



**State of Rhode Island and Providence Plantations
Water Resources Board**

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RHODE ISLAND WATER RESOURCES BOARD

MINUTES OF BOARD MEETING # #467

January 15, 2008

Members Present:

Daniel W. Varin, Chairman
William Penn
Pamela Marchand
William Parsons
Richard Mignanelli
June Swallow
Harold Ward
Robert Griffith
Ernie Panciera*
William Stamp, III
Ian Morrison
Frank Perry

Members Absent:

Jesse Rodrigues, Jr.

Guests

Heidi Green-Quonset Development Corporation
Emily Wild-USGS
John Duchesneou-KCWA
Tim Brown-KCWA
Brendan Ennis-Pare Corp.
Kenneth Booth-E.P. Water
Henry Meyer-Kingston Water

Staff Present:

Juan Mariscal., General Manager
Kathleen Crawley
Romeo Mendes
Beverly O'Keefe
William Riveroso

*Member designee

CALL TO ORDER AND APPROVAL OF MINUTES:

Chairman Varin called the meeting to order at 12:04 p.m. noting that a quorum was present.

No minutes presented.

REPORTS:

Chairman's Report

Chairman Varin stated we lost another staff member (Temporary Secretary) on December 31, 2007. He reported he, the General Manager and Staff Director met with the Senate Policy staff on January 3rd. He noted they had a lengthy discussion regarding the Senate Bill which will not be the bill going in this year but we did not learn much about how the bill will be amended. He added we raised numerous questions and had a very good discussion whereby we were able to bring out our position on several matters.

General Manager's Report

Mr. Mariscal reported four full time positions are still vacant. He stated the State has initiated a new process whether you can fill vacancies called a critical vacancy needs process. A hearing has been set up for this Friday. He invited board members to attend.

He stated the BRMA continues to be overseen by Mr. Mendes and Mr. Riverso. He stated the tenants known as the Goodwins did receive from our attorney terms and conditions for continued tenancy for which their attorney rejected and our attorney has reiterated our terms. The issue is being addressed to be finalized. A continuing issue of a tenant adding a deck violating the building codes is yet to be resolved.

He reported Water Quality Protection Program extensions had been given to United Water and QDC, and United Water decided not to follow up and their deadline has passed and QDC is still proceeding under their deadline of January 31, 2008.

He reported legal assistance has been obtained for the Groundwater Protection and Acquisitions program.

He reported the Big River Groundwater Development Project which is need of \$250,000.00 to get off the ground has been discussed with the Budget Office as proposed in our budget submittal whereby we would delay some of the USGS studies scheduled for this year and next thus freeing up monies to initiate our work on the Big River Groundwater Development Project. The Budget Office has accepted this proposal and forwarded it to the Governor's office and House Finance committee. We do not know where the proposal stands.

He reported on the drought status as conveyed by the Drought Steering Committee. He reported the Drought Steering committee met on January 10, 2008 and advised staff to maintain the statewide "Advisory" level but the southern, eastern and New Shoreham drought regions which are groundwater dependent should be moved to the "Watch" level. He added Ms. O'Keefe has prepared a press release which will be forwarded after review by the Governor's office for review and action.

Mr. Mariscal reported the annual water rates survey has been completed and passed out to the members. He added further evaluation will be done regarding rate structures. He noted the lowest rate is by the City of Warwick and the highest excluding Block Island is Bristol County Water Authority.

Mr. Morrison inquired about any insurance issues regarding the building code violation in BRMA. Mr. Mariscal stated this is a complicated issue and we are working to resolve the situation. Mr. Varin stated that a similar case had occurred in the past on another property before with lengthy wrangling resulting in the General Assembly passing legislation legalizing the construction.

Chief Business Officer's Report – William Penn, Chair

Mr. Penn noted that there was a quorum present for a Finance Committee meeting. He stated the report was reviewed and found to be complete.

Motion by Mr. Penn, second by Mr. Stamp to approve the December 2007 Chief Business Officer's Report as reviewed and approved by the Finance Committee. The motion passed unanimously.

COMMITTEE REPORTS AND ACTION ITEMS

Committee Structure – Daniel Varin, Chair

Mr. Varin reported we have been looking into an amendment to our rules that would authorize decisions to be made at the sub-committee level but would require advice from our attorney who was expected to be at the meeting today. The action will be put on hold.

Water Supply Systems Management Plan Program: Presentation & Recommendation - Juan Mariscal, General Manager

Mr. Mariscal led a presentation and discussion on the purpose, requirements, and responsibilities of the Water Supply System Management Plan Program (WSSMP) as outlined in Rhode Island General Law 46-15, (Handout dated January 11, 2008). He reviewed the background and legislative requirements of the WSSMP program and the responsibilities of the Water Resources Protection and Use Committee as defined by statute.

Mr. Mariscal asked Ms. O'Keefe, Supervising Planner, to present a brief history of the WSSMP program. Ms. O'Keefe stated the WSSMP program became part of Board responsibilities in 1997 with formal rulemaking completed by 1999 requiring the 28 major water suppliers to submit the first water supply system management plan by a negotiated date. Review and approval of all 28 plans was completed by 2004. During 2002, the rules and procedures were amended and included new requirements. Specifically, the Water Quality/Wellhead Protection Plan required by the RI Department of Environmental Management and the Source Water

Assessment Plan required by the RI Department of Health were incorporated into the WSSMP to increase efficiency and decrease the cost of preparing these separate plans by the water supply community. A new Drought Management requirement was also added to the rules and procedures. At that time, water suppliers were not required to amend their approved plans but were expected to include these new sections in the Five-Year Update. During 2003 to the present time staff has met with the water supply community, and developed guidance for updating the new requirements. She noted the second round of WSSMP – the Five Year Update began late 2005 with the expectation that all new requirements would be addressed. Mr. Mariscal thanked Ms. O’Keefe.

Mr. Mariscal continued to review the requirements of the enabling legislation. The WSSMP review process takes 180 days with plan review, determination of compliance or non-compliance, and notification occurring before the 180th day or the Plan is automatically approved. The Plan, when received, is date stamped with copies sent to the review agencies who have a 90-day review period (RI Departments of Environmental Management, Health, Administration and the Public Utilities Commission for publically regulated water utilities). The law allows for the reviewing agencies to make a “substantive determination” of compliance or non-compliance which is defined in the *Rules and Procedures for Water Supply System Management Planning, October 2002*.

Substantial compliance is defined as “having achieved the Water Supply System Management Acted stated goals, objectives, and planning mandates or otherwise having committed resources, as evidenced by a schedule for timely implementation of such actions necessary to achieve the Act’s objective, goals, and mandates...” a determination of non-compliance provides the water supplier up to one year to submit a revised plan. A First Notice of Deficiency can be issued by the Board due to incorrect, inconsistent, or missing data, or information but is in substantial compliance with the objectives of Chapter 46-15.

Mr. Mariscal noted there is a distinct difference between a finding of non-compliance and a Notice of First Deficiency. In addition, a Notice of First Deficiency carries with it a 120-day time period to correct the deficiency. He reported the Water Resource Protection and Use Committee met last week to review and make recommendations on four planning documents. During the meeting, staff recommended a finding of non-compliance for the Kent County Water Authority, City of East Providence, and the City of Newport WSSMP Five-Year Updates. After some discussion of the issues and an appeal made by Kent County Water Authority and East Providence, the Committee made a recommendation which is being brought forth here today, to not accept the staff recommendation for non-compliance for the Kent County Water Authority and City of East Providence Updates but to issue a Notice of First Deficiency. The Committee recommended acceptance of the staff recommendation of non-compliance for the City of Newport Update. The staff position is that there are substantive issues in several sections of the Update which need to be resubmitted.

Mr. Mariscal referred to the January 11, 2008 Handout, Attachment 2 – Summary of Recent WSSMP Determinations, noting in the distant past, the Board and committee had frequently approved the original Plans “subject to” completion of missing information but this is no longer

the direction taken by the committee. Mr. Mariscal stated we are in the part of the program where we should be able to make determinations of non-compliance or first deficiency or approvals. The WSSMP Determination matrix depicts the review of each submitted Five-Year Update and with areas of non-compliance identified for each required WSSMP section.

The General Manager pointed out the need to clarify the definition of “substantive” which is not defined in the law or rules. When I reviewed this table, I asked myself “Which sections are not really “substantive?” So for example, if the goals section was not mentioned but the rest of the plan was really good so maybe I would consider the plan not to be substantive but as you can see, not too many of the plans had problems in this area. Then I thought – maybe the water system description section is not substantive but many of the plans had problems in this area. Mr. Mariscal stated the central core of the the water supply system management plan program as the WSSMP plans define everything the water suppliers should be doing to manage their system effectively, efficiently, and to manage their resources. He stated he found it difficult to determine which of the remaining sections are not substantive. Within each one of those “Xs” there could be different shades of gray which is tricky as we have a number of agencies that look at these plans. Our staff also reviews the plans and makes final recommendations which are then submitted to the committee for their review, action and recommendation to the Board. He noted that while he certainly respects the committee and the Board’s decision-making ability, he noted his concerns that we may be making decisions now that may be different than those in the past and which could be considered the standard against which new decisions would be judged for consistency. His recommendation was that the Board should consider three proposals which come up in the next agenda item to accept the staff recommendations and determine that the plans are in noncompliance.

Chairman Varin asked to hear the recommendation from the Committee, and in the process we will consider the General Manager’s recommendations.

Dr. Ward commented that the handout was very important to have but there was an important omission as to what happens when the plan is not in compliance. The law says “the WRB shall forward any determination of non-compliance (and they name several sections) to the Division of Public Utilities and Carriers who shall consider such determination of non-compliance as a complaint under 39.43. This is a non-discretionary duty and applies to all findings of non-compliance not just to the suppliers regulated by the PUC. So there is a consequence to non-compliance which is important as we go forward. There is an administrative process which must begin when the complaint is received.

Mr. Morrison stated it was his belief that the table provides excellent information and should be provided to support legislative discussions. He recommended the WRB collect and prioritize what needs to be done so we know what needs to be done. For example, the “Water Quality Protection” section has the most hits and he doesn’t understand why that is but perhaps the suppliers do not understand what needs to be done.

Dr. Ward noted that since the WSSMP is the core for the water supply management and if we make the plans work then we will have an excellent programs. It seems the standards by which

the plans were reviewed have changed and we can now see the existing Act is not able to deal with the findings of non-compliance. The only enforcement right now is to report to the PUC otherwise the water suppliers will continue to submit plans with missing information.

Mr. Morrison questioned where the PUC fits in as it regulates some of the water suppliers but not all. Mr. Ward opined that this Act requires all water suppliers to be under PUC control for a filed complaint. Mr. Mariscal stated a submitted complaint would set into action following a standard PUC operating procedure. He noted during the past two years there have been several plans approved, a few instances of Notice of First Deficiency, and ten instances of non-compliance.

Mr. Penn questioned whether the law and/or the regulations were too restrictive. Mr. Mariscal responded saying he would like to change the rules and regulations, and he would like to change the law but he didn't think there was anything wrong in the law, or the rules and regulations right now that make it impossible or difficult for the water suppliers to comply. He noted one supplier was found in non-compliance for all sections.

Mr. Bill Stamp noted a difficulty to mandate certain actions against a community which is political, and that perhaps this is an impossible task as it is about control. Mr. Mariscal responded that there is only one section, "Coordination," which requires working with the community(ies) where the water supplier is located. Mr. Mariscal noted WRB staff have had meetings with the suppliers, provided guidance documents and many discussions have occurred regarding requirements for submitting a Five-Year Update, but the WRB are still having difficulties getting certain sections addressed.

Mr. Frank Perry stated he has been reading the reviews, and he thinks some comments are a matter of opinion. For example, the question about maps is a relatively minor item. Looking at the matrix – some items are minor but on the matrix everything looks the same, of equal value. It was his feeling the comments on mapping deserved a finding of First Deficiency not non-compliance. He felt the matrix was a good start but more work needs to be done. Mr. Mariscal stated his agreement with Mr. Perry's comments but there are several components that are substantive.

Dr. Griffith stated the Committee had a very thorough and detailed discussion of the process of reviewing and making findings and recommendations of the plan and updates. He recalled during last week's committee meeting the Kent County Water Authority Update was the first to be reviewed and bore the brunt of the committee's attention. He noted the committee was "awake and fresh" as they reviewed the staff recommendations. The Committee next reviewed the Update submitted by the City of East Providence, and the Committee did a good job on that, but then came the City of Newport, and the Committee was so "tired and beaten up", and it was his feeling that the City of Newport was not fully heard. The committee voted the staff recommendation without due consideration. Dr. Griffith stated if the work of the Committee was done over he would have entertained a recommendation for a notice of First Deficiency as the City of Newport Update was not any worse than the findings for the Kent County Water Authority or the City of East Providence Updates.

Mr. Griffith added there are a couple of other considerations. For example, now that the Five Year Updates are being received, we should expect progress and we should not expect a re-submittal of the original Plan but an Update which includes objectives, time tables and reports on progress. We should not apologize for being tougher the second time around. He noted that he has been troubled as have the other committee members, and we have expressed this to staff that there is such a large number of findings of noncompliance. We have only three approved plan updates and this should be a matter of concern to the water supply community, staff, and the citizens.

Dr. Griffith stated as Committee Chairman, he could go forward and do the presentations on the staff recommendations and probably get on vote Notices of First Deficiency on the two Updates, and we could probably get the Committee recommendation changed for the City of Newport changed to a Notice of First Deficiency but he would like to propose for discussion that the Board vote a moratorium on the submission and review of the water supply system management plans, making sure the systems already found in non-compliance, continue on the process on revising and correcting their plans, and all the remaining suppliers be notified of what the trends are where people are failing in the current Updates, also sit down with all of the reviewers and make sure everyone is working by the same rules and regulations, and applying the same standards, and as necessary, revise our rules and procedures in this process. As we have noted on numerous occasions, our staff, is very diligent. He does not question their expertise or integrity in reviewing these individual plans or preparing the recommendations but it is going to be very difficult for them to step back and look at the process as a whole while they are having to review and comment continuously on additional plans as they come in. He did not know what an appropriate time period would be for a moratorium but would defer to staff. It doesn't let anybody off the hook but it does stop the clock for a period of time. He don't know if we can do this legally and we need to find this out. The objective would be to review the rules, regulations, and process to ensure we are actually doing what we say are doing. Staff should do this with input from representatives of the water supply committee at large. We could create an ad hoc or advisory committee to work on this. There also, as the Chairman mentioned in his remarks, is going to be a Senate bill this season although it won't be the same as last year's bill but this will clearly will have an impact on water suppliers and us, and how we do business. We need to step back, review, and given our capacity, set aside recurring requirements of staff so they can work on this.

Dr. Ward stated he agrees and the law must change. The Coalition will submit a bill on recommended water supply management changes. He proposed the Notice of First Deficiency be issued to all three water suppliers which will allow the water suppliers to fix the Update where there are problems. Dr. Griffith stated the WRB can stop Plans that are coming in through review on a case by case basis. Mr. Henry Meyer stated there are many layers within each section so he would recommend the reviewing process be changed to include a meeting with the water supplier to review the findings, and provide time for the water supplier to amend the plan (after the 90 day agency review). Members discussed the question of moratorium for plans already submitted and under the 180-day timed review process, plans scheduled to be submitted within the next two months (which have most likely been completed and are ready for submittal), and the status of the remaining Five-Year Updates to be submitted.

The Chairman noted he has limited experience with the actual review of water supply plans but he thinks a lot of the problems arise at the end of the review period as there is very little time to decide how to address the problem. He stated there is the making of a motion on the table and asked for the motion.

The Chairman stated his hope to come out of this process would be a less demanding, more carefully defined requirements rather than adding new requirements that no-one has ever seen before. Legislative changes need to be prepared by the end of May with introductions prepared by February 5. The Chairman noted local legislation does not have to be submitted by the deadline. Mr. Morrison asked if there was something to be done to support staff so that these proposed revisions to rules and laws can be completed. The Chairman noted with all of experience in the room, there were many resources to draw from. Mr. Morrison asked if the chairman would put together a committee to work on revising the law, rules and procedures. The Chairman agreed to think about this and asked if there was any further discussion

A motion was made by Mr. Stamp to create a moratorium to review procedures for water supply system management plans, rules, and regulations and legislative procedures, and put a study in place until May 1 to come up with recommendations for legislation, regulations and procedures by May 1 with a report back to the Board with recommendations at an earlier time than that with the intent to follow a process, and with changes we can make in the regulations, we would get authority from the Board to hold a public hearing to adopt revised regulations. We will report back to the Board on May 14. At that Board meeting we would ask the Board to approve the revisions, and if approved, we would put out a public hearing notice on May 15 – with a 20-day notice. After June 4, we would bring something back to the Board for final approval with adoption 30 days later.

Motion: Mr. Stamp proposed a moratorium on all future water supply management plans for study to be received until May 31, 2008 with a second by Mr. Morrison. . The purpose of the moratorium will be to review the process to ensure it is workable. There was a Unanimous vote to support the motion.

Water Resources Protection & Use Committee - Robert Griffith, Ph.D., Chair

Dr. Griffith stated his presentation on action items would be brief given an interest in time and the previous discussion on the current water supply system management plan program, the moratorium, and perceived need to revise the rules and procedures. He asked for a package vote to include:

- Portsmouth Water & Fire District - 30-Month Interim Report - Approval**
- Kent County Water Authority - Five-Year Update – Notice of First Deficiency**
- City of East Providence - Five-Year Update – Notice of First Deficiency**
- City of Newport Public Works - Five-Year Update – Notice of First Deficiency**

Motion by Dr. Griffith second by Mr. Stamp to approve the Portsmouth Water and Fire District Thirty-Month Interim Report, and to issue a Notice of First Deficiency for the Five-Year Updates submitted by Kent County Water Authority, the City of East Providence Public Works, and the City of Newport Water Division. Determination with re-submittal dates to be worked out by staff and the water suppliers. Members voted for the motion with Mr. Panciera voting Nay stating that DEM believed that the staff recommendations should be upheld by the Board The motion carried.

Property Committee - Frank Perry, Chair

The committee did not meet.

Construction, Engineering and Operations Committee – Pamela Marchand, Chair

Interconnection Program:

Kent County Water Authority Interconnection Project – Requested Payment: 1,993,589.12; Recommended Payment: \$1,993,589.12. Request for Approval

Motion by Mr. Perry; seconded by Mr. Stamp to approve the payment request in the amount of \$1,993,589.12 to KCWA. Discussion: Mr. Penn relayed that the finance committee had also reviewed the request and recommended approval. Action: Board members voted in the affirmative for the motion with the exception of Mr. Panciera who voted Nay stating that the DEM Director had originally voted against the proposal to fund this project and to be consistent with that vote, he would vote against the motion. The motion carried. Ms. Marchand recused herself from the vote.

Finance Committee – William Penn, Chair.

Big River Management Area:

Town of West Greenwich - BRMA Maintenance Activities i.e. Snow Plowing, Brush Cutting, etc, for FY 2007 to FY 2008. Requested payment \$7,000.00; Recommended Payment: \$7,000.00. Request Approval

Mr. Penn relayed that the committee was concerned that there wasn't enough detail behind the invoice, i.e. a budget indicating where the \$7,000 was going to be spent. Additionally, is there a written agreement between the Town and the Water Resources Board and if there is, what is the term of the agreement? Mr. Mariscal responded that an agreement did exist and that it covered annual periods. He stated that if town representatives were present they would tell us that their expenses far exceed the \$7,000 annual amount. The expense is well worth the services we receive from them. Mr. Morrison relayed that the committee had requested that staff make a copy of the agreement available to its members. Mr. Penn indicated that the committee would like to initiate a review of the board and board

corporate bylaws in terms of the process currently in place that results in expenditures being approved. It may not be necessary for the committee to spend the considerable amount of time it has been expending in approving \$100.00 - \$300.00 items. Mr. Varin responded that the bylaws will indeed be looked at to determine if the process is able to be streamlined in any way.

Motion by Mr. Penn; seconded by Mr. Stamp to approve the payment request in the amount of \$7,000.00. Board members voted in the affirmative for the motion. The vote was unanimous. The motion carried.

Legislative Committee - Chair Daniel W. Varin.

Update, Review and Action

Mr. Varin stated he would like to discuss House Bill H-7007, approving project status for Shipwreck Falls Resort, RI LP a hotel and indoor water park located in the Town of West Warwick. He noted this bill is before the General Assembly to approve sales tax exceptions for construction materials. He asked how much water is being used. Mr. Ward stated 120,000 gallons per day. He asked Mr. Brown of KCWA if he was aware of the project. Mr. Brown said yes and added the park and hotel project has been approved for water service by the KCWA Board at a maximum of 120,000 gpd. Mr. Varin asked the Board if they would like to take an advisory action. Mr. Penn said yes. He stated there are examples of buildings being built under the Green Building Guidelines where gray water is being recycled so daily use can be reduced. He stated we should take an advisory position asking that this project not be developed with traditional technology but go the extra yard because the technology is there to minimize the water use impact of a project like this.

Motion by Mr. Penn; seconded by Mr. Morrison to advise the legislature of our opinion that this particular project should use the most recent water savings techniques outlined by the LEED Building Council Certification Program. Members voted for the motion with Ms. Swallow voting Nay. The motion carried

NEW BUSINESS/OTHER BUSINESS:

No new business or other business was discussed.

RECESS OF BOARD FOR BOARD CORPORATE BUSINESS

Without objection, Chairman Varin recessed the board meeting and started the Board Corporate Meeting at 1:41 pm

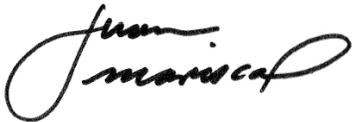
RETURN FROM BOARD CORPORATE BUSINESS

The Board Corporate meeting ended at 1:46 pm and returned to the Board meeting. Chairman Varin asked if there was any other business to come before the Board. There was None.

ADJOURNMENT:

Motion by Mr. Morrison second by Mr. Stamp to adjourn. The vote in favor was unanimous. The motion carried. The Board meeting ended at 1:46 pm

Respectfully Submitted,

A handwritten signature in black ink that reads "Juan Mariscal". The signature is written in a cursive, flowing style.

Juan Mariscal, P.E.
General Manager