

# INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN

## FIRST QUARTER FY2023 BUSINESS MEETING December 6, 2022

### VIRTUAL MEETING ROCKVILLE, MD

### APPROVED MINUTES

**CALL TO ORDER:** Chair Robert Sussman called the First Quarter FY2023 Business Meeting to order at 9:45am on December 6, 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)  
James Tsai (Alt. Commissioner)  
Kimberly Jones (Alt. Commissioner)

##### Maryland

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

##### Pennsylvania

William Willis (Commissioner)  
Adam McClain (Alt. Commissioner)  
Susan Weaver (Vice Chair, Alt. Commissioner)

##### United States

Robert Sussman (Chair, Commissioner)  
Darryl Madden (Commissioner)  
Amy Guise (Alt. Commissioner)

##### Virginia

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

##### West Virginia

Mindy Neil (Alt. Commissioner)

#### Staff

Michael Nardolilli (Executive Director)  
Cherie Schultz (Dir, COOP Operations)  
Curtis Dalpra (Dir, Communications)  
Heidi Moltz (Dir, Program Operations)  
Sarah Ahmed (Water Resources Analyst)  
Renee Bourassa (Outreach Program Manager)

#### Guests

Valerie Cappola (USACE, NAD)  
Anastasiya Kononova (USACE)  
Joel Caudill (WSSC Water)  
Greg Prelewicz (Fairfax Water)  
Chris Kimple (Rep. Commissioner Moul)  
Andrian Bouknight (PA DEP)  
Jeffrey Bailey (WV DEP)  
Peter Johnson (Hunton Andrews Kurth, attorney for  
Fairfax Water)

## 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 October 13, 2022, that a public health emergency exists and remains in effect.

## **2. WELCOME, ROLL CALL AND INTRODUCTIONS**

Chair Sussman 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 or were identified from the log of the attendees at the virtual meeting.

**3. PUBLIC COMMENT:** None were made.

## **4. ADOPTION OR MODIFICATION OF DRAFT AGENDA**

Chair Sussman asked if there are any changes to the agenda as circulated. Commissioner McCabe requested that the Agenda Item relating to the Phase 1 Report of the LFAA Workgroup be changed from “approval” to “updates.” **Commissioner McCabe made a Motion to so modify the agenda which was seconded by Commissioner Potter. All were in favor.** Chair Sussman asked if there were any other changes to the Draft Agenda as circulated but none were suggested. **Commissioner Holland made a motion to approve the draft agenda as revised, which was seconded by Commissioner Currey. All were in favor.**

## **5. DRAFT MINUTES FROM AUGUST 30, 2022**

The Commission reviewed the draft Minutes the last meeting under Tab 4 of the Commission Book. **Commissioner Kudlas made a motion to approve the August 30, 2022, Meeting Minutes as circulated, which was seconded by Commissioner Potter. All were in favor.**

## **6. SUMMARY FROM EXECUTIVE COMMITTEE (EC) CONFERENCE CALLS**

Mr. Nardolilli gave a brief overview of the Executive Committee meeting held on October 18, 2022 (notes found under Tab 2 of the Meeting Book). Action items from that meeting included the following. First, the Executive Committee decided to hold the December 6 meeting of the Commission virtually. Second, the Executive Committee recommended that the full Commission appoint Members of a permanent committee on Diversity, Equity, Inclusion, and Justice (DEIJ), pursuant to the Report of the DEIJ Workgroup. Finally, the Executive Committee approved the goals of the Executive Director for FY23.

Mr. Nardolilli then highlighted four actions from the Executive Committee conference call that was held on December 5, 2022. First, the Executive Committee reaffirmed its commitment to “open and transparent communications” as set out in the Values section of the current Strategic Plan. Second, the Executive Committee agreed with the suggestion from Commissioner McCabe that the Phase 1 Report of the Workgroup on the Low Flow Allocation Agreement (LFAA) be tabled for more discussion. Third, the Executive Committee noted that because the draft Lease on 401 N. Washington Street was still being negotiated, the Executive Committee recommended that the Commission delegate responsibility to the Executive Committee to finalize the Lease and authorize its execution. Fourth, the Executive Committee adopted the recommendations contained in the SmithPilot Report to set a new salary structure for ICPRB (based upon the Focused Survey Median) and separately established the compensation of the Executive Director. The Executive Committee understood that this increase in salaries will be paid for from the 18-

Tab 4, Attachment 2

March 7, 2023, ICPRB Commission Book

month rent abatement of the new lease and from the ICPRB operating surplus from previous years. The salary changes will be reflected in a Budget Amendment to be adopted by the Commission at its December 6 meeting.

## 7. OLD BUSINESS

### A. Executive Director's Report

Mr. Nardolilli went through some highlights of his report (under Tab 6) supplemented by activities after the Report's date of November 15, 2022. Mr. Nardolilli noted that at the August meeting, Commissioners deviated from the "regular order" of the Commission's leadership by designating a Chair from the federal government for FY23. It is anticipated that the Commission will return to regular order in FY24 and FY25, with the selection of Chairs from Pennsylvania and Virginia respectively. Mr. Nardolilli noted that in January, Wes Moore will replace Governor Larry Hogan as a Commissioner by operation of Maryland law. Hermela Mengesha of ICPRB submitted her resignation.

#### **New Office Lease**

Nardolilli indicated that JLL, our brokers, have been busy identifying new office space for ICPRB because our current lease expires at the end of 2024. Our current landlord has agreed to allow us out of the current lease without penalty. After a thorough process, we have selected 401 N. Washington Street in Rockville as offering the best deal for our relocation. Staff has been involved in the layout of the new office space which envisions a continuation of our current telework policy. On the advice of our General Counsel, we have retained outside counsel who has reviewed the draft lease and suggested some changes that are being considered by the new landlord. If the new lease is approved, Staff is looking to relocate in the late Spring/Early Summer of 2023. Our current rent at 30 West Gude is \$18,416.58. Savings from the New Lease: 18 months of free rent or approximately \$331,498.44. New Monthly Rent After Rate Abatement: \$16,128. Savings going forward: \$27,462.96/year. Nardolilli reported that at its meeting of December 5, the Executive Committee discussed the not-yet-final new lease at its meeting on December 5 and recommended that the Commission delegate to the Executive Committee the finalization of the new lease and authorize its execution. **Commissioner Currey made a motion that the Commission delegate to the Executive Committee the finalization of the new lease and authorize its execution, which was seconded by Commissioner Kudlas. All were in favor.**

#### **Compensation Report**

Nardolilli reported that ICPRB hired SmithPilot to conduct a review of ICPRB's salary structure and compensation. That report indicated that salaries at ICPRB have fallen far behind the market jeopardizing retention of the talented Staff and recruitment. (Our year-long effort in trying to hire an Office Manager illustrates the latter point). Based on public information and a focused survey, SmithPilot has calculated three salary structures: (1) "Salary Survey Median;" (2) "Focused Survey Median," and (3) a "Proposed Salary Structure Midpoint." **Nardolilli reported that the Executive Committee adopted the recommendations contained in the SmithPilot Report to set a new salary structure for ICPRB (based upon the Focused Survey Median) and separately established the compensation of the Executive Director.** The total salary amounts adopted in the FY2023 Framework Budget was \$1,701,988. If the Executive Committee adopts the Proposal, the salary component of the Budget would need to be adjusted by an additional \$182,469.23. This increase in Staff salaries will be financed by the savings in rent from the new lease (see above). After that, there would be a gradual drawdown of the ICPRB Operating Surplus that has been accumulating for the past 3 ½ years from belt-tightening at ICPRB and the investment strategy adopted by the Commission. (For example, doing without an Office

Manager saved ICPRB approximately \$100,000 in CY2022). ICPRB's current Operating Account Surplus is \$1,610,740.01. This is in addition to our Reserves and dedicated funds. In the "out years," the new Strategic Plan will emphasize fundraising and the diversification of revenue streams for ICPRB. Importantly, making this market rate adjustment to salaries will involve no increase in the assessments from the jurisdictions. **Nardolilli added that the only Commission action on this will be the consideration of the Budget Amendment #1 later in the agenda to modify the Budget to reflect the action of the Executive Committee.**

### **Travilah and WRDA 2022**

Nardolilli gave an update on recent successes. We have been working with many partners, including the Banner Public Affairs Group, who has been retained by the Metropolitan Washington Council of Governments, to authorize a study to address the need to make the DC-area water supply more resilient. The Senate passed a version of WRDA that did NOT include our provision; The House passed a different version of WRDA that DID include our provision; The House and Senate have been meeting for the last few months to conference the bill and reconcile the differences. Nardolilli confirmed today that our provision has made it into the conferenced bill. The conferenced bill text will be made public shortly. The conferenced bill will be voted on this week in the House. No amendments will be allowed so there will be no changes to our provisions. The conferenced bill will then be voted on in the Senate. Again, no amendments will be allowed so there will be no changes to our provisions. This is likely to happen the week of Dec 12. Once the same exact text has passed both the House and Senate, the bill goes to the President for signature. In January, we move on to getting the study appropriated. **[Commissioner Tsai requested that we invite a representative of Banner to a meeting of the Commission].** We had hoped to present to the Congress the results of the study we commissioned from Delta Point Solutions to calculate the impact of losing the Potomac River as a source of drinking water. The Executive Committee was briefed on the status of that report on December 5. More work needs to be done by Delta Point before their results can be circulated.

### **Office Manager Position**

Nardolilli advised that we are still actively seeking a replacement for our Director of Administration (now re-classified as an Office Manager). We have retained Parker Lynch, a search firm, to assist us. A new candidate performed well during their first interview, and we are scheduling them for second interviews. Our IT Administrator, Hermela Mengesha, recently submitted her resignation.

### **Increased Outreach**

Nardolilli indicated an increase in ICPRB's outreach efforts because of the slowing down of COVID-19 cases. For example, we have now held several well-attended "Walk-in-the-Woods" events. Moreover, ICPRB Staff has been attending more conferences in person. The Annual Meeting of the Potomac River Basin Drinking Water Source Protection Partnership (DWSPP) was held in person. Similarly, Nardolilli attended the EPA Region 3 State Directors Meeting last month. Nardolilli will be speaking at the Maryland Water Monitoring Council on December 15.

## **B. Progress on June 2021 Resolution**

### **Phase 1 Report of the LFAA Work Group Next Steps for the LFAA Work Group**

Catherine McCabe reported on the latest developments of the Low Flow Allocation Agreement (LFAA) Workgroup. Commissioner McCabe noted that the Workgroup divided its work into two Phases. Phase 1 would make changes to the wording of the LFAA pursuant to the Cruden Report and Phase 2 would address the Environmental Flow-By and the issue of upstream users. The Workgroup has produced a draft of the Phase 1 Report (dated November 15) that was transmitted to the Commission (found under Tab 6). That Report showed the Workgroup had reached an agreement on eight of the ten major issues identified in the Cruden Report. Moreover, there is a draft of the LFAA that reflects these changes. Commissioner McCabe indicated that on November 28, the group reached an agreement on another issue by deciding not to seek to bring in “upstream users” such as Loudoun Water and West Virginia. The one remaining issue is how to handle the environmental flow-by which remains under discussion. Commissioner McCabe reported that a subgroup of the LFAA Workgroup is developing a “straw draft” of a scope of work for discussion purposes. Accordingly, Commissioner McCabe requested that the Commission table the Workgroup’s recommendation that were contained in the November 15 Report with one exception. The parties agree regarding new provisions governing the selection of the LFAA Moderator, such as the selection criteria, the minimum qualifications, and the term of service. Because the LFAA does not need to be modified for these provisions to be operational, the selection of a new Moderator can proceed under these new guidelines. Currently, Maryland has been informally given the lead to nominate the Moderator. Chair Sussman agreed with Commissioner McCabe’s recommendations and noted that he remains confident that the Phase 1 recommendations will eventually be adopted.

**[Commissioner Jones was not available to discuss the DEI/J Report at this point but because it was addressed shortly thereafter, it is included here in its original order from the agenda].**

## **C. DEI/J Committee Members**

One of the recommendations of the Diversity, Equity, Inclusion and Justice (DEIJ) workgroup (formerly known as JEDI) was to establish a permanent DEI/J committee. At its meeting of December 5, the Executive Committee recommended that the Commission do so. Commissioner Jones presented a list of Members for appointment that was included in the Commission Book under Tab 6 as follows:

### **Members:**

- Kimberly Jones Ph.D., Chair (DC)
- Heather Barthel (MD)
- Curtis Dalpra (Staff)
- Paul Holland (VA)
- Darryl Madden (Federal)
- Mindy Neil (WV)
- Jeffrey Seltzer (DC)
- James Tsai (DC)
- William Willis (PA)

**Commissioner Jones made a motion to appoint the above Members to the DEIJ Committee which was seconded by Commissioner Holland. All were in favor.**

## **D. Operations Report**

### **Contracts and Financial Report**

Mr. Nardolilli gave the “Contracts and Financial Report” found under Tab 6 of the Commission Book. Nardolilli identified two new contracts (with James Smith and Policy Works) and noted that there were no withdrawals from the Reserve Account.

### **New Communication Tools**

At this Commission Meeting, Staff used the usual “Spotlight” section to highlight the ICPRB’s new communication tools. Renee Bourassa presented a series of interactive online maps that will help engage both water resources professionals and the public in Basin data and resources. Links to each of the interactive features can be found under Tab 6 of the Commission Book.

### **Tab 7 Reports**

Two of the other Units presented highlights of their activities during the First Quarter. Heidi Moltz briefed the Commissioners on the planning process to update the Comprehensive Plan’s milestones and measures of success. Dr. Moltz noted that a contract has been fully executed with Policy Works for facilitation services for the 2023 advisory committee. In addition, Dr. Schultz gave a short presentation on the daily drought monitoring that the CO-OP Section did in the Fall when the Potomac’s flow at Point of Rocks dropped below 2,000 cfs.

## **8. OLD BUSINESS**

### **A. Revising the Strategic Plan**

Nardolilli advised the Commission that the current Strategic Plan runs from 2020 to 2023. (See Tab 5, Att. 1). Last time, Commissioners Brakel, Wirts, Currey, Peterson, and Tsai helped lead the effort to write the Plan which focused on complementing and supplementing the 2018 Comprehensive Plan. Staff asked for volunteers to guide the development of a new strategic plan and Commissioners Brakel and Peterson agreed to help. It was noted that the review of the Comprehensive Plan and the revision of the Strategic Plan should be coordinated.

### **B. Topic for the 2023 Potomac River Conference**

It was noted that the current Strategic Plan calls for “Reinstituting an Annual Potomac Conference.” Last year, ICPRB held the highly successful “Conversation on PFAS” as the first of these conferences. Heidi Moltz explained that Staff had met and decided that this year’s conference should be “Climate Change in the Potomac River Basin” and welcomed suggestions for speakers from the Commissioners.

### **C. FY2023 Budget Amendment #1**

Nardolilli presented Budget Amendment #1 to the FY2023 Budget (found under Tab 5 of the Commission Book). Commissioners will recall that the 2023 Budget was unchanged from the “Framework Budget” adopted by the Commission in June. Nardolilli will point out that the major change this time is to increase the salary line in the budget to accommodate the new salary structure adopted by the Executive Committee on December 5. **Commissioner McCabe made a motion to adopt Budget Amendment #1 as circulated which was seconded by Commissioner Guise. All were in favor.**

### **9. NEXT MEETING**

After discussion, it was the consensus of the Commission that the next meeting of the Commission be held in person (with a hybrid option) at the Commission’s offices in Rockville.

### **10. FOR THE GOOD OF THE ORDER AND ADJOURNMENT**

With no further business to transact, Chairman Sussman asked for a Motion to Adjourn. **Commissioner Weaver made such a motion which was seconded by Commissioner Neil. All were in favor.**

Accordingly, the Commission adjourned at 11:58am.

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