

JANUARY 17, 1989

**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 p.m. on Tuesday, January 17, 1989. Chairman Smith called the meeting to order at 2:00 p.m.

Chairman Smith and the following members were present: Aceto, Batts, Boggs, Dent, Edwards, Ivey, Pope, Waddey and Williams. Others present were: W.H. Mull, Engineer-Manager, Bill Morris, Dean Huber and Dr. Lloyd Robinson of Hendon Engineering Associates, John S. Stevens, General Counsel for the District, William Clarke, Attorney for the District, Robert Ensley of MSD, Leah Karpen with the League of Women Voters, Helen Reed representing the Sierra Club, and Debra Price representing the Council of Independent Business Owners, Inc., and the League of Women Voters.

**2. Minutes of November 29, 1988:**

Mr. Dent moved that the Board minutes of November 29, 1988 be adopted as written. Mr. Batts seconded the motion, and voice vote carried unanimous in favor of the motion.

**3. Approval of Amended Sewer Use Ordinance:**

Mr. Mull turned the floor over to Mr. William Clarke, Attorney, to review the District's Amended Sewer Use Ordinance. Mr. Clarke reviewed his Report to the District Board of the Metropolitan Sewerage District of Buncombe County, attached hereto and made a part of these minutes. After reviewing the changes, Mr. Clarke recommended the Board adopt the Ordinance as presented. Mrs. Pope moved that the Board adopt the Amended Sewer Use Ordinance as presented. Mr. Williams seconded the motion, and roll call vote was unanimous in favor of the motion.

**4. REPORT OF ENGINEER-MANAGER:****a. Status of Phase III Plant Expansion Contracts:**

Mr. Mull reported that Republic Contracting Corporation is behind schedule at this time, and asked Bill Morris of Hendon Engineering to give the current status of this project. Mr. Morris stated that the contractor actually started the project approximately 1-1/2 months behind schedule. There have been problems during November and December which caused the contractor to slide further behind. The Contractor has submitted a request for an approximate 25 working day extension, which is being reviewed by Hendon Engineering Associates and the MSD.

All other work is proceeding on schedule.

**b. Status of Proposed Sludge Disposal Facilities (Phase IV, Plant Expansion):**

Mr. Mull reviewed a Public Meeting Notice with the Board which was prepared by the District for the EPA, at EPA's request. The EPA will hold a Public Meeting February 2, 1989, at 7:00 p.m., at the Buncombe County Board of Education Large Auditorium, to discuss its decision regarding sludge disposal facilities for MSD. To date, EPA has not given its final decision regarding sludge disposal facilities for the District. The EPA did state that its final decision would be put in a Summary Sheet which would be mailed out to all concerned, the middle of next week, prior to the Public Meeting. General discussion followed. Mr. Mull encouraged all Board members to be present for the Public Meeting.

**c. Appointment of MSD Board Members:**

- a. Williams - Reappointed by Black Mountain
- b. Aceto
- c. Batts
- d. Boggs
- e. Ivey

Mr. Mull reported that the District received a letter from the Town of Black Mountain stating Mr. M. Leon Williams has been reappointed to the MSD Board.

**d. Land-of-Sky Fifteenth Annual Dinner Meeting, January 25th, Hendersonville Country Club:**

Mr. Mull stated the 15th Annual Dinner Meeting of the Land-of-Sky Regional Council will be held January 25, 1989, at the Hendersonville Country Club, and encouraged the Board members to attend.

**5. Report of Officers:**

None

**6. Report of Committees:**

**a. Sewer System Consolidation Committee - Mr. Aceto:**

Mr. Aceto distributed minutes of the Sewer System Consolidation Committee Meeting of December 5, 1988, along with copy of a letter from The Town of Biltmore Forest dated December 1, 1988, and copy of the Minutes of Buncombe County Sewer Owners Meeting of November 30, 1988. These minutes and attachments are attached hereto and made a part of these minutes. Mr. Aceto reviewed these documents with the Board. Also reviewed was a maintenance proposal from the City of Asheville (attached hereto and made a part of these minutes).

Mr. Mull and Mr. Stokoe met with Asheville City Manager, Mr. Doug Bean on January 11, 1989, and received the City's proposal for sewer maintenance. Lengthy discussion followed, but no action was taken.

**b. Budget Committee - Mr. Batts**

Mr. Batts reported that the Board, at its' last meeting, authorized the Budget Committee to award a Chlorine Supply bid for bids expected to be opened December 1, 1989. Bids received on December 1st were: Jones Chemical Company @ \$24.975/cwt, Van Waters & Rogers, Inc. @ \$24.975/cwt, Thompson-Hayward Chemical Company (Harcros) @ \$27.50/cwt, and Suffolk Chemical Company @ \$35.00/cwt. There was a tie between Jones Chemical and Van Waters & Rogers, which resulted in readvertisement. Bids received December 15th were: Jones Chemical @ \$24.45/cwt, Van Waters & Rogers, Inc. @ \$24.975/cwt, and Thompson-Hayward @ \$27.50/cwt. The Budget Committee met December 16th to award the chlorine bid to the low bidder, Jones Chemical Company @ \$24.45/cwt. Mr. Batts moved that the Board ratify the decision of the Budget Committee to accept the Jones Chemical Bid @ \$24.45/cwt. Mr. Edwards seconded, and roll call vote was unanimous in favor of the motion.

**c. Insurance Committee - Mr. Edwards**

Mr. Edwards stated the Insurance Committee met December 16th, with Charlie Webb of Webb Insurance, concerning the District's hospitalization insurance with Blue Cross. After soliciting bids concerning this insurance, two bids were received, one from Jefferson Pilot and one from Providence.

Mr. Edwards stated that after long discussion, the Committee recommends that the District continue with the present Blue Cross/Blue Shield coverage. Chairman Smith asked Mr. Batts what effect this increase has on the current budget. General discussion followed. Chairman Smith referred this back to Mr. Batts so he could come up with an analysis of the effect the increase would have on the current budget. Mr. Waddey moved that the District continue with Blue Cross/Blue Shield hospitalization insurance, and Mr. Dent seconded. Roll call vote was unanimous in favor of the motion.

**7. Unfinished Business:**

None.

**8. New Business:**

Mr. Stevens reported on the U.S. Fish and Wildlife matter plaguing the District. A "Petition for Review of Administrative Law Judge Final Decision" was reviewed by the Board. This is a petition to ask the Superior Court Judge to review what the Administrative Law Judge did and direct the Administrative Law Judge to hear the case. General discussion followed. Mr. Mull stated he would check on the District obtaining a license for this project.

Mr. Mull stated he met with the Muskie Club on January 12th, to discuss concerns they had on this project. The Muskie Club stated they would help the District in any way they could.

**9. Date of Next Regular Meeting - February 21, 1989**

**10. Adjournment:**

There being no further business, the Board meeting was adjourned at 3:25 p.m.

  
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Secretary

MINUTES OF SEWER SYSTEM CONSOLIDATION COMMITTEE MEETING  
December 5, 1988

The Sewer System Consolidation Committee met December 5, 1988, in the MSD Board Room. Attending were Aceto, Dent, Morris, Mull, Smith and Stevens.

Morris delivered to the meeting a summary of the arrangements made between the Town of Chapel Hill and Orange Water and Sewer Authority in regard to annexation and sewer system additions, for comparison with proposed arrangements which could be entered into by MSD. The plan of sewer system additions was developed OWASA alone, but the Town of Chapel Hill adheres to the plan and turns its funds over to OWASA for purposes of annexation and sewer service extensions.

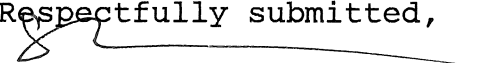
The meeting also considered sewer system maintenance proposals which might arise out of the meeting of sewer system owners. The sense of the meeting was that MSD should rely on the City of Asheville to expand on Doug Bean's offer to make a proposal to the sewer system owners, and to defer to the smaller municipalities in responding to whatever the City might propose.

Similarly, it was the sense of the meeting that it is incumbent on MSD to assure to the smaller municipalities its intent to faithfully follow the Sewer System Evaluation Survey's critical priorities list, and to simultaneously follow the "spreading stain" rehabilitation plan leading from the treatment plant outward.

It was agreed that annexation, extension, and capital improvements are best addressed by comprehensive planning, which is not addressed at all by the 1985 letter of intent between the city, county, and system owners. The committee and Board's counsel will closely monitor all proposals which might arise out of the sewer system owners meetings, and will monitor the continuing negotiations to assure compliance with the applicable bond covenants and orders.

A summary of the sewer system owner's meeting of November 30, 1988, prepared by Jim Stokoe, Land of Sky Regional Council, and Robert R. Musselwhite's letter on behalf of the Town of Biltmore Forest in regard to system maintenance, are attached hereto and incorporated by reference.

Respectfully submitted,

  
Steven T. Aceto  
Chairman, Consolidation Committee

Buncombe County Sewer Owners Meeting

November 30, 1988

MINUTES

The minutes are structured around Jim Stokoe's summary of MSD's 10/31/88 draft contract. Footnotes to the summary follow in ( ) and the nine provisions of the summary are underlined.

NOTES:

(The contract is written as a consolidation agreement between MSD and the City of Asheville, but is intended to serve as a model for the transfer of other sewer systems as well.)

(Provisions which pertain directly to the City's three areas of concern are shown by \*\*\*\*)

(The term "owner" as used below refers to one of the eleven present collector system owners. After consolidation there would only be one actual owner -- see #1 below)

PROVISIONS AND DISCUSSION:

1. Ownership of the total system -- in accordance with the unanimous expression of the system owner representatives at the May 11, 1988 meeting, the contract is based on consolidated ownership of the entire system by MSD.

There were no questions or comments on this provision.

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2. Master Planning -- the proposed basis for master sewer planning in the County is the MSD's 201 Facilities Plan dated April, 1982.

Discussion centered on whether the 201 Facilities Plan of MSD would be a suitable basis for master sewer planning in the County, and whether MSD sees the master planning process involving the current owners in a full partnership role or just an advisory role. The full partnership was desirable to all owners.

It was suggested by Bill Morris that the smaller scale, more immediate needs of each community should be added into the projected rehab and interceptor projects. A separate committee of

the MSD Board should be designated that would include appointed managerial and technical staff of each community to sit around a table and develop the Master Plan and its capital improvements package (CIP). Quarterly reviews of project progress and preparation of annual updates of the CIP would be essential. In this way all annexation plans, industrial parks, health hazards, etc. can be routinely and systematically placed in the CIP.

3. MSD would decide on which types of funding to use for operating, maintaining, repairing and rehabilitating the consolidated system, and the user charge structure needed to raise all or part of that funding.

Melba Banks asked if there would be different eligibilities and abilities of the different organizations to obtain grant funding. Charlie Horne asked if MSD would be the (single) lead agency for obtaining outside funding under the proposed consolidation. Jim Stokoe requested that the group postpone this issue until the discussion of extension funding (provision #8).

4. MSD would determine the priority and timing of rehabilitation of different parts of the system, giving highest priority to the most critical needs.

Jim Stokoe explained that MSD's engineers originally recommended that generally, rehab work should proceed from the treatment plant out. Al Richardson said that Black Mountain has been concerned that it would have to wait 6 or 7 years under such a scheme, and critical needs in the Town should be done before then. Bill Mull said that the priority system would be based on (1) public health/pollution and (2) impact on the treatment plant (capacity, etc.). The Swannanoa Interceptor is clearly the #1 priority in the total system. In cases where the above two priority factors are equal, the projects closest to the plant should generally be done first. Frank Smith noted that the regulators would dictate the priorities, to a great extent.

On questions by Bob Musselwhite and Mike Begley, the group clarified that (1) extensions would not be part of the definition of "most critical needs" above (they would be prioritized separately from the rehab program); (2) when the treatment plant upgrade from 25 MGD to 40 MGD is complete in 1990, MSD should be able to focus its capital improvements effort on rehab of the sewer system and not have to make further improvements to the plant until the sewers are rehabilitated.

5. The (City or other owner) would continue to act as billing and collecting agent for MSD.

Frank Smith raised the question of the eventual need for central billing. For example, if the Asheville-Buncombe Water Authority were to take over water service independently of the City at some future date, would the City have any further reason to stay in the sewer billing business? Doug Bean agreed that they would not. Some of the towns have sewer customers who get their water from individual wells. If the towns were no longer sewer owners, they too might not wish to continue being sewer billing agents for MSD. Frank's point was well taken that a central billing system (perhaps for water and sewer) may be in our future. However, it was discussed that whomever was doing the water billing could enter into a contract with MSD for the sewer billing on the same basis that the individual owners are doing now.

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6. The (City or other owner) would retain the right to levy additional user fees or charges in order to fund extensions of sewer service.

Jim Stokoe asked Jack Stevens to clarify where this provision came from, and does it represent a separate stream of potential revenue from the "extension fund" collected by MSD in provision #8? Jack explained that years ago in discussions about extensions, sewer owners wanted to reserve the right to raise funds, which they would otherwise lose by giving up ownership of their revenue-generating mechanisms (sewer systems) to MSD. MSD also expressed a desire to stay out of the business of economic development, annexation and decisions about where extensions should go, saying that these political and economic decisions were properly the realm of the local governments. MSD retained provision #6 to address these earlier concerns. It would provide the owners with a revenue stream independent of MSD.

7. The (City or other owner) would take steps to prevent or remove intentional connections of storm drains, etc. from their collector systems.

Jim Stokoe asked Bill Mull if removing such connections would be a prerequisite for accepting ownership of an owner's lines by MSD, or if it MSD just envisioned it as a contract provision that would be an ongoing process until all such connections were removed. Bill said he saw it as the latter. Bob Musselwhite asked if the Sewer System Evaluation Survey (SSES) done in the 1970's identified such illicit connections. Bill Mull said that the SSES did document these connections through the late 70's, and that the Buncombe County inspections process would have eliminated many stormwater connections since then.

\*\*\*\*\* 8. Sewer extensions for service to areas proposed for annexation, or for other purposes --

Steve Aceto prefaced discussion of this provision by explaining that it is a departure from the November 26, 1985 Statement of Principles signed by the City, County and MSD. The reason MSD put it in the 10/31/88 draft contract was in response to the City's concern about extension policy and funding. Jim Stokoe then read through items #8a-8i prior to discussing them.

\*\*\*\*\* a. MSD would consider fulfilling any request by the (City or other owner) for such extensions;

\*\*\*\*\* b. If MSD decides to do such an extension, the (City or other owner) would contract with MSD to do the extension (MSD could do the work itself or subcontract it);

\*\*\*\*\* c. MSD would establish a "sewer extension fund" to pay for such extensions;

\*\*\*\*\* d. The extension fund would be funded by an additional charge to users of the (City's or other owner's) system, to be agreed upon by MSD and the (City or other owner) -- that is, a charge in addition to the main sewer use charges which MSD would assess all users for operation, rehabilitation and maintenance of the total system;

\*\*\*\*\* e. The (City or other owner) would only control that part of the extension fund which is collected from users of its own collector system;

\*\*\*\*\* f. If the requested extension costs more than the (City or other owner) has in its portion of the extension fund, then it (and not MSD) would be responsible for providing the rest of the money needed;

\*\*\*\*\* g. The extension fund would be separate and distinct from the main sewer use charges which MSD would assess all users;

\*\*\*\*\* h. The extension charge would lapse automatically in five years and any unused funds would revert to the MSD general fund unless MSD and the (City or other owner) mutually agreed to continue the charge.

Mike Begley pointed out that #8a & b would allow MSD to build up an extension fund on behalf of an owner, then refuse to construct the extensions requested by that owner and under #8h



(the "sunset provision"), eventually transfer the funds into the MSD general fund. Steve Aceto said that the intent of MSD reserving the right to decide whether it will do a requested extension is to ensure sound engineering related to plant capacity, etc.; it is not MSD's intent to deny reasonable extensions. Frank Smith said that MSD could hardly say "no" to an extension request if the engineering was sound.

Mike Begley asked why any money in an owner's extension fund would not be returned to the owner rather than to MSD upon discontinuation of the fund? Jim Stokoe asked why the "sunset provision" was in the proposed contract at all. Steve Aceto explained that the purpose of the sunset provision was to force periodic review of the funding mechanism. The 5 years was chosen arbitrarily. After considerable discussion Frank Smith suggested that the group try to reach consensus on changing the sunset provision so that MSD would return unused funds back to the owners if their fund was untouched after (5 years). The discussion diverged at this point and the group did not reach consensus.

Charlie Horne re-asked his earlier question about whether MSD would be the "lead agency" for any grant funding (state or federal) that might be obtained for the sewer system. The group agreed that ownership of their lines was a prerequisite for obtaining grants or issuing bonds. Therefore, MSD would be the only agency capable of obtaining grants if it owned the entire system. This led to comments by Bob Musselwhite and Mike Begley that the towns would still be "in the sewer business" to some extent even if MSD owned the lines and if the extension fund were operating (for example, they will be responsible for removing stormwater connections from the system). Therefore, the towns will need a sewer fund, independent from the MSD extension fund, with which to carry out these responsibilities.

Doug Bean re-asserted his earlier concern that City residents as a whole would assume a disproportionately large share of the financial burden unless a uniform systemwide rate structure were used. Although he had thought that MSD was headed in that direction, this (10/31/88) contract draft does not reflect that.

Steve Aceto said that MSD's objective in the way they structured the extension fund was to respond to the City's concerns that (1) earlier draft contracts proposed by MSD were just "maintenance agreements, not true consolidation agreements", and (2) the funding base for extensions needs to be broadened so that City residents don't have to pay an unfair share of the bill. Doug's point was that charging only City residents for extensions the City makes would be placing an unfair burden on them. Steve said that the alternative to

MSD's proposed extension funding mechanism would be a true central planning mechanism, which we don't have yet.

Mike Begley made a proposal for an extension funding mechanism:

1. MSD assess a uniform systemwide charge for extensions.
2. In addition, any owner can agree with MSD to assess the owner's users an additional charge.

Steve Aceto then called on Bill Morris to explain his ideas on a systemwide sewer extension policy which could provide a mechanism for solving many of the problems that were being brought up. Bill said the extension policy would be overseen by a joint group much like this one. Its purpose would be to promote "rational growth". The definition of "rational growth" includes population density of an area, distance from the nearest interceptor, the land use plans of affected jurisdictions, etc. Impact fees would be used to pay for the prorated portion of eventual increases in interceptor size caused by each extension. Regarding annexation, Bill related an opinion by Jake Wicker of the Institute of Government that if a municipality no longer owned sewer lines, it would not be providing sewer service to its own residents and therefore would not be required to provide it in annexed areas. Rather, an area which had reached the density limit in the extension policy would automatically be eligible for extension of service by MSD under the joint planning process. Copies of Bill's extension policy outline were handed out at the end of the meeting.

Jim Stokoe asked whether the joint planning committee would be separate from the MSD Board. Bill Mull said it would have to be, because the Board could not take on such a major responsibility in addition to its regular workload.

Doug Bean said that Bill Morris' presentation on extension policy/master planning is the very essence of consolidation, whereas the 10/31/88 draft contract provides for a 201 Facilities Plan without a funding mechanism. Doug suggested that it would be a long time before we would have a fully-functioning mechanism for planning and funding extensions. He proposed that during the time it takes to build such a mechanism, all owners could retain ownership of their systems and use their bonding authority to rehabilitate them.

Mike Begley suggested that transfer of ownership seems to be the main stumbling block and asked if MSD could assess user charges on systems it did not own. Jack Stevens said that was prohibited under MSD's original bond covenants, but he would have to research whether it is possible under the new bond

order under which MSD now operates.

Mike Begley said that if a town annexes an area in which extensions were previously funded by the County's extension fund, the town should then be allowed to receive any unused part of that portion of the County's fund corresponding to that area. He suggested that an arbitration process might be the best way to resolve such situation.

Jim Stokoe noted that time was running short and asked if the group would like to assign committees to work on the issues raised today. During the discussion of this, Doug Bean proposed that the whole group meet one more time to deal exclusively with the maintenance issue, which the group had not directly addressed today. He offered to develop a written proposal and mail it to all group members one week before that meeting. The group decided to meet as a whole at 1:30 p.m. on January 18, 1989 at Land-of-Sky Regional Council to discuss maintenance.

\*\*\*\* i. Extensions would be done to MSD standards and would become property of MSD after construction;

This provision was not discussed.

\*\*\*\* 9. Who performs system maintenance? -- the proposed contract assumes that MSD itself would perform routine maintenance and repair of the consolidated system.

The group did not discuss this provision in depth. It will be covered at the next meeting as noted above.

SUMMARY OF ACTION STEPS:

Jack Stevens -- investigate bond order/ownership question, and possibly check on Jake Wicker recommendation re: annexation.

Doug Bean -- develop maintenance proposal and send to group members by January 11, 1989.

Jim Stokoe -- send minutes of meeting and signup sheet to all group members, along with a reminder of the next meeting. The single purpose of the next meeting is to discuss maintenance.