

## **Adopted By the Interstate Commission on the Potomac River Basin June 15, 2021**

### RESOLUTION ON ENHANCING WATER SUPPLY RESILIENCE FOR THE WASHINGTON METROPOLITAN AREA

Over the past year, the Ad Hoc Work Group on Water Supply (WGWS), with support from the Executive Director and staff of the Interstate Commission on the Potomac River Basin (ICPRB), has worked to develop a Resolution on water supply agreements for eventual consideration by the full Commission. At its meeting on February 2, 2021, the ICPRB Executive Committee recommended the adoption of a draft by the full Commission at its meeting on March 2, 2021. At its March 2 meeting, the Commission determined that more work needed to be done on the Resolution. A June 10 draft incorporating certain changes was circulated to the Commission. At its meeting on June 14, the Executive Committee made some additional changes which were also circulated to the Commission and recommended that the Commission approve the June 14 Mark-up. At its meeting on June 15, the Commission made a few final changes before adopting the Resolution as it appears below.

#### WHEREAS-

1. The Low Flow Allocation Agreement (LFAA), as amended by Modification 1, was signed in 1978 by the United States, the State of Maryland, the Commonwealth of Virginia, and the District of Columbia (the “governing parties”) and by the Washington Suburban Sanitary Commission (WSSC Water) and Fairfax County Water Authority (Fairfax Water).
2. The Water Supply Coordination Agreement (WSCA) was signed on July 22, 1982, by the United States acting through the Baltimore District Office of the US Army Corps of Engineers (USACE) functioning through the Washington Aqueduct Division (Washington Aqueduct), the District of Columbia, WSSC Water, Fairfax Water, and ICPRB. This agreement provides for coordinated operations and use of reservoir storage by the signatory water suppliers to optimize utilization of available resources in order to minimize the possibility that the LFAA’s allocation provisions will need to be implemented. The WSCA establishes an Operations Committee responsible for overseeing the WSCA, comprising a representative of each supplier, with decisions made through unanimous agreement. It also specifies cost-share formulas for ICPRB CO-OP support and for the construction, operations, and maintenance of future water supply storage. Concurrent with the signing of the WSCA, five separate agreements (1982 Cost-Share Agreements) were signed which established cost-share formulas for construction and/or for operations and maintenance expenses for Jennings Randolph Reservoir, Little Seneca Reservoir, and Savage Reservoir.
3. At its March 7, 2017 Business Meeting, the ICPRB passed a Resolution recommending, among other things, that separate reviews of the LFAA (by the governing parties) and the WSCA (by the signatories) be conducted to examine whether these agreements continue to serve their original purposes or should be updated and revised. The stated purpose of the reviews was to identify key issues and options that may inform a decision whether to modify the agreements.
4. ICPRB, with funding provided by the governing parties, retained The Cruden Team to conduct an independent review of the LFAA. The Cruden Team conducted interviews of the LFAA parties and reviewed numerous documents, including three studies which addressed environmental flow needs of the Potomac River: i) The Potomac River Environmental Flow-by Study, prepared by Maryland Department of Resources in 1981 (1981 DNR Flow-by Study), ii) a 2002 status report on a re-evaluation of low-flow requirements by the Maryland Department of Natural Resources (2002 MD

DNR Status Report), and iii) the 2011 Potomac Basin Large River Environmental Flow Needs study prepared for The Nature Conservancy, which was a component of the USACE's 2014 Middle Potomac River Watershed Assessment (2014 USACE/TNC Study). On February 23, 2018, The Cruden Team issued its Final Report to the ICPRB summarizing ten sets of issues and options concerning the LFAA, including the environmental flow-by at Little Falls dam. The report included a list of five measures which could improve the LFAA without making substantial revisions:

- i. Make available a consolidated LFAA document that includes the updated LFAA (with all modifications), the ancillary agreements, and the Memorandum of Intent.
- ii. Make technical revisions to the LFAA to improve accuracy and consistency and reflect new circumstances since 1978.
- iii. Provide opportunities – such as tabletop exercises – for the LFAA parties to practice their responses during a hypothetical severe drought and test the viability of individual sections of the LFAA.
- iv. Create a readily accessible LFAA resource, such as an LFAA manual, guidebook, or series of memoranda of understanding, that explains in detail key elements of the LFAA and how they are intended to be implemented.
- v. Set forth in writing the selection processes, term lengths, and eligibility requirements for the Moderator and Standby Moderator.

It should be noted that two of the five measures listed above have been addressed. A consolidated LFAA document was prepared and is available on ICPRB's website and a tabletop exercise to practice water supplier and state agency responses was conducted on November 30, 2018.

5. In the 2018 Cruden report it was noted that the 2014 USACE/TNC Study concluded, based on currently available information, that there has been no discernible adverse ecological impact on focal species due to human modification of flows. As a precautionary measure however, the USACE/TNC report recommended that the current large river flow regime be maintained for the entire range of flows as defined by 20 flow statistics based on a 21-year period of record (1984-2005). It also recommended maintaining the existing 100-mgd minimum flow requirement for Little Falls and 300-mgd minimum flow recommendation for Great Falls. Participants at a September 2010 workshop reviewed the draft information and findings of the USACE/TNC Study and recommended that a technical workgroup be convened to design a monitoring program to fill information gaps for these systems.
6. The Operations Committee of the WSCA formed the WSCA Workgroup at a meeting on June 26, 2017 to review cost-share formulas and other provisions of the WSCA and to determine a mechanism for bringing a new member, Loudoun Water, into the CO-OP system. The efforts of the Workgroup culminated in two documents. The first was a brief summary of the Workgroup's activities entitled *The Report of the Water Supply Coordination Agreement Workgroup*, dated September 10, 2019, which concluded that there were no items related to the WSCA which required immediate action. The second was a proposed agreement with Loudoun Water which extended to them all responsibilities and authorities enumerated in the WSCA related to planning and operations, including payment of a share of the costs of ICPRB CO-OP Section support according to a new cost-share formula, and called for aligning use of Loudoun Water's Quarry A with current CO-OP operational strategies (February 22, 2019). Both Loudoun Water and Virginia DEQ have indicated that they would not support the proposed agreement as written.

7. Travilah Quarry has been identified in two separate studies, the MWCOG’s National Capital Region (NCR) Water Supply and Distribution System Redundancy Study (2016) and the ICPRB’s Washington Metropolitan Area Water Supply Alternatives study (2017), as the facility which could most effectively mitigate the two most serious risks to water supply in the WMA: the risk of a contaminant spill which shut down one or more of the WMA’s major Potomac River intakes, and the risk that climate change will cause droughts in the future that are significantly more severe than those in the historic record. In the summer of 2018, ICPRB formed the Supplemental Storage Work Group, consisting of representatives from the major water suppliers, ICPRB, and MWCOG, for the purpose of acting “jointly to promote actions that would strengthen the WMA water supply system by providing additional raw water storage capacity to protect the region from the dual threats of water contamination and future drought.”
8. The signatories to the WSCA are at a critical juncture to secure supplemental storage to ensure a reliable water supply for the region. Ongoing discussions and planning for future storage facilities are calling for measures which address the dual threats of contamination events and droughts, a situation not envisioned by the authors of the WSCA and not reflected in the WSCA’s cost-share formula for future storage. Implementation of enhanced protective measures may require cost-sharing and other cooperative measures by the water suppliers that are difficult to accomplish under the WSCA in its current form. A recent AWWA study<sup>1</sup>, supported by all of the WMA’s major water suppliers, concluded that a successful regional collaboration requires governing documents that allow for adaptation to changing conditions and needs.
9. The ICPRB is committed to continuing its role of assisting in the cooperative management of regional water resources, and facilitating dialog between the multiple stakeholders where it has the authority, resources and relevant expertise, in studying water resources problems and developing solutions.
10. The ICPRB believes the WSCA needs to be updated to accurately reflect changing conditions since its inception including a roadmap for withstanding droughts that may become increasingly severe due to climate change. The ICPRB also believes it is essential that the updated WSCA highlight the readiness against threats to water security, including spills of contaminants into the Potomac River.

THEREFORE, BE IT RESOLVED BY THE INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN (ICPRB) –

That the following three actions shall be undertaken. The ICPRB Executive Director and staff shall help facilitate these actions by providing appropriate communications, technical, and legal support. Recognizing the time constraints of Commissioners and of the ICPRB Executive Director and staff, the initiation of the second and third actions may be delayed to help ensure successful completion of the first action – the revision of the WSCA.

1. The Commission requests that a Task Force on the Water Supply Coordination Agreement be formed to reinstate the dialogue on revisions that would accurately reflect changing conditions since its inception including the need for strengthening water security against spills, cybersecurity attack, and water scarcity and the ability to include additional suppliers.

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<sup>1</sup> Tran, T., Carpenter, A. and Kenel, P., 2019. Doing More With Many: Case Studies of Regional Collaboration in Management and Shared Infrastructure. *Journal: American Water Works Association*, 111(3).

- Task Force Members would consist of representatives from all of the five signatories of the agreement, with the Commissioners to be appointed by the ICPRB Chair as follows: one representative each from Fairfax Water, WSSC Water, and Washington Aqueduct, one ICPRB Commissioner representing the District of Columbia, and with two additional ICPRB Commissioners, representing Maryland and Virginia.
- At its first meeting, the Task Force shall select a chair by consensus.
- Task Force Members may each choose to designate one Alternate.
- Issues that need to be addressed include, but are not limited to, the following:
  - Consideration of new membership beyond the original signatories without diminishing the interests of the current CO-OP members and if there is favorable consideration, a recommendation for the mechanisms to incorporate new membership into the agreement, including the cost-sharing formulas, and alternative means of fair and equitable decision-making.
  - If warranted, a mechanism for the funding of Travilah Quarry which takes into account its dual role in mitigating the risks of spills in the Potomac River and of increased drought severity due to climate change.
- The chair of the task force will update the Commission at each quarterly meeting and, as soon as practicable, recommend to the Commission the consensus of the task force regarding revisions to the WSCA.
- If determined necessary by the chair of the Task Force to maximize the effectiveness of this dialogue, the ICPRB staff shall retain an independent contractor to facilitate the discussions and help the parties work toward revisions to the WSCA.

2. ICPRB Staff shall convene a Work Group of the governing (the United States, Maryland, Virginia, and the District of Columbia) and member (WSSC and Fairfax Water) parties to the LFAA (the LFAA Work Group) to discuss the ten sets of options identified in the 2018 Cruden report, including the five measures which could improve the LFAA without making substantial revisions, and to recommend what next steps are appropriate at this time.

Work Group Members shall be appointed by the Chair of ICPRB using recommendations from Commissioners representing LFAA governing parties and from representatives of the two member parties.

- Work Group Members shall be appointed by the Chair of ICPRB upon the advice and consent from Commissioners representing LFAA governing parties and from representatives of the two member parties.
- Representation shall include no more than two persons from each of the four governing parties and each of the two member parties.
- At its first meeting, the Work Group shall select a Chair by a vote of the majority of Work Group members present.

3. ICPRB Staff shall convene on a periodic basis an invitation-only scientific workshop on state of the art approaches to environmental flows for large river systems similar to that of the Potomac River for the purpose of identifying monitoring, assessment, and analysis gaps within the Potomac.

- The final list of invitees will be determined by the Chair of the CO-OP Section with input from ICPRB Commissioners and invitees will at a minimum include a representative from agencies of each Potomac basin state, the member parties, the national and regional agencies, and nongovernmental organizations with expertise in this area.
- Following the workshop ICPRB staff shall develop a summary report of the workshop and recommend if possible monitoring, assessment and/or analysis gaps may exist with the current environmental flow-by and LFAA.
- ICPRB Staff will brief the Commission and LFAA Workgroup on the outcomes of the workshop and recommendations in the summary report and seek input on next steps.

Any decision to modify the agreements shall be a separate action after deliberation on the recommendations, findings and conclusions. Such action, for the LFAA, should be a unanimous decision of its governing parties and, for the WSCA, a unanimous decision of the water suppliers and the District of Columbia.