

**5-2-1 Drainage Authority
Minutes Of The Board
July 22, 2009**

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

Board Members present:

Mel Mulder, Vice-Chairman
Richard Bowman, Secretary
Craig Meis, Treasurer

Technical and Authority Staff present:

John Ballagh	Grand Valley Drainage District, Manager
Julie Constan	Mesa County, Senior Engineer
Eric Mende	5-2-1 Drainage Authority, Manager
Janice McDonald	5-2-1 Drainage Authority, Office Administrator
Jesse Kirkpatrick	5-2-1 Drainage Authority, Stormwater Inspector

Guests Present:

Vohnnie Pearson Citizen, 630 Broken Spoke, Grand Junction, CO 81504

Called to order

Vice-Chairman Mulder called the meeting to order at 3:02 p.m. Ms. McDonald called the Board roll and a quorum was declared present. Vice-Chairman Mulder noted Chairman Walker's and Director Todd's excused absences from the meeting.

Review and adoption of the Annual Meeting agenda:

No changes to the agenda requested, Vice-Chairman Mulder asked for a motion to adopt the agenda.

Motion for approval of agenda: Director Meis
Seconded: Director Bowman
Motion passed with voice vote of 3-0

**Consent Agenda: Agenda Item 1 – Review and adopt minutes of June 24, 2009
 Agenda Item 2 – Financial Reports**

Motion for approval of Consent Agenda Items 1 and 2: Director Meis
Seconded: Director Bowman
Motion passed with voice vote of 3-0

End of Consent Agenda

Agenda Item 3a – MS4 Permit Submittal Process/Timeline

Manager Mende gave an overview of the report included in Board packet. Manager Mende stated he believes the TAC and he are 99.9% of the way there based on TAC review. Manager Mende reviewed the Summary of Outstanding Documents/Issues for the Permit Upload Process spreadsheet that was

included in the Board packet, and emphasized the need to have legal review completed in a timely manner to meet the September 1, 2009 deadline.

Director Meis asked Manager Mende based on this schedule, if he thinks the Authority will hold the MS4 permit by January 1, 2010. Manager Mende indicated yes, the TAC and he felt that January 1, 2010, is a doable and logical date. There is an annual report due from each of the MS4s, and this date would make a clean break. It also gives us three months to work out any details with the State. Director Meis asked if there are any different stipulations or conditions in the individual MS4s that are going to cause conflict when you upload it to a consolidated MS4. Ms. Constan responded that there shouldn't be, but the issue is going to be the enforcement of the construction and illicit discharge programs. There needs to be something in writing that shows the State the Authority has the capability to perform enforcement of some kind, and that's what we are working on for the IGAs. This is the area of where some legal issues may arise as to what commitments we can or are willing to make.

Manager Mende stated the program description for the Authority MS4 covers all the entities so there is no difference in the program description on what the program is going to look like. Within the IGAs and some of the related documents, there will be some minor differences in the individual IGAs as there were in the original IGAs. Probably the biggest differences are the enforcement procedures. Another issue is the involvement of the Authority on dealing with CSWMPs for Mesa County capital projects. The direction Ms. Constan has given the Authority is Mesa County does not want Authority review or permitting of their capital projects. Ms. Constan responded that part of the reasoning for this is how Mesa County handles the risk and liability of the stormwater permits. Mesa County has external engineers design the projects and take all the liability. The City of Grand Junction has their internal engineers design their projects and take on the risk and liability. Mesa County would rather leave all the liability with the external engineers as opposed to bring that in with the local stormwater permits. We still have to get a State permit, but we like to keep that ball with the design engineers and the contractors. Director Meis stated that it is the same as with every project out there. Every project has an engineer of record, and they still have to go through the local permit process so I don't understand how that would be any different for a private engineer as well. Ms. Constan stated they design engineers are still going to have to meet the same requirements; they're just not going to go through the Authority. To some degree there is a redundancy. Director Meis agreed that this whole thing is redundant. Ms. Constan continued there are some projects on which we can avoid the redundancy of both a State and local permits. We are going to have some internal briefings during the month of August to talk about some of these details.

Manager Mende continued the overview. The level of audit requested by the TAC is for the Authority to confirm that the minimum State requirements for the Illicit Discharge and Municipal Operations program elements are being met. For example, one of the requirements is to have a stormwater map. So instead of the Authority assessing whether or not the map is effective, the question will be "Is there a map?" This is a change, and it will change some of the text in the IGA. There is also the typical difference of opinion of legal staff from the various entities of what the dispute resolution and indemnification clauses need to be and this still needs to be worked out. The indemnification clauses in each of the IGAs we are currently working with are different. When we needed to resolve this the last time, we got all the attorneys together in the same room and at the same time, and it was resolved in about five minutes and that may need to happen again. Director Meis asked, assuming the combined MS4 permit is successfully uploaded, and looking at the Authority's schedule, I would like to see the State removed from this redundant process. How soon after uploading the MS4 permit can the Authority operate our own program without the State? Manager Mende explained Director Meis was referring to a Qualifying Local Program. A qualifying local program is only applicable to projects that are

five acres or less. If the project is more than five acres, the State is still involved. Director Meis asked if it was State or Federal legislation that requires the State to still be involved for a five plus acre project with a local qualifying program. Manager Mende and Ms. Constan confirmed it was State legislation. State legislation would have to be amended to change the five plus acre process. Director Meis asked who came up with the five acres and why. Ms. Constan replied the State set that criteria and has not seen any justification. Director Meis stated that the Authority's next priority is to go through the process to become a qualifying local program in order to remove the need for the redundancy of both a State and local permit. Manager Mende shared there are currently three local qualifying programs in Colorado so there is a process set with the State, and there is a template out there we can use. Manager Mende agreed with Director Meis that it is a good idea to go for the qualifying local program. Director Meis asked how soon that process can begin after uploading the MS4 permit. Manager Mende responded he is hesitant to ask the State until we have uploaded the MS4 permit. Director Meis continued, if there are at least three other programs who have gone through the process, we could at least get an idea of how long it might take from them. Manager Mende stated he would do some research with the three programs. Ms. Constan shared that she had looked in to this at one time there is some guidance on the State's website but no timelines. Director Meis asked Ms. Constan and the TAC to research the five acre limitation to the qualifying local program so some legislation can be started to change it. Mr. Pearson shared that it may be an EPA requirement.

Manager Mende continued there is another aspect that would be beneficial to the development community. It is a new type of permit which is common on the front range, but we haven't done it out here—a small site permit. It is designed to cover the situation where a builder would purchase a couple of lots from a developer. Those lots are still covered under the permitting process, since they are part of the larger plan of development. In these types of situations, a lot of the communities on the front range have a one-page form with a one-page site plan and a two-page description instead of having a full-blown stormwater management plan packet. I would like to get that implemented here as well. Director Meis asked if it was over five acres do they still have to come to the Authority. Manager Mende replied yes, anything over five acres with the qualifying local program will still have to get a State permit as well. New legislation is the only thing that would change that rule. Director Mulder asked if this is really the proper time to discuss this. Director Mulder asked if there was any prep work that could be done. Manager Mende indicated he would do some research on becoming a qualifying local program and what the provisions might be.

Agenda Item 3b – General Policy Discussion. Current strategy for submittal and summary of potential issues

Manager Mende gave an overview of the report in the Board packet with a detailed review of the Summary of Potential Issues Based On Previous State Comments spreadsheet. Director Meis struggled with the summary as the Authority hasn't even submitted the MS4 permit, and we already have problems. Manager Mende stated he wanted to provide the Board with a heads up. Director Meis asked that the Authority put together the application with what works best for us and meets the provisions/goals we are trying to achieve and put that forward. Once the application has been submitted, we can deal with Nathan or his superiors to address any issues. Director Meis indicated he doesn't want the Authority wasting its time, blood, sweat, or tears worrying about what Nathan thinks when our time should be spent on getting everything together on what works best for us. We can rationalize it with Nathan and his superiors later down the road. Manager Mende agreed with Director Meis and that is the direction he had been given and that is the direction the Authority is headed. This is just a heads up, and my best technical and professional judgment on what we are possibly facing. By being prepared for possible issues and having strategies for them, it could cut the review time down. We are going to submit exactly has the Board has requested. Director Meis stated he just doesn't want

Nathan building our program for us, because he doesn't know how we operate; he doesn't know the partnerships we have; he doesn't know our environment in which we work in; and I think we know that better than he does. I feel quite confident we can make that case to either Nathan or his superiors to rationalizing it down the road without him designing our program for us. Manager Mende stated that is exactly how we are submitting the application, but would feel like he would be doing the Board a disservice if he didn't at least think ahead.

Agenda Item 4 – Presentation of Inspection Program by 5-2-1 Stormwater Inspector

Jesse gave a presentation on the inspection program to the group. Discussion/questions:

- ~ *Are you going to do a screening inspection for every permit? Yes*
- ~ *Are you going to document the screening inspection even if there are no problems? Yes*
- ~ *Do you document the good? Yes, I am documenting the good and bad.*
- ~ *Is it a written report? Yes, a written report along with photos.*
- ~ *Will the State ask for copies of all the inspections or does the Authority keep them on file and then have those available at an audit? The State does not get any copies unless they come in for an audit. If the State does an audit, they can do it in two different manners. If the State wants to audit a particular site, they can ask for all of our inspection reports for that site. Or as part of a general audit of the MS4 program, they may look at a general file of what we are keeping inspection records on.*
- ~ *Manager Mende shared he has seen a big change in how folks are putting their CSWMPs together since we've started reviewing them in January. The key things are the 13 types of pollutants and the 8 types of BMPs. What I've told folks is to go through the SWMM, it tells you what all 13 types of the pollutants are and what the 8 types of BMPs are, and if they are not applicable, at least list them in the CSWMP and say 'not applicable.' The plans we were reviewing back in January and February, there was nothing. They'd state 'sediment and potential pollution sources' and that would be the extent of Section 3 which is not adequate. The SWMM is very clear you have to list each one of those different types and describe where it is on site or whether not you have it or not. Once they started doing that, it forced them into putting a little more thought in those CSWMPs.*
- ~ *Can you give me the thirteen types of pollution sources? Sediment, sediment from vehicle tracking, concrete washout, construction wastes, pesticides, fertilizers, paints, sanitary waste, non-specific water discharges—still missing a few from memory.*

Manager's Note: The thirteen sources are:

- all disturbed and stored soils;
- vehicle tracking of sediments;
- management of contaminated soils;
- loading and unloading operations;
- outdoor storage activities (building materials, fertilizers, chemicals, etc.);
- vehicle and equipment maintenance and fueling;
- significant dust or particulate generating processes;
- routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, oils, etc.;
- onsite waste management practices (waste piles, liquid wastes, dumpsters, etc.)
- concrete truck/equipment washing, including the concrete truck chute and associated fixtures and equipment;
- dedicated asphalt and concrete batch plants;
- non-industrial waste sources such as worker trash and portable toilets;
- other areas or procedures where potential spills can occur.

- ~ Manager Mende stated that Jesse has spent a lot of time in the field talking to folks because a lot of them are under the impression that the 24" x 36" drawing in the back of their construction plans is the stormwater management plan and that is not correct. That is a misconception a lot of folks have had and that is changing. The plan is the written portion and the map.
- ~ *Do the compliance advisories include information explaining the problems?* Yes, the inspection report is attached to the compliance advisory.
- ~ *Do you work with the people on site to try and resolve the issues right there?* Yes, I do. My time spent doing a screen inspection is a lot more than I thought it would be simply because I am not out there going check, check, check. It's me walking somebody through the process of that and explaining in detail what is wrong/deficient and then offer them some suggestions to fix the problem.
- ~ *When you do a screening inspection with no problems, you issue the inspection report, and as long as there are not major issues, they don't have to respond to the report at all?* That is correct.
- ~ *Do you ever ask them to respond to the inspection reports themselves?* For example, if I go out on an inspection and there nothing really wrong with site except a few minor technical issues, I send them a copy of the inspection report along with an inspection letter. The letter states, 'Here is your inspection report. You passed it. Any findings that are present in the inspection report will be addressed in the next regular inspection of your facility'. This lets them know I'm not going to come right back; they don't have to respond to it; but it will be looked at the next time we come out.
- ~ Manager Mende shared that this is part of the progressive inspection strategy. Any site that receives an inspection gets a copy of the inspection report. The report documents what is good and what is not good. The cover letter tells them you have a few minor things wrong, you need to fix them, and we are going to look at those the next time we are out without giving a specific time or date that we are going to do that. Next level up from that is a compliance advisory, and it formally documents the site is out of substantial compliance, and we are going to come back within a specified timeframe and re-inspect. Enforcement referral is when a site is issued a compliance advisory and has a certain amount of time to correct things, and they don't correct them. In certain cases and the reason we've got 15 compliance advisories and only 4 enforcement referrals, is there are number of sites where we've done a compliance advisory on a screening inspection and told them we are going to come back and do a field inspection or bump it up to an audit. If we do that, we will give a second compliance advisory, because we are looking at more stuff. So we'll give them that second strike instead of sending it to an enforcement referral. When we go out for a third time, if they haven't done the corrections, they'll receive an enforcement referral.
- ~ *How many permits do you have?* The Authority has five permits, but the inspection numbers include all of the sites that have been uploaded from the City of Grand Junction.
- ~ Director Meis stated he feels very strongly that we should be helping the folks on site and to him a compliance advisory translates into a notice of violation. As I've said before, the mission of uploading the MS4 and the mission when we created the Authority, are suppose to be a collaborative effort that is supposed to be supportive and helpful of those using the process and not combative. I am not saying it is, but I want to be sure and very sensitive to those using it that we are being helpful to those we are overseeing—especially when we are just starting out. We are learning as they are learning, and I want to make sure when they are receiving a compliance advisory, it is not being considering an NOV. I have to tell you that if I was receiving

a compliance advisory, I would be considering it the same as an NOV, and I would be considering that as heavy-handed government.

- ~ Ms. Kirkpatrick shared that when she is on site and can tell that they are going to receive a compliance advisory, I definitely let them know they are going to receive a compliance advisory; it is not a NOV or enforcement action; it is a piece of paper that lets you know you are out of compliance. Some people despite my best efforts, they do not get it. Some people understand the compliance advisory.
- ~ Director Bowman stated at the one site he got involved with, the engineer had put the plan together and then gave it to the people who were going to implement it in the field. The people on site just said, 'Thank you, we'll take it from here. We'll do the rest.' May be what we need is some type of a tie so that the people preparing the plan also have oversight on implementation. Director Meis agreed that there are operators out there that are uncooperative. That is why I want to understand how the enforcement part of this works. Director Bowman confirmed that we need to make a believer out of the people doing the implementation, but I agree with Director Meis that this is a transition period and we just can't come in and hit them over the head with a baseball bat and say you're in violation. Another thing is we are putting on these training classes and if we can get that across to them that now we are looking at these things and the SWMP does need to be implemented for the following reasons: water quality, etc. If we continue with a lot of enforcement and not getting compliance or not documenting the good parts, then the EPA can come back to us and say our education process is not good either. You are teaching these people, but nothing is happening. Director Meis stated the people doing the development are necessarily the ones taking the classes.
- ~ Ms. Kirkpatrick shared that the classes the Authority offers here are the same classes that are being offered on the front range. It is the same education opportunity. Director Bowman encouraged Ms. Kirkpatrick to make sure she is documenting the good sites, and the ones that are a problem, and can be fixed without being heavy handed. We can then demonstrate that assistance along with our educational processes. Director Meis wanted to make sure that when folks are willing to work with us that we are being sensitive to that and maybe not doing the compliancy advisory, but maybe giving them the inspection to try and cure the problems and we'll come out next week to see if the corrections have been made. If you have instances such as Director Bowman is referencing, you may want to just issue the compliance advisory right away. So there would need to be some judgment calls as to whether or not people want to work with you.
- ~ Manager Mende stated he believes the numbers will even out as the vast majority of the first sites Ms. Kirkpatrick looked at were thumbing their nose at us. Ms. Kirkpatrick continued that it really came down to people just not believing you. Not necessarily antagonistic about it but disbelief which is a reflection of the low knowledge level. Mr. Ballagh asked if inquiries have been made if the folks in the field have taken the classes. If you can't assess if the training works if we don't know if these folks have attended. Ms. Kirkpatrick indicated that most of the people she has worked with have been through the CDOT Erosion and Sediment Control class. The class is a one-day course with a very simple test at the end of the day that most people could pass. Some had the course three years ago and up until this point, it hasn't mattered to them. In Grand Junction it hasn't been important. There has been little implementation and the knowledge hasn't been exercised. Ms. Constan shared that she discussed this issue with Scott Olson. He made the comment that this is a problem everywhere, and no matter how much training he puts on, there are still a lot of problems out there. Director Meis stated this is not going to happen overnight, and it will take some time. This is probably some of the most

onerous rules that have affected the development industry. So you are going to have these challenges for quite some time unless you work with them and help them understand how this helps them, they are going to continue to thumb their nose at you. Just keep working with them and they'll get there. Ms. Kirkpatrick stated that most folks are willing to learn and learn very quickly.

- ~ *Why do we care if the erosion is on site as long as it doesn't leave the site?* Manager Mende stated it is important because the perimeter controls are your last line of defense and become overwhelmed in a storm event. There is only so much they can handle before failure.
- ~ Director Bowman states he sees a huge disconnect between the engineer and implementation. No liability or no responsibility one way or another. Director Meis stated it is similar to building a house. The engineers don't build the house the contractor does. The contractors will get there; it is not going to happen overnight. The Authority is new, even through stormwater is not a new concept. However enforcement and the heightened inspections are new. It will take time to get it in place. Ms. Kirkpatrick shared that the engineers are rapidly improving, if we can get them to put a little more thought and effort and to meet the minimum requirements and make it a workable on-site document instead of thinking of it as something they have to write so they can get our permit and then put on a shelf. Manager Mende stated the analogy of the building process is good. When a contractor is building the house and has a question about design, they go to the plans. What we are finding is that the contractors implementing the SWMP on site aren't there yet or at least a lot of them are not there yet. Director Meis stated that we are only six months into this with real inspections starting and so I have to say that the ones who are truly trying to learn and educate themselves and get up to speed that if we are too heavy handed with them, it will harden them even further. We need to make sure we're bringing them along through this major change in their industry. This is a big economic deal for them. It is not only the cost of the plan, but the cost of the BMPs and the maintenance of the BMPs are additional costs to their business. In addition, the future liability associated with this is a cost to their business. This is a huge impact to their business, and they are not too favorable about it, which I can appreciate, so we need to bring them along peacefully. Manager Mende shared that the larger contractors in the Valley get it, and they are making an effort to do a good job.
- ~ Ms. Kirkpatrick added there is another issue related to the economy right now. There is a site in which the bank is foreclosing on and the developer has skipped town so there hasn't been anyone out there doing anything for months. Director Meis asked how we are going to address this as this is the first of several. Ms. Kirkpatrick continued that in this instance we've been able to make contact with the bank and work with them. Their interest is in protecting the value of their investment. The Authority has been working directly with the bank on getting this site back up to speed.
- ~ *Where will the enforcement referral go?* To the City of Grand Junction.
- ~ *What is the role of the Authority once the enforcement referral has taken place?* Manager Mende responded that our role is to work with the owner, in this case the bank, to get the site back up to speed.
- ~ *If there is a mutual responsibility between the agency the referral went to and the Authority and the Petitioner?* Manager Mende responded that since the Authority doesn't have any enforcement power once the referral is sent to the agency that is pretty much the end of the line for us paperwork wise. It is then up to the agency's discretion to issue a NOV or a stop work order or fine, etc. In general, they are not going to do that. What they are going to do is use the referral as a way to get their attention and say you really do have an issue here. The other

reason those referrals are important to us, and they should be important to the local jurisdictions, are because they show the State that you are taking your local program seriously. You are backing up your program with the appropriate documentation to get those sites back into compliance. Director Bowman stated that hopefully at the point we are asking the local jurisdiction to take enforcement action, hopefully we are still working with everyone to get them up to speed. We want compliance...not just enforcement. Director Meis stated this is new to all of us and we want to figure out how we are doing it and add to our MS4 application what works best for us.

- ~ Ms. Constan reflected that in the example above, the Authority sent the referral to the City of Grand Junction; however since then the bank has been acting. So if that were a Mesa County project, our code enforcement would not go out and issue an NOV at that point since they were still taking action and moving in the direction they needed to go. Manager Mende agreed. Mesa County would document they were still taking action and moving in the direction they needed to; the Authority would be advised to continue to follow the progress and if actions cease, advise Mesa County. Director Bowman stated that hopefully it would be someone in Mesa County working with the Authority to resolve the sites issues and not go straight to enforcement and work with them to get compliance first. Ms. Constan agreed. Manager Mende stated in this example, the City of Grand Junction is taking that exact strategy. They are saying the decision whether to file a NOV or take them to court is in large part dependent on how they respond to the notice. If they take the action to respond, then that is a mitigating factor on what their enforcement is going to be. Director Meis asked if there was an agreement among the TAC that once that referral is made on what the response would be, so it is consistent. Ms. Constan replied that is part of the procedures we are currently working on. Manager Mende added it will not be consistent between jurisdictions. Ms. Constan added that there will be some level of consistency, but the actual actions the City versus the County can take is different due to the statutory versus home rule laws. Manager Mende stated the City of Grand Junction has wanted to be a little more aggressive in sending the enforcement referrals than Mesa County has. The City of Grand Junction did get a screening inspection from the State back in November, and they were put on notice by the State that they were not implementing their program effectively. So the City is trying to demonstrate they do take it seriously, and they are using us as that vehicle.
- ~ Ms. Kirkpatrick shared that with compliance assistance a site that has come up to a certain level where I think they've passed or they are in compliance, they should also pass a State inspection. And I would personally be there if the State was out there inspecting. The site passed my inspection because the regulations are the same. If they don't pass the State inspection, I'm definitely going to be on their side advocating for them. It should be a benefit for them to have me inspect their site before a State inspector comes out because the State has much less discretion and are much more hard edged about it.
- ~ *Director Mulder asked Manager Mende if we have changed direction in the inspection process during this discussion? Are we still going with education and cooperation?* Manager Mende stated education and assistance will continue to be a big part of Ms. Kirkpatrick's role. The difficulty we have right now with implementation of the MS4 programs are that the program is four or five years old now. In the first few years the State allowed the MS4s to do a lot of compliance assistance. Now the State is taking a much stronger stance. They don't want the programs to be doing compliance assistance anymore; they want enforcement; they want compliance; they want field activities to be going up. Yet we are starting out basically at mid-course and we are stepping back and doing some more of the compliance assistance. At the same time, we have got to take a little bit harder line than in the past.

Manager Mende raised the issue of having the Board visit an inspection site with Ms. Kirkpatrick, and asked for available dates. After discussion, the Board decided that Ms. Kirkpatrick should email the Board members with her scheduled inspection dates, and let the Board member pick what worked best with their schedules. Mr. Ballagh reminded the group that only two Board members could attend any specific inspection at a time to avoid having a quorum present.

Agenda Item 5 – Manager’s Report

Manager Mende gave an overview of the report in the Board packet.

The letters to our elected officials both electronically and hard copy have gone out.

We also have two other permits pending.

Director Meis asked what the Authority is doing as far as feedback from inspections and the permitting processes. Ms. Kirkpatrick answered that the letters that go out after an inspection now have the following, “To leave comments about an inspection experience, please go to” and it has the direct link to the feedback page on the Authority’s website.

Director Meis inquired as far as table tracking and numbers, are we tracking the numbers you are collecting as far as enforcements, referrals, number permits active, etc., so we can start tracking that data going forward. Manager Mende stated that information is currently being tracked in an Excel database. There have been discussions with the TAC of building an Access database versus a proprietary database, and we are doing some research to find the best alternative. The important part of tracking the data is for the annual report. There are a half of dozen or more that we need to set up, hotline calls, inspections, post-construction, etc. Director Bowman asked if there was an annual report that has to be sent to the State to tell them what we done over the past year. Ms. Constan responded yes, and one of things they are asking us to do now is report on the number and type of inspections we are doing, so this tracking is key for it. Manager Mende added that for this year, the annual reports will be completed by the local jurisdictions, but the data that we are collecting will feed into those.

Vice-Chairman Mulder adjourned the meeting at 4:37 p.m. The next 5-2-1 Drainage Authority Board Meeting will be on Wednesday, August 26, 2009, at 3:00 p.m. at the Mesa County Courthouse, Training Room B, 544 Rood Avenue, Grand Junction, Colorado.



David R. Walker, Chairman