

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT  
FEBRUARY 20, 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, February 20, 2008. Chairman Aceto presided with the following members present: Bissette, Bryson, Creighton, Gantt, Haner, Kelly, Metcalf, Russell, Sobol and VeHaun. Ms. Bellamy was absent.

Others present were: Thomas E. Hartye, General Manager, John Stevens, acting General Counsel, Gary McGill with McGill Associates, Robert Hobson with Banc of America, Marcus Jones with Henderson County, Dave Gildersleeve with WadeTrim, Leah Karpen with the League of Women Voters, Joseph Martin with Woodfin Sanitary Water and Sewer District, Stan Boyd, Ed Bradford, Peter Weed, Jim Hemphill, Angel Banks, Scott Powell, Ken Stines and Sondra Honeycutt, 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 January 16, 2008 Board Meeting:**

Mr. Aceto asked if there were any objections to approving the Minutes of the January 16, 2008 meeting as presented. With no objections, the Minutes were approved by acclamation.

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

None

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

Mr. Aceto welcomed Mr. Hobson, Mr. Gildersleeve, Mr. Jones, Mr. Martin, Ms. Karpen and Mr. Stevens. Mr. Sobol presented Mr. Russell with an official manhole puller, presented to all new Members of the Board. Mr. Russell, representing the City of Asheville, was appointed to fill the unexpired term of Mr. Newman.

**6. Report of General Manager:**

Mr. Hartye reported that since the last Board meeting, XL Capital, the insurer of MSD's 2004 and 2005 bonds was down graded by Fitch from "AAA" to "A" and from "Aaa" to "A3" by Moody's. He stated that a team was put together to evaluate scenarios developed by Robert Hobson concerning how MSD should go about extricating itself from XL Capital. The team felt that the best way to do this was to pursue an upgrade of MSD's ratings and to do a re-issuance or refunding. He further stated that during the last bond issue, staff made presentations to both Standard & Poor's and Moody's. MSD did get an upgrade from Standard & Poor's to "AA" but not Moody's. He explained that in order to be official with an "AA" rating, go public with it, and put it on the bonds, two ratings agencies must give that distinction. Therefore, a meeting with Fitch was immediately set up and a presentation was given on MSD's finances, operations, etc. As a result, Fitch came back with a flat "AA" rating, which means the 2004 and 2005 bond issues no longer need to be insured.

Mr. Hartye presented two resolutions authorizing the filing of an application with the North Carolina Local Government Commission (LGC) for approval of the issuance and private sale of MSD revenue refunding bonds, Series 2008A and 2008B. He stated that because the market is so erratic and XL Capital is falling out of favor, the team felt this is the quickest and easiest fix. He noted that the next bond issue is not expected to be

done until FY 2011.

Mr. Hobson reported that since the January Board meeting XL Capital has been downgraded by both Moody's and Fitch and yet to be downgraded by Standard & Poor's. As a result, the spread of 20 to 25 basis points presented at the January meeting has jumped to 200 or 300 basis points, so basically there is no market for bonds with XL bond insurance on them. Mr. Hobson stated that either XL has held the bonds or has sold the bonds back to Bank of America. He further stated that Bank of America has come up with options to fix the situation, but the best option was to achieve a second "AA" rating, which MSD was able to get from Fitch, and will meet with Moody's next week to try and get a third upgrade. Once MSD goes through the refunding to get rid of XL insurance, in approximately 5 to 6 weeks, Bank of America will be back to trading MSD bonds where they have been traded in the past. Mr. Kelly asked if XL has the right to sell the bonds to Bank of America. Mr. Hobson said yes; that Bank of America holds most of the bonds, if not all of them. Mr. Sobol asked if the \$23 and \$35 million bonds are the only MSD bonds insured by XL. Mr. Hobson said yes. The remaining bonds (approximately \$45 million) are fixed rate bonds from a previous issue.

Mr. Aceto called for a motion on the Resolution regarding the Series 2004 bonds. Mr. Kelly moved that the Board authorize the filing of an application with the LGC for approval of the issuance and private sale of Metropolitan Sewerage District of Buncombe County, North Carolina sewerage system revenue refunding bonds, Series 2008A in an aggregate principal amount not to exceed \$23,000,000 and related actions. Mr. Creighton seconded the motion. Mr. Aceto called for discussion. Mr. Sobol asked if MSD is going with the Base Case Scenario or the Letter of Credit. Mr. Hobson said neither. Mr. Sobol asked if the total percent of fees shown in the Base Case Scenario would be less than 2.45%. Mr. Hobson stated that the fees involved (liquidity fee, LC fee and Remarketing Fee) will basically stay in place and the total percent would go back to 2.25%. He stated that the purpose of refunding the bonds is to get rid of the bond insurance that is tainting the bonds and put them back on the market with an "AA" rating. With no further discussion, Mr. Aceto called for the question. Roll call vote was as follows: 11 Ayes; 0 Nays.

Mr. Aceto called for a motion on the Resolution regarding the Series 2005 bonds. Mr. Kelly moved that the Board authorize the filing of an application with the LGC for approval of the issuance and private sale of Metropolitan Sewerage District of Buncombe County, North Carolina sewerage system revenue refunding bonds, Series 2008B in an aggregate principal amount not to exceed \$35,000,000 and related actions. Mr. Bissette seconded the motion. Mr. Aceto called for discussion. Mr. Sobol asked about the MSD bonds that were not affected by bond insurance. Mr. Hobson explained how these bonds were rated, based on Tiers, prior to the downgrade of the bond insurer. Mr. Sobol asked if MSD can go with a fixed rate on the bonds. Mr. Hartye stated that if MSD wants to go to a fixed rate on the 2004 bonds, this could be done with an "AA" rating, but switching to a fixed rate on the 2005 refunding is much more complicated. Mr. Sobol said this is something that is worth discussing since inflation does not seem to be very tame and the Legislature only allows 25% of MSD bonds to be at a variable rate. Mr. Hobson stated that the synthetic bonds stay in place. Mr. Sobol asked if there would be any false swaps involved in this. Mr. Hobson said no. Regarding action on this issue, Mr. Aceto asked if MSD is precluding itself from other options. Mr. Hobson stated that this is a preliminary resolution that must be adopted by the Board before the LGC can approve the transaction. With no further discussion, Mr. Aceto called for the question. Roll call vote was as follows: 11 Ayes; 0 Nays.

Mr. Aceto asked what the next issues are for the Board to consider. Mr. Hartye stated that the economy is having some issues, but if it wasn't for XL Capital being downgraded, MSD's financial position is very good. The variable rate MSD is

experiencing would be down near 2% when 4.5% was budgeted, which is good news, for the money being paid out on variable rate bonds. He further stated that another plus is that MSD is getting 6 or 7 bidders on each construction project. As a result, it has saved \$600,000.00, based on last year's prices, with Engineering News Record inflation value applied to it, while maintaining the Capital Improvement Program as planned. Mr. Hartye further reported that even with the anticipated spike during the next six weeks, when it goes back down after that for the remaining 8 to 10 weeks by 2%, MSD should be able to level that off and still be on or below budget.

Mr. Hartye reported that because it's important to keep the options open, there is a Reimbursement Resolution on the Consolidated Motion Agenda. This is just in case MSD wants to go out for new money fixed rate bonds, if it chooses to do so; then the next bond issue would not be needed until much further out. Mr. Aceto asked what the Board will be asked to consider during the next 60-90 days. Mr. Hartye said to get XL Capital off MSD bonds and getting back to a good rate then, consider options from Banc of America on how MSD should proceed. Mr. Aceto stated that the bigger picture has to do with the effect this has on MSD's revenues and construction schedule. Mr. Sobol stated that Mr. Hartye is on top of the situation and that MSD is in a better position than others who are facing this same issue. Mr. Kelly asked if these resolutions will go to the LGC immediately and will they have acted on them by the next meeting. Mr. Hobson said the application to the LGC is a one paragraph letter attached to the resolutions stating the reason for refunding the bonds. He further stated that because the LGC is being swamped with these same request, MSD can request a special meeting to avoid waiting until April for a decision, since 3 or 4 weeks can make a difference.

Mr. Hartye reported on a call received from Mr. Heinrick at 1054 Columbine Road stating that Herman Shelton went above and beyond the call of duty. Also, a call was received from Mr. Snell of 123 Fairway Drive expressing his appreciation to Grady Brooks and Jason Capizzi for a job well done in handling a sewer leak.

Mr. Hartye reported that MSD has a new GIS map on the web that is much faster to use. He presented a user guide developed by Shannon Aiken.

Mr. Hartye presented a copy of the 2007 Asheville Metro Economy Outlook from the Asheville Area Chamber of Commerce and a blurb from Bond Buyer and email notice of XL Capital Insurance being downgraded.

Mr. Hartye reported that the Right of Way Committee will meet February 27<sup>th</sup> at 9AM and the Board Retreat will be held at 11 AM on March 19<sup>th</sup> prior to the regular Board Meeting at 2PM.

Mr. Haner expressed his appreciation to Shannon Aiken for a job well done in the development of MSD's Mapping Guide.

## **7. Consolidated Motion Agenda:**

### **a. Consideration of Bids for Sanitary Sewer Rehabilitation Projects: Delaware Avenue Four-Inch Main and Fair Oaks Road PRP:**

Mr. Hartye reported that the following bids for the Delaware and Fair Oaks Road projects were received February 7, 2008: Wolfpen Developers, Inc. with a total bid of \$284,427.00; Bryant's Land & Development, Inc. with a total bid of \$230,567.71; Hobson Construction Company, Inc. with a total bid of \$218,350.00; Carolina Specialties, Inc. with a total bid of \$207,509.70; T&K Utilities, Inc. with a total bid of \$196,025.00 and Terry Brothers Construction Co., Inc. with a total bid of \$157,148.00. He further reported that staff recommends award of the contract to

Terry Brothers Construction Co., Inc., in the amount of \$157,148.00, subject to review and approval by District Counsel.

**b. Consideration of Developer Constructed Sewer Systems: Crest Mountain Phase 1A, Crest Mountain Phase 2, Ingles #30, Dogwood Drive Apartments Phase 11, Waightstill Mountain Phase 9:**

Mr. Hartye reported that staff recommends acceptance of the developer constructed sewer systems and that all MSD requirements have been met.

**c. Second Quarter FY 07-08 Budget-to-Actual Revenues and Expenditures:**

Mr. Hartye noted that Industrial User Fees are higher than the conservative amounts budgeted under the assumption that two large industrial users would be winding down operations sooner. However, these industries held on longer than originally projected. Mr. Haner asked how much advance notice does MSD get when an industry is leaving and how does this affect the budget. Mr. Hartye stated that the Industrial Waste Staff visits industries periodically and as information is received, it is immediately put into financial projections if MSD knows they are leaving within a certain period of time. Mr. Haner asked if the MSD offers a measure of confidentiality to industry for notifying it in advance. Mr. Hartye said yes.

**d. Consideration of Reimbursement Resolution for Bond Projects:**

Mr. Hartye reported that staff recommends approval of the Reimbursement Resolution as presented.

**e. Cash Commitment/Investment Report-Month Ended December 31, 2007:**

Presented as information only.

With regard to item a, Ms. Karpen asked how Terry Brothers Construction can bid half of what the other construction companies bid for the same job. Mr. Hartye stated that when the economy is bad, they will bid low on projects in order to pay for their overhead and keep their crews busy. With no further discussion, Mr. Aceto called for a motion. Mr. VeHaun moved that the Board approve the Consolidated Motion Agenda as presented. Mr. Kelly seconded the motion. Roll call vote was as follows: 11 Ayes; 0 Nays.

**8. Old Business:**

None

**9. New Business:**

Mr. Gantt asked the Board to consider, at the Retreat, the cost and benefits of using computers instead of paper.

**10. Adjournment:**

With no further discussion, Mr. Aceto called for adjournment at 2:55PM.

---

Jackie W. Bryson, Secretary/Treasurer