

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

FIRST QUARTER BUSINESS MEETING NOVEMBER 29, 2011 ICPRB HEADQUARTERS, ROCKVILLE, MD

DRAFT MINUTES

CALL TO ORDER: Chairman Campbell called the First Quarter Business Meeting to order at 9:39AM on November 29, 2011 at the ICPRB Headquarters in Rockville, Md. **Roll call** of attendees was conducted with the following Commissioners, guests, and staff present for some or the entire meeting:

Virginia

Robert van Laer Hartwell (Commissioner)
Dann Sklarew (Alt. Commissioner)

West Virginia

Patrick Campbell (Alt. Commissioner)

District of Columbia

John Wennersten (Alt. Commissioner)

Pennsylvania

Andrew Zemba (Commissioner)
Lori Mohr (Alt. Commissioner)
Roger Steele (Alt. Commissioner)

United States

George Reiger (Commissioner)

Maryland

Colleen Peterson (Commissioner)
Herb Sachs (Alt. Commissioner)

Staff

Joseph Hoffman (Executive Director)
Robert Bolle (General Counsel)
Bo Park (Administrative Officer)
Curtis Dalpra (Communications Manager)

Guests

Maria Franks (Corps of Engineers, Baltimore)
Robert Pace (Corps of Engineers, Baltimore)

ADOPTION OF AGENDA: Chairman Campbell asked for an approval of the agenda. **Commissioner Peterson made a motion to approve the agenda. Commissioner Reiger seconded the motion. All were in favor.**

APPROVAL OF MINUTES: Chairman Campbell asked for an approval of the September 13, 2011 Minutes. **Commissioner Sachs made a motion to approve. Commissioner Zemba seconded the motion with all in favor.**

GENERAL COUNSEL'S REPORT: Mr. Bolle, General Counsel, reported that the legal activities involved routine legal matters, primarily contract reviews. There were no significant matters to report.

OLD BUSINESS

A. Financial Report: Mr. Hoffman noted that the financial report is based on only one month. In accounts receivables, the District of Columbia still has not made a payment for 2011 and is not expected to pay for 2012. The federal is not counted in the A/R, but DC and 1st quarter for Virginia are recorded. The contingency reserve still remains intact. Grant was received from the EPA Section 117 for the period of June 9, 2011 to June 8, 2012, and is anticipated to renew each year for six years. The EPA Section 106 grant for \$706,000 has not been received. The EPA is operating under continuing resolution until

December 6. By this time every year, partial amount is usually awarded. However, no word has been given. The \$706,000 is not a guaranteed amount. From West Virginia, the first quarter payment was received. From Maryland, \$118,000 was received, which was a part of the full amount received from the last period. In Pennsylvania, the General Assembly passed the budget for \$48,500. The PA DEP is currently working on the shortfall of \$2,000, to meet the full amount. In the doubtful "account receivable," which are prior year budgeted amounts not met with payments, are still recorded even though not expected to be received.

Commissioner Wennersten asked for the reason given by DC for not paying the jurisdictional dues. Mr. Hoffman replied that DC's current fiscal status is not in situation to pay. He also added that Commissioner Karimi has requested additional money for the DC Department of Environment to pay after 2012. Mr. Hoffman has had direct communication with Chris Tulou, DC Director of the Department of the Environment. He has indicated that no money will be coming. ICPRB has been communicating with George Hawkins at DC Water. DC Water runs the water operation for the District and the waste water treatment operation at Blue Plains facility. DC Water spends approximately \$2 million a day on water and waste water operations. Incidentally, DC Water is a recognized part of the District code, "sanitary water works," where it lists priority items. The 4th priority on this list is funding ICPRB. DC is currently failing to meet this priority. Mr. Hoffman is working with Dr. Karimi to explore other possibilities. Commissioner Wennersten asked for a copy of the DC code.

DC has three commissioner positions and three alternates with only one of each filled. Others have not been filled for several years. Mr. Hoffman has made suggestions to add George Hawkins as a member of ICPRB. He was told that Mr. Hawkins does not have the time. But other suggestions were made to appoint alternates who can participate in the meetings in his place. No interest has been received at this time. To take a different approach, staff has been providing information pertinent to DC Water to assist. Mr. Hawkins seems to be receiving the information in a positive manner.

The other potential for support is a former DC Water boardmember, David Bardin, who has expressed interest in ICPRB and funding. He has spoken to Councilwoman Mary Cheh about ICPRB. There has been no other leads.

Commissioner Sachs added that the Low Flow Allocation Agreement through ICPRB was formed to protect the downstream users where DC is located. Commissioner Sachs expressed that DC has forgotten this relationship and the importance of the Commission. Mr. Hoffman added that water withdrawal is not by DC but by the Corps. There may be something in that relationship to further explore. Mr. Hoffman wrote an email to Hamid Karimi and a letter to Chris Tulou, raising the issues, but no response has been received from Mr. Tulou. But Dr. Karimi's response has been that no payment will be made. In addition, a letter was sent to Director David Paylor, Virginia, as well. Commissioner Wennersten asked what seems to be the problem with DC not paying seemingly a small amount. Mr. Hoffman replied that the jurisdictions view ICPRB as an expensive association. But it could be a budget administrator at a higher level who makes the cuts without proper knowledge of the Commission. Commissioner Reiger commented that rather listing the basin benefits, focus on the jurisdiction benefits. Mr. Hoffman replied that state benefits have been the focus of several documents.

B. Executive Director's Report: Mr. Hoffman gave an overview of the ED report. Staff member, Pat Beno retired from the Commission on September 30, 2011. Audra Lew, Watershed Coordinator, has elected to reduce time to 80%. The Chesapeake Bay grant was received in the full amount. A contract was received from Virginia for the watershed implementation plan. As an example of benefits to Virginia, the initial project and money was paid by MDE to develop the tool. Virginia is gaining the tool and knowledge already put into place and paid for by Maryland through ICPRB.

The \$363,000 A/R has been reduced to approximately \$200,000 due to payments being made. The EPA Section 106 money is still not available. This will be a greater concern if no indication is given by EPA in another 90 days. Given the federal budget situation, receiving the full \$706,000 grant amount may be questionable.

Commissioner Corazon Dones is in the process of being removed from the Commissioner group. She is still listed on the Maryland Manual, however. The removal from the Commission depends on the Maryland Governor's office.

Mr. Hoffman gave a brief discussion of developing projects and strategies, as requested by Commissioner Witheridge at the September Commission meeting. ICPRB operates outside the state government framework and structure, with intergovernmental and inter-basin focus. A strategic plan is developed to assess basin needs and needs established through the Compact. The jurisdictional needs are translated into projects and activities. With available resources, the commissioners set the guidance, and the staff pursue the technical aspect of the work. Ideally, the needs of the states are matched with the skill sets of the staff. One of the areas of needs is staff retention for skilled and specialized staff. At each June meeting, projects and funding are presented. It is very important to receive steady stream of revenue to support the staff and continue the work.

Commissioners have approved a strategic plan laying out three goals: to promote watershed management, to protect ecosystems and water resources and foster and develop knowledgeable stakeholders, and to acquire resources to achieve the recognition of ICPRB as vital link to basin's health and the future.

Staff and commissioners are working towards the basin, not for individual jurisdictions. In FY2012 anticipated revenues, the strategic goal #1 is the primary focus, then #2, then #3. Approximately \$1.8M or 77% or 23 projects include individual jurisdiction projects. Among the projects, the benefits of the jurisdictions for VA/PA/DC are 7% each. Maryland is about 22%. The basin is about 35%. The bay is about 22%. The basin is primarily the EPA grant related projects. A portion of the EPA grant funding is utilized for communications and publications. Of the projects listed, 2% for VA and DC are working with school children for the shad program. And 2% for PA is for the stream assessment work.

ICPRB needs to focus on basin-wide approach, focusing on a comprehensive basin-wide plan. Each of the individual states are not likely to be concerned about other states. As an example, looking at the surface water withdrawals, individual states do not always have the big picture and do not always assess the impact that each state has on another. Without ICPRB's presence and oversight, there are no other agencies to provide this level of information. The Potomac cannot survive without ICPRB's presence. A comprehensive plan would be the beginning of this process to protect the resources and plan for the future.

Commissioner Steele suggested including charts that outline jurisdictional relevance to each jurisdiction as educational tool to assist with their decision making process. Charts with relevant information could also be distributed to the commissioners to be used at their various speaking engagements. Mr. Hoffman will forward electronic copies. He asked that the information be given to those who are in decision making position in the jurisdictions. Commissioner Reiger added that a presentation tool would be good for the commissioners to maintain as occasion arises to support and perpetuate the mission of the commission.

Mr. Hoffman reported that he gave a legislative briefing at Fairfax Water, invited by Virginia Del. Kaye Kory. The topic was ICPRB and what it does for Virginia. At the time of the presentation, the

Commonwealth was considering withdrawing from the Commission, in addition to the budget elimination. As a background information, the budget withdrawal took place during their legislative session in 2011. There was a one-day legislative reconvening session, which allowed for veto actions to be corrected. As part of the action, members were presented with a 554 page budget document, and were asked to vote on them. On about page 215, was a line that appropriated \$151k to ICPRB for FY2012, which started on 7/1/2011 and \$151k for period beginning 7/1/2012. Another 200 pages later, was language that withdrew money from certain organizations without specifying ICPRB. Most of the General Assembly members may not have been aware that they were voting on withdrawing from funding the ICPRB, when it was already approved 200 pages earlier. Due to this, ICPRB lost funding beginning July 1, 2011. In early August, ICPRB was advised by the Executive Director of the Potomac Conservancy that an email was received from their legislative office asking about their thoughts on withdrawing from the ICPRB. Subsequent to receiving this email, Mr. Hoffman sent out a fact sheet about ICPRB, which was put together very quickly by staff. Del. Kory has been a key Virginia legislative member for ICPRB, who requested the legislative briefing.

There are severe consequences of this withdrawal action. In the EPA Section 106 appropriations, about 2.6% of the total EPA appropriation goes to the six interstate commissions. The funds are then suballocated to each commission based on the state land area, state population, etc. If Virginia withdraws from ICPRB, approximately \$200,000-\$220,000 EPA Section 106 grant amount awarded to ICPRB will be lost and redistributed to other river basin commissions. There will be a major impact, not only Virginia's \$151,000 jurisdictional dues loss but additional \$200,000-\$220,000 EPA money lost to ICPRB and to Virginia. Additionally, any jurisdictions withdrawing from the Commission must give a year notice.

Commissioner Hartwell has been working on a supporting document. Delegate Miller had discussions with the Speaker of the House and Virginia State Senator Emmett Hanger. The withdrawal is an initiative from the governor, basically from the Secretary of Natural Resources, Doug Domenech, with input and recommendations from David Paylor, who also happens to be an ICPRB Commissioner. The fact sheet that the staff drafted provides good information. But assigning specific dollar benefit is the key. He is working with staff on a fact sheet that shows direct impact on economy.

Mr. Hoffman added that in a similar situation, Virginia has threatened to pull out from the Ohio River Valley Water Sanitation Commission (ORSANCO). As a response, ORSANCO has filed a lawsuit based on a previous supreme court decision, Dyer vs. Sims 1951, which ordered a state agency to pay a commission. Our General Counsel has reviewed and decided that it probably does not apply to ICPRB in this case. In the ICPRB Compact, the contributions are not mandatory but subject to appropriations by the individual jurisdictions.

To this point, Commissioner Peterson noted that #2 goal only has 4.3% of the revenue/expenditures spent on communication and outreach. There needs to be a thoughtful analysis of public outreach and tools. That may be a horizon issue for ICPRB where the public and stakeholders need to be reached. Mr. Hoffman replied that the Communications unit works on the website, to publicize what the technical staff has been working on. The Communications section has a challenge to translate projects into reports. The 4.3% is an attempt to assign a dollar value to a specific goal.

Chairman Campbell reiterated the request expressed by the commissioners to have a presentation tool ready by staff for the commissioners. He also suggested that a decision is needed to assist Commissioner Hartwell for Virginia and to address DC.

NEW BUSINESS

A. Amended FY2012 Budget: In June, the adopted budget had some \$470,000 in revenue shortfall, which did not reflect the \$650,000 federal payment, \$151,000 Virginia payment, and the \$69,000 DC payment. Since then new projects have been identified, with no change in the jurisdictional dues status. The increase includes \$35,000 from CO-OP for additional project work with the utilities. The EPA Section 106 and 117 remain the same. In the grants and contracts category, there is an increase of \$48,000 from the National Recreation and Conservation Service (NRCS) with \$48,000 cost matching by the Delaware Maryland Agribusiness Association, \$12,500 from Tetra Tech for CAST Training, and the pending VAST project from Virginia. MDE has awarded \$123,000 for TMDL work with \$50,000 for biological impairment modeling. The expected VA TMDL project may be questionable depending on which route the contract would go for signature. There is a total increase of \$400,000 revenue. At the same time, salary budget decreased in part by Pat Beno's retirement and Audra Lew's voluntary reduction of time. With other expenditure cuts, the total decrease in expenditure is approximately \$106,000.

At this time the Commission moved into Executive Session with the commissioners and invited guests to discuss budget and personnel matters as noted on the agenda.

With the Commission meeting back in open session, Chairman Campbell asked for an approval of the budget as amended. **Commissioner Reiger made a motion to approve the amended budget. Commissioner Wennersten seconded the motion. All were in favor.**

The Commission will send out a letter to Virginia with Chairman Campbell's signature. **Commissioner Steele made a motion to approve the action. Commissioner Peterson seconded the motion with all in favor.**

COMMISSIONER'S TIME

Commissioner Steele expressed a need for the Commission to obtain regulatory authority. Mr. Hoffman will distribute a discussion document previously prepared that explains the regulatory process.

Chairman Campbell asked that any document that takes positions in the basin, i.e. from the Potomac flows workshop should be reviewed by the commissioners. He cautioned against any publication without prior knowledge by the commissioners. Mr. Hoffman replied that before the report comes out, visits to the states will take place to discuss the relevance of this report as a decision making tool.

ADJOURNMENT

Chairman Campbell asked for a motion to adjourn the meeting. **Commissioner Peterson made a motion to adjourn the meeting, which was seconded by Commissioner Wennersten. The meeting adjourned at 2:18PM.**

Respectfully Submitted,
Joseph K. Hoffman
Commission Secretary