

State Water Infrastructure Authority
North Carolina Department of Environment and Natural Resources
January 13-14, 2014
Meeting Minutes

Monday, January 13, 2014

State Water Infrastructure Authority Members Attending Meeting

- Kim Colson, Chair; Acting Director, Division of Water Infrastructure
- Gwen Baker, President, CDM Federal Programs, CDM-Smith
- Leila Goodwin, Water Resources Manager, Town of Cary
- Vance Holloman, Deputy Treasurer, Local Government Commission (LGC)
- Maria Hunnicutt, Manager, Broad River Water Authority
- Dr. Patricia Mitchell, Assistant Secretary, Rural Development Division, Department of Commerce
- JD Solomon, Vice President, CH2MHill
- Cal Stiles, Cherokee County Commissioner (attended on January 13th only)
- Charles Vines, Mitchell County Manager

Division of Water Infrastructure Staff Attending Meeting

- Julie Haigler Cubeta, Supervisor, Community Block Development Grant – Infrastructure Unit
- Francine Durso, Review Engineer, Design Management Unit
- Jennifer Haynie, Supervisor, Facilities Evaluation unit
- Mark Hubbard, Assistant Chief, Project Management Branch
- Jessica Leggett, Review Engineer, Facilities Evaluation Unit
- Lisa Riegel, Program Specialist, Community Block Development Grant – Infrastructure Unit
- Seth Robertson, Supervisor, Design Management Unit
- Stacey Starkey, Grant Manager, Community Block Development Grant – Infrastructure Unit
- Vince Tomaino, Supervisor, Drinking Water State Revolving Fund Unit
- Michelle McKay, Review Engineer, Design Management Unit (January 13th only)
- Delphine Randall, Office Assistant, Administrative Services Unit (January 13th only)
- Don Evans, Engineer, Project Management Branch (January 14th only)
- Tony Evans, Engineer Inspector, Project Management Branch (January 14th only)

Department of Justice Staff Attending Meeting

- Mary Lucasse, North Carolina Department of Justice; Special Deputy Attorney General, Environmental Division

Item A. Call to Order

Mr. Colson opened the session and reminded the members of the State Water Infrastructure Authority (the Authority) of General Statute 138A-15 which requires any member who is aware of a known conflict of interest or an appearance of a conflict of interest with respect to matters before the Authority today is required to identify the conflict or appearance of a conflict at the time the conflict becomes apparent.

Item C. Oath of Office

The Oath of Office was administered to all Authority members by Secretary of State Elaine Marshall.

Item D. Overview of Applicable Statutes

Ms. Lucasse reviewed the requirements of the Open Meetings Act, the Public Records Act, and the State Ethics Act with the Authority. She provided some suggestions on how to meet the requirements of these statutes. She recommended that members set up an email account to be used for Authority business and each time the members send an email relating to Authority, a copy should be sent to an email address which has been set up to retain Authority emails. Emails to this account will be handled according to the requirements of the NC Department of Environment and Natural Resources (DENR) records retention policy. Regarding conflict of interest, when a member recuses him or herself from discussion of an item, it is best practice to step away from the table while the item is under discussion. If any member has an ethics questions relating to an action item, he or she may contact the Chair and/or Ms. Lucasse to discuss the concern.

Item F. History of Division of Water Infrastructure & State Water Infrastructure Authority

Background information was presented about Session Law 2013-360 (budget) which amended Chapter 159G of the General Statutes. This is the legislation that created the Division of Water Infrastructure and the State Water Infrastructure Authority, and consolidated major water infrastructure funding (federal State Revolving Fund (SRF) programs, federal CDBG-Infrastructure and the State programs) within one Division and one Department (DENR). The Authority must provide a report on its activities to the General Assembly by May 1, 2014.

Items G and H. Clean Water State Revolving Fund

Background information was presented about the federal Clean Water State Revolving Fund (CWSRF), the application process and the project application priority ranking method.

Items I and J. Drinking Water State Revolving Fund

Background information was presented about the federal Drinking Water State Revolving Fund (DWSRF), the application process and the project application priority ranking method.

Item K. Discussion

The Division sought comments from the Authority members about the information presented at the meeting. The discussion items included whether the Authority members required additional or different kinds of information at future meetings, Division plans to synchronize programs to the extent possible, and an explanation as to why applicants might decide not accept loan funding offers.

Item M. Adjourn – The meeting adjourned at 3:45 PM.

Tuesday, January 14, 2014

Item N. Call to Order

Mr. Colson opened the session and requested that Authority members state any conflicts of interest. Ms. Goodwin stated she had a conflict of interest with Items 38 and 49 on the DWSRF list and stated that she would recuse herself from voting on those items. Ms. Baker stated she had a conflict of interest with Item 41 on the DWSRF list and Item 34 on the CWSRF list and stated she would recuse herself from voting on those items (the Chair clarified that Item 34 on the CWSRF list was deemed incomplete and no action would be taken on that item.)

Ms. Lucasse provided additional information related to conflict of interest and bias. The Authority is a body that makes decisions as a group based on the information provided by Division of Water Infrastructure staff. A member may be said to be biased if he or she makes a decision based upon information that is not available to all members of the Authority. For this reason, the members of the Authority should avoid discussing the projects that come before them with the applicants, they should not make site visits on their own, and they should not perform independent investigations into any application or conduct fact finding outside the public meeting process. If a member of the Authority would like additional information on any project, he or she should contact Division staff who can then disseminate the requested information to the Authority as a whole. The purpose of this advice is to allow the Authority to conduct its decision making at the public meeting based on information which has been provided to all members. If approached by an applicant individually outside the public meeting to discuss an application, we recommend the member suggest that the person who wants to discuss an application contact Division staff, who could then answer any questions and disseminate any additional information to each member of the Authority.

Item O. Clean Water State Revolving Fund: Recommendations for Loan Priorities

Information was presented about the federal CWSRF projects before the Authority for action. A general discussion occurred about the following topics:

1. Question: What amount of principal forgiveness (PF) funding is allocated in the first round? Answer: the amount of PF now available is the least amount ever (\$1.5M compared to the typical \$4M). More PF for both the CWSRF and DWSRF programs is anticipated from the spending bills currently in Congress.
2. Q: What is the round's cutoff limit and the funding amount available for the next round? A: cutoff is strictly related to amount of funding available which is approximately \$40M and \$50M per round; typical annual income is comprised of loan repayments of approximately \$60M plus \$25M from the EPA capitalization grant and state match. There have been occasions when there have been more funds than applications and all projects are funded. Usually there are more applications than funding and not all projects are funded. The amount requested is always the amount funded with the exception of the last project above the funding line. The CWSRF Intended Use Plan allows for a single project to be allocated up to half of the total amount of funds available (for example, with \$40M available a single project could only receive \$20M maximum).
3. Q: Are applicants made aware of problems with their applications? A: points that are not claimed by applicant are not given by staff; basinwide water quality points can be especially difficult to claim with problems sometimes inherent in the plan itself. Division staff meets with applicants as requested to review unsuccessful applications. In addition, for all funded and non-funded projects, the Division sends letters to the applicants and includes the final project score sheets. Also, if applications were first received for the September 2013 round, then these applications will automatically be eligible to be

considered again in the next round; however, if they were considered for a second time in the September 2013 round, then they will have to reapply.

4. Q: If projects fall out, is that funding available for the next project “in line”? A: no, any “unused funds” are made available in the next funding round and are also used to cover cost overruns. A report one or two times per year showing the dollar amounts expended was requested.
5. Q: How is the decision made to cover overruns? A: once a project receives funding, the Division is committed to it no matter how much of an overrun occurs; if the LGC approval has already occurred and the overrun is either greater than \$500K or 10% of the cost, then additional approval from the LGC is needed. Only additional loan funds can be offered; additional principal forgiveness funds cannot be provided. Note was made that project costs are estimates for work that will occur two years into the future. Project cost underruns also occur.
6. Q: At what point would such changes be reported to the Authority? A: by legislation, the Authority’s actions are approvals related to the eligible projects and not the dollar amount which is a DENR decision.
7. Q: How does a drastic scope change impact a project? A: the Division ensures that the project purpose does not change.

Ms. Lucasse advised the Authority that the action item should be made for projects that are being funded. The motion should not include projects that are not approved.

Action Item O:

- Mr. Solomon made a motion to approve the top 20 projects (excluding project numbers 5, 6, 10, 11, 13, 18 and 19) as presented on the spreadsheet for Agenda Item O: North Carolina Clean Water State Revolving Fund (CWSRF) – September 2013 Applications and Recommendations for Loans. Dr. Mitchell seconded the motion. The motion passed unanimously. The Chair noted that all loans are still subject to LGC approval and any additional requirements related to CWSRF rules and regulations.

Item P. Drinking Water State Revolving Fund: Recommendations for Loan Priorities

Information was presented about the federal DWSRF projects on which the Authority would vote. Projects were presented in the order of: (1) Old Business, (2) New Business, (3) projects that are ready to proceed, and (4) projects that are not ready to proceed. The Old Business are projects that were ready to proceed but had not received LGC approval before the Authority was created by legislation. The members agreed to consider all four lists before making any motions. Principal forgiveness is in one round only since there is only one round of funding per year for DWSRF. A general discussion occurred about the following topics:

1. Q: How is the schedule for projects established? A: By statute all projects are required to be under contract within 24 months of funding. Staff works with the application to establish a timeline that will allow the project to proceed in 24 months. If an applicant fails to meet the 24-month limit, then funding is withdrawn. Previously, DWSRF projects were handled on a first-come, first-served approach.
2. Q: How should we prioritize Not Ready to Proceed projects? A: only Not Ready to Proceed projects that are of the highest priority should receive funding. The suggestion was made that a Not Ready to Proceed project with good benefits should be prioritized above one that would provide less benefit.

Ms. Lucasse requested the Authority vote on the projects within each group, rather than the entire DWSRF project list as a whole.

Action Items P:

- Mr. Vines made a motion to approve the “Old Business” projects (Projects 1, 2, 3 and 4) as presented on the spreadsheet for Agenda Item P: North Carolina Drinking Water State Revolving Fund (DWSRF) – September 2013 Applications and Recommendations for Loans – Old Business. Ms. Goodwin seconded the motion. The motion passed unanimously.
- Dr. Mitchell made a motion to approve the “New Business” project (Project 5) as presented on the spreadsheet for Agenda Item P: North Carolina Drinking Water State Revolving Fund (DWSRF) – September 2013 Applications and Recommendations for Loans – New Business. Mr. Vines seconded the motion. The motion passed unanimously.
- Mr. Solomon made a motion to approve the “Ready to Proceed” projects (Projects 6 through 23) as presented on the spreadsheet for Agenda Item P: North Carolina Drinking Water State Revolving Fund (DWSRF) – September 2013 Applications and Recommendations for Loans – Ready to Proceed. Ms. Baker seconded the motion. The motion passed unanimously.
- Mr. Solomon made a motion to approve the “Not Ready to Proceed” projects (Projects 24 through 29) as presented on the spreadsheet for Agenda Item P: North Carolina Drinking Water State Revolving Fund (DWSRF) – September 2013 Applications and Recommendations for Loans – Ready to Proceed, and to place the projects on the schedule as discussed previously. Mr. Vines seconded the motion. The motion passed unanimously.

Item Q. Community Development Block Grant Program

Background information was presented about the federal Community Development Block Grant – Infrastructure (CDBG-I) program and proposed draft priority criteria. The CDBG-I program has about two-thirds of NC’s CDBG money. At least 70 percent of all projects must benefit persons of low to moderate income (LMI); if all projects are at least 51 percent LMI, then the 70 percent requirement is met. The Division must also be aware of and coordinate with Department Commerce (DOC) CDBG activities and grants to achieve the overall percentages. The CDBG-I program is directed at public and environmental health and is not an economic development program. The intent of the presentation is to provide Authority members the opportunity to comment and approve draft priorities, not approving as final priorities at this time. The Division will request that the Authority approve final priorities in February 2014. The proposed draft priority criteria are:

1. Economic need
2. Severity of need
3. System management

A general discussion occurred about the following topics:

1. Q: How does Criterion 1 address a community that does not have a sewer system?: A: the surrounding area would have to be investigated in order to make a determination. Suggestion made that Authority also consider decentralization versus simply extending service and requiring hooking up to a centralized service.
2. Q: Is an asset management plan or Capital Improvement Plan needed to qualify for these funds? A: Criterion 2 – Severity of Need, would be funded ahead of projects that meet only Criterion 3 – System Management. Calculations will be similar across all programs (CWSRF, DWSRF, CDBG-I).
3. Q: Will these three criteria have equal weights? A: Concern raised that equally weighting the criteria might put certain local governments at a disadvantage.

4. Q: How will CDBG-I funding coordinate with economic development funding, and could funds be used in areas where the NC Department of Transportation (DOT) is working to provide an impact.?; A: CDBG-I funds could be used to send water and sewer to residential areas however, economic development CDBG funds would be needed to send water and sewer to a business that creates jobs. CDBG-I funds would be used to consider critical needs first. DOC CDBG funds are used for job creation. CDBG-I funds do not have to be related to job creation.
5. Q: How much money would be going out as part of the CDBG-I program? A: approximately \$26M in 2013 funds and the entire amount may be approved by the Authority in May 2014. If there are not enough projects to fund in the first round, then the Division must build time into the schedule for a second round. The Division could also consider funding some projects contingent upon the award of 2014 funds.
6. Q: Are there restrictions on how quickly the funds need to be committed? A: the §159G regulations regarding time and money limits must be considered. The project does not have to be ready to proceed by May 2014 but the applicant would provide enough information in the document to demonstrate the worthiness of a project. The Division would then provide them with a schedule of milestones that they would have to meet.

The Authority can revisit and revise the criteria as needed. The Division asked that the Authority consider how changing priorities impacts the overall schedule so that priorities are not changed when outreach for an application cycle must occur. Staff will provide feedback to the Authority on how well the criteria work after going through several funding rounds.

Action Item Q:

- Ms. Goodwin made a motion to continue with the public process as proposed by the Division. Mr. Solomon seconded the motion. The motion passed unanimously.

Item R. Planning for Future Work and Next Meetings

Mr. Colson presented information on future work items for the Authority to discuss:

State Programs

The legislation requires that state grant funds are only available for Tier 1 and Tier 2 counties. Thoughts on using planning grants versus grants for project construction were discussed. The Division stated that it is possible that better projects might occur if money were provided for grants. The Division regularly receives calls about the availability of technical assistance grants (TAG); four years ago, the Division had a \$500K release of TAG funds and made ten \$50K grants available. The TAG deliverable was an engineering report and some projects progressed from the report to construction.

Authority member noted that some local governments do not have the basics needed to create a plan and these funds can be used to determine their needs and issues; the bottom line is that TAG funds are needed in order to develop good projects via planning. Members discussed that smaller, local plans could coordinate with basinwide plans; plans supporting regionalization would be useful; also financial planning could be considered. It would also be a good idea to look at projects that might not be eligible for other types of funding.

State Revolving Fund Programs

The Division proposes moving forward with the CWSRF priority system as is because the process to change the priority system is lengthy and would result in substantial delay of the next funding round which is

scheduled for April 1, 2014 and has already been delayed. Part of the Authority's job is to look at the priority criteria but the Authority does not think it is necessary to disrupt the CWSRF funding process to do so. Q: have any concerns related to the priorities been raised? A: the Division has not heard of any issues and typically there are no public comments on the Intended Use Plan; the Division has heard compliments regarding the consistency and clarity related to applying the priority criteria.

Action Item R:

- Mr. Holloman made a motion that the Division move forward with the Spring 2014 CWSRF funding round. Dr. Mitchell seconded the motion. The motion passed unanimously.

The Division proposes to revise the priority system for the DWSRF program and will bring the proposal to the Authority in February 2014.

Congressional Update

Mr. Colson provided an update on the Congressional bill in front of Congress. A Buy American provision related to iron and steel products made in the USA was added to the EPA capitalization grants. Congress has taken the position that this provision applies to the entire SRF program (including revolving funds), not just EPA capitalization grants. Many states do not agree with Congress' interpretation of this provision and has always considered revolving funds as state funds. However, North Carolina has not disputed this interpretation in order to continue receiving federal funding. This new provision may impact some local governments that have applied for and recently received funds. Staff predicts that the inclusion of the Buy American provision will increase construction costs in the application.

Authority Implementation Discussion

The need for Internal Operating Procedures was discussed. Ms. Lucasse will prepare draft Procedures for the Division and Authority review.

The idea of setting up subcommittees to look at the different issues that the Authority is to address was raised; the members agreed that at this time the work would be done by the Authority as a whole and it would consider establishing subcommittees later if needed. Ms. Lucasse added that the Internal Operating Procedures could include a standing committee, but often operating procedures provide that the Chair can appoint subcommittees.

Some of the issues the Authority is required by Statute to address have not historically been under the purview of the Division, including making recommendations to the General Assembly regarding funding programs, management practices and best practices, public/private partnerships, troubled systems protocols, and utility planning by river basin. While the funding programs have historically been somewhat connected to the regulatory programs, these other issues above have not been specifically examined.

The Authority asked if the Staff could prepare future presentations on:

1. The approach of utility planning by river basin
2. Public/private partnerships
3. Other items not historically investigated by the Division in order to provide background information for the Authority
4. The CWSRF application/funding process in general as it relates to CWSRF

Strategic planning to set short- and long-term goals and priorities was discussed by the Authority.

Concern was expressed related to overburdening Division staff; a schedule showing the Authority's activities and how their actions and decisions fit into the regular on-going funding and other workloads was requested.

Level of Detail

The Chair requested input on the information and the level of detail Division staff is providing. Members agreed that the level of information provided for this meeting was very good and provided enough information to be able to address public questions. Items requested include:

1. Use of a standard format for presenting action items to the Authority
2. Information related to the number of people a project would serve
3. A standing agenda item for public comment. Ms. Lucasse suggested that the public comment time would be for the Authority to listen to the public and not to engage in conversation; she suggested a three-minute time limit and developing a procedure for taking public comments be developed. The Chair added that comments should not be project-specific.

Next Meetings: The following dates were established for the next meetings of the Authority:

- Thursday, February 20, 2014, 9:00 AM to 4:00 PM, NC Rural Economic Development Center
- Thursday, March 20, 2014, 9:00 AM to 4:00 PM, NC Rural Economic Development Center
- Monday, May 12, 2014, 9:00 AM to 4:00 PM, NC Rural Economic Development Center

A speakerphone will be set up to allow members to call in if they cannot attend in person.

Item S. Concluding Remarks by Authority Members, Chair, and Counsel

The members agreed that they had received a good understanding of the basics of the funding programs and look forward to addressing the issues. Members requested a list of "talking points" from the meeting that they could use when speaking with the public to promote the work done by the Authority.

Item T. Adjourn – The meeting adjourned at 2:35 PM.
