



RIVANNA WATER & SEWER AUTHORITY

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RWSA BOARD OF DIRECTORS Minutes of Regular Meeting May 18, 2009

A regular meeting of the Rivanna Water & Sewer Authority (RWSA) Board of Directors was held on Monday, May 18, 2009 at 2:00 p.m., in the Conference Room, Administration Building, 695 Moores Creek Lane, Charlottesville, Virginia.

Board Members Present: Ms. Holly Edwards, Mr. Gary Fern, Mr. Michael Gaffney – Presiding, Ms. Judith Mueller, Mr. Gary O’Connell, Ms. Sally Thomas, and Mr. Robert Tucker.

Authority Staff Present: Ms. Tamara Ambler, Mr. David Atkins, Ms. Cynthia Burnett, Mr. Bruce Edmonds, Mr. Tom Frederick, Mr. Chuck Kent, Ms. Mary Knowles, Mr. Cary Lang, Ms. Michelle Simpson, Mr. Justin Weiler, Ms. Jennifer Whitaker, Dr. Robert Wichser, and Mr. Lonnie Wood.

Also Present: 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. Gaffney on Monday, May 18, 2009 at 2:00 p.m., and he noted that a quorum was present.

Mr. Gaffney next welcomed the two new Board members: Ms. Holly Edwards, representing the City of Charlottesville, and Ms. Sally Thomas, representing Albemarle County.

2.0 Minutes of Previous Board Meeting

Mr. Tucker moved that the Board of Directors vote to approve the minutes of the regular meeting of the Board held on Monday, April 27, 2009, seconded by Mr. O’Connell. The motion was approved by a 5 - 0 vote. Ms. Edwards and Ms. Thomas abstained from the vote.

3.0 Executive Director’s Report

Mr. Frederick stated that he was pleased to announce that RWSA has recently executed an agreement with EnerNOC, which is an energy management company that uses a “sophisticated energy network” to track and anticipate total use on the electrical grid in the mid-atlantic region. The company contracts with electrical suppliers to obtain income by reducing electrical usage on the entire grid during peak summer demand periods. Through agreements with utilities like RWSA, EnerNOC achieves these electrical demand reductions. The Moores Creek WWTP and the South Rivanna WTP can be operated solely on generators during these peak summer periods. RWSA’s contract with EnerNOC allows the Authority to be reimbursed for operating expenses associated with generator usage as well as share in some of the revenues obtained by EnerNOC

from power companies for its energy efficiency solutions. Mr. Frederick was pleased that the Authority has the opportunity to participate in this form of "smart grid" management. RWSA's participation is contingent upon the Virginia Department of Environmental Quality's (DEQ) anticipated approval of the Authority's use of stand-by generators for this purpose.

Mr. Frederick then provided an update on the recent bid award for the Moores Creek WWTP ENR project. He stated that DEQ has confirmed that the Authority's WQIF grant agreement is being increased to \$21.574 million. DEQ also approved the construction of all proposed tertiary filters, allowing RWSA to proceed with the full \$40.3 million contract award to Adams Robinson to provide for nitrogen and phosphorus treatment and allow for improved water quality to the Rivanna River, James River, and the Chesapeake Bay. As construction of this project will begin within the next month, an item on today's agenda proposes for public safety reasons to change the location and schedule for future monthly Boards meetings while heavy construction is occurring at the Moores Creek facility. The proposed revised Board meeting schedule will be discussed further during the Other Business segment of today's meeting.

Ms. Thomas next commented that she had questioned whether running the generators "defeated the whole purpose of the energy savings," but she learned that this was not the case and that the Authority would also be compensated for costs associated with its generator usage.

4.0 Items from the Public

Prior to opening up the meeting for public comments, Mr. Gaffney reminded the audience that a public hearing on the proposed budget was scheduled under **Item 6a)** and requested that any public comments on that topic be held until that time.

Mr. Bernard Williams, who resides in Albemarle County, first commented that he was "glad to see that Sally Thomas is representing us here."

Mr. Williams next reminded the Board how important it was to maintain all infrastructure, which included both personal - such as, "brushing one's teeth ... and for this Board ... dredging the reservoir." He felt that it should be done routinely in order to "keep their investment in that dam ... because it can last us forever." For that reason, he believed that the dredging study should be done as "quickly as possible because it's been dragging on for quite a long time."

Mr. Richard Lloyd, who resides at 1825 Locust Shade Court in Albemarle County, first distributed copies of an agreement that he felt was referenced during an ACSA Board of Directors meeting. He stated that the 1973 agreement "came about" with the creation of the Authority in 1972. Mr. Lloyd then briefly explained the wording of the first part of the agreement, which included what water and wastewater facilities would be sold and leased to RWSA by the City and the County. He next referenced the sections that discuss Rivanna's role in the operation and maintenance of those systems and included the statement that "Rivanna has the obligation to maintain the reservoirs that they lease from the City." Mr. Lloyd then pointed out that the Authority leases the water rights and "that's all they have is the water rights." The agreement also states that "municipal uses will be the property of the City ... such as rowing and fishing." He further commented that the agreement "separates all these duties and responsibilities out ... how they are going to pay for it and it separates out the timing." New

facilities are covered at the end of the agreement under Section 4.3, which states that “In the event that the City or the Service Authority determines the need for additional water impoundment, production, transmission or distribution facilities, or wastewater interception and treatment facilities, Rivanna shall provide the requested facilities at the sole cost of the City or the Service Authority, as the case may be.” Mr. Lloyd then alleged that “the City has a decreasing forecast for water demand and the County has an increasing forecast for water demand, so the County has asked that we look at this Community Water Plan.” He next referred to Section 7.2, which discusses the establishment of rates for the urban area, and Mr. Lloyd read the following from subsection (a): “Water rates shall be uniform throughout the urban area, except as provided in subsection (c) below.” Paraphrasing subsection (c), Mr. Lloyd stated that “any of the charges under Section 4.3 will be added at the sole expense of the requesting party.” Mr. Lloyd felt this meant that RWSA could charge those expenses back to the County, if they were the requesting party. He further believed that the City was not making this request as they did not have a need for additional water.

Mr. Lloyd next stated that this document was “witnessed and signed. Some of the signers were still alive so you don’t have to divine what was on their mind.” He has talked to Mr. Francis Fife, who was the first signer in his capacity as Mayor of Charlottesville at that time, and he also consulted with an attorney about this document. Mr. Lloyd then commented on his inability to find out where the document was “stored” or if it had ever been amended, but he felt that RWSA probably had a copy in its files. He then offered to provide to any interested member of the public one of the extra copies that he had in his possession. [Editor’s Note: Mr. Lloyd’s reference to the Service Agreement, commonly referred to as the “Four-Party Agreement”, dated June 12, 1973 among the City of Charlottesville, the Albemarle County Service Authority, the County of Albemarle and RWSA.]

Dr. Richard Collins, who resides at 108 Wilson Court in the City, next stated that he was hesitant to provide his comments at this time because he was anticipating remarks from others in attendance, which included Mr. Lloyd, who has already spoken, Ms. Smith, Ms. Mooney, and Mr. Lynch.” Dr. Collins then commented that he would be speaking “in a different tone and for a different resolution of this issue than they will.” He added that although he “was a partisan with them” about the dredging study being “well worth whatever it cost ...,” he did not agree with the proposal that the City alone should conduct and pay for the dredging study. Dr. Collins further stated that he thought “for better or worse” a partnership had been created between the City and the County related to water and sewage systems, which he believed required moving forward with a regional approach in those two matters. He felt that it did not make “sense” for government decisions to be based on political statements such as, “Well, if you want that part of the water plan and we don’t want it, you pay for it.” Dr. Collins further commented that he felt “the City should propose what the City Council has asked for and that is ... have a dredging study undertaken with an RFP and have that study go forward and review whatever information comes from it and then look at what the consequences are, if any, for revising the water plan and the permits that are associated with it.” He did not “believe that the ACSA should take politics to the form that it has in passing [a] resolution asking that they not have to vote in this forum on this issue of government.” Dr. Collins also felt that “Mr. O’Connell and City staff should present that resolution to you all and have it voted up or down. ACSA has one vote - if they choose not to exercise it or vote in opposition, that’s their right. If the County Board of Supervisors, as

represented by Mr. Tucker, votes against it, that's also his right. I don't believe that will happen. I believe that you will all see that this is a worthwhile study, and I hope you'll proceed on that basis."

Ms. Dede Smith, who resides at 2652 Jefferson Park Circle in the City, next commented that "generally I agree with [Dr.] Collins, but I think we've come to an impasse on this dredging feasibility study." She felt that ACSA's letter to City Council, which she has seen, reflects that the "City and County have very different needs and very different interests and the way this is being paid for is going to impact the City and County very differently ... If what it takes to get the information that the City has asked for is that the City do that part of the study that they want, as a ratepayer - as a City resident - I would say, 'we need to do that.'"

Mr. Kevin Lynch, who resides in the City of Charlottesville, next commented that he read the letter from the ACSA concerning the dredging study, which he felt "in effect says, 'you all can vote for whatever you want, but we're not going to pay for it,' and I think that's fine." He believed that [the] City should pay for the study itself as it is the "owner of that reservoir and is responsible for the ultimate maintenance of that reservoir, even if the County refuses to pay for the maintenance." Mr. Lynch further commented that the City has been trying to get a dredging study to occur for the past year, but he felt that "the County has done nothing but stall - come up with committees - procrastinate - and I applaud the County for finally just putting it on the table and saying, 'look we don't want to do this.' At least we know where the County stands now." Mr. Lynch believed that "the City can move forward and it will be a better result because of that." He felt there were some "important things to keep in mind though as the City moves forward and obviously the City must insist that since we're footing the bill for the RFP the City will appoint the selection committee identified in s Section D, Part 1.2, of the draft RFP." Mr. Lynch also believed that "it's important that the City protect its interest and that means making sure that they are in charge of appointing who does this RFP." He further stated his belief that "even though the County doesn't want to pay for this, they'd be perfectly happy to meddle in the study further, and I suspect they will try to do that."

Mr. Lynch next requested that the RFP be amended to include the "ASTM" and "P-152" specifications. "ASTM is an engineering specification that large users of material - like cement users, road builders, asphalt makers ... use to judge the grade of material." He felt that an analysis of the material in the reservoir would be valuable to local markets who might potentially use the material. The "P-152 specification" calls for an analysis of the material in the reservoir as to its suitability for use as "runway fill." Mr. Lynch felt that "if we spend all this money and do this survey, let's not leave that an open question. It's easy enough to resolve, so let's make sure that it does get resolved."

Mr. Lynch then stated that he felt the "Introduction of the Draft RFP should be completely rewritten. It really says nothing at all about what the South Fork Reservoir is about or what's generally expected in the contract." He further alleged that "it was just a defensive justification of the current plan, and it would be completely irrelevant except to signal to a potential bidder that the issuer of the RFP doesn't really want dredging to occur and they're to work accordingly." He thought that there was some "better language that could be used - that instead of trying to defend this current scheme ... talk about the reservoir, the history of the reservoir, how much

sediment we think is in the reservoir, what we think the scope of the plan would be - and not burden it with a bunch of irrelevant leading information.”

Mr. Lynch next commented on the discussion concerning moving the time and the place of the Board meetings. He felt that it “would certainly be a good thing ... You couldn’t ask for a more inconvenient time and place for the general public to try to get to a meeting ... right in the middle of the afternoon. It’s not even during lunch or at the end of the afternoon, so it blows the whole afternoon for somebody [who] wants to come here.” He understood that there was some discussion about moving the meetings to the ACSA, and he thought “that would be almost as bad a location as this one in terms of trying to get to it.” Mr. Lynch felt there were “a number of much better locations” and suggested the training room located in the Public Works building that could “accommodate more people than this room” and is accessible “on just about any bus line.” He also suggested City Space, which is also a larger meeting space with good public access. He asked that the Board consider these issues when the item concerning changing the location and times for these Board meetings is under discussion.

Ms. Betty Mooney, who resides at 201 Sunset Avenue in the City, next welcomed the elected representatives on the Board, which she felt was “definitely a move forward that the ratepayers will have more active people on this Board.”

Ms. Mooney then commented that her husband gave her permission to speak on his behalf today. She stated that Mr. Mooney “very much supports the City paying for the dredging study. He feels that we have reached an impasse and that it is important that we get through this, and that there are different interests here, and both of us would like to see the City move forward with this as soon as possible.”

Ms. Mooney further stated that “I do agree with all the suggestions for the changes that Mr. Lynch has made on how the RFP should be issued.” She felt that “when we look back on this - hopefully 20 years from now I’ll be still around - we’ll say, ‘this is a good thing - that so many more people have gotten involved in the kind of water plan that we want to have for our future.’” She then stated that she found when she “FOIA’d the attendance records for the initial meetings” that there were “very few people at those meetings.” Most of the initial meetings had only about 11 to 17 people in attendance. Ms. Mooney recalled that Mr. Brent, who was [Executive Director] of the ACSA at that time, issued a memo asking for ideas on how to increase public participation. She felt the public was now “engaged” as evidenced by “over 400 people who have signed petitions,” public participation in surveys, and involvement by groups such as neighborhood associations, the Sierra Club, and the Thomas Jefferson Soil and Water [Conservation] Board. She believed that there were “a lot of smart people involved, but at the end of the day, we’re all amateurs.” Ms. Mooney next commented that she felt it was “finally time, I hope, for us to move from an amateur discussion, which has been very fruitful, but we’ve reached the end of the line with that. It’s gone on for over a decade. We’ve never done a professional study of our reservoir to get information about dredging. We need professionals. We need people other than all of us - calling, e-mailing, bringing people to meetings - who are not dredgers.” She then expressed her hope that “we will get to this point where we bring in the professionals, we get the information, and this community will be behind whatever we find out - but we need to find it out.”

Mr. Richard Lloyd next clarified his earlier comments concerning Section 4.3 of the “Four-Party Agreement.” He noted that he “failed to point out” that the County Supervisors and RWSA are not listed. The decision maker is either the City or the ACSA under that section.

Mr. Gaffney next thanked the members of the public who provided comments at today’s meeting. He appreciated their information and dedication to the Community Water Supply Plan.

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) Comprehensive Sanitary Sewer Study Amendment
- 5e) Cafeteria Plan Amendment
- 5f) 2009 Salary Survey

In regards to **Item 5a, Staff Report on Finance**, Ms. Mueller stated that she appreciated that the May meeting was being held a week early, but she did not feel that the Board could wait until the June Board meeting to be provided with the financial information. She had some concerns with the figures from last month’s report and did not want to receive two months of financial data a week before the end of the fiscal year. Ms. Mueller formally requested that the financial information be provided to the Board by next week, which would be the normal time to receive the information, to allow time to review the figures.

In regards to **Item 5b, Staff Report on Operations**, Ms. Mueller referred to page 2 of the report that listed two odor complaints related to the Moores Creek WWTP. She stated that she attended two meetings at this facility during April, and the odors were “very obvious.” During a discussion with staff concerning the odor issue, she was advised that the strong sewage smell could have been the result of the number of septage haulers using the facility on a Monday. Due to the strong odor that she detected on those two occasions, Ms. Mueller felt that the odor issue was still a serious problem that the Authority needed to address. Ms. Thomas next commented that the Board report referred to the “Out of Service” secondary clarifier as a possible contributor to the odor detection during the complaint time. Ms. Mueller responded that she was not able to confirm if the odor complaint occurred on the same day as the breakdown of the clarifier equipment. Mr. Gaffney then stated that he understood odor control measures would be implemented as part of the ENR project at the Moores Creek WWTP. Ms. Mueller stated that he was correct, but she felt it was important to convey to the public that the odor complaints were being taken very seriously and that the Authority was working to resolve this issue. Ms. Thomas next noted that Albemarle County was funding the construction of the new Septage Receiving Station as part of the odor control improvements being undertaken at the facility.

In regards to **Item 5c, Staff Report on On-going Projects**, Ms. Mueller expressed concern that the Board has not yet seen a report from the Expert Panel reviewing the Ragged Mountain Dam

project, which she understood would be provided in the near future. Ms. Mueller had also requested information on the Sanitary Sewer Interceptor, which she did receive.

In regards to **Item 5d, Comprehensive Sanitary Sewer Study Amendment**, Mr. Fern stated that he and Ms. Mueller would like to pull this item from the agenda as they felt it was “time” that the staffs from the ACSA, the City, and RWSA discuss this project without the presence of consultants before moving forward with additional Work Authorizations in the amount of \$40,000. Ms. Thomas then commented that she felt County staff should also be involved in that discussion as it is in the County’s interest to have a long-term sewer system that works for its growth management project purposes. Mr. Tucker suggested that Mr. Mark Graham be invited to this discussion as he was familiar with the project. Mr. O’Connell requested that the Board be informed when the meeting has been scheduled and also provided with the meeting agenda. Ms. Mueller stated that she felt the information could be communicated before the next Board meeting.

In regards to **Item 5f), 2009 Salary Survey**, Ms. Mueller requested that this item be deferred as she felt salary increase issues should not be considered during the current economic conditions. She stated that the City has deferred taking any action even on positions that have “clearly been earmarked as being off-market for almost two years” for economic reasons. Mr. Tucker then asked if this request related to a salary scale issue. Mr. Frederick affirmatively responded. Mr. Gaffney next questioned if the salary scale adjustment would affect the Authority’s salary expense. Mr. Frederick stated that there would be no salary adjustments, except for the minor adjustment of two RWSA positions, which are currently at the bottom of the scale and would automatically adjust to the new entry-level salaries. Mr. O’Connell then commented that it would change the actual pay for any new Authority hires, so he agreed with Ms. Mueller’s comments that it was not an appropriate time to deal with salary issues. Mr. O’Connell then asked how the County was handling this issue. Mr. Tucker replied that the County did not propose any salary scale adjustments in their proposed budget. Mr. Fern next stated that ACSA is proposing a 3% salary scale adjustment based on the same study referenced in RWSA’s Board report.

As there were no further questions or discussion, Ms. Mueller moved that the Board of Directors vote to approve Items 5a), b), c), e), and g) of the Consent Agenda, deferring Items 5d) and f). The motion was seconded by Mr. Fern and approved by a 7 – 0 vote.

6.0 Other Business

In regards to **Item 6a, Public Hearing - FY 2009-10 Operating Budget**, Mr. Gaffney opened the public hearing at 2:28 p.m.

Ms. Colette Hall, who resides at 101 Robertson Lane in the City, first gave a special welcome to Councilor Edwards and Supervisor Thomas.

Ms. Hall next stated that last week the media reported that “RSWA would receive about \$20 million from the recently passed federal stimulus bill to renovate the Moores Creek treatment and processing center.” She felt it was “a lot of taxpayers’ money that otherwise would have been taken from where - the RSWA reserves or the need to float a bond?” She further commented that

“until the future water plan is decided and a dredging estimate produced by a legitimate dredging company, the water and sewer rates should not increase for water and sewer customers. Let us see how much is needed before you increase the burden on the already burdened RSWA customer. Why not spread the burden around and increase the rates to future RSWA customers - to share the improvements - to share the responsibility?”

Ms. Mueller next stated for clarification purposes that she believed Ms. Hall meant to say “RWSA” instead of her references to “RSWA.”

Mr. Gaffney then asked Mr. Frederick to clarify the funding source for this project as it was not being funded through the federal stimulus package. Mr. Frederick explained that there were two items that had been approved for state financing. The first one entailed \$21.5 million in grant money to apply toward upgrades to the Moores Creek WWTP, which did not require a pay-back by the locality. The second funding source is a \$20 million low-interest State Revolving Fund loan, which is leveraged with state and federal money to obtain below market rate interest on borrowed money being applied to the Moores Creek WWTP upgrades. None of those “two pots of money” is being used to fund the water supply.

Mr. Kevin Lynch, who resides in the City, next commented that as the Board was aware, “Rivanna is seeking another about 10 or 11 percent [increase] in the water rate.” He believed that “there is no justification for raising the water rate at all” and felt that the water rate should be lowered. He did not know how many in attendance today were aware that “25 percent of the revenue that Rivanna collects right now doesn’t go into operations or debt service but is just going into building up a cash reserve that Rivanna’s been sitting on for six or seven years now - \$30 million is in that cash reserve.” Mr. Lynch further claimed that RWSA’s cash reserve “started ironically when I was on Council - we passed a water plan back in 2002 - we raised rates by 70 percent over two years to pay for that water plan.” He then alleged that “while this Board has made a hash of the water plan, you sure as heck have been great at collecting the money and so now you’re sitting on \$30 million that another Board took the political heat over and you’re planning to spend it on something else - something that I believe that you don’t need. Socking away 25 percent a year in cash - that’s a margin that a private utility that’s publicly regulated, such as Dominion Power ... could only dream of socking away that kind of cash. Not in their wildest dreams would the state regulators let them take 25 percent off the top the way you folks are doing. The state would insist that if they have worthy projects that they’d be paid for with bonds the way every other private company does it.”

Mr. Lynch next stated that he was also concerned that “Rivanna still has no idea how much its water scheme will really cost.” He further alleged that RWSA was “relying on CIP numbers from last year; numbers that were developed before [Rivanna] knew about the cost overruns of the dam. You know that there have been cost overruns. You haven’t been able to quantify them yet, so you’re just going to ignore them and pretend they don’t exist and use last year’s numbers ... if a company like AIG tried to do that and say ‘well, you know for this year’s budget we’re going to pretend last year didn’t happen and we’re going to use two years ago the value of our balance sheets,’ ... the public would laugh at them, and it’s only because they know less about the operations of this Board that they’re not laughing here or maybe because if it’s hitting us in the pocketbook that we’re not laughing.”

Mr. Lynch then stated that he wanted to speak further “on the subject of this dam cost overrun ...” because he was “puzzled” by Ms. Mueller’s comment that “there hasn’t been a dam report yet from the experts.” He further claimed that he “spoke with a County Supervisor several weeks ago who told me that Gary O’Connell had assured him that he had been in touch with these experts who said, ‘don’t worry about the dam. It’s all going to work out just fine.’ So, I’m curious as to how you all know that without a report.” Mr. Lynch then stated that he would “take this opportunity since I’m standing in front of you [in] public to make a Freedom of Information Act request. I’d like to see all communication with Rivanna staff and with Rivanna Board to the three parties who are working on this dam or any other party in which the subject of the Ragged Mountain Dam has been broached within the past six months concerning that dam because apparently there’s a back channel whisper campaign going on that hasn’t been laid out to the public yet.”

Ms. Betty Mooney, who resides at 201 Sunset Avenue in the City, first commented that she would only be speaking for herself at this time. She stated that she agreed with Mr. Lynch’s comments that the customers’ rates should not be raised “at all.” She felt that “the citizens of this community are doing an incredible job of conserving water, and you’re helping them - you’re giving out kits - you’re putting out lots of education.” She had observed during the last year “a tremendous ramp up of information about conserving water.” Ms. Mooney further commented that “there are architects working on buildings that are going to totally change the way we use water - the City has gotten an award - we’re all proud of that, but I think we need to see some rewards for the citizens ... when citizens conserve water, their rates go up.” She then stated that she wanted this Board to “send a message to our community and not raise their rates and encourage them to continue to conserve water.” She felt that the agencies distributing the water-saving devices in this community should also help the citizens learn how to use them. Ms. Mooney commented that she was “not too swift when it comes to plumbing, so I could use a little more help - like a little sheet telling me what to do.”

Ms. Mooney next commented that the “citizens’ finances are a mess.” She further claimed that “the people who can least afford these rate increases are hurting the worst - they’re losing their jobs - they’re not getting salary increases to keep up with inflation ... everyone is having a very difficult time.” She thought that “this was the worst of all times to be raising rates, and at least now and for maybe several years, we need to call a halt to that.” She then stated that “our President has said we are not going to be seeing Social Security adjusted for inflation right now because of the problems in our economy ... I hope that you will take this seriously and I hope you will take into consideration that there is a large percentage of our population [who] cannot afford a rate increase ... it’s just going to hurt them even more.”

Ms. Mooney then stated that she felt “there’s no reason to go forward with it because we don’t know the budget yet for the dam. We haven’t reevaluated the plan and the dredging results.” She claimed that “we really don’t have any hurry - there’s no fire right now - we’ve got plenty of water for this community - there’s no rush. We do need a plan - we do need cost estimates that are accurate - we need to go forward with that. We do need experts to evaluate dredging, but we don’t need to raise the rates.” Ms. Mooney concluded her comments by stating, “Please, right now, do not do that.”

Ms. Dede Smith, who resides at 2652 Jefferson Park Circle in the City, also “encouraged” the Authority to not raise the rates and then commented that she would be coming “from a slightly different angle.” She stated that on tonight’s City Council Meeting agenda is an item concerning using some of the \$100,000 currently in the City’s reserves “to offset rate increases for City residents ...a reserve of \$100,000 versus a reserve of \$20 million ... either of which could be used to offset rates.” She felt that it ‘just does not seem fair nor appropriate for the City to use that reserve to try to lessen the burden for their city residents when you all do charge so much more to put into reserves that you could use to offset these rates ... combine that with the possibilities [that] the City will need to chip in for the dredging feasibility study - that would be a much better way to use that reserve.”

Dr. Richard Collins, who resides at 108 Wilson Court in the City, next stated that he would not be requesting that the rates be lowered or approve any increases, but would be commenting on the impacts on the proposed dredging study, “no matter who finances it,” on how it will be undertaken. He then referred to Mr. Lynch’s comments that suggested that if the City pays for the dredging study - “which he favors and I do not”- that it have “special considerations in the way the RFP is drafted and who is on the committee to evaluate it.” Dr. Collins next claimed that “part of the concern about dredging is the belief that it can be done economically to provide enough water for foreseeable needs at a much lower cost for our residents - City and County.” He further stated that “until that study is conducted, we will really not know how much is needed to meet adequate needs under a reasonable focus.” Dr. Collins then asked the following for consideration: “How much money is now going to be utilized in this budget for understanding the conditions that will have to be met if the Water Supply Plan is revised because of new information relating to the cost of dredging and to the adequacy of the quantity of water needed to be stored and then delivered?” He questioned who would be doing those evaluations - “...many of us who have been opposing the Water Supply Plan felt that the consultants that you have been using - particularly an attorney apparently who has been the sole source of your information on the regulatory process - that somehow we know here in this budget who’s going to undertake those evaluations with the Corps of Army Engineers and with the Virginia Department of Environmental Quality as to what conditions have to be met, what flexibility and apparent choices to be made.” He felt these issues “should be part of the budget process so we know how much would be spent on that from the Rivanna.”

As there were no other members of the public in attendance at the meeting who wanted to speak on the proposed RWSA FY 2009-10 operating budget, Mr. Gaffney closed the Public Hearing at 2:43 p.m.

In regards to **Item 6b, Adoption of FY 2009-10 Operating Budget and Wholesale Water and Sewer Rates for FY 2010**, Mr. Frederick briefly summarized the budget highlights that were listed in the cover memorandum. He stated that the budget continues to provide for future funding of Capital Improvement projects, which is based on the CIP adopted in March 2008. No new positions are being recommended, and no merit pool is being requested. The proposed budget reflects a reduction in water usage, which impacts rate calculations. The Authority’s operating expenses for FY 2010 represent a 3.7% reduction from FY 2009. The budget document is nearly identical to the budget presented in February with exceptions being minor reductions in a few expense items, mainly in decreased health insurance estimates.

Mr. Gaffney then asked Mr. Frederick or Mr. Wood to provide a summary of RWSA's reserves. Since Mr. Wood did not have the specific numbers available at this time, Mr. O'Connell asked if Mr. Wood could describe conceptually the purpose of the reserves. Mr. Wood stated that the Authority has \$50 million in bond debt. A certain amount of money needs to be set aside to guarantee one year's debt service on those bonds. Currently, RWSA spends about \$5.5 million a year on debt service, which requires an equal match to be held in reserves that cannot be "touched" or even invested in "anything reasonable like a local government investment pool." RWSA also has "to restrict and set aside" another \$2 million to cover principal and interest payments. Mr. Wood further commented that the Authority's goal is to have 60 days of operating funds in reserve, which is roughly \$4 million depending on the budget, to handle principal and interest payments as well as sufficient cash to pay vendors for large capital projects. At some point, Mr. Wood plans to ask the Board's permission to expand that time frame to 90 days. Also, the Five-Year CIP will require an additional \$100 million in debt to fund large capital projects, which include a \$40 million water project and two \$40 million sewer projects. RWSA's debt load will increase 200%, which will require that the rates increase in order to pay for that debt service. The Authority's goal is to fund the \$150 million CIP with 10% cash, which equates to \$14 million. The ability of RWSA to impose a level rate increase instead of a large increase in one given year depends on the amount of cash built up in reserves. The Authority issued bonds in 2005 in the amount of \$20 million. While all those funds were being spent (as is required by federal arbitrage regulations) RWSA was building up its cash reserves. Mr. Wood explained that the reserves are currently being slowly used on the large capital projects. In about a year the Authority will need to issue bonds again, and the cycle will start over.

Mr. O'Connell then asked Mr. Wood if he could explain the difference between the wholesale rates and the retail rates charged to the City and ACSA customers. Mr. Wood stated that the wholesale rates that RWSA charges to its two customers are based solely on flow. Flows charts illustrate the fluctuations in flow that occur about every one to two years, but over the long term the flow is increasing. Currently, the flows are remaining "flat or going down a little bit." When flow decreases, the rates need to increase in order to generate the same amount of revenue. Although the budget reflects a rate increase, the Authority is actually operating on less revenue. Although Mr. Wood stated that there was a difference between the way wholesale rates and retail rates are calculated, he did not feel he was qualified to speak about the retail aspect since his experience is at the wholesale level. Mr. Wood did comment that the effect of the rate increases on RWSA's two customers is "not marginally the same as it is on the retail customers." Mr. O'Connell next stated that the "reality for City customers is a very small increase." Mr. Wood added that the Authority's wastewater flows can fluctuate as much as 40% in any given year, which is another reason for building up the cash reserves in order to make up the difference in the revenue stream.

Mr. Tucker then commented that most of the funds that Mr. Wood just mentioned were "restricted revenues in reserve," he then asked Mr. Wood about the estimated "unrestricted" amount in reserves. Mr. Wood stated that it would be about \$5 million for water and about \$5 million for wastewater. The Authority has targeted about \$1 million for rate stabilization, which was instituted in response to the 40% rate increase that was needed due to the 2001 drought. Also, half of RWSA's budget is totally fixed to pay its bond payments.

Ms. Thomas next stated that she was “impressed” that although items such as electricity and chemicals were increasing, “the actual total budget has been reduced this year.” She then referred to the statement on the cover page that read, “Reinvestment has been deferred in past years and has now come due to sustain legal compliance, environmental protection, and public health. This budget recognizes that need.” She added that based on her government experience she felt “we had been penny pinching our infrastructure and at some point you have to pay,” which she felt this budget reflected. She also noted that there was an error in one column on page v of the budget document, which should be disregarded.

Ms. Edwards then commented that it would be helpful for her and for the “ordinary person” to have a “clear explanation” as to how their water and sewer bills will be impacted next year.

Mr. Fern next provided additional information concerning the retail rates for ACSA customers. He echoed Mr. Wood’s comments that wholesale rates are different than retail rates. The ACSA is proposing at this time on an average usage basis that a single family residential customer would see rates increase by 9%. He compared that to wholesale rate increases that RWSA is proposing of 11.3% for water and 12.5% in wastewater. Mr. Fern noted that retail rate increases do not necessarily correspond with the wholesale rate increases. The ACSA Board of Directors takes into consideration how the rates affect each of the ACSA ratepayers whenever rates are adjusted.

Mr. O’Connell then raised the issue of infrastructure/maintenance needs of the ACSA, City Public Works Department, and RWSA, which adds expenditures to each of their budgets and impacts retail rates. The rates for the City would look different than ACSA’s rates. The proposed rate increase for water was between 1% to 2% and about a 3% increase for sewer rates. The City has reserves set aside for handling “peaks” in rates. The rate stabilization was put in place at the Authority due to the “huge jump” in rates that took place a number of years ago and putting cash in reserves upfront is a method to prevent this from occurring again. This process takes some time and might mean that there is a large cash reserve “sitting there” until it is needed to cover large expenditures.

Mr. Tucker next commented that there were many mandated projects, especially on the sewer side, which impact the ACSA and City rates. Mr. O’Connell added that the biggest effect on the rates is on the sewer side due to a state-mandated program to clean up the Chesapeake Bay. There has been very little public debate and discussion on this issue, but it will be reflected on the bills that the ratepayers receive in July. Mr. Fern next stated that both the City and the ACSA are putting more funding into their CIPs than in previous years. If the rates are not raised, then the capital projects related to the infrastructure system will get further behind and be more costly to undertake in the future. Mr. Gaffney next commented that it appeared RWSA’s reserves are not too high considering the capital projects that need to be undertaken and that the Authority’s debt and bond-required reserves will also increase.

Mr. O’Connell then stated that since the budget was presented to the Board in February, was publicly advertised, and discussed previously by the Staff Committee he moved that the Board of Directors vote to approve the following resolution regarding the adoption of

the Rivanna Water & Sewer Authority operating budget and related wholesale water and wastewater rates for FY 2010 to be effective July 1, 2009, seconded by Mr. Tucker:

RESOLUTION

**ADOPTION OF THE RIVANNA WATER AND SEWER AUTHORITY
BUDGET AND RELATED WATER AND WASTEWATER
RATES FOR FISCAL YEAR 2010**

WHEREAS, the Authority has advertised and held a public hearing on May 18, 2009, on the proposed Fiscal Year 2010 budget and related rates in accordance with Section 15.2-5136(G) of the Code of Virginia, as amended;

THEREFORE, BE IT RESOLVED that the Rivanna Water and Sewer Authority Board of Directors hereby adopt the accompanying rates schedule effective July 1, 2009, and the Fiscal Year 2010 budget as summarized in the attached table.

WATER RATES

Urban Area

City - \$2.461/1000 gal.

ACSA - \$3.320/1000 gal.

Crozet - \$52,315/monthly

Scottsville Water - \$32,089/monthly

WASTEWATER RATES

Urban Area

City - \$2.784/1000 gal.

ACSA - \$3.063/1000 gal.

Glenmore - \$22,968/monthly

Scottsville Wastewater - \$25,216/monthly

VOTE

AYES: Ms. Mueller, Ms. Edwards, Mr. O'Connell, Mr. Gaffney, Ms. Thomas, Mr. Tucker, Mr. Fern

NAYS: 0

ABSENT DURING VOTE: 0

ABSENT DURING MEETING: 0

Prior to moving on to **Item 6c, Dredging Feasibility Study**, Mr. Frederick recognized Mr. Krueger, who would make an announcement regarding the Board going into a closed session. Mr. Krueger announced that prior to considering the Dredging Feasibility Study, the Board was prepared to go into a closed meeting to discuss a legal opinion with respect to that item.

8.0 Closed Meeting

Mr. Tucker made the following motion, which was seconded by Mr. Fern:

RESOLVED that the Board of Directors of the Rivanna Water & Sewer Authority enter into a closed meeting for consultation with legal counsel with respect to a legal opinion as permitted by Section 2.2-3711.A.7 of the Code of Virginia.

The motion was approved by a 7 - 0 vote, and the Board of Directors of the Rivanna Water & Sewer Authority went into a closed meeting at 3:00 p.m.

ATTENDEES: Ms. Edwards, Mr. Fern, Mr. Frederick, Mr. Gaffney, Mr. Krueger, Ms. Mueller, Mr. O'Connell, Ms. Thomas, and Mr. Tucker.

Resumption of Open Meeting

The Rivanna Water & Sewer Authority Board of Directors meeting was reconvened at 3:35 pm.

Ms. Edwards moved that the Rivanna Water & Sewer Authority Board of Directors vote to approve the following resolution, seconded by Ms. Thomas:

WHEREAS, the Rivanna Water & Sewer Authority has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by the Rivanna Water & Sewer Authority that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Rivanna Water & Sewer Authority hereby certifies that, to the best of each members' knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Rivanna Water & Sewer Authority.

Prior to the vote, Mr. Hawes Spencer, identifying himself as "a citizen of this Commonwealth", stood up and stated that he thought there was a problem with the executive session because "just having a lawyer giving advice is not sufficient or necessary to invoke the Freedom of Information Act exemptions." He further commented that "exemptions are typically for real estate acquisitions, disciplinary matters, and things of a very private nature. Merely negotiating with other bodies is not a sufficient trigger to make it a legal public meeting." He continued by stating that "nothing in the Virginia Freedom of Information Act allows just the presence of a lawyer in attendance to permit the closure of a meeting, specifically 'consultation in an open meeting would have to adversely affect the negotiating or litigating position of the public body.' Given that both the County and the City have members on this Board, it seems that there is prima facie

evidence that there could be a problem - I hope I'm wrong - I would like to see if you could provide a little bit more specificity about the necessity for a closed hearing."

Prior to addressing Mr. Spencer's comments, Mr. Gaffney called for a roll call vote: Ms. Mueller – Aye, Mr. O'Connell - Aye, Ms. Edwards - Aye, Mr. Gaffney – Aye, Ms. Thomas - Aye, Mr. Tucker – Aye, and Mr. Fern – Aye.

Mr. Krueger next pointed out to the Board Chairman that under Section 2.2-371.A.7, which is the section under which the Board went into the closed session, "Mr. Spencer failed to read the last clause of that sentence which includes 'consultation with legal counsel employed by or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.'"

Ms. Mueller then stated that "at the last meeting of the four boards it was requested that RWSA obtain legal counsel to address a very specific issue. At this time, we have that information from our legal counsel." **She then moved that the Board of Directors vote to waive the confidentiality and attorney-client privilege and make this communication available to the public, seconded by Mr. O'Connell. The motion was approved by a 7 - 0 vote.** (The communication is attached to these minutes.)

Mr. Gaffney next commented that copies would be available to the public at the end of the Board meeting. Ms. Thomas suggested that the Chairman point out for the benefit of the public that the motion just made was for the subject of discussion in the closed session and not the next item on the agenda. Mr. Gaffney then explained that the information being released is the opinion letter from the Board's attorney to the Board.

6.0 Other Business (cont.)

In regards to **Item 6c, Dredging Feasibility Study**, Mr. Frederick stated that in the Board packet is a draft for a Request for Proposals (RFP) to conduct a Dredging Feasibility Study. For the public's benefit, he explained that an RFP is something that is "broadcast to the professional consulting profession that Rivanna is interested in seeking technical services to evaluate in this particular case a dredging feasibility [study]." He noted that this was "not a bid to construct," but was "a request for professional engineering services." The draft included in the Board packet was edited after the City Council meeting on April 6, 2009 and incorporates comments requested by City Council. The draft was initially requested by the four boards during the March 3, 2009 meeting, but there was no draft available at that time. RWSA staff prepared this draft after that time.

Mr. Frederick next discussed the items contained in the "Scope of Services" that are listed on page 5 of the draft RFP as follows:

The first one involved "Technical Support for Legal Opinion" on whether there were fringe wetlands at the South Fork Rivanna Reservoir (SFRR) that might "fall under special rules" related to whether dredging would be allowed in those areas or mitigation might be required.

The second step is a "Bathymetric Survey," which looks at current sediment levels at various points if a survey is conducted of the entire reservoir. The survey also provides a "map" of the available area above the sediment that can hold water.

A "Pre-Dredge Survey" is a step that identifies any potential barriers to dredging that could reduce the amount of sediment that could be removed from the reservoir.

The "Volume Analysis" uses the "Bathymetric Survey" information and calculates how much volume could be restored. In order to determine the impacts to the water supply, the amount of the restored volume located above the elevation of the lowest intake of the dam would need to be computed.

A "Sediment Analysis" involves the development of a plan to sample sediments in sections of the reservoir at different depths and different locations. The more sampling that is conducted the better the information that can be obtained. The challenge is to do sufficient sampling to obtain reliable information on the types of sediment found in the reservoir in the most economical manner. The analysis of the sediment should also include the "marketability of the materials," which could affect further studies.

The "Processing and Disposal Site Analysis" is a very important part of the study if dredging is going to be undertaken. As has been previously discussed, hiring someone to remove the sediment from the reservoir "is not the total cost of the project." The largest cost could entail how the material is processed after it is removed from the reservoir, which would include the type of disposal site and whether the material is marketed or used for other purposes. This analysis would be more detailed than ones conducted previously and would involve "significant discussions and negotiations with potential property owners."

A "Dredging Alternatives Analysis" involves an examination of the different means and different disposal sites based on the "preceding Processing and Disposal Site Analysis" and would actually formulate cost estimates for the various alternatives.

The "Forebay Analysis" could be conducted independently of the "Processing and Disposal Site Analysis" and "Dredging Alternatives Analysis" and would determine if there is a way to modify the "head end of the reservoir so that it can better capture sediment." This option assumes the removal of the sediment in the most efficient manner in order to "become a good catchment for future sediment." This analysis would examine whether the use of the "forebay" would "disturb or change the footprint of the reservoir itself" that would cause environmental damage that regulatory agencies would determine needed to be mitigated or possibly even avoided.

Mr. O'Connell next asked about whether some of the studies could "build" on available information and if all the analyses listed on page 5 would be necessary to achieve the goal of the Dredging Feasibility Study. Mr. Frederick stated that in order to conduct the "Dredging Alternatives Analysis" all the other studies would need to be done "except arguably maybe not the 'Forebay Analysis.'" To conduct the "Processing and Disposal Site Analysis" all the studies listed above that item in the "Scope of Services" would need to be undertaken. The "Forebay Analysis" would be helped by conducting at least a "Bathymetric Survey" of the upper parts of

the reservoir, and probably some "Sediment Analysis", to better understand the type of sediment that is desired to be trapped by the "forebay." Mr. O'Connell then commented that it appeared that the studies were "all very interconnected." Mr. Frederick added that in order to be able to obtain the cost estimates and "a recommendation about how to dredge the reservoir back to original contours" that a "Dredging Alternatives Analysis" could provide, all the other studies listed in the "Scope of Services" would be needed with the exception of the "Forebay Analysis."

Mr. Gaffney then asked Mr. Fern to briefly summarize the letter that the ACSA Board of Directors sent to City Council concerning the Dredging Feasibility Study. Mr. Fern stated that the ACSA Board of Directors has had two discussions about the RFP issue. From last Thursday's discussion a letter was sent to City Council on Friday, May 15, 2009, which basically stated that the ACSA "would propose moving forward on the Dredging Feasibility Study provided that only three of the tasks in the 'Scope of Services' were addressed. Those being the 'Technical Support for Legal Opinion on Wetlands,' 'Bathymetric Survey,' and the 'Forebay Analysis.'" The letter also stated that the ACSA would share the costs of those three tasks with the City in moving forward. ACSA would not share the costs of any of the other tasks in the "Scope of Services." The ACSA Board of Directors also wanted to "make sure that it was very clear that if the City wished to move forward to get some answers for their constituencies that involved the other tasks, they could certainly move forward at their cost."

Mr. Tucker next questioned for clarification if Mr. Fern was referring to RWSA being able to move forward with the three tasks identified in the letter sent to City Council as it related to cost sharing. Mr. Fern affirmatively responded.

Ms. Thomas then commented that she knew the answer to the question that she was about to ask, but she was not certain if the public knew the answer. She was concerned that if the "Bathymetric Survey" was conducted this year whether it would "suffice to meet the requirement that is with our Water Supply Plan permit that says we have to do a bathymetric study at a certain point - I think after the dam is built." She then asked Mr. Frederick to "share the answer" to her question with everyone in attendance. Mr. Frederick stated that Ms. Thomas' question was about the "regulatory requirements of the permit document. The permit states that by the time the new Ragged Mountain Dam is made operational, a new 'Bathymetric Survey' of the SFRR would be performed." The regulatory agencies were "interested" in seeing that the survey be undertaken because they want to know how much storage is available in all of the reservoirs. Because the SFRR is changing, the regulatory agencies made the request for updated information because the amount of total usable storage is one of the inputs into the formula as to how much flow needs to be released at the South Fork Dam. The regulatory agencies did not put in that requirement "to suggest 'yes' or 'no' that this community should dredge. They left that decision up to the local community to decide." RWSA did ask DEQ if a "Bathymetric Survey is done now as a part of this study, could it "count also as the updated study that was required under the permit." DEQ suggested that if RWSA "moves forward diligently to design and construct a new dam and it is within the time frames that [RWSA is] suggesting early in the next decade, that it probably would be satisfactory to [the regulatory agencies] to count this 'Bathymetric Survey' as meeting that permit requirement."

Mr. O'Connell then asked Mr. Frederick to discuss the type of engineering firm that the Authority would expect to conduct all the elements included in "Scope of Services."

Mr. Frederick stated that the Authority had some "strong requirements" in the draft RFP for a firm that has "experience in engineering services related to dredging projects." RWSA has requested up to ten references on previous dredging projects "as similar in scope to ours as they can based on their firm's experience." He added that "since a lot of dredging is done in coastal areas, it may be difficult to find a firm or many firms that have done a lot of inland dredging."

Ms. Mueller next inquired if RWSA anticipated that this would be a team project "as opposed to just one firm." Mr. Frederick replied that it was possible that "both types of proposals could be received." He then asked for clarification if Ms. Mueller was referring to a "team" as "meaning more than one consulting firm deciding to align forces together to accomplish this study."

Ms. Mueller replied affirmatively, and Mr. Frederick stated that a team approach could be utilized. He added that there "was a lot of room for subcontracting or subconsulting for some of the individual tasks" in the "Scope of Services," such as "Sediment Analysis" and "Bathymetric Survey." RWSA would not be instructing the firms about how to structure their studies but would request that they provide information on how they "propose" to conduct these studies.

Ms. Edwards then commented that the elements included in the "Scope of Services" involved "a lot of work," and questioned whether "we are going to find somebody that is going to be able to step up to the plate to really want to do this and be challenged by it." Mr. Frederick replied that he was "confident that we'll find several firms that will say 'we can do it.'" RWSA will have the "task to sift through their documents and ask the tough questions and be sure that they can [do it]." This community has had recent "exposure to one [dredging firm]," but there are also other firms with that type of dredging experience. Ms. Edwards next asked about a "timeline" for completing all the analyses listed in the draft RFP "in a logical way." She also inquired about the sequence for conducting these studies. Mr. Frederick responded that it would be the consultant's decision as "to fine tune how they want to do it," but he "could envision a scheme" where some of the work for the first three items - "Technical Support," "Bathymetric Survey," and the "Pre-Dredge Survey"- "could probably overlap." Information needs to be available from the previous surveys in order to conduct the optimum 'Sediment Analysis' because of the attempt to sample sediment representative of the sediment that would be proposed to be removed by dredging." He believed that some of the work involved with the "Processing and Disposal Site Analysis" could be conducted on a "preliminary basis - looking at maps, finding potential land sites, talking to staff and others in the community who are aware of people who might be willing to offer sites." However, in order to get the most reliable preliminary estimates, the "nitty gritty work would need to be undertaken after those preceding studies occurred." He also felt that the "Dredging Alternatives Analysis" needed to be done as part of the last step because the information obtained from this task "builds on" the data from the previous tasks. The "Forebay Analysis" he felt "to some degree could be independent of the 'Disposal Site Analysis' and the '[Dredging] Alternatives Analysis,'" but the "Forebay Analysis" was dependent upon information from the "Bathymetric Survey," the "Pre-Dredge Survey," and "Sediment Analysis."

Mr. Fern made a motion to have RWSA staff proceed with the issues of the Dredging Feasibility Study RFP provided that the study be limited to the three tasks - the "Technical Support for Legal Opinion on Wetlands," the "Bathymetric Survey," and the "Forebay Analysis."

Mr. O'Connell seconded the above motion with the following comment:

He stated that "several of us come here as representatives of the City obviously. This full RFP was approved after much discussion, debate, [and] language changes." He added that Mr. Frederick was present during those proceedings. The City representatives on this Board "come with Council's blessing approval of this RFP." He further stated "that in the spirit of working together in the community and my belief that there will be support for this, I'd like to make a motion to amend Mr. Fern's motion as follows:

"To amend this motion to include in addition to the first three studies, the remaining five studies that the Board has been discussing under the RFP as proposed in the 'Scope' page[s] 5 and 6, provided that the remaining five studies would be at the City's sole cost, subject to City Council approving funding for the full dredging studies.

"Further that if dredging ultimately became part of the Community Water Supply Plan, then the part of the dredging study paid by the City would also be subject to the usual cost split between the City and the ACSA. If the City Council decided not to fund the extra part of the study - those five [elements] - RWSA would contract for studies only with respect to the parts in the original motion, which was for the 'Technical Support for Legal Opinion on Wetlands, the Bathymetric Survey,' and the 'Forebay Analysis.'

"Further, the RWSA staff is directed to issue an RFP based on the draft RFP that is in the agenda book and presented today before this Board, except that a statement be added that 'RWSA reserves the right to reduce or eliminate some of the analysis in the draft Scope during negotiations with the selected firm based upon the best interest of the Authority, the City, the County, and the ACSA.'"

Mr. O'Connell next stated that the intent of the above motions was to "leave this meeting with a joint decision, and it would be City's Council's decision as to whether or not to fund the additional studies ... [Mr. Frederick] would be authorized to release the RFP and contingent upon where the council is, we could take some tasks out of the study during the negotiation process, if that's needed." City Council meets tonight, and a report on utility rates is on the agenda for discussion. Ms. Edwards has agreed to introduce this issue at the end of the City Council meeting for further discussion.

Mr. Tucker then inquired if Mr. O'Connell's "reasoning" behind his motions was to allow Mr. Frederick to move forward with the issuance of the RFP, but if the funding by City Council "does not come forward at the time we are ready to issue the proposal or select a consultant, then [Mr. Frederick] may reduce the tasks in this [RFP] through the negotiations." Mr. O'Connell explained that the intent is to keep the RFP moving forward with the staff so that the process is not delayed another month or two.

Mr. Fern was in agreement with Mr. O'Connell's amendments to the original motion except for one item. He stated that if City Council did not want to fund any of the remaining studies that RWSA does not move "forward with the dredging study." Mr. O'Connell clarified that the amended motion states that if City Council does not agree to fund the rest of the studies, RWSA would proceed with the first three studies as outlined in the original motion. Mr. Fern next

commented that if the RFP is narrowed down to the three items, then RWSA “not move forward with the three.” Mr. O’Connell then stated that he is hearing from Mr. Fern that he has not “accepted the amendment as it is written,” and asked if there was a second for Mr. Fern’s original motion. Mr. Fern next clarified that if City Council does not want to approve all of the other tasks under the “Scope of Services”, he was not certain if they would be approving the same three tasks that the ACSA has proposed. Mr. O’Connell then stated that the RWSA Board is approving the three tasks as proposed by the ACSA Board of Directors and ‘subject to City Council’s funding, the other five elements would be added and would be all part of one study.’ Mr. Fern then questioned whether City Council would be “satisfied with just those three elements being done in the RFP.” Mr. O’Connell replied that “I don’t think so.” Mr. Tucker added that an affirmative vote by the Board would approve RWSA moving forward with those three items. Mr. O’Connell then commented that he believed that City Council would support this Board’s action hopefully at tonight’s City Council meeting, which was echoed by Ms. Edwards. Mr. Fern next stated that with Mr. O’Connell’s clarification he could support the motion as amended by Mr. O’Connell.

Ms. Thomas next commented that she “appreciated” the City’s efforts to “work through” this issue. She agreed with the ACSA and also talked to each member of the Board of Supervisors to ensure that there would be agreement as to how the RWSA Board moved forward with the draft RFP. Concerning the “Legal Opinion on the Wetlands,” the SFRR Stewardship Task Force found this issue to be a major concern if dredging were not undertaken as it related to the legal status of wetlands that become permanent. The Board of Supervisors was “certainly supportive” that the first task be undertaken. The “Bathymetric Survey” has to be conducted within a couple of years according to the regulatory permit for Water Supply Plan, and it appears that the regulators have indicated their approval for undertaking the survey now. The “Forebay Analysis” was the other item that the Board of Supervisors members were “very interested to find out if there is a way to capture the sediment before it gets into the main body of the reservoir.”

Ms. Mueller then commented that in the “Forebay Analysis” task it states that “This task includes analysis of the bathymetry results and pre-dredge survey results.” She questioned that if the “Pre-Dredge Survey” is not done, how would a “Forebay Analysis” be undertaken. Ms. Thomas next stated that the “Pre-Dredge Survey” would assume that the “forebay” would be dredged out. She felt that most ideas for a “forebay” would be “some kind of small dam or holding bay of some sort.” Mr. Frederick added that “to the extent that an evaluation of a ‘forebay’ was trying to use the existing reservoir to reshape the bottom, the ‘Pre-Dredge Survey’ for the areas that are being considered with a forebay’ would be important.” He also thought that a “Sediment Analysis” is just as important since it would identify the types and size of the sediment particles that are designed to be captured in this “forebay.”

As there were no further questions or discussion, the Board of Directors voted to approve the motion, as amended by Mr. O’Connell, by a 7 - 0 vote.

In regards to **Item 6d), Revised Schedule for the 2009 Board of Directors Meetings**, Mr. Frederick stated that due to the construction that is scheduled to begin at the Moores Creek complex within the next 30 days, RWSA is suggesting that monthly Board meetings be moved off-site for the next several months. Also, at the request of one of the Authority’s new Board

members, RWSA is suggesting that the meeting dates be moved to the fourth Tuesday. The proposed dates are listed in the memorandum included in the Board packet.

Mr. Frederick further reported that based on the request last month that a retreat be held in June as opposed to a regular Board meeting. RWSA is proposing the retreat be held Thursday afternoon on June 25, 2009 starting at 1:00 p.m. He anticipated that there may be some business matters to discuss next month, and staff is proposing that those items be included as part of the retreat rather than schedule another regular Board meeting in June. The ACSA has offered to hold both the retreat and subsequent Board meetings in their lower level Board Room at 168 Spotnap Road, Charlottesville, VA. Mr. Frederick added that "assuming the Board moves in that direction, RWSA appreciates ACSA agreeing to host these meetings while this facility is under construction.

Ms. Thomas next inquired about the estimated length of time that the meetings would need to be held off-site. Mr. Frederick replied that the total construction time frame for this project is 42 months or 3 ½ years. The Authority is not "committing at this point" that the meetings are going to be off-site for 3 ½ years. The construction might reach a point when the major work has been contained or completed, and the meetings can be safely moved back to the Moores Creek facility. The facility will be open to the public throughout construction and "signage" will direct the public safely to this building. Staff feels that large gatherings should be moved off-site until such time when safety concerns are not an issue.

Ms. Mueller then asked Mr. Fern about the amount of parking at his facility. Mr. Fern stated that across the street from the ACSA building is an empty parking lot that ACSA staff will be requested to use on meeting dates, which will open up the lower level parking area for Rivanna Board meetings. Ms. Thomas next inquired about any sound system that ACSA would have available for the meetings as she has heard citizen complaints for some time about this room not being very conducive to hearing Board discussions. Mr. Fern replied that due to ACSA's Board Room being a little longer than RWSA's conference room, ACSA staff would look into providing some type of amplification for these meetings.

Mr. Tucker moved that the Board of Directors vote to approve the revised schedule for the 2009 Board of Directors Meetings, seconded by Ms. Mueller. The motion was approved by a 7 - 0 vote.

7.0 Other Items from Board/Staff not on the Agenda

There were no other items from the Board or staff not on the agenda.

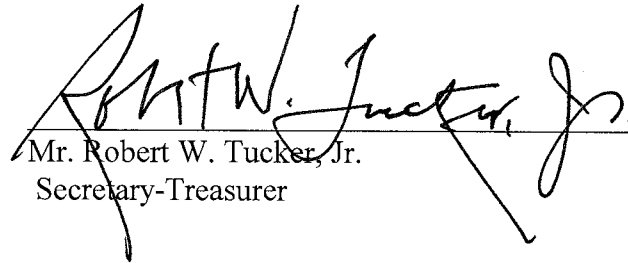
8.0 Closed Meeting

There was no need for another closed meeting.

9.0 Adjournment

There being no further business, Mr. Fern moved that the meeting be adjourned, seconded by Mr. Tucker. All members voted aye, and the meeting was adjourned at 4:08 p.m.

Respectfully submitted,



Mr. Robert W. Tucker, Jr.
Secretary-Treasurer

WILLIAM B. ELLIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEY AT LAW

1406 CONFEDERATE AVENUE
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May 18, 2009

**PRIVILEGED AND CONFIDENTIAL
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Mr. Thomas L. Frederick, Jr., P.E.
Executive Director
Rivanna Water & Sewer Authority
695 Moores Creek Lane
Charlottesville, Virginia 22903-9016

Dear Mr. Frederick:

This letter responds to your recent request for advice concerning the existing Corps of Engineers and Virginia Water Protection ("VWP") permits for activities associated with construction of the Expanded Ragged Mountain Reservoir and South Fork Rivanna River Pipeline project. As I understand it, you wish to know if these existing permits might be placed at risk if the water demand projections on which they were based were to be lowered, or if the Authority were to seek to lower the height of the Expanded Ragged Mountain Reservoir, or if it were to perform an engineering feasibility study of dredging the South Fork Reservoir that would result in a more detailed and updated estimate of potential costs.

You have asked that I not undertake an exhaustive and detailed legal opinion on these questions, but rather that I provide a short summary of practical conclusions based on my existing knowledge and experience in the field of municipal water supply, which has been continuous since the early 1980's and encompasses work on five major projects in several states, several of which have involved substantial federal and state litigation.

Before turning to your question I wish to make two observations. First, I am not aware of any credible information suggesting that the long-term water demand projections properly could, or should, be lowered; nor that reducing the height of the Expanded Ragged Mountain Reservoir is consistent with achieving project purposes and environmental mitigation goals; nor that dredging South Fork Rivanna Reservoir for water supply purposes is anything but impracticable and more environmentally damaging than the permitted project. My advice relates to the purely hypothetical question, "What if these things were done, nevertheless?"

Second, I wish to point out that, in the absence of efforts by the Authority to modify its permits or

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restudy their bases, and so long as the Authority diligently pursues completion of the project as permitted, the existing regulatory approvals are reasonably secure and may be relied upon with substantial assurance. You are undoubtedly aware of the recent court decision regarding the King William Reservoir. Judge Henry H. Kennedy, Jr. of the United States District Court for the District of Columbia in *Alliance to Save the Mattaponi v. U. S. Army Corps of Engineers*, No. 06-02168 (D. D.C. March 31, 2009), invalidated issuance of the Corps of Engineers permit for that project. At present, neither the Authority's Corps permit, nor its VWP permit, is vulnerable to that kind of judicial attack by individuals or citizen groups who may be dissatisfied with them. Among other things, no Notice of Appeal was filed within the prescribed time with respect to the VWP permit (Rule 2A:2, Virginia Supreme Court Rules). As to the Corps permit, no one participated in the Corps' administrative process by filing comment when the Corps issued its public notice of the permit application as is required to challenge federal agency action.

This situation could change if the Authority were not to pursue the permitted project diligently, and in the interim were to lower demand projections, or to alter the analysis of alternatives by lowering the pool elevation (and yield) of the Expanded Ragged Mountain Reservoir project or by performing additional, more detailed evaluation of dredging South Fork Rivanna Reservoir.

Both the Corps, and the Virginia State Water Control Board, through the Department of Environmental Quality, have discretion to suspend, modify, revoke, reopen or reissue permits based on changed circumstances or new information. In my experience, these agencies are more likely to invoke that authority when the permit applicant has not expended substantial resources in reliance upon an existing permit or has not otherwise diligently pursued completion of the permitted project, and considerable time has passed. Once reopened, it would likely be beyond the ability of the Authority to confine agency proceedings narrowly to particular issues or potential specific modifications. On the contrary, demand projections, project size and yield, and available alternatives are fundamental to and usually do affect the overall selection of "the least environmentally damaging, practicable alternative." In short, the extent, duration, expense, and outcome of further regulatory actions would be entirely unpredictable. The Authority should assume that any participant displeased by the result of such further regulatory proceedings would also have the opportunity to seek judicial review of both agencies' final actions.

To summarize, restudying and altering demand projections, seeking to lower the height of the Expanded Ragged Mountain Reservoir, or re-evaluating the practicability of dredging South Fork Rivanna Reservoir for water supply purposes could place the Authority's existing permits at risk and result in new and unpredictable regulatory processes that are entirely unpredictable in terms of scope, duration, expense and outcome.

WILLIAM B. ELLIS

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Please let me know if you have questions or desire further explanation of any of these points.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. Ellis". The signature is written in a cursive style with a large initial "W" and a stylized "B".

William B. Ellis