

**5-2-1 Drainage Authority  
Board Meeting  
Minutes Of The Board  
June 24, 2009**

**Mesa County Courthouse  
544 Rood Avenue, Training Room B, Grand Junction, Colorado**

**Board Members present:**

Dave Walker, Chairman  
Mel Mulder, Vice-Chairman  
Richard Bowman, Secretary  
Craig Meis, Treasurer (arrived at 2:14 p.m.)  
Linda Romer Todd, Assistant Secretary

**Staff present:**

Eric Mende      5-2-1 Drainage Authority Manager

**Called to order**

Chairman Walker called the meeting to order at 2:07 p.m., and declared a quorum present.

**Review and adoption of the agenda:**

No changes requested, Chairman Walker asked for a motion to adopt the agenda.

Motion for approval: Director Mulder  
Seconded: Director Bowman  
Motion passed with voice vote of 4-0

**Executive Session -- Discussion of a personnel matter**

Motion to adjourn to Executive Session as allowed by C.R.S. 24.6.402(4): Director Mulder  
Seconded: Director Bowman  
Motion passed with voice vote of 4-0

Chairman Walker adjourned the Executive Session at 3:30 p.m.

**Regular Board Meeting**

**Technical and Authority Staff present:**

John Ballagh	Grand Valley Drainage District, Manager
Nathan Boddy	Town of Palisade, Town Planner
Eileen List	City of Grand Junction, Environmental Services Manager
Eric Mende	5-2-1 Drainage Authority, Manager
Jesse Kirkpatrick	5-2-1 Drainage Authority, Stormwater Inspector
Janice McDonald	5-2-1 Drainage Authority, Office Administrator

**Guests Present:**

Tim Hayashi	Mesa County Senior Engineer
Bill Wilson	WRC Engineering

**Called to order of regular Board Meeting**

Chairman Walker called the meeting to order at 3:36 p.m., and declared a quorum present.

**Consent Agenda:            Agenda Item 1 – Review and adopt minutes of May 27, 2009  
   Agenda Item 2 – Financial Reports**

Chairman Walker presented the Consent Agenda items one through two. Chairman Walker asked the Board, Staff and guests if there were any objections to proceeding with the consent agenda for these items. No objections were heard.

Director Meis asked for a future Board discussion regarding the fund balance carried by the Authority as it seems heavy. Manager Mende confirmed request.

Motion for approval of Consent Agenda Items: Director Todd  
Seconded: Director Bowman  
Motion passed with voice vote of 5-0

End of Consent Agenda

**Agenda Item 3 –Purchase of ArcEditor Software**

Manager Mende presented information from the report in the Board packet. Director Todd asked what the cost and life of the software would be. Manager Mende responded the cost of the software is \$6,300 plus an annual update of \$1,500. The annual update will keep the software current. Mr. Hayashi shared that Mesa County uses the software to keep their data up-to-date and access drainage studies. Chairman Walker inquired if the Authority mapping would be duplicating work that other entities are currently performing. Manager Mende replied, no. This was always work that was intended to be performed by the Authority. Last year the County hired an intern to do the mapping and they already had the required software. In addition, the mapping is a provision in all of the MS4 permit requirements. Once the updates are done, the information will be uploaded into the Mesa County GIS mapping system for use by all of the entities. Director Meis stated the data updated in the ArcEditor program will be integrated with all the different layers of mapping into the County database.

Mr. Ballagh added the Grand Valley Drainage District updates their system with their equipment and surveyors, but they do not have the ability to integrate the data into the County system. GVDD would send their updates to the intern the County hired and she would update the entire system. Now the intern at the Authority is performing these updates. The same is true for the City of Grand Junction. In addition, the County intern was working on tracing capability which would be of great use to GVDD in tracking spills and would be very beneficial to all parties.

Chairman Walker polled the TAC members if the Authority needs to perform the mapping thus purchasing this software. Mr. Ballagh, Ms. List, and Mr. Boddy agree that this is a needed activity by the Authority. Chairman Walker asked the Board members if they feel this is a necessary purchase. The Board affirmed their support for the purchase of the software. Chairman Walker asked for a motion to instruct the Authority Manager to move forward with the purchase of ArcEditor Software:

Motion for approval of purchase of ArcEditor Software: Director Todd  
Seconded: Director Mulder  
Motion passed with voice vote of 5-0

#### **Agenda Item 4 – Streamlining the Stormwater Plan/Permitting Review Process**

Manager Mende presented his report in the Board packet and the memo submitted by Ms. Constan.

Director Bowman stated that with the problems the State found in their inspections last fall and the different level of focus being implemented by the Authority, some of this is a learning curve for the engineering community. However, we don't want to dictate design as it takes on too much liability. The Authority needs to be a user friendly organization. The engineer's responsibility lies with the engineers as they stamp it. The Authority should provide examples as potential BMPs, but it should not contain any "You will" or "You shall" statements. The Authority should provide assistance where it can, but it is the responsibility of the engineering community for creating the design. Chairman Walker asked Director Bowman if his interests were generally philosophical versus specifics to the manual. Director Bowman stated, yes. The specifics of the manual should be turned back to the Authority Manager and the TAC to work out the specific details.

Director Mulder agreed with Director Bowman's statement. The Authority will achieve stakeholder buy-in somewhere down the road. These items listed to make it more user friendly still have some TAC issues involved. These things will work themselves out in the not too distant future. Director Todd indicated she is in agreement with Directors Bowman and Mulder. Chairman Meis stated he believes the manual could contain items such as BMPs but not be prescriptive. Every site is different that is why you hire the engineers to design it. As the engineering community tries to figure out the requirements, they are probably asking for things that are more prescriptive and asking for guidance. The Authority can assist the engineers in trying to figure things out and use them as a resource in helping them with understanding the goal they are trying to achieve, but the Authority should not be writing their design for them. Just like in Planning, you have farmers come in and want to do something with their land. They know what the code says; they know how many acres they can do or split, but they don't know what clustering means so they need someone to help them understand. So you help them with understand the goal they are trying to achieve, but you don't tell them how to get from A to B. Director Meis indicated he does struggles with the Authority being too specific or prescriptive as it will cause liability concerns for us, because if there is an enforcement action, it does have a big reflection on us.

Chairman Walker stated that this issue does not have anything to do with the permit upload so we can provide examples of what Manager Mende and the TAC decide would work best. Director Meis suggested that the Authority go to trade organizations and ferret out what they feel would be a resource/helpful for them.

Manger Mende stated Section 1503.3 of the Stormwater Management Manual (SWMM) is titled 'Acceptable BMPs' and contains four resource references. It doesn't appear the Board has any objections to increasing the references. The Board doesn't want to be prescriptive, and by increasing the list of potential references, it gives the community more choice, it that an accurate summary?

Director Meis responded that some of this also goes not only with the guidance document, but with the review of permits/applications. It goes on both sides of the equation. There are twelve ways to skin a cat. As long as they are meeting their goals and objectives of the stormwater requirements, so be it. A guidance document is very similar to that mind set. It shouldn't be prescriptive; it shouldn't have examples of how to get from A to B. Director Meis reiterated that he has no objections as long as all guidance, resources and permit reviews are not prescriptive.

Manager Mende shared there seems to be two levels of developers. There are the larger developers who know what's going on with stormwater and the smaller developers who don't understand it. The smaller developer is the one looking for a cookbook. We can provide a lot of different examples within the edits of the SWMM, with the section of acceptable BMPs. The title may need to be changed from 'Acceptable BMPs' to 'Example BMPs', or 'Sources of BMPs.' Director Meis stated that even a farmer has to get a PE to do this. Manager Mende indicated the SWMM does not require a PE to prepare a Stormwater Management Plan. It requires an Erosion Control Specialist. Am I hearing the Board correctly that you are OK with the Authority providing additional guidance without being prescriptive and regulatory in nature? All Board members affirmed their support for additional guidance resources.

Mr. Hayashi stated that we are touching on a gray area of the Colorado Revised Statutes for engineers. If I were to come in with a design with my professional seal on it, I am the Colorado Engineer of Record. If we were to go to a court of law, my seal trumps the Authority's professional opinion as the engineer has working knowledge of the area. I want to urge caution when you start being prescriptive, you tie the Engineer of Record's hands, and that is when you cross the line. Director Bowman asked if the SWMM is adopted by the Authority and all the parties. Is it just a guidance document or is it criteria adopted under law. Mr. Hayashi responded that it is adopted by the parties, and it is a guidance document. All of the manuals are guides, and there will always be exceptions to the rules.

Manager Mende stated he disagrees with Mr. Hayashi. It has been expressed to me that the SWMM is the regulatory document. Mr. Hayashi stated that there are always exceptions to the rule. Ms. List added that when the City of Grand Junction adopted the SWMM, it was adopted as a regulatory tool under the City's Zoning and Development Code and she believes it is the same for Mesa County adopted under their Land Development Code. Mr. Hayashi responded that it is, but it is still a guide for an engineer to design their drainage or their stormwater plans. I can still say I disagree with this manual using the Colorado Statutes by saying, no, that's not how this area works. This area works differently than this. Here's my seal and calculations; I disagree with the SWMM. Ms. List responded there is an allowance for variances within the manual. Mr. Hayashi agreed. Director Bowman stated he agrees with Mr. Hayashi in terms of the P.E. requirement. The engineer comes back and says, no, I've sealed it, and that's the way I want it. But in terms of the review, we can say it is a regulatory requirement, and it doesn't meet the requirements and don't approve the plan. If the engineer comes back and says he doesn't agree, we can have a variance requirement, and I don't have a problem with that. Manager Mende states that this is a very important point from a technical stand point, because the way the Authority reviews a SWMP is we hold to the criteria of Chapter 15 of the SWMM as the regulatory guidance which basically duplicates the State guidance. In Chapter 15 there is a section titled 'Acceptable BMPs' with four reference sources. If this section is not meant to be prescriptive, you can pick from the four sources, or you have to submit alternatives for review. If a Colorado P.E. is stamping it but it is still not consistent with the text of the manual, which one controls--the P.E.'s stamp or the SWMM? Mr. Mende continued that he is under the impression that the SWMM is the controlling document. Chairman Walker asked the engineers of the group what the answer is. Mr. Hayashi states he believes it is the engineer with supporting information. Let the engineer prove his point, and if he proves it, it will be really hard to argue that in a court of law. Director Bowman added this is all through the State process in terms of getting the permit. I guess I'd have to go back and see what they are saying. If the SWMM has to be adopted as a regulatory document, but then there has to be a variance type of procedure, and the reviewing agency has the right to not approve the permit if it is not in compliance with our guidance/regulations. How many times is this going to happen? This is going to be one case maybe. If there are examples of what is acceptable and the engineer knows that those BMPs listed under the reference are going to work on his site, chances are he is not going to challenge it. If during an inspection it comes down to an enforcement action, you may have some problems. Director

Meis reminded one size doesn't fit all for every location. There are exceptions to every rule on every site and to suggest you can't use common sense is ridiculous. Chairman Walker summarized the Authority needs to do the best job it can, and have as much flexibility as the law allows with the SWMM as the regulatory tool, but it is not the absolute end all. Manager Mende continued that there is always a variance available, but that variance becomes available as part of the approval process. Mr. Hayashi is saying that if I'm the engineer and I've stamped it, the regulatory permit issuing entity has to accept it. Mr. Hayashi stated that is not what he said. What I said was that the Authority has to look and review it fairly and justly. If the engineer uses a new BMP that is not in the resources, and there are supporting documents; the Authority does not approve my plan; the BMP that the Authority dictates has to be installed and fails; guess who I'm coming to see. Manager Mende responded that a process is built into the SWMM for looking at proprietary BMPs or alternate BMPs and that text is already in the SWMM.

Ms. List added that the City of Grand Junction advocates talking to the regulated community. As the Authority goes through the process of updating the SWMM, these are good questions to ask the community. When the SWMM was last updated, the community didn't want specifics or prescriptive references; they wanted flexibility. I suggest kicking it out and asking the community. Manager Mende agreed with Ms. List.

Director Meis stated that he is struggling with creating another guidance document. There are many guidance documents out there with generally accepted engineering principals for BMPs. What I would suggest is there might be some way to help people understand the process versus the technical aspect. Every County, City, etc. has a difference process. They just want to know what they need for the application and submittal processes--a step by step process.

Chairman Walker asked the Board if it want to spend the time discussing the last four items on the attachment or ask the Manager and TAC to revisit these items for further discussion and resolution. Director Todd and Director Meis ask that these items be sent back to the Manger and TAC.

#### **Agenda Item 5 – Capital Project Priorities**

Manager Mende presented the report in the Board packet. As requested by Director Bowman at our April 22, 2009, Board meeting to have a general discussion of prioritization and implementation of capital projects, specifically Bosley Wash. As we continue to develop planning studies, and get them on the shelf, we are going to build up a backlog of data which is available to us if we want to move forward with capital projects. Bosley Wash is one of the ones out there if the Board choose to spend the money to participate in some type of a capital project. Capital projects will take a lot of time and money. The planning aspects don't take a lot of time as you are basically managing a consultant. They are costly as they are currently running \$150,000 to \$200,000 per study.

Chairman Walker asked if the Authority has enough money to talk about a detention reservoir at Bosley Wash. Manager Mende stated the \$100,000 that the Authority currently has for unspecified projects is nowhere close to what is needed. Director Bowman shared the first priority of the Authority should be to upload the permit and once the permit is upload, we can start prioritizing capital projects. At one point the TAC was going to prioritize the capital projects and maybe the TAC can start working on that. Bosley Wash is being pushed because there are a set of plans and specs in hand. Chairman Walker asked Mr. Ballagh asked if there was an engineer's cost estimate included. Mr. Ballagh stated, yes, there is an engineering cost estimate, but it is three years old.

Manager Mende reminded the group that we will be looking at some of this with budget discussions starting in a couple of months. Chairman Walker asked if we wanted to put prioritization of capital projects on the agenda. Director Mulder and Director Romer expressed their agreement with the Authority focusing on the uploading of the permit and then work on prioritizing the capital projects.

Director Meis asked if there is a capital budget for the Authority. Manager Mende indicated that currently there is not. Chairman Walker continued that this is a difficult thing to nail down as we didn't know what our funding sources would be year after year. Director Meis shared the Authority's funding source, as far as all of our contributions, is fairly new. Chairman Walker stated the general fund contributions have always been there, however the amounts changed last year. Two years ago the idea that we could actually build some things as we were moving forward with a strong effort to have some sort of rate structure in place. Then the realization hit that due to the opinions of the County Commissioners and the City of Grand Junction, the Authority needed to slow down, and the contributing entities moved forward with the general fund contributions. The last year and a half the general fund contributions are barely covering the operating costs of the Authority.

Mr. Ballagh shared that if things came together and all the stars aligned and one of the basin projects came together with a PDM grant that would jump to the front right now, priority one, because if there was a \$3 million grant with a \$1 million match, those type of monies don't come available often.

Chairman Walker continued that it is his understanding that the Authority cannot do any capital projects unless an opportunity like the one Mr. Ballagh just stated or another situation where there's a high priority where the entities are willing to front a large portion of the costs. Director Meis stated that the discussion of a wish list of projects during the next budget review, I guarantee if we're going down the utility fee discussion, unless you make a compelling argument that those priorities have some public health, safety and welfare components associated with it, you are going to get strung up with a utility fee. That goes back to each of us of making it a priority in our own general fund discussions with each of our Boards as to whether or not that is something our own Board contributes to the Authority to get done as a priority versus other things that we are spending with our own budget or going the utility fee option, but we have to have a wish list. Chairman Walker added a specific list; not just a need for money. Manager Mende stated that part of that discussion is how do we develop that wish list. Chairman Walker indicated that discussion has already taken place. We spent weeks on developing the criteria for determining how to prioritizing projects. Director Todd stated that if you are looking at prioritizing projects, I have to have that information by August as that is when the City of Grand Junction begins its budget process.

Manager Mende shared that three years ago when we had the discussion, there were a number of different ways you could prioritize a project. You could prioritize by the number of people who were going to be affected by a flood; you could prioritize by a plan already sitting on the shelf; you could prioritize based on urban, rural or developing. So there are a number of different ways you can prioritize on what is the best way to spend your money on a capital project. Most of the Board has not has this discussion so I think we do need to revisit it and come to a consensus so if we do move forward with capital projects, we need to know what you expect the TAC and I to bring to you as far as a recommendation. Director Meis and Chairman Walker affirm their support for uploading the MS4 permit and then prioritizing the capital projects.

Direct Meis stated we don't need to have the requested discussion item of fund balance on the next agenda since budget conversations will be beginning soon.

## **Agenda Item 6—Manager’s Report**

Manager Mende presented the report in the Board packet.

Regarding the inspection upload from the City of Grand Junction, both Manager Mende and Ms. List indicate it is working well.

Ms. List requested that the TAC be brought up to speed as to the database being created by the Authority at the next TAC meeting. Make sure the Authority is not spending too much time developing and maintaining databases.

The Board was asked its preference in getting rid of the 1994 GMC truck. Manager Mende suggested re-gifting it to another non-profit agency. Director Todd gave her support to donate to another non-profit agency. Chairman Walker asked the group if they could think of any educational uses. Director Meis reminded us the vehicle is a community asset and needs to be given to another community asset, non-profit organization or sell it. Chairman Walker asked the group to develop some ideas and bring them back to the table.

Manager Mende indicated the letter to the Federal representatives is ready to go and will have the Board sign them if they are ready for it to go. Board agreed the letter need to be sent.

Manager Mende gave a summary of the MS4 permit upload process. The draft program description which blends four program descriptions into one was put together; reviewed by the TAC; and then given to Nathan Moore for a big picture review. The issues of staffing and the enforcement are currently not satisfactory to Mr. Moore. The enforcement issue is a big issue. Direction received from the State is that the enforcement preference, where we refer any enforcement issues to the City or County code enforcement, is not acceptable to the State. The Board needs to be aware as it effects how we prepare a lot of the other documents that need to be put together particularly enforcement referrals and audit procedures. We are going to develop a strategy on how to change the State’s mind. The TAC will be meeting on July 1, 2009, and that is one of the topics of discussion. The question to the Board is: Do you want to challenge the State? The upside is you may be successful with the enforcement provisions as they currently are. If the State says no, then you have two alternatives. One, to accept more stringent language than they normally would, or two, you don’t upload the permit.

Chairman Walker asked what specifically in the enforcement provision upload that is going to be difficult for the different entities to do the same way? Manager Mende explained the State views the permit holder as the MS4 Operator. The Operator has to have control of the program elements and the ability to enforce the provisions of the permits back down on to the construction or development community or the entities that are covered under the permit. Chairman Walker asked what that means. Do the entities have to use their own personnel take care of the enforcement procedures or does it mean that we need to contract with the contributing parties? Manager Mende responded it could be either.

Mr. Ballagh stated the difference is that the Authority has no statutory/legislative authority to pass ordinances. So enforcement capability reverts back to the entities, and then it is enforced in the City or County under their respective ordinances/resolutions. It is like the police handing a file to the DA and DA making a choice whether or not to prosecute. That fuzzy determination is what the State is objecting to. Manager Mende added the State views the ability of the County and City of Grand Junction to exercise that discretion of whether to enforce removes the Authority’s ability to manage their permit.

Manager Mende shared that City of Centennial passed an ordinance that seceded stop work authority/notice of violation authority to SEMSWA as an organization. It gave them the right to go out on a construction site and issue a stop work order. Another option is through the process we have laid out, a referral process. When enforcement is needed, the Authority sends the City or County a referral. However, there has to be accountability back to the Authority that enforcement was taken. So there needs to be a procedure stating the entity 'shall' respond versus has the discretion to enforce. Chairman Walker asked the group if this can be done through modification of our IGAs. Ms. List stated it boils down to whether or not the Authority can legally require the City or County to enforce. Politically they probably could but probably not legally. Manager Mende agreed with Ms. List stating that is why the State is requiring a commitment from the entities to have an enforcement process.

Both Chairman Walker and Director Todd asked, why are we here if we can't upload the permit? Director Meis asked why that wasn't a major indicator in the feasibility project. In dealing with the State, I want you to challenge every bit, every time possible, what the State is suggesting if it fits what is best for us. What the State requires does not necessarily fit our scenario here. We tend to do things a lot better with more collaboration than any other part of the State, and we can do it better than the State thinks we can. Submit what works best for us, and challenge the State to come to agreement with us. Mr. Ballagh shared his support for Director Meis' statement as there is a level of trust and cooperation in this Valley that does not exist in other parts of the State.

Chairman Walker indicated that this has been his frustration for two years. I don't understand why the permit application hasn't been submitted yet? There's no harm in submitting the permit and then let the State tell us what doesn't work for them and then we'll negotiate with them. Manager Mende indicated that several items still need to be developed for complete application submittal. Director Meis stated that we need to let them know what works for us and let him do it. We carry a lot of weight with them. Ms. List suggested the Authority may need to meet with Steve Gunderson to help the State recognize the uniqueness of this permit. Director Todd affirmed her support of preparing the application for the permit and submit it. Let them come back to the Authority, and tell us what needs additional work.

Manager Mende confirmed with the Board that they would like him to take the strategy of sending in the application with the program elements that work for the Authority and let the State come back with comments. Ms. List suggested the Authority remind the State what it is gaining by us uploading this permit. Director Meis reiterated we don't want the State designing our plan. Manager Mende stated the Authority will get the rest of the required documents done and submit by September 1, 2009.

Manager Mende shared that the State representative verbally informed him that the State is increasing their MS4 oversight staff who will be focusing on the MS4 programs across the State. Their process is a progressive strategy of screening which is very similar to the Authority's process on construction site. In addition, based on the City of Grand Junction's results of last year's screening inspection, Mr. Moore indicated the State will be back out here in the next six months. Chairman Walker asked the City of Grand Junction what their reaction is to this communication. Ms. List stated this is one of the reasons the City of Grand Junction is a contributing party to the Authority. The City has a lack of resources to perform the reviews that are required. We know we'll get a better product with the Authority. Director Meis asked if these instances of enforcement actions were real egregious. I presume you went out and looked at all them on site. Ms. List responded that the City of Grand Junction provided more compliance assistance than active enforcement. On some of the sites, the City of Grand Junction has a different bar than the State. The Authority's bar is at the same level as the State's which is where it needs to be. Chairman Walker asked if the City of Grand Junction is willing to raise their enforcement standards prior



to the uploading of the permit to the State level. Ms. List and Director Todd indicated they would take that back to the City for further discussion.

Director Romer informed the group she would not be able to attend the July 22, 2009, Board meeting.

Chairman Walker asked Ms. Kirkpatrick how the inspections were going. Ms. Kirkpatrick stated they were going well. Screening level inspections are taking, in some cases, a couple of hours as Ms. Kirkpatrick in providing an intense level of compliance education to the permittees. The response she has received has been positive for the most part and the permittees are happy to have someone who is taking the time to discuss the stormwater process with them.

Director Meis indicated his desire for the Board to go out on a construction site inspection. Director Meis also requested a feedback process be created for feedback from the community.

Ms. List expressed the City of Grand Junction's appreciation to the Authority for their assistance in inspections and audits on permits held by the City.

Chairman Walker adjourned the meeting at 4:56 p.m. The next 5-2-1 Drainage Authority Board Meeting will be on Wednesday, July 22, 2009, at 3:00 p.m. at the Mesa County Courthouse, Training Room B, 544 Rood Avenue, Grand Junction, Colorado.



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Mel Mulder, Vice-Chairman  
5-2-1 Drainage Authority