

# Draft

## Conowingo Watershed Implementation Plan Financing Authority

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”), is made as of this [INSERT DAY] day of [INSERT MONTH], 2021 among the [INSERT PARTIES] (collectively the “Signatory CWIP Partners”) and the **Susquehanna River Basin Commission** (“Commission”) for the purpose of establishing a financing authority to implement the Conowingo Watershed Implementation Plan (“CWIP”), as more fully described herein, which is part of the overall 2010 Chesapeake Bay Total Maximum Daily Load (“Bay TMDL”) established by the U.S. Environmental Protection Agency (“EPA”).

WHEREAS, 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 EPA representing the federal government, and the Chesapeake Bay Commission are members of the Chesapeake Bay Program partnership (the “Chesapeake Bay Program partnership”) and collectively represented by the Principals’ Staff Committee; and

WHEREAS, through the Bay TMDL, watershed jurisdictions must have practices in place by 2025 to meet the nutrient and sediment load reduction targets necessary to restore the Chesapeake Bay; and

WHEREAS, 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; and

WHEREAS, the 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; and

WHEREAS, the Chesapeake Bay Program partnership estimates that, even after fully implementing the Bay TMDL and the jurisdictions’ Phase III Watershed Implementation Plans (WIPs), a significant reduction of nitrogen and phosphorous is still needed in order to mitigate the water quality impacts of Conowingo Reservoir infill; and

WHEREAS, at the December 2017 Principals’ Staff Committee meeting, the Principals’ Staff Committee, representing each member of the Chesapeake Bay Program partnership, 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; and

WHEREAS, at the December 2017 Principals’ Staff Committee meeting, all Principal Staff Committee jurisdiction members agreed to pool resources and to identify a process to fund and implement the CWIP; and

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WHEREAS, at the January 31, 2019 Principals' Staff Committee meeting, the Principals' Staff Committee approved final revisions to a framework for developing the CWIP; and

WHEREAS, the Principals' Staff Committee agreed to address these Conowingo pollution loads through the CWIP that all jurisdictions would work collectively to implement; and

WHEREAS, 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; and

WHEREAS, the CWIP is similar to, but need not be a jurisdictional Watershed Implementation Plan and presents a unique opportunity to innovate and build on existing, successful programs as much as it is feasible; and

WHEREAS, the Signatory CWIP Partners each individually and collectively through the Principals' Staff Committee have committed to support and implement the CWIP; and

WHEREAS, the Susquehanna River Basin Compact ("Compact") and the Commission ("collectively 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; and

WHEREAS, 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."; and

WHEREAS, 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; and

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

WHEREAS, the SRBC is authorized by federal legislation, to perform such services as are required by the Chesapeake Bay Program partnership and outlined in this MOU; and

NOW THEREFORE, the Signatory CWIP Partners and the SRBC (collectively the "Parties") express their mutual understandings and commitments as follows:

## 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

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- implementation of the CWIP, as 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. 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 partnership, 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 partnership, taking into consideration the implementation of the jurisdictional WIPs. In accordance with this section, SRBC will submit an annual plan to the Signatory CWIP Partners.

## 2. FUNDING SOURCES

### A. Signatory CWIP Partners

Reaffirming the Principals' Staff Committee's commitment to address the Conowingo pollution loads through the CWIP that all jurisdictions will work collectively to achieve by pooling partnership resources, 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

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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 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 MOU and make any necessary amendments in close consultation with the Chesapeake Bay Program partnership in order to incorporate lessons learned into continued implementation of the CWIP.

## 4. AMENDMENT

This MOU may be amended in writing upon the collective agreement of the authorized representatives of the Parties.

## 3. WITHDRAWAL

A Signatory CWIP Partner or the SRBC may, upon 30 days written notice to all other Parties to this MOU, withdraw its agreement to this MOU. In this event, the remaining Parties shall execute measures to appropriately adjust for the withdrawal.

[Signatures on Next Page]