


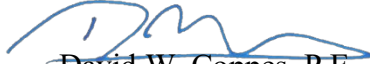
STAFF SUMMARY

TO: Board of Directors
FROM: Frederick A. Laskey, Executive Director 
DATE: December 15, 2021
SUBJECT: Renewal of City of Marlborough and Dedham-Westwood Water District Water Supply Continuation Agreements

COMMITTEE: Water Policy and Oversight

 INFORMATION
 X VOTE

Rebecca Weidman, Director, Env. and Regulatory Affairs
Katherine Ronan, Environmental Analyst
Preparer/Title


David W. Coppes, P.E.
Chief Operating Officer

RECOMMENDATION:

To authorize the Executive Director, on behalf of the Authority, to execute the attached ten-year Water Supply Continuation Agreements with the City of Marlborough and Dedham-Westwood Water District, substantially in the form filed as Attachments A and B to this Staff Summary.

DISCUSSION:

The City of Marlborough and the Dedham-Westwood Water District are “contract communities;” they receive MWRA water pursuant to Water Supply Continuation Agreements reflecting obligations to be fulfilled by both MWRA and the communities. The difference between contract and non-contract communities dates back to before MWRA’s Enabling Act. Twenty-eight of the 53 MWRA water-served communities are contract communities. Of these MWRA contract communities, eight are fully served, 17 are partially supplied by MWRA and regularly use local sources to meet some portion of demand, and three rely on MWRA only in unusual or emergency situations.

Both Marlborough and Dedham-Westwood Water District’s Agreements expired on December 31, 2020. Over the past several months, MWRA staff have worked cooperatively with the two communities to complete the contract renewal processes. The development of new Agreements is predicated upon meeting certain criteria set forth in the MWRA Enabling Act and the completion of a process outlined in MWRA regulation 360 C.M.R. 11.00, entitled “Regulations for the Continuation of Contract Water Supply.” These regulations require communities to prepare a Supplementary Report, which includes a supply and demand analyses, documentation of conservation and demand management efforts, and a description of various facets of the community’s water supply system. The regulations also prescribe the execution of a written agreement between MWRA and each community.

The Water Supply Continuation Agreements serve three purposes. First, they specify how the water supply needs of the communities will be met in a manner consistent with the capabilities of the MWRA water supply system. Second, they compel the community to implement demand

management and planning efforts. Third, they constitute a record of compliance with the factors and requirements specified in Section 8 (d) of the Enabling Act and MWRA regulations.

The Proposed Agreements

Each proposed Agreement establishes that the applicable criteria set forth in Section 8(d) of MWRA's Enabling Act are necessary conditions for the continuation of water supply and have been satisfied. These criteria relate to safe yield, use and non-abandonment of local sources, implementation of effective demand management measures, and the requirement to conduct water use surveys. Each Agreement also states the maximum annual water volumes and maximum daily water volumes that MWRA agrees to provide to the community over the next ten years. The typical term for MWRA Water Supply Continuation Agreements with communities is ten years. The exception to this general rule is for first-time Agreements applicable to new entrants into the MWRA system, which have five-year terms.

Marlborough

In 2016, Marlborough's Millham Water Treatment Plant was taken offline due to high chloride levels in the source water and its potential threat of causing lead to leach from the remaining lead water service lines in the local distribution system. Since then, Marlborough has relied on MWRA to meet 100 percent of local demands and has exceeded the previous MWRA/Marlborough Water Supply Continuation Agreement maximum annual water volume of 1.313 billion gallons. This limit (1.313 billion gallons) was intended to allow for some flexibility should the City need additional water in case of shortfalls or changes in circumstances regarding the local supply. Since Marlborough began using MWRA to meet its full demand, the City has used roughly 1.5 billion gallons annually in 2017, 2018, and 2019. In 2020, Marlborough used more than 1.5 billion gallons of water. The City was assessed and has paid for all water used at MWRA's full prevailing rate. The City intends to continue to use MWRA to meet 100 percent of local demands and therefore requests to increase its maximum annual volume to 1.663 billion gallons in this Agreement renewal. Marlborough has remained well below its maximum daily water volume of eight million gallons per day (mgd) and is not seeking to increase or adjust this volume.

Marlborough continues to implement water conservation and leak detection programs to reduce demands. A previous Agreement included a maximum annual volume of 2.04 billion gallons in 2010. The City now projects maximum annual volume to remain within 1.663 billion gallons through 2030. Over the years, Marlborough has worked to effectively lower usage and demand. In 2020, Marlborough's Residential Gallons Per Capita per Day (RGPCD) was 44 RGPCD, significantly below the State standard of 65 RGPCD. The City performs routine leak detection on approximately half of its local system annually. All water users are metered and the City administers a meter replacement program. The City issues monthly water bills to local high water users and regularly conducts public education and outreach regarding water conservation including distribution of MWRA materials.

Marlborough was originally admitted to the water system under the Metropolitan District Commission. Based on this and previous Water Supply Continuation Agreements, there is no additional "Entrance Fee" associated with Marlborough's proposed increased maximum annual volume. The City will continue to be assessed and pay for all water used at MWRA's prevailing rate.

Dedham Westwood Water District

Dedham-Westwood Water District (DWWD) is not seeking any changes from previous Agreement volumes, which include: (a) a maximum annual volume of 73 million gallons; and (b) a two mgd maximum daily volume. DWWD was admitted to MWRA in 2005, pursuant to OP.10, and uses MWRA water to supplement local sources when use of its Fowl Meadow Well is restricted during low flow periods on the Neponset River (per limitations established by the Water Resources Commission). In 2014, DWWD's maximum annual volume was increased from 36.5 million gallons to the current 73 million gallons, due to difficulties meeting local demand, as a result of these restrictions. At that time, the Agreement was amended and an additional entrance fee of \$556,727 was assessed, because DWWD joined MWRA under "System Expansion," pursuant to the then-current OP.10, which required revising the entrance fee if the community consistently used more water than was stated in the original contract.

In 2018, DWWD was temporarily authorized to exceed Agreement volumes while performing work on its local Bridge Street Water Treatment Plant. This work was delayed to 2019 and DWWD used (and paid for) a total of 240 million gallons in that year. Work was completed in May 2020 and DWWD now expects MWRA water usage to return to levels below previous agreement volumes (73 million gallons annually and a maximum daily volume of 2 mgd) through 2030.

DWWD continues to implement water conservation and leak detection programs to reduce demands. In 2020, DWWD's RGPCD was 65, in accordance with the State standard. For the past five years, DWWD has conducted system-wide leak detection twice per year. All water users are metered and DWWD is currently working with a consultant to evaluate plant and customer meters. DWWD utilizes an increasing block rate structure, and regularly conducts public education and outreach regarding water conservation.

BUDGET/FISCAL IMPACTS:

The City of Marlborough and DWWD are assessed in accordance with MWRA's Community Charge Determination Policy. MWRA's Community Charge Determination Policy computes charges for water services on the basis of each community's metered water flows. For fiscal year 2021, MWRA received \$6,194,747 from Marlborough and \$1,037,861 from DWWD.

ATTACHMENTS:

Attachment A: Draft MWRA/Marlborough Continual Water Supply Agreement
Attachment B: Draft MWRA/DWWD Continual Water Supply Agreement

**WATER SUPPLY CONTINUATION AGREEMENT
BETWEEN
THE MASSACHUSETTS WATER RESOURCES AUTHORITY
AND
THE CITY OF MARLBOROUGH**

PARTIES:

This Water Supply Continuation Agreement (“**Agreement**”) is entered into by and between the Massachusetts Water Resources Authority, a body corporate and politic and an instrumentality of the Commonwealth of Massachusetts established pursuant to Chapter 372 of the Acts of 1984, as amended, having an address of Charlestown Navy Yard, 100 First Avenue, Boston, MA 02129 (“the **MWRA**”) and the City of Marlborough (the “**City**” or “**Marlborough**”), (hereinafter jointly referred to as “the **Parties**” and each individually as a “**Party**”). This Agreement documents the understanding of the Parties regarding the arrangement whereby the MWRA will continue to supply water to the City and the City will purchase its water supply from the MWRA water supply system.

RECITALS:

- R1. Whereas, the Massachusetts Legislature created MWRA in December 1984 to use, operate, maintain, and improve the waterworks and sewerage systems serving the greater metropolitan area. Operating pursuant to its enabling act under chapter 372 of the Acts of 1984, as amended (the “**Act**”), MWRA provides water supply and distribution services and wastewater collection and treatment services, to certain cities, towns and special services districts (the “**Communities**”) within MWRA’s service area;
- R2. Whereas, MWRA desires to continue to provide safe and sufficient water supplies to the City and to provide system-wide assistance to help protect and conserve water supplies;
- R3. Whereas, Section 8(d) of the Act permits the MWRA to enter into an arrangement to provide for the continued delivery of water to a community if specified requirements are met;
- R4. Whereas, a regulation entitled “Continuation of Contract Water Supply,” promulgated by the MWRA at 360 C.M.R. § 11.00 and most recently revised on November 18, 1994, (the “**Regulation**”) defines more specifically the requirements of Section 8(d) of the Act and govern the continued delivery of water by the MWRA to the Communities purchasing water from the MWRA;
- R5. Whereas, the City executed a contract dated October 2002 for the purchase of water from the MWRA, which contract terms remained in effect until December 31, 2010; the Parties subsequently executed a contract dated May 2012 for the continued purchase of water from the MWRA, which contract terms remained in effect until December 31, 2020;

- R6. Whereas, pursuant to the Regulation the City has submitted a continuation request and a Supplementary Report including: (1) a supply analysis; (2) a demand analysis; (3) a description of water conservation and demand management measures, (4) an ordinance for the protection of local sources, and (5) a description of the local user charges and accounting system, which meet the Regulation's requirements for conservation based rates;
- R7. Whereas, the City also now requests to increase its annual withdrawal volume from 1,313 million gallons to 1,664 million gallons to meet 100% of its local demand, as the City's Millham Reservoir was taken offline in 2016 due to high chloride levels in the source water;
- R8. Whereas, the MWRA finds that the applicable requirements of Section 8(d) of the Act have been met as follows:
- (1) The safe yield of the watershed system as of the date of this Agreement and as projected for the term hereof is sufficient to meet the projected demand of the City;
 - (2) No existing or potential water supply source for the City has been abandoned;
 - (3) Effective demand management measures have been developed by the City;
 - (4) A local water supply source feasible for development has not been identified by either the City or the Department of Environmental Protection (the "DEP"); and
 - (5) A water use survey has been completed which identifies all users within the City that consume in excess of twenty million gallons a year; and
- R8. Whereas, the MWRA and the City wish to formalize their rights and obligations regarding the continuation of supply of water to the City and therefore enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the MWRA and the City agree to the following:

1. The term ("Term") of this Agreement shall end at midnight on December 31, 2030.
2. The MWRA shall, during the Term, provide the City with water on a maximum annual water volume basis, stated in millions of gallons, as follows:

Maximum Annual Volume
1,663 million gallons

And up to eight million gallons per day (mgd) on a maximum daily basis.

In the event of unusual circumstances regarding local demand and/or supply should occur or in the event new Water Management Act conditions affect local source withdrawals, and upon notice to the MWRA disclosing and explaining such conditions, MWRA agrees that it will use its best efforts to supply the City with those quantities of water to meet its legitimate needs in excess of the maximum daily and annual water volumes stated above.

3. In the event that revised circumstances regarding local demand and/or supply should occur and the City determines that the volume designated in this Agreement to be supplied from the MWRA system is insufficient to meet the City's newly projected demand, the City may petition the MWRA to amend this Agreement pursuant to 360 CMR § 11.11.
4. The MWRA shall bill the City and the City shall pay to the MWRA charges for all water supplied under this Agreement at the MWRA's applicable prevailing rate. All billing procedures, due dates, and interest charges for late payments shall be in accordance with the MWRA's standard policies and procedures.
5. The City agrees to continue a user charge system and an accounting system that meets the Regulation's requirement for: (a) conservation based rates and/or is designed to ensure affordability of water service to low and/or fixed income persons; and (b) to prohibit rate structures that incorporate descending or declining block rates.
6. The City shall develop and implement a full cost pricing system within twelve (12) months from the date that all communities listed in Section 8(d) of the Act other than those subject to 360 CMR 11.00 have implemented a full cost pricing system.
7. The City agrees that during the Term it shall continue the implementation of its current and proposed local demand management programs, including leak detection, participation in MWRA conservation programs, and distribution of MWRA-provided materials to all water users.
8. The City agrees that during the Term it shall not abandon any local source and substitute for it water from MWRA sources unless DEP has declared that the local source to be abandoned, is unfit for drinking and cannot be economically restored for drinking purposes.
9. The City agrees to use its best efforts to either continue in full force and effect during the Term the ordinance for the protection of local water sources, or, at the City's discretion, to adopt an ordinance with more stringent measures.
10. The City agrees that the MWRA will not be liable to the City of any disruption to water delivery to the City attributable to the water distribution system of the City.
11. Any dispute arising between the MWRA and the City concerning the calculation of Marlborough's annual assessment shall be resolved in accordance with the Review and Dispute Resolution Process as outlined in MWRA's Budget and Assessment Policies and

Procedures (Exhibit A). Any other dispute between MWRA and the City under terms of this Agreement shall be resolved in accordance with the dispute resolution process set forth at 360 CMR § 11.14 and the administrative procedures set forth at 360 CMR § 1.00.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on this day of December, 2021 by their duly authorized representatives.

MASSACHUSETTS WATER RESOURCES AUTHORITY

By: _____
Frederick A. Laskey
Executive Director

CITY OF MARLBOROUGH

By: _____
Arthur Vigeant
Mayor

Exhibit A: MWRA Budget and Assessment Policies and Procedures

**WATER SUPPLY CONTINUATION AGREEMENT
BETWEEN
THE MASSACHUSETTS WATER RESOURCES AUTHORITY
AND
THE DEDHAM-WESTWOOD WATER DISTRICT**

PARTIES:

This Water Supply Continuation Agreement (“**Agreement**”) is entered into by and between the Massachusetts Water Resources Authority, a body corporate and politic and an instrumentality of the Commonwealth of Massachusetts established pursuant to Chapter 372 of the Acts of 1984, as amended, having an address of Charlestown Navy Yard, 100 First Avenue, Boston, MA 02129 (the “**MWRA**”) and the Dedham-Westwood Water District, having an address of 50 Elm Street, Dedham, MA 02027-9137 (the “**DWWD**”), (hereinafter jointly referred to as the “**Parties**”; each individually as a “**Party**”). This Agreement documents the understanding of the Parties regarding the arrangement whereby the MWRA will continue to supply water to DWWD and DWWD will purchase a portion of its water supply from the MWRA water supply system.

RECITALS:

- R1. Whereas, the Massachusetts Legislature created MWRA in December 1984 to use, operate, maintain, and improve the waterworks and sewerage systems serving the greater metropolitan area. Operating pursuant to its enabling act under chapter 372 of the Acts of 1984, as amended (the “**Act**”), MWRA provides water supply and distribution services and wastewater collection and treatment services to certain cities, towns, and special services districts (the “**Communities**”) within MWRA’s service area;
- R2. Whereas, MWRA desires to continue to provide safe and sufficient water supplies to DWWD and to provide system-wide assistance to help protect and conserve water supplies;
- R3. Whereas, Section 8(d) of the Act permits the MWRA to extend its waterworks system to a community and to provide the continued delivery of water to the new community under reasonable terms as determined by MWRA provided that specific requirements are met;
- R4. Whereas, DWWD, having met the conditions of said Section 8(d) of the Act and the conditions of *O.P. #10, Admission of a New Community to the Waterworks System*, was duly admitted to the MWRA Waterworks system on October 25, 2005, thereby acquiring certain rights and obligations conferred by that admission;
- R5. Whereas, a regulation entitled “Continuation of Contract Water Supply,” promulgated by the MWRA at 360 C.M.R. 11.00 and most recently revised on November 18, 1994 (the “**Regulation**”), defines more specifically the requirements of Section 8(d) of the Enabling Act and governs the continued delivery of water by the MWRA to the Communities purchasing water from the MWRA;

- R6. Whereas, DWWD first executed a contract dated January 1, 2006 for the purchase of 36.5 million gallons of water a year from the MWRA;
- R7. Whereas, DWWD agreed to pay MWRA an entrance fee of Five Hundred Forty-eight Thousand Seven Hundred Forty-eight Dollars (\$548,748) for its share of the present asset value of the waterworks system in place at the time of its entrance to MWRA, in accordance with a schedule of payments established at the time of its entrance, and with the final scheduled payment having been made in February 2010. It is the express understanding of the Parties, in consideration of DWWD's payment of the entrance fee, that DWWD shall be eligible to continue its purchase of water supply from MWRA in accordance with Section 8(d) of the Enabling Act and with the Regulation;
- R8. Whereas, pursuant to the Regulation DWWD submitted a continuation request and a Supplementary Report, including: (1) a supply analysis; (2) a demand analysis; (3) a water management plan; (4) an ordinance for the protection of local sources; and (5) a description of the local user charges system and accounting system, which meet the Regulation's requirement for conservation based rates;
- R9. Whereas, on October 22, 2014, DWWD requested that its annual withdrawal limit from MWRA be increased from 36.5 million gallons a year to 73 million gallons per year;
- R10. Whereas, on December 17, 2014, the MWRA approved DWWD's request to increase its MWRA withdrawal limit from 36.5 million gallons a year to 73 million gallons a year, subject to payment of an additional entrance fee of \$556,727;
- R11. Whereas, DWWD agreed to pay an additional entrance fee of \$556,727 and to pay the entrance fee pursuant to a five-year, interest-free payment plan; this amount was paid by DWWD to MWRA in full in FY19;
- R12. Whereas, the MWRA finds that the applicable requirements of section 8(d) of the Enabling Act have been met as follows:
- (1) the safe yield of the watershed system as of the date of this Agreement and as projected for the term hereof, is sufficient to meet the projected demand of the DWWD;
 - (2) No existing or potential water supply source for DWWD has been abandoned;
 - (3) Effective demand management measures have been developed by DWWD;
 - (4) A local water supply source feasible for development has not been identified by either DWWD or the Department of Environmental Protection (the "DEP"); and
 - (5) A water use survey has been completed, which identifies all users within DWWD that consume in excess of twenty million gallons a years; and
- R13. Whereas, the MWRA and DWWD wish to formalize their rights and obligations regarding the continuation of supply of water to the DWWD and therefore enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of mutual promises contained herein and for other good and valuable consideration, the MWRA and DWWD agree to the following:

1. The term (“Term”) of this Agreement shall end at midnight on December 31, 2030.
2. The MWRA shall during the Term provide DWWD with water on a maximum annual water volume basis, stated in millions of gallons, as follows:

Maximum Annual Volume

73 million gallons

And up to two million gallons per day (mgd) on a maximum day (non-emergency) basis.

3. Any increase beyond 73 million gallons on an average annual basis will require a written contract revision and revision to the entrance fee. A water supply emergency may be an appropriate reason for DWWD to temporarily increase its maximum water volume in excess of the above referenced volume without requiring a revision to this Agreement.
4. DWWD agrees that during the Term it will operate its local water supply system in such manner so as to make maximum feasible use of any available local water supply sources.
5. DWWD agrees that the MWRA shall not be liable to DWWD for any disruption of water service delivery to DWWD attributable to the water distribution systems of the DWWD.
6. The MWRA shall bill DWWD and DWWD shall pay to the MWRA charges for all water supplied under this Agreement at the MWRA’s applicable prevailing rate. All billing procedures, due dates, and interest charges for late payments shall be in accordance with the MWRA’s standard policies and procedures.
7. The DWWD agrees to continue a user charge system and an accounting system, which meets the Regulation’s requirement to: (a) incorporate a uniform rate or an alternative structure which provides incentives for water conservation and/or is designed to ensure the affordability of water services to low and/or fixed income persons; and (b) prohibit rate structures that incorporate descending or declining block rates.
8. DWWD agrees to continue in effect a full cost pricing system for water received from the MWRA water supply system.
9. DWWD agrees that during the Term it shall maintain all reasonable conservation measures and continue the implementation of its Water Conservation Plan submitted to DEP in 2005, as a condition of its MEPA Certificate for admission to MWRA. Measures include, but are not limited to, participation in MWRA conservation programs, distribution of MWRA-provided materials to all water users, compliance with MWRA’s regulations for town-wide leak detection and repair (360 C.M.R. 12.00), maintain metering in 100% of DWWD’s distribution system, including all municipal facilities, and

maintenance of efficient water fixtures in all public buildings, together with promotion of their use in industrial, commercial, and residential areas.

10. DWWD agrees that during the Term it shall not abandon any local source and substitute for it water from MWRA sources unless DEP has declared that the local source will be or has been abandoned, is unfit for drinking, and cannot be economically restored for drinking purposes.
11. DWWD agrees that it will work cooperatively with the Towns of Dedham and Westwood to continue in full force and effect their local bylaws (Dedham's Aquifer Protection District Zoning By-law for the Bridge Street well field and Fowl Meadow Aquifer and Westwood's Water Resource Protection District zoning bylaw for the White Lodge Well Field and Rock Meadow Well), to preserve and protect existing and potential sources of drinking water supplies, to promote the health, safety, and general welfare of the community, to conserve Dedham and Westwood's natural resources, and to prevent temporary and permanent contamination to the environment. DWWD further agrees to work toward implementation of the recommendations of the Source Water Assessment and Protection Report prepared for DWWD, including cooperation with the Towns of Canton, Milton, and Norwood to encourage them to adopt local controls that include DWWD's wellhead protection area.
12. The Parties agree that the interconnection between DWWD's distribution and the MWRA system constructed in 1999-2000 to provide a source of emergency supply shall remain available for emergency use, with valving set to allow water to enter the DWWD automatically in the event of a low-pressure event, such as a major fire.
13. Any dispute arising between the MWRA and DWWD concerning the calculation of DWWD's annual assessment shall be resolved in accordance with the Review and Dispute Resolution Process as outlined in MWRA's Budget and Assessment Policies and Procedures (Exhibit A). Any other dispute between MWRA and DWWD under terms of this Agreement shall be resolved in accordance with the dispute resolution process set forth at 360 CMR § 11.14 and the administrative procedures set forth at 360 CMR § 1.00.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on this day of December, 2021 by their duly authorized representatives.

MASSACHUSETTS WATER RESOURCES AUTHORITY

By:

Frederick A. Laskey
Executive Director

DEDHAM WESTWOOD WATER DISTRICT

By:

Blake Lukis
Executive Director

Exhibit A: MWRA Budget and Assessment Policies and Procedures