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Nicholas A. DiPasquale, Director  
Chesapeake Bay Program Office  
410 Severn Ave Suite 109  
Annapolis, MD 21403

Dear Mr. DiPasquale:

First, I want to recognize the commitment and hard work that so many good people in the Chesapeake Bay Program have done over the past year to develop a new Chesapeake Bay Agreement. I appreciate the importance of renewing our focus, refreshing our goals, and recommitting as partners to pursue the best course of action for our restoration work. That being said, I am very disheartened by the draft Agreement. In its current form, this is an Agreement that seriously weakens the partnership and, in some cases, falls short of the efforts of the past.

To put my comments into perspective, let me remind you and my Program colleagues that restoring the natural balance to my beloved Patuxent River and the Chesapeake Bay has been a long labor of love for me. For the past forty-four years I have been dedicated to the business of protecting and restoring the River and the Bay. I have been involved in the Bay Program since its inception. I have the utmost respect for the leaders, staff and partners of the Bay Program who work tirelessly to achieve what is to me the most important unfinished effort of my life's work. My comments, therefore, should be taken not as criticism of anyone's efforts, but as seasoned advice from a restoration partner who has seen firsthand what we can accomplish together with a strong guiding document, and one who deeply wants to see us reach our goal of a restored Bay for my children, grandchildren and future generations.

The three Bay Agreements have been very important guiding tools that have pushed the members of our organization, the Bay states, the federal government, dozens of local governments and citizens to take action, pass policies, advance science, and secure funding. Each Agreement has built upon the prior one to raise new issues, to more clearly focus, and achieve more than each previous phase. This new Agreement must serve the same vital role; to inspire us to work harder and reach further than we have to date.

Unfortunately, this new Agreement in its present form speaks only to what is currently possible and falls short of reaching for necessary change. Let me elaborate on the reasons for this shortfall.

First, and of most concern to me, is the provision in the introduction to the Goals and Outcomes section that allows any signatory to exercise its discretion whether or not to participate in the development or implementation of the management strategies. This "opt-out" section seriously undermines the whole intent of this and all past Agreements, and the very nature and core substance of our partnership.

The Bay Agreements have always been voluntary agreements with each signatory expected to give its best effort to achieve the overarching restoration goals and commitments. The voluntary nature of the

Agreements always gave signatories the flexibility to focus on areas that most concerned their jurisdictions and where they could commit or find new resources. It also left open the possibility that if an opportunity arose the signatories could increase their efforts on any of the goals. This flexibility led partner governments to search out and create new opportunities for achieving goals, whereas the “opt-out” provision – because it simply offers and exit – will only close the door on new opportunities. This Agreement needs to inspire the signatories to do more, not foreclose new opportunities that we cannot yet anticipate. The “opt-out” provision should be removed from the Agreement.

The second flaw in the current draft is in the introduction to the Goals and Outcomes section and allows the Partnership to modify the goals and outcomes made in this Agreement if they identify new opportunities and concerns. In the spirit of adaptive management, this new concept has the potential to provide flexibility that can allow the Agreement to stay current as science advances. On its face that would seem like a good feature, but, because these decisions can alter the very basis and effectiveness of the Agreement, I strongly urge that the authority to make these changes reside only with the Executive Council (EC).

The EC is made up of the parties who sign their names to the Agreement, and who are held accountable to the public for its success. My experience as a former member of the EC, on which I served in 1992 as Chairman of the Chesapeake Bay Commission, leads me to insist that any decisions to change the goals or outcomes set forth in the final, signed Agreement must not be made on the staff level, but must only be made by the highest level of leadership to determine if new science or new facts support a revision to the Agreement. It is critical, therefore, that the Agreement specifies exactly where this authority resides. The current draft indicates that modifications or revisions can be made by the “Partnership” but it should be clearly stated in the Agreement that the Executive Council is the only body within the Partnership that can approve adoption or modifications to the goals and outcomes.

Finally, I must raise three issues that were not clearly mentioned in the new draft Agreement. This lapse suggests that these issues either have been resolved or do not matter to Bay restoration efforts, but to many of us these issues remain critical and unresolved to the Bay’s health.

The new Agreement does not contain a goal to reduce the flow of toxics to the Bay and it should. In the 2000 Chesapeake Agreement, we committed to a very specific goal of freeing the Bay of toxics by reducing or eliminating the input of chemical contaminants to a level that did not impact the living resources of the Bay or human health. We didn’t reach that goal but we should not abandon it. It is widely understood that the Bay can only be restored if we reduce the level of toxic contaminants.

Sea level rise is occurring in the Chesapeake Bay at the fastest rate in the world with an annual rate three to four times faster than the global average. Increases in storm frequency and duration exacerbates shoreline erosion and sediment pollution. Both have great bearing on the types of restoration projects in which we invest our scarce funds. This Agreement should address these issues and commit the partners to analyzing the implications of, and adapting our restoration efforts to, these changing conditions.

Finally, the Agreement is silent on how the signatories will address issues raised by the Conowingo Dam. The dam no longer has storage capacity to capture the sediments that travel down the Susquehanna and, further, can actually add to the sediment load in the Bay when heavy rains scour out the stored sediments behind the dam. This is a visible problem that raises the ire of the public and erodes support for other important restoration efforts like upgrades to Wastewater Treatment Plants and

improvements in agriculture. Although our partnership does not have authority over the Dam's relicensing, this issue needs to be acknowledged in some way in the new Agreement.

I offer these suggestions for improvement of this Bay Agreement because I am persuaded that we can restore the natural wonder that is the Chesapeake Bay. In my forty-four years of work to restore the Patuxent River and the Bay, I have learned one simple lesson: We must never waiver in our commitment to restore the Bay; we have the ability to restore it, and we must never stop until we do so. Never give up.

Sincerely,

Bernie Fowler

CC: Executive Council Members  
Chesapeake Bay Commission