

James River Water Authority
Board of Directors' meeting - August 27, 2009
By Dennis Holder

Discussions with Aqua Virginia

Formatted

Report: Discussion resumed of Aqua Virginia's (AV) proposal in concept to supply potable water to the James River Water Authority (JRWA), presented at the previous meeting. The AV proposal is intended to ~~postpone~~ ~~relieve JRWA of~~ the need to ~~spend money building~~ an estimated \$15 million treatment plant at Pleasant Grove for at least 10 to 20 years. Aqua Virginia currently has a permit allowing it to withdraw from the Rivanna River more water than it needs to serve Lake Monticello. Under the proposal, AV would treat that excess, approximately to draw 500,000 gallons of water daily, and sell it to JRWA, from the Rivanna. That permit allows the company to draw from the river approximately the quantity of water that AV proposes to supply to JRWA in the first phase of an agreement, 500,000 gallons a day.

~~However,~~

However, JRWA Chairman Tom Payne of Fluvanna County said he doubts that another 500,000 gallons can be taken from the Rivanna. Payne pointed out that the river's flow has been relatively low in previous drought periods. He added that he recently floated the Rivanna and "the canoe was on sand almost as much as it was on water."

Keith Smith, speaking for AV, told the board that the existing withdrawal permit already allows AV to take virtually all of the water it would need to satisfy demand in the company's proposed first-phase agreement with JRWA. If the permit needs to be modified to handle peak period demand, Smith said, AV will work with the state to obtain an amended permit.

Increasing the quantity of water that AV will provide to JRWA, as the company proposes for second- and third-phase agreements with JRWA (predicated on future demand and JRWA's satisfaction with AV's performance), would require that JRWA withdraw raw water from the James River and transport it to the AV treatment facility, which the company would expand. Transportation of raw water from the James would be handled in the same way that the authority plans to transport water if it builds its own treatment plant at Pleasant Grove, the likely alternative to the AV proposal.

As part of this discussion, Joe Hines of Timmons Group, the Authority's engineering consultant, pointed out that the existing permit to withdraw water from the James belongs to Fluvanna County. The board agreed that it must soon transfer that permit to JRWA.

Smith and the board agreed to meet in the next week or two to discuss the AV proposal further.

Analysis: The question about the Rivanna's capacity to provide needed water seems to be largely a red herring. As Smith pointed out, the state already has granted permits for most of the proposed withdrawal from the Rivanna. In conversations after the meeting adjourned, he added that, if the state feels the Rivanna cannot handle demand, AV will not be able to obtain an amended permit, in which case AV will withdraw its proposal.

As for Tom Payne's anecdotal evidence that the Rivanna is overtaxed, he did not say whether he floated upstream or downstream from the point at which AV currently withdraws water to serve Lake Monticello. ~~He also did not characterize his skill with a canoe.~~

The secondary point – that Fluvanna's permit to withdraw water from the James must be transferred to JRWA – did not include any discussion of remuneration to Fluvanna County. It seems to me that JRWA should, at very least, reimburse Fluvanna for the costs, including staff time, that the county incurred in obtaining the permit. The fact that transferring the permit will allow JRWA to forego similar costs and to avoid the delay, sometimes several years, involved in obtaining state permits ought to be worth a premium over actual costs. The permit is an asset with significant value, and Fluvanna taxpayers have an investment in that asset.

Pipeline Financing

Report:

At the previous two meetings, conversation about pipeline financing centered around channels through which the JRWA could borrow money to pay for a pipeline. However, at this meeting, the focus shifted. Discussion here centered on ways in which the two counties might independently borrow their shares of construction costs. All agreed that there is no requirement to borrow money jointly and that, if they borrow independently, they might choose different interest rates, loan durations and debt service schedules.

Cabell Lawton, the Fluvanna County Administrator who serves on the board, said that Fluvanna would like to delay debt service obligations until the pipeline begins to produce revenue. Delaying payments would help shift the costs from taxpayers to ratepayers, Lawton said. He indicated that Fluvanna likely would accept higher interest rates in return for delayed debt service payments. "My biggest concern is taking the burden off of our taxpayers," Lawton said. Dale Mullen of Louisa County said his county already has a customer base that could help pay debt service. Louisa would be most interested in finding the lowest possible interest rates, Mullen said.

Much of the conversation dealt with the need to get financial advisers in place as quickly as possible. Hines told the board that engaging financial advisers is essential to moving ahead with borrowing, no matter how the counties choose to do it. The board agreed that it should move with deliberate haste to contract for financial assistance with Davenport Financial, the counselors already engaged by Fluvanna County. Mullen added that Louisa probably ought to get Davenport on board to advise that county, too.

Analysis:

After the meeting, I expressed to Lawton my concern that permitting Fluvanna, Louisa and JRWA to engage the same financial adviser could set up conflicts in cases in which the interests of the three bodies are not parallel. Lawton handed me off to the board's attorney, Kurt Krueger, who said that the arrangement would present no conflict under the law. Krueger agrees that such an arrangement would be a de facto conflict if a law firm served those three parties. However, Davenport can do so, he said, because that firm would be engaged as "advisors," not as "advocates."

Krueger's response is a nice legal point, but it does not answer the question of whether the same firm can give quality advice to ~~interlocking~~ interlocking parties with divergent interests. Suppose, for example, that Fluvanna and Louisa prefer independent financing channels but that the best

~~interest rate may be obtained by allowing the authority to negotiate the combined total in one deal. accepts a higher interest rate and different repayment terms in its borrowing than Louisa agrees to with its lender. Further suppose that, allowing JRWA to borrow the total sum needed at one time could result in lower interest rates than either county could get on its own.~~ How is a single advisor to objectively resolve the conflicts that might arise? Keep in mind that, depending on the language of various agreements, Davenport may earn greater commissions through one financing scheme than through its alternatives.

The Lake Monticello Dam

Formatted

Report:

~~A question that was raised in our local newspaper, *The Central Virginian*, a few weeks ago was discussed briefly at this meeting. That question was whether Lake Monticello might have to construct a new, concrete dam if the pipeline is routed down highway 600, as currently planned.~~

Hines reported that he had researched the question. He said that the existing LM dam is classified by the state as a structure with “significant hazard potential.” However, Hines said, installing a water line roughly 800 feet downstream would not increase the dam’s hazard rating. The bigger concern, he said, is that failure of the dam could destroy the main water pipeline serving Fluvanna and Louisa business and residential customers.

“We can take care of that by sheathing the pipeline in concrete or steel or something,” Hines said. “I don’t think it is anything to worry about.”

Analysis:

I’m not an engineer, so I can’t challenge Hines’ conclusions. I will suggest, however, that you drive to the top of the LM dam and look down at the highway that lies surprisingly far below. Do you think that highway or any manmade structure parallel to it could withstand a serious breach of the dam?

Adrian Miller’s Comments

Report:

~~Adrian Miller of the Fluvanna Taxpayers’ Association spoke to the board during the public comments period before the meeting began (the only time this body accepts public comments). Miller expressed several concerns that Fluvanna citizens first raised during the controversy relating to a water authority referendum. One fact Miller presented drew strong reaction from the board. ~~That was his~~ His point was that, if JRWA enters into an agreement with Aqua Virginia, the authority could not legally sell water to the private company as could be necessary in emergencies. Louisa’s delegation, with the exception of Mullen, seemed surprised by this. Lawton and Krueger confirmed that Miller was right. If Aqua Virginia ever needed to buy water, it would have to be a customer of Fluvanna County, not of the authority, they said. Neither the authority nor Louisa County would share in the revenue.~~

Analysis:

Enough said except to note that, apparently, Louisa folks were a bit like Fluvanna supervisors in that they did not examine important questions before rushing to create the joint water authority.

