

**5-2-1 Drainage Authority  
Minutes Of The Board  
August 26, 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  
Linda Romer Todd, Assistant Secretary (arriving at 3:15 p.m.)

**Technical and Authority Staff present:**

John Ballagh	Grand Valley Drainage District, Manager
Nathan Boddy	Town of Palisade, Town Planner
Julie Constan	Mesa County, Senior 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
Jesse Kirkpatrick	5-2-1 Drainage Authority, Stormwater Inspector

**Guests Present:**

Vohnnie Pearson	Citizen, 630 Broken Spoke, Grand Junction, CO 81504
Bill Wilson	WRC Engineering, 1161 Primrose Lane, Fruita, CO 81521

**Called to order**

Chairman Walker called the meeting to order at 3:02 p.m. Ms. McDonald called roll, and declared a quorum present. It was noted that Director Todd will be arriving late due a delay in an airline flight.

**Review and adoption of the agenda:**

Chairman Walker motioned for the addition of an agenda item under the consent agenda to appoint John Ballagh as the Authority's proxy for the Special District Association elections. Director Bowman seconded the motion. Motioned passed by unanimous voice vote.

Chairman Walker motioned for the addition of an agenda item to discuss the letter received by Director Todd from Mr. Steve Thompson as the last item under discussion items. Director Mulder seconded the motion. Motioned passed by unanimous voice vote.

Chairman Walker motioned for the addition of an agenda item to discuss the development of performance criteria for the Authority's Manager. Director Mulder seconded the motion. Motioned passed by unanimous voice vote.

Motion for approval of agenda with the above listed amendments: Chairman Walker  
Seconded: Director Mulder  
Motion passed with voice vote of 4-0

**Consent Agenda:**        **Agenda Item 1 – Review and adopt minutes of July 22, 2009.**  
                                 **Agenda Item 2 – Financial Reports**  
                                 **Agenda Item 3 – Appointment of John Ballagh as proxy for SDA**

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

End of Consent Agenda

**Agenda Item 4 – Appointment of Budget Committee**

Manager Mende presented the report from the Board packet stating the need for the appointment of a Budget Committee. Director Walker poled the Board members and attending citizens for interest. Director Bowman made a motion that the Board appoint Director Mulder, Board Member, and Bill Wilson and Vohnnie Pearson, residents within the boundary of the Authority, to serve on the 5-2-1 Drainage Authority 2010 Budget Committee with Board Treasurer Meis and Manager Mende.

Motion for approval: Director Bowman  
Seconded: Director Meis  
Roll Call Vote: Director Bowman-yes; Director Mulder-yes; Director Meis-yes; Chairman Walker-yes.  
Motion passed with vote of 4-0

Director Bowman made a motion that the 2010 Budget Committee prepare a draft 2010 Budget no later than October 23, 2009, for Board consideration at the next subsequent Board Meeting.

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

Director Meis requested a draft budget be prepared and distributed to the Budget Committee prior to the first meeting to allow for review time. Director Mulder suggested meeting 30 minutes prior to regular Board Meeting on September 23, 2009. Committee members agreed.

**Agenda Item 5 – Performance Criteria for Authority Manager**

Chairman Walker stated that at the Manager’s review, the Board discussed a variety of performance items that we are looking for continued action and improvement in some cases. The review process is not complete and performance objectives need to be established and clarified for the Authority Manager. What do the other Board members think?

Director Meis stated that Mesa County submitted the letter during the Manager’s review, however, it is the view of only one Board member. In order to see the Manager succeed, there has to be a Board opinion with regard to expectations so we need to outline specific expectations of the Manager. This can be done either via email and consolidated or in a meeting, but we need to get this done otherwise we are setting the Manager up for failure. Secondly, we are setting ourselves up for failure as we are a group that needs to agree on issues as well.

Chairman Walker asked how we form this? How do we put this together? Do we start with some suggestions that were put forth in the review and exchange these via email? Director Meis suggested that the letter given out during the Manager's review is a great template to start with. Either agree or disagree on the various points, or how we can address the various issues in there. Then it is a Board decision going forward making sure we articulate clearly with the Manager future performance goals. Director Mulder asked that they be briefed again on the letter. Chairman Walker will distribute the comments out to the Board in a simplified, bulleted format and start the process that way.

Director Mulder asked if Manager Mende had an opportunity to respond to the letter that Director Meis distributed at the review? Chairman Walker indicated that Manager Mende had the opportunity to respond at the review, and he has an ongoing opportunity to respond. Director Mulder asked Manager Mende if there is a written response available? Chairman Walker stated that this conversation should be between the five Board members right now, and if we need a further review with the Manager, we could do that at another time in an Executive Session. Let's decide now how the Board is going to formulate the performance criteria so that the Manager is very clear on what the Board's expectations are. Director Mulder stated that there should be a response to Director Meis' letter and that it should be included as the Board formulates the performance criteria. Chairman Walker asked Director Mulder if he is asking that any responses given during the review be part of the bullet items the Board puts together and put out for comment. Director Mulder stated that it is his personal feelings that the Board did hold him accountable for a few issues and I never did hear the Manager's response in written form. Director Bowman stated his agreement with Director Mulder that he did not hear a response from Manager Mende to the Mesa County letter. In addition, there should be a timeframe. We need to put together our expectations and go over that with the Manager and the timeframe. The Mesa County letter stated six months. Director Meis added that the Board agreed on six months, however that was two months ago. So we have already set the Manager up for failure by not having our expectations in writing to him as a Board. Maybe that can be carried out upon having this discussion by consolidating our issues into one letter of expectations by this Board then start the six month timeline. Chairman Walker offered his support of Director Meis' statement.

Chairman Walker updated Director Todd on the discussion due to her late arrival. Director Mulder asked if the Board was reinventing the wheel? Does Mesa County already have forms made up that we could use in this process? Chairman Walker responded we have already had the review and we used the required forms for the review, and I still have access to those forms. Personally, I don't feel a need to do that again, does the Board feel we need to do that process again? Director Meis stated we just need to have something that represents the Board's opinion. Chairman Walker asked if the Board wanted him to take all the comments that were put forth during the review and start with that as an item by item document. Then we can comment and weed through it, and come up with a formal set of goals for the Manager. Director Todd stated she thought from the discussion from the review that it was clear not everyone had the same goals and this needs to be done.

Director Meis indicated he would appreciate it if the Chairman took the lead in this process. Directors Mulder and Bowman agreed. Chairman Walker asked the Board members if they felt there needed to be a face to face meeting prior to the next Board Meeting. All felt the email process would work for now.

#### **Agenda Item 6 – Approval of MS4 Permit Application**

This agenda item has been pulled from the agenda by Manager Mende. Manager Mende provided further details in the Manager's Report.

### **Agenda Item 7 – Rate Study Summary Letter Contract**

Manager Mende presented the report provided in the Board Packet. There is a \$5,000 line item within our 2009 budget to have a summary prepared on the Rate Study work that was done back in 2006 by AMEC Earth and Environmental. The Draft Rate Structure Options Paper was presented to the Board back in October of that year and at that time the Board decided not to pursue any further work. The project died after that so there was no summary or backup documentation prepared for it. The intent of this line item is to have this small fixed price contract with AMEC to accumulate all that stuff into a binder so we have something on the shelf. In the future if the Board decides to reconsider some type of a stormwater utility along with the rate and structure options, we will have it. You gave me the authority last year last to sign these types of small contracts, but knowing that there are strong opinions as far as doing work associated with rate structures, I decided to ask the Board for their concurrence before signing the contract.

Director Meis asked why the consolidation of the materials now, wasn't it part of the original scope to provide a summarize report. Manager Mende responded the original budget did include a full-blown report, but the budget was cut off before AMEC got to the point of preparing the report. So they have miscellaneous documents on somebody's computer files and various hard-copy stuff. We have some of this stuff, but it has never been consolidated and organized. Director Meis asked if the Authority paid for all the work to be done, but never got the report. Mr. Ballagh responded that there was about \$25,000 yet to be paid and the decision was made to stop this right here. So AMEC was told stop. The Authority carried the \$25,000 in the budget for a while and then there was a minimal amount to put in final form and the contract was just never completed. AMEC took it to a certain point and they said from here on we have to go through these multi-steps. At that point, the Board said, no; stop the work here.

Chairman Walker asked if he was correct in remembering that the Board ended it just prior to starting the efforts of determining the efforts of mapping the pervious and the non-pervious. Mr. Ballagh replied, yes. Chairman Walker continued, so the rest of the rate study that we did pay for was suppose to be a tool that could be adopted to many different scenarios down the road once we were ready for them. Mr. Ballagh added, the total document would have provided the documentation for how the rate was arrived at in a defensible way should the rate have been challenged. Chairman Walker stated we would have that in useable form if we do the \$5,000 final payment; we will have all that just minus the mapping? Mr. Ballagh indicated, yes. Manager Mende stated that as part of the process at some point and time the Board was going to have to select some type option and there were a number of options that were laid out. What we will be getting is the summary of those different options so we'll have that background information for reconsideration, but we will not select an option as the Board never got there.

Chairman Walker asked Director Bowman if that is how he remembered this. Director Bowman stated, yes that is how he remembered it as well. Chairman Walker asked if AMEC has given the Authority some indication as to what the \$5,000 is covering—are there man hours, printing cost, etc.? Manager Mende responded there are both. What I've asked for in their scope of work with this small contract is both hard copy and electronic versions of all the documents that they prepared for us in the past, the Rate Structure Options Paper, all of the diagrams and mapping, and whatever they've done in the past for us. So it is in a useable format for us both as a reference manual we can keep on the shelf as well as electronically that we could use in the future. Director Meis shared it was intriguing that the Authority didn't have AMEC compile and submit what they had done to date back then being that you paid for the work. Chairman Walker asked if the TAC has discussed this and what are their comments. Ms. Constan responded that if the study is truly scattered and we don't have anything we can utilize, then spending some man hours to put it together is not a bad thing. I don't know why we didn't get that done at the

tail end of everything else we were doing. But we didn't and that is the fact of it at this point unfortunately. Ms. List stated she believes it would be worth it just to get all the materials. Ms. Constan asked if this was a time and materials contract? Manager Mende answered the contract is a fixed price contract. Chairman Walker expressed that this sounds like it's one of these things of what can we hose the Authority with? Let's say \$5,000; they'll go for that. Manager Mende stated we had a budget line item for \$5,000. You're not going to get a lot. You're not going to get a new analysis. You are going to get a three page summary along with the documents that are already out there as well as putting it into an electronic form so we can use it. Chairman Walker asked if Manager Mende gave them the \$5,000 figure. Manager Mende responded, yes. Director Todd asked if Manager Mende gave AMEC the \$5,000 and then asked them what will this buy? Manager Mende answered, yes. And then it was up to me to evaluate if the Authority is getting anything worthwhile for the \$5,000, and I think we are. Director Todd asked if the Authority would receive more than the summary such as all of the backup data. Manager Mende responded, yes. Director Bowman asked if the Authority received a document that gave us the three options. Manager Mende stated, yes. The Authority did receive that along with the presentation. There is some backup documentation, but it is incomplete. Director Bowman asked if the \$5,000 would give us the complete backup documentation. Manager Mende stated AMEC was asked to give the Authority everything they have. To spend the man hours to go on to the computers; pull out all the various documents; organize them; scan them; and put them into a binder. Chairman Walker stated the way you described it now makes me wonder if this isn't something we could do. Manager Mende stated we don't have the documents. Chairman Walker stated that the Authority has paid for them. Anything that has been created should be ours and they should give that to us. From what I'm understanding now is they are just compiling and organizing the documents. Director Todd indicated that the process really isn't as easy as it sounds as she is trying to get records from a former employee and all your document don't always appear when you start gathering them. If you are paying them, they are responsible for providing those documents.

Chairman Walker asked for feedback from Mr. Ballagh as he was very involved in the Rate Study process. Mr. Ballagh stated that as Director Bowman stated there was information to provide three options and had we gone down one of the options, then a final report would have been done based on that option. But the choice was made by the Board not to pick one of those options and things just stopped. Director Meis replied that his experience as a private consultant, he has had work that has been stopped, and you just give them the information they paid for up to that point. I don't understand the \$5,000. Apparently we are going to pay them to compile this for us rather just give us what we already paid some \$60,000. Mr. Ballagh continued that they had the presentation of the three options and the choice was made not to take any of those options until additional directions were given. AMEC was told to stop working on it.

Ms. Constan asked if we had gone through the deliverables that were identified in the original contract and compared it to the deliverables we have in hand versus what we are asking them to give us. If that was my project, that is what I would probably be doing at this point is seeing what deliverables we had identified in the contract because I know we had specific things we identified. And I know we received some memos and some white papers so I'd go through and see what you do have of those. Mr. Ballagh stated he doesn't remember anything electronically. Ms. Constan shared she thought we were getting some of the items in MS Word.

Chairman Walker asked the TAC if there had been an opportunity to visit with Eric on this. Ms. Constan replied they had discussed the concept and agreed they needed to get something finalized. But we haven't sat down and looked at the list of deliverables and compared what we received versus what is on the original list. The TAC hasn't; I don't know if Eric has. Chairman Walker stated he's addressing the

TAC as they were here through that process. Would it be reasonable, if the Board directed you to do that, to spend some time with Eric and really take a look at this? Ms. Constan stated that prior to entering into a contract, it would be a good idea to know exactly what we asked for and then see what we can come up with with what we've received and where we cut it off at. Manager Mende indicated that would be fine. Chairman Walker indicated there probably isn't a deadline on this since AMEC is just sitting on this stuff. Manager Mende stated no, other than this budgeted line item going away at the end of the year. Chairman Walker responded that if it needs to go back next year's budget, we can do that. Chairman Walker asked the Board how they felt about that. Director Meis stated that was fine and felt this could be resolved rather quickly by having the TAC look at the contract and make a decision based on that. Director Mulder stated he was getting all the information from the study second-hand from David Karesny while I was on the Fruita City Council so I do have all of that documentation if needed. I am good with the decision to let the TAC take a look at it. Director Todd added not being involved with the original contract, it is difficult to say much about what, when, where and why other than I would look for the accountability of what we should have. Chairman Walker asked if there was a consensus among the Board rather than today approve the \$5,000 to get AMEC to pull this together, we would like the TAC that were involved with this to work with Eric to see if this is a necessary expenditure. Director Mulder agreed with Chairman Walker, but pointed out the written report in the Board packet states the TAC approves the issuing of the contract. Ms. Constan responded that yes globally she does agree but it probably would be the best thing for the Board to know exactly we do and do not have. The Board expressed their consensus. Manager Mende stated he would check it out to see if it is a reasonable expenditure compared to the information we are getting and what the deliverables are in the original contract. Chairman Walker suggested making a direct request to AMEC to hand over anything we don't already have.

#### **Agenda Item 8 -- Preliminary Budget Discussion/Guidance**

Manager Mende presented the report and spreadsheet included in the Board packet. In general, we are running under budget significantly in a lot of areas. We have not spent a lot of money on our basin master plans, and we have not initiated any new plans so there has been a significant amount of savings there. Looking at the program costs to just run the program for the compliance activities as well as the administrative costs, we are looking roughly in the area of \$437,000 a year. So that sets a lower bound on what the budget needs to be in 2010 if you decide that is the scope of effort for 2010. There's also some float built in as we took the Big Salt Wash Study at \$175,000 and accrued all of that in 2009. It will not all be spent in 2009; most will carryover. But at the end of last year, we changed from a cash accounting to an accrual accounting basis, and Ms. McDonald and I have been having some discussions on what that actually means as far as the budget numbers presented. There is a significant carryover to 2010 totally roughly \$229,000. That money can be used to offset 2010 contributions. If you assume a \$100,000 reserve, which is close to what we had this year, then around \$129,000 available to reduce contributions. That is equal 26% of current contributions or if you want to look at in terms of the minimum programs costs, it is close to 30% of the program costs of \$437,000.

The intent of giving you this information is to provide some direction to the Budget Committee and myself as we put the 2010 budget together. Where do you want to go? Do you want to assume a certain level or certain dollar amount for a reduction in contributions? Do we want to reduce contributions and assume we are going to fund some studies in addition to the Big Salt Wash? Director Meis asked of the Budget Committee could take first crack at this and then bring it back to the Board for consideration. Manager Mende responded, yes. As far as basic direction and concept are you all looking at some type of reduction in contributions? Director Todd stated she would want to look at the budget before any decisions on what might be required studies and required expenditures, before we start looking at pulling back. Director Bowman stated the Budget Committee should take the first crack at it.

The other thing I'm uncertain of is how everybody's budget is coming together for next year and where they are. Chairman Walker stated we are all starting the process and we are all starting in our budget discussions based upon the contributions made last year. None of us are very far into the process yet. Director Mulder stated he would be speaking with the Fruita City Manager regarding this and will be bringing his input into the budget discussions and possible reductions in contributions.

Chairman Walker stated there are some greater issues here. Quite frankly before we spend a lot of time looking at next year's budget, we have some things to figure out with regard to the general direction of this organization. If we can't figure out a way to let the State be comfortable with the Authority having some enforcement in uploading the permit, then we are spinning our wheels here anyway. I'd rather talk about those things rather than spend a great deal of time on a budget for what? Do we need to talk about this any further? Manager Mende stated he would like to highlight a couple areas. The Training classes revenue is down. Our inspector class is always full, but we are not as full as we were in the Erosion Control Supervisor class or the class for stormwater management plans. We are offering a new class in October on post construction BMPs. Planning review fees are significantly down as there is not a lot of development going on. Ms. McDonald stated classes were new to us this year so revenue numbers were our best estimate. However, the expenses and revenues for the classes offset each other. Manager Mende stated the Inspector's position was to be covered in large part by the planning review and permit fees, and that not turning out to be the case. Staff costs and utilities are running under budget. Legal fees are running over budget which is to be expected with the upload process. There are a couple of places where we could save a significant amount of money. We had a fair bit of money built in for hiring a consultant to help us with the revision of the SWMM. We will not spend most of that money. What we have decided is rather than updating the entire manual, we are going to update chapters 15 and 16 which is the stuff that deals specifically with the NPDES program. That we can do internally and there are some limited costs in there for stakeholders meetings. Chairman Walker asked if there was any further discussion for the preparation of the 2010 budget. None heard.

#### **Agenda Item 9 – Grant Applications**

Manager Mende stated things have changed significantly in the last few weeks. Most of you have probably seen the articles that the Department of Local Affairs doesn't have any money. However, there are two projects out there that we have discussed internally at the TAC, looking at whether the Authority should put together grant applications and submit them. In both cases, it is our recommendation to go ahead and put the grants together and submit them. There is no harm in submitting them. We know there is no DOLA money out there. The ability to get a grant is zero if you don't apply so our recommendation is to go ahead and apply.

The first one is Bosley Wash which would be design work and support the design effort needed to get a complete and final design. The County either has completed or is finishing up the purchase of the property. Where the detention pond would sit, giving us the ability to actually have a real project. Since there is no money, it is obvious we won't begin design work in October. Chairman Walker added, it's not that there is no money. We've all experienced grants that have been put on hold. We now have a million dollar grant that has been postponed. Ms. Constan continued, what we've heard through Jack Kirtland on Mesa County projects is that applications that were submitted prior to August 1, 2009, are just being held. The next time they will be looking at those applications will be April 1, 2010. Chairman Walker stated there is no harm in doing this, and we have money in the budget for the match, what do you want to do? Manager Mende stated, it does play into the budget because you would need money for that match in 2010 so that is another project for the discussion of the Budget Committee. Director Meis stated, I don't know why you would put in a grant application if it is not going to be considered. Director Bowman asked if the 32 ½ Road project in Mesa County was still being looking at. Ms. Constan

responded that they are going ahead with some of it. Mesa County is working with the GVDD, and we were hoping to receive DOLA funds to help pay for the portion crossing under the railroad. No matter what, we will be going up to the railroad on the south side. If we can receive grant dollars to go under the railroad, we can then connect into Clifton/Patterson/F Road/Hwy 6. Director Todd asked if the Authority had in the past received moneys from CWCB versus DOLA? Chairman Walker stated the Authority has received monies from CWCB for many of the basin studies. Director Todd stated the Water Congress' report last week, the Governor is trying to create another entity that is going to draw down greatly the authority and funding of the CWCB. It is one of those things that is out there that nobody really knows what is going to happen. Manager Mende stated the Authority has a request in for the Big Salt Wash study that was submitted several weeks ago, but has not heard anything yet. We did not budget for any grant revenues on the project so the budget is fine as far as being able to fund that. Director Todd stated CWCB is spiraling down because of the raid on their funds and it has cut back on their interest revenues so they don't have the interest income to help rebuild their revolving fund; they don't have the paybacks coming back; it's not pretty. Chairman Walker asked if there is even a point in pursuing grant monies right now. Director Meis asked who would the Authority be submitting the applications to, DOLA or CWCB. Manager Mende stated both. The design work for Bosley Wash would be with CWCB. Director Meis added that we know DOLA isn't going to consider anything until April, 2010, but doesn't know about CWCB. It's like the lottery; you can't win if you don't play. Director Todd affirmed her support as long as there is time. Manager Mende stated the CWCB application process is much easier than the DOLA process. Chairman Walker stated we should make sure we have match money in the 2010 budget just in case things turn around so we can go after some grants.

Director Bowman stated that we have plans and specs for Bosley Wash. How do we need to modify those? Ms. Constan replied it is based on the actual property acquisition. The original design was based around a certain layout of land that we would own for the pond, and the actual land has turned out different than the design. So it is some minor tweaking of the design to make it fit with the property we actually own. Director Bowman asked, \$50,000 worth of tweaking? Ms. Constan stated she did not know if it would be that expensive; it may be less. Director Bowman inquired if we are putting any of it on BLM land. Ms. Constan answered, yes. Director Bowman asked if the BLM had any money to help with the costs. Ms. Constan replied, no. Director Bowman asked for the DOLA funds, do they still have a process where locally you rank projects. Director Meis replied they do at the local level. Director Bowman stated he didn't think it would hurt to submit the grant applications. At least the agencies will know we are interested in receiving funds. Chairman Walker stated, if we put the application in this year, we have the matching funds in the budget, and then maybe we'll have some answers before we finalize the budget in October as to whether or not we continue that money for 2010.

Mr. Ballagh shared that the County and the GVDD have worked real hard on getting this drain up 32 ½ Road, and what will happen is the project stops at the railroad because it is a huge dollar cost. Engineers put it in the neighborhood of \$400,000. If we make the application now, and are able to count contributions now that are not yet made, but are going to be made, even if DOLA considers it later, we still have our position in contribution. Whereas if we wait until April, 2010, we've already spent money to get up to the railroad, I don't think DOLA will let us count that money that is already spent. They are going to tell us you have to come up with a match or something. It might make financial sense to be able to count what we are going to do yet this year to get to the railroad. Ms. Constan recommended that Manager Mende speak with Jack Kirtland, because her understand is that DOLA isn't even accepting applications right now, and I believe the only way we can count matching dollars is if the grant has been awarded. I could be wrong, but it would be good for Manager Mende to talk with Mr. Kirtland. Chairman Walker asked Mr. Ballagh if he was think that just having the grant application submitted, regardless of whether we have any idea whether we are going to receive that money, will aide your situation. Mr.



Ballagh responded, no. Director Bowman added that DOLA may look at it as a total project. Chairman Walker stated there are a lot of suppositions thrown around here. Knowing what the real situation is with DOLA would mean a lot to us. Would you consider staying in touch with Eric, and if there is a need for Eric to move forward on a grant application to have ready for us the next couple Board meetings based upon something new that comes along. Is there any reason we have to decide this today as opposed to talking about this again in the next meeting? Manager Mende asked if the next submittal date for DOLA is December. Ms. Constan stated no; it is April 1, 2010. That's why I think you should call Mr. Kirtland and see if they are even accepting applications now. Chairman Walker asked Manager Mende to get the facts from DOLA and bring this up again with the Board.

**Agenda Item 10 – Letter from Mr. Steve Thompson**

Chairman Walker and Manager Mende asked the Authority's Inspector, Ms. Kirkpatrick, to give an account of the inspections and processes that have occurred on the properties Mr. Thompson referred to in his letter to Director Todd. Ms. Kirkpatrick stated that Mr. Thompson is a Project Manager on two construction projects that were recently requested by the City of Grand Junction to inspect. They are City issued permits.

One is the Redstone Veterinary Clinic. I went out on August 4, 2009, to do a screening inspection on the Redstone Veterinary Clinic on Patterson Avenue. That was attended by Steve Renstrom, Contractor, and Steve Thompson, author of the letter. When I went out there the observations were the site didn't look too bad. The biggest thing is all the construction vehicles were going through a back corner. They had provided a tracking pad to prevent vehicles from tracking mud and dirt out into the street, but they weren't using it. It was easier for them to go out the back corner through an adjacent strip mall's parking lot. So they were doing that and in the process were discharging quite a bit of sediment into that parking lot and into the storm drain. There were a couple of other minor things which included some paint washout waste they were not disposing of properly. One of the bigger things was Mr. Renstrom and Mr. Thompson didn't seem to be aware of the existence of a Stormwater Management Plan for this site, or aware of the existence of State or local permits for the site. They were uninformed on that. They had the permits. I advised them why I was there as a 521 Drainage Authority inspector even though they have a permit through the City of Grand Junction, and informed them about the agreement the City has with the Authority. We discussed what we saw on the site and they were told to go ahead and take care of those things. They were advised that I would be back on August 13, 2009, to see if things were cleaned up. They were also advised that while the Authority handles the inspections, it may issue Compliance Advisories or refer a site to the City for enforcement. Any enforcement actions are completely at the discretion of the City because they are the permit holders.

The second inspection on August 13, 2009, was a screening inspection, attended by Director Meis, Mr. Renstrom, and Mr. Mark Barslund, a City of Grand Junction Inspector. That inspection went well. The vehicle access issue was fixed by simply closing off that side of the site to vehicle access and requiring his contractors and subcontractors to go out using the track pad. All the other minor things were fixed. Mr. Renstrom could not produce the Stormwater Management Plan and that plan is required by the permit to be prepared and kept on-site at all times. It is to be a reference document in how they are going to handle stormwater from day to day on their site. That is required by the permit to be on site. On every inspection, I ask if they have their Stormwater Management Plan. On the inspection, Mr. Renstrom expressed some doubt if the SWMP existed. It was explained that the site probably did as they went through the City's processes to obtain a permit and the City would have checked to make sure a SWMP was in place. Mr. Renstrom was asked to continue to look for the SWMP and notify Ms. Kirkpatrick by August 19, 2009, if there is or is not a SWMP in place. If one does not exist, a Compliance Advisory would be issued advising that a SWMP would need to be prepared and maintained on-site per

the terms of the permit. It was then explained that if a Compliance Advisory is issued the language in the Advisory is very strongly worded and included a statement of the maximum legal penalties for non-compliance of the permit. However in my experience, even if the project was eventually referred to the City for enforcement or for other reasons down the line, that City would almost certainly issue a Notice of Violation and give them the opportunity to correct the deficiencies.

Ms. Kirkpatrick stated she started giving this statement after the issuing of the first Compliance Advisory as they do contain strong language just like a traffic ticket states in the fine print: "Failure to obey traffic laws....." After the first person received a Compliance Advisory, they stated it had been terrifying to receive such a strongly worded letter in the mail; it was stressful to them; and they were shocked that this was a result of one of Ms. Kirkpatrick's inspections. As a result, Ms. Kirkpatrick began forewarning people to prepare them that this letter is coming, and it sounds distressing and strident; but in my experience those things aren't going to happen to you. What is most likely is going to happen, even if it gets to the level of an Enforcement Referral, is the City will issue a Notice of Violation, and then give you another chance to work it out.

On August 17, 2009, they found the SWMP for the project, and I confirmed it was on-site the following day. No further inspections are planning for that site absent any complaints. The Redstone Veterinary Clinic inspection was the only inspection attended by Mr. Thompson.

The Crossroads Wine and Liquor building is being built just west of 24 Road; west of Sutherlands at the mall. Ms. Kirkpatrick received a request from the City of Grand Junction to inspect this site and went out on August 3, 2009. The inspection was attended by Mark Barslund and Mark Smith, the contractor for the Permittee. What was observed was a complete lack of any kind of stormwater management or BMPs at the site. There was active discharge of sediment to the storm sewer system and the drainage ditch on 24 Road. It was so buried that you couldn't see the v-pan; you had to dig to locate the concrete v-pan on 24 Road. They had dumped a bunch of stucco washout waste nearly into the drainage ditch on 24 Road. They were using an adjacent lot, not owned by them, as a staging area for their construction activities. They did not have tracking control on that lot, and as a consequence, the construction vehicles were dragging sediment into the local streets on which there was no inlet protection so that is how sediments was discharging into the sewer system. Mr. Smith was advised of the deficiencies and told the appropriate BMPs needed to be installed, and the site needed be cleaned up, including the stucco washed out waste. In addition, local streets and the adjacent bank parking lot, which was dirty and gutters filled with dirt and construction debris from this project, needed to be cleaned. Mr. Smith was advised that the site would be re-inspected on August 10, 2009, at which time improvements should be seen. He was advised of the inspection process set up between the Authority and the City and that the City holds sole discretion, not the Authority, over any enforcement action. This is a canned speech I give when I go out to perform an inspection as folks want to know why the Authority is there when they have a City permit.

Chairman Walker asked if Mr. Kirkpatrick felt that that statement lessens people's attention to her. Ms. Kirkpatrick stated she didn't feel it did, and even if it did, she would continue with the statement because it is the truth. I strive to be transparent and if someone has a question about how the process works, I'm not going to trick them in to believing the Authority has enforcement capabilities.

On August 10, 2009, Ms. Kirkpatrick went back out to Crossroads Wine and Liquor to re-inspect the site. The inspection was attended by Mark Barslund and Mark Smith. It was observed that no changes since the last inspection had occurred other than the stucco washed out waste had been cleaned up. It was difficult to tell the difference in the photos between the two inspections. Sediment was still discharging

off site due to heavy vehicle tracking; no BMPs on the perimeter on the east or south sides of the project; and a lot of sediment and construction debris were still in the street and bank parking lot. The contractor was advised of on-going deficiencies and told appropriate BMPs needed to be installed and local streets needed to be cleaned up—same as the first inspection. The contractor was advised that the Inspector would write the Inspection Report that day, but wait to file it or talk about any sort of issuance of a Compliance Advisory with the Manager until the following Monday to give him an extra opportunity to make things right and make some progress on the site. The contractor was advised that if sufficient progress hadn't been made by Monday that the Inspector would feel compelled to recommend the issuance of a Compliance Advisory to the Manager based on the inspection results. Again, in an attempt to soften the blow of any potential Compliance Advisories that could come out of that, the Compliance Advisory letter, if he should receive one, was very strongly worded and stated the maximum penalties allowed under the law. But in the event an Enforcement Referral was issued, in the opinion of the Inspector, those severe penalties were extremely unlikely and the City would almost certainly issue a Notice of Violation first and give the Contractor the opportunity to fix the deficiencies on the site.

August 17, 2009, Ms. Kirkpatrick returned to the site to perform another screening inspection. This inspection was attended by Mark Barslund and Mark Smith. It was observed there had been some cleaning up on the local streets, and some effort on the ditch on 24 Road. There was still not adequate inlet protection on the local storm sewer system. The BMPs that had been installed near the bar ditch had not been installed adequately and could not have been expected to function as a BMP to prevent sediment discharge from the site. No BMPs had been installed on the south side of the project and deliveries were still taking place on the adjacent lot to the south with no BMP to prevent vehicle tracking consequently vehicle tracking was still occurring out onto the street. The Contractor was advised of the on-going deficiencies of the site and that the report would be filed and the Inspector would discuss the issuance of a Compliance Advisory based upon that report. The Contractor was advised that the report would be written immediately, but the Authority Manager would decide what course of action to take. The Manager decided on what course of action to take and a second Compliance Advisory was issued on August 24, 2009.

Chairman Walker asked why the Authority made the decision of issuing a Compliance Advisory as opposed to the City of Grand Junction. Manager Mende responded that the Authority makes the decision up through the Compliance Advisory because we are working directly with the site operator/contractor. Once it gets past the Advisory level, it becomes an Enforcement Referral. Then under my signature, it goes to the City for their review. Chairman Walker responded that this is still under compliance and Manager Mende confirmed that it is still under an advisory basis. Ms. Kirkpatrick continued that if a letter is drafted by the City that includes a lot of legalese and is intimidating if you read the fine print at the bottom. Remember the Compliance Advisory is not an enforcement action; it is an advisory only. Chairman Walker stated it seems odd. For example, a Palisade Police Officer gives you an advisory, but enforcement is going to take place by the Mesa County Sheriff's Department. If you are the person receiving the letter, it kind of feels like, here's a little bit of punishment, but you have a chance to do something before the next round comes around. Manager Mende stated this is the process that has been set up between the City and the Authority. Chairman Walker confirmed his understanding of the process and this is going to be an on-going issue, and we will have to figure it out. Ms. Kirkpatrick continued that receiving a Compliance Advisory is similar to a police officer giving you a warning instead of issuing a ticket. It gets a lot more attention because it is signed by the Authority Manager, and it says you are officially on notice. When I send a letter, even if there is something wrong with the site and it needs to be fixed, I say here's the report. Please refer to the inspection findings in the attached report; they will be addressed at the next inspection of your facility. Manager Mende

continued that this is the process that has been set up. Ms. Kirkpatrick signs the inspection reports. If it goes to the level of a Compliance Advisory, I would like to be under my signature so it rises to that level and if anyone is going to complain, they are going to complain to me rather than to Ms. Kirkpatrick. Chairman Walker stated it still seems very odd, and he realizes that what has been set up. We've got this agency issuing the Compliance Advisory, but we can't do any enforcement. We are sending a letter that has strongly worded language, yet we can't do anything about it. So would that be part of our compliance advisory letter from the Authority when the enforcement still has to come from the City of Grand Junction. Ms. List stated the City of Grand Junction added the strong language to their Compliance Advisories and felt it would be best to go on the Authority's advisories. Our perspective is that it gives notice that if the situation is not corrected, this is where it could go. Chairman Walker asked if the strongly worded options enforcement steps correct with regard to what the City of Grand Junction would or could do under its enforcement process. Ms. List responded, yes. What the Compliance Advisory says is that failure to comply with this advisory could result in further enforcement up to and including fines and jail time. Chairman Walker asked if the language included, 'by the City of Grand Junction.' Ms. List states she believes it does. Director Todd added that in an advisory capacity were here to help because you need to get all these things done or somebody else is going to come down on you. Chairman Walker stated that he didn't realize the Compliance Advisory had both the City of Grand Junction's and The Authority's logos listed on the letterhead. Manager Mende stated that is specific to the permits that have been uploaded from the City of Grand Junction where we are basically acting as a subcontractor. Ms. List added that this is the same language we use on all our advisories for illicit discharges.

Director Todd stated she received a telephone call from Mr. Thompson. Apparently, Mr. Thompson had call Mayor Hill and Mayor Hill advised him that Director Todd was a member of the Authority's Board. When Mr. Thompson called Director Todd, she listened and then advised she would not bring his words to this Board, but asked him to send her a letter so that they were his words and not her interpretation of them. He sent the letter and Director Todd forwarded it on to Chairman Walker. Ms. Kirkpatrick stated that this was the only time she met with Mr. Thompson on site, and he was fairly confused. And his frustration stemmed from his exceptionally low knowledge level. When I came on site, he was not aware that there was a State permitting program, or a State permit, or requirements by the State, or even that the State could inspect. He really wasn't aware that the site had a permit through the City of Grand Junction or that there were requirements there. He kept talking about MEPA and EPA requirements and did not understand where that fit in. Director Todd stated Mr. Thompson said that he couldn't believe you guys are going to send me to jail for doing this. Director Todd let that statement go by because she gets concerned when someone is trying to re-interpret a conversation, but it was as though he didn't know there were rules when I spoke to him on the telephone. Ms. Kirkpatrick stated that Mr. Thompson is a project manager who oversees the general contract who oversees the subs and contractors on site.

Ms. Kirkpatrick stated that her concern is that there are some strong accusations in the letter from Mr. Thompson, and I am pretty concerned that he has gotten some things second hand and badly distorted from what I have ever said to anybody on site. Chairman Walker asked if we needed to take any further action on this subject. Director Todd stated Mr. Thompson did send her an additional note which she did not respond to as she had told him these are open meetings and to feel free to come and he knew the time. In the note, he had asked if Director Todd had passed on the letter and whether or not he should come. Chairman Walker asked Director Todd if she wanted the Board to move in any direction as a response. Director Todd stated that in her opinion this was an FYI to the Board. Director Meis stated that this was not the first comment of this type that has been received. That is why he went out with Ms. Kirkpatrick on an inspection to see what she was seeing and hearing. Director Meis addressed Ms.

Kirkpatrick stating that she may have the toughest job right now. You are taking an industry that has done this the way they have for years and years and years and all the sudden they are being told to do it differently. Needless to say you are going to have to wear some kit gloves at the same time educate them and get them up to speed. This is why I am so sensitive to us being too heavy-handed government especially at this point and time because all we'll do is back them into a wall and have everyone complaining. We'll have a nightmare because you are trying to take an industry that has been doing this for so long and you've got to educate them, inform them, help them, and be a resource to them to get them up to speed. Help them understand that this is not the City of Grand Junction's doing, this is not Mesa County's doing. They don't know that right now. In fact, if I were to read that enforcement, I would that you guys passed an ordinance that is going out to the builders. They don't know that this is a Federal unfunded mandate that is coming down the chain and they need to know that. They need to be trained on that. Ms. Kirkpatrick stated she does go to great pains on site to explain that to people. I start with the Clean Water Act, to the State and how it rolled down that way. Hopefully, if people have received an inspection from me, they have at least heard it. Whether or not they've understood that they've at least heard that the City and County are getting a mandate from the State to do that. Director Meis continued there is nothing that unites like a common enemy. Needless to say if we can create that common enemy to be the Federal government it would help. We've got to impress upon them that we don't like this any more than they do, but we have a goal to achieve. I would like us to at least respond in writing to Mr. Thompson from the Authority at least referencing what we are required to do by Federal law now and this has been passed down to us through an unfunded mandate. In addition, these provisions as far as jail time are standard provisions of these enforcement proceedings of which we have to put on these citations. That is part of the enforcement protocol and procedure. I don't mean to be a jerk on this, but I'm going to pass the buck on this. I can assure you Mesa County would not be doing one bit of this if it weren't for the Feds. Mr. Ballagh complimented Director Todd in how she handled Mr. Thompson as you shouldn't be his advocate and you ask him to write something. In response to Director Meis, he agrees that we need to write a response. Director Mulder also complimented Director Todd on getting Mr. Thompson to write, and since he took the time to write to us, we should take the time to respond to him.

Chairman Walker stated that one of the issues is people don't understand that we aren't just making these rules up; that it is a Federal mandate. Why not have a very concise paragraph that explains it? The Compliance Advisory doesn't make it clear that it is a Federal mandate; it looks like a City ordinance. It doesn't make it clear that we are just doing what we've been told and we are doing our part of the permit. Could you work together to put a very easy, simply worded paragraph on this Compliance Advisory letter? I'd recommend it goes somewhere on the top or somewhere really obvious. Director Todd stated it should go on every letter not just the City's, but all jurisdictions. Director Meis stated this is not different than what we are dealing with in our Clerk's office regarding motor vehicle fees and we've got Governor Ritter's phone number right up there because we are not going to take the heat for it. Chairman Walker asked if all agreed to adding the paragraph; all affirmed their support. Manager Mende asked if they wanted Federal or both State and Federal. The group affirmed both Federal and State.

Director Todd stated the biggest earful in Mr. Thompson's conversation was the City and County not being in compliance in any of their sites. Ms. Kirkpatrick stated that is a point she wouldn't argue. Manager Mende stated there were a couple of other points he wanted to make in Mr. Thompson's letter as he feels they are pertinent to a lot of things we are doing. The level of inspection that we provide, we are sensitive to providing that helping hand rather than the heavy hand. You'll notice from what Ms. Kirkpatrick presented is that we went out there and told them; we went out there twice and told them again; it's just not sinking in. Our education process needs to improve at a higher level with

larger organizations like the Home Builders Association or AMGD. I think a lot of those guys know the program exists, but still haven't bought into the concept that those rules do exist and there are specific requirements they need to put in place on site. The one comment about, "There are more important things for us to do on site OSHA...", we don't get to pick the rules that apply; they all apply. And like you said, Director Meis, we are all in the same boat. So we will try to do our best to continue in the mode of trying to help them understand, but at some point they may get to the point where they are just resistant. The one portion of the property that this particular person was very resistant was on was the adjacent property. He said he didn't own it and that he was just using it as a storage yard. If you are using it as part of your construction project, it's covered by the permit. You can't just say, "I don't own it; therefore it's not my problem." Director Bowman stated that is still showing a huge disconnect between the requirement and the implementation. As when I met with that consulting engineer and he said well you've got to go and do all these things and gives his plan to the contractor and he shelves it and goes and does what he wants. There is still a huge educational process that needs to take place. I don't know if it would help when you go out the first time, if you tell them this is what you are going to be looking at such as the SWMP has to be on site, BMPs, etc. and leave them something in writing. That might go on the shelf as well, I don't know. Manager Mende stated that we do a pre-construction meeting on all of the permits we are issuing, but the majority of the inspections that Ms. Kirkpatrick is doing are on permits that are active that were issued by the City of Grand Junction. So as, Director Meis stated, they are used to a certain way of doing things and they had this permit in place and no one has come out and looked at them until we showed up. Then all the sudden it is new. Ms. List stated that in the City's pre-construction meetings for these development sites it has been brought up that the need to comply with stormwater regulations. They are not unaware of the requirements. Director Todd added that from the AMGD group, before Manager Mende came to speak, they kept talking about all these new regulations we were putting on them. Manager Mende then came in and explained that it was coming from someone else, this isn't coming from us. Chairman Walker asked if the SWMP was on the checklist. Ms. Constan confirmed that yes it was included on the checklist.

Ms. Kirkpatrick added that by in large most people are very courteous about it. Some people get very frustrated or they are confused. Most know that these requirements exist. They've all been to the stormwater management class. What they are unaware of is that somebody is going to be checking to make sure they are doing it. Director Meis stated there is not one construction site that you can go to and not find some type of OSHA violations or some stormwater violations. It's just like driving down the road; sometimes I do go 30 mph in a 25 mph speed limit. There is a violation on every job site. It is just a matter of how nitpicky you get and how you deal with that issue. As a project manager you've got to pick your battles. Ms. List continued that she thinks there is also an element of risk management. You have some large construction companies who are aware of the regulations and they choose not to enforce them. Director Meis state it is a risk decision on their part and sited an example of a local subdivision that said we weren't going to deal with the stormwater regulations as it was easier to deal with it in court. Director Meis continued that he believes the cost of dealing with it that way versus BMPs, etc., may be less expensive. Chairman Walker responded to Director Meis stated that along the lines of your comments, I know you are right that every job site you go on to there is some type of violation, which ones should Ms. Kirkpatrick overlook? Director Meis answered that he was not suggesting that she overlook any of them. It is just a matter of how heavy handed we want to get in regards to compliance advisories. Ms. Kirkpatrick expressed that she does not elevate everything up to the level of a compliance advisory just because they are not fixing it. Some job sites may not have all of their waddles trenched in or there is a BMP missing that are minor problems. The Inspection Report is issued listing the things that are wrong with the site; please address them; and they will be addressed in your next inspection. So I don't keep going back out until I think a site is spic and span. Director Meis stated that when Ms. Kirkpatrick and he went out to the Redstone site, Ms. Kirkpatrick told them the

waddle wasn't install correctly, and she would come back out there to check on it. There are certain things that in order to cover the Authority, you have to state it; you have to bring it up to cover the interests of the Authority, County, and City. But nonetheless, if you are redundant on going back and checking on minor things, that's where you get a little crazy. If there are major issues out there, tracking mud, etc., those are probably what require a follow up, but not having a SWMP on site is probably not a major issue. You want people that are going 20 mph over the speed limit, not those going 5 mph over.

Chairman Walker thanked Ms. Kirkpatrick and expressed his desire to have her attend all the Board meetings so she may provide on-going updates as to how things are going. Ms. Kirkpatrick expressed her thanks to the City of Grand Junction Inspector, Mark Barslund, for attending all the uploaded permits inspections with her. It has made her life easier.

Manager Mende inquired if the Board would like to review his written response to Mr. Thompson prior to it being sent out. The Board concurred to have Manager Mende send the response without their review.

#### **Agenda Item 8 – Qualifying Local Programs**

Manager Mende stated that this agenda item was driven by Director Meis to determine if there was a way to increase the 5 acre maximum for a QLP. The bottom line is the ruling came straight from the original legislation and there is no way to change the State law. Director Meis stated he didn't think his comment was to necessarily change the 5 acre. What it was, as we load up this MS4, the next step in this evolution and timeline, I want to make sure the Authority becomes a QLP. I wanted to make sure that the next step on the timeline you presented at the last meeting, in my opinion, was getting that QLP as the next checkbox. I recognize, and have recognized with his discussions with Ms. Constan, that the 5 acre issue doesn't have a chance in changing that.

Manager Mende state there is one potential fatal flaw to the idea of the Authority becoming a QLP although he has not had the opportunity to fully research it with the State regulators. The way it is written, the implementation of the QLP has to be throughout the jurisdiction, and I don't know what that term means. Throughout the Authority's jurisdiction? Throughout the County's jurisdiction? What it may mean is it may have to be implemented outside of the urbanized area, and we have taken great pains to make sure the program is implemented only within the urbanized area. Director Meis stated he would think it would be within your district or whatever your area of influence is or coverage. How would you be able to have a QLP outside of your district? Chairman Walker stated an example of Fruita having to be included whereas currently Fruita is outside the urbanized area and don't require a local permit. Manager Mende agreed with the example and added it could also include portions of Mesa County that are outside of the urbanized area are not subject to the local program either and it may bring those folks in there, for example, 24 and Q Roads. Manager Mende will continue researching this and report back to the Board.

#### **Agenda Item 9 – Manager's Report**

Manager Mende stated the big item on the Manager's Report is the postponement of the MS4 Permit submittal. The legal review is always the critical path for these types of documents, and once again, it has proven to be the case. The City, County, and Authority attorneys are reviewing these documents. As we have gone through the various revisions, we are on revision 4 of the IGAs as well as multiple revisions of the Program Description, and with the multiple revisions we've ended up taking text out of one document or putting text in the other, and it is entirely my fault that these documents are no longer coordinated. We have different commitments in the IGA and than what we are stating in the Program Description. The opinion of the Authority's attorney is that those commitments need to be as close as

possible as you don't want to make a commitment to the State that is different than the commitment the Authority is making to the contracted parties. They have to be identical. There are also a couple of instances where the text of the Program Descriptions can lead to an interpretation at the State level on the extent of the program that is different than is written in the IGAs. For example, there were provisions within the Program Description, which we deleted that stated this program applies within the urbanized areas and there are specific projects that are excluded such as: State owned properties are excluded; projects outside of the urbanized boundary within the County are excluded; utility projects that do not fall underneath the County's jurisdiction as the County doesn't have any hook to regulate and are also excluded from this program. The State may interpret those programs differently. For example, they may see Clifton Water putting in a water line and disturbing more than an acre, the State may say that's covered and that's within your jurisdiction, why aren't you issuing a permit. There is the opportunity for miscommunication which has potential liabilities for the Authority. So based on that and based on the continuing legal review at the City and County, it wasn't ready for the Board to review. Having said that, the GVDD had a Board meeting yesterday, and we have worked out some text differences that were consistent with the Authority attorney's comments: Those have been incorporated in the GVDD versions; and they did pass those yesterday. So that is complete. We have another round of edits I sent out this afternoon to the City, County, and Palisade, and the TAC will get together and work through those in the next week or so. Chairman Walker summarized that these are all legal concerns that the individual entities may have, before we can submit this to the State for the upload and anticipate the State coming back and telling us we have greater issues in regards to enforcement. Manager Mende stated this was just the coordination between the various attorneys, the contracting parties and the Authority. So it is at that level now and doesn't address what the State might come up with. We are still going to submit, per your direction, with the way we want the program to read, but there are differences between the Authority, as a separate entity, and the contracting parties that need to get worked out.

Chairman Walker asked if discussions within the TAC community and managers have started regarding the issues we are going to face as regard to enforcement. Ms. Constan shared that the County Commissioners were briefed yesterday, and have come to the conclusion that the County is going to recommend that the Authority be allowed to issue a NOV of the County's Land Development Code in regards to stormwater permits. The way it would work is prior to the issuance of a NOV, the Authority would go through the County legal and staff to verify that the County is sure the technical and legal background is there and will hold up in a court of law if we put it up there. We are proposing to upload that level of enforcement to the Authority hoping it will make it a little easier for the State to swallow as well as a little more consistency throughout the program. Chairman Walker inquired if it was the County's opinion that each of the other entities would have to sign off on the same process. Ms. Constan stated, no. It is just something the County would like to make our process and workload easier. Our code enforcement staff is already overloaded and it saves our code enforcement staff from having to become the technical expert on stormwater cases when there has already been technical expertise developed in the Authority staff. Director Todd added that the City of Grand Junction has had similar conversations. Ms. List continued that the City chose to wait to see what the County's position was going to be, and now the City will have internal discussions to see if that further enforcement should be uploaded. Chairman Walker asked if there would be a possibility of the Authority's inspector coming up with a situation that goes beyond the Compliancy Advisory letter and moves to enforcement yet, let's take the County's process, the County attorneys review it and deem that it will not hold up in court therefore they don't ask the Authority to enforce it. How would the State view that possibility? Ms. Constan responded that the Authority would have ample opportunity to go back out to the site and continue to work with the site to build a stronger case that would hold up in court. We are only going to be able to do what we can actually take to court. Ms. List stated the other thing we have seen is Ms.



Kirkpatrick's documentation is very good. Director Todd stated the ultimate goal is to educate folks and get them to do the job versus taking them to court. Ms. Constan continued we are trying to put a mechanism in place so that if we have a site that is actively discharging hazardous pollutants and causing problems such as fish kills and that sort of thing we have to have a mechanism where the Authority is taking that process all the way to court. Chairman Walker asked even if the County or the City, depending on where the site is located, decides that they don't want to pursue it. Ms. Constan stated that they don't have choice if there is immediate endangerment to health and environment. Chairman Walker asked what if it is not to that point, but is still in violation of the permit. Ms. Constan responded it would depend on the seriousness of the violation. If the Authority is willing to fight the battle, we'll take a look at it and if we think it can be successful in court.

Chairman Walker inquired with the discussions the City and County are having, are we feeling like we can actually move forward with uploading the permit and getting past the enforcement issue. Ms. Constan replied yes. The review they are asking county staff level would be looking to see if the 'i's are dotted and 't's crossed and the technical side of it. We won't be looking at the political side of it at all. It will be presented to the County Commissioners and that's where the politics will come in. If they are at that level, they are going to have to go to a public hearing and state why they are ignoring the requirements. This may actually get the developer to take a little more initiative and do something. We won't know until we go down that road and see how it is really going to work or not work. Ms. List stated that we have to recognize that our liability involved if there are violations of regulations and the decision is made not to go down that road then that puts us in the position of being liable to the State. Manager Mende stated the current text is in the IGAs, the way the strategy was before yesterday, is when the Authority felt the site was in a state that needed to go to an enforcement process, we would refer it to the City or the County and it would go under their process. The proposal now, instead of doing a referral, states the Authority would do a staff review at the staff or legal level, before we would go ahead and issue the NOV. But the decision to issue an NOV would still be at the City or County. Ms. Constan stated her disagreement with Manager Mende's statement. Ms. Constan continued that more than anything, we are trying to provide a review so that the Authority doesn't issue an NOV and then the County legal department can't do anything with it. We are trying to provide that check so that the NOV will be effective and be utilized once it is issued. We are trying to make the process more efficient. The private community doesn't have to know that we are going to be doing this internal review before the Authority issues the NOV. It should seem seamless to them. Director Todd stated that is how it should be. Chairman Walker stated that what we have learned over the last year or so, this is what the State wants. They want one permit holder with enforcement capabilities. Ms. Constan continued that the problem with the Authority's statute is under the statute it gives the Authority the ability to run programs but it doesn't give it any formal enforcement power. Until that statute is changed that is what puts us in the middle of this bind of having to have land use agencies come back in and do the final piece. Manager Mende stated the land use agencies have the ability to cede that authority. The City of Centennial has already done that with SEMSWA. Ms. Constan asked if their drainage authority actually take a case to court. Manager Mende responded, yes. They issued stop work orders; NOVs; they take them to court; they issue fines. They have been given the authority by the City of Centennial. Ms. Constan asked who's the legal support in these cases. Mr. Ballagh challenged Manager Mende on the issuing of fines as it is usually done by the courts. Manager Mende affirmed that Mr. Ballagh may be correct. Ms. Constan stated that in this case you have Mr. Beckner as your legal support and have a budgeted amount for his services. If you want him to be your legal support in taking cases to court, it is only going to increase our costs more as our in-house legal expertise has already been developed on our land development code. Chairman Walker stated that it just sounds like more than that. It sounds like there is still a need for the County to be able to decide if we're going to go to enforcement in some cases or the City needs to decide, and until we get beyond that we really don't have a consistent

enforcement plan for all five entities. Ms. Constan stated she felt this was a better than what we were doing with the just enforcement referral. The enforcement referral would get mixed in with the other 600+ enforcement referrals and would get less attention. Manager Mende stated there was both an upside and downside. The upside is if you go through the new proposed process, then before the Authority would issue a NOV, there are more people in the basket. Because it has been through the County staff and legal review, they've concurred it is a good case. The downside is there could be a decision to not take something forward. The other down side for the Authority, upside for the County, is we currently only issue an enforcement referral then it goes into their process and any action they take, they are liable for. Right now, under the new proposal, if there is a request by the Authority to issue a NOV and it gets shot down, we are back in compliance assistance mode and we have to re-document our stuff and take it back through. Manager Mende stated he hopes to have the final documents to the Board by next month.

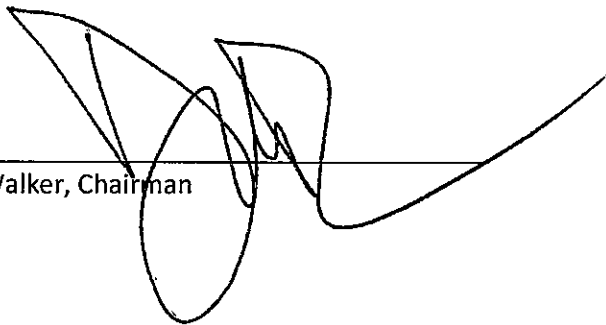
Manager Mende stated we are continuing to upload additional permits from the City of Grand Junction. We did issue an additional permit of our own this week with one pending probably the end of this week. Reviews are way down.

Director Todd shared that Mark Pifher of Aurora just got back from learning everything that is going on with the Clean Water Act around navigatability, and it comes down to what affects us ultimately. They have some exceptions written in so that we don't get back into the wastewater management of potholes, stock tanks, etc., so hopefully those exceptions will be put through.

Director Meis brought up a concern about the review comments received from the Authority on the Band of Brothers SWMP review. In the review comments, ISDS issues were brought up. Needless to say, we have a health department that comments on those issues. We want to make sure we are not a review agency of a review agency of a review agency and so on. I would leave the ISDS issues to the health department and focus strictly on the stormwater issues. It is bad enough we have up to 50 review agencies dependent on the project location, and we want to make sure we are not being duplicative with regards to comments.

Chairman Walker adjourned the meeting at 5:00 p.m. The next 521 Drainage Authority Board Meeting will be held on September 23, 2009, at the Mesa County Courthouse at 3:00 p.m.

David R. Walker, Chairman

A handwritten signature in black ink, appearing to be 'D. Walker', written over a horizontal line. The signature is stylized and somewhat cursive.