



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

BOARD OF DIRECTORS

Governance Committee

June 10, 2008

MEETING MINUTES

Committee Members

Keith Stone, Chairman
David J. Bardin
Kathleen Boucher
David Byrd
Anthony Griffin

WASA Staff

Jerry N. Johnson, General Manager
Avis Marie Russell, General Counsel
Linda R. Manley, Board Secretary
Gordon Fry, Governmental Relations Director

Board Members Attending

David Lake
Robin Martin, Board Chair

Keith Stone, Chairman, called the Governance Committee (the Committee) to order at 9:05 a.m. Chairman Stone addressed the second item on the agenda – the Purpose and Duties of the Governance Committee. Committee Chairman Stone noted that the Governance Committee had been reactivated as a standing committee of the Board. The Committee Chairman then requested that item five on the agenda – WASA Committee Structure, be taken out of order and discussed prior to item four – Pending Legislative Matters.

The Committee Chairman then stated that, for the third item on the agenda, the General Counsel, Avis Marie Russell, would give an overview of the Governance Structure. The General Counsel made a presentation regarding the factors contributing to the creation of WASA, the enabling statute, the WASA by-laws, the WASA 2000 Regionalization Study and the 2006 Governance Study, and relevant District of Columbia legislative and regulatory requirements.

The Committee Chairman moved to Item 5 on the agenda – WASA Committee Structure. The Committee Chairman noted that the Board currently had one ad hoc committee – the Lead

Services Committee. (This Committee is referred to as the Ad Hoc DC Water Quality Committee). The Committee Chairman opened the discussion by asking whether the current structure is working. Board Chairman Robin Martin suggested that the by-laws should be revisited to see how they relate to both the enabling statute and the Board's committees. Committee Chairman Stone suggested that the by-laws should be reviewed to see where they need to be tweaked and if there are activities the Board is not doing, but, pursuant to the enabling statute should be doing; and, conversely, if there are certain activities the Board is undertaking that it should not be undertaking. Committee Member Bardin requested that a copy of the enabling statute be circulated to the Committee members.

The Committee members continued their discussion of committee structure. It was pointed out in the discussion that if the by-laws are silent on an issue, the Board is to refer to Robert's Rules of Order. The Committee members requested that the documents listed on the last power point slide of the presentation on the Governance Overview, with the exception of Title 21, Water and Sanitation of the District of Columbia Municipal Regulations, be provided to the Committee. The comment was made that a resolution should be forwarded to the Board allowing for the Ad Hoc Committee on DC Water Quality to become a standing committee. At this time in the discussion Board Chairman Martin suggested that, for purposes of internal consistency, it might be valuable to revisit the committee structure set out in the 1999 by-laws. Committee Member Bardin pointed out that the enabling statute makes no mention of committees. However, the enabling statute does discuss that the participating jurisdictions can only participate in decisions affecting joint-use sewage facilities. Committee Member Bardin suggested that redistributing the legal opinion signed by Brian Flowers, Esquire, General Counsel to the Council of the District of Columbia on this matter might be helpful. It was further noted that all iterations of the Board's by-laws included a Section 5.02 which stated that only District Board members could serve on committees or subcommittees with jurisdiction affecting water and non-joint use facilities or the rates charged to District retail water and sewer customers. It was pointed out that the word "exclusive" which was included in the 1999 by-laws version of Section 5.02 was removed in the 2007 version of the same section.

Committee Member Bardin further commented that the present by-laws do not address jurisdiction over the General Manager. Committee Member Bardin continued that the logical committee to have jurisdiction over this matter was the Human Resources and Labor Relations Committee. Committee Member Griffin voiced support of Mr. Bardin's comment. Committee Member Griffin discussed the role of the committees in general and, that, in order to strengthen and clarify the roles of committees, all committee members should vote and the vote reported to the Board so that the recommendations of the Committee could have greater influence. This procedure could also insure a uniformity of approach. The General Counsel pointed out that the Handbook entitled the "Members' Handbook" prepared by the District

Office of Boards and Commissions discusses the role of committees. Committee Member Kathleen Boucher asked whether that Handbook was relevant to WASA. Committee

Chairman Stone stated that the committees do serve a purpose. Board Member David Lake concurred with the Chairman and stated that from his experience, the Board's committee structure works very efficiently. The committees allow the Board to focus on the decisions at hand, and are thus very valuable. Committee Member Bardin stated that the expanded version of "Robert's Rules" includes a chapter on small bodies and that a review of that chapter may be helpful to the discussion. Board Chairman Martin suggested that chapter might be a useful tool for the Committee members as they consider 'best practices'. Board Chairman Martin continued that as a matter of policy, either through the vehicle of the by-laws or by adoption of a policy, the Board can decide to be more open to the public. Committee Member Griffin, commenting on his experience in Virginia, stated that everything there is open to the public.

The Committee discussed the need to address both the joint use and non-joint use issue and the need to make the current Ad Hoc Committee on DC Water Quality a standing committee. Board Chairman Martin suggested that rather than handle these issues separately, a more comprehensive approach should be taken. Committee Chairman Stone commented that the issues should be brought forward at the September Board meeting.

Committee Member Byrd commented on the 2006 Governance Study recommendation to develop guidelines for needed background skills for future board members, and that a training mechanism to achieve this should be in place.

Committee Member Griffin stated that the Board members should be asked to submit their recommendations for by-law changes. The General Counsel was requested to review the by-laws for any inconsistencies with the enabling statute, to review Board practices for any inconsistencies with the by-laws and to make a list of the proposed actions identifying the pros and cons of the action.

Committee Chairman Stone then turned the Committee's attention to item four – Pending Legislative Matters. Board Chairman Martin stated that the first question to be addressed in the discussion was the Board's role with respect to legislative matters. Board Chairman Martin stated that two types of work are being suggested: reactive and proactive. Board Chairman Martin continued that from time to time he is requested to testify before the District Council and that as Board Chairman, the Council is under the impression that he is speaking for the Board. Committee Member Griffin voiced his confidence that the Chairman of the Board was representing the Board's current policies on such occasions. With regards to the role of the Board, Committee Member Griffin saw its role as more prospective, while the role of the Chairman of the Board was more reactive.

Gordon Fry, Director of Government Relations was requested to comment on the legislation pending before Congress concerning the preservation of WASA's independence. Mr. Fry informed the Committee that the legislation had passed the House of Representatives and would be sent forward to the Senate. The General Counsel gave a status report on the

regulations that have been submitted to the DC Register. The General Counsel stated that the amendments to the Lead and Copper Rule pertained to notice and education issues. The General Counsel explained that the substantive portions of the rule had not been reopened for comment.

Committee Chairman Stone then directed the Committee to address item seven on the agenda –Emerging Issues. The first emerging issue related to the designation of joint use and non-joint use facilities. Committee Member Bardin brought up the introduction of a resolution before the Board regarding revising the list in the enabling statute. Board Member Lake stated that any action on that resolution would be premature as the matter is unfinished business before the Environmental Quality and Operations Committee. Committee Member Bardin stated that the issue of updating the list of joint use facilities was raised at the Board. The General Counsel commented on the use of a definition for joint use facility in the legislation rather than the expansion of a list. Committee Member Griffin expressed support for the use of a definition in the legislation rather than a list, but stated that a list of such facilities should be kept. Committee Chairman Stone stated that Board Member Lake's Committee should be allowed to complete its work. Board Chairman Martin was also supportive of the use of a definition. Committee Member Bardin voiced concern about the manner in which the costs for joint use facilities were being documented. The General Manager reassured him that such costs were being documented appropriately. Committee Member Bardin acknowledged the General Manager's comments and suggested that the costs for the joint use facilities should be a subject for the Budget and Finance Committee. Committee Member Bardin expressed his intention to introduce a motion to the Board to move the resolution covering joint use facilities forward. Board Chairman Martin expressed his opinion that it was premature to pass such a resolution. Board Chairman Martin requested the Committee Chairman to express to the Board that the Governance Committee did not have a consensus on this issue.

Committee Member Bardin summarized the information he believed the Committee needed to review on this emerging issue: (i) examination of the suggestion to use a flexible definition for the legislation; (ii) review of the statutory language regarding the meaning of non-participation in decisions; (iii) provide the Environmental Quality and Operations Committee with the information requested; and (iv) information on cost breakdown for joint use facilities. The General Manager stated that while such information could be provided, it would be a time consuming endeavor for the Committee. Board Member Lake noted that the use of a definition for joint use facilities would decrease the level of detail that would be necessary.

The Committee Chairman then focused the Committee on the issues of the Washington Aqueduct and primacy under the federal Safe Drinking Water Act stating that the issues would be discussed together. The General Manager briefed the Committee that there had been little movement in the last year. The General Manager further commented that, in the case of the District, the regulatory entity EPA, a federal agency, is regulating the entity in charge of water production, the Army Corps of Engineers, also a federal agency. This

situation led to a discussion of which entity should assume primacy. In 49 of the 50 states, state governments have primacy. Committee Member Bardin stated that a change in the agency which exercises primacy would require both an act of Congress and action by the District Council. Committee Member Griffin commented that it might be better to consider this issue in January. Committee Chairman Stone suggested that the item be deferred until January and that staff keep the Governance Committee informed as to any progress. The General Manager stated that, thus far, staff has not met with a negative reaction on these issues. Committee Member Griffin stated that from his experience with the Corps of Engineers, they voiced no objection to getting out of the business. Committee Member Griffin continued that Fairfax County had commissioned a study at one time regarding its takeover of the Aqueduct. Fairfax County made it clear that if any entity objected they would drop the endeavor. Arlington objected and Fairfax County dropped the matter.

The Committee Chairman then focused the Committee's attention on the final emerging issue – Board Member Training. Committee Chairman Stone stated that a mechanism needed to be put in place to allow Board members to pursue necessary training. The General Manager stated the need for both a policy on the issue and a budget. Committee Member Griffin questioned whether the issue was a Finance and Budget Committee matter or a Human Resources and Labor Relations Committee matter. The General Manager also recognized the need for a white paper setting out rules and recommendations.

The Committee Chairman then turned to item eight on the agenda – Open Discussion. Committee Member Byrd voiced his concern that he hoped that in the Committee's efforts to be more effective and efficient, they weren't creating more work rather than less.

The Committee Chairman then turned to item nine – Meeting Date. The Committee Chairman asked the Secretary to the Board, Linda Manley for potential meeting dates. The following dates were presented: July 24, 2008 at 11:00 a.m., September 25, 2008, and October 23, 2008.

The Committee asked for further clarification from the General Counsel concerning the substance of the "District of Columbia Water and Sewer Authority Preservation Act". The General Counsel stated that the Act did the following: (i) added language that made the authority of the DCCFO inapplicable to the personnel of WASA; (ii) added language stating that the financial management, personnel, and procurement functions of WASA shall be established exclusively by the Board; and (iii) stating that the DC Jobs for Residents legislation is inapplicable to WASA. Committee Member Bardin inquired whether the Board would have the authority to agree with or concur with the General Manager on the appointment of the WASA CFO position, as that position is so critical to the organization.

Committee Chairman Stone adjourned the meeting at 12:00 Noon.