

MINUTES

Commission Meeting

May 14, 2003
Newport News, Virginia

The May 14, 2003 meeting of the Marine Resources Commission, a continuation of the April 22, 2003 meeting, was held with the following present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Russell Garrison)	Members of the Commission
Laura Belle Gordy)	
F. Wayne McLeskey)	
K. Wayne Williams)	
S. Lake Cowart, Jr.)	
Cynthia Jones)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Katherine V. Leonard	Recording Secretary
Vicki DeBerry	Court Reporter
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief, Admin-Finance Div.
Jack Travelstead	Chief, Fisheries Management
Rob O'Reilly	Deputy Chief, Fisheries Management
Chad Boyce	Fisheries Management Specialist
Roy Insley	Head-Plans and Statistics Dept.
Col. Steve Bowman	Chief, Law Enforcement
Lt. Col. Lewis Jones	Deputy Chief, Law Enforcement
Capt. Warner Rhodes	Supervisor, Middle Area
Capt. Ray Jewell	Supervisor, Northern Area
Capt. Randy Widgeon	Supervisor, Eastern Shore Area
Capt. Kenny Oliver	Supervisor, Southern Area
MPO Minor Stone	Marine Patrol Officer
MPO Ed Guy	Marine Patrol Officer
Tony Watkinson	Acting Chief, Habitat Management
Chip Neikirk	Acting Deputy Chief, Habitat Management

Hank Badger	Environmental Engineer Sr.
Kevin Curling	Environmental Engineer Sr.
Mark Eversole	Environmental Engineer Sr.
Jeff Madden	Environmental Engineer Sr.
Randy Owen	Environmental Engineer Sr.
Jay Woodward	Environmental Engineer Sr.
Benny Stagg	Environmental Engineer Sr.

Virginia Institute of Marine Science (VIMS):

Lyle Varnell
Roger Mann
Tom Barnard

Other present included:

Nancy Howard	Lee Ann Hartman	Peter Gnoffo
Roy Hoagland	Ann Jennings	Christina Mills
D. Sinclair	Ford Carter	John B. Dawson
Tyla Matteson	Cheryl Deutsch	Katie Edgar
Donald H. Phillips	Rose Mary Zellner	Joseph Liggan
Sarah Liggan	Jerry Cox	Kitty Cox
A. H. Fitzgerald	Leslie Fellows	Bance Schnenneker
Dennis Mountcastle	Rodney Tatum	David H. Teagle
Barry Marten	Brian Ramaley	William Richkus
William Dy	David Morris	Daniel B. Horne
J. Ron Harris	J. E. Ryan, Jr.	Joe S. Frank
Ed Maroney	Richard Thomas	W. Todd Henley, III
Kathy Henley	Sarah Henley	John Henley
Philip Henley	Billy Mills	Karl Blankenship
Eileen Leininger	Jay Taylor	Samuel Calhoun
Paul Peterson	Mary Helen Morgan	Del. Harvey Morgan
Amy Johnson	Don Chappell	Peg Babyak
Mary M. Beckett	Raven Wub	Joyce White
Karen Westerman	Jessica Wheeler	Warren Montcastle
Jim Noonan	Thomas Ellis	Sarah Kasler
Ray Waters	H.H. Batemen, Jr.	David S. Bailey
Diane Garrison	Henry Broaddus	Chris French
Dr. Patricia Woodbury	John Davenport	John Moncrief
Tom Rubino	Dennis Waxmunski	Carol Tyrer
Ron Hachey	Kelly V. Place	Dr. Lin W. Custalow
Katie Kissel	Buddy Spencer	Jeffrey J. Blielmel
Francis Broaddus-Crutchfield		Martha Kent

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Madeline McMillan
Melanie Davenport

Rob Ostermaier
Mary Fariss

Joanne Branson

and others.

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Commissioner Pruitt called the meeting to order at 9:30 a.m. All Associate Members were present.

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Commissioner Pruitt swore in the Court Reporter and then all of VMRC, DEQ, and VIMS staff that would be speaking or presenting testimony during the meeting. Then he swore in all others who would be addressing the Commission.

Commissioner Pruitt explained the procedure that would be followed and what behavior would not be acceptable, which would result in the person or persons being asked to leave the hearing.

Commissioner Pruitt explained that the list had been kept under lock and key by VMRC Law Enforcement to assure it was kept intact, and it was considered the same as evidence.

Carl Josephson, Counsel for VMRC, explained that the applicant would be allowed rebuttal.

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Carl Josephson read off the names on the list of speakers.

The following names were called, but were not present at the hearing:

Robert Hughes	Laura or Lynn Rollin	Ronnie Kozlowski
Tom Kozlowski	Page Wilson	Ralph White
Graham Hood	Ed Gran	Laverne Moncrief
Peter Defur	David Gedro	Neil Bates
Joann Bates	B. Leon Custalow	Gregg Lank
Richard Fry	Sharon Hart	Jerrienne Gardener
Edward C. Hogge	Thomas Finderson	Elizabeth Rogers
Lindsay R. Runyon	L. Nelson Fartley	Jacob V. Custalow
Skip Stiles	Sandy Southall	Mike Finchum
Larkin Linton	Mac McFay	Edward Haile
Diane Parker	David M. Fitzgerald	Linda Freemark
Lee Westerman	Douglas Jenkins	Robert Christopher

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Lisa Tracer	Michael W. Lewis	Joshua Rellick
Ann McRee	Ann Brummer	Ernest G. Reed
Steven Heinitz	Ian Borke	Zack Fields
Virginia Andersen	Walter Zadan	Joanne Berkley
Roger Clarke	William B. Grant	Wilcox Ruffin
Sara Greer	Jane Hosan	Gay Johnson
Dottie Mills	Joan A. Rilee	Charles Saunders
Shelley Simms	Amanda Cargile	Leigh C. Mitchell
Joe Lemon	Wester J. Morris	Sheila Noll
Eric Wallberg	Sue Gray Oslon	David A. Dutrow
Paul Garmen	John Shepherd	

Brad Carter was present and his comments are a part of the verbatim record. He expressed his concern that the reservoir would affect the Bay not just the Mattaponi River and for the loss of resources.

Gwynn Weeks, was present and her comments are a part of the verbatim record. She expressed her concern for the destruction of the foliage in the area that would be destroyed and said that the change in the salinity will affect the marine resources as well as the foliage.

Gerry Cox was present and his comments are a part of the verbatim record. He stated that he was very concerned about the loss of marine resources. He explained that the City of Newport News needed the water for uncontrolled growth and it was a water grab for future control. He said he was concerned about the way the USACOE changed and approved the project. He stated that he was requesting denial of the application for permit to protect the fisheries.

John Moncrief was present and his comments are a part of the verbatim record. He explained that there are not just one or two American Shad by the intake. There were also other species such as the herring and perch. He expressed his concern for the wetlands, Cohoke Basin and the Mattaponi River and requested that the Commission deny the application for permit as recommended by staff.

David H. Teagle, resident of Gloucester County and a member of the Wetlands Board, was present and his comments are a part of the verbatim record. He said that the river needed to be preserved for the Native Americans. He said that the reservoir would tarnish the area. He said the Commission should take care of the Mattaponi, as is their duty.

Skip Beattey, a resident along the Mattaponi River, was present and his comments are a part of the verbatim record. He expressed his concern for the marine resources. He said the shad fishermen agreed with the moratorium on the bay and ocean. He further explained that the intake pipe was located close to an eagle's nest, actually beneath the nest. He said there are

herring, rockfish, American eel and vegetation that would all be affected by this reservoir project.

Dr. Lynn Custalow, representative for the reservation and trained in Algae and Environmental Medicine, was present and his comments are a part of the verbatim record. He said the ecology would be affected. He explained that the river goes out 7 hours and come in for 5 hours. He said the river is sacred to the Mattaponi tribe and it was important to their survival because of the income and food it provides. He explained that if the water is drawn after a drought it would affect the natural cleansing of the water. He said that the strainers proposed are not tried and proven, that no research had been done on the strainer. He said the Commission needed to listen to the testimonies today and decide against the project.

Sarah D. Kadick, a James City County resident, was present and her comments are a part of the verbatim record. She said the changes proposed by Newport News were not good. She explained that there was a need for active conservation. She explained that the Norfolk Army Corps of Engineers had denied the permit and mitigation monies could not replace what would be lost. She said it was the responsibility of the Commission to deny the application for permit.

Jay Taylor, a representative for Wetlands Watch, was present and his comments are a part of the verbatim record. He said that the Commission needed to follow the recommendations of VIMS as they are Virginia's experts and also the staff recommendation. He explained that environmental degradation does not just affect shad that it is a permanent blight on the fishery, birds, and foliage. He said everything would be affected. He said the freshwater marshes are affected. He said the city said there was need for 40 million gallons, but the federal government says it needs less. He referred to an article written by Skip Stiles. He asked the Commission to vote no.

Peg Babyak, resident of the Mattaponi River area and operator of a boy's camp. She pleaded with the Commission to do their job in the manner required.

Ron Hachey, King & Queen County Administration representing the Board of Supervisors was present and his comments are part of the verbatim record. He requested that the Commission deny the application for permit.

Joseph Legerr, resident of King and Queen County was present and his comments are a part of the verbatim record. He stated that the City of Newport News was not in compliance with the regulations on the books.

Kelly Place, Waterman and representative for the Coastal Virginia Watermen Association, was present and his comments are a part of the verbatim record. He explained that the

Commission needed to adhere to the subaqueous guidelines, the Sustainable Fishery Act and not make a mockery of the Clean Water Act. He stated that VMRC had a legal obligation and needed to remember the American Shad FMP, Sturgeon FMP, the Treaty of 1667 of Mattaponi tribe and the rights of the minority. He explained that there is no comparison to the Lake Gaston situation in that it differed because of legal and human rights. He explained that the Chickahominy, which was made into a lake by a dam and altered the ecosystem, was a better comparison. He said the Commission needed to follow the recommendations of the USFW, CBF, VIMS, and adhere to the scientific recommendations. He further stated that there were 3,200 watermen and not one had stepped forward to support the project.

Philip Henley, a resident of the Mattaponi River, was present and his comments are a part of the verbatim record. He said the changes will cause much loss and VIMS had stated that the project was unnecessary.

Sarah Henley, a resident of King and Queen County who lived on a farm on the Mattaponi, was present and her comments are a part of the verbatim record. She read a poem she had written about the Mattaponi River and requested that the Commission deny the application for permit.

Kathy Henley, a resident of King and Queen County who lived on a farm on the Mattaponi River, was present and her comments are a part of the verbatim record. She explained that the noise of the intake would affect the fishery. She further explained that the fish follow sounds of falling water to locate spawning areas. She said that the intake noise confused the fish from what VIMS and other experts say.

W. Todd Henley, III, was not present and Kathy Henley read into the record his written comments. He wrote that his farm was only about a 1 and 1/2 miles from the intake. He wrote that in 2002 the drought increased the salt content to 900 ppm in July to 2,300 ppm in mid October. He wrote that the use of the water for irrigation is not good because of the increased salt content. He also wrote that Newport News only wants to draw water in peak times. He asked the Commission to not allow the destruction of the area.

Warren Montcastle, a resident of King William County near Scots Landing was present and his comments are a part of the verbatim record. He explained that 60% of shad larvae was in this area. He said that the intake would affect salinity and spawning. He said that the placement of the intake will destroy the spawning grounds.

Herbert H. Bateman, Jr., Newport News Councilman, was present and his comments are a part of the verbatim record. He explained that he was the son of Senator Herbert Bateman and how his father had worked passionately to help Newport News with their water supply. He explained that as an elected official and therefore representing a group of people that he should be allowed 10 minutes to address the Commission. He stated that in this case public

trust prevailed and that the ecology of the Mattaponi was being protected by the conditions of the Water Control Board permit. He requested that the Commission grant the VMRC permit.

Dennis Waxmuskey, resident of the King William County, member of the King William County Planning Commission, teacher, and a member of the Upper River Watermen Association was present and his comments are a part of the verbatim record. He explained that the marshlands are affected by groundwater withdrawal and these marshes are sinking. He said that the marshlands in this area represent a big percentage of the State's marshlands. He stated that fish spawning will be affected, the American Shad is a very important species and getting better, River Herring population are going down drastically, Striped Bass will be affected by loss of diet if herring is lost. He explained that would lose other species, such as, alewife, hickory shad, and white perch. He stated that VMRC is responsible for the river systems and the fish populations. He explained that the spawning areas are important to the Mattaponi and Pamunkey tribes. He said that VMRC represented all Virginians. He stated he was opposed to the project.

Karen Westerman, a resident of King William County, was present and her comments are a part of the verbatim record. She stated that VIMS and staff recommended against the project. The USF&WS were opposed; conservation organizations were opposed; and a majority of the King William County residents were opposed, and Madeleine McMillan, Newport News City Councilwoman was opposed. She stated that on April 10th, the Mattaponi River was named one of the top 10 endangered rivers by an organization known as American Rivers. She stated that this was a national issue. She quoted Chief W. Custalow, who said, "man thinks he owns nature, but man doesn't".

Peter Gnoffo, who works at NASA and is a resident of Newport News, was present and his comments are a part of the verbatim record. He explained that this was a value judgment and we tend to sell out too quickly our natural resources. He said he didn't believe the projection of need and there was a need to find alternatives. He stated that he was opposed to the project.

Betsy Moncastle, teacher, was present with a group of her students. She asked that her students be allowed into the meeting. She stated that the Commission needed to look out for 7 generations to come and not to take from others. She said that desalination was an alternative. She said we need to give to the future and not jeopardize the Mattaponi. She said there was a need to take care of what was precious. She explained that teaching was a stewardship to teach to young people and give them the knowledge to believe in their government.

Dennis Montcastle, resident on the Mattaponi River, was present and his comments are a part of the verbatim record. He said the Commission needed to protect the marshes, eagles, and the vast number of fish species in the Mattaponi River. He said that there are other

means available and mitigation cannot replace the river system.

Martha Kent, representative for the Preservation Alliance of Virginia, was present and her comments are a part of the verbatim record. She explained that this group had 150 members, which represented 50,000 Virginians. She said the Commission needs to respect other cultures.

Thomas Ellis, member of Global Awareness, as an individual representative, was present and his comments are a part of the verbatim record. He stated that greed, not need, was driving this project. He explained that the decision made today would shape the Mattaponi River and the Bay.

Chris French, representative for Virginia Native Plant Society, was present and his comments are a part of the verbatim record. He reminded the Commission of the 2000 Chesapeake Bay Plan for restoration of the natural resources, of the Public Trust responsibility of the Commission, and the need for them to listen to VIMS recommendations.

Dr. John B. Dawson, was present and his comments are a part of the verbatim record. He asked the Commission to not deny the permit.

Rosemary Zelder, a resident of King and Queen County and manager of a campground on the Mattaponi, was present and her comments are a part of the verbatim. She asked the Commission to deny the permit completely.

John Gregory Henley, resident of King and Queen County who lives on a farm on the Mattaponi River was present and his comments are a part of the verbatim record. He read a poem about the Mattaponi to the Commission.

Cecelia Rapalesky, a resident along the Mattaponi River, was present and her comments are a part of the verbatim record. She said there was no analyzing of the needs of the local farmers and that salty water was not good for irrigation. She asked the Commission to deny this project, because there were other alternatives available.

Cheryl Dorst, was present and her comments are a part of the verbatim record. She said she had a petition by students at Freeman-Douglas High School opposed to the project. She said that there were intake detriments, such as, changes in the salinity, which affect the shad. She said the Commission should follow VIMS' and staff's recommendations.

Jessica Wheeler, a resident of Norfolk and a teacher, was present and her comments are a part of the verbatim record. She stated that she supported all other comments in opposition and that her students were opposed to the project. She requested the Commission to vote no.

Raymond Waters, property owners on the Mattaponi River, was present and his comments are a part of the verbatim record. He stated that he and his wife Mida were opposed to the project and requested that the Commission vote no.

Donald Phillips, a resident of York County and representative of the West Point Hunt Club, was present and his comments are a part of the verbatim record. He said that the water was not needed, it would be less damaging to use alternatives and the project would damage the marine resources. He asked the Commission to vote no.

John H. Walker was not present and Billy Mills read Mr. Walker's written comments into the record. Mr. Walker wrote that he was the owner of Locust Farm on the Mattaponi River. He wrote that the Commission needed to follow the science and VIMS recommendation and deny the project.

Thomas Robeno, resident of King and Queen County and representative for the Save the Mattaponi River. He explained that he represented 1,100 people. He said the Commission should deny the permit, because it was a poor use of water and that there were other alternatives. He stated that he did not believe the quantity requested by Newport News was needed and that it was being requested 30 years before there was a need. He explained that Newport News with the desalinators provides 6 million gallons a day. He said the human population would double in 30 years resulting in 8 million mouths to feed. He explained that the Mattaponi was a non-renewable resource and the spawning grounds it provided were important.

Joyce White, resident of King and Queen County, was present and her comments are a part of the verbatim record. She asked the Commission to do what was right for the Mattaponi River, the fish, and the Native Americans and to deny the permit.

Aubrey Fitzgerald, Chairman of the Airport Commission and former councilman, was present and his comments are a part of the verbatim record. He stated that Newport News was an excellent steward of the water supplies. He said he felt it was better to err on the side of too much water, not too little. He said he didn't agree with VIMS. He requested the Commission approve the permit.

Buddy Spencer, representative of the Peninsula Housing and Building Association and also an executive member of the Alliance for Peninsula Development, was present and his comments are a part of the verbatim record. He stated that he was concerned about the water supply being plentiful. He said approval of the permit would benefit a half million people.

Barry Martin, representing Siemen's of Newport News, was present and his comments are a part of the verbatim record. He said that they supported the construction of reservoir and that there was a need for an adequate and cost effective water supply for the operation of

Siemen's. He requested that VMRC grant the permit for the reservoir, which will contribute to the economic well being of the area.

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Commissioner Pruitt at the end of the presentations by protestants and supporters explained the procedure that would be followed from this point:

- 1) Report by Commission staff.
- 2) Report by Roger Mann, representing VIMS.
- 3) Report from DEQ and Health Department representatives.
- 4) Applicant will be allowed 45 minutes for rebuttal of what has been said previously.
- 5) Questions by the Commission.
- 6) Request for motion.
- 7) Discussion of motion, and
- 8) Vote on motion by Commission.

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Dr. Shai, was present and his comments are a part of the verbatim record. He asked that the Commission deny the project on behalf of the Native Americans and the residents of King William County.

Commissioner Pruitt explained that he had asked that a Committee be established and be made up of City representatives, DEQ, VIMS, and staff. This committee met to discuss the City's mitigation plan.

Tony Watkinson, Acting Chief of Habitat Management, was present and he gave the staff presentation, which is a part of the verbatim record. He explained that along with evaluation addendum there were comments from VIMS, as well as a letter from Brian Remaley, Newport News Director of Waterworks with proposed permit conditions. He said that both documents were submitted last Friday and that was subsequent to the meeting of the committee to discuss the mitigation proposal. He explained that there were additional letters of protest in their packet from organizations as well as from the Fish and Wildlife Service, Annapolis Office. He said that there was also provided a couple of additional letters of support to the Commission. He briefed the Commission on the meeting with the City and VIMS that the Commissioner requested be formed to discuss the mitigation plan. He said VIMS was present and ready to discuss their assessment of the City's mitigation plan. He stated that the staff still could not support the approval of the project because of the location of the intake. He said that if the Commission should decide to approve the project that the time of year restriction should remain in effect even after the moratorium was lifted. He further explained that if approved, the staff would recommend condition 1, time restrictions

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and condition 3, the hatchery mitigation be amended. He explained that it must be clear that the monitoring required for determining the 60-day spawning period should be the responsibility of the permittee. He said also the time and location of the annual release of hatchery raised juvenile shad should be identified by the permittee in consultation with the Virginia Department of Game and Inland Fisheries and/or VIMS and approved by the Commissioner.

He presented to the Commission the conditions suggested by the City:

- 1) Time of year restriction- 60 days shad spawning period.
- 2) Temporary construction protection - February 15 to June 30 time period, taking into account the microtunneling technology for the installation of the intake, use of granular stone materials, turbidity curtains around the intake structure area as construction occurs, and use of clam shell equipment.
- 3) Shad Hatchery Mitigation } plans for hatchery/fish passage
- 4) Fish Passage Mitigation } efforts through mitigation.

He further explained to the Commission the amendments suggested by the staff:

- 1) Time of year restriction - permittee be held responsible to monitor the 60 days spawning period for the shad and that they be approved by the Commissioner as a signal for when to start and stop the spawning period.
- 2) Shad Hatchery Mitigation - time and location of the annual release of hatchery raised juvenile to be determined by the Permittee and DGIF and VIMS with the Commissioner's approval.

Mr. Watkinson talked about the newly received protestants comments. He said that these new protest letters, e-mails, and postcards were giving the same reason as previously given by others. He explained that there were several who stated that they did not feel that the mitigation plans were adequate enough to offset the project's adverse effects and were concerned that the 60-day window for the spawning period was not long enough because the spawning period differs each year. He said they were also concerned that withdrawals in the remainder of the year may be greater and cause additional effects.

Mr. Watkinson stated that if the Commission should decide to approve the project, the staff felt that the final disposal plan for the spoil removed from that area of the intake was needed before issuing the permit and also that the outfall in Beaverdam Creek should be relocated to the Diascond Reservoir.

Dr. Roger Mann, representing VIMS, was present and his comments are a part of the verbatim record. Dr. Mann presented some data tables to assist in his presentation. Dr.

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Mann stated that the intake was in the worst location with respect to the shad. He said that there was a problem using a 60-day window for a stop work period, but it is a reasonable place to start. He explained that if the Commission should decide to approve the project, VIMS would work with the applicant and VMRC to come up with withdrawal limits guidelines. He explained that the percentage of shad spawning that will occur in a 60-day period cannot be that definitive because those numbers are not in VIMS' data at this point. He explained that the start date or end date of the spawning season were not the same every year. He said it needs to be monitored to determine when spawning occurs in a given year. He explained that in previous documents provided by VIMS, there were other species discussed, but information was not available to put them into this situation. He said that shad is the one species that VIMS did have some information about. He asked the Commission that if this permit was approved and the moratorium on the shad was lifted, how can the Commission manage this fishery?

Dr. John Olney, representing VIMS, was present and his comments a part of the verbatim record. He explained the data tables that were presented by Dr. Mann at the request of Associate Member Jones. In response to Associate Member Garrison's question about the effects of construction noise on the fish in the area, he explained that studies by the University of Maryland have shown that shad and herring do avoid certain sounds because of the similarity to predator sounds. He further explained that in studies done in Great Britain it was shown that vibration cause fish to change migratory direction as they would not pass through the sound. He stated he didn't think there was any information on the effects of construction noises on fish.

Dr. Ellen Gilinsky, Virginia Water Protection Program Manager, was present and her comments are a part of the verbatim record. She stated that a Virginia Water Protection permit was issued in 1997 and it was modified in 2002, basically to change dates that had expired for different items due, because the project was still under review for other permits. She said that they did consider project need in relation to other regional water needs in Virginia and where other regions were going to get their water. She stated that they analyzed extensively other alternatives along with the Corps' EIS document. She explained that the permit conditions are very strict and there was allowance for mitigation for the impacts. She said there were specific withdrawal conditions in the permit designed to protect the river ecology by keeping salinity within a historical range. She said they limit the amount of water that can be withdrawn in a given time of year. She explained that the permit directs the city to exhaust other water sources first. She said that this would be the last resort source, not the first. Among other conditions, she said that the city does have to develop a water conservation plan, get it approved and implement it when in a drought condition. She explained there are also 3 monitoring and mitigation plans that are to be developed and refined through public comment. She said there was a salinity monitoring plan, an ecological monitoring plan and the third was the mitigation plan still had to be finalized. She said the public would be given the opportunity to comment on that also at a hearing that the city was

required to hold. She stated that DEQ staff would have to approve the final plans.

Joe Hassell, DEQ Permit Writer, was present and his comments are a part of the verbatim record. He said that when reviewing the project, DEQ did consider whether there was reasonable need and they decided that there was reasonable need. He explained that State water control law says, ...the right to withdraw water from any stream or river in the Commonwealth is limited to the amount that can be reasonably put to use by the public to be served. He said the projection in 1997 was approximately 92,000,000 - 93,000,000 gallons per day. He explained that in 1991 the General Assembly passed a River Basin Water Supply planning law, which directed the DEQ to do this planning. He explained that the city was higher in their projected water need than what was projected in the Water Supply Plan, but it was still within reason. He explained that they decided it was reasonable because their study was dated, only went to 2030 and the population had grown faster than projected. He said that they considered need in this project and felt that it met water control law.

Daniel B. Horn, Virginia Department of Health's Office of Drinking Water representative, was present and his comments are a part of the verbatim record. He explained that the bottom line from the Health Department standpoint is that they believe the project is definitely needed. He explained that they have cited various members of the regional raw water study group and put them on notice that they are expected to develop additional supplies of water. He said they have told them that in accordance with Health Department regulations they need to be doing this now. He stated that as part of the application process, they had evaluated the alternatives and like DEQ found this to be the best alternative to meet the full needs of the regional community.

Randy Hildebrandt, City of Newport News representative, was present and his comments are a part of the verbatim record. He explained the difference in Colonel Carroll's findings then the one of the State. He discussed other alternatives that had been suggested. He said that the Lake Gaston project would not have been done if there were not a need on the Southside for a water supply. He said that the water surplus in Norfolk was temporary and for use by other communities on the Southside. He stated that there was not a source of water in Norfolk to meet the 2050 needs. He explained that the use of the Chickahominy would be poor stewardship and others were already using this source. He explained that the wastewater reuse suggested could not be supported by the Health Department. He said that the kinds of projects talked about do not work in our reservoirs because of the size of those reservoirs and there was no way to do what was done in Northern Virginia.

John Daniel, representing the City of Newport News Raw Water Study Group, was present and his comments are a part of the verbatim record. He said that now the Commission was deciding a single action by a public entity for an extremely public purpose and the potential impacts of that on public property. He said this was different from developing a fishery management plan for the shad fishery and some would have you believe that you are developing a fishery management plan, but we know this Commission would not take a

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single action as before them and call it a fishery management plan anymore than you would contemplate taking that single action to balance the shad fishery budget. He explained that the reason for the need for this project resulted from the Health Department who determined in the 1980's that the Newport News Waterworks and the other peninsula water utilities were at or near a point where they would be required to begin planning for water supply expansion. He said when James City County began making these plans, the Environmental Protection Agency came in and said that the Peninsula needed to find a regional water supply, which served a lot of constituency and one less intrusive on the natural resources of the Commonwealth. He explained that the Raw Water Study Group had been working on a regional plan for a water supply and drought management for the past 16 years. He said that this plan has been reviewed by many groups and agencies and some have issued permits and have also offered constructive suggestions, which is a usual practice for the Commonwealth.

He said that the reason we are here was because of the Commonwealth. He said that because of the drought last summer many, many people along with the Governor had developed a Water Supply Planning process to address drought circumstances and to try to reinvigorate the necessity of water supply planning in the Commonwealth. He explained SB1221 says that....local or regional water supply plan shall be prepared and shall be presented to the Department of Environmental Quality in accordance with the criteria and guidelines developed by the board. Such criteria and guidelines shall take into account existing local and regional water supply planning efforts and requirements imposed under other State and federal laws. He said that Newport News and the multiple partners should not be penalized just because it started making these plans before this legislation would be in effect.

Joe Frank, Mayor for the City of Newport News, was present and his comments are a part of the verbatim record. He said that if the VMRC denies this project, then the Corps could not move forward and that would effectively kill it. He said that it's not for this generation that this water was needed, it is for the generations to come of Virginians that will live on this peninsula. He said that this is for the people who we will never know, but whose lives will be touched by the decision made on this project by VMRC. He said this is important to the military bases, which are important to the nation's defense, and need to be included in the water service. He said Newport News Shipbuilding would need this water in their shipbuilding operation. He explained this is also very important to the economy and area businesses. He said that people do not just need to eat as mentioned by a previous speaker, but also need to drink. He said in good faith we have brought forward a project, because at the initial stage the Health Department said that the water supply had gotten to the critical level where it was predictable that we would not have adequate raw water supplies unless we began planning for the future. He stated that was in 1987. He explained that 35 alternatives and technologies had been looked at since that time. He said that the City, the Corps, and the Department of Environmental agreed this project was the least environmentally detrimental, it was a reasonable demand, the need was demonstrated, and this project was the least harmful of all the alternatives considered to the environment and still met the needs of the

citizens of this peninsula for the study period 2050. He said the people of the Commonwealth have put their confidence in the Commission through their elected officials to make this decision. He said the Commission's duty is to look at the benefits and impacts and to determine whether the benefits outweigh the detriments. He also said that the Commission must determine whether the mitigation is reasonable and effective. He said that he hoped that on behalf of the 600,000 people, businesses, and future generations that the Commission will make a decision to allow the peninsula the opportunity to move forward in a positive way and to continue to play the effective role it had in the well being of this Commonwealth.

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EXECUTIVE SESSION:

Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvened in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to:

CITY OF NEWPORT NEWS, #93-0902. On behalf of the Regional Raw Water Study Group, the City requests authorization to construct a 75-million gallon per day (mgd) raw water intake structure in the Mattaponi River at Scotland Landing, and a raw water distribution line under Cohoke Creek in King William County and the Pamunkey River between King William and New Kent Counties, as well as a water discharge structure in Beaverdam Creek, a tributary to Diascund Reservoir in New Kent County, in association with the City's proposed King William Reservoir Project.

The motion was seconded by Associate Member Cowart and carried unanimously, 8-0.

Associate Member Ballard moved for the following:

**CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION**

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member McLeskey seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Ballard, Birkett, Pruitt, Garrison, Cowart, Williams, Gordy, Jones and McLeskey.

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried unanimously, 9-0.

**Clerk/Secretary
Virginia Marine Resources Commission**

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Commissioner Pruitt upon reconvening from the Executive Session stated that the matter was now before the Commission.

All Associate Members and Commissioner Pruitt made disclosure statements of the many contacts from the public and that they had read all the information that is in the public record.

Commissioner Pruitt asked for questions from the Commission.

After many questions and much discussion, which is a part of the verbatim record, Commissioner Pruitt again asked for a motion.

Associate Member Garrison made a motion that the City of Newport News, #93-0902, application for permit, be denied. He further explained that consideration had been made of all documents, staff recommendations, other agencies input, applicant

representatives input, all public comments, and Section 28.2-1205 of the Code of Virginia.

Associate Member Cowart seconded the motion. He read into the record Section 28.2-1205 of the Code of Virginia and discussed Article 11 of the Constitution, which are a part of the verbatim record.

Commissioner Pruitt asked for questions and discussion of the motion.

Associate Member Ballard stated that he could not support the motion from what was heard and when considering duties to balance the rights of usage, the public trust responsibilities, and Section 28.2-1205 of the Code. He further stated that he felt that everything had been done to minimize the effects of the project. He said the Commission had to balance against projections and side with 600,000 people. He said he could only see minimal adverse effects.

Associate Member McLeskey stated that he could not support the motion and wanted to err on the side of public drinking water now and in the future.

Associate Member Cowart stated that he disagreed with Associate Members Ballard and McLeskey. He stated that the public trust needed to be considered and should not infringe on the local rights. He stated there were a lot of fisheries compromised. He felt the Commission should follow the Staff's and VIMS' recommendations. He said the impacts on fisheries and salinities affect tidal grasses. He paraphrased Colonel Carroll of the USACOE, who wrote that the water intake sustained withdrawal would affect the ecosystem and the nutrients in the water.

Associate Member Williams stated that their duties are clear in 28.2-1205 of the Code. He said the city did a better job, but there were still too many questions unanswered. He said that there were other species to consider. He said he could not agree to support the permit and supported the motion.

Commissioner Pruitt asked for further questions and comments. There being no further questions or comments he asked for a vote on the motion:

Garrison - Yes	Jones - Yes	Ballard - No
Cowart - Yes	McLeskey - No	Birkett - Yes
Gordy - Yes	Williams - Yes	

The motion carried, 6 - 2.

Commission Meeting

**12402
May 14, 2003**

The meeting was adjourned at 4:51 p.m.

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William A. Pruitt, Commissioner

Katherine V. Leonard, Recording Secretary