

**CHESAPEAKE BAY PROGRAM**  
**WATER QUALITY GOAL IMPLEMENTATION TEAM**  
July 13, 2015 CONFERENCE CALL  
**MINUTES**

Summary of Action and Decision Items

ACTION: WQGIT members should submit GIT project funding ideas to Lucinda Power ([Power.Lucinda@epa.gov](mailto:Power.Lucinda@epa.gov)) by July 31.

ACTION: Jurisdictional representatives should each send a summary write-up to David Wood ([Wood.DavidM@epa.gov](mailto:Wood.DavidM@epa.gov)) on their current or planned efforts to engage local governments during the development of their BMP verification program plans.

ACTION: Please review the Phase 5.3.2 Nutrient Management Panel report and provide feedback to the panel chair, Chris Brosch (cc Emma Giese and Mark Dubin), in track-changes format by July 29.

ACTION: Jurisdictions should reply to the call for data on local reservoirs and impoundments that will be included in the Phase 6 Watershed Model. Data should be sent to Lewis Linker ([llinker@chesapeakebay.net](mailto:llinker@chesapeakebay.net)) by September 7.

DECISION: The WQGIT approved the Shoreline Management expert panel report pending two edits to the executive summary that place greater emphasis on the potential for unintended consequences resulting from shoreline management practices.

DECISION: The WQGIT approved the revisions to the BMP Protocol.

ACTION: David and Lucinda will work to communicate the impacts of the new BMP Protocol revisions on existing and recently formed BMP expert panels with the panel and sector workgroup coordinators.

ACTION: Lucinda Power will contact the WQGIT membership with the decision making process options and ask for preferences by July 24.

Welcome/Confirm Call Participants/Updates – James Davis-Martin, Chair

- James convened the call and verified participants.

**Updates:**

- The Phase 5.3.2 Nutrient Management Panel report was [posted](#) and emailed out to the WQGIT and its advisory committees on June 25. Additionally, a webinar was held on July 1 to provide an overview of the content of the report. The webinar was recorded and is also available [online](#). The comment period is open until July 29 and everyone is encouraged to submit their comments as part of this initial comment period. There will be a briefing on the panel recommendations during our August 10 WQGIT call, which

should give a general sense of the comments that were received and how they will be addressed.

- All jurisdictions have submitted their draft verification program plans. The BMP Verification Review Panel is currently reviewing the plans and are scheduled to meet on July 30-31 to compile their reviews and provide their initial feedback to the jurisdictions.
- Draft historical data cleanup was due on June 30, and most jurisdictions have supplied data for their nonpoint sources, and a few provided point source data. If you still have outstanding data submission requirements, try to submit that as soon as possible.
- Gary Shenk's position has shifted from EPA to USGS, but there will be no change to the leadership of the Watershed Model, nor to the operations of the Modeling Workgroup.
- Emma Giese (CRC) is moving on to graduate school at UMD in August, so we want to thank her for all of her work.
- There was a data call sent out to WQGIT membership and workgroups soliciting input for GIT project funding. Projects should be mostly associated with implementation of the new Bay Agreement and the Management Strategies. If you have project ideas please submit them to Lucinda by the end of July so they can be organized and prioritized by the GIT prior to our meeting on August 10. We can finalize our priorities during the August 10 call.
- Following our last conference call, Lew Linker (EPA, CBPO) issued a data call for local impoundments. It requests that we look at the list of reservoirs that will be incorporated into the Phase 6 Watershed Model and see where we have more information on their size and discharges, and provide that improved data. The original deadline for submitting that data was August 7, but to allow for more time to collect this information, the deadline has been extended to September 7.
- Mary Gattis (LGCA): LGAC members would like more clarity on the process being followed by jurisdictions with respect to engaging local governments during the development of their verification program plans. The hope is that by working with local governments, jurisdictions can ground-truth their protocols to make sure they are reasonable.
  - Sarah Diebel (DOD): I would like to second that request from the federal agency perspective.

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#### Shoreline Management Report – Bill Stack, CWP

- Bill provided an [update](#) on the revisions to the Shoreline Management BMP Expert Panel Report based on comments received to date.

#### **Discussion:**

- Bill Stack (CWP): The primary remaining issue is the expert panel's dissenting opinion on unintended consequences. The question is to what extent should credit for a very highly used and effective BMP be debited or not allowed due to the potential consequences for existing or historic SAV beds. In conversations with Lee Currey (MDE) and James Davis-Martin (VA DEQ), we decided to add language, in as many places as is applicable, to explain that state and local agencies should consider and use caution when selecting practices that could impact SAV or other natural resources.
- Lee Currey (MDE): Thanks for working with us through this process, Bill. The concern for Maryland was to ensure the unintended consequences were made more prominent in the report. From a science perspective, the report is doing its best to account for the sediment reductions. Separately, there is a policy question over not wanting to incentivize a practice that could be detrimental to achieving other water quality goals. We decided it wasn't appropriate for the expert panel report to make that policy decision, so this solution leaves that up to the jurisdictions.
  - Davis-Martin: Exactly. When I stood back last time and looked at the two dissenting views expressed, I thought the report was at an impasse. Thank you, Bill, for working with us and finding what I think is a creative and appropriate solution to the issue. Putting the responsibility onto the jurisdictions seems to me to be the right approach. It will force us to strike a balance between unintended consequences with the need to reduce nutrients and sediment.
- Dianne McNally (EPA): I want to make sure I understand the proposal on the table. How will Maryland and Virginia decide which practices get credit and which do not? It is left up to them according to this version of the report, but I would like to see a clear decision tree incorporated into this document that makes it clear how those decisions are being made. Forty percent of the panel dissented on this, so it is a contentious issue and it seems that we should decide now if, how, and when they should be installed, before these practices get put in place and given credit.
  - Currey: We struggled with this internally, and we have the understanding that the necessary pieces are in place to ensure this practice isn't used in the wrong locations. However, I don't know if a clear decision tree is available. It is important to recognize that there was a lot of dissention on the panel, and we want to also account for what is on the ground. I separated the policy and the science out because the panel is trying to bring the best science forward so we can make

the best policy decision. Ultimately it is up to the jurisdictions to make policy and regulatory decisions.

- McNally: I hear what you are saying, but the statements added in this version of the report say that a decision will be made by the states as to whether or not a practice will be given credit. Maybe it isn't part of this document, maybe we need a separate document that outlines how credit will be given for these practices. I understood the charge to be to define nutrient and sediment reductions and I think they have done that, but I think there is also an integration of science and policy happening here and that it would be useful to the implementers to know when they would be given credit.
  - Davis-Martin: I don't think we can do that in this document. I think it would be such a site-specific decision. Recognize that these structures don't just pop up. There are state, local, and federal requirements in place for them to be implemented. They may permit something we wouldn't want to give credit for because of unintended consequence but the permit system doesn't separate that out. It would have to be on a case-by-case basis.
    - Currey: I would agree with that. I talked to our permitting folks to work through this, but it isn't a simple decision tree. There may be site-specific situations where you are required to protect a property and the practice may go in. I question the terminology, maybe it is accurate to provide credit, but we don't want to incentivize it. There is crediting versus accounting, and that seems to be more of a modeling thing. I really don't know how to include these complexities in this report.
- Davis-Martin: We want to stay away from hardened shoreline structures, but in some cases they are your only option and there is no reason not to account for them in that case.
- Davis-Martin: How can we help address your concern, given that it depends on the site?
  - McNally: I hate to not move this forward, but it still seems vague. I think we have a reduction efficiency, but we don't know if a certain practice would get that number or not, because we don't know who be making that decision or when that would be determined.
- Davis-Martin: If we don't move this forward as written, it would go back for further consideration, but Bill has no more time on the contract, so we would need to decide to either convene a new panel or reconvene the previous panel in addition to deciding who would take the lead. However, we need a BMP for shoreline protection. By not doing anything, we make the situation worse, because currently we get nutrient and sediment credit under the stream restoration report criteria, which we all know is not appropriate.
  - Stack: That is right, James. It is likely when the modeling team makes their recommendation on nutrient availability to algae from these sediments, there would be a chance for amending the report to have nutrient credits in addition to the sediment credit. Maybe at that time we could continue this discussion.
- McNally: I want more accurate numbers than what is in stream restoration because they don't reflect what is in shoreline management. In the executive summary, can we recognize the dissent of the panel at the very beginning?

- Currey: I think the status quo in my mind doesn't seem acceptable. Moving the report forward does bring awareness to these unintended consequences. It won't be perfect today, but I wouldn't want to lose sight of this issue either. I'd like to be able to come back and revisit this BMP at a later date. I'd be in support of moving the language on unintended consequences up within the executive summary.
- Davis-Martin: The report does include language stating that the practice does need to be reviewed every several years. I agree we should come back and look at it again as new science becomes available. It also does call for credit duration to be 5 years, but we developed verification guidance based on a 10 year credit duration.
- McNally: Thank you for making the recommendation. Maybe we can conditionally approve this. Would this BMP efficiency be used for 2015 Progress?
  - Davis-Martin: If approved today it would be available for 2015 Progress, though I don't know if we'd have any data to report.
  - Matt Johnston (UMD, CBPO): The practice is already in the Model, and there was credit given last year in Maryland, so it is just a matter of changing the credit that is given.
- McNally: If we move up the language about the concern over unintended consequences in the executive summary and also recognize in the executive summary that this would be a crediting process on a case-by-case basis due to those consequences, then I would be ok with this report.
- Davis Martin: Do we have consensus to conditionally approve the Shoreline Management report pending those proposed minor edits?
  - No concerns were raised, and the report was approved by consensus.

DECISION: The WQGIT approved the Shoreline Management expert panel report pending two edits to the executive summary that place greater emphasis on the potential for unintended consequences resulting from shoreline management practices.

#### BMP Protocol Revisions – Lucinda Power, Coordinator

- Lucinda reviewed the latest revisions to the BMP protocol based upon comments received and the WQGIT was asked for final approval of the revisions.

#### **Discussion:**

- Lucinda Power (Coordinator): Since the first iteration of edits in March, we have been working with those who provided comments to incorporate changes and make this a stronger document. There was language added to strengthen the definition of a conflict of interest. We also added language to clarify that local practitioners should be considered if they can help meet the charge of the panel. It is up to the sector workgroup to develop the panel charge and membership, including identifying the qualifications and potential

conflicts of interest of potential members. The charge and membership would then be reviewed by the partnership. There was a decision last summer that the panel meetings would be closed to public but that there would be an open stakeholder forum at the start of the panel process. There is also a primary point of contact for each panel and their contact information is publically available. The panels are responsible for regularly updating their source sector workgroup as well. The other change to the document is to the partnership review process. We are suggesting one, 30-day public comment period that would occur after the report's release to the partnership. It would follow a similar process to the current Protocol, where comments are considered and a response document is developed as an appendix to the report. Once the 30-day comment period has passed, the report would be submitted to the sector workgroup, WTWG and WQGIT for approval. We hope that having the chance to receive all comments at once will streamline the process.

- Gattis: LGAC appreciates the consideration of the local practitioner and how that has been addressed in this version of the Protocol. Can we extend open comment period from 30 days to 45 days? LGAC has commented that the 30-day period is not reasonable.
  - Power: We can certainly consider it as a group.
  - Davis-Martin: I don't know that I would agree that 30 days is unreasonable. I'm afraid the increase would not work with the monthly meeting schedule.
  - Gattis: That is fine, and I can report that back.
  - Davis-Martin: I am happy to have a conversation about it, but LGAC will know the reports are upcoming because of the regular updates to the workgroups.
  - Norm Goulet (NVRC): I think 30 days is more than enough. I don't think this will shorten the process though. I think the 30-day comment period would just end up being additional time on top of the existing review process. It is what it is, but I think it will be lengthy.
  - Davis-Martin: We are hoping all major issues will be addressed in that 30 day period, but I hear your concerns.
- Andy Zemba (PA DEP): We use similar conflict of interest forms in Pennsylvania, and if people come back with questions, we have people we can refer them to. Who would be answering those types of questions if they come up? Is there legal support?
  - Power: That is an excellent question. We don't have anyone at the Bay Program, so I think the panel coordinator would be responsible for helping to address those questions. If you think the panel coordinator or workgroup coordinator wouldn't be right, maybe STAC can appoint someone to address those questions?
  - Zemba: I think they would need experience addressing conflict of interest questions, but unfortunately I don't have a good suggestion.
  - (Unidentified): I would confer with that comment. Who would be interpreting that conflict of interest, because there are legal consequences depending on the intent?
  - Jeremy Hanson (VT, CBPO): I think it would not be the strictly legal definition. It is more of a transparency tool. If we are running into complex questions that can't be addressed, maybe that panelist is in a gray area and we would just invite them as a guest.

- Johnston: Any perspective from STAC about how they have used the conflict of interest form?
  - Hanson: STAC has a pretty straightforward form compared to the NAS one.
- Power: I think you raise a good point Andy, and I think we should just see what happens. If there is a need to adapt, we can make those modifications as-needed.
  - Zemba: I am ok with that approach.
- Goulet: I spoke up initially against this because I'm afraid it is too restrictive. I think it would keep us from putting members on the panel who have the level of expertise we require, even though we know there may be some conflict of interest. Can we write in some kind of "out" for this? I understand where STAC is coming from, but I'm afraid of the Protocol becoming too rigid.
  - Power: I think the elements we use to define conflicts of interest are fairly fundamental points to the process. I think it would undermine the integrity of the panel if some of these conflicts are present in a panel.
  - Goulet: We had a recommendation to put together a panel on proprietary BMPs. There is no way I can put together that panel without having members of those companies on the panel because of the limitations outlined in this Protocol.
- Davis-Martin: Lucinda, does the document specifically exclude those who document conflicts of interest? I thought it was a transparency issue. As long as they disclosed it, I thought that was the goal.
  - Power: I don't think it is exclusionary. For the purposes of your panel, as long as they are open to disclosing what those conflicts of interest might be, they would not be automatically excluded. It would need to undergo partnership review.
  - Goulet: Ok, I just read it as restrictive, but if the GIT doesn't read it that way, that's great.
  - Hanson: Yes, and I trust the partnership's judgment on what the clear red flags would be.
- Davis-Martin: I think we have addressed all concerns raised. Do we have consensus to approve the revisions to the BMP Protocol?
  - No concerns were raised, the revisions were approved by consensus.

DECISION: The WQGIT approved the revisions to the BMP Protocol.

- Davis-Martin: Please make sure we are clear about documenting the expectations of existing panels as well as those in the formative stages with regards to these new requirements. Make sure we communicate that out to the workgroups as well.

ACTION: David and Lucinda will work to communicate the impacts of the new BMP Protocol revisions on existing and recently formed BMP expert panels with the panel and sector workgroup coordinators.

- Gattis: I think there should be a process that allows us to evaluate whether or not this document will be opened to revision about 6 months prior to the scheduled biannual review.

- Davis-Martin: Good suggestion. We will just have to put this in the GIT calendar for the future.

#### Governance Protocol – James Davis-Martin, Chair

- James reviewed the latest revisions to the WQGIT Governance Protocol, which includes a new option for WQGIT membership alternatives.

#### **Discussion:**

- Davis-Martin: Based on offline conversations with our workgroup chairs and vice chairs, the majority felt that their role as an advisor was more appropriate than a role as a member. This was largely due to concern over having to support a position contrary to the one held by the workgroup they represent.
  - Gattis: CAC's preference is to be an advisor, because the chances of having someone who could serve as a full member are slim. They didn't specify a choice between options 2 and 3. My recommendation from LGAC would be the same.
  - Power: STAC would also prefer to stay as advisory members. Natalie Gardner submitted their response.
  - Goulet: I think the appropriate role for a workgroup chair is as an advisor, for the reason you mentioned. I think that is the opinion of several other workgroup chairs as well.
- Davis-Martin: Do we have general consensus to have the three advisory committees and the workgroup chairs serve as advisors to the WQGIT?
  - No concerns were raised, there was consensus.
- Davis-Martin: Now let's talk about size of the overall group. Should there be one or two members representing each of the signatories? In Virginia, we have separate agriculture and regulatory agencies, but we usually work together to build consensus on the jurisdictional perspective that we want to put before the WQGIT. So from our perspective, not sure that having one or two members makes a big difference. In the interest of size, I would probably lean towards one member per signatory, although more people would likely participate.
  - DE, MD, NY, PA, and WV all expressed agreement that one member was preferable.
  - George Onyullo (DDOE): I think I agree but I think two members is a better number to work with because of the breadth of issues covered by this group.
  - Marel King (CBC): The Chesapeake Bay Commission is ok with either one or two members.
  - McNally: We would prefer to have just one member for EPA.
- Davis-Martin: Can D.C. live with a single member as opposed to two?
  - Onyullo: Yes, we can live with one member.
- There was consensus to have one member from each signatory.
- Davis-Martin: For at-large members, the concept is that they would consist of non-governmental organizations, other federal agencies, academic institutions and local practitioners. How do we feel about the ratio of at-large members to signatory members?



If we have one signatory, how do we feel about six at-large members? I am trying to keep it at an even number since we are looking at two year terms with half of the members elected each year.

- Onyullo: In order to be effective in the process, what does the group think is an optimal total number? I think that should be addressed first rather than giving numbers to individual subgroups.
  - Davis-Martin: I don't know that I have input on an optimal number. My gut is no more than 20 total members. From my perspective, there should be more signatory members than at-large members. I am open to other thoughts.
    - King: CBC agrees that there should be more signatories than at-large members.
    - McNally: I agree.
- Beth McGee (CBF): We are happy that there is an opening to allow groups like the Chesapeake Bay Foundation to be formal members. I agree signatories should have a larger number of members. I don't like option 3, because it seems like at-large members don't really have an official place, since it would default to just the signatories if consensus couldn't be reached.
  - Davis-Martin: I hear that perspective, and I actually agree with it because the Management Board wanted us to be inclusive, and we want to have a consensus driven process with true equity among members.
- Davis-Martin: Personally, I am comfortable with six at-large members.
- Diebel: Has anyone expressed interest in being an at-large member? Maybe knowing what the interest is could help decide what the number should be. Also, federal agencies are already represented by EPA, so they may not need to be included in the at-large group.
  - McNally: You're right, EPA would represent federal agencies as a whole, but there is active participation by federal agencies and if someone wanted to be an at large member, I wouldn't want to discourage that.
- Diebel: Maybe hone-in on who the bodies are that we actually want representation. Maybe it's one NGO, one academic, etc.
  - Davis-Martin: I agree, and that was kind of how we got to these numbers presented. I don't feel like we should necessarily restrict the membership by saying who would need to be represented in that category, because I think that will happen organically. We want a clearly defined process for allowing at-large members to advance into this group.
- Davis-Martin: Are there any objections to using six at large members?
  - No objections were raised, there was consensus to include six at-large members.
- Davis-Martin: Now we have to decide whether or not we want to have a two-tiered consensus process?
  - McNally: I appreciate your concerns about this. I think option 3 is more workable because it does indicate that only if after substantial negotiation, consensus can't be reached, the decision would rise to that second tier, particularly on time sensitive issues. Given the Midpoint Assessment, there is a tight schedule to meet

and gaining consensus among 15 or having issues raised to the Management Board could really set us back.

- Davis-Martin: With respect to everyone's time I think we should take it up at the next meeting. Please take one more review through the entire document. I would like us to complete this by our next meeting. We just have to resolve the issue regarding all member consensus versus a two-tiered consensus approach.
- Power: Can we solicit everyone's preference over email between now and August to get an idea of where everyone falls? I think both sides feel pretty strongly, and I'm afraid we will have the same conversation in August. I want to find out the best way for us to reach consensus so that we don't have to elevate this to Management Board and I think gauging preferences before our next meeting would help.
- Onyullo: D.C. is okay with option 3.
- Teresa Koon (WV DEP): West Virginia is also okay with option 3.

ACTION: Lucinda Power will contact the WQGIT membership with the decision making process options and ask for preferences by July 24.

### Adjourn

### List of Call Participants

<b>Member Name</b>	<b>Affiliation</b>
James Davis-Martin (Chair)	VA DEQ
Lucinda Power (Coordinator)	EPA, CBPO
David Wood (Staff)	CRC
Karl Blankenship	Bay Journal
Marel King	CBC
Beth McGee	CBF
Natalie Gardner	CRC, STAC
Bill Stack	CWP
Neely Law	CWP
George Onyullo	DDOE
John Schneider	DE DNREC
Sheryl Quinn	Dept of the Navy
Sarah Diebel	DOD
Dianne McNally	EPA, R3
Chris Day	EPA, R3
Jen Sincock	EPA, R3
Suzanne Trevena	EPA, R3
Ann Carkhuff	EPA, R3
Lew Linker	EPA,CBPO

Jenny Tribo	HRPDC
Ross Mandel	ICPRB
Mary Gattis	LGAC
Lee Currey	MDE
Greg Sandi	MDE
Dinorah Dalmasy	MDE
Norm Goulet	NVRC
Ben Sears	NY DEC
Andy Zemba	PA DEP
Kevin McGonigal	SRBC
Matt Johnston	UMD
Lisa Ochsenhirt	V/MAMWA
Teresa Koon	WV DEP