

**INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN**

**SECOND QUARTER 2017  
BUSINESS MEETING  
MARCH 7, 2017**

**ICPRB LOCATION  
ROCKVILLE, MD**

**DRAFT MINUTES**

**CALL TO ORDER:** Chairman Sussman called the Second Quarter 2017 Business Meeting to order at 9:49AM on March 7, 2017. The following Commissioners, staff, and guests were in attendance for all or part of the meeting.

**Commissioners**

**West Virginia**

Patrick Campbell (Alt. Commissioner)

**District of Columbia**

Hamid Karimi (Commissioner)

Willem Brakel (Commissioner)

Tiffany Potter (Alt. Commissioner)

Kimberly Jones (Alt. Commissioner)

**United States**

Robert Sussman (Chair, Commissioner)

**Maryland**

Robert Lewis (Commissioner)

Virginia Kearney (Alt. Commissioner)

**Virginia**

Scott Kudlas (Alt. Commissioner)

Paul Holland (Alt. Commissioner)

**Pennsylvania**

Jennifer Orr (Alt. Commissioner)

Ronald Stanley (Commissioner)

Chairman Sussman recognized Virginia Commissioner Bierman (absent) for his service as he has resigned from the Commission as of February 28.

**ADOPTION OF AGENDA: Commissioner Kudlas made a motion to approve the agenda, which was seconded by Commissioner Lewis. All were in favor.**

**DECEMBER 6, 2016 DRAFT MINUTES: Commissioner Jones made a motion to approve the December 6, 2016 Meeting Minutes, which was seconded by Commissioner Potter. All were in favor.**

**Staff and Guests**

**Staff**

Carlton Haywood (Executive Director)

Robert Bolle (General Counsel)

Bo Park (Dir, Administration)

Curtis Dalpra (Communications Manager)

Claire Buchanan (Dir, Program Operations)

Cherie Schultz (Dir, CO-OP Operations)

Heidi Moltz (Assoc Dir, Water Resources)

Alimatou Seck (Water Resources Scientist)

Renee Bourassa (Communications Specialist)

Zachary Smith (Aquatic Ecologist)

**Guests**

Henry Gruber (USACE, NAD)

Heather Cisar (USACE, Baltimore)

Chris Kimple (for C. Moul, PA)

Herb Sachs (Citizen)

**SUMMARY FROM EXECUTIVE COMMITTEE CONFERENCE CALL:** There were no comments.

## **OLD BUSINESS**

**Executive Director's Report:** Mr. Haywood gave highlights of some of the activities at the Commission for the last quarter.

- Staff: A. Seck will be going on family leave in April.
- Commissioner: In West Virginia, Mr. Austin Caperton replaced Randy Huffman as WVDEP Secretary and as ICPRB Commissioner. Pat Campbell was re-appointed as Alt. Commissioner.
- Financial Statements: Contingency Reserve Account remains intact. The signatory dues are up-to-date except from DC. Commissioner Karimi will follow-up for payment. As previously, MD paid 90% of their dues.
- Grant/Contracts: Small contract for \$1,700 was executed for a translation service for the Score 4 program. Most of the current EPA 106 grant money was made available in January. We expect the balance to become available at some later point this fiscal year. A new EPA 117 grant was awarded to ICPRB for a 6-year term beginning in June 2017. This grant will replace an existing grant. There were two contracts with VA DEQ that have received no-cost extensions. The technical work has been completed but the extensions will allow additional time for review by DEQ staff.
- ED activities: Mr. Haywood has been working with the Baltimore COE (Corps of Engineers) on funding for potential projects. Some projects that are in discussions are Jennings Randolph Reservoir Water Control Plan, COE assistance on the Comprehensive Plan, and COE assistance on the review of the Low Flow Allocation Agreement (LFAA).
- Action Items from December 6, 2016 Business Meeting:
  - The Comprehensive Plan vision statement, a list of challenges, and the workplan for the Comp. Plan were posted on the Commission's website.
  - Regarding recommendation from the commissioners for staff to continue to engage with the water suppliers for alternatives to providing water supply in the future and moving ahead with the discussions with the review of the LFAA and WSCA agreements, staff has been pursuing these items in the last quarter and some were addressed in the CO-OP meeting. Further discussions on the LFAA agreement will take place later in this meeting.
- Pet Waste Recognition: Commission received an award for a project that was initiated by a former staff Audra Lew and Curtis Dalpra, and completed by Rebecca Wolf. The project was recognized by the National Association of Counties.
- Project Status Report: The Potomac Basin Reporter periodical resumed its publication via electronic delivery. In addition, the 2016 Annual Report in electronic format was released couple weeks ago, re-designed to be interactive and public friendly. The Annual Report seems to have a positive result as seen through many "hits" on the website.

**Comprehensive Plan Update:** Mr. Haywood reported that the 3<sup>rd</sup> Advisory Committee meeting was held last week. There were two panels of presenters. The first panel was composed of federal agency representatives and included Nick DiPasquali, EPA Chesapeake Bay Program, Ed Ambrosio, EPA Region III, and Anna Compton, USACE Baltimore District. The second panel was on water and energy, Susan Gray from Maryland Power Plant Research Program and Zachary Clement from the Federal Department of Energy. They spoke on the water/energy nexus and the future of energy in MD and energy from the national perspective. The presentations will be placed on the website when we have approval from the presenters.

Commissioner Brakel commended the process and complimented Dr. Moltz and the facilitator. He added one item that was not discussed at the meeting which was on the location of water/energy problems in the

basin and information about future water/energy problems. The facilitator is soliciting further comments about this meeting from the Advisory Committee by email and that feedback will be provided to the staff.

Mr. Haywood continued that the Comprehensive Plan is set to finalize in spring 2018. The main information gathering phase will be done by September 2017 and the Advisory Committee should have its recommendations for the Comprehensive Plan by November 2017.

Chairman Sussman suggested that at the Commission's August business meeting have an extended discussion of what was learned from the information gathering phase. Then, at the December meeting, he would like to have discussions about the recommendations from the Advisory Committee. Chairman Sussman encouraged the commissioners to attend the meetings to keep abreast of the process.

## **NEW BUSINESS**

**FY2017 Budget Amendment #3:** Mr. Haywood asked for an approval of the budget amendment. It reflects the current expectation for revenue and expenses for the year, including some changes that have occurred in recent months. There is one new project proposed for the budget, which involves working with the New York Department of Environmental Conservation to develop a tool for accessing biological assessment data. On the expenses, there was a change in the salary category, which is due to not hiring an FTE. Given current uncertainty about future fiscal conditions, a decision was made to defer hiring at this time.

Commissioner Campbell asked if the Commission has extra staff time for projects. Mr. Haywood indicated that in FY2017, there is limited staff time. In FY2018, however, there are opportunities for staff to work on projects. All sections except CO-OP could use extra work. Commissioner Karimi asked for a possible list of expertise that could be useful at the jurisdictions. Commissioner Campbell added that it would be mutually beneficial if the jurisdictions know Commission's staff availability that can be matched with the needs at the jurisdictions.

**Commissioner Stanley made a motion to approve the FY17 Budget Amendment #3, which was seconded by Commissioner Lewis. All were in favor.**

**Financial Outlook:** Mr. Haywood discussed the current revenue sources at the Commission which are generally split between the jurisdictional dues, EPA grants, CO-OP, and other grants and contracts. The grants and contracts category includes revenues that are project specific, in other words, the funding source goes away once the project is completed. The revenues in this category vary from year to year. On the expense side, the main expenditure is in salaries and wages. Other expenses are basic needs for operation. The biggest expense item in this category is rent, for which we are committed to a lease which ends in 2024.

It is still too early in the process to make any decisions regarding future budget scenarios. The Commission was informed by EPA to request the same amount for the FY2018 EPA 106 grant as the current year. Commissioner Karimi asked the commissioners to keep the ED abreast of any news on federal funding. Commissioner Campbell added that the jurisdictions may get an increase in other grants even if the EPA 106 funding goes down and so there may be other opportunities for funding. Commissioner Kudlas informed that in Virginia, the General Assembly passed a budget for the next two years, including Virginia's dues to ICPRB.

**Resolution for Review of LFAA and WSCA:** Chairman Sussman summarized the purpose for the review of the Low Flow Allocation Agreement (LFAA) and Water Supply Coordination Agreement (WSCA). The proposed review of these documents was motivated by the discussions at the December meeting with the water utilities. At that meeting, it was apparent that there were some significant challenges related to adequacy of existing water storage and a need for new investments. It was apparent

also that the profile of water uses in the Washington metropolitan area has changed over the years. In addition, concerns about climate change and security of water supply are increasing.

At the December meeting, both the commission and water suppliers indicated it may be useful to review the two agreements, which govern collective response to drought conditions in the metropolitan area and the sharing of resources and cost among major utilities. The two agreements have different signatories. The LFAA signatories are jurisdictions and the WSCA signatories are water utilities plus the U.S., and ICPRB. The WSCA provides for operations that will prevent the emergency conditions that would activate LFAA rules for allocating water.

The Commission's Executive Committee formed an ad-hoc group consisting of DC, MD, VA, and U.S. commissioners, plus the Executive Director, to develop a draft resolution. The intent is to undertake a review to identify aspects of both agreements that are candidates for revision. This review, however, does not automatically lead to a revision of the agreements. That will be a separate decision at the end of the review process. The workgroup felt that the review would be best done by a third party expert with no affiliation with the parties to the agreements, to ensure elements of objectivity.

Chairman Sussman asked for a motion to approve the resolution in hand (dated March 1, 2017). **Commissioner Kudlas made a motion to adopt the amended March 1, 2017 version of the resolution. Commissioner Lewis seconded the motion.**

Commission Campbell asked for a clarification on the legal support by ICPRB staff indicated in #7 of the resolution. Chairman Sussman indicated that General Counsel Bolle will be providing guidance on the Commission's policy, By-laws and procedures. The utilities and the regulatory agencies also have their own legal counsels. Mr. Haywood clarified that the intent of this statement in #7 was that staff would provide informational and logistical support to whoever is doing the review. Chairman Sussman advised leaving the sentence as is.

Mr. Haywood explained that this workgroup included the jurisdictions that are signatory to the LFAA and the USACE had been consulted. He summarized the aspects of the review process that had been discussed and/or decided by the workgroup as:

- The review should be done by an expert, independent of the parties of the agreement.
- Doing the review does not presuppose the next steps or any actual changes to the agreement. At the end of the review, there is a decision point as to the next step, whether to proceed or not.
- There were some discussions about whether the WSCA should be facilitated by the same or different third party expert but that was not decided.
- Funding for the LFAA review contractor should be split among the LFAA governing parties and funding for the WSCA review contractor should be split among that agreement's water suppliers.
- There is a target funding of \$60k for the LFAA review, \$15k from each governing party. The governing parties will pay to ICPRB and ICPRB will procure the contractor and manage the contract. In addition, ICPRB will provide in-kind services in assisting, gathering information, or any necessary technical work towards the effort.

The resolution also includes a recommendation for a review of the WSCA. There are many details that need to be worked out with the water suppliers prior to moving forward with the WSCA review. As for the LFAA, there is some motivation to move quickly due to funding availability in the current fiscal year versus funding uncertainty in the next year. For WSCA, there needs to be further discussions on whether that process should be in parallel or sequential. The workgroup suggested that the LFAA review be done in consultation of the water suppliers so that they are included in the process. Similarly, the WSCA agreement should include consultation with the states and DC as well.

The next immediate step is for the LFAA governing parties to secure funding. Next week on March 13, there is a CO-OP Operations meeting with this topic on the agenda. On April 26, the annual LFAA meeting will be held with representatives from all jurisdictions and water suppliers. This issue will be on that agenda as well. As soon as this resolution is approved, the various parties of the LFAA will secure funding, and once funding is received ICPRB will proceed with procuring a contractor.

Commissioner Brakel expressed his support for the resolution and asked if it would be beneficial to the process for the Commission to use its communications tools (website, etc) to publicize this resolution. Several commissioners responded that this should wait until after all parties had agreed to the reviews and the steps to be taken are better defined. Commissioner Brakel expressed his agreement with these comments and he also asked the ED at the next meeting to update the Commission with a more detailed plan for the review.

**With no additional comments, Chairman Sussman asked for a vote on the motion. The resolution was approved unanimously.** The draft resolution is attached to the minutes.

**Measuring Biological “Health”:** Staff members, Dr. Buchanan and Zachary Smith gave a presentation on the development and application of the Chessie BIBI (Chesapeake Bay basin-wide Benthic Index of Biological Integrity) to measure biological health.

Executive Order 13508 (2009) and the Chesapeake Watershed Agreement (2014) call for improvements in stream health and function within the Chesapeake Bay watershed. State agencies within the Chesapeake Bay basin use independently developed Indices of Biotic Integrity (IBIs) to assess stream condition but these indices cannot be combined to calculate a standard assessment of stream health. Currently, the Chessie BIBI is the best available tool for evaluating non-tidal stream health across state borders in the Chesapeake Bay watershed.

Indices in the Chessie BIBI were created by defining an environmental disturbance gradient, identifying metrics (i.e., community measures) that reflect the disturbance gradient, scoring (i.e., standardizing) the metrics to generate a final index value, and assigning rating categories to the final index values. Multiple spatial scales and taxonomic ranks were evaluated, but we ultimately recommended that the family-level regional indices provided the best representation of stream health. The Chessie BIBI is not a regulatory tool and will not supersede state assessments; instead the Chessie BIBI allows for the evaluation across state borders to guide the Chesapeake Bay Program efforts, such as the identification of high quality waters that should be protected and the identification of degraded waters that would be well suited for remediation. Additionally, ICPRB plans to use the Chessie BIBI and other biological indicators in the Ecological Health chapter of the Potomac Basin Comprehensive Plan. These biological measures will allow us to address the “Protecting Ecological Health” challenge area identified by the Chesapeake Bay Program.

**DATE AND LOCATION FOR JUNE MEETING:** Maryland will be hosting June’s meeting. A two-day meeting including a tour on Monday will be held on 6/5-6/7/17. A possible tour of Jennings Randolph Reservoir or other interesting sites in Western Maryland will be pursued.

**ADJOURNMENT:** Commissioner Kearney made a motion to adjourn the meeting at 12:10 PM, which was seconded by Commissioner Holland. All were in favor.

Minutes Draft By: Bo Park, Director, Administration

Minutes Reviewed, Approved, Submitted by: H. Carlton Haywood, Recording Secretary

**Resolution for discussion and approval at ICPRB's March 7, 2017, business meeting  
Draft 3/1/2017**

WHEREAS –

1. The Potomac River is the principal source of drinking water for the citizens of the Washington Metropolitan Area.
2. Virginia, Maryland, District of Columbia, and the United States entered into a Low Flow Allocation Agreement (LFAA) on January 11, 1978 to provide for the equitable allocation of Potomac River flows among all users in time of shortage.
3. BG Drake Wilson, Acting Director of Civil Works USACE, issued a Memorandum of Intent to James Joseph, Under Secretary of the Department of the Interior, dated July 20, 1978, clarifying the steps to be taken by the parties under the LFAA to assure that sufficient water remains in the Potomac River "to avert severe and irreparable damage to the Potomac River ecosystem, and to recognize the need to avoid damage to properties of the National Park Service". The signatories to the LFAA concurred with the MOI and agreed that reference to the MOI be included in permits granted and any future permits for withdrawal structures from the affected portion of the Potomac River.
4. The United States, District of Columbia, Washington Suburban Sanitary Commission, Fairfax County Water Authority and ICPRB entered into a Water Supply Coordination Agreement (WSCA) on July 22, 1982 to align operations and planning by the principal water suppliers serving the District of Columbia and suburban Maryland and Virginia in order to minimize the possibility that the LFAA's allocation provisions will need to be implemented.
5. The WSCA establishes an Operations Committee, supported by the CO-OP Section of ICPRB, to enable the water suppliers to oversee implementation of the agreement and participate in joint operational and planning activities.
6. The LFAA and WSCA have been effective in increasing the reliability of the regional water supply system and avoiding low flow conditions during droughts and other threats to drinking water supply through cooperative forecasting of supply and demand and optimum utilization of the area's water resources.
7. Nonetheless, a comprehensive review of the adequacy of the LFAA and WSCA has not been conducted since 1982.
8. Such a review is warranted in light of changes in population, water demand and use, laws and regulations, threats to supply and understanding of the metropolitan area's water resources and the ecology of the Potomac River Basin.
9. The goals and provisions of the two agreements are inextricably linked.

THEREFORE, BE IT RESOLVED BY THE INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN (ICPRB) –

1. It is recommended that reviews of the LFAA and WSCA should be conducted to examine whether these agreements continue to serve their original purposes or should be updated and revised.
2. The four entities comprising the governing parties under the LFAA should organize and undertake a review of the LFAA in consultation with water suppliers within the pertinent portion of the river as defined in the LFAA and other suppliers as may be affected.
3. The signatories to the WSCA should organize and undertake a review of the WSCA in consultation with the LFAA governing parties.

## **Resolution for discussion and approval at ICPRB's March 7, 2017, business meeting**

4. Each review should be performed by an expert or experts agreed to by the LFAA governing parties (in the case of the LFAA) and the WSCA signatories (in the case of the WSCA), respectively, and should be conducted under these parties' oversight and supervision.
5. The purpose of the reviews should be to identify key issues and options that may inform a decision whether to modify the agreements,
6. Any decision to modify the agreements should be a separate action after deliberation on the reviews' recommendations, findings and conclusions. Such action, for the LFAA, should be a unanimous decision of its governing parties and, for the WSCA, a unanimous decision of the water suppliers and the District of Columbia.
7. The ICPRB Executive Director and staff should help facilitate communications, provide appropriate technical and legal support and respond to requests for assistance as the reviews are organized and carried out.