

**Virginia Soil and Water Conservation Board**  
**Thursday, January 14, 2010**  
**Association of Electric Cooperatives, Glen Allen, Virginia**

**Virginia Soil and Water Conservation Board Members Present**

Linda S. Campbell, Chairman	Joseph H. Maroon, Director
Susan Taylor Hansen, Vice Chair	Darlene Dalbec
Gary Hornbaker	Jerry L. Ingle
Daphne W. Jamison	Jean R. Packard
Raymond L. Simms	
Ray Dorsett for John A. Bricker, NRCS, Ex-Officio	

**Virginia Soil and Water Conservation Board Members Not Present**

C. Frank Brickhouse, Jr.

**DCR Staff Present**

Russell W. Baxter	Robert Bennett
Ryan J. Brown	William G. Browning
David C. Dowling	Michael R. Fletcher
Jack E. Frye	Jim Robinson
Lee Hill	
Elizabeth Andrews, Office of the Attorney General	

**Others Present**

Wilkie Chaffin, Virginia Association of Soil and Water Conservation Districts  
Kendall Tyree, Virginia Association of Soil and Water Conservation Districts  
Bruce Kay, Lake of the Woods Association President  
Ted Wessel, Lake of the Woods Association General Manager  
Shannon Varner, Troutman Sanders  
Barrett Hardiman, Homebuilders Association of Virginia  
William E. Nowers, Lake of the Woods resident  
Bob Fink, Westmoreland County  
Erin Hawkins, Lynchburg  
Clark Draper, Scottsville  
Peter Sevcik, Albemarle County

**Call to Order and Introductions**

Chairman Campbell called the meeting to order and declared a quorum present. She noted that Mr. Maroon was delayed at the General Assembly and that Mr. Baxter would serve as his designee until he arrived.

**Approval of Minutes from November 19, 2009 and December 9, 2009**

*November 19, 2009*

Mr. Brown provided a correction to the November DRAFT minutes with regard to the Dam Safety, Flood Prevention and Protection Assistance Fund.

MOTION: Ms. Packard moved that the minutes from the November 19, 2009 meeting of the Virginia Soil and Water Conservation Board be approved as submitted by staff and as amended by staff at this meeting.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried unanimously

*December 9, 2009*

MOTION: Ms. Hansen moved that the minutes of the December 9, 2009 meeting of the Virginia Soil and Water Conservation Board be amended on page 32 with reference to the opinion of the Board regarding substantive changes to the Stormwater Management Regulations and that the minutes should reflect that the Chairman opened the floor for a motion, but no motion was made.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion to amend was approved unanimously

MOTION: Ms. Packard moved that the minutes of the December 9, 2009 meeting of the Virginia Soil and Water Conservation Board be approved as amended by Board action.

SECOND: Mr. Hornbaker

DISCUSSION: None

VOTE: Motion carried with Mr. Simms abstaining

REVISED: 4/7/2010 9:10:17 AM

**Dam Safety Certificates and Permits**

Mr. Browning presented the Dam Safety Certificates and Permits. He distributed an updated list of requested dam safety actions.

Mr. Browning said that there had been no change with regard to Enforcement Actions and that no action was needed by the Board.

*Conditional Certificates*

Mr. Browning presented the recommendations for Conditional Certificates.

3	Bear Creek Dam	04902	CUMBERLAND	1 Year Conditional
4	Silver Lake Dam	06922	FREDERICK	1 Year Conditional
5	Woodhaven Dam	12701	NEW KENT	1 Year Conditional
6	Arey Dam	14312	PITTSYLVANIA	1 Year Conditional

Mr. Browning noted that the Director should abstain from voting on the Bear Creek Dam, Inventory #04902.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the Conditional Operation and Maintenance Certificate Recommendations as presented by DCR staff and that staff be directed to communicate the Board action to the affected dam owners.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried with Mr. Baxter abstaining

*Regular Certificates*

Mr. Browning presented the following Regular Certificate recommendation.

4	Deep Run Farm Dam	11315	MADISON	6 Year Regular
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MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the Regular Operation and Maintenance Certificate Recommendation as presented by DCR staff and that staff be directed to communicate the Board action to the affected dam owner.

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

*Permit Certificates*

Mr. Browning presented the recommended list of Construction and Alteration Permits.

5	Lake Monroe Dam	09906	KING GEORGE	1 Year Alteration
6	Woodberry Forest Lake Dam	11316	MADISON	2 Year Construction

MOTION: Mr. Simms moved that the Virginia Soil and Water Conservation Board approve the Permit Recommendations as presented by DCR staff and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Hansen

DISCUSSION: None

VOTE: Motion carried unanimously

*Extensions*

Mr. Browning presented the list of Extension Recommendations.

4	Clover Dam	00341	ALBEMARLE	1 Year Extension
5	Crozet Sportsman Club Dam	00345	ALBEMARLE	1 Year Extension
6	Mountain Valley Dam #1	00385	ALBEMARLE	1 Year Extension
7	East Fork Falling River Dam #7	01102	APPOMATTOX	1 Year Extension
8	East Fork Falling River Dam #15	01103	APPOMATTOX	1 Year Extension
9	East Fork Falling River Dam #21	01104	APPOMATTOX	1 Year Extension
10	Elk Garden Dam	01930	BEDFORD	1 Year Extension
11	Willis River Dam #3	02903	BUCKINGHAM	1 Year Extension
12	Willis River Dam #4	02904	BUCKINGHAM	1 Year Extension
13	Willis River Dam #5E	02905	BUCKINGHAM	1 Year Extension
14	Willis River Dam #5F	02906	BUCKINGHAM	1 Year Extension
15	Willis River Dam #6A	02908	BUCKINGHAM	1 Year Extension
16	Willis River Dam #9	02910	BUCKINGHAM	1 Year Extension

17	Little Falling River Dam #1	03101	CAMPBELL	1 Year Extension
18	Little Falling River Dam #2	03103	CAMPBELL	1 Year Extension
19	Little Falling River Dam #3	03104	CAMPBELL	1 Year Extension
20	Swift Creek Dam	04104	CHESTERFIELD	1 Year Extension
21	Chesterfield Power Station Dam	04145	CHESTERFIELD	1 Year Extension
22	South Wales CC Dam	04710	CULPEPER	1 Year Extension
23	Burnt Quarter Dam	05307	DINWIDDIE	1 Year Extension
24	Kinloch Farm Dam	06109	FAUQUIER	1 Year Extension
25	Coventry Dam	06118	FAUQUIER	1 Year Extension
26	Lake Monticello Dam	06501	FLUVANNA	1 Year Extension
27	Upper Blackwater River Dam #4	06702	FRANKLIN	1 Year Extension
28	Sheppard Dam	06907	FREDERICK	1 Year Extension
29	Meadow Lake Dam	06909	FREDERICK	1 Year Extension
30	Twin Lakes Dam #2	07912	GREENE	1 Year Extension
31	Twin Lakes Dam #1	07913	GREENE	1 Year Extension
32	Greene Mountain Lake Dam	07915	GREENE	1 Year Extension
33	Forest Lake Hills Dam	08518	HANOVER	1 Year Extension
34	Gillie Creek Dam	08703	HENRICO	1 Year Extension
35	Horse Pasture Creek Dam #2	08909	HENRY	1 Year Extension
36	Little Creek Dam	09506	JAMES CITY	1 Year Extension
37	Cranstons Dam	09513	JAMES CITY	1 Year Extension
38	Horsepen Dam	10707	LOUDOUN	1 Year Extension
39	Dulles Airport Dam	10708	LOUDOUN	1 Year Extension
40	Northrup Dam	13706	ORANGE	1 Year Extension
41	Lower Byers Dam	14506	POWHATAN	1 Year Extension
42	Westlake Dam	14533	POWHATAN	1 Year Extension
43	Avery Dam	14534	POWHATAN	1 Year Extension
44	Prince Edward Dam	14704	PRINCE EDWARD	1 Year Extension
45	Spring Valley Lake Dam	77002	CITY OF ROANOKE	1 Year Extension

Mr. Browning noted that the Director would need to abstain from action regarding items 20 and 44 as those dams are owned by the Department. He also noted that Ms. Jamison should abstain from action on items 27 and 35 as those dams are owned by the Blue Ridge Soil and Water Conservation District.

**MOTION:** Ms. Hansen moved that the Virginia Soil and Water Conservation Board approve the list of Extension Recommendations as presented by DCR staff for rows 6, 10, 21, 24-25, 33-34, 37-43 and 45 contingent upon receipt of the required fee and that DCR staff be directed to communicate the Board actions to the affected dam owners.

**SECOND:** Ms. Dalbec

REVISED: 4/7/2010 9:10:17 AM

DISCUSSION: None

VOTE: Motion carried unanimously.

MOTION: Mr. Ingle moved that the Virginia Soil and Water Conservation Board approve the Extension Recommendations as presented by DCR staff for items 20, 27, 35 and 44 and that DCR staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Mr. Simms

DISCUSSION: None

VOTE: Motion carried with Mr. Baxter and Ms. Jamison abstaining.

**Lake of the Woods Association, Inc. Staff Report to President Bruce Kay's comments to the VSWCB on November 19, 2009**

Mr. Browning gave an update regarding the status of the Board recommendation for Lake of the Woods. He distributed a staff recommended motion for Board consideration.

Ms. Campbell reviewed the history and the staff recommendation.

Subsequent to the Board issuing Lake of the Woods Dam, Inventory Number 13701 a Class I Conditional Operation and Maintenance Certificate (03/16/06 – 03/31/08), Dam Safety staff and the Board have on many occasions evaluated information submitted that was believed to substantiate and justify a change in the Hazard Classification. None of the information submitted to date has warranted the dam owner's consulting engineer(s), Dam Safety or the Board to change the Hazard Classification. In brief, the justification for the current classification of Lake of the Woods Dam, Inventory Number 13701 is:

1. The High Hazard classification is due to downstream considerations, most notably among them the homes located below the dam. The Board's criteria, requiring a High Hazard dam to pass the Probable Maximum Flood (PMF) is consistent with those used by many states and generally accepted throughout the United States. Virginia's previous and existing Impounding Structure Regulations provides dam owners the option of exploring some relief in the spillway design flood requirement through the use of the incremental damage analysis.
2. In the past, traffic counts were used to assist in determining the hazard classification, with regard to downstream roadways (Route 3 lies downstream of the LOWA dam). However, the location of homes and the impact to

homes located below dams has always been used to determine the hazard classification. The number of homes (approximately 10) located within the inundation zone below the dam alone justifies the High Hazard (formerly Class I) classification.

Chairman Campbell called for public comment regarding this recommendation.

Mr. Bruce Kay of the Lake of the Woods Association addressed the Board:

In the sixty days since the Chair directed the staff to review my presentation of November 19, no one has discussed any of the content with me or my staff. Either I or LOWA staff have been in contact almost daily with the dam safety staff on construction issues and have made many inquiries as to my November presentation. There has been no response.

The Lake of the Woods main dam has been and continues to be a structurally sound dam. It is a fact that it has never had any serious deficiency on the main dam. There has never been any degreed climatologist on the state's staff to produce documented factual data to substantiate those thirty-some inches of rain in 24 hours vs. a documented factual possible projection of 18 inches of rain in 24 hours in the next 5,300 years.

Lake of the Woods has a comprehensive emergency action plan in place and continues to provide a safe dam for its residents and neighboring communities.

At a special executive session of the Board of Directors that I've called for next Tuesday, I will direct that we pursue all avenues available to the Lake of the Woods to maintain the current integrity of our dam and avoid any needless modification to it.

Thank you.

Mr. William E. Nowers, a resident of Lake of the Woods addressed the Board. He said that he was speaking for the members of the Lake of the Woods Association but was not a member of the Board of Directors.

Mr. Nowers said that the question comes down to whether the dam is a high hazard dam or a significant hazard dam. He said that there was almost a zero chance of a fatality if the dam fails or overtops. He said that economic damage below the dam would not be significant.

Mr. Nowers said that there was no real evidence to support the dam being a Class I dam and that it should be a Class II dam.

Mr. Simms said that it appeared that the question with regard to the classification was the potential loss of life. He said the other factor was appreciable vs. serious economic damage. He said that he did not know how the current legislation before the General Assembly would affect that classification.

Mr. Baxter said that the bill had been introduced but the passage was not certain. The action by the legislature would have no impact until it was passed and signed.

Chairman Campbell said that there was no action before the Board unless the Board felt otherwise.

Chairman Campbell said that the staff recommendation was that no information received warranted a recommendation of changing the classification.

### **Rainbow Forest Dam, Inventory Number 02303**

Mr. Browning gave an update concerning Rainbow Forest Dam, Inventory #02302. He said that based on the Board action at the November 2009 meeting, the dam owners were to give an update regarding progress on the dam. He introduced Melissa Floyd from the Rainbow Forest Recreation Association.

Ms. Floyd said that since the November Board meeting the Association had obtained estimates to remove the debris from the right groin of the dam and to remove the trees. The Association also received an estimate for the cost of breaching the dam. The estimate to upgrade the dam was between \$250,000 and \$350,000.

Ms. Floyd said that the major issue for the Association was funding. She said that they may not have the funding for construction. She said that with the water level being lowered and without the existing lake options for funding the improvements were almost impossible. She said that with this information the Association was now able to consider all the options for moving forward.

Mr. Browning said that at this point the Association needed to either move forward with the repairs or lower the water level. He said that staff had been working with the Association regarding the reservoir water level. He said that this is a public safety issue and that is the only reason for considering the water level.

Mr. Browning said that the options were to bring the dam into compliance or to breach the dam.

Mr. Browning said to accomplish a breach, there might be a way to work to remove the controls that are currently in place and maintain the existing roadway over the dam. He said there is a possibility that if the water level was lowered, the existing controls could be removed to allow the water in the streambed to pass under the roadway through the culverts that are in place. He said that might be a less expensive alternative to breaching



the dam. This would allow the current impounding structure to revert to a roadway embankment that would allow the road to continue to remain functional.

Ms. Jamison asked if lowering the water to a certain level would mean that the dam was no longer subject to regulation.

Mr. Browning said that the lowering of the water was to address public safety and that if the controls were permanently removed to create a breach of the dam, it would mean the water in the creek would flow through the existing box culverts under the embankment. If this was accomplished, Rainbow Forest Dam, Inventory Number 02303 would no longer be subject to regulation.

Mr. Browning said that the dam was currently under a Conditional Operation and Maintenance Certificate that expires at the end of January 2010.

Ms. Hansen said that if the Board agreed to give the Association more time, the Conditional Certificate would need to be extended. She asked for the staff recommendation.

Mr. Browning said that eight months would allow staff sufficient time to work with the dam owner to decide the best course of action.

Ms. Hansen said that in the interim once the ice thaws the Association should lower the water level for public safety and this should be a condition of the extension.

MOTION: Ms. Hansen moved that the Soil and Water Conservation Board approve an eight month extension for Rainbow Forest Dam, Inventory # 02303 with the provisions that the lake be immediately and completely drained and that the Association develop a plan of action to present to staff and the Board prior to the end of the eight months.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

### **Soil and Water Conservation District Resignation and Appointments**

Mr. Frye presented the list of Soil and Water Conservation District Director Resignations and Appointments.

*Piedmont*

Resignation of Donald C. Grant, Jr. Prince Edward County, effective 12/31/09, elected director position (term of office expires 1/1/12).

Recommendation of Don Maxey, Prince Edward County, to fill unexpired elected term of Donald C. Gantt, Jr. (term of office to begin on or before 2/13/10 – 1/1/12).

*Tidewater*

Recommendation of Ronnie Lewis, Mathews County, to fill unexpired elected term of Carl Thiel-Goin (term of office to begin on or before 2/13/10 – 1/1/12) (*appointed during the November 19, 2009 SWC Board meeting, but failed to take oath*).

Resignation of Carter M. Borden, Gloucester County, effective 11/18/09, elected director position (term of office expires 1/1/12).

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the list of District Director resignations and appointments as presented by staff.

SECOND: Ms. Jamison

DISCUSSION: None

VOTE: Motion carried unanimously

**Erosion and Sediment Control**

Mr. Hill presented the Erosion and Sediment Control actions.

*Approval of 2010 Annual Standards and Specifications for Utility Companies*

MOTION: Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the review of the 2010 annual standards and specifications for electric, natural gas, telecommunications and railroad companies. The Board concurs with staff recommendation for conditional approvals of the 2010 specifications and the request for variances for the utility companies listed below in accordance with the Erosion and Sediment Control Law. The Board requests the Director to have staff notify said companies of the status of the review and the conditional approval of the annual standards and specifications and the request for variances.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction from January 29, 2010 to December, 31, 2010 must be submitted by February 26, 2010. The following information must be submitted for each project:
  - Project name (or number)
  - Project location (including nearest major intersection)
  - On-site project manager name and contact information
  - Project description
  - Acreage of disturbed area for project
  - Project start and finish dates
2. Project information unknown prior to February 26, 2010 must be provided by DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address [LinearProjects@dcr.virginia.gov](mailto:LinearProjects@dcr.virginia.gov)
3. Notify DCR of the Responsible Land Disturber (RLD) at least two (2) weeks in advance of land disturbing activities by e-mail at the following address [LinearProjects@dcr.virginia.gov](mailto:LinearProjects@dcr.virginia.gov). The information to be provided is name, contact information and certification number.
4. Install and maintain all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

Variances were requested for Minimum Standard 16.a and Minimum Standard 16.b. The responses to the requests for the variances are as follows:

1. Minimum Standard 16.a: The project may have more than 500 linear feet of trench length opened at one time provided that all trenches in excess of 500 feet in length are adequately backfilled, seeded and mulched at the end of each work day and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.
2. Minimum Standard 16.b: The variance to this criteria is not necessary due to Minimum Standard 16.f which allows applicable safety regulations to supersede the Virginia Erosion and Sediment Control Regulations.

Companies recommended for conditional approval with the 4 conditions are:

Electric: Allegheny Power; Dominion Virginia Power  
Electric Transmission; Old Dominion  
Power/Kentucky Utilities/EonUS; Trans-Allegheny  
Institute Line Company; Virginia Association of  
Electric Cooperatives

Gas: Columbia Gas Transmission/NiSource; Dominion  
Gas Transmission; East Tennessee Natural  
Gas/Duke Energy/Spectra; Williams/Transco

Company recommended for conditional approval with the 4  
conditions and the variance requested for Minimum Standard 16.a  
is:

Telecommunications: Virginia Telecommunications  
Industry Association

SECOND: Ms. Dalbec

DISCUSSION: None

VOTE: Motion carried unanimously

*Local Programs recommended to be found consistent following completion of Corrective  
Action Agreement (CAA)*

Mr. Hill presented the local programs that were recommended to be found consistent  
following the completion of their CAAs.

Bob Fink from Westmoreland County said that the County supported the staff  
recommendation.

Erin Hawkins from Lynchburg said that the staff representation had been exceptional in  
helping the City to become consistent.

Clark Draper from Scottsville thanked the DCR staff for their assistance.

MOTION: Ms. Dalbec moved that the Virginia Soil and Water Conservation  
Board commend Middlesex County, Westmoreland County, City  
of Lynchburg, Town of Occoquan, Town of Scottsville and the  
Town of Vienna for successfully improving their respective  
Erosion and Sediment Control Programs to become fully consistent  
with the requirements of the Virginia Erosion and Sediment

Control Law and Regulations, thereby providing better protection for Virginia's soil and water resources.

SECOND: Ms. Packard

DISCUSSION: Ms. Hansen said that it was good to hear that the staff had been so helpful. She congratulated Mr. Hill and his staff.

Ms. Packard said that it was nice to have so many localities in compliance.

VOTE: Motion carried unanimously

Mr. Simms asked if the criteria had changed from the previous year.

Mr. Hill said that staff was reviewing the process and the criteria which have been applied to all localities during this review cycle. Recommended changes to be implemented during the next review cycle will be prepared and sent to the Office of the Attorney General for review.

*Local Programs previously found inconsistent and request for Board to extend Corrective Action Agreement (CAA)*

Mr. Hill gave the background for Botetourt County.

The Virginia Soil and Water Conservation Board approved Botetourt County's Corrective Action Agreement (CAA) with a completion date of November 24, 2009. At the direction provided by the Board, DCR staff reviewed Botetourt County's progress on implementing the CAA. Based on the results of the review, staff has determined that the County has not achieved compliance with the CAA. DCR staff recommends that the County be given until July 15, 2010 to comply with the outstanding CAA.

No one was present from Botetourt County.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board accepts the staff recommendations and grants Botetourt County an extension until July 15, 2010 to fully comply with the outstanding CAA. The Board further requests that the Director of DCR and his staff evaluate the County's compliance with the outstanding CAA and provide a report at the September 2010 Board meeting.

SECOND: Ms. Jamison

DISCUSSION: Ms. Hansen encouraged staff to bring this to the Board at an earlier date if there is no activity.

VOTE: Motion carried unanimously

Mr. Hill gave the background for the Town of West Point.

The Virginia Soil and Water Conservation Board approved the Town of West Point's Corrective Action Agreement with a completion date of November 19, 2009. At the direction provided by the Board, DCR staff reviewed the Town of West Point's progress on implementing the CAA. Based on the results of the review, the staff has determined that the Town has not achieved compliance with the CAA. DCR staff recommends that the Town be given until July 15, 2010 to comply with the outstanding CAA.

There was no one present from the Town of West Point.

MOTION: Ms. Hansen moved that the Virginia Soil and Water Conservation Board accept the staff recommendations and grant the Town of West Point an extension until July 15, 2010 to fully comply with the outstanding CAA. The Board further requests that the Director of DCR and his staff evaluate the Town's compliance with the outstanding CAA and provide a report at the September 2010 Board meeting.

SECOND: Mr. Ingle

DISCUSSION: None

VOTE: Motion carried unanimously

### **2010 Legislative Update**

Mr. Dowling gave the Legislative Update. He distributed two documents. One, a summary of legislation pertaining to Soil and Water Conservation and Dam Safety, and two, copies of specific legislation. Copies of both handouts are available from DCR.

Mr. Dowling reviewed the following bills affecting Board issues:

#### **Stormwater**

- **HB 155 (Dance) - Stormwater management programs; delays for two years DCR's regulations governing.**

Delays for two years the Department of Conservation and Recreation's regulations governing the stormwater management program that were to be implemented on July 1, 2010. (*House Agriculture, Chesapeake and Natural Resources*)

- **SB 245 (Watkins) Stormwater management programs.**  
Delays the effective date of regulations that establish local program criteria and delegation procedures and the water quality and water quantity criteria for stormwater management from July 1, 2010, to July 1, 2011. Any regulation adopted prior to this date shall be considered outside the scope of authority granted by the General Assembly. (*House Agriculture, Chesapeake and Natural Resources*)
- **SB 395 (Wagner) - Stormwater management regulations; effective date.**  
Extends the effective date of the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria based on the completion of the Virginia Total Maximum Daily Loads (TMDL) Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by the United States Environmental Protection Agency and the regulations thereafter adopted to implement the Plan. (Senate Committee on Agriculture, Conservation and Natural Resources)
- **SB 123 (Petersen) - Stormwater management; developer of single lot to provide where redevelopment is proposed.**  
Requires the developer of a single lot to provide stormwater management where substantial redevelopment of the lot is proposed. Defines "substantial redevelopment" as land-disturbing activities that occur on more than 15 percent of the square footage of any single lot. (*House Local Government*)
- **HB 987 (Jones) - Regulation of stormwater.**  
Amends current law by removing the requirement that waivers given to federal, state, or local government agencies that develop, redevelop or retrofit outfalls, discharges or property so that there is a permanent reduction in post development stormwater flow and pollutant loading be full waivers. The amount of the waiver to such agencies shall be equal to the product of the fee that would be charged to the agency multiplied by the percentage of the stormwater runoff captured by the agency's storm drainage or stormwater control facilities. (*House committee referral pending*)
- **HB 1100 (Sickles) - Stormwater management; certain landowners shall be immune from civil liability.**  
Stormwater management facilities; liability. Provides that landowners who cede responsibility for the maintenance, repair, and replacement of a stormwater management facility to the Commonwealth or political subdivision thereof shall be immune from civil liability in relation to such stormwater management facility. The immunity does not extend to cases of intentional or willful misconduct or gross negligence. (*House committee referral pending*)

### Regulatory Procedure Bills

- **HB 385 (Dance) - Suspension of state mandates; Governor to suspend any mandate, not to exceed two years.**  
Requires the Governor, upon application by a locality, to suspend any mandate, or portion thereof, for a period not to exceed two years, prescribed by any unit of the executive branch of state government on a locality upon a finding that it faces fiscal stress and the suspension of the mandate or portion thereof would help alleviate the fiscal hardship. Under existing law, the Governor may suspend such mandates for up to one year, but is not required to do so. (*House General Laws*)
- **SJ 24 (McDougle) - Constitutional amendment; powers of General Assembly (first reference).**  
Constitutional amendment (first resolution); General Assembly powers; regulations. Provides that the General Assembly may suspend or nullify any or all portions of any administrative rule or regulation by joint resolution agreed to by a majority of the members elected to each house. The General Assembly may designate a joint legislative commission or pair of standing committees representing both houses to suspend any administrative rule or regulation during the interim that the General Assembly is not in session. (*Senate Privileges and Elections*)
- **SB442 Joint Commission on Administrative Rules; authority to suspend a regulation with the concurrence of the Governor.**  
Allows for the Joint Commission on Administrative Rules to suspend a rule or regulation with the concurrence of the Governor whether or not the rule or not the regulation has become effective

### Dam Safety

- **HB 438 (Toscano) - Dam safety; Soil & Water Conservation Board to establish alternate standard spillway design.**  
Requires the Soil and Water Conservation Board to establish an alternate procedure that provides for a new standard for the spillway design requirement. This new spillway standard would apply to those dams in existence prior to July 1, 1982. The bill also allows an owner of a dam who has received a report from the Board containing recommendations for the correction of deficiencies in the dam to submit his own plan for such corrections. One of the two criteria for designating a dam as unsafe is changed. Currently, if there are serious deficiencies in the design or construction of the dam that, if left unaddressed, could result in a failure that may result in loss of life or damage to downstream property, the dam is cited as being unsafe. The new criterion would be that such deficiencies may result in "significant" damage to downstream property. The bill requires the Board to adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk in the determination



of the hazard potential classification of an impounding structure. (*House committee referral pending*)

- **SB 244 (Watkins) - Dam Safety Act; low traffic roadways.**  
Requires the Virginia Soil and Water Conservation Board to adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure. (*Senate Agriculture, Conservation and Natural Resources*)
- **SB 276 (Houck) - Dam safety**  
Allows those dams that do not comply with dam safety regulations to continue to operate so long as the owner of the dam has adopted a dam safety emergency action plan. These dams could continue to operate without correcting any deficiencies as long as funding is not available through the Dam Safety, Flood Prevention and Protection Assistance Fund. Once such funding is available the dams will have to comply with all of the dam safety regulations. (*Senate Agriculture, Conservation and Natural Resources*)

### **Erosion and Sediment Control**

- **HB 129 (Pollard) - Land-disturbing activities; exempts certain activities from Erosion and Sediment Control Law.**  
Exempts certain activities from the Erosion and Sediment Control Law (E&S) as land-disturbing activities if certain practices are followed. Under the bill the harvesting of forest crops would not be considered a land-disturbing activity and therefore would not be regulated under the E&S law if the area on which the harvesting occurs is: (i) reforested artificially or naturally in accordance with a forest management plan developed by a professional forester or (ii) converted to agricultural or improved pasture use by following a conservation plan approved by the soil and water conservation district. Currently, such harvested areas can be exempted from the E&S law if other types of restoration procedures are implemented. (*House Agriculture, Chesapeake and Natural Resources*)
- **HB 619 (Orrock) - Erosion and sediment control; penalty.**  
Provides localities with the option of assessing civil penalties for the commencement of land-disturbing activities without an approved plan in the amount of \$100 for an initial violation and in the amount of \$1,000 for any subsequent violations. Currently, the penalty is set by statute at \$1,000 for any violation. (*House committee referral pending*)
- **SJ 35 (Northam) - Study; Virginia Institute of Marine Science; tidal shoreline management.**  
Requests the Virginia Institute of Marine Science to review tidal shoreline management in the Commonwealth and similarly situated states; identify potential changes to the regulatory structure of tidal shoreline management to

reduce the cost and time required to issue a permit; identify regulatory innovations that would increase adoption of living shorelines among shoreline landowners; and make specific recommendations to achieve the sustained protection of tidal shoreline resources. (*Senate Committee on Rules*)

### **Fertilizer**

- **HB 329 (Plum) - Lawn fertilizers; prohibits use and application of those that contain phosphorus.**

Prohibits the application of fertilizers that contain phosphorus for use on lawns, golf courses, parks, and cemeteries. The prohibition does not apply to fertilizer products primarily intended for gardening, trees, shrubs, or indoor plants. The bill prohibits the application of fertilizer that contains phosphorus when the ground is frozen. Any fertilizer that runs onto impervious surfaces has to be immediately contained and collected. New lawns or lawns that have had soil tests in the last three years showing phosphorus levels are deficit based upon Department of Conservation and Recreation's nutrient management standards and criteria can use fertilizers that contain phosphorus. Beginning January 1, 2011, no person can display for sale lawn fertilizer that is labeled as containing phosphorus; however, such products can be stored off the sales floor and may be sold upon request. Also beginning on this date, a business selling fertilizers has to provide signage that informs the public of the new law and noting the effects of phosphorus on state waters. Any person who violates provisions of the new law may be assessed a civil penalty by the Department of Conservation and Recreation of up to \$250. The moneys collected will be deposited in the Water Quality Improvement Fund. (*House Agriculture, Chesapeake and Natural Resources*)

### **BMP Tracking**

- **SB 346 (Hanger) - Land conservation practices; information management.** Requires the Secretaries of Agriculture and Forestry and Natural Resources to develop a strategy for a database of acreage maintained pursuant to land conservation and on-site best management practices. To the extent possible or appropriate, the database shall (i) be uniform in content and format to applications in the other states of the Chesapeake Bay watershed, (ii) maintain the confidentiality of information, and (iii) use existing methods of data collection. (*Senate General Laws and Technology*)

### **Water Quality Funding**

- **HB 329 (Comstock) - 11B 900 Offshore drilling; royalties.** Offshore drilling; royalties. Apportions 80 percent of any royalties that the Commonwealth might receive from offshore drilling for natural gas and oil to the Transportation Trust Fund, and 20 percent to programs developed by the Secretary of Natural Resources to clean up the Chesapeake Bay. (*House committee referral pending*)

- **HB 1115 (Ebbin, Bulova, Englin and Herring) - Paper and plastic bag fee.** Imposes a fee of \$0.05 on-paper and plastic bags used by purchasers to carry tangible personal property from the place of purchase. Durable, reusable plastic bags and bags used for ice cream, meat, fish, poultry, leftover restaurant food, newspapers, dry cleaning and prescription drugs are exempt from the fee. Retailers are allowed to retain \$0.01 of the \$0.05 fee or \$0.02 if the retailer has a customer bag credit program. The revenues raised by the fee will be deposited in the Virginia Water Quality Improvement Fund. Failure to collect and remit the fee will result in fines of \$250, \$500, and \$1,000 for the first, second, third and thereafter offenses. (*House committee referral pending*)

### **Dam Safety Program Guidance**

Mr. Dowling presented the information on Dam Safety Program Guidance. He provided draft working copies for discussion. He said that in some cases this guidance addressed procedures that were already in place. He said that the purpose was to make sure that the procedures were clear and reflected the Board's intent.

Mr. Dowling said that guidance does not have the force of law and is instructional in nature. He said that guidance reflects how the Board believes the regulations are to be interpreted. He noted that guidance can be reviewed and amended by the Board at any time.

Mr. Dowling distributed a handout with the following draft guidance documents. Copies of this handout are available from DCR.

1. Guidance Document on Credits and Refunds of Dam Safety Certificate Application Fees.
2. Guidance Document on Special Low Hazard Impounding Structure Requirements.
3. Guidance Document on Agricultural Exemption Requirements.
4. Guidance Document on Dam Break Inundation and Incremental Damage Assessment Analysis and Mapping Procedures.
5. Guidance Document on Roadways on or Below Impounding Structures.
6. Guidance Document on Impounding Structure Hazard Potential Classification.

Mr. Dowling said that staff was requesting the Board authorize these documents to go out for public comment.

Mr. Hornbaker asked how interested parties would be notified of the public comment process.

Mr. Dowling said that it would be posted on the DCR website and that a mailing would be sent to all dam owners.

**MOTION:** Mr. Hornbaker moved that the Virginia Soil and Water Conservation Board authorize the Department of Conservation and Recreation to refine the draft guidance documents and to initiate a 30-day public comment period on these documents. Further, that the Department may hold a focus group meeting(s) on issues surfaced during the public comment period at the discretion of the Department. The Department staff shall provide at a subsequent meeting the results of the public comment period and recommendations on final guidance for the Board's consideration.

**SECOND:** Hansen

**DISCUSSION:** None

**VOTE:** Motion carried unanimously.

Chairman Campbell encouraged Board members to provide feedback to staff.

### **Proposed Establishment of Nutrient Offset Working Group**

Mr. Dowling said that at the last Board meeting Director Maroon advised the Board that there was a need for additional guidance concerning a component of the nutrient offsets program. He noted that in the 2009 General Assembly Session House Bill 2168 sponsored by Delegate Abbott established the nutrient offset program. DCR established a work group to develop guidance concerning the use of offsets. This guidance did not, however, address the equivalency of nonpoint nutrient offsets and other offsite compliance methods. Additional guidance is needed to address this topic.

**MOTION:** Ms. Hansen moved the following:

Motion to authorize and direct the Department of assemble a workgroup to establish offset program criteria.

The Board authorizes and directs the Department to assemble a workgroup to assist the Department of Conservation and Recreation and the Virginia Soil and Water Conservation Board in the development of offset policy and procedure (formal guidance) that will provide the Board, DCR staff and regulated entities with the general legal and technical framework through which Subsection I of § 10.1-603.8:1 will be implemented. As specified in the Code, the workgroup will assist with the formulation of "criteria for determining whether any such local program is substantially equivalent, which shall be used during the local stormwater management program approval process in § 10.1-603.3."

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions for review and approval at subsequent Board meetings.

SECOND: Mr. Simms

DISCUSSION: Chairman Campbell clarified that this motion would direct the staff to come back to the Board for further action.

Chairman Campbell asked for comment from the public.

Shannon Varner said that he encouraged the Board to move ahead with the action.

VOTE: Motion carried unanimously

### **Response to 25 Petitioners on Stormwater Regulations**

Ms. Hansen moved the following:

I move that the Board convene a closed meeting pursuant to §2.2-3711(A) (7) of the Code of Virginia for the purpose of consultation with legal counsel regarding specific legal matters requiring the provision of legal advice, namely the receipt of 25 petitions for an additional public comment period on the new stormwater management regulations.

This closed meeting will be attended only by members of the Board. However, pursuant to § 2.2-3712(F) of the Code, the Board requests counsel, the Director of the Department of Conservation and Recreation (DCR), and Mr. Baxter, Mr. Dowling, Mr. Brown, Mr. Hill and Mr. Frye to attend because it believes that their presence will reasonably aid the Board in its consideration of the topic that is the subject of this closed meeting.

SECOND: Ms. Packard

DISCUSSION: None

VOTE: Motion carried unanimously

A closed meeting was held.

MOTION: Ms. Hansen moved the following certification:

WHEREAS, the Board has convened a closed meeting on January 14, 2010 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 the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Soil and Water Conservation Board hereby certifies that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

SECOND: Ms. Packard

DISCUSSION: None

ROLL CALL VOTE: Aye: Campbell, Hansen, Maroon, Packard, Simms, Hornbaker, Jamison, Dalbec

No: None

VOTE: Motion carried.

Chairman Campbell asked Mr. Dowling to return to the issue of the response to the petitioners on the Stormwater Regulations.

Mr. Dowling said that the Board had received 25 petitions requesting an additional 30-day public comment period to review substantial changes to the proposed regulations.

MOTION: Mr. Hornbaker moved the following:

Motion to suspend final regulations related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations (Parts I, II and III) and to solicit additional public comment.

The Board suspends the regulatory process associated with the final amendments to Parts I, II and III of the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations in accordance with § 2.2-4007.06 of the Administrative Process Act

in order to allow for a 30-day public comment period on the changes made to the proposed regulations adopted as final by the Board on December 9, 2009 and published on January 4, 2010. The 30-day public comment period shall commence upon publication of the Notice of Suspension of Effective Date and Extension of Public Comment Period in the Virginia Register. The Board is receiving comment only on the changes that have been made between the proposed and final stages of the regulations. The suspension shall remain in place until the Board takes further action on these regulations at a subsequent meeting.

The Board requests the Director of the Department of Conservation or the Departmental Regulatory Coordinator to provide the Board with a summary of comments received during the public comment period and recommendations for the Board's consideration.

SECOND: Ms. Packard

DISCUSSION: Chairman Campbell asked if there were comments from the Board or the public.

Mr. Hardiman of the Homebuilders Association of Virginia said that he would submit written comments.

VOTE: Motion carried unanimously with Mr. Maroon abstaining

### **Commending Resolution for Mr. Maroon**

Chairman Campbell read the following proposed resolution:

**Virginia Soil and Water Conservation Board  
COMMENDING RESOLUTION  
Presented to**

**JOSEPH H. MAROON**

At a regular meeting of the Virginia Soil and Water Conservation Board held on Thursday, January 14, 2010 at the Association of Electric Cooperatives in Glen Allen, Virginia the following resolution was unanimously adopted:

WHEREAS, Joseph H. Maroon was appointed by Governor Mark R. Warner to serve as the Director of the Department of Conservation and Recreation in 2002 and reappointed by Governor Timothy M. Kaine in 2006, and

WHEREAS, Mr. Maroon had previously served for more than 16 years as the Virginia executive director of the Chesapeake Bay Foundation, and

WHEREAS, Mr. Maroon began his career as a principal legislative analyst for the state's watchdog agency, the Virginia Joint Legislative Audit and Review Commission following graduate education at Virginia Tech, and

WHEREAS, during his tenure at DCR, the Agency made significant advances across a range of issues from land conservation to water quality improvement to dam safety, and

WHEREAS, the Department, under Mr. Maroon's leadership, served the Soil and Water Conservation Board with dedication and integrity,

BE IT THEREFORE RESOLVED that the Virginia Soil and Water Conservation Board recognizes and applauds Mr. Joseph H. Maroon for his commitment to the natural and recreational resources of the Commonwealth,

BE IT FURTHER RESOLVED, that on this date, January 14, 2010, the Virginia Soil and Water Conservation Board establishes as public record their deep appreciation and admiration for Mr. Maroon's years of service.

The resolution was unanimously adopted by the Board.

### **Partner Agency Reports**

#### *Department of Conservation and Recreation*

Mr. Frye gave the report for the Department of Conservation and Recreation. A copy of the report is included as Attachment #1.

#### *Natural Resources Conservation Service*

Mr. Dorsett gave the report for the Natural Resources Conservation Service. A copy of the report is included as Attachment #2.

Mr. Dorsett said that Mr. Bricker was on another assignment and that Vicki Drew would be coming to serve as Acting State Commissioner.

#### *Virginia Association of Soil and Water Conservation Districts*

Mr. Chaffin spoke on behalf of the Virginia Association of Soil and Water Conservation Districts.



Mr. Chaffin said that the discussions with the EPA regarding the Bay TMDL were vague and that it was not yet clear what was expected from the state.

Mr. Chaffin said that Lou Ann Wallace from the Clinch Valley Soil and Water Conservation District and Kent White from the Robert E. Lee Soil and Water Conservation District had been elected as officers of the Association.

Mr. Chaffin noted that the following day was the Association's Legislative Day in the General Assembly. He said that the first priority for the Association was funding for the Districts. He acknowledged that it would be difficult to secure additional funding in this session.

Mr. Chaffin said that it had been a great pleasure to work with Mr. Maroon.

Chairman Campbell commended the Association for a well run annual meeting in December.

### **Public Comment**

Mr. Sevcik from Albemarle County noted that he was one of thirty co-owners of Clover Dam. He said that he looked forward to the public comment period on the guidance documents and asked that the comments be made available for public review.

Mr. Nowers said that the Lake of the Woods dam was a very serious issue for him. He said that the additional charges to homeowners were very difficult. He noted that over 400 residents had refused to comply with assessments made.

Mr. Nowers said that he was prepared to refute information, but that no new information was presented. He said that the dam was falsely classified in 2001.

Mr. Nowers asked the Board to vote to change the dam classification or that the Board direct that all construction be halted until a full hearing is conducted.

Ms. Campbell said that the Board's responsibility was to uphold the law and regulations. She said that in the case of Lake of the Woods the concern was the classification of the dam. She said that as the Board and staff reviewed the criteria it had been determined that the Lake of the Woods Dam was a high hazard structure.

Mr. Nowers asked if there was a right to appeal or to have a public hearing.

Ms. Andrews said that she would review that possibility. She said that the time for allowing public comment was generally at the time of the issuance of the certificate.

Mr. Brown said that appeals to the Board would have to be made by the dam owner within 30 days of Board action.

Ms. Andrews cited the following section from the Virginia Administrative Code:

**4VAC50-20-190. Right to informal fact-finding proceeding or hearing.**

Any owner aggrieved by an action taken by the director or by the board without hearing, or by inaction of the director or the board, under the provisions of this chapter, may demand in writing an informal fact-finding proceeding pursuant to § [2.2-4019](#) of the Code of Virginia or a formal hearing pursuant to § [2.2-4020](#) of the Code of Virginia. A formal hearing may be granted only with the consent of the board.

Ms. Andrews noted that in this case the owner was the Lake of the Woods Association. The Association would need to be the entity making the request.

Mr. Maroon said that the dam was originally classified as a high hazard dam and then around 2001 reclassified as less than high hazard.

Mr. Maroon noted that no other dam in the Commonwealth has received as much attention as the Lake of the Woods Dam. He said that there had been repeated meetings with attorneys, with engineers as well as reconsideration of regulations and allowances of other procedures not available to all dams in Virginia. He said that in all of that nothing has shown the need for a different classification.

Mr. Maroon noted that, in addition, the General Assembly and Governor Kaine had provided \$1 million out of the dam safety fund that could have been used elsewhere in the Commonwealth.

Mr. Maroon said that this position by the Board and the Department were not out of a lack of thorough consideration of the issues.

Chairman Campbell said that in her eight years on the Board, the Lake of the Woods Dam had been addressed at nearly every meeting.

Ms. Hansen said that the Board has also heard many commitments on the part of the Association that were not kept.

There was no further public comment.

**New Business**

There was no new business.

**Next Meeting**

The next meeting of the Virginia Soil and Water Conservation Board will be Friday, March 26, 2010 in the Patrick Henry Building in Richmond.

**Director's Comments**

Mr. Maroon took a moment of personal privilege to express his appreciation for working with the Board over his eight years as Director of the Department of Conservation and Recreation.

**Adjourn**

There was no further business and the meeting was adjourned.

Respectfully submitted,

Linda S. Campbell  
Chairman

Russell W. Baxter  
Acting Director

Attachment # 1

**Department of Conservation and Recreation  
Report to the Virginia Soil and Water Conservation Board**

**1. DCR/SWCD Operational Funding**

All 47 SWCDs were issued a grant agreement with DCR in June, 2009 for operational funding this fiscal year (FY10). Each has returned a fully endorsed agreement to their CDC and each was issued 25% of the approved operational funding for FY10. At the outset of this fiscal year (FY10), operational funding for all districts totals \$3,536,535. This amount reflects a decrease below the peak funding level experienced by districts in FY10 (\$4,301,000). However, over two thirds of the 47 districts are also receiving this fiscal year, funds that total \$1,800,000 to employ conservation specialists for the implementation of agricultural BMPs. In addition to operational funding, districts receive funding for staff through a provision in state law that directs 8% of the amount deposited in the Virginia Natural Resources Commitment Fund (for FY10, \$20 million was deposited) to support technical staff of SWCDs that are performing assistance with implementation of agricultural BMPs.

**2. Conservation Partner Employee Development**

The conservation partners continue to work through the “JED” – Joint Employee Development system which relies on 4 regional teams (coordinated through a separate state level JED team) to address training and development of SWCD and other partner agency field staff. The last quarterly meeting of the state JED group was held as a conference call on November 18<sup>th</sup>, 2009.

The state level JED team is focusing on the delivery of 3 “core courses.” The short course “Conservation Selling Skills” has been held at least annually for the past 8 years. The last course was delivered on November 4<sup>th</sup> and 5<sup>th</sup>, 2009 at the Central Virginia Community College in Lynchburg. The class consisted of 16 participants. NRCS is supporting delivery of the EP&I (Effective Presentation and Instruction) short course. Teams of trainers to deliver the course have been established. Each of the 4 JED regions has a training team for this course consisting of 3 individuals. Two of the 4 teams have delivered the course within their region of the state. The other 2 teams will deliver the course in their regions during the months to come. The third “core course” – Conservation Orientation for New Employees is delivered regionally when sufficient need exists to justify the sessions. Broader training needs of the staff of the conservation partners are being addressed regionally through the 4 regional JED teams.

The next scheduled meeting of the JED State Team will be held as a conference call on February 17, 2010 beginning at 9 a.m.

**3. SWCD Dams**

The SWCD dam owner work group comprised of representatives from the 12 SWCDs that own dams, DCR, NRCS and others continue to meet approximately every 3 months (a quarterly schedule). Of the roughly 4 meetings per year, one session is focused on

Emergency Action Plans (EAPs), another addresses routine annual maintenance of district dams and the remaining two meetings address the priority topics identified by the group. The group last met on October 15<sup>th</sup>, 2009 and focused on the Dam Break Inundation Studies (DBIS) and mapping that are being completed through DCR's Design and Construction staff (DAC). The group received instruction on the interpretation and use of the completed BIS documents. Presentations were delivered by staff of DAC, the Division of Dam Safety, Schnabel Engineering and DCR's Soil and Water Conservation Division. Continuation of this topic was requested by the group for their net meeting (scheduled January 28, 2010 in Charlottesville). Ultimately members of the group want to ensure that localities incorporate the information in their planning processes.

#### **4. Agricultural BMP Incentive Programs:**

Virginia Agricultural BMP Cost-Share Program: The program's Technical Advisory Committee (TAC) held its last meeting on January 7, 2010. The group considered changes that affect existing practices and the introduction of new BMPs. Subcommittees of the TAC continue to work on specific topics and practices. They will report their findings and recommendations during upcoming meetings of the full TAC. The next scheduled meeting of the TAC is February 25<sup>th</sup> in Charlottesville. Revisions to the Ag. BMP specifications for implementation during the next (2011) Agricultural BMP Cost-Share Program year must be completed by April, 2010 so that program materials, training and other program needs are in place by July 1<sup>st</sup> when the new program year begins.

Agricultural BMP Tracking Program: Phase 1 of the modernization of the Ag BMP Tracking program is substantially complete, with several supplemental improvements (Phase "1.5") to be deployed within the next few weeks. Planning for Phase 2 is ongoing as well as training on use of the tracking program. A meeting of SWCD program users was held on January 13<sup>th</sup> in Charlottesville, to further refine program enhancements that will constitute the focus of the Phase 2 work. The goal for Phase 2 deployment is July 1, 2010. A third phase for 2011 is planned.

CREP: Twenty-nine CREP perpetual conservation easements have been recorded to date that protect 1,182 restored riparian buffer acres statewide. Within the Chesapeake Bay 12 recorded easements protect 352 acres. Work is ongoing on another 9 easements that will protect an additional 294 acres. In the Southern Rivers drainage 17 recorded easements protect 830 buffer acres while another 9 easements that will protect another 214 restored buffer acres are in progress.

Federal Programs: The Virginia NRCS Environmental Quality Incentive Program (EQIP) and the special Chesapeake Bay Watershed Initiative (CBWI) conservation program will be funded with approximately \$20M split between the two programs during federal fiscal year 2010.

**5. Erosion and Sediment Control & Stormwater Management Programs:** As of today's meeting (January 14, 2010), 152 or 93% of local erosion and sediment control programs have been found consistent with state law. A total of 373 new construction

activities have registered for coverage under the construction general permit from October 1, 2009 through December 31, 2009. A total of 4,115 construction general permits, permit reissuance (2,933) plus new projects (1,182), have been issued through December 31, 2009.

**6. DCR Statewide TMDL Activities:** Currently DCR is working on five TMDL implementation plans in the following watersheds across the Commonwealth: Middle River (Augusta County), Christians Creek and South River (Augusta County and City of Waynesboro), Ash Camp and Twittys Creek (Charlotte County), Lewis Creek (Russell County), and Cherrystone Inlet and Kings Creek (Northampton County). To date a total of 39 waterbodies. Eighty four of these impairments are receiving targeted TMDL implementation funds to implement agricultural BMPs through state and/or federal funding.

**7. Chesapeake Bay TMDL:** The U.S. Environmental Protection Agency held 5 Chesapeake Bay TMDL public meetings in Virginia in cooperation with DEQ and DCR the week of December 14, 2009. EPA will develop this TMDL for nutrient and sediment impaired segments in the watershed to be completed by December 31, 2010. Since all Virginia tributaries contribute loadings to one or more of these segments, the TMDL will impact areas all the way to the headwaters of each tributary. In the Commonwealth, the Virginia Department of Environmental Quality and the Virginia Department of Conservation and Recreation will have to develop a Watershed Implementation Plan to detail how the reductions will be achieved. To provide input to the process, a large Stakeholder Advisory Group has been formed in Virginia comprised of 35 representatives from major sectors and interests including those representing agriculture, wastewater, stormwater, septics, conservation and environmental organizations, local governments, and other impacted parties. An initial meeting of the group was held on December 17, 2009. A meeting is planned for February 26. The official EPA website for Bay TMDL information is: [www.epa.gov/chesapeakebay.tmdl/](http://www.epa.gov/chesapeakebay.tmdl/).

Attachment # 2

**NRCS REPORT  
VA Soil & Water Conservation Board Meeting  
January 14, 2010  
VA Electric Cooperatives  
Richmond, VA**

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**ACTING NRCS STATE CONSERVATIONIST**

Jack Bricker, NRCS State Conservationist has been called on a "detail" appointment at our national headquarters. He reported for duty Monday, January 11 and it is not clear when this detail will terminate.

Vicky Drew, Assistant State Conservationist for Programs from NRCS in Vermont will report to the state office as Acting State Conservationist in Virginia on Tuesday, January 19, 2010. Ray Dorsett is Acting State Conservationist until Ms. Drew arrives.

**FARM BILL PROGRAMS**

**Stewardship:**

**Conservation Stewardship Program (CSP).** The first Statewide sign-up closed on September 30 and NRCS received 176 applications in both agricultural and forestry. We have 132 applications pre-approved for funding. We have until January 29, 2010 to complete the field verifications and develop Stewardship plans and contracts. Virginia has received an allocation of 31,656 acres for agricultural land and 22,283 acres for nonindustrial private forest land. The funding will go for approving the highest ranked applications. This is a continuous sign-up and the next ranking period has not been set.

**Easement Programs:**

**Farm and Ranchland Protection (FRPP).** In FY-10, NRCS has closed two easements on 246.9 acres in Clarke County. Federal cost was \$424,000. We received \$1,587,170 in FY-10 funding and have set a February 19, 2010 cut-off for applications.

**Grassland Reserve Program (GRP).** NRCS has received 15 new applications for FY-10. Fourteen are easement contracts and one is a rental contract. Total requests equal \$3,341,122. NRCS will rank these applications and develop contracts with those approved. We received \$634,720 in funding for FY-10.

**Wetland Reserve Program (WRP).** In FY-10, NRCS has received one application in Essex County for about 50 acres for this ranking period. We will work with the landowner to develop a contract for this land. We received over \$4.6 million in funding for FY-10.

**Financial Assistance Programs:**

We are in the process of developing 2010 program guidance and will conduct field training over the next two weeks. Our first evaluation period cutoff for most of the programs is February 19 and the second one is March 12. All funds must be obligated by April 1, 2010.

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**Environmental Quality Incentive Program (EQIP).** NRCS received a total of \$9,907,236 in FY-10. This is a decrease of \$464,921 from last year's funding level. We will be funding high tunnel hoop houses as a special initiative this year.

**Wildlife Habitat Incentive Program (WHIP).** We received \$210,425 in our initial allocation but this is expected to go up with additional allocations, to about the same level as FY-09.

**Chesapeake Bay Watershed Initiative (CBWI).** Our allocation increased 68% in FY-10 to \$9,530,802; therefore, we expanded the priority watershed areas and the priority practices that will receive funding within the Bay watershed. We will provide a special pilot for funding water quality projects related to shellfish aquaculture in FY-10.

### **DAM REHABILITATION:**

**Pohick Creek Site 3 (Woodglen Lake) in Fairfax County** – The design of this project has been completed. Over \$1,449,000 was obligated in federal funds were obligated for construction in December. Fairfax County will solicit bids and award a contract by April 2010. Construction is scheduled to be completed in September 2010.

**Pohick Creek Site 2 (Lake Barton) in Fairfax County** – A final plan has been developed for this dam rehabilitation project. The Chief of NRCS has authorized the plan for implementation. The design should be completed by June 2010. About \$2,040,000 in federal funds will be obligated by September 2010 and construction will be completed by September 2011.

The Fairfax County Board of Supervisors and the Northern Virginia SWCD sponsors both Pohick Creek rehabilitation projects. Funding is provided by the American Recovery and Reinvestment Act (ARRA) for these projects.

**Pohick Creek Site 8 (Huntsman Lake) in Fairfax County** – NRCS received funding in FY-10 to assist Fairfax County and the Northern Virginia SWCD to initiate planning for dam rehabilitation on this site. A final plan is expected in 2011.

**South River Site 25 (Toms Branch) in Augusta County** – Construction is ongoing on Toms Branch and should be completed in early spring 2010. The project is in winter shutdown due to bad weather. The contract was awarded to Adams Contracting Company from Robbinsville, NC for \$1,098,917. Project sponsors include Augusta County, the City of Waynesboro, and the Headwaters SWCD.

**South River Site 10A (Mills Creek) in Augusta County** – NRCS is assisting Augusta County to develop a dam rehabilitation plan for this site. The planning process is ongoing with a final plan expected by September 2010.

**Assessments for High Hazard Dams** – NRCS has awarded a contract to URS Corporation for \$210,000 to assess nine dams in Virginia.

### **WATERSHED OPERATIONS**

**Buena Vista Flood Control Project** – NRCS is assisting the City of Buena Vista with the acquisition of environmental permits for the channel modification of Chalk Mine Run

NRCS has hired an A&E firm to design the channel modification project for Chalk Mine Run. The design will be completed in May 2010.



NRCS has reimbursed the City of Buena Vista for the cost of acquiring a house located in the floodplain of Chalk Mine Run. The demolition of the house was completed in December.

**North Fork Powell River Watershed** – ARRA funding has been received to design and construct five abandoned mine land sites in this watershed. This project will address water quality problems from abandoned mines in this watershed. The project is sponsored by the Lee County Board of Supervisors, the Daniel Boone SWCD, and the Virginia Department of Mines, Minerals and Energy. The five sites will be designed and constructed in 2010.

**Chestnut Creek Watershed** - \$220,000 in financial assistance dollars from ARRA funding have been received to develop new long-term contracts with landowners in this watershed in Carroll and Grayson Counties. This project will address water quality problems caused by grazing in the watershed. Two new contracts totaling \$139,046 have been signed and the funds obligated.

**Little Reed Island Creek Watershed** - \$120,000 in financial assistance dollars from ARRA funding has been received for new long-term contracts with landowners in this watershed in Carroll, Pulaski, and Wythe Counties. This project will address water quality problems caused by grazing in the watershed. One new contract for \$82,065 has been signed and the funds obligated.

#### **VDGIF AGREEMENT**

VA NRCS is partnering with the VA Department of Game and Inland Fisheries through a Cooperative Agreement to hire five biologists. These positions will help coordinate Virginia's Quail Action Plan, and implement state wildlife BMP and federal WHIP programs on private lands across the Commonwealth. The VDGIF biologists will be stationed in NRCS offices in Farmville, Fredericksburg, Smithfield, Staunton, and Wytheville. The biologists will serve as first point of contact for private landowners interested in improving wildlife on their land and serve as links that keep the agencies moving together in the same direction.

#### **NRCS AND VSU SIGN OUTREACH GRANT AGREEMENT**

NRCS has entered into a Grant Agreement with Virginia State University to strengthen outreach efforts to limited resource, beginning, and socially disadvantaged farmers. This will expand the existing Small Farm Outreach program at VSU and enhance opportunities for participation in USDA Farm Bill conservation programs. Specific program emphasis includes the Chesapeake Bay Watershed Initiative, Conservation Stewardship Program, and Environmental Quality Incentives Program. NRCS is hiring 3 term appointments to conduct workshops, tours, setup demonstration farms, and make individual contacts. They will be located in Cooperative Extension offices of Hanover, Chatham, and Lawrenceville.

#### **Third Annual USDA Outreach Conference**

Eleven USDA agencies will provide information about their programs targeted to "small farm" farmers at the USDA Outreach Conference, March 18, 2010. The event will be held at the Douglas L. Wilder Building on the Virginia State University campus. In addition to presentations from each of the agencies, there will be a panel of local producers explaining how access to these programs has affected their operations.