

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

August 18, 1993

1. Call to Order and Roll Call:

The regular monthly meeting of the Board of the Metropolitan Sewerage District was held in the Boardroom of MSD's Administration Building at 2:00 P.M., on Wednesday, August 18, 1993. Chairman Post presided with the following members present: Bryson, Casper, Dent, Joyner, Kelly, Penny, Post, Selby, Slosman and Wallace. Those members absent were: Frizsell

Others Present were: W. H. Mull, Engineer-Manager, John S. Stevens, General Counsel, Bob Holbrook, Bill Morris and Bill Conner of Hendon Engineering Associates, Inc., Bob Tinkler, with Land of Sky Regional Council, David Senter, Attorney representing Rockdale Pipeline, Inc., Paul Duncan with Rockdale Pipeline, Inc., Larry A. New with Vaughn & Melton, Inc., Ben J. Morgan with Ruby-Collins, Inc., Mike Wilson with Metromont and Linda Dickson and Sharon Walk, MSD.

2. Approval of July 21, 1993, August 5, 1993 and August 11, 1993 Board Minutes;

Mr. Dent requested that the minutes of July 21, 1993 be corrected to show that Mr. Joyner encouraged Board members to attend the Local Government Commission meeting August 3, 1993 and Mr. Penny requested that the minutes show that Bob Selby nominated Pete Post as Chairman. Mr. Dent asked for a clarification on the reported amount of the Revenue Bonds in the minutes of August 5, 1993. Mr. Stevens explained that the amount of \$18,000,000 represents a portion of the bonds to be refunded under a federal tax law. With regard to the August 11, 1993 meeting, Mr. Casper stated that the minutes be corrected to show that he was present. There being no further discussion, Ms. Bryson moved that the minutes be approved as corrected. Mr. Casper seconded the motion. Voice vote was unanimous in favor of the motion.

3. Consideration of Resolutions of Appreciation for Marvin Waddey and George Ivey;

Mr. Stevens presented two (2) Resolutions of appreciation for Mr. Marvin Waddey and Mr. George Ivey. Ms. Wallace questioned the wording in the Resolution for Mr. Waddey. Mr. Stevens stated that the wording should be corrected to read "difficult" instead of "different". There being no further discussion, Mr. Dent moved that the Board adopt the Resolution for Mr. Ivey as presented and the Resolution for Mr. Waddey as corrected. Mr. Joyner seconded the motion. Voice vote was unanimous in favor of the motion.

Mr. Dent asked if the District has considered a dinner in honor of Mr. Ivey's service on the Board. Mr. Mull stated that an annual dinner in honor of past Board members and for those who's terms expire was discussed previously but that the decision was entirely up to the pleasure of the Board.

4. Report of Engineer-Manager:

a. Report on Claim - 707 Merrimon Avenue;

Mr. Mull presented a letter from the District's insurance agent assigned to handle the claim of Mr. Rusty Pulliam. Mr. Mull reported that on August 5, 1993 Mr. Pulliam was reimbursed for his claim in the amount of \$14,407.00 and that the insurance company reimbursed the District \$4,407.00 of the total amount of the claim since there was a \$10,000.00 deductible.

b. Consideration of Agreement to Reimburse the City of Asheville for Sewer Rehabilitation - Contract 10 Street/Sidewalk Work;

Mr. Mull presented a letter from Hendon Engineering Associates, Inc. regarding an agreement to reimburse the City of Asheville for sewer rehabilitation, Contract 10, Street and Sidewalk Work and reported that the revised bid of APAC, Inc. was reviewed by the Sewer System Consolidation Committee on August 5, 1993. Mr. Mull further reported that because of scheduling and time restraints with the City, the Committee recommended that the Board approve the revised bid of APAC, Inc. in the amount of \$371,404.45 following Asheville City Council's authorization to award the bid of APAC, Inc. for Section 2, Sewer Rehabilitation, which is below the budgeted amount of \$449,226.00. Mr. Dent moved that the Board approve the revised bid of APAC, Inc. as presented. Mr. Joyner seconded the motion. Following a brief discussion regarding those projects that were eliminated and when they would be completed, Roll call vote was as follows: 10 Ayes; 0 Nays.

c. Consideration of Request from the NC Department of Transportation to Accept and Maintain Sewers Constructed Outside of District Boundary;

Mr. Mull reported that at the August 5, 1993 meeting of the Sewer System Consolidation Committee representatives of the NC Department of Transportation (DOT) gave a presentation on two project plans along Leicester Highway that are currently tied to the sewer system, (Elida Home Road and Old County Home Road) and requested that following replacement of the lines that the District take over ownership and maintain the lines. Mr. Mull further reported that following consideration of the request, the Committee recommended that the Board approve ownership and maintenance of these lines contingent on the DOT's proper easements, separation of water/sewer lines and meeting the District's specifications on construction of the lines. Mr. Penny moved that the Board adopt the recommendation of the Sewer System Consolidation Committee. Mr. Slosman seconded the motion. Following a brief discussion as to whether the lines would bring in additional revenue, voice vote was unanimous in favor of the motion.

d. Consideration of Authorization to Proceed with Easement Plat Preparation - Sweeten Creek Interceptor Sewer - Hendon Engineering Associates, Inc.;

Mr. Mull presented a Contract Amendment from Hendon Engineering Associates, Inc. for Easement Survey and Plats for addition of the Wilson Creek area of the Sweeten Creek Interceptor Sewer project. Mr. Mull reported that through July 23, 1993, work has been completed on the first 62 parcels and 42 plats for a total cost of \$32,300.00 or \$520.97 per parcel, or \$769.05 per plat, with the additional 36 parcels to be performed for approximately \$450.00 per parcel according to the proposal by Hutchison-Biggs, for an additional cost \$16,200.00. Mr. Mull further reported that Hendon Engineering Associates, Inc. proposes to accomplish the revised scope of work for all 98 parcels and 78 plats for a total of \$48,500.00, (which is within the existing approved budget ceiling of \$50,000.00) which would equate to \$494.90 per parcel or \$621.79 per plat. Mr. Mull stated that the Contract Amendment was reviewed by the Right-of-Way Committee, August 6, 1993 with a representative of Hutchison-Biggs & Associates, Inc. present to explain the surveying process. Mr. Slosman moved that the Board approve the Contract Amendment as presented. Mr. Penny seconded the motion. Following a brief discussion as to the expected completion date of the Sweeten Creek Interceptor Sewer project, voice vote was unanimous in favor of the motion.

5. Report of Officers:

None

6. Report of Committees:

a. Sewer System Consolidation Committee - August 5, 1993 - Mr. Dent.

Mr. Dent reported that the Sewer System Consolidation Committee met August 5, 1993 to discuss several items previously discussed in the Engineer-Manager's report. Mr. Dent further reported that the Committee considered bids for the Montreat CIP project, but decided to wait and see what the CIP Committee developed as far as funding and rescheduling of projects before making its recommendation to the Board. In addition, the Committee discussed existing sewers serving the area at Wal-Mart on Hendersonville Road and recommended that staff proceed with negotiations to determine the developer's willingness to participate in the upgrade of the line.

b. Right-of-Way Committee - August 6, 1993 - Mr. Slosman;

Mr. Slosman reported that the Committee met August 6, 1993 to discuss the following items:

1. Beaverdam Creek Interceptor

Mr. Slosman reported that the project is 50% complete and that \$3,450.00 in cash compensation has been issued to date from the total budgeted amount of \$27,556.00. Mr. Slosman further reported that the Lakeview Park Commission expressed concern regarding loss of revenues (approximately \$1,000.00 per month) from boating and fishing during construction. In addition, the Beaver Creek Partnership, Inc. has requested total compensation in the amount of \$1,750.00 in exchange for signing the easement.

2. Montreat Sanitary Sewer Improvements

Mr. Slosman reported that acquisition is 100% complete with cash compensation issued to date in the amount of \$2,336.50 and that bids were opened on August 3, 1993 with Wheeler Construction the apparent low bidder at \$999,876.00.

3. North Swannanoa Interceptor Sewer, Phase II

Mr. Slosman reported that the project is currently 2 % complete with a budget for acquisition to be established once the compensation chart is presented at the September meeting.

c. Retreat Planning Committee - August 9, 1993 - Ms. Wallace

Ms. Wallace reported that the Retreat Planning Committee met August 9, 1993 to discuss the retreat scheduled which will run from 9:00 a.m. on Friday, August 27 through 5:00 p.m. on Saturday, August 28, 1993 and expressed the Committee's hope that all Board members will attend. Ms. Wallace further reported that the Committee clarified the major and secondary agenda items with Mr. Tom Elmore, of Land of Sky Regional Council, who has agreed to facilitate the retreat. With regard to the Consultant's Report, Mr. Mull stated that the figures on the last page of the Consultant's Report should be changed to read \$300,000 to \$400,000. In addition, the Committee discussed the need for the creation of a Mission Statement in order that present and future Boards will have a clear understanding of the State Statutes, (by which the District is governed) and that Jack Stevens has prepared information from the Statutes that include the provisions and responsibilities placed on the Board. Ms. Wallace further reported that the Committee briefly discussed a Strategic Plan and set a proposed

agenda that will address both the major and secondary issues. Mr. Post stated that although this is a public meeting, an Executive Session has been scheduled for 1:30 on Friday with the Management Consultant and an open session scheduled on Saturday to set priorities for remaining topics. Mr. Post requested that each Board member read the study prepared by Ernst & Young on the development of the capacity depletion fees and the Consultant's Report and, if possible, attend the Capital Improvement Plan (CIP) Committee scheduled for August 20, 1993.

Mr. Mull presented a brochure from the Georgia Institute of Technology announcing a course scheduled for November 5-6, 1993 on "Calculating Water, Sewer and Stormwater Development Impact Fees" and asked for Board approval to attend this course. Following a brief discussion regarding the cost and who should attend, Ms. Wallace moved that the Board approve the expense for not to exceed three (3) people to attend the course. Mr. Dent seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

7. Unfinished Business: Report on Asphalt Paving Contract

Mr. Mull reported that in checking on the possibility of an inter-local agreement with the City of Asheville for the District's annual asphalt paving contract, that the City of Asheville's unit prices for those areas were higher (approximately \$17,000.00) than the bid of APAC, Inc., therefore the District entered into a contract with APAC, Inc. in the amount of \$213,700.00. Mr. Penny suggested that in the future the District work with the City of Asheville when a contract is bid.

8. Old Business:

Mr. Joyner expressed his concern regarding the continued practice of providing lunch for Board members and questioned who paid for the lunches. Mr. Joyner pointed out that the minutes of the April 21, 1993 reflected the Board's decision that no one would be furnished lunch except staff members who were required to work during that period and that this situation was particularly evident when guests who were in attendance offered to pay for lunch but no money was collected. Mr. Penny stated that since Board members are taking time to meet during the lunch hour, felt that the District should provide lunch but agreed that with the exception of staff, the District should not provide lunch for others who are present. Following a lengthy discussion as to what was reported in the minutes of April 21, 1993 and whether lunch should be served, Mr. Selby moved that the District pay for staff and those Board members who wish to eat and that the staff be directed to institute a billing procedure for others present who wish to eat. Ms. Bryson seconded the motion. Roll call vote was as follows: 9 Ayes; 1 Nay (Mr. Kelly).

Mr. Joyner reported that in his attendance of the Right-of-Way Committee meeting that addressed the cost of survey's and plats, Mr. Biggs of Hutchinson-Biggs reported that a system has been developed whereby everyone, including the Right-of-Way Committee will know how much the District is paying for surveys that were not platted, resulting in a price change.

Mr. Selby gave a brief report on the Bond Closing process held August 12 and 13, 1993 in New York City and stated that the experience was very interesting and enlightening and requested that the Board discuss the costs of this closing compared to the cost of previous closings at the retreat. A brief discussion followed regarding the costs.

At 3:00 p.m. Mr. Penny moved that the Board go into Executive Session to discuss a legal matter regarding the Kledis claim. Mr. Slosman seconded the motion.

Voice vote was unanimous in favor of the motion.

At 3:45 p.m., the regular meeting of the Board was reconvened and the following actions were taken.

1. Beavercreek Partnership

Mr. Slosman moved that the District enter into a negotiation with the Beavercreek Partnership on the District's offer of \$987.00 and if the offer is rejected, proceed with condemnation. Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

2. Mulliniks Parcel

Mr. Slosman moved that the District enter into a negotiation with Mr. Mulliniks on the District's offer of \$1,250.00 and if the offer is rejected, proceed with condemnation. Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

3. Young Parcel

Mr. Slosman moved that the District enter into a negotiation with Mr. Young on the District's offer of \$208.00 and if an agreement cannot be reached on the compensation, proceed with condemnation. Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

4. Palas Parcel

Mr. Slosman moved that the District enter into a negotiation with Mr. Palas on the District's offer of \$283.00 and if the offer is rejected, proceed with condemnation. Ms. Wallace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

9. New Business

Mr. Mull presented a letter of appreciation from Ms. Anderson of Black Mountain, addressed to Ann Sutton, regarding work recently done by the Maintenance Facility Crew.

Mr. Stevens excused himself and Mr. Walt Currie joined the meeting.

HEARING
Rockdale Pipeline, Inc.

Chairman Post declared the Hearing open at 3:49 p.m. and introduced Mr. Walt Currie, Attorney for the District who presented the following information: a copy of the cover page of the contract document package; the bid of Rockdale Pipeline, Inc., (the apparent low bidder); Rockdale's MBE Certification, Bid Bond and Power of Attorney; a tabulation of bids by the District engineers, (showing all bids in the amounts bid by all bidders); a request to withdraw the bid by Rockdale Pipeline, Inc., (made the next day, Wednesday, August 11, 1993); a letter from Rockdale's Attorney; a letter from Stan Boyd notifying Rockdale Pipeline, Inc. of the hearing; a copy of the statutes on withdrawal of bids and a copy of the statutes relating to Open Meetings. In addition, Mr. Currie stated that a package of information from the contractor and from Mr. Bob

Holbrook of Hendon Engineering Associates, Inc. would be presented.

Mr. Currie explained what the contractor must prove in order to be allowed to withdraw the bid and reported that under State law a Hearing must be conducted to determine one of two things, whether you will allow the contractor to withdraw the bid, in which case the bid security will not be forfeited or whether it will not be allowed, in which case there is an automatic forfeiture of the bid bond. Mr. Currie further reported that the District cannot award the contract to the bidder since a request for withdrawal has been made and that the purpose of the Hearing is to hear from the contractor, who has the burden of convincing the Board that they should be allowed to withdraw the bid.

Mr. David Senter, Attorney for Rockdale Pipeline, Inc. presented information to assist in following the course of the presentation. Mr. Senter stated that the presentation will primarily consist of Mr. Duncan explaining his bid process and his discovery of the mistake in the bid that was submitted. Mr. Senter explained that the information provided is as follows: the statutes provided by Mr. Walt Currie; a withdrawal/request, (which is a requirement under the statutes); documents supporting Rockdale's contention that a mistake was made in submitting the bid and affidavits from a senior dispatcher with CP&L, a sub-contractor and manager from the Holiday Inn West. Mr. Senter stated that at the time Rockdale Pipeline, Inc. was preparing its bid, (the morning of the bid) at the Holiday Inn-West in Asheville there was a power outage and because the contractors are very high tech and have computers set up in their motel rooms, they are inputting unit prices and bid information into the computer and a computer that has not been backed up prior to the power outage will result in loss of information. Mr. Senter further stated that as a result of that outage, some of the information may have been lost and that some of the information had to be re-input into the computer; whether that's exactly where the mistake occurred or not, we cannot say but created a lot of headaches for Rockdale on the morning of the bid and gives some suspicion that might be the exact event that occurred. Mr. Senter reported that during the course of the hearing he will not question Mr. Duncan but rather act as guide in areas that will be important for the Board to have some information and encouraged the Board to ask questions at any time during the hearing.

Mr. Kelly asked what the unit price of the next low bidder on the particular item was. Mr. Senter reported that the particular item that the mistake occurred in was not a bid item, but rather a mistake that occurred in connection with the rock excavation, which is not a line item on the long bid tab sheets and explained how Rockdale built that particular item into the cost of its pipe. Mr. Senter further reported that in calculating the unit price for small pipe, the mistake did not occur, since the cost of the rock excavation was included, which is more in line with the bid of Ruby-Collins, Inc. in terms of the cost of the small pipe, therefore, on an initial review that is some indication where the excavation cost were included and where it was not included.

Mr. Kelly further inquired as to what staff projected the bids would come in at. Mr. Mull reported that the cost was estimated between \$9.5 and \$10 million. Mr. Holbrook reported that the number in the CIP budget of July, 1991 was done prior to design and did not include a couple of items that were added later.

Mr. Senter stated that there is a specific statute which governs withdrawal of bids based on a mistake, to be addressed by Mr. Currie, but basically, they only have to show that an honest mistake was made; that the bid was submitted in good faith and that the mistake arose as a result of an arithmetic error. Mr. Senter submitted that both of those instances apply to this particular situation and show, by the greater weight of the evidence, that a mistake occurred and that following the presentation of the evidence, it will be clear that Rockdale Pipeline, Inc. simply left out a portion of the rock

excavation, which should have been at \$44.00 per cubic yard instead of \$4.00 per cubic yard.

With regard to a question as to whether the bid can be renegotiated, Mr. Currie reported that whether the bid bond is forfeited or not, the contractor can not have the contract nor can it bid again and that the intent of the public bidding statutes is to make sure there is no fraud or collusion, therefore, the Board will need to make sure the mistake was made in good faith and not an attempt to get another chance to bid.

Mr. Duncan of Rockdale Pipeline, Inc. reported that he realized a mistake had been made when the bids were read out and explained that when he got back home and plugged the computer in he saw that the rock was put in at \$4.00 per yard instead of \$44.00 per yard. Mr. Duncan further reported that following a conversation with the bonding company, he came back to the MSD the next day to request a withdrawal of the bid. Mr. Senter explained what would take place if the bid bond is forfeited by the Surety Company.

A lengthy discussion followed as to the events that occurred following the power outage; the difference in the price for large and small pipe, and if the information was put in manually, item by item, why the mistake was not evident. Mr. Senter stated that on the large pipe, where it says rock excavation, 42,000 yards at \$4.00 per cubic yard, is where they contend is the basis for the unit price difference was and that the excavation itself is the same whether its large or small pipe.

Mr. Currie clarified the issue before the Board and stated that it will need to decide whether or not to allow withdrawal of the bid bond. Mr. Holbrook of Hendon Engineering Associates, Inc. reported on how the District will proceed following withdrawal of Rockdale Pipeline, Inc's bid and stated that it is Hendon Engineering's feeling that if the District rebids the project as designed, it is taking a chance that those contractors who previously bid can either increase or decrease the price or that another contractor might choose to bid the job and that the only disadvantage is that the numbers are public as far as what has been previously bid. A brief discussion followed with regard the difference between the engineer's tabulation of the bids and the way the contractor calculated his bid and whether the other contractors, who bid on the project, would have a problem if the Board allowed withdrawal of bid.

Mr. Casper ask Mr. Duncan if there was an alternative to withdrawal of his bid. Mr. Duncan stated that there was no way he could bill a \$1.9 million dollar mistake and explained the difference between the computer run sheets and the work sheets; when the computer sheets were run; what was included in the price of \$44.00 for blasting and backfill and how Carolina Blasting would determine its price. A brief discussion followed as to when the bid was withdrawn.

Mr. Mull questioned Mr. Duncan about the type of computer used and whether it was battery operated or not. Mr. Duncan stated that it was a small computer and when they tried to use the computer in the car it would not work and had to wait until they could plug it in. Mr. Currie asked Mr. Duncan if any changes were made in the computer from the time he was at the Holiday Inn and the time the first two pages were run. Mr. Duncan stated that no changes were made. Mr. Currie further asked Mr. Duncan if he intentionally built an error into the bid so he could ask for a withdrawal if the bid happened to be low. Mr. Duncan stated that he did not and that the error was legitimate and that he needed the work.

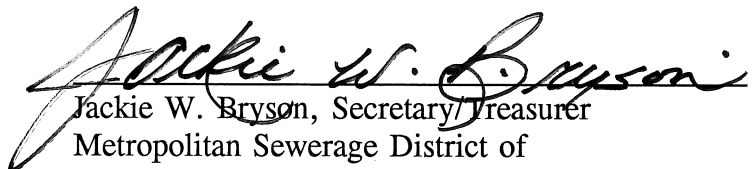
Following a statement by Mr. Holbrook on his investigation into the background of Rockdale Pipeline, Inc., Mr. Kelly moved that the Board find that Rockdale Pipeline, Inc. in its bid for North Swannanoa Interceptor - Phase I, was based upon a mistake,

which constituted a substantial error, and was actually due to an unintentional and substantial arithmetic error or to an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid and based upon those findings the Board authorizes Rockdale Pipeline, Inc. to withdraw its bid from consideration without forfeiture of its bid security. Mr. Joyner seconded the motion. A brief discussion followed regarding the reason for a bid, performance and payment bonds and the difference in bid estimates. There being no further discussion, Roll call vote was as follows: 8 Ayes; 0 Nays.

Mr. Currie informed the Board that it will need to decide whether to award the bid to the next low bidder or reject all bids and readvertise. Following a brief discussion, Mr. Casper moved that the decision be delayed until the next regular meeting of the Board. Mr. Selby seconded the motion. Voice vote unanimous in favor of the motion.

10. Adjournment:

There being no further business, the meeting was adjourned at 5:00 p.m.


Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

August 11, 1993

1. Call to Order and Roll Call:

A special emergency meeting of the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina, was held by teleconference at 11:00 A.M., on Wednesday August 11, 1993 with the following members present: Bryson, Dent, Joyner, Penny, Slosman, Wallace and Casper. Those members absent were: Frizzell, Kelly, Post and Selby.

Others Present were: John S. Stevens, General Counsel, and Sondra Honeycutt, MSD.

Mr. Stevens reported that the Chairman called this special emergency meeting because unexpected circumstance require immediate consideration by the Board of matters dealing with the pending bond closing. Specifically, in order to have an Assistant Secretary/Treasurer present at the bond closing in New York City, scheduled for August 13, 1993 which must, because of tax laws, close no later than that date. The appointment of a new Assistant Secretary/Treasurer must be ratified by the Board immediately at an emergency meeting. Further, in order to correct typographical errors in the Supplemental Series Resolution adopted by the Board on August 5, 1993, the Board must consider immediately these corrected changes in an emergency meeting.

Mr. Stevens briefly outlined the Resolution and stated that the only action required by the Board is to approve the appointment of Linda M. Dickson as Assistant Secretary/Treasurer. Mr. Stevens reported that this action is necessary because Jackie Bryson, Secretary/Treasurer is not able to attend the bond closing because of the illness of her husband and Mr. Charles Dent, Assistant Secretary/Treasurer is also unable to attend because of a procedure with his wife, which left the District without an officer to sign documents at the closing. Therefore, Mr. Dent resigned as Assistant Secretary/Treasurer and signed a letter to that effect and Chairman Post signed a letter appointing Linda M. Dickson, Assistant Secretary/Treasurer, since she would be present at the closing. Mr. Stevens further reported that the Chairman's appointment of Linda M. Dickson as Assistant Secretary/Treasurer is subject to the ratification and approval of the Board which is permitted in the Bylaws, whereby the Assistant Secretary/Treasurer need not be a member of the Board. In addition, Mr. Stevens stated that as a result of the Management Consultant's report, recommend that a non-Board member be the person having the responsibility of signing the checks. Following an explanation of the Resolution, Mr. Penny moved that the Board adopt the amended Resolution as presented, which is attached to these minutes as Exhibit (A).

Mr. Joyner questioned whether the appointment of Linda M. Dickson as Assistant Secretary/Treasurer would be a permanent position. Mr. Stevens stated that the decision of whether the appointment is a permanent position or not is entirely up to the discretion of the Board. There being no further discussion roll call vote was as follows: 7 Ayes; 0 Nays.

With regard to the matter of the Kledis parcel, Mr. Stevens reported that Angel Craven of the District delivered a letter to Mr. Kledis saying that the District intended to get an appraisal of the damage done to his property and trees off the right-of-way and would be negotiating with him, and that the District intended to proceed. In addition, a letter was given to the contractor instructing the contractor to proceed. Mr. Stevens further reported that the attorney for the contractor stated that Mr. Kledis has instructed him not to proceed, therefore the contractor is reluctant to do so and that the attorney for Mr. Kledis has advised him not to proceed until the matter can be resolved. Mr. Stevens recommended that Stan Boyd, (who is in charge of the District, in the absence

Minutes
Special Emergency Board Meeting
August 11, 1993

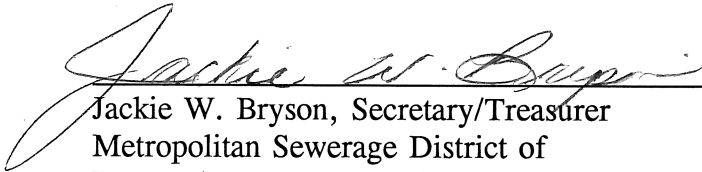
of Mr. Mull) take no action until a recommendation is made by Mr. Mull and presented to the Board at its next regular meeting, August 18, 1993. Mr. Stevens stated that the parcel is part of the Earl Capps Hollow project and gave a brief overview of events to date.

2. Adjournment:

There being no further business, the meeting was adjourned at 11:20 a.m.

I, Jackie W. Bryson, Secretary/Treasurer to the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina, do hereby certify that the above is a true and correct copy of the minutes of the August 11, 1993 meeting, adopted by the Metropolitan Sewerage District Board at its regular meeting held August 18, 1993.

WITNESS my hand and seal of said District this 18th day of August, 1993.



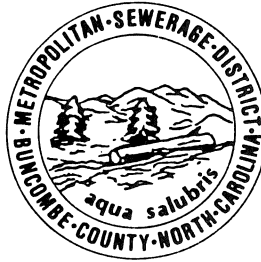
Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina

MSD Metropolitan Sewerage District of Buncombe County, North Carolina

W. H. Mull, P.E., Engineer-Manager
P.O. Box 8969, Asheville, N.C. 28814
Telephone: Area Code 704-254-9646

Telecopier (704) 254-3299

John S. Stevens, General Counsel



George E. Ivey, Chairman
O. R. Post, Vice-Chairman
Jackie W. Bryson
Larry Casper
Charles M. Dent
Kenneth E. Frizzell
Joe Joyner
Charles W. Penny
Bob Selby
E. Benson Slosman
Carolyn R. Wallace

August 10, 1993

Mr. O.R. Post, III, Chairman
Board of the Metropolitan Sewerage District
P.O. Box 423
Montreat, North Carolina 28757

Dear Mr. Post:

Recognizing the need for either the Secretary/Treasurer or Assistant Secretary/Treasurer to attend the bond closing in New York City on August 13, 1993 and further recognizing that neither Jackie M. Bryson, Secretary/Treasurer or Charles M. Dent, Assistant Secretary/Treasurer can attend this closing, I hereby resign my position as Assistant Secretary/Treasurer effective immediately in order to allow the Chairman to appoint an Assistant Secretary/Treasurer who can attend the bond closing.

Sincerely,

Charles M. Dent
Board Member

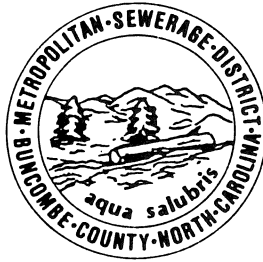
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MSD Metropolitan Sewerage District of Buncombe County, North Carolina

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John S. Stevens, General Counsel



George E. Ivey, Chairman
O. R. Post, Vice-Chairman
Jackie W. Bryson
Larry Casper
Charles M. Dent
Kenneth E. Frizzell
Joe Joyner
Charles W. Penny
Bob Selby
E. Benson Slosman
Carolyn R. Wallace

MEMORANDUM

TO: MSD Board Members
William H. Mull, Engineer-Manager

FROM: O.R. Post, III, Chairman

SUBJECT: Appointment of new Assistant Secretary/Treasurer

DATE: August 10, 1993

Jackie Bryson, Secretary/Treasurer to the Board will be unable to attend the Bond closing in New York City on August 13, 1993 due to the hospitalization of her husband. Charles M. Dent, Assistant Secretary/Treasurer has advised that he is also unable to attend the bond closing in New York City.

Since the District must have either the Secretary/Treasurer or the Assistant Secretary/Treasurer at the bond closing, Mr. Charles M. Dent has resigned effective immediately as Assistant Secretary/Treasurer and I am herewith appointing Ms. Linda M. Dickson as Assistant Secretary/Treasurer. This appointment must be finalized prior to the bond closing and I respectfully request that the Board favorably consider and concur with the appointment of Ms. Linda M. Dickson as Assistant Secretary/Treasurer at an emergency meeting by telephone at 11:00 a.m., August 11, 1993.

O.R. Post, III, Chairman
Board of the Metropolitan Sewerage District
of Buncombe County, North Carolina

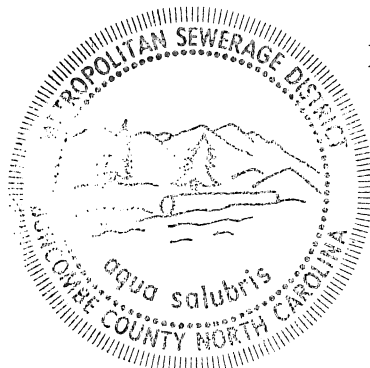
NOTICE OF PUBLIC HEARING BY THE METROPOLITAN
SEWERAGE DISTRICT OF BUNCOMBE COUNTY
(NORTH CAROLINA) REGARDING THE
REFINANCING OF SEWERAGE FACILITIES
WITH THE PROCEEDS OF THE ISSUANCE OF
TAX EXEMPT BONDS

NOTICE IS HEREBY GIVEN to all interested persons that the Metropolitan Sewerage District of Buncombe County (the "District") will hold a public hearing in the Board Room of the District's Administration Building, Highway 251 North (Town of Woodfin) Asheville, North Carolina 28814 at 2:00 p.m. on August 5, 1993, at which time any person may be heard regarding the sewerage facilities project proposed to be refinanced by the District with proceeds from the issuance of tax-exempt bonds.

The District proposes to issue its revenue bonds (the "Bonds") in an amount up to, but not exceeding, \$18,000,000 for the purpose of (i) advance refunding the District's outstanding Sewerage System Refunding Revenue Bonds, Series 1991A (the "Prior Bonds"), and (ii) paying certain expenses incurred in connection with the authorization and issuance of the Bonds. The proceeds derived from the sale of the Prior bonds were applied (i) to advance refund the District's then outstanding Sewerage System Revenue Bonds, Series 1985 (the "1985 Bonds"), and (ii) to pay certain expenses incurred in connection with the authorization and issuance of the 1985 Bonds. The proceeds derived from the sale of the 1985 Bonds were applied, (i) to finance the costs incurred in connection with the re-establishment of a hydroelectric generating facility at the District's wastewater treatment plant on the French Broad River, and a portion of the costs of designing, acquiring and constructing certain improvements to the District's wastewater treatment plant (the "Project"), (ii) to fund a debt service reserve fund for the 1985 Bonds, and (iii) to pay certain expenses incurred in connection with authorization and issuance of the 1985 Bonds. The Project is located on Highway 251 North in the Town of Woodfin, North Carolina, and is owned and operated by the District. In October 1984, the District entered into an agreement with Carolina Power and Light Company ("CP&L") pursuant to which CP&L agreed, for an initial term of fifteen years, to purchase all surplus power generated by such hydroelectric generating facility.

Any person wishing to comment in writing on the issuance of the Bonds should do so, within fourteen (14) days after the date of publication of this notice, to W. H. Mull, Engineer-Manager, Metropolitan Sewerage District of Buncombe County, Highway 251 North, P. O. Box 8969, Asheville, North Carolina 28814.

July 22, 1993



METROPOLITAN SEWERAGE DISTRICT
OF BUNCOMBE COUNTY

W. H. Mull, P.E.
Engineer-Manager

RESOLUTION CORRECTING TWO RESOLUTIONS
PASSED ON AUGUST 5, 1993 AND APPROVING THE
APPOINTMENT OF AN ASSISTANT SECRETARY-TREASURER
OF THE DISTRICT BOARD

WHEREAS, on August 5, 1993 the District Board of the Metropolitan Sewerage District of Buncombe County (the "District") passed a resolution entitled:

"RESOLUTION SUPPLEMENTING THE SERIES RESOLUTION OF THE DISTRICT BOARD OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$39,000,000 SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 1993A OF SAID DISTRICT PURSUANT TO THE PROVISIONS OF SECTION 211 OF THE BOND ORDER ADOPTED BY SAID DISTRICT BOARD ON MAY 23, 1985, AS AMENDED, AND APPROVING THE AWARD OF SAID BONDS."

which resolution is hereinafter called the "Supplemental Resolution"; and

WHEREAS, on August 5, 1993 the District Board of the District also passed a resolution entitled:

"RESOLUTION-MUNICIPAL BOND INSURANCE POLICY."

which resolution (the "Insurance Policy Resolution") approved, under certain conditions, certain provisions with respect to an insurance policy with Financial Guaranty Insurance Company in connection with the issuance of bonds of the District described in the Supplemental Resolution; and

WHEREAS, the conditions to the Insurance Policy Resolution have been fulfilled and it is advisable to correct certain typographical errors in such resolution and to make it a part of the Supplemental Resolution; and

WHEREAS, it is also advisable to correct certain typographical errors in the Supplemental Resolution; and

WHEREAS, the office of Assistant Secretary-Treasurer of the District Board of the District has become vacant and it is necessary to approve the recommended appointment by the Chairman of the District Board of a person to fill such office;

NOW, THEREFORE, THE DISTRICT BOARD OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY DOES HEREBY DETERMINE AND RESOLVE, as follows:

Section 1. Subsection (g) of Section 11 of the Supplemental Resolution is hereby corrected by inserting "Series 1993A" before the word "Bonds".

Section 2. Subsection (k) of Section 11 of the Supplemental Resolution is hereby corrected by inserting "not" before the word "take".

Section 3. Subsection (m) of Section 11 of the Supplemental Resolution is hereby corrected by inserting "Series 1993A" before the word "Bonds".

Section 4. Clause (ii) of subsection (o) of Section 11 in the Supplemental Resolution is hereby amended by inserting "Series 1993A" before the words "Bond has been recovered".

Section 5. The provisions approved by the Insurance Policy Resolution are hereby corrected to read as follows:

"Unless the Order requires the use of a higher interest rate, for all purposes (including calculation of the Debt Service Reserve Requirement and the additional Indebtedness tests), Variable Rate Indebtedness issued under the Order shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet Outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been Outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, and (iii)(1) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (2) if interest is not so excludable, the interest rate on direct U.S. Treasury obligations with comparable maturities plus fifty (50) basis points.

In addition, the maximum purchase price of Indebtedness subject to tender for purchase shall be included in Principal and Interest Requirements unless such purchase price is available pursuant to a Credit Facility rated in the top two rating categories by Moody's Investors Service Inc. and Standard & Poor's Corporation and approved by the Bond Insurer."

and the Supplemental Resolution is hereby corrected by inserting such provisions as subsection ~~(j)~~ of Section 11 of the Supplemental Resolution.

(g)

Section 6. The recommended appointment of Linda Dickson as the Assistant Secretary-Treasurer of the District Board is hereby approved.

Section 7. This resolution shall take effect immediately upon its passage.

BOARD OF THE METROPOLITAN SEWERAGE DISTRICT

August 5, 1993

1. Call to Order and Roll Call:

A meeting of the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina, was held at 2:00 P.M., on August 5, 1993 with the following members present: Bryson, Dent, Frizzell, Joyner, Kelly, Penny, Post, Selby, Slosman and Wallace. Those members absent were: Casper

Others Present were: W. H. Mull, Engineer-Manager, John S. Stevens, General Counsel, G. C. Ball, Jr., Municipal Advisors, Inc., David Gray, with The Robinson-Humphrey Company, Inc., Sharon Kane, Hendon Engineering Associates, Inc. and Linda Dickson, MSD.

2. Introduction of New Board Member, Mr. E. Glenn Kelly;

Chairman Post introduced and welcomed Mr. E. Glenn Kelly, representing the Town of Biltmore Forest, replacing Mr. George E. Ivey.

3. Public Hearing

At 2:00 P.M. Chairman Post announced that the District Board would proceed to hold a public hearing and would hear anyone who wished to be heard regarding the sewerage facilities project proposed to be refinanced by the District with the proceeds from the issuance of tax-exempt bonds.

The District intends to issue its revenue bonds in an amount up to but not exceeding \$18,000,000 for the purpose of advance refunding the District's outstanding Sewerage System Revenue Refunding Bonds, Series 1991A and paying certain expenses incurred in connection with the authorization and issuance of the Bonds.

The proceeds derived from the sale of the Series 1991A Bonds were applied to advance refund the District's then outstanding Series 1985A Sewerage System Revenue Bonds and to pay certain expenses incurred in connection with the authorization and issuance of the Series 1991A Bonds. The proceeds derived from the sale of the 1985A Bonds were applied to finance the costs incurred in connection with the reestablishment of a hydroelectric generating facility (pursuant to an agreement with CP&L) and a portion of the costs of designing, acquiring and constructing certain improvements to the District's wastewater treatment plant owned and operated by the District. In addition, the proceeds derived from the sale of the 1985A Bonds were applied to fund a debt service reserve fund for the 1985A Bonds and to pay certain expenses incurred in connection with authorization and issuance of the 1985 Bonds.

Mr. Mull presented an Affidavit of Publication, which notice of public hearing was advertised in The Asheville Citizen Times July 22, 1993 (14 days prior to August 5, 1993 meeting) and shall be attached to the minutes of the District Board as Exhibit A.

Following a report by Mr. Mull that no written inquiries were received concerning the proposed issuance of the Bonds and there being no persons present who wished to speak, the public hearing was closed at 2:10 P.M.

At 2:11 P.M. Chairman Post moved that the Board go into Executive Session to consider a personnel matter. Mr. Penny seconded the motion.

At 2:25 P.M. the Board Reconvened the regular meeting.

Chairman Post introduced Mr. G. C. Ball, and Mr. David Gray for a summary of events to date. Mr. Ball presented a Savings Report Summary showing True Interest Cost, (TIC), Present Value Savings and Gross Savings from July 5, 1993 to August 4, 1993 for the proposed bond refunding. Mr. Ball reported that on July 23, 1993 interest rates increased to a point where the cost to the District was too great to realize a savings, however, on July 29, 1993 interest rates dropped by 5 basis points, therefore, the bonds were sold on August 4, 1993 at an interest rate of 5.69 percent with a Present Value Savings of \$1,026,996 and a Gross Savings of \$1,964,460. Mr. Gray expressed Robinson-Humphrey's appreciation for the District's selection of their firm as representative for this issue. Mr. Gray gave a brief report on the retail activity of the bonds and the advantages of having an insured issue. With regard to insurance, Mr. Gray reported that the issue was insured at 26 basis points, (the lowest seen for a water and sewer system). Mr. Selby questioned whether the "True Interest Cost" (TIC) included the cost of issuance and expenses. Mr. Ball reported that the TIC does include the cost of issuance and presented a report on the Sources and Uses of Funds and explained how the costs are distributed. A brief discussion followed regarding the retail cost of selling the bonds.

There being no further discussion, the Chairman called for a motion to authorize issuance of the Bonds as described. Mr. Selby moved that the District Board approve issuance of the proposed Bonds. Ms. Bryson seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

4. Consideration of Resolutions Regarding Proposed Revenue Refunding Bonds as follows:

a. Resolution Regarding An Order Correcting A Supplemental Bond Order Adopted July 21, 1993.

Mr. Stevens stated that the Order which is attached to these minutes as Exhibit (B) is to amend the words "Accreted Value" to read "Accreted Amount". Following its consideration, Mr. Dent moved that the Order be amended to read "Accreted Amount". Mr. Joyner seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

b. Resolution - Municipal Bond Insurance Policy

Mr. Stevens reported that the Resolution which is attached to these minutes as Exhibit (C) deals with provisions of the Municipal Bond Insurance Policy and although Bond Counsel has not resolved the issue of the provisions with the insurance carrier, the Board will need to approve the provisions of the insurance policy if, first, the provision is insisted on by Financial Guaranty Insurance Company as a condition of its issuance of the policy, and second, if Bond Counsel and the District's Counsel conclude such provision is permitted under the Bond Order. Following a clarification by Mr. Ball and Mr. Stevens regarding the provisions, Mr. Dent moved that the Board adopt the provisions, subject to approval of Bond Counsel. Mr. Penny seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

c. Certificate of Metropolitan Sewerage District of Buncombe County, North Carolina;

Mr. Stevens reported that the Certificate which is attached to these minutes as Exhibit (D) states that the District is not and has not ever been in default of the Florida and New Jersey Blue Sky Law. There being no discussion, Ms. Wallace moved that the Board adopt the Certificate as presented. Mr. Frizzell seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

d. Resolution Supplementing the Series Resolution of the District Board adopted May 23, 1985;

Mr. Stevens reported that the Resolution which is attached to these minutes as Exhibit (E) authorizes the issuance of not exceeding \$39,000,000 Sewerage System Revenue Refund Bonds, Series 1993A pursuant to the provisions of Section 211 of the Bond Order adopted by the District Board on May 23, 1985, as amended, and approving the award of said bonds. Following a brief clarification of the Resolution, Mr. Joyner moved that the Board adopt the Resolution as presented. Ms. Wallace seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

e. Bond Purchase Contract;

Mr. Stevens reported that the Bond Purchase Contract is an Agreement between the Underwriters and the District and Local Government Commission (LGC) for the sale by the LGC and the purchase by the Underwriters of the Metropolitan Sewerage District's Sewer System Revenue Refunding Bonds, Series 1993A. As a matter of clarification, Mr. Stevens discussed the portion of the contract that deals with fees and expenses. Mr. Gray reported that because the closing is scheduled for Friday, August 13, 1993, and because no provision for weekend carry-over cost is included in the contract, The Robinson-Humphrey Company, Inc. is requesting that the District approve the additional costs of a one day carry-over. He said he would be surprised if the cost were anything more than nominal or would exceed \$2,000. Following a brief discussion as to the cost involved, Mr. Ball stated that the additional expense would be covered in the cost of issuance. There being no further discussion, Mr. Slosman moved that the Board approve the Purchase Contract as presented and authorized its execution by Board officers. Mr. Dent seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

f. Escrow Deposit Agreement;

Mr. Stevens reported that the Escrow Deposit Agreement, dated August 13, 1993, is an agreement between the District and Wachovia Bank of North Carolina, N.A., to hold the Escrow Fund to pay redemption premium and interest on and principal of the Bonds to be refunded. Following a brief discussion regarding the process in the selection of an Escrow Agent, Mr. Joyner moved that the Board approve the Escrow Deposit Agreement as presented and authorized its execution by Board officers. Mr. Post seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

g. Preliminary Official Statement Dated August 2, 1993;

Mr. Stevens presented the Preliminary Official Statement and explained the provisions therein. With regard to the matter of rate increases, Mr. Stevens explained the provision within the Official Statement for Sewer Consolidation Rate Increases and Future Rate Increases. Mr. Mull called to the Board's attention the footnote from the Statement regarding Projected Net Revenues and Debt Service Coverage which states that "Current Expenses for the Fiscal Year ending June 30, 1994 are in accordance with the adopted budget for such Fiscal Year and amounts shown for subsequent Fiscal Years have been increased four (4) percent annually". There being no further discussion, Mr. Dent moved that the Board approve the Preliminary Official Statement as presented. Mr. Slosman seconded the motion. Roll call vote was as follows: 10 Ayes; 0 Nays.

5. Consideration of Expense for Certain Board Members to Attend the Bond Closing;

The Board discussed in length the bond closing process and whether there was a need for Board members, other than the Chairman and Secretary-Treasurer, to attend

the closing. Following a statement by Mr. Kelly regarding his concern that the District should keep expenses to a minimum and a brief discussion regarding the Board's approval of expenses for Ms. Dickson to attend the closing, Mr. Slosman moved that the Board approve the expense for the Chairman, Secretary-Treasurer and one other Board member to attend the closing. Mr. Penny seconded the motion. Roll call vote was follows: 9 Ayes; 1 Nay.

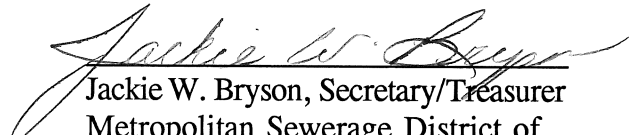
Mr. Stevens stated that if the Board had any questions regarding the Official Statement to contact himself or Mr. Ball.

6. Adjournment

There being no further business the meeting adjourned at 3:40 P.M.

I, Jackie W. Bryson, Secretary/Treasurer to the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina, do hereby certify that the above is a true and correct copy of the minutes of the August 5, 1993 meeting, adopted by the Metropolitan Sewerage District Board at its regular meeting held August 18, 1993.

WITNESS my hand and seal of said District this 18th day of August, 1993.


Jackie W. Bryson, Secretary/Treasurer
Metropolitan Sewerage District of
Buncombe County, North Carolina