

“LTCP”). The Authority also provides this Interim Update to advise the Court with respect to the ongoing discussions with the U.S. Environmental Protection Agency (“EPA”) and the Massachusetts Department of Environmental Protection (“DEP”) regarding a potential framework for the next three years of this case and anticipated future filings.

I. Final Assessment Report

a. Schedule Seven Compliance Milestones

The submission of the Final Assessment Report is the culmination of four years of work by the Authority, in accordance with the last two Court-ordered Schedule Seven compliance milestones which are:

- i. [By January 2018,] MWRA to commence three-year performance assessment of its [CSO LTCP]. The assessment shall include post-construction monitoring in accordance with EPA’s [CSO Policy] (59 Fed. Reg. 18688) (April 19, 1994); and
- ii. [By December 2021,] MWRA to submit results of its performance assessment of its [CSO LTCP] to the EPA and DEP. MWRA to demonstrate that it has achieved compliance with the levels of control (including as to frequency of CSO activation and as to volume of discharge) specified in its [CSO LTCP].¹

With submittal of this Final Assessment Report, all Court-ordered Schedule Seven compliance milestones have been satisfied.

¹ While the Final Assessment Report commencement milestone referred to a “three-year” performance assessment period, the Parties subsequently agreed to extend the assessment period term to four years, and the Court approved a change to the final Schedule Seven Milestone extending the Final Assessment Report from December 31, 2020 to December 31, 2021. (ECF No. 1870). The Authority sought this extension in order to provide the time necessary to perform receiving water quality modeling to support water quality assessments for the Lower Charles River/Charles Basin and the Alewife Brook/Upper Mystic River.

b. Summary and Key Findings from Final Assessment Report

The Final Assessment Report is comprised of two main parts: (1) key findings and (2) a summary of supporting activities. Among the Final Assessment Report's key findings, the Authority highlights the following, and respectfully refers the Court to Section 5 of the Final Assessment Report for a more detailed discussion of its findings:

- As a result of the projects implemented under the CSO LTCP and the continued work by the Authority and its CSO community partners, both treated and untreated CSO discharges have been reduced significantly. With the current overall CSO volume prediction of 414 million gallons (MG) in a Typical Year, the Authority has reduced discharges in a Typical Year by 87%. This is very close to the overall LTCP goal of an 88% reduction, established years ago.
- As of the end of 2021, the CSO LTCP goals for average annual CSO activation and volume were met, or materially met, at 70 of the 86 CSO outfalls for which performance targets were defined.^{2 3}
- The 25 CSO outfalls designated as "closed" or "to be closed" under the Second Stipulation were confirmed to be closed, along with ten additional outfalls that were closed through additional work by the Authority and the CSO communities.

² See March 15, 2006 Second Stipulation of the United States and the Massachusetts Water Resources Authority on Responsibility and Legal Liability for Combined Sewer Overflow Control (ECF 1636)(the "Second Stipulation").

³ As previously reported, included in the 70 outfalls are six (noted with an asterisk in Table 2-2 of the Final Assessment Report) where, while the predicted activation and/or volume exceeds the LTCP goal, the performance has improved since 1992 to a level believed to achieve water quality goals. In each of the six cases, the difference between the Q4-2021 performance and the LTCP goal is relatively nominal, and the inability to precisely meet the activation and/or volume goals at these locations is not considered material. Additionally, for these six outfalls water quality is not impaired by the deviation from the LTCP goals. See Section 2.1.3 of Final Assessment Report.

- Of the 16 remaining CSO outfalls⁴ that did not meet the LTCP goals for activation frequency and/or volume by the end of 2021, the Authority developed plans to enable six CSO outfalls to meet LTCP goals after 2021.⁵
- With respect to the remaining 10 CSO outfalls not projected to meet the CSO LTCP goals after 2021, the Authority has identified through hydraulic modeling potentially feasible alternatives that may enable four of these outfalls to achieve CSO LTCP volume and activation goals. While the Authority continues to evaluate and investigate alternatives and work with its CSO community partners to identify system changes to improve CSO performance, there are at least six CSO outfalls that remain particularly challenging.
- As for the receiving water quality for the variance waters, in both the Charles River and Alewife Brook/Upper Mystic River, non-CSO sources are the overwhelming source of bacteria loading. Specifically, for the Charles River, over 99% of the bacteria load was from non-CSO sources; approximately 40% from upstream sources and 60% from stormwater for both the 1-year storm and for the Typical Year. For the Alewife Brook, over 70-90% of the bacteria load was from non-CSO sources in the 1 year and Typical Year storms respectively, and for the Mystic River, over 98% of the load was from non-CSO in the 1 year and Typical Year storms.
- Under current conditions, CSO alone contributes to annual non-attainment of the *E. coli* criterion less than 1% of the time for the Charles River, and approximately 2% of the time in the Alewife Brook/Upper Mystic River, consistent with the targets established in previous CSO planning efforts.
- The receiving water quality models predict that further reducing CSO activations and volumes to the Charles and Alewife Brook/Upper Mystic River will not have substantive impacts on the maximum levels of *E. coli* or the percent of the time that *E. coli* levels in the water body exceed water quality standards.
- In the Class B (non-variance) waters of the Neponset River and the Class SB (non-variance) waters of North Dorchester Bay, South

⁴ The 16 outfalls are: SOM007A/MWR205A; MWR205; BOS014; CHE008; BOS009; BOS003; MWR201; MWR018; MWR019; MWR020; CAM005; SOM001A; BOS017; BOS062; BOS065; and BOS070.

⁵ The six outfalls are: SOM007A/MWR205A; MWR205; BOS014; CHE008; BOS009; and BOS003.

Dorchester Bay and Constitution Beach, CSO discharges were eliminated (or, in the case of North Dorchester Bay, no discharges in up to a 25-year storm). Thus, CSOs would not contribute to any non-attainment of water quality standards in these waters. Beach closings due to high bacteria are now relatively infrequent, allowing for swimming on most summer days at all beaches.

- The Authority conducts routine monitoring where CSO discharges remain to Class SB_{CSO} designated waters, including the Mystic River mouth, Chelsea Creek, Inner Harbor, Reserved Channel, and Fort Point Channel. To evaluate water quality in those regions, MWRA adopted the methodology used by EPA to publish grades presented in annual “report cards” for Boston Harbor’s tributary watersheds. The receiving water quality has consistently achieved a report grade of B- or better in most locations (and in many instances as high as A+). The only location with grades lower than B- was at the head of Fort Point Channel. CSO discharge to the Fort Point Channel in the Typical Year is 34.71 MG (Q4-2021 system conditions), which is less than half of the LTCP goal of 73.89 MG. Overall, CSO discharge to Fort Point Channel has been reduced by 88%, from 298.81 MG in 1992 to 34.71 MG (Q4-2021 system conditions), of which 77% of the remaining CSO is treated at the Union Park CSO facility.

II. Interim Update

The Authority has kept the Court, EPA, DEP, the Conservation Law Foundation (CLF) and other parties abreast of some of the challenges associated with certain CSO outfalls, and these challenges are further detailed in the Final Assessment Report, including with respect to the abovementioned 16 CSO outfalls. Most recently, on September 30, 2021, the Authority submitted a Supplemental Report to the Court, (“Supplemental Report”) (ECF No. 1893), updating the Court on its discussions with various Court parties and stakeholders regarding a potential framework for next steps. The Authority recommended a multi-prong approach for the next phase of this case, including: (1) submission of the performance assessment report in December 2021

consistent with the final Schedule Seven milestone; (2) three years of additional time for the Authority to focus its efforts on the 16 troublesome outfalls; (3) annual reporting; (4) periodic meetings with EPA and DEP; and (5) submission of a supplemental report at the conclusion of the three year period as to the 16 outfalls.

On October 13, 2021, the United States submitted a response to the Authority's Supplemental Report. In its response, the United States explained that it "...concur[s] in the Authority's recommendation that the Court Order allow until December 2024 to complete additional improvements on the six outfalls...[and] until that date with respect to all of the CSO outfalls within or hydraulically connected to the Authority's sewer system, the United States and the Commonwealth will not make their determination on achievement of controls under Paragraph 4 of the March 15, 2006 Second Stipulation of the United States and the Massachusetts Water Resources Authority on Responsibility and Legal Liability for Combined Sewer Overflow Control." (ECF 1895) Further, the United States did not object to the content of the annual reports to be submitted to the Court, with one exception. Specifically, the United States requested that the Authority "...continue to report on the Authority's coordination with the CSO communities, and in particular the performance of community CSO outfalls based on community meter/model data in comparison to MWRA meter/model data to better understand what is causing discrepancies between the two data sets." (ECF 1895) Finally, the United States took no issue with the Authority's

proposal for periodic meetings and the submission of a supplemental report as to the 16 CSO outfalls by December 31, 2024.

On October 27, 2021, the Court issued an Order, which explained, in relevant part, that the “...court will defer any formal rulings until the submission of the remaining Schedule Seven Milestone Report detailing the results of the performance assessment of the Long-Term CSO Control Plan.” (ECF 1896) The Court also explained that it was open to the Authority’s “...requests for a three-year extension to complete the proposed improvements to the six outfalls identified as remediable, and to investigate further the ten outfalls that it suggests may not achieve full compliance without a disproportionate expenditure of resources.” (ECF 1896) The Court was also open to the Authority’s “...recommendation that future reporting be scheduled on an annual (as opposed to biannual) basis beginning in April of 2022, although the court would expect in any event to reserve the right to request informal interim updates on progress and possible solutions pertaining to the ten problem outfalls.” (ECF 1896)

Since the issuance of the Court’s October 27th Order, the Authority, EPA, and DEP have discussed a potential framework for this case over the next three years. This framework is comprised of six interrelated components, including: (a) submission of the Final Assessment Report; (b) three-years of additional time for certain system improvements at six outfalls of the 16 CSO outfalls, and continued investigations as to the remaining 10 outfalls; (c) annual reporting; (d) periodic meetings; (e) submission of a supplemental Report in December 2024 as to the 16 outfalls; and (f) corresponding additional Schedule Seven compliance

milestones for the Authority's submission of the annual reports and supplemental report in December 2024. The framework provides a well-reasoned approach to govern the further CSO mitigation efforts over the next three years. The Authority, EPA, and DEP have discussed and exchanged proposed language as to the details and specifics of these components. The Authority believes it is close to reaching consensus with EPA and DEP. In the coming days, the Authority will reach back out to CLF regarding the proposed framework. As the Authority continues to work toward a comprehensive proposal for the Court's consideration, the Final Assessment Report is being timely filed, in compliance with both the last remaining Schedule Seven Compliance milestone and as the first component of the potential framework for the next three years.

The Authority was hopeful that a consensus proposal as to the next steps in the case would be submitted for the Court's consideration at the time of the filing of the Final Assessment Report. However, while the parties have worked cooperatively, the intervening end-of-year holiday season and associated scheduling constraints have made that infeasible. The Authority will diligently continue the discussions and expects to file a motion, with a proposed framework and accompanying new corresponding compliance milestones, for the Court's consideration in early 2022. In the meantime, the Authority will continue working with its CSO community partners on the planned improvements for the six outfalls and its assessments and evaluations as to the remaining 10 outfalls.

III. Conclusion

Since 1987, the Authority has invested approximately \$911 million to reduce CSO discharges into the rivers and harbor that are the environmental and recreational centerpieces of the Metropolitan Boston region. When combined with related local community projects, that investment is over \$1 billion. The Authority, with support and collaboration from state and federal partners at DEP and EPA, as well as the communities, CLF and watershed associations, has made dramatic improvements in the capacity and reliability of the systems that transport and treat wastewater. Moreover, the Authority's ratepayers have made a substantial investment in the elimination or control of CSO discharges to protect the environment and public health. This has yielded impressive environmental improvements to the region including:

- Boston Harbor, once derided as the dirtiest harbor in America, has rebounded; seals, whales, and other wildlife are returning.
- Boston's beaches are considered among the cleanest urban beaches in the country, providing residents with safe access to the seaside without the need to travel.
- Water sampling shows water quality improvements under all weather conditions, and receiving water quality modeling shows that CSO outfalls themselves contribute to remaining bacterial standard exceedance only a small fraction of the time.
- The cleanup of Boston Harbor, rivers, and beaches has produced a renaissance of recreational activity and waterfront development.

The Authority has worked diligently since its inception to mitigate the impacts of the legacy of years of neglect of the infrastructure it inherited, mindful

of its responsibility to continue to improve and maintain that infrastructure while serving as steward of ratepayer resources. As its work continues, the Authority looks forward to working with the parties in the next three years toward a successful conclusion to this case.

Respectfully submitted,

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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 electronic copies will be sent to those indicated as non-registered participants (excluding Christopher Little of Pierce Atwood, who has retired from the practice of law, and Lawrence Liebesman and Joseph McGovern, who no longer work at the U.S. Department of Justice) on December 30, 2021.

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