

A regular meeting of the Board of Members of Rapidan Service Authority was held on November 18, 2021 at the Madison County Administration Building, Madison, VA.

The meeting was called to order at 2:00 PM. A quorum was established followed by the Pledge of Allegiance.

Present:           Members:       Coppage, Crozier, Frame, Martin, Williams, Yowell  
                  Staff:           G.M. Clemons, DO Jarrell, MFAS Gaskins  
                  Attorney:       Terry Lynn  
                  Visitors:       Jonathan Weakley, Mark Taylor, Clay Jackson, Media

The agenda for the meeting was adopted on a motion by Crozier, seconded by Coppage and approved unanimously.

The minutes of the October 21, 2021 meeting were approved on a motion by Yowell, seconded by Crozier and passed unanimously.

There was no old business and no public comment. No customer requests were presented.

An opportunity for comments from the Board was given. Mr. Williams expressed thanks for the reply he received from the General Manager regarding the sewer leak in Stanardsville. He then suggested that what appears to be an old holding basin located below the pump station be used, at least temporarily, for overflow. GM Clemons will check to see if the tank is/can be outfitted for use. Atlantic Pump is currently rebuilding one of the pumps and the second pump will be replaced with a new one.

Williams read a statement to the Board regarding the outcome of court hearings involving RSA and Greene County and reiterated Greene County's decision to withdraw from RSA. He asked that the statement be added to the Board minutes along with the transcript of the November 8, 2021 hearing. He concluded by making a motion that the Greene County facility fee be reinstated at the July 2020 rate of \$30/month with any required public hearing taking place as soon as possible. The motion was seconded by Yowell and passed 5-1 on the following vote: Coppage, aye; Crozier, aye; Frame, nay; Martin, aye; Williams, aye; Yowell, aye.

Mediation is scheduled for December 8, 2021. In addition to G.M. Clemons and RSA attorney Terry Lynn attending, Orange and Madison Counties may have a representative in attendance. Attorney Lynn indicated that the goal for the parties is to leave the mediation with an agreed-upon withdrawal agreement.

A&K, developer of the Twin Lakes subdivision in Orange County, has requested that Section 1A of the development be taken into the RSA system. G.M. Clemons explained that Board approval was required for any systems of 15 units or more. A motion was made by Crozier, seconded by Coppage to accept the subdivision into the RSA system. Crozier asked whether the water main pressure in the system was excessive. G.M. Clemons indicated that he believed it was within the industry standard. The Chairman asked that he forward a copy of the testing standards to him and

Crozier so that they would have them if asked about the pressure in the future. The motion passed unanimously on a voice vote.

G.M. Clemons presented a frontline bonus request in the amount of \$500 for full-time employees and \$300 for part-time employees for approval. The total would be less than \$25,000. Crozier stated that he would like to see RSA's compensation package for its employees reviewed. On motion by Crozier, second by Coppage, the bonus passed on a unanimous voice vote.

G.M. Clemons gave the General Manager's report indicating that a project has been added to the Capital Improvement Projects list. RSA has been waiting for the Stanardsville Streetscape Project to begin in order to do some sewer line replacement. That Streetscape project is now beginning, and the project contractor is going to do the sewer line replacement. RSA will pay for the work, but this will allow for coordination of paving and concrete work. The only other item on the General Manager's report is the financial report, and the bottom line continues to be fine.

A question was raised by Coppage about the Rt. 29 boring project in Madison. The contractor has been delayed again by Covid.

There was no attorney report other than that which had been previously discussed, the upcoming mediation. There are upcoming court dates on December 13<sup>th</sup> and in January.

A motion to adjourn was made by Crozier at 2:24 PM; the motion was seconded by Yowell and passed unanimously.

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Chairman

## **November 18, 2021, RSA Board meeting –**

In a recent communication with the RSA Board, I mentioned the need for this Board to give attention to the litigation record that RSA is compiling in the Greene County case. We have come up short every time the parties have been before the court.

Here's RSA's record in court so far –

1. November 10, 2020 – RSA's Motion Craving Oyer – RSA sought a ruling on what's included in the agreement that's in dispute – Judge Worrell ruled in favor of Greene County.
2. January 4, 2021 – A Greene County Motion to Quash RSA Subpoenas of documents from WW Associates, Davenport, & Stantec – Judge Worrell ruled in favor of Greene County.
3. February 9, 2021 – Greene County Motion to File Amended Complaint – Judge Worrell ruled in favor of Greene County.
4. May 24, 2021 – RSA Plea in Bar – The plea asserted that the facility fee was an “illegal tax” – Judge Worrell ruled in favor of Greene County – the facility fee was not an illegal tax.
5. November 8, 2021 – RSA Plea in Bar – RSA asserted that Greene County's claim is barred per the doctrine of sovereign immunity – Judge Worrell ruled in favor of Greene County – denying or overruling RSA's Plea in Bar asserting sovereign immunity – and ruled that Greene County's claim is not barred. The Court observed at this hearing that, based on our General Manager's testimony, RSA has perhaps failed to do what we had agreed with Greene County that RSA would do. The Court also said that RSA seems to have committed that failure without good faith.

This week, a copy of the transcript of the November 8 hearing was sent to each board member.

We now know and it is crystal clear that, among many other things, RSA's legal strategy has been flawed:

- 1) The theory that the facility fee is illegal has not been accepted by the court, and
- 2) The theory that RSA, through Sovereign Immunity, is immune to legal agreements with Greene County. The court is clearly stating that the Agreements are legally binding.

How long must this costly legal exercise play out? We all see the legal line item in our monthly financial report. The rate payers of our three counties are footing this bill.

The court has set a date for RSA's final demurrer and seems eager to move on to a Motion for Partial Summary judgment. While it is unwise to predict the direction the court will take, it is easy to see the trend in the court's decisions...

Mr. Chairman, I would like to ask that the November 8<sup>th</sup> hearing transcript be entered into the minutes of this meeting. They are of public record; they are public documents. If we don't discuss them then I would like them entered into RSA's public record through the minutes to this meeting.

On November 12, 2021, Greene County received a letter from RSA attorney Lynn inviting Greene County to undertake mediation with RSA, a mediation that Greene County and VRA have been encouraging for months. A mediation date is finally being set. We were pleased to see that for the first time, Ms. Lynn's letter says nothing about the conditions that RSA has previously said must be satisfied before mediation can take place.

Greene County is reading Ms. Lynn's November 12th letter as an invitation to mediation **without** conditions. Again, we hope this is the case. We want to be clear that this mediation is about Greene County withdrawing from the RSA. There is no need for any discussion about Greene County remaining in the RSA. That is not happening. Greene County is withdrawing.

Gentlemen, I would ask that the RSA take a different tack. Is it not time to stop the financial bleeding and the agony of this long legal process? Is it not time for RSA to follow the Resolutions of the three member counties and permit Greene County's withdrawal? I would suggest the path is clear to do so. This board can direct RSA staff to make this happen.

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From the hearing on May 24, it is now clear that Greene County's facility fee was a legal fee.

From the hearing on November 8, it is clear that the agreements between RSA and Greene County are enforceable contracts. Those agreements stipulated the fees that have been in question for so long.

I would ask that the RSA Board reinstate the Greene County facility fee. We ask that the fee be restored to \$30, the same level that RSA had approved prior to the July 2020 decision to eliminate it over Greene County's objection. If this requires a public hearing, and we would like that hearing to be held and action taken as quickly as possible.

I am ready to make the motion.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

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GREENE COUNTY BOARD OF  
SUPERVISORS and GREENE COUNTY,  
VIRGINIA,

Plaintiffs,

-vs- Case No.  
CL20000689-00

RAPIDAN SERVICE AUTHORITY;  
ORANGE COUNTY, VIRGINIA; and  
MADISON COUNTY, VIRGINIA,

Defendants.

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VIDEOCONFERENCE PROCEEDINGS BEFORE

THE HONORABLE CLAUDE V. WORRELL, II, JUDGE

4:30 p.m. to 5:45 p.m.

November 8, 2021

Job No. 46376

REPORTED BY: Kimberly A. Adderley, RPR, RMR

1           Videoconference proceedings before The  
2 Honorable Claude V. Worrell, II, Judge, reported  
3 by Kimberly A. Adderley, RPR, RMR, Notary Public  
4 in and for the Commonwealth of Virginia at large,  
5 commencing at 4:33 p.m., November 8, 2021.

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I N D E X

WITNESS:

TIMOTHY CLEMONS

Direct by Ms. Lynn.....	24
Redirect by Ms. Lynn.....	46
Recross by Mr. Habeeb.....	48

E X H I B I T S

PLAINTIFFS'

RECEIVED

(NONE)

DEFENDANT'S

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1 (4:33 p.m., November 8, 2021)

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P R O C E E D I N G S :

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THE COURT: So, we are here for Ms. Lynn's plea in bar. I'm happy if we could, and would like to if we could, deal with the nonsuit issue first, because I think that's relatively straightforward.

Mr. Gregg, I didn't see your -- I didn't see a signature from Mr. Gregg or anyone from that office with regard to an endorsement on the nonsuit. I saw the objection to same, but not an endorsement from Mr. Gregg.

MR. GREGG: I thought I had endorsed it and mailed it to the Court. But, I have endorsed it seen and objected to, and I will send another copy to the Court tomorrow.

THE COURT: Seen and objected to.

MR. GREGG: That's correct, your Honor.

THE COURT: Okay. For exactly the same reasons as Mr. Calos objects.

MR. GREGG: Yes, your Honor.

THE COURT: I figured.

1 MR. GREGG: Judicial economy. Just put  
2 ditto marks.

3 THE COURT: Right. You can't just  
4 point at him and say, "What he said."

5 MR. GREGG: Exactly.

6 THE COURT: Oh. Ms. Adderley, you want  
7 to raise your right hand.

8

9 (Court Reporter sworn)

10

11 THE COURT: Okay. Mr. Habeeb, tell me  
12 about the motion to nonsuit and I will deal  
13 with that first.

14 MR. HABEEB: Judge, this goes to count  
15 three relating to Madison and Orange, which  
16 were made parties in this case for purposes  
17 of the requested relief. At least  
18 conditionally we have resolutions adopted by  
19 both boards, Madison and Orange. So, we  
20 believe at least now, if the facts don't  
21 change in those jurisdictions, that they are  
22 not needed as parties at this time. So, we  
23 have sought to nonsuit them. There was one  
24 issue with Madison because they have a  
25 pending counterclaim. That pending

1 counterclaim we believe was addressed by the  
2 Court's previous ruling on the legality of  
3 the facility fee. But that was really the  
4 only issue.

5 So, we would like to nonsuit without  
6 prejudice the claims against Madison and  
7 Orange, and we believe that's proper to do  
8 so. If Madison does not want to be nonsuited  
9 without prejudice because of their pending  
10 counterclaim, they are welcome to stay in the  
11 party and they can continue to participate.

12 THE COURT: Okay. Mr. Gregg, you  
13 first.

14 MR. GREGG: Thank you, your Honor.  
15 Your Honor, I just don't understand why this  
16 is not a dismissal with prejudice, both of  
17 Madison County and, for that matter, Orange  
18 County. The issue related to Greene County  
19 and Orange County and Madison County is moot  
20 because both Madison and Orange have passed  
21 the resolution that Greene County was  
22 seeking. And for that reason, we just don't  
23 believe it is appropriate. And the reason we  
24 object to it is because, you know, we believe  
25 a dismissal with prejudice is more

1 appropriate.

2 Thank you.

3 THE COURT: Understood. All right.

4 Any more arguments as to the nonsuit?

5 MR. CALOS: Judge, Stefan Calos, here  
6 on behalf of Orange. I would just echo what  
7 Mr. Gregg said and I would just rely upon the  
8 objection that I put in writing on my  
9 endorsement page.

10 THE COURT: All right. So, I will note  
11 your objection, but I'm going to grant the  
12 motion to nonsuit. And I will note that  
13 Mr. Gregg, for his sake, adopts the objection  
14 of, and includes his objection for Mr. Calos,  
15 too.

16 MR. GREGG: Thank you, your Honor.  
17 Appreciate it.

18 MR. HABEEB: Thank you. Just while you  
19 are cleaning that up, you will note a couple  
20 of folks have joined the Teams that don't  
21 have their cameras on. I know at least some  
22 of those are the Greene County Board of  
23 Supervisors and Mark Taylor, the County  
24 Administrator, who are participating as  
25 observers. So, that's who those other folks

1 are on there.

2 THE COURT: Yeah. If it pops up that I  
3 have to -- I'm apparently being asked to  
4 admit people, so I'm admitting people as we  
5 go along here. I just admitted Mr. Taylor to  
6 this and I will continue to admit as many  
7 people as want to attend by video.

8 MR. HABEEB: I'm sure this is a hot  
9 ticket today, so we may have...

10 THE COURT: I doubt that seriously.  
11 For us lawyers it may be, but for everybody  
12 else, you know, I think it will be  
13 interesting, but that's it.

14 So, now let me ask another question.  
15 Ms. Lynn, are you prepared to take up the  
16 motion for partial summary judgment, too,  
17 today?

18 MS. LYNN: No.

19 THE COURT: Okay. Just the plea in  
20 bar. And is there any chance we can take up  
21 the demurrer this afternoon, too?

22 MS. LYNN: Your Honor, the only thing  
23 I'm prepared for is the plea in bar.

24 THE COURT: Okay.

25 MS. LYNN: I do have a question though.

1 THE COURT: You don't need to explain.  
2 Go ahead and start your argument then for  
3 your plea in bar.

4 MS. LYNN: So, your Honor, we are  
5 moving the Court to dismiss this action  
6 because the relief in the amended complaint  
7 is barred by the doctrine of sovereign  
8 immunity. I'm going to do a brief --

9 THE COURT: Let me ask you a question  
10 right off. Let me ask a question right off.  
11 So, if Rapidan Service Authority does  
12 something that someone doesn't like, there is  
13 no redress at law, no recourse at law to  
14 solve their mistake or their error if they  
15 did something ultra vires? They can condemn  
16 someone's property when they didn't have the  
17 authority to do it, that person or persons  
18 are just out of luck because it's sovereign  
19 immunity?

20 MS. LYNN: So, Rapidan Service  
21 Authority is a municipality created under the  
22 Virginia Water and Waste Authorities Act.  
23 And under that Act, it has sovereign immunity  
24 for governmental functions, not proprietary  
25 functions. So, to the extent that we are

1 talking about a legislative function of  
2 setting fees, managing the board, agreeing to  
3 the withdrawal of a locality, those are all  
4 legislative functions that they were given  
5 discretion to do.

6 So, this isn't a case where they are  
7 saying that the fees were unreasonable or, as  
8 such, we came in front of you to see that the  
9 fees, whether they were legal or not. This  
10 lawsuit is asking the Court to override the  
11 legislative authority given to RSA to set  
12 fees and rates for its customers.

13 So, to answer your question, for some  
14 circumstances the answer to your question is  
15 yes. If it's a governmental function, which  
16 includes legislative authority given by the  
17 statute, the answer to your question is yes.  
18 If it's a proprietary function, the answer is  
19 no. Today we are only dealing with  
20 governmental functions and mainly legislative  
21 authority given by the General Assembly under  
22 the Virginia Water and Waste Authorities Act.

23 THE COURT: Tell me why this isn't  
24 merely an enforcement of a contract.

25 MS. LYNN: Because under Virginia law

1           you cannot contract away a legislative  
2           delegation of setting rates and fees. There  
3           are numerous cases stating that you cannot  
4           contract away those legislative functions.  
5           Those legislative functions --

6                   THE COURT: Stop. Stop there for a  
7           second. Then how does a government, a county  
8           government or a town government enter into a  
9           contract with another individual for any  
10          purpose, much less a board that it created  
11          jointly with others, to carry out a certain  
12          function? Because that's what the State  
13          Water Act allowed them to do. And so, why  
14          can't the two governmental entities contract  
15          with each other?

16                   MS. LYNN: Because there's no authority  
17          for that contract within the Virginia Water  
18          and Sewer Authorities Act. Under Code of  
19          Virginia Section 15.1-2136, the Rapidan  
20          Service Authority, which was formed by all  
21          three counties, is the only entity that is  
22          given authority under that section to set  
23          fees and rates. There's no provision  
24          anywhere in the Virginia Water and Sewer  
25          Authorities Act that allows Rapidan Service

1 Authority to contract with anyone regarding  
2 the delegation of setting rates and fees.

3 We can contract with people. Like, for  
4 example, the provisions in the Act allow us  
5 to contract with people to build things. We  
6 can also contract with people to send out our  
7 bills or we can contract out for people to  
8 prepare our bills. But we cannot, under the  
9 Act, in any way contract out our legislative  
10 function of setting fees and rates. We  
11 furthermore can't even allow anyone to have a  
12 say-so in those fees and rates, because that  
13 authority was given solely to Rapidan Service  
14 Authority. We are the only one that provides  
15 water and sewer services in Greene County.  
16 Greene County does not provide any water or  
17 sewer services in Greene County.

18 In 1969, when they issued the Articles  
19 of Incorporation and formed Rapidan Service  
20 Authority, they relinquished the control of  
21 providing water and sewer services to those  
22 three counties to Rapidan Service Authority.  
23 So, everything is governed under the Virginia  
24 Water and Sewer Authorities Act, which is  
25 cited in the Articles of Incorporation, as

1 well as in all the amendments, as well as in  
2 the contracts that you are talking about.

3 THE COURT: So, tell me where this is  
4 different than CONCERNED RESIDENTS OF  
5 GLOUCESTER COUNTY and THE GLOUCESTER COUNTY  
6 BOARD OF SUPERVISORS.

7 MS. LYNN: So, I'm not in any way  
8 saying that Rapidan or the County cannot  
9 enter into contracts. That's not my  
10 position.

11 THE COURT: You just told me they  
12 weren't --

13 MS. LYNN: They are not allowed to  
14 enter into contracts which set rates and fees  
15 for Rapidan Service Authority's customers.

16 THE COURT: I think that's not true. I  
17 think that the contract or agreement that was  
18 entered into by Greene County and the Rapidan  
19 Service Authority regarding utility fees and  
20 others, and the way the fees were collected,  
21 is entirely permissible between Rapidan  
22 Service Authority and Greene County. And if  
23 that's the case, then there has to be some  
24 mechanism of enforcement if Greene County is  
25 to make sure that its rights under the

1 contract are enforceable. There's no other  
2 way to do it. Because what you are telling  
3 me is once the localities create the Rapidan  
4 Service Authority, they no longer have any  
5 ability to regulate or control what this  
6 entity that they created does. And that  
7 can't possibly be the law.

8 MS. LYNN: Yes, it is the law.

9 THE COURT: It isn't. There has to be  
10 a check and a balance somewhere. So, you  
11 mean to tell me if Rapidan Service Authority  
12 in their function passed a rule that said we  
13 are going to condemn this amount of land from  
14 point A to point B so that we can build  
15 another water treatment plant, that there  
16 would be no ability to complain from those  
17 landholders that Rapidan Service Authority  
18 condemned their land by their legislative  
19 authority and their governmental power?  
20 There's no way to complain about that and  
21 Rapidan Service Authority gets to do what  
22 they want to without the ability of the  
23 courts to say no, you can't?

24 MS. LYNN: No. That is a totally  
25 different issue.

1 THE COURT: Why is it different?

2 MS. LYNN: Well --

3 THE COURT: Why is it different where I  
4 have an ability to step in in one instance  
5 and I don't here because Greene County agreed  
6 with Rapidan Service Authority to do certain  
7 things on behalf of the citizenry of Greene  
8 County?

9 MS. LYNN: Greene County stepped into  
10 the shoes of a developer. If they had not  
11 signed the contracts and stepped into the  
12 shoes of Fried, we wouldn't be here today.  
13 They didn't step in with any police powers of  
14 the County. The police powers of setting  
15 fees and rates was delegated to Rapidan  
16 Service Authority through the Virginia Water  
17 and Sewer Act. With regard to eminent  
18 domain, we are given the power of eminent  
19 domain through the statutes.

20 THE COURT: Right.

21 MS. LYNN: So, it gives us that  
22 authority. I am talking -- this plea in bar  
23 is specifically about delegation of  
24 legislative authority in setting fees and  
25 rates, in governing our board, and in

1 allowing a locality to withdraw from the  
2 Authority. And the General Assembly has set  
3 forth the mechanism for all three of those by  
4 statute. And the State Corporation  
5 Commission does have a say-so, they can  
6 review whether it's reasonable or not. There  
7 is a means by which to do that. As a matter  
8 of fact, a concerned citizen can come to you  
9 with regard to whether it's reasonable or  
10 not. But, the rate and fee is set by  
11 Rapidan.

12 What Greene County is asking you to do  
13 in this situation is to override a  
14 legislative discretionary decision of a  
15 majority board in requiring Rapidan to set a  
16 fee which its majority board decided they did  
17 not want to proceed with.

18 So, they have exercised the legislative  
19 function they were given by the Virginia  
20 Water and Waste Authorities Act in  
21 determining what the rates and fees would be  
22 for Greene County. Greene County is saying  
23 we want you to override that and act as the  
24 legislature in setting the fees because we  
25 don't like what they have done. That's why

1 the Virginia Water and Sewer Authorities Act  
2 has board members from each of the localities  
3 on the board.

4 THE COURT: So, Ms. Lynn, tell me the  
5 timeline and the facts of this decision made  
6 by the Rapidan Service Authority that you are  
7 talking about. What's the timeline?

8 MS. LYNN: July 2020.

9 THE COURT: And what happened in  
10 July 2020?

11 MS. LYNN: In July of 2020, the Greene  
12 County Board of Supervisors came to an open  
13 meeting of the Rapidan Service Authority and  
14 requested that Rapidan Service Authority  
15 increase a fee to be charged on Rapidan  
16 Service Authority's bill to Rapidan Service  
17 Authority's customers.

18 THE COURT: In Greene County.

19 MS. LYNN: Yes.

20 THE COURT: Right. Not in Madison.

21 MS. LYNN: No.

22 THE COURT: Not in Orange. Just in  
23 Greene; right?

24 MS. LYNN: Rapidan Service Authority  
25 customers of Greene.

1 THE COURT: Go ahead.

2 MS. LYNN: In July, at the board  
3 meeting, the Rapidan Service Authority board  
4 by majority vote decided the stop charging a  
5 facility fee to the Greene County customers.

6 THE COURT: Which facility fee their  
7 agreement between Greene County and Rapidan  
8 Service Authority said that they would  
9 collect; right?

10 MS. LYNN: It said that the fee had to  
11 be decided by Rapidan Service Authority  
12 because Rapidan Service Authority is actually  
13 the only entity that can set the fee.

14 THE COURT: So, if the Rapidan Service  
15 Authority says the fee is zero, is that a  
16 fee?

17 MS. LYNN: I wouldn't think it's a fee.  
18 I don't think our customers would think it's  
19 a fee.

20 THE COURT: Right. So, Rapidan Service  
21 Authority has to charge a fee. If Rapidan  
22 Service Authority is not charging the fee,  
23 then they are in violation of the agreement  
24 they have with Greene County. And if they  
25 are not charging the fee, they are not

1 collecting the fee, they are not doing what  
2 they said they would do in the agreement,  
3 where does Greene County go to make them  
4 collect the fee that Rapidan Service  
5 Authority is supposed to charge?

6 MS. LYNN: They can't. Rapidan Service  
7 Authority is the only one that has the  
8 authority to decide any fees or rates  
9 charged.

10 THE COURT: But charging no fee is not  
11 or deciding a fee, is not levying a fee, it's  
12 no fee at all. So, they have no right to  
13 vote for no fee at all, they must charge a  
14 fee. So, when they say they are not going to  
15 do what they are contracted to do, tell me  
16 where is Greene County supposed to go to find  
17 relief for that behavior.

18 MS. LYNN: Well, according to the  
19 Virginia Supreme Court, any contract that  
20 attempts to control the setting of rates and  
21 fees by a governmental entity that the  
22 legislature imposes that obligation on is  
23 void. So, for example, in the CITY OF YORK  
24 case, where the county administrator could  
25 not enter into a contract with a developer,

1           although he did, with regard to the setting  
2           of fees, the Court found that that contract  
3           was void because the county administrator  
4           could not override, in that situation, the  
5           county's legislative duty of setting fees and  
6           rates. In that case, the county provided  
7           water and sewer services. They were given  
8           the legislative right of setting fees and  
9           rates. Not even their county administrator  
10          could go outside of that authority. And the  
11          Court in that case said that the contract was  
12          void and any action that was taken by either  
13          party on that contract was of no consequence,  
14          because the contract was void because you  
15          cannot do a contract and take away a  
16          legislative right to set fees and rates.

17                   THE COURT: All right. Anything else,  
18                   Ms. Lynn?

19                   MS. LYNN: Well, your Honor, I do have  
20                   a full argument and I have Mr. Clemons here  
21                   to testify. And based on this conversation,  
22                   I think it's important that I be able to make  
23                   a record.

24                   THE COURT: I'm happy to have you make  
25                   the record. What was Mr. Clemons going to

1 testify about?

2 MS. LYNN: Well, I think that there are  
3 definitely some statements made in the  
4 complaint and in the pleadings that had been  
5 filed that are contested. There are  
6 suggestions based upon the statutes that have  
7 been relied upon by Greene County that  
8 there's some shared responsibility for  
9 providing water and sewer services in Greene  
10 County. There is no shared responsibility  
11 for that. And so, there are a number of  
12 contested issues that I was going to have him  
13 address.

14 THE COURT: All right. Mr. Clemons,  
15 raise your right hand for me.

16 (Witness sworn)

17 THE COURT: Go ahead, Ms. Lynn.

18 MS. LYNN: I'm going to introduce him,  
19 your Honor. I know you know who he is.

20

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1                                   TIMOTHY CLEMONS,  
2                                   was sworn and testified as follows:

3                                   D I R E C T  
4                                   E X A M I N A T I O N

5 BY MS. LYNN:

6                   Q.       Can you state your name for the record.

7                   A.       My name is Timothy Clemons.

8                   Q.       And are you employed?

9                   A.       I'm employed by the Rapidan Service  
10 Authority.

11                  Q.       And for how long?

12                  A.       I have been there just short of 22  
13 years.

14                  Q.       And what is your current position?

15                  A.       I am the general manager currently.

16                  Q.       And can you tell the Court about the  
17 formation of Rapidan Service Authority?

18                  A.       Yes. In 1969, Counties of Orange,  
19 Madison, and Greene, recognizing the significant  
20 resource there was in the Rapidan River and its  
21 tributaries and watershed, decided to create the  
22 Rapidan Service Authority pursuant to the Virginia  
23 Water and Sewer Authorities Act in order to better  
24 manage that resource from a regional standpoint.  
25 And so, when they created Rapidan Service

1 Authority, those three counties relinquished their  
2 responsibility to provide utility services in  
3 those counties. It was delegated fully to Rapidan  
4 Service Authority to do.

5 MR. HABEEB: Judge, I'm not going to  
6 object during this, because I realize your  
7 Honor can regard or disregard any of this.  
8 But, what we just heard was Mr. Clemons'  
9 legal opinions as to what the formation of  
10 the Rapidan Service Authority did. I expect  
11 we will hear a lot more of that. Again, I'm  
12 going to sit quietly because I would just  
13 like them to continue to talk, but if you  
14 could note our objection to Mr. Clemons  
15 offering any more legal conclusions, I will  
16 be quiet.

17 THE COURT: Sustain the objection as to  
18 his legal conclusions.

19 Go ahead, Ms. Lynn.

20 BY MS. LYNN:

21 Q. Mr. Clemons, I sat in front of you what  
22 has been designated as Exhibit 1.

23 A. Yes.

24 THE COURT: Is this your Exhibit 1,  
25 Ms. Lynn?

1 MS. LYNN: Yes. And, your Honor, I  
2 sent them by email recently. I mean, all of  
3 them except one were attached to the plea in  
4 bar.

5 THE COURT: Right. So, just so you  
6 know, I've read your papers. I've also  
7 considered what are essentially now 15  
8 exhibits that were attached to your papers to  
9 your plea in bar. Exhibit Number 1, is this  
10 the resolution signifying the intention of  
11 the Board of Supervisors of Orange, Madison,  
12 and Greene?

13 MS. LYNN: Along with the Articles of  
14 Incorporation, yes.

15 THE COURT: Right. I don't see there's  
16 any need for Mr. Clemons to identify these  
17 documents for this purpose. All you need do  
18 is ask the Court to admit them and make them  
19 a part of the record of this proceeding, and  
20 I will do so.

21 MS. LYNN: So, all of the exhibits to  
22 the reply --

23 THE COURT: All 15 exhibits, the Court  
24 will accept. I will note that Mr. Habeeb and  
25 his clients have objected to the

1           admissibility of certain of these exhibits.  
2           I overrule their motion that was filed  
3           earlier today or yesterday regarding the  
4           admissibility of these exhibits for the  
5           purposes of this hearing. When it comes to  
6           trial or anything else, we will take them up  
7           again, but as per this hearing, all of your  
8           exhibits will be deemed admitted.

9                       MR. HABEEB: Thank you, your Honor.

10                      MS. LYNN: Your Honor, and today in an  
11           email that I sent, there was Exhibit  
12           Number 9, which is the resolution that was  
13           previously produced. The only difference is  
14           the one I emailed today had a corrected date  
15           on it.

16                      THE COURT: So, I will receive that,  
17           too, and add it to the documents that I've  
18           already received.

19                      MR. HABEEB: Judge, just --

20                      THE COURT: I've got also a letter with  
21           the tab number 11A, the sovereign immunity,  
22           it says something about sovereign immunity,  
23           but it's an October 29, 2021 letter from the  
24           Virginia Resources Authority and Stephanie  
25           Hamlett. That's the other thing that I

1 received today.

2 MS. LYNN: Yes. Oh, you received that  
3 today. Okay.

4 MR. HABEEB: Judge, if I may.

5 THE COURT: Yes.

6 MR. HABEEB: Exhibit 9, I just want to  
7 make sure the record is clear what it is.  
8 The Exhibit 9 that I'm looking at that  
9 Ms. Lynn's office sent today is a whole bunch  
10 of letters from the VRA.

11 THE COURT: So, I don't have that. So,  
12 my Exhibit 9 is a second resolution calling  
13 for the anonymous consent of Orange and  
14 Madison Counties to the withdrawal of Greene  
15 County from the Rapidan Service Authority  
16 pursuant to Virginia Code section 15.2-5112.  
17 That's what I have as Exhibit 9 that was  
18 given to me with her papers for the plea in  
19 bar.

20 MR. HABEEB: Thank you. I'm looking at  
21 the email that her office sent this  
22 afternoon.

23 THE COURT: Okay. I'm getting a copy  
24 of that now. Give me just a moment to find  
25 it.

1 MR. HABEEB: Great. As I see, this is  
2 a February VRA letter, an August VRA letter,  
3 a September VRA letter, another September VRA  
4 letter, a County of Greene letter from  
5 October.

6 THE COURT: Yes, I have that.

7 MR. HABEEB: October 29th VRA letter.  
8 I don't have the resolution as 9 based on  
9 this email.

10 MS. LYNN: So, to date --

11 THE COURT: Either do I, but I will  
12 receive the letters.

13 MS. LYNN: So, your Honor, today it was  
14 Exhibit 6 that was the corrected  
15 September 16, 2020 resolution. And that's  
16 the only difference, is that the resolution  
17 we previously provided said September 17, and  
18 it should have been the 16th. So, that was  
19 the only difference.

20 THE COURT: Okay. Go ahead.

21 MS. LYNN: All right. So, I'm going to  
22 move passed getting him to identify and  
23 introduce the exhibits.

24 MR. HABEEB: Thank you for noting our  
25 objection, Judge.

1 BY MS. LYNN:

2 Q. Mr. Clemons, what services are provided  
3 by Rapidan Service Authority in Greene County?

4 A. In Greene County we provide water  
5 treatment and distribution and we provide  
6 wastewater collection, treatment, and disposal.

7 Q. And who else provides water and sewer  
8 services in Greene County?

9 A. Nobody else provides water and sewer  
10 services in Greene County, only Rapidan Service  
11 Authority.

12 Q. What involvement does Greene County  
13 have in the operation of any water or sewer  
14 facility in Greene County?

15 A. Greene County doesn't have any  
16 involvement in Rapidan Service Authority or the  
17 operation.

18 THE COURT: Say that again. I'm sorry,  
19 Mr. Clemons, I couldn't hear you. Greene  
20 County doesn't what?

21 THE WITNESS: I said Greene County does  
22 not have any involvement in the operation of  
23 the water and sewer systems in Greene County,  
24 your Honor.

25 THE COURT: So, do they have members on

1 the board?

2 THE WITNESS: They have two members on  
3 the Rapidan Service Authority board, your  
4 Honor.

5 THE COURT: So, what does that mean in  
6 terms of the management and functions of the  
7 Rapidan Service Authority as to Greene  
8 County, they have no say? I mean, the board  
9 members are just sitting there doing nothing?

10 THE WITNESS: No, sir.

11 THE COURT: So, why are they there if  
12 they have nothing to do with the way in which  
13 Rapidan Service Authority operates as to  
14 Greene County?

15 THE WITNESS: I could not hear him.

16 THE COURT: I said --

17 THE WITNESS: Sorry, your Honor, I  
18 couldn't hear you.

19 THE COURT: I said why is it that there  
20 are board members if none of the board  
21 members have a say in the way in which the  
22 Rapidan Service Authority operates in each of  
23 the jurisdictions that participate in the  
24 Rapidan Service Authority?

25 THE WITNESS: I wasn't saying that the

1 board members did not have any say-so in how  
2 we operate. I said Greene County government,  
3 as an entity, or Greene County or Madison  
4 County or Orange County, they do not --

5 THE COURT: Okay.

6 THE WITNESS: -- operate the systems.  
7 We do. We own them, we operate them.

8 THE COURT: Okay.

9 BY MS. LYNN:

10 Q. And can you explain to the Court what  
11 led to the July 16th, 2020 vote?

12 A. What led to the July 16th, 2020 vote  
13 was the Greene County Board of Supervisors coming  
14 to the Rapidan Service Authority board and asking  
15 the Rapidan Service Authority board to increase a  
16 fee. The Rapidan Service Authority board,  
17 majority of the Rapidan Service Authority board  
18 determined that they didn't think that fee was  
19 equitable and sustainable for our Greene County  
20 customers.

21 THE COURT: You can't testify about  
22 what the board thought or did or said. You  
23 can testify --

24 THE WITNESS: Okay.

25 THE COURT: -- about what the board did

1 as a result of the --

2 THE WITNESS: Okay.

3 THE COURT: You can report the vote.

4 THE WITNESS: All right, your Honor.

5 THE COURT: But you can't tell me what  
6 they thought.

7 THE WITNESS: The vote that day,  
8 majority vote was to require all water  
9 availability fees in Greene County to be paid  
10 directly to Rapidan Service Authority and to  
11 discontinue billing and collecting any  
12 facility fee in Greene County.

13 BY MS. LYNN:

14 Q. And what was the vote?

15 A. The vote was four in favor and two  
16 against.

17 Q. And how does Rapidan Service Authority  
18 operate with regard to a vote?

19 A. Rapidan Service Authority operates on a  
20 majority vote system.

21 Q. And can you tell the Court about the  
22 September 17th, 2020 vote?

23 A. The board voted in September of 2020 to  
24 restrict the participation of the Greene County  
25 reps on the Rapidan Service Authority board as a

1 result of Greene County filing a lawsuit against  
2 the Service Authority. And they voted to restrict  
3 their participation until such time as the  
4 conclusion of the lawsuit.

5 THE COURT: Why would they do that,  
6 Mr. Clemons? Did you give any reason for  
7 asking them to do that?

8 THE WITNESS: That was the board's  
9 choice, your Honor.

10 THE COURT: Did you tell them not to do  
11 that because the Greene County Board of  
12 Supervisors doesn't have anything to do with  
13 how you run the Rapidan Service Authority and  
14 it doesn't matter what those people did, that  
15 these people who were serving on the board  
16 are different than the Greene County Board of  
17 Supervisors?

18 THE WITNESS: I did not tell my board  
19 how to vote one way or the other, sir.

20 THE COURT: Go ahead.

21 Did you find that their vote was  
22 inconsistent with the position that you just  
23 took with regard to Greene County and Greene  
24 County's ability to tell the Rapidan Service  
25 Authority what to do or what not to do?

1 THE WITNESS: No, sir. I found that  
2 their vote was consistent with the Rapidan  
3 Service Authority bylaws, Section 2.6, that  
4 allowed them to restrict a Rapidan Service  
5 Authority board member's participation should  
6 they choose to.

7 THE COURT: Right. For any reason  
8 whatsoever, it doesn't have to be a good  
9 reason, they can just decide that I don't  
10 like the color of his tie or her tie today  
11 and vote to restrict their ability to  
12 participate; is that right?

13 THE WITNESS: Well, what the bylaws say  
14 is the board by majority vote can restrict a  
15 member's participation. They have to give a  
16 reason, it's done by resolution, your Honor.

17 THE COURT: And the reason this time  
18 was because the Board of Supervisors of  
19 Greene County decided to sue the Rapidan  
20 Service Authority; is that right?

21 THE WITNESS: That's my understanding,  
22 your Honor.

23 THE COURT: And so what relationship,  
24 if any, did that action have to do with these  
25 two members on the Rapidan Service Authority

1 board?

2 THE WITNESS: I don't think I'm  
3 following your question, your Honor. I  
4 apologize.

5 THE COURT: The two people that are on  
6 the Rapidan Service Authority board.

7 THE WITNESS: Yes.

8 THE COURT: Right.

9 THE WITNESS: Yes, sir.

10 THE COURT: What was their relationship  
11 with the lawsuit, did they join the lawsuit,  
12 were they suing the Rapidan Service  
13 Authority, too, or was it just Greene County  
14 that was doing so?

15 THE WITNESS: I actually think, your  
16 Honor, that at least one, if not both, of  
17 them might have been part of that lawsuit,  
18 named in it.

19 THE COURT: Because they work for  
20 Greene County?

21 THE WITNESS: Well, one of them is the  
22 chairman of the Greene County Board of  
23 Supervisors.

24 THE COURT: Uh-huh.

25 THE WITNESS: And the other is

1 appointee from their planning commission.

2 THE COURT: Okay. And so they, Greene  
3 County, decided to sue Rapidan Service  
4 Authority.

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. Go ahead.

7 BY MS. LYNN:

8 Q. How many lawsuits were filed,  
9 Mr. Clemons?

10 A. I believe there were two lawsuits  
11 filed.

12 Q. And who filed the second lawsuit?

13 A. Greene County, and it named both of  
14 those individuals in that second lawsuit --

15 Q. What --

16 A. -- as part of the lawsuit --

17 Q. What --

18 A. -- against the Service Authority.

19 Q. What two individuals?

20 A. Bill Martin and Ron Williams,  
21 representatives on the Rapidan Service Authority  
22 board from Greene County, they were named in that  
23 second lawsuit as suing Rapidan Service Authority.

24 Q. So, what happened in February of 2021?

25 A. In February of 2021, the Rapidan

1 Service Authority board, by majority vote, voted  
2 to allow the Greene County representatives to  
3 again participate in open meetings and open  
4 discussion with Rapidan Service Authority.

5 Q. And have they been restricted, have  
6 those Greene County members been restricted since  
7 February of 2021?

8 A. No, they have not.

9 Q. Have those Greene County members since  
10 February of 2021 taken inconsistent positions with  
11 regard to recommendations for Greene County?

12 A. Taken inconsistent positions? Well,  
13 yes, I would say so. I had gone to the board at  
14 one point to try to move ahead with some projects  
15 in Greene County. I was going to need to borrow  
16 some money for funding for capital projects, and  
17 those individuals in Greene County voted against,  
18 or did not vote, it didn't come to a vote. They  
19 voiced opposition to us doing that, but then later  
20 they complained that we hadn't done capital  
21 construction work in Greene County.

22 Q. Are those two Greene board members  
23 participating since February?

24 A. Yes, they have participated since  
25 February.

1 Q. What vote has the Rapidan Service  
2 Authority board taken regarding the withdrawal of  
3 Greene County?

4 A. The Rapidan Service Authority board has  
5 not taken any vote regarding the withdrawal of  
6 Greene County from Rapidan Service Authority.  
7 Actually, in May of this year, Rapidan Service  
8 Authority's corporate counsel and Rapidan Service  
9 Authority bond counsel made a very detailed  
10 presentation to the Rapidan Service Authority  
11 board, detailing the steps that had to be taken  
12 for Greene County to effectuate a withdrawal from  
13 the Service Authority. I think at that time they  
14 were at the step of satisfying the Virginia  
15 Resource Authority as the bond holder. And I  
16 believe that still is the step they are at.

17 Q. Have they satisfied VRA?

18 A. No.

19 Q. To your knowledge have you received  
20 notice that VRA has consented to Greene County's  
21 withdrawal?

22 A. No.

23 Q. And --

24 THE COURT: Can I ask a question.

25 Mr. Clemons, given that you are, from

1 the position that you have taken in some of  
2 this, free to do whatever you want to do  
3 without regard to anything else, why do you  
4 think you need to wait for the approval of  
5 VRA before Greene County is removed as  
6 participants in the Rapidan Service  
7 Authority?

8 THE WITNESS: Your Honor, that's not  
9 dictated by our say, that's dictated by the  
10 Virginia Water and Waste Authority. They are  
11 the ones that statutorily lay out the  
12 process.

13 THE COURT: Right. But, if you don't  
14 have to follow the process because you have  
15 sovereign immunity and you can do what you  
16 want, why not just get rid of Greene County?

17 THE WITNESS: Because Greene County  
18 still needs to demonstrate to their bond  
19 holders that they can --

20 THE COURT: But that doesn't have  
21 anything to do with you.

22 THE WITNESS: I'm sorry?

23 THE COURT: That doesn't have anything  
24 to do with you. Greene County has to  
25 demonstrate to "its" bond holders, not the

1 Rapidan Service Authority bond holders.

2 Aren't they different people? Aren't they

3 two different --

4 THE WITNESS: No, sir. I don't believe  
5 they are necessarily different people, sir.

6 THE COURT: Hmm. So, then you have  
7 this relationship with Greene County that's  
8 created by what, the fact that you all are  
9 both signatories on a bond and guarantors on  
10 bonds?

11 THE WITNESS: We are not signatories on  
12 bonds together, no, sir.

13 THE COURT: No. So, then what duty, if  
14 any, do you owe Greene County or Greene  
15 County owe Rapidan Service Authority before  
16 they are allowed to leave the Rapidan Service  
17 Authority?

18 THE WITNESS: Good question, your  
19 Honor. I really haven't thought that one  
20 through.

21 THE COURT: Well, I will tell you the  
22 answer is that --

23 THE WITNESS: I think that the  
24 procedure --

25 THE COURT: -- Greene County has to

1 follow what the VRA says.

2 THE WITNESS: I have just been  
3 following the steps laid out in the Virginia  
4 Water and Waste Authority Act that deals with  
5 the withdrawal of a member from the Service  
6 Authority, or any service authority, not just  
7 Rapidan Service Authority.

8 THE COURT: Okay.

9 THE WITNESS: Any service authority.

10 THE COURT: Part of what is difficult  
11 about this for me, Mr. Clemons, is your  
12 counsel has argued that the Rapidan Service  
13 Authority is effectively a land unto itself  
14 and it can do what it wants without any legal  
15 recourse by any other person, except for a  
16 citizen complaining about it, and that Greene  
17 County is without the ability to complain.  
18 So, I'm interested in knowing whether or not  
19 you thought that it was permissible to just  
20 discharge Greene County from the Rapidan  
21 Service Authority without this process that's  
22 taking place.

23 THE WITNESS: I don't think it's  
24 permissible, your Honor.

25 THE COURT: Thank you.

1                   Go ahead, Ms. Lynn.

2       BY MS. LYNN:

3           Q.     So, has there been a vote at all?

4           A.     On the withdrawal?

5           Q.     Yes.

6           A.     Not on the withdrawal, no. Not at all.

7           THE COURT: And just we can note at  
8           this point, though, Orange County and Madison  
9           County have agreed that Greene should be able  
10          to withdraw.

11          MS. LYNN: Conditional on VRA's  
12          consent.

13          THE COURT: Yeah.

14          MS. LYNN: Because VRA is the bond  
15          holder for Rapidan Service Authority. And  
16          the statute requires that the bond holder --  
17          it specifically says that, "No locality" --  
18          I'm reading from 15.2-5112, section A. "No  
19          locality may withdraw from any authority that  
20          has outstanding bonds without the unanimous  
21          consent of all the holders of such bonds  
22          unless all such bonds have been paid or  
23          cashed or United States Government  
24          obligations have been deposited for their  
25          payment."

1 BY MS. LYNN:

2 Q. Mr. Clemons, who does RSA have bonds  
3 with?

4 A. Virginia Resources Authority.

5 Q. And have those bonds been satisfied?

6 A. No, ma'am.

7 Q. And is that why VRA corresponds with  
8 regard to the status of Greene County meeting  
9 their conditions with you as the Rapidan Service  
10 Authority general manager?

11 A. Yes.

12 Q. Do the counties have any say-so in  
13 appointing persons to the board?

14 A. Yes, they do. They appoint their  
15 representatives. The Board of Supervisors for  
16 each county appoints their two representatives.

17 Q. And how many board members do you have?

18 A. Six, two from each county.

19 MS. LYNN: As long as you have accepted  
20 all of the exhibits, your Honor, that's all I  
21 have for Mr. Clemons.

22 THE COURT: Thank you. Anybody else  
23 have any questions for Mr. Clemons?

24 MR. HABEEB: Judge, there are a lot of  
25 questions I could ask Mr. Clemons. I'm going

1 to pass with one comment, assuming your Honor  
2 is okay, one of the exhibits that we just  
3 talked about, Exhibit 9 on that email,  
4 included an October 29th, 2021 VRA  
5 conditional consent to withdrawal, that I'm  
6 not sure if maybe Mr. Clemons hasn't seen it  
7 yet, but it's inconsistent with that  
8 testimony. I don't need to ask him questions  
9 as long as your Honor has it.

10 THE COURT: I have it.

11 MR. HABEEB: You will note what the  
12 latest is --

13 THE COURT: I have it.

14 MR. HABEEB: Then I will waive any  
15 cross-examination, your Honor.

16 THE COURT: Thank you. Any other  
17 witnesses, Ms. Lynn?

18 MS. LYNN: Well, I will redirect on  
19 that comment, your Honor, if I may.

20 THE COURT: Sure.

21

22 \* \* \* \* \*

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1 R E D I R E C T

2 E X A M I N A T I O N

3 BY MS. LYNN:

4 Q. Mr. Clemons, can you look at Exhibit  
5 Number 9, the last letter.

6 A. Later dated October 29th, 2021.

7 Q. Yeah. That's an exhibit in the  
8 package; is that correct?

9 A. Yes, it is.

10 Q. Are you copied on that?

11 A. I am copied on it.

12 Q. Okay. What is your understanding of  
13 the process based on the receipt of that letter?

14 MR. HABEEB: This is, again, asking  
15 Mr. Clemons to be a lawyer, but --

16 THE COURT: It is.

17 MR. HABEEB: -- I'm happy to --

18 THE COURT: I sustain the objection.

19 Go ahead, Ms. Lynn.

20 BY MS. LYNN:

21 Q. As the manager, has the board taken any  
22 further action on Greene County's withdrawal?

23 A. The only action the board has taken so  
24 far is, in a recent meeting, to authorize me as  
25 the general manager and Terry Lynn as our

1 corporate counsel to mediate on Rapidan Service  
2 Authority behalf if and when it reaches that  
3 juncture in this process. This letter, my  
4 understanding, and I'm not a lawyer, you are  
5 correct, sir, is that this is simply a letter  
6 conditional, it says conditional withdrawal, with  
7 the completion of quite a few things that have  
8 been outstanding for a number of months. I  
9 believe that conditional withdrawal, my  
10 understanding was Greene County had asked for that  
11 so that mediation could move forward. They don't  
12 have full consent, they have a conditional consent  
13 based on meeting a lot of requirements.

14 MR. HABEEB: Judge, based on that --

15 THE COURT: Any other questions,  
16 Ms. Lynn?

17 MS. LYNN: No, your Honor. Thank you.

18 MR. HABEEB: There are two questions I  
19 would love to ask based on that redirect.

20 THE COURT: Go ahead.

21  
22 \* \* \* \* \*  
23  
24  
25

1 R E C R O S S

2 E X A M I N A T I O N

3 BY MR. HABEEB:

4 Q. Mr. Clemons, have you been informed  
5 that Greene County for about a year has offered to  
6 enter into binding mediation without condition as  
7 set forth in this October 29th letter?

8 A. I know that Rapidan Service Authority  
9 offered to enter mediation with Greene County last  
10 year.

11 Q. Let me --

12 A. And I believe it was rejected,  
13 Mr. Habeeb.

14 Q. Let me ask my question specifically and  
15 let me ask it real clear. Are you aware that for  
16 over a year Greene County has offered to  
17 unconditional mediation with Rapidan Service  
18 Authority, and Rapidan Service Authority has  
19 refused to mediate unless certain preconditions  
20 were met? Are you aware of that?

21 A. What Rapidan Service Authority did, I  
22 believe, sir, was to say when Greene County gets  
23 far enough down the process that mediation  
24 actually makes sense, that they would be willing  
25 and glad to participate.

1 Q. So, it is not Rapidan Service  
2 Authority's position that Greene County must  
3 dismiss the litigation with prejudice prior to  
4 your counsel agreeing to schedule a mediation,  
5 that is not Rapidan Service Authority's position?

6 A. Rapidan Service Authority does believe  
7 that Greene County should dismiss the litigation,  
8 and that's also stated in VRA's letter of  
9 October 29th.

10 Q. So, again, I'm going to ask it again.  
11 Do you agree that Greene County for over a year  
12 has agreed to mediate unconditionally with Rapidan  
13 Service Authority?

14 A. I don't believe I agree with that.

15 Q. Okay. Second question and last line of  
16 questions, although it may take more than one  
17 based on that last round. The second bullet point  
18 is successful negotiation and execution of a  
19 comprehensive withdrawal agreement among Greene,  
20 Rapidan Service Authority, and the other counties.  
21 Tell the judge how long ago you, as director of  
22 RSA, were provided with Greene County's proposed  
23 comprehensive withdrawal agreement. Was it six  
24 months ago?

25 A. I'm going to guesstimate, sir, five or

1 six months ago.

2 Q. Okay. Let's guesstimate six months.

3 Would you please tell the Court when Rapidan

4 Service Authority provided its response to

5 Greene's proposed comprehensive withdrawal

6 agreement?

7 A. It has not at this point.

8 Q. It has not provided any response so

9 far; right?

10 A. I believe that my attorney has been in

11 contact with another attorney in your office going

12 back and forth on those sort of things.

13 Q. So, you believe the Rapidan Service

14 Authority has in fact provided a response to the

15 proposed comprehensive withdrawal agreement?

16 A. I don't know, to be honest with you. I

17 don't believe so.

18 Q. Okay. Because it's hard on my end when

19 you point to the conditions contained in this VRA

20 letter, but it seems like you control the

21 conditions and have an --

22 A. I didn't place the conditions in the

23 VRA letter, sir, VRA did.

24 MR. HABEEB: I don't have any other

25 questions. Thank you.

1 THE COURT: Thank you. Ms. Lynn, any  
2 other argument?

3 MS. LYNN: Well, I have argument. No  
4 questions for him.

5 THE COURT: Go ahead then, please  
6 continue your argument.

7 MS. LYNN: So, your Honor, I think that  
8 the documents that are in front of you and  
9 the testimony establishes how Rapidan Service  
10 Authority was formed by the three counties.  
11 And in doing so, as part of the Articles of  
12 Incorporation, the counties were given the  
13 right to appoint people on the board. So,  
14 the board has six members. That was an  
15 amendment to the articles that went from five  
16 to six. So each county has the right to  
17 appoint anyone, the two people from each  
18 county, to represent their interests on the  
19 board. And so, the board acts collectively  
20 as the Rapidan Service Authority governing  
21 body. There are checks and balances in that  
22 governing body because each county can  
23 designate two people to be on there. So, to  
24 the extent there needs to be protections  
25 afforded, there are representatives on the

1 board for that very purpose. But, the board  
2 operates through a majority vote, just like  
3 other boards, just like the Madison County  
4 Board of Supervisors, the Orange County Board  
5 of Supervisors, or the Greene County Board of  
6 Supervisors. They all take votes, they  
7 operate the same as Rapidan Service  
8 Authority. And sometimes the votes may not  
9 be unanimous, but the board operates on a  
10 majority vote. And so, that's where the  
11 protections come in for each of the counties,  
12 whether it's Orange, Madison, or Greene, is  
13 by their appointment of people on the board  
14 that are supposed to act as liaisons for this  
15 governmental entity.

16 So, the resolutions, the Articles of  
17 Incorporation, and every single amendment  
18 that has been introduced and accepted by the  
19 Court reflects that the Rapidan Service  
20 Authority was formed under the Virginia Water  
21 and Waste Authorities Act, which back then  
22 was called the Sewer Authorities Act. So,  
23 that is the act that governs all of the  
24 functions of this public governmental entity  
25 that the legislature decided was an important

1 thing to put in the Virginia Code because it  
2 allowed regionalization of utility providers.  
3 That was the whole goal of the legislature in  
4 forming this Act was to protect resources,  
5 for example, like the Rapidan Service  
6 Authority, and have a regional entity govern  
7 those water sources, rather than numerous  
8 counties going in different directions.

9 So, what is established is that Greene  
10 County does not under any police power or any  
11 other act provide water or sewer services in  
12 Greene County. That is only done by Rapidan  
13 Service Authority. The board, all six  
14 members, are the ones that are given the  
15 legislative authority to act as Rapidan  
16 Service Authority and this entity. So,  
17 Mr. Clemons has testified to those facts. We  
18 have got the amendments to the articles, all  
19 of those reflect the authority for Rapidan  
20 Service Authority's actions, or non-actions.

21 So, Code of Virginia Section 15.2-5114  
22 is actually the code section that indicates  
23 that Rapidan Service Authority -- it says,  
24 "Each authority" -- and I'm not going to read  
25 this whole statute. But it says, "Each

1 authority is an instrumentality exercising  
2 public and essential governmental functions  
3 to provide for the public health and  
4 welfare," and this statute goes on and sets  
5 forth the powers of Rapidan Service  
6 Authority. So, this is where the authority  
7 gets its power from. No other statutes, just  
8 this Act.

9 So, Rapidan Service Authority can only  
10 act within the mandates of that Act. It  
11 doesn't have authority to engage in any  
12 activities that are not authorized by the  
13 General Assembly. That's the Dillon Rule  
14 that we have talked about in the brief. As a  
15 matter of fact, I have another case here that  
16 I thought was interesting. This is an  
17 Albemarle County case, SINCLAIR VERSUS NEW  
18 CINGULAR WIRELESS PCS, LLC. And this was a  
19 case that the Virginia Supreme Court noted  
20 that local bodies only have the powers  
21 expressly granted and that you can only  
22 delegate legislative functions to others if  
23 you're authorized by the statute. In this  
24 case, they found that Albemarle County, they  
25 could not delegate a waiver decision to

1 another board, because there was no statute  
2 allowing them to do so.

3 In the case at hand, we are governed by  
4 the Virginia Water and Waste Authorities Act.  
5 There is no language in that Act that allows  
6 us to delegate the right to set or even have  
7 any say-so in setting fees and rates.

8 THE COURT: So, Ms. Lynn, then tell me,  
9 please, why in the world is there a second  
10 amendment to the Rapidan Wastewater System  
11 Service Authority agreement dated December 9,  
12 2014, that was entered into between Greene  
13 County and Rapidan Service Authority if  
14 there's no reason for Greene County to have a  
15 say? Or if Greene County doesn't have a say,  
16 why is there in existence any agreement at  
17 all, much less a second amendment to the  
18 Rapidan Wastewater System Service agreement  
19 between Greene County and the Rapidan Service  
20 Authority, wherein on page 4 -- no, page 2  
21 maybe. I can't remember where it was.

22 MR. HABEEB: It's on page 2, Judge.  
23 4A.1 I think is probably what you are looking  
24 for.

25 THE COURT: There you go. It says,

1 "Rapidan Service Authority hereby establishes  
2 a sewer system facility fee for the Rapidan  
3 water system in an amount approved in writing  
4 by the County and the Rapidan Service  
5 Authority from time to time."

6 If that exists and it is entered into  
7 and agreed to between the parties, doesn't  
8 Rapidan Service Authority now have some duty  
9 under this agreement or contract to abide by  
10 the terms of this agreement or contract once  
11 they enter into it?

12 There's nowhere here in this contract  
13 that says that Greene County is taking away  
14 their legislative authority to do anything,  
15 but that Rapidan Service Authority and Greene  
16 County have agreed to operate in a certain  
17 way. And then Rapidan Service Authority's  
18 failure to operate in this certain way leads  
19 Greene County to come to this Court and ask  
20 for help under the circumstances.

21 Under King's Villa, King George,  
22 Concerned Citizens of Gloucester County, and  
23 the other cases that I've read, your view of  
24 your plea in bar and what your sovereign  
25 immunity is, I don't believe extends to this

1 particular lawsuit, Ms. Lynn. And the Court  
2 denies your plea in bar, or overrules it as  
3 it relates to the issues presented therein,  
4 in that Greene County can ask this Court to  
5 intervene on all of the contractual issues  
6 presented in its complaint, the amended  
7 complaint, most recent one to the Court, and  
8 that Rapidan Service Authority will have to  
9 respond to same.

10 Now, I would like it if, Mr. Habeeb,  
11 you would draft an appropriate order for this  
12 purpose.

13 Part two of that is I would like to  
14 schedule the partial summary judgment,  
15 because I believe that that can be done  
16 pretty quickly and without lots of issues.  
17 Because I think there is some issues here  
18 once I get through everything, again, that  
19 may be ripe to resolve one way or the other  
20 in partial summary judgment, or not. I don't  
21 know yet, because I haven't thought about all  
22 that yet. But, it may be an appropriate time  
23 to think about how we take the next steps in  
24 this case and what we want to schedule next.  
25 So, I'm going to ask y'all to contact

1 Miss McIver and schedule another hearing date  
2 to take care of both the demurrer and any  
3 other outstanding pretrial issues that may be  
4 dispositive as to any issues, that we  
5 schedule them for a hearing where we will  
6 hear all of those matters at one time,  
7 instead of in a piecemeal fashion, and  
8 dispose of all of it and allow you parties to  
9 figure out how you wish to proceed next.

10 MR. HABEEB: Thank you, Judge.

11 MS. LYNN: Your Honor, you asked me a  
12 question that I don't feel that I was given  
13 the opportunity to answer. And that is why  
14 doesn't Rapidan Service Authority have to  
15 abide by a contract, the second amendment.  
16 And so, I understand your ruling. I would  
17 like the opportunity to answer that question  
18 in a letter, because I believe that that is  
19 incredibly important.

20 THE COURT: Ms. Lynn, you can always  
21 address the Court in writing at any time  
22 about any particular issue. Feel free to do  
23 so.

24 MS. LYNN: I mean, because you  
25 specifically asked me why do we not have to

1 go by that amendment. And the answer to the  
2 question is that under numerous Virginia  
3 Supreme Court cases, that amendment would be  
4 considered void.

5 THE COURT: But it's not. Nobody has  
6 asked me to consider it to be void. And as a  
7 matter of law, it's not void or voidable. It  
8 exists between two governmental entities.  
9 And one governmental entity has the ability  
10 to ask this Court to resolve the dispute  
11 between it and the other one that it created.  
12 And as a result, the plea in bar must fail.

13 MS. LYNN: I believe that there are  
14 ample cases, including in the annotations of  
15 the statutes that Greene County presented,  
16 even one from the United States  
17 Supreme Court, indicating that the delegation  
18 of legislative functions such as the setting  
19 of rates and fees cannot be contracted away.

20 THE COURT: That's not what they did.  
21 Rapidan Service Authority agreed that they  
22 would set and collect the fees, which they  
23 have now abandoned based on the testimony of  
24 Mr. Clemons, when they said that they are not  
25 going to collect the fee anymore. The

1 agreement says Rapidan Service Authority  
2 establishes a sewer system facility fee in an  
3 amount approved in writing by the County and  
4 the Rapidan Service Authority from time to  
5 time. And so, the Rapidan Service Authority  
6 has agreed to work with Greene County in  
7 order to establish this fee. They didn't  
8 give anything up. They still have to approve  
9 it, they still have to do all the things that  
10 they need to do to make the fee a reality.  
11 But, what they have agreed to do is something  
12 now that they have seemed to, based on  
13 Mr. Clemons' testimony, failed to do. And  
14 perhaps failed to do without good faith,  
15 because some entity called Greene County  
16 Board of Supervisors sued the Rapidan Service  
17 Authority. And then they censured the  
18 members of the Rapidan Service Authority that  
19 were members of Greene County, or appointed  
20 by Greene County, when it's a different  
21 entity at all that sued them.

22 And so, there are some questions that  
23 Greene County has asked the Court to answer  
24 based on Rapidan Service Authority's response  
25 to things done by Rapidan Service Authority,

1 for whatever reason. And this is the only  
2 place that Greene County can ask for that to  
3 take place. There is no other recourse for  
4 them. And so, the argument that this is  
5 somehow asking that they legislate away their  
6 ability to set fees is just a  
7 misunderstanding of the facts as they exist.  
8 It's not what Greene County is asking the  
9 Court to do. Nor are they suggesting that  
10 the Court allow them to do it. All they are  
11 asking is that Rapidan Service Authority  
12 comply with the contract and agreement they  
13 entered into with Greene County. And when  
14 they do that, I don't know what happens.  
15 But, that is what Greene County is asking  
16 for.

17 So, Mr. Habeeb, if you can circulate  
18 the appropriate order. I have entered the  
19 order that you sent in, or Mr. Haley sent in,  
20 I can't remember who did. Who sent it in for  
21 the nonsuit, Haley?

22 MR. HALEY: I did, Judge.

23 THE COURT: So, I've entered that order  
24 regarding the nonsuit and noted Mr. Gregg's  
25 objection, that he adopted the objection of

1 Mr. Calos.

2 MR. HABEEB: Thank you, your Honor.

3 MS. LYNN: So, your Honor, there is a  
4 demurrer outstanding that I have not briefed  
5 and we have not filed an answer.

6 THE COURT: Yes.

7 MS. LYNN: So, the statute requires  
8 that all preliminary motions be resolved  
9 before the filing of a summary judgment  
10 motion. We anticipate that if we get passed  
11 the demurrer, we will answer and file a  
12 counterclaim. So...

13 THE COURT: So, there's no reason that  
14 I understand under Virginia law when  
15 everything has been properly noticed, that we  
16 wouldn't be able to resolve them all at the  
17 same time, just in the right order. So that  
18 we would take up your demurrer and anything  
19 else, and then we can take up a substantive  
20 issue, like the motion for partial summary  
21 judgment, right after we deal with the  
22 demurrer, if there's a reason to. It doesn't  
23 mean that the Court won't sustain the  
24 demurrer, it just means that if we schedule  
25 the demurrer and hear the demurrer, the Court

1 agrees with you, then we don't get to the  
2 other part. But, if I don't agree with you,  
3 then we can do the other matter, too, and try  
4 to resolve all of the issues at one time.

5 MS. LYNN: Well, my only issue with  
6 that, your Honor, is that we haven't filed an  
7 answer and we are not required to file a  
8 counterclaim until, you know, we file an  
9 answer. And if there are motions for summary  
10 judgment, we would do a countermotion as  
11 well.

12 THE COURT: So then I'm not going to  
13 tell you how to litigate your case. All I'm  
14 telling you is the way I want to proceed here  
15 is in an efficient way and try to resolve all  
16 of the issues that are outstanding at one  
17 time. If you are telling me that you are  
18 unable to do that, for whatever reason, then  
19 we can take that up. But, I would like to  
20 schedule one more motions day to resolve this  
21 case, as much of it as we can, and try to  
22 define what issues are going to be tried or  
23 not tried efficiently. I mean, this case has  
24 been around for a little while now. And I  
25 would like it to be able to efficiently

1 conclude one way or the other; either through  
2 trial or the agreement of the parties, or  
3 other order of the Court, sooner rather than  
4 later.

5 MS. LYNN: So, I would ask that the  
6 Court entertain the demurrer next, and I will  
7 brief it as soon as possible.

8 THE COURT: Happy to entertain the  
9 demurrer next. And all I would ask you to  
10 do, Mr. Habeeb and Miss Lynn, and to the  
11 degree Mr. Craig and Mr. Calos are interested  
12 in, to schedule a new date with my office and  
13 we will schedule it as soon as possible.

14 How much time do you think you need to  
15 respond, Ms. Lynn?

16 MS. LYNN: I haven't even started a  
17 memorandum on it. I mean, I would think I  
18 can get one done in 10 days or so.

19 MR. HABEEB: Judge, it's the exact same  
20 issues you just ruled on.

21 THE COURT: So, I know that I have time  
22 available December 27th and 28th. And I'm  
23 happy to spend those days with you all doing  
24 whatever you would like to do that day. But  
25 that seems to be a date that no one wants. I

1 have another case involving the State Water  
2 Board that day, the 28th, because, well, he  
3 works for the State and he was available that  
4 day.

5 So, I have the 27th and 28th. And  
6 after that, it gets difficult to find some  
7 time.

8 MR. HABEEB: Judge.

9 THE COURT: Let me also say this. I  
10 have --

11 MR. HABEEB: Judge, let me see if I can  
12 make it easy for you. Greene County has  
13 already filed a brief on this demurrer. The  
14 demurrer is purely an issue of argument.  
15 There's no need to have a hearing, we would  
16 waive oral argument and allow your Honor to  
17 decide the matter on the pleadings, and we  
18 will not file anything else after what we  
19 have already filed.

20 THE COURT: Excellent. Good to hear.

21 MS. LYNN: And I'm available on the  
22 28th, your Honor.

23 MR. HABEEB: That would be a great day  
24 to hear our motion for summary judgment.

25 THE COURT: All right.

1 MS. LYNN: Well, I was saying I was  
2 available that day for a hearing on the  
3 demurrer.

4 THE COURT: Okay. So, what we are  
5 going to do is schedule both demurrer and the  
6 summary judgment for that date. And I will  
7 receive in 10 days or so Ms. Lynn's response.  
8 And if I can respond to the paperwork, I  
9 will, without setting a hearing. And if  
10 that's the case, then we will just have the  
11 summary judgment motion on the 28th. If not,  
12 we will have the demurrer hearing on the  
13 28th.

14 MR. HABEEB: Judge, just so we can get  
15 the right notice out, how much time and when  
16 on the 28th do you have available?

17 THE COURT: The 28th is available after  
18 1:00. So, it would be 1:30 on.

19 MR. HABEEB: Okay. And would you like  
20 an in-person hearing or another virtual  
21 hearing?

22 THE COURT: I think given the spread of  
23 everyone, that a virtual hearing is just fine  
24 with the Court, unless everybody wishes to  
25 travel to Greene. I have another matter

1 scheduled that morning at 9:00 a.m. that is  
2 unlikely to take place given the history of  
3 the defendant in the case. It's unlikely to  
4 be resolved that day. And so, if you want to  
5 start early and be the backup team for the  
6 9:00 case, we can do it in Greene that  
7 morning. I've got to be there anyway. That  
8 may be just as efficient.

9 MS. LYNN: That sounds good, your  
10 Honor.

11 THE COURT: Okay.

12 MR. HABEEB: And we will work in  
13 general on all of that.

14 THE COURT: Okay. Greene County at  
15 9:00 a.m. on the 28th.

16 MS. LYNN: In person?

17 THE COURT: Yes.

18 MS. LYNN: Thank you, your Honor.

19 MR. HABEEB: Thank you, Judge.

20 THE COURT: Thank you all.

21 MR. HALEY: Thank you, Judge.

22 THE COURT: Thank you.

23 MR. GREGG: Thank you, your Honor.

24 Have a good afternoon.

25 (Hearing concluded at 5:45 p.m.)

## 1 CERTIFICATE OF COURT REPORTER

2

3 I, Kimberly A. Adderley, RPR, RMR,

4 Court Reporter, do hereby certify that I reported to

5 the best of my ability the proceedings heard before

6 the Circuit Court for the County of Greene,

7 Virginia, in the captioned cause, by The Honorable

8 Claude V. Worrell, II, Judge of said Court, on

9 November 8, 2021.

10 I further certify that the foregoing

11 transcript, numbering pages 1 through 67 inclusive,

12 constitutes a true, accurate, and complete

13 transcript of said proceedings.

14 Given under my hand this 14th day of

15 November, 2021.

16

17

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19

20

21 -----  
Kimberly A. Adderley, RPR, RMR, Notary Public

22 Notary Registration No. 273323

23 Commonwealth of Virginia at Large

24

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