

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
AUGUST 19, 2009

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 P.M., Wednesday, August 19, 2009. Chairman Aceto presided with the following members present: Bellamy, Bryson, Creighton, Haner, Kelly, Metcalf, Russell, Stanley and VeHaun. Mr. Bissette and Mr. Sobol were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Gary McGill with McGill Associates, Joseph Martin with Woodfin Sanitary Water & Sewer District, Leah Karpen with the League of Women Voters, Marcus Jones with Henderson County, Stan Boyd, Ed Bradford, John Kiviniemi, Peter Weed, Scott Powell, Jim Hemphill, Ken Stines, Angel Banks, Mike Butler 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 July 15, 2009 Board Meeting:

Mr. Aceto asked if there were changes to the Minutes of the July 15, 2009 Board Meeting. Mr. Haner moved that the Board approve the Minutes as presented. Mr. VeHaun seconded the motion. Mr. Aceto called for discussion. With no discussion, voice vote in favor of the motion was unanimous. Ms. Bellamy was absent during the vote.

4. Discussion and Adjustment of Agenda:

None

5. Informal Discussion and Public Comment:

Mr. Aceto welcomed Ms. Karpen, Mr. Jones and Mr. Martin.

6. Report of General Manager:

Mr. Hartye reported that a Plumbers/workshop was held July 23rd by the System Services Division, headed up by Barry Cook, who began this tradition approximately 18 years ago. He stated that there were approximately 20 plumbers in attendance as well as the County plumbing inspector and 8 representatives from the City of Asheville. Topics covered included the sewer service policy, first responders, flooded structures, cut permits, tap applications, cleanout installations, private sewer rehab, grease trap installations, web map capabilities, grading permits and city codes. He further stated that the meeting was a great success as a public relations measure and as an information exchange on how best to serve customers. He expressed his thanks to Barry Cook, Lisa Tolley, Eric Bryant, Jason Capizzi, Kathryn Brewer, Mike Butler and Wayne Tipton.

Mr. Hartye reported that MSD has received the Gold Safety Award for the 6th consecutive year due to low illness and injury rates. He stated that MSD is below the state average, which translates into reduced workers comp premiums. He expressed his congratulations to the employees and a special thanks to Jim Naber and Sandra Moore for their work with MSD's Safety program.

Mr. Hartye presented a copy of the NCLM Legislative Bulletins for July 17th and 31st and noted the highlighted sections on the Ethics Policy and Electronic Notice. He also presented a copy of the AWWA Streamlines regarding the Water Trust Fund and the NACWA Regulatory Update of July 8th. Mr. Aceto asked about the Ethics Policy and its application to the MSD Board. Mr. Clarke said the policy appears to apply to all local governments, and that it would require each Board Member to have two hours of ethics training upon appointed to MSD and two hours after re-appointment. He stated that

training will be offered in several locations, but feels this can be accomplished in a two-hour session prior to a regularly scheduled Board meeting. He further stated that he will review the Board's current Ethics, Conduct and Attendance Policy and he and Mr. Hartye will make a recommendation to the Board on how to comply.

Mr. Hartye announced the following upcoming staff events: Bobby Arrowood Retiring, August 27th, Day of Caring, September 3rd; United Way Golf Tourney, September 18th and Employee Picnic, September 24th.

Mr. Hartye reported that the next Right of Way Committee meeting will be held August 26th at 9 A.M., and the next regular Board Meeting will be held September 16th at 2PM.

With regard to House Bill SB 600 - Condemnation of Conservation Easements, Mr. Clarke reported that municipal utility projects, including electric, gas, water, sewer, stormwater systems and greenways are exempt.

7. Report of Committees:

Personnel Committee

Mr. VeHaun reported that the Personnel Committee met July 22, 2009 for the evaluation of the General Manager. He stated that Mr. Hartye discussed and presented his objectives and short term goals. Mr. VeHaun further stated that although the Board is extremely pleased with Mr. Hartye's performance, the Committee felt that since the employees received no salary increase, any increase to Mr. Hartye would be put on hold until next year.

8. Consolidated Motion Agenda:

a. Sanitary Sewer Rehabilitation Project – Town Branch Interceptor:

Mr. Hartye reported that the Town Branch project is necessary due to repeated maintenance calls associated with an aged and structurally deficient clay interceptor and structures constructed both near and over the line. The project is comprised of 1,339 LF of 8-inch through 30-inch DIP. Mr. Hartye stated that the following bids were received on July 23, 2009: Spur Construction with a total bid of \$999,490; Carolina Specialties Construction with a total bid of \$886,529.00; Haren Construction Co., with a total bid of \$877,320.00; B E & L Mechanical with a total bid of \$ 869,970.50; Goodwater, Inc. with a total bid of \$856,685.00; Pipeline Utilities, Inc. with a total bid of \$828,600.00; Cooper Construction, Co., with a total bid of \$815,470.00; D.H. Griffin Infrastructure with a total bid of \$794,318.00; L-J, Inc. with a total bid of \$779,830.72; Buckeye Construction Co., with a total bid of \$778,151.59; DPI Construction, Inc. with a total bid of \$730,335.69; Terry Brothers Construction with a total bid of \$729,006.00 and BC&D Associates, Inc. with a total bid of \$726,875.00. Mr. Hartye further reported that staff recommends award of this contract to BC&D Associates, Inc. in the amount of \$726,875.00, subject to review and approval by District Counsel. He stated that BC&D has not previously worked on MSD rehabilitation projects, but all five references checked were complimentary.

b. Consideration of Developer Constructed Sewer Systems - Bell Road Subdivision and Honeysuckle Lane Subdivision:

Mr. Hartye reported that the Bell Road Subdivision consists of five (5) single family homes and the Honeysuckle Lane Subdivision consists of four (4) single family homes. Staff recommends acceptance of the developer constructed sewer systems. All MSD requirements have been met.

c. Fourth Quarter Budget to Actual Review:

Mr. Hartye reported that Capital project expenditures at 67% of budget is due to delay of the microscreen project until FY 10.

d. Fourth Quarter City of Asheville Billing Report:

Mr. Hartye reported that a comparison of the first three quarters of FY 09 with the same time period in FY 08 reveals a reduction in residential consumption as well as signs of recessionary constraints on commercial usage. In addition, the aging percentages do not currently indicate any significant changes and staff will continue to monitor this in future quarters as this could have a cash flow effect on the District.

e. Cash Commitment/Investment Report-Month Ended June 30, 2009:

Presented as information only.

f. Consideration of Reimbursement Resolution for Bond Projects:

Mr. Hartye reported that the proposed Reimbursement Resolution identifies major projects intended to be solely or substantially financed by bonds anticipated to be issued in fiscal year 09-10. Board approval is required to obtain the tax-exemption of interest paid on MSD bonds by authorizing reimbursement from bond proceeds of the expenditures for these projects. Mr. Hartye presented a list of the projects and stated that the estimated reimbursable expenditure total is \$3,629,644.

Mr. Bellamy reported on an effort by local design firms and contractors to get more dollars spent locally. She asked what MSD's policy is on bidding projects. Mr. Clarke stated that State law does not allow MSD to give preference to local contractors. MSD must advertise in newspaper of general circulation, or electronically. The intent of the local bid laws is to get the lowest possible price. Mr. Hartye stated that most of the local contractors are winning the contracts, unless the project is much larger or more technical. As far as design services and RFP's, MSD does most of this work in-house, with the exception of more technical work, which would go to a consultant. Ms. Bellamy stated that she gave Mr. Hartye's name to David Price, who heads up this group of Architects and Builders, which is called Asheville Design-Asheville Build. Mr. Hartye stated that when he receives information from this group, he will forward it to Ed Bradford who maintains a list of Engineers and Surveyors. Mr. Bradford asked if MSD can choose from a list of contractors for informal projects. Mr. Clarke said MSD can do informal bids, but cannot say it has a preference for a local contractor.

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

9. Old Business:

Mr. Hartye presented a list of MSD Board 2009-2010 Goals and Objectives. Mr. Aceto requested that the Board review them and forward any comments to Mr. Hartye or himself. He stated that the Goals and Objectives will be forwarded to the appropriate committee for consideration in the coming year.

10. New Business:

None

11. Adjournment:

With no further business, Mr. Aceto called for adjournment at 2:22 PM.

Jackie W. Bryson, Secretary/Treasurer

<h1 style="margin: 0;">MSD</h1> <h2 style="margin: 0;">Regular Board Meeting</h2>

Metropolitan Sewerage District
of Buncombe County, NC

AGENDA FOR 8/19/09

✓	Agenda Item	Presenter	Time
	01. Call to Order and Roll Call	Aceto	2:00
	02. Inquiry as to Conflict of Interest	Aceto	2:05
	03. Approval of Minutes of the July 15, 2009 Board Meeting.	Aceto	2:10
	04. Discussion and Adjustment of Agenda	Aceto	2:15
	05. Informal Discussion and Public Comment	Aceto	2:20
	06. Report of General Manager	Hartye	2:25
	07. Report of Committees: a. Personnel Committee – 7/22/09 - VeHaun	Aceto	2:40
	08. Consolidated Motion Agenda		2:50
	a. Consideration of Bids for Town Branch Interceptor Rehabilitation.	Hartye	
	b. Consideration of Developer Constructed Sewer Systems: 114 Bell Road Subdivision and Honeysuckle Lane Subdivision.	Hartye	
	c. Preliminary Report on Budget-To-Actual Revenues and Expenditures.	Hartye	
	d. Fourth Quarter City of Asheville Billing Report	Hartye	
	e. Cash Commitment/Investment Report – Month Ended June 30, 2009.	Hartye	
	f. Consideration of Reimbursement Resolution	Hartye	
	09. Old Business:	Aceto	3:10
	10. New Business:	Aceto	3:15
	11. Adjournment (Next Regular Meeting – 9/16/09)	Aceto	3:25

APPROVAL OF MINUTES

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT
JULY 15, 2009**

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, July 15, 2009. Chairman Aceto presided with the following members present: Bellamy, Bissette, Bryson, Creighton, Haner, Kelly, Russell, Sobol and Stanley. Mr. Metcalf and Mr. VeHaun were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Joseph Martin with Woodfin Sanitary Water & Sewer District, Marcus Jones with Henderson County, Jason Beard and Mike Odom with Hickory Construction, Ken Lackey with Black & Veatch, Stan Boyd, Ed Bradford, John Kiviniemi, Peter Weed, Scott Powell, Angel Banks, Julie Willingham, Pam Thomas, Lisa Tolley and Sondra Honeycutt, MSD.

2. Election of Officers:

Mr. Aceto called on Mr. Clarke to preside over the election of Chairman. Mr. Clarke called for nominations for Chairman of the MSD Board. Mr. Kelly nominated Mr. Aceto as Chairman. Ms. Bellamy seconded the nomination. Mr. Clarke called for further nominations. Mr. Haner moved that the nominations be closed. Mr. Stanely seconded the motion. With no discussion, voice vote in favor of Mr. Aceto as Chairman was unanimous.

Mr. Aceto called for nominations for Vice Chairman of the MSD Board. Mr. Kelly nominated Mr. Sobol as Vice Chairman. Ms. Bellamy seconded the nomination. Mr. Aceto asked if there were any other nominations. Mr. Bissette moved that the nominations be closed. Ms. Bryson seconded the motion. With no discussion, Mr. Sobol was elected Vice Chairman by acclamation.

Mr. Aceto appointed Ms. Bryson to serve as Secretary/Treasurer of the Board. Mr. Aceto called for a vote to ratify the appointment by the Chair. Mr. Stanley moved that the Board ratify the appointment by the Chair. Mr. Russell seconded the motion. Voice vote in favor of the motion to ratify the appointment of Ms. Bryson as Secretary/Treasurer by the Chair was unanimous.

3. Inquiry as to Conflict of Interest:

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

4. Approval of Minutes of the June 10, 2009 Board Meeting:

Mr. Aceto asked if there were any objections to approving the Minutes of the June 10, 2009 Board Meeting as presented. Mr. Haner requested a copy of the industry associations, web addresses and conference offerings presented at the last meeting. Mr. Hartye said he would forward a copy. With no further discussion, the Minutes were approved by acclamation.

5. Discussion and Adjustment of Agenda:

None

6. Informal Discussion and Public Comment:

Mr. Aceto welcomed Mr. Martin, Mr. Jones, Mr. Beard, Mr. Odom and Mr. Lackey.

7. Report of General Manager:

Mr. Hartye presented a letter from NCLM Risk Management Services approving MSD for a Wellness Ongoing Grant in the amount of \$2,500.00. He expressed his congratulations to Jim Hemphill, Pam Thomas and Sheila Pike of Human Resources for the progressive array of programs made available to MSD employees.

Mr. Hartye reported that a call was received from Mr. David Herbert of Kenilworth expressing how pleased he and others in the area were with the work that MSD had done repairing a damaged culvert. He expressed his appreciation to Ben Reeves, Roy Lytle, Eric Dawson, Shane Meadows, Chris Johnson and Eric Gillis.

Mr. Hartye presented information regarding the Fiscal Year 2010 Budget along with rate information, which is provided to the Board as a reference sheet. In addition, he presented a summary of average monthly bills for member agencies for water and sewer along with actual increases (billing, flat rate, and volumetric).

Mr. Hartye presented a graph of the annual number of Sanitary Sewer Overflows (SSO's) since beginning in FY 1999, which reflect significant reductions. He stated the numbers are influenced by weather, but have been reduced mainly as a result of both the Districts' aggressive Capital Improvement Program and preventative maintenance performed by System Services.

Mr. Hartye reported that the workshop held by MSD's Pretreatment section on June 16th was well attended. He stated there were 25 attendees representing 16 out of the 20 industries. He further stated there was good feedback including requests for more training, include other agencies, and start a website network for sharing of information. He expressed his appreciation to Jon Van Hoff, who headed up the workshop, and to Monty Payne, Wayne Tipton and Maria Slagle of the pretreatment group.

Mr. Hartye presented a letter from the Asheville Chamber of Commerce regarding Asheville publicity, a copy of the NCLM Legislative Bulletin and a Bill stuffer regarding MSD's recent rate increase.

Mr. Hartye reported the next regular Board meeting will be held August 19th at 2PM. The Personnel Committee will meet July 22nd at 9:30 AM.

8. Report of Committees:

Finance Committee

Mr. Kelly reported that the Finance Committee met June 25th and authorized RFP's to be sent out for Bond Underwriter services. He stated that the RFP's were received and acted on today by the Finance Committee. Mr. Kelly called on Mr. Powell for a report on the recommendations made by the Committee. Mr. Powell reported that the Finance Committee recommends Wells Fargo Securities be selected to serve as Senior Managing Underwriter due to their knowledge of the District as well as municipal bond distribution resources. In addition, that both Citigroup Global Markets, Inc. and BB&T Capital Markets be offered the opportunity to participate in the underwriting as Co-Managing Underwriters. He further reported that the second recommendation of the Committee is to engage Davenport & Company LLC to provide Financial Advisory Services for Debt Issuances. In answer to a question by Mr. Aceto on how MSD could improve its rating, Mr. Clarke stated that MSD is one of the ten utility only Districts in the Southeast to have an AA rating and it would be difficult to increase that rating because MSD does not have the authority to tax. He explained that the double AA or equivalent rating allows MSD's bonds to be purchased by institutional investors. Mr.

Kelly stated that the recommendations by the Finance Committee are part of the Consolidated Motion Agenda.

9. Consolidated Motion Agenda:

a. Consideration of Sodium Hypochlorite Contract:

Mr. Hartye reported that the following bids were received and opened on June 18, 2009: Univar, with a bid of #164,000.00; Brenntag SE, with a bid of \$163,200.00 and JCI Jones with a bid of \$137,400.00. He further reported that staff recommends the Board award the contract for the supply of Sodium Hypochlorite to JCI Jones at a unit price of \$0.687 per gallon.

b. Consideration of Acceptance of Developer Constructed Sewer Systems: Falconwood Subdivision and Waightstill Mountain Phase 2:

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

c. Consideration of Bids for Water Reclamation Facility Intermediate Pump Replacement Project:

Mr. Hartye reported that the three hydraulically-driven 300HP pumps are used to lift water from the last RBC basin to the Intermediate Clarifier. He stated that this type of pump is not only inefficient, but also poses a risk of contaminating the effluent with hydraulic fluid, since the pumps are submerged. He stated that the pumps have reached the end of their functional life, and in accordance with the Facilities Plan, are being replaced with more efficient units. Black & Veatch designed the new system to utilize electric pumps rather than hydraulic pumps. Mr. Hartye further reported the following bids were received on June 24, 2009: IMOCO, Inc. with a total bid of \$2,227,400.00; Haren Construction Co., with a total bid of \$2,129,000.00; Gilbert Engineering with a total bid of \$1,960,500.00; Laughlin-Sutton Construction Co., with a total bid of \$1,818,000.00 and Hickory Construction Company with a total bid of \$1,690,788.00. Mr. Hartye stated that Black & Veatch has had extensive experience with Hickory Construction and state they have an excellent performance history. He further stated the second low bidder, Laughlin-Sutton Construction Company, sent MSD a letter alleging that the Hickory Construction bid (the low bid) was non-responsive and not in compliance with MSD's MBE requirements. MSD staff and Black & Veatch have investigated both allegations and are satisfied that the bid is responsive and in compliance with MSD's MBE requirements. Therefore, staff recommends award of this contract to Hickory Construction Company in the amount of \$1,690,788.00, subject to review and approval by District Counsel. Mr. Hartye stated that staff tried to get this in as a green project for the stimulus, but it did not qualify. Mr. Sobol asked what the life expectancy of the pumps is. Mr. Kiviniemi said 20 years.

d. Consideration of Sanitary Sewer Rehabilitation Project: Middle Beaverdam Creek Interceptor:

Mr. Hartye reported that the Middle Beaverdam Creek rehabilitation project is necessary due to repeated maintenance calls associated with an undersized and structurally deficient interceptor and that several structures have been built over this line, thus making access impossible in certain areas. The project is located in North Asheville and is comprised of 4,014 LF of 8-inch through 30-inch DIP. He further reported that the following bids were received on July 2, 2009: Mendon Pipe Line with a total bid of \$1,670,475.00; Spur Construction Co., LLC with a total bid of

\$1,010,528.00; T&K Utilities with a total bid of \$919,560.00; B.E. & L. Mechanical, LLC with a total bid of \$901,710.00; DPI Construction with a total bid of \$897,273.90; Terry Brothers Construction Co. with a total bid of \$884,570.00; Buckeye Construction Co. with a total bid of \$864,626.20; Metra Industries with a total bid of \$787,371.00; Blythe Co. Construction, LLC with a total bid of \$780,675.00 and Moore & Son Site Construction with a total bid of \$736,476.00. Mr. Hartye stated that Moore & Son, the apparent low bidder, has not previously worked on MSD rehabilitation projects; however, the supervisor who holds the Contractor's License for this company has worked on previous MSD rehabilitation projects and did an excellent job. He further stated that staff recommends award of this contract to Moore & Son Site Contractors in the amount of \$736,476.00, subject to review and approval by District Counsel. Ms. Bellamy asked how far up Merrimon Avenue does the line go. Mr. Bradford stated that the line goes from Elkmont Drive at Merrimon Avenue to I-26 North and across I-26. Ms. Bellamy asked if this will help the issue of the sink hole. Mr. Bradford stated that this area is located near the Fresh Market and is on the radar as an area of concern. Ms. Bryson asked if part of this project is in Woodfin. Mr. Bradford said it is near the City/Town limit.

e. Consideration of RFP for Bond Underwriter Services:

Mr. Hartye reported that the Finance Committee recommends that Wells Fargo Securities be selected to serve as Senior Managing Underwriter due to their knowledge of the District as well as municipal bond distribution resources. Additionally, the Committee recommends both Citigroup Global Markets Inc. and BB&T Capital Markets be offered the opportunity to participate in the underwriting as Co-Managing Underwriters.

f. Consideration of Resolution Authorizing Filing Application to LGC to Issue Bonds:

Mr. Hartye reported that this item came out of the June 25th Finance Committee Meeting. The Finance Committee endorses approval of the resolution recommended by staff.

g. Consideration of Resolution Authorizing Filing Application to the LGC to Issue Refunding Bonds:

Mr. Hartye reported that this item came out of the June 25th Finance Committee Meeting. He stated that the LGC requires present value percentage savings of at least 2% on current refunding, and as of the date of this report, the percentage of net present value savings on the refunded bonds is 4.3%; reducing future debt payments by an average of nearly \$78,000 per year with a total net value present savings of nearly \$683,000. The Finance Committee endorses approval of the resolution recommended by staff.

h. Consideration of Audit Services Contract for FY 2009:

Mr. Hartye reported that staff recommends and the Finance Committee endorses continuing the auditing relationship with Cherry, Beckaert & Holland, LLP in the amount of \$47,710.00.

i. Consideration of Operational Checking Account with Bank of America:

Mr. Hartye reported that the operational checking account is part of the liquidity agreement with Bank of America. Ms. Bellamy asked who MSD's current account is with. Mr. Powell said First Citizens Bank. Mr. Sobol asked if staff obtained a quote

from First Citizens Bank. Mr. Powell stated that the Standby Liquidity Agreement approved earlier this year required MSD to have its operating bank account with Bank of America. In order to insure the .65% basis points Liquidity Agreement, MSD had to have a substantial banking relationship with Bank of America. Mr. Sobol asked if MSD could get a Liquidity Agreement with First Citizens Bank. Mr. Powell said no, that there are only three banks currently providing this; BB&T on deposit with Bank of America at 1.0%, Wachovia at 1.05% at Bank of America at .65% and that MSD's money is 100% secured.

Mr. Kelly moved that the Board adopt the Consolidated Motion Agenda as presented. Mr. Stanley seconded the motion. With regard to Bond Underwriter Services, Mr. Sobol asked if Mr. Powell will negotiate the fees down. Mr. Aceto asked if this is part of Davenport & Company LLC service agreement. Mr. Powell stated that Davenport & Company suggested that staff negotiate the fees. Regarding the swaps offered by Citigroup, Mr. Sobol asked how MSD would go about looking into this. Mr. Hartye stated that the Board can direct staff to investigate this with the underwriter. With no further discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

10. Old Business:

Mr. Kelly asked if MSD is making power with the river flow and selling it to Progress Energy. Mr. Kiviniemi stated that during the rainy period more power was generated, but most of that is offset by what is purchased.

11. New Business:

None

12. Adjournment:

With no further business, Mr. Aceto called for adjournment at 2:33 PM.

Jackie W. Bryson, Secretary/Treasurer

REPORT OF GENERAL MANAGER

MEMORANDUM

TO: MSD Board
FROM: Thomas E. Hartye, P.E., General Manager
DATE: August 12, 2009
SUBJECT: Report from the General Manager

- Plumbers Meeting/Workshop

The meeting/workshop was held July 23rd by our System Services Division headed up by Barry Cook, who began this tradition approximately 18 years ago. There were approximately 20 plumbers in attendance as well as the County plumbing inspector and 8 representatives from the City of Asheville.

Topics covered included Sewer service policy, first responders, flooded structures, cut permits, tap applications, cleanout installations, private sewer rehab, grease trap installations, MSD web map capabilities, grading permits and city codes.

The meeting was a great success as a public relations measure and as an information exchange on how best to serve our customers.

Special thanks to Barry, Lisa Tolley, Eric Braynt, Jason Capizzi, Kathryn Brewer, Mike Butler, and Wayne Tipton.

- Department of Labor – Gold Safety Award

MSD has received the Gold Safety Award for the 6th consecutive year due to the low illness and injury rates. MSD is below the state average which translates into reduced workers comp premiums. Congratulations to the employees and special thanks to Jim Naber and Sandra Moore for their work with our safety program.

- Reading

- NCLM Legislative Bulletin July 17 and 31st – note highlights
- AWWA Streamlines regarding Water Trust Fund.
- NACWA Regulatory update July 8th.

- Staff Events

- United Way Golf Tourney September 18th
- Day of Caring September 3rd.
- Bobby Arrowood Retiring August 27th
- Employee Picnic September 24th

- Board/Committee Meetings

The next Right of Way Committee will meet August 26th at 9am. The next Regular Board Meeting will be held September 16th at 2pm.

Ask your Senators to oppose HB 524 as long as it includes a referendum

Status: The House passed *HB 524 – Annexation Omnibus Changes* with the referendum provision last week. A July 30 Asheville Citizen Times article quoted Rep. Goforth, bill sponsor, indicating he was told the bill would be heard in the Senate before session ends.

What the bill would do: The bill makes sweeping changes to the state’s statutes governing city-initiated annexations. The referendum provision requires a referendum on the annexation if a petition is signed by 15 percent of the registered voters in the area to be annexed and the municipality. Those opposing the annexation have at least one year, beginning from the adoption of the resolution of consideration, to gather the signatures. This referendum provision makes the bill unworkable, and we cannot support the bill with it included.

What you need to do: Please contact your senators to ask them not to support HB 524 as long as it includes a referendum. Please ask your residents, civic, business and chamber leaders to contact your senators also.

This week’s developments

N.C. cities and towns could lose some beer and wine taxes under state budget proposal

Our North Carolina cities and towns could potentially lose some of their local share of the beer and wine excise tax, according to information we’ve gathered at the General Assembly on a budget proposal now under consideration by House and Senate leaders. Under the latest revenue proposal to balance the state budget, the state would retain some of the local share of beer and wine excise taxes for one year. Statewide, this tax produces about \$33 million in annual revenues with about \$22 million going to towns and cities and \$11 million going to counties. Negotiations are continuing and the proposal is not final.

Other, more significant, local revenue sources were under consideration for reduction or elimination but our understanding is no other revenues beyond the beer and wine excise tax are expected to be retained. Cities, towns and counties receive their beer and wine tax proceeds annually from the state in May.

“We are disappointed that reducing or eliminating a local revenue source is necessary to balance the state budget. Our cities and towns, of course, are struggling as well. However, we do understand the importance of meeting the needs of citizens in these tough economic times,” said NCLM President Jerry Jones, mayor of Morehead City. “It is particularly difficult because the loss is happening after the adoption of municipal budgets for this year. However, we want to try to work in partnership with the state in both the good and bad times. We are committed to that.”

House and Senate leaders are continuing to work hard to reach final agreement on the overall budget package. The leadership indicates they are near completion, meaning the General Assembly would be voting on the package next week, with adjournment close behind. The basics include: a penny sales tax, an income tax surcharge of 3 percent for married couples making \$250,000 or more, and 2 percent for those making between \$100,000 and \$250,000, and excise tax increases on cigarettes, beer, wine and liquor.

Eminent Domain bill expected to be considered in House Judiciary II

HB 1268 - Eminent Domain would amend the state constitution to bar government from condemning private property for economic development. The constitutional amendment would also provide the landowner the right to receive a jury trial to determine just compensation. The statutes were amended several years ago to clarify this and the League believes a constitutional amendment is unnecessary. The bill was earlier sent from the House floor to a Judiciary II subcommittee, which is expected to report to the full committee next week.

Local government ethics bill ratified

The House has approved the Senate’s amendments to *HB 1452 – Local Government Ethics*, and the bill will be sent to the Governor. It requires cities, towns, counties, boards of education, unified governments and sanitary district boards to adopt codes of ethics. All members of the

N.C. GENERAL ASSEMBLY INFORMATION

Main Number
919-733-4111

Printed Bills Office
919-733-5648

Bill Status Desk
919-733-7779

Legislative Bldg.
Fax 919-733-2599
Raleigh, NC 27601-1096

Legislative Office Bldg.
Fax 919-733-3113
Raleigh, NC 27603-5925

General Assembly website
www.ncleg.net

NCLM website
www.ncmlm.org

GO TO WWW.NCLM.ORG. CLICK ON THE ACTION CENTER ICON FOR INFO



governing boards must complete at least two hours of ethics education within 12 months of being elected to office and two hours of education after each subsequent election or appointment to the governing board.

The code of ethics must be adopted by January 1, 2011, and governing board members must receive their initial training by that date. Please note that the upcoming Essentials of Municipal Government, which will be offered at six locations beginning in December, will include ethics education to satisfy this requirement. Also, there will be a pre-conference workshop on ethics at the N.C. Association of County Commissioners Annual Conference. This five-hour workshop, sponsored by the Local Elected Leaders Academy, will be held August 27.

Condemnation of Conservation Easements bill approved

The Senate agreed to the House version of *SB 600 – Condemnation of Conservation Easements* and it will be sent to the Governor. The League thanks Sen. Dan Clodfelter and Rep. Ruth Samuelson for their efforts on this bill. We worked with legislators and other interested parties to obtain provisions to exempt municipal utility projects, including electric, gas, water, sewer, stormwater systems and greenways. The bill is to be effective October 1, 2009.

More electronic notice of proposed increase in fees

The Senate concurred in the House committee substitute for *SB 698 – City/County/Sanitary District Fees/Internet* and the bill now goes to the Governor for her signature. The legislation requires local governments, sanitary districts and water and sewer authorities that maintain their own websites to publish notices of new or increased development-related fees on the website. The notice must appear at least seven days before the first meeting at which the new or increased development fee will be discussed, and the governing board must provide a public comment period. If the fee is part of the annual budget, no special electronic notice is required. The provisions are to be effective September 1, 2009.

Moratorium on rules scaled back

HB 1335 – Moratorium on EMC Rule Making passed the Senate this week after its focus was narrowed. A Senate committee substitute replaced a House bill on another subject with a bill placing a two-year moratorium on rulemaking by the Environmental Management Commission. The revised bill, which now only applies to rules regarding water quality testing by animal feeding operations, returns to the House for a vote on concurrence in the Senate changes.

Affordable housing bill advances

SB 810 – Affordable Housing/No Discrimination (McKissick) has passed the House, and was amended on the House Floor to accommodate the League's concerns over the legal standard to be applied in discrimination cases. It now makes its way to the Senate for concurrence.

Conflicts of interest bill moves

SB 653 – Cities – Do Not Automatically Count Vote (Rucho) was moved from the House Local Government II Committee without prejudice, to the House Judiciary I Committee. The bill in its current form would eliminate the requirement that when a city council person fails to vote on an issue before the board, the vote is counted as "yes." The bill also requires NCLM, NC Association of County Commissioners, and UNC School of Government to study local government conflicts of interest, and report back to the 2010 Session of the General Assembly.

Permit extension advances

The House and Senate adopted a conference report for *SB 831 – Extend Certain Development Approvals* this week and the legislation will now be sent to the Governor. The bill extends the life of certain types of state and local development approvals if they were valid at any point during the period from January 1, 2008 through December 31, 2010. The conference committee removed a provision dealing with the allocation of water and sewer capacity due to bill sponsor concerns. We are working to have that provision included in another bill this session.

Golf carts regulation bill passes

HB 121 – Regulation of Golf Carts has been ratified. The bill allows municipalities and counties to regulate the operation of golf carts on any public street, road, or highway where the speed limit is 35 mph or less. It also allows local governments to require registration, specify who is authorized to operate golf carts and requires that no person under 16 years old may operate a golf cart on a public street.

Bill Summaries

Bill summaries for this week will be posted by 5 p.m. Friday at www.nclm.org "Legislative Action Center."

NC LEAGUE OF MUNICIPALITIES Legislative Bulletin

No. 25

www.nclm.org

July 17, 2009

Annexation bill to be heard in House Appropriations on Tuesday! Request removal of referendum provision; Plan to attend Committee Mtg.

Tuesday, July 21, at 8:30 a.m. the Appropriations Committee is scheduled to consider HB 524 – Annexation – Omnibus Changes Please continue your contacts with members of this committee to request removal of the referendum provision in the bill and ***plan to attend the meeting in Room 643 Legislative Office Building***. We have made significant compromises in this bill and, while we still have specific concerns, we stand behind our good faith efforts to support a reasonable bill that has the legislative support to pass this session. You have shown great leadership in your support for annexation reform and the sweeping changes to the annexation statutes proposed in HB 524 as recommended by the House Judiciary II Committee. Unfortunately, the referendum amendment added in House Finance would lead to the effective elimination of annexation as a tool to manage growth and to provide services in an orderly and logical manner in urban areas. Annexation opponents are requesting a number of changes to HB 524, including a vote just of the people being annexed and giving county boards of commissioners control over city-initiated annexations.

Actions needed: Please contact members of the House Appropriations Committee **immediately** to ask them to remove the referendum amendment from HB 524. (For a complete list and contact information visit the League's Legislative Action Center at: <http://www.nclm.org/lachomepage.htm>)

Discuss Importance of Privilege License Tax with Legislators

The Senate and House continue to disagree on how to raise the approximately \$1 billion needed to balance the state budget. This week, the General Assembly passed another continuing resolution to keep state government running until July 31, funded at 84 percent of last year's budget. We continue to work with House and Senate budget leaders to prevent the elimination of the local privilege license tax, which raises approximately \$50 million for municipalities statewide. Last week the League was asked to provide the budget conferees with a proposal for reforming the tax, rather than eliminating it. This proposal, which was sent to cities and towns earlier this week, would eliminate the caps and exemptions for specific types of businesses, limit the taxation of businesses without a location within the city, and place a cap on the total tax bill for a single business. For a copy of the proposal, go to www.nclm.org/lachomepage.htm. Please contact House and Senate budget conferees to discuss how important the privilege tax is as a revenue source to your city or town and to support reform of the tax rather than its elimination. For a list of conferee co-chairs, visit <http://www.nclm.org/Legal-legislative/LegisBulletin070209.htm> -- the July 2 bulletin, which includes this list and contact information. Any legislator's office may be reached by calling 919-733-4111 and asking for the legislator by name.

Seek amendment to Open Government Act

HB 1134 – Open Government Act requires awarding of attorneys' fees to anyone who "substantially prevails" in a public records case against a city, county or the state. The government unit can avoid paying the attorneys' fees only if the court finds that it acted in reasonable reliance on a court order, a published appellate opinion, or a written opinion or letter of the Attorney General. It also creates an Open Government Unit in the Attorney General's Office to serve as a mediator in resolving public records and open meetings disputes.

Status: Senate Judiciary I Committee. (Passed House)

Actions needed: Please talk to your Senators and request additional language to prevent attorneys' fees from being awarded if a local government acts on the advice of its attorney.

This week's developments

Electronic notice of development fee increases

The House has passed a committee substitute for **SB 698 – City/County/Sanitary District Fees/Internet** that would require local governments that maintain their own websites to publish notice of new or increased development-related fees on the websites. The notice must appear at least seven days before the first meeting at which the new or increased fee will be discussed, and the governing board must provide a public comment period during the meeting when the fee is considered. If the fee is a part of the annual budget, no special electronic

N.C. GENERAL ASSEMBLY INFORMATION

Main Number
919-733-4111

Printed Bills Office
919-733-5648

Bill Status Desk
919-733-7779

Legislative Bldg.
Fax 919-733-2599
Raleigh, NC 27601-1096

Legislative Office Bldg.
Fax 919-733-3113
Raleigh, NC 27603-5925

General Assembly website
www.ncleg.net

NCLM website
www.nclm.org

GO TO WWW.NCLM.ORG. CLICK ON THE ACTION CENTER ICON FOR INFO



notice is required. The League was successful in obtaining a number of changes to this bill to limit its scope and make it more reasonable. The bill now goes back to the Senate for concurrence.

Fireworks safety regulation

The Senate State and Local Government Committee approved a bill to respond to safety concerns after a fatal July 4 fireworks explosion on the Outer Banks. **SB 563** would require those operating a public fireworks display to meet minimum training standards of the state fire marshal's office, get a two-year permit, and have proof of insurance of at least \$500,000. The bill now goes to the Senate Finance Committee.

Development moratorium bill not heard

SB 117 – Clarifying Development Moratoria Authority prohibits a city or county from adopting a temporary moratorium on development for the purpose of developing and adopting new or amended ordinances. The House Commerce Committee had scheduled it for this week but ran out of time before the bill was heard. The League opposes the bill as currently written. Planning statutes were revised a few years ago to set sufficient standards for moratoria, which are an important tool for addressing local growth and development issues. Please continue to let members of the House Commerce Committee know of your need to have development moratoria as a tool.

Looking to 2010 . . .

Municipal Legislative Policy Proposals

Please Submit Your Ideas Now

The League Conference will be held October 25-27, 2009 in Greenville. The annual business meeting will be held on October 27, and in that meeting the membership will consider any changes to the advocacy agenda or core principles for 2010. In accordance with the League bylaws, proposals from the membership must be submitted to the League at least 90 days in advance of the annual meeting.

Policy proposals should be sent to JWebb@nclm.org at the League as soon as possible, but no later than July 29, 2009. Please put "Policy Proposal" in the subject line.

Smaller cities' urban area revitalization projects

Both the Senate and House have now passed **SB 618 – Urban Area Revitalization Made Uniform**. The legislation permits all municipalities to participate in urban area revitalization projects under the municipal service district statute; previously, only cities with populations greater than 150,000 met the threshold.

Compromise version of conservation easements bill

The House passed a committee substitute for **SB 600 – Condemnation of Conservation Easements** this week. The original bill would have created new standards and procedures for condemnation of properties encumbered by conservation easements that could have effectively eliminated local government ability to condemn such properties for road or utility projects. The League successfully negotiated numerous provisions, including an exemption for municipal utility projects (electric, gas, water, sewer, storm water systems and greenway trails). For road projects, if the easement holder contests the condemnation, the court is to consider whether a prudent and feasible alternative exists and, if it does, must dismiss the action and award costs and expenses (but not attorneys' fees) to the easement holder. The bill now returns to the Senate for concurrence.

Changes in quasi-judicial appeals process

The House has passed a committee substitute for **SB 44 - Appeals of Quasi-Judicial Land Use Decisions**. The legislation codifies in statute the procedures for appeals of quasi-judicial land use decisions, such as variances and special use permits. The League was successful in getting several changes, including language to require the court to consider the interpretation of the decision-making body. The bill must go back to the Senate for concurrence.

Development permit extensions

The House passed a committee substitute for **SB 831 – Extend Certain Development Approvals** this week and it will return to the Senate for concurrence. The legislation suspends the running of the period of a development approval during the period beginning January 1, 2008 and ending December 31, 2010. The bill was introduced as a response to the current recession. The League worked to secure several changes to provide a similar extension for certain state water and wastewater permits granted to local governments and to address situations in which water or sewer capacity is at issue.

Special separation allowance

The Senate passed a committee substitute for **HB 816 – Clarify Local Special Separation Allowance** that makes several changes requested by the League. The bill clarifies that payment of a law enforcement officer's special separation allowance ceases upon the death of the officer; the last day of the month in which the officer attains 62 years of age; or the first day of reemployment by a local government employer in any capacity. It allows a local government to employ retired officers in a

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HEADLINES

Water trust fund bill not a slam-dunk winner

Editor's Note: See link below to comment on this article.

Introduction of a bill July 14 to create a \$10 billion annual federal water trust fund met with mixed reaction at a hearing in the US House of Representatives. Some industry associations support it, while AWWA and others don't support the concept at this time.

AWWA would prefer that funds raised locally be retained and spent locally, rather than being sent to Washington, D.C., first, and that communities that have adopted adequate rates not be asked to subsidize those that have not. One way of doing this is through a federal water infrastructure bank, which AWWA supports over a trust fund.

The trust bill — Water Protection and Reinvestment Act (HR 3202) — would create a trust fund with a dedicated source of funding, new federal taxes that would raise \$10 billion annually. The taxes proposed by the sponsor are

- A 4 cent per-container fee on water-based beverages — includes anything that is more than 50 percent water, such as soda, but not juice or milk;
- A 3 percent fee on items disposed of in wastewater, such as toothpaste, shampoo, cosmetics, toilet paper, and cooking oil;
- A one-half of 1 percent excise fee on pharmaceutical products, which would support remediation research and programs to prevent drugs from entering water systems;
- A one-fifteenth of 1 percent fee on corporate profits over \$4 million — similar to the tax that funded the Superfund program until the tax expired in 1995.

Citing the shortfall of funding for water infrastructure, sponsor Rep. Earl Blumenauer (PDF), D-Ore., who drew bipartisan sponsorship (1 Democrat, 3 Republicans), said, "While it's probably the case that some water agencies could and should charge more for the water services they provide, we can't expect individuals to shoulder the entire burden of upgrading our nation's seriously neglected infrastructure with their water bills. This could mean a doubling or tripling of rates.... To me it is unconscionable that in this country, something as essential to life as water could become unaffordable."

Joining in support of the bill at a hearing June 15 before the Subcommittee on Water Resources and the Environment of the House Transportation and Infrastructure Committee were representatives from the American Society of Civil Engineers, the National Association of Clean Water Agencies and the Associated General Contractors of America.

Representing American Society of Civil Engineers, which gave a grade of D- for both the nation's drinking water and wastewater infrastructure, Dale Jacobson (PDF) testified "Although Americans still enjoy some of the best tap water in the world, the costs of treating and delivering that water where it is needed continue to outpace the funds available to sustain the system," Jacobson said.

New sources of funding must be found, he said, adding ASCE "strongly supports the creation of a trust fund to finance



Chips Barry testifies on behalf of AWWA at a hearing July 15 on HR3202.

the national shortfall in funding." ASCE estimates the shortfall to replace aging drinking water facilities alone at least \$11 billion annually.

Representing AWWA, Chips Barry (PDF), manager of Denver Water, noted that over \$80 billion annually is spent by local officials on water and wastewater infrastructure. The infrastructure gap represents a shortfall of about 20 percent relative to current spending, Barry said.

Thomas K. Walsh, engineer, director and treasurer for a water pollution district in Millbury, Mass., spoke for NACWA, citing a recent US Conference of Mayors report that says municipalities currently pay 95-99 percent of the costs for drinking water and wastewater infrastructure.

NACWA's own study showed that "the average cost of wastewater services for a single-family residence increased by about 5.3 percent in 2008, compared to the rate of inflation, which was 3.9 percent," Walsh said. He felt small, rural and low-income communities would be hardest hit.

Referring to the decline in state revolving fund appropriations in recent years, "it is critical to take the issue of water infrastructure investment out of the realm of uncertain annual appropriations and into the more certain arena of a dedicated funding stream," Walsh said.

"If highways merit a trust fund with \$30 billion per year and airports \$10 billion per year, why should we not have one for water, a resource each of us uses every single day?"

Kristine L. Young, representing Associated General Contractors of America, testified that "many communities do not currently have the financial resources to make the investments that are direly needed and necessary to meet federal water quality standards and face significant practical and political challenges enacting rate structures that would raise adequate capital to make the improvements that are needed."

She noted the declining appropriations that SRFs suffered until recently and said "AGC supports creation of a long-term, sustainable, off-budget source of funding for water infrastructure."

Barry expressed a number of reservations about trust funds, in general, to the subcommittee, and said AWWA was "not prepared...at this time" to support HR 3202.

"In practice, federal trust funds routinely collect more in revenue than they are allowed to spend by congressional appropriation," Barry said. Trust funds usually must be renewed annually during the appropriation process. If a trust fund collects more funds than it is allowed to spend through the appropriations process, those funds can be and often are spent elsewhere, Barry said.

"At the present time the Treasury owes many billions of dollars to federal trust funds, not counting the vastly larger sums that are owed to the Social Security and Medicare Trust funds," Barry said.

"We believe a water trust fund bill, regardless of the revenue sources it employs, should include a guaranteed or automatic appropriation of all monies collected to the EPA for the program's intended purposes," Barry said.

ASCE's representative had the same thought, "The fund should contain budgetary firewalls to ensure that a reliable amount of financial aid goes to state and local governments annually." Blumenauer's testimony didn't discuss this.

Barry also cited AWWA's long-standing policy: "The primary responsibility for funding water infrastructure has always been local, and should remain so. Americans are best served by water and wastewater systems that are self-supporting through rates and other local charges."

He was concerned that local officials would be loath to raise rates locally if they believed a pot of money were coming from Washington.

What AWWA favors, Barry said, is "a federal water infrastructure bank [that] would provide direct low-interest financing or loan guarantees for projects of regional or national significance, or which were simply too large for a state [SRF] to accommodate. With loans at the Treasury bond rate, communities would typically save 10 to 20 percent compared to their current borrowing rates and would save significantly more if the bank were authorized to provide additional subsidies."

The cost to the federal government of a federal water infrastructure bank would be relatively small, Barry said. If the federal banking system were to forgive 20 percent of the principal of a 20-year \$10 billion loan to the water bank, the cost to the federal government would be only \$150 million a year. The bank could, in turn, provide significant cost savings and even subsidies to needy communities.

The National Association of Water Companies issued a statement regarding testimony it submitted to the committee, stating, "The trust fund mechanism created by this bill would serve to further mask the value of water through taxes on unrelated activities and discourage responsible water use and conservation through heavy, broad utility subsidizations."

The NAWC "supports federal policies that provide utilities with incentives to set prices that both sustain infrastructure investments and encourage conservation," the statement said. NAWC also supports using the SRFs and passing a bill to remove volume caps on private activity bonds, which increase the amount of tax-exempt funding available to utilities. Both allow affordable investments in infrastructure while "still sending accurate price signals to the public about the value of water," the release said.

Barry said AWWA is glad to see that the bill would channel funds through existing state revolving fund (SRF) loan programs and also urged passage of S1005, a bill that reauthorizes the SRFs and gives greater weight to loan applicants who "can demonstrate that they are implementing asset management plans and responsible financial planning." (See [Water](#)

Legislation column.)

AWWA also supports efforts to remove the annual volume caps from private activity bonds used for water infrastructure projects, as HR537 would do, he said.

A report recently released by the Aspen Institute — *Sustainable Water Systems: Step One - Redefining the Nation's Infrastructure Challenge* (PDF) — cited by both NAWC and AWWA, makes 10 recommendations, including that the price of water should cover "the total cost of meeting service and sustainable water infrastructure requirements, subject to concerns about affordability."

The Government Accountability Office also issued a report recently — *Clean Water Infrastructure: A Variety Of Issues Need To Be Considered When Designing A Clean Water Trust Fund* (PDF).

Anu Mittal (PDF), author and a GAO natural resources and environment issues director, testified before the subcommittee about a variety of sources for funding a trust fund.

Levying a federal water use tax was one source she mentioned. AWWA does not support a water tax because it would siphon away local funds and would result in communities with adequate rates subsidizing those without.

However, Blumenauer did not accept the water tax recommendation from the GAO, nor did he propose putting a tax on fertilizers and pesticides, as the GAO suggested.

Blumenauer also [spoke for the record on the House floor](#) the day before the hearing, emphasizing the need for improved water infrastructure financing.

In addition to House Transportation and Infrastructure Committee, HR3202 has been sent for consideration to the following committees: House Energy and Commerce, House Science and Technology and House Ways and Means. Some of those committees are believed to favor the water use tax, according to Tom Curtis, AWWA deputy director for government affairs.

Additional AWWA Resources

- [Report Financing Water Infrastructure: A Water Infrastructure Bank and Other Innovations](#) (PDF 2M)
- A study of [private activity bonds](#) (PDF), commissioned by the AWWA Water Utility Council, completed in June 2009.
- From the AWWA Bookstore: "[Avoiding Rate Shock: Making The Case For Water Rates](#)"; "[Thinking Outside the Bill: A Utility Manager's Guide to Assisting Low-Income Water Customers](#)"; and "[Water Infrastructure at a Turning Point: The Road to Sustainable Asset Management](#)."
- [AWWA Streamlines](#) story, March 17 "Economy stresses out water customers, employees"

Sandy Nance, Managing Editor

Posted: 07/21/2009

Comments

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Hartye, Tom

From: Bradford, Ed
Sent: Friday, July 24, 2009 2:35 PM
To: Hartye, Tom
Subject: Annexation Sewers - Facility and Tap Fees

Tom - I called Stan but couldn't reach him, so I asked Mike Stamey (who has dealt with many of these). For annexations, a tap is provided for each home along the sewer line (at the town/city's cost) - so there is no tap fee charged to the property owner.

The homeowner must, however, pay the facility fee to MSD when and if they choose to connect. They don't have to connect if their septic system is working ok.

Also - for the three Black Mtn. projects - I looked at the bid schedules and counted the number of connections. There are 89 proposed taps.

If you need anything else please advise.

To: Members & Affiliates; Regulatory Policy Committee
From: National Office
Date: July 8, 2009

The National Association of Clean Water Agencies (NACWA) is pleased to provide you with the July 2009 *Regulatory Update*. This *Update* provides a narrative summary of relevant regulatory issues and actions current to July 8, 2009. Please contact NACWA's Chris Hornback at 202/833-9106 or chornback@nacwa.org or Cynthia Finley at 202/296-9836 or cfinley@nacwa.org with any questions or information on the *Update* topics.

Top Story

EPA Administrator Jackson Calls for Increased Water Quality Enforcement

In a July 2 memorandum, EPA Administrator Lisa Jackson called for improved water quality through transparency and effective enforcement of Clean Water Act requirements. The memo, directed to Cynthia Giles, Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance (OECA), stated, "Despite the successes we have achieved over the years, water in the United States is not meeting public health and environmental goals. Too many of our streams, lakes and rivers do not meet our water quality standards." The memo also states that "in many parts of the country, the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low."

To address this situation, Jackson calls for increased transparency, stronger enforcement, and improved information technology. Jackson recommends increasing transparency by making more and better information available on EPA's website, including permit compliance and enforcement activities in each state. Not only should EPA collect and disseminate this information, but the Agency should also update its information technology to provide analytical resources that make the information easily understood and useable by the public. EPA needs to "raise the bar for clean water enforcement performance," and cites wet weather pollution as one of the problems with the largest impact on water quality, requiring the highest priority for enforcement. The memo includes instructions for Giles to report back to Jackson within 90 days with recommendations for steps to achieve these goals.

Although wet weather pollution has long been EPA's highest enforcement priority, NACWA is concerned about Jackson's request for stronger enforcement. Jackson recommends close consultation between OECA and the EPA Regions and the states, including the Environmental Council of the States (ECOS) and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), but does not mention working with municipalities or other dischargers regulated by the Clean Water Act. NACWA believes that a more cooperative approach between EPA and municipalities would be beneficial, and that new solutions to wet weather problems need to be explored, such as wet weather water quality standards, a comprehensive sanitary sewer overflow (SSO) rule, or a holistic watershed approach, such as the Association's draft 21st Century Watershed Act. NACWA will continue its advocacy for these potential solutions and keep members informed about progress, as well as about the development of recommendations resulting from Jackson's memo.

Climate Change

NACWA Comments on EPA's Proposed Endangerment Finding for Greenhouse Gases

NACWA submitted comments on June 23 about EPA's proposed endangerment findings for greenhouse gases, published in an April 24 *Federal Register* notice. If finalized, the endangerment finding would allow regulation of greenhouse gases under the Clean Air Act. NACWA previously expressed concerns about this type of regulation in its November 26, 2008 comments to EPA on the Agency's *Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act*. NACWA reiterated these concerns in its endangerment finding comments, stating that "The Clean Air Act was meant to address pollutants on a local or regional basis with a focus on improving public health, and its framework cannot account for the global nature of greenhouse gas emissions and climate change. Instead, a new framework for regulating greenhouse gases should be developed that recognizes the strong interrelationship between climate change and water resources."

NACWA also pointed out that potential greenhouse gas reduction requirements could conflict with implementation of existing Clean Air Act standards. The endangerment findings state that the health effects of greenhouse gas emissions are indirect, but does not provide direction for how conflicts between health-based criteria pollutants and greenhouse gas emission reduction should be resolved. NACWA recommended that EPA "make a clear distinction between health-based criteria pollutants and health effects caused indirectly by greenhouse gases, and the health-based objectives should take precedence." NACWA will continue to follow legislative and regulatory actions taken regarding greenhouse gases and climate change and their potential effects on clean water agencies.

EPA Announces Funding Program for Greenhouse Gas Reduction Projects

EPA has announced a \$10 million Climate Showcase Communities grant program to help create "replicable models of sustainable community action that generate cost-effective and persistent greenhouse gas reductions while improving the environmental, economic, public health, or social conditions in a community." The program is intended to provide funding for local governments, including municipalities, local public authorities, and special districts, and utilities should consider applying for the grants. EPA expects to award about 30 applicants with funding ranging from \$100,000 to \$500,000 per project. Grant recipients will be required to meet a 50 percent cost-share, which can be in the form of cash or in-kind contributions, such as donated time, equipment, or expertise. EPA will offer peer exchange, training, and technical support to grant recipients, and encourage replication across the country to promote the creation of sustainable climate management programs. The agency will accept proposals through July 22 and is expected to begin awarding grants in January 2010. More information about the grants program is available on EPA's website.

Facilities and Collection Systems

NACWA, Water Sector Partners Meet with EPA on Collection System Attributes

NACWA, the American Public Works Association (APWA), and the Water Environment Federation (WEF) met with staff from the EPA Office of Wastewater Management on June 30 to discuss ongoing efforts to develop a consistent set of management guidelines for sanitary sewer collection systems. For the past year and a half, volunteers from NACWA and WEF (APWA joined the effort earlier this year) have been drafting the *Core Attributes of Effectively Managed Wastewater Collection Systems*, a list of 12 attributes that comprise the range of activities essential to maintaining a well-run collection system. With clear guidance lacking on the national level, the associations hope the attributes will provide treatment utilities and satellite collection system managers with a

REPORT OF COMMITTEES

PERSONNEL COMMITTEE MEETING

July 22, 2009

9:30 a.m.

1. Call to Order

Chairman VeHaun called the meeting to order at 9:44 am in the W.H. Mull Building of the Metropolitan Sewerage District. In attendance, were the following members: Jackie Bryson, and Mike Sobol. Also present were Steven Aceto, Max Haner, Kevin Kopp, Tom Hartye, Jim Hemphill, and Pam Thomas.

2. Inquiry as to Conflict of Interest

Mr. VeHaun stated there was none at this time.

3. Evaluation of the General Manager

Mr. Hartye discussed objectives and short term goals.

The goals were as follows:

- *Complete MSD Collection System Master Plan.* McGill Associates completed the Collection System Master Plan that was presented and endorsed by the Board. The Master Plan incorporated our member agencies planning efforts, to include Henderson County and Cane Creek. Since the completion of their plans, the goal is to coordinate our plans. This will include figuring out what systems should be upgraded and what their participation needs to be. This will likely involve a renegotiation of (and hopefully simplifying) the current agreement.
- *Final Design and procurement for Secondary Microscreen Project.* Has been completed and is in the permitting process. MSD stands ready to procure the screens and construct the project, but we have held off due to the economy. The projection of the reduced revenues/consumption is at 3% for this fiscal year. MSD will see how the trend in the economy plays out before beginning the project.
- *Keep within operating budget.* Final numbers are not yet in, but will show that we were under budget by at least 3%. Next years operational budget will actually be less than this past year even with additional obligations.
- *Meet all environmental permit regulations.* Meet all permit requirements and have received good regulatory reports from NC DENR for the Plant, the collection system permit, the pretreatment program and the ISO program.
- *Replace or rehab 250,000 LF of sewer main over 5 years.* Just recently negotiated the amount from to 50,000 LF a year to 250,000 LF which gave flexibility in meeting the requirement. This year we have rehabbed or replaced approximately 45,643 LF, and 15,700 LF was performed by system services in-house crews. The two (2) year running total is 114,893 LF, which is 14,893 above where we need to be. Mr. Haner asked if MSD had the latitude if MSD performs the full 250,000 LF, are we able to "take the next year off". Mr. Hartye stated that there is a minimum amount that needs to be performed annually (i.e. 25,000 feet). Mr. Sobol asked if the 15,000 LF includes the cumulative totals plus other jobs that have been done.

- Mr. Hartye stated that not all, but some point repairs are included in the total. He also stated that the IRS and dig-up crews are included.
- *Preventative Maintenance > 500,000 LF of sewers.* MSD is way over that amount and the work is done by in-house crews. Mr. Sobol asked what the savings are to do in-house instead of sub-contracting out. Mr. Hartye stated that MSD is no longer paying a contractor \$500,000 per year for the full system clean and CCTV.
 - *Utilize Master Plan findings to further formulate expansion policies.* MSD has shifted its focus and development incentives from sending out rebates and reimbursements for extension of lines, to providing for the orderly growth of the system. Reems creek basin master plan line has developed into a good model for how master planning can be utilized for the betterment of the larger community. MSD has completed the design and permitting (which involved about 10 permits which had to be revised due to trout buffer concerns). In addition, MSD has nearly completed obtaining the ROW and has facilitated the extension by construction a tie-in where needed. These efforts put money toward a viable system not just as a general incentive.
 - *Update Financial Forecast and parity plan and assist Board in understanding assumption, inputs and impacts.* Updated the forecast model to adjust medical, GASB 45, along with change in consumption and growth. This tool is utilized to help determine the timing of our big \$10 million project at the plant as well as when best to go out for bonds.
 - *Temporary shift of collection system monitoring and maintenance for Dry Weather Conditions.* System Services crew last summer and fall during the dry weather went out and investigated areas of concerns. Lake Julian area, has in the past, had consistent SSO's. MSD crews performed smoke testing, rain walks, and CCTV to hunt down defects and cross connections. The original smoke testing performed many years ago by the consultant/contractor had problems finding the critical areas because the water tables were up, and they didn't know the system very well. Our crews who know our system, performed smoke testing and other types of investigations. The problem areas that were identified were fixed and this area has not since experienced the SSO's that it would in even very light rains (thus prolonging the life of the system and when it has to be replaced). The other spot was on the Biltmore Estate 36' interceptor. Barry Cook showed great leadership in leading our system Services crews in cleaning a large amount of debris from the interceptor. This effort was larger and more involved than most jobs that our crews typically do because of the size of the main, the amount to be pumped around and the fact that crews were faced with T manholes which made access difficult. A discussion followed about what a T pipe was and how the crews used this to get the equipment down in the pipe and clean out the system. What came out of the project was a learning event along with extending the life of the main. Mr. Haner asked if there is a need to replace the T's. Mr. Hartye stated that it would be a major endeavor to redesign and that there will likely be a parallel interceptor in the future. The important thing is that SSD personnel now know what they are contending with.
 - *Succession planning for passing on of knowledge, experience, and core values.* Human Resources has completed a gap analysis and interviewed every employee and their supervisor. The outcome identified training needs for basic and advanced computers, and other miscellaneous training needs. Mr. Hemphill has developed a computer lab for basic computer training needs.

- *The District received the Excellence in Management Award from NACWA for 2008 - 2011. MSD was one of only 4 nationwide to be given that distinction. This reflects well on the organization from top to bottom.*

Mr. Haner asked if a point person or staff member is involved in tracking the master plan that is being developed, or if that was something Mr. Hartye did himself. Mr. Hartye stated that Mr. Boyd is the point person in Planning & Development. Mr. Boyd is involved with planning and development on a day to day basis and that periodically our consultant will update the plan. The involvement for the update will consist of seeing what happens with the Buncombe County land use, and what has changed in the various agencies. However, the effort involved will be much less than the original mapping, engineering, and modeling effort that McGill Assoc. completed this last year. Mr. Haner asked how many entities that we have currently, make up the plan. Mr. Hartye stated that all of the agencies may not have a planning & development department but everybody has had a plan done and has had input.

Mr. Sobol moved that the meeting be conducted in closed session to discuss Mr. Hartye's evaluation. Ms. Bryson seconded that motion. Voice vote was unanimous in favor.

Closed session began at 10:16 a.m.

Closed session ended at 10:41 a.m.

Recommendation:

Mr. VeHaun stated that the Board is very satisfied with Mr. Hartye's performance as coach and a team player. The Board also felt that since the employees received no increase this past year. Mr. Hartye's increase would be put on hold until next year. Mr. Aceto stated he was very impressed with the goals and objectives and performance. Mr. Hartye would like to thank the Board for their support.

4. Adjourn

With no further business, the meeting was adjourned at 10:45 a.m. No future meeting has been scheduled.

CONSOLIDATED MOTION AGENDA

Metropolitan Sewerage District of Buncombe County
BOARD ACTION ITEM

BOARD MEETING DATE: August 19, 2009

SUBMITTED BY: Tom Hartye, P.E. - General Manager

PREPARED BY: Ed Bradford, P.E. - Director of CIP
 Mike Stamey, P.E. - Project Manager

SUBJECT: Sanitary Sewer Rehabilitation Project: Town Branch Interceptor, MSD
 Project No 2004230

BACKGROUND: This rehabilitation project is necessary due to repeated maintenance calls associated with an aged and structurally deficient clay interceptor. In addition, structures have been constructed both near and over the line, requiring it to be relocated from its current location. This project is located near downtown Asheville, and is comprised of 1,339 LF of 8-inch through 30-inch DIP.

The project was advertised and thirteen bids were received on Thursday, July 23, 2009 at 2:00 PM as follows:

<u>Contractor</u>	<u>Bid</u>
1. Spur Construction	\$999,490.00
2. Carolina Specialties Construction	\$886,529.00
3. Haren Construction Company	\$877,320.00
4. B E & L Mechanical	\$869,970.50
5. Goodwater, Inc	\$856,685.00
6. Pipeline Utilities, Inc.	\$828,600.00 (*)
7. Cooper Construction Company	\$815,470.00
8. D.H. Griffin Infrastructure	\$794,318.00
9. L - J Inc	\$779,830.72
10. Buckeye Construction Company	\$778,151.59
11. DPI Construction, Inc	\$730,335.69
12. Terry Brothers Construction Company	\$729,006.00
13. BC & D Associates, Inc.	\$726,875.00

(*) Bid is rejected due to invalid bid bond.

The apparent low bidder is BC&D Associates, Inc. with a bid amount of \$726,875.00. BC&D has not previously worked on MSD rehabilitation projects; therefore, staff checked references. All five references were complimentary of BC&D.

It is interesting to note that while checking references, the second-low bidder (Terry Brothers) was complimentary of this company and their work.

Please refer to the attached documentation for further details.

FISCAL IMPACT: The FY09-10 construction budget for this project is \$768,000.00.

STAFF RECOMMENDATION: Staff recommends award of this contract to BC&D Associates, Inc. in the amount of \$726,875.00, subject to review and approval by District Counsel.

**METROPOLITAN SEWERAGE DISTRICT OF
BUNCOMBE COUNTY, NORTH CAROLINA**

**Town Branch Interceptor Sewer Replacement
Project No. 2004230**


**BID TABULATION
July 23, 2009**

BIDDER	Bid Bond	MBE Form	Bid Forms (Proposal)	Total Bid Amount
Spur Construction Waynesville, NC	5%	1	Yes	\$999,490.00
Carolina Specialties Construction Hendersonville, NC	5%	1	Yes	\$886,529.00
Haren Construction Company Etowah, TN	5%	1	Yes	\$877,320.00
B E & L Mechanical Mars Hill, NC	5%	1	Yes	\$869,970.50
Goodwater, Inc. Greenville, SC	5%	1	Yes	\$856,685.00
Pipeline Utilities, Inc. (**) Raleigh, NC	5%	1	Yes	\$828,600.00
Cooper Construction Company Hendersonville, NC	5%	1	Yes	\$815,470.00
D.H. Griffin Infrastructure Greensboro, NC	5%	1	Yes	\$794,318.00
L - J Inc. Columbia, SC	5%	1	Yes	(*) \$779,830.72
Buckeye Construction Company Canton, NC	5%	1	Yes	(*) \$778,151.59
DPI Construction, Inc. Arden, NC	5%	1	Yes	\$730,335.69
Terry Brothers Construction Company Leicester, NC	5%	1	Yes	\$729,006.00
BC & D Associates, Inc. Cullowhee, NC	5%	1	Yes	\$726,875.00

APPARENT LOW BIDDER

(*) Indicates correction in Contractor's bid amounts.

(**) Bid is rejected due to invalid bid bond.


Michael W. Stamey, P.E.
Project Engineer
Metropolitan Sewerage District
Buncombe County, North Carolina



7/27/09

This is to certify that the bids tabulated herein were publicly opened and read aloud at 2:00 p.m. on the 23rd day of July, 2009, in the W.H. Mull Building at the Metropolitan Sewerage District of Buncombe County, Asheville, North Carolina, and that said bids were accompanied by acceptable bidders bonds in the amount of 5% of the bid.

Interoffice Memorandum

TO: Tom Hartye, General Manager

FROM: Ed Bradford, CIP Manager
Mike Stamey, Project Engineer

DATE: July 28, 2009

RE: Town Branch Interceptor Sewer Replacement
MSD Project 2004230

This project is for the replacement of the existing interceptor sewer line along Town Branch, adjacent to Depot Street, in Asheville. The existing sewer line in this area has been problematic for many years with repeated overflows, back ups, and structural failures associated with the aged pipe segments. The work will include installation of approximately 1,044 LF of 30-inch DIP and 295 LF of 8-inch DIP.

Thirteen bids were received on Thursday, July 23, 2009 at 2:00 PM as follows:

<u>Contractor</u>	<u>Bid</u>
1. Spur Construction	\$999,490.00
2. Carolina Specialties Construction	\$886,529.00
3. Haren Construction Company	\$877,320.00
4. B E & I Mechanical	\$869,970.50
5. Goodwater, Inc	\$856,685.00
6. Pipeline Utilities, Inc	\$828,600.00 (*)
7. Cooper Construction Company	\$815,470.00
8. D.H. Griffin Infrastructure	\$794,318.00
9. L - J Inc	\$779,830.72
10. Buckeye Construction Company	\$778,151.59
11. DPI Construction, Inc	\$730,335.69
12. Terry Brothers Construction Company	\$729,006.00
13. BC & D Associates, Inc.	\$726,875.00

(*) Bid is rejected due to invalid bid bond.

The FY 09-10 Construction Budget for this project is \$768,000.00. BC & D Associates, Inc is the apparent low bidder for this contract with a bid amount of \$726,875.00. As MSD has no previous experience with this contractor, references were requested and contacted. All references contacted had very favorable experiences with BC& D Associates, Inc. These references indicated that this contractor had performed work very similar in nature to what is included in the Town Branch Interceptor Sewer Replacement project. Some of the comments made by the references included completion of projects on-time, positive testing results, good work quality, and a desire to work with the company again. See attached reference notes for additional information.

After completing this reference review, staff recommends award to BC & D Associates, Inc, contingent upon approval by MSD legal counsel.

and were very flexible to work with. The test results on the installed 54" line were excellent. Mr. Vane indicated that he would like to do another project with the company in the future. The biggest thing MSD will need to watch per Mr. Vane is corrosion control issues and jobsite safety.

**4. Mr. Glen Armstrong, Glen Armstrong, P.C.
Charlotte, NC**

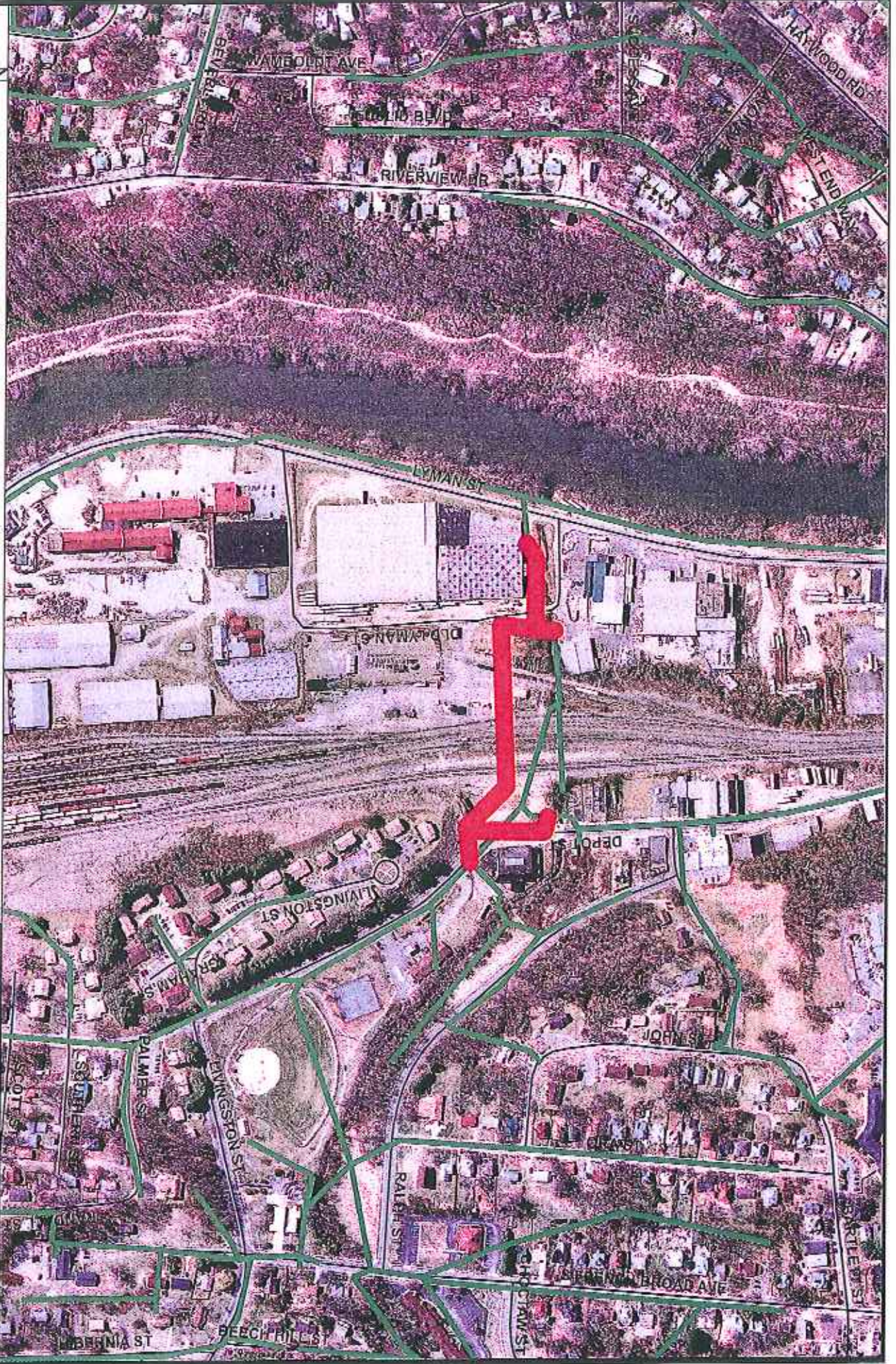
Primary Project: Tools Fork Creek Sewer Interceptor for the City of Rock Hill, SC Utilities Department

Cost: 1,414,261.78 Time Period: July, 2005

Comments: Project went well. Project consisted of 16-24" pipe @ .1% grade in creek bottom. Contractor dealt with running sand and rock. Clean up was good. Mr. Armstrong stated he would recommend.

**5. Eddie Gahagan, Vice President
Terry Brothers Construction
Asheville, NC**

Comments: Mr. Gahagan indicates that BC & D Associates are a top notch company and that MSD will not have any problems with them.



Town Branch Interceptor
Project No. 2004230

NOT TO SCALE



METROPOLITAN SEWERAGE DISTRICT
 of
 BULLOCH COUNTY, NORTH CAROLINA

Budget Map

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA

CAPITAL IMPROVEMENT PROGRAM

BUDGET DATA SHEET - FY 2009 - 2010

PROJECT:	Town Branch (Nasty) Interceptor	LOCATION:	Ashville	REVIEWED BY:
TYPE:	Interceptor	DATE OF REPORT:	January-09	
PROJECT NO.	2004230	TOTAL L.F.:	1,337	
PROJECT BUDGET:	\$823,100.00	PROJECT ORIGIN:	Line Condition, Access	

DESCRIPTION	ESTIMATED PROJECT COST	TOTAL EXPENDS THRU 6/30/08	TOTAL COSTS JULY - DEC 08	EST. COST JAN - JUNE 09	EST. BUDGET FY 09-10
01 - EASEMENT PLATS # PLATS: [3]	\$4,000.00	\$3,965.00			
02 - LEGAL FEES	\$6,000.00	\$2,219.00	\$1,109.00	\$2,672.00	
03 - ENGINEERING ASSISTANCE					
04 - ACQUISITION SERVICES					
05 - COMPENSATION	\$20,000.00	\$8,477.00		\$10,000.00	\$3,523.00
06 - APPRAISAL	\$2,500.00			\$2,500.00	
07 - CONDEMNATION	\$7,500.00			\$2,500.00	\$5,000.00
08 - ENVIRONMENTAL SURVEY					
09 - PRELIM. ENG. REP.					
10 - DESIGN / ASBUILT SURVEYS	\$7,500.00	\$5,625.00			\$1,900.00
11 - ENVIRONMENTAL ASSESSMENT					
12 - ARCHAEOLOGICAL					
13 - GEOTECHNICAL	\$5,800.00	\$5,590.00			
14 - CONSTRUCTION CONTRACT ADM.					
15 - CONSTRUCTION	\$788,000.00				\$788,000.00
16 - PERMITS					
17 - PUBLIC MEETINGS					
18 - TESTING	\$2,000.00				\$2,000.00
TOTAL AMOUNT	\$823,100.00	\$23,736.00	\$1,109.00	\$17,672.00	\$780,423.00

ENGINEER:	MSD	ESTIMATED BUDGETS - FY '10 - '19	
CONTRACTOR:		FY 10-11	\$0.00
CONSTRUCTION ADMINISTRATION:	MSD	FY 11-12	\$0.00
INSPECTION:	MSD	FY 12-13	\$0.00
R.O.W. ACQUISITION:	MSD	FY 13-14	\$0.00
		FY 14-15	\$0.00
PROJECT NOTES:		FY 15-16	\$0.00
		FY 16-17	\$0.00
		FY 17-18	\$0.00
		FY 18-19	\$0.00

Metropolitan Sewerage District of Buncombe County

Board Action Item

BOARD MEETING DATE: August 19, 2009

SUBMITTED BY: Thomas Hartye, P.E., General Manager

PREPARED BY: David Monteith, Kevin Johnson

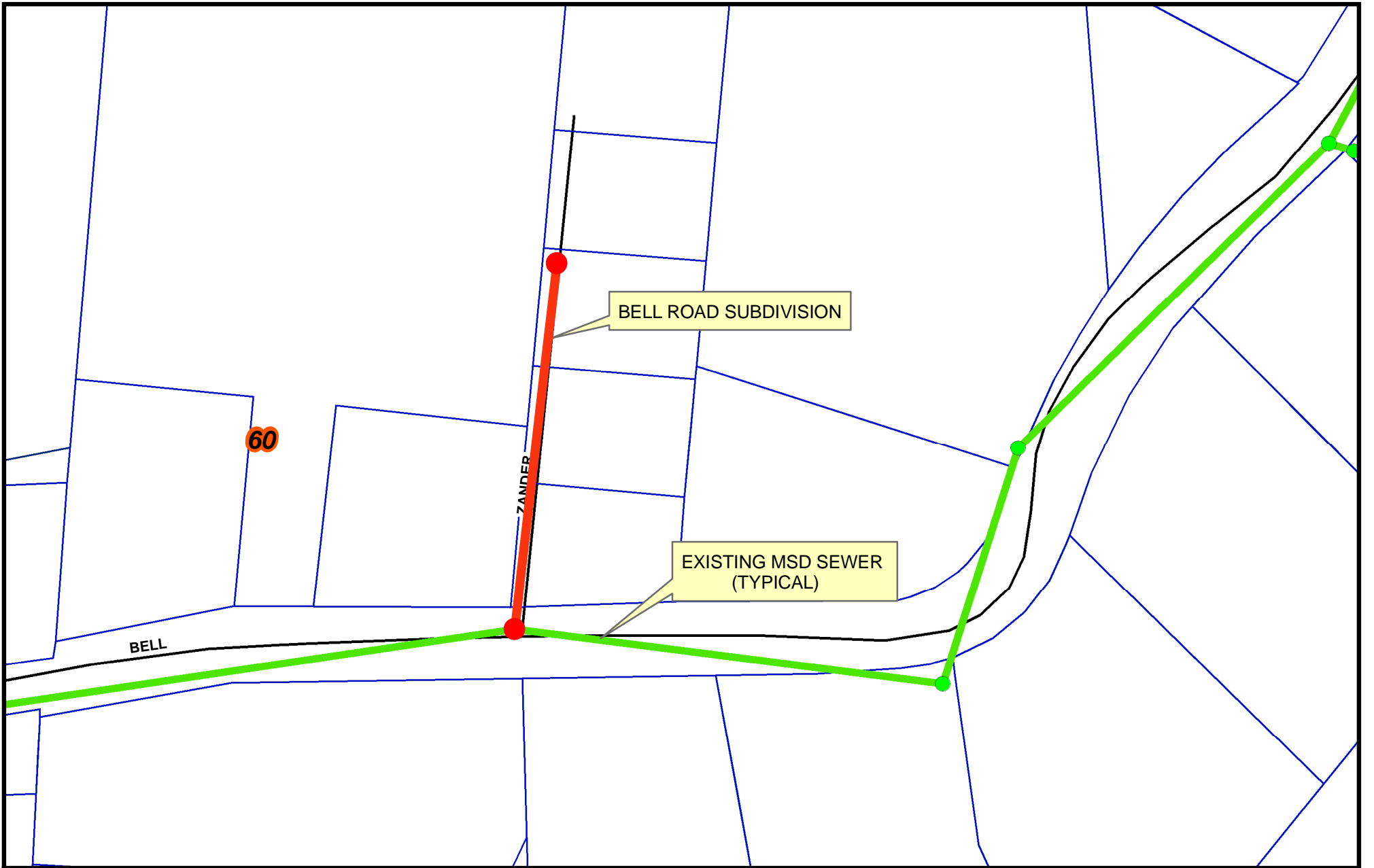
REVIEWED BY: Stan Boyd, PE, Engineering Director

SUBJECT: Acceptance of Developer Constructed Sewer System for 114 Bell Road Subdivision

BACKGROUND: This project is located inside the District boundary off Bell Road in Asheville, North Carolina. The developer of the project is Steve Hale. The project included the installation of approximately 285 linear feet of 8" gravity sewer to serve a residential development consisting of five (5) single family homes. A wastewater allocation was issued in the amount of 1,800 GPD for the project. The estimated cost of the sewer extension is \$21,764.00.

STAFF RECOMMENDATION: Acceptance of developer constructed sewer system. (All MSD requirements have been met)

COMMITTEE ACTION TAKEN	
Motion by :	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to staff
<input type="checkbox"/> Other:	
BOARD ACTION TAKEN	
Motion by	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to staff
<input type="checkbox"/> Other:	



Project #2007159

Not To Scale



METROPOLITAN SEWERAGE DISTRICT
of
BUNCOMBE COUNTY, NORTH CAROLINA

**Bell Road Subdivision
Sewer Extension**

Metropolitan Sewerage District of Buncombe County

Board Action Item

BOARD MEETING DATE: August 19, 2009

SUBMITTED BY: Thomas Hartye, P.E., General Manager

PREPARED BY: David Monteith, Kevin Johnson

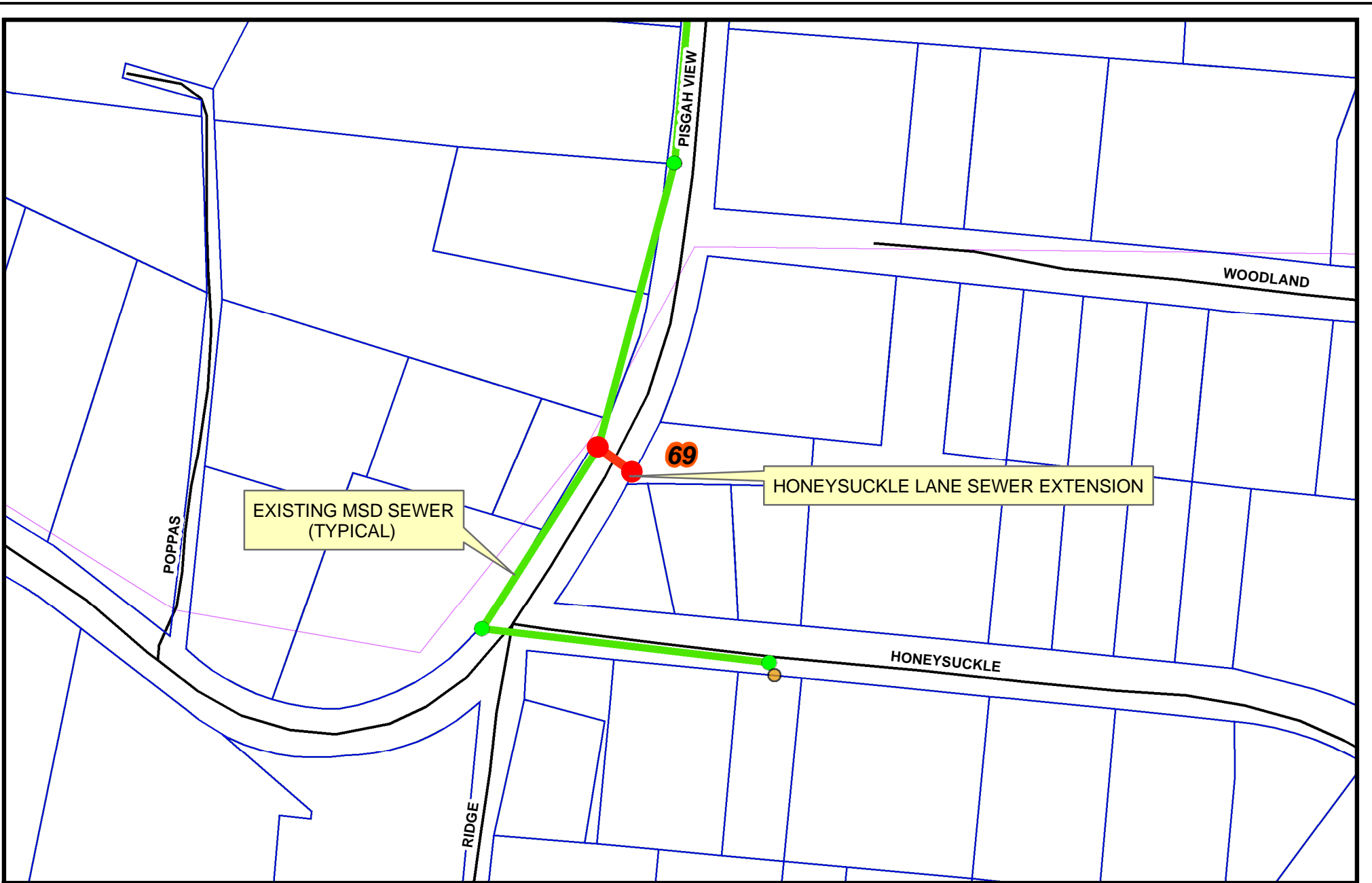
REVIEWED BY: Stan Boyd, PE, Engineering Director

SUBJECT: Acceptance of Developer Constructed Sewer System for Honeysuckle Lane Subdivision

BACKGROUND: This project is located inside the District boundary off Pisgah View Road in Asheville, North Carolina. The developer of the project is TBS Developers, LLC. The project included the installation of approximately 32 linear feet of 8" gravity sewer to serve a residential development consisting of four (4) single family homes. A wastewater allocation was issued in the amount of 1,200 GPD for the project. The estimated cost of the sewer extension is \$12,000.00.

STAFF RECOMMENDATION: Acceptance of developer constructed sewer system.
(All MSD requirements have been met)

COMMITTEE ACTION TAKEN	
Motion by :	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to staff
<input type="checkbox"/> Other:	
BOARD ACTION TAKEN	
Motion by	To: <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove
Second by:	<input type="checkbox"/> Table <input type="checkbox"/> Send back to staff
<input type="checkbox"/> Other:	



Project # 2007236

Not To Scale



METROPOLITAN SEWERAGE DISTRICT
of
BUNCOMBE COUNTY, NORTH CAROLINA

**Honeysuckle lane
Sewer Extension**

Metropolitan Sewerage District of Buncombe County

BOARD INFORMATIONAL ITEM

Meeting Date: August 19, 2009

Submitted By: Thomas E. Hartye, PE., General Manager

Prepared By: W. Scott Powell, Director of Finance

Subject: Fourth Quarter Budget to Actual Review

Background

At the end of each quarter, actual revenue and expenditure amounts are compared with the budget to evaluate departmental performance. The fourth quarter report is analyzed to estimate year-end results, and project revenues and expenditures for the subsequent year's budget. See the attached schedule for comparison of year-to-date actual amounts at June 30, 2009 with original budget for FY 08-09.

Discussion

There are several explanatory notes at the bottom of the page to assist in using this schedule as a management tool. Other considerations are as follows:

- ◆ Domestic User Fees are at approximately 98% of budget. Staff believes the variance is attributed to a reduction in residential consumption as well as seeing signs of recessionary constraints on commercial usage. The accounts receivable balance from the Member Agencies for June billings will be received in September, but are not anticipated to vary greatly. Staff will continue to monitor consumption data as this has a direct effect on the District's future budgets.
- ◆ Industrial User Fees are at approximately 96% of budget. This is a direct result of Spring Global cutting production.
- ◆ Facility and Tap Fees, also conservatively budgeted, can be significantly higher than budget. The unusually large variance is due to receiving unanticipated checks for \$1,340,800 from three new developments this fiscal year.
- ◆ Interest and miscellaneous income reflect higher than expected earnings on investments.
- ◆ Rental income is down, as the facility vacated by the Buncombe County Solid Waste Department has not yet been leased to another tenant.
- ◆ Actual and encumbered O&M expenditures appear reasonable but once accruals and adjustments are made, may vary slightly in the final audit.
- ◆ Bond principal and interest actually spent are slightly less than budgeted due to variable interest rates being budgeted conservatively.
- ◆ Amounts budgeted for capital equipment are rarely expended proportionately throughout the year and are expected to be fully spent prior to the end of the year.
- ◆ Capital projects expenditures are at approximately 67% of budget. Staff placed the secondary microscreen project on hold until FY10 which represents the variance in budgeted expenditures.

Staff Recommendation

None – Informational only

Action Taken

Motion by:	to	Approve Table	Disapprove Send to Committee
Second by:			
Other:			
Follow-up required:			
Person responsible:			Deadline:

Board Meeting

August 19, 2009

Subject: Fourth Quarter Budget to Actual Review

Page -2-

**Metropolitan Sewerage District
Budget to Actual Revenue and Expenditure Report
For the fiscal year ended June 30, 2009
UNAUDITED--NON-GAAP**

	Budget	Actual to Date	% Budget to Actual
REVENUES			
Domestic User Fees ¹	\$ 23,408,339	\$ 22,931,927	97.96%
Industrial User Fees	1,438,311	1,377,005	95.74%
Facility Fees ²	1,330,000	2,679,085	201.43%
Tap Fees ³	147,000	278,430	189.41%
Billing and Collection	590,181	620,247	105.09%
Interest and Misc. Income	855,607	1,220,290	142.62%
Employee Contribution to Health Ins.	333,370	320,294	96.08%
City of Asheville (Enka Bonds)	37,000	37,003	100.01%
Rental Income ⁴	58,750	16,560	28.19%
Use of Available Funds ⁵	12,823,337	-	0.00%
Total Revenues ⁶	<u>\$ 41,021,895</u>	<u>\$ 29,480,840</u>	104.55%
EXPENDITURES			
Operations and Maintenance ⁷	\$ 13,520,130	\$ 12,539,265	92.75%
Bond Principal and Interest	8,160,540	7,600,385	93.14%
Capital Equipment (Other than O&M)	537,500	372,945	69.39%
Capital Projects	17,803,725	12,551,154	66.75%
Contingency	1,000,000	-	0.00%
Total Expenditures	<u>\$ 41,021,895</u>	<u>\$ 33,063,750</u>	80.60%

Notes:¹ Revenues are on the cash basis² Received \$608,000 from Continental Properties, \$246,400 from Berrington Village Apts. and \$486,400 for Rockwood Rd. Apts.³ Increase in number of Taps requiring Bore Fees⁴ Old Admin Building not rented⁵ Prior year bond and pay-as-go funds to be used for CIP⁶ Budget-to-Actual Ratio does not include use of available funds⁷ Includes encumbered amounts as well as actual insurance expenditures

Metropolitan Sewerage District of Buncombe County

BOARD INFORMATIONAL ITEM

Meeting Date: August 19, 2009

Submitted By: Thomas E. Hartye, PE., General Manager

Prepared By: W. Scott Powell, Director of Finance

Subject: Fourth Quarter City of Asheville Billing Report

Background

At the end of each quarter, the City of Asheville Staff prepares a summary of all billing and collections activity for MSD which is reconciled to beginning and ending receivables balance. This is designed to monitor billing and collection rates and trends to maximize the accuracy of financial projections for the current fiscal year and budgeted revenues for the upcoming year. The City of Asheville represents approximately 80% of domestic sewer revenues so data is periodically reviewed for trends and anomalies impacting MSD financial management decisions.

Discussion

The attached report summarizes billing activity for the last six quarters. A comparison of the first three quarters of FY 09 with the same time period in FY 08 reveals the following:

- ◆ Net billings are down 0.3% from the previous period last year. Since the billing data includes the board approved 3% rate increase for the current fiscal year, this corresponds to the consumption data which shows a decrease of nearly 3.3%. Staff believes the decrease is attributed to a reduction in residential consumption as well as seeing signs of recessionary constraints on commercial usage. Staff will continue to monitor consumption data as this has a direct effect on the District's current and future budgets.
- ◆ Cash received during the fiscal year is about the same as last fiscal year.
- ◆ The aging percentages do not currently indicate any significant changes. Staff will continue to monitor this in future quarters as this could have a cash flow effect on the District.
- ◆ The comparability of increased rates of billings, receivables, and payments indicates a good likelihood of all funds being remitted to MSD in a timely manner.

Staff Recommendation

None – Informational only

Action Taken

Motion by:	to	Approve	Disapprove
Second by:		Table	Send to Committee
Other:			
Follow-up required:			
Person responsible:			Deadline:

Metropolitan Sewerage District of Buncombe County

BOARD INFORMATIONAL ITEM

Meeting Date: August 19, 2009
Submitted By: Thomas E. Hartye, PE., General Manager
Prepared By: W. Scott Powell, Director of Finance
Subject: Cash Commitment/Investment Report-Month Ended June 30, 2009

Background

Each month staff presents to the Board an investment report for all monies in bank accounts and specific investment instruments. The total investments as of June 30, 2009 were \$37,509,953. The detailed listing of accounts is available upon request. The average rate of return for all investments is 2.693%. These investments comply with North Carolina General Statutes, Board written investment policies and the District's Bond Order.

The attached investment report represents cash and cash equivalents as of June 30, 2009 does not reflect contractual commitments or encumbrances against said funds. Shown below are the total investments as of June 30, 2009 reduced by contractual commitments, bond funds, and District reserve funds. The balance available for future capital outlay is (\$18,088,870).

Total Cash & Investments as of 06/30/2009	37,509,953
Less:	
FY10 O & M Expenditures approved June 10, 2009	(13,603,885)
FY10 Construction Expenditures approved June 10, 2009	<u>(20,432,008)</u>
	(34,035,893)
Bond Restricted Funds	
Bond Service (Funds held by trustee):	
Funds in Principal & Interest Accounts	(4,586,035)
Debt Service Reserve	(5,017,974)
FY10 Principle and Interest	<u>(8,539,519)</u>
	(18,143,527)
District Reserve Funds	
Fleet Replacement	(963,974)
WWTP Replacement	(908,301)
Maintenance Reserve	<u>(805,170)</u>
	(2,677,445)
Post-Retirement Benefit	(170,122)
Self-Funded Employee Medical	<u>(571,835)</u>
Designated for Capital Outlay	<u><u>(18,088,870)</u></u>

Staff Recommendation

None. Information Only.

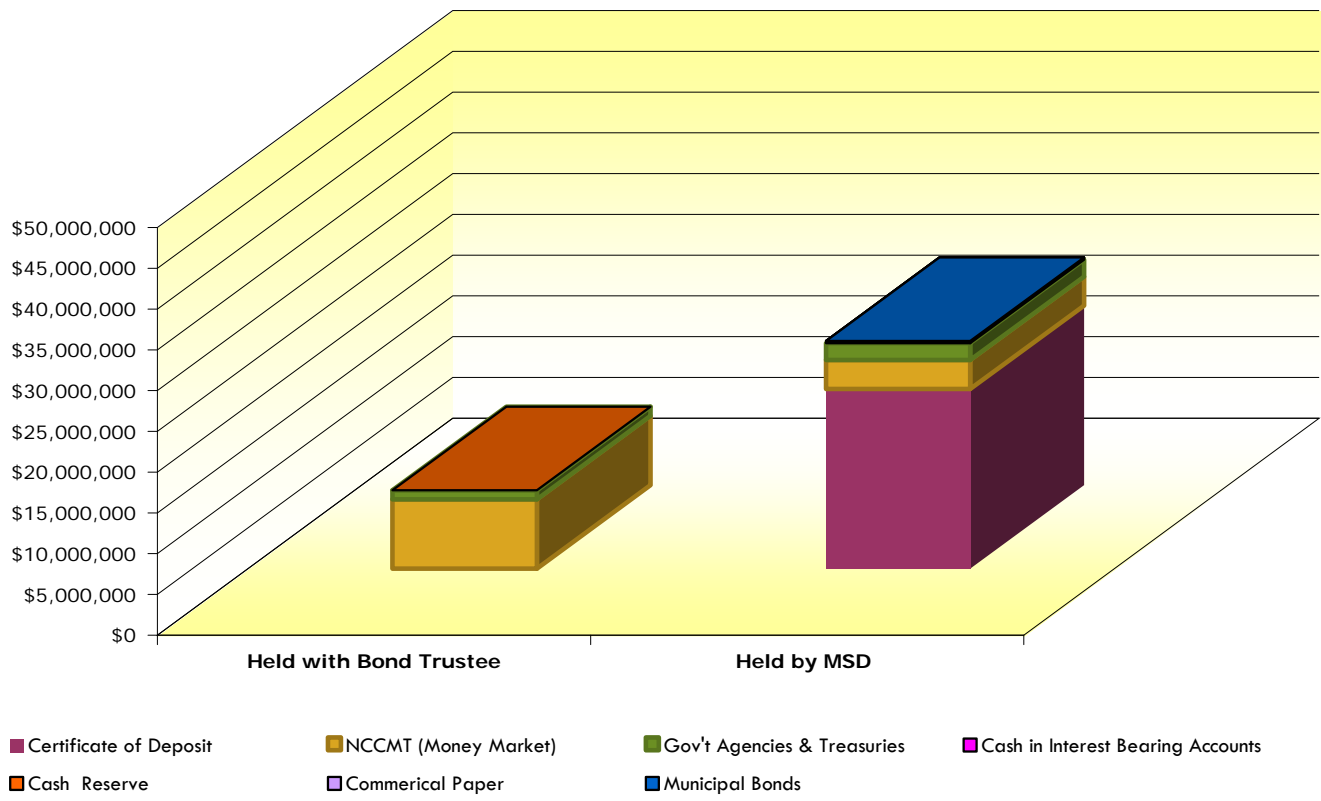
Action Taken

Motion by:	to	Approve	Disapprove
Second by:		Table	Send to Committee
Other:			
Follow-up required:			
Person responsible:			Deadline:

Metropolitan Sewerage District of Buncombe County Investment Portfolio

	Cash in Interest Bearing Accounts	NCCMT (Money Market)	Certificate of Deposit	Commercial Paper	Municipal Bonds	Cash Reserve	Gov't Agencies & Treasuries	Total
Held with Bond Trustee	\$ -	\$ 8,465,879	\$ -	\$ -	\$ -	\$ -	\$ 1,138,130	\$ 9,604,009
Held by MSD	293,751	3,544,517	22,015,796	-	-	-	2,051,880	27,905,944
	\$ 293,751	\$ 12,010,396	\$ 22,015,796	\$ -	\$ -	\$ -	\$ 3,190,010	\$ 37,509,953

**MSD of Buncombe County
Investment Portfolio by Location
As of June 30, 2009**



Board Meeting

August 19, 2009

Subject: Cash Commitment/Investment Report-Month Ended June 30, 2009

Page -3-

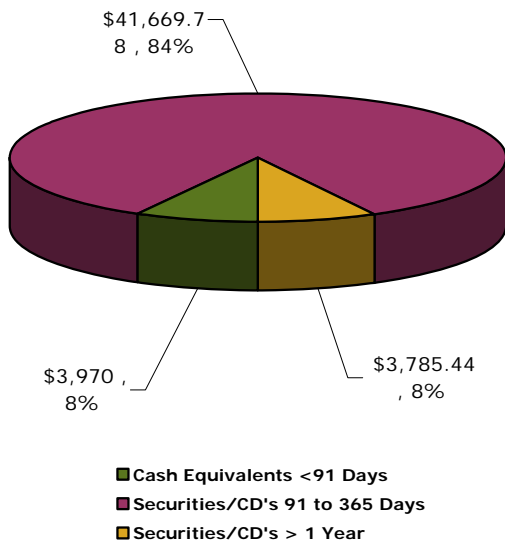
MSD Investment Managers' Report at June 30, 2009

<u>Summary of Asset Transactions</u>			
	Original Cost	Market	Interest Receivable
Beginning Balance	\$ 28,634,026	\$ 28,690,146	\$ 282,854
Capital Contributed (Withdrawn)	(2,601,654)	(2,601,654)	-
Realized Income	80,815	80,815	(80,625)
Unrealized/Accrued Income	-	(4,240)	53,475
Ending Balance	\$ 26,113,187	\$ 26,165,067	\$ 255,704

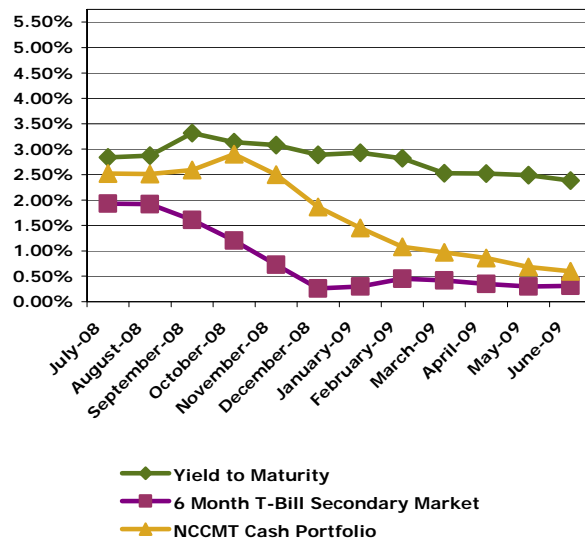
<u>Value and Income by Maturity</u>			
	Original Cost	Income	
Cash Equivalents <91 Days	\$ 2,097,391	\$ 3,970	
Securities/CD's 91 to 365 Days	22,015,796	41,669.78	
Securities/CD's > 1 Year	2,000,000	3,785.44	
	\$ 26,113,187	\$ 49,425	

<u>Month End Portfolio Information</u>	
Weighted Average Maturity	146.7
Yield to Maturity	2.38%
6 Month T-Bill Secondary Market	0.31%
NCCMT Cash Portfolio	0.60%

Metropolitan Sewerage District of Buncombe Co.
Investment Portfolio Income by Maturity
June 30, 2009



Metropolitan Sewerage District of Buncombe Co.
Yield Comparison
June 30, 2009



Board Meeting

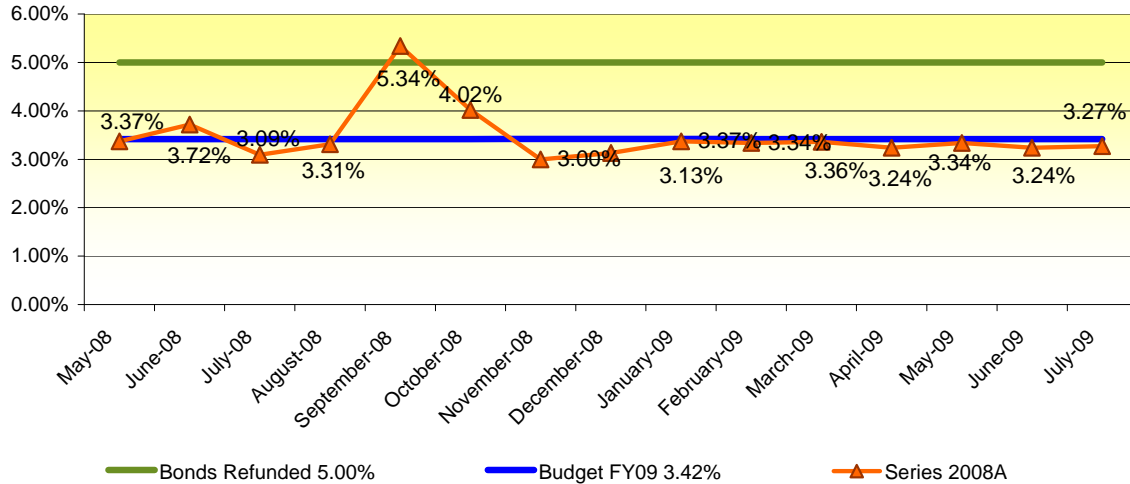
August 19, 2009

Subject: Cash Commitment/Investment Report-Month Ended June 30, 2009

Page -4-

**MSD Variable Debt Service Report
As of July 31, 2009**

Series 2008A Synthetic Fixed Rate Bonds Performance History



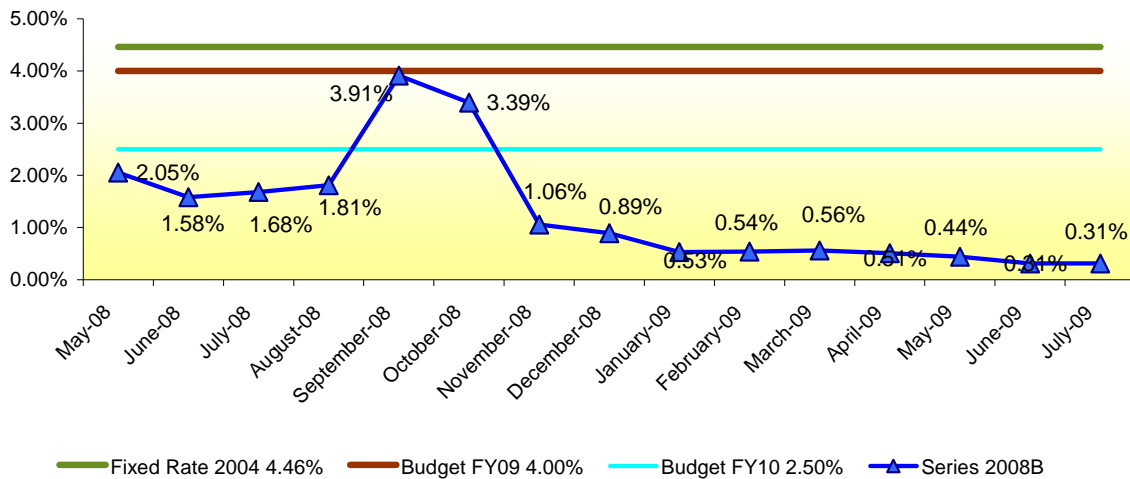
Series 2008A:

Savings to date on the Series 2008A Synthetic Fixed Rate Bonds is \$610,994 as compared to 4/1 fixed rate of 4.83%.

Assuming that the rate on the Series 2008A Bonds continue at the current all-in rate of 4.1675%. MSD will achieve cash savings of \$4,730,000 over the life of the bonds.

MSD would pay 2,560,000 to terminate the existing Bank of America Swap Agreement.

2008B Variable Rate Bond Performance History



Series 2008B:

Saving to date on the 2008B Variable Rate Bonds is \$818,895 as compared to 5/1 fixed rate of 4.46%

Since May 1, 2008, the Series 2008B Bonds average variable rate has been 1.31% .

MSD will achieve \$6,925,000 in cash savings over the life of the bonds at the current average variable rate.

REIMBURSEMENT RESOLUTION

RESOLUTION OF THE DISTRICT BOARD OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND/OR EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS

WHEREAS, the Metropolitan Sewerage District of Buncombe County, North Carolina (the "Issuer") is a body politic and corporate organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Issuer has paid, beginning June 20, 2009, and will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with the acquisition, design and construction of the projects on the attached Exhibit (the "Projects"); and

WHEREAS, the District Board of the Issuer (the "Board") has determined that those monies previously advanced no more than 60 days prior to the date hereof and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Issuer for the Expenditures from the proceeds of one or more issues of tax-exempt bonds (the "Bonds");

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

Section 1. The Board hereby declares the Issuer's intent to reimburse the Issuer with the proceeds of the Bonds for the Expenditures with respect to the Project made on and after June 20th, 2009 which date is no more than 60 days prior to the date hereof. The Issuer reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Bonds.

Section 2. Each Expenditure was and will be either (a) of a type properly chargeable to capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Issuer so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Issuer.

Section 3. The maximum principal amount of the Bonds expected to be issued for the Projects is \$3,629,644.

Section 4. The Issuer will make a reimbursement allocation, which is a written allocation by the Issuer that evidences the Issuer's use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Projects are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Issuer recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least five years.

Section 5. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 19th day of August, 2009

Steven Aceto
Chairman of the Board

Attested to:

Jackie Bryson, Secretary/Treasurer

STATUS REPORTS

CAPITAL IMPROVEMENT PROGRAM

STATUS REPORT SUMMARY

Current as of August 10, 2009

PROJECT	AWARD DATE	NOTICE TO PROCEED	*COMPLETION DATE	*CONTRACT AMOUNT	*COMPLETION STATUS (WORK)	COMMENTS
DORCHESTER AVENUE FOUR INCH MAIN	3/26/2009	5/4/2009	8/1/2009	\$109,079.00	100%	Informal Project is complete and in close out.
EASTWOOD AVENUE @ OLD U.S. 70	TBA	TBA	TBA	TBA	0%	Informal Project is scheduled to bid on September 3rd.
GLEN BRIDGE ROAD (PRP 47006)	6/10/2009	7/6/2009	2/1/2010	\$227,967.50	15%	Formal - ARRA project Bores are complete. Work on mainline construction has begun.
GRINDSTAFF ROAD (PRP 11008)	3/26/2009	5/4/2009	8/1/2009	\$40,971.00	100%	Informal Project is complete and in close out.
LONG SHOALS ROAD (PRP 48002)	6/10/2009	7/6/2009	2/1/2010	\$358,724.50	50%	Formal - ARRA project Mainline construction is progressing.
MERRIMON AVENUE @ OTTARI ROAD	1/21/2009	2/9/2009	6/8/2009	\$283,910.00	100%	Formal Project is complete and in close out.
MIDDLE BEAVERDAM CREEK INTERCEPTOR	7/15/2009	8/31/2009	2/27/2010	\$736,476.00	0%	Formal Preconstruction meeting was held August 6th. No work has begun yet.
REEMS CREEK INTERCEPTOR	9/17/2008	10/9/2008	6/30/2010	\$3,549,320.00	95%	Formal Contractor is working on punch list.
REEMS CREEK INTERCEPTOR SEWER EXTENSION PHASE 1	6/10/2009	6/22/2009	8/20/2009	\$52,803.00	90%	Informal Mainline construction is complete. Contractor is working on punch list.
TOWN BRANCH INTERCEPTOR	TBA	TBA	TBA	TBA	0%	Formal Bids were opened July 23rd. B C & D Associates is the apparent low bidder. Project will be presented at the August Board meeting.
WEAVERVILLE HIGHWAY @ HILLCREST ROAD	3/26/2009	5/4/2009	8/1/2009	\$40,973.00	95%	Informal Mainline construction is complete. Contractor working on punch list.
WRF - INTERMEDIATE PUMPING REPLACEMENT	7/15/2009	8/19/2009	8/19/2010	\$1,690,788.00	0%	Formal Shop submittal review is in progress.

*Updated to reflect approved Change Orders and Time Extensions

Planning and Development Projects
Status Report August 19, 2009

Status	Project Name	Project Number	Work Location	Units	LF	Pre-Construction Conference Date	Comments
	Gene Bradley Subdivision	2004022	Fletcher	9	420	3/3/2005	Complete-Waiting on final documents
	Davidson Road Sewer Extension	2004154	Asheville	3	109	12/15/2004	Complete-Waiting on final documents
	Reynolds Mountain Phase IV	1995126	Asheville	37	2,036	7/6/2005	Complete-Waiting on final documents
	Riverbend Urban Village	2004206	Asheville	260	1250	8/29/2006	Complete-Waiting on final documents
	N. Bear Creek Road Subdivision	2005137	Asheville	20	127	7/11/2006	Complete - Waiting on final documents
	Woodfin Manor	2003154	Woodfin	60	575	10/11/2006	Complete - Waiting on final documents
	Willowcreek Village Ph.3	2003110	Asheville	26	597	4/21/2006	Complete - Waiting on final documents
	Westmore Subdivision	2003003	West Asheville	92	1163	8/29/2006	Complete - Waiting on final documents
	Rock Hill Road Subdivision	2005153	Asheville	2	277	8/7/2006	Complete - Waiting on final documents
	Ken Higgins	1999153	Asheville	-	240	6/15/2007	Complete - Waiting on final documents
	Jim Beck	2003003	West Asheville	future	75	12/12/2000	Complete - Waiting on final documents
	Holiday Inn	2001068	Asheville	1	474	8/11/2003	Complete - Waiting on final documents
	Bitmore Park Town Square II-4	2007079	Arden	-	481	6/21/2007	Complete - Waiting on final documents
	Byrd Street Condos	2007085	Asheville	14	300	7/31/2007	Complete - Waiting on final documents
	MWB Sewer Extension	2008046	Asheville	Comm.	285	5/12/2008	Complete - Waiting on final documents
	The Cottages on Liberty Green	2007297	Asheville	7	124	5/30/2008	Complete - Waiting on final documents
	Haw Creek Tract	2006267	Asheville	49	1,817	10/16/2007	Complete - Waiting on final documents
	Haywood Village	2007172	Asheville	55	749	7/15/2008	Complete - Waiting on final documents
	Oak Crest Place	2004056	West Asheville	27	791	12/3/2004	Ready for final inspection
	Buncombe County Animal Shelter	2007216	Asheville	Comm.	78	5/1/2008	Ready for final inspection
	Oak Crest Drive	2008138	Asheville	5	290	1/14/2009	Pre-con held, ready for construction
	Leicester Village Townhomes	2007291	Weaverville	56	427	4/15/2008	Ready for final inspection
	Ridgefield Business Park	2004188	Asheville	18	758	2/16/2005	Complete-Waiting on final documents
			Subtotal	741	13,443		

Planning and Development Projects
Status Report August 19, 2009

Status	Project Name	Project Number	Work Location	Units	LF	Pre-Construction Conference Date	Comments
Under Construction	Buchanan Road	2009005	Asheville	3	392	5/19/2009	Pre-con held, ready for construction
	Crayton Creek Green	2006282	Asheville	10	482	3/15/2007	Ready for final inspection
	Grove Park Cove Subdivision	2004101	Asheville	14	1122	6/28/2006	Pre-con held ready for construction
	The Settings (6 Acre Outparcel)	2004192	Black Mountain	21	623	3/15/2006	Ready for final inspection
	Asheville Ford	2008083	Asheville	Comm.	243	2/16/2009	Pre-con held, ready for construction
	McGinnis Sewer Extension	2004225	Asheville	9	48	5/19/2005	In redesign.
	Falcon Ridge	2004240	Asheville	38	3,279	10/11/2006	Ready for final inspection
	Waightstill Mountain PH-8	2006277	Arden	66	3,387	7/26/2007	testing
	Artisan Park	1998125	West Asheville	133	4,529	4/26/2001	Changed Engineer - work to restart soon
	Brookside Road Relocation	2008189	Black Mtn	n/A	346	1/14/2009	Pre-con held, ready for construction
	Scenic View	2006194	Asheville	48	534	11/15/2006	Ready for final inspection
	Ingles	2007214	Black Mtn.	Comm.	594	3/4/2008	Ready for final inspection
	Bartram's Walk	2007065	Asheville	100	10,077	7/28/2008	testing
	Morgan Property	2008007	Candler	10	1,721	8/11/2008	Pre-con held, ready for construction
	Village at Bradley Branch - Ph. III	2008076	Asheville	44	783	8/8/2008	Installing
	Versant Phase I	2007008	Woodfin	64	12,837	2/14/2007	Ready for final inspection
	Canoe Landing	2007137	Woodfin	4	303	5/12/2008	Ready for construction
	Central Valley	2006166	Black Mtn	12	472	8/8/2007	Punchlist pending
	Hominy Valley Center	2005010	Candler	5	433	8/9/2005	Punchlist pending
	Kenilworth Cottages	2008031	Asheville	11	177	5/12/2008	Ready for construction
	CVS-Acton Circle	2005163	Asheville	4	557	5/3/2006	Ready for final inspection
	Hamburg Mountain Phase 3	2004086	Weaverville	13	844	11/10/2005	Ready for final inspection
	UNCA New Science Building	2005039	Asheville	5	538	10/28/2005	Ready for final inspection
	Bostic Place Sewer Relocation	2005102	Asheville	3	88	8/25/2005	Ready for final inspection
	Kyfields	2003100	Weaverville	35	1,118	5/10/2004	Ready for final inspection
	Brotherton Co-Housing	1999162	West Asheville	32	152	1/24/2003	Ready for final inspection
	Teems Road Subdivision	2007143	Asheville	40	1,308	5/27/2008	Ready for construction
	Thom's Estate	2006309	Asheville	40	3,422	1/24/2008	testing
	Thom's Estate - Phase II	2008071	Asheville	40	3,701	6/10/2008	testing
	Rockwood Apartments	2008109	Asheville	256	4072	1/27/2009	Pre-con held, ready for construction
	Skyland Apartments	2007117	Arden	63	96	4/23/2008	Ready for construction
	Berrington Village Apartments	2008164	Asheville	308	4,690	5/5/2009	Pre-con held, ready for construction
	Lodging at Farm (Gottfried)	2008169	Candler	20	45	6/2/2009	Pre-con held, ready for construction
North Point Baptist Church	2008105	Weaverville	Comm.	723	5/20/2009	Pre-con held, ready for construction	
The Villages at Crest Mountain	2009049	Asheville	63	1,364	8/18/2009	Pre-con held, ready for construction	
CVS- Weaverville Hwy	2006301	Woodfin	Comm.	59	8/18/2009	Pre-con held, ready for construction	
Camp Dorothy Walls - Ph. 1	2007294	Black Mtn.	Comm.	593	6/16/2009	Pre-con held, ready for construction	
Forest Manor Complex	2088050	Asheville	Comm.	96	12/4/2008	Installing	
Subtotal				2487	85,865		
Total Units:				3,228			
Total LF:					99,308		