

**MINUTES OF SPECIAL JOINT MEETING AND WORK SESSION OF  
THE BOARDS/COUNCIL**

**Albemarle County Board of Supervisors  
Albemarle County Services Authority Board of Directors  
Charlottesville City Council  
Rivanna Water & Sewer Authority Board of Directors**

**WITH FEDERAL AND STATE REGULATORY AGENCIES**

**Virginia Department of Conservation and Recreation  
Virginia Dam Safety  
Virginia Department of Environmental Quality  
Virginia Department of Game and Inland Fisheries  
Virginia Department of Health  
Virginia Marine Resource Commission  
U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency**

**April 18, 2005**

A special joint meeting and work session of the Albemarle County Board of Supervisors (AC BOS), the Albemarle County Service Authority Board of Directors (ACSA BOD), the Charlottesville City Council (CCC), and the Rivanna Water & Sewer Authority Board of Directors (RWSA BOD) was held with federal and state regulatory agencies on Monday, April 18, 2005, at 10:30 a.m. in Conference Room A at the Albemarle County Office Building – 5<sup>th</sup> Street, 1600 5<sup>th</sup> Street, Charlottesville, Virginia.

**AC BOS PRESENT:** Mr. David Bowerman, Mr. Kenneth Boyd – Vice-Chairman, Mr. Lindsay Dorrier, Jr., Mr. Dennis Rooker – Chairman, Ms. Sally Thomas, Mr. David Wyant.

**ACSA BOD PRESENT:** Mr. Robert Humphris, Mr. Robert Larsen, Mr. Hollis Lumpkin, Mr. J. Randolph Parker - Chairman, Mr. Clarence Roberts, and Mr. Donald Wagner – Vice-Chairman.

**CCC PRESENT:** Dr. David Brown - Mayor, Mr. Blake Caravati, Ms. Kendra Hamilton, and Mr. Kevin Lynch - Vice Mayor.

**CCC ABSENT:** Mr. Rob Schilling.

**RWSA BOD PRESENT:** Mr. William Brent, Mr. Michael Gaffney – Chairman, Mrs. Judith Mueller, Mr. Gary O’Connell, and Mr. Robert Tucker.

**FEDERAL REGULATORS PRESENT:** Mr. James Brogdon and Mr. Mike Schwinn – U.S. Army Corps of Engineers; Mr. Peter Stokely – U.S. Environmental Protection Agency.

**STATE REGULATORS PRESENT:** Ms. Lynn Crump – Virginia Department of Conservation and Recreation; Mr. Robert Cooper – Virginia Dam Safety and Floodplain Management; Dr. Ellen Gilinsky, Mr. Joseph Hassell, Mr. Scott Kudlas, Mr. Terry Wagner, and Ms. Brenda Winn – Virginia Department of Environmental Quality; Mr. John Kauffman, Ms. Amy Martin, and Mr. Brian Watson – Virginia Department of Game and Inland Fisheries; Mr. James Moore and Mr. Ron Conner – Virginia Department of

Health; Mr. Tony Watkinson – Virginia Marine Resource Commission.

**ALSO PRESENT:** Ms. Nancy Barker – VHB Project Team; Mr. James Bowling – ACSA BOD Legal Counsel; Mr. Craig Brown – City Attorney; Ms. Ella Carey – Clerk to AC BOS; Ms. Jeanne Cox – Clerk of CCC; Mr. Larry Davis – County Attorney; Mr. William Ellis – Legal Counsel to RWSA on the Community Water Supply Plan; Mr. Tom Frederick – RWSA Executive Director, Mr. Aaron Keno – Gannett Fleming Vice President and Project Principal; Mary Knowles – RWSA Executive Secretary; Mr. Kurt Krueger – RWSA Legal Counsel; Ms. Debi Moyers – Senior Deputy Clerk to AC BOS; Ms. Susan Rohm-Briggs – ACSA BOD Administrative Office Associate; Ms. Jennifer Whitaker – RWSA Chief Engineer; Dr. Robert Wichser – RWSA Director of Water and Wastewater Operations; ACSA, City, County, and RWSA staff; members of the public; and media representatives.

**1.0 Call To Order**

Mr. Michael Gaffney, Chairman of the RWSA BOD, welcomed everyone in attendance at the special joint meeting and work session of the AC BOS, ACSA BOD, CCC, and the RWSA BOD. He stated that the purpose of today’s meeting was to meet with federal and state regulatory agencies of interest to entertain questions and have discussion on the permitting process for the Community Water Supply Plan. He also noted that staff from Albemarle County (AC), Charlottesville City (CC), Albemarle County Service Authority (ACSA), and Rivanna Water & Sewer Authority (RWSA) were present, as well as RWSA consultants. The first item of business would be for the Chairman of each board/council to call the special meeting of its board/council to order as follows:

The special meeting of the RWSA BOD was called to order by Mr. Michael Gaffney on Monday, April 18, 2005 at 10:40 a.m., and he noted that a quorum was present.

Mr. Dennis Rooker called the special meeting of the AC BOS to order on Monday, April 18, 2005 at 10:40 a.m., and he noted that a quorum was present.

Mayor David Brown called the special meeting of the CCC to order on Monday, April 18, 2005 at 10:40 a.m., and he noted that a quorum was present.

Mr. J. Randolph Parker called the special meeting of the ACSA BOD to order on Monday, April 18, 2005 at 10:40 a.m., and he noted that a quorum was present.

Mr. Gaffney reported that he would be leaving at 12:30 p.m. as his attendance was required at another meeting that began at 1:00 p.m. Mr. Gary O'Connell had agreed to adjourn the RWSA BOD meeting in his place if that became necessary.

Mr. Gaffney next commented on the challenges associated with arranging the meeting table to accommodate the large size of the group. He requested that all speakers stand and direct their remarks into one of the microphones so that everyone seated at the table and in the audience could hear their comments.

Mr. Gaffney thanked everyone for their attendance, especially those who had traveled from out of town, which he felt demonstrated the importance of the meeting. RWSA appreciated their assistance during the water supply planning process.

Mr. Gaffney further stated that RWSA staff and its consulting team have worked extremely hard on this project for over a year. He publicly thanked the staff for their very dedicated work under sometimes stressful circumstances. Their efforts have led to the completion of numerous reports and technical memoranda, several presentations to the RWSA BOD, six well-attended Public Outreach Meetings for public education and input from which many positive comments have been received, several programs at community group meetings, regulatory agency meetings, and many discussions with the consulting team. From his observations during this process, Mr. Gaffney felt that the staff was dedicated to carry out the mission of the RWSA BOD to find a solution to the community's water supply needs that took into account local public opinion and satisfied the requirements of local, federal, and state regulations. Those who had attended the RWSA BOD meetings and the numerous Public Outreach Meetings would attest that there had been considerable discussion about those regulations and the role in defining this process. Some of the questions posed to the regulators today had already been asked of RWSA staff and its consulting team in previous meetings. He felt this was an opportunity to hear directly from the regulators on those issues.

Mr. Gaffney added that as the boards/council would be making very critical decisions concerning the community's future water supply, it was deemed important to review certain issues related to this process in order to confirm

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information or learn of opportunities not previously known.

Mr. Gaffney reiterated that RWSA had not made a decision at this point on a preferred alternative and was still considering four “short-list” concepts as possibilities while seeking concurrence with CCC, AC BOS, and ACSA BOD.

Mr. Gaffney explained that as part of a prepared list of questions and answers, RWSA’s consulting team and the Community Water Supply Plan attorney offered an opinion on March 3, 2005 that was still being considered but had not been acted upon at this time by any of the joint local boards/council present today. A key purpose of this meeting was to permit the board/council members to clarify some questions with the regulators of interest and engage in an important dialog before making decisions.

Mr. Gaffney then welcomed the citizens in attendance at the meeting and thanked them for their interest. RWSA had provided previous opportunities for public comment and would be planning one or more further avenues in the future.

Mr. Gaffney further explained that this meeting was not designed as a public forum. The agenda and purpose today was to hold a discussion involving the joint boards/council, the regulators, and the RWSA staff on questions concerning the water supply planning process that members of the joint boards/council had at this point in the process. An opportunity was provided for the members of the joint boards/council to submit advance questions for the regulators. Questions received by last Monday were distributed to the regulators prior to this meeting. A handout listing those questions had been provided on the table located in the lobby entrance to the conference room. In fairness to those who submitted advance questions, the prepared list will be addressed first. The floor would then be opened up for additional discussion and questions from the joint board/council members. As questions were asked, the regulators were requested to decide among themselves who was in the best position to answer a particular question, or in some cases, if more than one person could contribute to the issue under discussion. A limited amount of time would be permitted for follow-up discussion from board/council members and RWSA staff to ensure that responses are understood and clarified before proceeding to the next question. He asked that the discussion be focused and succinct as possible since there were a number of questions and limited amount of time to cover all the issues.

Mr. Gaffney reported that RWSA was notified at the last minute that the Virginia Department of Historic Resources (DHR) had canceled their plans to participate today. They did provide an e-mail response to the prepared questions for which they felt they could contribute. A copy of their response was being provided to each of the board/council members.

Mr. Gaffney added that the joint board/council members were appreciative that the regulators were present today to answer their questions while at this point in

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the planning process when the investigations had not been completed and a

preferred alternative had not yet been selected. It was recognized that this might limit the amount of information that could be provided, but the board/council members were grateful for what the regulators could offer to assist with the decision-making process.

Prior to proceeding to the first question, Mr. Gaffney recognized Mr. Ken Boyd, Ms. Sally Thomas, and Mr. David Wyant for their contributions to the list of prepared questions.

Mr. Gaffney then read the first question as follows:

1. *For each regulatory agency, "What role will your agency play in the application process?" (Regulators answering this question should include the Albemarle County Community Development Office.) Is there one agency that determines or controls the final answer more than other agencies?*
  - a) *What is the timeframe for federal and state review and approval, once a complete application is received? Are the reviews by the regulatory agencies concurrently or in succession?*
  - b) *Is VDOT another agency that will need to have input at the same time as the other regulatory agencies? What role do they play, especially in the Ragged Mountain reservoir option?*

Mr. Gaffney inquired as to which regulatory agency wanted to be the first to respond to the question.

Ms. Sally Thomas, member of the AC BOS, stated that she pictured this question as an opportunity for the joint boards/council to hear briefly from each regulatory agency in attendance on their role in the overall process.

Mr. Gaffney concurred with Ms. Thomas's suggestion and asked if a regulator from each of the agencies represented at the meeting could briefly outline their role in the water supply permitting process during their response to the first question.

Mr. Joe Hassell with the Virginia Department of Environmental Quality (DEQ) stated that his agency was responsible for issuing a Virginia Water Protection permit, which dealt with wetlands, streams, and instream flow, and also the amount of water that could be withdrawn from any particular project.

In reference to item 1a), Mr. Hassell responded that DEQ preferred to issue approval within a year of receiving a complete application, but this was not always possible.

Concerning item 1b), Mr. Hassell explained that DEQ was required by state law to seek the recommendations of five specific state agencies and any other interested agencies. VDOT would fall in the latter category. If RWSA submitted an application on the two projects that involved raising the dam, then DEQ would request VDOT's recommendation and would be required by state law to give VDOT's recommendation full consideration.

Referring back to item 1a), Mr. Hassell added that reviews by regulatory agencies are considered concurrently. There was a new state law that was passed this year that required the Virginia Marine Resources Commission (VMRC) and DEQ to jointly advertise the application and to act within one year, as much as possible, on the completed application and to coordinate the permitting process. DEQ also coordinated with the U.S. Army Corps of Engineers (COE) as well.

Mr. Tony Watkinson with the VMRC stated that his agency was responsible for issuing permits for projects that encroached upon state-owned submerged lands, which would include most waterways throughout the Commonwealth of Virginia, unless the bottom of the stream bed was rendered to an individual by some special legislation or dated back to a King's land grant prior to the founding of the Commonwealth. Reservoirs themselves were authorized by statute, and under Virginia code sections, VMRC did not issue permits for reservoirs. VMRC did issue permits for other activities that resulted in encroachment upon state-owned submerged lands. Of the four concepts under consideration, water withdrawal structures in the James River would require permits from VMRC, if that were the preferred alternative, as well as pipeline crossings over various tributaries and waterways leading throughout the distribution system.

Mr. Watkinson also stated that VMRC conducted what they called a "public interest review." Upon receipt of a completed application, a public notice would be posted in concurrence with DEQ based on new state law requirements that would become effective July 1, 2005. Public comments would then be accepted. VMRC would also seek input from other regulatory agencies during their permit review process. The effects of the project on other reasonable or ongoing uses of state-submerged lands would be evaluated, such as fishery resources, adjacent properties, and water quality. These studies would be conducted consistent with their requirement to consider the public trust doctrine and the public use of those waterways.

Mr. Watkinson added that from his perspective, VMRC would have the most involvement with the James River project if that were the selected alternative. His agency would examine the effects of that alternative on water quality, fishery resources, and the habitats for those particular fisheries.

Mr. Mike Schwinn with (COE) stated that Mr. James Brogdon who worked out of their Staunton office was also in attendance. COE regulated the discharge of

dredge and fill material under Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act.

Mr. Schwinn further stated that once his agency received a completed application, the goal was to complete the processing of the application within 120 days. Depending on the project, and the extent and nature of the impacts, the review and approval process could take up to a year or longer to complete. COE coordinated extensively with DEQ during the permitting process, and application reviews were conducted concurrently in order to establish a parallel tracking process.

Mr. Schwinn thanked the local boards/council members for including COE in this meeting.

Mr. Jim Moore with the Virginia Department of Health (VDH), Office of Drinking Water, stated that his agency did not have any primary involvement in the application or permitting of the raw water source. VDH provided input and comment to DEQ. Once a raw water source had been chosen, the Office of Drinking Water's focus would be on the raw water pumping, treatment, and distribution components of the project. His agency would need to issue a construction permit for the raw water intake, the pumping station, and the treatment facilities. Once this had been completed, the Office of Drinking Water would issue an operating permit for the waterworks facility. His agency has attempted to keep up to date on this planning process and had provided input and comment where applicable.

Mr. Peter Stokely with the Environmental Protection Agency (EPA) commented that his agency did not issue any permits. EPA reviewed the permit application as it pertained to the Clean Water Act, Section 404 Permit, with COE. EPA's review process began once public notice had been issued and generally involved a 30-day period. The two tests that EPA conducted during its evaluation of the permit application to ensure that it was in compliance with the Clean Water Act entailed meeting the water dependency requirement and the regulation that stated only the "least damaging, practicable" alternative could be permitted. He further explained that "least damaging" referred to the impacts to aquatic resources, wetlands, and streams. As part of that process, EPA would review the environmental documentation and the alternatives' analyses in order to determine which alternative was the "least damaging" overall. In summary, he stated that EPA had a review role and commented directly to COE.

Ms. Lynn Crump with the Department of Conservation and Recreation (DCR) stated that DCR was one of the five agencies to which DEQ requested comments. Her particular role pertained to scenic and recreation resources protection. Three rivers within this whole study were designated scenic rivers. Her agency would be providing comments relative to that issue. DCR also examined recreational

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opportunities to ensure that the minimum water flow could support those

activities during prime-time recreational seasons. Her agency did not have any legal compliance requirements, and the scenic river legislation only stated that scenic rivers cannot be impounded without the Governor's approval. Within DCR, Natural Heritage would also be providing comments concerning the environmental impacts for native and protected species.

Mr. Robert Cooper with DCR's Dam Safety and Floodplain Management Department stated that his agency did not have any regulatory role in the Community Water Supply Plan process. Their role was to bring the upper and lower Ragged Mountain Dams into compliance with state law.

Ms. Amy Martin with the Department of Game and Inland Fisheries (DGIF) commented that her agency also did not have any regulatory authority over the projects being considered in the water supply plan. DGIF did provide comments to the permitting agencies regarding impacts to the native wildlife species.

Mr. Gaffney thanked the regulators for providing a brief overview of each agency's role in this process. He then asked Ms. Thomas if she had any further comments before proceeding to Question No. 2.

Ms. Thomas inquired if there was a representative from Albemarle County's Community Development Office in attendance. She was informed that no one from that Department was seated at the meeting table.

Mr. Gaffney then read Question No. 2 as follows:

2. *Can we obtain an extension on the deadline date for the Ragged Mountain Dam replacement decision? If so, what do we need to do to obtain the extension? As elected officials, we feel public pressure to complete the planning process and we have little desire to prolong it, but we do want to have the information in hand that will make our decision an intelligent one and allow time for citizen input.*

*Regulators may want to discuss with us alternatives to having our planning time line driven by one specific facet (the spillway's condition).*

- a) *Are there interim safety measures and/or other good faith efforts that this community can undertake to warrant a request for an extension of the Ragged Mountain permit?*
- b) *We understand that there are anticipated changes to the state's dam safety regulations. Will those impact our situation and/or the deadline?*
- c) *Some of us are aware that the long-range water supply permitting/planning process is being revised this fall, but we don't know if the proposed changes are impacting our own planning process and its time*

*line. We'll appreciate the regulators discussing this issue and any other pending issues of which we should be aware that may impact our planning process.*

Mr. Cooper referred back to the inspection report that was done in 1978, which deemed the emergency spillway inadequate because it only allowed passes of a 25-year probable maximum flood (PMF) event. Since that report, the Dam Safety Board (the Board) had been issuing two-year conditional certificates, with the prominent condition being to resolve and rectify the inadequate spillway capacity. On July 15, 2004, the Board issued a one-year conditional certificate for both of the Ragged Mountain Dams, which expires on July 30, 2005. In addition to the primary condition, the Board specified that the design for meeting their requirement be presented with a time table for action by July 30, 2005. As of today, Dam Safety had received no documentation that dealt with the Board's request concerning the conditional certificate. In order for the Board to renew the conditional certificate, Dam Safety and Floodplain Management required a letter requesting that extension. His agency stipulated that within that letter, an explanation as to why the goals of the last conditional certificate had not been met and proof of the owner's proceeding with the necessary corrective action. After review of that request, and if the information was adequate, a recommendation would be presented to the Board for approval.

Mr. Cooper further stated that in response to item 2b), there have not been any changes to the state's dam safety requirements since July 1, 2002.

Mr. Gaffney further inquired if any additional changes have been proposed.

Mr. Cooper replied that there had not been any to date.

Mr. Kevin Lynch, Vice Mayor of Charlottesville, stated that there had been an awareness of safety considerations concerning the Ragged Mountain Dam spillway. One of the long-term water supply solutions under consideration concerned raising the Ragged Mountain Dam in addition to making the required repairs. The repair work had been identified as early as 2002 and was approved as part of the Community Water Supply strategy. He asked what could the community do to expedite moving forward with a design that could address raising the dam and how would that fit into the Dam Safety requirement that a repair strategy be submitted as quickly as possible? Could those repairs be done in the context of raising the dam?

Mr. Cooper replied that improvements could be made to the dam other than what was required by Dam Safety. His agency's main concern had been the inadequacy of the spillway. Because of the water supply issue, raising the dam would be part of the whole construction activity. For the permit, Dam Safety would consider that request as long it included the required improvements to the

Mr. Lynch commented that it was not probable that a design for raising the dam could be incorporated into the repair strategy and submitted by July 30, 2005. He inquired as to what assurances would be needed by his agency that the design for the required repair work was moving forward in order to obtain another one-year permit.

Mr. Cooper reiterated that his agency would need to know why the work had not been done and future plans for satisfying their spillway requirements. Dam Safety had hoped that the design and a timetable for the repair work would be presented to them by July 30, 2005, and they would need to continue that approach.

Mr. Dennis Rooker, Chairman of the AC BOS, stated it appeared that under any circumstances an extension would be needed. Even if a water supply option was selected within the next 30 days, approval of that option would not be known by July 30, 2005. A concrete plan that involved Ragged Mountain could not be developed until, as he understood it, an application was actually approved that would allow us to move forward with the preferred alternative. He asked, given the current circumstances, if there were any scenario where an extension would not be needed.

Mr. Cooper replied that an extension would always be needed because the conditional permit expired at the end of July.

Mr. Gaffney asked what would happen if the request for an extension was not granted.

Mr. Cooper stated that the worst case scenario would be that the dam would be found out of compliance.

Mr. Lynch commented that he understood from Mr. Cooper's comments that his agency would need a letter documenting what has been done to date on the required dam repair work. Funding for the dam repairs had been approved in 2002 and presumably RWSA had done some work on this project since that time. He felt the letter should also identify the community interest in raising the dam, potentially to 13 feet or even a greater height depending on the circumstances, and also present some timelines for accomplishing the redesign work.

Mr. Cooper replied that what Mr. Lynch described was the type of information his agency would need in a letter in order to consider a permit extension.

Mr. Lynch also asked if such a letter were sent would there be a significant chance for receiving approval for a one-year extension.

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Mr. Cooper replied that he felt the answer to that question would be “yes.”

Mr. Tom Frederick, RWSA Director, stated he understood from Mr. Cooper’s

earlier statement that if the community wanted to take steps beyond what was required by Dam Safety requirements and raise the dam, Dam Safety would not have an objection to that strategy. He asked if any of the other regulators wanted to comment on whether expediting the raising of the dam for the purpose of providing additional stored water for water supply purposes could be accomplished through a permit from Dam Safety or would that require going through the water supply process.

Mr. Scott Kudlas, with the DEQ Office of Water Supply Planning, replied that he did not believe that the water supply planning process would be linked to the DCR permit application. If the proposed regulation goes forward in its present form, RWSA’s water supply plans would be due in 2008. He felt that RWSA could move forward with applying for a permit to implement a short-term option at Ragged Mountain or somewhere else. In terms of the impact of the planning regulations, it would be to the extent that there were issues from the planning process currently underway that did not address fully what was in the regulation.

Mr. Frederick stated that the advice RWSA had been receiving through its consulting team and counsel was that to expand the water supply through any alternative for the purpose of providing additional drinking water supply to meet future needs would require that RWSA proceed through the Section 404 and state companion processes. He felt that what was being discussed now was the idea of going through Dam Safety with a plan that not only rehabilitated the Ragged Mountain Dam and improved the spillway capacity, but as part of the same project, raise Ragged Mountain Dam 13 feet to provide additional water supply to this community on an interim basis. He asked if this could be accomplished strictly working with Dam Safety regulations or did that require RWSA to go through the water supply planning process.

Mr. Kudlas responded that it was not the water supply planning process that RWSA would need to go through but the permitting process for the water supply. This had been a common mistake made throughout the development of the regulations for the water supply planning,

Dr. Ellen Gilinsky with DEQ added that RWSA would need to go through the 404 process with COE and the Virginia Water Protection permit process if wetlands or streams were impacted. She stated that Mr. Kudlas was referring to the water supply planning regulation, which RWSA would not need to follow for the permit application under discussion.

Mr. Schwinn stated that COE had an entire suite of what they called “nationwide permits.” Those permits covered a group of activities that were determined to have either accumulatively or individually minor impacts and included one

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specifically for repair and maintenance of existing structures. Rehabilitating the spillway on Ragged Mountain Dam could be done under an existing “nationwide

permit.” Raising the crest elevation of the dam another 13 feet in addition to the rehabilitation work would put this in another category of regulations under Section 404, and it could lengthen the process. Depending on the potential impacts, this could also involve a public review process which would involve a minimum of 120 days.

Mr. J. Randolph Parker, Chairman of the ACSA BOD, inquired that if one of the four alternatives included building a new Ragged Mountain Dam in addition to the required spillway improvements and if the work performed to date was documented in a letter to Dam Safety, which also demonstrated our diligent efforts to move forward with the project, would that be sufficient information for Dam Safety to approve a one-year extension or would the request be submitted to the Board for a determination on that information.

Mr. Cooper replied that his agency would study the information that was submitted, and a recommendation would be made to the Board based on that information. The Board would then make the ultimate decision on the course of action that would be taken.

Mr. Parker asked Mr. Cooper what he felt the Board action would be if such a letter was submitted requesting a one-year extension. There was considerable sentiment that if an extension was granted, it would allow for a decision to be made in an orderly fashion.

Mr. Cooper responded that it was the goal of Dam Safety that the process continue in a progressive way so that the dam could be moved from an unsafe conditional certificate to a regular six-year certificate.

Mr. Gaffney stated that it was his understanding from this discussion that although the Ragged Mountain project could be taken outside the Community Water Supply Plan and raised 13 feet, it would still need to be permitted but not as part of the water supply planning process. He asked if this would also be the case if the dam were raised higher than the 13 feet. He further inquired that if this option were selected, would RWSA be assuming the risk that eventually it could be placed in a position of having a separate water supply plan in a situation that did not warrant such a strategy.

Mr. Terry Wagner with DEQ stated that he thought there was confusion with the planning requirements versus permitting requirements. He felt there needed to be a very clear distinction between planning requirements that might occur in the future due to draft regulations that were currently in the public comment process and the existing permitting requirements.

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To further clarify his comments, Mr. Wagner stated that currently there are requirements that specify obtaining a permit for various activities. It was the

logical assumption that if there were a planning process, future actions would be identified that would require permits in that planning process. As far as a state-required planning process, it currently did not exist. Localities could apply for permits that were in concert with its plans, and conversely, could apply for a permit for an activity that was not included in the local plan. There was no requirement that an application for a water-withdrawal activity be included in an existing plan. DEQ's involvement with water supply planning requirements that would go into effect in the future had no relevance with activities that might be proposed today. It was hoped that effective water supply planning would guide the permit process.

Mr. Gaffney asked if his understanding was correct that DEQ would consider an application to raise Ragged Mountain by 13 feet outside of a community water supply plan.

Mr. Wagner responded that the regulations that would require localities to submit a water supply plan were currently in draft form and were not expected to be finalized for at least three years. If during that time frame you initiated the process for obtaining permits to raise the dam 13 feet, certainly that activity would be captured in your water supply plan, so it could not be considered strictly outside the process.

Ms. Jennifer Whitaker, RWSA Chief Engineer, commented for clarification purposes on the terminology being used for water supply planning. She felt that when Mr. Wagner was presenting DEQ's perspective, he was referencing the proposed state-mandated water supply plan that was currently in the development stage. RWSA's comments to the public concerning the water supply planning process pertained to the internal plans developed by Rivanna to determine what type of water supply permit to file. She felt the confusion in terminology resulted from RWSA's efforts to involve as many citizens as possible during this planning process.

Mr. Wagner further commented that he applauded RWSA's efforts, which had not occurred in all areas of the Commonwealth. He added that he was responding to the question on whether there was any state requirement from DEQ that an application be in concert with the existing water supply plan. It was a local decision. There was nothing in the regulations that precluded localities from submitting an application for a water withdrawal permit project outside of its existing water supply plan. It was his opinion that RWSA's Community Water Supply Plan would suffice for a state-approved water supply plan in concert with future regulations.

Mr. Rooker stated that it had been previously mentioned that an application to

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increase the height of the Ragged Mountain Dam would require a 404 analysis. He inquired whether the 404 analysis then required a consideration of alternatives,

using the standard of the “least environmentally damaging, most practicable” option.

Mr. Schwinn responded that if during COE’s evaluation of the option to raise Ragged Mountain Dam by 13 feet it was determined that it would not qualify for a category of “nationwide permits,” then the agency would be put into the position of examining the purpose and need of the project and selecting the “least damaging, practicable” alternative based on that purpose and need. The answer to Mr. Rooker’s question was that this would be a COE requirement.

Mr. Lynch commented that RWSA had already studied the option of raising the Ragged Mountain Dam by 13 feet and concluded that it had fairly low environmental impacts, possibly the least environmentally damaging option currently under consideration. He asked if a letter was written to Dam Safety that documented this information and was then submitted to COE for their review, what would be the minimum time frame for COE to evaluate the request and issue a finding as to whether they were in agreement that it would be the “least damaging” alternative and could move forward with the project.

Mr. Schwinn stated that COE would be responsible for conducting an independent review. Presumably during the course of developing the water supply plan, other alternatives were evaluated during the process which would benefit during COE’s review of the alternatives analyses. Ideally, there would be a 120-day review window unless an environmental assessment was needed or additional studies were deemed necessary to evaluate available alternatives not considered during the planning process. COE could also request additional analysis on alternatives that had been dismissed during the evaluation process to ensure there was adequate data to determine whether they met the “least environmentally damaging, practicable” criteria.

Mr. Lynch further inquired as to what level of construction plans would COE need to have included in the letter to DCR concerning raising the Ragged Mountain Dam by 13 feet in order to receive approval and proceed with construction by next year.

Mr. Schwinn responded that COE would not be reviewing the project based on the soundness of the engineering design. His agency would evaluate the project based on the impacts to the water in the reservoir, wetlands, and streams.

Mr. Hassell addressed the original question of raising Ragged Mountain Dam by 13 feet and whether this could be accomplished under the project purpose of improving the spillway. Since there were two different project purposes, DEQ

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would need to conduct their review under the second project purpose which was to provide a water supply. During the review process, the Ragged Mountain alternative would be evaluated in comparison to the other alternatives. DEQ

would also consider during their evaluation of the 13-foot option what additions could be anticipated in the future. Since there was nothing in their regulations which mandated a 50-year planning period, a shorter interval could be used when assessing the potential environmental impacts.

Dr. Gilinsky elaborated that DEQ, and she felt COE was conveying this as well, could review a permit to raise the elevation of the dam without even having a complete water supply plan. DEQ would however need information concerning other available alternatives and their environmental impacts since the purpose for raising the elevation of the dam was not based on safety issues but to obtain additional water. This review would be conducted outside the ongoing planning process.

Ms. Thomas commented that practicality would become an issue. Raising the dam 13 feet with the assumption that it would never be raised higher created a different structure than if the dam were going to be raised 13 feet with the potential for future additions. A decision on which option to pursue she felt would take longer than certainly the July 30, 2005 deadline for informing DCR on what type of structure would be constructed.

Mr. Lynch asked what actions would need to be taken in order to get the existing water supply plan approved by the regulators. He stated that the community had initiated the water supply planning process in 1999. In late 2002, a set of recommendations from RWSA were approved by both the County and the City along with a rate increase to its customers to pay for the plan. Components of the long-term community-approved plan included raising the South Fork Rivanna Reservoir (SFRR) dam by four feet, repairing the Ragged Mountain Dam, rebuilding the Mechums River Pump Station, and maintenance dredging of the SFRR. The consultants apparently overestimated the amount of additional storage that would result from raising the SFRR by four feet. However, by raising the elevation of Ragged Mountain by 13 feet, you could make up the difference. The community could have a 50-year plan by including the Ragged Mountain option in the 2002 plan if it could be approved by the regulators.

Mr. Stokely commented that he thought EPA would not have a problem with a permit application for one aspect of an overall larger water supply plan, as long as the impacts of the overall plan were disclosed as part of that permit application. Based on previous experiences with piecemeal processes, he would recommend applying for the overall project or at least disclose the impacts and maybe apply for an expedited permit for raising Ragged Mountain by 13 feet.

Mr. Lynch suggested discussing each component of the 2002 plan and have the

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regulators provide input on potential environmental impacts associated with each of those projects.

Mr. Parker commented that we were not here today to discuss the 2002 Plan. He thought the purpose of the meeting was to address the list of prepared questions and discuss the regulatory decision-making process as it related to the four concepts under consideration. He did not feel it would be helpful to focus on one specific plan that was not even on the table.

Mr. Lynch followed up by stating that he wanted to discuss this process in the context of the 2002 Plan, which was submitted by RWSA and approved by both the City and the County.

Mr. Gaffney interjected that every local board/council member was afforded the opportunity to submit questions in advance of the meeting. He further stated that due to the number of questions that remained to be answered and the limited amount of time to address them, he felt a return to the list of prepared questions was in order and proceeded to read Question No. 3 as follows:

3. *What is the definition of "practicability?"*

- a) *Is "practicability" determined solely by the applicant, or do state and federal regulators participate in determining the "most practicable" solution, such as by analyzing cost estimates?*
- b) *If regulators participate in determining practicability, is it a requirement that the most practicable project be used? If it's not a requirement, what do regulators allow as arguments for a project that is not the "most practicable?"*

Mr. Schwinn stated that he would answer part of that question from COE's perspective. Under the 404(B)(1) guidelines, the COE was charged with permitting only the "least damaging, practicable" alternative. The test of practicability took into consideration the cost, technology, and logistics. The solution also needed to be practicable for the applicant. COE generally would defer to the applicant on the development of cost estimates, analysis on the technology, and the logistics of building the various alternatives. He reiterated that the COE was charged with conducting its own independent review. Mr. Schwinn also stated that if COE determined that one of the alternatives would meet the purpose and need of the project and had fewer impacts on wetlands and streams, but it was not the applicant's preferred alternative, by law that was the only alternative that COE could permit.

Mr. Stokely added that he felt there was some confusion in that they did not permit the "practicable" alternative, but permitted the "least damaging, practicable" alternative. COE and EPA by regulation could only permit the "least

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damaging” of the four alternatives currently under consideration, presumably all of which were practicable.

Mr. Lindsay Dorrier, member of the AC BOS, inquired if there definition of “damaging” referred to impacts to the environment.

Mr. Stokely responded that it referred to damage to the aquatic environment, which included wetlands and streams as the primary focus.

Mr. Schwinn added as clarification that EPA had ultimate oversight over the process. COE might issue a permit for what they decided was the “least damaging, practicable” alternative, but there was another provision under the law, 404(C), that gave EPA veto authority over the COE.

Mr. Stokely stated that Mr. Schwinn’s comments were correct. EPA had review authority and could also veto COE’s permits, if COE chose to issue a permit that EPA did not believe was the “least damaging, practicable” alternative.

As there were no further comments or questions, Mr. Gaffney read Question No. 4 as follows:

4. *Is the community locked into filing applications which are based upon a fifty-year time period? Can we use a thirty-year time period?*
  - a) *Since both bodies of elected officials previously adopted the 2002 Multi-step Integrated Water Supply Strategy plan proposed by RWSA, a plan that developed a phasing of future water-supply projects, is there any regulatory reason why such a plan could not be approved? The Plan included a commitment to Integrated Resource Planning, watershed management, demand management, and early warning drought management response and efforts to balance water uses to protect natural resources. We understand that some of the previous plan's yield figures now appear to have been incorrect, but is there any other reason why the approach taken in that plan is unsatisfactory? Do regulators look for components such as these in a long-range plan? What do you look for in the application?*
  - b) *Since in 35 or 50 years technology will change and experience will create new solutions, such as recycling waste water, do regulators require 50-year plans as if all options are already known? Do not the regulatory agencies want some flexibility in the community plan to allow for the impact of some of these improvements, technological advancements, etc., over the next 25 -30 years?*

Mr. Hassell responded that the answer was “no” to the first part of that question which dealt with whether a community was locked into filing an application based upon a 50-year time period. The answer was “yes” to the second part of

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that question concerning using a 30-year time period.

Mr. Hassell stated that he would not be able to comment on Question 4a) concerning the 2002 Multi-step Integrated Water Supply Strategy until he received further information on the plan.

Concerning Question 4b), Mr. Hassell stated that DEQ realized that new technology could be developed and would consider the associated impacts. There were some reuse options considered in both the 2002 and the current water supply plans, such as pump back from below Moores Creek up into the watershed. The Health Department, which was one of DEQ's advisory agencies that were given full consideration, took a position against that option.

Mr. Hassell then referred back to Question 4a) concerning what regulatory agencies look for in an application. He stated that "need" was very important. He felt it was well recognized that RWSA's central system needed water.

Mr. Hassell next addressed elements of the 2002 Plan, which included integrated resource planning, watershed management, conservation plans, and drought management plans, and stated that those would be important components of a permit application that DEQ would consider.

Mr. Kudlas used the analogy of the land use planning process in answering Question No. 4. He stated that the process involved the development of a comprehensive plan, zoning ordinances, and then approval of site plans or subdivision plans. He felt that this community's water supply planning process was at the site plan stage. The planning regulation that DEQ had in process now was akin to the comprehensive planning process, which was a general 30-year to 50-year plan. He pointed out that the detail provided in RWSA's plan was much further along than other community planning processes.

Mr. Gaffney then moved on to Question No. 5 as follows:

5. *Are acres of impacted wetlands and feet of stream inundations the only environmental impacts that will be considered in evaluating our application? If not, what other environmental impacts will or may be considered in the evaluation?*
  - a) *To some of us, proposals that allow us to weaken our stewardship of our watershed (such as getting water from outside this watershed) should be regarded as potentially environmentally damaging. Can regulators either correct this assumption or suggest ways in which it can be inserted into the permitting process?*
  - b) *Since relying on James River water for use in times of drought decreases the need for, and interest in, protecting our existing reservoirs from siltation and other degeneration, is this abandonment of our present*

*infrastructure (in whatever form and to whatever degree this takes place) considered when regulators evaluate environmental impacts? Since some of this abandonment can take the form of land-use, zoning and storm water decisions that are not under RWSA's direction, do regulators take into account the effect on such city and county decisions? We are aware that EPA is supportive of the type of land-use decisions called "Smart Growth." Does that support play any role in the long-range water supply permitting process? What other land-use decisions that can be implemented by a locality are being promoted by the regulatory agencies?*

Mr. Schwinn stated that once a federal permit was required under Section 404, the Clean Water Act, COE had to address both direct and indirect impacts. The obvious direct impacts were listed in Question 5, which included the physical loss of streams and wetlands either through the placement of fill material or inundation as a result of raising the crest of the dam. There might also be some indirect impacts that would need to be considered by COE. He also listed some of the other federal laws that COE was mandated to follow, which included the Endangered Species Act, Fish and Wildlife Coordination Act, the National Historic Preservation Act, and the National Marine Fisheries Preservation Act.

Mr. Schwinn further stated that in a water supply project not only would COE be evaluating the loss of wetlands and streams upstream of the dam, there might also be downstream impacts that would need to be considered. Those impacts could include reduced flows and increased flows. He commented that if the project mentioned earlier concerning refurbishing the Mechums River Pump Station were tied into the overall components of the plan, COE would need to address the impacts of that pump station in terms of whether there were any endangered species or other aquatic species in that area that would be affected by the reduced river flows. He added that there were several issues that would need to be addressed once a federal permit was required in terms of both direct and indirect impacts.

Mr. Schwinn next discussed part a) of Question No. 5. He stated that if one of the alternatives being evaluated by COE was outside of the watershed, but it had the potential for greater environmental impacts than an alternative within the watershed, then his agency would not consider that alternative.

Mr. Schwinn then addressed part b) of Question No. 5, which he understood pertained to the other activities currently underway in the watershed that might result in environmental gain and if they could be considered during mitigation for impacts from some of the other projects. He asked if his interpretation was correct.

Mr. Rooker stated that he felt the question dealt with two mitigation issues. The first one pertained to mitigation with respect to determining what is the "least

environmentally damaging,” and the second one concerned the cost of mitigation. An option that might have more stream and wetlands inundation could have some other benefits to the environment that ought to be considered in making the initial “least damaging” to the environment analysis.

Mr. Schwinn referenced again the 404(B)(1) guidelines , which specified a sequence of steps that at one point in time were quite rigid and could not be altered, and were in the following order: Can the impact be avoided; can the impact be minimized; and finally, compensatory mitigation for unavoidable impacts. COE was now allowed more flexibility and could alter the sequence if it were determined that the project would result in an overall environmental gain. He asked Mr. Stokely if it was correct that EPA’s concurrence would be needed before COE could proceed in that manner.

Mr. Stokely responded that EPA did take into account a variety of mitigation efforts as part of the overall project. Instead of the use of “sequencing,” EPA would look at the overall picture of the permit, the impacts, and what was being done to mitigate the impacts.

Mr. Schwinn clarified further that when COE was evaluating the “least damaging, practicable” alternative, the mitigation issue would not be addressed upfront as a means to buy down the impact so that the alternative becomes “least damaging” at that point. COE was required to review the merits of the project on the impacts without considering mitigation. It was only when they reached the step of determining that it was the “least damaging, practicable” alternative, that mitigation could be addressed. If Question 5b) concerned whether all the environmental gain could be considered upfront to buy the impacts down, then the answer would be “no” as it related to COE regulations.

Mr. Rooker stated that he felt it was a very important question that needed to be developed fully at the meeting due to the four options currently under consideration. The James River Pipeline alternative, which was outside the watershed, appeared to have very little stream inundation and wetlands impacts. There were other options within the watershed that were much less costly but had potentially more stream inundation and wetlands impact issues. Many in the community had expressed their preference to stay within its watershed to develop an additional water supply source. He inquired if there was a way to bypass the first level of analysis and evaluate the overall project in terms of protecting the watershed for existing reservoirs and other factors deemed important by this community, which he felt were well stated in Question 5b). He also asked if the options currently under consideration that appeared to have more stream and wetlands impacts were still on the table for this community.

Mr. Schwinn commented that in answer to Mr. Rooker’s question, COE could not bypass stream and wetland impact analysis under the current state of their

regulations. He further stated that the COE must look both within the watershed and outside the watershed to find the “least damaging, practicable” alternative, and must consider all the factors that are part of the regulations to make that determination. He offered, however, that if their findings were to conclude that an alternative within the watershed and alternative outside of the watershed, both of which met the purpose and need of the project, had similar environmental impacts, then COE could approve the alternative within the watershed because it would not matter in terms of the regulations which of those the COE permitted.

Mr. Rooker referred back to the earlier discussion by Mr. Lynch concerning the 2002 Community Water Supply Plan. This community-approved plan included the four-foot crest option, which was a quick and not too expensive way of substantially increasing the water supply. There were some significant initial wetlands and stream impact issues associated with that concept. It did provide the benefits of working within the existing watershed, continued efforts to protect the watershed and the water source, provided for probable creation of new fringe wetlands, and maybe could provide some improvements in the existing stream areas by way of mitigation. He felt it was important to know as quickly as possible whether that option could still be considered as part of the plan.

Mr. Schwinn replied that he did not know the details of this project in terms of how many acres of wetlands and how many linear feet of streams would be inundated by raising the crest height on Ragged Mountain or SFRR. Once the COE were to review the data, they would first determine if the preferred alternative fits into a “nationwide permit” category. If not, they would determine if the overall impacts are low enough to allow COE some flexibility in terms of considering alternatives. The COE really cannot answer Mr. Rooker’s question definitively until the COE knows the project details and measured impacts.

Mr. Rooker stated that the consultants had developed the wetlands and stream inundation figures. He then reiterated that he felt it was important to know the viability of that alternative before proceeding with the application process and trying to guess whether or not COE would approve a plan that included the four-foot crest option.

Mr. Brian Watson with DGIF stated that there would be approximately 30 acres of wetlands impacts and 18,000 linear feet of stream impacts with the four-foot crest option.

Mr. Lynch commented that by raising the SFRR by four feet, 30 acres of existing wetlands would be inundated. Those wetlands were created when the dam was first built. This option would create more than 30 acres of new wetlands. He asked if COE and EPA would view those new wetlands favorably during their review process.

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Mr. Schwinn stated that this was the question asked earlier by Mr. Rooker as to whether mitigation could be used to buy down the impacts of the project. The answer to that question was in general “no.” The loss of 30 acres of wetlands would have to be evaluated upfront and compared to other alternatives being considered to fulfill the purpose and need of the project to determine whether or not that particular alternative was the “least damaging” alternative. If COE reached that conclusion and issued a permit for that alternative, then the discussion could take place about recreating the loss of 30 acres of wetlands. Mr. Gaffney noted an earlier comment by Mr. Schwinn concerning applications for both off-site and on-site alternatives. He asked if the suggestion was that two applications be submitted.

Mr. Schwinn clarified that he felt holding a pre-application meeting with his office would be very appropriate to discuss the detail and the documentation of the alternatives under consideration, so RWSA would know upfront what information was needed by the regulators and not waste a lot of time, energy, and resources on an application that may or may not be permitted. He added that his office was always available to conduct pre-application meetings. This was done routinely before there was a big investment of resources.

Mr. Stokely commented that there would be additional information needed on the James River Pipeline alternative. Although the environmental impacts to streams and wetlands would be less with this option than raising the existing reservoir level, not all the impacts from bringing the James River water into the upper watershed were known at this time and would need to be determined before EPA could make a decision as to which alternative was the “least damaging” alternative. Two other factors that EPA would take into consideration when reviewing this alternative was whether the cost was considered “practicable” by the community and whether it met the purpose and need of the project.

Mr. Hassell stated that there were other issues to be considered during the review process, which included impingement and entrainment issues with the James River Pipeline and instream flow issues with all of the alternatives, with the possible exception of dredging. He felt the “gist” of the question concerned whether the regulators would take into account a community’s choice of an alternative outside of its watershed rather than preserving its existing watershed. He referred to the 404(B)(1) guidelines, which mandated the permitting of the “least environmentally damaging” alternative in terms of its aquatic impacts, unless that alternative itself has other significant environmental impacts. If that were applied to the James River Pipeline alternative, arguments that approval of this option would result in the community having to face future population growth and zoning issues leading to degradation of the SFRR would not carry much weight with the regulators due to the area’s control over comprehensive planning initiatives. He could not recall an alternative associated with other environmental

impacts that had been approved with minimal impacts to wetlands and streams, but he felt it would be possible.

Mr. Gaffney commented that he felt Question No. 6 had been covered during previous discussions but went ahead and read the question as follows in case there were any further comments concerning this issue:

6. *How do the estimated environmental impacts for the four-foot crest option compare with the other water supply expansion projects which have been approved elsewhere?*
  - a) *Is selecting the "least environmentally damaging" option required, or is there leeway for selecting other options, assuming there are legitimate environmental reasons for doing so?*

Mr. Lynch stated that he thought a better question might be whether a 30-acre inundation as part of an overall plan that would create wetlands for the future had been approved previously.

Mr. Schwinn stated that the answer to the question as to whether COE had permitted impacts in excess of 30 acres was "yes." He added that every project had to go through the same review process that was being discussed at this meeting.

Mr. Gaffney then went on to read Question No. 7 as follows:

7. *Can we get "environmental credit" for wetlands created, stream improvements made, conservation easements, maintaining the health of our existing reservoirs, etc., if we were to choose adding the four-foot crest on SFRR and/or maintenance dredging as part of our water supply solution?*
  - a) *Many of us are convinced of the value of living within the resources of our own watershed and being good stewards of our present watershed and our present infrastructure. We have prided ourselves in the care we have taken of our watersheds. We have developed sediment and erosion, storm water, land use, zoning, and Comprehensive Plan measures over the years that indicate our community's commitment to watershed protection. To some of us, the "compensatory mitigation" measures that would be required to counter stream and wetland impacts seem extensions of, and increased funding for, measures already being pursued. Is this inaccurate?*
  - b) *From a regulator's perspective, is it preferable to live within our own watershed's resources if possible?*

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- c) *It has been suggested that projects that require substantial mitigation will fail the "least environmentally damaging" test. Does the regulatory framework recognize the positive value of stewardship and maintenance of our own watersheds?*
- d) *How do the regulatory agencies take into account in their decision the positive impacts of a decision, e.g., flooding of an area destroying certain habitat but increasing the habitat in nearby areas?*
- e) *Do regulators have suggestions for how Buck Mountain land, owned by RWSA, could fit into compensatory mitigation?*
- f) *Can endangered species be moved to allow construction?*
- g) *How might the regulatory agencies work with this community, as partners, to develop and implement a water supply plan that has as its foundation a commitment to local-source water use and watershed protection? Can you refer us to other water supply systems that have taken an innovative or integrated management approach to address their water needs while protecting the environment?*

Mr. Gaffney added that a number of the issues listed in this question had already been discussed and requested that the focus be on the items not previously covered.

Mr. Hassell addressed the question that asked whether living within your own watershed's resources was viewed as preferable by the regulators. He stated that it was preferable, but it was not always possible. The watershed for this area was about 250 square miles if the SFRR was included, and the amount of water needed to meet the future projected demand was 20 million gallons per day (MGD). By staying within your own watershed, meeting the projected demand would place a stress on that system. For example, the area had already experienced the drying up of the Moormans River and could expect a similar experience with the SFRR.

Mr. Hassell next addressed the question dealing with whether an endangered species could be moved. He believed that the answer was "yes."

Mr. Hassell further stated that if a project was permitted that impacted streams, Buck Mountain Creek might fit into compensatory mitigation because you could either preserve part of the land to receive mitigation credit or if it were degraded – which he did not believe was the case – you could get restoration credit. Dr. Gilinsky commented that if it were already preserved, then you would receive no compensation benefit.

Mr. Watson, who stated that he dealt primarily with freshwater mussels with

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DGIF, addressed the question concerning whether endangered species could be moved to allow construction. He commented that this had been done in the past, but he could not state for certain whether it would be allowed with any of those projects that involved inundation of an area that had endangered species. It would require a different level of review that would involve his agency and the Fish and Wildlife Service (FWS). During that process, a biological opinion would be offered and an opinion issued as to whether the species could be moved.

Mr. John Kauffman also with DGIF stated that concerning the Buck Mountain land, he felt there was the potential for compensatory mitigation. He had suggested several times to RWSA that Buck Mountain could serve as a model area for how riparian areas are managed within the watershed and could be one avenue for compensatory mitigation as far as loss of stream habitat. Some other potential areas included opening up areas for fish migration, which had been investigated by Stafford County during their water supply planning process.

Mr. Rooker inquired if compensatory mitigation could be considered during the initial evaluation of the "least environmentally damaging" alternative, with discussions on how those impacts would be mitigated being held after the plan had been approved.

Dr. Gilinsky commented that it was a sequencing process that considered avoiding and minimizing impacts and how the impacts would be compensated. Even though alternatives are viewed as a complete package, it would still need to be demonstrated that impacts were avoided and minimized before a compensation package would be considered. She added that a permit would not be issued unless it was felt that the compensation being provided addressed the acreage and functions of the waters lost. She reiterated that the project would first be evaluated based on whether the impacts were justified by the project need and if those impacts were minimized.

Mr. Schwinn referred back again to the 404(B)(1) guidelines and stated that COE was obligated to require compensatory mitigation for lost aquatic resource function. Sometimes it was in the form of using acreage of wetlands or linear feet of streams as a "surrogate" for that lost function. There was also a Presidential Executive Order that charged the COE with no net loss. This criterion was to be applied nationwide and not for each individual project. He then addressed the question as to whether watershed improvement efforts by a community could be considered as mitigation. He felt it would be very difficult to go back and quantify exactly what the functional improvements have been based on the watershed work done in terms of the miles of streams improved and wetlands acreage created. There have been losses that predated the Clean Water Act, and some of the improvements were compensating for past losses. Current plans cover new losses that needed to be mitigated.

Mr. Lynch commented that he understood that breaching the Woolen Mills Dam

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could not count toward mitigation, but he inquired if future projects such as improvements to Meadow Creek would be allowed.

Mr. Schwinn replied that he felt COE would consider such future projects and asked EPA to provide its perspective on this issue.

Mr. Stokely agreed that these future stream restoration projects could be considered for mitigation for loss of streams. He noted that deed restrictions would be required as part of the mitigation compensation.

Mr. Rooker inquired if they were discussing solely the compensation package or were they referring to the initial judgment of an application.

Mr. Stokely replied that the regulations are not very flexible as far as the alternatives analysis process, which specified a determination of the “least environmentally damaging” alternative.

Mr. Schwinn further clarified the term “mitigation” to avoid confusion on that issue. He stated that COE was charged by regulations to look for functional replacement as part of the total package, which could include restoring and protecting riparian areas and creating wetlands.

Mr. Schwinn referred back to the Endangered Species Act and stated if there were any endangered species involved with any of these alternatives, COE would conduct a two-prong test that asked whether there was “no affect” or “may affect.” If the test indicated that it “may effect,” than it would involve FWS and complying with the Endangered Species Act. It would also involve Section 7 Consultation with the FWS that would entail preparing a biological assessment, which sometimes became the responsibility of the applicant and their consultant to prepare that document. The biological assessment would be submitted to the FWS, and they would render a biological opinion. There were two options associated with the rendering of a jeopardy opinion. The first one entailed adding steps to be undertaken to resolve this issue, which generally included the requirement to salvage whatever endangered species were involved. He added that endangered species could be moved, but to get to that point was an involved process. The involvement of FWS meant that a new time frame under Section 7 Consultation of the Endangered Species Act would be in place.

Mr. Gaffney inquired if both the “does affect” and “may affect” determinations involve the Section 7 Consultation process.

Mr. Schwinn replied that ultimately it would be COE’s decision, but occasional disagreements have occurred with FWS concerning determinations made on endangered species impacts. If COE made the determination that there was “no

affect,” then there was another set of procedures that would allow FWS to elevate

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that decision if they felt that it was a “may affect.” FWS could request that they enter into Section 7 Consultation.

Mr. Gaffney stated that he would combine the next two questions as they pertained to the same issue. He then read Questions 8 and 9 as follows:

8. *Under what circumstances can we do dredging in the South Fork Rivanna Reservoir without obtaining permits? If a permit is required and issued, how long will it be valid?*
9. *Can we obtain permits for maintenance or opportunity dredging of SFRR in order to maintain the health of the reservoir? If so, should we file such an application separate from our application(s) related to the long-term water supply applications, or as a part of those applications?*
  - a) *If reservoirs are not dredged and silt builds up possibly forming new wetlands or flooding upstream, is this viewed as a negative environmental impact? Where would that issue appear in the permitting process?*
  - b) *Albemarle County, the Thomas Jefferson Water Resources Advisory Committee, and consultants have studied the source and composition of sediment that is filling the Rivanna Reservoir, but all studies point to a need for more information if sedimentation is to be reduced and/or dredged spoils are to be put to constructive use. Do state and federal regulators encourage further study? Does pinpointing the sources of sediment qualify for expenditure of mitigation funds? There is a concern that without study, traditional stream-bank restoration, for example, may be minimally effective in reducing siltation. Or, without further study, the cost of dredging may be inaccurate due to uncertainty of a market for the dredged material.*
  - c) *Do regulatory agencies ever require maintenance dredging, e.g. if needed to maintain infrastructure? If maintenance dredging is not allowed, then what means are the regulatory agencies allowing localities to use to keep all water supply impoundments in the USA from becoming unusable?*

Mr. Hassell first addressed the question dealing with the circumstances under which SFRR could be dredged without a permit. He stated that “perhaps none,” because even if you were to drain the reservoir and conduct the work under dry conditions, there might be fringe wetlands that would be impacted. He added that any impacts would probably be minor, so dredging under dry conditions could possibly be done under a general permit. DEQ did not have a general permit for dredging, so if a permit were obtained from them it would be issued for a period of 15 years.

Mr. Hassell then discussed the question concerning the ability to obtain permits for opportunity dredging to protect the health of the reservoir. He stated that as

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opposed to dredging for water supply purposes, the answer would be “yes” as long as the material was not disposed into wetlands or streams.

Concerning whether pinpointing the sources of sediment qualified for expenditure of mitigation funds, Mr. Hassell said the answer was “no.” In that same section, Mr. Hassell commented on whether further sediment studies were encouraged. He stated that it had been suggested that additional studies would show whether the dredged material was suitable for reuse. The economic analysis that he had reviewed on this project used several scenarios, which included 50 percent reuse and 0 percent reuse, and provided a realistic cost for the project. He did not feel that an additional study was needed.

Mr. Hassell added that regulatory agencies did not usually require maintenance dredging. The one dredging project that he was aware of that was not for navigation but solely for water supply purposes was conducted by the City of Fairfax, which was conducted by their choice and not due to a DEQ requirement.

Mr. Schwinn asked Mr. Brogdon if RWSA fell under Section 10 of the Rivers and Harbors Act, which was an important question from a dredging standpoint for COE. Section 10 authorized COE to regulate dredging operations. Mr. Brogdon replied that RWSA fell under Section 404 and no permits would be required from COE to dredge the sediment. Mr. Schwinn added that if the method of removal entailed dropping the reservoir pool and then placing heavy equipment in the upper end of the reservoir, a COE permit would be required. Dredging operations that would require a COE permit included a hydraulic dredge drag line or track hoe. He added that the method of removal would be the important determination as to whether RWSA would need a permit from COE.

Dr. Gilinsky clarified that a state permit would be needed for any dredging operations.

Mr. Schwinn continued by stating that if the material was being removed by a hydraulic dredge drag line or track hoe and was being transferred off site, then COE would be very interested in the disposal site. If the material was being placed into a U.S. waterway, the disposal of that material would require a permit due to wetlands or stream issues. While the dredging in and of itself would not require a permit from the COE, the disposal site could require a permit.

Mr. Rooker commented that the reservoir was silting up, and it made sense to maintain the health of our reservoir, regardless of what else was done for the future water supply. During the drought of 2002, the community was interested in performing dredging operations. For whatever reason, the dredging permit was never issued. The community did not want to find itself in the position of not

being able to take advantage of future opportunities to maintain the health of the reservoir due to not having a dredging permit. He asked if a permit application

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for dredging could be submitted separate from the water supply plan. He further inquired as to what would be the process for obtaining an opportunity dredging permit that would allow them over the next 15 years to address sediment issues.

Mr. Gaffney followed up Mr. Rooker's question by asking if the opportunity arose in the fall to lower the reservoir and create our own opportunities to dredge, would it be possible to obtain a permit for that purpose.

Dr. Gilinsky stated that RWSA could apply for a permit to conduct dredging or opportunity dredging operations. During the last drought, the permit issue was discussed several times in several meetings but DEQ never received an application that her agency could act on. During the review process, the key issues for DEQ would be the purpose and need, as well as the disposal site. DEQ would encourage an uplands disposal site versus filling in wetlands.

Ms. Thomas commented that those who had been involved with transportation planning were aware that as federal and state funding has decreased, efforts have been made to utilize the existing infrastructures more efficiently. She felt at the local government level a value was placed on protecting and utilizing its existing infrastructure. Dredging appeared to be a necessary means to maintain present infrastructure as effective as possible. She inquired if the concept of preserving existing infrastructures appeared anywhere in the permitting process.

Mr. Hassell stated that DEQ had never expressed any opposition to dredging based on its environmental impacts. The impacts to water quality would be temporary. The impacts to wetlands, as long as the disposal was upland, would be zero. He felt dredging was a question that the local boards had to address as to whether they would be willing to undertake such an expensive project. DEQ had issues with the SFRR four-foot crests alternative that was partnered with dredging.

Mr. Gaffney then read Question No. 10 as follows:

*10. Do any of the regulatory agencies have data which include broad spectrum (all contaminants) test results from water in the James River and/or the other rivers in our watersheds? If so, can we obtain these data? There are many questions regarding the proposed James River pipeline.*

- a) From regulators' perspective, does our community have to "lay claim" to James River water by some specific time?*
- b) During a drought of record, what actions might state or federal regulators take to limit withdrawal from the James River? Can we*

*assume that withdrawals will be allowed up to maximum permitted volumes at all times? Does use of the James River free the community from having a drought management plan that might restrict some uses*

- c) *Are there records regarding James River water quality during the last drought? Should any treatment plant for river water be designed to deal with a decreased quality of water in a drought (since the river water will not be needed during normal rainfall years)? In addition to the Virginia Department of Health's determination that water meets safety standards, do state or federal regulators deal with issues of water quality and treatment requirements and costs, and if so, in what way? (We know that we as rate-payers will have an interest in those costs and as water-drinkers in issues such as taste, but we are unsure if the regulators are interested in these issues.)*
- d) *Are there regulations regarding the introduction of lower quality river water into a higher quality river system, such as may be the situation when putting James River water into Ragged Mountain reservoirs? (Some data suggest James River water is inferior in hardness, alkalinity, pH, suspended solids, Total Organic Compounds, and Pharmaceuticals and Personal Care Products. Future deterioration of this raw water, derived from a large watershed not under our control, is also possible.)*
- e) *Does the importation of water into a basin necessitate a regional plan in which all communities in the Rivanna River basin have input? Will the proposed Rivanna River Basin Commission be recognized by the regulators as having a role to play in the planning process if and when it is constituted?*
- f) *How much input do the regulatory agencies have in a cooperative arrangement among localities? Who is the primary contact-locality from the regulatory agencies' perspective, the end user, the processing locality, or the supply locality?*

Dr. Gilinsky stated that data concerning basic water quality primers could be accessed on the DEQ website through their interactive Geographic Information System (GIS).

Mr. Hassell felt that one of the premises of this question concerned whether or not the James River water was of lower quality than the water in the SFRR, Moormans River, or the Ragged Mountain Reservoirs. He stated that he could not answer that question definitively without access to the data. There was one myth that he saw in the question that concerned suspended solids. The premise of the James River operation would be to pump during drought conditions. At that point

in time, suspended solids in the James River in drought events would be very, very low. He had examined the 2002 data for the James River for suspended solids level near Lynchburg, and they were below detection limits.

Mr. Hassell next addressed the part of Question 10 that dealt with the “lay claim” issue. DEQ strongly discouraged communities from “laying claim.” The state policy as to water stated that “the right to withdraw water from any river or stream is limited to the amount that it could be put to beneficial use by the public to be served.” His agency has received applications where communities are attempting to “lay claim.” In those cases where DEQ felt the water would never be used, “sunset” clauses were inserted in the permits stating that after a certain time period, the water right allocation would expire. He recommended that applications for James River water use be filed only when it would actually be utilized.

Mr. Hassell also commented that it appeared from the technical data provided by the consultants on the James River Pipeline alternative that a permit would be issued for RWSA’s maximum daily demand. He felt it would more likely be based on the normal daily demand figure. There would also be a requirement that when the river flow was down, conservation efforts would be initiated.

Mr. Lynch questioned as to what would be the assurance if you could not “lay claim” to the water. The reason for considering the James River Pipeline option was the ability to meet the 50-year demand requirement.

Mr. Gaffney also inquired that if a phased-in approach was taken and the James River was the second or third phase to be implemented 20 to 30 years from now, was that possible or would the community lose that option after a 5-year time period.

Mr. Hassell commented that DEQ recognized 50 years as a legitimate planning period. He further stated that if RWSA submitted an application for a two-phase project, for example, raising Ragged Mountain Dam now and as part of a 50-year plan, and submitted an application at the same time for the James River Pipeline, the answer to whether DEQ would issue a permit for both phases was probably “yes.” Knowing that the second phase was to be implemented at a later time, DEQ would probably not insert a “sunset” clause into the permit. There were several applications on the James River at this time, and it was a legitimate concern to “lay claim.” On the other hand, the water supply that would be taken out of the James River if that were the preferred alternative, would largely be withdrawn from either the Scottsville site or at Bremono Bluff if done as a regional approach, used in the Charlottesville metropolitan area, and returned at the Moores Creek Wastewater Treatment Plant. Due to that aspect of the project, he was not certain that DEQ in its role as a state allocator of water would view this project the same way it would evaluate a power plant that uses the water consumptively.

Mr. Tony Watkinson with the Virginia Marine Resource Commission (VMRC) commented on the potential permit application for the use of the James River. As part of the application process, his agency would like to see complete

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documentation of the resources of that section of the river, such as fisheries, aquatic resources, and the habitat that those resources are dependent on, and how the project might influence those resources. This might include entrainment impingement issues with organisms that might be drawn into the intake system, as well as the minimum instream flow issue, and at what point would water levels be so low that withdrawals would be detrimental to certain resources in the river. He added that did not feel that a water supply plan could be submitted without a full analysis of some of the aspects he just described for an intake in the James River. Mr. Gaffney then moved on to Question No. 11 and follows:

11. *Are we locked into measuring demand based upon a starting point of 12 MGD, when actual system-wide demand (including Scottsville) has been averaging less than 10 MGD for two years? Why can't we use the historical data available to us?*
  - a) *From regulators' perspective, is a drought management plan taken into account in demand projections? Since we have experienced an ad hoc drought management situation in which consumer use was reduced almost 20%, we suspect that a well-designed drought management plan can significantly affect water demand in a drought of record. Are we limited to assuming only a 5% reduction due to a drought management plan?*
  - b) *We have also seen a yearly decrease in water usage, partly due to conservation measures such as low-flow toilet rebate programs. Do regulators take into account the effect of water conservation programs on projected demand?*

Mr. Hassell stated that he was not certain how to answer the section dealing with using the starting point of 12 MGD for demand measurement. What he recalled from reviewing RWSA's drought demand projections was that four methods were used and the demand deficit was averaged from the four different methods. He felt that a best fit linear regression process was not concerned with water use in one particular year, but the average demand over time and the amount by which it was increasing. DEQ's review of RWSA's demand projections found them to be reasonable. There was a slight criticism concerning the population to be served. It was 7 percent higher than what the Virginia Employment Commission had projected. He commented that those numbers change as evidenced by the new projections issued by the Census Bureau recently.

Mr. Hassell then commented on the question concerning conservation programs. He stated that DEQ did take into account conservation programs. The

conservation efforts by this community during 2002 did result in a significant reduction in water use. At the time the mandatory conservation measures were enacted in August 2002, citizens were consuming more water due to the dry conditions. Another factor for the reduced water demand was the heavy rainfall

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received during September and October 2002. He thought the 5 percent reduction figure as a result of implementing a drought management plan was a little low, but added that he thought the 20 percent goal was not realistic.

Mr. Gaffney then read Question 12 as follows:

12. *Is there a regulatory reason we can't consider the Beaver Creek Reservoir as part of our long-term supply solution?*
  - a) *The Mechums River pump [station] would possibly make Beaver Creek water more fully usable in time of drought; what is the permit status of the pump station?*

Mr. Jim Brogdon with COE stated that the rehabilitation of the Mechums River Pump Station had been issued under a "Nationwide Permit 3." There were some conditions placed on the permit that took into consideration some requests from DGIF and DEQ. The permit is still usable for the lifetime of "nationwide permits" that are in affect for the rehabilitation of that facility.

Mr. Hassell stated that if it were decided to raise Ragged Mountain Dam, which had a drainage area of 2 square miles, there would be a long refill time after a drought. DEQ had issued some minimum instream flow requirements when the previous Executive Director applied for a "nationwide permit." This did not mean those would be the same permit conditions that DEQ would apply if RWSA submitted an individual application for Ragged Mountain with the Mechums Pump Station as its refill component. The Mechums Pump Station only contemplated a 4 MGD pump. DEQ might allow the installation of a larger pump that could be used at higher flows. As the flows dropped, the amount of water that could be pumped would also decrease. At higher flows, you could take more water which might decrease the refill time for an expanded Ragged Mountain Reservoir.

Mr. Gaffney then moved on to Question No. 13 as follows:

13. *Will regulators look at the recharge rate for facilities proposed? Is it not best to have a large drainage area with many springs above an impoundment to keep the water level as stable as possible during a drought?*

Mr. Hassell responded that DEQ would keep Ragged Mountain on the same critical drought cycle. What was not desired was a back-to-back dry year that resulted in the storage level becoming lower than the first year. DEQ would

attempt to "craft" the instream flow requirements and pumping limits so that the facility would be on that one-year drought cycle.

Mr. Hassell referred back to the question concerning the Beaver Creek Reservoir

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and stated that DEQ did not have any regulatory reason for disallowing a water release from the Beaver Creek Reservoir or for it to be a part of the project.

Mr. Gaffney next addressed the questions from Mr. Ken Boyd and read the first one as follows:

- 1. How much influence does the desire of the community, as professed through the local elected officials, have with [the regulators'] decision? Especially since local officials have a better handle on land use policies and planning. I think this is embedded somewhere in Sally's questions, but I would like to hear a direct answer as to where our input ranks in the decision process. If what we want is irrelevant, [the regulators] need to let us know.*

Mr. Schwinn stated that it was up to the applicant to determine the purpose and need of the project. Congress had charged COE to permit what people needed and not necessarily what they wanted. There was a provision within their regulations that allowed the Governor of that state to voice his opinion and request that COE reconsider its decision on a specific project that was considered important to a community.

Mr. Ken Boyd, Vice Chairman of the AC BOS, stated that from his standpoint, what prompted this meeting was the fact that the consultants appeared to be leading the community down a path where its only "least environmentally damaging" solution was the James River Intake or increasing the capacity of Ragged Mountain. He felt that it was obvious that the alternative with the least environmental impacts was the James River Intake option. This was also the option that was the least attractive from the consensus of the community. The community's sentiment was not to go outside of its watershed and provide an on-site solution. He asked if it came down to a decision between those two alternatives, would the input of the community have any influence on their decision-making process.

Mr. Schwinn replied that in addition to the 404(B)(1) guidelines, his agency also had a whole suite of "public interest review" aspects that factored into COE's determination of the "least damaging, practicable" alternative. In the context of the "public interest review" factors, consideration was given to the needs of the community, impacts to fish and wildlife resources, and the economy. He did not want to leave the impression that community input was not important, as this had to be considered in the overall context of determining whether or not to issue a permit for a particular alternative. He could not however state that community input was going to be the sole determining factor.

Mr. Dorrier referred to Mr. Schwinn's earlier comments on the number of applications that had been submitted concerning the James River as a potential water supply source. He asked if COE had any financial incentives or encouraged localities to consider joint regional projects.

Mr. Terry Wagner with DEQ commented that he thought there was some confusion again concerning planning and permitting. The state law and the regulations encourage regionalization of water supply planning. To his knowledge, there was no financial support provided for those endeavors. The James River Pipeline was a good example of a project that could be encouraged as a regional approach. It would first need to be argued that it was a practicable source. Another consideration would be whether all the local approvals could be obtained to move the water from the James River to RWSA's system. He felt that although any withdrawal from the James River that contemplated a regional use of the water would be viewed more favorably, this did not mean that a permit for individual use could not be issued.

Mr. Dorrier also inquired if the number of applications requesting use of the James River would factor into a decision.

Mr. Terry Wagner replied in the affirmative and stated that any resources being utilized in the Commonwealth would be evaluated as to its total stress on that resource and its ability to supply water in the future. He felt this referred back to an earlier question as to whether a permit issued for use of the James River would allow a withdrawal for the maximum amount specified in that permit at any time. The answer was "no." There would be conditions on any permit issued on the James River, as well as for the alternatives inside the watershed under consideration.

Mr. Rooker commented on the issue of water quality of the various sources that might be available to the community. He asked if highly treated water was not considered to be a "practicable" solution for its population, would that be taken into consideration by the regulators.

Dr. Gilinsky responded that DEQ would take into consideration the amount of treatment needed, which would also affect the cost of that alternative versus the other alternatives.

Mr. Rooker stated that cost would be a factor, but his question pertained to the potential health impacts of highly treated water that might be more of a long-term concern for the population versus less treated water. He did not have the data at this time to determine if the James River would require more or less treatment than water from SFRR or Ragged Mountain. He asked if he understood correctly that if a substantial difference was determined, this information might have some impact on that available option during the permitting process.

Dr. Gilinsky commented that after the application had been submitted, DEQ would consult with Health Department on that issue.

Mr. Ron Conner with the VDH stated that they conducted essentially a two-step

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process when evaluating the preferred alternative. The first step entailed reviewing a preliminary engineering report, which they have received from RWSA. During their review, the whole scope of the project would be taken into consideration. A recommendation on a preferred alternative would then be evaluated, and the plan would be approved if it met the demand and treatment requirements. The next plan of action would be the issuance of construction permits. Considerations from other regulators would need to be satisfied before this process could be initiated by his agency. VDH's policy has been to use the best quality of water available for treatment. He added that the James River water could be treated. A decision on the treatment costs associated with the James River option would be made by the consultants or other staff and would be submitted to VDH for their review and approval of the plan.

Mr. Rooker inquired if there were certain contaminants that could not be treated out of water.

Mr. Conner responded that with the present advances in technology, water could be treated to the desired quality.

Mr. Rooker further inquired if that would be the case for contaminants, such as PCB's that remained suspended in water even after going through a treatment process.

Mr. Conner stated that those contaminants could be treated but could not verify the results.

In response to a question by Mr. Lynch concerning the preliminary information provided to VDH by RWSA, Mr. Conner stated that a letter of support for all the alternatives under consideration had been written based on meeting demand and treatment requirements.

Mr. Lynch further inquired as to when VDH received information on the four alternatives.

Mr. Conner responded that the data was submitted by RWSA when the list of alternatives was narrowed down to the four options currently on the table.

Mr. Lynch also noted Mr. Hassell's previous comments that he was unaware of the 2002 Community Water Supply Plan. The community had undertaken a long planning process starting in 1999, which resulted in selected alternatives in 2002. He expressed concern that this plan had not been submitted for regulatory review.

Mr. Gaffney responded that the community approved a water supply plan in 2002. The first step taken after approval of the plan was to update the data. When the update was completed, the area was experiencing a drought. After a review of the resulting data, it was determined that the Community Water Supply Plan of 2002

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would not meet the needs of this community. A reevaluation of the plan was then undertaken, which resulted in the four alternatives currently under consideration.

Mr. Lynch further stated that the plan was approved and financed in December 2002. In the spring of 2004 the elected officials who passed the rate hike onto its customers were told that the 2002 plan was moving forward. In July 2004, the elected officials were informed that some of the original projections were overstated and the plan would need to be reevaluated. He expressed concern that during that 18-month period, there was no attempt to permit the plan.

Mr. Gaffney commented that this issue had been addressed over time and was not a subject for this meeting. He suggested that Mr. Lynch obtain that information from either a RWSA Board member or Mr. Tom Frederick.

Mr. Don Wagner, Vice-Chairman of the ACSA BOD, commented that as he understood the process, to obtain a permit once a decision had been made on the preferred alternative, a permit application would be submitted with the accompanying technical information on that option, as well as the data on the other three alternatives that were under consideration, in order to ascertain whether the preferred alternative was the “least environmentally damaging, practicable” solution. He inquired that if a permit application was submitted on Option A, and it was determined by the regulators that Option B better met their requirements, would the regulators deny a permit on Option A but then issue a permit on Option B or would another application need to be submitted for Option B.

Mr. Schwinn stated that there were two options available with that scenario. A permit could be issued for Option B, or the permit could be denied with the statement that there was a “less damaging, practicable” alternative available to the community. If it were COE’s decision to permit Option B, the option would be to either sign the permit or appeal the decision to the COE Division in New York. At that level, COE’s decision would be reviewed by an independent party. If the COE did not provide the option of permitting Option B, an opportunity to appeal that decision above the district level would also be available.

Before moving on to the last prepared question, Mr. Gaffney asked Mr. Gary O’Connell to assume the Chairman’s role for the RWSA BOD proceedings and Mr. Tom Frederick to handle any follow-up questions in his absence.

Prior to leaving the meeting, Mr. Gaffney read the second question submitted by Mr. Boyd as follows:

2. *What do we need to do to get a reservoir approved at Buck Mountain where we bought land years ago?*

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Mr. Schwinn stated that this option would need to go through the same process previously discussed at this meeting. COE would review the purpose and need of that particular reservoir, the environmental impacts, and whether there was a “less damaging, practicable” alternative available that fulfilled that purpose and need.

Mr. Rooker followed up by stating that they had been previously informed that it would be highly unlikely that a new reservoir application would be approved given the fact that there were other alternatives available to the community. He asked if this statement was correct.

Mr. Schwinn responded that COE would never place itself in the position to prejudge any project and would need to follow the process as described previously.

Mr. Rooker asked for DEQ’s input on this question.

Mr. Hassell stated that it would be difficult to permit the Buck Mountain project, due to it being a request for a new reservoir. The aquatic impacts with building a new dam occurred during building the first few feet of the structure. With this project, there would a large inundation of streams and impacts to the wetlands. The impacts associated with raising dams would be somewhat less per million gallons of additional storage. He echoed COE’s comments concerning not prejudging projects. He did not have the technical information for the Buck Mountain project in order to make a determination on whether it could be permitted.

Mr. Watson with DGIF stated that Buck Mountain was a known documented location for the currently state-endangered James Spiny mussel. Those records had been documented from 1998 until last year from the survey conducted by Virginia Tech. Applying for a permit for this project would probably require a formal consultation by DGIF on this issue, as there would be no way to remove all the species in the inundation zone. He felt that DGIF would probably not support building a reservoir in the Buck Mountain Creek because of the “take” on the James Spiny mussel as well as the other impacts to that species that have occurred in the watershed.

Mr. Kauffman added that in the late 1970’s he had several discussions with George Williams and Gene Potter when the Buck Mountain proposal was first being proposed as far as condemning the land. He had advised that before the land was condemned a study be conducted for the presence of the James Spiny mussel since there was the potential for that species to be at that location. This study was not conducted until later in the process.

Mr. Lynch asked what defined a project as “practicable.” He noted that three years ago the James River Pipeline option had not even been identified as being “practicable.” He had his own doubts today whether it was in fact “practicable”

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because of the cost and the issues associated with a project of that magnitude of installing 20 miles of pipeline to pump water from the James River to Charlottesville. He asked if the James River project could be dropped from the list of “practicable” alternatives. He mentioned that the Buck Mountain Reservoir was “practicable,” and although it might not be desirable from an environmental point of view, it could be an easy solution to the “conundrum” that the community faces by having to negotiate between “practicality” and impacts of the current list of projects.

Mr. Schwinn restated that COE would review the projects based on the test of “practicability” for the applicant. The factors used to make that determination included the project cost, technology, and logistics. During the course of the analysis if COE were to determine that the alternative had been taken off the table for a variety of reasons that rendered it “impracticable,” then it would no longer be under consideration. However, COE would still need to go through the process as described at this meeting.

Mr. Lynch further asked what would occur if the James River Pipeline were not included in the list of “practicable” alternatives in the first place.

Mr. Schwinn replied that just because an alternative were not included in the original application did not mean that it would not be evaluated by COE.

Mr. Lynch asked Mr. Schwinn how many alternatives the local community did not consider would the COE add, such as desalinating and treating seawater and pumping it to Charlottesville.

Mr. Schwinn stated that in his experience, the COE took a reasonable approach when conducting the alternatives analysis. The fact that the James River Pipeline option might not be included in the “suite” of alternatives did not mean that COE would not evaluate that option from a “practicability” standpoint, as well as determine if it met the purpose and need of the project.

Mr. O’Connell asked Mr. Schwinn to comment further on the pre-application meeting process as he felt this was a logical step to take as a follow-up to this meeting and asked who locally should attend.

Mr. Schwinn replied that RWSA staff and consultants who had been responsible for the planning process should be in attendance. He further stated that screening of alternatives could also be done at this meeting in order to save time and money by eliminating options that would obviously not be “practicable.” Mr. Jim Brogdon would be the point of contact for the pre-application meeting.

Mr. O’Connell inquired as to what other regulatory agencies would be in attendance, and he was informed that representatives from EPA and DEQ normally attended pre-application meetings which were coordinated by COE.

Mr. Brogdon commented that this water supply planning process began nine years ago with 29 alternatives, and a number of pre-application meetings were held during that period of time. Since the regulators had been through this process once before, they would be familiar with alternatives available to this community.

Mr. O'Connell thanked everyone for their attendance at this meeting, particularly the regulators who had to travel some distance to be present today. He also expressed his appreciation for the information they shared on this complex issue and felt this would be of benefit during the decision-making process.

As there was no further discussion or questions, Mr. O'Connell announced in the Chairman's absence that the special meeting of the RWSA BOD was adjourned at 1:30 p.m.

Vice Mayor Kevin Lynch adjourned the special meeting of CCC at 1:30 p.m.

Chairman Dennis Rooker adjourned the special meeting of the AC BOS at 1:30 p.m.

Vice-Chairman Donald Wagner adjourned the special meeting of the ACSA BOD at 1:30 p.m.

Respectfully Submitted,

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Mr. Robert Tucker  
Secretary - Treasurer