

INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

THIRD QUARTER 2022 BUSINESS MEETING June 14, 2022

VIRTUAL MEETING ROCKVILLE, MD

DRAFT MINUTES

CALL TO ORDER: Chairman Lee Currey called the Third Quarter 2022 Business Meeting to order at 9:48am on June 14, 2022. The following commissioners, staff, and guests were in attendance for all or part of the meeting.

Commissioners

District of Columbia

Willem Brakel (Commissioner)
Jeff Seltzer (Commissioner)
Tiffany Potter (Commissioner)
Hamid Karimi (Alt. Commissioner)
Kimberly Jones (Alt. Commissioner)

Maryland

Catherine McCabe (Commissioner)
Lee Currey (Chair, Alt. Commissioner)

Pennsylvania

William Willis (Commissioner)
Adam McClain (Alt. Commissioner)
Lisa Daniels (Alt. Commissioner)

United States

Robert Sussman (Commissioner)

Virginia

Paul Holland (Commissioner)
Scott Kudlas (Alt. Commissioner)
Mark Peterson (Alt. Commissioner)

West Virginia

Mindy Neil (Alt. Commissioner)

Staff

Michael Nardolilli (Executive Director)
Robert Bolle (General Counsel)
Wendy Wang (Dir., Administration)
Cherie Schultz (Dir, COOP Operations)
Curtis Dalpra (Dir, Communications)
Claire Buchanan (Emerita Director)
Carlington Wallace (Assoc. Director of Water Resources)
G. Michael Selckmann (Assoc. Director for Aquatic Resources)
Alimatou Seck (Senior Water Resources Scientist)
Sarah Ahmed (Water Resources Analyst)
Christina Davis (Senior Water Resources Planner)
Stephanie Nummer (Water Resources Postdoc)
Hermela Mengesha (IT Administrator)

Guests

Valerie Cappola (USACE, NAD)
Joel Caudill (WSSC Water)
Greg Prelewicz (Fairfax Water)
Chris Kimple (Rep. Commissioner Moul)
Allison Keller (West Virginia Staff)
Kristina Peacock-Jones (PADEP)
Phillip Musegaas (Potomac Riverkeeper)

1. EXPLANATION FOR VIRTUAL MEETING

Executive Director Mike Nardolilli started the meeting by explaining that this "virtual" meeting is allowed under a revision to the By-laws of the Interstate Commission on the Potomac River Basin (ICPRB) which added Section V(g). That new section was approved by an e-mail vote of the Commission on April 17, 2020, pursuant to Section XIII of the By-laws. Section V(g) permits public meetings by virtual conferencing under the state of emergency declared by either Maryland (the headquarters of ICPRB) or the federal government. The U.S. Department of Health and Human Services renewed its determination on April 12, 2022, that a public health emergency exists and remains in effect.

2. WELCOME, ROLL CALL AND INTRODUCTIONS

Chairman Currey welcomed everyone to the virtual meeting and introduced himself. Due to the nature of the virtual meeting, Mr. Nardolilli called the names of the members, staff, and guests. Those at the meeting acknowledged their attendance during the roll call as shown above.

3. WELCOME TO NEW COMMISSIONERS NEIL & DANIELS

Chairman Currey introduced Alternate Commissioner Mindy Neil from West Virginia as a new Member of the Executive Committee and the replacement for John Wirts who retired from government service on June 1. Commissioner Currey highlighted a few parts of Commissioner Neil's impressive background, including managing the section of the Watershed Assessment Branch responsible for assessing data to prepare the WV Integrated Water Quality Monitoring and Assessment Report, including the 303(d) list of impaired waters, and developing Total Maximum Daily Load (TMDL) restoration plans. Chairman Currey noted that Commissioner Neil also worked in private industry. Chairman Currey asked Commissioner Neil if she would like to say a few words and Commissioner Neil addressed the group.

Chairman Currey introduced Alternate Commissioner Lisa Daniels from Pennsylvania as a new Member of the Executive Committee and the replacement for Kristina Peacock-Jones who has accepted a new position at Pennsylvania's Department of Environmental Protection within the Bureau of Abandoned Mine Reclamation. Commissioner Currey highlighted a few parts of Commissioner Neil's impressive background, including as Acting Deputy Secretary for Office of Water Programs, Director of the Bureau of Safe Drinking, and her participation on and chairing ICPRB's Potomac River Basin Drinking Water Source Protection Partnership. Chairman Currey thanked Commissioner Peacock-Jones for her service on the Commission, including as Vice Chair. Chairman Currey asked Commissioner Daniels if she would like to say a few words and Commissioner Daniels addressed the group.

4. PUBLIC COMMENT: None were made.

5. ADOPTION OR MODIFICATION OF DRAFT AGENDA

Chairman Currey noted that the departure of Commissioner Peacock-Jones has left a vacancy in the position of Vice Chair. Accordingly, Chairman Currey suggested that Item 9B on the Draft Agenda be split into two parts: Section 9B1 to address the election of the Vice Chair; and Section 9B2 to Appoint the Nominating Committee with instructions. **Chairman Currey made a motion to approve the draft agenda as circulated with the above changes, which was seconded by Commissioner Seltzer. All were in favor.**

6. DRAFT MINUTES FROM MARCH 1, 2022

The Commission reviewed the draft Minutes Under Tab 4 of the Commission Book. **Commissioner Karimi made a motion to approve the March 1, 2022, Meeting Minutes as circulated, which was seconded by Commissioner Holland. All were in favor.**

7. SUMMARY FROM EXECUTIVE COMMITTEE (EC) CONFERENCE CALLS (Tab 2)

Mr. Nardolilli gave a brief overview of the Executive Committee meeting held on April 26, 2022 (notes found under Tab 2 of the Meeting Book). Mr. Nardolilli then highlighted an update on the Executive Committee conference call that was held on June 13, 2022, as follows. **The Executive Director notes that the five items identified on the agenda as part of the Executive Director's Report (Agenda Item 8A), the three Status Reports related to the One-Year Anniversary of the June 2021 Resolution**

(Agenda Item 8B), the Lifting of the Swimming Ban (Agenda Item 8D) and filling the Vice Chair position (Agenda Item 9B) are reported later in these Minutes at the appropriate points in the agenda.

A. Executive Committee's Desire to Meet In-Person At the 4th Quarter Commission Meeting

At the Executive Committee Meeting of April 26 there was a strong desire by the Executive Committee to hold the next Commission Meeting (currently set for August 30) in-person as this is the so-called Annual Meeting and Commissioners have not met face-to-face since the beginning of the Pandemic. This view was reinforced at the Executive Committee Meeting on June 13. Commissioner Currey believes that MDE will be able to host the meeting safely in its large conference rooms, but he will need to check on their availability.

B. LFAA Annual Meeting

The Executive Committee received a report on the results of the Annual Meeting of the Low Flow Allocation Agreement which occurred on April 28, 2022. There, it was agreed to increase the per diem of the Moderator to \$700 (from \$500). (Three of the four governing parties obtained the necessary authorizations and that was sufficient to take this action). The Aqueduct designated Peter Grevatt as the Stand-By Moderator but there still is a need to designate a Moderator. [Mark Masters of Albany State University of Georgia was suggested by Staff; Virginia and the USACE are not opposed to this choice and DC will follow Maryland's lead; Mark Masters has not been asked until the informal vetting process is complete]. This choice must be memorialized in a "signed Memorandum" by all the governing parties. Maryland is still in the process of vetting this choice. It was suggested that the choices be "flipped" and have Mr. Grevatt serve as Moderator but there was no consensus on this point.

8. OLD BUSINESS

A. Executive Director's Report (Tab 6, Att. 1)

Mr. Nardolilli went through his report (Tab 6) with a focus on the following five items.

Travilah & WRDA 2022

Mr. Nardolilli reported that at its meeting on April 20, the Supplemental Storage Workgroup (SSWG) heard a presentation from Bridget Lawson of the Staff of Congresswoman Eleanor Holmes Norton. Recently, Congresswoman Norton was able to secure language in the House version of the Water Resources Development Act of 2022 (WRDA) authorizing a feasibility study of a secondary water source for the Washington Aqueduct. As a result, both WTOP and Fox5 TV News contacted ICPRB for comment and Mr. Nardolilli was interviewed by both news outlets. On May 18, 2022, the House Transportation and Infrastructure Committee reported out the House version of WRDA 2022. We understand from Mike Kane of the Senate Committee on Environment and Public Works that "if the [supplemental storage] provision is in the final House bill," it is "likely" to survive Conference with the Senate. Bridget Lawson of Congresswoman Norton's Office tells us that once the provision is authorized, Congresswoman Norton will work to make sure that funding for the study is included in the President's FY2024 Budget and in the appropriations bill. On May 20, Rudy Chow, the General Manager of the Washington Aqueduct made the same points that Mr. Nardolilli did in his interviews with various news outlets. Because of the likely continuing interest by the media, the core group of the SSWG will be forming a "Communications Committee" to coordinate messaging. The next meeting of the SSWG is set for July 27. Moreover, we have executed a contract with Delta Point Solutions to calculate the downside cost of not moving forward with our project. The "Kick-Off" Event for that project was held on April 25

and the project team of Dr. Tonya Thornton and Dr. Terry Clower should be able to report their preliminary findings at the next Commission meeting on August 30. Finally, on May 19, ICPRB Staff participated in a meeting convened by Catherine Libertz, the Director of the Water Division of the EPA, that brought together EPA officials and interested partners to discuss the secondary water source further, including funding, intergovernmental coordination, and other matters. Ms. Libertz and Rudy Chow agreed to continue discussions “off-line” to compare notes on available sources of funding.

Jurisdictional Funding Activities Update

Mr. Nardolilli detailed the funding from the signatory Jurisdictions. Virginia, Pennsylvania, and DC have not finished work on their budgets. We have asked Commissioners Moul, Willis and McClain to assist in PA. MD and WV have approved “full funding” of our requests. On the federal level, ICPRB has joined with the other two Mid-Atlantic River Basin Commissions (the Susquehanna River Basin Commission and the Delaware River Basin Commission) (collectively the RBCs) in submitting a request to Senator Casey for congressionally directed spending (CDS) to the Senate Appropriations Committee. [ICPRB is requesting \$650,000]. (Senator Casey was chosen because Pennsylvania is part of all three RBCs). Senator Casey has formally requested funding from the Appropriations Committee for all three RBCs. Staffs of two of the three Potomac Basin Senators on the Appropriations Committee (Van Hollen & Manchin) have indicated their support for Casey’s request. There has been no response from Senator Capito.

ICPRB PFAS Conference Update

Mr. Nardolilli reported on the status of this Conference entitled *The Potomac River Conference: A Conversation on PFAS* which will be held on September 22, 2022. (This is part of our Strategic Plan). Fairfax Water has offered the large capacity Griffith Water Treatment Plant conference room. A Draft Agenda has been developed that features a Keynote Address by Adam Ortiz (Regional Administrator for EPA Region 3) and remarks on PFAS and Environmental Justice by Commissioner Jones. Other speakers include Jennifer Benjamin of Corona Environmental Consulting, Vicki Blazer & Emily Majcher of the USGS, Alice Fulmer of the Water Research Foundation, Rosa Gwinn of AECOM, and Phillip Musegass of the Potomac Riverkeeper Network. A highlight of the event will be a Panel Discussion among the Potomac Basin Jurisdictions moderated by Sarah Grace Hughes of the Environmental Council of States featuring Commissioner Currey from Maryland, Jeffery Steers from Virginia, and Commissioner Daniels from Pennsylvania. ICPRB’s Christy Davis noted that we are still awaiting confirmation for speakers from DC and West Virginia. This is timely as EPA will announce on June 15 certain Health Advisories relating to PFAS and relevant Talking Points. Registration for the conference will be open in early July.

Staff Compensation

Mr. Nardolilli advised the Commissioners that we have put out an RFP for a Comparison Compensation Study. ICPRB last did such a study in 2015 and “best practices” indicate that we should do such a study every five years. Recent inflationary pressures have highlighted the need to be competitive in the marketplace.

Office Space/Move

Mr. Nardolilli briefed the Commissioners on our discussions regarding the office space for the Commission Staff. Our Lease which expires at the end of 2024. Because of the Owners’ desire to change the buildings into a “life sciences campus” they have offered us the option of terminating our lease early without penalty. Mr. Nardolilli is discussing our current space needs with our brokers (JLL) and has narrowed our search down to two locations in Rockville, MD.

B. One-Year Anniversary of the June 15, 2021 Resolution: Status Reports

Chairman Currey stated that because it has been one-year since the Commission adopted the June 15, 2021, Resolution, he thought it appropriate to get a Status Report on each of the three major activities identified in the Resolution: the Low Flow Allocation Agreement (LFAA) Workgroup, the Environmental Flow-By Workshop, and the Water Supply Coordination Agreement (WSCA) Task Force.

LFAA Workgroup

As the Chair of the LFAA Workgroup, Commissioner McCabe reported on the substantial progress made by the group in examining the ten issues identified in the “Review of the Potomac River Low Flow Allocation Agreement,” dated February 23, 2018 (the so-called Cruden Report”). Commissioner McCabe noted the consensus on two of the issues: (1) that the LFAA should continue; and (2) that the roles of the Member and Governing Parties should remain “as is.” Because the Commission had no objection to either conclusion, Commissioner McCabe indicated that “the boxes had been checked” on both issues. Continuing in the prioritization of issues, Commissioner McCabe noted that revising the language relating to the Moderator and the so-called Technical Changes are nearing consensus and should be completed by the end of the month. Commissioner McCabe did request some feedback on whether the Moderator’s Decision should be subject to Mediation. Speakers noted the need to reach a decision quickly in times of drought and so argued against any mediation process. Requiring the Moderator to have some mediation experience was one way to address this. Commissioner McCabe also asked for guidance on whether the Commission would want to examine the issues “piece meal” or all at once. The consensus was for the Workgroup to present its results on the four issues identified at the August 30 meeting. Commissioner McCabe indicated that the next issue for the Workgroup to address would be the environmental flow-by, to be informed by the results of the Environmental Flow-By Workshop.

Environmental Flow-By Workshop

ICPRB’s Claire Buchanan reported on the successful results of the two-day Workshop which began on May 5. Presenters were asked to focus on two questions: (1) Are there other approaches for determining environmental flows in large, relatively unregulated rivers like the Potomac? And (2) If there are, what data, analysis tools, and assessments are needed to make a scientifically defensible change? During Day 2, held on May 17, Andrew Roach of USACE moderated a panel that offered their comments on the May 5 presentations. A wide range of viewpoints were represented at the Workshop. The preliminary view of ICPRB Staff is that the answer to question 1 is “Yes.” There was a great deal of interest in using the Structured Decision-Making approach suggested by Dr. Kyle McKay. As to the second question, it appears that new data to assess recent hydrology, hydraulics, habitat and possibly water quality in the Gorge are currently being collected. New tools have been developed by various agencies. What is lacking is biological data during low flow periods and updated assessments of biological communities in the Gorge after the opening of the “door” of the Little Falls Dam fish passage (post 2000). Dr. Buchanan presented six possible avenues for additional research, modeling, and assessments. The schedule is for a draft report to be sent to Speakers, Panelists, and the Planning Committee for comments by June 15th. The next step is for the Draft Report to be sent to all workshop participants and Commissioners to review with the goal of making the Final Report available by July 1.

WSCA Task Force

ICPRB’s Cherie Schultz noted that WSCA Task Force has not been formed yet due to the lack of available Staff at ICPRB and the various agencies. In addition, it was decided to devote the necessary resources to the other two aspects of the June 15, 2021, Resolution. Dr. Schultz noted that there are many problematic aspects with the WSCA that warrant careful consideration after August.

C. Work Group on Justice, Equity, Diversity, and Inclusion (JEDI)

Commissioner Jones reported on the efforts of the Work Group which met last on May 9. The group is “agnostic” to whether the JEDI name should be kept or changed to DEI. The finalization of their report was postponed until representatives of the other jurisdictions joined the group. Commissioner Jones highlighted a few activities that were being planned. Commissioner Jones noted that the group will meet prior to the Commission’s August 30 meeting with all who could attend and finalize their Report to the Commission for discussion and adoption at the August 30 meeting. Commissioner Currey agreed to help circulate the drafts among Commissioners prior to then.

D. Operations Report

Contracts & Financial Report (Tab 6, Att. 2)

Mr. Nardolilli presented the Contracts and Financial Reports which was shown under Tab 6 and summarizes the position of ICPRB as to Grants & Contracts, Vendor Contracts, Cash Accounts, Total Assets, Accounts Receivables, Income Statement, and Balance Sheet. Mr. Nardolilli noted that there were no withdrawals from the ICPRB Reserve Account. All is as anticipated.

Unit Reporting (Tab 7)

Mr. Nardolilli asked two of the Unit Directors to give the highlights from their recent work. Carlington Wallace, the Associate Director of Water Resources and Curtis Dalpra, the ICPRB’s Communication Manager reported on their Units. More details are found in Tab 7 of the Commission Book.

Spotlight Program

Curtis Dalpra provided a historical background on swimming in the Potomac River including ICPRB’s efforts to encourage lifting the ban on swimming in DC waters in the 1970s. Commissioner Sussman offered a motion to instruct ICPRB Staff to issue a press release to encourage DC to move towards modifying the ban as appropriate. Commissioner Seltzer noted that the District is already moving aggressively in that direction and requested that any action by ICPRB be postponed until the District has had time to complete their review of all the data and issues raised. Chairman Currey noted that there may be an ideal time for engagement by ICPRB in the Spring of 2023 prior to the beginning of swimming season. Accordingly, Commissioner Sussman tabled his motion.

9. NEW BUSINESS

A. Resolution Honoring John Wirts (Tab 5, Att. 1)

Chairman Currey presented a Resolution honoring John Wirts and read the Resolution that was in the Commission Book at page 43. Chairman Currey noted that John has been a West Virginia Alternate Commissioner to the ICPRB from September 1, 2017, to May 31, 2022, and served on the Executive Committee and as Chair of the Commission in 2020. **Commissioner Brakel made a motion to adopt the Resolution as circulated except that it should be signed by the Chairman of the Commission. Commissioner Kudlas seconded the Motion. All were in favor.**

B1. Election of Vice Chair

Chairman Currey explained that the Executive Committee discussed how to fill the vacancy in the Vice Chair position and stated his appreciation to Commissioner Daniels for her willingness to step forward and be considered as Vice Chair. Chairman Currey noted that this issue is linked to the question of successorship of the Chair position at the Fourth Quarter meeting in August. Under the Commission Bylaws, the Chair and Vice Chair are to be rotated among the member bodies in the following order: West Virginia, District of Columbia, Maryland, Pennsylvania, the Federal Government and Virginia. Chairman Currey noted that at the Fourth Quarter Meeting, normally the Chair would be elected from Pennsylvania and the Vice Chair from the Federal Government. The Executive Committee noted, however, that the upcoming gubernatorial election in Pennsylvania has raised a doubt as to whether the person elected as ICPRB Chair in August will still be in the appropriate office in January 2023. Accordingly, the Chair suggested a two-fold approach to maximize continuity and flexibility: (1) the election of Commissioner Daniels as Vice Chair to fill out the remaining term until August; and (2) the Nominating Committee be instructed to consider the need of ICPRB for continuity and stability in the Chair position and come back with a recommendation at the August meeting as how best to proceed. This may include “switching the years” of Chair so that a representative of the Federal Government be elected as Chair for FY23 with a Pennsylvanian perhaps serving as Chair in FY24. **Commissioner Kudlas made a Motion to elect Lisa Daniels as the Vice Chair to serve the remainder of current term until August. Commissioner McCabe seconded the Motion. All were in favor.**

B2. Appointment of Nominating Committee with Instructions

After further discussion, Chairman Currey asked for a Motion as to the second component above. **Commissioner Holland made a Motion to appoint the Nominating Committee (Commissioners Karimi, Holland, and Seltzer) and instructing them to report back at the Commission’s Fourth Quarter meeting with their determination as to the correct order of who will fill the role of Chair and Vice Chair to best ensure continuity for the Commission. Commissioner Potter seconded the Motion. All were in favor.**

C. FY2022 Budget Amendment #3 (Tab 5, Att. 3)

Mr. Nardolilli explained that because all changes over \$20,000 need to be recorded as changes to the Budget, every Quarterly Meeting usually involves a minor “Budget Amendment” to reflect these changes. Mr. Nardolilli pointed out one change was an increase in Grants and Contracts (Non-EPA). **Commissioner Karimi made a Motion to adopt the Budget Amendment as presented that was seconded by Commissioner Daniels. All were in favor.**

D. FY2023 Framework Budget (Tab 5 Att. 4)

At the 3rd Quarter Meeting each year, a “Budget Framework” is adopted by the Commission to provide guidance to the Staff in crafting the actual budget for FY23 that will be presented at the Commission’s 4th Quarter Meeting. Mr. Nardolilli noted a few of the minor changes between the recently adopted Budget Amendment #3 and the proposed Framework Budget that serves only as a guide in preparing the FY23 Budget that will be adopted by the Commission at its August meeting. **Commissioner McCabe made a Motion to adopt the Framework Budget that was seconded by Commissioner Holland. All were in favor.**

E. Presentation of Audit (Tab 5, Att. 5)

Commissioner Holland presented the Annual Audit that has been approved by the Audit Committee. Commissioner Holland noted that this year’s Audit broke out the CO-OP Section in more detail. It was a “clean” Audit. Commissioner Kudlas congratulated Staff in getting another clean audit. **Commissioner Kudlas made a Motion to accept the Audit which was seconded by Commissioner Potter. All were in favor.**

10. NEXT MEETING DATE: August 30, 2022.

Commissioner Currey offered that the Maryland Department of the Environment could act as host for holding the Fourth Quarter meeting in Baltimore. Chairman Currey expressed his preference for an in-person meeting and instructed Staff to conduct a survey of Commissioners to see how many would be able to attend the meeting in-person.

11. FOR THE GOOD OF THE ORDER AND ADJOURNMENT

Chairman Currey expressed his appreciation for all the hard work done by Commissioners and Staff. With no further business to transact, Chairman Currey asked for a motion to adjourn. **(Motion made by Commissioner Karimi, Seconded by Commissioner Potter). All were in favor.** Accordingly, the Commission adjourned at 12:08pm.

Minutes Drafted, Edited, Approved, and Submitted By: Michael Nardolilli, Recording Secretary
