

AT A MEETING OF THE NEW RIVER RESOURCE AUTHORITY
HELD ON OCTOBER 27, 2021 AT 12:00 PM,
NRRRA ADMINISTRATION BUILDING,
DUBLIN, VIRGINIA:

PRESENT: Mr. Barry Helms, Chairman
Mr. Paul Baker, Vice-Chair
Mr. Robert Asbury, Member
Dr. Chris Kiwus, Member
Mr. Andy McCready, Member
Mr. Tom Starnes, Member
Mr. Tye Kirkner, Member
Mr. Jonathan Sweet, Member

STAFF: Mr. Joseph Levine, NRRRA Executive Director
Ms. Marjorie Atkins, NRRRA Recording Secretary
Mr. David Rupe, NRRRA
Mr. Howard Estes, Legal Counsel
Mr. Clayton Hester, Legal Counsel

ATTENDEES/

GUESTS: Mr. Andrew Monk, Thompson & Litton
Mr. Adam Murray, Thompson & Litton
Mr. Chris Hale, Kalsor IT Consulting
Mr. Tim Kirtner, Pulaski County
Mr. Kevin Belcher, Giles County

Chairman Helms called the meeting to order at noon.

Mr. Helms noted that he would like to add a vote by the Board on who would be able to attend the closed meeting just before the closed meeting. He noted that it had been requested that all member jurisdiction legal counsels and any other attendees from member jurisdictions be included in the closed meeting.

The motion to approve the October 27, 2021 Agenda with the amendment was made by Mr. Starnes. The motion was seconded by Mr. Baker and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

The motion to approve the Minutes from the September 22, 2021 meeting was made by Mr. Baker. The motion was seconded by Mr. McCready and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>abstain</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

The Check List for the month of September 2021 was presented. Mr. Sweet asked for a more detailed itemization of invoices for legal services. He noted that he had issue with the fact that the Authority was 128% above budget for that line item.

The motion to get a more detailed itemization of legal services was made by Mr. Sweet. The motion was seconded by Mr. Kirkner and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>no</u>	Mr. Starnes	<u>no</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>no</u>

The motion to approve the Check List for the month of September 2021 was made by Mr. Baker. The motion was seconded by Mr. McCready and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>no</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

Mr. McCready asked that a column regarding the percent of the Budget Year remaining also be added to the Financial Statement.

The motion to approve the Financial Statements for the month of September 2021 was made by Mr. McCready. The motion was seconded by Mr. Sweet and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

Mr. Levine presented the Executive Director's Report. 16,100.43 tons of waste was managed during September. Revenue was 31% above projections (RVRA revenue and adjustment not made for MRSWA revenue from May received after the first of fiscal year.) and expenses were near projections. The Authority entered a one-year contract with Lusk Disposal for hauling away and recycling tires. Mr. Rupe has worked with CHA on an update of the Authority's Health and Safety Plan. Chesapeake Liner working on placing liner in Area D this week. Mr. Levine has attended meetings of the Waste Diversion and Recycling Task Force. Proposals have included \$2.00 and \$3.00 waste tax per ton. Mr. Levine is drafting letter to legislators opposing the proposals. Mr. Levine was appointed to and has attended meetings of the Non-Hazardous Solid Waste Fee Study Group. The group has been tasked with increasing fees to fund DEQ. Mr. Kirkner requested that Mr. Levine share the letter so that members might also send letters. Mr. Starnes asked about installing securing cameras at the West Fork site, Mr. Levine stated that grant money was proposed to be used but that a final cost would be given to the Board before moving forward.

The motion to approve Area D, Pay Request 16 in the amount of \$872,451.14 was made by Mr. Asbury. The motion was seconded by Mr. Sweet and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

Total FOIA cost recoverable was \$14,907.33. Discussion was held regarding details of the total. Mr. Levine noted that the only staff time in total was for overtime, that staff worked on the request during normal work hours but that overtime was required. Mr. Helms asked Mr. Levine if that included any of his time and Mr. Levine answered it did not. Mr. Sweet asked about the \$35,576.00 in legal fees, he stated it was hard to understand that. Mr. Levine answered that it was a large amount but since the FOIA request came from attorneys, the Authority's attorney was in constant communication with them and NRRRA staff. Mr. Kirkner noted that the Town of Dublin would contest any amount billed.

The motion was made by Mr. McCready that no charges be recovered from the FOIA request because NRRRA failed to follow the FOIA requirements of notifying the requester in advance of what the charges might be, a fundamental part of the law. The motion was seconded by Mr. Sweet.

Mr. Starnes asked Mr. Estes was it a legal requirement to provide an estimate. Mr. Estes noted that it was not. Mr. Kirkner stated that the Authority was given the opportunity to provide the information in the request and did not so the FOIA request was made. Mr. Sweet stated that "we are member jurisdictions and any request should be provided to members". Dr. Kiwus stated that time requirements kick in on FOIA request as opposed to just asking for information as a member. Dr. Kiwus added that if a member request was not being processed, his suggestion would be to bring the matter to the Board before issuing a FOIA request and that would control costs. Mr. Helms noted that a large amount of the FOIA request was information that Board members had been provided (Agendas, minutes, budgets) and that he had issue with that. Mr. Sweet stated that not all of the information was received "regarding matters discussed in Executive Session and those were serious allegations".

The motion was made that no charges be recovered from the FOIA request because NRRRA failed to follow the FOIA requirements of notifying the requester in advance of what the charges might be, a fundamental part of the law. The motion was seconded by Mr. Sweet and failed by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>no</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>no</u>	Mr. Starnes	<u>no</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>no</u>

Mr. Sweet asked what was the outcome? Mr. Estes noted to the Chairman that the Authority was not required to bill.

The motion to charge for recovery of the \$14,907.33 responding to the FOIA request was made by Mr. Baker. The motion was seconded by Mr. Asbury and failed by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>no</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>no</u>	Mr. Sweet	<u>no</u>
Mr. Kirkner	<u>no</u>	Mr. Helms	<u>yes</u>

Mr. Levine presented his October 19, 2021 regarding "Request Appropriation for purchase of landfill compactor and a hydraulic excavator. Utilizing Sourcwell, the national direct purchase organization, Carter Machinery quoted at 2021 CAT 313 excavator for \$239,714 and a CAT 836 compactor for \$1,249,500 with a buy back of 160,000 at 10,000 hours. VML/VACO quoted preliminary financing for five years at 1.5% and seven years at 1.75%. Mr. Levine recommended that \$400,000 be appropriated from the Equipment Fund toward the lease/purchase. Mr. Levine will coordinate review of all documents with legal counsel. Mr. McCready noted that these were great deals.

The motion to accept both bids from Carter Machinery and for the Executive Director to proceed with the purchase of a CAT 313 for \$239,714 and for the CAT 836 landfill compactor for \$1,249,500 with the guaranteed buy back of \$160,000 was made by Mr. McCready. The motion was seconded by Mr. Starnes and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

The 2022 Holiday Schedule was included in the Agenda Package.

Mr. Levine presented the Engineering Section of the Agenda.

Ingles Mountain – LaBella has been evaluating the active gas recovery system.

NRSWMA – DEQ was on site to inspect the construction project and also conducted an inspection of the facility. A report from the inspection has not been received. Mr. Monk reported on new water testing requirements regarding PCB's. In January 2020 one sample was higher than normal and one was lower. The underdrain was below normal limits and the leachate was six times higher. Thompson and Litton continue to investigate the source. Mr. Kirkner asked if DEQ had given any notification of a potential response. Mr. Monk stated no. He did note that PCB 11 is the highest and that it is a by-product of yellow dye. Mr. Kirkner noted that Pepper's Ferry Wastewater Treatment Authority has been tasked with finding the source from its testing also. Mr. Levine noted that the amount of PCB's that causes the overage is about a tablespoon.

West Fork – No report.

The Chairman invited public comments.

No comments were presented.

Dr. Kiwus asked for dates for the November and December meetings:

Audit Committee	November 9
Board Meeting	November 17
Board Meeting	December 8

The motion was made to allow all member jurisdiction legal counsels and all member representatives present to attend the closed meeting by Mr. Sweet. The ~~meeting~~ was seconded by Mr. Kirkner and failed by a recorded roll call vote of the Board as follows: no turn

Mr. Asbury	<u>no</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>no</u>	Mr. Starnes	<u>no</u>
Dr. Kiwus	<u>no</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>no</u>

The motion for the Authority Board to convene in Closed Meeting for the purpose of consultation with legal counsel regarding Investigation of Possible Data Breach pursuant to Virginia Code Section 2.2-37711(A) (8) and that the following persons be in attendance: Board members present, alternates, Howard Estes, Clayton Hester, Marjorie Atkins, Joe Levine, David Rupe and Chris Hale was made by Mr. Asbury. The motion was seconded by Mr. Baker and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>no</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>no</u>
Mr. Kirkner	<u>no</u>	Mr. Helms	<u>yes</u>

The Board reconvened in open session and regular meeting. The public was invited back into the meeting room.

Mr. McCready, " I hereby move to reconvene the regular meeting and for certification pursuant to Section 2.2-3712(D) of the Code of Virginia, that the Board of Directors, to the best of each Director's knowledge, heard, discussed or considered only public business matters lawfully exempted from open meeting requirements by the Freedom of Information Act in the closed meeting of this date, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Directors of the New River Resource Authority". The motion was seconded by Mr. Asbury and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>yes</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

The motion that the NRRRA Board received the report from counsel regarding possible data breach at NRRRA and unauthorized access was made by Mr. McCready. The motion was seconded by Mr. Baker and approved by a recorded roll call vote of the Board as follows:

Mr. Asbury	<u>yes</u>	Mr. McCready	<u>yes</u>
Mr. Baker	<u>yes</u>	Mr. Starnes	<u>yes</u>
Dr. Kiwus	<u>yes</u>	Mr. Sweet	<u>no</u>
Mr. Kirkner	<u>yes</u>	Mr. Helms	<u>yes</u>

The meeting adjourned at 2:35 pm by unanimous consent.

The next regularly scheduled meeting of the Board of Directors of the Authority is scheduled for Wednesday, November 17, 2021, 12:00 noon, at 7100 Cloyd's Mountain Road.

Respectfully Submitted,

Marjorie W. Atkins
NRRA Recording Secretary

Approved at 11/17/2021 Board Meeting.



Barry Helms, Chair