



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL

Board of County Commissioners of Hamilton County
County Administration Building
138 East Court Street, Suite 603
Cincinnati, Ohio 45202

Christine Zimmer
General Counsel
City of Cincinnati
1600 Gest Street
Cincinnati, Ohio 45204

Diana Christy, Director
Metropolitan Sewer District of Greater Cincinnati
1600 Gest Street
Cincinnati, Ohio 45204

Re: Regulators' Approval of the Defendants' August 2023 Proposed Phase 2A
Schedule

Dear Commissioners, Ms. Zimmer and Ms. Christy:

By this letter, which is sent on behalf of the U.S. Environmental Protection Agency, Ohio Environmental Protection Agency and Ohio River Valley Water Sanitation Commission (the Regulators), the Regulators approve, in accordance with Paragraph XXX of the Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan for Sanitary Sewer Overflows (Global Decree), as amended, and Paragraph C.4.a of the Wet Weather Improvement Program ("WWIP"), the proposed Phase 2A Schedule that was included in the document entitled "Board of County Commissioners of Hamilton County, Ohio Phase 2A Wet Weather Improvement Program (WWIP)" submitted to the Regulators on August 28, 2023. Specifically, the Regulators approve only (a) the schedule and list of projects specified in the table on page 5 of the document (Table 3.1) and (b) the June 30, 2024, date for submission of a proposed Phase 2B schedule to the Regulators that is set forth on page 2 of the document. In accordance with Judge Barrett's May 2020 ruling, we understand that the County's proposal is deemed to be the Defendants' proposal.

In addition to the items that the Regulators are approving, the County's document also includes text pertaining to development of the Phase 2A schedule and certain County expectations regarding development of future phases of the implementation schedule under the WWIP. The

Regulators' approval is specifically limited as noted above. The Regulators are not acting or expressing any opinion on any other aspects of the document, and do not necessarily agree with many of the statements made therein. The Regulators further note that Defendants' development of future phases of the implementation schedule, and the Regulators' review thereof must be in accordance with the requirements of the WWIP, including but not limited to the requirement in Paragraph B.1 of the WWIP that all schedules must be "as expeditious as practicable based on the considerations and factors" described in Paragraph B.1.

In accordance with the Global Decree, as amended, and Paragraph C.4 of the WWIP, Defendants are required to implement the approved Phase 2.A schedule in accordance with its terms and to submit a Phase 2.B schedule by June 30, 2024, for the Regulators' review. If you have any questions, please contact either Andi Hodaj of my staff at (312) 353-4645 or Gary Prichard from our Office of Regional Counsel at (312) 886-0570.

Sincerely,

Nefertiti DiCosmo
Branch Manager
Water Enforcement & Compliance Assurance Branch

cc (via email):

David Edelstein, Counsel for Board of County Commissioners
Lou McMahon, Counsel for City of Cincinnati
Marilyn Wall, Sierra Club
David Altman, Counsel for Sierra Club
Leslie Allen, U.S. Department of Justice
U.S. EPA, Ohio EPA and ORSANCO Regulator team

On motion of Ms. Reese and seconded by Ms. Dickhaus, the following resolution was adopted...

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RESOLUTION APPROVING AND AUTHORIZING THE COUNTY ADMINISTRATOR TO SUBMIT A WWIP PHASE 2A PLAN

BY THE BOARD:

WHEREAS, the Metropolitan Sewer District of Greater Cincinnati ("MSD") was created and exists as a County Sewer District under Chapter 6117 of the Ohio Revised Code; and

WHEREAS the City of Cincinnati ("City"), by Ordinance of City Council adopted April 10, 1968, consented to be included in the County Sewer District now known as MSD; and

WHEREAS, the Board of County Commissioners, Hamilton County, Ohio ("County") is a party to an Agreement dated April 10, 1968, with the City of Cincinnati pursuant to which the County exercises authority and control as the owner of MSD, and the City provides certain management and operations services on its behalf as its agent; and

WHEREAS, the County entered into two Consent Decrees (collectively "Consent Decree") on June 9, 2004 in a matter pending in the United States District Court for the Southern District of Ohio, Western Division ("Court"), Case No. C-1-02-107, captioned *United States of America, the State of Ohio, and Ohio River Valley Water Sanitation Commission vs. The Board of County Commissioners of Hamilton County, Ohio and the City of Cincinnati, Ohio*; and

WHEREAS, the plaintiffs in the Consent Decree (U.S. EPA, Ohio EPA, ORSANCO)(collectively, the "Regulators") have approved a Final Wet Weather Improvement Program ("WWIP"), dated November 9, 2009 (as amended and conditionally approved by the Regulators on January 6, 2010 and by the Court as part of the First Amendment to the Consent Decree on August 10, 2010) which sets forth certain projects and terms for implementation of certain aspects of the Consent Decree; and

WHEREAS, pursuant to WWIP Section B.1., a Phase 2 Schedule of Work ("Phase 2"), with accompanying information, was due to the Regulators on June 30, 2017; and

WHEREAS, the Board began work on a Phase 2 in 2016, including discussions with MSD staff, provided Board policy directives regarding the Phase 2 in early 2017, and attempted to develop a consensus Phase 2 with the City during 2017 and 2018; and

WHEREAS, because a consensus Phase 2 could not be reached by Spring 2017, despite Mediation through the Federal Court, the County initiated Consent Decree dispute resolution procedures with the Regulators in April 2017 seeking: (1) a one-year extension of time, to June 30, 2018, to submit a WWIP Phase 2; and (2) a one-year extension of the deadline by which the Regulators could impose a WWIP Phase 2 for the Consent Decree; and

WHEREAS, an agreement was reached with the Regulators in early 2018 regarding extension of the WWIP deadline to June 30, 2018, and agreed projects to be completed during the extension. The Regulators lodged a notice of tentative agreement with the Federal Court and

thereafter caused it to be the subject of public comment through a Federal Register Notice. The Regulators then filed, and the Court accepted, a modification of the Consent Decree; and

WHEREAS, the Board continued to seek to reach a consensus Phase 2 with the City during 2018. Having not reached a consensus by May 2018, the Board prepared a draft Phase 2A Schedule of Work plan ("Phase 2A"), shared it with the City in mid-May, revised it based on input from the City, then issued it to the public on May 25, 2018, and held several public meetings to present and discuss the terms of it with the public; and

WHEREAS, the Board submitted its Phase 2A proposal on June 29, 2018 after ratifying the resolution dated June 20, 2018. Separately, the City of Cincinnati submitted its own Phase 2A proposal. The Regulators subsequently rejected both submissions without providing formal comments; and

WHEREAS, the Regulators, in February 2023, requested the Board to re-submit a revised Phase 2A proposal based off of the Board's 2018 proposal. The Regulators requested that the revised proposal include ongoing projects and a schedule that would end in 2024; and

WHEREAS, the Board began work on a Phase 2A in February 2023, including discussions with MSD, provided Board policy directives, and developed the attached WWIP Phase 2A with the City; and

WHEREAS, the Board believes the attached WWIP Phase 2A balances the requirements of the Consent Decree WWIP, the asset management infrastructure needs of MSD, and the financial burden placed on the ratepayers of Hamilton County.

NOW THEREFORE BE IT RESOLVED, the Board of County Commissioners of Hamilton County, Ohio, formally approves and adopts the attached Phase 2A plan (Exhibit A).

BE IT FURTHER RESOLVED, that the County Administrator is hereby authorized and directed to submit the final Phase 2A to the Federal District Court and Regulators on or before August 31, 2023;

BE IT FURTHER RESOLVED, that the Board affirms and ratifies its Resolution of July 18, 2012, a copy of which is attached here to as Exhibit B, setting forth Board policies to be followed in the implementation of the Consent Decree requirements;

BE IT FURTHER RESOLVED, that this Board of County Commissioners hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board of County Commissioners and that all deliberations of this Board of County Commissioners and of its committees, if any, which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code; and

BE IT FURTHER RESOLVED, that the Clerk of the Board be and hereby is authorized and directed to certify copies of this resolution to Jeff Aluotto, Hamilton County Administrator, Aftab Pureval, Mayor of the City of Cincinnati, the Council of the City of Cincinnati, Diana

Christy, Director of MSD, and Kathleen H. Bailey, Assistant Prosecuting Attorney Hamilton County.

ADOPTED at a regularly adjourned meeting of the Board of County Commissioners of Hamilton County, Ohio, this 24th day of August, 2023.

Ms. Reece Yes Ms. Driehaus Yes Ms. Summerow Dumas Yes

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution adopted by the Board of County Commissioners of Hamilton County, Ohio, this 24th day of August 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of County Commissioners of Hamilton County, Ohio, this 24th day of August 2023.



Leslie Hervey, Clerk
Board of County Commissioners
Hamilton County, Ohio

Exhibit A: Phase 2A

Exhibit B: July 18, 2012 Board Resolution

Exhibit A



Hamilton County

Board of County Commissioners

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**BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO
PHASE 2A WET WEATHER IMPROVEMENT PROGRAM (WWIP)
REVISED SUBMISSION**

August 2023

Hamilton County WWIP Phase 2A Schedule of Work Submittal

1. Introduction

This document is the Hamilton County Board of Commissioners' (Board or County) submission of a proposed Phase 2A for the Wet Weather Implementation Program (WWIP) implemented under the Consent Decree (Consent Decree) approved in Case No. 1:02-CV-107 in the U.S. District Court of the Southern District of Ohio, Western Division. The County is the owner and principal of the County Sewer District known as the Metropolitan Sewer District of Greater Cincinnati (MSD), which is operated, per agreement, by the City of Cincinnati (City or Cincinnati) as agent for the County.

The Global Consent Decree requires projects in the WWIP to be implemented as expeditiously as practicable according to community affordability. The WWIP is to be implemented in multiple phases. Phase 1 of the WWIP ended December 31, 2018. Additional projects were then implemented during the 2018-2020 timeframe, referred to as Bridge projects, intended to be prior to the start of Phase 2A. The County submitted a proposed Phase 2A plan on June 29, 2018 (2018 proposal). The County's 2018 proposal was intended to be completed from the end of the Bridge to December 31, 2024 and consisted of WWIP, asset management, and adaptive management projects. The County Phase 1 was subject of multiple community public meetings with stakeholder and community input solicited.

The Regulators rejected the 2018 proposal without providing formal comments. In February 2023, the Regulators requested that the County submit a revised schedule of projects from its 2018 proposal for approval as the 2018 proposal schedule represented the most expeditious as practicable approach under the criteria of the WWIP and Consent Decree. The Regulators requested that the revised Phase 2A plan would also end by December 31, 2024, but contain only a subset of the WWIP projects in the County's original 2018 proposal. This document constitutes the County's revised Phase 2A plan in response to the Regulators' request.

After approval of this Phase 2A plan, the County will submit a Phase 2B proposal. The Phase 2B proposal will be prepared and formally submitted on or before June 30, 2024. Concurrent with approval of this Phase 2A plan, the Consent Decree will be modified to provide, as a matter of right, a subsequent Phase 2C, in addition to the already existing right to other potential phases. The County will submit a proposed Phase 2C plan during Phase 2B at a date to be identified in the Phase 2B proposal. It is expected that additional phases 2D and beyond will be needed considering the absolutely massive financial burden associated with completing the WWIP and the Board's need to protect the financial welfare of Hamilton County's most vulnerable citizens.

2. Phase 2 Considerations

The Phase 2A projects include construction of major projects, and planning and design for other major projects to be built during Phase 2B. Because the projects in this plan were present in the County's 2018 proposal, the key concepts and considerations from the County's 2018 proposal are carried through and remain in this revised plan. Further, those concepts and considerations remain key elements in the County's strategy for completing the entirety of Phase 2 and thus will continue to be utilized moving forward in development of future phase planning. A summary of these concepts is therefore included. Most importantly, the County's approach emphasizes rate-payer protection and defends the most vulnerable citizens of Hamilton County.

Hamilton County WWIP Phase 2A Schedule of Work Submittal

First, the County's approach emphasizes the control and removal of stormwater from the combined system through green infrastructure, separation, and other projects where applicable. EPA's 2012 Integrated Planning Framework is used to focus on mitigating peak flows by controlling rainwater at its source (where it falls) and keeping rainwater out of combined and sanitary sewers to save money on both capital projects and operating costs, while meeting Clean Water Act obligations. This approach is also crucial to the overall plan for major enhanced high-rate treatment plant ("EHRT") construction at MSD's largest WWTPs.

Second, the County's approach recognizes the value and importance of "lessons learned" to guide future project selection and revisions when appropriate. Thus far, the County has spent well over a decade implementing the Consent Decree and completing asset management projects. This has created an extensive base of knowledge and understanding on MSD's system, the effectiveness of WWIP projects, and the constructability and costs for project completion. Relying on this experience will allow for proper sizing and selection of future Phase 2 projects thus leading to the most effective and efficient completion of Phase 2.

Finally, the County's strategy emphasizes affordability for its ratepayers. MSD rate increases to implement the Consent Decree thus far have been significant. Ratepayers experienced a nearly 8.5% average annual rate increase between 2006-2015 which is a 108% cumulative increase, and a cumulative rate increase of more than 800% since the first MSD consent decree in 1985. Because project construction could not proceed as quickly as originally intended, these substantial rate increases led to a massive surplus fund that had to be spent down, thus no rate increases were needed to continue implementation of the Consent Decree for years. Raising rates faster than the money can be spent by the district is not a desired financial management practice and is a recent lesson learned in this community. When the surplus fund had been drawn down to near its minimally required levels, the Board approved a 3% rate increase for 2023.

A. Long-Term Water Quality Improvement and Green Infrastructure versus Gray Infrastructure

One of the Board's top priorities is to provide a balanced CSO/SSO solution to reduce basement backup and surface flooding emanating from the sewer system while implementing green and gray infrastructure. It is important to evaluate green and gray infrastructure in an integrated fashion, while also considering the in-stream water quality improvements the projects can provide. Two root causes of CSOs/SSOs are insufficient system capacity and insufficient wet weather treatment capacity, both of which lead to increased hydraulic grade lines throughout the system. An integrated approach of balancing green and grey infrastructure also leads to more local source control projects, such as combined system separations, impervious surface improvements, stormwater detention, and inflow and infiltration (I/I) removal projects to reduce the peak flows and hydraulic grade lines, and thus overflow volumes, while also addressing basement backups and sewer emanating surface flooding with the same project investment. The Board views the prevention of stormwater from entering the system to be a better strategy than simply increasing the system's capacity.

B. Lessons Learned and Project Flexibility

MSD accomplished significant project completion and overflow reduction goals through Phase 1 and the Bridge projects. Additional system monitoring led to an evolved understanding of the sewer system's capacity and performance. The significant amount of information collected should

Hamilton County WWIP Phase 2A Schedule of Work Submittal

inform the future phases of the WWIP, especially since the information learned from implementing Phase 1 supports a change in direction for several future Phase 2 projects. One of the “lessons learned” from Phase 1 is that the system-wide collection system hydraulic model was determined to be sufficient for conceptual project planning, but not sufficiently accurate for final design (and sizing) of projects. As a result, it may not always be possible to develop final performance criteria for a project that is still being planned until the model has been sufficiently calibrated and validated. History has also demonstrated that initial project cost estimates can be grossly underestimated. This fact is even more omnipresent with the current economic and inflationary climate because of multiple issues including, but not limited to, the COVID-19 Pandemic, sustained inflation, massive worker and building material shortages and cost increases, and logistics issues.

C. Affordability Concerns

Affordability limitations required the Board to limit the scope of its original Phase 2A submittal compared to Phase 1. As previously mentioned, ratepayers were subject to significant rate increases during Phase 1. Most recently, the Board approved a 3% rate increase for 2023. Major populations in the MSD Service Area (City of Cincinnati and other high poverty communities and population groups) are suffering severe economic burdens due to the local and national economic conditions. Drastic increases to MSD’s rate would exacerbate this affordability problem to an unacceptable level. Local citizen groups and citizen activists, such as Communities United for Action (CUFA),¹ have staunchly and publicly opposed overly burdensome rate increases during implementation of the Consent Decree.

Future phases of projects and schedules will be based on local affordability conditions. Multiple factors impact the need to increase revenues and decrease expenses, all of which will be analyzed and adjusted to ensure rates will be increased only when absolutely necessary. The Board will continue to scrutinize all Consent Decree projects, Allowance budgets, and Asset Management spending to ensure all work is designed, engineered, and constructed with best management practices for productivity, efficiency, and to eliminate unnecessary costs. This also includes appropriate scheduling of Phase 2 so that MSD can realistically complete the projects on-time and within the expected budget.

3. PHASE 2A: PROJECTS, SCHEDULES, AND BUDGETS

A. Phase 2A Project Listing and Descriptions

Phase 2A projects are listed in Table 3.1 below. The Regulators and Defendants have determined this schedule of projects is as expeditious as practicable following the criteria of the WWIP and Consent Decree. A description of each project follows.

¹ See the group’s website here <https://www.cufacincy.org/> which lists “advocated for fair sewer rates” as a 2022 CUFA accomplishment.

Hamilton County WWIP Phase 2A Schedule of Work Submittal

Table 3.1 Phase 2A Projects: Planning, Design and Construction Milestones and Costs

WWIP Index	Project Name	Milestone Date	Milestone	Project Cost (Current\$)	Project Cost (2006\$)
204	LMWWTP Standby Power	12/31/24	Construction Substantial Completion	\$11.1 million ^[1]	\$6.9 million
218-222	CSO 402-406 Regulator Improvements	12/31/24	Construction Substantial Completion	\$16.3 million ^[1]	\$10.1 million
248	Mill Creek WWTP CEPT (EHRT), Complete Diversion Chamber	12/31/24	Construction Substantial Completion	\$22.4 million ^[2]	\$14.9 million
248	Mill Creek WWTP CEPT (EHRT), Design Pump Station for EHRT	12/31/24	Permit-to-install (PTI) Submitted	\$14.0 million ^[3]	\$8.7 million
240-244	East Branch Muddy Creek Interceptor	12/31/24	Business Case Evaluation (BCE) completed	\$1.7 million ^[4]	\$1.0 million

Footnotes:

^[1] Actual construction bid cost award amount from 2022.

^[2] Total actual project cost was \$33.6 million with substantial completion achieved in 2021 (project is already completed). The value shown for Phase 2A in this table is the total project cost less the cost of the "Bridge" phase of the work (\$11.2 million).

^[3] This amount was appropriated by the Board in the 2022 CIP for planning and design only for this project.

^[4] Planning only to complete the BCE.

Little Miami Standby Power (Index 204) – Standby power generators and electrical equipment improvements will be implemented at the Little Miami WWTP to provide power redundancy in case the primary electrical feed is lost.²

Muddy Creek CSOs 402-406 Regulator Improvements (Indices 218, 219, 220, 221, 222) – The planning and design work completed as part of the Bridge will result in construction completion in Phase 2A.

² The Little Miami Standby Power and Duke Rider discussed in the County's Phase 2A 2018 submission was removed as this is a now existing MSD Operating Expense.

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East Branch Muddy Creek Interceptor (Part 1) (Indices 240, 241, 242, 243, 244) – Since the time Index 240-244 East Branch Muddy Creek Interceptor project was developed, new information has been learned during WWIP Phase 1 regarding the flows in the collection system. For example, the existing East Branch interceptor has approximately 2 times the conveyance capacity as each of the existing four East Branch pump stations' rated capacity which provides the opportunity to convey more wet weather flow to the Muddy Creek WWTP for treatment. In addition, during planning for the original interceptor replacement project, poor soils and constructability challenges were identified that increased the capital cost from \$60.3M (2006\$) to over \$100M (2006\$). This project will perform planning work for wet weather and reliability improvements to the four East Branch pump stations and the East Branch interceptor consistent with Index 240 – 244 and in coordination with a potential Muddy Creek WWTP EHRT. A combination of improvements to the four existing pump stations, maximizing the existing conveyance capacity of the East Branch interceptor, source control upstream of each of the CSOs, and additional relief sewer capacity will be planned.

Mill Creek WWTP CEPT (Index 248) – To take advantage of the existing available conveyance capacity to the WWTP, planning is ongoing for an EHRT at the Mill Creek WWTP in coordination with, or in lieu of, the chemically enhanced primary treatment (CEPT) project listed in WWIP Attachment 2 (Index 248). A wet weather diversion chamber to the future EHRT was designed and partially constructed as part of the WWIP Bridge. The Phase 2A work completed the diversion chamber construction, with tie-ins accomplished to the Mill Creek and Auxiliary Mill Creek interceptors.

Mill Creek WWTP CEPT (EHRT), Pump Station for EHRT (Index 248) (Planning and Design) – The WWIP anticipates a future wet weather treatment facility at the Mill Creek WWTP. This project advances the initial phases of a future EHRT facility by planning and designing a WWTP wet weather influent pump station for a future wet weather treatment facility within the WWTP fence line. The design would enable the pump station to be constructed during Phase 2B, replacing the existing WWTP influent pump station facilities.

B. WWIP Allowances and Asset Management Budgets

Since 2010, MSD has used allowances for WWIP and Asset Management projects. WWIP Section C.6 lists 8 subject matter programs referred to as "Allowances." Of the eight WWIP Allowances, only five will be utilized in WWIP Phase 2A. The remaining three WWIP Allowances have been reduced in use to the point where funding has been minimal and the work in those three allowances is addressed in specific, larger projects negating the need for separate allowances. Below is a discussion of the five WWIP Allowances currently anticipated to be utilized in Phase 2A.

Water-in-Basement (renamed Sewer Back Up (SBU)) Program: The Allowance funds the cleanup of structures and, depending on circumstances, funds the repair and/or replacement for damage resulting from the backup. In some cases, this allowance also funds the installation of a backup prevention device. This is an operating cost, not a capital expenditure.

Sewer Relining (Trenchless Technology) Program (currently referred to as Main Sewer Renewal Program): This program performs internal lining of buried sewers and is a cost-effective method for rehabilitating structurally deteriorated sewers. The trenchless technology deployed with this allowance is primarily Cured-In-Place-Pipe (CIPP) technology. These projects are

Hamilton County WWIP Phase 2A Schedule of Work Submittal

identified through investigations of the sewer lines and are prioritized based on a standardized condition assessment procedure.

Manhole Rehabilitation (Trenchless Technology) Program (currently referred to as Manhole Renewal Program): The manhole rehabilitation program involves rehabilitating structurally deteriorated manholes. Manhole rehabilitation efforts are typically coordinated with the City of Cincinnati's and other political jurisdictions' street re-paving projects. This affords the ability to address the manhole deficiencies and adjust manhole elevations in coordination with the repaving.

Home Sewage Treatment System (HSTS) Elimination Program: This program funds the design, property acquisition and construction of new sanitary sewers to connect to properties in built up areas of the MSD service area to eliminate home sewage treatment systems (HSTS). These projects improve the water quality of the MSD watersheds by replacing failing or inadequate home systems. These projects are identified and prioritized based on public health risk.

Urgent Capacity Response (UCR) Program: The UCR Program is in addition to the Sewer Back Up (SBU) Program, noted above in this Section. The UCR Program focuses on historically documented problem SBU areas, to determine the root cause(s) of the reported problems. The UCR Program will focus on identifying and planning broader long-term project solutions for multiple affected properties to address sewer back up problems, surface flooding emanating from the sewer system, and, where possible, CSO reduction.

WWIP Section C.5. defined "asset management" as generally referring to "a comprehensive and structured approach to the long-term management of assets as tools for the efficient and effective delivery of services; for purposes of this WWIP, the term "Asset Management" means those capital expenditures by MSD that are not formally considered WWIP Projects or WWIP Allowance expenditures."

4. Future Phase 2B Submittal

Project selection in future Phase 2 phases will naturally grow out of, and benefit from, the information and lessons learned from prior phases. The Board currently intends to utilize the results of integrated planning, in part, to design and build EHRTs at the major MSD treatment plants and implement strategic stormwater source control projects in the neighborhoods to reduce CSOs and address SBUs and sewer-emanating surface flooding. Future project schedules will also be dependent on ratepayer affordability concerns and local economic conditions to minimize overly burdensome rate increases.

5. Public Participation

The Board placed its proposed 2018 Phase 2A Plan Summary on its website. It then sent letters via email notifying political subdivisions, elected officials, and community groups in the MSD service area of upcoming public hearings on its proposed Phase 2A Plan. The notice of public hearings also included an electronic link to the proposed Phase 2A Plan. The Board then held two public meetings at the County Administrative Building, followed by more than a half-dozen meetings in surrounding communities, to discuss its proposed Phase 2A Plan where it obtained stakeholder input, and invited stakeholders to submit comments on the Phase 2A plan.

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During this extensive community engagement process, the public expressed two over-arching concerns: rates and SBUs. The public indicated that rates were unaffordable and that a wide number of MSD ratepayers, especially low-income ratepayers, could not afford more or continued rate increases. The public also expressed significant concerns regarding the immediate need to both respond to SBUs and to take action to eliminate or prevent SBUs.

6. Conclusion

This Phase 2A plan is in response to the Regulators' request for a revised and reduced version of the County's 2018 proposal. Phase 2A sets the stage for a Phase 2B proposal submission. It is also based on a future Phase 2C which will be planned and proposed to the Regulators during completion of Phase 2B. Both Phases 2B and 2C, and subsequent phases, shall be based on the key concepts and considerations summarized and reiterated above, and as originally discussed in the County's 2018 proposal.

Exhibit B

On motion of Mrs. Hartmann, seconded by Mr. Monzel the resolution was adopted.

**RESOLUTION REGARDING MSD CONSENT DECREE WET WEATHER
IMPLEMENTATION PROGRAM**



WHEREAS, the Board of County Commissioners, Hamilton County, Ohio ("Board") entered into two Consent Decrees ("Consent Decree") on June 9, 2004 in a matter pending in the United States District Court for the Southern District of Ohio, Western Division, Case No. C-1-02-107, captioned *United States of America, the State of Ohio, and Ohio River Valley Water Sanitation Commission v. The Board of County Commissioners of Hamilton County, Ohio and the City of Cincinnati, Ohio*; and

WHEREAS, the regulator plaintiffs to the Consent Decree have approved a Final Wet Weather Improvement Program ("Final WWIP"), dated November 9, 2009, which Final WWIP sets forth certain projects and terms for implementation of certain aspects of the Consent Decree;

WHEREAS, the Metropolitan Sewer District of Greater Cincinnati ("MSD") is a county sewer district established by the Board, pursuant to Ohio Revised Code Chapter 6117. As stated in the Consent Decree, the Board acts as the principal for MSD, including maintenance of funding authority for MSD, while the City of Cincinnati ("City") serves as agent for the County in the management and operation of MSD; and,

WHEREAS, the Board has the responsibility to ensure that the WWIP is implemented in compliance with the Consent Decree and applicable law and to oversee expenditures for the benefit of MSD ratepayers;

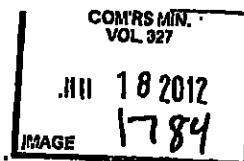
WHEREAS, pursuant to the WWIP, Board and City, as co-defendants, are due to submit to U.S. EPA, Ohio EPA, and the Ohio River Valley Water Sanitation Commission (collectively, "Regulators") certain reports by December 31, 2012 ("WWIP Reports"); and,

WHEREAS, City has requested, and County now provides, guidance regarding certain matters related to the WWIP Reports.

NOW, THEREFORE, BE IT RESOLVED, that the following are policy directives to be followed in the implementation of the Final WWIP:

1. In implementing the Final WWIP, compliance with the Consent Decree and applicable law, improvement of water quality particularly near homes and parks, financial solvency of MSD, protection of the MSD ratepayer's ability to pay for services, ongoing MSD financial transparency, and cost-saving innovation are key Board priorities.

2. In implementing the Final WWIP, specific projects and project bundles should be managed by MSD, to the greatest extent practicable within the limits of applicable law, to be planned, designed and constructed in all circumstances "on or under budget". The phrase "on or under budget" in this Resolution means the total amount spent on each Final WWIP project and project bundle shall not exceed the total projected costs listed in the Final WWIP for that project or project bundle, except as compelled by applicable law and clear engineering requirements. Except where contrary to applicable law and approved by this Board, projects and project



bundles which exceed their Final WWIP cost projections at any time during planning or design must be re-evaluated, re-planned, re-designed, or construction must be changed, to achieve the needed cost savings to be on or under budget. MSD is to immediately report to the Board if spending estimates project that a project or project bundle may be over-budget and provide management corrective action options or plans.

3. In implementing the Final WWIP, cost certainty for every project and project bundle to remain on or under budget is extremely important. MSD shall manage projects and project bundles, to the greatest extent practicable within the limits of applicable law, to minimize cost over-run risk and maximize cost certainty. The risk of cost over-runs shall be borne, where reasonably practicable, by MSD contractors, not MSD ratepayers, through procurement procedures and contracts, and MSD management thereof, which shall be consistent with Ohio law for procurement by county sewer districts. MSD shall obtain the advice of the County Prosecutor, through the County Administration, regarding consistency with applicable Ohio law.

4. The Board is supportive of "green infrastructure" and "stormwater separation/storage" alternatives to "grey treatment" approaches if the alternatives meet the cost control and cost certainty mandates noted in Policies 2 and 3, above. In implementing the Final WWIP, all MSD budgets, cost projections, and spending records for projects and project bundles should clearly identify all project elements and costs which are not required solely for Consent Decree compliance, including but not limited to roadwork, parks, waterways, and other amenities ("Amenities"). MSD shall not spend funds on planning, design, or construction of any Amenities without Board approval.

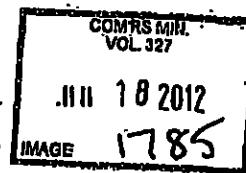
5. In implementing the Final WWIP, especially Final WWIP -related deliverables due December 31, 2012, MSD should confer intensively and frequently with the County Administration to obtain ongoing County policy input and achieve the goals of Policies 1-3 above.

Adopted at a regularly adjourned meeting of the Board of County Commissioners, Hamilton County, Ohio, this 18th day of July, 2012

Mr. Hartmann YES

Mr. Monzel YES

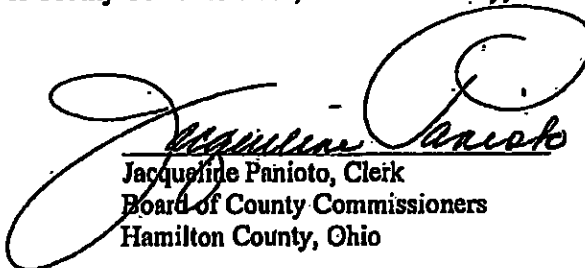
Mr. Portune YES



CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a Resolution adopted by the Board of County Commissioners, Hamilton County, Ohio in session the 18th day of July, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners, Hamilton County, Ohio this 18th day of July, 2012.


Jacqueline Panioto, Clerk
Board of County Commissioners
Hamilton County, Ohio