

James River Water Authority  
Board of Directors' Meeting - August 6, 2009  
By Dennis Holder

## **PIPELINE FINANCING**

### **Report:**

The JRWA heard two financing options and chose one – Virginia Resources Authority (VRA) – giving the clearest picture yet of the pipeline's cost to taxpayers. Financing from USDA Rural Development (USDA) will be a fallback. They based their decision on the following chart.

### **Borrowing \$50 million**

	USDA	VRA
	3.82% - 40 Years	5.00% - 30 Years
Monthly Payment	\$203,406.94	\$268,410.81
Annual Payment	\$2,476,883.28	\$3,220,929.72
Annual Payment – Each County	\$1,238,441.69	\$1,610,464.86

### **Total Payback**

USDA – 3.82% - 40 Years = \$99,075,331.20

VRA – 5.00% - 30 Years = \$96,627,891.60

Louisa County Board members Goodman Duke and Dale Mullen emphasized that these numbers were hypothetical and should not be taken to represent the actual arrangements that could be made.

Joe Hines of the consulting company, Timmons Group, told the board that he believes the VRA will be flexible in financing and the actual interest rate may be a little lower. Hines also said that USDA has never financed a project as large as the proposed pipeline and said that lack of experience could slow down financing.

Hines also urged the board to engage Davenport Financial to represent JRWA in further negotiations and to do so quickly in order to nail down financing as soon as possible. He said he hopes to be able to complete financing no later than November.

Mullen offered a long, two-part motion, passed unanimously, which boils down to the following:

- 1 – Determine terms under which JRWA can retain Davenport and come back with an agreement for board approval.
- 2 – Pursue financing with VRA by submitting a preliminary application.

The board's attorney pointed out that the two counties must guarantee payments because JRWA has no revenues and cannot borrow on its own.

**Analysis:**

Despite the fact that the figures presented were hypothetical, the board voted to pursue a particular avenue for financing. This means that the board agreed to go ahead with a \$50 million deal without any clear idea of the financial consequences of their action.

There was no explanation of why the interest rates presented -- 3.82% for USDA and 5.0% for VRA -- differed from those presented at the previous meeting, which were 2.75%-3.25% for USDA and 4.5% for VRA. There also was no explanation for the difference in loan periods -- 30 years versus 40 years -- between the two agencies. It may be that the USDA will not agree to a 30-year loan, though that is hard to imagine. Whatever the reason, the effect in the chart above is to skew the numbers in a way that makes the VRA deal appear more favorable than it would if calculations represented the same loan period for both lending channels.

If the authority is successful in borrowing money according to the timetable that Hines outlined, funding for the pipeline -- and its consequences for taxpayers -- will be locked in before any new members of the Fluvanna Board of Supervisors take office.

After the meeting, I asked the JRWA attorney, Kurt Krueger, how the authority can enter into agreements with Timmons and Davenport without competitive bidding. He assured me that, for services of these kinds, state law permits such agreements. I should note, by the way, that Krueger said his firm represents VRA as well as JRWA. Is this a conflict?

## **DISCUSSIONS WITH AQUA VIRGINIA**

**Report:**

Fluvanna JRWA Board member Cabell Lawton and Mullen reported on their recent meeting with Aqua Virginia's (AV) representative, Keith Smith, the developer who is running against Don Weaver for Cunningham District Supervisor. Smith is acting as a consultant to AV.

According to Lawton, Mullen and Smith, the three had a productive meeting. The offshoot was a letter, delivered to the authority board too late for board members to read, that included a preliminary proposal from the private water company. Smith sent me a copy of the letter, and I can forward it to anyone interested.

The gist of the letter is that AV is willing to enter into a trial agreement under which it would supply potable water to the JRWA pipeline. As proposed, AV would initially deliver 0.5 million gallons a day to the pipeline at two points, Crofton Bridge and the intersection of highways 53 and 600. The authority would transport and deliver water from those points as needed. As demand on the pipeline grows and as AV demonstrates its ability to perform satisfactorily, the company would expand its capacity in order to

deliver 1 million gallons a day and, later, 3 million gallons a day. Cost to the water authority would range from \$2.75 to \$3.19 per thousand gallons. The authority also would pay expansion costs of about \$3.6 million. That compares to at least \$15 million for the authority to build its own treatment plant.

**Analysis:**

The agreement proposed by AV would postpone the need to construct a treatment plant. That would cut initial costs to taxpayers, though significant right-of-way acquisition and pipeline construction costs still would be borne by the authority.

Fluvanna Board member John Gooch said that the AV proposal would cost more per thousand gallons, at least at the outset, than would having the authority build and operate the complete system. Gooch asked whether going with AV would get the system up and running faster. Hines answered that uncertainties of right-of-way acquisition made it impossible to answer that question.

The AV proposal would move more of the total system cost onto the customer who actually uses the water, relieving taxpayers of at least a portion of the initial costs. That, of course, is because the authority would not have to pay to build a plant. AV would expand its capacity as the base of ratepayers grows.

## **QUORUM PROBLEMS**

**Report:**

As the authority board prepared to adjourn, questions arose about the next meeting on August 20. Neither Gooch nor Lawton could attend a meeting on that day. That would mean that only the three Louisa members and Tom Payne from Fluvanna would be present. The main item expected to be on the agenda was an agreement, equivalent to a contract, with Davenport to push ahead on financing.

Board attorney Krueger advised that those four members would constitute a quorum and the agreement could be signed. Hines urged the board to move quickly in order to get Davenport on board and close financing deals as soon as possible. However, Gooch told the group that he would not be comfortable with a meeting of three Louisa members and only one from Fluvanna. The board put the meeting off for one week, until August 27, when Lawton expects to be present but Gooch still will not be able to attend.

**Analysis:**

Members of the Fluvanna Taxpayers Association and other public speakers repeatedly raised questions about exactly this kind of quorum problem as Fluvanna Supervisors raced to establish the JRWA. The questions from citizens never were answered.

After the meeting, I asked Krueger whether the bylaws or the water authority's charter might affect this quorum question. There had been some concerns among citizens who spoke at the Fluvanna JRWA public hearing about a Louisa majority dictating key decisions regarding a pipeline running through Fluvanna. The fact is, there is nothing

within the current authority structure that could prevent Louisa's members from outnumbering Fluvanna's members. However, some citizens felt language such as the following could have mitigated the problem:

*A quorum requires the presence of at least four of the six members of the JRWA board and further requires that members present must include at least two representatives from each county.*

Krueger reviewed the charter and bylaws at my request and found that no such condition ever was placed on JRWA board meetings. By the way, Krueger seems willing to help ordinary citizens understand legal aspects of JRWA activities so long as he does not compromise his proprietary responsibilities to the board. This is a refreshing contrast to the attitude of Fluvanna County's attorney, Fred Payne. Payne has frequently refused to speak to ordinary taxpayers.