

**5-2-1 Drainage Authority
Minutes Of The Board
February 25, 2009**

**5-2-1 Drainage Authority Offices
575 West Crete Avenue, Suite 203, Grand Junction, Colorado**

Board Members present:

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| Jim Doody, Chairman | City of Grand Junction Representative |
| Richard Bowman, Secretary | GVDD Representative |
| Craig Meis | Mesa County Representative |
| Mel Mulder, Vice-Chairman | City of Fruita Representative |

Technical and Authority Staff present:

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| John Ballagh | Grand Valley Drainage District, Manager |
| Nathan Boddy | Town of Palisade, Town Planner |
| Ken Haley | City of Fruita, Engineer |
| Eileen List | City of Grand Junction, Environmental Svcs Manager |
| Trent Prall | City of Grand Junction, Engineering Manager |
| Eric Mende | 5-2-1 Drainage Authority, Manager |
| Janice McDonald | 5-2-1 Drainage Authority, Office Administrator |

Guests Present:

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| Bill Wilson | WRC Engineering Inc., Principal Engineer |
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Called to order

Chairman Doody called the meeting to order at 3:07 p.m. and declared a quorum present. It was noted that Director Walker was out on a scheduled absence.

Review and adoption of the agenda:

Chairman Doody asked for a motion to adopt the agenda.

Motion for approval: Director Mulder
Seconded: Director Bowman
In favor: All
Opposed: None
Motion passed with voice vote 4-0

Consent Agenda:

Agenda Item 1 – Review and adopt minutes of January 21, 2009
Agenda Item 2 – Financial Reports
Agenda Item 3 – Appoint Paul D. Miller, CPA, as Auditor for the Authority for 2008

Chairman Doody presented the Consent Agenda items one through three. Chairman Doody asked the Board, Staff and guests if anyone had objections to proceeding with the consent agenda for these items. No objections were heard.

Manager Mende mentioned the fiscal reports included a 2008 Expense Summary/Revised Budget Summary for Board review. In addition, Paul Miller, who did a good job with the Authority's audit last year, has submitted a proposal for the 2008 audit.

Director Meis asked why the Planning and Study Costs on the Profit and Loss Budget Performance Report separate each study out separately. Manager Mende stated the basin master plan and floodplain studies are separated from the watershed work plans.

Director Meis inquired why the contingency fund is on the P&L report. Office Administrator McDonald replied this question has been posed to the accountant, but no response as of yet and will keep everyone informed.

Director Meis asked if a discussion had occurred regarding paying for credit card processing fees. Office Administrator McDonald responded that all credit card processing and set up fees are being supported by the stormwater training registration fees. Currently the only charges processed through the credit card system are for the stormwater training and it is self-supporting. Director Meis complimented Authority staff on the detail in the budget reports.

Motion for approval of Consent Agenda: Director Meis

Seconded: Director Mulder

In Favor: 3-0

Abstention: Director Bowman due to absence at December 17, 2008 meeting

Opposed: None

Motion passed with voice vote 3-0

End of Consent Agenda

Agenda Item 4 – Resolution 2009-1 Establishing Purchasing Limits for the Authority Manager for Professional Services Agreements

Manager Mende briefed the Board with the following: In July 2008, the Board adopted the Mesa County Purchasing Policies as the template for purchasing authority executed by the Authority Manager. The Board also established lower direct purchasing limits for the Manager than contained in the Policies. In January, consistent with Policies, the Board authorized the Manager to execute a small (\$5000) sole – source contract with Rex Burns for professional services.

Under the adopted Purchasing Policies, the Manager has independent authority to execute professional service contracts up to \$50,000, which are otherwise consistent with the Policies (e.g., competitive bidding provisions for example). The Manager believes that was not the intent of the Board when Resolution 2008-02 was passed.

The intent of Resolution 2009-01 is to clarify the intent of the Board and avoid future confusion on the Manager's service contract signature limit, and to streamline Board agendas where possible. All dollar limits are consistent with the Purchasing Policies, but provides greater specificity (and a lower limit) for projects that are not identified by name within the Budget, and establishes a lower limit than Policies for sole source or non-competitive service agreements. \$15,000 was chosen as the sole source / non-competitive limit because this is the limit above which competitive procurement is required by the Purchasing Policies.

If approved, contracts such as the Burns Agreement discussed last month, or the Miller Agreement this month would be executed by the Manager and would not be placed as action items on Board Agendas. These actions would continue to be reported to the Board as part of the Financial Reports and in the Managers Report.

Director Meis verified with Manager Mende that the Board would still be signing the payments for these services. Manager Mende stated yes, the Board would still be signing the checks and adopting this resolution will just make day to day operations more efficient. Director Meis stated the checks and balances were still in place and had no problem with approving this resolution.

Motion for approval: Director Meis
Seconded: Director Mulder
In Favor: All
Opposed: 0
Motion passed with voice vote of 4-0

Agenda Item 5 -- Resolution 2009-02 Changes to the Bylaws

Manager Mende presented two Bylaw changes to the Board. Last month we discussed some provisions of the Bylaws that are inconsistent with the way in which the Board appointments are actually made, and how officer vacancies are filled. The proposed Bylaw changes bring the text of the Bylaws into line with actual practice.

The Bylaws currently specify a four-year term for Board appointments and do not address whether a new Board member (as in the case of Director Meis) fills a remainder term or starts a new four-year term. To resolve this discrepancy, a change to the Authority's Bylaw Section 8a is proposed whereby the specified four-year term of a Board appointment is deleted. The revised term specification is left to the discretion of the appointing governing body—a Board Member will serve until replaced by the appointing governing body.

Similarly, officer elections are specified in the Bylaws (Section 8c) as one-year terms. The Bylaws are silent as to whether electing a new Board member to fill an officer vacancy means for the remainder of the one year term, or an election for a new full one-year term. Nor do the Bylaws address extensions of terms absent an election. The last real "election" was in February 2007, putting us out of compliance with our Bylaws.

(Note: When Director Mulder joined the Board in May 2008, there was a motion and vote reconfirming the officer positions for an additional year, with Mr. Mulder filling the vacant Vice Chairman position; however, this was not a true election.)

The proposed Bylaw change sets an annual officer election in May, and allows the Board to fill a vacant officer position up to a maximum term of eighteen months.

Attorney Larry Beckner has reviewed both proposed changes and finds they both comply with state statute.

Motion for approval: Director Meis
Seconded: Director Mulder
In Favor: All
Opposed: 0
Motion passed with voice vote of 4-0

Agenda Item 6 – MS4 Permit Upload - Issues and Schedule

Manager Mende reviewed the current status of the MS4 permit upload with the following summary report:

Under the IGAs signed in December, 2008, the Authority is required to make application to the State for a consolidated MS4 Permit, to be held by the Authority, resulting in the existing Permits held by Mesa County, Grand Junction, Palisade, and GVDD being terminated. Towards that end, I met with Nathan Moore of CDPHE to obtain specific guidance on the submittal process, and the required commitments that must be made to obtain a consolidated permit. Mr. Moore is our primary regulatory contact who will be responsible for review and approval of the application submittal, and issuance of the permit. A summary of the guidance/requirements I received is given below.

Performance Issues

Permittee's are considered "Operators" of the MS4 Program by the State. For the Authority to be considered an "Operator", Mr. Moore will require us to show proof that we have the resources and authority to exercise operational control of all six of the Program Elements contained in the MS4 Program Description. "Operational control" requires three components: adequate funding, adequate staffing, and enforcement powers, applied to each of the six Program Elements individually, and to the Program as a whole.

Verbally, funding and staffing do not appear to be a problem. There was no indication that a multi-year funding commitment from the Contracting Parties was necessary – only that the annual funding is adequate to execute the program commitments made in the new MS4 Program Description submitted by the Authority and approved by the State. Similarly, having a full time dedicated staff, bolstered by the TAC, appeared more desirable and acceptable than a larger number of non-dedicated staff or a reliance on contract personnel.

Enforcement power is the key issue, and will receive a very high level of scrutiny by Mr. Moore in determining our ability to truly exercise operational control of the Program Elements, and ultimately to be issued the MS4 Permit. In interpreting and evaluating enforcement power, the State does not necessarily require the Authority to have the ability to issue stop-work orders or levy fines. The issue is one of accountability and responsiveness of the Contracting Parties to potential non-compliance documented by Authority personnel as part of the Authority's duty to perform. The concepts developed by the TAC and currently incorporated into the IGAs, whereby the Authority will refer inspection enforcement actions to the local jurisdictions, and the Authority will "audit" Municipal Operations and Illicit Discharge, appear workable, although certain "guarantees" must be put in writing by both the Authority and the Contracting Parties.

These State required "guarantees" require a level of accountability that may present a problem to management, legal, and elected officials of the Contracting Parties, or this Board. For example, although the Authority is only required to "audit" Municipal Operations compliance of the Contracting Parties, the State will require a formalized procedure from each of the Contracting Parties for addressing and resolving any audit findings, including providing supporting documentation to the Authority. These procedures must be approved and adopted by Contracting Party elected officials, and backed up by revised or new IGAs containing acceptance of liability language if the procedures are not followed. Similar "adopted" procedures will be required for audits of the Illicit Discharge Program, and for construction/post-

construction enforcement referrals. Companion procedures will need to be adopted by this Board as well, with specific requirements needed for dispute resolution and recordkeeping.

The potential for disagreement between the Authority and individual Contracting Parties in preparing the final text of these procedures (and any revised IGAs) is potentially quite high. The 5-2-1 Drainage Authority is generally considered a "subcontractor" performing certain services for the Contracting Parties, and accountable to them for performance of those services. While that arrangement remains in place for most of the activities performed by the Authority, when it comes to audits and enforcement the arrangement is flipped around and requires the Contracting Parties to be accountable to the Authority. This will significantly limit the discretion of the Contracting Parties to perform enforcement (or not) or correct audit findings (or not). It was these exact issues that caused the failure of the SEMSWA / Arapahoe County MS4 Permit agreement. Arapahoe County was unwilling to commit to written accountability to SEMSWA, and the State required them to retain their own MS4 permit as a result.

Liability Issues

According to Mr. Moore, liability for past occurrences of non-compliance with the MS4 Permit provisions remains with the original permittee, regardless of when a State audit is conducted or finding is issued. Our liability will begin on the effective date of our Permit certification. However, the Authority will become liable for any continuation of non-compliance that extends past our effective date. To determine whether a non-compliance issue is a previous non-compliance or a continuing non-compliance, we would need to review the committed implementation dates from the previous (2003-2008) Program Descriptions of each Contracting Party. Mr. Moore suggested that language would need to be added to a revised IGA placing financial liability for uncorrected (e.g., continuing) non-compliance back onto the Contracting Party. Alternatively, the Authority would need to be able to audit the full MS4 Program of each Contracting Party, and require remedial actions, if needed, before accepting full permit liability for that Contracting Party. Of the two alternatives, the first seems to be the more practical approach.

Technical Issues

The "new" permit will require a "new" Program Description write-up. When asked whether we could just "adopt" or "transfer" the existing Program Descriptions of the existing permits, the answer was a resounding "no". The good news is that Mr. Moore seemed open to all of our proposed changes to the Program Description, such as moving away from the current "10% audit" commitment for active construction sites in favor of a "100% screening inspection" commitment with provisions for progressive enforcement. In addition, many of the constituent specific Public Education / Public Participation commitments of the GVDD may be deleted because the broader valley-wide program will pick these up. With the help of the TAC, writing the new Program Descriptions will probably be the easiest task to accomplish.

Submittal Process and Schedule

There is no standard application document for our situation. Mr. Moore stated that he would need to create one that is unique to us. It will be a "single permittee" application, but issued as a "renewal" permit.

However, before accepting a formal application from the Authority, Mr. Moore will require us to submit documentation for his review pertaining to the funding, staffing, and enforcement issues raised above. This documentation will include the current Authority budget, current IGAs, current Authority Policies and Procedures, new (draft) Authority and Contracting Party procedures specific to audits and enforcement, and any new (draft) IGAs developed. His review will be informal, and will need to be done before any formal adoption by us, or before we will be able to submit the formal application. He's committed to expediting his review. Given the procedures and agreements that need to be worked out (both locally and with him), and the actions required by elected officials, he believes a September 1st formal submittal date is aggressive, but possible. The effective date can be any mutually agreeable date at least 30 days past that (statutory review time).

The actual application and submittal will be relatively straightforward. Mr. Moore will not need copies of adopting ordinances and resolutions, or the actual policies and procedures. These will simply be referenced within the new Program Description that is submitted with the Application. As part of the final submittal documents, he will need a letter from each existing permittee requesting termination of their permit. The letter must include the certification language from the existing permit(s).

The TAC is aware of the above issues. With the Boards approval, I would like to put the above commentary into a formal letter for distribution to the Contracting Parties. Of immediate concern, the IGA specified March 1st application review submittal date to the Contracting Parties, and the April 1st Permit submittal date to the State are not feasible, and will be missed. Our clients need to be aware of these issues so that we can work together to stay on track and resolve them as efficiently as possible.

End of summary report

Director Bowman stated the language in the MS4 permit needs to assure the State that non-compliance with the permit would be resolved by the permit holder. Director Meis responded the new IGAs should provide this for the State. Director Mende shared that this was not what he was led to believe by Nathan Moore as to how this will happen. Director Bowman asked Manager Mende to verify this information with the State.

Eileen List added there are different ways to look at this and the Authority needs to present other alternatives to the State. Director Bowman indicated the Attorney General will have to review the permit language as well. Manager Mende shared that Nathan Moore wants to review and approve all the policies and procedures prior to our adoption. Eileen List indicated there may be a need to negotiate with the Permits Unit Manager. Manager Mende stated this would be a decision for the Board. Director Meis stated he was not worried and is confident we will get all policies and procedures worked out.

Manager Mende stated that it was interesting as SEMSWA formed as a fully-funded entity with five stakeholders. SEMSWA has a MOU on their Board meeting agenda this month with Arapahoe County. This is a model that may work for the Authority if we can't upload the MS4 permits. Director Meis added that it was Arapahoe's decision to set this model up as they did not want to give enforcement to SEMSWA.

Manager Mende stated the March 1, 2009, application deadline will not happen, and it is out of the control of the Authority due to the State's timeline. Nathan Moore has stated the September 1, 2009, date is doable, aggressive, but doable.

Eileen List stated the TAC has always felt the IGAs would need to be rewritten/updated for the uploading process.

John Ballagh added that the Authority is a unique vehicle, particularly the way the City and County lines sit within the Authority's boundaries. As water makes its way to the river it crosses these municipal boundaries multiple times. It would take a huge load off the State to have one organization that coordinates all the processes that go along with the MS4 permits. Director Bowman affirmed his agreement with Mr. Ballagh's statement, and added it will take some creative language for the State to feel comfortable. Director Meis stated we need to look at the current IGAs and the enforcement language and tie them together for the uploading process. The language needs to offer the State a leg to use for enforcement. Director Bowman added

that if enforcement was given to the Authority, we wouldn't be having this conversation. Director Meis countered that we, all the stakeholders, are the 5-2-1 Drainage Authority.

Manager Mende asked the Board for their support to send a letter to the Managers of the entities with the above information as the Authority will be missing deadlines. Chairman Doody asked if the School District will be responsible for their own MS4. Manager Mende responded yes, they will have their own IGA and are interested in uploading their permit to the Authority.

Eileen List asked if the other non-standard organizations are interested in uploading their permits to the Authority. Manager Mende stated Orchard Mesa Irrigation District and Grand Valley Water Users Association are not currently interested as they feel it will cost their organizations more money.

The Board indicated their approval to send a letter to the Manager of the entities to inform them of the upload process as indicated by Manager Mende.

Agenda Item 7 – Provide direction for Annual Board Meeting on April 22, 2009

The formation IGA (June 14, 2004) requires the Board to hold an Annual Meeting within the first 120 days of the calendar year. The Board has previously set April 22, 2009 as the date of the Annual Meeting.

There is no set format for the Annual Meeting, but in the past the Annual Meeting has been used to summarize the previous year's activities, and to provide information on the future activities and goals of the Authority to the general public and to representatives of Federal and State elected officials. Last year, staff from the local offices of Congressman John Salazar and Representative Bernie Buescher attended, as did former members of the original steering committee.

The Manager requested the Board provide direction on topics / invitees for this year's meeting. Manager Mende also noted the Annual Meeting will be followed by a regular meeting to conduct monthly business.

The Board suggested a summary of retreat and long-range goals of the Authority. Director Meis also suggested showing how much this unfunded mandate is costing us. Manager Mende stated he would invite local officials as last year. John Ballagh added that last year's meeting included representation from John Salazar, Bernie Buescher, and Ken Salazar.

Agenda Item 8 – Manager's Report

Public Education Programs:

- Authority personnel, with help from Contracting Party personnel manned a booth at the Landscapes West (Home and Garden) Show on February 6-8, 2009. There was 1,527 paid attendance. Based on the number of air fresheners given away, our best guess on "contacts made" is approximately 300.
- We will sponsor and participate in the Children's Water Festival, May 18 and 19, 2009.

- Charles Pope (School District 51) attended the February 11th TAC meeting to discuss ongoing public education efforts at the schools. The kids are doing some great artwork. There are a number of coordination / joint participation opportunities that were discussed. Mr. Pope is also interested in “uploading SD51’s MS4 Permit and was given a copy of GVDD’s IGA as a template for him and the attorneys to look at.

Hotline: There were no hotline calls in January.

Billboard: The billboard is now located on the Business Loop at 28 ½ Road.

Adobe Creek Channel Capacity Analysis: I met with Olsson Associate in Denver on February 10 to review the status of the project. The survey work was completed except for three crossings where the landowner refused access. John Ballagh knew the landowner and was able to get a GVDD crew on the property to pick up the information we lacked. Hydrologic and hydraulic analyses are done, and the primary flooding areas have been identified, but the basin delineations need revision, requiring revision of the flow calculations, channel capacities, and flood extents. Olsson will develop improvement alternatives and preliminary recommendations by the first week of March. I’ve directed them to start with cheap and easy and work toward difficult and expensive (e.g., railroad). A draft report will be completed, and a presentation given to the Board on March 25, 2009.

John Ballagh stated he met with Deb Ohlinger from Olsson Associates to discuss the ACCCA work. In addition, the Grand Valley Drainage District provided 18 cross sections of the property belonging to the property owner who refused Olsson Associates access.

Stakeholder Process for policies and procedures: Stakeholder meetings involving representatives from local developers, builders, contractors, and engineers were held on 1/23, 2/6, and 2/20. The intent of these meetings is to get input and feedback on how the “new” Authority stormwater permit activities will be conducted. We’ve covered CSWMP reviews, inspection procedures, and transfer/reassignment/amendment procedures. There has been good participation and I think it’s been a good process for all involved. As an outgrowth of this process, the word seems to be out about our new responsibilities. I’ve fielded a number of calls from people looking for guidance on submitting CSWMPs and permit applications, and whether they are “covered” or not.

The current commitment for inspection protocol is to auditing 10% with a full audit. What has been proposed is auditing 100% with a screening inspection. If all is well the site is left alone, if another step is need, the site will receive a field inspection. If another step is still needed for compliance, a full audit will occur. Nathan Moore liked this concept and so did the Stakeholders. The Stakeholders particularly liked the lighter inspection early on in the construction process instead of no inspection for 3 months and then hammering them. The stakeholders’ discussion of transfers, reassignments and amendment procedures at the last meeting will continue into the next meeting.

Manager Mende shared he has tried to get guidance from Nathan Moore regarding transfers and reassignments for small lots and lot transfers between developers/builders and homeowners, but there is just no simple answer. One concept that appeals to the Stakeholders is to create a short form format for a low impact type of permit. This could be designed for smaller lots where a full-blown SWMP is not needed: Eileen List added the State tells us we are

in a unique situation as the front range does not allow a developer to transfer lots. Manager Mende stated that in many jurisdictions, the developer stays on the hook until every lot is sold and landscaped, and a builder only signs a certification of SWMP compliance.

Director Bowman asked what the trigger is for release of the permit on a lot. Manager Mende indicated the sale of a residence to a homeowner is the only permit exception available.

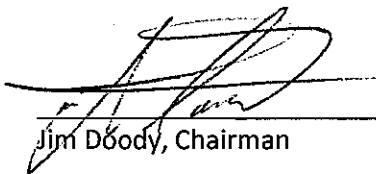
There is one remaining Stakeholder meeting scheduled for March 6th, with a fifth meeting on the March 20th only if needed. Once we get all input from stakeholders, the TAC will get together and blend together all comments, both TAC and Stakeholders, to create the final policies and procedures.

CSWMP Reviews and Permits: We've had our first "paying customer" for a CSWMP review. \$900.

Retreat: The retreat date is March 26, 2009. We've confirmed Gary Carr as our facilitator. We're still researching venue options.

John Ballagh shared before and after photos of clean up in Indian Wash by the City of Grand Junction and Mesa County with the group. Photos demonstrate the huge effect clean up and brush removal has on water flow.

Chairman Doody adjourned the meeting at 4:21 p.m. The next 5-2-1 Drainage Authority Board Meeting will be on Wednesday, March 25, 2009, at 3:00 p.m. at the 5-2-1 Drainage Authority office at 573 West Crete Circle, Suite 203, Grand Junction, Colorado.



Jim Doody, Chairman