

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT  
JANUARY 16, 2008**

**1. Call to Order and Roll Call:**

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration Building at 2:00 PM, Wednesday, January 16, 2008. Chairman Aceto presided with the following members present: Bisette, Bryson, Creighton, Gantt, Haner, Kelly, Metcalf, Sobol, VeHaun. Ms. Bellamy and Mr. Newman were absent.

Other present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Leah Karpen with the League of Women Voters, Joseph Martin with Woodfin Sanitary Water & Sewer District, Doyle Freeman with Cane Creek Water & Sewer District, Marcus Jones with Henderson County, Robert Hobson with Banc of America, Stan Boyd, Martha Zeigler, Ed Bradford, Ken Stines, Barry Cook, John Kiviniemi, Peter Weed, Jim Hemphill, Angel Banks, Julie Willingham and Sondra Honeycutt with MSD.

**2. Inquiry as to Conflict of Interest:**

Mr. Aceto asked if there were any conflicts of interest with the agenda items. No conflicts were reported.

**3. Approval of Minutes of the December 19, 2007 Board Meeting:**

Mr. Aceto asked if there were any objections to approving the Minutes of the December 19, 2007 meeting as presented. With no objections, the Minutes were approved by acclamation.

**4. Discussion and Adjustment of Agenda:**

Mr. Aceto suggested that the presentation by Robert Hobson be given prior to the Report of the General Manager.

**5. Informal Discussion and Public Comment:**

Mr. Aceto welcomed Ms. Karpen, Mr. Martin, Mr. Freeman, Mr. Jones and Mr. Hobson. Mr. Aceto welcomed Mr. Metcalf to the Board representing Weaverville, replacing Don Venable. Mr. Sobol presented Mr. Metcalf with an official manhole puller, presented to all new Members of the Board.

Mr. Hartye introduced Mr. Robert Hobson with Banc of America for an update on MSD's variable rate revenue bonds. Mr. Hobson reported that on November 10, 2004, MSD issued \$24,000,000 in variable rate bonds to fund new construction projects for MSD. He stated that the average variable rate paid to bondholders from 11/10/04 through 12/31/07 was 3.11% and since inception through 12/31/07 the effective interest rate on variable rate bonds was 3.41%, including all costs associated with the bonds on an on-going basis. He further stated that the cumulative savings of issuing variable rate bonds instead of fixed rate bonds is \$516,464.00. He pointed out some of the reasons for issuing variable rate bonds.

Mr. Hobson reported that on January 6, 2005, MSD issued \$33,915,000 of variable rate refunding bonds and entered into a fixed rate swap with Bank of America, N.A. ("BANA") whereby MSD pays BANA a fixed rate of 3.4175% and in return, MSD receives from BANA a floating rate of 1-Month LIBOR plus 35 bps. He stated that assuming the variable interest rate received by MSD under the swap equals the variable interest rate on the bonds over the life of the transaction, MSD will achieve a present value savings of \$2,502,035, or 8.03% of refunded par, by refunding certain portions of its Series 1999 and 2001 bonds. He further stated that typically you want to see at least a 3% savings on a refunding and the Local Government Commission likes to see 5%, so

the 8.03% savings exceeds expectations. He reported that from 1/6/05 through 12/31/07, MSD experienced an average of 16 basis points of negative basis. He explained that applying the 16 basis points of negative basis to the fixed swap rate of 3.4175% creates an adjusted interest rate of 3.5775%. Assuming this adjusted rate over the life of the transaction, MSD's projected savings would be \$1,743,522 on a present value basis, or 5.60% of refunded par. Mr. Clarke asked what effect if any would the downward trend on interests rates have on the variable rate refunding with synthetic fixed. Mr. Hobson stated that interest rate fluctuations do not matter as much as how well the two variable rates correlate.

Mr. Hobson presented a graph showing a history of variable rates versus fixed rates from 1985 through January 4, 2008. He stated that the current variable rate on MSD bonds is below 3%.

Mr. Hobson presented a pie chart showing MSD's aggregate debt composition. He stated that this is something they keep up with as well as the Local Government Commission and the rating agencies; where MSD has two very good ratings, the higher of which is "AA" from Standard and Poor's. He explained that the largest percentage of the pie chart is the blue showing traditional fixed rate bonds at 44%, the red is the variable rate bonds at 23% and the yellow is the synthetic fixed variable rate bonds at 33%. He said there are a couple of rules of thought that apply in that the blue pie should always be the greatest part with the red at 25-30% and the yellow at 35-40%. He stated that the current mix is very good and serves MSD well.

Mr. Hobson presented a bar chart showing MSD's revenue bond debt. He stated that the bonds prior to 2004 are the traditional fixed rate. Payments for debt service from 2008 through 2016 is level at \$8 million and starts to drop off to just under \$7 million in 2017, \$6 million in 2018, \$5 million in 2024 and under \$1 million in 2031. These levels of debt service will increase when future debt is issued.

Mr. Hobson presented an overview of the current outlook of the "AAA" bond insurers with the rating agencies (Moody's, Standard & Poor's and Fitch). He reported that because of MSD's "AA" rating with Standard & Poor's and "A-1" rating with Moody's, it was advantageous for MSD to have gone out into the bond insurance market for both the 2004 variable rate bonds and 2005 variable rate refunding bonds. He explained that there are insurance companies that insure bonds, where a company pays a premium and in return the insurer would lend the company its "AAA" rating, which would make the variable rate lower. He stated that at the time MSD went out for its bonds, it solicited proposals from several bond insurance companies, all of which had "AAA" ratings, but some of these companies are now being looked at by the rating agencies to make sure they should still have the same rating, including MSD's bond insurer XLCA who is under review for downgrade by Moody's, has a negative outlook by S&P, and has a negative rating watch by Fitch. He reported that in the next 30-45 days, the bond insurers who have a negative outlook will attempt to raise more capital, or the rating agencies plan to take action. Mr. Hobson stated that if MSD's bond insurer is downgraded to "AA" or "A" MSD could go out and get a stable bond insurer to "wrap" the current bond insurance; get a letter of credit from a bank, or re-issue the variable rate bonds at a fixed rate. He further stated that they are watching this daily and hope that everything will work out with XLCA. If not, they will come back to MSD with detailed alternatives.

Mr. Aceto asked how much lead time the Board needs if any action is necessary. Mr. Hobson stated that if MSD decides to go with another bond insurer, or a letter of credit it will have to go to the Local Government Commission, which will take approximately 60 days. If it decides to re-issue the bonds to a fixed rate it will take approximately 90 days. Mr. Aceto asked if there is anything the Board can do that will

put MSD in a better position. Mr. Hobson stated that other than monitoring the situation, there is nothing the Board needs to do at this point. Mr. Aceto said he was thinking more in terms of what MSD is doing financially; budget, rates disbursements, contracts, etc. Mr. Hobson stated that he does not think this situation would have a huge effect on the budget. Ms. Zeigler stated that the District would have enough money in the budget if something came up. She further stated that since she and Mr. Hobson first talked, the interest rates have come down appreciably, so there is not the same sense of urgency as there was initially. Mr. Sobol asked if there is a way out should the worst case scenario occur. Mr. Hobson said yes.

**6. Report of the General Manager:**

Mr. Hartye reported that The Event Center of Asheville called to praise Herman Shelton on the splendid job he did on Sunday 12/16/07 and that she will be following up with a thank you note. In addition, an e-mail was received from Ms. Sarah Hedgepath of 8 Governor's Court expressing her thanks and appreciation to the following staff for the work done in her neighborhood and for their patience in answering questions: Jason Capizzi, Lee Plemmons, Mike Rice, Furman Dean, Julio Miquel, Jason Norton, Wayne Rice, Shaun Buckner, Alan Knighten, Bobby Arrowood, McKinley Hensley, Lloyd Anders, Clement Crowe and Ray Lunsford.

Mr. Hartye presented a news release from the Chamber regarding the Annual Homecoming Job Fair held December 27<sup>th</sup> at the Biltmore Square Mall. He also presented Standard & Poor's annual update and affirmation of MSD's "AA" bond rating.

Mr. Hartye reported that under "New Business" are the minutes of the last Board Retreat along with the plan for Goals & Objections he developed to talk from. He stated that Chairman Aceto will discuss the possibility of having another retreat to discuss some new Goals and Objectives for the Board.

Mr. Hartye reported that the Right of Way Committee meeting scheduled for January 23<sup>rd</sup> has been cancelled. The next Regular Board Meeting will be held February 20<sup>th</sup> at 2PM.

**7. Consolidated Motion Agenda:**

**a. Consideration of 2008 Annual Meeting Dates:**

Presented as information only.

**b. Consideration of 2008-2009 Budget Calendar:**

Presented as information only.

**c. Consideration of Bids for Shelburn Road Wet Weather Interceptor Rehabilitation:**

Mr. Hartye reported that this project is for the replacement of an aged clay interceptor line along Shelburne and Davenport Roads in West Asheville and is comprised of 3,617 LF of 8-inch through 16-inch DIP. He stated that the following bids were received and opened on December 20, 2007: BC&D Associates, Inc. with a total bid of \$1,059,955.00; Paul Howard Construction Co., Inc. with a total bid of \$929,244.00; Wolfpen Associates, LLC with a total bid of \$833,661.00; Carolina Specialties, Inc. with a total bid of \$813,592.54; Bryant's Land & Development, Inc. with a total bid of \$699,791.71; Mendon Pipeline, Inc. with a total bid of \$594,295.00; Hobson Construction Co., Inc. with a total bid of \$541,135.00; Terry

Brothers Construction Co., Inc. with a total bid of 521,824.00 and T&K Utilities, Inc. with a total bid of \$506,823.00. Mr. Hartye further reported that staff recommends award of this contract to T&K Utilities, Inc. in the amount of \$506,823.00, subject to review and approval by District Counsel.

**d. Consideration of Adoption of Internal Control Policy:**

Mr. Hartye called on Ms. Zeigler for a report on MSD's Internal Control Policy. Ms. Zeigler reported that at the last Board meeting, Mr. Fields with Cherry Bekaert & Holland discussed policies and procedures that will come into play during the next audit, one of which is MSD's Internal Control Policy. She stated that the auditors will be looking to make sure MSD has ways set up to identify and address major performance and management challenges in areas at greatest risk, i.e., fraud, waste, abuse and mismanagement. She further stated that the policy is a way to document the fact that the Board is aware of these policies, that managements is aware of what is going on and that the Board has set the tone with its Ethics Policy and expects staff to implement reasonable procedures, which the auditors will check. Mr. Aceto asked how the policy will affect the Board's fiduciary obligation. Mr. Clarke stated that the Board has a fiduciary obligation to people living in the District and to the ratepayers to safeguard its funds, to adopt policies and procedures and to hire a General Manager and other competent staff to make sure things are done. He further stated that Ms. Zeigler has done a very good job and has been responsive to the outside auditors.

**e. Consideration of Appointment of Deputy Finance Officer:**

Mr. Hartye reported that staff recommends that Scott Powell, Accounting Manager, be designated Deputy Finance Officer for the purpose of performing the pre-audit certification in the absence of the Director of Finance.

**f. Cash Commitment/Investment Report – Month Ended November 30, 2007:**

Presented as information only.

Mr. VeHaun moved that the Board approve the Consolidated Motion Agenda as presented. Mr. Creighton seconded the motion. Mr. Aceto called for discussion. With no discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

**8. Update on MSD Variable Revenue Bonds:**

Update given prior to the Report of the General Manager.

**9. Old Business:**

None

**10. New Business:**

Mr. Aceto noted the Minutes of the 2007 Board Retreat and Planning Issues for 2007-2008. He asked the Board to consider a date and location for an upcoming Retreat. Mr. Hartye suggested the Retreat be held March 19<sup>th</sup> prior to the regularly scheduled Board meeting and if the meeting runs over, it can continue following the Board meeting or at a second session prior to the April Board meeting. Following some discussion, the Board agreed that the Retreat be held March 19<sup>th</sup> at 11AM, prior to the Board meeting and that information for the Retreat will be sent out with the Board books. Mr. Hartye stated that if Board Members have any ideas for future Goals & Objectives, these can be included. Mr. Gantt suggested that staff survey all of the municipalities represented by

MSD and prepare a spreadsheet of what their policies are on steep slopes and ridge top development. He stated that he would like to see the Board discuss this issue to see how MSD fits into what the municipalities say they want, since this is one of the larger issues they will deal with.

Mr. VeHaun announced that at the last meeting of the Board of Aldermen, Ms. Bryson was unanimously appointed to fill a vacancy on the Board. Mr. Aceto congratulated Ms. Bryson on her appointment.

At 2:58 PM, Mr. Bissette moved that the Board go into closed session to discuss a personnel matter. Mr. Kelly seconded the motion. Voice vote in favor of the motion was unanimous.

At 3:15 PM, the Board went back into open session.

**11. Adjournment:**

With no further business, Mr. Aceto called for adjournment at 3:16PM.

---

Jackie W. Bryson, Secretary/Treasurer