

**AGREEMENT FOR SUPPLEMENTAL HEARING
IN SETTLEMENT OF LITIGATION**

This Agreement is made by and between the City of Newport News, Virginia (City) and the Virginia Marine Resources Commission (VMRC), for the purpose of settling, compromising, resolving and concluding that certain litigation in the Circuit Court for the City of Newport News known as *City of Newport News v. Virginia Marine Resources Commission*, Chancery No. 37247-PT (the litigation). The City and the VMRC (collectively, the parties) have agreed to settle the litigation upon the following terms and conditions:

REMAND

1. The parties will ask the Circuit Court, promptly, but no later than one week after the execution of this Agreement, to remand the case to the VMRC for further proceedings in accordance with this Agreement and to dismiss the litigation as agreed, with prejudice, but without prejudice to the City's right, pursuant to Code of Virginia § 28.2-1205.F, to bring a new appeal from any subsequent adverse agency decision on remand. Counsel for the parties will submit an agreed Final Decree to the Court in the form attached to this Agreement as Exhibit 1. The agreed decree will include withdrawal of the Court's January 6, 2004 letter opinion in the litigation. All obligations of the parties other than those set forth in this paragraph 1 are conditional upon the Court's entry of the agreed decree. If the Court does not enter the decree within fourteen days of the parties' request that it do so, either party may terminate this Agreement. In that event this Agreement shall be terminated and of no further effect, and the parties shall have no further obligations hereunder, and the litigation shall proceed as if this Agreement had not been reached.

2. The parties will make their best efforts, in all good faith, to conclude the proceedings on remand on or before August 15, 2004 or as soon thereafter as possible.

3. The VMRC will conduct a new informal hearing in Newport News and render a new decision on the City's permit application number 93-0902. The Commissioner will preside at the hearing. The VMRC will set aside two days for the hearing and its subsequent deliberations. VMRC will attempt to set aside consecutive days for this purpose, but, if scheduling conflicts arise, may set aside non-consecutive days provided any intervening period is minimized to the extent possible.

4. The City, as applicant, will be allowed up to a maximum of four hours to present its case in chief, including its opening statement. The public will also be allowed to comment. Public commentators who oppose the project, collectively, will be allowed up to an amount of time equal to the time allowed to the City to present its case in chief plus the time taken by public commentators who support the project. The City will be allowed up to a maximum of two hours to present its case in rebuttal, including its closing argument.

5. All participants and commentators will be limited to presentation of testimony and evidence regarding the potential impacts of the proposed Mattaponi River raw water intake for the King William Reservoir Project on the early life history stages of American shad that utilize the Mattaponi River as spawning and nursery grounds and other fishery resources the Commission is entrusted to protect. The Commissioner, in his discretion, will use his best efforts to exclude irrelevant and/or duplicative testimony and evidence.

6. The City will be allowed to respond fully to any questions posed by the Commissioner or members of the Commission. The time required to respond fully to such questions, up to two hours maximum, will not be charged against the time allocated for the

City's case in chief or its case in rebuttal. Similarly, the time to respond to questions posed by the Commissioner or members of the Commission to public commentors opposed to the Project, up to two hours maximum, will not be charged against the time allocated for public commentors opposed to the Project.

7. The record made at the previous hearings of this matter will be included in the record on remand and made available to the Commissioner and each member of the Commission at least four weeks prior to the hearing. The Commission's decision will be based on the existing record and the record of this agreed supplemental hearing. VMRC staff may elect to provide a written summary of such record to the Commissioner, to each member of the Commission, and to the City at least two weeks prior to the hearing. Such summary shall also be made available for public review and comment. The City may, if it so chooses, provide written and/or oral corrections, clarifications, amplifications, and/or rebuttals of the staff summary. Any written comments on the staff summary, by the City or the public, shall be submitted no later than seven days prior to the hearing and distributed promptly to the members of the Commission.

8. The City will be allowed to direct non-objectionable questions, through the Commissioner, to representatives of the Virginia Institute of Marine Science (VIMS), VMRC staff, and other State and/or federal agency representatives who testify at the hearing.

9. The City may identify State agency personnel whom it desires to present as witnesses at the hearing; and provided that it does so no later than 21 days before the hearing, the Commissioner shall take necessary steps to assure the attendance of such personnel at the hearing including, if he deems necessary, the issuance of subpoenas.

10. The City agrees not to seek any subsequent formal hearing of its application pursuant to Va. Code § 28.2-216.

WRITTEN SUBMISSIONS AND COMMENTS

11. The City may present an amendment to its Joint Permit Application, a detailed report on fisheries issues (as described in ¶ 5 of this Agreement), and other documentary evidence in support of its application to the VMRC no later than April 1, 2004; and thereafter such written submissions as it may deem advisable, in response to comments, reports or other materials received by the Commission. The VMRC will promptly issue a public notice and invite public comments on the amendment to the City's Joint Permit Application and supporting materials. A maximum of 30 calendar days will be allowed for written public comments. The public notice shall specify that all written comments must be limited to the potential impacts of the proposed Mattaponi River raw water intake for the King William Reservoir Project on the early life history stages of American shad that utilize the Mattaponi River as spawning and nursery grounds and other fishery resources the Commission is entrusted to protect.

12. The VMRC will invite VIMS to review and comment on the amendment to the City's Joint Permit Application and supporting materials. The VMRC will use its best efforts, in all good faith, to obtain any VIMS comments at the earliest possible date. The VMRC will provide any VIMS comments to the City immediately upon receipt.

13. The VMRC hearing will be convened no sooner than twenty (20) days after VIMS' comments are provided to the City and as soon as possible thereafter.

14. The VMRC staff shall make its written report and recommendation available to the Commission and the City no later than 6 working days before the hearing.

STIPULATIONS

For purposes of the proceedings on remand and any subsequent proceedings related thereto, the parties hereby agree and stipulate to the following:

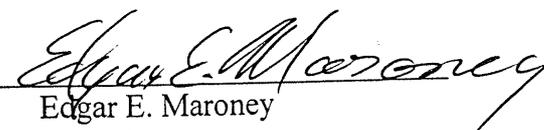
1. VMRC staff has advised the Commission that “[w]hile additional water for the Lower Peninsula is obviously the benefit of the project, Commission Staff has not attempted, nor do we feel qualified, to determine the validity of various assessments regarding future water needs. We can only report there are different opinions regarding this matter.” Habitat Management Division Evaluation, April 22, 2003.
2. The Virginia Department of Health (VDH) is qualified by authority, expertise and experience to make judgments regarding public water supply needs. The Virginia Department of Health (VDH) is charged by law with the regulation of waterworks to guarantee an adequate supply of pure water to the public served. VDH has evaluated the need for the King William Reservoir Project and has concluded that the water it will supply is needed.
3. The State Water Control Board (SWCB) and its staff at the Department of Environmental Quality (DEQ) are qualified by authority, expertise and experience to make judgments regarding public water supply needs. When issuing Virginia Water Protection (VWP) Permits, the SWCB and its staff at DEQ are guided by state law which limits the right to use water to an amount that is reasonably required for the beneficial use of the public to be served; and the SWCB is authorized to limit the volume of water which may be withdrawn as a part of a permitted activity. When considering the City’s VWP permit application, DEQ staff evaluated the need for the water to be supplied by the project and concluded that it was reasonable; and the

SWCB issued a VWP permit authorizing withdrawals from the Mattaponi River in the amounts requested in the joint permit application, subject to certain conditions set forth in the permit.

4. The Governor of Virginia submitted a "Commonwealth of Virginia Public Interest Review: King William Reservoir," dated May 3, 2001, to the U.S. Army Corps of Engineers. That Public Interest Review reached the conclusion that the RRWSG needs the King William Reservoir project in order to provide the additional water necessary to serve its citizens.

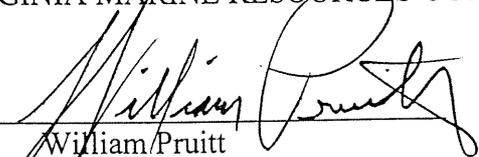
5. The position of the United States Army Corps of Engineers with respect to the need for the project is as stated by the North Atlantic Division Commander in his Memorandum for Record, Subject: Decision Memorandum for King William Reservoir Project, Norfolk District Application No. 93-0902-12, September 30, 2002, i.e., that there is a need for reliable, dependable, additional water to be available to the lower Virginia Peninsula and the King William Reservoir is the least environmentally damaging practicable alternative to meet that public need.

THE CITY OF NEWPORT NEWS

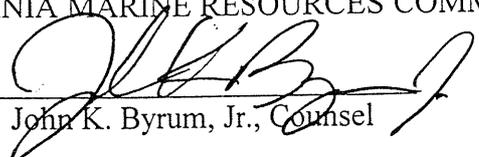
By: 
Edgar E. Maroney
City Manager

By: 
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VIRGINIA MARINE RESOURCES COMMISSION

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Commissioner

VIRGINIA MARINE RESOURCES COMMISSION

By : 
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