

WASHINGTON SUBURBAN SANITARY COMMISSION

MINUTES OF THE COMMISSION MEETING

**Wednesday, July 15, 2009
Laurel, Maryland**

Chair Joyce Starks called the meeting to order at 9:00 a.m. in the Commissioners' Conference Room at the Richard G. Hovevar Building, 14501 Sweitzer Lane, Laurel, MD 20707, with due notice having been given to all members of the Commission and the public. Vice Chair Gene Counihan, Commissioners Prem P. Agarwal, Adrienne Mandel, Juanita Miller, and Roscoe M. Moore, Jr. were present at the meeting. Also, present were Interim General Manager Teresa Daniell, Interim Deputy General Manager Rudy Chow, Corporate Secretary Charlett Bundy and General Counsel, Jerry Blask.

AGENDA APPROVAL

Commissioner Agarwal moved to approve the agenda for the Commission meeting Vice Chair Counihan moved to change the agenda to add the proposed MBE Program and the Extension of the MBE Program as discussion items. Two votes were taken and the motion failed as three Prince George's Commissioners voted for the agenda and three Montgomery County Commissioners voted against the agenda. Vice Chair Counihan moved to amend the agenda adding the words "or adoption of an amendment to the proposed MBE program and that they both [MBE Program and Extension] be [on the agenda] for discussion." After additional discussion, Vice Chair Counihan clarified that his motion was to adopt the published agenda that is amended by the former addition. Commissioner Mandel seconded the motion. Vice Chair Counihan during discussion asked for an amendment that would allow a review of the two proposed MBE Programs and the Extension of the MBE Program. The motion carried with six affirmative votes.

**MORNING CLOSED SESSION
COMMISSIONERS' CONFERENCE ROOM**

Commissioner Miller moved that the meeting be Closed pursuant to Section 10-508(a)(13) to approve closed session minutes for May 20, 2008; May 13, 20, June 12, 18, July 8, and 10, 2009; Section 10-

508(a) (13) to discuss the Transition Plan; Section 10-508(a) (1) to discuss the following personnel matter: Contract of direct report; Section 10-508(a) (7) to discuss legal representation of Commissioners; and Section 10-508(a) (9) to discuss union negotiations. Commissioner seconded the motion. The motion carried with six affirmative votes.

ATTENDEES: Chair Joyce Starks, Vice Chair Gene Counihan, Commissioners Prem Agarwal, Adrienne Mandel, Juanita Miller, and Roscoe Moore, Jr. Corporate Secretary Charlett Bundy was present for all of the discussions except the discussion on the contract of a direct report. Mr. Jerry Johnson joined briefly by telephone to participate in the discussion on the Transition Plan.

Commissioners discussed a matter relating to the Transition Plan involving Mr. Jerry Johnson. Commissioners discussed the expired employment contract for a direct report and voted to approve a new contract for that direct report.

Commissioner Miller moved to approve Closed Session Minutes for May 20, 2008 and May 13, 20, June 12, 18 and July 8, 2009. Commissioner Agarwal seconded the motion. Commissioner Moore abstained from approving minutes for May 20, 2008 and May 13 and 20, 2009 because he was not a commissioner on those dates. The motion carried. Other matters were postponed until later in the day. No union matters were discussed as it was determined the subject needed to be discussed only in open session.

Commissioner Agarwal moved to resume the open session. Commissioner Miller seconded the motion. The motion carried with five affirmative votes. At 11:15 a.m. the open meeting resumed.

Engineering & Construction

Contract CP4231C05. Commissioners reviewed the details of the award of Contract CP4231C05, Broad Creek WWPS Augmentation Project to Hatch Mott MacDonald/Gannett Fleming, Inc. Joint Venture in the amount of \$5,740,010.00.

Commissioners

Bylaw Edit/Review. Commissioners moved through the Bylaws picking up where they left off at the previous session on edits of the Bylaws. Commissioner Miller moved to adopt Article V as edited. Commissioner Mandel seconded the motion. The motion carried unanimously. Commissioner Counihan moved to adopt Article VI, Section 6.01 through 6.04. Commissioner Agarwal seconded the motion. The motion carried unanimously.

**OPEN SESSION
AUDITORIUM**

Chair Starks called the meeting to order in the auditorium at 1:57 p.m. Vice Chair Counihan was asked to lead the pledge of allegiance.

PRESENTATION OF WSSC RETIREES

No June retirees were present to be recognized but include: Johnnie B. Flora, Construction Manager in the Systems Inspection Group retired with 27 years and 5 months of service; Linda P. Maier, Administrative Assistant III in the Human Resources Group retired with 15 years of service and Bernard R. Windsor, Contract (Tech) Manager I in the Systems Inspection Group/Lyttonsville retired with 29 years of service.

July retirees included Helmut R. Bottjer, Internal Investigative Unit Coordinator in the Security and Safety Services Group who retired with 22 years and 1 month of service; David N. DeHaas, Contract Manager in the Customer Care North Group/Gaithersburg who retired with 29 years and 10 months of service; Marcus R. Jones, Facility Technician I, in the Parkway Group/Parkway who retired with 28 years and 7-1/2 months of service; Rita McGlothlin, Senior Human Resources Coordinator in the Human Resources Group who retired with 29 years of service; and Clark M. Miller, Systems Construction Inspector II, in the Systems Inspection Group/Gaithersburg who retired with 28 years and 2 months of service.

EMPLOYEE EXCELLENCE VIDEO

A video of the H2O Fest and was shown as part of the series of employees at work.

APPROVAL OF THE MINUTES

Commissioner Mandel moved to approve the open session minutes from May 20, 2008, May 13, 20, June 4, 12, 18, July 2, and 8, 2009. Commissioner Agarwal Counihan seconded the motion. The motion carried but Commissioner Moore abstained from approving minutes for May 20, 2008, May 13 and 20, 2009 as he was not a commissioner for those meetings.

COMMISSIONERS' ITEMS/COMMENTS

Commissioner Miller commended the employees who contribute to the success of the H2O Program and noted that the Commissioners should review the requirement of a team chief that employee volunteers for programs such as the H2O Program must use their own leave to participate as volunteers.

Election of Officers

Commissioner Mandel noted it was an honor and privilege to place in nomination to be the incoming Chair of the Washington Suburban Sanitary Commission, Gene Counihan who would lead WSSC with distinction. The nomination was seconded by Commissioner Agarwal. Mr. Counihan was elected chair with five affirmative votes. Commissioner Miller was temporarily off the podium.

Mr. Counihan thanked Commissioner Mandel for her kind remarks and vote of confidence of fellow commissioners. He pledged to Commissioners, employees, ratepayers to be faithful to the mission and to keep commissioners focused on completing the hiring of a general manager while avoiding interfering with management. He intends to work with the county to find funding for infrastructure; noting WSSC must work collaboratively in getting funds and funding for 2011 capital and operating budgets. Mr. Counihan went on to say he will work to keep the Commissioners focused on maintaining current governing documents and resolving questions about the Minority Business Enterprise Program. He

will work to update the WSSC strategic plan to ensure the plan goals are current. He announced that small business contractors no longer will be required to attend commission meetings. Lastly, Chair Counihan noted he will focus the meeting on getting action items done in the morning.

Outgoing Chair Starks then made some remarks. She noted that water is our most precious element. While Chair she experienced an exciting, rewarding challenge but noted it was great that she was assisted by a helpful Vice Chair, Gene Counihan. She expressed her confidence in Mr. Counihan to do a great job as Chair. She thanked the Montgomery County Commissioners for their support in sharing and keeping WSSC a triple A bond rated agency. She offered special thanks to Commissioners Prem Agarwal and Juanita Miller for the value they added in promoting excellence and a commitment to ethical values of WSSC. She also expressed appreciation to the Interim General Manager and Interim Deputy General Manager for staying the course during all of the changes in 2008. She noted the goals accomplished during her tenure as chair: Marlboro Meadows was connected to WSSC's system; an engineering scholarship from the Commissioners' Office was instituted; amending water bills to include the opportunity to round up the bill amount with the difference donated to the WSSC Water Fund; and a retreat for Commissioners to work together towards the goal of understanding better the infrastructure funding needs. She thanked everyone for their diligence and support and presented certain WSSC Employees with plaques to recognize their special efforts at WSSC. Those receiving the plaques included: Teresa Daniell, Interim General Manager; Rudy Chow, Interim Deputy General Manager; Maxene Bardwell, Internal Audit Manager; Marcia G. Tucker, Acting Chief of Customer Care; Roscoe Wade for his duties as Acting Chief of Logistics; James A. Price, Acting Chief of Operations, and LaToya Harding, Administrative Assistant, Commissioners' Office; J.C. Langley, Jr., Ronald Buck Sanders, Barry E. Arter, Christian Capili, Kenneth Chambers Ron Dreher, D. Allen Gibson, Jacob E. Piper, Walter Van Alstine, all of the

Industrial Assets Management Group (Trade Shop Unit) for building a new table for the Commissioners' Conference Room.

The Chair then accepted nominations for Vice Chair. Commissioner Prem Agarwal nominated Joyce Starks as Vice Chair. He stated it was his privilege and honor to submit her name. Commissioner Miller seconded the motion. The motion carried unanimously.

Commissioner Miller remarked that she has not been ousted but that her term has expired and the Prince George's County Executive exercised his option to appoint a new candidate. She further stated the reports of her use of her assigned WSSC travel account funds were distorted and that all of her spending was legal and authorized under the travel account procedures. These reports she stated were a distraction to hide the real facts about the unauthorized payments to a firm without a contract and that such conduct failed to adhere to WSSC policy and procedures. Commissioner Miller went on to express her intent to serve the WSSC employees and ratepayers until the nominee to replace her is confirmed by the Prince George's County Council.

Fiscal Year 2010 Meeting Schedule

Commissioner Mandel moved that the Commission adopt a Fiscal Year 2010 meeting schedule as follows: August 19, 2009; September 3, 2009; October 21, 2009; November 18, 2009; December 16, 2009; January 20, 2010; February 17, 2010; March 17, 2010; April 21, 20009; May 19, 2009; and June 16, 2009. Commissioner Agarwal seconded the motion. The motion carried unanimously.

INTERIM GENERAL MANAGER'S ITEMS/COMMENTS

Ms. Daniell offered congratulations to the newly-elected chair and vice chair and expressed thanks to outgoing Chair Starks for her work. She noted that water main breaks and leaks are the second highest since 1927. Ms. Daniell expressed special thanks to crews who continue to work tirelessly repairing the breaks. WSSC's completion of 34.4 miles of water main repair in fiscal year 2009 was highlighted.

This exceeded the goal of completing 27 miles. Ms. Daniell mentioned the documentary "The Crumbling of America" which features WSSC crews. This film, she noted, put WSSC on the national stage and brings light to the aging infrastructure issue. In her closing comments, Ms. Daniell recognized Theresa Bond who did a "great job" with organizing the WSSC employee picnic as well as other employees who worked to make the event enjoyable for all other employees.

PRESS COMMENTS

There were no comments.

PUBLIC COMMENTS

Norma Byrd of Business Promotion Consultants offered congratulations to the new Chair and offered thanks to the outgoing chair for the work on developing a WSSC Minority Business Enterprise Program. Ms. Byrd also gave thanks to Commissioner Miller noting that others may not have appreciated Commissioner Miller's style for getting the job done and doing the right thing.

Engineering and Construction

Commissioner Mandel moved that the Commission award Contract CP4231C05, Broad Creek WWPS Augmentation Project to Hatch Mott MacDonald/Gannett Fleming, Inc. Joint Venture in the amount of \$5,740,010.00. Commissioner Agarwal seconded the motion. The motion carried unanimously.

At 2:30 p.m. Commissioners then moved to the Commissioners' Conference Room for the remainder of the meeting.

Finance Office

1. Proposed Capital Improvement Program (CIP) for Fiscal Years 2011-2016 Briefing. Commissioners' comments were sought for incorporation into a public hearing document for the hearings scheduled for September. The \$2.7 billion budget for the 2011-2016 CIP Program is the largest CIP budget ever proposed.

2. April and May 2009 Monthly Status Reports. These reports had been transmitted to the counties. No improvement in water production created the necessity to change the predictions as production was seven million gallons per day lower than initially predicted. May and June production was the lowest in the last 20 years. Debt service was also decreased.

3. 2009 Levy of Front Foot Benefit and Deferred House Connection Charges. Commissioner Mandel moved approval of 333 new Front Foot Benefit and/or renewal levies for 2009, and that they be added to the Prince Georges County and Montgomery County tax books. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes as Commissioners Agarwal and Moore were temporarily out of the room.

4. Reappointment of Employee Trustee to WSSC Employees' Retirement Board of Trustees. Commissioner Miller moved to reappoint Mr. Steiner to his second, four-year term. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes as Commissioners Agarwal and Moore were temporarily out of the room.

5. Change in WSSC Water Bill. Chair Starks has requested that a line be added to the WSSC water bill to allow customers to round up their bill to the next whole dollar and/or add additional donations to their bill payment with the difference placed in the WSSC Water Fund. It was noted that it will take four to six months to revise the computerized billing system to accept this change.

Human Resources

Ms. Yvonne McKinney, Director of Human Resources requested an extension to the contract that expired June 30, 2006 between WSSC and the American Federation of State, County, and Municipal Employees Local No. 2898 and to authorize renegotiation of a successor agreement and that the represented employees receive all the pay raises that non-

represented employees receive. The request was made by the union. A second extension expired June 30, 2008.

Commissioner Miller moved to authorize the Interim General Manager to execute a Memorandum of Understanding that approves extending to June 30, 2010 the terms of the July 1, 2003 through June 30, 2006 bargaining agreement so a successor agreement may be negotiated between WSSC and ASFCME AFL-CIO Council Local 2898. Commissioner Moore seconded the motion. The motion carried unanimously.

Engineering and Construction

Infrastructure Update. Mr. Gary Gumm gave an overview of the status of the construction accomplishments last year. He discussed the status of the repairs in relation to the budgeted funds as well as the various methods of repair that WSSC uses for certain types of pipe.

Briefings on 1) Contract BR/CR4764A08, a water/sewer reconstruction contract for University Park I and 2) Contract BR/CR4720B07, a water/sewer reconstruction project for Oxon Hill II completed the report from the Engineering and Construction team. These contracts are scheduled for award at the August 19, 2009 Commission Meeting.

Logistics

1. Contract No. 5295. This briefing covered the contract for mechanical joint valve and accessories including resilient seated gate valves.

2. Contract No. 5423. Commissioners were briefed on the need to purchase high performance asphalt cold mix.

3. Contract No. 5323. The purchase of Dry Barrel Complete Fire Hydrants was discussed.

Internal Audit

Contract 5046. A third change order for the contract for the external auditors was briefed. \$80,500 was sought that increases the total contract value to \$600,000.00. Commissioner Miller moved that the Contract 5046 be changed to a voting item. Mandel seconded the motion. The motion carried with five affirmative votes. Commissioner Miller moved to approve contract 5046. Vice Chair Starks seconded the motion. The motion carried with five affirmative votes. Commissioner Agarwal was temporarily out of the room.

SLMBE

Extension of Interim MBE Program 96-01 and Proposed MBE Program.

Commissioner Miller moved that the Commission approve an extension of Interim MBE Program 96-01 for 120 days. Vice Chair Starks seconded the motion.

Before the vote, Chair Counihan asked Ms. Livingston, SLMBE Director what would happen if the program lapsed. She noted WSSC would be out of compliance with the statute that states WSSC must have a program. Also, she stated the contracts coming up for approval of option years could be impacted by the absence of a program that contains mandatory MBE requirements. Mr. Blask stated WSSC shall establish a minority business program if the program expires WSSC would be in violation of the statute but he did not know what such a violation would do to WSSC in terms of having a fine levied. Extending the program is not the only option. The renewal of the program infers the legislature wanted WSSC to do something more than what was in the 96-01 program he opined.

The motion failed as the vote was three aye votes from the Prince George's County Commissioners and three nay votes from the Montgomery County Commissioners.

Vice Chair Starks then moved to adopt SP 96-01 as the WSSC MBE program. Commissioner Agarwal seconded the motion. The motion failed.

A roll call vote had the three Prince George's County Commissioners voting yea and the Montgomery County Commissioners voting nay resulting in a tied vote.

Chair Counihan recognized Commissioner Mandel but Vice Chair Starks made a motion. The Chair ruled the motion out of order as Commissioner Mandel had the floor.

Commissioner Mandel moved to adopt the MBE Program proffered by the Interim General Manager that is dated December 18, 2008.

Commissioner Moore seconded the motion. The motion failed because of a tied vote: The roll call vote resulted in three yea votes from the Montgomery County Commissioners and three nay votes from the Prince George's County Commissioners.

Vice Chair Starks then voted to extend the MBE Program 96-01 for 60 days. Commissioner Agarwal seconded the motion. The three Prince George's County Commissioners voted yea and the Montgomery County Commissioners voted nay causing the motion to fail due to a tied vote.

Ms. Livingston asked if there was anything staff could do to help adopt a policy on or before August 5th. She was assured by Chair Counihan that staff had performed all that could be done. Commissioner Mandel noted that staff could reiterate why they had recommended a particular program and why the program was written so that distributorship appeared only in goods and services.

Acquisition

Update on Chemical Contracts Purchasing. Ms. Bobbie Tolston of the Acquisition department described a nation-wide solicitation from the City of Las Vegas for purchasing in bulk chemicals for numerous water departments. This would create a very competitive unit cost for purchasing chemicals for water treatment. Ms. Tolston also discussed taking over the Council of Governments' chemical contract from Fairfax County as Fairfax has decided to no longer manage this contract. Other

contractors on this contract were queried regarding requiring MBE participation on the chemical contracts.

Commissioners

After reviewing all of the subsections 6-05, 6-06 and 6-07 in Article VI of the proposed Bylaws, Commissioner Moore moved to adopt the changes to Article VI as marked up during the discussion. Commissioner Mandel seconded the motion. The motion carried with five affirmative votes as Commissioner Miller had temporarily left the meeting room.

Upon the completion of the review of Articles VII, VIII, and IX, Commissioner Mandel moved to adopt the amendments Commissioners discussed during the meeting. Vice Chair Starks seconded the motion. The motion carried with four affirmative votes as Commissioner Moore abstained. He abstained to balance the representation of commissioners eligible to vote as Commissioner Miller had left the meeting. Corporate Secretary Bundy was asked to provide a copy of all of the changes made to the Bylaws to review at the August meeting for final adoption.

Fair Practice Office

Laurie Young gave a summary of the race gender and retaliation complaints received by the Fair Practice Office. She advised Commissioners that all WSSC employees had completed the sexual harassment training.

Internal Audit Office

Time only permitted Ms. Bardwell, Internal Audit Manager to inform Commissioners that Auditor IV Angela Makle-Fortune has earned the Certified Fraud Examiner status.

General Counsel Office

General Counsel Jerry Blask referred Commissioners to the office monthly report to obtain details of EEO cases. He noted there are 13 active EEO cases in various stages of activity. He went on to describe the status of those cases.

**AFTERNOON CLOSED SESSION
COMMISSIONERS' CONFERENCE ROOM**

Vice Chair Starks moved to close the meeting pursuant to Subtitle 5 of Title 10 of the State Government Article, Maryland Code Section 10-508(a)(7) to discuss legal representation of Commissioners and Section 10-508(a)(13) to discuss a personnel matter related to the Transition Plan. Commissioner Agarwal seconded the motion. The motion carried with four affirmative votes (Commissioner Mandel was temporarily out of the room). At 7:35 p.m. the meeting was closed.

ATTENDEES: Chair Starks; Vice Chair Counihan, Commissioners Agarwal, Mandel, Miller and Moore; Corporate Secretary Charlett Bundy for all discussions and General Counsel Jerry Blask.

A discussion was held on the legal opinion of Mr. Blask regarding the need for certain commissioners to obtain legal counsel outside of WSSC for representation in a particular legal matter. Commissioners reached a consensus to agree with General Counsel's recommendation that such commissioners are entitled to outside legal representation, with one being entitled sooner than others.

Corporate Secretary was authorized to pay for legal representation for a commissioner based on the reasonableness standard.

Commissioners did not address the performance evaluations of the commissioners' direct reports.

Commissioner Agarwal moved to resume the open session. Commissioner Mandel seconded the motion. The motion carried with five affirmative votes. At 8:13 p.m. the meeting was declared open.

OPEN SESSION RESUMED

Adjournment

With no other business to be addressed at this meeting,
Commissioner Agarwal moved to adjourn the meeting. Commissioner Mandel
seconded the motion. The motion carried with four affirmative votes:
At 8:15 p.m. Chair Counihan declared the meeting was adjourned.

Respectfully submitted,

 //signed//
Charlett Bundy
Corporate Secretary