

Chesapeake Bay
Fiscal 2017 Budget Overview
Response to the Department of Legislative Services

Issues

1. Overall Chesapeake Bay Restoration Funding: The Department of Legislative Services recommends the addition of budget bill language to request that the Administration continue to publish the overall Chesapeake Bay restoration data and two-year milestones funding in the Governor's budget books.

Response: The agencies accept this recommendation.

2. Stormwater Funding Changes: DLS recommends that the BayStat agencies comment on the impact of the BRF being available for stormwater remediation in fiscal 2018, whether the regulated jurisdictions appear to have sufficient stormwater remediation financing plans in place, and on whether it makes sense to implement a statewide P3 for stormwater remediation financing.

Response: The Maryland Department of the Environment (MDE) has been working with the ten regulated MS4 jurisdictions that are required to submit financial assurance plans to MDE by July 1, 2016. MDE will not know how the different counties intend to meet the financial assurance requirements until after the plans are received and reviewed, but many are advocating for the expanded use of the BRF for stormwater projects. A P3 approach to stormwater remediation financing is a local government decision that could be based on several factors including existing staffing and resources, and potential P3 cost savings, if any.

3. Nutrient Trading and Accounting for Growth: DLS recommends that the BayStat agencies comment on the plans for nutrient trading and Accounting for Growth, especially as the plans relate to baseline regulatory programs and other policies that are intended to reduce the likelihood of local water quality degradation caused by nonpoint source pollution from unregulated entities. In addition, DLS recommends again that the BayStat agencies submit information on updated historical spending and projected Chesapeake Bay restoration spending and associated impacts and the overall framework to meet the calendar 2025 requirement of having all BMPs in place to meet water quality standards for restoring the Chesapeake Bay. Finally, DLS recommends that the BayStat agencies include an analysis of the costs and benefits of revitalizing the regional financing authority idea for financing Chesapeake Bay restoration.

Response: The Maryland Trading & Offset Policy and Guidance Manual recently released by MDE attempts to provide the framework for trading by defining the requirements and obligations of credit users and generators, buyers and sellers, and intermediaries (aggregators and brokers). There are eligibility rules for point and nonpoint sources, baselines, geographies, mechanisms of exchange, rules for verification and assurance, and the process for the enforcement of trades. Trading is proposed to require all pollution reduction trades to comply with local TMDL-based allocations and not allow trading to cause or contribute to violations of local water quality standards. To ensure that

trades result in a net decrease in loads, a retirement ratio is applied to trades at the time of sale and the credits so derived will be applied toward TMDL goals.

In August 2013, the Accounting for Growth Stakeholders Workgroup published a Final Report that reflected consensus on many of the issues needing to be addressed by a statewide offsets policy. Full agreement was not achieved on some key elements, such as the determination of an offset baseline condition. An offset baseline is an essential part of an offset policy and is used to determine the amount of load offset required for new and/or increased sources of pollution. The reason that this became an issue is that active agricultural crop land under full implementation is estimated to generate, on average, higher nutrient and sediment loads than urban stormwater runoff under Environmental Site Design conditions. This means that as land converts from agriculture to urban nutrient loads could decrease. Maryland Bay Agencies are working to find a solution to this issue that does not conflict with other state policies. The current plan is to engage the Nutrient Trading Advisory Committee on this issue, once the nutrient trading manual is completed.

4. Conowingo Dam Relicensing Complications: DLS recommends that the BayStat agencies comment on when USACE is likely to approve the Lower Susquehanna River Watershed Assessment, the range of outcomes being explored in the report, and the possibility for obtaining some kind of compensation for issuing the water quality certification that could be used to reduce permanently nutrient and sediment loads upstream of Conowingo Dam.

Response: The Lower Susquehanna River Watershed Assessment Team worked to address comments and the final report is awaiting approval by the Army Corps of Engineers (ACOE). It is expected that the report will be finalized in 2016.

The ACOE report indicated that while the cost of dredging may be cost prohibitive and the impact short lived, implementation of upland practices may provide more long-term and cost effective solutions toward mitigating the impact of the infill. As part of the Water Quality Certification process, an array of options including dredging, upland mitigation, and nutrient trading are anticipated to be evaluated as potential solutions.

The major findings and outcomes of the ACOE report were that 1) Conditions are different than what was previously understood about the Dam; 2) Increases in nutrient loads entering the Bay as a result of the full reservoir are likely causing significant impacts to the health of the Chesapeake Bay ecosystem; 3) Sources of nutrients upstream of the Conowingo reservoir have far more impact on the Chesapeake Bay ecosystem than do the increases in nutrients caused by scour plus reduced deposition in the reservoir; 4) Managing sediment via large-scale dredging, bypassing, and/or operational changes do not provide sufficient benefits to offset impacts from the loss of long-term trapping capacity.

The Report recommended that before 2017, quantify the full impact on Chesapeake Bay water quality and living resources based on the report findings. This is being accomplished in part through a \$3.5 million enhanced monitoring and modeling project which is being funded by Exelon. Through a collaborative approach involving; MDE, DNR, University of Maryland, USGS, EPA Chesapeake Bay Program Office and Exelon; this information is currently being brought into the Chesapeake Bay Program Partnership decision tools that will inform the Chesapeake Bay 2017 midpoint assessment,

development of the Phase III Chesapeake Bay Watershed Implementation Plans as well as the 401 Water Quality Certification. These tools will be used to quantify the impact and assist in identifying mitigation options. Maryland is committed to using innovative technologies and strategies to reduce the threat to Bay water quality.

Recommended Actions

1. Add budget bill language on a Chesapeake Bay restoration framework.

Response: The agencies accept this recommendation.

2. Add budget bill language on two Chesapeake Bay restoration reports.

Response: The agencies accept this recommendation.