

## MINUTES OF BOARD MEETING # 439

June 14, 2005 12:00PM

### Members Present:

Daniel W. Varin, Chairman  
William Penn, V. Chairman  
Robert Griffith  
Frank Perry  
Jon Schock  
William Stamp, III  
June Swallow  
Alicia Good\*  
William Parsons

### Staff Present:

Kathleen Crawley  
Elaine Maguire  
Brian Riggs  
Beverly O'Keefe  
Tracy Shields  
William Rivero  
Thomas Walker

### Members Absent:

Timothy Brown

\*Member designee

### Guests:

Kathleen Wainwright, TNC  
Rupert Friday, RI Land Trust Council  
Colonel Steven M. Pare, RI State Police  
Jerome Williams, Administration  
Eugenia Marks, Audubon Society of RI  
AnnMarie L. Ignasher, Atty./SLT  
Robert Brunelle, Administration  
Peter Lord, Providence Journal  
Wendy Waller, Save the Bay  
Meg Kerr, Rivers Council  
Jeff Hatcher, Robinson Green Beretta Corp.  
Brian Crandall, WJAR  
Jarrod Holbrook, WPRI  
Michael Lathrop, RI Aeromodelers  
Mark D. Boyer, Boyer Associates  
Fred R. Thacker, RI Aeromodelers  
Rebecca Partington, Attorney General

### 1. CALL TO ORDER

With a quorum present, Chairman Varin called the meeting to order at 12:05 PM. The Chairman requested a change of order to the agenda. He requested that item No. C 2 be handled immediately after the General Manager's report. This requested change was approved unanimously.

### 2. APPROVAL OF MINUTES:

On a motion by Mr. Perry, seconded by Mr. Stamp, the Board unanimously approved the minutes of the May 2005 Board meeting.

### 3. CHIEF BUSINESS OFFICER'S REPORT

Mr. Penn stated that the Finance Committee reviewed the report and recommended adoption. On a motion by Mr. Penn, seconded by Mr. Schock, the Board unanimously approved the Chief Business Officer's Report dated May 2005.

**4. CHAIRMAN'S REMARKS**

Chairman Varin did not offer a report this month explaining that today's agenda was lengthy and the Board would need time to get through it.

**5. GENERAL MANAGER'S REPORT**

The General Manager provided the following written report to the Board; again, in an effort to expedite today's agenda items.

Mr. Chairman, members of the Board, May was once again an extremely productive month. Some highlights include:

- ◆ Research on the Big River Business Plan and well development options; Chairman Varin and AGM met with Mark Adelman from the Governor's office to discuss the wells and options for development.
- ◆ Significant investment of staff and board resources to facilitate the Governor's request for the State Police headquarters.
- ◆ Continued progress on the Pawcatuck Optimization Project
- ◆ Land Use team continued field work in the Big River Management Area including a tour of the management area
- ◆ Reviewed the Amgen reseeding project on site with an AMGEN representative
- ◆ Presentation of the Big River optimization study by the Acting GM and the USGS team to the Director of DEM, Michael Sullivan
- ◆ Meeting with the Maple Root Trailer Park management to clarify roles and responsibilities
- ◆ Board staff reviewed the Quonset Point Master Plan in amendment of the North Kingstown Comprehensive Plan
- ◆ Attended two retirements-Jim Marvel from Woonsocket and Fred Vincent
- ◆ Attended Brown University thesis presentation from three students-two of whom previously reported their Master's thesis findings to the Board. Ms. Sobel's thesis related to the Hunt is here on disc for any member wishing to have a copy.
- ◆ Met with the Providence Water Supply Board regarding safe yield and capacity
- ◆ Met with Johnston Water Department regarding the findings of the audit
- ◆ Met with reporters on the Big River series published by the Kent County Times
- ◆ Held interviews for the Programming Services Officer position
- ◆ Beverly O'Keefe was asked to participate as a reviewer for NOAA (Environmental Literacy Grants) in Washington DC
- ◆ Brian Riggs and Attorney Mike Mitchell have successfully defended the Board in the eviction proceedings resulting in a credit to the Board and a written letter to the landlord for attention to lease requirements (cleaning, parking etc)
- ◆ Staff have begun developing the Capital Budget for Board approval in July

In conclusion, the Property, Public Drinking Water Protection and Finance Committees met in preparation for today's meeting. Draft minutes of both committee meetings have been distributed. The new report of routine matters approved in committee is attached for your review.

## 6. COMMITTEE REPORTS AND ACTION ITEMS RESULTING

### C. Property Committee—Chair, Frank Perry

#### (2) Big River Management Area—Possible Use of Land by State Agencies and Effect of Bill S-1100; Questions and Issues List for Review and Comment

Chairman Varin noted that 4 items had been received today and therefore had not been distributed with the rest of the package, and noted that there were copies available today. He proceeded to list these items as follows:

- 1) Legislation which would accomplish today's proposal;
- 2) E-mail from Mrs. Asermely in Hope, RI;
- 3) Findings of Fact from Jon Schock;
- 4) Providence Journal article by Peter Lord.

Chairman Varin called on Mr. Perry as the Chair of the Property Committee to report his committee's findings and noted that this issue had also been heard by the Public Drinking Water Protection Committee and its Chair Robert Griffith would report for that committee.

Mr. Perry explained that the Property Committee had heard and reviewed the proposal from the State Police and the Department of Administration. One thing the committee did was establish a checklist of items that need to be considered. There are 7 items, which are enumerated in the cover memorandum for this item from the Acting General Manager. Mr. Perry explained that it was noted that the subject parcel is located in the northeast corner of the Big River property. It is not within or close to any flowage area of the proposed reservoir. It is not near any of the proposed well sites. Therefore, the committee did not have major concerns regarding location. Mr. Perry added that there was not a specific metes and bounds location and he was not sure if that it would be needed at this point. He elaborated that there had been some informal environmental review done by DEM. From these preliminary findings, it appears that no wetlands would be involved. There did not appear to be any alternatives to locating this facility.

The committee discussed the need for legislation and indicated the desire to involve the Board in crafting of legislation, and a draft of said legislation was distributed today. All agreed that there was a need to specify what uses would be allowed on this site, specifically that there would be no environmentally unfriendly or problematic uses such as fueling facilities. There would be state of the art drainage control, oil separators in the parking lots, and site protection for this location would include being served by the existing sewer system. Based on that, the committee agreed to proceed with this project.

The other major concern was open space. The possibility of whether there could be other state property exchanged as a means of preserving the amount of open space that would be lost if this project went forward.

At this point, Chairman Varin asked if Mr. Griffith had anything from the Public Drinking Water Protection Committee. Mr. Griffith explained that he had attended the Property Committee meeting that Mr. Perry had chaired and he wished to elaborate on a couple of points. The Property Committee forwarded the project to the full Board with the recommendation that we approve it in concept—not that we approve it; this is an important distinction. This is a work in progress and there are a lot of details still to be resolved. Mr. Griffith invited Mr. Brunelle and other interested parties to the Public Drinking Water Protection Committee meeting on June 7 and the proposal was given a full airing. Mr. Griffith did not see the need to take a vote of his committee as the matter was already referred to the full Board by the Property Committee.

Mr. Griffith noted the article in today's *Providence Journal* which quotes him directly but does not attribute the quotation to him. Also, there were a couple of points which needed correction. Both the Property Committee and the Public Drinking Water Protection Committee were properly and publicly noticed in advance of those meetings. The reference in today's paper that no public announcement was made might lead some to conclude that this was a project that was developed in the dark, and he did not want that to go unnoticed. He along with other members of his committee had some major reservations about this project. After discussing it and listening to the presentations made to Mr. Perry's committee, many of his concerns were allayed. Mr. Griffith was quoted as saying, "One of the things that gave me a degree of assurance was the fact that both the Nature Conservancy and the Audubon Society had participated in the process from the beginning". Ms. Coit, the head of the Nature Conservancy, is correct in saying that participation does not mean approval. However, there was no immediate, adamant opposition voiced by either of those organizations, which suggests to Mr. Griffith a continuing willingness to pursue this with all the necessary safeguards, which the subcommittees and the full Board would pursue. Mr. Griffith stated that his committee—not unanimously—does believe that the Board should move forward and approve this project in concept today, and they are actively working with other participants and other concerned citizens on this project to assure that the necessary safeguards are in place.

Chairman Varin then stated that there were several people present who were directly involved in the project. He asked Mr. Jerome Williams to address the Board. Mr. Williams identified himself as the Executive Director with the Department of Administration, introduced Colonel Steven Pare, State Police and Robert Brunelle with the Department of Administration Facilities Management. He thanked the Board for all the work it had done during the previous two weeks and for providing him time today to request this conceptual approval. Mr. Williams explained that the State Police have unique needs relative to their headquarters—they want to be centrally located; they need to be centrally located. They must have close access to the highway—in their world seconds can mean lives. In looking at all the sites for a headquarters, there was an exhaustive search done of state-owned land and privately held land. It came down to a site in Cranston, which he identified previously and then the issue of the site with the Water Resources Board came up, and they took a look at this site. This site was reviewed with regard to the needs of the State Police. Mr. Williams explained that this site would not have been considered if it had been within the needs of the reservoir or the needs of the wells. It was his understanding that this would not impact the ability to obtain water in the future. He noted that there had been requests made regarding draft legislation which had been provided to the Board, and he asked for the Board's comments after review of that legislation. He continued that they had been working with the Department of Environmental Management to have them review the site as the Board's subcommittees had requested relative to some of the issues on groundwater protection and other environmental issues. A more formal review is underway regarding some environmental issues that have arisen. He stated that they are doing everything they can to help the Board move forward, and while he didn't have all the information available today, a tremendous effort had been made by staff working with both DEM and the Director of Administration's office.

The need for this site is based not only on the needs of the State Police but also the need to finalize the site and begin the construction as soon as possible because of the ever-rising construction costs. Mr. Williams stated he had asked Colonel Pare to explain his needs, then explained that the Department of Administration was the "construction arm" and needed to ensure that the site meets the needs of the State Police, and then he would ask Mr. Brunelle to give an overview of the construction project and the facility.

Colonel Pare thanked the Chairman and the Board. He explained that they needed quick access to the interstate, which is why they had begun looking at the 37 corridor and 95, 295 right from the beginning. Although that land is not leaseable at this point, they looked at other land. He reiterated the need for quick access to the interstate. This property is located 11 miles south of where they would have been located. The growing population in the southern part of the state geographically puts them near the center of the state, perhaps a little south of where they want to be. He added that he believed the State Police would be environmentally friendly, could improve on the illegal dumping in and around the Management Area, and they are very sensitive to the environmental needs there and not impeding the future progress of building the reservoir or tapping into well heads—that is paramount to this Board. Therefore, he requested

consideration and at least approving this project conceptually and assured the Board that the State Police were committed to the Board's goals of protecting the environment and looking for that acreage which would host that facility and nothing beyond that. He acknowledged the concerns regarding the issue of future development and maintaining open space. He gave assurances that he would not come back before this Board seeking to build any additional buildings on this property.

Mr. Williams added that he recognized the concerns regarding future development. He explained that there are many state projects that they are looking to do on the Pastore Complex, i.e., the Training School, which is underway and they have located 2 sites on the Pastore Complex site, the Traffic Tribunal is going on state land at the Pastore Complex. He continued that they were not looking at open space for the other projects. This request is being made because of the unique needs of the State Police.

Chairman Varin then asked Mr. Brunelle to speak and explained that after Mr. Brunelle, he would look to Board members to ask any questions they might have after which he would call on anyone in the audience who wished to be heard on this matter.

Mr. Brunelle explained that he was the Associate Director of Administration in charge of Capital Projects and thanked the Board for allowing him to address them today. He explained that he had already addressed the two subcommittees on this issue, so he would address the "high points" today and answer any questions anyone might have. He showed a rendering of the facility they intend to build. It is a 140,000 square foot facility with 3 stories, flanked by 2, 1-story wings. One of the wings will house a 30,000 square foot forensic laboratory and the other wing would house facilities that the State Police provide. The center would contain the administrative offices of the State Police. He went on to give greater detail of the inside of the building and stated it would contain some public areas, such as an auditorium, dispatch, operations of the State Police, evidence storage, special operations vehicles garage. He explained that in 2002, the citizens approved a bond referendum for approximately \$48 million dollars to construct this facility. From day one, it had been decided to locate this facility in the center of the state with quick access to the highway—find a site that meets that criteria and also has the utilities necessary. We did an exhaustive search of all the land that is state-owned and found very little that would fit these needs. The largest problem is identifying 18 contiguous acres with the necessary highway access. Finally, they did find a piece of land on the Pastore Complex. Of that land, 13 acres were state-owned and 5 acres are privately-held land. Of the 13 acres of state-owned land, 3 acres were unencumbered; unfortunately, 10 acres were encumbered by a lease which has 7 years remaining. They needed to take an additional 5 acres from Golfing Partners to create the 18-acre piece. They have had difficulty negotiating with Golfing Partners, who have both the lease on the 10 acres and own the adjoining 5 acres. They have been unable to come to terms with the owners and they are far apart on the money. Golfing Partners has informed them that if they go forward with the taking, Golfing Partners will take them to court, and they are unsure of what the outcome of that would be. Naturally, they are hesitant to move forward with that piece of property for these reasons.

While that was happening, the State Police began speaking with the Water Resources Board and were able to identify the 18 acres we are now discussing. He then provided further description of the 18-acre site in the Big River Management Area and its location relative to Amgen and Route 95. It is considered one, 30-acre parcel with access from Division Road and encumbers approximately 18 acres—give or take. The actual footprint of the site is 14 acres with some acreage on the front that would probably be needed. It would be an environmentally friendly building, we are subscribing to a national set of standards for new buildings. It would be the first such public building in the state. We intend to be self-enclosed; the property will be fenced. We plan to bring in sewer from across the highway, water and power off Division Road. Gas will come in from across the highway as will fiber optic cabling. All the utilities are present. We wish to work with the Water Resources Board and with DEM on any concerns they may have relative to runoff on the property, capturing that runoff and ensuring that nothing adversely affects ground water.

Mr. Brunelle made a correction to prior presentations by stating that after discussions with the architect, it was now realized that the facility would require backup fuel use for heating and air conditioning systems. They are exploring alternative ways to accomplish this. Diesel fuel would have been used at the original site, but they realize this may be a problem with respect to water and they are researching other alternative fuels—possibly using propane as a backup. They are still researching this with the engineers and do not have that answer today. However, he did want to make this known. He then asked if there were any questions.

Chairman Varin then asked if any of the Board members had questions to ask of any of the 3 speakers. Mr. Penn asked what the total footprint of the facility with all appurtenances—parking lots, storm water runoff, etc. Mr. Brunelle explained that the area within the fence would be 14 acres and a driveway would be needed.

Mr. Schock then asked what distance from the highway would be considered “close”—within a mile, within a half-mile, etc. Colonel Pare explained that they had not set a specific distance. The problem with the Pastore Complex even though it is only ¼ mile from the highway is potential gridlock. He explained that it was a time issue. Mr. Schock then asked if it would be 5 minutes, 2 minutes—he explained he was trying to ensure that this parcel is close and no other parcel will be needed. The Colonel explained that they prefer to be right on the highway—that is where the various barracks have been built—the closer to the highway, the better. Mr. Schock asked about locating this facility at Quonset, and Colonel Pare responded that Quonset is not near enough to the interstate.

Mr. Penn asked Mr. Williams about offsetting the loss of this open space land with other land to ensure there would be no net loss of open space. Mr. Williams explained that this is still being reviewed; he did not have a specific answer today, but expected to have one soon.

Mr. Stamp asked why it was necessary for the State Police to centralize facilities. He was concerned that this would make the State Police more vulnerable, and wanted to understand the need to do this. Colonel Pare explained that there were 5 barracks located around the state, but by placing everyone in one facility they can consolidate and conserve resources. He added that there were redundancies in place should this facility to inoperable. Mr. Stamp asked if the current barracks would be abandoned and the Colonel stated there would be substations. They would abandon Chepachet, and Wickford while retaining Lincoln, Portsmouth and Hope Valley. These would not be continued as they operate today; they would be substations and not manned 24-7. He continued that he could function with less people in one facility, but currently he is required to put personnel in 5 facilities.

Mr. Griffith explained that Mr. Brunelle had contacted him immediately once the architect had explained the backup fuel requirement.

Mr. Perry wished to address the concerns regarding the possibility that this would be the beginning of a “land grab” within the Management Area. He understood that there were no guarantees with regard to the future, but that this specific proposal was a one-time, stand-alone prospect. It would not be used as a means of gaining more land within the Management Area. He reiterated the fact that he and a few others consider there is currently a need to withdraw water from the Management Area and that others acknowledge that if there is not a need currently, there soon will be. Water is a unique resource and this is the last untapped water resource within this state. He emphasized the need to not chip away at this property because of the water situation that exists today and will worsen tomorrow.

Mr. Stamp explained that he did not presume to know the operational requirements of the State Police, but as a member of this Board representing the agricultural community, he has taken an opposition stance. He explained that he believes this would be a blatant misuse of the property. It was taken from individuals for a specific purpose—to build the reservoir. As members of this Board, it is our responsibility to safeguard the water resources of this state. It is not this Board’s responsibility to ensure the safety of the citizens

through the State Police. He viewed it as simply an easy way out for the State Police. He stated that \$48 million dollars didn't seem to be enough and that the State Police needed to get out and look at land, which is relatively easy to come by. He viewed this whole procedure as proof of how easy it is to change the purpose for which this specific land had been taken, simply by allowing legislative changes. He emphasized the need for caution in doing this and acknowledged his belief that it should not be done at all—it is inappropriate because it does leave the door open for other agencies to come forward with similar requests. He reiterated that the mission of this Board is to provide water to the community at large and this request has nothing to do with that mission. We should follow the premise of why this land was taken by eminent domain and use it as a water resource.

Mr. Penn added to Mr. Perry's comments regarding the loss of open space—this would open the door on all open space regardless of whether it was state-owned or owned by the various conservation groups. He wanted to ensure that if this project moves forward that no other open space could be taken out of that designation and developed. This is a Pandora's Box which he believes is totally inappropriate.

Chairman Varin acknowledged that he did not necessarily disagree with everything that Mr. Stamp had to say, but he wished to point out that the act under which this property was acquired (in package, Section 21) says that this Board "on behalf of and in the name of the State of Rhode Island with the approval of the governor may at any time and from time to time make, grant, receive or enter into such options, easements, agreements or concessions concerning the property and rights acquired under the provisions of the Act or any part of such property or any building thereon."

He explained that there was a more recent written advisory from legal counsel referring to the same legislation that says: "the legislation further provided that pending the construction of the reservoir, the site acquired could be leased and devoted to other programs of the state." On the specific point of how this parcel was acquired, he had to say that this question had been researched, but the answer was unknown. The vast majority of the properties were acquired by negotiation. Some were acquired by condemnation, but that was 1965 and there is no one around who remembers, and thus far, the available records have not informed us on this specific issue.

At this point, Mr. Thacker stated that he had been on that committee and he identified himself as the vice-president of the RI Aeromodelers. He stated that the association had 20 acres of land on this property which was under discussion. He noted that it would not hurt them in the least. But, that he had been on the committee which had condemned the property. At that time, they were paying \$200 per acre for real estate. He added that as it stands right now, the State Police would not interfere with them in any way nor would they interfere with the State Police.

Chairman Varin then called for questions from the audience. Ms. Wainwright spoke on behalf of The Nature Conservancy and thanked the Board for allowing her to speak. She noted that there were a couple of points regarding today's *Providence Journal's* article which needed to be clarified. The Conservancy is very concerned about the precedent-setting nature of this proposal. They are concerned that this action may undermine future attempts to defend conservation interests at both the municipal and state level. Should the proposal move forward, the Conservancy would like the opportunity to review and comment on that as well as the MOU, and to be involved in the legislative process. Finally, they would propose that the state look at imposing safeguards on other open space land.

Chairman Varin noted there was a copy of the draft bill available. Mr. Penn noted that the Board had not had the opportunity to comment on this draft.

Ms. Eugenia Marks, Policy Director at the Audubon Society of Rhode Island, expressed concerns about the chilling effect that this transfer of land may have on open space for the future. Even though this administration is guaranteeing that there will not be any further development here, setting a precedent of this nature for future administrations is of great concern. This past November, the people of Rhode Island overwhelmingly voted to approve a wide open space bond. It is important to all of us and we are concerned

that this will set a precedent and the people will be concerned with regard to the acquisition of open space and the use of public monies. We look to the issue of alternative sites; we reviewed in a more detailed process, where items such as the distance to utilities and how much it would cost to connect. Whether there will be any future requirements for restructuring access to I-95 from Division Road, where there now occurs a 4-way stop. This review of alternative sites is common practice in major federal projects. While I know it is not stipulated in the state, it could be a useful look at siting important facilities. We do understand what an important facility the State Police Headquarters is. We are interested in the draft legislation; obviously, we have not seen it. The basic concern is whether there are sufficient safeguards against the precedent-setting nature of this project. The legislation will have to be very carefully crafted, and we would certainly like legal counsel opinion on that as well.

Ms. Wendy Waller from Save the Bay requested to read into the record a letter from Curt Spaulding.

While respecting the mission of State Police, Save the Bay opposes the taking of land designated as open space for the protection of drinking water supplies and development as a site for the Rhode Island State Police Barracks. It is not necessary to chip away at this important element of the state's green infrastructure for this purpose. Alternatives exist and have been identified. It is highly unlikely that this site would be under consideration at all if the land was assigned a realistic financial value and then compared to the alternative. The long-term implications of this proposal on the willingness of Rhode Island citizens to continue to invest public funds in the creation of open space only to see it developed later are tremendously negative. Furthermore, the impact of the precedent set by this proposal could severely undermine the state's ability to acquire and protect open space in the future.

Save the Bay respectfully requests that the proposal be withdrawn by the state and permission be denied by the Water Resources Board... Thank you for your consideration.

Chairman Varin noted that a copy of Mr. Spaulding's letter would be entered into the record.

Mr. Rupert Friday, Director of the RI Land Trusts Council, stated that his organization had not had the chance to review and discuss this issue; however, it was on the agenda for Wednesday night. He wished to put this decision in the context of federal discussion that exists. For the past 2 years, Congress, the Joint Committee on Taxation, Senate Finance Committee and the IRS have been reviewing land conservation practices. One of the biggest concerns is that current land conservation practices don't really permanently protect open space. He was concerned that this decision feeds right into that federal concern. He thought it important that the Board make its decision in that context.

Mr. Penn requested further clarification from Mr. Friday. The federal evaluation looked at land conservation practices of non-profit organizations and federal government and how land is protected through conservation easements, through ownership, in many cases land is acquired through conservation easements through bargain sales or even fair market sales, where the land owner had the intent of protecting the land over the long-term. In some situations, there are tax credits being given to land owners through these situations. This is what generated the investigation. But, the real concern in the investigation is long-term—are these lands being protected through current conservation practices for the long-term?

Mr. Griffith noted that Mr. Friday raised a valid point. The impetus for this investigation on the part of Congress was that, in fact, some conservation organizations—certainly not in Rhode Island—but in other parts of the country have actually taken property that they received either through bequest or through the application of bond money, and then sold it for the purposes of raising funds. Therefore, the Board needs to be very careful as all 4 representatives of conservation organizations have stated—they are worried about precedent. If the Board proceeds in this manner, it needs to ensure that it work closely with the conservation organizations. The Nature Conservancy in particular offered its offices to assist the Board in identifying land that is already owned by the state, but not classified as open space and move it into that

category as an acre-for-acre offset. He believed that would allay some concerns, and it would enable the state to demonstrate that it is not attempting to end-run the purposes for which land was taken. He would also add that the Board would not have entertained—at least iscommittee would not have entertained this request at all—had the specific site encroached on either the impoundment zone or buffer zone that was intended for the original reservoir. Indeed, review of the specific location indicates that the ground water flow in this area is away from the basin of the reservoir as envisioned. Notwithstanding that, he, too, is very concerned and will be very jealous about our role in guarding the prerogatives of the Board in protecting this property for future intended purposes.

Mr. Penn explained that this proposal is not transferring the land to the State Police. The state owns the land. What is being proposed is that the use of this state land be changed from open space to a very specific use—the new State Police Headquarters. It's not a transfer of property.

Ms. Ann Marie Ignasher, Attorney with offices at 1804 Mineral Spring Avenue in Providence, spoke. She is also a chair of one of the local municipal land trusts. She was here today to speak to the Board in regard to this proposal and her concerns of the chilling effect this proposal will have on other municipal land trusts and agencies within the state. She reiterated two things Board members had said—Mr. Stamp and Mr. Penn. The Board needed to be guided by its mission, why this Board was originally put in place. She was also greatly disturbed about the comments that the Board had the right to lease this property. She read the statute and the language about the leasing is very specific. It says, “until the actual construction of the reservoir.”—that is under Section 2 of Chapter 133. This is the Board's public law that was dated January 1964. There was also an issue where the Board read about the leases which appears under Section 21 – “Power to Enter into Leases and Agreements.” These leases and agreements are not permanent and there is a time limit of 20 years on them. This is the guidance given to the Board under the statute itself. Also with regard to the leases, part of the language noted that it was to be a source of income. Is this going to generate revenue? Before the Board goes forward with this, she wished to make it aware these concerns with open space. The Board may not be aware of it, but in essence it is acting on behalf of the land trusts—the Board, in essence, is holding the land even though the state owns the land. Approximately ¼ of the land trusts within the state are municipal land trusts, which mean they were formed by the towns or municipalities. This Board was formed by the state. Part of the reason why she was here today is that she can see parallels between this board and municipal land trusts. If this Board fails to follow its mission, she sees it as weakening the missions of the other municipal land trusts within the state. Again, talking about open space, this property was designated by a completely different statute as open space. As a municipal land trust, when we deal with land owners, we have to overcome a very large barrier and that barrier was the land owner thinking that the government is getting my land but will they use it for the purpose it was given. She was asking the Board to please reconsider its mission and follow through on that and not weaken the standing of the other municipal land trusts.

Chairman Varin clarified with respect to the mission of this Board, the Board should be able to begin next year with the development of Phase I of the ground water potential of the area. We know that water is needed in the central part of the state and we have spent several years and several hundreds of thousands of dollars. The US Geological Survey has done that as well bringing us to the point where as soon as we negotiate our final scope of work and get the consultants working, we should be able to proceed. The Big River Management Area has been divided into 3 subbasins. The most westerly one is called the Big River subbasin and at the present time the intention is to develop groundwater pumping stations in that basin. The second area is the Mishnock Area which may come into use in the future and that depends on the need for the resource, and the third is the Carr River basin, which is a very long-term potential, but must be held in reserve. Beyond that the long-range picture is certainly to hold the possibility of constructing the reservoir at some time in the future if and when it's needed and not decrease that potential in any way. Consequently, we have asked the staff to make a very intensive investigation of how this site and its proposed use would affect either the development of ground water or the reservoir and I think that we are satisfied that we are not reducing those potentials in any way.

Chairman Varin explained that legislation would not be required to begin Phase I of the ground water development. He explained that such legislation had recently been adopted although he was unsure of the exact date. He stated that he believed the legislation would extend to the second and third phases as well. Even the construction of the reservoir is provided for in current legislation. He continued that the Board is not held up by legislation, but rather by the need to carefully document what we are doing and to what we are doing it. It has taken a long time—extended over several years, but it has never stopped moving and it is getting closer to the time when we can begin that development. As part of this process, the US Geological Survey evaluated the ground water potential of 375 sites in and around Big River. They wanted to do the best job they could before

Ms. Good relayed the DEM Director's request to postpone an actual vote on this issue. He has recently had a meeting with some for the State Police and raised a couple of questions he would like answered before he or the Department takes a position, and in addition, we now have the legislation we were all just given. This would give us the opportunity to look at that as well.

Chairman Varin explained that the options available are the standard ones: approve in concept; disapprove in concept; or defer action to a future meeting. Currently, no motions are on the table.

Mr. Penn moved that the proposal be approved in concept. Mr. Griffith seconded. Mr. Griffith continued with respect to the DEM Director's request that an approval in concept does not block his exercising his prerogative on behalf of the Department of Environmental Management to introduce further concerns or conditions as we continue to work out the details. All we are doing is allowing this process to proceed.

Ms. Good requested that words to that effect be added to provide the Director the opportunity to raise further concerns pending the response which comes back. Mr. Perry noted that the legislation involves the Department of Environmental Management as a separate entity. However, Ms. Good noted that the Director had not yet seen the legislation.

Chairman Varin noted that if the motion passes, all of the issues raised today must still be addressed by staff, have to be studied, have to be negotiated with several different parties. Therefore, this is not the end of the road, but rather a step that tells the staff to either start working on this or not to waste time.

Mr. Penn then amended his motion to reference the cover memorandum from the Acting General Manager listing 7 items of concern which must be addressed, so in terms of the approval in concept subject to satisfactory resolution of these 7 items. Chairman Varin also requested that the findings of fact provided by Mr. Schock be added to the motion as well. Chairman Varin continued that the outcome of passage of this motion, was that the staff would feel free to spend time particularly in negotiating with the various parties even though we are responsible for managing this property, it doesn't belong to us. We are not leasing it; it belongs to the state. If this motion passes, it will belong to the state and the use changes but not the ownership.

Mr. Schock asked if at a future meeting there would be a vote on a full proposal. Chairman Varin responded affirmatively and noted that Ms. Partington had the Memorandum of Understanding and needed all comments that anyone wanted included as soon as possible. Mr. Schock explained that he had done the findings of fact because regardless of whether or not this motion was approved, he believed it necessary to memorialize specifically why it is approved or denied. Therefore, Mr. Schock requested that the MOU or motion at that time include the findings of fact.

Chairman Varin explained that attached to the MOU would be Ms. Crawley's memorandum dated June 8, 2005 and Mr. Schock's findings of fact and anything else which is relevant. Mr. Griffith explained that the Board's approval in concept must still go before the State Properties Committee for approval in concept and any MOU approved by this Board must also be reviewed and approved by the State Properties Committee, which is an additional check on the Board's actions today. This is by no means the end of the line in this effort. Mr. Perry added that as was stated in Ms. Crawley's memo, this Board would not give

final approval without the concurrence of DEM. Ms. Partington then added that the legal staff at DEM had been involved in drafting and commenting on the legislation. Ms. Good acknowledged that was a good thing but she was unaware of whether or not the Director was aware of that fact. Ms. Crawley added that we had also asked legal staff from DEM—specifically, Mary Kay—to participate in drafting the MOU.

Chairman Varin stated that the motion was to approve in concept, to ensure that the issues raised today and elsewhere are addressed by the staff in subsequent work, and specifically the memo from the Acting General Manager, the findings of fact from Mr. Schock and the concerns from Statewide Planning be attached to the minutes. At this point, the Chairman called for a recorded vote:

Mr. Penn—yes.  
Mr. Perry—yes, with concerns that we are not opening any doors.  
Mr. Schock—yes.  
Ms. Good—yes.  
Mr. Parsons—yes.  
Mr. Stamp—nay.  
Ms. Swallow—yes.  
Mr. Griffith—aye.

And the Chairman voted yes. The vote was 8 in favor; one opposed with no abstentions. Chairman Varin called for a brief recess.

**C. Property Committee—Chair, Frank Perry (cont’d.)**

- (1) Big River Management Area—Phase VI Selective Cutting: Hopkins Hill Road, New London Turnpike, West Greenwich. Request for Approval

Mr. Perry explained that subsequent to the report included in the package, bids had been received and the high bidder was Dan Reed, who has done quite a bit of work for us in the past. He does good work—he bid \$28,000. The bid was approved and we are awaiting the signed contract to be returned with the 50 percent deposit, which will go into the DEM Forestry Fund. Mr. Perry moved approval with a second from Mr. Griffith. This motion passed unanimously.

At this point, Chairman Varin noted that the Board would “back up” to the Public Drinking Water Protection Committee.

**A. Public Drinking Water Protection Committee—Chair, Robert Griffith**

- (1) Water Supply Systems Management Plans (WSSMP):

- (a) Town of Westerly—WSSMP, 30-Month Interim Report; Request for Approval Maguire Group Invoice #9—Payment Requested: \$19,180.00; Recommended payment: \$19,180.00. Request for Approval

Mr. Griffith explained that the committee had reviewed the staff’s analysis of the Town of Westerly’s 30-month interim report and moved approval. Mr. Perry seconded. Ms. Crawley asked to note that in the letter which goes to Westerly the staff will make note of the reduction in non-account water as it was a fairly significant reduction as instructed by the Public Drinking Water Protection Committee. The motion carried unanimously.

**D. Construction, Engineering and Operations Committee—Chair June Swallow**

Ms. Swallow noted that this committee did not meet. However, she wished to note that the Bristol County Water Authority treatment plant is once again operating.

**E. Finance Committee—Chair William Penn**

Mr. Penn explained that the Finance Committee had met and had approved all payments in accordance with our new policy.

**F. Legislative Committee—Chair Daniel W. Varin**

(1) 2005 Legislation

Chairman Varin explained much of this material was previously reviewed.

(a) S-1100 Relating to Public Property and Works – Big River Reservoir  
Recommendation – **For Discussion**

He began with S-1100 stating that Ms. Partington had had some concerns about this bill. However, staff was unable to discover what the sponsor intended. Ms. Partington noted that it didn't matter what the sponsor intended rather the concern was what it allowed. Mr. Perry explained that he had met with the sponsor and noted that it had been his intention to make it easier to develop water within the Management Area. Ms. Crawley requested that the Board allow her to oppose this if it was scheduled for a committee hearing notice that it directly competes with the State Police legislation. Ms. Partington explained that the legislation had been changed since she had seen it—it had been "tightened." Mr. Stamp moved opposition to this legislation and Mr. Penn seconded. The motion carried unanimously.

(b) S-0737 Relating to Public Utilities and Carriers – Kent County Water District  
H-6091  
Recommendation – **No Position**

Chairman Varin explained that these two pieces of legislation had to do with the Kent County Water District also known as the Kent County Water Authority. The key language is found on the first page on lines 13 through 16 "provided however that the Authority shall transfer all its infrastructure system and appurtenances located in the City of Warwick to the City of Warwick for an amount agreed to by the City of Warwick and the Authority." Mr. Perry explained that it's a local issue in Warwick as the Authority serves only about 20-25 percent of the citizens of that city and the rest of the city is served by municipal water. The Authority's rates are about half again as high as the city's because KCWA's rates are established by the PUC, which require its rates be done on the basis of actual cost. It became a political issue and this is the resolution discussed. This is a \$100 million dollar plus job—it's not as simple as people think it's going to be. The largest problem is that it began with complaints about water quality in the Cowesett section of Warwick with the presence of manganese in our "East Greenwich" well. Unfortunately, our "East Greenwich" well is in Warwick, and would be transferred to the City of Warwick under this bill along with our major pumping station that pumps from the Bald Hill connection we have with Warwick and the joint connection we have with Providence that supplies a good portion of the water which goes to the West Warwick area and to the East Greenwich area. It is very unclear whether these facilities would be transferred to the City under the broad language of this bill. A lot of the Authority's critical infrastructure could be transferred to the City of Warwick. We also have a situation in the Cowesett section and the East Greenwich area in which we have a major hillside—a big elevation change which comes down from the Love Lane area down to the Bay and our total gradient system is very different from Warwick's. We must have a series of pressure reducing stations that serve that whole Cowesett-East Greenwich hillside to maintain pressures that is something under 100 pounds. Otherwise, we have huge pressures and many problems. As everyone knows, pressure does not respect municipal boundaries and the design of our system is based on boundaries. There is no easy, straight-forward solution.

Ms. Swallow explained that she thought in terms of how things get regulated and wanted to know if they were talking about cutting a line across 10, 15, 20 transmission and distribution lines. Mr. Perry responded affirmatively. Ms. Swallow noted this would be a real nightmare should she have to tell one or the other provider to boil water.

Chairman Varin noted that he did not think the Board should take a position on this issue as it was a matter between 2 other agencies. The most the Board could do is send a letter stating there are the following factors to consider and that the transfer of all of the “infrastructure and appurtenances located in the City of Warwick” is not workable.

Mr. Perry explained the big thing was the well as the Authority got 1 mgd from that well and it supplies all of East Greenwich. Mr. Stamp asked Mr. Perry if the City were to do this, would the Authority just hand it over to them and Mr. Perry explained that it would have to be negotiated. The figures being talked about would be in excess of \$100,000,000. For instance, the main feeder that the Authority has to East Greenwich runs right down Post Road from Apponaug, which was just rebuilt a few years ago.

Mr. Penn moved that no position be taken, but to send a letter to the appropriate committee explaining some of the complications involved here. Mr. Schock seconded and the motion carried with Mr. Perry abstaining and Ms. Swallow opposing.

(c) S-1152 Relating to the Joint Committee on Water Resources - Membership  
Recommendation – **No Position**

This item pertains to the Joint Committee on Water Resources. It does two things: adds one more member from the Senate giving the committee 4 members from each chamber and instead of having a chair, the speaker and the president would each appoint a co-chair. Mr. Griffith moved to take no position with a second by Mr. Schock. The motion carried unanimously.

(d) H-6172 Relating to Waters and Navigation (Separation of Powers) Sub B  
Recommendation – **For Discussion**

Item H-6172 Substitute B as amended. This is the separation of powers bill that pertains to the Water Resources Board. It’s been passed by the House as a substitute A and it’s been passed by the Senate as a sub-A and the Board has taken no position on this bill. Two different versions of this have passed and neither will become law unless the differences can be worked out. It increases the size of the Board from 10 members to 15 and it requires that the General Manager conduct a training course for newly-appointed and qualified members and new designees of ex-officio members within 6 months of their qualification. The part that the Governor objects to is that most of the 15 positions must come from areas of interest; it does not name anyone but states that the Governor shall consider a recommendation from this or that group.

(e) S-0461 Water System Supply Management Plans-Confidentiality  
H-6091  
Recommendation – **For Information Only**

Ms. Swallow has a problem with the definition of large public water systems and small public water systems and that is on page 6, lines 21-25. Ms. Swallow explained that the terminology within the Water Resources Board statutes is loose especially with reference to water systems—sometimes they say water supply facilities, sometimes they say public water supply, sometimes they say just water supply or water system. The terminology varies and over the years we have found ourselves wondering what is actually meant. In the past, we have generally relied on the one specific definition in the statute about water supply facilities, which specifically refers to water systems which sell more than 50 million gallons per year, and generally this Board has relied on that definition as the working

definition dealing with the larger water systems as those that pumps more than 50 million gallons per year. This allows the Board not to deal with the smaller systems, which the Health Department deals with—for example, the surcharge monies are not collected from restaurants and hotels that have their own wells. Under this legislation, the Board could find itself holding a public hearing when a new Dunkin Donuts opens. This statute actually defines large public water system and small public water system, so there would be no more ambiguity. This legislation defines a large system as one which pumps more than 50 million gallons per year and a small system as one which pumps less than 50 million gallons per year. The Department of Health’s request is that instead of having large public water system and small public water system defined that we revert to the definition found in 46-15-1.1 and use that definition consistently.

Mr. Perry suggested that the wording state that one member shall come from a system which pumps more than 50 million gallons and one member shall come from a system which pumps less than 50 million gallons, which eliminates the definitions and the problems which they create.

Chairman Varin suggested that the Board send a letter to the committee’s chair explaining the problems and suggesting the language changes. Ms. Swallow acknowledged that this would help her—at least it would leave things in the status quo.

Mr. Stamp stated that the Agriculture Council voted to oppose this bill.

Mr. Perry moved approval of the change in the language of this legislation to eliminate large and small public water systems and say that one member shall come from a system which pumps more than 50 million gallons per year and one member shall come from a system pumps less than 50 million gallons per year—however, taking no position with respect to the legislation itself. Ms. Swallow seconded.

Ms. Crawley explained that she would prefer not to just say “pumps” because the language in the statute says “sells, conveys, transports”—it’s not just about pumping. Chairman Varin assured her the language in the statute would be used.

Ms. Good asked for clarification as to just what this motion was approving and was told that it was just approving the changes to the language. The Board was not taking a position on the bill itself.

(f) S-0461 Water System Supply Management Plans-Confidentiality  
H-6091  
Recommendation – **For Information Only**

Chairman Varin moved on to the bill regarding the confidentiality of water system supply management plans. He noted the Board had already taken a position and that he did not expect this legislation to live. Hearing no objection, the Board continued to uphold its adopted position.

(g) S-0958 Public Drinking Water Supply—Cross Connection Control Plan  
Recommendation – **For Information Only**

This is an issue that the Health Department has brought up before and although they did not bring it forward this year, the Department does support it. Ms. Swallow explained that it was discussed last year. Mr. Perry explained it was introduced at the request of Kent County Water Authority. Ms. Crawley explained that the Board had already officially supported this bill.

(g) S-0978 BRMA 41 Park Lane, Maple Root, Town of Coventry  
Recommendation – **For Information Only**

Chairman Varin noted that all would recognize this last bill. The Chairman explained that the sponsors know that the Board has not taken a position on this.

**G. Strategic Committee—Chair Daniel W. Varin**

Chairman Varin did not have anything to report under this item.

**H. Personnel Committee—Chair Jon Schock**

Mr. Schock referred this item to Executive Session.

**7. NEW BUSINESS**

Ms. Partington explained that she was aware of some encroachments and while she did not have specific recommendations, she added that the options for the Board are to tell the encroachers to get off, let them stay there indefinitely—however, letting them stay indefinitely would cause problems. Chairman Varin suggested language stating that the letter says the “encroachment must be eliminated by a particular date five years from now.” Ms. Partington added “in five years from now or when it falls down whichever comes first.” Mr. Penn suggested “or when the property transfers” be added as well. Mr. Griffith explained that since this was new to most of the membership, it would be appropriate to remand to the Property Committee for recommendations to the full Board. Mr. Perry explained that in one situation the property owner adjacent owns a large farm and he had a lot of material on our side of the line, which he has since removed. All that is left is a part of his barn which comes across the line, but it is not a permanent structure. The property owner has asked that he be allowed to keep it there, but is willing to move it if required.

The other owner was not home. However, a prior owner of this property was paid to remove this structure and that was not done. Mr. Stamp asked if the Board could require him to pay rent for this structure and therefore protect the Board from an adverse position action. Ms. Partington did not recommend this course of action.

Chairman Varin agreed that this should be referred back to the Property Committee for recommendation although he recommended a lenient course of action, but nevertheless ensuring that the owners were aware that they were encroaching and that the Board was aware of it.

**8. OTHER BUSINESS**

**9. RECESS OF BOARD FOR BOARD CORPORATE BUSINESS**

With no objection, Chairman Varin recessed the Board for Board Corporate Business at 2:12 P.M.

**10. RETURN FROM BOARD CORPORATE BUSINESS**

At 2:16 P.M, the Board returned from Board Corporate business.

**11. OPEN CALL FOR EXECUTIVE SESSION IN ACCORDANCE WITH:  
R.I.G.L. 42-46-5(a)(1) JOB PERFORMANCE—GENERAL MANAGER POSITION**

On a motion to meet in executive session by Mr. Stamp and seconded by Mr. Schock. The following roll call vote was taken:

Mr. Griffith—yes.

Ms. Swallow—yes

Mr. Stamp—yes

Mr. Parsons—yes.

Ms. Good—yes

Mr. Schock—yes.

Mr. Perry—yes

Mr. Penn—yes

And the Chairman votes yes and the motion is unanimous.

Mr. Griffith moved that the minutes of the executive session be sealed until such time as the issue is resolved. Ms. Swallow seconded. The motion carried unanimously.

**12. ADJOURNMENT**

On a motion by Mr. Griffith, seconded by Mr. Stamp, the Board unanimously voted to adjourn at 2:27 p.m.

Respectfully Submitted,

Tracy Shields  
Personnel Aide

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