

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

SECOND QUARTER BUSINESS MEETING

JUNE 12, 2012

GUNSTON HALL, MASON NECK, VA

DRAFT MINUTES

CALL TO ORDER: Chairman Campbell called the Third Quarter Business Meeting to order at 10:32AM on June 12, 2012 at the Gunston Hall in Mason Neck, Va. **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)
David Paylor (Commissioner)
Scott Kudlas (Alt. Commissioner)

West Virginia

Patrick Campbell (Alt. Commissioner)

District of Columbia

Hamid Karimi (Commissioner)
John Wennersten (Alt. Commissioner)

Pennsylvania

Andrew Zemba (Commissioner)
Ronald Stanley (Commissioner)
Roger Steele (Alt. Commissioner)

United States

George Reiger (Commissioner)
Jane Witheridge (Commissioner)
Robert Pace (Alt. Commissioner)

Maryland

Herb Sachs (Alt. Commissioner)

Staff

Carlton Haywood (Executive Director)
Robert Bolle (General Counsel)
Bo Park (Administrative Officer)
Curtis Dalpra (Communications Manager)
Jim Cummins (Director, Living Resources)
Claire Buchanan (AD, Aquatic Habitat)

Guests

Julie Fritz (Corps of Engineers, Baltimore)
Chris Kimple (for Commissioner Moul)
John Booser (PA, DEP)

Mr. Pace, a new Alternate Commissioner for Commissioner Reiger was recognized with an ICPRB pin.

ADOPTION OF AGENDA: Chairman Campbell added new items to the agenda to include Virginia membership update under Old Business and under New Business, a summary of the strategic planning session, and discussions on business activities with non-profit organizations. Chairman Campbell asked for a motion to approve the modified agenda. **Commissioner Zemba made a motion to approve the agenda. Commissioner Witheridge seconded the motion. All were in favor.**

ACCEPTANCE OF EXECUTIVE COMMITTEE MINUTES: Chairman Campbell asked for comments and questions and acceptance of the Executive Committee Meeting Minutes from March 12, 2012. **Commissioner Sachs made a motion to accept the Minutes which was seconded by Commissioner Hartwell. All were in favor.**

APPROVAL OF MINUTES: Chairman Campbell asked for an approval of the March 13, 2012 Minutes. **Commissioner Sachs made a motion to approve. Commissioner Kudlas seconded the motion with all in favor.**

GENERAL COUNSEL'S REPORT: Mr. Bolle reported that the legal activities involved routine legal matters, primarily contract reviews. However, a significant amount of time was spent on Loudoun Water in the context of the Low Flow Allocation Agreement and the Water Supplier Agreement. And there were no pending or threatening litigations.

As previously requested by Chairman Campbell, Mr. Bolle discussed the pros and cons of forming a 501(c)(3) organization. 501(c)(3) organizations are exempt from state and federal taxes. ICPRB currently is exempt from tax under Section 115 of the IRS Code as a governmental entity. 501(c)(3) organizations generally receive charitable contributions from individuals and corporations. ICPRB can currently receive such contributions as ICPRB is considered a charitable organization under the existing rules. Any corporation or individual, subject to their limitations also can contribute to ICPRB and claim charitable deductions. The most benefit of having a 501(c)(3) organization is receiving grants from private foundations that limit, under their own rules, contracting only with 501(c)(3) entities. These private foundations could work with ICPRB, if they so desired, as long as their administrative and accounting structures are properly setup.

A disadvantage of a 501(c)(3) organization is the extensive IRS reporting requirements in annual returns, which includes details of the entity's activities, finances, and all the sources of expenditures. IRS requires these data to be posted on the organization's website, including a full disclosure of the organization's finances to the world. Separate record keeping and accounting for the 501(c)(3) entity is expected. This means a separate audit, which may also be required to be posted on the website. A separate legal counsel is also required, as Mr. Bolle would present a conflict of interest as a General Counsel for ICPRB. Another disadvantage is legal and fiduciary responsibilities for the board members, which requires separate officers and director's liability insurance at additional cost.

There are no guarantees that this organization would receive an exempt status from the IRS. A pass-through organization where funds are passed onto another organization would not be granted exempt status by the IRS. Other exempt status organizations are universities and hospitals which have other purposes and functions. If setup, this new organization may be audited by the IRS involving time, effort, and money. The process of filing would also expose ICPRB to close scrutiny by the IRS with respect to its current tax exempt status. This would be problematic at the present time since only 17% of the Commission's funding is from the jurisdictions. Per the Compact, it is specified that it shall be funded by the appropriations from the signatories and the federal government. The basic question is whether ICPRB is an agency of the states. Commissioner Hartwell asked if the Commission is currently not in compliance with the Compact. Mr. Bolle replied that the current ICPRB exempt status can be justified, however, it could be scrutinized if the 501(c)(3) status is filed.

In terms of the conflict of interest between being an ICPRB Commissioner and also a board member of a 501(c)(3), that is an individual determination by each jurisdiction according to their policy. Depending on the state law, it could be viewed as an extension of the scope of functioning duties as a commissioner. It would be advisable that each Commissioner check with their state attorney and their own attorney to determine whether they would be protected by the sovereign immunity of their state and not as a separate entity. As some are political appointees and some per their statutory seat by virtue of the position in the state government, there may be a conflict. Since the Commission's Compact is approved by the U.S. Congress, an act by legislation also enabling legislation by each jurisdiction, he advised that every jurisdiction make their own determinations.

Mr. Bolle suggested that rather than pursuing a 501(c)(3) status, a Section 509(a)(3) organization, which is a supporting organization with board members, may be a better fit. Otherwise, a totally independent organization as a 501(c)(3) may present a conflict of interest.

Commissioner Witheridge asked whether the Commission has knowledge and experience of fundraising. Mr. Haywood replied that ICPRB lacks fundraising experience, but the possibility of pursuing a 501(c)(3) status was due to encountering obstacles in finding funding sources for particular topic areas of interest. There are organizations that are interested in funding specific type of work, but only to 501(c)(3) organizations. Mr. Bolle added that these organizations adhere to rules they set for themselves which are not IRS rules. The basic problem is that the organizations that require a 501(c)(3) status to receive funds do not want to deal with the potential tax consequences and potential scrutiny by the IRS.

Mr. Booser commented that the Penn Foundation, a 501(c)(3) organization, has found ways to fund studies by the Delaware River Basin Commission. There also is a parallel at the Great Lakes Commission where they receive grants for project work. Chairman Campbell asked for a contact at the Penn Foundation to explore further. Mr. Dalpra added that Subaru, which is a green company, has on their foundation website that they only provide funding to 501(c)(3) organizations. Interestingly, The Chesapeake Bay Alliance was able to work out an arrangement to receive a significant amount of funding from Toyota, Genon, and Pepco, which also specified 501(c)(3).

Chairman Campbell added that although funding sources may specify 501(c)(3), it should be explored and pursued for possible workable arrangement. He also asked that Commissioner Zemba and Mr. Booser contact DRBC about their relationship to Penn Foundation and report back at the next Commission meeting. Commissioner Witheridge also added that if possible, a partnership with 501(c)(3) organization should be considered to explore opportunities without having to establish a separate entity.

OLD BUSINESS

A. Executive Director's Report and Financial Report: Mr. Haywood reported that Mr. Joseph Hoffman officially retired from the Commission as of March 30, 2012. Mr. Haywood spent much time shadowing and learning before Mr. Hoffman's retirement. Staff member, Jennifer Willoughby, Senior Communications Specialist, resigned as of May 3, 2012. She worked on communications and outreach projects and as webmaster for ICPRB. For the short term, Ms. Willoughby was contracted to continue the webmaster function while a long term solution is reached. For the remainder of her communications and outreach functions, the rest of the Communications staff will fill in temporarily.

The audit for fiscal year 2011 was a clean audit with no findings. It was submitted to the cognizant and other agencies. The contingency account remains intact. Commissioner Karimi noted that the recent District of Columbia's payment of \$69,000 is for FY2012, and not for FY2011 as indicated on the financial report. Accordingly, DC's FY2011 will remain on the books as accounts receivable. Mr. Haywood added that the current cash flow situation is reasonable, but further discussions will be held during the budget discussions.

The EPA has awarded \$706,000 for the Section 106 grant. For the Section 117 grant, ICPRB just started the second year of its six-year grant period. New projects are currently being pursued. ICPRB is currently in negotiations with West Virginia, Department of Environmental Protection (WV DEP) for a project worth \$50,000. WV DEP has also asked for assistance with their water resources development act.

Mr. Haywood, since becoming the Executive Director, has been meeting with the jurisdictions and various agencies such as the Corps of Engineers, Civil Works, Potomac Conservancy, Anacostia Society, and the water utilities. He will be visiting Pennsylvania next and going back to Virginia to meet with their agency staff.

Commissioner Karimi asked if the Commission was included in the Chesapeake Bay Regulatory Assurance Program (CBRAP). Mr. Haywood replied that he met with the Director of the Chesapeake Bay Program (CBP) in Annapolis and asked about other funding programs that ICPRB may be eligible for in terms of topic areas rather than dollars. The CBRAP money was allocated to the states. The EPA indicated that they are concerned about the rate of spending at the state level and that there were discussions at the EPA headquarters and Congress about taking back the funds. Some potential work may come about if the states cannot spend this money. The EPA could ask ICPRB for assistance at that time. Commissioner Zemba added that Pennsylvania disagrees with the EPA's analysis, and it may be an accounting issue that needs to be closely looked at. The funds were intended for compliance and enforcement activities, for tracking of WIIP implementation and making sure permit requirements are being followed.

B. Project Status Review: Mr. Haywood reported that there was a spill exercise with the appropriate agencies and water utilities to test communication routes and response procedures in case of a toxic spill in the Potomac River. The Pennsylvania critical area resource plan project, Project #353, is near completion with a draft plan that was submitted to the local advisory committee. By the end of this week, it will go to the regional committee and then there will be a six month process before final review is complete. This project identifies the evaluated water resources issue in the watershed and identify management actions to address the issues. The key water issues are availability, storage, quality, stormwater policy water management data and communication and management responses in each area. Commissioner Zemba added that he will discuss with PA DEP about the next course of action following the regional committee review.

The Corps of Engineers Middle Potomac Project #400 is currently going through its final stages in a Corps renew process. By early next week, a complete report should be distributed to all the participants who attended any of the two workshops. A webinar is planned for next week to discuss the findings. Major components address large rivers, Great Falls and Little Falls, identifying state gaps with the existing data that do not identify any particular ecological stresses due to flow alterations. There are recommendations for flow pattern around low flows to be maintained and additional data to be collected. With respect to smaller streams, flow characteristics were shown quantitatively as a result of land use change due to development and impervious surfaces. It was also shown quantitatively that changes in flow characteristics increase the risk of degraded biological communities.

The shad project #726 is a yearly project involving local schools. This year 65 schools were involved. It was another successful year with six million fry being released into the Rappahanock River and 600,000 released into the Potomac River.

C. Virginia Membership Update: Commissioner Paylor gave an update on the status of the Virginia membership for ICPRB. Virginia would like to move forward with ICPRB as being a valued agency for the state. Although the current Virginia budget is zero for ICPRB, it is not indicative of future budget scenarios. Commissioner Hartwell added that he is looking forward to continuing the dialogue to convey ICPRB's services and activities for Virginia.

Chairman Campbell asked if the budget just passed is a two-year budget. Commissioner Paylor added that it is a two-year budget but a caboose bill, a modification to the second year budget, is decided in the middle of the biennium. The two-year biennium starts this July 2012 through June 2014. The budget for calendar year July 2013 to June 2014 is a caboose bill, which will be decided next winter.

Chairman Campbell asked if ICPRB can be of assistance to the state, not duplicating any effort but areas that may need further assistance. Mr. Paylor replied that the Virginia's focus has become narrower with less funds. The Chesapeake Bay cleanup is a critical piece for VA. There have been

some discussions on how the federal funds should be used. The EPA is working hard to get rid of nitrogen and phosphorous out of the streams. The water quality is Virginia's top priority and the challenge is nutrient trading and cost effective methods to address urban runoffs. Mr. Paylor also added that there is an inadequate evaluation for groundwater withdrawal scenarios affecting Virginia and Maryland, particularly along the coastal plains. And there is equal concern west of the fall line. Mr. Sachs further added that the coastal plain includes the metropolitan area, eastern bay and eastern shore. At the present, there is heavy usage for irrigation. In the future, there will be more conflict between agriculture users and small town users pulling from the same aquifers.

NEW BUSINESS

A. ICPRB Activities in Tidal Fresh Potomac: Dr. Buchanan gave a brief slide show which highlighted ICPRB's recent efforts to help the Chesapeake Bay Program and the states to address five of the challenges currently facing the Potomac tidal fresh region: excess nitrogen inputs, urban stream syndrome, toxic chemical pollutants, a poor understanding of shallow water impairments, and low fish recruitment. ICPRB also encourages studies that assemble, integrate, synthesize, and interpret the diverse collections of monitoring and research information relating to the Potomac.

B. Revised FY12 Budget: Mr. Haywood discussed the budget amendment included in Tab 5 of the meeting book. He proposed to take out the federal appropriations of \$650,000 from the budget. However, Virginia's jurisdictional dues will remain on the budget to be consistent with past treatment of state jurisdictional dues as accounts receivable. One project with Water Research Institute (WRI) under Olivia Devereux was terminated early after the departure of Ms. Devereux. WRI requested that ICPRB contract with Ms. Devereux to continue the project. ICPRB declined and terminated the contract with WRI. There was no benefit to ICPRB to be a pass-through entity for this project. A new project #450P with West Virginia to conduct biological sampling is estimated at \$50,000 to be spent between this fiscal year and next. There may be new projects in the works that are not included in the budget amendment. The Corps may have additional \$10,000 for the #400 project, which may be available to ICPRB. There are also discussions with West Virginia DEP for assistance with water resource protection act. The current budget amendment is a deficit budget, although it is better than last summer. However, there are additional projects that are currently being pursued, which will be reflected in September's amendment.

There have been a number of departures in staff. The total salaries have not changed much due to the annual leave payouts. But the annual leave obligations will be reduced which is reflected in reduced liabilities for ICPRB.

Commissioner Karimi asked whether budget contingency measures discussed in the recent past are again necessary for the upcoming fiscal year. These measures included travel freeze, reduction of reporters mailing, staff benefit reduction, etc. Mr. Haywood replied that these emergency budget items will be revisited again next year. The budget shortfall situation in the beginning of the fiscal year will always happen. And September would be an appropriate timeframe to discuss these items.

Chairman Campbell asked for an approval of the amended FY12 budget. Commissioner Sachs made a motion to approve the amended budget, which was seconded by Commissioner Kudlas. All were in favor.

C. Review of Strategic Planning Session: Chairman Campbell reviewed the strategic planning discussions, which took place on Monday. He also asked Mr. Dalpra to give information on other entities in the basin that are competitors or potential partners for ICPRB.

Mr. Dalpra reported that from the outreach perspective, there are smaller groups/activists that are important to various parts of the basin. Through their involvement, these groups help to shape the future of the basin. ICPRB has developed several projects with other partners, e.g. Rainbarrel

project which partners with local shops that conduct training and sales of rainbarrels. ICPRB has also assisted with establishing a 501(c)(3) status for local watershed groups and helped with membership database needs and water quality and other data needs, including GIS maps. However, ICPRB does not make any financial contributions or give out grants to these local groups. In addition, ICPRB does not get involved in policy decisions within the groups. The ICPRB role is to empower them by equipping them with the information and data they need. ICPRB has also attempted to link different watershed groups together. Success has been limited because the groups tend to focus solely on local stream issues. The volunteer nature of the groups limits time and resources applied to regional cooperation.

In terms of the size, two of the largest non-profit organizations that ICPRB has worked with are The Nature Conservancy and the Alice Ferguson Foundation, which does the Potomac trash cleanup. The Chesapeake Bay Trust (CBT) is a 501(c)(3) agency that has given ICPRB grants to help the watershed groups. And ICPRB has assisted small watershed groups to apply for CBT grants themselves. The Metropolitan Washington Council of Government (MWCOC) is another group that ICPRB has some overlap with. The difference is that MWCOC represents the local governments where ICPRB represents the states. Another group, the Riverkeepers is a group that ICPRB shares information with. The Cacapon Institute, the Potomac Conservancy, and Living Classrooms are other groups that ICPRB partners with on projects. There are other groups and directory of watershed groups on the ICPRB website. The ICPRB website gets about 8,000-10,000 visits per month from the public and government agencies.

Chairman Campbell summarized the strategic planning meeting on Monday. Commissioner Witheridge facilitated the meeting. The Commission reaffirmed that ICPRB is an agency of the states. There were some discussions about ICPRB's role in the basin and the condition of the basin. ICPRB should add value to the basin and not duplicate state efforts. In Article D of the Compact, it is stated that ICPRB is a coordinating body. There were discussions about the administrative fees and the size of the organization and whether that should be based on funding or based on the mission.

To continue the strategic planning process, Chairman Campbell suggested that the Executive Committee meet in late July or early August, before the September meeting, to summarize and organize the discussions from the strategic meeting. Another option would be to open up the discussions to the full Commission and invite anyone interested in participating. Commissioner Hartwell suggested that since the Executive Committee is open to the rest of the Commissioners anyway, the meeting be done with the Executive Committee meeting. Commissioner Karimi suggested that the discussions continue quarterly with a working strategic draft for review by the full Commission as a working progress. As factors change over time, September timeframe may be too early to complete a good strategic plan. Chairman Campbell agreed that since the new Executive Director's performance expectation has a footnote that it may not be completed by September, the strategic plan does not have to be completed by September.

Commissioner Sachs added that the final expectation of this process is unclear, whether it is a comprehensive plan which can be a guide for budget decisions or a broader statement of the basin and specified roles of the Commission. Mr. Haywood added that it would be beneficial to continue the discussions and proceed at the Executive Committee meeting level. Commissioner Pace added that the discussions need to be organized and defined. Commissioner Witheridge added that there was consensus from the discussions from a high level perspective which can lead to priorities. She encouraged further discussions at the Executive Committee meeting with open invitation to the full Commission. Chairman Campbell asked that the next planning meeting be scheduled sometime in July.

Chairman Campbell encouraged the Commissioners to understand the role of the board members. He suggested the book, Boards That Make a Difference, by John Carter. This book defines the roles

of the board members, not getting mired in details but setting direction from a higher perspective.

Commissioner Hartwell suggested that the next discussion include a way to quantify the benefits and efforts made in the states. This information could facilitate demonstrating the benefits to the jurisdictions, and could be used as a mechanism for cooperation and feedback from the states.

D. Proposed FY13 Budget: Mr. Haywood reviewed the FY13 budget amendment included in the meeting book. The salary decreased due to the loss of staff. The revenue budget for federal appropriation of \$650,000 and Virginia jurisdictional dues are included. Although it is highly unlikely that the federal appropriations will be received, the federal revenues remain on the budget for now. Also included are the projects that are continuing from FY12. This budget reflects a net loss, however, it is similar to the budget figures submitted last fall. And staff is pursuing potential projects where discussions are being made. There is one area of concern where continuing deficit budget precludes management from hiring new staff. The new strategic plan should provide direction for work areas that the Commission can focus on, which may provide the justification to hire new staff to maintain the expertise on hand to get the work done.

Commissioner Sachs asked whether there was any staff surplus in the remaining staff. Mr. Haywood replied that he is concerned about the areas of expertise rather than the surplus of labor. As an example, ICPRB lost an agricultural BMP and trading expertise. Currently, there is one staff person with trading experience but none in the agricultural expertise area. If agricultural expertise is an important area to focus on, then hiring would be required. Basically, ICPRB needs to identify direction and focus to build the staff expertise. Commissioner Karimi added that due to the economic situation, it may be prudent to be conservative. He also inquired about the status of the office space. Mr. Haywood replied that the current lease expires in September 2014, but there currently is excess office space. He has been discussing options with a leasing agent. Chairman Campbell added that he had discussions with the Executive Director and further discussions will be made at the Executive Committee meeting. **Commissioner Sachs made a motion to approve the FY13 budget, with the deletion of the \$650,000 federal appropriations. Commissioner Kudlas seconded the motion, with all in favor.**

E. Proposed FY14 Framework Budget: Mr. Haywood discussed the FY14 framework budget. The budget includes some known projects with reasonable estimates. It also includes \$650,000 federal appropriations. Commissioner Witheridge asked why the Commission makes a budget so far in advance. Virginia has a biennium budget and the states form their budget ahead of time. ICPRB budgeting process was done in response to the budgeting process of the states and their appropriation process. This budget is submitted with no increase in jurisdictional dues, including the federal \$650,000 appropriations request. **Commissioner Zemba made a motion to approve the FY14 framework budget with the inclusion of the \$650,000 federal appropriations. Commissioner Witheridge seconded the motion with all in favor.**

F. Subcommittee Formation: Chairman Campbell asked for a discussion on forming subcommittees of Commissioners. In a previous meeting, Commissioner Hartwell suggested forming a public and government affairs committee and a budget and finance committee to seek out sources of revenues and private foundations. It may be an opportunity for more commissioners to get involved. Mr. Bolle suggested that the audit committee should be separate from the committee that seeks out funding sources. ICPRB currently has an audit committee which due to circumstances was not involved this year. Commissioner Karimi further added that the finance and audit committees should not be combined due to possible conflict of interest, although the members can serve on both as a separate committee. The audit committee's purpose was to assist the commissioners to understand the audit and not to oversee the audit process. Commissioners Peterson and Hartwell have expressed an interest in the revenue committee. Mr. Bolle added that the chairman has the power to create committees and appoint members.

Chairman Campbell will appoint the Nominating Committee with three members by email. The District of Columbia is next in line for the chair. Mr. Bolle added that the past practice has been the Executive Committee members become chair and vice chair. The current vice chair becomes the chair. And the next jurisdiction would become the vice chair. The order of succession is West Virginia, District of Columbia, Maryland, Pennsylvania, Federal, Virginia.

COMMISSIONER'S TIME

None

ADJOURNMENT

Chairman asked for a motion to adjourn the meeting. **Commissioner Sachs made a motion to adjourn, which was seconded by Commissioner Karimi. All were in favor. The meeting adjourned at 2:43pm.**

Respectfully Submitted,
Carlton Haywood
Commission Secretary