

Lower Cape Fear Water & Sewer Authority
Regular Board Meeting Minutes

September 11, 2017

With Chairman Blanchard participating by telephone, Vice Chairman Sneed called to order the Authority meeting scheduled on September 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: Trent Burroughs, 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: Norwood Blanchard and Wayne Edge

Absent: None

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

Guest: Glenn Walker, Brunswick County Water Resources Manager

PLEDGE OF ALLEGIANCE: Vice Chairman Sneed led the Pledge of Allegiance.

APPROVAL OF CONSENT AGENDA

C1 - Minutes of Regular Board Meeting August 14, 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

Due to a conflict of interest, Director Sneed recused himself from presiding over Agenda Item OB1 and from any resultant action taken by the Board. As General Counsel, Mr. Wessell affirmed the recusal of Director Sneed as appropriate.

Motion: Director Sue **MOVED**; seconded by Director Newton, acceptance of Director Sneed's recusal. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

Director Sneed appointed Director Milliken to take the chair, as the next officer in attendance.

OB1 - Subcommittee Report on August 17th Meeting With Two Law Firms, Seagle Law and Baron and Budd

A. Resolution To Negotiate a Contingency Fee Agreement For Legal Counsel To Advise and Represent Lower Cape Fear Water & Sewer Authority In Matters Relating To GenX

Executive Director Betz reported that on August 17, 2017 Harold Seagle of Seagle Law and four representatives from the law firm Baron & Budd, P.C. (firms) met with a subcommittee of the Board pertaining to legal counsel and representation in matters relating to GenX. Mr. Wessell provided a summary of the meeting. The firms reviewed their qualifications and extensive experience. They have had success with a number of cases in their representation of local government who has had problems with contaminants in their water sources. They are additionally offering their service to similarly situated bodies of government including Pender and Brunswick Counties and Cape Fear Public Utility Authority. Brunswick County recently retained the firms to represent its interest and neither Pender County nor Cape Fear Public Utility Authority has made a decision. There could be a greater likelihood for success in having regional partners present a united front by having the same legal representation and Mr. Wessell pointed out there is some merit in this concept. On a contingency fee basis, the firms offered to represent the Authority and provide legal counsel in how to best respond to the situation which Chemours appears to have created in the Cape Fear River. The contingency fee basis means legal fees and all incurred costs/expenses will be paid from any settlement or recovery and

if no recovery is made, no fee or reimbursement of expenses will be charged to the Authority. Mr. Wessell recommends the Board consider retaining Seagle Law and Baron & Budd, P.C. to see what can be done to remedy the situation so that Chemours no longer discharges substances into the river that would affect water usage and that, to the extent possible, the situation in the river is mitigated. He noted that even if multiple parties are represented, the remedies can be individualized to each of the parties because each clearly has different interests. The primary solution would provide for some means of water treatment so these chemicals can be taken out of the water that is ultimately given to consumers and the cost of the treatment is paid by an entity other than the regional governmental agencies.

Discussion ensued regarding: commendation of the firms' qualifications and experience by subcommittee members who attended the August 17th meeting; the benefit of unified representation to keep the narrative controlled and focused on the liability of the corporate entity actually responsible for the suffered damage; the view that an entity should have separate legal representation to ensure its best interest is being served rather than being a part of united representation; and the question of representation for future personal health injury claims.

Motion: Director Williams **MOVED**; seconded by Director Norris, approval of the *Resolution To Negotiate a Contingency Fee Agreement For Legal Counsel To Advise and Represent Lower Cape Fear Water & Sewer Authority In Matters Relating To GenX* as presented. Upon vote, the **MOTION CARRIED** with 11 votes in favor and 2 against.

Mr. Wessell responded to a question concerning the need for closed session discussions and conflict of interest of board members who also represent governmental bodies which are directly impacted by this issue. He stated that in future discussions where the Board decides what actions to take as opposed to who is being hired, it may be necessary to exclude certain board members or in the alternative create a committee, excluding those with a conflict of interest, in order to address these issues. Cape Fear Public Utility Authority participated in the original study which revealed the GenX issue and Executive Director Betz disclosed that Detlef Knaffe, who was on the N.C. State University research team leading the study, has been retained by the firms as an expert witness.

OB2 - Report on Draft Preliminary Design Memorandum for the Kings Bluff Parallel Raw Water Transmission Main (Tony Boahn, P.E., McKim & Creed)

Mr. Boahn provided an update to the design of the Kings Bluff Raw Water Parallel Transmission Main Project. The first task was to establish the material and size for the pipe so capital and lifecycle costs could be determined. Initially, three pipe sizes (48-inch, 54-inch and 60-inch) were deemed feasible and six material types were considered. The scope was to identify one pipe size and two materials for bid. The material recommendation is for ductile iron pipe (DIP) and welded steel pipe (Steel) with prestressed concrete cylinder pipe being a distant third. The material capital cost varied based on the difference in pipe size with Steel being the least expensive for all three sizes. The goal for pipe total capacity was 96 million gallons per day (MGD). Paralleling the existing 48-inch pipe with either a new 54-inch or 60-inch pipe will meet this goal. It is also important from a future standpoint, to be cognizant of the maximum safe withdrawal from the Cape Fear River which is currently determined to be 106 MGD (Maximum 20% 7Q10 Withdrawal = 106 MGD). The configuration of the existing 48-inch pipe with the new 54-inch pipe provides for a maximum withdrawal of 107 MGD; whereas, the configuration with the 60-inch pipe provides a maximum withdrawal of 124 MGD. In comparing lifecycle cost for Steel and DIP, Steel is the least expensive; however, in comparing 54-inch to 60-inch DIP, the 60-inch DIP is slightly less. McKim & Creed was charged to meet the design criteria for 96 MGD by way of the most economical route. Based on this scope and the presented analysis, the current draft recommendation is to bid 54-inch pipe with Steel and DIP as material options. In response to questions on increasing the maximum capacity withdrawal from the river Mr. Boahn replied that a hydrologic study on the model and an environmental impact study would be required which would be costly. Director Norris commented that, as the most sure and economic supply available, it is prudent to withdraw as much water from the river as possible; however, because the population will continue to grow that resource will be tapped out and other sources will need to be utilized. The next steps are to finalize the Design Memorandum; move forward with the design; continue work on NC DOT permitting and the Wetlands/CAMA/Environmental process; and prepare and update the 30% design documents due mid-December.

NEW BUSINESS

NB1 - Discussion of Request From Brunswick Regional Water & Sewer H2GO to Place a Composite Sampler at Kings Bluff Raw Water Pump Station

Executive Director Betz commented that on September 6th a request was made by Brunswick Regional Water & Sewer H2GO for placement of a composite water sampler at the Authority's Kings Bluff Raw Water Pump Station (KBRWPS) starting immediately and to be in place through the end of October. H2GO would require daily access to

the sampler. Executive Director Betz noted that operation and maintenance of KBRWPS is performed by Brunswick County as a second party contractor. There was discussion regarding the Authority having several customers and that it is not sagacious to set a precedent permitting any third party activity or sampling at KBRWPS.

Motion: Director Norris **MOVED**; seconded by Director Sue, to deny Brunswick Regional Water & Sewer H2GO's request to place a composite sampler at Kings Bluff Raw Water Pump Station in that it sets an ill-advised precedent. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

EXECUTIVE DIRECTOR REPORT

EDR1 - Customers' Water Usage Report as of August 31, 2017

Water revenue for this fiscal year as of August 31st is slightly below budget.

EDR2 - Update on Transmission Main 48-in LCP Temporary Repair Clamp

Executive Director Betz recalled that after the transmission main failure during Hurricane Matthew in September, 2016, the Board approved the purchase of various spare parts to have on hand including a temporary, emergency repair clamp for the transmission main. He recognized Glenn Walker who provided an update. Mr. Walker noted, the clamp can be used as a temporary repair measure not only on a joint but also on a boring hole puncture. The repair clamp was tested and is now being sent back to the manufacturer for a design change to the parts used in lifting the clamp and for an instruction manual to be prepared for assembly of the clamp at the repair site. No date has been provided as to when the clamp will be ready for delivery but it is anticipated it will be by the end of December.

EDR3 - Status Report on the Cary, Apex, Morrisville Interbasin Transfer (IBT) Modification Administrative Appeal

Last month it was reported that the appeal to Superior Court from the decision of the Administrative Law judge was scheduled in Cumberland County for September 14th and 15th; however, since then there has been a change. Mr. Wessell explained he received notification from one of the lawyers representing PWC that some settlement discussions occurred with the other towns, and he assumed the state agencies, regarding an agreement for some kind of return of treated water back to the Cape Fear River basin. This resulted in the continuation of the hearing to be scheduled sometime in October. Within a week to ten days, it is possible the Authority may hear whether the parties reach a settlement or not.

EDR4 – Status of Kings Bluff Generators

With it being hurricane season, Executive Director Betz reported that both generators are in excellent condition and there is an ample supply of fuel on hand.

DIRECTOR'S COMMENTS AND/OR FUTURE AGENDA ITEMS

None

PUBLIC COMMENT

None

ADJOURNMENT

There being no further business, Chairman Blanchard adjourned the meeting at 10:16 a.m.

Respectfully Submitted:



Wayne Edge, Secretary