

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

FOURTH QUARTER AND ANNUAL BUSINESS MEETING

SEPTEMBER 11, 2012

ICPRB HEADQUARTERS, ROCKVILLE, MD

DRAFT MINUTES

CALL TO ORDER: Chairman Campbell called the Fourth Quarter Business Meeting to order at 10:03AM on September 11, 2012 at the ICPRB Headquarters in Rockville, Md, 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)
Scott Kudlas (Alt. Commissioner)

West Virginia

Patrick Campbell (Alt. Commissioner)

District of Columbia

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

Pennsylvania

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

United States

George Reiger (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)
Cherie Schultz (Director, CO-OP Section)
Ross Mandel (Assoc. Dir., Watershed Analysis)

Guests

Chris Kimple (for Commissioner Moul)
Maria Franks (U.S. Corps of Engineers)
Korey Gerdeman (PA Management Associate)
Nicholas DiPasquale (Speaker, Director, CPB, EPA)

ADOPTION OF AGENDA: Chairman Campbell asked for a motion to approve the agenda. **Commissioner Karimi 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 June 12, 2012 Minutes. **Commissioner Sachs made a motion to approve the June 12, 2012 Meeting Minutes. Commissioner Kudlas seconded the motion with all in favor.**

GENERAL COUNSEL'S REPORT: Mr. Bolle reported that the legal matters were of routine nature.

The Commission received a letter from the National Federation of the Blind (NFB) requesting information on compliance with the American Disabilities Act in the context of the Commission's website. The assumption was that the ICPRB was a federal agency. ICPRB is not a federal agency, therefore, not required to comply. But ICPRB is legally in compliance regardless. A response letter was sent to NFB. Mr. Bolle added that the letter from the NFB is a general letter sent to all the presumed federal agencies.

Mr. Dalpra added that in the American Disabilities Act concerning the blind, there are federal standards for the websites that would allow a reader to link to an audio of certain contents of the website. ICPRB uses a template that supports the Section 508 of the ADA. A potential problem area may be that every photo or panel in the website may not have a caption that the device can read. Due to the nature of the complexity of the website, there may be some that do not have a caption.

Commissioner Sachs added that the New York Attorney General is suing the Delaware River Basin Commission (DRBC) for failure to follow federal regulations for an EIS regarding Marcellus shale drilling. DRBC is contesting the suit on the grounds that it is not a federal agency. SRBC is also concerned and have made a number of statements stating that their agency is not a federal agency. Mr. Bolle responded that ICPRB is in a stronger position than DRBC or SRBC, as the federal government is not a signatory to ICPRB's compact. However, for DRBC and SRBC, the United States is a signatory to their compact.

Mr. Bolle also reviewed, from a legal perspective, the commissioner's role in representing positions of the Commission versus individual views. The commissioners alone cannot commit ICPRB to any position or comment with respect to issues in academic journals or similar publications without a disclaimer. The disclaimer should state that the views of the author do not reflect the views of the Commission but are solely those of the author. Chairman Campbell added that the subject of disclaimer came up in the context of the sturgeon position, to be discussed later in this meeting.

OLD BUSINESS

A. Executive Director's Report and Financial Report: Mr. Haywood reported that the watershed coordinator, Audra Lew, resigned as of August 3. This position was advertized and will be filled. In the interim, the project with Montgomery County will be contracted out to continue the work.

Mr. Haywood noted that the budget discussions will take place under New Business, and the FY2013 budget is to be amended in FY2013. There were no withdrawals from the reserve account, with good cash flow. The amount due from the District of Columbia for Drinking Water Source Protection Partnership (DWSP) for \$6,000 will be paid per DC. As for the Virginia dues, the unpaid bills will remain on the books as accounts receivables to be consistent with past practices.

ICPRB's auditor, Polan & Hollis LLC, has decided to discontinue auditing ICPRB due to lack of staffing and to terminate a long term relationship that may not present a good audit practice for both parties. Request for proposals were sent out to various audit firms that were recommended by John Hollis. In addition, he has offered to provide consulting service to assist with the transition process, although at an extra cost. Mr. Haywood views the transition as an opportunity to exhibit proper governance and good management responsibilities. The contract with a new auditor will be a fixed cost contract. Chairman Campbell added that if the cost of the contract exceeds Executive Director's limit of \$20,000, the approval can be done at the next Executive Committee conference call.

In July, the EPA informed ICPRB that an extra \$57,000 was available for the FY2013 Section 106 grant. Subsequently, an application was submitted for the higher amount. It is anticipated that ICPRB will use the additional funds to provide support for the WV Water Resources Management Act (WV WRMA) project, and support to certain TMDLs for the jurisdictions. Mr. Haywood continued that the Corps of Engineers also informed ICPRB that an extra \$12,000 will be provided to fund the remaining part of the Corps project.

Mr. Haywood informed that his visits to the jurisdictions were completed in July. And he has been working on the office space lease, which ends in two years. The goal is to reduce space and cost before the end of the lease in September 2014. However, there has been a new development with the Washington Real Investment Trust (WRIT) as a company. WRIT is selling their buildings in Maryland. Due to this, WRIT leasing staff has not shown much interest in talking to ICPRB about space at this time.

Mr. Haywood has been in contact with the American Clean Water Association (ACWA) for a possible sub-leasing of some excess ICPRB space and including a shared service contract for the

front office support. ACWA desires a location close to the EPA headquarters and Capitol Hill, which may be more important to them than the benefits of a shared location with ICPRB.

Mr. Haywood welcomes new ideas and suggestions from the commissioners regarding space. However, at this time his principal focus is working on an arrangement with WRIT that would reduce the amount of space we rent in advance of the current lease termination in September 2014.

Commissioner Karimi suggested that other commissioners look for space possibilities and come back to ICPRB with concrete suggestions.

B. Project Status Review: Mr. Haywood gave a brief summary of the projects that the staff are currently working on. More information is found in Tab 7 of the meeting book. Mr. Haywood added that project #353, Pennsylvania Critical Area Resource Plan, is a successful project that he would like to highlight and present at the December or March meeting. Chairman Campbell suggested perhaps that location can be an option for the next meeting location.

C. Status of Filling Commissioner Vacancies: Mr. Haywood asked each jurisdiction for their status to fill the commissioner vacancies. Virginia is fully filled. Commissioner Sachs informed that there are two candidates for one position from Southern Maryland region. For the central Maryland region, a state senator or a delegate is being pursued. Maryland commissioners have to be residents of the basin.

Commissioner Karimi reported that names have been submitted to fill the DC commissioner vacancies. Possibly related to this, Mr. Dalpra received a call from the District of Columbia for a copy of the ICPRB by-laws, which was forwarded as requested.

Commissioner Zemba reported that PA is pursuing Chris Kimple to be a voting member as an alternate. But this will require a legislative change which is not easy. More discussions will take place after this meeting.

Mr. Haywood reported that in West Virginia, a letter would need to be sent to the governor to fill the vacancies. There are a couple of WV commissioners who have not been active for many years. He has made contact with the two commissions to determine their desire to remain on the Commission. The two commissioners indicated that they would be agreeable to being replaced.

Commissioner Reiger reported that he has written a letter which was given to Commissioner Pace. Since, Commissioner Pace has forwarded the letter to a key person at the White House. Another letter was also given to a person at the office of the Secretary of the Army. He hopes to see a permanent designation for a full Commissioner from the Corps of Engineers. There is no requirement for a federal commissioner to be a resident of the basin.

Ms. Franks added that the Water Resources Development Act (WRDA) has a language that appoints the North Atlantic Division Commander of the Corps as one of the commissioners for the U.S. government. Ms. Franks added that this is automatic for SRBC and DRBC as it is a matter of the law. But for ICPRB, the legislation requires appointment from the President. She suggested that a change in the WRDA language could make it automatic for ICPRB as well. Mr. Bolle replied that there was an attempt to change this language in WRDA in the past, but was not successful.

As for the alternate for Commissioner Witheridge, she can appoint at any time. Chairman Campbell expressed that a former EPA personnel would be a good addition to the Commission.

Commissioner Kudlas has a recommendation for a former EPA staff who is also a resident of the basin.

Commissioner Hartwell expressed that in continuation of reinstating the Virginia funding, he would like to see a report of the value added, for example an in-depth research report to quantify ICPRB's work in each jurisdiction. He suggested an independent think tank like the Thomas Jefferson Institute for Public Policy (TJIPP) which has economists with experience in quantifying these benefits. An independent, unbiased, analysis may carry more credibility at the jurisdictions. Mr. Hartwell thinks the cost would be about \$5,000-\$10,000. Chairman Campbell added that time is of the essence since the next Virginia legislature goes back in session in January.

Commissioner Kudlas added that it can be a good tool to build relationships with the key legislative members. But he suggested targeting for the Virginia administration's last budget, which would be the most opportune time to influence the budget. The last budget from the governor is a "lame duck" budget which the General Assembly carefully reviews, to get ready for the next administration. That may be the best chance to get new appropriations, and even retroactive appropriations. He is not suggesting ignoring the caboose bill timeframe. But he believes the best time to influence may be the last budget timeframe. And he further advised that the Commission talk to the finance committees in Virginia, where the Commission did not pursue strongly the last time. To assist, he will provide the link to those committee members. Chairman Campbell will discuss this matter with Commissioner Karimi and make a decision at the next Executive Committee conference call. He asked Commissioner Hartwell to look for additional firms for comparison.

D. DRBC 501(c)(3) Funding: Commissioner Zemba reported that the DRBC has contracts with the William Penn Foundation. Within their compact, DRBC can negotiate loans and grants for the purpose of the compact. Mr. Bolle added that ICPRB can also negotiate any contracts. And any 501(c)(3) organizations can give grants to ICPRB if they so desire. However, the uncertainty is how Penn Foundation operates to give grants to DRBC. The answer is finding the right 501(c)(3) organizations that will give grants to ICPRB.

NEW BUSINESS

A. Chesapeake Bay TMDL Presentation by Nicholas DiPasquale: Mr. DiPasquale, Director, Chesapeake Bay Program, U.S. Environmental Protection Agency, gave a presentation on the "Chesapeake Bay TMDL, Focus on Implementation and Possible Future Roles for the Commission." The ultimate goal is to bring the water quality conditions back to the early 1950's through the development and implementation of various programs. The EPA has provided grants to the states to continue their work in implementation, regulatory and accountability programs, and headwater nutrient and sediment reduction grants. Possible roles for ICPRB are to support jurisdiction implementation plans, expanding monitoring of the watershed through small watershed groups, and to be a stronger advocate for securing opportunities with a geographical focus which targets areas for BMPs. Mr. DiPasquale will forward the presentation and other useful information to the Commission.

B. Adoption of FY 2013 Meeting Schedule: Chairman Campbell asked for a motion to approve the proposed FY2013 meeting dates. **Commissioner Kudlas made a motion to approve the dates. Commissioner Steele seconded the motion. All were in favor.**

C. Key messages from *Global Thirst*: Commissioner Wennersten, author of the book, *Global Thirst*, discussed the importance of water on a global scale as the population grows and the importance of reliance on water supply increases globally. The book is a call to realize that placing too much reliance on hope will not bring solution and that we rely too heavily on cheap technological

fixes at a greater cost. Over time, the countries that have a successful desalination programs will become the affluent countries. As human race, the main problem is that we have the capacity but not the will to control pollution.

D. Proposed FY12 Budget Amendment: Mr. Haywood presented a budget amendment for approval. Minor adjustments were made for the EPA Section 106 grant, which had a \$35,000 in unspent funds which will be carried over to FY2013. The under spending was due to staff turnover. Since this grant spans over two years, there should be no problem with carrying forward the unspent amount. In project #400, the U.S. Corps of Engineers will be providing \$12,000 in additional funding rather than the original indicated amount of \$10,000. A previous project #450 was renumbered to #760 to realign project classification. Project #276 was adjusted between the two-year project period. **Commissioner Reiger made a motion to approve the budget amendment. Commissioner Sachs seconded the motion with all in favor.**

E. Strategic Planning Session Outcomes: Chairman Campbell gave out a handout of the summary of the strategic planning session from the previous day. The structure of the strategic plan was done with the exception of grammar edits. The vision, mission, and values were agreed by the commissioners and staff present at the session. **Commissioner Steele made a motion to accept the strategic plan structure. Commissioner Karimi seconded the motion with all in favor.**

Mr. Haywood added that the next steps are to outline the objectives and actions in an annual work plan format. The strawman for objectives will be discussed with the states including the areas where the jurisdictions would need assistance from ICPRB. Commissioner Skarlew gave an alternate suggestion to form an interest group around each goal. Commissioner Karimi suggested that the ideas be brought up and discussed before the December meeting. Commissioner Hartwell also added that he will work on a list of services to better meet the needs of the stakeholders or more informed and active public. Each commissioner has areas of expertise. He suggested that each commissioner go to their jurisdiction and inquire about expectations. These discussions can be done via a phone call. Chairman Campbell will send the goals to the jurisdictions and a call for each commissioner to sort out their niche before the December meeting. Commissioner Hartwell will contact some Virginia agencies that he is familiar with and use this opportunity to educate in an outreach effort. Chairman Campbell further added that webinars are useful to promote ICPRB without travel. Commissioner Steele requested a communications piece to use for average citizens and legislators or a slogan to remember. Chairman Campbell added that vision and mission statements should be the slogan.

F. Loudoun Water permit impacts on CO-OP: Mr. Haywood summarized the discussions made at the CO-OP meeting prior to the ICPRB business meeting. An agreement was drafted between the Loudoun Water and the CO-OP utilities that ICPRB will sign. A signing event may be scheduled to coincide with the March meeting and to encourage the CO-OP utilities to participate in the Commission meeting as well.

COMMISSIONER'S TIME

Commissioner Hartwell discussed that the Atlantic sturgeon is on the endangered list. The James River sturgeon is a genetically different species from the Potomac River species. Several hundred James River sturgeons have been kept at the Maryland Department of Natural Resources hatchery, the Fish and Wildlife hatchery, and the Genon hatchery. These fish are not of the Chesapeake Bay origin so are not allowed to be released into the Potomac. The entire lot of fish will be destroyed due to a difference in the origin. An article was drafted by ICPRB staff member, Jim Cummins, on behalf of the Commissioners to highlight the issue at hand.

Commissioner Sachs has discussed the sturgeon article with MD DNR and was informed they have no objection. Commissioner Hartwell suggested going to the agencies to publicize the article. Commissioner Karimi asked that those working on the issue to look at all the scenarios and report back to the commission by the next meeting with information on who to talk to and what to do with the specifics. Commissioner Sachs added that a motion is needed for the commission to investigate the possibility of rejuvenating the sturgeon population in the Potomac by seeking information from the signatory parties. With this motion, he can get the names and specific departments. Mr. Haywood added that a draft is proposed to be published with three names, commissioners Sachs, Hartwell, and Reiger. The article draws attention to the issue. He recollects that the letter draws attention to the matter without taking a position.

Commissioner Reiger further added that placing a disclaimer on this article is a concern. Commissioner Hartwell wants a consensus to publish the article. Mr. Bolle replied that the article cannot be published as ICPRB without a formal review of the article by the rest of the commissioners. Commissioner Hartwell added that the letter can be sent to the Executive Committee for approval. Mr. Haywood is not against taking a position but not everyone has seen the article. He suggested that the letter be distributed to all the commissioners with a couple of weeks to review. Chairman Campbell suggested taking email votes after the commission review. Mr. Cummins added that the authorship is from three jurisdictions, commissioners Reiger, Sachs, and Hartwell. He would like a fourth authorship from the District of Columbia. Commissioner Karimi will talk to the DC department and get back with more information. Mr. Bolle suggested that the Chair of the Commission sign if the Commission is to take a position. Commissioner Hartwell added that in addition to the Chair, other jurisdictions' endorsement will add more weight on the matter. **Commissioner Reiger made a motion to approve the letter with the review process described herein. Commissioner Sachs seconded the motion with all in favor.**

Mr. Haywood will look into the next meeting location. Historically, December meetings have been held at the ICPRB office. Pennsylvania Adams County may be a possibility.

Commissioner Kudlas gave a summary of the nominations for the next officers. The Nominating Committee consisted of commissioners Reiger, Zemba, and Kudlas. The Nominating Committee nominated Commissioner Karimi as the next Chair and Commissioner Sachs as Vice Chair. **Commissioner Kudlas made a motion to accept the recommended nominations. Commissioner Reiger seconded the motion with all in favor.**

ADJOURNMENT

The meeting adjourned at 2:29pm.

Minutes Prepared By,
Bo Park
Administrative Officer

Minutes Approved By,
Carlton Haywood
Commission Secretary