last year, it made a request to review the compensation at MWRA and other public agencies to see where they stand. Getting the compensation from the MWRA is fairly easy as it is a public document. Should the Committee look at other agencies? Several years ago a salary schedule was prepared with steps, which include the Executive Director and the other employees; to go through all of the work that is involved to try to reproduce that is probably not needed at this time.

Mr. Fink asked what year that study was done. Mr. Favaloro said about four years ago. Chairman Dunphy asked if members were satisfied that the Committee just look at the MWRA or do an entire second study. Joe has indicated that he is comfortable with the step salary schedule at this time.

Mr. Fink said I would look at the MWRA and refer to the same report. Mr. Favaloro said he would put a package together with all of the background information.

Chairman Dunphy asked for volunteers to serve on a sub-Committee. Jay Fink said in the past a few people have taken the opportunity to sit and go through comments and formed a subset. Chairman Dunphy invited members to contact her via email.

VIII. Approval of the Advisory Board Agenda for January 17, 2008

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE JANUARY 17, 2008 MEETING.** It was seconded and passed by unanimous vote.

IV. Adjournment

A Motion was made **TO ADJOURN THE MEETING AT 10:01 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary