

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
MARCH 19, 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, March 19, 2008. Chairman Aceto presided with the following members present: Bellamy, Bisette, Bryson, Creighton, Gantt, Haner, Kelly, Metcalf, Sobol and VeHaun. Mr. Russell was absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Joseph Martin with Woodfin Sanitary Water and Sewer District, Stan Boyd, Ed Bradford, John Kiviniemi, Scott Powell, Peter Weed 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. Ms. Bellamy said she had a conflict with Item f. (City of Asheville Billing Report) of the Consolidated Motion Agenda. Mr. Aceto stated that since this is an informational item, no vote is required. No other conflicts were reported.

3. Approval of Minutes of the February 20, 2008 Board Meeting:

Mr. Aceto asked if there were any objections to approving the Minutes of the February 20, 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. Martin.

6. Report of General Manager:

Mr. Hartye presented the final item from the Retreat regarding use of Board Books versus Computers. He stated that at the request of Board Members, the Information Technologies (IT) department pursued available options for the replacement of current Board meeting material. He reported that the first option is to remain with the current program at an annual cost of \$4,000 to \$4,300. The second option includes converting all Board documents to PDF files, which would be provide to all members through direct emails or made available on a secure location on the MSD website. Paper copies would still be available to each Member prior to the meeting. This option would lower the annual distribution costs from \$1,200 to \$1,500. Mr. Hartye stated staff recommends this option since this would provide the greatest gain for the least cost. Mr. Haner asked if the documentation provided at the meeting would be scaled down. Mr. Hartye said that full documentation would be provided for now. Mr. Hartye further reported that option 3 has to do with converting and distributing electronic files as with option 2, but using monitors and keyboards on site to scroll through agenda items. This option would require hardwiring the boardroom. The projected total cost for this option, including IT support is estimated at \$21,700 for the first year; annual cost thereafter projected at \$3,000 to \$5,000. Option 4 is similar to option 3 except laptops for all Board Members would be utilized, but would remain on site and utilized for training purposes. Hardwiring would not be necessary; however, more IT support would be required. He stated that the first year annual cost for this option is estimated at \$22,750 to \$25,000 with annual cost expected to range from \$5,000 to \$8,000 thereafter.

Mr. Hartye stated that both options 3 and 4 would be “paperless.” Mr. Bissette moved that the Board approved the recommendation of staff and go with Option 2. Ms. Bellamy seconded the motion. Mr. Haner said he agrees with Option 2, but would like this information available on DVD as well as e-mailed to each Member. Mr. Gantt stated that he likes the idea of a DVD and is pleased the Board is considering this. With no further discussion, Mr. Aceto called for the question. Voice vote in favor of the motion was unanimous.

Mr. Hartye presented an e-mail from Ms. Lauren Bradley expressing her appreciation to Grady Brooks and Randy Mull for a job well done. Ms. Bradley stated that they were extremely friendly, helpful and knowledgeable about the problem at her home and was impressed by their superb customer service and genuine desire to help.

Mr. Hartye reported that Mr. Dusty Pless called to report on a response by MSD to a problem at his residence. Mr. Pless was very complimentary of Denver Bradley who responded to the call within twenty minutes. He stated that Mr. Bradley evaluated the situation, explained what needed to be done, then acted efficiently and professionally to remove the blockage.

Mr. Hartye reported that MSD’s annual Plumbers meeting was held March 13th at MSD with System Services leading the effort. He expressed his appreciation to Barry Cook and Ken Stines who participated. Mr. Hartye presented the meeting agenda and said attendance was good and a lot of positive discussion was held.

Mr. Hartye presented a copy of an article in the Weaverville Tribune on Woodfin getting a new Alderperson. He expressed his congratulations to Jackie Bryson for her appointment.

Mr. Hartye presented an article in the Asheville Citizen Times on Asheville Water. Mr. Sobol asked if MSD is sending hazardous waste down stream. Mr. Hartye stated as far as hazardous waste from the hospitals, they have procedures for that, but a lot of what is being talked about now, is what is coming from private residences. He stated that this is being discussed now because of the sensitivity of new testing equipment and as far as EPA is concerned, this is in the discovery stage and EPA is now trying to determine the impacts. He said no decision has been made on what will be done about it. Mr. Sobol stated that it would be prudent on MSD’s part to stay on top of the issue.

Mr. Hartye reported that the Personnel Committee meeting has been rescheduled for Monday, April 21st at 11:30 AM. The Right of Way Committee meeting will be held March 26th at 9 AM and the next regular Board meeting will be held April 16th at 2PM. He further reported that a special Board meeting will be held Tuesday, March 25th at 11:30AM to consider the Series Resolution for Sewerage System Revenue Refunding Bonds Series 2008A and 2008B. Because of the need for a quorum, Mr. Hartye stated that a couple of the members will attend by phone. Mr. Clarke stated that under the By-laws, if there is a special meeting, the Chairman can determine that Members can attend, vote and participate by telephone. Mr. Aceto made the determination that Board Members can attend, vote and participate by telephone at the March 25, 2008 Special Meeting of the Board.

7. Report of Committees:

Right of Way Committee

Mr. Kelly reported that the Right of Way Committee met February 27, 2008 to consider condemnations on the Reems Creek Interceptor, Eastwood Avenue @ Old US 70 PRP and Dunwell Avenue General Sewer Rehabilitation Projects. Mr. Kelly recommends that the Board adopt the actions of the Committee as reported in Items

a.b.and c. of the Consolidated Motion Agenda.

8. Consolidated Motion Agenda:

a. Consideration of Condemnation – Reems Creek Interceptor:

Mr. Hartye reported that the Committee recommends authority to obtain appraisal and proceed with condemnation.

b. Consideration of Condemnation – Eastwood Avenue @ Old US 70 PRP:

Mr. Hartye reported that the Committee recommends authority to obtain appraisal and proceed with condemnation.

c. Consideration of Condemnations – Dunwell Avenue General Sewer Rehabilitation:

Mr. Hartye reported that the Committee recommends authority to obtain appraisal and proceed with condemnations.

d. Consideration of Cost Participation for Biltmore Residences Development:

Mr. Hartye reported that the last phase of the Biltmore Residences development requires a connection to an existing sewer line located on the property, which is in poor condition and must be replaced. He stated that staff has evaluated the Cost Participation and has determined that a 50% cost share of \$28,535.00 is appropriate. Mr. Hartye presented a map showing the location of the line, a rehabilitation matrix and a status report on MSD's Cost Participation projects. Mr. Hartye reported that staff recommends the Board authorize the General Manager to Reimburse Power Development, LLC for the Residences at Biltmore Sewer Rehab in an amount not to exceed \$28,535.00 upon the District's acceptance of the completed sewer work.

e. Consideration of Developer Constructed Sewer Systems: B.F. Haynes Subdivision, Hensley/Conrad Sewer Extension, Waightstill Mountain Phase 6B and Waightstill Mountain Phase 6C.

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

f. Second Quarter City of Asheville Billing Report:

Mr. Hartye reported that net billings are up nearly 7% from the previous time last year, which reflects primarily the 4% rate increase. However, consumption data shows an overall 3% increase, which reflects current growth and consumption trends. He further reported that cash received during the first six months of the year was up about 11% and receivables down 14% over 12/31/06. Comparability of increased rates of billings, receivables and payments indicates a good likelihood of all funds being remitted to MSD in a timely manner. Mr. Haner asked if the billing done by the City of Asheville comes up periodically for review. Mr. Hartye stated that MSD has an agreement with all of the municipalities to do its billing, but these agreements are not reviewed regularly. However, the issue of cost of billing has been reviewed and an agreement was reached five years ago to use the CPI adjustment for billing cost increases. Mr. Clarke stated that MSD is not required to use the municipalities for billing. It can do its own billing.

g. Cash Commitment/Investment Report – Month ended January 31, 2008.

Presented as information only.

h. Consideration of Series Resolutions for 2008A and 2008B Sewerage System Revenue Refunding Bonds:

Mr. Hartye presented a copy of the Series Resolution along with a copy of a memorandum from Mr. Clarke concerning the Series Resolution and authorization. Mr. Hartye introduced Mr. Scott Powell, MSD's new Finance Director replacing Martha Zeigler and stated that Mr. Powell has been very involved in this endeavor.

Mr. Clarke reported that between the time MSD bought the two bond insurance policies, one in 2004 and one in 2005, the Bond Insurer (Capital Assurance ("XL")) got into the sub-prime market by insuring the securitization of sub-prime mortgages. Because of the potential problems with sub-prime markets, the bond insurer had put on their books "potential loss reserves." As a result, the bond insurer was downgraded from AAA to A-, first by Fitch then Moody's and Standard & Poor's. Mr. Clarke explained that even though MSD's bonds had a higher underlying rating, AA from Standard & Poor's and A from Moody's, the bonds were trading at 230 basis points above the price they would have had with a AAA rating, which was and is costing MSD about \$35,000 per week in extra interest, therefore, it had to get rid of XL.

Mr. Clarke reported that a number of options were considered. The least costly option would be to boost MSD's rating up to AA from two agencies. First, MSD applied to Fitch for an underlying rating and received an AA rating, followed by a request to Moody's that it upgrade its rating from A to AA, which MSD received after presenting updated financial information. He stated that this option was for MSD to trade on its own underlying rating. As an AA rated issuer, MSD is eligible to be purchased by institutional money market funds who often buy these bonds. Other options included issuing fixed rate bonds and buying new bond insurance. Mr. Hartye stated that by being upgraded to AA, MSD does not have to pay for bond insurance again, thereby saving approximately \$150,000 to \$400,000. Mr. Clarke stated that MSD should always consider fixed rate bonds, but at this time, he does not feel it would be a good economic decision to do so, but said MSD can always convert to a fixed rate in the future. The final option was to get rid of the bond insurance, including a voluntary "termination" of the policy by XL, but because of the sheer number of issuers seeking voluntary termination and the conditions XL was imposing on the "termination," this option was not practical from the standpoint of time and cost. Mr. Clarke further stated that after through investigation, it was determined that the quickest, most cost effective option would be to do a current refunding of the 2004 and 2005 bonds without bond insurance.

Mr. Aceto asked what will take place at the special Board Meeting on March 25th. Mr. Clarke said the Board will need to adopt two Series Resolutions authorizing the issuance of the bonds, authorizing the Chairman of the Board or the General Manager to sign the Official Statement for the Bonds, request that the Local Government Commission (LGC) award the sale of the Bonds to Banc of America Securities, LLC and approve the Bond Purchase Agreement, the Standby Bond Purchase Agreement, the Tender Agreement and the Remarketing Agreement. Mr. Hartye stated that the reason action on the Resolutions is not being taken at today's meeting is because MSD has asked the LGC to have a special meeting to consider this, and the Board can only approve the Resolutions after the LGC has met. The LGC was scheduled to meet on March 20, 2008. Mr. Clarke stated that under the Bond Order, the Board must adopt a Series Resolution for both the 2008A and 2008B Bonds. Mr. Aceto asked

when is the best time to consider variable rate, versus fixed rate bonds. Mr. Clarke stated that the LGC will not allow MSD to issue more than 20% of its debt in variable rates. He explained that variable rate bonds, if issued today, would trade at an interest rate around 2.15%. Fixed rate bonds would trade at 5%. Mr. Clarke asked Mr. Powell what premium MSD is paying every week. Mr. Powell said the differential ranges from \$30 to \$35,000 per week or 4.5%. Mr. Sobol said MSD is exposed, and there is a gamble in issuing variable rate bonds. Ms. Bellamy asked who brought this to the Board's attention; Banc of America or Staff. Mr. Powell said it was a combination of both. He further stated that when Mr. Hobson came in January and said the Bond Insurers were on watch, MSD started watching them as well. Ms. Bellamy asked how many weeks has the MSD been paying \$35,000. Mr. Powell said about 5 weeks. He stated that the good thing is that interest rates have gone down. Mr. Hartye stated that since the market has gone down at the same time as this happened with XL that they pretty much offset each other, but that MSD could realize this savings once XL is removed. Therefore, at the end of the year, MSD will end up right at budget, but next year it will realize a savings. Mr. Sobol said the Board needs to understand the position it could be in if it can not get out of this situation. Mr. Clarke stated that because of MSD's good stewardship and management, it is uniquely qualified to get out.

Ms. Bellamy moved that the Board approve the Consolidated Motion Agenda as presented. Ms. Bryson seconded the motion. With no further discussion, roll call vote was as follows: 8 Ayes; 0 Nays. Mr. Creighton, Mr. Gantt and Mr. Kelly were absent during the vote.

9. Consideration of Revisions to Cost Recovery Policy:

Mr. Hartye reported that the last time MSD changed its cost recovery incentives, the Board expressed an interest in looking at the Cost Recovery Program to see if there was a way these incentives would only apply to affordable housing subdivisions, since they felt the other subdivisions did not appear to need incentives. He stated that an analysis of water usage was done in areas where affordable housing was constructed versus other residential areas and was incorporated into MSD's Geographic Information System. As a result, no appreciable difference in the volume of water usage was found. Biltmore Park was the only neighborhood in the entire district that stood out as having a higher per unit usage. He further reported that MSD General Counsel is of the opinion that rate discrimination based solely on income levels would not be upheld in North Carolina. Mr. Hartye presented the following options for discussion:

1. Leave the Cost Recovery Policy "as is" and it continues to apply to all development with an offsite sewer extension as defined in the current policy with \$40,000 cap; or
2. Revise the Cost Recovery Policy to where it applies only to projects where affordable housing is constructed.

Mr. Clarke stated that the laws in North Carolina allow for some rate differential, but there has to be some compelling governmental interest. He further stated that if the constituent members of the MSD submitted resolutions requesting that MSD allow cost recovery for affordable housing, then it could be considered as a compelling governmental interest. Mr. Aceto asked if there is a way to make a finding, as to affordable housing, that it makes a difference between people hooking up or not hooking up to the sewer. Mr. Clarke stated if the members agree, he will draft a resolution in support of this action. Mr. Bisette moved that the Board table this item until staff has received the support of the municipalities along with data that shows MSD is adding customers as a result of the policy. Ms. Bellamy seconded the motion. With no discussion, Voice vote in favor of the motion was unanimous.

10. Old Business:

None

11. New Business:

Mr. Sobol requested that at the next meeting of the Board a discussion be held on the down turn of the economy and the effects de-regulation has on the banking and investment system.

Mr. Haner asked that a resolution be prepared addressing how this specifically affects MSD, and that members of this Board that are associated with the municipalities have direct communication with those Boards for their input on the wording.

Ms. Bellamy announced that on April 25 at 11:30 AM, the City of Asheville will open the Bee Tree Water Facility. Ms. Bellamy expressed her appreciation to MSD staff for working with the Water Department on recent projects.

12. Adjournment:

With no further business, Mr. Aceto called for adjournment at 3:07PM.

Jackie W. Bryson, Secretary/Treasurer