

**State Water Infrastructure Authority**  
**North Carolina Department of Environmental Quality**  
**October 14, 2020**

**Note: This meeting was held via WebEx due to the COVID-19 pandemic**

**Meeting Minutes**

---

**State Water Infrastructure Authority Members Attending Meeting via WebEx or by Phone**

- Kim Colson, Chair; Director, Division of Water Infrastructure
- Melody Adams, Director, Rural Grants/Programs, Rural Development Division, NC Dept. of Commerce
- Greg Gaskins, Deputy Treasurer, State & Local Finance Division; Secretary, Local Government Commission
- Leila Goodwin, Water Resources Engineer
- Ed Goscicki
- Maria Hunnicutt, Manager, Broad River Water Authority
- Dr. Bernadette Pelissier
- Juhann Waller, Principal, JC Waller & Associates, PC

**Division of Water Infrastructure Staff Attending Meeting via WebEx or by Phone**

- Cathy Akroyd, Public Information Officer
- Linda Culpepper, Viable Utility Reserve Support
- Julie Cubeta, Community Block Development Grant – Infrastructure Unit Supervisor
- Francine Durso, Senior Project Manager
- Susan Kubacki, Environmental Program Manager
- Jon Risgaard, State Revolving Fund Section Chief
- Amy Simes, Senior Program Manager
- Vincent Tomaino, SRF Drinking Water Unit Supervisor

**Department of Justice Staff Attending Meeting via WebEx**

- Jill Weese, NC Department of Justice; Assistant Attorney General, Environmental Division

**Item A. Call to Order**

Chair Colson opened the meeting and reminded the members of the State Water Infrastructure Authority (SWIA) of General Statute 138A which states that any member who is aware of a known conflict of interest or potential conflict of interest with respect to any matters before the Authority today is required to identify the conflict or potential conflict at the time the conflict becomes apparent.

Chair noted that this meeting is being held via WebEx. All attendees except the members of the State Water Infrastructure Authority are muted to reduce background noise. The PowerPoint slides for the meeting are visible via WebEx; video is not being used.

**Item B. Attorney General's Office Report**

Ms. Weese reported that on Oct. 13, 2020, the Attorney General's Office filed a lawsuit against Chemours to seek financial damages associated with "forever chemicals", such as PFAS, released into the Cape Fear River. This supports actions that have been taken by the NC Department of Environmental Quality.

**Item C. Chair's Remarks**

Chair Colson stated that the deadline for applications for the Fall 2020 funding round was Sept. 30, 2020; staff will provide an update about the applications at the Authority's December 2020 meeting. He reminded

the Authority of the WebEx meeting later today with the Local Government Commission members and asked if any Authority members were not planning to attend; no members indicated that they would not attend.

#### **Item D. Viable Utility Reserve**

Chair Colson updated the Authority on the work of the Viable Utility Reserve Committee.

#### **Distressed Criteria**

The Authority was provided with Agenda Item D, Potential Distressed Criteria, a summary of the proposed distressed criteria with definitions. The Division is leading the development of criteria related to utility organization and infrastructure, and the LGC is leading the development of the utility financial criteria. The criteria mirror the Authority's Master Plan focus on organizational, financial, and infrastructure management, with some of the distressed criteria overlapping the different focus areas.

Since the last Authority meeting, some changes have been made to the financial criteria. A new criterion is whether a unit is behind in submitting its audits for the last two years, and if so, it will be designated as distressed since there is substantial risk when the LGC does not know the financial situation of a unit; this criterion is considered both organizational and financial. Division and LGC staff consider this in keeping with the need to be able to designate some units as distressed even though they may not meet the numerical criteria since there are not enough financial data to fully apply the distressed criteria.

The members of the Viable Utility Committee of the Authority commented that the criteria have been evaluated from a wide range of perspectives and, similar to the Authority's development of other criteria over the years such as the Affordability Criteria, it may need to be modified over time but it will be important to apply the criteria in order to begin the process with distressed units.

Staff noted that there will probably be just over 100 units that will be identified as distressed but not all the units will need funding from the Viable Utility Reserve. Many will be able to take actions on their own or use funding available from the other Division funding programs.

Comments/questions from Authority members:

- Q: There will be a need to make qualitative decisions; who will make these decisions? A: Staff will provide information and recommendations, and the Authority and the LGC will make the decisions.
- Q: Might systems purposefully allow themselves to fall into worse condition to be able to access the VUR grant funds? A: Units that can fund work on their own will not be eligible for the grant funds. In addition, the purpose of the VUR funds is to ensure viability for the long-term and funds are not awarded to just fix infrastructure; the unit must also make permanent organizational and financial changes.

#### **Process Overview**

The Authority was provided with a second item for Agenda Item D, Implementing SL 2020-79 Reform of Water and Wastewater Public Enterprises. The document summarizes the Viable Utility Reserve legislation, a proposed approach to the local government unit assessment which includes both the criteria and the identification of distressed units, education, and implementing action plans. The intended audience is the Authority and LGC members, but it can serve as the basis for other documents that can be used with local government units and the General Assembly. Staff presented a flow chart of the draft distressed system process and will update it as the process becomes more defined. The short-term action plan includes an asset assessment and rate study to determine early in the process if the utility can become financially sound. Staff will modify the flow chart based on a comment at this meeting.

Comments/questions from Authority members:

- Q: Some units might not agree with the Authority and LGC's determination that they are distressed; how would such situations be handled since a unit's buy-in is important for positive results. Will there be opportunities for units to respond and interact with staff? A: A key aspect will be the one-on-one

conversations with the unit's elected officials at the orientation meeting during which staff will review the data used to determine distress and the unit will have the opportunity to provide other data that may lead to a change in the designation. Education of the elected officials and staff is also part of the legislation. Hearing success stories from units that have changed their operations and are no longer distressed will be important. Some of the conversations, especially about rates, will be challenging.

- Q: How will long-term viability be ensured once a unit is no longer distressed? A: The legislation provides that the Authority and LGC may impose specific performance measures or conditions (similar to bond covenants) on any grant awarded from the VUR funds, and adherence will be tracked. The LGC monitors all local government units every year through the yearly audit process and will be able to determine if financial conditions are changing. In addition, the Department of Environmental Quality Division of Water Resources conducts operations monitoring of water and wastewater systems.
- Q: What is the expected timeframe from the orientation meeting through analyzing possible solutions? What will happen if units are not progressing through the process? A: Highly distressed units lack the ability to proceed through the process on their own and in this case, the Division and LGC will direct the work and drive the timeline. Through the education process, the advantages of the program will be presented which include the access to substantial funding not otherwise available as well as the ability to leverage the other funding programs to support viable solutions.
- Q: What will happen if a unit supports a very expensive solution, but another solution exists that costs much less? A: Since the Authority and the LGC approve all funding, both bodies would need to decide that spending the larger amount of funds is beneficial.

#### Potential Recommendations from VUR Committee to Authority at a Future Meeting

Some units are already in a critical situation including two that the LGC has already assumed financial control of and that are already receiving VUR grant funds for emergency operating deficits. Other units have not submitted audits, in part due to the lack of financial records, or the financial indicators are clearly unsustainable even in the short term. As a result, the VUR Committee may make recommendations at the Authority meeting on Nov. 18, 2020, to proceed with designating several units as distressed before the distressed criteria have been finalized. The Committee may also recommend that the Authority approve the expenditure of VUR funds for identified initial work tasks with the stipulation that staff report on how much is spent for which tasks for each unit. This item will be discussed at the meeting today with the LGC Commissioners. VUR Committee members commented that it will be important to proceed with designating these initial units and that working through the process with them will help identify details that may not have been thought of yet. Authority members want to make sure they understand the criteria that indicate the units are distressed, prior to designating them.

The full distressed criteria are likely be presented at the Authority's December 9, 2020 meeting. Once the criteria are adopted by the Authority and the LGC, a list of units meeting that criteria will then be presented to the Authority and LGC to designate the units as distressed.

#### **Item E. Concluding Remarks by Authority Members, Chair and Counsel**

The Authority appreciated the work of the VUR Committee. Chair Colson stated that the program "NC Impact" on WUNC on Oct. 15, 2020 highlights water infrastructure issues in the state and that he and Mr. Gaskins are featured speakers, along with the Mayor of Bethel and staff of the Yadkin Valley Sewer Authority.

**Item F. Adjourn** – The meeting was adjourned.