

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,  
et al.,

Defendants.

.....

CONSERVATION LAW FOUNDATION OF  
NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendants.

.....

CIVIL ACTION  
No. 85-0489-MA

CIVIL ACTION  
No. 83-1614-MA

MWRA QUARTERLY COMPLIANCE AND  
PROGRESS REPORT AS OF MARCH 15, 2005

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from December 16, 2004 to March 15, 2005, and supplementary compliance information in accordance with the Court's order of December 23, 1985, and subsequent orders of the Court.

I. Schedule Six.

There were no scheduled activities for the last quarter on the Court's Schedule Six.

A. Progress Report.

1. Combined Sewer Overflow Program.

(a) Annual CSO Progress Report.

In compliance with Schedule Six, the Authority submits its Annual Combined Sewer Overflow (“CSO”) Progress Report (the “Annual Report”), which is attached as Exhibit “A.” The Annual Report sets forth the progress toward implementation of the projects that constitute the Authority’s long-term CSO control plan during the past quarter and in 2004, describes delays or potential delays in completing projects on schedule and identifies important activities for 2005.

Over the past year, the Authority continued to make significant progress on the implementation of the remainder of its proposed long-term CSO control plan. Progress on design and construction in 2004 exceeded any previous year, and the Authority spent \$46 million, the highest annual spending to date.

The Authority completed construction of the \$5.5 million first construction contract for the East Boston Branch Sewer Relief project. The work involved rehabilitation of over 5,430 linear feet of a 40 inch diameter sewer including the largest sewer bypass operation in New England with a flow capacity of 42 million gallons per day. The Authority completed design of the

BOS019 CSO storage conduit in Charlestown and made significant construction progress on the \$40 million Union Park CSO detention and treatment facility. The contractor for Union Park removed more than 60,000 tons of soil from the site, placed 10,000 cubic yards of concrete and completed much of the work to modify and upgrade the existing pump station. Boston Water and Sewer Commission (“BWSC”) made significant progress on the South Dorchester Bay sewer separation project. Construction activity associated with South Dorchester Bay sewer separation reached its highest level with the installation of 4.6 miles of new storm drains, completing 70 percent of the total work and surpassing the Court mandated progress requirement. All major construction activity on Stony Brook sewer separation is completed or underway. BWSC has installed 50,000 linear feet of new storm drains, surpassing the Court’s requirement. In addition, BWSC completed design and began construction of a portion of the Fort Point Channel BOS072-073 sewer separation project. The City of Cambridge completed 100-percent design for the stormwater basin and storm drain outfall for its Alewife sewer separation project. In 2004, the Authority was able to develop and reach consensus on a revised CSO control plan for the South Boston beaches and Reserved Channel. Since reaching consensus on the plan, the Authority completed 60-percent plans and specifications for the North Dorchester Bay storage tunnel and 100-percent plans and specifications for the Pleasure Bay stormwater diversion.

To date, 14 of the 25 recommended CSO control projects have been completed, and six others (sewer separation for Alewife Brook, South Dorchester Bay, and Stony Brook, Union Park Detention and Treatment Facility, East Boston Sewer Relief, and Flotables Controls) are in construction. The Authority and BWSC recently commenced construction on one more project, Fort Point Channel sewer separation, and the Authority's Board of Directors recently awarded the construction contract for the storage conduit BOS019. The Authority has spent approximately \$300 million on planning, design and construction, and the CSO program is now the largest single capital spending commitment in the Authority's proposed Capital Improvement Program ("CIP") (encompassing drinking water and wastewater projects). The total cost of the CSO plan has risen from \$411 million when the Final CSO Conceptual Plan was issued in 1994, to \$481 million when the Final CSO Facilities Plan and Environmental Impact Report was approved in 1997, to \$747 million in the Authority's Proposed Fiscal Year ("FY") 2006-2008 CIP with a current cost to complete estimate of \$825 million. CSO spending represents almost 40 percent of estimated capital spending between fiscal years 2004 to 2008, during which period the Authority is projecting a cumulative rate increase of nearly 30 percent. In an effort to control the financial burdens on its ratepayers, the Authority proposes to reduce spending on non-CSO projects over the next eight years by \$425 million from the projections in the current capital budget.

Over the next year, the Authority plans to complete final design of the North Dorchester Bay storage tunnel, complete design and commence construction for relocation of Pleasure Bay stormwater to the Reserved Channel, and continue progress with other ongoing projects. In addition, the Authority plans to continue discussions with the United States Environmental Protection Agency (“EPA”) and the Massachusetts Department of Environmental Protection (“DEP”) with the purpose of gaining regulatory acceptance of all outstanding issues associated with the Charles River, Alewife Brook/Mystic River and East Boston that will bring CSO discharges into compliance with water quality standards and the Clean Water Act.

(b) North Dorchester Bay and Reserved Channel Consolidation Conduits and CSO Facility.

The Authority continues to make progress on the design of the North Dorchester Bay CSO control plan. As previously stated, the Authority completed 60-percent plans and specifications for the storage tunnel and 100 percent plans and specifications for the Pleasure Bay stormwater diversion. In addition, the Authority is performing preliminary design investigations on the dewatering pump station. The Authority was also able to reach an agreement in principle on the right-of-entry permit and the environmental liability issues for the short-term occupancy permits and the long-term easement for Massport’s Conley Terminal that will be needed to complete the remaining field survey and soil boring work, construct the project and site the dewatering pump station. If the parties execute a right-of-entry permit by the end of

March, the Authority expects to be able to commence the remaining field survey and soil boring work by the end of April.

The Authority is also planning to amend its CSO Memorandum of Understanding and Financial Assistance Agreement with BWSC to include the eligible construction costs for the Morrissey Boulevard Storm Drain and the Reserved Channel Sewer Separation. A preliminary schedule for the various components of the North Dorchester Bay and Reserved Channel CSO control projects is included in the Annual Report on page 18. The Authority expects to file a motion with the Court to amend Schedule Six to include construction milestones for the North Dorchester Bay storage tunnel once it reaches agreement with EPA and DEP on all outstanding issues regarding the overall long-term CSO control plan.

In regards to stormwater, the Authority reiterates that it does not have stormwater responsibility. At its March 9, 2005 meeting, the Authority's Board of Directors again noted its serious concerns with the Authority's agreement to accept stormwater as part of its CSO control plan for North Dorchester Bay. The Board of Directors stated that acceptance of stormwater in this case does not set a precedent for other CSO control projects and wanted assurances from both EPA and DEP that the Authority would not be obliged to provide stormwater control for any of its other CSO projects by accepting stormwater as part of this project. The Board of Directors also noted its concern over not having an agreement with EPA and DEP on all components of the overall CSO long-term control plan that will bring CSO discharges into compliance with

water quality standards and the Clean Water Act. As a result of these uncertainties, the Board of Directors delayed their approval of the Authority's Section 61 finding for the North Dorchester Bay and Reserved Channel CSO projects until the Authority receives written confirmation of prior verbal commitments from EPA and DEP that its acceptance of stormwater as part of the North Dorchester Bay CSO control project will not serve as a precedent for solving future CSO compliance issues and an agreement on a final long-term CSO control plan is reached.

(c) Cambridge Sewer Separation.

Over the past three months, Authority staff reviewed in detail the basis for Cambridge's \$20 million increase in its cost estimate for the recommended CSO control plan for Cambridge (from \$74 million to \$94 million) and held meetings with Cambridge and its consultants, as well as discussions with the Authority's Board of Directors, in an effort to reach consensus on project cost and an agreement on a new cost sharing arrangement. The cost of the Alewife Brook sewer separation project has risen from an initial cost estimate of \$13.8 million in 1997 to today's estimate of \$94 million (with the cost of unawarded contracts expressed in November 2004 dollars) and an estimated cost-to-complete of \$102 million (unawarded contracts escalated to the mid-point of construction.) Although some progress toward an agreement on overall cost and cost sharing with Cambridge has been achieved, the Authority and Cambridge remain far apart on other related cost issues. These include

funding by the Authority of the increased cost of the stormwater outfall and detention basin, the cost of engineering services to design and manage construction of the project and Cambridge's accepting a cap on funding of the program by the Authority similar to its existing agreement with BWSC for the Stony Brook sewer separation work.

In addition to the continuously increasing cost for the Alewife Brook sewer separation project, Cambridge also faces risks in obtaining permits and access to land necessary to construct Contract 12 (a new stormwater outfall and detention basin to accommodate storm water flows) and the permitting phase potential impact on the project cost and implementation schedule. Contract 12 is critical because it must be constructed before the bulk of the remaining Alewife Brook plan can be implemented.

While Cambridge has made considerable progress in the final design of Contract 12, it is still awaiting issuance of a superseding order of conditions from DEP for the wetlands permit needed to construct this project. Any delays in obtaining this critical wetland permit could seriously delay the project or create an obstacle to implementation.

Notwithstanding the wetland permit, the inability to reach an agreement on funding the most recent significant cost increase may also delay implementation of the recommended plan. Cambridge informed the Authority that due to the schedule of its capital budgeting process, the current lack of agreement on funding Contract 12 may delay commencement of construction of this project until FY07, which commences in July 2006.

The Authority intends to continue discussions with Cambridge in an effort to reach an agreement on cost and cost sharing.

(d) Storage Conduit for BOS019.

The Authority's Board of Directors awarded the contract for the construction of the storage conduit for CSO outfall BOS019 at its March 9, 2005 meeting. The award amount was \$10.5 million, which is more than \$3 million or 44 percent higher than the amount carried in the Authority's current CIP to fund this project. The Authority is concerned that the significant increase in the contract amount is an indication of escalating construction costs, which may affect future CSO contracts.

In addition, the Authority and Massport reached agreement on the terms of the short-term and long-term easements for the BOS019 site. The Authority plans to issue the Notice to Proceed with construction by the end of this month in accordance with Schedule Six.

(e) Union Park Detention and Treatment Facility.

Since last reporting, the construction contractor for the Union Park CSO detention and treatment facility completed considerable work within BWSC's existing Union Park pumping station, including major structural modifications to reconfigure the building layout to accommodate the new CSO detention and treatment facility. The contractor completed the installation of a 50-foot stack to service the new turbine, a 1250kw emergency standby generator, electrical

switchgear, two new motor control centers and secondary duct banks. The contractor also completed the demolition of the existing wetwell and discharge chamber, installed electrical pumps 5 and 6, and completed the construction of the new pump room. As of February 28, 2005, the contractor completed 61 percent of the construction work for the Union Park detention and treatment facility.

As previously noted, the Authority extended the contract completion date from September 29, 2005 to January 9, 2006.<sup>1</sup> The Authority recently extended the contract completion date an additional seven days to January 16, 2006 to account for the time lost during the Democratic Convention. The Authority is currently evaluating the contractor's request for additional time extensions related to differing site conditions in the detention basin and design changes associated with pump improvements to BWSC's electrical pumps 5 and 6.

(f) Sewer Separation for BOS072 and BOS073.

On March 1, 2005, BWSC commenced construction of a portion of the BOS072 and BOS073 sewer separation project in compliance with Schedule Six. The remainder of the sewer separation project is in final design, and the Authority expects that this work will commence in September of 2005 and be completed in March 2007.

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<sup>1</sup> See Compliance and Progress Report for December 15, 2004, p. 9.

(g) Deputy Chief Operating Officer

Michael J. McBride, P.E., Deputy Chief Operating Officer for the Authority, responsible for engineering and construction functions, announced his resignation effective March 31, 2005. Mr. McBride will be replaced by Mr. Charles Button, P.E. Mr. Button is returning to the Authority where he was formerly responsible for construction of the Boston Harbor Project.

By its attorneys,

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Certificate of Service

I, John M. Stevens, attorney for the Massachusetts Water Resources Authority, do hereby certify that I have caused this document to be served by hand or mail to all counsel of record.

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John M. Stevens (BBO No. 480140)

Dated: March 15, 2005

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