

Lower Cape Fear Water & Sewer Authority  
Regular Board Meeting Minutes

December 11, 2017

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Chairman Blanchard called to order the Authority meeting scheduled on December 11, 2017 at 9:00 a.m. and welcomed everyone present. The meeting was held at the Authority's office located at 1107 New Pointe Boulevard, Suite 17, Leland, North Carolina. Director Leonard gave the invocation.

**Present:** Norwood Blanchard, Trent Burroughs, Wayne Edge, Larry Johnson, Al Leonard, William Milliken, Jackie Newton, Phil Norris, Charlie Rivenbark, Bill Saffo, Larry Sneed, William Sue, Skip Watkins and Frank Williams

**Present Electronically by Telephone:** None

**Absent:** None

**Staff:** Don Betz, Executive Director; John Wessell, General Counsel; Tony Boahn P.E., McKim & Creed and Amy Scruggs, Administrative Assistant

**Guest:** Ann Hardy, Brunswick County Manager; John Nichols, Brunswick County Public Utilities Director; Chad McEwen, Pender County Assistant County Manager; Bryan McCabe, Pender County Interim Public Utility Director; Frank Styers, Cape Fear Public Utility Authority Chief Operations Officer; Carel Vandermeiden, P.E., Cape Fear Public Utility Authority Director of Engineering; John Malone, Cape Fear Public Utility Authority Water Resources Manager;

**PLEDGE OF ALLEGIANCE:** Director Burroughs led the Pledge of Allegiance.

#### **APPROVAL OF CONSENT AGENDA**

**C1 - Minutes of Regular Board Meeting November 13, 2017**

**C2 - Kings Bluff Monthly Operations and Maintenance Report**

**C3 - Bladen Bluffs Monthly Operations and Maintenance Report**

**Motion:** Director Rivenbark **MOVED**; seconded by Director Milliken, approval of the Consent Agenda Items as presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

#### **OLD BUSINESS**

##### **OB1 - Presentation of Capacity Allocation for 60-inch Parallel Line and Discussion**

Executive Director Betz reviewed a PowerPoint presentation providing background information on the capability of the Kings Bluff Raw Water Pump Station (KBRWPS); the NC DENR designated safe water yield from the Cape Fear River of 106 million gallons per day (MGD) being equally divided at 53 MGD each between the Authority and Cape Fear Public Utility Authority (CFPUA); the average MGD usage of the Authority's customers over the past nine years; Pender County's planning for future water needs and the status of its 14.5 MGD interbasin transfer (IBT) request; and capacity allocation, cost analysis and cost proportioning per customer for the 60-inch parallel main. A copy of the presentation is hereby incorporated as part of these minutes.

Executive Director Betz briefly summarized that the Authority was founded in 1970 with the purpose of being a raw water provider for the regional counties. In this region, only the Authority and CFPUA have intakes in the Cape Fear River. The Authority's three intakes are located in Bladen County with two of those being at the KBRWPS with the capacity to withdraw 125 MGD. Delivering this capacity is limited by the current 48-inch transmission main. Only with the addition of the 60-inch parallel main will the 125 MGD capacity be made available to customers. CFPUA's intake is located next door to the KBRWPS. Because CFPUA's pump station only has the capacity to withdraw approximately 10 MGD of its designated safe water yield of 53 MGD; the Authority provides CFPUA 23 MGD via a water supply agreement. Additionally via water supply agreements, the Authority provides Brunswick County 24 MGD, Pender County 6 MGD and Cape Industries/Hwy 421 6.5 MGD. Over the past nine years, the combined annual average of all customers is 24.48 MGD. Executive Director Betz recalled that on March 13, 2017 the Authority approved entering an Interlocal Agreement with CFPUA and Brunswick County which stipulated that when design of the 60-inch parallel main is or almost complete, a determination would be made whether they and additional parties have interest in participating in a project to construct the proposed 60-inch parallel main and at that time a separate agreement among the participating parties would be developed. Currently design is at 20%; therefore there are still variables such as Pender County's IBT request which needs time to play

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out so informed decisions can be made. The public hearing for the IBT is scheduled on January 18, 2018 with the final decision tentatively expected on May 10, 2018. As noted Pender County's water supply agreement is for 6 MGD so with approval of the IBT an additional 8.5 MGD would be needed for future needs. Total water allocation by the Authority per water supply agreements with its customers, is 59.5 MGD. Design of a 54-inch parallel main rather than a 60-inch main would be short in new capacity by 2 MGD whereas a 60-inch main provides a total system capacity of 124 MGD with a gain of 64.5 MGD of new capacity. To meet the future needs of the three, primary customers, Executive Director Betz suggested the new capacity could be allocated as follows: Brunswick County 40.8 MGD; CFPUA 15.2 MGD and Pender County 8.5 MGD. The cost would be shared proportionately among these customers. With participation in the design process Pender County would be required to equally compensate CFPUA and Brunswick County for its associated percent of design cost. Executive Director Betz discussed how the cost proportioning amount for Pender County could be addressed through a system development charge annualized over 10 or 20 years or by a variable water rate charged for system development associated with their percent of cost for the 60-inch parallel main in addition to the regular raw water use rate charged to all customers.

At the Chairman's invitation, Mr. Nichols apprised the board that in the county's Capital Improvement Plan (CIP) for this fiscal year, Brunswick County plans to increase the capacity of its Northwest Water Treatment Plant by 12 MGD and to do so; a DEQ permit is needed in the next couple of months. Obtaining this permit requires proof of adequate raw water supply. Brunswick County needs assurance from the Authority, that the required water can be secured; therefore, there needs to be an understanding of available capacity and the associated cost. He referenced agenda item OB1-Addendum, the *Memorandum of Understanding, Capacity Allocation* (MOU) presented by the county to the Authority which indicated the additional capacity from the 60-inch main would be split between Brunswick County at 56.8% and CFPUA at 44.2% with each paying the same dollar per gallon rate for their percent of capacity. The MOU listed additionally gained capacity as 69 MGD rather than 64.5 MGD illustrated in the PowerPoint presentation. He noted one item that is not apparent in the MOU is the system's current capability of delivering approximately 46 MGD with the current allocation, as pointed out in the presentation, as being 59.5 MGD. He stated this equates to an estimated range between nine to fourteen million dollars which Brunswick County and CFPUA would pay for already allocated capacity within the system. Without this over allocation the calculation for Brunswick County to obtain 26 MGD from a 60-inch pipe based on the current cost would be approximately \$22,000,000.00. What the Authority presented represents the upper limit for Brunswick County to pay. Mr. Nichol expressed concern about who would cover the capital cost debt service for Pender County and about including capital cost (system development charge) in the raw water rate with no guarantee of actual water usage to cover the rate. He said the MOU would also provide assurances that the over allocation of water would not occur again in the future. He also stated that the MOU does not provide an allocation of water to Pender County but it can be adjusted if Pender County is seeking additional capacity. The intent is not to keep Pender County from getting capacity; however, in order for Brunswick County to obtain the needed permits a framework for water allocation needs to be constructed. Because a decision needs to be made as soon as possible, he recommended two frameworks should be constructed with one including and one excluding Pender County. This would allow Pender County to make a decision once bids come in and it would allow Brunswick County to move forward with permitting the expansion of its Northwest plant. As illustrated in the presentation, Mr. Nichols expressed concern that out of the 53 MGD of safe yield river withdrawal allocated to the Authority there is only 16.5 MGD available to be allocated to Brunswick and Pender Counties and Brunswick County needs much more capacity than that. If Brunswick County can only get a maximum of 16.5 MGD then there is no need for the county to make the expenditure in a 60-inch main whereby the allocation would be 40 MGD; however, only 16.5 MGD of that could be utilized. These issues need to be determined in order to direct the design team on moving forward with either a 54-inch or 60-inch pipeline. In response to a question by Director Watkins, Executive Director Betz provided clarification on the concerns expressed by Mr. Nichols about the capital improvements debt service payment by Pender County. He explained the presentation merely was an illustration of a couple of payment options with one being the annualizing of debt service payments via a system development charge over 10 or 20 years. The second option illustrated a variable system development rate of \$0.29 per 1,000 gallons applicable only to Pender County based on additional capacity allocation of 8.5 MGD. With the variable rate, Pender County would pay the regular monthly water usage rate paid by all customers and an additional monthly system development rate over a 10 or 20 year period. For a 10 year payment period the monthly payment would equate to approximate \$75,000 in addition to the monthly water usage payment. Executive Director Betz explained, the illustration does not address financing the project. Executive Director Betz also clarified the comment that Brunswick County and CFPUA would be paying for over allocated capacity. He noted that both Cape Industries and Pender County paid a system development charge for their current capacity allocations; however, when the City of Wilmington/CFPUA requested an allocation increase in 2008 from 15 MGD to 23 MGD and when Brunswick County requested an allocation increase in 2012 from 12 MGD to 24 MGD neither paid a system development charge. The capacity identified as over allocated for delivery via the current or the 54-inch pipeline, was designated to Brunswick County in 2012 and is available in the line. Executive Director Betz stated that as a member of the board, Pender County should have the opportunity to participate for the quantity they need as to be determined by their IBT request. Accordingly,

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the Authority can develop a MOU that includes Pender County. Director Norris commented that Brunswick County, Pender County and CFPUA are the ones who must figure out what they need and sort out these issues together along with the assistance of Executive Betz. Then the recommendation can be brought back to the Authority's board for vote. Director Newton agreed with Director Norris stating that Pender County does want to participate depending on the outcome of the IBT request. She added it may be more financially feasible for the county to finance their part upfront rather than utilizing such options as presented. Director Williams stressed that all partners must proportionately share the cost according to the percent of capacity received and total system allocation should not exceed the actual capacity. There was discussion regarding a timeline to accommodate both Brunswick and Pender Counties' needs; cost based on current or potential allocations; the current safe yield capacity of 106 MGD and the potential safe yield capacity of 124 MGD; allocation/over allocation of deliverable capacity and who will pay for the over allocation of capacity and the need for the involved parties to work out an agreement among themselves. Mr. Styers commented that CFPUA is on record with the state as having a 53 MGD allocation either through CFPUA's pump station or through the KBRWPS and any proposal that would decrease that allocation to CFPUA would need a deliberate vote by its board. Director Watkins concluded the discussion by noting that he sits on two boards associated with the resource of water. He stated the Authority's board needs to be cognizant in preserving the integrity and mission of Lower Cape Fear Water & Sewer Authority which has existed for a long time to serve multiple counties and should continue to do so and not be gutted by actions taken in this matter. Therefore, there needs to be some ability for the Authority to retain its regional position.

**Motion:** Director Newton **MOVED**; seconded by Director Williams, a recommendation that within 45 to 60 days the Lower Cape Fear Water & Sewer Authority Board of Directors has an opportunity to hear from representatives of Pender County, Cape Fear Public Utility Authority and Brunswick County who will be meeting in the interim to try to work out the allocations and expenditure cost issues pertaining to the *Memorandum of Understanding, Capacity Allocation* as presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**OB2 - Common Interest Agreement (John Wessell, General Counsel)**

Mr. Wessell recalled, the Authority has engaged two law firms to represent the Authority in connection with GenX issues. These firms recently provided Mr. Wessell with the Common Interest Agreement for consideration for board approval. This is an agreement among the law firms that are collectively bringing civil actions against Chemours as a result of the GenX issues. It is an agreement where the law firms agree to share information among them while at the same time protect the confidentiality of that agreement so that it is not disclosed to an outside third party. It identifies authorized persons who are essentially the law firms who are representing the various plaintiffs and various litigations which have been initiated. By approving this agreement, the Authority agrees that its lawyers can share information with the other lawyers involved in this litigation subject to the restrictions of the agreement. Mr. Wessell pointed out page 4 paragraph 4 with the paragraph heading, "Covenant Not to Sue." This paragraph is to say that none of the parties to this agreement will sue one another based on claims resulting from contamination of the river by Chemours.

**Motion:** Director Williams **MOVED**; seconded by Director Watkins approval of the Common Interest Agreement as provided. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**NEW BUSINESS**

**NB1 - Election of Authority's Board of Directors Officers for the Term of January 1, 2018 until December 31, 2018**

Chairman Blanchard presented the following slate of officers for board consideration for the term of January 1, 2018 to December 31, 2018. Per Bylaws of the Authority (Article III. - Officers 1.) the chairmanship shall rotate among the political subdivisions with New Hanover County being next in the rotation schedule.

Chairman: Larry Sneed (New Hanover County)  
Vice-Chairman: Wayne Edge (Bladen County)  
Secretary: Al Milliken (Brunswick County)  
Treasurer: Trent Burroughs (Columbus County)  
Assistant Treasurer: Charlie Rivenbark (City of Wilmington)

Motion: Director Watkins **MOVED**; **SECONDED** by Director Norris to approve the slate of officers for the term of January 1, 2018 to December 31, 2018 as presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**EXECUTIVE DIRECTOR REPORT**

**EDR1- Customers' Water Usage Report for Fiscal Year to Date Ending November 30, 2017**

Water Usage was slightly above forecasted usage for the month of November and the revenue projection is tracking the budget.

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**EDR2 - FEMA Closeout Payment**

Executive Director Betz reported, the cost of the Hurricane Matthew raw water main repair work was 100% reimbursed with receipt of the last FEMA reimbursement check on November 27<sup>th</sup>.

**DIRECTOR'S COMMENTS AND/OR FUTURE AGENDA ITEMS**

Director Sue

Director Sue commented that the Authority has always rotated the chairmanship through its membership comprised of the counties and the City of Wilmington. Now there is CFPUA which is one entity, just as Brunswick County is one entity. Therefore there is an issue now that in the rotation for chairmanship, Brunswick County gets one rotation and CFPUA gets two rotations.

Director Watkins

Director Watkins wished all a Merry Christmas.

Chairman Blanchard

With this being the last meeting in 2017, Chairman Blanchard thanked the board for allowing him to chair the Authority over the past year.

**PUBLIC COMMENT**

Mr. Nichols expressed appreciation to the board for their time and he expressed his appreciation to Executive Director Betz.

**ADJOURNMENT**

There being no further business, Chairman Blanchard adjourned the meeting at 10:10 a.m.

Respectfully Submitted:

  
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Wayne Edge, Secretary