

**RWSA BOARD OF DIRECTORS**  
**Minutes of Regular Meeting**  
**August 22, 2005**

A regular meeting of the Rivanna Water and Sewer Authority (RWSA) Board of Directors was held on Monday, August 22, 2005 at 2:00 p.m., in the Conference Room, Administration Building, 695 Moores Creek Lane, Charlottesville, Virginia.

**Board Members Present:** Mr. William Brent, Mr. Michael Gaffney – Presiding, Ms. Judith Mueller, Mr. Gary O’Connell, and Mr. Robert Tucker.

**Authority Staff Present:** Ms. Anne Bedarf, Mr. Bruce Edmonds, Mr. Tom Frederick, Mr. Chuck Kent, Ms. Mary Knowles, Ms. Michelle Simpson, Ms. Andrea Terry, Ms. Kathy Ware, Mr. Norman Wescoat, Dr. Robert Wichser, and Mr. Lonnie Wood.

**Also Present:** Ms. Tamara Ambler – Albemarle County Natural Resources Manager, Mr. Kurt Krueger – RWSA Attorney, members of the public and media representatives.

**1.0 Call To Order**

The regular meeting of the RWSA Board of Directors was called to order by Mr. Michael Gaffney on Monday, August 22, 2005 at 2:00 p.m., and he noted that a quorum was present.

Mr. Gaffney welcomed his fellow Board members, RWSA staff, and members of the public in attendance at the meeting.

**2.0 Minutes Of Previous Board Meeting**

Mr. Gaffney noted that on page 5, line 1 under Agenda Item 5.0, “Mr. Gaffney asked” should be corrected to read “Mr. O’Connell asked.” Upon a motion by Mr. Tucker, and seconded by Mr. Brent, the Board of Directors by a 5 – 0 vote approved the minutes of the regular Board meeting held on Monday, July 25, 2005 as corrected by Mr. Gaffney.

**3.0 Executive Director’s Report**

Mr. Frederick stated that as mentioned in his report regarding the Moores Creek Headworks project, the two bids received in July had been formally rejected earlier this month due to being over budget, and the project was being rebid after significant redesign to attempt to meet the budget. Recent negotiations with the manufacturer of the pre-selected screening equipment caused by changes in the construction contract bid schedule had not been completed at the time the Board packet was finalized. The negotiations were now completed, and Mr. Frederick suggested that the Moores Creek Headworks project be added to the agenda under “Other Business” as Item 6c. At that point in the agenda, he would discuss this

project in further detail. Copies of the report were distributed to the Board members and members of the public in attendance at the meeting.

#### **4.0 Items From The Public**

Ms. Liz Palmer, Albemarle County resident, read from a prepared statement as follows:

“As a private citizen, I would like to speak regarding the letter titled **UPDATE ON DEPARTMENT OF ENVIRONMENTAL QUALITY'S (DEQ) PROPOSED NUTRIENT WASTELOAD ALLOCATION FOR JAMES RIVER.**

“In the letter, Tom Frederick writes, ‘Staff recommends that the Board of Directors authorize the Executive Director, in coordination with the Chairman of the Rivanna Board of Directors, to plan and carry out activities to convey RWSA’s interests in revising the currently proposed DEQ nutrient wasteload allocations ... etc.’ The letter lists some of the possible activities. RWSA has already been engaged in activities such as commenting to the SWCB and DEQ on Regulation for Nutrient Enriched Waters and Water Quality Management Planning Regulation. Missing from the list is any mention of litigation, support of VAMWA in litigation, or posturing to litigate. By authorizing RWSA to convey its interests, will you be authorizing RWSA to pursue activities related to litigation?

“Second, would you please define, within the context of this statement, what is meant by ‘RWSA interests.’ And, have these interests been determined to be consistent with the community’s interests as defined in City and County Comprehensive Plans? It is important, if you have not already, to involve the Board of Supervisors and City Council as soon as possible in this determination so that the community’s interests will be articulated. Drawn out battles over allocations or buying nutrient credits to put off plant improvements may have little or no community support.

“My third concern is more a comment than a question. Tom Frederick writes, ‘Instead of using water quality basis for allocations, DEQ has chosen what appears to be a political basis for decisions, citing *economic hardship* for Lynchburg and Richmond and *industry* for Hopewell as the basis for its decisions.’ I believe that it is important to understand these communities’ situations thoroughly before assuming that their allocations are politically based. Richmond and Lynchburg have combined storm water and sewage systems. This means that they are treating at least a portion of their storm water. Unfortunately the system is overwhelmed during storm events resulting in partially treated or untreated sewage dumping into the James. In a conversation with a DEQ representative I was told that DEQ is most concerned at this time with water quality at Richmond and Lynchburg’s discharge points, and that Lynchburg will be paying over 200 million dollars on their system in the next several years to improve water quality at the discharge

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point. I believe the ratepayers of Scottsville will be very supportive of Lynchburg's efforts to discontinue discharge of poorly treated sewage during storm events.

"My point is that the problems of Richmond and Lynchburg are much different from ours, and RWSA must be careful to ensure that our treatment of wastewater meets our own community standards."

Mr. John Martin, resident of Free Union, Virginia, stated that he wanted to address the same basic subject matter.

Mr. Martin first commented on a meeting that he, Ms. Liz Palmer, and Ms. Jerry McCormick-Ray attended in Richmond on August 11, 2005. It was an informational meeting concerning the "rule making" that was occurring now. Others in attendance included Dr. Robert Wichser from RWSA, Mr. Russell Baxter – Assistant Secretary of Natural Resources, numerous industry representatives, DEQ staff, representatives from the Chesapeake Bay Foundation and the James River Association. The meeting opened with a "ubiquitous" ©PowerPoint presentation followed by some questions from those in attendance. The question posed by Mr. Martin was as follows: "Is it possible that this rule making will wind up in the courts?" At that point, a "general chuckle broke out." He recognized then that although there was no certainty of litigation, there was much more than a possibility of litigation and his question was really an understatement. He further inquired, "If this does get into the courts, what is this going to do to DEQ's timetable to meet Chesapeake Bay commitments in the year 2010?" Mr. Alan Pollock of DEQ started his response as follows: "Well, if the regulations are approved by the State Water Control Board at the end of September, they will go into effect and they'll be enforced." Mr. Chris Pomeroy, outside counsel for VAMWA, stated: "Not if there is an injunction." Mr. Martin then asked, "If there is an injunction, is DEQ going to be able to meet its commitments for the 2010 requirements?" Mr. Pollock basically responded "No."

Mr. Martin also stated that at the conclusion of the questions and answers that he just discussed, Mr. Glen Harvey from Alexandria interjected, "Whether there is a lawsuit or an injunction or not, the City of Alexandria is going to go forward with upgrading its sanitation plan."

Mr. Martin added that there was a lot at stake. He had read Mr. Frederick's memorandum that was included in today's Board packet numerous times very thoroughly. He asked himself the following question: "Why was Tom writing this memorandum and why he is requesting this Board for authorization to do the things that he sets forth in this memorandum." Everything that was being requested in his memorandum were things that Mr. Frederick, Dr. Wichser, and Mr. Krueger have already been doing for a year or more. Maybe it was really requesting authorization

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to pursue litigation, either being filed by RWSA or RWSA joining as a party or supporter with VAMWA. Mr. Martin next stated that he wanted to follow up and ask the same question as Ms. Palmer. “Can you state specifically today whether the authorization that you are going to give Tom includes the authorization relating to the initiation or participation in litigation?” He thought that the public was entitled to know the answer to that question.

Mr. Martin further commented that as of right now and as far as he could tell, there was no community support for actions being taken by RWSA with respect to the wastewater nutrient regulations. That could change as evidenced by what occurred very dramatically on the water side. The public got behind the water supply plan, and it was now proceeding on a good track.

Mr. Martin then stated that all of the 22 comments that were submitted with respect to renewal of the Moores Creek permit were concerned about renewal under the terms that were specified. As a result of those 22 comments, DEQ set a public hearing on the permit. He understood that the hearing had been scheduled for November 11, 2005, although official notice might not have gone out.

Mr. Martin next commented that if it were felt public support was needed, he suggested that it be dealt with through the governmental processes. He referenced a glossy brochure from Malcolm Pirnie, which advertised the services it could offer to utilities dealing with Chesapeake Bay requirements. He quoted the following from the brochure concerning community outreach: *Malcolm Pirnie recognizes that when average citizens cannot participate in local decision making, they can feel frustrated, distrustful, and disenfranchised.* At this point, he interjected that he felt the statement was 100 percent correct and then resumed reading from the brochure as follows: *To overcome this perception, we develop strategic public participation and outreach programs that share necessary information and provide appropriate opportunities for all parties to express their needs and concerns.* He felt the reference to *strategic public participation* programs was “scary.” Those programs were run by a consultant with facilitators and were no substitute at all for participation by elected public officials, who were “woefully” uninformed as to what was going on. He encouraged the Board members, as their employees, to request the involvement of the elected public officials, as he felt the public would also do.

Mr. Martin added that there appeared to be some “strategic foot dragging” taking place here. On September 22, 2004, DEQ gave RWSA a matching grant to do a *Nutrient Basis of Design Report and Interim Optimization Plan*, and nothing happened. On July 14, 2005, DEQ finally wrote and asked what was going on and what was RWSA planning to do. On July 18, 2005, a Request for Proposals was issued, and on August 6, 2005 proposals were received. He understood that sometime during the first two weeks in September, the Technical Review

Committee was finally going to sort through them and then make a decision that would require DEQ approval. He wondered what was taking so long. Conducting a technical analysis was the initial step in figuring out what needed to be done to the Moores Creek Wastewater Treatment Plant, if we wanted to do something to the facility to reduce nutrient emissions. It was a study and not the final decision. He reiterated his questions concerning why was it taking so long, why was it being dragged out, why hasn't it been done, and why weren't we following Alexandria's attitude. He urged RWSA to direct staff to expedite completion of the procurement process, make a decision, and "get on with it." According to the person he talked to at DEQ, this was not tied to the permit at all and there was absolutely no reason not to move forward.

Mr. Gaffney thanked Ms. Palmer and Mr. Martin for their comments.

#### **5.0 Consent Agenda**

Mr. Gaffney asked if there were any items that the Board members would like to pull for questions or further discussion from the Consent Agenda.

- 5a) Staff Report on Finance
- 5b) Staff Report on Operations
- 5c) Staff Report on On-going Projects
- 5d) Staff Report on Community Water Supply Plan

As there were no further questions or discussion, Mr. Tucker moved, which was seconded by Mrs. Mueller, that the Board of Directors vote to approve Items 5a), b), c), and d) of the Consent Agenda. The motion was approved by a 5 – 0 vote.

#### **6.0 Other Business**

In regards to **Item 6a), South Fork Rivanna Reservoir (SFRR) Boat Dock Policy**, Mr. Frederick stated that RWSA's Boat Dock Policy was approved by the Board in May 1989. As described in the Board report, in recent weeks there had been interest expressed by two property owners adjacent to the reservoir to construct a boat dock. The interested parties had gone through the process of applying first to Albemarle County for the required Special Use Permit. RWSA received notice a month ago that the Charlottesville City Council authorized the City Manager to sign Special Use Permit Applications, but only after a Boat Dock permit was issued by RWSA. Albemarle County had determined that since the SFRR was located on City property, the City's signature was needed on an application before Albemarle County would consider the matter. These decisions effectively require RWSA to now be first in line in this process, whereas the 1989 policy was predicated on RWSA being the final step.

Mr. Frederick stated that following the City Council's decision, RWSA immediately reviewed its Boat Dock Policy to ascertain if the policy in place was consistent with the recent decisions concerning the permitting process. Since it was determined that

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some revisions were needed, staff took this opportunity to also examine all the provisions of RWSA's Boat Dock regulations, in consultation with Mr. Kurt Krueger concerning the revision process. He then recognized Ms. Andrea Terry, RWSA Watershed Manager, who was in attendance at the meeting. He stated that Ms. Terry had spent a great deal of time on this project during the past month and would be providing an overview of the proposed Boat Dock Policy.

As previously stated by Mr. Frederick, Ms. Terry reported that RWSA has had a Board-approved Boat Dock policy since 1989. The policy was being revisited at this time because there were two applicants who had first submitted Special Permit Applications to Albemarle County as specified in the 1989 policy. Since it had been determined that the boat docks would be sitting on City property, Albemarle County now required that the City also sign the Special Use Permits. The Resolution that was passed by City Council stipulated that the City Manager's signature on the Special Permit Applications was conditioned upon the issuance of an RWSA boat dock permit as the first step in the permitting process.

Ms. Terry further stated that since the City Council passed the Resolution, RWSA staff has been coordinating with the Albemarle County Community Development Department regarding a revision to the Boat Dock Policy Statement to reflect the recent changes to the permitting process.

Ms. Terry also reported that the following three documents were included in today's Board packet for the Board's review and approval: Revised Boat Dock Policy Statement, Revised Boat Dock Use Permit and Agreement, and Revised Boat Dock Construction Requirements. Also included was a draft Procedure Memorandum that would be issued jointly by RWSA and Albemarle County Department of Community Development to assist applicants through the permitting process. She pointed out that an inspection fee for each permit was also being proposed, which was a change from the 1989 policy. The purpose of the inspection fee was to monitor the boat docks for compliance with Board policy with respect to protecting water quality in the reservoir and the continuing use of the reservoir as a water supply resource.

Ms. Terry added that RWSA staff was recommending that the Board approve the revised Boat Dock Policy Statement and supporting documentation as outlined above, as well as the proposed Application Fee of \$150.00 and an Annual Inspection Fee of \$75.00.

Mr. Tucker commented that the application fee for applying for a Special Use Permit with Albemarle County had been noted on page 3, Item 2), of the draft Procedure for Boat Dock Permit Applications. He requested that the amount not be included since the figure was subject to change from year to year. He also asked who would be responsible for replacement of docks if the bladder on the SFRR were raised in the future and if that issue was addressed in the revised policy. Ms. Terry

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responded that it was noted in the revision that impacts from any changes made to the reservoir by RWSA related to the water supply would be the responsibility of the owners. Mr. Frederick added that RWSA was offering adjoining property owners the privilege of private boat dock use on the reservoir. The policy as drafted permitted RWSA for any reason related to its water supply needs to require that boat docks be removed.

Ms. Mueller commented that she found it interesting that the boat docks were being built on City property, but the City was not receiving any rental money for use of that property and asked if that issue had ever been addressed by Council.

Mr. Frederick provided as background information that when RWSA considered what amounts should be set for the Application Fee and the Annual Inspection Fee, the private use of boat docks on the reservoir was again viewed as a privilege. RWSA also did not want to make a recommendation to the Board that Rivanna's budget subsidize this activity. There had been some discussion in the community that RWSA in recent past years might have been lax in its inspection of boat docks. He would not be commenting on the validity of that statement, but he did report that a recent RWSA inspection on the reservoir uncovered a few issues that the Authority was addressing. RWSA's intent going forward was to inspect the boat docks on a regular basis. The inspection fee would make it possible for RWSA to conduct those inspections without asking the ratepayers to cover the costs.

In response to Mrs. Mueller's comments, Mr. Krueger pointed out that there was a specific Virginia statute that addressed the public use of land and facilities owned by municipalities and authorities. If no fee for use was charged, there was a blanket sovereign immunity statute that applied. The case was challenged by a park that charged a parking fee. The imposition of the fee was upheld since it was only charged to those who parked and not for use of the facility, such as those who hiked into the park. He stated that the question for the City would be if the fee were charged, would the City find itself in the position of not being able to take advantage of the sovereign immunity statute?

Ms. Mueller thanked Mr. Krueger for his legal opinion on the boat dock fee issue.

Mr. O'Connell moved, which was seconded by Mr. Tucker, that the Board of Directors vote to approve the revised Boat Dock Policy Statement, the revised Boat Dock Use Permit and Agreement, the Draft Procedure for Boat Dock Permit Applications as amended by Mr. Tucker, and the revised Boat Dock Construction Requirements and to also approve the proposed Application Fee in the amount of \$150.00 and the Annual Inspection Fee in the amount of \$75.00. The motion was approved by a 5 – 0 vote.

In regards to **Item 6b), Update on Department of Environmental Quality's (DEQ) Proposed Nutrient Wasteload Allocation for James River**, Mr. Frederick  
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stated that he would first summarize this issue and then address some of the comments made earlier in the meeting.

Mr. Frederick reported that RWSA was reviewing this issue based on both the environmental implications and the challenges facing the Commonwealth of Virginia and other states in this area, as well as the potential economic implications. The most immediate issue is the DEQ wasteload allocation, which is largely an economic issue. Mr. Frederick suggested that after DEQ and the State Water Control Board (SWCB) have made their decisions concerning wasteload allocations among communities within the James River watershed, this community would need to decide the extent of the upgrades to the Moores Creek Wastewater Treatment Plant based on local environmental considerations. Although RWSA was not limited by DEQ's decisions, the Authority was influenced by the minimum standards set by them.

Mr. Frederick further stated that by establishing those allocations, DEQ was also setting the baseline from which communities could start in the Nutrient Trading program. The underlying issue in this report concerned the manner in which wasteload allocations were distributed by DEQ. A community that was given a stringent wasteload allocation would not have the same opportunity on the market to sell nutrient credits as those communities that were given higher allocations.

Mr. Frederick next discussed DEQ's process for setting wasteload allocations based on existing permitting capacities. He commented that RWSA was not arguing that it was an unreasonable approach as a starting point, but pointed out that communities whose actual wastewater flows were close to their permit limits would have less opportunity in the future to sell nutrient credits than communities that were operating at half their flow capacity. Mr. Frederick added that if allocations were set as water quality standards, DEQ's mandate from the Federal Clean Water Act as well as state statutes would be to look at discharges above a certain point of impact and evaluate how those discharges influenced the environmental problem at the point of impact.

Mr. Frederick then reported on how DEQ's proposed wasteload allocation would affect RWSA. DEQ had identified the "tidal fresh" James River as the area where there was the most critical environmental impact as a result of nutrients. Since the most critical area was the "tidal fresh" James River, his report had focused on that issue. DEQ had proposed very stringent targets above the fall line to address this matter as follows: 4.0 milligrams per liter total nitrogen and 0.3 milligrams per liter total phosphorus. The same standards were generally being reflected in the "tidal fresh" area with some pretty significant exemptions for the City of Richmond and the City of Hopewell. Although the City of Lynchburg was above the fall line and was included in the same category as RWSA, it would receive a less stringent allocation on a concentration basis than Rivanna and other dischargers within that category.

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Mr. Frederick noted that this information was being presented to the Board based on the economic perspective and not what upgrades would be needed at the Moores Creek WWTP, although he felt that discussions on the extent of advanced nutrient treatment at that facility would need to be held soon. He agreed with comments made earlier in the meeting that a significant amount of local community input should be a part of that process. He was also in agreement that ongoing issues should be presented in a public forum, which was the reason for this item to be part of the Board packet. He cautioned that DEQ was moving on a fast timetable. Local influence concerning this issue would need to be exerted on a pace with the State Water Control Board's (SWCB) schedule. It appeared that a final decision on this matter could happen as early as September 27 or 28, 2005.

Mr. Frederick next reported that the activities being proposed by RWSA concerned addressing the economics of the wasteload allocation. Approval was not being requested from the Board at this time related to decisions on upgrades to the Moores Creek WWTP.

Mr. Frederick concluded by stating that he was perplexed by comments made earlier in the meeting about litigation, as the word did not appear anywhere in the staff report and in no way was RWSA requesting authority to undertake any litigation. He then stated that he would be glad to entertain any questions or provide further detail at this time.

Mr. Brent asked what would be the maximum reduction in the amount of nitrogen and phosphorus discharges that the Moores Creek WWTP could realistically achieve based on existing technology and not economic considerations.

Dr. Wichser stated that based on current technology on enhanced nutrient removal, the reduction would probably be able to get down to about 3.0 milligrams per liter total nitrogen and 0.3 milligrams per liter total phosphorus. He further stated as a follow-up to comments made earlier concerning Alexandria's wasteload allocation, the Northern Virginia utility was required to reduce to 3.0 total nutrient discharges approximately four to five years ago to meet Potomac Bay standards, which were different criteria than what was being proposed for the other Chesapeake Bay tributaries.

Mr. Brent further commented that based on Dr. Wichser's comments, the Moores Creek WWTP could not reduce much further than what was being proposed by DEQ, which would eliminate the facility from the possibility of exceeding the limits and taking advantage of the Nutrient Trading program.

Mr. Gaffney asked Mr. Frederick to provide a comparison between the Moores Creek WWTP and the Cities of Hopewell and Richmond related to nitrogen contributions to the Chesapeake Bay. Mr. Frederick stated that under the regulations now being proposed by DEQ for SWCB action, the Moores Creek plant's nitrogen cap would be 182,734 pounds per year. He then referenced the

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“delivery factor,” which related to how much of the nitrogen waste that was discharged in Charlottesville would reach the “tidal fresh” James River. DEQ’s figure indicated that only 61 percent of the Moores Creek plant’s nitrogen load would actually influence the “tidal fresh” James River. The remainder would be naturally attenuated in the streams between Charlottesville and east of Richmond. Sixty-one (61) percent of the Moores Creek WWTP’s nitrogen cap of 182,734 pounds per year would calculate somewhere in the 111,000 to 112,000 pound range. The cities of Richmond and Hopewell discharged directly into the “tidal fresh” James River with no natural attenuation. DEQ had proposed giving Hopewell a nitrogen cap of 1,827,336 pounds. DEQ’s reasoning for proposing that number for Hopewell was based on the large amount of industrial processed wastewater that came into their system from industry that used a heavy nitrogen load. The City of Richmond’s proposed nitrogen allocation was 1,096,402 pounds. The only justification DEQ had provided for proposing that number for Richmond was due to the City’s combined stormwater and sanitary sewer system that required separation.

Mr. Frederick then commented that RWSA was not suggesting that Richmond did not have economic issues to address, but the Authority was questioning why Richmond should be subsidized by the other communities in the James River Basin. If the Commonwealth of Virginia felt that Richmond needed to be subsidized in order to address the “economic hardship” issue, he suggested that the assistance be provided through either a federal or state appropriation. RWSA had concerns with this community’s sewer ratepayers subsidizing industrial waste in other communities.

Mr. Frederick next referenced percentages related to delivered point source nitrogen loads to the “tidal fresh” James River. The City of Hopewell represented 22.9 percent of the total point source amount and would be given a nitrogen allocation of 12 milligrams per liter in concentration, which was three times what most of the other communities in the James River Basin would be given. The City of Richmond would represent 13.7 percent of point source delivered loads. Allowing for the “delivery factor” of 61 percent that DEQ had determined for communities above the “fall line,” the City of Lynchburg’s allocation would be 4.1 percent. RWSA’s would be only 1.4 percent.

Mr. Frederick reiterated that RWSA was not disputing that it should contribute its part based on its fair share or if the community chose to exceed those standards to earn credits, taking into consideration all the local environmental implications as well as other appropriate issues.

Mr. Gaffney commented that RWSA was being requested to go from 6.34 to 4.0 for a nitrogen reduction of 33 percent and asked what the starting point was for the City of Richmond and for the City of Hopewell and were those communities also being requested to reduce discharges by one third. Dr. Wichser noted that the Moores Creek WWTP was actually starting around 13.0 or 14.0 milligrams per liter total

nitrogen and was being requested to reduce to 4.0 milligrams per liter total nitrogen. The City of Richmond was starting in the 11.0 to 13.0 range and would be going to 8.0. The City of Hopewell's starting range was 27.0 to 31.0 and would be reduced to 12.0.

Mr. Tucker inquired if the communities of Richmond and Lynchburg benefited financially when they built a combined stormwater and sanitary sewage system. Dr. Wichser commented that in the past combined systems were found in the majority of American cities. Lynchburg's long-term combined sewer system would be separated from stormwater. The untreated stormwater would go directly into the James River and would not surcharge out with the untreated raw wastewater. Only about 33 percent of Richmond's sewer systems were combined, and currently about 18 percent of that has been converted into separate treatment systems.

Mr. Gaffney stated for clarification purposes that the capital improvement costs for the Moores Creek WWTP would go from \$15 million to \$30 million if the 6.34 milligrams per liter nitrogen limit was reduced to 4.0 milligrams per liter nitrogen limit. Mr. Frederick stated that pre-design order of magnitude cost estimates developed by a wastewater engineer that RWSA had solicited for short-term services indicated that capital costs for meeting an 8.0 milligrams per liter nitrogen limit at the Moores Creek plant would be in the range of about \$8 million. If the limit went to 6.34 milligrams per liter, which was a number previously indicated by DEQ within the past 18 months, the cost would be about \$15 million. To meet the currently recommended 4.0 milligrams per liter figure, capital costs were estimated to be about \$30 million. RWSA also asked the same engineer to provide a "ballpark" figure with the addition of operations and maintenance costs. Based on June 2005 dollars, the additional costs were estimated to be about \$750,000 per year.

Mr. Frederick then explained why he felt it was important to benchmark the cost estimates to a particular month and year. A significant part of reaching very low nitrogen limits required that a supplemental carbon source be obtained, which would require chemical purchase on a regular basis. The chemical used in the industry has been methanol, and its cost would likely increase if the price for petroleum-based products continued its upward trend. A significantly higher cost for petroleum products at the time upgrades to the Moores Creek WWTP were underway would also be reflected in the operational costs.

Mr. Gaffney followed up his previous question by stating that if the difference between the 6.34 and the 4.0 nitrogen limits was about 33,000 pounds of nitrogen, then the Moores Creek WWTP was discharging 100,000 pounds of nitrogen that was reaching the "tidal fresh" area and the \$15 million would be representative of the 33,000 pounds of nitrogen. He asked if it would be more cost effective to give Hopewell the \$15 million to improve their wastewater plants and thereby reducing the amount of nutrients being discharged into the "tidal fresh" area. Dr. Wichser

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replied it was a novel idea and that when the nutrient trading legislation was passed

in the General Assembly, part of the theory in trading was that you might get “more bang for the buck” by transferring credits to another facility versus a smaller plant. He added that he could not comment on the Hopewell scenario as he did not have sufficient information concerning the amount of industrial waste that was processed at its facility.

Mr. Tucker commented on evaluating the benefits that would be derived in this community from spending the large amount of money that was being discussed today, taking into consideration that the Moores Creek WWTP was not directly discharging into the James River, in comparison to the improvements that could be realized in other areas, such as Tidewater.

Dr. Wichser added that the community needed to be cognizant of an important caveat. As Mr. Frederick previously stated, reducing nutrient discharges to the proposed limits also had special economical impacts. The nutrient allocations were predicated on the Moores Creek WWTP’s current capacity to handle 15 million gallons per day. In 10 or 15 years, when this facility has expanded hydraulically to 20 or 25 million gallons per day, the legislation stated that the expansion design must be based on the new technology. Unless there was a change in legislation, it would only be a matter of time before the community would need to address this issue.

Mr. Brent stated that the Clean Water Act required that these nutrient limits be scientifically based. He inquired if DEQ had offered an explanation as to why the allocations were not being scientifically applied or were seemingly arbitrarily applied to this facility. Mr. Frederick responded that he had not heard a response from DEQ on that issue. DEQ was proposing wasteload allocations without setting water quality standards, even though the Clean Water Act establishes that DEQ first set water quality standards based on the Commonwealth’s established uses of the water, both for humans and ecosystem benefit. The impacts from the various discharges were then considered, taking into account natural attenuation if the loads were distant from the location of impact. RWSA did not see that type of criteria being used to determine nutrient allocations and had not received any explanation as to why it was not being considered. The answers that DEQ has inferred as the basis for their decisions related to socioeconomic issues and the industrial load.

Mr. O’Connell asked for further clarification concerning timelines, the public comment period, and hearing dates on the proposed wasteload allocations to ensure that he had the correct information.

Mr. Frederick responded that in terms of public comment to DEQ on the proposed regulations, the deadline was Wednesday, August 24, 2005. RWSA intended to submit comments only if the Board authorized such action today. He understood that between that deadline and the September SWCB meeting, DEQ staff would use

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that opportunity and time to review and consider the comments. He recently learned that DEQ had agreed to conduct some additional “model runs.” The

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Protection Agency (EPA) has a sophisticated and unique computer that has modeled the Chesapeake Bay and all of its tributaries, including portions of the James River that were being impacted by the nutrient discharges, and could predict environmental responses and impacts to various scenarios. Month-long discussions between DEQ and VAMWA resulted in DEQ agreeing to run these additional model runs that had not been performed prior to the submission of their recommendations. Some of those model runs would include higher loading rates above the fall line to determine impacts to the “tidal fresh” James River. Results of those model runs will probably not be known until very close to the SWCB meeting. There would be an opportunity for public comment at the SWCB meeting.

Mr. O’Connell also inquired if there was a public hearing scheduled between now and the SWCB meeting. Mr. Frederick stated that a public hearing was held last Thursday, and as discussed earlier during the public comment period, Dr. Wichser had attended the meeting. Mr. O’Connell next asked if the SWCB would act on DEQ’s recommendations at the SWCB meeting in September. Mr. Frederick stated that the recommendations would be on the agenda, and it would be at the discretion of the SWCB as to whether action would be taken at that time.

Mr. Tucker asked if at this time DEQ’s recommendations to the SWCB in September would be as summarized in the Board report. Mr. Frederick stated that he had not received any indications that DEQ would change the approach they used in June. Those were the same recommendations that DEQ had made public six days before the last SWCB meeting. The SWCB had indicated to DEQ staff that it was highly unusual for an issue of this magnitude to have so little input provided prior to the meeting. He felt that the public notice issue was one of the reasons for allowing the public comment period and time for reconsideration prior to the September meeting.

Mr. Brent commented that RWSA currently had a large capital expense related to the water supply plan in the amount of \$100 million. He felt that if \$40 million needed to be added for improvements to the Moores Creek WWTP to address the nutrient issue, the ratepayers were entitled to an explanation as to why an arbitrary figure was set for this area different than the other metropolitan areas along the James River. Several dollars would be added to the typical residential customer’s average monthly sewer bill. He also wanted to know why this arbitrary figure was proposed for the Moores Creek plant.

Mr. Gaffney stated that he felt everyone present at the meeting was supportive of the efforts to clean up the Chesapeake Bay, but the Board wanted to ensure that it was undertaken in the most equitable and effective way.

### **RWSA Board Minutes 6.0 Other Business (cont.) August 22, 2005**

Mr. O’Connell asked if a draft statement to DEQ had been developed and if

Mr. Frederick's report to the Board would be the essence of the written comments submitted during the public comment period. Mr. Frederick replied in the affirmative.

Mr. Gaffney inquired if RWSA would have enough time to react to the results of the additional model "runs" to be performed by DEQ after the data had been made available to the public. Mr. Frederick replied that it would be difficult to answer that question since DEQ had not indicated when the information would be released. Dr. Wichser added that he felt the release of data would be handled similar to what occurred last June with a limited amount of time to review the results.

Mr. Brent asked if DEQ had indicated when the nutrient limits would go into effect. Dr. Wichser referred to legislation passed during the last General Assembly session that was known as "General Permits for Point Sources," which charged DEQ with the development of those "General Permits" by January 31, 2006 or soon thereafter. DEQ was actively working on the "General Permit" process, and he expected that by March or April 2006 the "General Permits" would be issued, probably in draft form for review and comment. Once the "General Permits" were issued in final form, nutrient allocations would be regulated under "General Permits" and normal facility operations would fall under existing VPDES Permits. He stated that a realistic assessment as to when this process would be completed and the nutrient limits go into effect would be June 2006. He added that there would be a construction timeline, which was generally three to four years, and entailed the preliminary study and design work, with the actual construction to begin by 2008 or late 2009.

Mr. Frederick stated that he felt it was very important to consider that if the SWCB acted to adopt these regulations as proposed or as amended in September, the basis of the "General Permit" would be the SWCB actions.

Mr. Gaffney asked Mr. Frederick to review the activities that RWSA was requesting the Board authorize at today's meeting. Mr. Frederick reiterated that RWSA was not requesting that the Board take action at this time on the extent of nutrient removal enhancements at the Moores Creek WWTP. RWSA was requesting the Board's direction in terms of how the Authority attempted through the public process to convey its views and make them known to DEQ and the SWCB that from an economic standpoint this community felt it was not receiving equitable treatment related to nutrient allocations and nutrient trading opportunities. The activities that were being recommended by RWSA were listed in the Board report. In realization that not all Board members' schedules would permit active participation, he was also proposing that the details of those activities be coordinated with Chairman Gaffney who would keep the Board informed on a very frequent basis.

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Mr. Gaffney asked if he was correct that the proposed activities in no way involved litigation. Mr. Frederick replied that Mr. Gaffney's statement was correct and that litigation was not even being considered.

Mr. Tucker inquired if anyone knew where the litigation issue originated. Ms. Liz Palmer replied that litigation arose during last Thursday's public meeting and concerned VAMWA possibly taking such action. Mr. Frederick commented that when he heard there was some discussion concerning VAMWA litigation, he called the VAMWA attorney who stated that VAMWA was not considering litigation. Mr. Frederick stated that it was fair to note that there were some utility representatives in the state who have individually discussed that option, but they do not speak for VAMWA or RWSA. VAMWA's goal for the next 30 to 40 days was through the public process attempt to influence decisions of the SWCB.

Mr. Brent moved, which was seconded by Mrs. Mueller, that the Board of Directors vote to authorize the Executive Director, in coordination with the Chairman of the Rivanna Board of Directors, to plan and carry out activities to convey RWSA's interests in revising the currently proposed DEQ nutrient wasteload allocations to improve its equity to point sources above the "fall line" of the James River as outlined in the Board report.

Prior to the vote, Mr. O'Connell asked if the initial step for RWSA was the development of a comment position for submission to DEQ by this Wednesday. Mr. Frederick replied in the affirmative.

As there were no further questions or discussion, the Board of Directors approved the motion by a 5 – 0 vote.

In regards to **Item 6c), Moores Creek Influent Screen Project**, Mr. Frederick stated that as mentioned earlier in the meeting, RWSA was rebidding the Headworks Improvement Project construction contract, which involved the deletion of an architectural building around the influent screens and replacing the structure with a canopy to provide weather protection. Dr. Wichser had been directing the redesign of this project. During this process, a number of questions have been raised with the consultants and issues resolved in order to accomplish this redesign within budget.

Mr. Frederick further reported that RWSA also recognized the need to renegotiate with BrackettGreen as the new schedule called for receiving bids on September 15, 2005 with the hope of awarding a construction contract by the September 26, 2005 Board meeting. This new timeline would encroach on the initial proposal that shop engineering begin in early September 2005. BrackettGreen indicated that a price increase would be required in order to delay that process. RWSA had negotiated an alternative option that would allow the Authority to issue a letter of intent by the end of August 2005 stating that RWSA intended to purchase the equipment and

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authorized BrackettGreen to begin the engineering work. If RWSA canceled the equipment purchase, the Authority would be allowed to only pay the engineering costs that had been incurred up to the date of cancellation. If a Notice of Cancellation was issued on September 15, 2005, then RWSA's potential liability

would be limited to \$7,296.00 in engineering costs.

Mr. Frederick commented that if a contract was awarded in September, RWSA would be able under this negotiation to hold BrackettGreen to their current price. If the Authority attempted to negotiate delays in the engineering production, BrackettGreen would have the opportunity to renegotiate the price of the equipment. Due to the increasing cost of fuel and stainless steel, the company would seek an addition upwards to \$37,350.00 for the equipment. RWSA was recommending the option that would allow BrackettGreen to move forward with the project.

Mr. Frederick then recognized Dr. Wichser, his staff, and Hazen & Sawyer, RWSA's engineering consultant, for the entire effort they put into this particular issue over the last few days. He then asked if the Board had any further questions that Dr. Wichser could address.

Mr. Gaffney asked what the next step would involve if unacceptable bids were received on September 15. Dr. Wichser stated that RWSA would immediately issue a Notice of Cancellation to BrackettGreen, and RWSA would only be liable for \$7,296.00 in engineering costs. Mr. Gaffney further asked what action would RWSA need to take after the Notice of Cancellation had been issued in order to get the project underway. Dr. Wichser replied that RWSA was requesting Board approval of the attached Resolution that would allow the Executive Director to negotiate with the lowest bidder in order to obtain a contract price within available funds.

Mr. O'Connell asked for further clarification concerning the wording on line 4 of the Resolution which stated "responsible bidder exceeds available funds" and the section beginning on line 6 which read "to negotiate with the lowest bidder to obtain a contract price within available funds." Mr. Krueger explained that it meant if no bidder came in at the budgeted amount for the project, RWSA could take the lowest one and negotiate for the best price within available funds. This could be accomplished through modifications to the project.

Mr. Frederick added that BrackettGreen was obligated to provide the equipment at their previously quoted price. If a contract award was presented next month that was within budget, RWSA would then move forward with the project. If the lowest bidder was above budget but was within a range that would allow further negotiations, approval of this Resolution would allow him to seek negotiations with the lowest bidder to try to obtain a price within budget. If the negotiations were successful, the contract award would be presented at the September Board meeting and the contract with BrackettGreen would be retained. If the bids exceeded the

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budget to such an extent that negotiations would not be possible, RWSA could immediately cancel the purchase with BrackettGreen to limit the amount of engineering fees that would need to be paid.

Mr. Krueger also advised that in order for the Executive Director to have the ability to negotiate with the lowest bidder if all bidders were above budget, the law required that a Resolution be passed in advance in order to authorize the Executive Director to take such action.

Mrs. Mueller moved, which was seconded by Mr. Tucker, that the Board of Directors vote to approve Option #2 that would allow RWSA to issue by August 31, 2005 a Letter of Intent to Purchase to BrackettGreen, which would lock in the original pricing and allow RWSA the option of canceling the purchase of the screening equipment with liability for only the engineering fees incurred up to the date of cancellation in the amount of \$7,296.00. It was further moved that the Board of Directors also vote to approve the following resolution that would authorize the Executive Director to negotiate with a low bidder between bid opening and bid award as follows:

**RIVANNA WATER & SEWER AUTHORITY  
MOORES CREEK INFLUENT SCREEN PROJECT  
RESOLUTION**

**RESOLVED:** that in connection with the request for proposals which the Authority intends to issue for the Moores Creek Inflow Screen Project, pursuant to Va. Code Section 2.2-4318, in the event that the bid from the lowest responsible bidder exceeds available funds, the Authority reserves the right, and hereby authorizes the Executive Director of the Authority and/or Authority staff designated by the Executive Director, to negotiate with the lowest responsible bidder to obtain a contract price within available funds, which negotiations may include, but not be limited to, modifications to the scope of work, materials and equipment to be furnished, time for performance, price and other such other terms as the Executive Director deems appropriate.

**VOTE:**

**AYES:** Mr. Brent, Mr. Gaffney, Ms. Mueller, Mr. O'Connell, Mr. Tucker

**NAYS:** 0

**ABSENT DURING VOTE:** 0

**ABSENT DURING MEETING:** 0

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**7.0 Other Items From Board/Staff Not On Agenda**  
There were no other items from the Board or staff not on the Agenda.

**8.0 Closed Meeting**  
There was no need for a closed meeting.

**9.0 Adjournment**

There being no further business, Mr. Tucker moved that the meeting be adjourned, seconded by Ms. Mueller. All members voted aye, and the meeting was adjourned at 3:08 p.m.

Respectfully submitted,

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Mr. Robert Tucker  
Secretary - Treasurer