



September 21, 2021

Executive Director Andrew DeHoff, P.E.  
Susquehanna River Basin Commission  
4423 N. Front Street  
Harrisburg, PA 17110

Secretary Matthew Strickler  
Commonwealth of Virginia  
Office of the Secretary of Natural and Historic  
Resources  
Patrick Henry Building  
1111 East Broad Street  
Richmond, VA 23219

Secretary Shawn Garvin  
State of Delaware  
Department of Natural Resources and  
Environmental Control  
The Richardson and Robbins Building  
89 Kings Highway  
Dover, DE 19901

Deputy Secretary Scott Mandirola  
State of West Virginia  
Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

Director Tommy Wells  
District of Columbia  
Department of Energy & Environment  
1200 First Street NE  
Washington, D.C. 20002

Assistant Secretary Suzanne E. Dorsey, Ph.D.  
State of Maryland  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD

Commissioner Basil Seggos  
State of New York  
Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-0001

**Re: Conowingo Watershed Implementation Plan Financing Authority**

Dear Stakeholders:

The purpose of this Letter of Understanding (LOU) is to establish the terms under which the Susquehanna River Basin Commission (SRBC) will serve as the financing authority for the initial implementation of the Conowingo Watershed Implementation Plan (CWIP).

**BACKGROUND**

The State of Delaware, the District of Columbia, the State of Maryland, the State of New York, the Commonwealth of Pennsylvania, the Commonwealth of Virginia, the State of West Virginia, the Environmental Protection Agency and the Chesapeake Bay Commission are partners of the Chesapeake Bay Program and they are represented by the Principals' Staff Committee.

The State of Delaware, the District of Columbia, the State of Maryland, the State of New York, the Commonwealth of Pennsylvania, the Commonwealth of Virginia and the State of West Virginia are collectively the “Signatory CWIP Partners.”

The Conowingo Reservoir, formed by the Conowingo Dam, is located in the lower portion of the Susquehanna River and has historically trapped and stored sediment and associated nutrients transported from the Susquehanna River watershed, preventing these pollutants from reaching the Chesapeake Bay.

The Chesapeake Bay Total Maximum Daily Load (Bay TMDL) estimated that the Conowingo Dam would trap sediment and associated nutrients through 2025; however, current science and information have revealed that the Conowingo Reservoir is subject to scour events that result in more nitrogen and phosphorous entering the Chesapeake Bay than was estimated when the Bay TMDL was established in 2010.

The Chesapeake Bay Program estimates that, even after fully implementing the Bay TMDL and each jurisdiction’s Phase III Watershed Implementation Plans (WIP), a significant reduction of nitrogen and phosphorous is still needed in order to mitigate the water quality impacts of the Conowingo Reservoir infill.

At their December 2017 meeting, the Principals’ Staff Committee, representing each jurisdictional partner of the Chesapeake Bay Program, agreed to assign the total pollutant reductions attributed to the Conowingo Reservoir infill to a separate Conowingo Planning Target and to collectively develop a separate CWIP.

The State of New York may consider addressing its pollutant loads (80,000 pounds of nitrogen) associated with Conowingo Dam through its own approach independent of the CWIP.

Additionally, at the December 2017 meeting, all jurisdictional members of the Principals’ Staff Committee agreed to pool resources and to identify a process to fund and implement the CWIP.

At their January 31, 2019 meeting, the Principals’ Staff Committee approved final revisions to a framework for developing the CWIP. The Principals’ Staff Committee agreed to address these Conowingo pollutant loads through the CWIP that all jurisdictions would work collectively to implement. The Principals’ Staff Committee also agreed that the CWIP should develop innovations in financing that leverage both private capital and market forces to reduce restoration costs.

The CWIP is similar to, but need not be a jurisdictional WIP, and presents a unique opportunity to innovate and build on existing, successful programs as much as it is feasible.

The Signatory CWIP Partners each individually and collectively through the Principals’ Staff Committee have committed to support and implement the CWIP.

The Susquehanna River Basin Compact (Compact) and the SRBC were created by the United States Congress for the purpose of enhancing public welfare through comprehensive planning, water supply allocation and management of the water resources of the Susquehanna River Basin.

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Section 1.3 of the Compact provides that because the “water resources of the basin are functionally interrelated, and the uses of these resources are interdependent...,” the SRBC is “essential for effective and economical direction, supervision and coordination of water resource efforts and programs of federal, state and local governments and of private enterprise.”

The SRBC’s goals include serving as a leader in issues concerning the conservation, utilization, allocation, development and management of water resources within the Susquehanna River Basin.

The signatory parties to the Compact are the State of New York, the Commonwealth of Pennsylvania, the State of Maryland and the federal government, who thus share membership with the Principals’ Staff Committee.

The SRBC is authorized by federal legislation to perform such services as are required by the Chesapeake Bay Program and outlined in this LOU.

#### TERMS OF THE UNDERSTANDING

The following terms and conditions will govern the parties understanding:

##### 1. FINANCING AUTHORITY

- A. Establishment: Recognizing the interstate nature of the CWIP and the capabilities of the SRBC as an interstate agency that works throughout the Susquehanna River Basin, the parties agree that the SRBC will serve as the financing authority for initial implementation of the CWIP if approved by the Signatory CWIP Partners. The SRBC’s role as the financing authority will sunset on December 31, 2025, with the option for renewal. Whether or not the option for renewal is exercised, funded ongoing or approved projects shall continue until completion or funds are exhausted, whichever occurs first.
- B. Contract Authority: In its capacity as the financing authority, the SRBC may enter into contracts, including grant agreements, to receive and distribute funds to implement the CWIP, including associated administrative costs.
- C. Use of Funds: The SRBC will use the funds it receives as the financing authority to finance best management practices that implement the CWIP with input from the Chesapeake Bay Program. The SRBC’s use of funds as the financing authority will be subject to the terms and conditions of contracts, including grant agreements, which the

SRBC enters into in its role as the financing authority. Subject to the terms and conditions of these contracts, including grant agreements, the SRBC, as the financing authority, may, with input from the Chesapeake Bay Program, implement best management practices called for in the CWIP directly, or through contracts or grants to third parties. The SRBC will keep any and all funds received for the CWIP separate from all other SRBC funds and the parties agree that the SRBC is not obligated to provide funding to the CWIP from these other SRBC funds.

- D. Governance: The work to be performed by the SRBC and the selection and approval of projects to be implemented will be guided by the CWIP in close consultation with the Chesapeake Bay Program, taking into consideration the implementation of the jurisdictional WIPs during development of the annual plan. In accordance with this section, SRBC will submit an annual plan to the parties and jurisdictional WIP leads.

## 2. FUNDING SOURCES

- A. Signatory CWIP Partners: Reaffirming the Principals' Staff Committee's interest in addressing the Conowingo pollutant loads through the CWIP, the phased financing strategy targets the Susquehanna River Basin. The Signatory CWIP Partners may, collectively or individually, enter into one or more contracts with the SRBC as the financing authority to provide resources to the financing authority to finance best management practices for initial implementation of the CWIP. This partnership is focused on initial implementation of the CWIP in which the SRBC will work closely with the University of Maryland and the Principals' Staff Committee to establish a structure around the initial implementation of the CWIP. The SRBC's use of such resources as the financing authority will be subject to the terms and conditions of any such contract or contracts. The parties will develop a uniform terms and conditions document to be used for any contracts regarding the administration of the SRBC's implementation of the CWIP.
- B. Federal Funding: The SRBC, as the financing authority, may solicit and receive federal funds, including federal grants, to finance best management practices for initial implementation of the CWIP. The SRBC's use of such funding as the financing authority will be subject to the terms and conditions of any relevant federal contracts or grant agreements.
- C. Other State Funding: The SRBC, as the financing authority, may solicit and receive, at the discretion of a state, other state funding beyond resources provided by the Signatory CWIP Partners, including other state grants, to finance best management practices for initial implementation of the CWIP. The SRBC's use of such funding as the financing authority will be subject to the terms and conditions of any relevant state contracts or grant agreements.

- D. Private Funding: Acknowledging the Principals' Staff Committee's agreement that the CWIP should incorporate innovations in financing that leverage both private capital and market forces to reduce restoration costs, the SRBC, as the financing authority, may solicit and receive private funding, including grants, to finance best management practices for initial implementation of the CWIP. The SRBC's use of such funding as the financing authority will be subject to the terms and conditions of any relevant private contracts or grant agreements.

### 3. REVIEW

The Signatory CWIP Partners and the SRBC will review this LOU and make any necessary amendments in close coordination with the Chesapeake Bay Program in order to incorporate adaptive management into implementation of the CWIP.

### 4. AMENDMENT

This LOU may be amended in writing upon the collective agreement of the authorized representatives of the parties.

### 5. WITHDRAWAL

Signatory CWIP Partners or the SRBC may, upon thirty (30) days written notice to all other parties to this LOU, withdraw from this LOU.

### 6. END DATE

The LOU will sunset on December 31, 2025 unless renewed by mutual agreement of the Signatory CWIP Partners and the SRBC.

### 7. NO CONTRACTUAL RIGHTS

This LOU is not intended to and does not create any contractual rights or obligations with respect to the Signatory CWIP Partners or the SRBC or any third parties.

### 8. DISPUTE RESOLUTION

In the event of a dispute arising under this LOU, the Signatory CWIP Partners and the SRBC shall confer to resolve the issues and elevate them through management levels, as deemed necessary. Representatives from the Commonwealth of Pennsylvania will seek advice from their Office of General Counsel in an effort to reach a final conclusion.

If the terms and conditions outlined above are acceptable, please sign where indicated below.

Sincerely,



Ramez Ziadeh, P.E.  
Executive Deputy Secretary

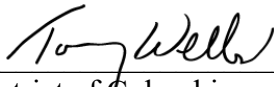
Signed:



Susquehanna River Basin Commission



State of Delaware



District of Columbia



State of Maryland



State of New York



Commonwealth of Virginia



State of West Virginia

cc: Diana J. Stares, Chief Counsel  
Pennsylvania Department of Environmental Protection