

**MWRA ADVISORY BOARD MEETING
OCTOBER 20, 2011
PEQUITSIDE FARM
79 PLEASANT STREET, CANTON, MA – 11:30 A.M.
MINUTES APPROVED AT THE NOVEMBER 17, 2011 MEETING**

Forty-seven people were in attendance, including twenty-four voting members: E. A. Maguire, ASHLAND; Michael Bishop, BELMONT; John Sullivan, BOSTON; Jay Hersey, BROOKLINE; John Sanchez, BURLINGTON; Michael Trotta, CANTON; Andrew DeSantis, CHELSEA; David Field, DEDHAM; J. R. Greene, GUBERNATORIAL APPOINTEE; Charles McCollum, MARBLEHEAD; Cassandra Koutalidis, MEDFORD; Katherine Haynes Dunphy, MILTON; Wiff Peterson, NATICK; John Cosgrove, NEEDHAM; Lou Taverna, NEWTON; Bernie Cooper, NORWOOD; Michael Coffey, QUINCY; Jeff Zager, READING; John DeAmicis, STONEHAM; Carol Antonelli, WAKEFIELD; Patrick Fasanello, WALPOLE; Walter Woods, WELLESLEY; Bob Angelo, WESTWOOD; Michael Woods, WILMINGTON.

Also present: John Carroll, MWRA BOARD OF DIRECTORS; Avril Elkort, CANTON; Joe Welch, NORWOOD; Ginger Barrett, SOMERVILLE; Robert O'Brien, WALPOLE; Bill Shaughnessy, WELLESLEY; Ed Bretschneider, WAC; Lexi Dewey, WSCAC; Phil Jasset, UCANE; Fred Laskey, Michael Hornbrook, Rachel Madden, Rick Trubiano, Kathy Soni, Michael Delaney, Matt Horan, Patterson Riley and Carolyn Fiore, MWRA STAFF; Joe Favaloro, Matthew Romero, Magda Atanasov and Mary Ann McClellan, MWRA ADVISORY BOARD STAFF; Cornelia Potter, MWRA ADVISORY BOARD CONSULTANT.

A. APPROVAL OF THE SEPTEMBER 15, 2011 MINUTES OF THE ADVISORY BOARD

Chairman Katherine Haynes Dunphy called the meeting to order at 11:36 a.m. and introduced Avril Elkort from the Canton Board of Selectmen who welcomed everyone to Canton. A Motion was made **TO APPROVE THE MINUTES FROM THE SEPTEMBER 15, 2011 ADVISORY BOARD MEETING**. It was seconded and passed by unanimous vote.

B. "DIRECTORS' CORNER" – John Carroll, Andrew Pappastergion, Joseph Foti
MWRA Executive Director Joseph Favaloro said many of the discussions that take place at the Board meetings don't always get a full discussion at this meeting. The Advisory Board would like to provide an opportunity for each of the Advisory Board's Board members over the course of meetings to talk about the topics at the Board being discussed at the Board level. The topics are of the Board Members choosing without input from Advisory Board staff or the Chairman.

Board Member John Carroll said he has chosen to speak about mitigation. There are eleven members on the MWRA Board of Directors and mitigation is a very touchy subject because the Board members have varying interests. The Advisory Board representatives have

concerns relating to the cities and towns in the MWRA district; members from Boston have Boston concerns, and Quincy and Winthrop have their concerns and then there are gubernatorial appointees with their concerns.

When the MWRA started siting various facilities, such as the sludge plant in Quincy and the Deer Island Wastewater Treatment Plant in Winthrop, there were major concerns from these communities that the MWRA was “foisting” these facilities upon the communities.

The Authority does have mitigation agreements with Winthrop and Quincy. Quincy's mitigation agreement is expiring on December 31, 2011 and Winthrop's goes for another four to five years. It is a general feeling on the Board that we have to get rid of the mitigation agreements. Quincy receives around \$750,000 per year from the MWRA. There was some open discussion about this and there was some thought that the MWRA could enter into an agreement with Quincy where it would pay them \$750,000 for the first year and then ramp it down 20% per year with close to nothing in the fifth year and that would be the end of it.

One of the things Board members are concerned about is what happens when Winthrop's agreement comes up. The Speaker of the House is a Winthrop resident.

At a recent meeting, a compromise was reached to extend Quincy's mitigation agreement for another two years; it was a vote of eight to two, with Joe Foti and Andy Pappastergion voting against it. There was a general feeling that it would be left to Fred Laskey to come up with some language that would try to end this agreement.

Every vote of the Board of Directors has to be won by six votes. Even if only seven board members are present, the vote must be six to one, etc. That has worked extremely well because it makes the Board have to work well together. That is an example of the kind of thing we have to deal with.

Wiff Peterson asked what the plan is for the sludge plant in Quincy. MWRA Executive Director Fred Laskey stated that the plant is operating under a privatized contract that expires in 2015. There are a lot of important questions that have to be answered on the way the current program is running and the new technology that is now available.

A lot of the new biotech firms have various new ideas on how to reduce the sludge so the Authority is hiring a consultant to help weigh the options on the best way to move forward. It is probably one of the largest strategic questions facing the Authority in the next five years.

Andrew DeSantis asked if there are mitigation agreements with any other communities besides Quincy and Winthrop. Mr. Laskey said it would depend on what you would consider mitigation agreements. MWRA does pay full Payments in Lieu of Taxes (PILOT) through the DCR Water Supply Protection Trust on watershed lands that amounts to about \$8 million per year. Additionally, Clinton receives free water and MWRA runs the Clinton Wastewater Treatment Plant and Southborough gets a certain amount of free water for the siting of the plant. Marlborough got some mitigation when the plant was built. When MWRA rents space, it pays taxes through the landlords, such as \$900,000 through the Chelsea lease and \$300,000 to Boston for the Navy Yard.

C. PRESENTATION: REFUNDING OPPORTUNITIES ON MWRA DEBT – Rachel Madden, Director of Administration and Finance

Director of Administration and Finance Rachel Madden provided an update on a proposed refunding and restructuring of MWRA debt. The Authority consistently and constantly is evaluating its portfolio trying to identify opportunities to refund debt to lower the interest rates.

Staff plans to make a transaction by the first week in December, which will do two things. First there will be a straight refunding for savings, which is a traditional version where you take a bond where its maturity lies but interest rates have dropped and just refund it and reissue it at a lower interest rate. The second component is a different strategy, which will be refunding variable rate debt. Staff is going to take a portion of the variable rate debt and refund it as fixed-rate debt to give some budget security, shorten and compress the variable rate portfolio.

Currently the MWRA's debt portfolio is made up primarily of fixed-rate debt; 76%, or \$4.4 billion, is long-term fixed debt. The Senior General Revenue Bonds, as well as Massachusetts Water Pollution Abatement Trust or the SRF debt is also fixed at \$1 billion. The variable rate component amounts to \$1.2 billion of the MWRA's debt and that has two components as well, which is straight-floating, traded daily or weekly, and then another component, which is made up of SWAPs, which are floating rate bonds. MWRA has a contract with a bank and pays the bank a fixed rate and they give the MWRA a floating rate.

MWRA has set a minimum threshold by which it will execute a refunding of 4%. If there is not 4% of present value savings, it is not generally a transaction that MWRA will pursue.

The proposed transaction that staff is planning to execute in the next two weeks is a refunding for savings of straight fixed-rate debt, as well as a restructuring of a portion of the principal on the 2002 Series C variable rate bonds to fixed-rate debt.

The first part of the transaction is the fixed-rate debt refunding. Staff has asked the Board for up to \$500 million worth of refunding authorization; right now the transaction is sized at \$317 million worth of bonds. The reason staff asks for that additional capacity is that the market is always changing so if the market shifts and interest rates drop even lower, there might be an opportunity to refund even more debt to produce additional savings so staff asks for an "up to" limit so that it can take advantage of the market conditions.

On October 12, staff went to the Board and requested this authorization and showed to the Board at that moment a present value savings of \$14.9 million or 4.7%, which is above the 4% threshold. Market conditions have changed in the MWRA's favor and as of today, the present value savings is approximately \$18.5 million or 5.83%. Hopefully it will continue to change in the MWRA's favor. Just the way this shifted to the MWRA's favor, market conditions can go the other way as well.

In addition to this fixed-rate refunding, staff is planning to restructure and refund \$30 million of the MWRA's variable rate portfolio. This will come out of the 2002 C Series, which had a

bullet maturity in 2020, the peak of MWRA's debt service. A bullet maturity is a one-time, one-hit maturity where all \$70.6 million was coming due in that one fiscal year. This maturity was at the very peak of MWRA's debt service so the Authority looked at ways to tackle this to rein it in so it would not have a detrimental effect in the immediate term.

Besides being a bullet maturity, there were other things that made this series a prime candidate for refunding and restructuring. One reason is that on any of the variable rate series, MWRA has to have a liquidity backstop; this one happened to have a letter of credit. In other words, if the Authority couldn't make the debt service payment, there was someone behind it that would step in and pay the bondholders. MWRA pays a certain price for that security. Most of the Authority's contracts have a termination payment, so if the contract ended early, the bank would have to be paid as though it continued for the remainder of the contract. This particular series did not have that term in the contract. There is no swap associated with it so it is not complicated; there is purely floating variable rate debt. The plan is to take \$30 million that would be due in 2020 and restructure it and bring the maturity in to 2018. The way the debt service was structured, 2018 showed a negative rate increase in that year so bringing it in would help to smooth rate increases and be consistent.

This series was selected because it has a letter of credit without a termination payment. By taking it and moving it to 2018, staff is projecting that it will have a lower debt service payment, lower yield, on those bonds than it would if it were kept at variable. It will be locked in at an interest rate of 2.26% and will be paid off earlier.

The refunding of the fixed rate debt will provide \$27.3 million worth of savings and on the variable side the combination of adding another \$10 million; staff is anticipating a savings for the Authority over time of \$37 million.

In the rate projections, 2018 was showing a -2.37%; after moving the debt from 2020 to 2018, staff is now projecting a 2.85% increase, as well as having a favorable effect on other years. At the height of the MWRA's debt service in 2020, a 10% rate increase has been reined in to a more moderate 3.6%, and lowering 2019 as well. It is producing budgetary savings and begins to chip away at the peak of MWRA's debt service.

We anticipate closing this particular transaction in the first week of December.

D. COMMITTEE REPORTS

Executive Committee – Katherine Haynes Dunphy

❖ ACTION ITEM: AUTHORIZATION TO OPPOSE BALLOT INITIATIVE 11-10

[Authorization to Take Any and All Necessary Steps to Oppose Ballot Initiative 11-10 (A Petition for a Law Limiting the Amount by Which Water or Sewer Rates May Be Raised to an Amount Not Greater Than Two and One-Half Percent Annually)]

Mr. Favaloro said an Initiative Petition has been filed to cap water and sewer rate increases to 2.5% per year. Staff would like to be authorized to do as little or as much to provide the perspective of the communities with regard to the petition.

Ed Bretschneider asked if the proponent gets the nearly 69,000 certified signatures it needs, does the initiative automatically appear on the ballot. Mr. Favaloro said the next step would be to send the language to the legislature where the legislature can approve, oppose or do nothing on the matter. If the legislature approves it, it would go on the ballot. If opposed or nothing is done, the proponent then has an opportunity to collect an additional 11,000+ signatures and if the signatures are certified, it will then be on the 2012 ballot.

John Cosgrove asked what “necessary steps” staff would propose. Mr. Favaloro said staff would put the communities’ face on the discussion and provide updates and education to members of the Advisory Board to talk about the realities of the cap and what the impacts would be. In some cases, some communities will not be impacted because of certain features of the ballot initiative. One provision states that all existing debt is exempt so many communities would be in a position that their debt already exceeds the 2½ level; therefore, they would not be impacted by the initiative. It might not impact your rates but would impact the politics and perception.

At this point, the proponents have picked up their petitions. Currently we have not seen any action to acquire signatures in support of this petition.

John Cosgrove asked if staff has checked with the Office of Campaign and Political Finance as to what the Advisory Board’s obligations are. He read the law regarding this matter: a state, municipal or any other governmental unit may not give, pay, expend or contribute money or anything of value to a ballot question committee or promise to do so; nor may such a governmental unit make any expenditures or use public resources to promote or oppose a question that appears on a state ballot. Mr. Favaloro said the Advisory Board is a state agency and is not raising funds. Staff will get a clear position.

Mr. Cosgrove asked what the restrictions are on the use of public resources to support or oppose a ballot question. It was 30 years ago that the Massachusetts Supreme Judicial Court ruled in the case of Anderson versus the City of Boston that campaign finance laws prohibit cities, towns, or any other governmental unit from using their resources or facilities to influence the vote on a ballot question; however, certain policy making officials may, within limitations, act or speak in their official capacity on ballot questions. Honestly, there is not a lot you can do. Mr. Favaloro said the last sentence is key; staff can articulate and raise points.

Mr. Favaloro said he will certainly obtain further clarification from the Office of Campaign and Political Finance. In discussions with others, we were told we can advocate for a position but will get that further clarification from the Office of Campaign and Political Finance.

Chairman Dunphy said public officials can provide factual information and do that without providing an opinion. They can provide facts and the effects of what a vote yes or no might mean.

A motion was made UPON CLARIFICATION OF ACCEPTABLE LEVELS OF ACTION FROM THE OFFICE OF CAMPAIGN AND POLITICAL FINANCE, THE ADVISORY BOARD AUTHORIZES STAFF TO TAKE STEPS, WITHIN THE BOUNDS PROVIDED BY CAMPAIGN/FINANCE, TO OPPOSE BALLOT INITIATIVE 11-10 (A PETITION FOR A LAW LIMITING THE AMOUNT BY WHICH WATER OR SEWER RATES MAY BE RAISED TO AN AMOUNT NOT GREATER THAN TWO AND ONE-HALF PERCENT ANNUALLY) ON BEHALF OF THE COMMUNITIES. It was seconded and passed by unanimous vote.

❖ LEGISLATIVE UPDATE

The Commonwealth has formed a Water Infrastructure Finance Commission (WIFC) that has been working to try to come up with dedicated funding sources for water and sewer infrastructure projects.

The Commission is made up of many different organizations (the Cape Cod Commission, the Contractors' Association, engineering groups and many others) have come up with a preferred recommendation on how to raise some necessary revenue. The Commission proposal would raise water rates and would take those funds into a dedicated fund to be administered by the Commonwealth and returned to the communities based on certain criteria. Communities would perhaps be more receptive to raising the rates as long as those funds remained within their own community for repairs.

News reports were written on this report and then the 2½% cap was brought into the discussion in news reports.

Operations Committee – Jay Fink

❖ **PRESENTATION: CHANGE IN PRIMARY METHOD FOR ROUTINE ANALYSIS OF DRINKING WATER BACTERIA SAMPLES** – Richard Trubiano, Deputy Chief Operating Officer and Michael Delaney, Director of Laboratory Services

MWRA Deputy Chief Operating Officer Richard Trubiano said the Authority is pursuing changing the method it uses for drinking water bacterial analysis to Colilert, which is a more rapid test. This issue has been reviewed with senior staff, the MWRA Board of Directors, the Department of Environmental Protection and now staff is coming to the communities to tell you that MWRA will be changing its bacterial analysis method.

Director of Laboratory Services Michael Delaney said this is an important change. The biggest bacterial risk in drinking water is *E. Coli*, which is a public health risk. Staff wants to get results confidently and as fast as possible. Total coliforms are also important and currently if a town gets more than 5% of total coliform positive samples in a month it is a violation of the total coliform rule. A small community would only be allowed two positive samples in a month before they hit the 5% limit.

Currently staff tests all of its regular samples by the membrane filtration method and any repeat samples are done by the Colilert method. The membrane filtration takes 22 to 24 hours to incubate and then if there is any atypical growth, there is an additional required four hour confirmation procedure the same day for *E. Coli* and then the total coliform confirmation can take an additional 24 to 96 hours. The Colilert test takes 18 hours to give a confirmed total coliform and *E. Coli* result with no additional confirmation. The advantages of Colilert are that it gives reliable data fast and there is a smaller risk of lab contamination because there is less handling, less overtime is required, and fewer internal and community notifications are needed.

The trade off is that the Colilert supplies are a little more expensive but it requires less labor so overall there is no net budgetary impact of making this switch. Recently the Authority has gotten even more aggressive pricing from the manufacturer of Colilert.

The change will be implemented on January 1.

❖ **PREVIEWING SEWER SYSTEM EXPANSION REQUEST**

On the sewer side, there had been a quasi-request for a single connection in Hingham to tie into the MWRA through Weymouth. That request will likely be made in the next calendar year.

On the water side, there have been discussions with Ashland and North Reading about joining the system. Staff will be meeting with 495 belt communities next week as well.

One of the biggest obstacles continues to be the regulatory process. Staff worked with stakeholders to try to streamline the process and the MWRA continues to move forward with the process; however, Ashland said at the meeting that the regulatory process is unyielding. We have to find a way to chip away at that component of the process.

❖ **STATUS: LOCAL PIPELINE ASSISTANCE PROGRAM**

Mr. Favalaro said an Operations Committee meeting will be scheduled for November to talk about the Local Pipeline Assistance Program (LPAP). Carl Leone has put together an analysis on what communities have used and what they have remaining and what, in reality, they will be using between now and when that funding will be under a sunset provision.

Finance Committee – Bernard Cooper

❖ **UPDATE: CIP/CEB BUDGETS**

Matthew Romero stated that for the first quarter on the CIP, the Authority is \$2.2 million or 6.8% over budget, primarily due to overspending in waterworks, with \$3.1 million in spending mostly related to the Hultman rehabilitation, which had accelerated progress. Waterworks overspending was also offset by watershed land purchases, which have not yet been made but will be made in the future. It is a timing issue.

Business and Operations Support is over by \$991,000 because the Charlestown wind turbine is being completed this year; it was budgeted to be completed at the end of FY11. It is important to note that while it appears to be hitting the budget, it is actually funded with stimulus funds.

Wastewater has underspending of \$1.8 million, largely due to savings from a renegotiation of the North Dorchester Bay temporary easement, some project delays in both CSO program and the treatment program as well.

In the CEB, the Authority is currently 3% or \$4.4 million under budget after the first quarter, with \$3.2 million of that due to lower than budgeted variable rate debt service. Market conditions continue to remain low for variable rate interest rates. The finance group has

already said they are looking at the potential use for those surplus funds to benefit the troubled years that we have in the near future.

The largest other drivers are workers' compensation, which is a very difficult line item to predict, which is basically fewer payments and less reserve requirements and wages and salaries continues to remain below the head count on the Authority side.

Fall briefings have begun.

E. ADJOURNMENT

A MOTION WAS MADE TO ADJOURN THE MEETING AT 12:56 P.M. It was seconded and passed by unanimous vote.

Respectfully submitted,

Lou Taverna, Secretary