

**Virginia Soil and Water Conservation Board
Friday, March 19, 2004
Department of Forestry
Charlottesville, Virginia**

Virginia Soil and Water Conservation Board Members Present

David L. Moyer, Chairman
Linda S. Campbell
M. Denise Doetzer
Jean Packard

Joseph H. Maroon
Donald O. "Spec" Campen, Jr.
W.P. "Billy" Johnson
Granville Maitland

Virginia Soil and Water Conservation Board Members Not Present

A. Dewey Bond
Robert M. Hall

Susan Taylor Hansen

Staff Present

Leon E. App
Michael R. Fletcher
Mark B. Meador
Stuart Wilson

William G. Browning
Jack E. Frye
Dianna Sheesley

Others Present

J.L. Bailey, Lake of the Woods Association
Jim Byrne, VASWCD
J. Carlton Courter, III, VDACS
Dom Demetrious, DPWES, Fairfax County
Daniel Elliott, Lake of the Woods Association
Lee Frame, Lake of the Woods Association
J. Michael Foreman, Department of Forestry
Jean Hopkins, Lake of the Woods Association
Jim Hopkins, Lake of the Woods Association
John Isaacs, Lake of the Woods Association
Robin Knepper, Fredericksburg Freelance-Star
Abdul Lewally, DPWES, Fairfax County
Stephanie Martin, VASWCD
Peter Molinari, Lake of the Woods Association
Beth Teare, Office of the Fairfax County Attorney
Harry Ridge, Lake of the Woods Association

Call to Order

Chairman Moyer called the meeting to order at 9:30 a.m. and declared a quorum present.

Thank you to Michael Foreman for hosting the meeting

Minutes of the January 23, 2004 Meeting

MOTION: Mr. Campen moved that the minutes of the January 23, 2004 meeting be approved as submitted.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Director's Report

Mr. Maroon reported that the General Assembly was still in session, but had not to date reached a budget agreement. He noted that the Senate version of the budget included additional funding for water quality and dam restoration. The House version included additional funding for state park positions, district operations and district dam repairs.

Also under consideration is the merger of the Chesapeake Bay Local Assistance Department into the Department of Conservation and Recreation. This was considered in the 2003 session, but did not pass.

Mr. Maroon noted that he hoped to be able to discuss the details of the budget at the May meeting.

Mr. Maroon reviewed the following legislation that had passed. A full list with explanatory notes is available from the Department of Conservation and Recreation.

HB 445 Erosion and sediment control and stormwater management inspectors; certificate of competence.

HB 549 Open-space preservation; imposition of additional fee for distribution to Outdoors Foundation.

HB 883 Conservation easements; holders to have principal office in State.

HB 1177 Stormwater management programs; reorganization.

HB 1271 Soil and water conservation districts; nonpoint source pollution activities.

HB 1283 Erosion and Sediment Control Law; def of land-disturbing activity including certain surface or deep mine.

HJ 72 Nutrient management plan: JLARC to study effectiveness of implementation, performance and enforcement. – Mr. Maroon noted that he would discuss this item later in the agenda.

HJ 371 Commending the River Basin Grand Winners of the Clean Water Farm and Bay Friendly Farm Awards.

SB 523 Watershed Coordination Program; established.

Dam Safety Certificates and Permits

Mr. Browning gave the report for Dam Safety Certificates and Permits.

Staff has determined the following dams to be out of compliance.

01533	Fauber	Class I
06114	Lake Mellott	Class II
08703	Gillie Creek	Class II
17907	Little Lake Arrowhead	Class II
17908	Lake Arrowhead	Class II

Mr. Browning noted that the Fauber Dam is new in the system as of January. He noted that staff has been working with the owner and the owner's attorney. Staff is currently working on the dam under the Governor's directive with the intent of alleviating the imminent danger to property and life.

Mr. Maroon said that it was important for the board to understand the situation. When DCR was notified in January the inspection showed that the water level was over the spillway by a couple of inches. The threat was deemed imminent. The owner indicated that he had performed no maintenance on the dam in 30 years. DCR worked closely with the county officials and the Office of the Attorney General. Every opportunity was given for the owner to respond, but he did not. Staff had to obtain a court order to enter the property.

Mr. Moyer asked if the cost of the work will be billed to the landowner.

Mr. Browning said that the contractor will be paid. A bill will be sent to the landowner along with instructions on what must be done to bring the dam into compliance.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board authorize DCR staff to work with the Attorney General's Office on drafting a letter that outlines the needed corrective measures to bring Lake Mellot, Inventory Number 06114, Little Lake Arrowhead Dam, Inventory Number 17907, and Lake Arrowhead Dam, Inventory Number 17908 into compliance with the Virginia Dam Safety Act and that the notification be send by certified mail.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Due to the need for Mr. Fisher to attend another meeting, Chairman Moyer called for the update on Lake Martin.

Lake Martin Update

Mr. Wilson noted that the litigation process is completed. He introduced three representatives from Fairfax County to provide an update:

Beth Teare, Office of the Fairfax County Attorney.

Dom Demetrius, Fairfax County DPWES

Abdul Lewall, Fairfax County DPWES

Ms. Teare said that she was part of the three person team that litigated the case. The trial was held in August of 2003. The county presented testimony of citizens who live around the lake as well as some of the inspectors, and county surveyors.

The judge announced the ruling on September 22, 2003 with the final order being entered on October 28, 2003. The judge awarded judgement in the amount of \$625,271. The developer appealed, but withdrew the appeal on December 23. The County already had in hand an amount of \$356,400 from the developer's letter of credit and conservation deposit. The County will pursue the recovery of the additional \$268,871 from the Court judgement. The County recognized that it may be difficult to recover the balance from an insolvent corporation.

Mr. Lewally reviewed the current status of the lake and the property.

Mr. Demetrius said that the county is challenged to do with \$235,000 work that has been estimated at \$500,000. The plan is to go back and look at alternative measures for remediation.

The county is looking at a re-scoping of the preliminary design and will seek citizen input before selecting a final design and beginning construction. The tentative timetable for completion is 2007.

Mr. Moyer asked if the county had been in contact with the affected landowners.

Ms. Teare said that she has ongoing communications with the citizens.

Ms. Campbell asked where the county was looking for the next source of funding assuming the recommendations cannot be modified.

Ms. Teare said that the county will make the best use of funds available and that they were committed to using the funds recovered for actual remediation work.

Mr. Maroon noted that it would be helpful that, as significant steps were taken the county would keep the board up to date. He noted that this was the first presentation from the county during his tenure as director. The County agreed to provide updates.

Mr. Moyer directed members back to the agenda and Dam Safety Certificates and Permits.

Dam Safety Certificates and Permits (cont.)

Mr. Browning noted that he had been working with the Lake of the Woods Association in concert with Dianna Sheesley. They met with the association board in December to discuss the dams in question.

He said that Mr. Frame would like to address the board concerning the dams. However, he noted that the Board would be taking no action at this meeting. DCR staff hopes to meet with the association and present an agreeable solution not later than July.

Mr. Moyer recognized Mr. Frame for the purpose of remarks. A copy of Mr. Frame's presentation is attached as Attachment #1.

Ms. Packard noted that the association has a commitment from the developer not to develop homes in the affected area. She asked Mr. Frame what the zoning was on the property in question.

Mr. Frame said that no building permits have been granted for the property.

Ms. Packard asked if Orange County had an ordinance allowing the county to shift the density for development. She noted if there is no ordinance the county cannot shift the density.

Mr. Bailey, General Manager of the Lake of the Woods Association said that the county planner has the appropriate maps. He said that he did not believe the county had granted to the developer an increase in density to make up for the 199 homes they lost in the affected property.

Ms. Campbell asked that the board receive a continual update on this matter.

Mr. Maroon noted that the dam was clearly well maintained. He said that the issue was not the maintenance of the dam, but the classification. Standards are very high when life and property are involved.

Mr. Moyer recognized Mr. Harry Ridge, Lake of the Woods resident.

Mr. Ridge said that he had a bit of a different perspective about the steps needed. He noted that the topographic maps show that a 2 foot rise in the lake would bring the water to the door of some homeowners. He said that he believed the dam allows the lake to rise about 5-6 feet.

Mr. Ridge said that he believed a berm would raise the lake another three feet. He believes that this would cause damage to existing homes.

Mr. Campen asked if Mr. Ridge had any input into the planning. Mr. Ridge said he did not.

Mr. Moyer recognized Mr. Daniel Elliott, Lake of the Woods resident.

Mr. Elliott said that his background was in scientific engineering. He said that his concern was the ground rules for determining action. He noted that a 2-3 foot rise would impact the first floor of area homes.

MOTION: Ms. Campbell moved that the consideration of the two Lake of the Woods Association dams be extended until the July 2004 meeting of the Board.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning presented the following recommended Operation and Maintenance Certificates.

00908	Graham Creek Reservoir Dam #1	Class II Regular
01515	Camp Shenandoah	Class II Regular
01519	Coles Run	Class I Regular
03102	Timber Lake	Class II Regular
03111	Lakeland	Class I Regular
03105	Lakewood	Class III Regular
05906	Lake Accotink	Class I Regular
05910	Lake Fairfax	Class II Regular
05923	Pohick Creek	Class I Regular
06521	Fluvanna Women's Institution	Class III Regular
06702	Upper Blackwater River Dam #4	Class I Conditional
07908	Deer Lake	Class II
07909	Reynolds Farm	Class III Regular
08501	Camp Hanover	Class III
10929	Woolfolks Dam #1	Class III Regular
14321	Brushy Mountain	Class III Regular
15506	Camp Powhatan	Class II Regular
17923	Bridal Lake	Class II
18709	Apple Mountain Lower	Class II
18711	Apple Mountain Upper	Class II
19502	Big Cherry	Class I Conditional
81003	Stumpy Lake	Class III

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

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning presented the following permit recommendations:

00980	Graham Creek Reservoir Dam #1	Class II Regular
08501	Camp Hanover	Class III
10922	Izac Lake	Class III Conditional
15326	New Bristow Village	Class II
17104	Woodstock	Class I Conditional

MOTION: Ms. Packard 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 owner.

SECOND: Mr. Campen.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Mr. Campen moved that the Board reconsider the vote on Operation and Maintenance Certificates.

SECOND: Ms. Campbell.

DISCUSSION: Mr. Maitland stated that he had questions concerning Stumpy Lake (Inventory Number 81003).

VOTE: Motion carried unanimously.

Mr. Maitland asked what was the required dam height for a dam to come under classification.

Mr. Browning noted that specific to Stumpy Lake the engineer specifically asked that this dam be added. The current database contains 1629 dams. Mr. Browning noted that up until 2002 the division was dealing strictly with dams that were over 25 feet. Stumpy Lake was previously not regulated.

Mr. Maitland said that regulating a dam of this type will have a negative effect. He noted experience in operating a dam for sediment control.

Mr. Campen asked to clarify that the law does not allow a dam owner to break a dam on their own property.

Mr. Maitland said that it must be coordinated through the Army Corps of Engineers.

Mr. Maroon noted that the dams regulated by DCR pertain to those that present a risk to property or life.

MOTION: Mr. Campen moved that the Board affirm the list of Operation and Maintenance Certificates as previously approved.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Browning presented the following list of Extension Recommendations. He noted that Goodwin Dam (Inventory Number 14705) is owned by the DCR Division of State Parks. He also noted that the Lake of the Woods dam had been previously voted on by the board. There were no board member conflicts with district owned dams.

01516	Upper Wallace	Class III Regular
01903	Beaver Creek	Class II Regular
01922	Ivy Hill	Class I Regular
01932	Lake Ridge Drive	Class III Regular
02501	Brunswick County	Class III Regular
03507	Stewarts Creek–Lovills Creek Dam	Class I Regular
03701	Roanoke Creek #70A	Class III Regular
04502	John's Creek #1	Class I Conditional
04503	John's Creek #3	Class I Regular
04905	Clements	Class III Regular
07507	Pruitt's	Class III Regular
07508	Reservoir #1	Class III Regular
07525	Lake Dillon	Class III Regular
08502	South Anna 52B	Class III Regular
09908	Darr Pond	Class III Regular
13502	Epes	Class III Regular
13701	Lake of the Woods	Class I Conditional
13708	Keaton's Run	Class I Conditional
14705	Goodwin	Class III Regular
14718	Mottley	Class III Regular
14735	Bush River Dam #12	Class I Regular
16308	Turner	Class II Regular
16505	Lake Shenandoah	Class II Regular
16512	Lake Massanutten	Class III Regular
17101	Stoney Creek #9	Class I Conditional
17104	Woodstock	Class I Conditional

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board approve the extension recommendations as presented by DCR staff, with the exception of the Lake of the Woods Dam (Inventory Number 13701), Keaton's Run Dam (Inventory Number 13708) and Goodwin Dam (Inventory Number 14705) Dam and that staff be directed to communicate the Board actions to the affected dam owners.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Mr. Campen moved that the Virginia Soil and Water Conservation Board approve the extension recommendation for Goodwin Dam (Inventory Number 14705).

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried with Mr. Maroon abstaining.

Mr. Moyer noted that there had been a number of recent news articles concerning dams and dam safety.

Mr. Browning noted that staff has been working with various reporters. This has been a good opportunity to call attention to dams that need maintenance or repair.

Urban Program Update

Mr. Wilson presented recommended motions regarding approval of 2004 Annual Standards and Specifications for Utility Companies.

MOTION: Ms. Campbell moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the review of the 2004 annual standards and specifications for electric, natural gas, telecommunications and railroad companies. The Board concurs with staff recommendations for conditional approval of the 2004 specifications for the utility company listed below in accordance with the Erosion and Sediment Control Law and, that the Board further request the Director to have staff notify said

company of the status of the review and conditional approval of the annual standards and specifications.

The four items for conditional approval are:

1. A revised list of all proposed projects planned for construction in 2004 must be submitted by April 16, 2004. 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 April 16, 2004 must be provided to DCR two (2) weeks in advance of land disturbing activities by e-mail at the following address LinearProjects@dcr.state.va.us.
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.state.va.us. The information to be provided is name, contact information and certification number.
4. Apply all erosion and sediment control practices in accordance with the 1992 Virginia Erosion and Sediment Control Handbook.

Company recommended for conditional approval with the above 4 conditions is: Washington Gas.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board receive the staff update concerning the request by Columbia Gas Transmission Company to modify the variance granted by the Board at the January 23, 2003 meeting regarding Minimum Standard 16.a, that the Board concur with staff recommendations to modify the granted variance in accordance with the Erosion and Sediment Control Law, and further that the Board request the Director to have staff notify said company of the status of the variance request.

The response to the requested variance is as follows:

The granted variance to Minimum Standard 16.a is modified such that a project may have more than 500 linear feet of trench length opened at one time provided that at the end of each work day the open trenches are adequately backfilled, seeded and mulched such that no more than 500 feet of trench remains open and adjacent property and the environment are protected from erosion and sediment damage associated with the regulated land disturbing activity.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried unanimously.

District Director Resignations and Appointments

Mr. Meador presented the following list of District Director Resignations and Appointments.

Big Sandy

Resignation of Edna Justis, Buchanan County, effective 2/25/04, elected directed position (term of office expires 1/1/08).

Recommendation of James N. Horn, Buchanan County, to fill unexpired term of Edna Justis (term of office to begin on or before 4/18/04 – 1/1/08).

Blue Ridge

Recommendation of Jonathan Vest, Roanoke County, to fill vacant Extension Agent position (term of office to begin on or before 4/18/04 – 1/1/05), (*previously disqualified due to failure to take oath*).

Colonial

Resignation of Robert M. Oliver, City of Williamsburg, effective 2/24/04, elected director position (term of office expires 1/1/08).

Recommendation of James N. McCord, Jr. City of Williamsburg, to fill unexpired elected term of Robert M. Oliver, (term of office to begin on or before 4/18/04 – 1/1/08).

Headwaters

Recommendation of Charles C. Schooley, Augusta County, to fill vacant elected position (term of office to begin on or before 4/18/04 – 1/1/08). (*previously disqualified due to failure to take oath*).

Resignation of Christophe L. Lawrence, Augusta County, effective 3/5/04, appointed Extension Agent director position (term of office expires 1/1/05).

Recommendation of Thomas A. Stanley, Augusta County, to fill unexpired Extension Agent term of Christophe L. Lawrence (term of office to begin on or before 4/18/04 – 1/1/05).

Lord Fairfax

Resignation of Wilbur N. Wood, III, Clarke County, effective 3/11/04, elected director position (term of office expires 1/1/08).

Recommendation of Gregory H. Hart, Clarke County, to fill unexpired elected term of Wilbur N. Wood, III (term of office to begin on or before 4/18/04 – 1/1/08).

Resignation of David S. Zerull, Frederick County, effective 12/12/03, elected director position (term of office expires 1/1/08).

Recommendation of Marcus M. Adams, Jr. Frederick County, to fill unexpired elected term of David S. Zerull (term of office to begin on or before 4/18/04 – 1/1/08).

Northern Neck

Resignation of Virginia Barnes, Lancaster County, effective 2/20/04, appointed Extension Agent director position (term of office expires 1/1/05).

Recommendation of Samuel M. Johnson, Lancaster County, to fill unexpired Extension Agent term of Virginia Barnes (term of office to begin on or before 4/18/04 – 1/1/05).

Thomas Jefferson

Recommendation of Andrew H. Gantt, II, Nelson County, to fill vacant elected position (term of office to begin on or before 4/18/04 – 1/1/08). (*previously disqualified due to failure to take oath*).

MOTION: Ms. Packard moved that the Virginia Soil and Water Conservation Board approve the resignation and appointment actions as presented by DCR staff and that staff be directed to communicate the Board actions to the affected individuals and their SWCDs.

SECOND: Mr. Campen.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Lake Barcroft WID Budget

Mr. Meador presented a request from the Northern Virginia Soil and Water Conservation District for the approval of the Lake Barcroft Watershed Improvement District FY04 Budget.

MOTION: Mr. Campen moved that, under the authority provided by § 10.1-626 of the *Code of Virginia* that the Virginia Soil and Water Conservation Board approve the Lake Barcroft WID operating budget as submitted, and that DCR staff be directed to communicate this action to the Northern Virginia SWCD and the Lake Barcroft WID.

SECOND: Ms. Campbell.

DISCUSSION: None.

VOTE: Motion carried with Ms. Packard abstaining.

SWCD Financial Policy Considerations for FY04-05

Mr. Meador presented a copy of the SWCB Financial Policy. He noted that the Board has a self-imposed deadline of May 1 to review the attachment to the policy. He said at this time staff had no recommendations for changes to the policy or attachment.

- MOTION: Mr. Campen moved that the Board make no changes to its current Policy on Financial Assistance for Soil and Water Conservation Districts at this time.
- SECOND: Ms. Packard.
- DISCUSSION: None.
- VOTE: Motion carried unanimously.

DCR/SWCD Grant Agreement Deliverables

Mr. Meador noted that the DCR staff had no recommendations for changes to the Grant Agreement Deliverables at this time. DCR staff will be meeting with representatives from the Soil and Water Conservation Districts. Any proposed changes will be presented in advance of the May 2004 meeting.

- MOTION: Mr. Campen moved that the Board direct DCR staff to provide each Board member with any draft revisions to the existing list of Deliverables at least 10 days prior to the Board's May 20, 2004 meeting (on or before May 10th) for review and possible action by the Board during the May meeting.
- SECOND: Ms. Campbell.
- DISCUSSION: Mr. Maitland asked if someone from the executive committee of the Virginia Association of Soil and Water Conservation Districts could be a part of the discussions.
- Mr. Maroon noted that staff would be in discussion with the Association.
- VOTE: Motion carried unanimously.

City of Roanoke Petition to Join the Blue Ridge SWCD

Mr. Meador noted that public hearings are set for April 13th in Roanoke and April 14th in Rocky Mount. Ms. Campbell will serve as the hearing officer.

No Board action is required at this time.

New River SWCD Audit

Mr. Meador provided members with a letter saying that the audit of the New River SWDC had been successfully completed.

MOTION: Mr. Campen moved that following the completion of an audit for the required 3 fiscal years and concurrence by DCR staff that the completed audit satisfies audit requirements of all districts, that the Board direct DCR staff to resume normal disbursements of New River SWCD funds, to release to the New River SWCD any withheld dollars and to communicate these actions to the New River SWCD chair.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Meador informed members that in January 2004, the Prince William SWCD discovered a serious financial problem. Because of employee theft, the District has suffered approximately a \$90,000-100,000 loss. There is an initial date to file criminal charges and a plea. A court date is scheduled for April 22.

At this time, there is no request for Board action.

Subcommittee on the Future of Districts

Mr. Maitland reported that the subcommittee met on March 8 in Mechanicsville and identified the following three subjects for further consideration.

- 1) Program funding
- 2) Program role of districts
- 3) Resource sharing.

MOTION: Mr. Campen moved that the current subcommittee be instructed to continue discussions with a focus on the program roles of districts.

SECOND: Ms. Packard.

DISCUSSION: None.

VOTE: Motion carried unanimously.

By-laws

Mr. App presented recommended changes in the Board bylaws. He noted that changes presented mainly brought the bylaws into conformance with current law.

Mr. Foreman asked the intent of the relationship of the Board with the Department of Forestry. He noted that partner agencies were not recognized in the Bylaws.

Mr. App noted that if the Board wished to make additional changes that the Bylaws precluded them from amending in the same session.

MOTION: Ms. Packard moved that the revised Bylaws be approved as revised.

SECOND: Mr. Johnson

DISCUSSION: Ms. Packard suggested that staff could review the Bylaws and make appropriate recommendations concerning partner agencies.

Mr. Maroon suggested it would be beneficial to know if there are other agencies that reference partner agencies within their bylaws.

VOTE: Motion carried unanimously.

Partner Agency Reports

Virginia Department of Agriculture and Consumer Services

Mr. Courter noted that Agriculture Stewardship Act Case #208 has been resolved satisfactorily. The cattle no longer have access to areas in question and the vegetation has been re-established.

Mr. Courter noted that VDACS continues to face new challenges in including Mad Cow disease, the avian influenza. He noted there may be cases of sudden oak death on nursery crops.

Department of Conservation and Recreation

Mr. Maroon noted that there were a number of programmatic issues of which the Board should be aware. These relate to the charge given at the Governor's Summit on Natural Resources, the JLARC study and the Senate budget amendment.

DCR is asking if we are making the greatest impact with the limited resources we have. Jack Frye and Mark Meador have been formulating ideas along these lines. In addition we have asked Greg Evans to convene members for further discussion.

HJ 72 sponsored by Delegate Kirk Cox will study the effectiveness of Virginia's nutrient management plans. We believe this will have a positive impact.

Mr. Frye reported on additional programs for the Department of Conservation and Recreation. A copy of Mr. Frye's report is attached as Attachment #2.

MOTION: Mr. Campen moved that the Board be on record as supporting the request for an additional 5,000 acres of CREP enrollment for the Southern River watershed.

SECOND: Mr. Maitland.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Natural Resources Conservation Service

Ms. Doetzer gave the report for the Natural Resources Conservation Service. A copy is attached as Attachment #3.

Department of Forestry

Mr. Foreman gave the Department of Forestry report. A copy is attached as Attachment #4.

Mr. Moyer expressed appreciation on behalf of the Board for Mr. Foreman hosting the meeting at the Department of Forestry.

Public Comment

Mr. Byrne thanked the members for moving ahead with the subcommittee. He said that the worth of the districts is more than the implementation of programs. He noted that districts need essential funding to operate in the field.

Next Meeting

The next meeting will be on Thursday, May 20, 2004 in Richmond.

Mr. Maroon stated that he would like for the Board to move into executive session. He made the following motion for that purpose.

MOTION: I, Joseph H. Maroon, move that this Board go into executive session pursuant to § 2.2-3711 of the *Code of Virginia*. The purpose of this executive session is to discuss and/or consult with counsel regarding personnel matters under § 2.2-3111 A.1 and A.4 of the *Code of Virginia*.

SECOND: Ms. Campbell.

VOTE: Unanimous hand vote.

MOTION: Mr. Campen moved the following:

WHEREAS, the Virginia Soil and Water Conservation Board has convened an executive session/meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3711 of the *Code of Virginia* requires a certification by the Board that such executive session/meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE BE IT RESOLVED that the Board hereby certifies, to the best of each member's knowledge, the following:

- 1) Only public business matters lawfully exempted from open meeting requirements by Virginia Law were discussed in the executive session to which certification applies, and
- 2) Only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

VOTE:

AYES Johnson, Hall, Maroon, Moyer, Campbell, Maitland, Campen

NAYS None

ABSENT DURING VOTE:

ABSENT DURING MEETING: Ms. Packard had left for the day.

Adjourn

There being no additional business the meeting was adjourned.

Respectfully submitted,

David L. Moyer
Chairman

Joseph H. Maroon
Recording Secretary

Attachment #1**Prepared Remarks for the
Soil and Water Conservation Board Hearing
March 19, 2004**

Lee Frame, President,
Lake of the Woods Association

Two years ago, representatives from the Division of Dam Safety (DDS) recommended to you that the hazard classification of the Lake of the Woods Main Dam and the Keaton's Run Dam be changed from Class II to Class I. Their rationale for this change as reflected in their justifications document dated September 20, 2001, was the high traffic volume on Routes 3 and 20. The conditional Operational and Maintenance Certificate and forwarding letter we received a week or so later required further investigation to be conducted as an implicit condition of the conditional certificate, but provided no explanation to us of the commonwealth's rationale for the classification changes. In response to an inquiry from one of our members, Ms. Dianna Sheesley provided a copy of the justification provided to you and stated her opinion that a sunny day failure of either dam would probably result in loss of life as well as a significant amount of property damage.

Virginia's Impounding Structures Regulations (Dam Safety) state that the Class I hazard potential for impounding structures will cause probable loss of life in the event of failure. Our reading of the literature on dam failures and discussions with Dewberry and Davis, our consulting engineers, indicate that dam failures can occur from overtopping under heavy precipitation conditions that exceed the capacity of the spillway, or when internal erosion occurs due to unchecked animal burrowing, excessive tree growth, leaking pipe penetrations or other poor maintenance situations. In any realistic scenario there most likely will be warning indications of a dam failure. Heavy precipitation situations will be accompanied by rainfall measurements and rising spillway levels which are the basis for warnings, road blocking and evacuation of occupied buildings. Failures under any other conditions are significantly minimized by proper dam management and will have indications revealed during regular inspections again allowing sufficient warning to take life preserving measures. In reviewing dam failure investigation reports, even the "unexpected failures" usually have had advance warning indications that minimally responsible dam management would have detected. The only scenario in which a loss

of life may be probable is a failure situation without any indication that has been worst case situation hypothesized by DDS as the sunny day failure. Such an extreme failure situation is not discussed anywhere in the Virginia statutes or regulations. DDS personnel have stated that the sunny day failure is a standard practice for evaluating impounding structure hazards. However, using such a standard to upgrade hazard classification and therefore requiring dam modification expenditures in the millions of dollars without subjecting that standard to scrutiny during the regulatory process and approval by the Soil and Water Conservation Board seems inconsistent with good governing.

Also, the change in hazard classification to Class I did not appear to be reasonable because the Main Dam's classification was changed from Class I to Class II in 1987 with many of the current homes in place at that time. In reviewing what changed conditions could have led to an increase in the Main Dam hazard classification level in 2001, we identified a proposed development that platted 199 homes in the Main Dam inundation zone. None of these homes have yet been constructed, and working with Orange County and Tricord, the new developer of this area, we have received the developer's written commitment not to build homes in this area.

Lake of the Woods Association has a record of excellent dam management that will ensure that the dams are well maintained and that adequate warnings and protective actions are carried out. Although we are not an official Emergency Action Coordinator, the Association has plans in place to manage a wide variety of emergency situations, including dam emergencies that could affect our community and surrounding areas. We have 24 hour security staff on duty and have implemented a radio-linked warden system to supplement our staff for emergency functions such as notification, evacuation and traffic control. In the area of routine operation and maintenance we installed piezometers on both dams to enable monitoring of internal water levels. Problems identified by our professional engineer inspections and the former head of the DDS during his visit have been promptly corrected. Our staff conducts the required annual inspection functions on a monthly basis. And, after the recent earthquake, our staff came in during off duty time to inspect the our dams within an hour of the earthquake. I doubt if many other dams were so inspected after the earthquake.

Although we do not believe that a Class I hazard classification is warranted, Lake of the Woods Association recognizes that there are some actions that we can take to reduce further the minimal hazard potential that exists. We feel that the following actions are sufficient to meet reasonable dam safety levels for the Lake of the Woods Main Dam.

- First, we would address what the Division of Dam Safety has indicated is their most serious concern, the low level drain that passes through the base of the Main Dam. This concern was not part of the discussions on increasing classification level, but subsequently expressed to us and we agree that it should be addressed. This 12 inch pipe currently has a double valve at the downstream end, is normally subjected to full pressure and if it were to develop a leak could lead to piping and subsequent dam failure. Lake of the Woods will cap the underwater end of the pipe, inspect the pipe for integrity, and either install an underwater valve to take the pressure off the pipe or fill the pipe with grout. This effort is planned for completion this summer
- Second, we will install a two to three foot berm in the low area near our current beach. Because this area is lower than the top of our dam, the full 0.5 Probable Maximum Flood (PMF) current capability of our spillway can not be realized and flow through this low area could potentially flow to the toe of the dam and cause erosion. As a result of this low area, our dam may be at risk for less than a 0.5 PMF event. We will complete the berm within the next two years.
- Third, we will install a bladder in the top portion of the current spillway. The bladder will allow us to maintain the current lake level while inflated, but deflating it would allow us to increase spillway capacity to 0.7 PMF. The use of the bladder would also allow controlling lake levels for lesser precipitation events and prevent flooding of low lying homes along our lakefronts. The bladder would also allow lowering the level in the lake in anticipation of a precipitation event that could threaten the dam. During the next two years we will do all of the engineering and design work for this effort. We would expect to complete the installation of the bladder in six to eight years after completion of the berm.

The above projects are expected to cost the members of Lake of the Woods Association in excess of a million dollars. We have adjusted our assessment fees for a number of years to accumulate reserves and would be expected to have sufficient funds to carry out these projects in the time frames indicated.

Although the above actions do not achieve a 1.0 PMF spillway capacity as required for new Class I dams by Table 1 of the Impounding Structure Regulations, they do increase spillway capacity significantly (from 4400 cfs to 6100 cfs or 38% increase) and remove a potential hazard (i.e. the pressurized low level drain). We consider it very unreasonable for our dam to be required to achieve a full 1.0 PMF spillway capacity, especially given the questionable process for classifying it as Class I Conditional and the fact that increased spillway capacity does nothing to address the sunny day failure mode. The following additional points support this position.

- The PMF event is a theoretical event that has only the remotest possibility of occurrence. A PMF event requires precipitation of 37 inches in 24 hours. The maximum 24 hour rainfall recorded in Virginia since the 1600s was 27 inches in Nelson County in 1969. Not only is 37 inches of rain needed, but the storm must be accurately positioned and oriented over the Main Dam watershed area and it must remain there for 24 hours to achieve the full 1.0 PMF condition. The 1985 National Research Council report on Safety of Dams which evaluates the need for full PMF spillway capability indicates that the probability of occurrence of full 1.0 PMF is on the order of once in ten thousand years to once in a million years. The same report extrapolates the 500 year event to 0.4 PMF well within our current spillway capacity when the berm is completed.
- Current literature on dam safety is addressing dam spillway capacity in terms of cost benefit, where the cost factor for existing dams is substantially greater than including full PMF for new dams.
- Actions to reach 1.0 PMF will likely require excavation into the earthen structure which in itself creates risks. Such excavation would require substantial lake lowering and loss of use of the Main Lake by our community. The fill of a new earthen dam is a time of known greater risk and although there is no data on refill after a major excavation, it is logical that this would engender some unnecessary risk.
- Actions to reach 1.0 PMF would require additional millions of dollars of costs and would achieve only marginal improvements in safety.

During earlier discussions with Dam Safety Office representatives, we were led to believe that removing the 199 home development in the Main Dam inundation zone, building a berm to eliminate a low point adjacent to the dam, resolving potential problems with the low level drain by installing a new valve or totally blocking it, and installing a rubber bladder to increase

spillway capacity and enable lowering water levels prior to heavy precipitation, would result in a permanent solution. The Lake of the Woods Association feels that we have worked in good faith with the Dam Safety Office to find reasonable and effective solutions to the issues of our dam safety. We were taken aback by recent discussions which have dissolved those earlier efforts and appeared to implement abrupt and dramatic changes in policy that require much more expensive solutions. These changes were brought on apparently by a change in staff, which we feel is an inappropriate process for changing or interpreting policy. The new requirements appear to be based on an incomplete understanding and interpretation of the intent of the regulations

With regard to the Keaton's Run Dam, there has been additional commercial development in the vicinity of the Route 3/Route 20 intersection. This intersection and its commercial enterprises are within or near the 100-year floodplain and would be impacted by flooding during significant storm events (e.g. the 100-year storm or greater) well before the spillway capacity at Keaton's Run Dam was exceeded. In this case the dam break analysis conducted by Dewberry indicated that there would be little additional flood damage and less than two feet of additional water resulting from a possible dam break due to overtopping. For this dam we believe that regardless of hazard classification, the present spillway design is sufficient due to the small increase in downstream hazard that would result from an overtopping failure of the dam.

Virginia statutes state that "No one shall maintain a dam which unreasonably threatens the life or property of another." We believe that our dams as currently configured meet that standard and will more that meet that standard after our planned improvements are implemented. We achieve safety by conscientious management and maintenance.

In conclusion, we feel that the facts and regulations pertaining to our dams would permit an unconditional six-year permit for the Keaton's Run Dam and a two-year conditional permit for the Lake of the Woods Main Dam which would require resolving the low level drain situation, installing a berm in the low area next to the dam and doing the engineering design work for a bladder installation at the spillway. Such efforts would provide the basis for additional conditional permits until the spillway bladder is installed when an unconditional permit could then be granted for the Main Dam. We would request that the Soil and Water Conservation Board approve this improvement program and give our members a sense of certainty as to the futures of our dams.

Attachment #2

Department of Conservation and Recreation

Report to the: Virginia Soil & Water Conservation Board March 19, 2004

DCR/SWCD Grant Agreements for FY04 Operational Funding:

Monthly disbursements of operating funds continue to be issued to districts. All 47 districts have signed a grant agreement with DCR and have been issued an allocation each month through (and including) February, 2004. No change in this disbursement process is anticipated.

For the current fiscal year (FY04), total operational funding for all districts is \$3,932,240, which reflects a slight increase above FY03 operational funding that totaled \$3,812,965. However, FY04 funding is still roughly 8% less than the full funding level experienced by districts in FY01 (\$4,301,000).

Agricultural BMP Cost-Share Program:

This program year the CDCs continue to work closely with districts to ensure the \$409,080 in available funds are allocated and utilized where needed.

The Agricultural BMP Advisory Committee met on March 4th. New items discussed included the need for a program “standardized” 35 foot wide riparian buffer and composting as a manure management tool. Discussions continue to look at methods for better targeting of agricultural cost-share funds and attracting new participants to the state cost-share program.

Conservation Reserve Enhancement Program (CREP):

In the Chesapeake Bay 1,004 contracts have been approved that will restore 10,503.3 acres of buffers and wetlands, the average contract is 10.5 acres. In the Southern Rivers 1,307 contracts have been approved that will restore 8,904.2 acres of buffers and wetlands, the average contract is 6.8 acres. An addendum to the CB CREP Agreement to add the CP-29 (herbaceous buffer) has been generated, the pending signature of this addendum by the Virginia Secretary of Natural Resources will allow it to be forwarded to USDA for approval.

A revised Southern Rivers CREP Agreement that includes a request for an additional 5,000 acres of enrollment, incorporation of all previous addenda, and the addition of the CP-29 practice has been developed. The Secretary of Natural Resources will be working with Governor Warner in an effort to expand the Southern Rivers CREP by 5,000 acres this Spring.

Efforts to record program easements continue with the Potomac Conservancy, the Chesapeake Bay Foundation, and the CREP Manager; all working with different CREP participants. In the Southern Rivers, the USDA Farm Service Agency and NRCS are

working with the existing CREP applicants to complete conservation planning and contract approval.

SWCD Audit Services:

The accounting firm of Robinson, Farmer, Cox Associates (RFCA) will again be auditing SWCDs this year and we are working to increase the number of districts audited. Our goal is to perform individual district audits every other year and thereby aid districts in identifying any problems in a more timely manner.

SWCD Desk Top Guide for Fiscal Operations is available and training on the revised guide was held in December at the annual meeting.

Clean Water/Bay Friendly Farm Award Program:

Delegate Weatherholtz has introduced HJ 371 commending the 2003 River Basin Grand Winners of the Clean Water Farm and Bay Friendly Farm Awards. This resolution will be framed and presented to the grand basin winners at the appropriate VASWCD Area meetings in upcoming weeks. DCR will continue to work with the Association and SWCDs to discover ways to make the recognition a meaningful experience for recipients.

Development of Virginia's 2004 Chesapeake Bay Implementation Grant:

Planning is underway to develop projects and activities for funding with Virginia's portion of an EPA grant program, which is shared among states within the Bay watershed. Virginia has relied upon these federal funds (which annually total approximately \$2 million) for over 15 years to support many Bay related activities. One initiative under development for the coming year includes an important role for district directors. In a pilot effort, Districts and DCR staff will target local government leaders (boards of supervisors and city council members) with messages that aim to strengthen understanding of the Commonwealth's commitment towards fulfilling the related goals established within the multi-state Chesapeake 2000 (C2K) Agreement, highlighting the Tributary Strategies and the role of local governments in achieving those commitments. The interaction will also be designed to further strengthen the local government awareness of the district and its role in local natural resources conservation. Districts that choose to partner with DCR will receive some amount of financial compensation to offset staff and director expenses.

Stormwater Management:

HB 1177 has passed the General Assembly and is headed for the Governor's desk. Therefore, effective July 1, 2004 the VA Soil and Water Conservation Board shall receive the appropriate regulations from the Board on Conservation and Recreation (SWM Act regulations) and the State Water Control Board (MS4 and construction general permit) and begin amendment actions as necessary to operate the program under authorization of EPA. The actual program then transfers from DEQ to DCR effective July 1, 2005 or upon authorization of the Soil and Water Conservation Board by EPA. Tidewater localities under Chesapeake Bay Preservation Act and all MS4 localities shall adopt consistent programs by July 1, 2006. Other localities initially interested in

receiving delegation to run a local stormwater program shall notify DCR by July 1, 2005. Under changes being considered there may be opportunities for SWCDs to partner more closely with local governments and especially with MS4, which includes local public awareness and education activities.

Nutrient Management Regulatory Actions:

DCR expects to file the Notice of Intended Regulatory Action (NOIRA) this week; possibly in the Register by April 5 for public comment period of at least 30 days. This is the beginning of actions that will include considering how Virginia will manage phosphorus applications.

Attachment #3

**NRCS REPORT
VA SOIL AND WATER CONSERVATION BOARD MEETING
MARCH 19, 2004
VA DEPARTMENT OF FORESTRY
CHARLOTTESVILLE**

NRCS BUDGET

State allocations have been sent to the states. In Virginia we have Congressional earmarks for Marrowbone dam renovation implementation, Buena Vista flood control, the Chesapeake Bay, and the Delmarva Initiative. Delmarva's funding includes \$326,000 for FRPP and \$63,000 for WHIP.

Financial Assistance was received in the following amounts for Farm Bill programs:

- EQIP \$9.8 million
- WRP \$ 2 million
- FRPP \$1.4 million – awaiting release of national RFP
- WHIP \$.5 million – VGIF will assist with administration again this year
- GRP \$.5 million – awaiting release of revised national guidance

FARM BILL PROGRAM**EQIP**

A statewide EQIP sign-up began March 2 and will be continuous. The same five resource concerns will be used again this year (animal waste, grazing land, cropland, forestry, and nutrient management). Several new practices have been added such as irrigation water management and poultry litter management.

In June we will begin work on developing the FY 05 EQIP program. This will enable us to begin program implementation as soon as we receive funding next fall. One of the first things for June will be updating our cost lists.

Contribution Agreements

Letters have been mailed to every District announcing the opportunity to apply as a TSP participant. NRCS in Virginia has approximately \$200,000 to be divided among the Districts in Virginia. This year the process for reimbursement of a contribution agreement has changed significantly. Each District will need to propose a budget of their costs rather than use a fixed rate as done in FY 2003. All costs that are allowable and reasonable will be used to factor the individualized 50% reimbursement to each District applying to be a TSP participant. Currently, only practice implementation will be offered for TSP reimbursement to Districts in Virginia.

PUBLISHED STATEWIDE IMPORTANT FARMLAND MAPS

Approximately 250 copies of the publication Statewide Important Farmland maps have been published and delivered. Plans are to have these distributed by April. Senator Hager introduced the Preservation of Important Farmlands legislation.

Attachment #4

Department of Forestry Report

- The Department has received its final year funding for the USFS Potomac Watershed Partnership. This year's allocation is \$235,000 and will be used for stream restoration including riparian buffer plantings, rain garden stormwater mitigation efforts, forest health, and fire education and information work. Next week, the Friends of Black's Run will dedicate their greenway gazebo in Harrisonburg. The Department will be present and this is the site of several thousand feet of stream restoration and plantings.
- The Department has had 481 fires consuming 1919 acres since January 1. Ten homes have been damaged. Several of those 10 damaged homes were in Fluvanna County resulting from a grass fire. Also, our forester in Fluvanna, Steve Pence was burned on the hands and face escaping a fire on the bulldozer.
- The new Chesapeake Bay Riparian Forest Buffer Directive was signed on December 9. The statewide Riparian Working Group met in February to begin a dialogue on how best to accomplish those new goals. One very positive discussion revolves around a revision of the Executive Order #48. Russ Baxter, Assistant Secretary of Natural Resources, gave us some very positive feedback on revising the Order. If you would like to comment also, I would be more than happy to give you a copy.
- The Department is a host for the upcoming Environment Virginia Conference at VMI. The State Forester is hosting the last day and Secretary of Commerce and Trade Michael Schewel is keynote speaker. The conference theme is "Planning for Growth and Environmental Quality." The Department will be emphasizing "working landscapes" through a pre-conference tour and concurrent session activities. The dates are March 30 through April 1.
- The Department has acquired the first conserved tract in the Dragon Run watershed. This tract was a gift purchased through the NOAA-Coastal Zone funding stream with half given to the Department and half to the Peninsula Access Authority. The Access Authority is an offshoot of the Middle Peninsula Planning District Commission and is concerned with recreational access to the waterways of this area.