Virginia:

AT A SPECIAL JOINT MEETING of the Nelson County Board of Supervisors and the Nelson County Service Authority at 9:00 a.m. at the Nelson County Service Authority Administrative Building located at 620 Cooperative Way, Arrington, Virginia 22922.

BOS Present: Jesse N. Rutherford, East District Supervisor – Vice Chair
Ernie Q. Reed, Central District Supervisor
David Parr, West District Supervisor
Cameron Lenahan, North District Supervisor

Absent: Jessica Ligon, South District Supervisor

NCSA Present: Justin Shimp, North District Director - Chairman
Robert McSwain, East District Director
Ernie Reed, Central District Director
David S. Hight: West District Director

Absent: Sergio Sanchez, South District Director, Vice-Chairman

Staff Present: Candice W. McGarry, County Administrator
Amanda B. Spivey, Administrative Assistant/Deputy Clerk
Grace E. Mawyer, Director of Finance and Human Resources
George T. Miller, Nelson County Service Authority Executive Director
Jennifer Tyree Fitzgerald, Nelson County Service Authority Secretary/Treasurer

I. CALL TO ORDER

Mr. Shimp convened the Nelson County Service Authority meeting at 9:00 a.m. with four (4) Directors present to establish a quorum. Mr. Sanchez was absent.

Mr. Rutherford convened the Board of Supervisors meeting at 9:00 a.m. with four (4) Supervisors present to establish a quorum. He noted that Dr. Ligon was absent and he would be presiding.

Mr. Shimp thanked those in attendance and noted that there was a slight revision to the agenda, stating that the Boards would first receive a report from the Executive Director discussing the state of the Wintergreen plant, followed by public comment. Mr. Shimp said he would go over the rules for public comment as needed before that portion of the meeting. He stated that afterward there would be a joint discussion between the NCSA Board and the Board of Supervisors regarding the issues raised and how they would move forward.

II. JOINT MEETING WITH THE SERVICE AUTHORITY

A. Wintergreen Wastewater Treatment Plant Updates

Mr. Miller thanked those in attendance and stated that the Nelson County Service Authority (NCSA) was preparing to receive a new consent order from the Department of Environmental Quality (DEQ) for the Wintergreen Wastewater Treatment Plant due to the overflows that occurred during the 2024–2025 and 2025–2026 ski seasons. He said the cause of the overflows at the equalization basin was described in Section C, "Findings of Fact and Conclusion of Law," Item No. Seven (7) of the consent order, and stated that the overflows resulted from the membranes not functioning as designed. He said the membranes become fouled, clogged, and will not allow the flow to pass through them, which creates backups in the treatment process, thus creating the overflows at the equalization basin.

Mr. Miller stated that the manufacturer, contractor, design engineers, DEQ, and NCSA were working collaboratively to resolve the problems with the membrane systems. He said that while this work continues, NCSA must submit to DEQ, a Plan and Schedule of Correction Action by July 10, 2026 for their review and approval, a detailed Short-Term Corrective Action Plan addressing how NCSA will avoid overflows during the upcoming winter season. He said the plan must include a schedule for implementation of the selected corrective actions to be completed as soon as possible, and no later than December 1, 2026. He reported that NCSA has employed an engineering firm to provide the plans required by DEQ.

Mr. Miller stated that mobile sewage treatment units were the identified solution for preventing overflows while the membranes are further corrected and tested for their intended flows. He said if the membranes failed the cold-weather performance test, the temporary mobile sewage treatment units would need to remain in use until the membranes are corrected or replaced with a design process that will meet design specifications and pass performance testing. He stated that the mobile units must be ordered promptly, by July 15, 2026 to meet the DEQ deadline of December 1, 2026. Mr. Miller reported that the Short-Term Corrective Action Plan also includes pump-and-haul as a backup to the plant.

Mr. Miller stated that the estimated cost to avoid overflows during the upcoming winter season was $4.1 million, and continued use of temporary treatment processes might be required until the plant could operate at its full average daily design flow of 0.36 MGD and daily peak design flow of 0.72 MGD for three consecutive days. He said the full extent and duration of the needed measures remained unknown; he could not provide a fixed total cost and asked that invoices be paid as they were received.

Mr. Shimp said he would take questions about the Short-Term Corrective Action Plan.

Mr. Shimp asked Mr. Miller to break down the $4.1 million estimated cost to avoid overflows.

Mr. Miller provided the following breakdown of estimated costs:

Total Project Cost Estimate for Temporary 300,000 GPD Package WWTP by BluBox

Capital Cost Item Description	**Cost**
Delivery of equipment to site (by supplier)	$174,000
Installation of equipment on site and startup (by supplier)	$475,000
Freeze protection of equipment (by supplier)	$270,000
Decommissioning (by supplier)	$180,000
Removal of equipment and shipping to supplier (by supplier)	$174,000
Site preparation, grading and pad site (by owner)	$75,000
Site mechanical, piping, transfer pumps (by owner)	$300,000
Site electrical and controls (by owner)	$300,000
Generator and ATS for package plant (by owner)	$425,000
Crane rental for loading/unloading (by owner)	$25,000
Total Capital Cost	***$2,398,000***
Operating Cost Item Description (5 month term) (by owner)	**Cost**
Package plant rental cost ($96,765/month)	$483,825
Generator diesel fuel cost (est. 14,400 gallons/month, $5/gallon)	$360,000
Plant operations cost (personnel, chemicals)	$75,000
Total Operating Cost for 5 month term	***$918,825***
Additional Project Costs Item Description	**Cost**
Engineering (15% of owner capital construction costs)	$165,000
Contractor OH&P (15% of owner capital construction costs)	$165,000
Contingencies (20% of owner capital & operating costs)	$408,765
Permitting/approvals by Virginia DEQ	$50,000
On-site inspection during construction	$30,000
Total Additional Project Costs	***$818,765***
Total Estimated Overall Project Cost	**$4,135,590**

Mr. Miller reiterated that the total estimated overall project cost was $4.1 million.

Mr. Shimp asked if that was just the mobile package plant or also the additional storage.

Mr. Miller said that no storage is included in this, and the only backup is pump and haul.

Mr. Shimp asked if there were any bids for this yet or if it was just estimates from experience.

Mr. Eric Anderson of CHA Consulting stated that it was both quote and estimates.

Mr. Shimp stated that if the five-month period extended to 12 months, approximately $1 million in additional operating expenses would be incurred—and this duration would depend on whether the plant could be fixed in a timely manner. He said the NCSA would need to get through the upcoming winter ski season, and repairs or fixes were not expected to be completed by then. Mr. Shimp said the mobile plant might need to remain onsite while the permanent plant was being remedied if structural repairs or improvements were required, though that was not yet known. He said the corrective action plan also referenced further cleanings and potential added staffing, and he asked whether those numbers were included in the $4.1 million estimate.

Mr. Miller responded that they were not.

Mr. Shimp stated that in addition to the mobile plant, efforts would continue to diagnose and improve the existing plant. He said certain components had been installed incorrectly by the contractor, creating impacts that were still being sorted out and remedied, and retesting would be required once those issues were addressed. He confirmed with Mr. Miller that this work was part of the corrective action plan. Mr. Shimp said that additional costs in the hundreds of thousands of dollars were anticipated. He stated that the last cleaning cost approximately $150,000 and was necessary to allow the system to be tested for peak performance and to determine whether the plant could meet contract specifications.

Mr. Rutherford said that DEQ required a corrective action plan and asked what the due date was.

Mr. Shimp confirmed that the deadline was July 10, 2026.

Ms. McGarry stated it was Item No. 7, located on Page 21 of 24 of the consent order.

Mr. Shimp said that the reason the meeting was important was that the Authority was not comfortable signing a commitment to the corrective action plan with DEQ because it did not have the money to cover the required work. He stated that Mr. Miller has to sign the plan by July 10, or the Authority would need to obtain an extension, and that signing would obligate the Authority to the commitments in the plan. He said the Authority did not have the cash, the bank capacity, or the ability to borrow the necessary funds in a timely manner.

Mr. Shimp stated that the Authority had only a small amount of credit available and said those matters could be discussed after public comment. He said the central issue was that the Authority had 10 days to commit to the plan or secure an extension, and the commitment involved costs the Authority could not currently fund based on the estimates received. He stated that improvements might reduce costs, but the Authority could not rely on that at this time.

Ms. McGarry asked how much leeway existed with timing between DEQ approval, signing a contract with the temporary station provider, and the December 1 deadline for having the system operating.

Mr. Shimp said he thought very little, as there were many other items that needed completion before installation—plumbing, pumps, wiring, and generators—and the lead time was practically days from the 10th.

Mr. Anderson said due to the lead time they would need to tell the rental company by July 15, so there would not be time for the DEQ to respond and get things installed by December 1.

Mr. Lenahan asked if the Service Authority was looking to have the temporary units running by December 1st.

Mr. Shimp stated that they basically had to proceed or they would be in violation again, which they could not allow. He said that everyone had gone to the meeting and told DEQ that under no circumstance would they be back there next February dealing with overflows. He stated that they would have to do whatever it took to remedy the situation.

Mr. Rutherford stated that from an operational standpoint, he wanted to know the size of the NCSA's equivalent to a general fund, similar to what the County operated with.

Mr. Shimp responded that the Authority did not really have a general fund, and while they had some cash in reserve, they did not accumulate much cash as they essentially ran a balanced budget every year. He stated that some years there was a gap between their depreciation expense on paper and their actual debt service payments, which yielded some additional funds. He said that over the last four or five years, they had accumulated about $500,000 in CDs and a separate account with about $1 million, which was not allocated whereas most other funds were. He said moving forward, the debt service payments at the Wintergreen plant were due in full and they were going to run a deficit in their cash position this year. He said that during construction times when they were making interest-only payments, they factored in the cost of the debt service and built up a little cash. Mr. Shimp said however, because expenses had increased so much, they were reluctant to raise rates on customers under their current fiscal budget and were likely to be in the hole by $300,000 or $400,000 in net cash from the start of the calendar year to the end of the calendar year.

Mr. Rutherford asked if the cost had largely been attributed to the Wintergreen Wastewater Treatment Plant.

Mr. Shimp stated that they had spent $1-1.5 million, based on their previous audit, on engineering fees, Ovivo cleaning services, and pump-and-haul—and it was nothing to spend $300,000 or $400,000 in a matter of weeks there, which had been depleted somewhat. He stated that moving forward, they simply did not run a surplus to save any money.

Mr. Rutherford stated that the contractor had been responsible for some installation corrective action, and he asked if the contractor had been the one to fix those issues or if that was something the Authority was having to resolve outside of that.

Mr. Shimp explained that there were two screens—a fine screen and a coarse screen—at the headworks of the plant, which catch larger solids; those had been initially installed incorrectly by English Construction, which has since fixed them recently to the best of the Authority's knowledge.

Mr. Rutherford asked if the contractor was assisting with any reimbursement for the cleanings or if they had said no. Mr. Shimp said at this point, no. Mr. Rutherford asked if the contractor currently had outstanding obligations, either through a performance bond or the 10% retained for substantial completion.

Mr. Shimp responded that at this point, the Authority has not asked for reimbursement. He confirmed that there was still a retainer.

Mr. Parr asked for clarification as to whether the contractor said no, or whether the Authority had not asked at all.

Mr. Shimp stated that they had not approached the topic with the contractor, and the situation had unfolded over the last six months to a year. He stated that the NCSA Board had been under the impression that going into November of the past season, the plant would be 100% complete and everything would work—so the problems experienced in 2024 would not be repeated. He stated that this did not prove true, and they had the same problems because of things that were not built correctly, not finished and intalled, along with a variety of other issues they were addressing separately. He said the problem before them was that DEQ was going to give them a very tight deadline requiring them to fix the issues, and regardless of the deadline, they had to fix the problems and said they could not allow the same situation to occur again, including the overflows.

Mr. Hight suggested that Mr. Shimp point out that the problem with the screens had only been discovered in the last few months.

Mr. Shimp confirmed that this was correct, and during the previous two ski seasons they had learned the screens were not installed correctly, which had adversely affected the performance of the plant. He stated that they believed the issue had been fixed, which was an important step, but there may need to be repairs, replacements, or other fixes needed to the system because the problem had gone unrepaired for so long. He stated that they were working toward a more long-term fix.

Mr. Lenahan stated that he had reached out to Ground Effects Environmental Services, LLC, a company based in Canada. He said they charged $2,000 a day for a mobile plant with a capacity of 250,000 gallons per day. He stated that transport costs ranged from $20,000 to $30,000, and installation costs ranged from $20,000 to $50,000. He stated that the company had worked with DEQ. He noted that it was a significantly cheaper option.

Mr. Shimp agreed that the option was a lot cheaper, but one of the problems with these systems was that the details of the permit limits varied by waters and by state. He stated that one of the tasks for their staff in the next week was to find any more economical approaches—but they also had to make sure any option would work. He stated that it was a challenge and said the schedule was far too compressed, but that was the situation they were in; however, they would certainly investigate that option. Mr. Lenahan stated that the dispatch time for Ground Effects Environmental was one to two weeks.

Mr. Rutherford the closed session on the agenda, and he wanted to understand what the expectation would be at the end of that session. He asked whether the County would need to provide a consensus indicating that they would assist, similar to how they had supported their financing, or whether a different specific action was required.

Mr. Shimp said that he had not intended to ask anyone to sit through the Service Authority's closed session, which may be lengthy because it would involve discussing litigation issues and the details of the consent order. He said before they began that portion of the meeting, it would ideally be the time for the Board and the County to give some indication that when the Authority proceeded, they would have financial backing.

Mr. Rutherford asked how that would look from the Board's perspective.

Ms. McGarry asked whether the indication of support needed to be a formal action or a general consensus to provide financial support.

Mr. Payne stated that consensus was sufficient.

Mr. Rutherford stated that he understood the severity of the situation and the consent order, but he did not want to commit to supporting the effort without clarity on the financial implications. He stated that he did not want to agree to provide support only to later find that the cost was not $4 million but $7 million. He said that the County had procurement rules and did not want to receive bills and write checks without knowing what was occurring. He stated that his expectation was that the County was willing to support the effort, but if at any point the Authority found a change in the plan that saved the County money, he wanted to know how that would be reflected and how they would be informed.

Mr. Shimp stated that the intention was not for the County's support to function as a grant; it would be a loan that the Authority would pay back. He stated that the system should be responsible for paying for itself, and he hoped he was not speaking out of turn for the NCSA Board. He stated that to repay the loan, they would have to raise revenues, which meant raising rates—and the process of adopting a new budget, raising rates, and securing borrowed funds would take time, and it would be December before they had money in hand. He said for their immediate issue, they needed what he described as a line of credit from the County to stabilize their situation, with the understanding that it would be repaid.

Ms. McGarry stated that, when appropriate, she would like there to be additional discussion about the Service Authority's ability to contribute to the short-term plan alongside the County.

Mr. Rutherford agreed.

Ms. McGarry stated that after reviewing the FY25 audit and discussing it with Service Authority staff, the Authority's unrestricted net position as of June 30, 2025, was approximately $5.4 million. She said they had spent about $1.5 million over the last year, which would place their current net position at roughly $3.8 million. She stated that this indicated there was some ability for the Authority to contribute financially to the short-term plan—which was the only component for which they currently had solid numbers. She stated that regarding the long-term solution, no one had a clear sense of what that might be, and therefore she was not sure they could discuss or commit to anything further at this point.

Mr. Reed asked whether the net position referenced included coverage for debt service.

Ms. McGarry stated it did.

Mr. Rutherford asked whether the money referenced in the Service Authority's net position could be deployed toward the current situation or whether it had to remain restricted within the utility's financial pool.

Mr. Shimp stated that some of the money could be deployed, and the total cost of the quantified needs in front of them would completely wipe out their available funds and more, if it reached the total amounts.

Ms. McGarry suggested that a minimum contribution of $1 million from the Service Authority seemed reasonable, unless there were other restrictions that limited the use of those funds.

Mr. Rutherford asked Ms. Fitzgerald and Mr. Miller whether they knew how the Service Authority's funds were restricted, and whether they were tied to VRA expectations requiring the money to remain in reserve or if the limitation was due to something else.

Ms. Fitzgerald responded that she had not yet had an opportunity to speak with the auditors to determine what was being referenced as "unrestricted funds" in the audit. She confirmed that the Service Authority did have several required reserves and was required to maintain a debt service reserve for VRA as well as Rural Development.

Ms. Fitzgerald stated that in addition to the required debt service reserves, the Service Authority also had operational expenses and unforeseen emergency expenses that had to be covered. She said they also had depreciation and other financial obligations that needed to be maintained within the budget.

Ms. McGarry noted that depreciation is included within the unrestricted balance referenced earlier.

Mr. Shimp stated that the Service Authority's financial position had been moving in the wrong direction since the audit was completed. He explained that the money spent on the current issues, combined with prior budgets, had reversed what had previously been a slight annual increase in cash, about $300,000-$400,000 per year. He said that because revenues had not been raised enough to cover increased expenses, the Authority was experiencing an actual reduction in its cash position and was dipping into reserves.

Ms. McGarry stated that the Service Authority should still have approximately $3.8 million available in its unrestricted net position.

Mr. Shimp stated that it might be appropriate to open the public comment period unless anyone disagreed. He said that after public comment, the Boards could finish their discussion and hopefully reach a consensus with the Supervisors on what to agree to.

Mr. Shimp opened public comments.

Stephen Bayne – Nellysford, VA

Mr. Bayne stated that he had originally prepared a different public comment, but after reviewing the shocking executive summary, he revised his remarks, asking for lenience on the three-minute limit.

Mr. Bayne recapped the timeline: In 2024, the new $18.5 million state-of-the-art wastewater plant went online, and by December 2024 it began experiencing a long series of failures—operational, systemic, and otherwise. He argued that continuing to attribute the problems to ski season was disingenuous, given that roughly 18 months had passed since the failures began. He emphasized that the situation is what it is, but the issuance of a consent order on June 15 placed the burden squarely on citizens, because any financial impacts would ultimately be passed on to ratepayers.

Mr. Bayne noted that the upcoming July 21 public hearing involved a massive rate increase, and that even those increases were being described as insufficient given the fiscal situation, so everything would be passed down to the citizens. He stated that the County's recent $9 million property purchase would also be passed along to citizens, and the cumulative effect was that residents were bearing all costs. He said the Boards were now facing a July 10 deadline, and that after 20 months of issues, no one should find this situation acceptable. Mr. Bayne argued that more diligence should have been exercised from the beginning and that the boards should have jumped on this from day one. He criticized the fact that only now was a short-term plan being presented and that no long-term plan existed. He stated that Ovivo, the engineers, or others should be contributing financially, given that the $18.5 million plant was not functioning; if they were not already doing so, that would be negligent.

Mr. Bayne stated that he had submitted a FOIA request to the Service Authority regarding financial reserves, including reserves for a $215,000 civil penalty, and was told there were none. He said as an accountant and CFO, he knew that was a violation of generally accepted accounting principles and constituted poor fiscal management.

Mr. Bayne also described the lack of transparency from both the County and the Service Authority as unfathomable. He said the issue did not emerge publicly until the April Board meeting, which he found unacceptable. He acknowledged the legitimacy of closed sessions but argued that residents—especially those living along Beech Grove Road near Pond Hollow Creek and the South Fork of the Rockfish River—were not informed for 18 months that they were potentially at risk. He said these residents use the river recreationally and rely on wells near the creek, and the lack of disclosure was completely irresponsible.

Mr. Shimp asked whether there were any additional public comments. Seeing none, he closed the public comment period and returned the meeting to directors' comments. He then asked whether anyone on the NCSA side wished to respond to anything raised during public comment or to make statements to the Board of Supervisors.

Mr. McSwain said he wanted to reinforce what Mr. Shimp had stated. He described the County's willingness to assist as essentially coming to the NCSA's rescue, and agreed that the Service Authority should contribute financially but did not yet know the exact numbers, noting that Ms. Fitzgerald would determine and communicate those details. Mr. McSwain stated that the situation reflected a long history of being told certain things by various parties that ultimately did not turn out as represented. He said they were now at a critical point where they were prepared to spend the money and would try to make the burden as manageable as possible. He emphasized that he did not want ratepayers to bear the full cost, but warned that without additional help from the County, that is what would occur.

Mr. Shimp said despite comments about transparency, the NCSA Board had been discussing the plant issues at every meeting for a long time, and anyone from the public could have attended. He said that unlike years past, there was no longer regular press coverage or broadcasting of meetings, but the Board had been working very diligently on the matter from the beginning.

Mr. Shimp recalled the meeting where they first learned that holes had been cut in the equalization basin, which was the precursor to the problems that followed. He said the NCSA Board reacted strongly at the time, making clear to the contractor and engineer that the situation was unacceptable. Despite that, he said, things were still not adequately addressed before the most recent ski season, and the plant was not complete in the first ski season.

Mr. Shimp explained that "ski season" is referenced so often because flows during that period are three to five times higher than normal. He noted that the plant is operating fine now because flows are low, around 100,000 to 150,000 gallons per day, but during ski season peak days can reach 600,000 to 700,000 gallons per day.

Mr. Parr asked at what point the plant begins to fail.

Mr. Miller stated there was no definite time when the plant begins to fail.

Mr. Shimp explained that one of the major contributors to the plant's failures was the improper installation of the screening equipment; because the screens were not installed correctly, debris was getting in when it should not have, and it caused the membranes to clog. He described the membrane system as entering a death spiral: once treatment efficiency drops, material accumulates more quickly, clogging worsens, and the plant rapidly declines in performance. He stated that when flows are under roughly 150,000 gallons per day, and when temperatures are warm, the plant runs smoothly with no issues; cold water, however, reduces performance, and higher flows exacerbate the problem. Although the system was designed for a peak flow of 0.72 MGD (720,000 gallons per day), he said it has not been able to achieve even one-fourth of that capacity.

Mr. Lenahan reacted to Mr. Shimp's explanation about cold water reducing plant performance. He asked whether the plant engineers and contractors understood the system would be serving a ski resort.

Mr. Shimp responded that the engineers certainly knew the system would be serving a ski resort. He said there is considerable debate about where things went wrong, and determining this is part of the long-term corrective action plan. He emphasized that any deficiencies, whether in design assumptions or other factors, must be identified and addressed moving forward.

Mr. Reed said that one of the major issues throughout this situation is that the broader context has not been clearly articulated or fully considered. He emphasized that in the short term, the responsibility for addressing the plant's failures falls squarely on the Service Authority and its Board; however, other entities also have obligations. He noted that the problems facing the plant are not solely, and perhaps not even primarily, the fault of the Service Authority—yet the Authority and the County are the ones who must deal with the immediate consequences. He said there were no realistic decisions the Service Authority could have made that would have changed the fact that they must assume responsibility while waiting for the other parties involved to fulfill their own obligations. He described the current situation as dealing with the short-term scenario, with many elements remaining unaddressed.

Mr. Shimp stated that the Service Authority paid for a plant designed to handle peak flows of 720,000 gallons per day, the level required during ski season, and they will ultimately get a plant capable of that performance. The problem, he said, is that they do not have that capacity today, which is why a corrective action plan is necessary.

Mr. Hight added context about why the plant and membrane system was chosen. He explained that the wastewater plant sits in a small hollow at the base of Wintergreen, leaving very limited space for construction. He said that early in the planning process, other treatment systems were evaluated, but they required significantly more land—land that simply wasn't available, especially while keeping the existing plant operational during construction. Mr. Hight stated that because of these constraints, the membrane bioreactor system was selected: It fit within the tight footprint, allowed the old plant to remain functional during construction, and was considered the least expensive feasible option given the site limitations.

Mr. Shimp explained that why addressing the plant's failures has taken so long is because only two or three weeks a year is when they encounter the conditions that lead to these problems. He stated that the core issues are that the conditions that cause the failures occur during the coldest part of winter when flows spike during ski season. He said the plant's contract requires that performance testing occur in winter at those peak flow rates, because that is when the system is most stressed. Mr. Shimp said that Ovivo missed the testing window this past year, even though they were supposed to conduct those winter tests. Outside of that narrow period, he said, the Service Authority cannot replicate the necessary conditions: They do not have enough flow, nor can they simulate 26-degree temperatures.

Mr. Parr asked if that was the test that was supposed to occur in November.

Mr. Shimp clarified the test was supposed to be done in February.

Mr. Shimp explained that Ovivo had been paid $164,000 to clean the membranes; after completing the cleaning, Ovivo left without performing the required winter performance test, which would have provided crucial information about the plant's ability to handle peak ski-season conditions.

Mr. Lenahan asked if Ovivo would clean the membranes for free when they returned to do the testing.

Mr. Shimp said Ovivo will need to return and perform the test during the next winter window, and that this is one of the issues currently being worked through. He acknowledged the situation is challenging and then turned back to the Supervisors, asking whether they had feedback or thoughts on how the Boards could secure a consensus of support, if the Supervisors were willing to offer it.

Ms. McGarry asked whether the Service Authority had approached Wintergreen for any assistance regarding the ongoing wastewater plant issues.

Mr. Miller confirmed that he had.

Ms. McGarry asked what Wintergreen's response was when approached, and whether the Service Authority had spoken with the Wintergreen Resort or with WPOA.

Mr. Miller explained that he first approached Wintergreen Resort for assistance, he was told that Park City would not hear it. He said he then went to WPOA, which told him that providing assistance wouldn't be fair to Stoney Creek. He said he walked away with nothing. He noted that he went to the County and was told that the County could not help them. He commented that this all took place in September 2021.

Ms. McGarry noted that the 2021 conversation Mr. Miller referenced would have been with her predecessor. She then asked whether there is enough physical real estate beside the existing Wintergreen wastewater plant to place the temporary pump station and solutions discussed.

Mr. Miller confirmed that there was enough space.

Mr. Parr said he was confused because the current plant failures began in 2024, yet Mr. Miller referenced outreach efforts from 2021.

Mr. Miller explained that in 2021, the Service Authority was trying to borrow money to fund the construction of a one-million-gallon equalization basin, which was intended to help manage peak flows and stabilize plant performance. Because they were unable to secure the needed financing, he said the basin had to be removed from the project due to cost.

Mr. Hight clarified that the equalization basin would have provided additional storage capacity, which would have prevented the overflows.

Ms. McGarry clarified that it would not necessarily have helped the plant function properly.

Mr. Parr asked whether there is data or an estimate showing how many days or how often overflows have occurred at the plant.

Mr. Shimp responded that the Service Authority does track overflow data daily and keeps a log, including the height of the overflow and the depth of water in the equalization basin, which can then calculate the volume of any overflow.

Mr. Anderson said they certainly know the duration of it based on the tank levels.

Mr. Shimp added that during the most recent winter season, this information was reported to DEQ daily or weekly, and the Authority was in constant communication with regulators throughout the overflow events. He emphasized that the Authority does track the data consistently.

Mr. Parr asked for an approximation of how many days the plant experienced overflow in the last 12 months.

Mr. Shimp said approximately 30 days.

Mr. Anderson said he recalled two overflow events, noting that there were more days of overflow in 2024, and he said there were around 60 with the first occurrence and about 28 days with the second.

Mr. Parr emphasized that there is a public perception that the plant is overflowing continuously, 365 days a year, dumping into the creek nonstop, but it's happening during peak season.

Mr. Shimp clarified that while overflows did occur, the discharged water flowed into a containable area rather than directly and freely into the creek. He acknowledged that some effluent did reach the stream, but emphasized that the Health Department and the Authority's independent testers sampled the stream; no E. coli was detected; and testing confirmed that the stream was not contaminated by the overflow events.

Mr. Reed added that the effluent is partially treated and has already settled before the overflow—meaning solids have dropped out and the water has undergone some degree of passive treatment.

Mr. Hight noted that the 750,000-gallon equalization basin provides continuous aeration, which further contributes to partial treatment. He confirmed that the basin helps break down organic material and moderate flow, meaning the water that overflows has undergone both settling and aeration before discharge.

Mr. Shimp stated the effluent discharge occurs after that.

Ms. McGarry asked if a separate equalization basin would have prevented the overflows, why was a temporary equalization basin not pursued. She wanted to know whether that option had been evaluated and why it wasn't selected as part of the interim solution.

Mr. Shimp explained why a separate temporary equalization basin was not a practical solution:

- The flow imbalance (the spread) is too large. The plant can treat 100,000 gallons/day, but during peak ski-season surges, it receives 600,000 gallons/day for three days, which creates a 1.5-million-gallon divide.

- To cover that deficit, the Authority would need a 2-million-gallon temporary basin, which would not physically fit at the Wintergreen site; the cost of that much temporary storage would be extremely high.

- Wintergreen already has a 750,000-gallon equalization basin, and engineers had previously told them that similar plants often operate with no equalization basin at all, so the plant already has more equalization capacity than many comparable facilities.

- Because the gap between incoming flow and treatment capacity is so wide, adding storage is not the real fix; even a large temporary basin would not solve the underlying treatment-capacity problem.

He also noted that installing a 2-million-gallon tank by December 1, the start of ski season, would be impossible.

Mr. Lenahan asked if well testing had been performed, noting that there are some hand-dug wells there.

Mr. Shimp said the Service Authority isn't aware of any problems with downstream wells and hasn't heard reports of issues from residents. He said surface-water testing showed no contamination, including no E. coli, which suggests groundwater was likely unaffected. He said testing found no trace of contamination in the creek, and no groundwater testing was conducted to indicate otherwise.

Mr. Rutherford asked Mr. Shimp to clarify how the $4.1 million cost estimate would be distributed over time—how quickly the Service Authority expects to need those funds and when the bulk of the money would be required during the project timeline.

Mr. Shimp said that most of the $4.1 million would probably need to be spent within the next 30 days, adding that they hoped to find a solution costing less than $4 million but would still need the bulk of it immediately.

Mr. Anderson explained that the equipment manufacturer requires 50% of the equipment cost up front, and the remaining 50% is due upon delivery to the site. He estimated the upfront portion to be around $2 million, though he would need to verify the exact number.

Mr. Lenahan asked how many gallons per day a treatment plant of this type is actually designed to handle.

Mr. Anderson responded that it was 300,000 gallons.

Mr. Lenahan asked why a company in Canada would sell him a plant that could handle 350,000 gallons per day for $3 million.

Mr. Anderson asked what type of plant it was.

Mr. Lenahan clarified that it was a plant from Ground Effects Environmental Services, LLC.

Mr. Anderson stated that they were proposing a membrane plant that would discharge to meet the quality requirements the plant is subject to, but he could investigate other options.

Mr. Rutherford asked the Service Authority to clarify the timing of the funding needs. He summarized what he had just heard: Roughly $2 million would be required within the next 30 days, unless a cheaper option emerges.

Mr. Shimp said the remaining funds would likely be needed within 90 to 120 days.

Mr. Rutherford asked how long it would take for the Authority to determine whether $1 million from its own fund balance could be used to support the project.

Ms. Fitzgerald said she can reach out to the auditor today to begin determining whether the Authority has $1 million in available fund balance and could likely get an answer sometime this week.

Ms. McGarry added that the auditors should be quite responsive.

Mr. Rutherford said the auditors will understand how serious the situation is, and the Board will need regular, ongoing reports as the project moves forward. He described the entire matter as frustrating and unfortunate, and acknowledged that the financial burden won't resolve itself, so the Board will have to figure out how to front the money.

Mr. Rutherford emphasized that every party involved in the events that led to this failure needs to be approached and asked to help resolve the issue, both financially and with technical expertise. He noted that when a major problem occurs, the responsible parties typically have to help resolve it monetarily. He said he doesn't know what is being discussed in closed session, and his understanding is that the Board of Supervisors will not be participating in that session today.

Mr. Rutherford said he understands the Authority must act, and suggested that if they can contribute $1 million, the County can contribute $1 million, then both sides would be committing to seeing the project through. He stressed that the Board will need clear, strong indications from all entities involved about what they are going to do to help fix the problem. He emphasized that non-answers are unacceptable, and any entity involved must begin assisting publicly to help resolve the issue. He closed by asking the Board what they think of the idea of contributing $1 million if the Authority can confirm its own $1 million quickly.

Mr. Parr said his notes lined up exactly with Mr. Rutherford's comments, and he reiterated several of the same concerns. He expressed disappointment—after all the time leading up to this—that they don't know what money is available to help. He said his expectation is that the Authority should be able to contribute $1 million toward the fix, and both the County and the Service Authority are under the gun with this. He reiterated that they have no choice but to resolve the problem, and the County will support the Authority, even though he's not happy about the situation.

Mr. Parr stressed that the Authority must show due diligence in pursuing responsibility, reimbursement, and answers from all parties who had obligations in the events leading up to the failure. He said he expects reports documenting what questions were asked of those entities and how they responded. He specifically mentioned the contractor responsible for the screen installation error, saying they owe not only reimbursement for the faulty work but also for the liability it created.

Mr. Parr addressed Mr. Hight, Mr. Reed, and Mr. Shimp directly. He said that as the West District Supervisor, he was extremely disappointed that this issue persisted for so long without the Board of Supervisors being informed. He acknowledged that he could have attended Service Authority meetings, which he doesn't really have time to do, but emphasized that the Authority's representatives have a responsibility to communicate major problems to the Board. He said it was unacceptable that the Board learned of the situation only in February, roughly a year after problems began. He said he expects better communication going forward, whether it's this issue or any future one.

Mr. Parr closed by saying the County is willing to help the Authority get through this crisis, but he expects accountability and communication from all involved going forward.

Ms. McGarry asked about the purchase cost of the temporary treatment system they're proposing to rent for \$4.1 million, and whether any portion of the rental cost would be applied toward eventual ownership. She noted that this idea may have been mentioned briefly in an earlier conversation she had with staff when the issue first surfaced.

Mr. Anderson explained that renting the temporary treatment units costs about \$100,000 per month to rent three units, with each unit sized to handle 100,000 gallons per day. He said the arrangement is lease-to-own, meaning the rental payments are applied toward eventual ownership; at the current rate, they estimate it would take three to four years to fully own the equipment. He noted that the total ownership cost works out to about \$1.2 million per 100,000-gallon treatment unit, which may not be the least expensive option.

Ms. McGarry asked for the total cost to own the system.

Mr. Anderson said the estimated cost would be \$3.6 million to own just the equipment, with additional expenses for installation and operations on top of that.

Mr. Shimp clarified that a large portion of the total cost isn't just the equipment, it's the setup and installation of the temporary treatment system. He agreed with Mr. Anderson's earlier explanation that the lease-to-own structure means the Authority would essentially own the units after about four years of rental payments. Mr. Shimp stated if the original wastewater plant ultimately cannot meet regulatory standards, the Authority could potentially keep the leased system permanently and then seek reimbursement for its cost from whichever parties are found responsible for the failure. He said in other words, the temporary system could become the long-term solution if needed, and the Authority could pursue repayment later. Mr. Shimp also noted that there are still other issues that complicate the situation, so it's too early to know how everything will play out. He confirmed the rough estimate that setup alone is around \$2 million, separate from the equipment cost itself.

Mr. Anderson added there would be operating costs in addition to the unit price.

Ms. McGarry noted that if the Authority was already paying rental fees on the unit, she wondered why they couldn't just pay the remainder to keep it.

Mr. Reed said they also must consider who is liable for the original wastewater plant, which was guaranteed to operate at a specific performance level but has repeatedly failed to meet that standard. That question of liability, he emphasized, has shaped the Authority's approach from the beginning. Mr. Reed explained that the Authority has been trying to avoid taking actions that might complicate or weaken their ability to recover costs later from the parties responsible for delivering a functioning plant. He said their goal has always been to ensure that the people who were supposed to produce a compliant, working facility actually do so, and to give those parties the opportunity to fix the plant without prematurely shifting the financial burden onto the Authority or the County.

Mr. Rutherford said he believed a few possible outcomes were likely. He stated that one possibility was that the current membrane product could be replaced with another membrane that would require little to no change to the plant's internal mechanical systems if the existing product could not be made to work. He said the first and preferred outcome was that the product supplier would succeed in getting the plant to operate at the level it was originally supposed to.

Mr. Rutherford stated that if the supplier could not achieve that, the next step would be determining how to replace the smallest component possible while minimizing operational modifications. He said the third outcome was that the Authority would not build a new system, because the existing system had already been constructed, and the challenge was to make the plant work within its current footprint.

Mr. Rutherford said engineers should be able to determine fairly quickly whether the current system could be made functional and, if not, what replacement product could be used and at what cost. He stated that if the situation extended beyond a year, purchasing the temporary equipment would become an obvious decision. He said the Authority could not rely on legal action to produce a timely fix or a functioning product in the immediate future.

Ms. McGarry noted that it could take a long time.

Mr. Reed said the Authority had assumed they would have the necessary information by February. Mr. Rutherford said there was significant disappointment in the supplier, and it was very unfortunate that events had unfolded this way.

Ms. McGarry said she wanted to know whether DEQ would allow the temporary treatment system to remain in place permanently as a backup if the Authority ended up purchasing it, adding that she disliked the idea of spending money on a rental if the system might ultimately serve as part of a long-term solution.

Mr. Shimp said the temporary system could remain in place permanently as long as it meets the DEQ permit limits. He stated that the flows could be managed either individually or in combination with the existing membrane plant, which he said would likely continue to perform better than the temporary system. He said there was no reason the temporary system could not stay in place permanently if it met all regulatory requirements.

Mr. Anderson confirmed this.

Ms. McGarry stated that if the Authority purchased the temporary system, she was unsure whether the monthly rental cost would still apply when the equipment was not actively being used.

Mr. Shimp said the temporary system would continue to incur costs as long as it remained onsite, even if it was not actively operating. He stated that the monthly charge, about $90,000 per month, was essentially structured like a principal-and-interest payment under the lease-to-own arrangement. He said that one important question was how much of a discount the Authority might receive if it chose to purchase the system outright rather than continue renting it for four years. He stated that it was worth comparing the total cost of renting for a year against the cost of buying the equipment up front, because the Authority might not be committing to significantly more funding by purchasing it immediately.

Mr. Rutherford said there could be some resale value in the future.

Mr. Shimp said in theory, the temporary system could also provide additional treatment capacity if the resort grows and could add infrastructure value to the facility.

Mr. Parr said the Board definitely needed that information to make a decision.

Mr. Rutherford said he wanted to help the Board move the discussion forward and asked for additional questions before trying to determine a consensus. He also asked whether staff could join the Board in closed session.

Michael Deredyn, Service Authority attorney, responded that the issues the NCSA Board needed to address were specifically related to potential litigation and the consent order. He stated that in order to maintain attorney-client privilege, the closed session would need to be limited to the NCSA Board.

Mr. Rutherford said he believed the Board had reached a general consensus. He stated that the expectation was essentially to secure $1 million and then determine the remaining details afterward. He said staff had a significant amount of information to gather for reporting purposes, emphasizing that the Authority needed to keep the Board informed and maintain strong communication with staff as well as with the public.

Mr. Shimp said they needed to go further in discussing the funding issue. He stated that by signing the order in front of them, the Authority would be committing to spend up to $4 million, and he emphasized that the actual cost would be higher because that figure did not include additional expenses they would inevitably have to address. He said he was unsure how the Board felt about the fact that staff might need to return in two months and request another $2 million.

Mr. Rutherford said he did not envision the County abandoning the issue before it was fully resolved, as they had no interest in jeopardizing its DEQ standing or risking additional fines or complications. He stated that the total cost could exceed $4 million, and the Board understood that funding might need to be allocated in increments of $1-2 million, and the appropriate approach would depend on staff recommendations.

Mr. Lenahan said that if the Authority was already expecting to spend $4 million and was anticipating the possibility of needing another $2 million, it might make more sense to spend $5.1 million and simply purchase the temporary system outright.

Mr. Rutheford stated that the Board understood this logic but did not yet have the information needed to evaluate that option.

Ms. McGarry said she wanted to confirm that Mr. Lenahan was referring to the additional $2 million plus the other $2 million already anticipated.

Mr. Shimp said that Mr. Lenahan was referring to the next $2 million, and staff saw a high probability of needing well over that in the very near future. He emphasized that no one involved had any interest in putting the County or the Service Authority in financial jeopardy, nor in telling DEQ that they lacked the funds to pay for the treatment plant they had already committed to.

Mr. Shimp said that failing to fund the project would mean losing the deposit and discharging sewage into the stream, which was an unacceptable outcome for everyone. He said additional funding would be needed, and NCSA did not expect to find more than $1 million internally, noting that even that amount would be tight.

Ms. McGarry asked under what scenario the Authority would lose its deposit.

Mr. Shimp explained that the “deposit” he was referring to was the $2 million commitment tied to signing the consent order and moving forward with the temporary treatment system. He said that once the Authority commits to this path, they are effectively committing to the full $4 million cost, not just the initial $2 million—and once the Authority signs the order, they must be prepared to fund the entire amount, not just the first portion.

Mr. Rutherford said it was likely they would not have a clear solution for several months, and if they were able to identify a solution, then the Board could have an expected timeframe for how long the issue would take to resolve.

Mr. Reed said they were planning to conduct a non-peak outflow test in December, followed by another test in February, when temperatures are colder. He explained that all of their expectations were dependent on the treatment plant, its designers, builders, and engineers successfully completing the work.

Mr. Rutherford said that if the winter turned out to be unusually warm, and they did not get the cold-weather conditions needed for the February test, it could affect their ability to evaluate the plant’s performance.

Mr. Reed said that if they were able to conduct the February cold-weather test, they would be in good shape and would have the information they needed.

Mr. Shimp said he believed it would be cold enough in February and that there would be sufficient flow for the test. He explained that under normal daily conditions, there simply isn’t enough water coming off the mountain to properly test the system, so they rely on colder periods when flows increase.

Mr. Reed said that Ovivo would be responsible for making the determination about whether the February test conditions were adequate. He emphasized that the decision was theirs, not the Authority’s.

Mr. Rutherford asked how dependable Ovivo would be.

Mr. Reed acknowledged Mr. Rutherford’s concern, saying it has been hanging over the Authority since day one.

Mr. Rutherford asked how responsive that entity had been.

Mr. Shimp said that Ovivo has become more involved recently, even though that wasn’t always the case, and they now hold weekly calls every Thursday.

Mr. Reed explained that during the weekly calls with Ovivo, he has had to request that they follow standard common practices so there is some clarity as to what happens on those calls. He said he has not been on every call but has joined several of them, and he intends to continue participating and pushing for accurate documentation of detail and who was present.

Mr. Rutherford said the Board clearly understood the scenario and said this would be a moving target toward resolution, but the expectations were already laid out: The Service Authority should identify the $1 million, and the County would provide the first $1 million needed to meet the 50% deposit required to move forward. He stressed that the County has no interest in a bankrupt Service Authority and every interest in ensuring the wastewater system functions properly. Mr. Rutherford said the Board’s approach is about due diligence on behalf of taxpayers, maintaining an ongoing dialogue, and asked if the County was satisfied with that.

Ms. McGarry said she was but wanted a recap of the action items.

Mr. Shimp said the first step was to confirm promptly whether the Service Authority could fund $1 million. He stated that their engineers would continue conducting due diligence by confirming any additional bids and sources for a temporary plant, as well as determining the cost of purchasing such a system. He said that purchasing might become the preferred option if the numbers made sense, and the Authority might pivot in that direction. He then asked when the next regular Board of Supervisors meeting would take place.

Mr. Rutherford confirmed that it was July 14, 2026.

Mr. Shimp said he would like Mr. Anderson to obtain the information regarding the purchase cost of the temporary plant, and it would be prudent to send Mr. Miller or another representative, possibly Mr. Reed, to deliver that information to the Board of Supervisors.

Mr. Rutherford said it would be best to have the information by July 8 or 9 at the latest, as staff needed time to prepare and ask any necessary questions.

Mr. Parr asked the information to be submitted by July 9 at the latest.

Mr. Reed said he would like the information as soon as possible and appreciated the effort being made. He said that going forward, it would be beneficial to include reports within the Director's reports or to have a standing report from the Service Authority presented at Board meetings.

Mr. Rutherford noted that a Service Authority representative needs to come monthly now.

Mr. Miller said given the discussion about renting to own a mobile unit, the Authority would be sending $780,000 per year for the next 25 years to pay for the unit they currently had.

Mr. Rutherford said they still did not know the full story regarding the unit they had already purchased.

Mr. Shimp said there was a firm commitment on the part of the Service Authority to get their return for the $18 million spent for a system designed to deliver a specific flow rate and level of performance. He said it might not happen today or tomorrow and might require a fight, but the Authority was committed because a significant amount of money had been invested, and it was not acceptable to receive anything less than what had been purchased.

Ms. McGarry stated she believed there was consensus on that.

Mr. Shimp said the situation had not been easy, explaining that if the system failed every day, they would likely have reached a solution quickly. He stated that the real problem was the pattern of intermittent failures: they would experience a failure, believe they had identified a solution, and then months would pass before discovering that the fix had not worked. He said they were often not informed of the failure until after the attempted solution had already proven ineffective, which was far from ideal. He stated that he understood how the situation appeared to the public, acknowledging that it looked bad and that, in truth, it was bad. He said the challenge was comparable to diagnosing a car with an intermittent issue, noting that the system had been damaged for eight months, making the troubleshooting process slow and difficult.

Mr. Shimp said the situation was difficult to diagnose and was a problem faced by the Authority. He said it was a very tough circumstance and noted that getting contractors to show up during the Christmas season was also challenging. He stated that the period when their operational challenges were greatest tended to be the same period when everyone wanted to take vacation, creating a compounding list of obstacles. Mr. Shimp said despite that, there were no excuses, and the system should operate. He stated that everyone involved, and everyone who had been paid to make the system function, needed to ensure that it happened.

B. Closed Session Pursuant to 2.2-3711 (A)(7) & (A)(8).

Mr. Shimp noted that the Service Authority would be adjourning the joint meeting and then going into Closed Session. The Board of Supervisors did not hold a Closed Session.

III. ADJOURNMENT

At 10:18 a.m., Mr. Lenahan **moved** to adjourn the Board of Supervisors meeting. Mr. Parr **seconded** the motion, which passed unanimously (4-0) and the meeting adjourned.

Mr. McSwain moved to adjourn the joint meeting and Mr. Hight seconded the motion, which passed unanimously (4-0) and the meeting adjourned.