

DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
FORT NORFOLK, 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096

February 3, 2000

REPLY TO
ATTENTION OF:

Southern Virginia Regulatory Section
93-0902-12 (Cohoke Creek)

Mayor Joe S. Frank
City of Newport News
2400 Washington Avenue
Newport News, VA 23607

Dear Mayor Frank:

This letter responds more fully to your December 21, 1999 letter. Before getting into the substance of my response, let me reiterate an important point. Water need was only one part of the overall problem with the proposed King William Reservoir project. As I stated in my June 4, 1999 letter to Randy Hildebrandt, my decision to recommend denial of a permit is based on the lack of a demonstrated need to destroy 437 acres of wetlands as well as the cumulative adverse environmental impacts of the project, particularly the potential for a disproportionately high and adverse effect to an American Indian minority population. Before you go to any additional expense related to providing additional information on water need, please be aware that even if the need issue were resolved completely in favor of the Regional Raw Water Study Group (RRWSG), I would still recommend denial of this permit. I do not want to mislead you or create a false impression that resolving the water need issue will change my position on the King William Reservoir. I believe the cumulative environmental impacts of this project and the potential risk to the culture and economy of the Tribes would be too great. I do not believe that the ecology and diversity of the affected habitat could be replicated or that the losses that the Tribes would experience as a result of the project could be adequately compensated or mitigated.

I appreciated the opportunity to meet with you, the RRWSG and the Institute for Water Resources (IWR) panel on December 17, 1999 to discuss the panel's draft water needs report. We scheduled that meeting in order to provide the RRWSG the opportunity to ask questions and provide information to the IWR panel before the panel finalizes its report to us on the issue of water need. We feel the meeting was quite productive overall and resulted in a better understanding of each party's position on this issue.

During the December 17th meeting, the IWR panel discussed several "data gaps" they identified in the information the RRWSG submitted in support of the issue of water need. While it is unclear whether having the additional information would change the panel's ultimate opinion on the water need issue in any way, it appeared that the RRWSG might be interested in providing additional information to the panel, as suggested by you near the end of the meeting. As you requested, I am writing to you to advise you of what data or analysis the panel felt was missing so that you can determine whether you wish to

provide any further information to us on those points. IWR has provided the following list of suggested measures to improve the major deficiencies ("data gaps") in your analysis:

A. Establish a better picture of the possible futures.

- On the needs side, augment a centrist forecast with low and high scenarios.
- Consider the benefits of much higher industrial water use. Since differences in industrial water use constitute most of the difference between the City and IWR panel, pay special attention to this sector
- Include expected conservation in future water use
- Recognize supply projects that will be built no matter what happens on the permit application
- Establish the safe yield of the existing system in future years more convincingly

B. Broaden the array of alternatives.

- Address the advantages and disadvantages of utilizing the Norfolk water supply
- Include the proposed James City County groundwater project
- Consider the advantages and disadvantages of more aggressive conservation
- Estimate all the costs, including opportunity costs

You asked in your letter for the Corps' assistance in bringing the water need issue to closure by working "collaboratively on defining a framework and methodology for producing an updated water needs assessment." As Bill Sorrentino, Chief of our Technical Services Division, discussed with Randy Hildebrandt on January 12, 2000, the Corps of Engineers' Planning Branch would only be able to work on an issue like this one if it is done at the conclusion of the permitting process. This is because as an agency, the Army Corps of Engineers wears two hats. On one hand, our Regulatory Branch is responsible for permit actions associated with Section 404 of the Clean Water Act, among other things. We apply permitting regulations and act on the solution the permit applicant proposes to us. On the other hand, our Planning Branch advises local governments and other agencies concerning various issues such as flood control, navigation, water supply, and hydroelectric power, and then recommends a course of action. In this capacity, we would actively engage with you to come up with a solution and would ultimately recommend something for you that may or may not be your preferred solution.

It is important for you to understand that so long as a permit application is pending on the King William Reservoir, we are acting in our Regulatory capacity. We would consider it a conflict of interest while the permit is pending for our Planning Branch to also act in a "collaborative" or advisory capacity with respect to issues that relate to this permit (i.e., water needs assessment issues, alternatives analysis issues, etc.). The current permit application would have to be withdrawn by the RRWSG -- or a final decision denying the permit would have to be issued by the Army Corps of Engineers -- before our Planning Branch could begin to work on a water needs study for Newport News.

If Newport News and the RRWSG wish to provide further information relating to the "data gaps" mentioned above, you are welcome to do so. As we see it, you have three options at this point. Newport News and the RRWSG may do one of the following:

1. Augment the water needs information RRWSG has already provided by submitting additional information as outlined above. As I've noted, we cannot work collaboratively with you on these issues while the permit application is pending, so this would be an independent effort by the RRWSG. If you choose this course of action, please advise us of a date by which we can expect to see your final submission. You may submit information for some or all of the areas noted above. I will consider everything you submit in making my final recommendation on this permit application. We will forward whatever you choose to submit to the IWR panel for their review and analysis, and will include your information and the panel's analysis when I forward my recommendation on the permit application package to the North Atlantic Division for its decision.
2. Withdraw the permit application and request that the Corps' Planning Branch conduct a study to assist the city in developing long-range solutions to the Newport News water supply situation. In order to conduct such a study, we would initially need Congressional authorization, followed by an appropriation of funds. During the course of the study, we would depend heavily on the water supply expertise of IWR. Our planning study would be a cooperative effort with the city and involve all appropriate regional, state, and Federal interests. It would establish a full and clear set of objectives and metrics that can be used to determine how well an alternative satisfies each objective. All possible alternatives would be screened and appropriately evaluated in terms of economic, technical, environmental, cultural, and related criteria. The study would create a dynamic ability to compare mixes of alternatives to costs and performance. It is important to note that implementation of recommended actions would be subject to full compliance with NEPA and related provisions of our regulatory process. This option would also be available to you if the permit is denied by the Corps.
3. Provide nothing further to us, which will result in our completing our Record of Decision (ROD) within the next month or so and forwarding it with our recommendation to the North Atlantic Division for a final permit decision. If you decide to submit nothing further, please so advise me by February 28, 2000. This option will result in the fastest final permit decision.

When we spoke on January 18th, you also asked me to inform you about other alternatives that we believe are available to you and what the RRWSG would need to do to get such alternative options approved.

- The RRWSG's 2040 plan provides for 23.2 mgd of safe yield from the King William Reservoir, 4.4 mgd from fresh groundwater and 5.7 mgd from brackish groundwater and 7.1 to 11.1 mgd from conservation. The combined safe yield of the non-reservoir components of this plan is 17.2 to 21.2 mgd which would meet the 2040 deficit of 17 mgd indicated by IWR. No Corps permit would be required to use groundwater and conservation as your sole methods of providing for your water need.
- The City of Norfolk has indicated that it currently has between 32 to 45 mgd of surplus water which could serve the RRWSG for the short-term and could potentially meet the entire 2040 deficit, provided other southside users do not have a long-term need for all of the water. Corps authorization would be necessary for any pipelines or crossings affecting wetlands or waters of the United States. Generally, pipeline crossings don't involve major environmental impacts.

- Certain alternatives identified in the final EIS were not investigated in detail because they were eliminated early in the alternatives analysis for various reasons (e.g., some would provide a safe yield lower than Newport News' projected 39.6 mgd deficit). Alternatives which we believe might satisfy the smaller 17 mgd deficit indicated by IWR -- either separately or in combination -- include: the purchase of surplus treated or raw water from the City of Richmond, the withdrawal of fresh water from the James River above Richmond, and the withdrawal and desalination of brackish water from the James River, the Pamunkey River or the York River. With the limited information that is available to us at this time, there currently appear to be no unacceptable adverse environmental impacts related to these alternatives.

Please remember that so long as there is a non-wetland alternative that meets the project purpose, any alternatives involving wetland impacts would be presumed to be more environmentally damaging and therefore unacceptable under our regulations. Therefore, other reservoir alternatives such as Black Creek and Ware Creek which involve large wetland impacts would not be considered when non-wetland alternatives are available to meet the need.

I hope this information will be helpful to you in determining your course of action.

Sincerely,
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Allan B. Carroll
Colonel, Corps of Engineers
District Engineer

CC:

Randy Hildebrandt, Assistant City Manager, Newport News

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Joe Hassell, Virginia Department of Environmental Quality

The Honorable E. Anne Petersen, Commissioner, Department of Health

Regina Poeske, U. S. Environmental Protection Agency

Janet Norman, U. S. Fish and Wildlife Service

Rod Schwarm, National Marine Fisheries Service