

Citizens for a Sustainable Water Plan
C/O Rebecca Quinn
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April 5, 2011

VIA CERTIFIED, RETURN RECEIPT REQUESTED FIRST CLASS U.S. MAIL

Col. Andrew W. Backus, P.E., District Engineer
U.S. Army Corps of Engineer, Norfolk District
803 Front Street
Norfolk, VA 23510-1096

RE: U.S. Army Corps of Engineers Permit #06-V1574
Rivanna Water and Sewer Authority (RWSA, the Permittee)

Dear Colonel Backus:

Citizens for a Sustainable Water Plan (CSWP) is a coalition of citizens who live in the City of Charlottesville and Albemarle County. We are concerned about the environmental, financial, and social implications of the 2006 Community Water Plan which includes as its centerpiece, the activities authorized by Virginia Water Protection (VWP) Individual Permit No. 06-1574 and by Permit #06-V1574 issued by the U.S. Army Corps of Engineers.

A. Request for Suspension or Modification of the Permit Made Necessary by Considerations of the Public Interest

33 C.F.R. § 325.7 - Modification, suspension, or revocation of permits.

(a) General. The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits, either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms

and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with 325.2 of this part, and not as modifications under this section.

THEREFORE, pursuant to 33 C.F.R. § 325.7, CSWP requests reevaluation of the circumstances and conditions of the permit and suspension or modification of the permit, and suspension or postponement of consideration of any and all subsequent applications and requests to modify the permit, made necessary by considerations of the public interest.

A-1. CSWP requests suspension or modification of the permit pending the results of the demand analysis and a reevaluation by the Permittee, City of Charlottesville, and Albemarle County regarding the need for the permitted project because “circumstances relating to the authorized activity have changed.”

Justification and Evidence: The Permit Support Document¹ cited a water demand projection that was prepared in 2004² using data through 2001. Actual water use data reported by the permittee has fallen significantly in the past 8 years (characterized in the consultant’s oral presentation as a 22% reduction)³, despite an increase in population similar to that projected in the 2004 analysis. The RWSA’s FY 2012 budget⁴ bases revenue projections for FY11 on the same assumptions for water consumption that were used in the FY10 budget (i.e., no increase in water use for the next 12 month period). The fact that the reduction in use has been sustained over several years calls into question the validity of the 2004 projection that the Urban Service Area will require 18.7 MDG by the year 2055. The entire justification for the large new dam near the location of the existing Lower Ragged Mountain Dam (LRMD), and a new pipeline to convey water from the South Fork Rivanna Reservoir (SFRR) to LRMD is predicated on that estimate. Further, at its March 22, 2011 meeting, the RWSA

¹ <http://rivanna.org/documents/community/permitsupportdocument.pdf>

² <http://rivanna.org/documents/community/demandanalysis.pdf>

³ http://rivanna.org/documents/community/Review_of_2004_Water_Demand_Analysis_Swartz.pdf

⁴ http://rivanna.org/documents/agendas/agenda_feb22_2011_doc7a.pdf

Board of Directors approved a contract with AECOM Technical Services, Inc., to develop a new water demand analysis using current methodologies that will be based on up-to-date water use data, current population projections, and current comprehensive plans. The results of this analysis are due prior to November, 2011. CSWP asserts that, given the sustained drop in demand and the recent review of the previous demand projection requested by the RWSA that recommended a “step-down” in the projection⁵ (which was not acted on), there is a reasonable expectation that the anticipated new demand analysis will not support the stated need for permitted project. If that is the case, it is conceivable that a lower projected demand can be met either by a smaller project or an alternative project, both of which would have significantly less adverse impact on streams and wetlands.

A-2. CSWP requests suspension or modification of the permit pending completion of the solicitation for dredging of the SFRR and a reevaluation of the safe yield of the current system based on what is now known about its current capacity, the rate of sedimentation, and the anticipated post-dredge capacity because “circumstances relating to the authorized activity have changed.”

Justification and Evidence: The Permit Support Document (page 68) reports on an October 27, 2005 meeting with regulators. Based on this meeting the permittee was allowed to summarily eliminate dredging of the SFRR from the short list of alternatives due to what were characterized as “disproportionate costs,” despite the fact that “maintaining and expanding an existing element of the existing water supply system at equal cost and with minimal environmental impact, was preferable to constructing a new element of the water supply system, with unclear long term consequences.” The Permit Support Document indicates the permittee estimated the cost to dredge the SFRR would be \$145 million (the permittee subsequently revised the projected 2007 cost estimate upward to as high as \$223 million⁶). The 2010 Dredging Feasibility Study⁷ conducted by HDR Engineering, Inc., found more capacity in the SFRR than was previously reported (i.e., less accumulated sediment); HDR also determined that the rate of sedimentation is half that reported in the Permit Support Document. HDR concluded that the cost to dredge would be \$27-\$40 million, less than one-third of the estimate reported in the Permit Support Document. At its March 22, 2011, meeting, the RWSA Board of Directors adopted guidelines, as required by State law, that allow the RWSA to use a method of procurement that allows responding

⁵ http://rivanna.org/documents/community/Review_of_2004_Water_Demand_Analysis_Swartz.pdf

⁶ http://cvilwater.info/cost_estimate_dredging_225.pdf

⁷ http://rivanna.org/documents/sfrredredging/report_alternatives.pdf

proponents to, for example, propose alternative approaches, including different ways to manage the dredged materials and different timelines. Using this procurement method is expected to result in even lower costs to restore the SFRR to nearly its original capacity. At the same meeting, the RWSA Board authorized staff to take the next step towards developing an RFP for dredging.

A-3. CSWP requests suspension or modification of the permit made necessary for consideration of the public interest because “significant objections to the authorized activity were not considered earlier.”

Justification and Evidence: The public interest was not adequately considered prior to submission of the permit application, during permit evaluation, and subsequent to permit issuance. Further, the public interest has not been adequately considered since circumstances relating to the authorized activity have changed (see A-1 and A-2, above). In January 2011, CSWP transmitted a letter to the Virginia Department of Water Quality and the USACE, Norfolk District (receipt confirmed). Neither the DEQ nor the Corps has acknowledged or responded. CSWP is on record expressing significant objections to the authorized activity over several years before numerous public meetings of the City Council and the RWSA Board of Directors, in the press, and during public meetings and forums prior to issuance of the permit. Furthermore, during the 30 day notice permit during which requests for a public hearing on the permit application could be submitted, a letter was sent by a member of CSWP to the Virginia Department of Environmental Quality. The letter was reported “lost in the DEQ mail room” and subsequently dismissed.

A.4. CSWP requests suspension or modification spite anticipated assertions that “modification, suspension, or other action would adversely affect plans, investments and actions [that] the permittee has reasonably made or taken in reliance on the permit.”

Justification and Evidence: Despite the investments made and actions taken by the RWSA in reliance on the permit, the total investment to-date is a small fraction of the total anticipated cost of the proposed project. The fact that some funds have been expended by the RWSA, the City, and the Albemarle County Service Authority on studies and designs for the proposed project is not sufficient justification to outweigh a decision to suspend or modify, especially in light of the potential financial burden on the ratepayers and social implications for thousands of low-income City and County residents who can ill-afford to pay higher rates that will result from paying principle and debt service for a multi-million

dollar capital investment that may not be needed. Further, the Permittee asserts that expenditures to-date have been made from a contingency fund created by a rate increase imposed in 2003 to fund, among other activities, dredging of the SFRR. Thus, no additional burden would be borne by the RWSA and ratepayers if the permit is suspended or revoked.

B. Request for Suspension for Reevaluation of Public Interest Review and Public Need

33 C.F.R. § 320.4 General policies for evaluating permit applications.

(a) *Public Interest Review.*

(2) The following general criteria will be considered in the evaluation of every application:

- (i) The relative extent of the public and private need for the proposed structure or work;
- (ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and
- (iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

B-1. CSWP requests suspension of the permit based on the evaluation factors and general criteria that must be considered regarding every application, including the “relative extent of the public and private need for the proposed structure or work.”

Justification and Evidence: The extent of public need for the proposed structure (dam and pipeline) is predicated on the projected demand for water in the year 2055. Data on actual water use available from the Permittee documents the sustained and significant drop in water use over the past 8 years despite an increase in population (see A-1, above). This calls into question the extent of the public need for the proposed project. It is appropriate to suspend the permit to allow for reevaluation based on the results of the new demand analysis in order to properly consider the relative extent of the public need.

B-2. CSWP requests suspension of the permit based on the evaluation factors and general criteria that must be considered regarding this request, because there are “unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work.”

Justification and Evidence: The 2010 Dredging Feasibility Study, although subject to several imposed constraints that likely result in a high estimated cost, indicates that hydraulic dredging to significantly restore the capacity of the SFRR would cost significantly less than purported in the Permit Support Document (see A-2, above). The very high cost reported by the Permittee (and subsequently revised significantly upward) was the basis for dismissal of serious consideration of dredging as a feasible and less environmentally damaging alternative. Given recent decisions by the RWSA Board of Directors, it is appropriate to suspend the permit to allow for reevaluation based on the results of the solicitation for proposals to dredge in order to properly consider the practicality of reasonable alternative locations and methods to accomplish the objective of increasing water supply for the Urban Service Area with significantly less detrimental effects on streams and wetlands.

B-3. CSWP requests suspension of the permit because of the “extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.”

Justification and Evidence: In order to properly consider the extent and permanence of beneficial and/or detrimental effects of the proposed project on the public uses of the area impacted, it is necessary to suspend the permit pending reevaluation of the need for the project (see A-1, above), as well as the feasibility of alternatives that have significantly less impact on streams and wetlands (see A-2, above). The permitted project involves a concrete dam and a proposed maximum pool elevation that is approximately 45 feet above the current pool of the LRMD. The Permittee will seek a modification of the permit to accommodate a modified project which is an earthen dam on a base that would support an ultimate dam height to raise the pool approximately 42 feet above the current pool. The Permittee has not released the differences in stream impacts and permanent wetlands impacts, although it is obvious on the surface that the footprint of the earthen dam is significantly greater than the footprint of the permitted concrete dam and will impact more stream length and likely will have more wetlands impacts. The location of the existing LRMD and the proposed dam is in the center of the Ragged Mountain Natural Area (RMNA) which consists of 988 acres of hardwood trees, public trails, and natural bird and wildlife habitat. The construction of any new dam will have extensive and permanent detrimental effects on the RMNA. Approximately 200 acres will have to be clear cut to accommodate the dam footprint and the modified reservoir pool raise of +42 feet. The RMNA, owned by the City of Charlottesville, will suffer extensive and

permanent detrimental effects on public and private uses to which the area is suited. Adjacent property owners and citizens of the City and surrounding areas regularly enjoy the RMNA and that enjoyment will be significantly impaired by the proposed dam and reservoir. These impacts that endanger the environment can be regulated to acceptable levels by reevaluation of new information and new studies, and subsequent reevaluation of alternatives to meet the projected 30- to 50-year water use needs for the Urban Service Area.

C. Request for Revaluation Warranting Suspension or Revocation

General Condition #7 (page 15 of 17): New information and data have become available which demonstrates that several aspects of the original basis for selection of the permitted activity as the least environmentally damaging alternative were materially incomplete and perhaps materially false, thus warranting suspension or revocation.

Further Information #3 and #4 (page 16 of 17): Some of the information on which the Corps based the determination has proven to be false, incomplete, and inaccurate and, importantly, significant new information and new studies have been prepared which the Corps did not consider in reaching the original public interest decision, which is sufficient and imposes a duty for the Corps to exercise its authority to reevaluate, suspend, modify or revoke the permit.

THEREFORE, pursuant to Permit #06-V1574, “Further Information” #3 Reliance on Applicant’s Data and #4 Reevaluation of Permit Decision (page 16 of 17), and “General Condition” #7 (page 15 of 17), CSWP requests reevaluation of the permit decision.

Justification and Evidence: Reevaluation is warranted because the in making the determination that issuance of the permit was not contrary to the public interest, the Corps relied on the information contained in the Permit Support Document and much of that information has been proven to be incomplete or inaccurate. Significant new information and new studies have become available which demonstrate that there have been material and substantive changes in the circumstances on which the Corps’ decision was based. In addition, pursuant to General Condition #7, some new information and data have become available which demonstrates that several aspects of the original basis for selection of the permitted activity as the least environmentally damaging alternative were materially incomplete and perhaps materially false (see A-1 and A-2, above). See the attached letter from CSWP to the DEQ and USACE, Norfolk District, for a detailed

comparison of statements in the Permit Support Document and new information and new studies that show discrepancies, internally conflicting information, and material and substantive changes.

D. Request for Public Process and Public Hearing

CSWP requests a public process and public hearing to afford interested persons the opportunity to submit factual data, views and comments.

Justification and Evidence: The public interest was not adequately considered prior to submission of the permit application, during permit evaluation, and subsequent to permit issuance. Further, the public interest has not been adequately considered since circumstances relating to the authorized activity have changed (see A-1 and A-2, above). In January 2011, CSWP transmitted a letter to the Virginia Department of Water Quality and the USACE, Norfolk District (attached, receipt confirmed). Neither the DEQ nor the Corps has acknowledged or responded. CSWP is on record expressing significant objections to the authorized activity over several years before numerous public meetings of the City Council and the RWSA Board of Directors, in the press, and during public meetings and forums prior to issuance of the permit. Furthermore, during the 30 day notice permit during which requests for a public hearing on the permit application could be submitted, a letter was sent by a member of CSWP to the Virginia Department of Environmental Quality. The letter was reported "lost in the DEQ mail room" and subsequently dismissed

Citizens for a Sustainable Water Plan requests that the District Engineer respond to this letter within 15 business days after receipt. Further, if a request for modification of Permit #06-V1574 is received before the District Engineer responds, CSWP requests that no action be taken pending response and resolution of the requests and matters raised in this letter is provided.

Sincerely,

Rebecca Quinn, Chair
Betty Mooney, Sec'y
B. J. [unclear], [unclear]

Executive Committee, Citizens for a Sustainable Water Plan

Joanna Sahelis, St. Lawrence
1000

USACE
April 5, 2011
Page 9

Attachment: CSWP to DEQ/USACE (dated December 13, 2010)

Cc: Director, Virginia Department of Environmental Quality
City Council, City of Charlottesville,
Board of Supervisors, Albemarle County
Thomas L. Frederick, Executive Director, Rivanna Water & Sewer Authority
James D. Brown, Esq.