

**DISTRICT OF COLUMBIA**

**WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**GOVERNANCE COMMITTEE**

**MEETING MINUTES**

**September 14, 2016**

**Committee Members** **D.C. Water Staff**

Ellen O. Boardman, Chairperson George S. Hawkins, General Manager

Ana Harvey Henderson J. Brown, IV, General Counsel

David W. Lake Linda Manley, Board Secretary

Matthew Brown

Chairperson Boardman convened the meeting at 9:05 a.m.

**Agenda Item # 1 - DC Water’s Blue Drop Project**

General Manager & CEO George Hawkins made a presentation to the Committee on the progress of DC Water’s Blue Drop proposal. Mr. Hawkins opened by re-introducing Alan Heymann, DC Water’s Chief Marketing Officer, who has played a key role in the development of Blue Drop. As discussed in the July 2016 Governance Committee meeting, Mr. Heymann is expected to serve as President of Blue Drop and, along with Mr. Hawkins, will continue to lead the effort in creating and managing the new, nonprofit company. Mr. Heymann briefly introduced other key members of the development team: DC Water’s Manager of Marketing and Business Development, Gloria Cadavid, who is expected to serve as Vice President of Blue Drop, and Outside Counsel, Nick Karambelas, who is assisting DC Water with the legal issues involved with establishing and maintaining Blue Drop. Mr. Heymann also thanked DC Water’s Finance team and General Counsel, Henderson Brown, for their continued assistance and guidance.

Mr. Hawkins presented an in-depth review of Blue Drop’s progress. He explained that the Board had challenged him to find new and innovative sources of revenue to help mitigate effects of rising costs of service. Mr. Hawkins explained that Blue Drop will be a separate, nonprofit, limited liability company (LLC) formed to generate new revenue from the sale of specific services and products to customers in both the public and private sectors. Mr. Hawkins indicated that Blue Drop’s success would be measured by the revenue generated from existing product offerings and by the intellectual property gained from ongoing research and development efforts. Ms. Boardman asked if funding for Blue Drop will be derived from the Marketing Department and identified as a line item expense in the budget. Mr. Hawkins advised that any capital allocated for Blue Drop’s operations will be disclosed in a full accounting to the Board.

Committee Member Lake asked how funding and revenue would be allocated among DC Water and the Intermunicipal Agreement (IMA) partners. Mr. Hawkins responded that he expects funding and revenue would be allocated in a manner similar to Bloom™. The precise allocation and calculation for distributions would be determined in consultation with the Board’s Finance and Governance Committees, and consistent with any obligations under the Operating Agreement, applicable law, and the IMA.

Committee Member Harvey asked if Blue Drop plans to deliver other products in addition to Bloom™, and what best practices would be followed or developed. Mr. Hawkins answered that Blue Drop will be responsible for marketing Bloom™, and for the delivery of peer-to-peer consulting services, support services to other organizations, and deploying a collaborated utility platform. Mr. Hawkins also emphasized that the creation of Blue Drop as a separate, nonprofit company has strong precedent. He identified other public sector organizations that created similar spinoff entities which generated income, including: Clean Water Services (Oregon), Easton Utilities (Maryland), the District of Columbia Public Library, the District of Columbia Housing Authority, and the National Zoo.

Chairperson Boardman asked about the manner in which DC Water employees involved in Blue Drop would be compensated for their services. Ms. Boardman and Committee Member Harvey asked that the employment relationship be evaluated carefully, including potential joint-employer and leased employee issues. Mr. Hawkins stated that DC Water employees engaged to assist in the creation and initial management of Blue Drop would be fully and properly compensated for their services. Although various models are being evaluated, currently it is anticipated that Blue Drop will reimburse DC Water for services provided by DC Water employees consistent with applicable law. Ms. Boardman also inquired whether and how funds would be returned to DC Water as an offset to the costs associated with any initial investment. Mr. Hawkins stated that, in time, an offset would be part of the expected return based on assumptions of significant revenue generation in excess of the initial investment. Mr. Heymann further commented that a revenue “waterfall” will be established to focus on outcomes, disbursements, and timelines.

With respect to Blue Drop’s Board of Directors, Mr. Lake inquired whether DC Water’s Board of Directors could, or should, have appointment authority over Blue Drop’s Board of Directors. As currently envisioned, Mr. Hawkins will be vested with appointment authority in his role as the member representative of Blue Drop. In response to Mr. Lake’s inquiry, General Counsel Brown recommended a separation between the two boards for legal and fiduciary reasons. Mr. Hawkins stated that any appointment of members to Blue Drop’s Board of Directors would necessarily take place in full consultation with DC Water’s Board members. Mr. Heymann added that there will be provisions in Blue Drop’s Operating Agreement for appointment and removal of directors.

Mr. Lake suggested that Mr. Hawkins consider a presentation to the IMA Partners to demonstrate the potential impact and benefits of DC Water’s investment in Blue Drop. Mr. Hawkins agreed and indicated that a presentation to the IMA Partners would be welcomed.

General Counsel Brown indicated that a Board resolution approving the creation of Blue Drop had been prepared for advance consideration, and that the resolution will be revised and updated to reflect the Board’s input and recommendations. Mr. Lake suggested that a draft submission be circulated in advance to the Board in anticipation of the next committee meeting. Chairperson Boardman agreed and stated that Blue Drop will be revisited at the next meeting. The Governance Committee also agreed to schedule a special meeting in October to address specific questions on Blue Drop incorporation.

**Agenda Item # 2 – District of Columbia Statehood Legislation**

Next, General Counsel Brown conducted a brief informational session on the District of Columbia’s Proposed Constitution for statehood as set forth in DC Council Bill B21-0826, proposed by Councilmember Phil Mendelson. First, General Counsel Brown outlined the key elements of the proposed legislation and the current dates for public hearings (September 27, 2016 and October 6, 2016). Then, General Counsel Brown explained that David Bardin, a former Board member and continued supporter of DC Water, has submitted a letter to Councilmember Mendelson suggesting four amendments to the proposed Constitution as well as an amendment of Bill B21-0826's ancillary provisions.

General Counsel Brown advised that Mr. Bardin has proposed four amendments to B21-0826. One of his proposals is to amend the legislation to ensure that DC Water retains its status as an independent authority, particularly in its financial operations as provided under federal and District of Columbia law. General Counsel Brown explained that Mr. Bardin will be presenting testimony in support of his suggested amendments and opened the floor for feedback from the Board.

Chairperson Boardman asked if DC Water’s and Mr. Bardin’s efforts might prompt other independent agencies to present similar amendments and potentially distract from the core purpose of the legislation, which is to obtain statehood for the District of Columbia. General Counsel Brown noted that, while there is a potential risk of distraction, all efforts are and will be conducted in a manner designed to support the goal of statehood for the District of Columbia with the aligned mission of preserving DC Water’s statutorily-granted financial and operational independence.

Ms. Harvey stated that, being part of the conversation at the cabinet level and with the Mayor, she believes the Mayor strongly feels the matter of statehood is larger than any individual interests and asked how DC Water would translate the underlying principles of independent authority in a way that avoids the perception that these efforts are self-serving and help only DC Water. Ms. Boardman suggested that consideration be given to a revised amendment that would cover all similarly-situated entities. Mr. Lake asked whether DC Water might consider other vehicles that allow DC Water to continue as independent without the need for incorporating language amending the proposed Constitution.

General Counsel Brown responded that Mr. Bardin is sensitive to and appreciates this concern and has approached the matter with the DC Council in a carefully considered fashion. General Counsel Brown added that he believes other entities such as the zoning commission are planning to testify at the public hearings in support of their independent authority.

General Manager Hawkins indicated that the underlying goal is to maintain independence and constitutional construction in a manner that ensures appropriate protection for DC Water but without inadvertently resulting in the challenge of requiring individual and separate clauses in the proposed Constitution for all independent agencies. To that end, Mr. Hawkins proposed an evaluation of whether the ‘savings clause’ in the proposed Constitution could be strengthened to provide sufficient coverage for District of Columbia independent authorities rather than amending the legislation in a piecemeal fashion. Mr. Lake expressed his support for moving forward on that path. Ms. Harvey recommended that it be made clear that Mr. Bardin is testifying in his individual capacity and not on behalf of DC Water. The Committee, joined by Mr. Hawkins,

expressed its deep appreciation for Mr. Bardin’s tireless efforts as a concerned DC resident and former Board member.

The Committee’s next meeting is scheduled for November 2016, after the public hearings. Ms. Boardman stated that she would appreciate a brief review of developments in the meantime. General Counsel Brown indicated that he will continue to apprise the Board of new developments on this important issue.

**Conclusion**

There being no further business, Chairperson Boardman adjourned the meeting at approximately 10:30 a.m.