State of Rhode Island and Providence Plantations
Water Resources Board
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RHODE ISLAND WATER RESOURCES BOARD MEETING #499

Monday, May 17, 2010 @ 1:00 PM

Minutes

Members Present

William Penn, Chairman
Pamela Marchand, Vice-chair
Thomas Boving (1:03pm arrival)
Michael P. DeFrancesco
Kevin Flynn (1:08pm arrival)
Alicia Good* (1:02pm arrival)
Samuel Kitchell
Susan Licardi
William Parsons*
Jesse Rodrigues
Jon Schock
June Swallow
Harold Ward

Staff Present

Kenneth J. Burke, General Manager
Kathleen Crawley, Staff Director
Romeo Mendes, Supervising Engineer
Peter Duhamel, Principal Planner
Emily J. Cousineau, Implementation Aide

Members Absent

Ronnie Gibson
William Stamp, III

Guests Present

Jane Austin, Save the Bay
Ames Colt, Bays Rivers & Watersheds Coordination Team
Ray DiSanto, East Smithfield Water
Charles Donovan, House Policy Committee
Kevin Essington, The Nature Conservancy
John Faile, Lincoln Water
Bill Falcone, RI Water Works Association
David Goggan, Amgen
Megan Kerr, Narragansett Bay Estuary Program
Juan Mariscal
Eugenia Marks, Audubon Society
Henry Meyer, Kingston Water
Jessica Pagan, Brown University
Carissa Richard, Providence Water
Mark Smith, The Nature Conservancy

*Member Designees

CALL TO ORDER

Chairman Penn called the meeting to order at 1:01pm, noting that a quorum was present.

APPROVAL OF MINUTES:

Motion by Mr. Schock, second by Ms. Swallow to approve the minutes of the Board Meeting dated April 19, 2010. The vote in favor was unanimous. The motion carried.

CHAIRMAN'S REPORT & PUBLIC COMMENT

Chairman Penn reported that the new appointments and reappointments to the Board had been approved by Governor Carceiri and the Senate. He introduced the three new members: Susan Licardi, Thomas Boving, and Michael DeFrancesco. Mr. Penn noted that the meeting would focus heavily on the Board's number two priority: Water allocation. The Board has a responsibility to develop new allocation regulations in a fair, equitable, and transparent manner. He further acknowledged that some parties would

ultimately be adversely affected. He stated that the Board would indeed meet the established deadline for the new allocation regulations.

FINANCIAL REPORTS

A. Chief Business Officer's Report – April 2010
Motion by Mr. Penn, second by Mr. Schock to accept the Chief Business Officer's Report for April 2010. The vote in favor was unanimous. The motion carried.
Discussion
Mr. Penn noted that the Finance Committee had reviewed the report and recommended it for approval.

GENERAL MANAGER'S REPORT

Mr. Burke reported that Kent County Water Authority had expressed disinterest in performing a joint hydraulic model with the Big River well field. The Authority is scheduled to meet in the coming week and they will continue to discuss the development of the Mishnock well field. Mr. Burke will attend the meeting. The General Manager further stated that the staff had received consultant proposals for the South County Groundwater Protection and Acquisition Program for review. The staff is also reviewing Providence Water's 5-Year Update report.
Mr. Penn requested that Mr. Burke structure his reports around priorities established by the WRB Business Plan.

COMMITTEE REPORTS AND ACTION ITEMS:

Allocation Committee
Mr. Ward provided a brief history of the Board's involvement with promulgating allocation regulations. He further explained that the draft regulations require suppliers to report consumption, allowing the Board to compare usage with availability and allocate water efficiently. The regulations give a supplier 10 years to comply with efficiency targets if a system is not stressed. A more ambitious time frame of five years will be required in stressed systems where consumption is greater than availability. Mr. Ward noted that, currently, the draft rules state that a stressed watershed could be assigned lower targets. That is an option the Committee must still resolve. He then asked the Board for another month, stating that the Committee would present draft regulation for approval at the June 21st meeting.

Motion by Mr. Ward, second by Mr. Flynn, to delay action on the draft regulations by one month. The vote in favor was unanimous. The motion carried.

Discussion
Chairman Penn directed the Board to focus the discussion on three major areas: targets, methods, and enforcement.
Targets – Residential use of 65 gallons per capita per day

- Mr. Schock raised concern about how South Kingstown would estimate its population during seasonal fluctuations from tourism. It is not uncommon for summer rental units to house many more people than intended. Mr. DeFrancesco remarked that 65gpc is a good target, but actually calculating the unit is difficult. He suggested that the target and definition be construed liberally.
- Ms. Swallow asked if the target was sufficient for contaminant flushing. Mr. Ward stated that such systems would be given higher targets that reflect flushing as an "essential use". Ms. Marchand agreed that Providence Water would be able to estimate the amount of water used when residents flush out their faucets, which is recommended by the supplier.

- Mr. Penn asked what factors should be added to the target calculation to cover health and seasonal population change. He also asked if the Board wanted to mandate rules to suppliers in a top-down fashion. Ms. Marchand stated that enforcement would be difficult when some users can afford to pay higher costs, ultimately raising rates across the system and hurting those that conserve. Mr. Penn deferred this to the later topic of enforcement.
- Ms. Licardi stated that 65gpc is a good "starting point" and that it is important to give suppliers a set target.
- Mr. Kitchell stated that given the draft's current flexibility, businesses should be able to accommodate for new efficiency standards.
- Ms. Swallow asked about audits being required for major users, but not for small users. Mr. Ward explained that this was deemed necessary for practical purposes. The WRB simply does not have enough staffers to audit small, private users.
- Mr. Rodrigues voiced his concern for how the regulations will affect small, privately owned businesses, such as horticulture, as well as real-estate values. He noted the need to proactively educate customers about water efficiency in order to burden businesses as little as possible.
- Mr. DeFrancesco asked if it would be possible to see the State's entire water budget. This may help show how 65gpc actually relates to the larger picture of overall use. Mr. Schock added that the major variable is outdoor water use and that typical household needs do not change much by season.

PUBLIC COMMENTARY

- Henry Meyers, Director of Kingston Water – Mr. Meyers stated that his system has been taking steps towards efficiency over several years. Kingston is already close to the 65gpc target, but the implementation of that target will be more complicated in different areas. Specifically, he noted that urban systems will need support in reaching the target per capita.
- Juan Mariscal – Mr. Mariscal stated that his town of Bristol is already below 65gpc per day, which is an average. He asked the Board to consider if the target is a goal or an enforceable mandate.
- Jane Austin, Save the Bay – Ms. Austin voiced her organization's support for the new regulations.
- Bill Falcone, RI Water Works Association – Mr. Falcone noted that he aided in writing RIGL 46-15.7 and that the intention was always to work with suppliers.

<u>Methods</u> – Education, Conservation Rates, Outdoor use restrictions, etcetera.

- Mr. DeFrancesco noted that paragraph 5A states "these methods *may* be used". He asked if, hence, the listed methods are merely suggestions. Mr. Ward explained that the methods are a "menu" from which to select. Suppliers will need to prove that their selections can work within their systems. The Board will ultimately determine if a supplier's plan is acceptable. Ms. Swallow added that the section under discussion did not specify if only major suppliers needed to submit a plan, as opposed to all suppliers. Mr. DeFrancesco suggested the language read, "including, but not limited to…"
- Ms. Swallow asked about leakage and general maintenance. Mr. Ward replied that the section about non-account water covers the topic of leakage and maintenance.
- Mr. Ward further clarified that stressed systems would need to select options from list C, which are more intensive.

PUBLIC COMMENTARY

- Mark Smith, the Nature Conservancy – Mr. Smith noted that the regulations do not discuss methodology for determining leakage amounts. Ms. Swallow replied that outside companies are usually contracted for that purpose. Mr. Smith stated that the Board should ensure its ability to review a supplier's methods.

Enforcement

- Ms. Swallow asked if all suppliers would only be required to submit annual reports. Mr. Ward clarified that all suppliers would continue to report annually. Mr. Shock noted that the regulations must be clear as to which sections apply to what type of supplier. He added that the Board should not require small systems to submit a report. Staff could use data from DOH to see how much water small systems consume. Mr. Penn agreed, noting that the Board did not want to burden small businesses if staff can obtain the information independently.
- Mr. Penn noted that enforcement must be consistent. Mr. Ward stated that the Board would need to see if a supplier makes reasonable attempts towards achieving regulated targets. Staff would likely be responsible for issuing notices on non-compliance. Mr. Penn clarified that the language should read, "Any supplier who fails to comply with these regulations," not necessarily with the set schedule.
- Mr. Schock noted that 20 days for a supplier to identify a solution for non-compliance is much too short. He suggested 120 days, also stating that penalizing a supplier for, "each day failing to comply….," is too strict. The regulations should simply state that legal action can be taken.

  (2:38PM – Mr. Parsons leaves the meeting)

- Mr. Schock noted that section 6E states, "[The Board] shall inform the person of the amount of the penalty." The term "person" should be defined. Mr. DeFrancesco commented that 6E gives the violator 30 days to appeal to the "Board". He stated that a violator would not appeal to the body issuing the penalty. Mr. Penn concurred that the appeal should go to a third party. Kevin Flynn added that the DOA Legal Division could suggest what steps would be needed for an appeal.

PUBLIC COMMENTARY

- Mr. Meyer stated that the method of appeal for major users was not explained. He added that the phrase "Environmental Quality Standard", in section 6D of the regulations, needed to be clearly defined.

Motion by Mr. DeFrancesco, second by Ms. Licardi to refer the Stream Depletion Methodology study to the Technical Committee for review and comment. The vote in favor was unanimous. The motion carried.

RECESS OF BOARD FOR BOARD CORPORATE BUSINESS

Motion by Mr. Schock, second by Ms. Swallow to recess the Board Meeting and proceed into the Board Corporate Meeting at 3:11pm. The vote in favor was unanimous. The motion carried.

RETURN FROM BOARD CORPORATE BUSINESS

The Board returned from Board Corporate by consensus at 3:13pm.

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EXECUTIVE SESSION Pursuant to RIGL § 42-46-5 (a) (4) Investigative Proceedings Regarding Allegations of Misconduct

Chairman Penn called for the role call vote to begin Executive Session in accordance with RIGL § 42-46-5 (a) (4) Investigative Proceedings Regarding Allegations of Misconduct.

Mr. Flynn – yes
Ms. Marchand – yes
Mr. Schock – yes
Mr. Rodrigues – yes
Ms. Licardi – yes
Ms. Good – yes
Mr. Boving – yes
Mr. Kitchell – yes
Mr. DeFrancesco – yes
Ms. Swallow – yes
Mr. Ward – yes

And Chairman Penn voted yes. The vote in favor was unanimous. The motion carried.

The Board proceeded into Executive Session at 3:14pm.

RETURN FROM EXECUTIVE SESSION

The Board returned from executive session at 3:26pm with no voting matters.

ADJOURNMENT

Motion by Mr. Flynn, second by Mr. Schock to adjourn the meeting. The vote in favor was unanimous. The motion carried and the Board adjourned at 3:26pm.

Respectfully Submitted,

Emily Cousineau

Emily J. Cousineau
Implementation Aide

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