

Lower Cape Fear Water & Sewer Authority  
Regular Board Meeting Minutes

March 11, 2019

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Chairman Edge called to order the Authority meeting scheduled on March 11, 2019 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 Norris gave the invocation.

**Present:** Trent Burroughs, Wayne Edge, Al Leonard, William Milliken, Phil Norris, Larry Sneed, William Sue, Frank Williams and Rob Zapple

**Present Electronically by Telephone:** Jackie Newton, Charlie Rivenbark and Bill Saffo,

**Absent:** Norwood Blanchard and Larry Johnson

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

**Guest:** Frank Styers, Cape Fear Public Utility Authority Chief Operations Officer; John Malone, Cape Fear Public Utility Authority Water Resources Manager; Chad McEwen, Pender County Assistant County Manager; Kenny Keel Pender County Public Utilities Director; Glenn Walker, Brunswick County Water Resources Manager; Heidi Cox, NC DENR Assistant Regional Engineering Supervisor, Public Water Supply Section Division of Water Resources and Shirley Lawler

**PLEDGE OF ALLEGIANCE:** Chairman Edge led the Pledge of Allegiance.

**APPROVAL OF CONSENT AGENDA**

**C1 - Minutes of Regular Board Meeting February 11, 2019**

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

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

**C4 - Bladen Bluffs Weekly Report: March 1, 2019**

**C5 - Budget Amendment #6**

**C6 - Resolution Awarding Annual Audit Contract for Fiscal Year Ending June 30, 2019 to Thompson • Price • Scott • Adams & Co. P.A. in the Amount of \$8,000.00**

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

**OLD BUSINESS**

**OB1- Resolution of Lower Cape Fear Water & Sewer Authority Authorizing Condemnation of Property in Conjunction with Installation of New 54-Inch Water Line (John Wessell, General Counsel)**

Mr. Wessell referenced the resolution which authorizes staff to undertake condemnation of two easements in conjunction of the installation of the new 54-inch transmission main. Both easements are located in the vicinity of the Kings Bluff Pump Station. Concerning the Snowden easement, two letters were sent by Mr. Wessell with receipt of delivery requesting that Mr. Snowden contact him. Additionally, staff from the pump station visited Mr. Snowden and asked him to call Mr. Wessell. There has been no response to these requests so there appears to be no alternative other than to condemn 0.39 acres of Mr. Snowden's property to acquire the easement. Concerning the second property which is the Macon easement, both Executive Director Betz and Mr. Wessell visited Mr. Macon. Since then Mr. Wessell had additional conversations with Mr. Macon who rejected the Authority's initial offer but is agreeable to be paid \$3,500.00 for the property which is less than the cost for condemnation. Therefore, Mr. Wessell recommends the Authority offers Mr. Macon this amount for acquisition of the easement consisting of 1.26 acres. Mr. Wessell noted that the presented resolution provides authorization to condemn Mr. Macon's property; however if it is resolved otherwise, the condemnation will not go forward. There is a third easement in the vicinity of Kings Bluff belonging to Mr. Brewer who agreed to convey the easement property to the Authority for a reasonable amount of \$1,500.00 which was approved by Executive Director Betz. Mr. Brewer resides in California and Mr. Wessell sent him the easement documents to be signed. If property condemnation is necessary, Mr. Wessell recommends the Authority hire Attorney Mark Hamlet of Hamlet & Associates, PLLC who recently handled a number of foreclosure

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actions for the Town of Leland. There are two properties in Brunswick County on Port Royal Road where structures need to be removed from the easements and one of these properties also has a shallow well used for irrigation located in the easement. These property owners must remove all structures from the existing easements; however, both Mr. Wessell and Executive Director Betz believe it is appropriate for the Authority to assist with relocating the well which was in place when the easement was originally given. The owner is in process of obtaining quotes for relocation of the well with a recent quote being between \$700.00 and \$800.00. The second property owner on Port Royal Road was also notified his storage buildings located on the easement must be moved. Mr. Wessell has been speaking with Glen Peterson and H. O. Peterson concerning two easements on Mt. Misery Road. Mr. Wessell is working on a situation where a part of one of those easements, which is not needed, can be released in order to acquire an easement which is needed of approximately the same size.

Concerning the Snowden, Macon and Brewer easements, Mr. Wessell explained that upon McKim & Creeds' survey of the existing easements it was discovered the transmission main was initially installed outside the easement; therefore, these properties must be acquired to legitimize the location of the existing main. The new main will be located within the existing easement. Mr. Wessell said the Authority has done more than is legally required to communicate with Mr. Snowden and if all else fails a thirty days noticed must be provided to him prior to filing the condemnation action. Director Williams expressed concern about the lack of communication with Mr. Snowden and requested that Mr. Wessell personally speak with Mr. Snowden one more time to ensure his understanding of the available options.

**Motion:** Director Sneed **MOVED**; seconded by Director Burroughs, approval of the *Resolution of Lower Cape Fear Water & Sewer Authority Authorizing Condemnation of Property in Conjunction with Installation of New 54-Inch Water Line* as presented and approval to offer Mr. Macon up to \$3,500.00 as a settlement amount for acquisition of additional easement. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**Motion:** Director Zapple **MOVED**; seconded by Director Williams, approval to hire outside counsel, if needed, to handle the condemnation of property action. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**OB2 - Resolution Authorizing Chairman to Execute Interlocal Agreement Funding for the Lower Cape Fear Water & Sewer Authority Transmission Main Relocation with New Hanover County**

Being unsuccessful in securing FEMA 406 Mitigation funds for this project, Executive Director Betz met with the New Hanover County Manager and his staff. This meeting resulted in the negotiation of the presented Interlocal Agreement (agreement) approved by the New Hanover County Commissioners to loan the Authority \$1,506,438.00 at a 2% interest rate for a three year term for relocation of the Authority's raw water transmission main on US HWY 421. The project's total estimated cost is \$2,006,438 and per the terms of the agreement, the Authority is responsible for payment of the first \$500,000.00 in project cost. Executive Director Betz noted that with New Hanover County working with Cape Fear Public Utility Authority (CFPUA) to provide treated water and sewer on US HWY 421; the Commissioners understand their investment in this locality and are willing to assist the Authority.

At the recommendation of Glenn Walker, Executive Director Betz met with Teresa Carter, a consulting contractor who is very knowledgeable of FEMA and is working with Brunswick County. She explained that with FEMA 406 Mitigation the Authority would have had to upfront payment of the project to be reimbursed only 50% of the cost. This would create a precarious cash flow situation for the Authority whereas with the potential funding from New Hanover County that type of pressure is eliminated. On behalf of the Authority, Ms. Carter will pursue funding options available through other federal agencies as well as the 404 Hazard Mitigation Grant Program used to provide protection to undamaged parts of a facility or to prevent or reduce damage caused by future disasters. If she identifies suitable funding opportunities, the Authority would need to enter an agreement for her services at that time. Executive Director Betz explained that currently the Authority will be debt free as of May, 2022; however, with the addition of the New Hanover County loan into the existing debt service payment schedule, the Authority will be debt free as of May 1, 2023 at which time New Hanover County will be paid the balance of the loan of \$726,000.00 with interest. Then going forward for Fiscal Year 2023-2024, with no increase in the water rate, \$1,000,000.00 will be available for capital projects. Executive Director Betz explained the expensed \$500,000.00 would normally be replenished by the receipt of increase in water revenue over the fiscal year budgeted revenue. Fiscal year water revenue is calculated based of each customers' projected water use for the year. For example, this year the budget was built upon Brunswick County's projected water use of 12 million gallons per day (MGD) for the entire year, however; Brunswick County's is averaging slightly over 13 MGD. Therefore at the end of each fiscal year the increase in water revenue rolls over into the fund balance. Last year that amount was approximately \$200,000.00.

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The agreement provides the Authority with the necessary funds to relocate the main from the footprint of the two bridges being constructed by NC DOT and it allows the Authority to move forward so as to work with NC DOT's construction schedule. Executive Director Betz and Mr. Boahn met with five representative of NC DOT who are very amenable to work with the Authority to open cut the road for relocating the main and to include repaving the road over the main upon bridge construction completion. With NC DOT open cutting the road for installation of the main, the Authority will save approximately \$1,000,000.00. After the main is relocated additional work includes installation of main on the west side of the highway and the installation of taps. Some of the work will occur within the NC DOT right-of-way so an encroachment agreement is required; however, Mr. Boahn noted that NC DOT will fast track the encroachment agreement in order to open cut the highway in late July to coincide with the bridges construction schedule. Executive Director Betz recalled that at last month's meeting Mr. Wessell suggested he edit his letter to NC DOT to be less forceful concerning damage liability and focus more on awareness and the need for caution to prevent potential damage to the Authority's main during construction. Executive Director Betz said the letter has been edited; however, he recommends a legal letter not be sent due to the high level of cooperation offered by NC DOT. In response to a question by Director Newton, Mr. Wessell stated that the encroachment agreement will be the official agreement between NC DOT and the Authority. It was agreed that an email should be sent, rather than the letter, summarizing the points of understanding discussed at the meeting with the NC DOT representatives along with the actions taken by the Authority's Board at this meeting.

Director Norris stated that he was not fully convinced of the necessity of this project; however, in considering all the facts he believes it is prudent for the Board to support this resolution, especially if the water rate does not have to be increased.

**Motion:** Director Norris **MOVED**; seconded by Director Zapple, approval of the *Resolution Authorizing Chairman to Execute Interlocal Agreement Funding for the Lower Cape Fear Water & Sewer Authority Transmission Main Relocation with New Hanover County* as presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**A) Consideration for Approval - Capital Project Ordinance Kings Bluff Raw Water Pump Station 48-Inch Raw Water Main Relocation (US HWY 421) and Discussion with NC DOT Representatives**

**Motion:** Director Sneed **MOVED**; seconded by Director Williams, approval of the *Capital Project Ordinance Kings Bluff Raw Water Pump Station 48-Inch Raw Water Main Relocation (US HWY 421) and Discussion with NC DOT Representatives* as presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**B) Request for Proposals (RFP) Engineering Services for the Relocation of 700 Feet of 48-Inch Raw Water Main**

Executive Director Betz said there is a sense of urgency to get this project underway as it pertains to NC DOT's construction schedule, the water needs of the four industrial customers on US HWY 421 and CFPWA with its pump station being offline,. North Carolina General Statute 143-64.31 (G.S. 143-64.3) provides procedural requirements for the procurement of architectural, engineering, and surveying, construction management at risk services, design-build services, and public-private partnership construction services except in the cases of special emergency. Executive Director Betz noted the required procurement procedure can be lengthy; however, the Board has the option to declare this project an emergency to speed up the process to hire an engineer for project design so that a contractor can be hired. If the project is not declared an emergency, then a Request for Proposal (RFP) would be issued as soon as possible with a submittal deadline of March 25<sup>th</sup>. Then the recommendation to issue the contract would be presented to the Board for approval at the April 8<sup>th</sup> meeting. Executive Director Betz noted that McKim & Creed submitted a proposal in the event the Board decides to issue a RFP and the proposal was not provided in the agenda in order to maintain the fairness of the RFP process. G.S. 143-64.31 is sometimes referred to as the Mini-Brooks Act and Mr. Wessell explained that if a project is more than \$50,000.00, it requires solicitations of the referenced service providers through a request for proposal process where the fee amount is not provided so selection is based on the best qualified service provider. After the service provider is selected the fee is then negotiated. In the same statute there are two ways of exemption from the procurement process. One is if the fee amount is less than \$50,000.00 and the other exemption is if it is an emergency situation. Mr. Wessell stated he is not fully convinced this situation have risen to the level of an emergency; however, he understands the necessity to move forward particularly with the time

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constraints with NC DOT and the ability to open cut the road consistent with their schedule so the Authority can a significant amount of money. He stated the Board has the option to by-pass the requirements of the Mini-Brooks Acts and declare this project an emergency or issue a RFP for the engineering portion of this project. There was discussion about the urgency/emergency status of the project. If the Board chooses the RFP process it will push back the project's start date placing it outside the window of opportunity for NC DOT to open cut the road at a loss of \$1,000,000.00. Additionally, hurricane season begins June 1<sup>st</sup> and with the delay of issuing a RFP there is the potential that exposure and relocation of the main could occur in peak season. Director Leonard commented that the Authority has the ability to say an emergency exists because currently traffic is impaired and emergency vehicles are impeded on this section of highway and for hurricane season US HWY 421 must become an evacuation route as quickly as possible. Mr. Wessell commented that the potential of a hurricane falls more in the category of an emergency than saving money and perhaps the combination of the two together is sufficient enough to justify declaring an emergency. Executive Director Betz recalled those who would be majorly impacted if this main is breached would be the Authority's industrial customers and New Hanover County who would receive less than 50% of its daily usage. Mr. Boahn noted that the originally presented project schedule is a typical schedule and not indicative of how this project schedule must be approached for immediate design in order to work with NC DOT's schedule. With last month's approval, the Preliminary Environmental Survey is already in process. In response to a question by Director Norris, Mr. Boahn affirmed that if this project is declared an emergency so that the process starts now, the schedule will be tight; however it is possible to make it happen. Director Norris commented that the Board has obviously decided to move ahead with this project and there isn't any question that time is of the essence. If this main should breaks it will certainly be an emergency. Additionally, he strongly recommended, the Authority continues to pursue any possible funding avenues for reimbursement of the cost for relocating the main.

**Motion:** Director Norris **MOVED**; seconded by Director Sue, that the Kings Bluff Raw Water Pump Station 48-Inch Raw Water Main Relocation (US HWY 421) Project be declared an emergency and that McKim & Creed is approved to provide professional consulting engineering services for the design, permit, bid and construction phase services for the project. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**OB3 - Resolution Adopting Water Supply Agreement Between Lower Cape Fear Water & Sewer Authority and INVISTA S.à r.l. (John Wessell, General Counsel)**

Mr. Wessell recalled the Authority terminated the existing water supply agreement with Invista on March 1, 2018. The presented agreement provides Invista with up to 2.5 MGD. The agreement is a 10 year agreement which automatically renews at the end of 10 years unless either party gives notice to terminate and either party may terminate the agreement at any time by giving two years of written notice of their desire to do so. Invista will purchase water at the rate established by the Authority in accordance with the Standard Provision. Mr. Wessell recommends the terms are satisfactory if the Board wishes to approve the agreement.

**Motion:** Director Sue **MOVED**; seconded by Director Zapple, approval of the *Resolution Adopting Water Supply Agreement Between Lower Cape Fear Water & Sewer Authority and INVISTA S.à r.l.as* presented. Upon vote, the **MOTION CARRIED UNANIMOUSLY**.

**NEW BUSINESS**

**NB1 - Finance Committee Comments (Chairman Wayne Edge)**

Committee Chairman Edge reported the Finance Committee met prior to the regular board meeting. The committee reviewed the figures for the Kings Bluff operating budget for Fiscal Year 2019-2020. Executive Director Betz noted the Bladen Bluffs operating budget will be reviewed in April in preparation for presentation of the full recommended budget at the May meeting. Director Norris commented that with the Finance Committee's review, the Kings Bluff budget looks sound. Therefore for the purposes of the Authority's local government customers who are currently in the budget preparation process it would be appropriate for the Authority to notify them that it appears there will be no increase in the existing water rate. It was also reported the AWWA Annual Conference & Exposition is schedule for June 9-12, 2019 in Denver, Colorado. The early registration deadline is April 25<sup>th</sup> and interested Directors can notify staff at the April 8<sup>th</sup> board meeting. There are funds budgeted for three attendees. Executive Director Betz pointed out the Fiscal Year 2019-2020 budget will be presented for approval at the June 10<sup>th</sup> board meeting which falls within the timeframe of the conference dates.

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**NB2 - Evaluation Committee Comments (Chairman Al Milliken)**

The Evaluation Committee also met prior to the regular board meeting. Committee Chairman Milliken reported the documents and instructions for the Executive Director's annual evaluation will be emailed to the Board on April 1<sup>st</sup> and should be completed and returned to him no later than April 30<sup>th</sup>.

**EXECUTIVE DIRECTOR REPORT**

**EDR1 - Letter from NC DEQ; Emissions Extension to May 1, 2019**

Executive Director Betz reported that in response to the Authority's letter dated December 18, 2018 requesting a deadline extension for emissions testing at the Kings Bluff Pump Station, the Authority received a response letter from the North Carolina Department of Environmental Quality (NC DEQ) dated February 12, 2019 granting a deadline extension to May 1, 2019. With delivery and installation of the emission equipment scheduled for the last week of March and testing on April 15<sup>th</sup>, the Authority is positioned to meet the deadline. Then with positive test results, the Authority can once again participate in Duke Energy's Demand Response Automation program.

**EDR2 - Joint Participation in the Cape Fear River Basin Dioxane-Bromide Coalition**

Executive Director Betz referenced an email from Mick Noland, of Fayetteville Public Works Commission (PWC), regarding the adverse impact upstream dischargers are having on the State's surface water as a source of drinking water and the need for NC DEQ to issue NPDES discharge permits sufficient to protect downstream drinking water in reducing contaminant levels such as Dioxane and Bromide. PWC has retained a legal firm and would like to form a joint defense group to take action if DEQ's actions are not satisfactory. PWC is asking utilities to support this effort which possibly could result in a lawsuit against the State and a commitment of financial assistance. Executive Director Betz expressed that at this time this information is for the Board's awareness for possible future consideration of participation and he can notify PWC that the Authority is an interested party.

**EDR3 - Customers' Water Usage Report as of February 28, 2019**

For the month of February Brunswick County's water usage remains strong. Both CFPUA and Pender County are very close to their projected water use for the month.

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

None

**PUBLIC COMMENT**

None

**ADJOURNMENT**

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

Respectfully Submitted:

  
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Trent Burroughs, Secretary