

## **MINUTES OF A SPECIAL MEETING OF THE NEW YORK CITY WATER BOARD**

A Special Meeting of the New York City Water Board (the “Board”) was held on February 27, 2009, at 8:30 a.m. at 75 Park Place, Room 8S-1, New York, New York 10007. The following members of the Board were present:

Alan M. Moss;

Marcia Bystryn;

Donald Capoccia;

Amaziah Howell; and

Benjamin Tisdell,

constituting a quorum. Mr. Moss chaired the meeting, and Albert F. Moncure, Jr., served as Secretary of the Meeting.

### **Adoption of Minutes**

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on January 30, 2009. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on January 30, 2009 were unanimously adopted.

### **Introductory Remarks**

Mr. Moss briefly described the recent field trip to the Croton Filtration Plant construction site at Van Cortlandt Park.

### **Approval of Renewal Agreement for Environmental Health and Safety Compliance Consultant**

The next item on the agenda was the approval of the renewal of a contract with an Environmental Health & Safety (“EH&S”) Compliance Consultant. DEP General Counsel

Robin Levine described the continuing need for the consultant's services to complete 6 remaining investigations related to DEP's EH&S Employee Concerns Program. That Program is required by DEP's plea agreement with the U.S. Attorney. At Mr. Moss' request, Ms. Levine described the genesis of the plea agreement which resulted from the inadvertent discharge of mercury into the water supply which leaked from DEP equipment. At Mr. Capoccia's request, Ms. Levine described the remaining conditions for termination of probation and the status of prior Water Board EH&S consultant contracts. Responding to Ms. Bystryn, Ms. Levine explained that Water Board-funded contracts are utilized instead of DEP procurements where time is of the essence.

There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted.<sup>1</sup>

**WHEREAS**, the water and wastewater systems (the "Systems") of the City of New York (the "City") have been leased by the City to the New York City Water Board (the "Board") pursuant to an Agreement of Lease, dated as of July 1, 1985, as amended, between the City and the Board; and

**WHEREAS**, the New York City Department of Environmental Protection ("DEP") operates and maintains the Systems; and

**WHEREAS**, the Board and DEP both wish to ensure that the Systems are operated and maintained in a manner that complies with all applicable laws, rules and regulations; and

**WHEREAS**, in furtherance of this important objective, the Board previously authorized the execution and delivery of a consulting agreement between the Board and Daly and Pavlis, LLC (the "Consultant"), to provide assistance to DEP in serving on the Investigatory Report Review Committee pursuant to DEP's Environmental, Health and Safety (EHS) Employee Concerns Program; and

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<sup>1</sup> Mr. Tisdell arrived after the vote on this resolution and did not participate in the vote.

**WHEREAS**, the Board entered into an agreement with the Consultant on July 1, 2008 to provide such assistance for a term of one year (the “Consulting Agreement”); and

**WHEREAS**, there is insufficient funds remaining to enable the Consultant to complete several investigations already assigned under the current Consulting Agreement; and

**WHEREAS**, the Board has received a memorandum<sup>2</sup> from Robin Levine, General Counsel of DEP, which indicates that it is advisable to retain the services of the Consultant as DEP moves forward with its EHS Employee Concerns Program; and

**WHEREAS**, as indicated in the memo, DEP requests that the Board authorize a one-year extension of the Consulting Agreement with Daly and Pavlis, LLC with fees and expenses not to exceed an additional \$300,000; and

**WHEREAS**, in accordance with the Water Board’s Policy on the Procurement of Goods and Services, in particular, Section 5.i (prior Board approval of contracts where the cumulative value exceeds \$100,000) and Section 6.iv (waiver of competitive solicitation where the procurement is a continuation of existing services and it is desirable for purposes of continuity and compatibility), the Board finds such justification reasonable and appropriate in the present circumstances; it is therefore,

**RESOLVED**, that the Executive Director is hereby authorized and directed to execute an amendment to the Consulting Agreement for a one-year extension of the term of the agreement to June 30, 2010, provided that maximum compensation for fees and expenses during such term shall not exceed \$300,000 (total authorized compensation to date including this resolution shall not exceed \$950,000), and upon such other terms and conditions as the Executive Director considers reasonable and appropriate.

## **Financial Update**

- **Revenue and Expense Variances: April 2008 to February 2009**
- **Anticipated FY2010 Changes**

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<sup>2</sup> Filed with Minutes of the Meeting.

The next item on the agenda was a financial update provided by Executive Director Steven Lawitts.

Mr. Lawitts first reviewed the factors affecting Fiscal Year 2010 rates, namely revenue requirements needed to fund debt service costs and operating and maintenance expenses.

Mr. Lawitts said that actual revenue collections are 4% below plan target amounts compared to a 3% shortfall last year at this time. He attributed the variance between actual results and target amounts to a decline in consumption and reduced collections. He noted that there has been a decline in the percentage of accounts which are delinquent for more than 6 months but an increase in the percentage of accounts which are less than 6 months delinquent.

He then compared actual interest rates on the last two Water Authority bond issuances with the debt service assumptions in the financial plan. Interest rates on the January bond sale averaged 5.2% while February rates ranged from 2.2% to 5.14%. These actual rates were lower than rates assumed for plan purposes of 6.2% to 6.8%. Responding to Mr. Capoccia, Mr. Lawitts explained that when actual interest costs are lower than budgeted amounts, the savings are used to offset revenue shortfalls, fund operating and maintenance costs, or added to the year-end surplus.

Mr. Lawitts next discussed the status of DEP collection initiatives. Twenty percent of eligible accounts have enrolled in the new Payment Incentive Program which eliminates late charges in return for agreement to pay in full immediately or over time pursuant to a payment plan. Lien sale notices have been sent to 18,492 eligible accounts owing \$180 million in delinquent charges.

Responding to a question from Mr. Moss, Mr. Lawitts said the Board does not offer a prompt payment discount but does impose a late charge for delinquent payments. Ms.

Bystryn requested that more data describing the decline in consumption be provided for future meetings.

### **Potential FY 2010 Regulatory Proposals**

Mr. Lawitts next discussed proposals to increase fees for denial of access, theft of service, and unreturned tap and meter permits. These proposals would be considered by the Board as part of the Fiscal Year 2010 rate adoption. Responding to Mr. Capoccia, Mr. Lawitts explained that the most common reason to require access to customer premises is to inspect faulty meters. Mr. Tisdell asked for an estimate of the financial impact attributable to denial of access and theft of service. Ed Markus, the Board's Rate Consultant, replied that while actual data for the System is not available, other large cities in the United States have estimated a 2% revenue loss because of theft of service or denial of access. Mr. Tisdell observed that this would equate to a \$30 million loss to the New York City Water and Sewer System.

Responding to a comment from Mr. Moss that theft of service is a matter for the criminal justice system, William Kusterbeck, Treasurer, explained that the District Attorney typically will not prosecute this offense as a crime and that any fines or penalties assessed in a judicial proceeding would not be revenues of the Board and would leave the system uncompensated for water which was received by the property and not charged. He then observed that other cities have dedicated revenue enforcement units to respond to theft of service issues.

### **Presentation of Update on Real Estate Taxes**

The next item on the agenda was a presentation on upstate real estate taxes by DEP Assistant Commissioner, David Warne and Rita Dumain, Chief of the Law Department's Tax and Bankruptcy Litigation Division. Commissioner Warne explained that DEP pays real estate taxes on City-owned infrastructure in the Watershed, such as dams, on City-owned land in

the Watershed acquired prior to the Watershed Memorandum of Agreement (“MOA”), and on City-owned land acquired pursuant to the MOA. DEP paid \$109 million in real estate taxes in Fiscal Year 2008. Of this amount, \$76 million or 70% was attributable to City-owned dams. Real estate taxes are projected to be \$115 million in Fiscal Year 2009 and \$123 million in Fiscal Year 2010.

Ms. Dumain discussed the process by which her Division challenges excessive real estate tax assessments. Challenges consist of grievances filed against tentative rolls and subsequent litigation to challenge final assessments. Many of the City-owned properties are specialty properties such as waste-water treatment plants or reservoirs for which there are no comparable appraisals thereby complicating such litigation. She then discussed ongoing tax settlement discussions initiated by the Governor which if successful, would establish an assessment template by property type resulting in more predictable tax rates in the future.

### **Rate Structure Study Process Report**

Mr. Lawitts briefly discussed the status of the Rate Structure Study which he said was on track.

### **Adjournment**

There being no further business to come before the Board, upon motion duly made and seconded, the meeting was duly adjourned.

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SECRETARY