

February 25, 2020

Re: Conowingo Dam Emergency Legislation (HB1465 & SB955) to Address Inadequate Settlement Agreement

Dear Committee Members:

The below signed Watermen and Bay Captains urge you to hold Exelon Corporation accountable for its fair share of the environmental cleanup needed because of Conowingo Dam -- this is Maryland's only opportunity in the next 50 years to get meaningful pollution reductions necessary to address the risk that the Dam reservoir poses to the Susquehanna River and the Chesapeake Bay. Without a different regulatory and legislative course of action, and with Pennsylvania's Chesapeake Bay cleanup plans in serious doubt, most of the financial burden for cleanup could fall on Maryland taxpayers.

In April 2018, the State of Maryland issued a Water Quality Certification under Section 401 of the Clean Water Act for Conowingo Dam, as the federal license expired in 2014 and was up for renewal. Exelon sued Maryland a month later in federal district court, challenging the state's authority to require any pollution reductions from upstream sources. In October 2019, MDE and Exelon announced a settlement agreement that significantly falls short of protecting Maryland's waterways and requires Maryland to waive its 401 authority under the Clean Water Act, along with the issued Water Quality Certification. The Water Quality Certification is the state's only statutory tool to protect local water quality from the impacts of the Dam under the federal license.

Virtually all of the substantive portions of the settlement agreement will *not* be incorporated into the 50 year federal license agreement – which means there is no public input, scrutiny, and, more importantly, no ability to enforce these provisions. In addition, the settlement provides grossly insufficient funds to deal with the risks that Conowingo operations pose to the Susquehanna River and Chesapeake Bay — primarily from the next large storm that will scour the millions of tons of sediment, nutrients, and debris currently trapped behind the Dam.

As a 50-year agreement, this once-in-two-generation opportunity only amounts to about \$1.2 million per year from Exelon - the Water Quality Certification that MDE forfeited in light of this agreement would have required \$172 million a year for upstream nutrient abatement alone. This equates to \$8.5 billion in losses over the next 50 years. A few other deficiencies in the settlement agreement include:

- A mere \$500,000 was dedicated to finding solutions for the millions of tons of trapped sediment in the Dam's reservoir, which will be wholly inadequate to addressing that problem and remains the biggest threat to the health of the Chesapeake Bay.
- The settlement does not mention any appropriation of funding for upstream water quality improvements to lessen the continuous sediment and nutrient load to the dam's reservoir. Upstream communities need support as a part of this settlement.
- The settlement includes statements of intent, without assurances that the initiatives and actions under the agreement will actually be fulfilled by Exelon Corporation. There are barely any stipulated timelines for required completion.

- The settlement gives the public no enforcement power to make sure the terms of the settlement are fulfilled in a sufficient manner by MDE and Exelon.
- The settlement requires payments made by Exelon Corporation to go to the State's Clean Water Fund, which can be reallocated or raided by the Governor of Maryland at any time over the next 50 years.

Maryland's Chesapeake Bay Watermen rely on the health of the bay for their livelihoods. When large storm events cause the Susquehanna River to swell, the Conowingo Dam scours millions of tons of harmful, toxin-laden sediment and nutrients that negatively impact the health of the Chesapeake Bay, particularly the Upper Chesapeake Bay. The settlement, as it stands, does not include adequate funding to mitigate the effects of large scour events. Fishing, crabbing, and harvesting oysters is nearly impossible in the Upper and Mid Bay when Conowingo opens its flood gates. Not only does sediment muddy the water and cover up spawning grounds, but the nutrients attached to it, like phosphorus, create large algal blooms that devastate aquatic life and water quality.

After high flows in the summer of 2018, many captains all around the bay indicated that their businesses ceased to operate due to sediment and nutrient loads coming from the Conowingo Dam. In addition, the amount of trash and debris coming over the dam kept many boats docked in 2018. Under this settlement, Exelon has claimed that they will not remove any more trash and debris than was removed in 2018. Conowingo Dam poses a direct threat for the sustained future of shellfish harvesting and fishing in the Upper and Middle Bay. Watermen of the Chesapeake Bay deserve more and Exelon must pay its fair share.

Maryland Watermen ask that you:

- 1. Support emergency legislation (HB1465 & SB955) that prevents the state from waiving its 401 water quality certification authority -- this will ensure that Exelon plays its fair share of a role in the clean up around the Dam; and**
- 2. Urge Governor Hogan and the Maryland Department of the Environment (MDE) to either:**
 - a. Withdraw the settlement agreement in a timely manner and address the deficiencies listed above; or
 - b. Continue litigating the state's 401 Water Quality Certification.

The Susquehanna River and the Chesapeake Bay are public resources that should not be sold off to a private company for exclusive use without ensuring that the impacts to the public, Maryland's waterways, and aquatic life have been properly mitigated.

Sincerely,

Mark Brown
 Marks Charters
 3551 Revolea Beach Road

Herman Jeffery Harrison
 Commercial Fisherman
 21404 Wharf Rd
 Tilghman, MD 21671

Jason Seman
Maryland Fishing and Hunting
P.O. Box 443
Denton, MD 21629

Rick Trumbetas
Upper Bay Charter Captains Assoc.
96 Marydale Rd
Pasadena MD 21122

Joseph J Tomaschko
Charter fishing
8432 Hallmark Circle

Christopher Diehl
Teaser Charter Fishing
29 Craig Ct.
Conowingo, MD 21918

Jon Sweitzer

Robert T Brown, Sr
Maryland Watermen's Association
1805A Virginia Street
Annapolis, MD 21401

Madison Warner
Madison Services LLC
7613 Iroquois Ave
Baltimore, MD 21219

Robert Krausman
Galloway Charters
1121 Cold Spring Rd

Tracy Geho
Baltimore's Finest Charters
4236 Lynhurst Road

Kevin Strother

Captain Doug DuVall
Upper Bay Captains Assn.
8404 Old Frederick Rd
Ellicott City MD 21043

Michael Sadler
222 Batts Neck Road

Brian Hardman
Charter boat
102 Bay Drive
Stevensville MD 21666

James Mullin
Maryland Oystermen Association
P.O. Box 290
Rock Hall, MD 21661

Tim Smith
Fin Hunter Charters
14930 Tanyard Rd