

## Testimony of Jim Eshleman, Chairman

### Municipal Authority of the Township of East Hempfield - (MATEH)

#### State Government Committee Public Hearing on SRBC

June 26, 2017

MATEH is a municipal authority that supplies water to portions of East and West Hempfield Townships in Lancaster County. Our water system is supplied by 9 wells and a spring. We serve approx 6,600 customers. Our employees consist of a superintendent, an office manager, 3 field technicians, and a couple of part-time employees. Our annual revenues are approximately \$1.75 mil.

Here is our story. We have been dealing with the SRBC for 7 years on a well re-permitting and have still not reached a conclusion since one of our wells came up for re-permitting in 2010.

1. Our well #5 docket expired on 3/12/11. To be able to keep pumping if the docket review was not completed by expiration, we were told to have the application in by 9/12/10. We submitted the application with a fee of \$17,600.
2. Our well #'s 1, 2, 3, 4, and the spring all pre-dated SRBC regulations. In conjunction with the review of well #5, SRBC requested pumping data on these grandfathered sources. They concluded that these grandfathered sources no longer qualified for grandfather status and had to be included in the application. The permit fee was increased by \$32,740 to a total of \$50,340.
3. Our 9 wells and the spring are all tied into a network of pump houses, storage tanks, and a distribution system that is a live operating system. I want to stress that performing tests on these sources is much more difficult, expensive, and disruptive than testing a new potential source that is not connected to a live system.
4. In the re-permitting of well #5 (and now the other 5 sources for which grandfathering was terminated), the SRBC wanted to treat and hold these sources to the same current standards and procedures as a new source being permitted today. They ignored and would not consider the fact and data that these sources operated successfully without causing any problems in a 1 in 50 yr drought that I believe occurred in the 1991-2001 time frame.
5. SRBC wanted aquifer pump testing. Our engineer advised that to do the kind of testing they wanted would require site reconnaissance, E&S Plans, pump test plan design, removal of existing pumps and installation of pumps suitable for pumping required volumes, an 8 hr step test, groundwater monitoring to establish 2 weeks of stable water table readings before conducting the test, a 72 hr continuous pump test, shutting down

and monitoring other wells while the test is being performed, site restoration, and a complete hydrologic report and would cost approximately \$70,000. There is risk of damaging the well in the test and this does not include costs such as removing and replacing pump house roofs to pull/re-install existing pumps or rebuilding pumps that had been in place for 20 to 30 yrs. And while all of this is being done, we have to keep our system operating.

6. We decided this was not practical or economical and requested to submit historical pumping data in lieu of aquifer testing. What I did not realize at the time was that if the historical pumping rates were lower than the previously approved capacities, SRBC would reduce our allowed capacities.
7. In addition to submitting historical pump test data, we did research on future potential water needs in our community and provided information and advocated for future capacity needs of approx. 6.1 MGD.
8. After much back and forth between SRBC, our staff, and our engineers, we reached agreement with SRBC staff in May of 2012 agreeing to a reduction in capacity on the 6 sources being discussed from 2.561 MGD to 2.228 MGD which is a 13.0% reduction in allowed capacity. This was supposed to be presented to the Commission at their September 20, 2012 quarterly meeting.
9. In August we received notice of an SRBC Public Hearing on projects proposed for commission action at the September 20<sup>th</sup> meeting. Having not heard from SRBC staff since May, we inquired about our agreement in May. We received what I realize now to be vague response on what was going to be proposed by staff to the commissioners. We therefore did not see a reason to attend the August public hearing.
10. We were then contacted and asked to attend a meeting at the SRBC office on August, 30, 2012. At this meeting, SRBC staff told us what they had concluded and were going to recommend to the commissioners on September 20<sup>th</sup> which was totally different than what had been discussed to date, included substantial reductions in capacity to our other 4 permitted sources (for which we had valid permits that did not expire for years into the future), and which had the effect of reducing our total system capacity from 6.06 MGD to 1.94 MGD which was a 68% reduction in capacity on our entire system. They said they had to follow the “science” and explained their science in terms of a bathtub model (I would be happy to explain this if you have the time).
11. I can’t stress enough how much of a bombshell and game-changer this was because 1.94 MGD was an amount that had been pumped in 2006 meaning that we had no remaining capacity to approve any future requests for water service.

12. Between August 30<sup>th</sup> and September 20<sup>th</sup> we appealed with the SRBC staff to limit the current docket renewal to the source that was expiring (plus the grandfathered sources they pulled in) and give us time to address their concerns on the future dockets for our remaining sources which amounted to 3.5 MGD of capacity. The staff was unrelenting and proceeded with their recommendation to the commission.
  
13. An Authority member and our superintendent tried to attend the Commission meeting on September 20, 2012. Before they could get through security and into the hearing room, the hearing was concluded and the Commission had adopted what the SRBC staff had recommended. Obviously, there was substantial communication between the staff and the commissioners prior to the meeting in a non-public setting.
  - a. The docket approved effectively reduced our capacity by 68% from 6.06 MGD to 1.94 MGD and left us with no capacity to approve future requests for water.
  - b. The docket contained 22 standard and special conditions imposing various requirements on the Authority requiring the expenditure of staff time and capital costs to comply.
  - c. Special condition 21 required proceeding with an operational testing and monitoring plan (i.e. pump testing – see 5 above) to verify the staff’s conclusions and possibly allow for modifications to the capacity levels established.
  - d. Special condition 22 required the Authority to present a “water resource development plan” detailing how we would meet future water demands we had identified of 6.1 MGD (see 7 above). In other words, after taking 4.12 MGD of previously approved capacity away from us, they required us to present a plan of how we would develop 6.1 MGD of new capacity for the future.
  
14. MATEH followed the SRBC process for appealing the September 20<sup>th</sup> docket decision. We hired an attorney, he pulled together over 2 years worth of facts and dialogue, prepared an argument, and attended the next Commission meeting in Annapolis, MD on December 14, 2012. At that meeting, the following occurred:
  - a. The Chairman called on the SRBC’s attorney to present information regarding our appeal.
  - b. The Chairman then invited our attorney to speak but cautioned that the commissioners had already been fully briefed on the matter and that he should make his remarks to be as brief as possible.
  - c. At the conclusion of our attorney’s presentation, one of the commissioners read from a script and made a motion to deny our appeal. The commission voted unanimously to deny the appeal.
  - d. In our attorney’s words, “Based on comments by the Chairman to the SRBC’s attorney, the reasoning of the Commission appears to be as follows: Although the Commission failed to follow its own regulations, and failed to provide

notice to the Authority of the need to provide data regarding the impact of the total system of operating wells 6, 7, 8 and 11, such errors were harmless because the Authority now has the opportunity to perform testing that will enable the Commission to develop a reasoned result.”

15. From 2013 through the present (4-½ years) we have been working on the required operational testing and monitoring plan. The testing was completed in January of 2017 and our results and report were submitted to SRBC in May of 2017. Through April of 2017, we have spent \$423,000 in 3<sup>rd</sup> party costs (permit fees, engineering fees, equipment rental, attorney fees) and that does not include the cost of a huge amount of staff and authority member time and expense and distraction from things that we should be working on.
16. To be able to continue to handle new requests for water, we had to negotiate an arrangement with Lancaster City to be able to buy 0.4 MGD and spend \$50,000 on infrastructure for the interconnection. The cost of water purchased from the city is near to or in excess of our selling price.
17. This whole matter has consequences far beyond what is obvious. For instance, Act 57-2003 of the General Assembly regarding Tapping Fees requires that these fees be calculated based on costs (of facilities and distribution system) divided by capacity. By reducing our capacity from 6.06 to 1.94, you reduce the denominator in that equation and our tapping fees went up by 3.12 times (one EDU is now \$2,698). While on the surface that may seem good for us, it has contributed to us losing new development projects – they either connect to another nearby system or move elsewhere. Having some growth in your system is necessary to water rates since our costs go up every year and without growth, we have to pass these costs along to our customers.

#### Conclusions/opinions:

1. It is not practical or fair to treat the re-permitting of an existing well the same as a new well that would be developed.
2. Our due process was violated repeatedly throughout this ordeal. This is not a fair fight. The SRBC is way too powerful and needs oversight and there needs to be avenues of recourse for those being regulated.
3. The SRBC’s science on which they hide behind in defending their decisions is not accurate and we have proven that both in our historical operations and in the operational testing and monitoring plan we have been forced to pursue. The bathtub model is not applicable to our situation.

4. There is no consideration to common sense and practicality in dealing with the SRBC. This is significantly driving up the cost of water, eliminating the availability of water, and limiting economic growth and vitality in the Commonwealth of PA.
5. I started out and proceeded through this process thinking the goal was to renew a previously approved permit. I now firmly believe that the SRBC's agenda was to reduce or take away as much of our capacity as possible and then rule over us with an iron fist going forward.

# Attachment 1

| <b>MATEH Water System</b>     |                    |                |                   |  |                 |                 |
|-------------------------------|--------------------|----------------|-------------------|--|-----------------|-----------------|
| <u>Source</u>                 | <u>Date</u>        | <u>Docket</u>  | <u>Previously</u> | <u>Results of SRBC 9/20/12 Docket Decision</u> |                 |                 |
|                               | <u>Established</u> | <u>Renewal</u> | <u>Approved</u>   |  |                 |                 |
|                               |                    |                | <u>Capacity</u>   | <u>Indiv</u>                                   | <u>Group</u>    | <u>Total</u>    |
|                               |                    |                | <u>MGD</u>        | <u>Capacity</u>                                | <u>Capacity</u> | <u>System</u>   |
|                               |                    |                |                   |  |                 | <u>Capacity</u> |
|                               |                    |                |                   | (All #'s are MGD)                              |                 |                 |
| Spring                        | 1946               | Pre-Regs       | 0.070             | 0.070  |                 | 1.937           |
| Well #1                       | 1956               | Pre-Regs       | 0.288             | 0.268  |                 |                 |
| Well #2                       | 1964               | Pre-Regs       | 0.792             | 0.673  | 0.673           |                 |
| Well #3                       | 1974               | Pre-Regs       | 0.288             | 0.264  |                 |                 |
| Well #4                       | 1976               | Pre-Regs       | 0.331             | 0.321  |                 |                 |
| Well #5                       | 1981               | 3/12/2011      | 0.792             | 0.632  |                 |                 |
| Well #6                       | 1987               | 3/12/2017      | 0.288             |  |                 |                 |
| Well #7                       | 1987               | 3/12/2017      | 0.115             |  |                 |                 |
| Well #8                       | 1989               | 5/11/2019      | 1.440             |  |                 |                 |
| Well #11                      | 1993               | 1/14/2023      | 1.656             |  |                 |                 |
| Spring and Wells 1-5          |                    |                | 2.561             | 2.228  |                 |                 |
|                               | % Reduction        |                |                   | 13.0%  |                 |                 |
| Total System                  |                    |                | 6.060             |  | 1.937           |                 |
|                               | % Reduction        |                |                   |  | 68.0%           |                 |
| MGD = million gallons per day |                    |                |                   |  |                 |                 |

