



**DISTRICT OF COLUMBIA
WATER AND SEWER
AUTHORITY**

BOARD OF DIRECTORS

*Governance Committee
January 11, 2012
9:30 a. m.*

MEETING MINUTES

Committee Members

Alan Roth, Vice Chair
Anthony Griffin
David Lake
Carla Reid

Other Board Members

Joseph Cotruvo
Howard Croft

DC Water Staff

George Hawkins, General Manager
Randy Hayman, General Counsel
Linda Manley, Board Secretary
Alan Heymann, Chief, External Affairs
Leonard Benson, Chief Engineer
Walter Bailey, Assistant General Manager
for Plant Operations
Olu Adebo, Chief Financial Officer

Vice Chair Alan Roth called the meeting to order at 9:35 a.m., and turned the Committee's attention to Agenda Item # 2 – Government Affairs: Update. Alan Heymann, Chief, External Affairs, briefed the Committee on new pesticide legislation being considered by the District of Columbia Council and noted that DC Water was exempt from such legislation. Mr. Heymann also noted that Councilmember Mary Cheh, who chairs the Committee on Environment, Public Works and Transportation, has decided to hold one public hearing covering both DC Water oversight and the DC Water budget. He then discussed federal legislation and stated that Congress had allocated \$15 million for the Clean Rivers Project in FY 2012. Mr. Heymann concluded by discussing DC Water's meeting with the Commission on Fine Arts (CFA) concerning DC Water's construction of a new warehouse and visitor's center at Blue Plains. The CFA staff embraced the idea of including DC Water's logo colors on that building. Vice Chair Roth commended the communications staff's recent inclusion in retail consumers' bills of an insert explaining the various components of DC Water's retail rates.

The Vice Chair then turned the Committee's attention to Agenda Item #3 – 2012 Intermunicipal Agreement (IMA) Briefing. General Manager George Hawkins commenced the briefing with a discussion of the status of the proposed new 2012 IMA.

The General Manager stated that the new document would be distributed to all the parties once the document had undergone a technical clean-up and Allen Lew had made his recommendation on behalf of the District, which is imminent. Once the new document is reviewed and approved by all the jurisdictions, it will be voted on by the Board, at the earliest in March or perhaps in April. The General Manager stated negotiations are now concluded and that the fate of the new document would ultimately be decided by an up or down vote of each of the parties. A negative vote would leave the 1985 IMA in place. The General Manager recommended approval of the document and turned the presentation over to Stuart Freudberg of the Metropolitan Washington Council of Governments (COG) to discuss the new document. COG had the role of a neutral party in the negotiation process.

Mr. Freudberg stated that the new draft IMA encompasses a totally new scheme from the 1985 IMA. In response to a suggestion from Dr. Cotruvo, Mr. Freudberg indicated that because the versions are so different, there is not a redline markup of the two. However, Board members can be provided with a comparison of the two documents highlighting the changes. Mr. Freudberg emphasized that the 1985 IMA is out of date and, unlike the new IMA, is not a living document.

Mr. Freudberg stated that the new IMA is composed of a core agreement and three types of derivative agreements – operating agreements, service agreement, and limited party agreements. Currently, six operating agreements are in draft form and will be transmitted to the parties at the same time the core IMA is distributed.

Mr. Freudberg then outlined the contents of the core IMA. Section 1 lists 12 key principles that provide the basis for the overall document. Section 2 covers governance and defines levels of authority and sets out roles and responsibilities. Section 3 specifies DC Water's responsibilities. Mr. Freudberg described Section 4 as a fundamental section covering flow capacity, loads and peak flows, allocations, and limitations. This section is supported by operating agreement #1. This section also increases the District's capacity. Section 5 was also described as a fundamental section covering the financial responsibilities of the parties and is supported by operating agreement #2. Section 6 sets out the measurement of flow and loads and is supported by operating agreement #3. Section 7 covers projected flow capacity needs and future options and is supported by operating agreement #4. Mr. Freudberg noted that this section is drafted in a manner that recognizes changes may occur in the future. Section 8 covers pretreatment and operational requirements and is supported by operating agreement #5. Section 9 covers biosolids management and is supported by operating agreement #6. Mr. Freudberg noted that operating agreement #6 memorializes WSSC's responsibility to manage/issue contracts for a portion of Blue Plains biosolids within a range of 30% to 50%. Mr. Freudberg characterized Section 10, pertaining to administrative provisions and procedures, as the section that makes the new IMA a living document. This section recognizes the concept of the core IMA vs. derivative agreements. This section also sets out procedures for dispute resolution and amendments. Section 11 describes the scope and function of the derivative agreements. Section 12 includes a glossary.

Mr. Freudberg concluded his presentation by emphasizing the aspects of the new agreement that ensure it will be a living document, and listed its overall benefits to the region.

The General Manager then explained to the Committee that DC Water's Chief Engineer, Assistant General Manager for Wastewater Treatment, Chief Financial Officer, and General Counsel would each, in turn, give their rationales for recommending the new IMA document.

Leonard Benson, Chief Engineer, recommended approval of the new IMA, pointing to sections 1, 3, and 7. The Chief Engineer stressed the equity of the document in ensuring that one party doesn't profit from another party's loss. He further noted the value of the document in clearly delineating DC Water's obligations. The Chief Engineer concluded by stating that the document: (i) ensures that the District of Columbia will always have capacity at Blue Plains as Blue Plains is the District's only option; (ii) considers the needs of the region for the next 30 years; and (iii) includes structured processes for governance and financial participation.

Walter Bailey, Assistant General Manager for Wastewater Treatment, likewise recommended approval, citing sections 4, 6, 8, and 9. The Assistant General Manager emphasized: (i) the requirement for the management of plant flow and load; (ii) the document's support for compliance with the Chesapeake Bay TMDL through the requirement of nutrient allocations from each party; (iii) the document's mechanisms for ensuring DC Water's ability to monitor what enters the Blue Plains facility; and (iv) its support of biosolids best management practices.

Olu Adebo, Chief Financial Officer, stated that section 5 creates a new and more equitable sharing of risks. He also noted that the document: (i) ensures the predictability of revenues; (ii) provides flexibility to deal with cost allocation changes over time; (iii) and provides a clear dispute resolution process. The Chief Financial Officer formally recommended approval of the new IMA document.

Randy Hayman, General Counsel, cited sections 2, 10 and 11 when stating his rationale for recommending approval of the new IMA. The General Counsel first emphasized the document's creation of a formal seat for DC Water in the governance structure. The General Counsel further noted that the new document provided: (i) legal stability by delineating the responsibilities and obligations of the parties; (ii) enhanced stability by developing a formal dispute resolution process; (iii) and established an approval process based on unanimous consent.

The General Manager then concluded the discussion on the proposed new IMA. He stated that each party to the agreement would determine how that entity would handle the dissemination of information and recommendations to the decisionmakers for that party, including Mr. Lew for the District. The General Manager formally recommended approval of the proposed new IMA and explained the various ways in which the new

agreement would improve DC Water's role and inclusion in the governance and decisionmaking process for Blue Plains issues on an ongoing basis.

The Vice Chair asked the Committee members if they had any comments or questions. Committee Member Lake pointed out that Committee Member Griffin was the Chair of the Leadership Committee for the IMA, and that Mr. Lake was the Chair of the Negotiating Team. Mr. Lake commended the work of the many DC Water staff that had participated in the process, and particularly commended Chief Engineer Len Benson's chairmanship of the Operating Agency Workgroup, which had the toughest tasks. Mr. Griffin in turn commended all those who had been involved in the process going back to Bruce Romer. Mr. Griffin echoed earlier comments of the General Manager about the formal role for DC Water that the new agreement would provide and commended the legal review this document has received.

Committee Member Reid, Board Member Cotruvo, and Vice Chair Roth added their commendations to those of the other Committee members. Dr. Cotruvo also inquired about the nature of the arbitration process in the dispute resolution provisions. General Counsel Hayman and the General Manager explained the reasons for adopting a non-binding arbitration approach.

Vice Chair Roth asked what the potential impact on District ratepayers would be of the District's getting the right under section 4 to pick up an additional 4.5 mgd in capacity. The General Manager explained that the District is already approaching its capacity limitations and that the 2012 IMA addresses the District's needs over the next 30 years in two distinct ways, one of which is the additional 4.5 mgd. Chief Engineer Benson assured the Committee that the new capacity allocated to the District would not result in a rate increase because ratepayers have already been purchasing that capacity, which heretofore had been held in reserve.

Mr. Roth also raised some questions about the process by which Board Members could obtain the invitation that the new IMA would require to attend BPRC or Leadership Committee meetings as observers. Mr. Griffin, the General Manager, Mr. Roth, and Mr. Lake each offered their own suggestions as to how that issue should best be handled by the Board, with general agreement that however the matter is resolved, it should be a Board-level procedural decision.

The Vice Chair then turned to agenda Item # 4 - Emerging Issues. The Vice Chair recommended that the item to amend the by-laws to rename the Human Resources and Labor Relations Committee be discussed at the next Governance Committee meeting after the item had vetted by the Human Resources and Labor Relations Committee.

The Vice Chair adjourned the meeting at 11:17 a.m.