



# Executive Committee Meeting

Friday, September 12, 2014  
8:30 AM

Advisory Board Conference Room  
100 1<sup>st</sup> Avenue, Building 39-4  
Boston, MA 02129

**Attendees**

John Sanchez	Burlington	Andy Pappastergion	MWRA Board	Joseph Favaloro	Staff
Tim MacDonald	Cambridge	Lou Taverna	Newton	Matthew Romero	Staff
Rob King	Framingham	Bernie Cooper	Norwood	Cornelia Potter	Staff
William Hadley	Lexington	Michael Coffey	Quincy	Travis Ahern	Staff
Katherine Dunphy	Milton	Nick Rystrom	Revere	Mary Ann McClellan	Staff
John Carroll	MWRA Board	John DeAmicis	Stoneham		

**MINUTES APPROVED AT THE NOVEMBER 14, 2014 MEETING**

**I. Approval of the June 13, 2014 Minutes of the Executive Committee**

Chairman Katherine Haynes Dunphy called the meeting to order at 8:51 a.m. A Motion was made **TO APPROVE THE JUNE 13, 2014 MINUTES OF THE EXECUTIVE COMMITTEE**. It was seconded and passed by unanimous vote.

**II. Action Item: Nomination of the FY15 Executive Committee**

The following slate was presented to the Executive Committee, acting as the Nominating Committee, for its consideration for the FY15 Executive Committee:

- Chair: Katherine Haynes Dunphy, Milton
- Vice Chair of Finance: Bernie Cooper, Norwood
- Vice Chair of Operations: Lou Taverna, Newton
- Secretary: William P. Hadley, Lexington
- Treasurer: John P. Sullivan, Boston
- At-Large: Carol Antonelli, Wakefield  
Michael Coffey, Quincy  
John DeAmicis, Stoneham  
Andrew DeSantis, Chelsea  
Robert King, Framingham  
Timothy MacDonald, Cambridge  
Brendan O’Regan, Saugus  
Michael Rademacher, Arlington  
Nick Rystrom, Revere  
John Sanchez, Burlington  
Walter Woods, Wellesley  
(1) Vacant

Hearing no nominations from the floor, a motion was made **TO SUBMIT THE LIST OF NOMINEES TO SERVE AS THE FY15 EXECUTIVE COMMITTEE TO THE FULL MWRA ADVISORY BOARD**. It was seconded and passed by unanimous vote.

### **III. Action Item: Discussion on Advisory Board Financial Participation in the Charles River Pollution Control District NPDES Appeal**

MWRA Advisory Board Executive Director Joseph Favaloro stated that he had the opportunity to speak with some Executive Committee members at the August field trip in regard to the appeal process for the Charles River Pollution Control District's (CRPCD's) National Pollutant Discharge Elimination System (NPDES) Permit.

Mr. Favaloro requested that the Advisory Board participate in a financial way to help the CRPCD communities that have received a draft NPDES permit containing co-permittee language. Staff has discussed legal action that the MWRA Advisory Board might take in the event that co-permittee language is included in the Authority's draft NPDES permits.

On August 27<sup>th</sup>, the firm of Bowditch & Dewey filed an appeal on behalf of the Upper Blackstone Water Pollution Abatement District and CRPCD's communities in regard to the co-permittee language in their NPDES permit. The U.S. Environmental Protection Agency (EPA) has 30 days to take action or ask for an extension. It must be filed with the Massachusetts Department of Environmental Protection (DEP) as well.

John DeAmicis asked what DEP's role is in this process. Do they side with EPA or the communities? Mr. Favaloro stated that DEP sometimes sides with EPA; however, on numerous occasions, DEP has broken away from EPA and sided with the communities as it relates to components of the NPDES permits and other documents. Lou Taverna noted that the NPDES permit is a joint EPA/DEP document. Mr. Favaloro noted that the Advisory Board has advocated for primacy for DEP. If there were primacy, DEP would be in the lead role.

Mike Coffey asked staff to summarize the key issues from the Executive Committee's perspective. Mr. Favaloro stated first and foremost, it is using the Charles River permit on the four communities to enforce stormwater issues against those communities. Should co-permittee language be included in the MWRA's NPDES permit, EPA would ultimately be using the MWRA to potentially become the enforcer. Instead of requiring Quincy to do "X" and Stoneham to do "Y", they could simply pick up the phone and call Fred Laskey to have him contact the communities to take care of the issues. It changes the relationship between the MWRA and the communities and lets EPA off the hook from doing their job.

No one is arguing that EPA shouldn't have a role in stormwater and other issues facing communities, but if they want that role, they should take it directly and not let someone else do it for them.

Additionally, DEP has just gone through a whole process to make regulatory changes as relates to stormwater; will EPA have a set of rules and DEP have a second set of rules?

The primary element is the co-permittee issue. The Upper Blackstone District took on EPA when its permit was issued many years ago. Through adjudications, EPA pushed off the co-permittee issue and spent a couple of years putting hundreds of pages of legalese together defending its position on co-permittees and inserted this language into permits moving forward. EPA is issuing permits to smaller communities to set a precedent. These are communities that would not have the resources to appeal.

This is where the Upper Blackstone comes in. Seven entities have contributed or have pledged to contribute funds for this appeal. They include the four communities that make up the Charles River Pollution Control

District, the Upper Blackstone, South Essex Sewer District and the MWRA Advisory Board. The commitments range from \$5,000 to \$20,000 and have covered the first portion of \$80,000. The MWRA is sympathetic; however, it would need Board action, which may be taken up in the fall.

The Advisory Board would be an unmentioned third party as part of the process. All the Advisory Board would be doing is to help provide resources so the Upper Blackstone and the Charles River communities can move forward with their appeal. For the \$5,000 commitment, the Advisory Board would be part of all communication that comes forward and would see all the documentation as it is created and discussed and would be kept apprised of what is going on as relates to this case.

What is our dividend? If, in fact, the appeal is successful in eliminating or changing the co-permittee language, the MWRA would become a significant benefactor. It helps to avoid a battle that would be taking place when the Clinton or Deer Island permits come forward with co-permittee language.

A second dividend is that we can learn from this experience. If we decide to move forward, we can determine what they did right or what we would change. We will be in a better position when those permits come forward.

Mr. Taverna asked if the Advisory Board would be called to testify. Mr. Favaloro stated that the Advisory Board is a silent party. We will be kept informed of everything that goes on related to this case but there is no “legal connect-the-dots” in the process.

Chairman Dunphy asked if the co-permittee issue is just in the northeast region. Mr. Favaloro said stormwater issues are paramount with EPA (especially in Region 1), noting that he believed these issues will travel from east to west. Because of a lack of staffing at EPA, it seems they have gone from a regulator to a litigator. They are just looking for someone else to do their work. This is not part of the MWRA’s statutory obligation.

Mr. DeAmicis asked if this has the potential to become a huge issue. Mr. Favaloro responded in the affirmative. Mr. Taverna said that is why we are trying to fight it now.

Mr. Coffey said it could end up that the MWRA gets fined for something that Quincy doesn’t do. Mr. Favaloro added that it could force the MWRA to make Quincy do something. Mr. Coffey asked if the MWRA and the Advisory Board would fight this even if this appeal fails. Mr. Favaloro said it would give us a perspective on where to fight. Mr. Coffey said you could learn from their loss.

Mr. Favaloro said one perspective is that if co-permittees show up in four or five permits between now and when they issue the permits for Clinton and Deer Island, they will be able to say this is established common practice. Right now, we are trying to put out an “ember” as opposed to trying to put out a whole “forest fire.” If this can be blocked at this level, the MWRA would be a huge benefactor. It also creates incredible good will. These same entities will be there for us when these issues become paramount to us as well.

Mr. Favaloro said the regulations are coming but it is the level of control that we are trying to fight. Mr. Taverna said the communities want to control their own means and methods and do not want to be dictated to by the MWRA. More stringent regulations on communities are coming; but this is about who will be in charge of your destiny. Is it going to be the community or EPA, using the MWRA to tell you what to do?

Chairman Dunphy said the MWRA would be an enforcer instead of a partner. That is not a good relationship.

Mr. Favaloro said his personal opinion is that this is a good investment on many different levels.

Mr. DeAmicis asked why the MWRA isn't more aggressive. Mr. Favaloro stated that MWRA staff was very involved in the first round of conference calls and are very aware. MWRA staff, from the attorneys to the operations staff, are very interested in this process. The Authority has been active and clear in its concerns as relates to the co-permittee issue.

Also of note, one of the partners of Bowditch & Dewey is Ned Bartlett, who is the husband of the Chair of the MWRA Board of Directors, Maeve Valley Bartlett.

Mr. Cooper asked what the difference is in the Charles River Pollution Control District and the Upper Blackstone. Mr. Favaloro said the Upper Blackstone commented on the Charles River's permit and are going to be on the appeal. If you commented on the draft permit, it makes you eligible to officially appeal.

Mr. Cooper asked how big the Charles River Pollution Control District is. Mr. Favaloro said it is the four communities of Bellingham, Franklin, Medway and Millis. The Upper Blackstone has been in the forefront in trying to fight conditions in the NPDES permits. They did comment on the Charles River NPDES permit, which gives them legal standing to appeal.

The Advisory Board commented on the Clinton NPDES permit to keep its right to appeal.

A motion was made **TO PLEDGE \$5,000 FOR LEGAL FEES RELATED TO THE CO-PERMITTEE APPEAL OF THE CHARLES RIVER POLLUTION CONTROL DISTRICT.** It was seconded and passed by unanimous vote.

The Executive Committee stipulated that these funds would come from the Advisory Board's "Legal Fund."

#### **IV. Advisory Board FY15 Updates and Priorities**

Mr. Favaloro noted that MWRA Executive Director Fred Laskey will be at the full Advisory Board meeting next week to update members on the MWRA's priorities for FY15. The Advisory Board updates its priorities at the September meeting as well. DEP Commissioner David Cash is expected to be at this meeting and he can give the state's perspective on various topics.

In the Advisory Board's FY15 budget comments, staff had the "four no more" tag line. Rates will always be priority number one. This was the sixth consecutive year that rate increases have been under 4%, coming in at 3.43% for FY15. Staff continues to put a "bull's-eye" on FY17, which was the other critical point. In FY13, the projected increase for FY17 was 8.9%; in the MWRA's FY15 published budget document, FY17 is down to just above 5%. When staff is reviewing the FY16 budget, the projected wholesale rate increase will be in the fours, if not under four for FY17.

Fiscal Year 2017 is critical for a lot of reasons; clearly for all of the community assessments but also to try to attract water customers. No one wants to pay increased rates but by showing that range, it is clear that the goal is to keep rates from spiking, and staying clear to the message of “sustainable and predictable” rates.

In 2008, recommendation 28 talked about the MWRA developing a policy statement on the utilization of surplus funds at the end of any given year. Staff gave significant weight to paying down the debt. To show that Advisory Board staff does engage the MWRA staff, and the fact that they do listen, from there came the policy of paying down debt and how to use surpluses that are accrued to the debt line item because of interest rate variations through the course of the year and timing of SRF loans; to date, the MWRA has been able to pay down an additional \$286 million in debt payments, which means rate increases are not going to be as high as they were once predicted. The Authority has finally turned the corner in that they are now paying more in principal payments than in interest.

Molybdenum is another item that the Advisory Board is focusing on to have the Authority come up with an approach to either work with DEP to lower its approved level as opposed to the EPA level. Staff will push the Authority to do something so that the MWRA’s pellets can be used 12 months of the year for beneficial re-use in Massachusetts. It wouldn’t take much of an increase of in DEP’s level of 25 milligrams per kilogram (mg/kg) and staying lower than EPA’s 75 mg/kg. The Authority has hit the number 9 out of 12 months, but for the three months it goes over it is in the 30 mg/kg range. Common sense would say that if the rest of the country is at 75, lifting it to 35 in Massachusetts would be acceptable. It would allow the MWRA to have beneficial re-use of the pellets every day of every month, all year round. Staff will push the MWRA to come up with a policy to enforce the molybdenum levels if DEP’s number can’t be raised. It might be a good question to ask David Cash, why is DEP’s level at 25 mg/kg when EPA’s is at 75 mg/kg.

There are three things that were laid out in our budget comments this year that can be classified as “get your hands out of our pockets.” One is the hatchery pipeline project to help the stressed fish. Another is co-digestion. Why should the Authority be taking a financial hit if this is a state-wide green initiative? It should be the state that is on the hook for these funds, not the MWRA ratepayers. The original number was going to be in the hundreds of thousands of dollars; however, because of transportation issues with truck traffic in Winthrop, barging and piping, the number is now at \$2.5 million.

Mr. Coffey asked if the MWRA has incurred the \$2.5 million. Mr. Favaloro said no; Mr. Laskey has engaged Mr. Cash on co-digestion so hopefully that will change. Regardless, come October 1, the new regulations will be in place that food waste has to be separated from solid waste. It will impact larger restaurants and institutions, colleges and hospitals, so there has to be something in play.

The cross harbor cable is another item that is not the MWRA’s responsibility. The Commonwealth of Massachusetts has decided to dredge up the harbor to allow for bigger cruise ships and tankers to enter the harbor. It wants Boston to become a highly sought after port. The cross harbor cable is in the way. The bottom line is that the MWRA has already paid for this cable once, it will not pay for it twice. The Harbor Electric Energy Company (HEEC) did very nicely with MWRA’s principal and interest payments on that cable, why should the MWRA do it again? If it is “your” initiative, “your” idea and “you” benefit from it, the MWRA is not paying for it. “Get your hands out of my pocket” will always be relevant.

For system expansion, Mr. Favaloro said he hoped that one day he would be able to sit at the table and say that staff has actually accomplished something. He said that he and Mr. Laskey had been before Tri-Town (Braintree, Holbrook and Randolph) about 14 times. This past week we were before Southfield. When we went there in July, Mr. Favaloro said he felt they had turned the corner on the Tri-Town negotiations. If it fails, it won't be from a lack of effort. MWRA is actively engaged in efforts to have Ashland join the MWRA system.

Mr. Favaloro noted that in the last five years, the MWRA has spilled about 92 billion gallons of water over the dam. The average for the cost of this water is a little over a quarter of a billion dollars. There is real money here; we don't have to spill it if we are able to sell it.

System expansion discussions are ongoing. Mr. Laskey has done an immense amount of work in trying to accomplish this. For every step forward, it seems there are six steps back.

Bernie Cooper said that he read something about the Tri-Town communities receiving funding. Mr. Favaloro said in the environmental bond bill, Senator Joyce took the language in the infrastructure bill that related to the entrance fee and included the language that would provide a 50/50 match to help build their water treatment plant.

The only thing an environmental bond bill does is authorize a potential appropriation for a bond. A bond bill's life is four years and about 50% of the bond authorization never occurs. Administration & Finance has the final say in what gets appropriated versus what stays at the authorization level. The opportunity exists for them to get 50% but it may not happen soon. There won't be a new environmental bond bill in the next two months and then a new administration will be coming in. They will bring on a new Secretary of Administration & Finance and their first efforts will not likely be an environmental bond bill. It could be years away from being appropriated.

Mr. Cooper added that he would not under-estimate Senator Joyce. Mr. Favaloro said nor would he. Mr. Cooper said he is a remarkably effective senator for his district. Mr. Favaloro simply noted that Tri-Town is more "under the gun" and in some ways the "potential" of having this funding deters them from moving forward.

Mr. Favaloro said the Advisory Board has had some successes this year in its legislative priorities. We were able to increase Debt Service Assistance (DSA) by 10%; the Infrastructure bill, which people still call the MWRA bill, passed. It provides for 50% of the cost of entrance fees, which has to be appropriated. Staff was able to get the criteria in that allows for pipe construction to be principal forgiveness through the State Revolving Fund (SRF) for MWRA connection costs; it allows the MWRA to be reimbursed up to \$13 million per year for the I/I Program, which was another reason we pushed for the expansion of I/I funding because there is a potential pot of money now.

Mr. Cooper asked if these are operating monies or are these capital that will be stuck in the environmental bond bill. Mr. Favaloro said the one piece that is through the infrastructure bill through the SRF is the connection costs and principal forgiveness. That does not have to go through a subsequent appropriation. The entrance fee and the I/I both have to be appropriated. That is part of the reason we were pushing so hard to have Southfield and Tri-Town be the first system wanting to go through that process because of who the

players are. Chairman Dunphy noted that Senator Joyce is Chairman of the Bond Committee. Mr. Favaloro said if the first one is Tri-Town and it is approved, it would be hard to say “no” to North Reading or Ashland.

The real message here is that we had a successful year in at least putting in the foundation of an infrastructure bill. The priority for FY15 is to get beyond the foundation and to secure it and start building up.

Mr. Coffey asked if there would be any benefit to having a third party, like the Collins Center at UMass that did the Economic Development study, do a study on the economic benefits to the state of a much larger MWRA. From a state perspective, wouldn't it make sense to have one large water provider? You wouldn't need multiple water treatment plants. We could throw it out there for small money to have the Collins Center do a small study. Mr. Favaloro said we can “kick it around.”

It is also the end of the two-year legislative session. The Advisory Board has to file a new legislative package moving forward. Staff will bring that forward in November for the Committee's review, and, hopefully, support.

One item on the list will be the expanded Bottle Bill, with the MWRA receiving the receipts. It may be a joint Cape/MWRA use of the bottle bill. Mr. Favaloro said he is relatively confident that the Bottle Bill expansion will pass. It is supported by the Senate and Administration. Mr. DeAmicis said these monies go to the General Fund, correct? Mr. Favaloro said yes. This could help to get the infrastructure bill funded for the MWRA and communities. There will be a much smaller legislative package this year, but they are critical pieces.

Mr. DeAmicis said at one point you raised Payments in Lieu of Taxes (PILOT) as an issue. Is there any update on that or is it a lost cause? Mr. Favaloro said the Advisory Board has had issues specifically with double PILOT. Staff has been pushing for more than a decade and it hasn't gained any leverage at all. The legislature isn't likely to take money away from these communities. This is an example that the MWRA is willing to pay its share, but it should not be paying it twice.

Advocacy for our communities continues to be high on the Advisory Board's priority list. Staff worked hard to get the I/I Program expanded. This is a program that the communities wanted and is being utilized.

## **V. Retail Rates Workshop**

At previous Executive Committee meetings, there was discussion about having fewer meetings during the year and filling in those months with other activities. This year, staff is planning a retail rates workshop. Chris Woodcock of Woodcock & Associates will talk about the rates piece of it, the ascending block rates, and some of the enterprise fund discussion. Keith Readling of Raftelis Financial Consultants, Inc., who is a national authority on stormwater fees, will talk to communities about stormwater fees. MAPC will talk about its “stormwater toolbox” that they make available to the communities.

Additionally, there will be panelists from communities that have stormwater fees to let them talk about the “hiccups,” problems and accomplishments. The workshop will take the place of the October 16 Advisory Board meeting and will be in Wellesley. In addition to the designees, staff is hoping that members will push for their finance people to attend as well, since they are part of the implementation process.

Mr. DeAmicis asked if official invitations would be going out. Mr. Favaloro said yes, after the next Advisory Board meeting. Mr. DeAmicis asked who will be invited. Mr. Favaloro said the plan is to get it out to Mayors, Boards of Selectmen, designees and as many identifiable CFOs, Treasurers, Business Managers, etc. as possible.

The green sheet videos have taken on a life of their own. Staff has broken them up into the “shortshelf-life” items, such as quarterly updates with changing numbers from quarter to quarter, and the “historical, policies, practices and procedural” videos that have an educational value and a longer “shelf-life,” such as the history of entrance fees and wholesale water and wastewater rate methodologies.

Additionally, if we can financially make it work, staff is going to have the workshop video-taped and edited down to get the important pieces and then make that available for communities and it will be posted to the Advisory Board website so that it is not just a one-time tool.

Bill Hadley noted that he would prefer to see presentations that will be made before the full Advisory Board at the Executive Committee meeting the week prior. He also asked if MWRA presentations could be made available prior to the Advisory Board meeting as well. Mr. Favaloro said he would ask the Authority. Mr. DeAmicis agreed that seeing a presentation helps him to learn more about a topic.

Mr. Favaloro said staff is working on the website to provide as much information as possible to be educational and useful.

**VI. Approval of the Advisory Board Agenda for September 18, 2014**

A motion was made **TO APPROVE THE ADVISORY BOARD AGENDA FOR THE SEPTEMBER 18, 2014 MEETING.** It was seconded and passed by unanimous vote.

**VII. Adjournment**

A motion was made **TO ADJOURN THE MEETING AT 10:02 A.M.** It was seconded and passed by unanimous vote.

Respectfully submitted,



William Hadley, Secretary