

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

.....

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.

.....

MWRA QUARTERLY COMPLIANCE AND
PROGRESS REPORT AS OF JUNE 16, 2014

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from March 15, 2014 to June 16, 2014 and supplementary compliance information in accordance with the Court's order of December 23, 1985 and subsequent orders of the Court.

CIVIL ACTION
No. 85-0489-RGS

CIVIL ACTION
No. 83-1614-RGS

I. Schedule Seven.

Schedule Seven activity for the month of March 2014 on the Court's Schedule Seven, certified by Frederick A. Laskey, Executive Director of the Authority, is attached hereto as Exhibit "A."

A. Activities Completed.

1. Annual Combined Sewer Overflow Report.

The Authority submitted its 2013 annual combined sewer overflow ("CSO") progress report on March 14, 2014, in compliance with Schedule Seven.

B. Progress Report.

1. Combined Sewer Overflow Program.

a. Control Gate and Floatables Control at Outfall MWR003 and MWRA Rindge Avenue Siphon Relief.

The Authority advertised its estimated \$1.8 million construction contract for the Control Gate and Floatables Control at Outfall MWR003 and Rindge Avenue Siphon Relief project (the "MWR003 project") on May 27, 2014. This is the last construction contract bid advertisement for the Authority's approved long-term CSO control plan. The Authority held a site visit with prospective bidders on June 11, 2014, and plans to open bids on June 26, 2014. The Authority plans to award this last construction contract in July and issue the notice to proceed in August, in compliance with Schedule Seven, and complete the work by October 2015.

The MWR003 project is also the last of the six projects in the Authority's approved long-term CSO control plan for the Alewife Brook to move into construction (four of the projects are now complete, and the City of Cambridge's construction of the CAM004 sewer separation project is well underway). The MWR003 project will promote attainment of the long-term levels of CSO control along Alewife Brook and upgrade the overflow hydraulic capacity at Outfall MWR003 to provide adequate system relief and control of upstream system flooding in extreme storms. The greater overflow capacity is necessary in part to compensate for the planned closing of nearby Outfall CAM004 with completion of the CAM004 sewer separation project in December 2015. The project will increase the hydraulic capacity of the Authority's Rindge Avenue Siphon, which delivers overflows to the outfall, by replacing the existing 30-inch diameter siphon with a 48-inch siphon and replacing the existing static overflow weir at the outfall with an automated, electric-powered weir gate that in its lowered position will provide a higher overflow capacity when needed to mitigate system flooding. The weir gate will be programmed to drop when metered flow levels in the Authority's system approach critical levels. The project also includes the installation of an underflow baffle in the weir structure, to control the discharge of floatable materials.

The project is located mostly on land under the control of the Department of Conservation and Recreation ("DCR") within its Alewife Brook Reservation. DCR issued a Construction/Access Permit dated April 29, 2014, that allows the Authority's construction and stipulates conditions on the work,

including ground and pavement restoration requirements and the mitigation of park land impacts, which includes maintaining public access along the Fitchburg Cut-Off Bike Path, a small portion of which passes through the construction work area. On June 5, 2014, the Cambridge Conservation Commission issued an Order of Conditions allowing the construction, most of which falls within the jurisdiction of the Wetlands Protection Act. And earlier this year, the Massachusetts Bay Transportation Authority (“MBTA”) and the Authority executed a license agreement allowing the Authority’s construction that falls within the MBTA Alewife Station property. It will also be necessary for construction equipment to cross a small private parcel in order to remove the portion of an abandoned 30-inch concrete-encased sewer that crosses under the Alewife Brook. The Authority has had productive conversations with the owner of the property and is presently drafting the license agreement.

The Authority reported last quarter that the City of Cambridge had expressed concern about the potential for the MWR003 project to impact Cambridge’s planned wastewater level of service in the area and had requested the opportunity to conduct more analyses to evaluate the Authority’s design and investigate modifications to the system that would maintain the CSO reduction goal for Alewife Brook while increasing or enhancing Cambridge’s current level of wastewater service. Cambridge has asked the Authority to install a backflow prevention device (flap gate) at the downstream end of a MWRA 48-inch interceptor that serves areas of Cambridge only.

The Authority and Cambridge have performed hydraulic model evaluations and have confirmed that the flap gate could improve service and lower sewer flow elevations in the 48-inch interceptor and upstream Cambridge local sewers without compromising CSO control or service to the other communities. While accepting Cambridge's proposal, the Authority did not include the flap gate in the MWR003 construction documents as Cambridge had requested. The Authority believes the flap gate could cause adverse hydraulic impacts to the Cambridge system if it is installed prior to Cambridge's completion of the CAM004 sewer separation project, which will remove large volumes of stormwater from the same 48-inch interceptor. All of the analyses of the benefits and impacts of the flap gate assumed future conditions with removal of the stormwater. Although the flap gate is not a component of the Authority's approved long-term CSO control plan and is not necessary to achieve the required long-term level of CSO control, the Authority still plans to develop with Cambridge an alternative plan and schedule for installing the proposed flap gate that can increase or enhance Cambridge's existing level of wastewater service after all components of the long-term CSO control plan for Alewife Brook are complete.

The flap gate is not a component of the Authority's approved long-term CSO control plan and is not necessary to achieve the required long-term level of CSO control. The Authority expects to develop with Cambridge an alternative plan and schedule for installing the proposed flap gate that can

increase or enhance Cambridge's existing level of wastewater service after all components of the long-term CSO control plan for Alewife Brook are complete.

b. CAM004 Sewer Separation.

Cambridge has continued to make progress with the three construction contracts that comprise the remaining work of the CAM004 sewer separation project, further advancing the construction progress of its contracts 8A, 8B and 9. Cambridge continues to manage, coordinate and sequence the work of all three contracts and related utility relocations and traffic management to bring the project to completion by December 2015 in compliance with Schedule Seven.

The \$17.4 million Contract 8A (the Authority's cost share is \$10.6 million) includes the separation of combined sewers in a 68-acre area immediately east of Fresh Pond Parkway, from Fresh Pond to Brattle Street. The sewer separation related work of Contract 8A is now substantially complete. Cambridge expects to continue with the surface restoration work of this contract through December 2015.

The \$30 million Contract 8B (the Authority's share is \$18.7 million), includes the separation of combined sewers in Huron Avenue and several intersecting streets to separate combined sewers in an 83-acre area east of the Contract 8A work area, extending as far east and north as Concord Avenue and as far south as Brattle Street. Contract 8B commenced in September 2013 and is approximately 20 percent complete. In the past quarter, the contractor made progress with storm drain and sanitary sewer installation on

Fayerweather, Reservoir, Chilton, Walden, and Blakeslee streets. The contractor also completed the removal of buried rail and ties along Huron Avenue. Sewer separation work in contract 8B is scheduled to be substantially complete in September 2015. Cambridge expects to continue with the surface restoration work of this contract through September 2016.

The \$24.2 million Contract 9 (the Authority's cost share is \$5.8 million), includes the separation of combined sewers in a 60-acre area north of Contracts 8A and 8B and extending from Fresh Pond Parkway in the west to the intersection of Concord Avenue and Huron Avenue in the east. Contract 9 commenced in February of this year and is 18 percent complete. In the past quarter, the contractor continued with the excavation of test pits across the contract area and initiated sanitary sewer and storm drain construction on Concord Avenue and Fayerweather Street. Sewer separation work in Contract 9 is scheduled to be substantially complete in December 2015. Cambridge expects to continue with the surface restoration work of this contract through August 2016.

Cambridge and its contractors continue their coordination with utility companies for the work in the Contract 8B and Contract 9 areas. Utility relocations could impact the contractors' schedules, particularly for gas relocations needed in advance of and storm drain and sewer construction. So far, NStar's gas line relocations have not impacted the contractors' work. Cambridge has adjusted and will continue to adjust, if necessary, the schedule

and/or design of its drain and sewer work to avoid conflicts with the gas mains to the extent possible.

Cambridge plans to substantially complete the CAM004 sewer separation project by December 2015 in compliance with Schedule Seven. As previously reported, long-term cost and schedule concerns remain with regard to limited in-state landfill space for soil disposal, though there appears to be relief for the CAM004 work that will be performed over the next year with the recent opening of two in-state landfills. A third landfill, currently in the permitting process and with available space projected for 8 years, could provide resolution through completion of the project. Cambridge will continue to monitor the issue for impacts to the CAM004 project costs and schedule.

c. Concord Lane Delays.

As previously reported, Cambridge was unable to include in Contract 9 a small portion of the originally planned contract improvements involving work along Concord Lane, a private way behind the Fresh Pond Mall that serves commercial properties. Concord Lane is presently served by storm drains and sanitary sewers that interconnect at common manholes, and proper connection of street, property and building drains and sewer laterals was not confirmed. According to Cambridge, it was initially unable to gain the property owner's consent for rights of entry to perform site surveys, utility investigations, building investigations, soil and groundwater testing and, ultimately, construction. The site is in a former industrial area, and the Authority surmises that the owners are concerned that environmental testing may lead to

environmental remediation requirements. As such, the owners' interests are to authorize as little activity as possible that has the potential to reveal and/or disturb subsurface conditions.

Design of the construction improvements to separate the storm drain and sewer systems along Concord Lane, upgrade the systems for long-term reliability, and remove stormwater inflow from the sanitary system necessitates the collection and evaluation of information about site and system conditions. Cambridge must confirm the locations and physical conditions of utilities and service connections and the physical and environmental conditions of soils and groundwater to be able to define the scope and cost of necessary construction and prepare contract documents. As reported last quarter, Cambridge was able to secure a Right of Entry (ROE #1) from the owners in February 2014 to enter the property and conduct limited investigations, including surface survey, utility survey and internal building services inspections. This work was initially delayed due to prohibitive winter conditions. Cambridge also had difficulty gaining approval to enter certain buildings and commercial spaces, but eventually overcame this hurdle with the assistance of the property owners. Cambridge has completed the majority of the work allowed with ROE#1, with building investigations still underway.

Since March 2014, soon after executing ROE#1, Cambridge promptly began its efforts to obtain a second Right of Entry (ROE#2) from the owners to permit its engineering consultants to do soil borings and install groundwater observation wells and analyze soil and groundwater conditions. Cambridge

estimates that it must get its consultants on the site no later than the end of August 2014 to perform these remaining investigations in order to complete the design, issue a construction contract, and complete the construction work by the court deadline of December 2015. Cambridge was, again, initially unable to make progress on ROE#2 with the owners and in early May asked the Authority to send correspondence to them explaining the importance of the court-mandated work schedule and of the Authority's intention either to employ its powers of entry under its enabling act or to seek an entry order from the Federal District Court ("Court"). Accordingly, the Authority sent a letter to the property owners on May 15. Possibly as a result of the Authority's letter and its repeated statements to the owner's counsel that it would seek court intervention, the owners and Cambridge began the actual negotiation of the terms and conditions of ROE #2 when, on May 29, the owners' new counsel sent a proposed draft ROE document to the City for review. The City responded to the owners' draft, and the parties held a meeting on June 12.

As a result of the June 12 meeting, the Authority is advised that the parties have tentatively reached an agreement in principle to develop a single, two-phased ROE#2, by which the landowner would grant: (i) immediate access to allow Cambridge to conduct the geotechnical investigations necessary to allow completion of design and (ii) later access for a contamination testing program that conforms to and supports the final design layout. Cambridge will draft the ROE#2 for submission to the owner's counsel during the week of June 16. As of the date of this filing, the Authority is further advised that

unresolved issues remain but the Authority does not have a full understanding of the positions of the City and of the landowner about those issues. Should these issues raise any concerns for project completion, the Authority will advise the Court in a supplemental filing.

While the Authority continues to see the benefits of allowing the parties to continue their negotiations rather than interrupting on-going discussions, it also remains concerned about the Court milestone for completion as ROE#2 still has not been signed. The Authority's attention remains focused upon the late August deadline by which geotechnical work must begin and, as a last resort, has at its disposal under its enabling act a right of entry requiring only fifteen days advance notice which right it will employ if it becomes necessary. Short of being denied entry by the owner, the Authority does not now foresee the need for Court intervention. The Authority intends to continue to closely monitor the parties' on-going negotiations as well as to further update its Board of Directors at its June 25, 2014 meeting of the potential need to exercise its right of entry, as a means of last resort, to enable the necessary geotechnical work to be completed and assure timely completion under Schedule Seven. In the meantime, the Authority has made Cambridge and the land owner aware of its willingness to assist them in their negotiations so as to make a statutory entry unnecessary.

d. Reserved Channel Sewer Separation.

As previously reported, BWSC has completed four of the nine planned contracts for the \$65.1 million Reserved Channel Sewer Separation project - the \$4.0 million Contract 1 that rehabilitated all four BWSC CSO outfalls that discharge to the Reserved Channel so as to provide long-term reliability and adequate capacity to carry the separated stormwater flows; the \$5.9 million Contract 2 that separated the combined sewers in a 55-acre area tributary to outfall BOS080; the \$1.3 million Contract 7, which was the first of two sequential pavement restoration contracts; and the \$11.7 million Contract 3A, which involved sewer separation in a 33-acre area tributary to outfall BOS076 bounded approximately by West First Street, G Street, West Broadway and E Street.

BWSC continues to make progress with construction of the \$11.6 million Contract 3B for sewer separation in a 66-acre area of South Boston approximately bounded by East First Street, N Street, East Third Street and Dorchester Street, and including Elkins Street and Summer Street to the edge of the Reserved Channel. In the past quarter, BWSC continued to install 48-inch drain and 18-inch Sewer on East Third Street and 24-inch drain and 12-inch sewer on East Second Street. In addition, it has had to replace water mains on both streets due to conflicts. Work on Summer Street has been progressing slowly due to the anticipated utility conflicts. The disconnection of building downspouts also continues. Contract 3B is approximately 90 percent

complete, and BWSC expects to attain substantial completion of this contract by the end of 2014.

BWSC also continues to make progress with construction of the \$11.8 million Contract 4 for sewer separation in two areas totaling 182 acres tributary to outfalls BOS076, BOS078 and BOS079. One of the two areas lies south of the Reserved Channel and is approximately bounded by G Street, East Third Street, N Street, Emerson Street and East Fourth Street. The second area lies west of the Reserved Channel, close to the Boston Convention and Exposition Center ("BCEC"), and is approximately bounded by the Reserved Channel, West Broadway, G Street and the BCEC.

In the past quarter, BWSC completed installing the 12-inch storm drain on I Street between East Fourth Street and East Fifth Street, 18-inch storm drain on K Street between East Broadway and Emerson Street, and 12 to 18-inch storm drain on Emerson Street between I Street and H Street. BWSC is redesigning the intersection of East Fourth Street and Emerson Street due to utility conflicts. Contract 4 is approximately 75 percent complete, and BWSC expects to attain substantial completion of this contract in August 2015.

Contract 8 is the second of two pavement restoration contracts that follow the work of the various sewer separation contracts (contracts 3A, 3B and 4) as sections of work are completed. The contractor will resume paving activities in May, following the winter shutdown. Overall, Contract 8 is approximately 35 percent complete and will continue to follow the sewer separation work of Contracts 3B and 4 through April 2016.

BWSC awarded the \$661,442 Contract 6 on January 29, 2014. Contract 6 involves the disconnection of building downspouts in the Reserved Channel area. BWSC expects to substantially complete with this contract by October 2015.

BWSC also recently awarded the \$4.8 million Contract 5 (the last Reserved Channel contract), on February 24, 2014. Contract 5 involves the rehabilitation of pre-existing sewers in the Reserved Channel area. Construction began in May 2014 with cleaning of various sewers and performing necessary point repairs or manhole installations. BWSC expects to substantially complete this contract by November 2015.

All construction activities for the Reserved Channel sewer separation project are on schedule for project completion by December 2015, in compliance with Schedule Seven. As previously reported, BWSC has requested the Authority's approval to expand the sewer separation infrastructure (primarily new storm drains) into certain streets within the established Reserved Channel sewer separation area to increase inflow removal. BWSC has also identified additional work necessary within the scope of the original contract work. The Authority approved a \$3.1 million increase to the agreement with BWSC on May 14, 2014, which included a \$4.8 million increase to the Reserved Channel project for this work. BWSC plans to accomplish the work by change orders to contracts 3B and 4 and to complete the existing work within the existing contract durations.

Respectfully submitted,

/s/ Jonathan M. Ettinger
Jonathan M. Ettinger (BBO #552136)
Foley Hoag LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
(617) 832-1000
Jettinger@foleyhoag.com

Of Counsel:

Steven A. Remsberg,
General Counsel
Christopher L. John,
Senior Staff Counsel
Massachusetts Water Resources
Authority
100 First Avenue
Boston, Massachusetts 02129
(617) 242-6000

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document, which was filed via the Court's ECF system, will be sent electronically by the ECF system to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 16, 2014.

/s/ Jonathan M. Ettinger
Jonathan M. Ettinger (BBO #552136)
Jettinger@foleyhoag.com

Dated: June 16, 2014