

**EXECUTIVE COMMITTEE MEETING  
FRIDAY, JUNE 13, 2008  
ADVISORY BOARD OFFICE  
8:30 A.M.**

**Minutes Approved at the September 12, 2008 Meeting**

Present: Ed Sullivan, CANTON; Katherine Haynes Dunphy, MILTON; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Ted McIntire, READING; Carol Antonelli, SOMERVILLE.

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

**I. Approval of the May 9, 2008 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting to order at 8:40 a.m. A Motion was made **TO APPROVE THE MAY 9, 2008 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

**II. Legislative Update**

MWRA Advisory Board Executive Director Joseph Favaloro stated that it is difficult to get information at this stage of the State Budget process on how much Debt Service Assistance (DSA) will be included in the State Budget.

Bernie Cooper asked what the range for DSA would be. Mr. Favaloro said the Senate allocated \$10 million, the Governor \$15 million and the House \$20 million. The Legislative Session ends by July 31. The Authority has kept their number, for budget purposes, at the Authority's share of \$15 million.

Staff strongly advocated in the Senate, reemphasizing that 23 Senators had signed onto an Amendment that would have accepted the House appropriation. Fourteen members of the Senate also signed onto a letter asking that the Conference Committee go with the House number.

Advisory Board staff testified on the Governor's bridge bill, stressing that the bill should be expanded to include water and sewer infrastructure. There is more than \$12 billion of unmet water and sewer infrastructure needs. A funding source could be an expanded bottle bill.

Further, Senator Resor's Committee on the Environment, Natural Resources and Agriculture, has a bill that the Massachusetts Water Works Association was supportive of about funding for water and sewer initiatives. Staff provided testimony in support of that bill as well.

Another piece of legislation that remains on the radar is the Saugus interest-free loan bill, which would have the MWRA fully subsidizing and providing interest-free loans up to \$20+ million so Saugus can fix its water main problems. The Advisory Board does not support this bill and has the support of House Ways and Means.

### **III. Status of FY09 CIP/CEB Review Processes**

Mr. Favaloro stated the Authority put together, based on the Advisory Board's FY08 CIP review, an answer to the question of why the Authority has been significantly under what they had projected to spend in the CIP for the last few years versus actual CIP spending. Through the Committee the Authority put together to address this finding, they have reduced the amount of contingency on projects and put an additional layer of reporting between the line and the budget and the Executive Office so they can determine where the delays are on projects and where they need more support to move projects through. With contingency numbers reduced, the Authority was able to live within its cap number for FY09.

The "cap within a cap" was not supported by the Board of Directors. The Advisory Board wanted a healthy debate relating to the escalating costs of CSO projects, which was accomplished between the Board, MWRA staff and the Advisory Board. The Authority believes that the surprises are behind them and that most of the work that is going out is already well into design and ready to go out for bid and will be more predictable in developing their cost estimates and, more importantly, their cash flow.

Matthew Romero noted that the MIS Program, because technology changes so quickly, will be rolled into the Business Plan because that is revisited more frequently. The Energy Program is included in the Master Plan; however, it was included there before alternative energy options started taking off at the Authority. Staff plans to review the Energy Program; however, the revisit will not be significant before the next session of the Master Plan.

Mr. Favaloro said Advisory Board staff would like to reassess the cost-effectiveness of CSO projects; however, the Authority believes they are so far along in many of these projects that they feel they have evaluated most of that potential for savings. Authority staff says they are looking at the potential for savings in other projects. For example, since the North Dorchester Bay tunneling has been so successful, why stop? As opposed to spending \$80 to \$100 million on the next phase, would it be more cost-effective to continue going if the details can be worked out?

On the CEB side, on Direct Expenses the Advisory Board recommended a \$795,000 reduction, with the principal recommendation on the vacancy rate.

On the spring revisits, staff felt it was important to bring forward any additional costs as part of the review process. Since then, energy costs have increased so the actual spring revisits ended up in the \$3.4 million range. Staff added back nearly \$3.5 million into the budget based on updated information.

Authority staff is adamant that no reductions in the GASB 45 line item be used to offset rate increases; however, the Board sent a very strong message to staff that they are unsure of the best approach. The Advisory Board has significant concerns over GASB, its impacts and the likelihood of the current constitution of what the GASB language says being the language that is there a year or two from now.

As part of its review, the Authority is looking at the current level if every one of the 1,200 employees of the MWRA were to retire tomorrow what would the Authority's exposure be for the annual cost. They have determined it would be about \$5 million of the nearly \$8 million so they are looking at that level to fund GASB. Then the question is what to do with the remaining \$2.5 million that is projected to go into the FY09 budget. One subsequent idea that has come forward is to put \$5.1 million in GASB and \$2.5 million into the pension fund, which is also under-funded. Advisory Board staff does not believe that to be the best approach at this juncture.

The Advisory Board has "drawn a line in the sand" on the operating reserve exemption. Staff strongly believes no matter how much money is put into GASB, the MWRA should not have to put another one-sixth on top of that amount into another reserve. Bernie Cooper asked if MWRA staff agreed. Mr. Favaloro said staff said they continue to talk with bond counsel. Mr. Romero noted that MWRA staff said it would have an answer by the next Board meeting.

There was good, healthy discussion at the Water Supply Protection Trust meeting. Chairman Dunphy and the Advisory Board pushed very hard to send a strong message that costs at the watershed should be more in line with the MWRA's growth now that they are at a steady state; with that, the Trust budget was somewhat reduced, however, they still got a healthier increase than the Advisory Board feels they should have. Staff believes the message has been delivered for next year.

Mr. Romero said for capital financing, MWRA staff is looking at their interest rate assumptions. Interest income has been budgeted at 2% even after the successful scrubbing off of the bond insurance, which added back nearly 2%. MWRA staff still insists on being conservative with regard to the variable rate debt assumption, maintaining a 4.25% rate. The Board said that staff cannot have it both ways so the Advisory Board believes the variable interest rate debt assumption will be slightly reduced and the interest income rate assumption maintained.

Mr. Favaloro said the Authority did a yeoman's job in getting the Authority out of the sub-prime mess. The rate staff received for the first week was between 1.65% and 1.75%; with administrative costs, it is in the 2% to 2.25% range. With the volatile market, the Authority reset 20 basis points lower than the first issuance, the first reset amount. The Authority should have some level of confidence and should be conservative in its approach; however, the Advisory Board believes the Authority is being too conservative. To put it in perspective, never would the Advisory Board articulate that they should go down to 1.75% but the reality is for every 100 basis points, it is about \$5 million. Cities and towns must provide the money that may or may not be used because the Authority needs to be conservative. This should be a "no brainer"; the Authority should be able to reduce it down.

Advisory Board staff has come up with a series of recommendations that allowed no use of rate stabilization funds, which brings the rate increase down from the Authority's draft of 4.91% to 4.45%. The Authority has reduced it to 4.45% as well.

The Board of Directors next meets on June 25. Considering that the rate increase started above 6% and came down to 5.9% and is now down to 4.45%, it is clearly going in the right direction. It does allow for some manipulation as relates to rate stabilization funds and it

keeps in focus that next year the Authority will really begin to draw on rate stabilization funds, with next year's number closer to \$17 million.

#### **IV. Report from Operations Committee**

- A. **Action Item: That the Advisory Board join the Massachusetts Coalition of Water Resources and request the Massachusetts Water Resources Authority to likewise become a member of the Coalition.**

Mr. Favaloro noted that Worcester Commissioner of Public Works and Parks, Robert Moylan, came before the Advisory Board in April and it was determined that an Operations Committee meeting should be held to fully explore the benefits of participating with the Massachusetts Coalition for Water Resources Stewardship.

On June 3, the Operations Committee meeting was held with Mr. Moylan in attendance. The purpose of the Coalition is to develop a working relationship with the Environmental Protection Agency (EPA) to put back on the table the idea of looking at affordability, cost-benefit analysis and good science in looking at the NPDES permit and other items that are impacting communities and entities, not just the MWRA. There is a belief that in numbers there is a stronger voice.

After Mr. Moylan's presentation and a healthy discussion by those in attendance at the meeting, the Committee recommended that the Advisory Board join the Massachusetts Coalition for Water Resources Stewardship and also suggested that the Authority join as well.

Chairman Dunphy noted that the Committee asked Michael Hornbrook, Chief Operating Officer of the MWRA, if he would recommend that the MWRA join and he said definitely yes.

A Motion was made **THAT THE ADVISORY BOARD JOIN THE MASSACHUSETTS COALITION OF WATER RESOURCES AND REQUEST THE MASSACHUSETTS WATER RESOURCES AUTHORITY TO LIKewise BECOME A MEMBER OF THE COALITION.** It was seconded and passed by unanimous vote.

- B. **Action Item: That the Executive Director be authorized to search out legal counsel, if necessary, for the purposes of appealing the Massachusetts Water Resources Authority's NPDES permit.**

Chairman Dunphy noted the last time the National Pollutant Discharge Elimination System (NPDES) permit was issued both the Advisory Board and the MWRA had concerns. They appealed and immediately went into discussions and negotiations and there was no action on the court level.

Mr. Favaloro stated one of his greatest fears is logistics. EPA Regional Administrator Robert Varney says EPA's plan is to have a NPDES permit by October 1. That doesn't leave a lot of time.

Bernie Cooper asked if staff is still looking for standby authority. Mr. Favaloro said yes, it is not easy to find someone you are comfortable with that can provide you with support if necessary that would be required, especially if you have to live within that October timeline. Chances are we are not going to be together again until the August field trip. The Advisory

Board needs to put in place the building blocks to be ready, come fall, to engage in whatever actions need to be engaged in, whether it be an official appeal or a non-event.

Since the Operations Committee meeting, Mr. Favaloro has talked to firms and individuals that potentially might be a good fit for the Advisory Board. “Fit” is defined as able to work with the Advisory Board and being familiar with issues such as NPDES permits and knowing the Authority and the Advisory Board because that is critical.

Mr. Favaloro offered a proposal from the firm of Donoghue Barrett & Singal. This office and the Advisory Board were well served on three engagements by Steve Goldberg, a former senior legal attorney at MWRA. A longtime senior attorney, Richard Goldstein, who left the Authority on phenomenal terms and went and worked as special counsel on some of the “Big Dig” issues and is now residing at Donoghue Barrett & Singal. He does a lot of construction and basic law but, more importantly, he interfaced with Foley Hoag and the Authority’s counsel and the court parties as the Authority’s senior litigator during the appeal seven years ago so he has intimate knowledge of that process. They are also fully aware that this may be an engagement of one hour or it could be hundreds of hours.

Andrew Pappastergion asked if the Advisory Board has standing in a case like this. Mr. Favaloro said if it goes to litigation, no; however, the Advisory Board does have the right to appeal the permit to EPA.

A Motion was made **THAT THE EXECUTIVE DIRECTOR BE AUTHORIZED TO HIRE THE FIRM OF DONOGHUE BARRETT & SINGAL TO REVIEW AND APPEAL, IF NECESSARY, THE MASSACHUSETTS WATER RESOURCES AUTHORITY’S NPDES PERMIT AND TO EXPEND, IF NECESSARY, AN AMOUNT NOT TO EXCEED \$10,000.00 FROM THE MWRA ADVISORY BOARD’S LEGAL FUND.** It was seconded and passed by unanimous vote.

**V. Approval of the Advisory Board Agenda for June 19, 2008**

A Motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE JUNE 19, 2008 MEETING.** It was seconded and passed by unanimous vote.

**VI. Questions/Comments**

**VII. Adjournment**

A Motion was made **TO ADJOURN THE MEETING AT 9:40 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,

Edward Sullivan, Secretary