

RSA votes to take lead on water project

BY TERRY BEIGIE
Record Editor

Editor's note: The July 21 board of supervisor's meeting occurred after press time. Updates were added to the story online and more will be in next week's issue.

The White Run Reservoir project that has been in the works for nearly two decades may be dead after last

RSA

meeting for Tuesday, July 21, which was after the paper went to press.

In a release, the county said the action taken by RSA was "unwarranted and outrageous."

The county and RSA entered into a contract in 2005 that allowed the county to receive the impact fees per hookup, provided the county complete water infrastructure improvements by the end of 2008, according to a press release from Tim Clemons, general manager of RSA.

"To date, several major components of these improvements have yet to be initiated, much less completed," Clemons said in the release. "Among these pending projects are the White Run Reservoir Project, water treatment facility and other improvements contractually agreed to by Greene County."

Lee Frame, a member from Orange County who made the motion, said he is concerned about the split responsibility between Greene County

Thursday's Rapidan Service Authority (RSA) Board of Members meeting. The board voted 4-2 to assume leadership of a 50-year water plan from Greene County during the monthly meeting and to immediately end the billing and collecting of facility fees for water and sewer users. Additionally, the board voted that all water and sewer impact fees collected per new hookup will need to be handed over to RSA before service will be turned on.

and RSA.

"Our experience with both Madison and Orange is that RSA is responsible for and manages (plans) with input from the appropriate RSA board members," Frame said. "I think that RSA should take on the responsibility, which would mean that they should take on the necessary funding to do so. It's very obvious that RSA will need to raise their rates to accommodate the funding necessary to build a water plant, build a pumping station or other facilities."

Frame said RSA staff needs to sit down with the Greene County board representatives to identify what the rates will need to be prior to the next RSA board meeting on Aug. 20. He said the first step is putting RSA in charge of the plan to continue to provide water to the customers.

"Does that (plan) include an impoundment?" Martin asked the board.

"I didn't say impoundment, I didn't say plant, I said provide water service," Frame said. "In

terms of how that occurs, it will need to be discussed between you and RSA."

The county has already purchased 125 acres for a proposed 900-million-gallon reservoir and a 1,460-foot-long, 75-foot-high dam on land between Watson, Fredericksburg and Dairy roads in Ruckersville.

"This whole project was supposed to be done in 2008 and in as much has tripled in cost and that gives me great pause," said Jim Crozier, a member from Orange County. "I also serve on not just this board but on other boards, and it is always my greatest concern to make sure that whoever I'm representing is treated the fairest that we possibly can and have the best outcome. I haven't seen an outcome, yet. That's what's very, very bothersome to me."

RSA board Chairman Steve Hoffman, a member from Madison County, said he's taking a position of looking out for the customers.

"We have been in the business of providing water and sewer. We

RSA is a regional water and sewer authority, founded in 1969, with Greene, Madison and Orange counties.

Greene County's appointed representatives on the board—Stanardsville Supervisor Bill Martin and Planning Commissioner Ron Williams—opposed the motion.

This vote occurred two days after the Greene County Board of Supervisors voted 5-0 on Tuesday, July 14, to increase the facility fee for users annually for the

have the experience in designing and building and operating water and sewer. I think it is proper that Rapidan Service Authority be the lead agency," Hoffman said.

Troy Coppage, the other Madison representative, said RSA is a "seamless operation; a one-stop shop."

Martin told the board that all the money that's been collected by impact and facility fees has been used to pay down previous infrastructure debt that the county assumed from RSA. He also pointed out there was a recession during the timeframe that Crozier noted.

"But no one can claim that Greene County is not trying to do its upmost now," Martin said.

"I never said as such," Crozier said. "I did mention the timing and let me explain it to you; due to the fact that Greene County did not do what they were supposed to do it is now costing triple what it would have cost had they done what was contractually obligated."

Clemons said the original estimate for the project was \$20 million.

next three years, beginning Jan. 1, 2021. The current fee is \$30 per equivalent dwelling unit (EDU), which measures how much water is used. Residential customers have one EDU while larger businesses have many. Both the county and the RSA board must agree to the increases before they can be implemented.

The Greene County Board of Supervisors called an emergency board

See **RSA**, Page A3

Recent estimates have the total project between \$45 million and \$65 million.

"Greene County needs water for its current growth, it needs water for its future growth; the data is clear," Martin said prior to the motion. "Greene County has developed a project and invested heavily in its realization."

Greene County Director of Planning and Zoning Administrator Jim Frydl told the RSA board that the county has invested about \$11.4 million in costs for engineering, purchasing of land and state and federal mandated stream mitigation credits for the reservoir.

Clemons said while he doesn't believe RSA has to use the project design that's been worked on to this point, it might.

There is also a lawsuit in Greene County Circuit Court, filed by Charlottesville Land Development, which calls the monthly facility fee a tax, which would be illegal, according to an opinion by Judge Claude Worrell Jr. from May. At press time, the case had

not been scheduled for trial.

Clemons said he has spoken to state officials and an engineer that RSA has worked with before to begin the process of developing a new water plan.

Currently, water is pumped from the Rapidan River to the treatment plant, which is on U.S. Route 29 south. The county is permitted to withdraw up to 1.5 million gallons of water per day and has an average daily demand, according to an engineering consultant for the county, of 1.2 million gallons of water per day.

"RSA knows that Greene County needs a reliable water supply far greater than our current run-of-the-river withdrawal from the Rapidan River," the release said.

Greene BOS to withdraw from RSA

BY TERRY BEIGIE
Record Editor

The Greene County Board of Supervisors voted unanimously to request withdrawal from the Rapidan Service Authority (RSA) at its Tuesday, July 28, meeting, citing what the county views as breaches of contract by RSA.

RSA was established in 1969 as regional authority with the counties of Greene, Orange and Madison. Boards of Supervisors for Madison and Orange must agree to the withdrawal, though the resolution makes it clear that if they do not, "the county attorney for Greene County shall file all necessary legal proceedings to enforce the breaches of contract referenced about and shall take such additional legal action as necessary to force RSA to comply with its contractual and legal obligations to the Greene County Board of Supervisors and to the citizens of Greene County."

This conversation comes after the RSA Board of Members at its July 16 meeting voted 4-2 to terminate the facility fee billing on monthly water and sewer bills, effective July 17, and have all future water hookup fees paid directly to RSA.

See **RSA**, Page A2

RSA

Continued from A1

The RSA board is comprised of two members from each of the member counties. The two opposing votes came from Greene County Board of Supervisors Chairman Bill Martin, Stanardsville, and Greene County Planning Commissioner Ron Williams.

That vote occurred two days after the Greene County Board of Supervisors unanimously to increase the facility fee for users annually for the next three years to pay for the water supply project, beginning Jan. 1, 2021. The current fee is \$30 per equivalent dwelling unit (EDU), which measures how much water is used. Residential customers have one EDU while larger businesses have many. Both the county and the RSA board must agree to the increases before they can be implemented.

According to Greene County Administrator Mark Taylor, the resolutions by the boards of supervisors show RSA had two main purposes—one in Orange and one in Greene.

"The first purpose was the acquisition, construction, operation and maintenance of a water transmission storage and distribution system in Orange County. What's notable is that so far as we can comprehend, RSA has managed to achieve this purpose for Orange County," Taylor said. "RSA's stated purpose B is the acquisition, construction, operation and maintenance of water supply and treatment facilities, plus a water transmission storage and distribution system in Greene County that will treat and transmit water from a water impoundment site near Stanardsville to the town of Stanardsville and to the Ruckersville community and in the area along U.S. 33 between Stanardsville and Ruckersville."

In 2005, 35 years after RSA was formed, Greene County decided to take on its own water supply project, Taylor said. At that time, by agreement with RSA, the county would collect the water and sewer hook-up fees to help pay the more than \$4 million in RSA debt the county agreed to assume and start the water supply project.

In a press release

issued after the RSA decision, General Manager Tim Clemons said the county was supposed to have completed the water improvements by the end of 2008.

Taylor disagreed with that sentiment.

"The agreement does not say that the work would be completed by 2008. Read it; 2008 does not appear anywhere in that agreement," Taylor said. "We didn't even have the approval of the Army Corps of Engineers to build the impoundment until 2011."

The Greene County Record obtained two letters under an open records request from RSA that mention the 2008 date—one dated Dec. 14, 2004, and dated June 28, 2005—both signed by then-RSA Board of Members Chairman V. Rea Jones and then-Greene County Board Supervisors Chairman Steve Catalano. However, in the agreement, obtained from the county via open records request, between Greene and RSA dated Oct. 25, 2005, "2008" is not included anywhere, though under "recitals" it mentions a Dec. 14, 2004 letter as the "preliminary agreement."

Taylor said in 2008, the bottom dropped out in the economy during the "Great Recession."

"Greene County's water supply project is back on track and looking forward to breaking ground next year," Taylor said. "We must move forward and we will."

In September 2017 the county heard from a hired contractor Stantec a plan to pay for the Greene County Water Treatment Plan and White Run Reservoir project using gradually increasing facility fees, water hookup fees, water costs and 7.5 cents per \$1 of real estate taxes.

The county has purchased 125 acres for a proposed 900-million-gallon reservoir and a 1,460-foot-long, 75-foot-high dam on land between Watson, Fredericksburg and Dairy roads in Ruckersville. Currently, water is pumped from the Rapidan River to the treatment plant, which is on U.S. Route 29 south. The county is permitted to withdraw up to 1.5 million gallons of water per day and has an average daily demand, according to an engineering consultant for the county, of 1.2 million gallons of water

per day.

Additionally, the county has obtained the permits and approvals from state and federal authorities, purchased the required streambank mitigation credits, completed the engineering work on virtually the entire project and is negotiating easements/rights of way for pipeline from the river to the impoundment.

At-Large Supervisor Dale Herring said RSA has been aware of the project.

"My concern with the whole situation, if you will, is that during one meeting RSA indicated it may come to a point where water would be insufficient for future projects," Herring said. "There appears to be no plan, at least no plan presented to Greene County. It has taken away all of the citizens' input, all the input from our planning commissions, from our boards of supervisors as far as how we grow as a county. I'm in total agreement with this resolution. I think it's imperative that we make this decision so we can grow, so that we have a future. Considering how involved I thought they were, I was very surprised that by the actions taken at the meeting on July 16."

Midway Supervisor Marie Durrer also said she was supportive of the resolution.

"It's clear that RSA, in my mind, does not want us; they want us out," she said.

Martin said the actions taken on July 16 put not only the service authority but the other counties above "the duly elected members of the Greene County Board of Supervisors."

While the facility fees have disappeared, the project will still have to be paid for, Martin said.

"The only way I know to compensate for their absence is with significantly higher water usage

rates, which frankly, I would welcome," Martin said. "The second option is to significantly raise real estate property taxes and I'm dead set against that, have been dead set against it since we began really moving forward on this project a few years ago."

"I'm afraid that all that RSA's actions have done is slow our water supply and water treatment project," Martin continued. "And it appears to me that Rapidan Service Authority either isn't interested in Greene County's vision for the future or doesn't have the capacity to take this on as their interest seems to be elsewhere."

Monroe Supervisor Steve Bowman made the motion to approve the resolution. Herring seconded the motion.

"I hope the public understand what we're doing, we're doing it for the citizens of Greene County," said Ruckersville Supervisor Davis Lamb.

There were representatives of RSA on the Zoom meeting call, though no one directed any questions to them in open meeting. Supervisors in Orange and Madison counties did not return request for comment by press time.

Martin said all the work the county has done over the past decade will not go to waste. He said he believes the recently passed Public-Private Education Facilities and Infrastructure Ordinance will help the county attract organizations interested in working with them on the "exciting shovel-ready project that has so many of the building blocks in place."

The next regular Board of Supervisors meeting is Tuesday, Aug. 11. The next regular RSA Board of Members meeting is Aug. 20.

Greene RSA reps silenced by board

Greene files civil lawsuit against utility in circuit court

BY TERRY BEIGIE
Record Editor

The Rapidan Service Authority (RSA) Board of Members' first action at its monthly meeting on Sept. 17 was to prohibit the Greene County representatives from speaking on business during public sessions or sitting in during closed session in a 4-2 vote. The two opposing votes were from the Greene County representatives: Greene County Board of Supervisors Chairman Bill Martin, Stanardsville, and Planning Commissioner Ron Williams.

RSA board Chairman Steve Hoffman, of Madison, requested the motion in response to a lawsuit filed in Greene County Circuit Court earlier in the week against RSA by the Greene County Board of Supervisors that requests more than \$33 million and Greene's removal from RSA (see sidebar, at end of article).

RSA was created as a regional water authority on June 17, 1969, by the counties of Greene, Orange and Madison.

The lawsuit includes six total counts for four alleged breaches of contract, one count for alleged breach of fiduciary duty and one count for alleged breach of articles of incorporation.

Hoffman said he had an opinion from Virginia Attorney General Mark Herring regarding conflict of interest.

"I had thought about the Greene County members' participation after we were once served, and I asked for and received a reply from the attorney general," Hoffman said.

The letter, obtained by the *Greene County Record* through an open records request, is dated June 15, 2018, and pertains to a case where a member of a board of supervisors was hired to be executive director of a public service authority and what conflict would arise if he remained a supervisor for the said locality. It is not a current opinion.

Hoffman went on to read several sentences from the letter into the record.

"Because an individual in the position you describe would have a personal interest in both governmental agencies—the Greene County Board of Supervisors and Rapidan Service Authority—he would have to remain alert at all times of which might require formal disclosure qualification or other action under (Virginia Code) 2.2-3.112," Hoffman read. "For example, conflicts or this sort could arise from decision by the Board of Supervisors pertaining to or having a financial effect on the authority, which is us, or from transactions that are pertaining to the effect of the county. That's the part I wanted to read into the minutes."

According to RSA's bylaws, obtained through an open records request, dated June 17, 1969, the board of members—by a majority vote—can limit the privileges of any board member.

"The privileges of a board

member may be restricted by majority vote of the board of members: provided however, that the restrictions imposed and the basis for such restrictions shall be specifically stated in the resolution passed by the board," the bylaws state.

Martin said according to the Virginia Freedom of Information Act code provision 2.2-3712 (g) that both he and Williams shall be permitted to attend board of members closed session meetings.

"In my opinion, you're wearing two hats and I don't think that's gonna fly," Hoffman said.

Lee Frame, of Orange County, made the motion to prohibit Martin and Williams from participating in further RSA board meetings, both public and closed, until such time as the lawsuit is settled.

"Does that sound appropriate, I guess is the word?" Orange representative Jim Crozier asked the RSA attorney Terry Lynn.

"Yes," Lynn said.

"I would ask the attorney, rather than is it appropriate, is it legal based on the statute I just read," Martin said.

Crozier said that was the intent of his question.

"I'm presuming that would still be the same answer," Crozier said to Lynn.

Lynn said the motion must be turned into a resolution per the bylaws.

At the time of the vote there was no written resolution.

The majority of the remaining business centered on Greene County's water needs.

RSA General Manager Tim Clemons laid out for the board the past 20 years' history of the planning of the county's water supply project and offered a plan to move forward with upgrading the treatment plant, among other projects for Greene.

Clemons said the comprehensive water plan, dated August 2000, was for a regional plan which would connect all three counties' systems together.

"The regional concept was the fundamental basis for the plan's conclusions," he said. "The long-range projects, which included the White Run Reservoir and the new water treatment plant, were to be constructed by Greene County, as indicated by letters of understanding dated Dec. 14, 2004, and June 28, 2005. All projects associated with the agreement were to be completed between 2005 and 2008."

Clemons noted Greene's growth numbers have not materialized as quickly as originally projected, using U.S. Census numbers showing that Greene has grown about 1% per year for the past decade.

"Neither the average daily demand nor that peak daily demand projection (of 2008) proved to be accurate. This certainly appears to indicate a downturn in growth," Clemons said.

In July, the peak day demand was 983,000 gallons, he said.

"What can be deceiving if you

simply look at the number is that it is not necessarily demand," Clemons said. "For instance, the day prior, we only produced 596,000 gallons. Our minimum day in July was 514,000 gallons."

Clemons said the term "safe yield" for the river is used in regulations for both the Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Health (VDH), but since RSA's Greene treatment facility is excluded from needing a water surface withdrawal permit by DEQ, the more "stringent definition of safe yield does not apply. DEQ will not require a (withdrawal) permit until such time that significant change needs to be made to the intake. I've had that discussion myself."

The intake, Clemons said, was rated by DEQ in 2007 for 1.75 million gallons per day. The VDH waterworks permit is the limiting factor, he said, as it states 1.15 million gallons per day for the treatment plant itself.

"In order to increase the plant's capacity, raw water storage will be necessary," Clemons said. "RSA has known that and recognized that fact for more than 20 years."

The 2000 plan estimated the cost of the impoundment at \$14.5 million and said it needed to be done by 2010. The 2005 agreement with Greene County said it would cost \$20.3 million and be constructed by 2008, Clemons said, using the dates found in the letters of intent. There is no due date found in the agreement the *Greene County Record* obtained through open records requests.

"Regardless of what has been printed in news sources or said by an individual, RSA did not enter into an open-ended agreement with no timeframe associated with performance," Clemons said. "It's 2020, and we still don't have a reservoir or plan and the projected cost is upwards of \$63 million."

Clemons requested the board approve \$48,500 for a preliminary engineering review of upgrading the water treatment plant with new membrane technology that could increase the plant's efficiency and lower operating costs. Clemons said the preliminary engineering report will take 60 days to complete. The board approved that unanimously 4-0 with the Greene members unable to participate.

"As noted previously, RSA still recognizes the need to safeguard against drought conditions and provide long-term water storage to that end," Clemons said. "We've already made contact with two potential properties for that."

Additionally, Clemons said he recommends the following actions to meet Greene County's water supply needs in the future: ■ Revise RSA's Comprehensive Water Supply Plan to reflect county preference for segmented water systems, improvements and system changes since 2000, identification of key future improvements, updated

water projects and impacts of "advanced metering infrastructure and low-flow appliances on demand reduction."

■ Authorize the preliminary engineering report for upgrading the existing water treatment plan to membrane technology.

■ Initiate formal discussion with VDH and DEQ regarding upgrading the existing water treatment plant and increasing river intake volume.

■ Review the Greene County water system in its entirety for needed upgrades.

■ Finalize required water rate increase to fund identified improvements.

■ Proceed with the selection of property and the design/construction of drought storage.

■ Further investigate and identify ground water sources for development and addition to the water system.

Greene County Director of Planning and Zoning Administrator Jim Frydl and Greene County Administrator Mark Taylor spoke during public comment.

"As a ratepayer, I'm a little embarrassed and ashamed and angry. First of all, the first action you guys took was to ban my representation in Greene County, then made a decision to spend \$48,000 of my money without my representatives being able to speak; no representative in Greene County spoke on a Greene County action," Frydl said.

Taylor offered packets of information for the board, though no members agreed to receive them.

"Sir, you might as well stop, we've cut ties with Greene County," Hoffman said.

"Oh no, sir. We asked you to cut ties with us, we asked you to let us out and you wouldn't. So you either will or you won't," Taylor said. "These are our representatives, they have a right to be part of this body and they have a right to be here. And there will be consequences for your ill-conceived actions taken today. I ask you respectfully, gentlemen to consider the Virginia code and reconsider today's action."

Frame asked for a closed session to discuss the litigation with the attorney.

Both Martin and Williams left the room, despite the code section Martin read previously.

"There was no reason to stay," Martin said. "It was outrageous. I believe it's illegal and I suspect they'll be hearing about it."

The lawsuit

On Tuesday, July 28, the Greene County Board of Supervisors unanimously approved a resolution that requested Madison and Orange boards of supervisors release Greene from the Rapidan Service Authority.

Both Orange and Madison supervisors said no to the release of Greene County.

On Sept. 14, Greene County filed a lawsuit in Greene County Circuit Court requesting, among other things, that a court dissolve the corporation and to sur-

render to Greene all RSA assets within the county and without cost to the county.

RSA attorney Terry Lynn said after the Sept. 17 board of members meeting that nobody will comment on the lawsuit.

"It's in the court; that's where we'll try it," Lynn said.

There are six counts in the lawsuit. The first is alleged breach of contract that stems from the RSA board July 16 meeting vote to stop billing for and collecting of the facility fees which were an integral part of the county's plan to fund the water project and continue to pay the debt on the sewer project.

The county is asking for \$24.2 million for the money spent by Greene County in preparation for the new water system, according to the lawsuit.

The second count is alleged breach of fiduciary duty. The county alleged in the lawsuit that Greene paid for a \$19,180 billing system to allow the facility fees to be added to the billing, as well as the fact that RSA kept 10% of facility fees collected monthly as part of the original agreement with the county. The county is asking for both the cost of the billing system, as well as the amounts collected from facility fees monthly by RSA and for RSA to produce the customer list to the county.

Count three is for alleged breach of contract causing the "unjust enrichment" of RSA because the county assumed the debt in the 2005 agreement.

"RSA has been unjustly enriched by Greene County's payment of \$7,537,524.22 over 15 years," the lawsuit stated. The county still owes \$1,313,732.17 for future bond payments, according to the lawsuit. The county is asking for all that money back.

The fourth count alleged breach of contract due to RSA's alleged failure to maintain the system.

"RSA has not had a capital improvement project in 20 years," the lawsuit stated. "Items are fixed on an ad hoc basis, but there has been no capital improvement plan to upgrade the water or sewer system or infrastructure."

The county is requesting a writ of mandamus that will require RSA to turn over the operations of the water and sewer systems to Greene.

The fifth count alleged breach of articles of incorporation as it relates to the infrastructure in Greene County.

The final count in the civil lawsuit alleged breach of contract for water hookup fees due to the fact that the July 16 board of members' vote "unilaterally determined that all water (hookup fees) would be paid directly to RSA. There was no consultation with the Greene Board of Supervisors about this change prior to the breach," the lawsuit stated.

At press time no hearing date had been scheduled and no response filed by RSA.