

The District Board of the Metropolitan Sewerage District of Buncombe County met in a rescheduled regular session in the Boardroom at the District's office in Woodfin, North Carolina, the regular place of meeting, at 2:00 P.M. on November 10, 2004.

Present: Chairman Brady Blackburn, presiding, and Boardmembers Steven Aceto,  
Cathy Ball, Terry Bellamy, Jackie Bryson, Elizabeth Graham, Glenn Kelly, Ben Pace,  
Mike Sobol and Don Venable.

Absent: David Gantt and Jerry VeHaun

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Chairman Blackburn introduced the following resolution which was read by title and summarized by the General Manager of the District:

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE NORTH CAROLINA LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE ISSUANCE AND PRIVATE SALE OF METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 2005 AND RELATED ACTIONS

WHEREAS, the Metropolitan Sewerage District of Buncombe County (the "District"), acting by and through its District Board (the "Board"), is authorized by the North Carolina Metropolitan Sewerage Districts Act, being Article 5 of Chapter 162A of the North Carolina General Statutes, as amended, and The State and Local Government Revenue Bond Act of North Carolina, being Article 5 of Chapter 159 of the North Carolina General Statutes, as amended (collectively, the "Enabling Act"), to issue revenue bonds for the purpose of financing the cost of acquisition, construction, reconstruction, enlargement, equipping, extension, maintenance or improvement of facilities for the collection, treatment, purification or disposal of sewage and to issue revenue refunding bonds; and

are managed in strict compliance with law and (v) under current economic conditions, the Series 2005 Bonds can be marketed at a reasonable interest cost to the District.

Section 2. The Board hereby authorizes the filing of an application with the North Carolina Local Government Commission (the "Local Government Commission") for approval of the issuance of the Series 2005 Bonds pursuant to The State and Local Government Revenue Bond Act and hereby directs Thomas Hartye, General Manager of the District, and Martha Zeigler, Director of Finance of the District, as representatives of the District, to file such application with the Local Government Commission.

Section 3. The Board hereby recommends that the following financing team members be engaged in connection with the issuance and sale of the Series 2005 Bonds and requests that the Local Government Commission approve said financing team members:

Bond Counsel:	Sidley Austin Brown & Wood LLP
Underwriter:	Banc of America Securities LLC
Underwriter's Counsel:	McGuireWoods LLP
Trustee and Bond Registrar:	The Bank of New York Trust Company, N.A.
Escrow Agent:	The Bank of New York Trust Company, N.A.
Tender Agent:	The Bank of New York Trust Company, N.A.
Remarketing Agent:	Banc of America Securities LLC
Liquidity Provider:	Bank of America, N.A.
Liquidity Provider's Counsel:	Helms Mulliss & Wicker, PLLC
Insurer:	XL Capital Assurance Inc.

RESOLUTION AUTHORIZING THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA TO ENTER INTO AN INTEREST RATE SWAP TRANSACTION AND AUTHORIZING THE DIRECTOR OF FINANCE TO FILE AN APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION FOR THE APPROVAL THEREOF

BE IT RESOLVED by the District Board for the Metropolitan Sewerage District of Buncombe County, North Carolina:

Section 1. The District has determined and does hereby find and declare as follows:

(a) Under current conditions obtaining in the tax-exempt bond market, the District has been advised by finance professionals that the District can achieve significant debt service savings by (i) issuing variable rate refunding bonds to advance refund a portion of the District's outstanding Sewerage System Revenue Bonds, Series 1999 and Sewerage System Revenue Bonds, Series 2001 (collectively, the "Bonds to be Refunded") and (ii) simultaneously entering into an interest rate swap agreement in order to create a synthetic fixed rate on the refunding bonds.

(b) The District can achieve this economic result by entering into an interest rate swap agreement (a "Swap Agreement") with a qualified provider (a "Counterparty"). Under such an agreement, the Counterparty will agree to make, for the period ending on the latest date the Bonds to be Refunded are redeemed, variable interest rate payments based upon a specified percentage of LIBOR plus a specified number of basis points or, upon the occurrence of certain specified events, the lesser of (1) the then current tax-exempt variable rate on the variable rate refunding bonds and (2) a specified percentage of LIBOR (London Interbank Offered Rate) or another established rate on a notional amount corresponding to the principal amount of the variable rate refunding bonds, and, after such date, a specified percentage of LIBOR or another established rate, and the District will agree to pay the Counterparty fixed rate interest payments on the same notional amount.

Government Commission's consideration of such application, the Board makes the following findings and determinations:

(a) The annual audits of the District show the District to be in strict compliance with debt management policies and that the budgetary and fiscal management policies are in compliance with law.

(b) Entering into a Swap Agreement with respect to the proposed refunding bonds is expedient for the District.

Section 5. Efficient Capital Corporation is hereby authorized to act as Swap Advisor to the District with respect to the Swap Agreement authorized hereby.

Section 6. Bank of America, N.A. is hereby approved as the Counterparty under the Swap Agreement.

Section 7. The General Manager and the Director of Finance of the District and the Chairman of the District Board are each hereby authorized to execute on behalf of the District the various certificates, proofs, instruments or other documents to be executed in connection with the delivery of the Swap Agreement. All actions previously taken by the District and its representatives in connection with the subject swap are hereby ratified and approved.

Section 8. This resolution shall take effect immediately upon its passage.

Thereupon, upon motion of Boardmember Glenn Kelly seconded by  
Boardmember by Finance, the foregoing resolution was passed by the following vote:  
Committee.

Ayes: Boardmembers Steve Aceto, Cathy Ball, Terry Bellamy, Brady Blackburn  
Jackie Bryson, Elizabeth Graham, Ben Pace.

Noes: Mike Sobol and Don Venable

The Chairman thereupon announced that the foregoing resolution had been adopted.

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT  
NOVEMBER 10, 2004**

**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, November 10, 2004. Chairman Blackburn presided with the following members present: Aceto, Ball, Bellamy, Bryson, Graham, Kelly, Pace, Sobol and Venable. Mr. Gantt and Mr. VeHaun were absent.

Others present were: Thomas E. Hartye, General Manager, William Clarke, General Counsel, Leah Karpen with the League of Women Voters, Larry Frost with DENR, Gary McGill with McGill Associates, Robert Hobson with Banc of America, Gene Cahalan with Efficient Capital, Martha Zeigler, Stan Boyd, Ed Bradford, Ann LeMieux, John Kiviniemi, Peter Weed and Sondra Honeycutt, MSD.

**2. Approval of Minutes of the October 20, 2004 Meeting:**

Mr. Aceto moved that the Minutes of the October 20, 2004 Meeting be approved as presented. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous.

**3. Discussion and Adjustment of Agenda:**

Mr. Venable requested that Item f. (application to LGC to Refund Bonds) of the Consolidated Motion Agenda be pulled. Mr. Blackburn moved Item f. into the report of Finance Committee.

**4. Informal Discussion and Public Comment:**

Mr. Blackburn welcomed Leah Karpen with the League of Women Voters, Larry Frost with DENR and Robert Hobson with Banc of America.

**5. Report of General Manager:**

Mr. Hartye presented information regarding United Way, Annual Performance Report, AWWA/WEA Conference, Bond Issue(s), Congratulations and Board/Committee Meetings.

Regarding United Way, Mr. Hartye reported that MSD nearly doubled last years' participation with pledges totaling \$15,000.00. He stated that inspirations for this year's campaign were provided by coordinators, Peter Weed and Art Mandler. He further stated that Peter Weed was very creative in coming up with the "Wheel of the Fortunate", used to raffle off free time to encourage participation, which was well received and will be used at other United Way functions. Mr. Blackburn presented a plaque to Peter Weed for his efforts in this year's MSD United Way Campaign. Art Mandler was not present, but will receive a plaque for his efforts.

Mr. Hartye reported that MSD honored it's Veterans at a ceremony held today. The Asheville High ROTC and Lieutenant Colonel Dennis Watts were present for the celebration.

Regarding the Annual Performance Report, Mr. Hartye reported that this summary was sent directly to all 42,000 + MSD customers and has been published in the paper. He further reported that the full detailed report with data and graphs, etc. is available on MSD's website with hard copies made available upon request.

Mr. Hartye reported that the AWWA/WEA Conference will be held in Charlotte November 14-17<sup>th</sup>. He further reported that Ed Bradford and Eric Mann will give a presentation on the District's Pipe Rating Program and Mr. Hartye will give a presentation on developing a system condition assessment and business plan for infrastructure investment.

Regarding the Bond Issue(s), Mr. Hartye reported that closing of the \$24 Million Series 2004 Bond Issue was held November 9<sup>th</sup> and 10<sup>th</sup> in Asheville and that the Finance Committee will make a recommendation on refunding portions of the Series 1999 and 2001 Bonds.

Mr. Hartye reported that Angel Banks was awarded Professional of the Year by the NC Chapter of the International Right of Way Association.

With regard to Board/Committee Meetings, Mr. Hartye reported that the Right of Way Committee scheduled for November has been cancelled. The next regular Board Meeting will be held December 15, 2004 at 2PM.

Ms. Bryson commended staff for the Veterans Day program. Mr. Hartye stated that Marsha Kiser was responsible for coordinating the program.

**6. Report of Committees:**

**Right of Way Committee**

Mr. Pace reported that the Right of Way Committee met October 27, 2004 to consider the Compensation Budget for the Lake Louise Interceptor Rehabilitation Project and Condemnation on the Russell Avenue Rehabilitation Project.

**Finance Committee**

Mr. Kelly reported that the Finance Committee met today to consider an Interest Rate Swap Agreement Policy, selection of a Swap Advisor and Refunding portions of the Series 1999 and 2001 Bonds. He further reported that the Finance Committee recommends adoption of all three (3) agenda items considered. Mr. Kelly moved that the Board adopt the recommendations of the Finance Committee of November 10, 2004 with respect to the Interest Rate Swap Agreement Policy, Selection of a Swap Advisor and Refunding of the Series 1999 and 2001 Bonds. Mr. Venable expressed his appreciation to representatives of Banc of America and Efficient Capital for their efforts, but feels that although there are potential savings to be made, there are risks involved. He stated that in his opinion, the Board is gambling that the risks are worth the potential savings, but does not feel it's his place to gamble with the rate payers money, therefore, will vote against the motion and asked that others do the same. With regard to Mr. Venable's statement, Mr. Kelly stated that the District is taking a gamble if it doesn't proceed by paying above the market rate for money the District can get at market rate. Mr. Pace stated he is in favor of the motion because he feels there are enough safeguards. Mr. Sobol stated that no matter how you look at it, the District is speculating. With no further discussion, roll call vote was as follows: 8 Ayes; 2 Nays (Mr. Sobol and Mr. Venable).

Mr. Venable asked if this item will come back to the Board when the time comes to refund the bonds. Mr. Hartye stated the motion is to proceed with making application to the Local Government Commission and that staff will come back to the Board for adoption of a Series Resolution.

**7. Consolidated Motion Agenda:**

Ms. Bellamy asked to be excused from voting on item a. (cost recovery request for Ross Creek Commons) of the Consolidated Motion Agenda. Mr. Blackburn pulled item a. and excused Ms. Bellamy from voting.

Ms. Graham moved that the Board approve the Consolidated Motion Agenda items b. c. d. e. and h. Mr. Pace seconded the motion. Mr. Hartye went over the following items:

**a. Consideration of Cost Recovery Request for Ross Creek Commons:**

Mr. Hartye reported that this project is located off Chunn's Cove Road and when complete will be an 8-unit rental project. The estimated cost to extend the sewer to the property is \$5,000.00 and the estimated 5-year net revenue will be \$8,907.00. He further reported that staff recommends that the Board approve authority for the General Manager to reimburse Rich Olejniczak the amount of \$5,000.00 upon Board acceptance for ownership of the sewer system and receipt of surety.

**b. Consideration of Compensation Budget – Lake Louise Interceptor Rehabilitation Project.**

Mr. Hartye reported that the Right of Way Committee recommends approval of the Compensation Budget for the Lake Louise Interceptor Rehabilitation Project.

**c. Consideration of Developer Constructed Sewer Systems: Whitney Drive Sewer Extension and Affordable Homes/Broadview Drive Sewer Extension:**

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

**d. Consideration of Sole Source Procurement of Replacement Blowers:**

Mr. Hartye reported that the blowers at the Treatment Plant are in need of replacement since the currently installed equipment is obsolete and future repairs are no longer an option due to the availability of parts. He further reported that Hazen and Sawyer conducted a through equipment (blower) evaluation/selection process and recommends pursuing sole source procurement. Specifically, they identified Gardner Denver (Lamson) model 2003 multi-stage centrifugal blower due to the particular performance and size criteria. Staff recommends acceptance of the recommendation of Hazen and Sawyer to proceed with sole source procurement of the Gardner Denver (Lamson Model 2003 multi-stage centrifugal blowers.

**e. Consideration of Designation of Applicant's Agents for FEMA Reimbursement:**

Mr. Hartye reported that the District is seeking reimbursement from the Federal Emergency Management Agency (FEMA) for cost of repairs made due to damages resulting from the storms (Hurricanes Frances and Ivan). Mr. Hartye also added that the District had experienced a sewer main washout

along Hominy Creek from a mudslide which was due to the effects of the hurricanes.

He further reported that the State requires a primary and secondary agent be designated by the Applicant's Board. Each agent is authorized to execute and file federal assistance application for federal and/or state assistance. He stated that staff recommends the designation of himself, General Manager as the primary agent and Stan Boyd, P.E., Director of Engineering Services as secondary agent.

**f. Consideration of Series Resolution 2005 Refunding Bonds:**

Mr. Hartye reported that the Finance Committee recommends authorizing the filing of an application with the North Carolina Local Government Commission for approval of the issuance and private sale of MSD Sewerage System Revenue Refunding Bonds, Series 2005 and related actions. [Adopted under Report of the Finance Committee]

**g. Consideration of Interest Rate Exchange Agreement (Swap) Policy:**

Mr. Hartye reported that at the October 20, 2004 Board Meeting, a resolution was passed authorizing staff to continue exploring whether a synthetic fixed rate refunding of certain maturities of the 2001 Series Bonds would be financially advantageous to the District. He further reported that after contacting the Local Government Commission (LGC) they recommended that the District adopt a "Swap Policy". The LGC provided interest rate exchange policies from the cities of Cary and Fayetteville, NC for use as references in preparing a draft policy. Also, the policy from the state of Illinois was a valuable resource. He stated that the draft policy was reviewed by William Clarke and Robert Hobson edited the financial definitions. The Finance Committee recommends approval of the policy. [Adopted under Report of the Finance Committee]

**h. Cash Commitment/Investment Report – Month Ended September 30, 2004:**

Presented as information only.

With no discussion, roll call vote was as follows: 10 Ayes; 0 Nays.

Mr. Kelly moved that the Board approve Item a. of the Consolidated Motion Agenda. Mr. Pace seconded the motion. Roll call vote was as follows: 9 Ayes; 0 Nays. Ms. Bellamy was excused from voting.

**8. Old Business:**

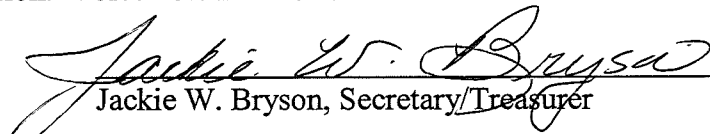
None

**9. New Business:**

None

**10. Adjournment:**

With no further business, Mr. Sobol moved for adjournment at 2:25 PM. Mr. Pace seconded the motion. Voice vote in favor of the motion was unanimous.

  
Jackie W. Bryson, Secretary/Treasurer