

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN
COMPLIANCE ORDER NUMBER 239

July 11, 2016

STEARNS, D.J.

This is the two hundred and thirty-ninth Compliance Order that has issued over the course of this litigation. On June 15, 2015, the Massachusetts Water Resources Authority (MWRA) filed its (now) Biannual Compliance and Progress Report. The United States and the Conservation Law Foundation have since declined to file a response.

Schedule Seven

Of special note among the scheduled activities of the past six months was a special court hearing convened on March 18, 2016. At the hearing, MWRA Executive Director Frederick A. Laskey made a formal presentation of the Combined Sewer Overflow (CSO) Annual Progress Report for 2015. The Report marked the completion by the MWRA and the Boston Water and Sewer Commission (BWSC) of the Reserved Channel sewer separation project, and in partnership with the City of Cambridge, the CAM004 sewer separation project. With these two milestones met (on time and under budget), the construction phase of the Long-Term CSO Plan is now finished. The magnitude of this multi-decade achievement was underscored by Director Laskey who noted that the 184 CSO-related milestones set by the court required the MWRA to undertake or negotiate 35 separate construction projects, 125 design contracts, 82 oversight contracts, 10 planning and technical support contracts, and 5 host community agreements. The court will post this Order and the official transcript of the hearing on the District Court's public web site as a tribute to the thousands of people, including the ratepayers, who in the apt words of Peter Shelley, speaking on behalf of the Conservation Law Foundation, "collectively rolled up their sleeves and made it happen."

As Director Laskey's cautioned at the hearing, much work remains to be done. Two milestones are still to be completed, including the three-year post-construction monitoring program and performance assessment that will begin in 2018. In the meantime, over \$600 million has been budgeted for upgrades and improvements in the wastewater system between now and the anticipated expiration of the consent decree implementing Schedule Seven in December Of 2020.

Combined Sewer Overflow (CSO) Program

a. CSO Water Quality Standards Variances

The MWRA, the Massachusetts Department of Environment Protection (DEP), and the United States Environmental Protection Agency (EPA), are discussing the extension to 2019 of the existing variances to the water quality standards for CSO discharges to the Lower Charles River/Charles Basin and the Alewife Brook/Upper Mystic River. The variances, which were first approved by the DEP in 1998 and 1999, are expected to be granted (as was agreed among the MWRA, DEP, and EPA in 2006 when the current Long-Term CSO Control Plan was approved by the court). The MWRA believes that the forthcoming performance assessment, in conjunction with modifications to the existing water quality monitoring program, will enhance the value of the data provided to support DEP's future

CSO and water quality standards determinations. DEP will hold a public hearing on the requested variance extensions on July 27, 2016.

b. CSO Post-Construction Monitoring

The MWRA has begun planning the implementation of the CSO post-construction monitoring program and performance assessment that will begin in January of 2018 in compliance with Schedule Seven.

c. Mystic River Report Card

On May 31, 2016, the EPA issued its annual report card on the Mystic River and its tributaries based on a three-year rolling accumulation of testing data. Working with the Mystic River Watershed Association, the EPA issued separate grades for each of the 14 component areas of the watershed. The grades show consistent improvement in water quality in most segments, with the Mystic River and Chelsea River receiving overall grades of A-. The D grade for Alewife Brook is disappointing, but as yet the rolling averages have not captured the benefits expected from the completion of the CAM004 sewer separation project in December of 2015.

d. Deer Island Cross Harbor Cable

The MWRA has called the court's attention to a dispute that has its origins in an order issued by my predecessor, Judge Mazzone, in 1989, establishing an October 1990 deadline for securing a suitable power supply

for the then-proposed Deer Island Waste Water Treatment Plant. The MWRA and the Army Corps of Engineers question whether the (now) Eversource Energy subsidiary, Harbor Electric Energy Company (the owner of the cable), complied fully with the depth requirements of the cable-laying permit issued by the ACoE. The Inner Harbor dredging that will be undertaken by the Boston Harbor Deep Draft Navigational Improvement Project will likely impact the cable, which is critical to operations at Deer Island. Because of the litigation-related aspects of the dispute, the court will refrain from any comment on the issue.

Comments

The court repeats its congratulations to the MWRA, the BWSC, the City of Cambridge, and everyone else involved in achieving completion of the construction phase of Long-Term CSO Control Plan. I look forward to what I expect will be the final celebratory hearing in January of 2021.

ORDER

Consistent with the court's revised Scheduling Order, the MWRA will submit Compliance Report No. 240 on or before December 31, 2016.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *
*UNITED STATES OF AMERICA *
* * * * *
* v. *
* * * * *
* METROPOLITAN DISTRICT COMMISSION*
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CIVIL ACTION
No. 85-00489-RGS

Related Cases: 83-cv-01614-RGS
90-cv-11086-ADM
90-cv-11286-ADM
91-cv-10771-ADM
93-cv-10883-ADM

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
SPECIAL PRESENTATION Re: FINAL REPORT
on the COMBINED SEWER OVERFLOW CONTROL PLAN
March 18, 2016

Courtroom No. 21
1 Courthouse Way
Boston, Massachusetts 02210

JAMES P. GIBBONS, RPR/RMR
Official Court Reporter
1 Courthouse Way, Suite 7205
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1 APPEARANCES:

2 UNITED STATES ATTORNEY'S OFFICE, (By AUSA Susan M.
3 Poswistilo), 1 Courthouse Way, Suite 9200, Boston,
4 Massachusetts 02210, on behalf of the Plaintiff, United
5 States of America

6 CONSERVATION LAW FOUNDATION NEW ENGLAND, INC., (By
7 Peter Shelley, Esq.), 62 Summer Street, Boston,
8 Massachusetts 02110, on behalf of Plaintiff
9 Conservation Law Foundation

10 FOLEY HOAG, LLP, (By John M. Stevens, Jr., Esq.,
11 and Jonathan M. Ettinger, Esq.), 155 Seaport Boulevard,
12 Boston, Massachusetts 02210-2600, on behalf of Defendant
13 Massachusetts Water Resources Authority

14 MASSACHUSETTS WATER RESOURCES AUTHORITY, (By Steven
15 A. Remsberg, Esq.), Building 39, 100 First Avenue,
16 Charlestown, Massachusetts 02129, on behalf of Defendant
17 Massachusetts Water Resources Authority

18 OFFICE OF THE ATTORNEY GENERAL OF MASSACHUSETTS,
19 (By AAG Pierce O. Cray, Esq.), One Ashburton Place,
20 Boston, Massachusetts 02108-1698, on behalf of Defendant
21 Commonwealth of Massachusetts

22 ALSO PRESENT:

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FREDERICK A. LASKEY, EXECUTIVE DIRECTOR
Massachusetts Water Resources Authority

P R O C E E D I N G S

THE CLERK: All rise.

Court is open. You may be seated.

This is Civil Action No. 85-00489, United States of America versus the Metropolitan District Commission.

If counsel who will be addressing the Court can please introduce themselves.

MR. SHELLEY: Peter Shelley, Conservation Law Foundation.

MS. POSWISTILO: Good afternoon. Susan Poswistilo on behalf of the United States.

MR. STEVENS: John Stevens from the Water Resources Authority.

THE COURT: Welcome back, Mr. Stevens.

MR. STEVENS: Thank you, your Honor.

MR. ETTINGER: Good afternoon, your Honor. Jonathan Ettinger for the MWRA.

MR. CRAY: Good afternoon, your Honor. Pierce Cray, Assistant Attorney General, for the Commonwealth.

MR. REMSBERG: Steven Remsberg, MWRA.

MR. LASKEY: Frederick Laskey, MWRA.

THE COURT: Thank you all for be being here.

Just two things to begin. You will note from the case caption, 85-0489, that this may be the oldest active case in the Federal District Court in Massachusetts.

1 (Laughter.)

2 THE COURT: The second thing I would say is that
3 this is probably the first time something happy has happened
4 in this courtroom --

5 (Laughter.)

6 THE COURT: -- at least for everyone involved.

7 I would like to shortly begin the formal proceeding,
8 and I realize we are anticipating the presentation of the
9 final report on the CSO program, but a few minutes ago I
10 received a lovely letter from Mr. Shelley, which was not
11 really addressed to me, but addressed to those of you who
12 are here in the audience.

13 Mr. Shelley, if you will permit me, I am go to have
14 Marsha read the letter.

15 MR. SHELLEY: Please.

16 THE COURT: Marsha Zierk, as most of you know, has
17 been my career law clerk since I began literally as a
18 federal judge, and she has been at my side throughout the
19 entire litigation of this case, beginning in 2000 when I was
20 first introduced to the MWRA by Mr. Stevens, among others.
21 And I do remember an Easter Sunday when she stayed with me
22 in the office trying to finish the opinion before the 1st of
23 April, having been warned, I believe by Mr. Stevens, that
24 every day of delay after April 1 is going to cost the
25 taxpayers a million dollars in delayed construction charges.

1 (Laughter.)

2 THE COURT: Looking -- and I did take a sneak peak
3 at the report -- there is a map that shows the principal
4 locations that the program has touched. I believe,
5 Mr. Laskey, that Marsha and I, with your guidance, have been
6 at every significant site that I see on that map over the
7 course of the last ten years.

8 So, Marsha, would you begin the proceeding by reading
9 Mr. Shelley's letter into the record.

10 MS. ZIERK: This is Docket No. 1831 in this case.

11 "I am writing this letter as our final formal
12 correspondence in this matter. Conservation Law Foundation
13 (CLF) filed its 60-day notice letter pursuant to Section
14 505(a)(1) of the Clean Water Act in the summer of 1983,
15 expressing its intention to bring federal legal action
16 against the Commonwealth of Massachusetts, the Metropolitan
17 District Commission, and the U.S. Environmental Protection
18 Agency for chronic violations of the Clear Water Act from
19 Boston's metropolitan sewerage system.

20 "I can say with confidence that CLF had no idea at the
21 time how deep the underlying infrastructure and
22 institutional problems were that produced the desperate
23 contamination situation we all faced back then when 70 tons
24 of raw sludge and 350,000 mgd of poorly treated wastewater
25 were being discharged into the harbor every day. And

1 looking today at the results of the past 33
2 years' activities, it is easy to gloss over the truly
3 herculean, multi-institutional effort that ultimately
4 materialized in response to that 60-day notice of violation.
5 Somehow, almost miraculously, the entire wholesale sewerage
6 and water system for metropolitan Boston has been rebuilt -
7 in many cases from scratch - while metropolitan life
8 continued on without a hitch on the surface.

9 "On behalf of CLF's Board of Directors, membership, and
10 staff, I would like to put on the record CLF's profound and
11 lasting appreciation for the many efforts - small and
12 large - that produced such notable achievements: a clean and
13 thriving harbor; a new federal park featuring Boston harbor;
14 an unforeseeable explosion of public and private investments
15 along the harbor and in the City's future clean beaches that
16 residents and visitors to Boston can use with confidence;
17 and so many more wonderful outcomes.

18 "In particular, we need to point out several prominent
19 players in this multi-decadal effort. First, the federal
20 court rose to the significant challenge of overseeing and
21 prodding the engineering, legal, and political processes
22 along with great wisdom and purpose. Boston is fortunate to
23 have such a capable judiciary and jurists. Second, we want
24 to note our appreciation to the Massachusetts Water
25 Resources Authority, an agency that arose from the ashes of

1 the non-functional MDC to become one of the preeminent water
2 and sewerage agencies in the world. The MWRA, its staff,
3 and its boards showed what was possible for a public works
4 project in Massachusetts, bringing the vital new systems on
5 line on schedule and under budget. CLF would also like to
6 commend the U.S. Environmental Protection Agency, who
7 started off as a defendant in this case but quickly became
8 the lead plaintiff and ensured that the system that was
9 being built would get the job done and quickly recognized
10 and addressed the importance of addressing the combined
11 sewerage system overflows as well as the more prominent
12 outfalls at the end of the lines.

13 "Of course, these institutions did nothing. It was the
14 people in the institutions who worked the impossibly long
15 and difficult hours on this project over the past 33 years
16 who produced these results. They are too numerous to
17 mention. And while the leaders involved in the case were
18 all remarkable, their efforts would have fallen flat if it
19 weren't for the engineers, accountants, law clerks, trades
20 people, lawyers, financiers, and the hundreds of other
21 specialty walks of life that collectively rolled up their
22 sleeves and made it happen.

23 "Finally, we would like to thank the thousands of
24 business and household ratepayers. This was not an easy 33
25 years for anyone watching the ever-mounting water and sewer

1 bills and there is no question that many families and
2 businesses struggled to keep up. But the MWRA's ratepayers,
3 who were well served by the MWRA Advisory Board, supported
4 the vision for a better future for Boston harbor and its
5 surroundings and got the job done. Future generations will
6 never fully appreciate the scale of the effort that produced
7 a clean harbor but with continued dedication and vigilance,
8 they will enjoy the fruit of those labors.

9 "To everyone involved and on behalf of all the
10 beneficiaries of those efforts that have no voice - the fish
11 and the marine mammals and all the other biological
12 components of Boston's now shining harbor - thank you.

13 "Sincerely,

14 "Peter Shelley"

15 THE COURT: Thank you, Mr. Shelley. You said
16 everything that I could have said and said it better.

17 Mr. Ettinger, I believe you have a report that you
18 would like to present?

19 MR. ETTINGER: I do, your Honor.

20 On behalf of the Massachusetts Water Resources
21 Authority, it is with great pleasure and honor that I
22 present the 20th and final Combined Sewer Overflow Control
23 Plan Annual Progress Report.

24 May I approach the bench?

25 THE COURT: You may.

1 (Document presented to the Court.)

2 THE COURT: I believe Mr. Laskey is going to
3 explain the contents, or at least a summary of the contents,
4 of the Report for us.

5 MR. LASKEY: Thank you, Judge.

6 I appreciate the honor of being here today to present
7 you a summary of the CSO program.

8 Before I begin, I would just like to thank the MWRA's
9 Board of Directors. We have at least three of them here
10 today: Mr. Blackmon, Austin Blackmon, who is the
11 Environmental Secretary for the City of Boston.

12 We have Mr. Henry Vitale, who is the director of the
13 Boston Water and Sewer Commission.

14 And we have John "Jack" Walsh, who represents the City
15 of Quincy on our Board of Directors.

16 And I believe Mr. Papastergion from Brookline is on his
17 way here as well.

18 And without their support over the years, the Board,
19 this would not have happened. And one of the key
20 instrumental decisions made early in this process was that
21 the four or five communities that had CSOs, the project
22 would be addressed as a system-wide program and paid for by
23 all the ratepayers of our sewer system. So that was a
24 fundamental decision made long before the term
25 "environmental justice" was coined. The Board saw the

1 vision and the advantage of it as a region.

2 I have, your Honor, a PowerPoint presentation that I
3 would go through. I hope I don't go too long, but there
4 have been many years of hard work, and I think it's
5 important to take a minute to reflect on what has been
6 accomplished. I believe you have a hard copy before you.

7 The Long-Term CSO Plan was completed in December 2015,
8 in no small part to you. You made it very, very clear that
9 we were going to finish those last projects out in
10 Cambridge -- and I see my friend from Cambridge over there
11 smiling (indicating) -- including a personal tour out there
12 to kick the tires to make sure we got it done.

13 The range of the improvements are dramatic:
14 Elimination of dry weather overflows, Deer Island transport
15 and treatment upgrades.

16 And it's important to realize, without the massive
17 pumping capacity of the Deer Island Treatment Plant, none of
18 this would have been possible.

19 The CSO system optimization, and 35 separate CSO
20 projects, and, as you know, 184 CSO-related court milestones
21 that were achieved.

22 Thirty-five of those projects were planned and designed
23 and constructed. That took 125 contracts and agreements.
24 They were managed by 82 construction contracts, 33
25 engineering, 10 planning and technical support contracts, 5

1 MWRA/CSO community agreements, totaling 423 million.

2 And I'll just take a minute and thank our friends and
3 partners at Boston Water and Sewer. As I said Mr. Vitale is
4 here.

5 The Town of Brookline had a massive project that was
6 managed spectacularly.

7 The City of Cambridge continues to be a very aggressive
8 partner with us.

9 The City of Chelsea and the City of Somerville have all
10 worked in partnership with the MWRA to complete the
11 \$907 million CSO program.

12 Eight-four outfalls were part of the program.

13 Thirty-four of those outfalls have been closed to CSO
14 discharges.

15 Five more outfalls along the South Boston beaches we've
16 achieved what is called "virtual CSO elimination," and I
17 will talk a little bit more about that as we move on.

18 Four outfalls had upgraded wet water treatment, and the
19 frequency and the volume of the discharge was greatly
20 reduced at all remaining outfalls, reducing system-wide CSOs
21 for a typical year by 88 percent, and of that remaining, 93
22 percent is now treated.

23 A bunch of different technologies were utilized, some
24 of them cutting-edge: Sewer separation, which was tried and
25 true, treatment and upgrades, consolidation and storage,

1 relief sewers, localized hydraulic relief, outfall repairs,
2 system optimization, floatable controls.

3 All of these were challenging decisions made on how to
4 proceed via the regions, and I compliment not only the
5 engineering firms who worked for us, but also our
6 engineering staff at the MWRA, which remains to this day a
7 very, very strong engineering and construction group at the
8 Authority.

9 This visually shows you the results of the program, the
10 reduction in total CSOs and the increase of what is
11 remaining is being treated. Again, a very, very dramatic
12 improvement in the quality of water.

13 Here's a chronological report on how we got there, and,
14 as you can see, we are still analyzing the data and will
15 continue to analyze the data for the next several years as
16 we go forward.

17 One of the things I hear about is the parity of the
18 spending, Did we spend more on one watershed than the other?
19 And you can see it's fairly consistent across the board.
20 The money was invested wisely, and I don't think there is
21 any region of our service area that can complain that they
22 were neglected in this program. It was across the entire
23 area.

24 One of the things I would just like to compliment are
25 the core parties and you, Judge, for your flexibility in the

1 2006 agreement that we reached. The EPA, the Justice
2 Department, the DEP on behalf of the Commonwealth, the
3 Attorney General, all came to this compromise that really
4 set the "pathway to success," as I say, to drive the
5 projects home.

6 And many of the these projects, particularly the one in
7 South Boston, was mired down or bogged down in a bitter
8 dispute over how to proceed, and this project moved forward
9 with great community support, and we achieved in all the
10 cases the level of control in the water quality improvements
11 that we had looked for.

12 I am going to run through the projects, if I may,
13 Judge.

14 In very humble beginnings there was a \$400,000 project
15 in Somerville along the Alewife Brook and Upper Mystic River
16 which kicked off the project, the program, the \$900 million
17 program, and again 100 percent reduction, though small as it
18 may be, with that small \$400,000 contract.

19 A lot of attention, obviously, has been put to the
20 beaches. The Constitution Beach project, 100 percent
21 reduction, which was a key part of the agreement, that the
22 beaches in those sensitive areas would get 100 percent
23 control, and Constitution Beach over in East Boston was the
24 first of those beaches.

25 Hydraulic Relief, again 99 percent reduction in that

1 particular project.

2 The Neponset River Sewer Separation, 100 percent
3 eliminations of CSOs.

4 The Chelsea Relief Sewers, as you can see, the variety
5 of types of construction that were used, 93 percent
6 reduction.

7 CSO Facility Upgrades in 2001, again just an investment
8 in that we had to make sure they all worked and were all
9 optimized.

10 The Stony Brook Sewer Separation separated large
11 portions of the city of Boston, 99 percent reduction in the
12 CSOs in those areas.

13 The South Dorchester Bay Relief Sewer Separation
14 separated virtually all of what is called Dorchester. And
15 if Dorchester was a stand-alone city, it would probably be
16 the fifth or the sixth largest in the state, about the size
17 of Brockton. So you get a sense of the scale of this
18 massive project to do the sewer separation. Again, I
19 compliment our partners in Boston Water and Sewer, very
20 difficult construction, congested areas, and they got the
21 job done and they did it well.

22 The Fort Point Channel Sewer Separation, again another
23 sewer separation project managed by Boston Water and Sewer.

24 Floatables' control, outflow closings. Again, the
25 variety of projects involved obviously were great.

1 The Union Park Detention Facility, which was co-run,
2 co-managed by MWRA and Boston Water and Sewer provides great
3 water quality relief to the Fort Point Channel.

4 Bos019 in Charlestown underneath the Tobin Bridge, most
5 folks don't even know it's there. Again, done in a nice
6 location without any interruption to the neighborhood and a
7 dramatic reduction the CSOs in what's called the "Little
8 Mystic."

9 Prison Point CSO Optimization, again a small contract,
10 but the thought is all kinds of different pieces made this
11 all happen.

12 The Cottage Farm Brookline Connecticut, which was a
13 great stroke of genius to take a pipe that had been
14 abandoned 50 years ago and reverse the flow in it to get
15 more flow across the river over to the Boston side to Ward
16 Street. Again, a lot of folks should take credit in the
17 ingenuity there.

18 The East Boston Branch Relief Sewer we basically
19 reconfigured. And I know, Judge, this was one of the
20 projects that you came out and visited and saw some of the
21 difficult construction that we did. We basically
22 re-engineered the entire sewer system, the way it flows, out
23 in East Boston, using pipe bursting, micro-tunneling.

24 And, you know, it's easy to sit here and feel like
25 we've done a great job, but when you think back and the

1 street had been lifted and we collapsed someone's cellar
2 wall... So it's a little bit of making sausage at times,
3 but we got there and got it done.

4 There's East Boston, the micro-tunneling and the pipe
5 jacking. Again, a very congested area, very innovative
6 construction techniques to make sure we got it done and
7 minimize the interruption to the neighbors.

8 The Bulfinch Triangle, as I mentioned earlier, we had a
9 reversal of pipe that brought more water over to the Boston
10 side. The question is how can we -- it's like a beanbag,
11 did we just push the overflow somewhere else?

12 In this part of the agreement that the Judge approved,
13 we, through Boston Water and Sewer, or Boston Water and
14 Sewer separated what's called the Bulfinch Triangle near the
15 Boston Garden. And that, in fact, had the added
16 advantage -- there was 60 acres of separated areas in the
17 Government Center area that were connected to a combined
18 system. So this was a great bang for the buck, because not
19 only did we get the Bulfinch Triangle benefit, but we were
20 then able to tie the entire Government Center issue, Boston
21 Water and Sewer was, to tie the entire Government Center
22 into the area and take advantage of that sewer separation.

23 There's the Bulfinch Triangle again, a very positive
24 project.

25 Interceptor Connection Relief, Floatables, all the

1 little things that needed to be done.

2 Combined Manhole Separation out at the Alewife,
3 100 percent reduction.

4 And we still struggled with the big project, which was
5 to South Boston beaches. And the first thing that we did
6 was take -- there was no combined flow at the Pleasure Bay
7 portion of the beach, but there was a lot of stormwater that
8 went in there that was found on the beach. And we agreed,
9 as part of the 2006 program, to take all those storm drains
10 and put them over in the Reserved Channel.

11 And that required flexibility with the Commonwealth and
12 with the federal government to allow us to enter into the
13 stormwater business without setting a precedent. And that
14 was a very positive investment.

15 The South Boston Beach project, again, Judge, you were
16 there for that on several occasions to make sure that was
17 going well. Again, this is one of the projects that has led
18 to Save the Harbor/Save the Bay determining that we have the
19 cleanest urban beaches in the country.

20 The innovative technology, there's the big boring
21 machine. There we are, you and I, at the ceremony, and it
22 was nice to have my hand shook and not my arm twisted.

23 (Laughter.)

24 MR. LASKEY: It's the job. I apologize.

25 We got the job done.

1 Morrissey Boulevard. The storm drain had been flooding
2 down Morrissey Boulevard. We were going to divert a lot of
3 the stormwater that was going onto the beach, and the
4 project was to improve the storm drain down Morrissey
5 Boulevard. again, our partners at Boston Water and Sewer
6 ensured that was accomplished.

7 The Brookline Sewer Separation, again another piece to
8 remove some flow out of the system because of the connection
9 and the interceptor maximization to make sure we didn't put
10 more overflows along the Charles River.

11 You can see the scale of the construction out in
12 Brookline, managed by the Town of Brookline. Again, a very
13 congested area, massive construction, and it has worked
14 magnificently.

15 The Alewife Stormwater Outfall and Wetlands. Again,
16 that is part of a multi-step project up in the Mystic
17 Alewife to make sure that that pollution was controlled.

18 And that led to a project that really has gained.
19 Cambridge and the MWRA, but mostly Cambridge, they deserve
20 credit for it, with the green infrastructure, the largest
21 green infrastructure in New England. And it's a manmade
22 wetlands.

23 As you know, Judge, this is another case where you were
24 out kicking the tires, making sure that it was going well,
25 and understanding how it would work. And it has really

1 worked magnificently.

2 Intercept Relief Floatables.

3 Reserved Channel Sewer Separation. Massive sewer
4 separation by Boston Water and Sewer.

5 Very difficult construction. Again, when you say
6 you're doing sewer separation or adding storm drains, you
7 don't have the sense of the magnitude of the flows until you
8 see the construction pictures before you.

9 Sewer Separation Program-Wide. It's important to
10 realize that as part of the sewer separation, 100 miles of
11 new sewers and storm drains were installed as part of this
12 project, 100 miles. And 4,300 acres were separated. So
13 it's been a massive, massive investment in reworking the
14 original sewer and stormwater system.

15 Again, Floatables Control and Siphon Relief. Again, a
16 lot of the engineering is complex. The projects may seem
17 simple, but the engineering is complex.

18 And then the city of Cambridge in the CAM004 in 2015.
19 This separated a huge portion of North Cambridge, and it was
20 a great inconvenience to the folks who lived out in that
21 area, and part of that was driven by the need to get this
22 job done. And Cambridge rose to the occasion and did a nice
23 job, and I take my hat off to them. 100 percent reduction
24 in the CSO volume out there.

25 Again, not to repeat myself, but this is another one

1 where the Judge came out to make sure that we were on track.

2 Again, CAM004 Sewer Separation, and again you can see
3 the difficulty in the construction.

4 And, you know, with the completion of it, we take great
5 pride in what has been accomplished.

6 We met 180 CSO court-related milestones.

7 Thirty-nine of the outfalls were closed or had a
8 25-year level of control, and that was a case of compromise
9 on the virtual elimination, the ability for us to deal with
10 stormwater without setting a precedent.

11 The sensitive areas, again the negotiations that had
12 proceeded along this discussion about different levels of
13 control for different areas worked out very well.

14 The reduction, as I already mentioned, has been
15 dramatic and it's been a big success.

16 Judge, I have been in government a long time, and I
17 know in government you sometimes debate shades of gray as to
18 whether the dollars are working right to accomplish the
19 goal. And I have to say this is empirical scientific data
20 that is not in any dispute. This is a dramatic testament to
21 the investment and how it's worked.

22 Anything that's red or purple means -- and this is all
23 in rain. I should qualify this. This is in rain and not
24 dry weather. Anything that's red or purple, in the day if
25 you fell in, the recommendation would be to go to Mass.

1 General and get disinfected.

2 Now you see, for the most part, you can swim in most of
3 Boston Harbor during rainstorms.

4 Obviously there's issues that we're sorting out with
5 the estuaries and studies, but we need to make sure we get
6 it right to figure out how to move forward.

7 But you can see dramatic results. I won't go through
8 all these percentages, but you can see the water quality in
9 the various locations since the program was complete. A
10 dramatic -- some of them well up over 90 percent, 99
11 percent, improvement in the water quality in those
12 particular areas.

13 And again here are the beach numbers, and they will
14 only get better and better over time. Again, the numbers
15 speak for themselves. You can see to the right of this
16 slide some dramatic results in the improvement to the
17 beaches in South Boston.

18 What are the remaining milestones?

19 We have two milestones left. The first is to commence
20 in 2018 a three-year performance assessment, including
21 post-construction monitoring. We have already begun the
22 negotiations with the regulators on how that will work and
23 how we'll go forward.

24 Then we need to submit a report, after that, on
25 performance assessment to DEP and to EPA to determine where

1 do we go next and how do we move forward.

2 I will say this, at lot of the things that -- one of
3 the perceptions is, Oh, we're finished, we don't have to
4 spend more money on the wastewater system. But I would
5 assure the Court and I would assure the court parties, that
6 there is a very, very substantial amount of funds budgeted
7 for improvement and upgrades and maintenance of our
8 wastewater system. So in the next five years, we have over
9 \$600 million budgeted and in design, or preliminary design,
10 for upgrades and improvements to the wastewater systems.

11 So the job is not done, it will never be done, with the
12 size of our system, and we will not back away from any
13 commitment to keep our system in top shape moving forward.

14 I would be remiss if I didn't thank the folks that did
15 a lot of work, the contractors, the design firms.

16 I know we have representatives of AECOM here today. I
17 thank them.

18 I thank all the -- Kleinfelder (indicating.)

19 I'm not sure who else is in the room. I don't want to
20 slight anyone. But you see the names here.

21 Again, the construction folks, the folks who were down
22 in the hole in the snow and in the rain, down in the mud,
23 working in difficult conditions.

24 I believe the Gioiosos were going to try to make it.
25 Oh, there they are in the back (indicating). I thank you.

1 Say Hi to your dad.

2 And Mr. Barletta was hoping to be here. I'm not sure
3 he's here, but we did extend the invitation.

4 And I'd like to take a minute and just -- I would be
5 remiss if I didn't compliment the Boston building trades,
6 folks who -- for the most part, it was union work. There
7 was some non-union work, and just the construction folks and
8 the quality of the work they bring is a testament to the
9 character of their organizations and the quality of work
10 that their members produce.

11 I would also like to thank the Board of Directors of
12 the MWRA. As I said, several of them are here today. I
13 don't think you could find a more diligent board. They work
14 hard at it. They are committed, and, you know, there's no
15 such thing as a rubber stamp with this Board of Directors.

16 And just as an example, we had about an hour-and-a-half
17 debate on an issue the other day on how to deal with the
18 lead situation that has now become national news. And we do
19 have some lead services and how should we deal with them.
20 It was a spirited debate, and we got to the right place. I
21 think it's indicative of the commitment they have.

22 And also to the former members who have spent many a
23 day at headquarters at the Board meetings.

24 And I would be remiss, Judge, if I didn't thank you and
25 Marsha and your staff for your hands-on approach. It is

1 really difficult at times to understand what is going on
2 until you see it. You made that very clear. You wanted to
3 see it. You wanted to hold us to deadlines. And sometimes
4 your words in your reports were pointed. But you looking at
5 me in the eye and the staff and telling us what you wanted
6 and when you wanted it was far more effective than any
7 written word.

8 So I thank you, and I thank you for your patience and
9 your dedication to this thing; because we got to a great
10 place in the end, and I thank you for that.

11 And what's the end result - and this is the most
12 important thing - we have a great harbor. We have gone in
13 one generation's time from the dirtiest harbor in the
14 country, that was subject to national scrutiny during a
15 presidential election, to a river that had a song written
16 about it and, basically if you fell in you would have to go
17 to the hospital, to an area now where all three rivers, the
18 Mystic, the Neponset, and the Charles, are in far better
19 shape. They're actually trying to find a place to have
20 swimming in the Charles. The harbor itself is clean. It is
21 almost on every tide rejuvenating itself. The eelgrass is
22 back. The oysters are back. There's whales. You name it,
23 it's back. It has regenerated itself. And, as Mr. Shelley
24 pointed out in his letter, we like to take great pride in
25 the wastewater business, and where we stand today -- I was

1 disoriented when I came and got out of the garage here in
2 the Seaport District with the growth that's been undertaken.

3 And, you know, back in the day when it smelled and you
4 had to keep your windows shut and you'd look down and you
5 couldn't identify -- or maybe you could identify what was
6 floating, you just didn't want to talk about it, now it's
7 clear and it's pristine. And there are people in kayaks and
8 sailing.

9 And it's just an amazing, amazing renaissance, and we'd
10 like to take some pride that we had some part of that,
11 because the harbor is now a great place to live, work, and
12 play.

13 I thank you, Judge, and I'm ready to get my staff
14 ready -- oh, by the way, if I may indulge you?

15 I'd just like to take a minute to thank Dave Kubiak and
16 Michael Hornbrook, the two guys sitting right here
17 (indicating). They'd be the last ones to ever stand up and
18 take credit, but those two gentlemen, it's been Dave's sole
19 responsibility -- Michael had it before Dave and has still
20 kept an eye on it as if it was still his pet project. I
21 would like thank them, as well as all the MWRA employees,
22 the 1152 employees, of the Authority. I would like to thank
23 them publically.

24 Thank you.

25 THE COURT: Mr. Laskey's too modest to point it

1 out, but this was all being done while he was also
2 overseeing a water system that provides drinking water as
3 well as clean beaches to the citizens of the Commonwealth.

4 Mr. Laskey, thank you. The report is astonishing.
5 The Court accepts it gratefully. As I said, I took the
6 privilege I have of getting advanced notice of reports like
7 this, of reading it, and you are right, it is an impressive
8 story of accomplishment.

9 Mr. Shelley said it best, that the MWRA has basically
10 risen from the ashes to become the preeminent authority on
11 all things dealing with water, I would say not just in the
12 U.S., but possibly even in the world.

13 I had an experience somewhat similar, Mr. Laskey, to
14 the one that you had today. I was out walking along the
15 waterfront, which I do from time to time, and, frankly, it
16 never occurred to me that I would see - and I am thinking
17 back 10 years or 15 years ago - a time when people would be
18 bidding for the right to live on Boston Harbor, which is a
19 phenomenon that this project has sparked.

20 There are many heroes to be written about when the
21 history of the project is completed. Certainly the names of
22 Paul Levy, Doug MacDonald, and Michael Dukakis will figure
23 in that history.

24 I will save my praise for Mr. Laskey until January of
25 2021 --

1 (Resounding laughter.)

2 THE COURT: -- when we will have, hopefully, a
3 similar ceremony to this one.

4 So I am not finished with the oversight of the project
5 yet, but one of the things that I am most proud of, which I
6 mentioned when I had the privilege of speaking to a group of
7 MWRA employees, is that a federal judge who does his or her
8 job well, will some day see his or her name on a building at
9 a prominent law school or perhaps even a courthouse. The
10 thing I am most proud of is that my name is on a plaque at
11 the Conley Terminal Sewage Pumping Station.

12 (Resounding laughter.)

13 THE COURT: Something I brag about constantly.

14 Judge Mazzone, of course, has to be acknowledged. The
15 lesson he imparted when he bequeathed the project to me in
16 2004 was "to be firm but not rigid," and that's the approach
17 I have tried to take.

18 He also told me to get my hands on things, that that
19 was the only way I would really understand the demands that
20 were on the project and those that had to be met and what
21 the proper role of the Court really was.

22 That was not only good advice - in fact, the best
23 advice I could have gotten - in terms of trying to do what
24 my small part in this project required, but it also allowed
25 me to meet a number of astonishing people, both in the MWRA,

1 in the City of Cambridge and the many other places that I
2 visited, all of whom labored to make this day possible.

3 Mr. Laskey properly acknowledges the workpeople who
4 have been behind the project including, remember, several
5 who lost their lives many, many years ago in the execution
6 of this plan. But what has been done not only for the city
7 of Boston and the Commonwealth of Massachusetts as an
8 example for others elsewhere is an achievement that I think
9 worth celebrating.

10 But let me ask if any of the other parties would like
11 to say something officially for the record at this time.

12 Mr. Shelley, I know I have already preempted your
13 letter, but that does not mean that you are not invited to
14 speak if you wish.

15 MR. SHELLEY: No. I probably would have gone
16 through a few more drafts if I knew you were going to read
17 it in open court.

18 (Laughter.)

19 MR. SHELLEY: It really is just a privilege to be
20 associated with this project, and the proof is in the eating
21 of the pudding, as they say, which is the pleasure that
22 people are getting from the harbor.

23 Thank you.

24 THE COURT: Ms. Poswistilo, do you wish to say
25 something for the record?

1 Let me say that the U.S. Attorney's Office and the
2 Department of Justice have done a wonderful job representing
3 the interests of the EPA in this matter. The best trial I
4 think I have ever presided over was the one that your office
5 participated in with Mr. Stevens. It did not directly
6 involve the harbor case, but it did involve a very important
7 component of the water system. And, as I have said, in
8 terms of a trial that accomplished an important public
9 purpose, I think it is the one that I am most proud of in my
10 history as a judge.

11 MS. POSWISTILO: Your Honor, on behalf of the
12 United States, we truly appreciate that, and Mr. Henderson,
13 whom you know has been assigned to this case maybe since
14 1985, definitely regrets that he is unable to be here.

15 As far as further comments, perhaps Mr. Henderson will
16 present them in 2021 for the final report.

17 (Laughter.)

18 THE COURT: I hope so.

19 Mr. Stevens, any valedictory words?

20 MR. STEVENS: Well, your Honor, this case has
21 spanned the greater part of my practice of law, so I would
22 appreciate an opportunity to say a few words about what I
23 think is the import of what's happened in this courtroom
24 over the last three decades.

25 THE COURT: Please do.

1 MR. STEVENS: Back when construction of the
2 treatment facilities on Deer Island was at its height,
3 Judge Mazzone used to take counsel and other representatives
4 of the parties out to Deer Island for a view every year or
5 so, and something that Doug Foy said on one of those
6 occasions has always stuck in my mind. Doug was the
7 director of the Conservation Law Foundation, who brought
8 this lawsuit and whose gracious letter was read into the
9 record.

10 And what Doug said, probably quoting from some urban
11 sociologist, was that, "A great city had three
12 characteristics: It had world-renown cultural and
13 educational institutions. It had enduring distinctive
14 residential neighborhoods, and it had a body of water that
15 it embraced."

16 And I'm afraid that for the better part of the
17 twentieth century Boston met only two of those
18 characteristics because it had turned its back on its
19 sullied harbor. And it wasn't until this court mandated
20 that the construction of what I believe to be the largest
21 sewer treatment facility ever built at one place in one time
22 in the history of the world that Boston turned around and
23 embraced its harbor, leading to this courthouse, as Fred was
24 talking in his remarks, this courthouse, the Institute of
25 Contemporary Art, the building where my law firm has its

1 offices, the other towers that are sprouting up all around
2 it, and the public spaces and restaurants that are filled
3 with people on weekends.

4 And this \$6 billion project to construct a new sewerage
5 treatment facility coincided with another large public works
6 project in Boston, a highway improvement project that
7 budgeted to \$5 billion. And that project, as we all know,
8 finished billions of dollars over budget and a decade late;
9 whereas, the sewage treatment project ended up a billion
10 dollars under budget and substantially on schedule.

11 A large part of the reason for the difference in those
12 outcomes, people had written, was that the sewage treatment
13 program was carried out by an independent authority,
14 monitored by a judge, with, I'm proud to say and I hope
15 others sitting here with me are as well, advice and counsel
16 presented by lawyers.

17 We are all extremely fortunate in the fact that as
18 leaders of the authority assigned to carry out this project,
19 we had a succession of right men for the job.

20 Paul Levy took over a floundering, fledgling agency.
21 He got it on track. He kept it on track, even if he had to
22 step on, I think, every toe in eastern Massachusetts.

23 And Doug MacDonald came on. He kept the work on track
24 while bandaging up all those toes, sometimes having to use
25 really expensive Band-Aids.

1 Then Fred Laskey brought the work, as we heard, to an
2 extremely successful conclusion while placing the Authority
3 on a sustainable basis.

4 The only quibble I have with Fred is that he might have
5 pinched a few fewer pennies in the purchase of legal
6 services.

7 (Laughter.)

8 MR. STEVENS: And we're also extremely fortunate in
9 the Judges who shaped the project and scheduled its
10 construction, because they were not only versed in law but
11 rooted in the community. They not only enforced the law,
12 but they dispensed justice in a court of equity, making
13 sure, as Fred said, that the citizens of Greater Boston
14 received environmental value for the economic burdens they
15 bore.

16 So it is no wonder, really, that Secretary Kerry chose
17 for his meeting with his Chinese counterpart a site
18 overlooking Boston Harbor, saying that, If the citizens of
19 Boston can come together to effect a transformation of this
20 great harbor, then surely the citizens of the world can come
21 together to address the change in their planet's climate.

22 Let's all hope that it's so.

23 THE COURT: Thank you, Mr. Stevens.

24 Does the Commonwealth wish to be heard?

25 MR. CRAY: Yes, your Honor.

1 I just want to express on behalf of the Commonwealth
2 and its Department of Environmental Protection their
3 profound appreciation for all the Court, the parties -
4 particularly the MWRA - and the municipalities involved have
5 done to bring us to this moment.

6 THE COURT: I hope I have not omitted anyone that
7 would like to be heard?

8 (No response.)

9 THE COURT: Again, congratulations to everyone who
10 has brought us to this point, and I will look forward to
11 seeing you, as I said, in January of 2021.

12 That will end this proceeding today. The Court has, as
13 I said, accepted the report and again extends its
14 appreciation and its compliments to all involved.

15 The Court will be in recess.

16 THE CLERK: All rise. Court is in recess.

17 (Proceedings adjourned.)
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C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/James P. Gibbons
James P. Gibbons

March 25, 2016

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