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MWRA ADVISORY BOARD MEETING
JUNE 17, 2010
WELLESLEY FREE LIBRARY
530 WASHINGTON STREET, WELLESLEY, MA 02482 – 11:30 A.M.
MINUTES APPROVED AT THE OCTOBER 21, 2010 MEETING

Thirty-five people were in attendance, including twenty voting members: E. A. Maguire, ASHLAND; Peter Castanino, BELMONT; John Sanchez, BURLINGTON; David Field, DEDHAM; J.R. Greene, GUBERNATORIAL APPOINTEE; Ed Demko, HINGHAM; Bill Hadley, LEXINGTON; Charles McCollum, MARBLEHEAD; Katherine Dunphy, MILTON; Wiff Peterson, NATICK; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Peter Smyrnios, PEABODY; John DeAmicis, STONEHAM; Michael Collins, WAKEFIELD; Patrick Fasanella, WALPOLE; Walter Woods, WELLESLEY; Earl Forman, WESTON; Bob Angelo, WESTWOOD; Zig Peret, WILBRAHAM.

Also present: John Carroll, MWRA BOARD OF DIRECTORS; Greg Burt, MARBLEHEAD; William Shaughnessy, WELLESLEY; Phil Jasset, UCANE; Ed Bretschneider, WAC; Lexi Dewey, WSCAC; Michael Hornbrook, Joshua Das, Kathy Soni, Pam Heidell, Ria Convery and Carl Leone, MWRA STAFF; Joe Favaloro, Cornelia Potter and Matthew Romero, MWRA ADVISORY BOARD STAFF.

A. WELCOME

Chairman Katherine Haynes Dunphy called the meeting to order at 11:30 a.m.

B. PRESENTATION: EPA'S REGION 1 GOALS AND PRIORITIES – H. Curtis Spalding, EPA Region 1 Administrator

EPA Region 1 Administrator H. Curtis Spalding said EPA Region 1 is considered one of the best regions in the country on environmental issues and is one of the most innovative regions when it comes to water issues. EPA is proud of a Boston Harbor that is basically a recovered resource and a Charles River that just got a B+ in terms of water quality. This kind of progress is exceptional compared to other places in the country. It is a tribute to this region on how we get things done.

Region 1 has a consistent track record and continues to make progress. The Clean Water and Air agenda is supported in New England regardless of who is in the White House or in Congress. This region will continue to work on these issues no matter what because this is what our communities value.

For the leaders of EPA, there are three things that are non-negotiable: 1) To restore integrity, or in some places, the rule of law, meaning that EPA is going to do the work well and be good government on carrying those things out. When EPA says it will inspect a facility, it will inspect that facility and will address problems; 2) EPA believes strongly that the science EPA does has to be what it grounds its thinking on. Staff will be rational and good science will be behind its decisions; 3) Transparency is the third pillar upon which EPA will build itself. Staff intends to be open on how its decisions are made and will explain how its science is being applied to the law.

EPA Administrator Lisa Jackson has said clearly that she wants all regions of EPA to be on the same page. A term used at EPA is “One EPA.” The three pillars will be driven by seven priorities.

First is taking action on climate change. Comprehensive climate change legislation will move forward during this administration.

Second is improving air quality, which had not been a priority in the previous administration. New air standards will be seen on a number of parameters, although compliance schedules may take five to ten years. Air regulation is a high priority because it is so far behind.

Third, chemicals are a major priority and are something that is big with MWRA. How do we deal with the new science that is telling us that small amounts of chemicals can be disruptive to ecosystems and to people? For example, EPA will be promulgating regulations and rules on new levels of dioxin and other constituents that are toxic to people. The science says that dioxin, even in small quantities, can be disruptive in humans. Region 1 is thinking of ways to avoid the problem in the first place. EPA has held its first meeting to talk about a green chemistry initiative in New England.

Fourth, clean and healthy communities will be a priority, especially communities that are struggling because of long-term environmental injustice. Almost all of EPA’s major programs (air, water, waste) have a community focus.

Fifth, protecting Americas waters are a key issue for everyone. Across the country, there hasn’t been as much progress on water as there has been on air. Massachusetts has seen great progress on Boston Harbor in the last decade; however, there is a sense at the agency that the water program needs to be reenergized.

Sixth, expanding the conversation on environmentalism is another priority. The idea is our country is diversifying and broadening and EPA has to have good communication with this diverse group of people who have a stake in these issues. EPA is a science and engineering organization and is not as skilled as it needs to be in talking to different types of communities so it needs to get better at that.

Seventh, states and tribes are going through some difficult financial times. For the foreseeable future, EPA will have to work closer with people to ensure that its mission gets carried out and that the laws are enacted as Congress and the state legislatures wanted them to be.

Priorities will include enhancing eco-systems. Mr. Spalding said he strongly believes that EPA has to bring a holistic approach to water pollution problems. For example, enforcing the Clean Water Act won’t help if you are not addressing individual septic systems or storm water run off outside cities. If you don’t have a way to address the whole problem and engage the whole community in it, you won’t get the success you want.

Region 1 believes there is no higher priority than dealing with storm water when it comes to clean water; staff plans to make this something that Region 1 will lead the country on. Mr. Spalding said he would ask for support from the national programs to help make progress on that and establish a performance-based program.

There has been a lot of anxiety over the disaster in the Gulf. EPA leadership has been trying to figure out a way to deal with that spill and to protect public health. In effect, it has had a demoralizing affect to the feeling that EPA can lead the country to a new place on the environment. Staff is now getting its arms around how to manage that kind of crisis and wants to restore the Gulf to a better condition than it was prior to the oil spill.

Ed Bretschneider said he has heard that EPA is looking for input on SSOs and wet weather conditions and changing current permits to come out with the new NPDES permits; he asked that Mr. Spalding outline the key milestones and timing on this. Mr. Spalding said he did not know the key milestones; however, he knows that EPA has launched some regulatory enforcement efforts on SSOs over the last year. EPA expects systems not to have sanitary overflows; however, in the broader sense EPA recognizes that these are big challenges and only so much capital money can be spent so it will work with those constraints. On the stormwater issue, staff will listen and try to find the balance between time and what is reasonable in terms of performance.

Chairman Dunphy said MWRA debt will not peak until the year 2022 so we are still moving our way up the mountain; this does not leave a lot of resources in the communities to do work locally if monies are being spent for the projects that we are already enjoying the benefits of. Most community officials and certainly the Public Works personnel are anxious to make repairs and implement projects but they do have limitations with costs. Further, there are issues with the proposed NPDES permit. MWRA has been a tremendous partner when the communities have problems. The communities hope that EPA will not turn the MWRA into a regulator. The partnership that communities have had with the MWRA has been essential in the successes we have seen, not the ones that make the headlines, but the ones that really count to people. Chairman Dunphy asked Mr. Spalding to work to ensure that these regulations will not stop this partnership.

Mr. Spalding said he believes that the relationship between EPA and MWRA is in a much different place than it was when he worked for EPA in 1987. Back then, conversation was still contentious, with lawsuits and compliance agreements; that has changed. There is open conversation and transparency. Problems are explained back and forth. Unless something changes, EPA won't likely come forward with a new hard-edged enforcement kind of framework with capable agencies like the MWRA as long as programs are moving forward. The intent and commitment matters the most.

MWRA Executive Director Fred Laskey said MWRA has a great working relationship with its member communities and there is some concern on whether the next NPDES permit will change that. Is it going to try to fix something that isn't broken related to co-permittees and storm water? There is a lot of anxiety from member communities about that particular part of the permit. Mr. Spalding said things are changing as we speak. EPA does not have as constructive a relationship with Worcester right now. Plainly put, EPA asked for limits on phosphorous and nitrogen, which is absolutely necessary. EPA came forward with a permit that says Worcester has to control nitrogen and the City said it does not agree with EPA's science. Science is clear. EPA went to the Environmental Appeals Board and EPA prevailed. So EPA is going to restart that relationship to move forward but the situation is different.

MWRA Chief Operating Officer Michael Hornbrook said there are some serious concerns about the draft NPDES permit regarding local collection systems. EPA is asking for comments but a lot of the information is vague. It says "you should provide capacity" but it does not describe

what “capacity” is. How can you comment on that when you can't tell what kind of an impact it will have?

Mr. Hornbrook said in reference to a holistic approach to watersheds and water quality, different communities have to do different things with their “silos;” is anyone looking at the cumulative impacts of these requirements on communities? Mr. Spalding said within the water program, there should be that dialogue. If there is not, I am going to ask why. Mr. Spalding said the silos he worries about are air, water and waste. The coordination on the water side should be good. There is an opportunity to sit down and talk and Mr. Spalding said he would look into it.

Bernie Cooper said most of the people in this room are the people that actually manage the day to day business and capacity in their systems. Is EPA making the assumption that the MWRA will have a role? Communities won't likely agree with that. There is not a lot of confidence that EPA will work with the communities that have a severe financial problems. There has got to be a strategy to help pay for it. The federal government has got to get involved. Mr. Spalding said to be honest, it is frustrating to EPA staff because we are charged with carrying forward a regulatory program with a law that says we need to achieve water quality standards.

Mr. Cooper said EPA needs to engage in the long-term viability of the goal if there are no resources provided to obtain that goal. Mr. Spalding said there has been a lot of conversation in Washington about infrastructure. This Administration has put more money into infrastructure than any Administration has done in twenty years so there has been a demonstrated commitment from the President. There is competition between land, water, schools, etc.; every piece of the mix has need for capital investment. The fact is, we are not where we need to be so those capital dollars have to be found somewhere, whether they be at the state or federal level or to some degree at the local level. There is no magic bullet; EPA can be flexible. Mr. Cooper said at the local level there is a perception that EPA doesn't care about who pays because it is not their responsibility.

MWRA Advisory Board Executive Director Joseph Favaloro said coming down the pike there is not a bigger issue that will impact cities and towns than SSOs. The capital costs are undefined and whatever that dollar amount turns out to be, that is a dollar that cities and towns have to prioritize amongst a bunch of priorities. Additionally, regarding SSOs, there is the day to day operation and all of those requirements regardless of what the capital expenditure is. This requires resources – people, power, study, etc. Right now, those dollars are scarce. There isn't really a light at the end of the tunnel.

As significant as SSOs are, there is no “listening tour” in this region. Wouldn't it make sense to do something in this region? Mr. Spalding said he would take that back. Mr. Favaloro said we have access for three minutes in a virtual conference. A few months ago, an EPA staffer was before the Advisory Board to outline these changes. There is a disconnect because now that the communities have a better idea of what the requirements look like, it almost calls for the communities to have some access into the process, especially if all the regions are going to live by the same set of rules. Mr. Spalding said he takes the point about having this region have more impact seriously. On storm water, EPA did bring the listening tour here as they were looking at the national storm water rule. We can make sure that input is brought forward from the communities into the system.

Mr. Favaloro said that Mr. Spalding mentioned that the Charles got a B+. If we are all living in a world of finite dollars and the Charles is at a B+, should that be the number one focus? It must

be for EPA. Mr. Spalding said it is a place we have invested in and staff believes it can get to a level that would meet the water quality standards that are mandated by state law, which means something must be done about phosphorous. EPA does not see how a solution can be met on phosphorous without doing something about storm water. Mr. Spalding asked if Mr. Favaloro is suggesting that B+ is good enough because EPA does not believe it is. Mr. Favaloro said he isn't saying it is good enough; however, if the difference from getting from a B+ to an A- is hundreds of millions of dollars, should that be your focus? Mr. Spalding said no one at EPA believes it will cost hundreds of millions of dollars. Staff sees a 10 to 15 year program to get to that A. Under this round of MS4 permits the residual designation for those communities will begin a four-year process on how to get to the next increment. EPA needs to be consistent about where it is going and the timeframes it will take to get there.

John Sanchez asked if EPA is suggesting it will be mandating that the cities and towns will have to implement storm water utilities. Mr. Spalding said staff thinks it is a great strategy but it will not be mandated. A utility approach allows optimization on how we address storm water problems because there are different soils in different places.

Mr. Sanchez said his community is capped on how much its budgets can go up every year. Burlington would have no other option but to create a utility so this suggestion is more of a mandate for us. There is no other money. Mr. Spalding said every state is different. Mr. Sanchez said this state is very clear. Mr. Spalding said the conversation we are furthering is that the way to approach storm water on the Charles is to create a watershed level utility to deal with creating the revenue, the bonding authority and the effort. EPA can't ignore the problem.

Mr. Laskey said if storm water is going to be the issue, not only do the communities need to get together, but the six states need to get together to try to find a way to leverage federal money. The Great Lakes are going to get billions of dollars in federal money. There has to be a way, if in fact this is going to be the initiative, to try to get state and federal money as well.

Mr. Laskey said the Mystic River Watershed has an invasive taking over the whole river. Invasives are a huge problem that affect not only our rivers but our water supplies as well. Is the federal government or EPA getting out ahead of the zebra mussels or other invasives? How do we get a grasp on this because they are overwhelming everything? Mr. Spalding said we should get ahead of it and that he would speak to his staff about it. This is an important issue that we all have to get our heads around.

Mr. Laskey said MWRA just launched \$120 million worth of work combined with Cambridge on the Cambridge CSOs for the Mystic River; you can't even get through the river in spots. It is overwhelmed with this foreign invasive growth and it has to be part of the equation. Mr. Spalding said some of that is resources. Usually invasive species are managed by state programs. There is an opportunity on a regional level to bring the states together on invasive species instead of each state trying to figure out what the best solution is.

C. COMMITTEE REPORTS

Executive Committee – Katherine Haynes Dunphy

❖ LEGISLATIVE UPDATE

Mr. Favaloro said legislatively there is not much to report. Currently there is \$500,000 for Debt Service Assistance (DSA) in Conference Committee but, with all the other things going on, it is safe to assume that there will not be DSA in the final state budget.

❖ **ADVISORY BOARD OFFICE MOVE**

Mr. Favaloro said consistent with the philosophy that the Advisory Board's Executive Committee has instilled in staff to practice what we preach, in an effort to control and lower costs, the Advisory Board is leaving its office on Beacon Street and moving to the fourth floor of the building where the MWRA is located in the Charlestown Navy Yard in September.

Finance Committee – Bernard Cooper

❖ **UPDATE: CEB/CIP REVIEW**

Matt Romero highlighted information submitted to MWRA and its responses. First was a concurrence with the 1.49% rate increase, which Advisory Board staff committed to the Authority staff that it would not push to reduce that increase any further, so long as the final assessments for communities were the same as preliminary assessments to assist with budget preparations. The Authority did meet this goal and in fact managed to keep its Direct Expenses level funded from FY10 to FY11; FY10 was level-funded to FY09 as well so that is two years of level funding on Direct Expenses.

The second point was defining boundaries for the next five-year capital spending cap period. For the FY14-18 cap and looking outward, the Advisory Board wants to set boundaries on future caps. The Authority has deferred discussion on this topic at this point but the Advisory Board's aim is to get the conversation going to engage the Authority further as the FY14 cap becomes more in focus.

The third point is to create a working committee, including the Authority's Bond Counsel, financial advisor and Advisory Board, to consider using the range of tools available to ensure a measured approach for meeting its rate revenue requirement through 2022. As the Advisory Board's Chair indicated before, 2022 is when the MWRA will begin to see that mountain of debt drop off a bit. As debt service increases, and thereby becomes a larger portion of assessments to cities and towns, that is where the Authority's focus needs to be. The Authority's response to that was to welcome the Advisory Board's input. To be fair, the MWRA has already begun conversations with its financial advisor to start outlining and laying out a plan to get to managing rates in 2022.

The fourth point was to support the Authority's efforts to accelerate water redundancy projects. The Advisory Board understandably sees a focus on redundancy projects in the wake of the recent break at Shaft 5. The Authority has already begun to outline how and where it can accelerate redundancy projects.

For FY10, the Advisory Board consistently talked about the \$2.8 million that was in the FY10 budget that went beyond what the Authority was required to contribute to its pension liability. Staff's argument was that the \$2.8 million should be reserved for future years to strategically manage rates rather than made as an additional contribution. The Board of Directors decided to move that \$2.8 million into the Rate Stabilization Fund to help manage rates in future years.

Operations Committee – Jay Fink

❖ **UPDATE – SHAFT 5A PIPE BREAK**

Michael Hornbrook said the MWRA has been in the process of searching for the coupling. Ground penetrating radar found three potential hot spots; personnel went down about twenty feet, about five feet below the invert of the pipe, and did not find the coupling at that depth. The abnormalities on the ground penetrating radar may have been different soils from backfill used for the leak.

MWRA continued the search. The next step was to probe deeper and two more potential hot spots were located; however, MWRA cannot dig down that deep next to the pipe; instead more probing will be done.

Yesterday an 11" X 14" piece of the coupling was found; it is a striker plate that goes below where the two couplings come together. The striker plate did not show any obvious problems that would cause a failure. This piece was discovered on the surface between the break and the top of the river bank. The coupling was 1,400 pounds and is ten feet in length; this piece has a second piece and only weighs about two pounds and is made out of stainless steel.

The search for the coupling will continue with a split spoon and supportive excavation at the two hot spots from the penetrating radar. If nothing is found, the other side of the pipe will be investigated with split spoons instead of digging. If nothing is found, the next proposal is to drop some borings down on both sides of the pipe to see if we can acoustically shoot across the bottom of the pipe to see if anything can be found before digging. If that indicates there is something under the pipe, the next step would be to determine what it would take to recover it as far as support of the pipe so it can be safely done.

The only other piece of news is that the groundwater in the area is significantly higher than it was during the break, which is probably because of the recovery of the Charles River. Right before the break, the Charles was lowered to do some repairs on the Waltham Dam. When the break occurred, the groundwater was extremely low in the area and now groundwater is up about mid-point on the MWRA's pipe. As we dig deeper, ground water control is an issue and is causing concern.

An expert panel has been appointed by the Board of Directors to do a full investigation on the causes and reasons of the break and who is responsible and to make recommendations as we go forward. The panel will report to the Board of Directors, not MWRA staff.

Chairman Dunphy asked if there is any reason to believe that the lowering of the Charles may have caused some problem. Mr. Hornbrook said that has been thrown out there as a theory; we also had the March rains, which had the highest ground water in the region in twenty years. This information will be passed along to the panel.

Mr. Favaloro said at the last Board of Directors meeting, there was discussion about communities calling about recovering costs associated with the break. The Board and the Advisory Board will have discussions about whether to revisit that issue and hold communities harmless for that period of time. Last Friday, the Executive Committee had discussions on the topic and suggested that the wholesale price of water is relatively cheap, so even hundreds of millions of gallons of water are relatively small in actual dollars. If the Authority were to discount May 1 to May 4 and take that out of the communities' usage on the wastewater side as well, the range of dollars, even for larger communities, is \$30,000 to \$40,000, which is relatively small. Having said that, communities should be careful not to open Pandora's Box because retail customers may hear that their community got a rebate and they may ask for a rebate as well; \$30,000 does not go a long way in reimbursing the customers. The Executive Committee felt leaving it alone might be the best direction.

❖ **PROPOSED REVISIONS TO LOCAL WATER SYSTEM ASSISTANCE PROGRAM GUIDELINES**

An expansion of the water loan program has been discussed at two Operations Committee meetings, two Executive Committee meetings and one Advisory Board meeting. The previous program has been highly used and has benefited many communities.

The Board of Directors adopted an additional \$200 million for the Local Water System Assistance Program and, with the input of our Committees, also expanded the uses for the tier 2 funds to include GIS, mapping, water meters, water tanks, and projects well beyond cleaning, lining and replacement. At the Board meeting, there was discussion about limiting the tier 2 usage for communities unless they have 20% or less of unlined pipe.

The Executive Committee discussed this and would like to offer a compromise. Agreeing that the intent of the program is the cleaning, relining and replacement of water mains, the Committee felt that 80% was an arbitrary number. The Committee's counter-proposal that will be brought to the Board of Directors is that the use of tier 2 funds should be tied to the percentage of lined pipe that each community has. In essence, if a community has 100% lined pipes, it can use 100% of its tier 2 funds for projects other than lining pipes. If a community has only 1% of its system lined, it can only use 1% of the funds for projects that aren't lining or replacement. It provides some flexibility but keeps in mind the original purpose of the program.

❖ **UPDATE ON LEAD AND COPPER RULE COMPLIANCE AND CONSUMER CONFIDENCE REPORT (CCR) – Joshua Das, Project Manager, Public Health**

Joshua Das stated that the MWRA has now passed the lead and copper compliance testing thirteen times. This time, for the system, it was the lowest level the MWRA has ever tested, which is good news. MWRA has been working with DEP to try to get testing down to once a year; however, DEP has not agreed.

In regard to the CCR, it will be a new format this year with six pages rather than eight to provide a savings of \$40,000. The CCR's are being mailed to communities. The report mentions the break and offers an apology.

D. ADJOURNMENT

A MOTION WAS MADE TO ADJOURN THE MEETING AT 1:22 P.M. It was seconded and passed by unanimous vote.

Respectfully submitted,

Louis Taverna, Interim Secretary