

Minutes of Water Resources Board Meeting - October 5, 1979

A meeting of the State Water Resources Board was held October 5, 1979, in the Conference Room at 1205 Greenbrier Street, Charleston, West Virginia, on the call of the Chairman. The meeting was called at the request of Larry George, Dr. Donald Brannon and Dr. Edward Crum, by their letter to John C. Ailes, Chairman, dated September 16, 1979. The Chairman had set the time for the meeting for 9:00 a.m., October 5, 1979, instead of the requested time of 1:30 p.m., a change concurred in by Dr. Crum in his letter dated September 24, 1979 on behalf of himself and Dr. Brannon. NA Press Release entitled "Water Resources Board to Meet" marked FOR RELEASE: September 26, 1979, was prepared and delivered to the appropriate offices in the Capitol.

Copies of the aforementioned letters and press release are hereto attached and made a part of these minutes. (The originals of the two letters are placed in the Board's files.)

9:00 a.m. Mr. Forrest H. Kirkpatrick pointed out to Chairman Ailes that a quorum was not present at the time set by the Chairman's call for the meeting because of the absence of Mr. George, Dr. Crum and Dr. Brannon. Acting Secretary Madge Hill stated that she had just received a phone call from Dr. Crum informing her that he and Dr. Brannon were meeting Mr. George at the airport and would arrive something after 10:00 a.m. Chairman Ailes and Mr. Kirkpatrick agreed that they would not declare the meeting adjourned for lack of a quorum at the time and place agreed to by the members who had requested the meeting, as they felt that as a matter of courtesy to the attorneys and other persons scheduled to appear, they would wait for a quorum.

10:00 a.m. Attorney and party arrived for New River Company.

10:30 a.m. Dr. Crum, Dr. Brannon and Larry George arrived, and Mr. Ailes called meeting to order. Mr. Kirkpatrick voiced his objection to the Board members for their tardiness.

10:35 a.m. Meeting called to order to discuss New River Company's "Extension of Time" on Appeal No. 104, Case 284. An appeal has been filed in the Circuit Court of Kanawha County.

In attendance for New River Company were:

Larry Gonzales, Attorney-at-law
Frank Getty - Consulting Engineer

In attendance for the Chief were:

Karen Watson and Bob Pollitt - Assistant Attorney Generals
Paul Ware and Harold Dunbar - Water Resources staff.

Gonzales presented his argument of "Extension of Time", saying 30 days was not long enough to submit a valid application. He said more time was needed to determine exact data on 1) flow of water (parameters), 2) Available land area, 3) oxidation rates, before an application could be filed. Gonzales introduced Mr. Frank Getty, consulting engineer, who he pointed out had been employed by New River for two weeks. Gonzales ask to be granted a February 1, 1980 deadline for submitting an application.

Karen Watson responded for the Chief in opposition to the Motion for Extension of Time on the grounds that New River had from 1973 (6 years) to study problems and that the Board's Order of July 31, 1979 was reasonable.

Larry George made motion that the "Extension of Time" be granted,

as he said New River has shown a marked change of attitude.

John Ailes called for an executive session.

RESULT: The Board agrees to grant New River Company an extension of time until February 1, with a condition that a biweekly progress report be sent to the Chief, with a copy to Mr. Ailes and Board members.

11:30 a.m. Bob Pollitt made a statement that he was to converse with Robert Chambers, attorney for Parrish Manor Mobile Home Park, in regard to 1) Findings of Fact, and 2) Comments. Mr. Pollitt is to provide the outcome of this discussion to the Board within 10 days from Tuesday, October 9, 1979.

11:45 a.m. Ron Shipley, Assistant Attorney General, discussed the question of jurisdiction of the Board on NPDES permits. Mr. Ailes' opinion is that the Board has no jurisdiction on NPDES permits since they are federal. Mr. Shipley stated he had two cases in Circuit Court (Monongahela Power and Consolidation Coal) which deal with jurisdiction. After much discussion on whether this is state or federal, Mr. Shipley stated he would get back with the Board on this matter.

12:00 Karen Watson brought up the subject of Oil and Gas, Regulation 23. She is obtaining affidavits for testimony and is talking with persons who may be qualified as "Experts" in court. She stated a hearing date in Circuit Court has not been set, and she will advise as soon as such date is scheduled.

12:10 Lunch

1:00 p.m. Meeting called to order, and discussion on the matter of electing a chairman and vice-chairman was brought up. Mr. Ailes stated he did not see where the statute provides for a vice-chairman, but added he would respect an opinion from the Attorney General's office.

Dr. Crum made a motion to have the chairman request an opinion for the Board. The question is whether or not, under the statute, the Board can have a vice-chairman, and if so, what his duties and authority would be.

In discussion on the "Rules of Conduct", a motion was made that 1,2 and 3 be tabled pending a decision on the vice-chairman position. It was also moved that Nos. 4,5 and 6 would await the hiring of a temporary replacement for the Board secretary.

1:30 p.m. John Ailes recessed to interview applicant for secretary of the Water Resources Board.

2:00 p.m. Meeting called to order again with Larry George introducing a study by the Corps of Engineers called "Study of Runoff Impacts Due to Landuse in the Big Sandy and Cumberland River Basins of West Virginia, Kentucky, Virginia and Tennessee", with motion to endorse the study and recommend it be funded. Ailes, Kirkpatrick and Brannon questioned whether the Board should get involved in recommending policy and opposed endorsement. Motion failed, George and Crum voting "aye"; Brannon, Kirkpatrick and the Chairman voting "na".

2:30 p.m. A tentative meeting was scheduled for October 19, 1979, in Morgantown, to discuss the proposed regulations on water quality standards and EPA-NPDES permits, with Patrick, West Virginia Law School.

3:20 p.m. Meeting adjourned.