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Testimony of
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Before the Subcommittee on Water Resources and the Environment
Reauthorization of the Chesapeake Bay Program
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Chairman Cardin and members of the Subcommittee on Water Resources and the Environment, thank you very much for the invitation to appear before you today. On behalf of the Administration of Governor Martin O'Malley, I appreciate having the opportunity to testify on behalf of the protection and restoration of the Chesapeake Bay. My name is John Griffin and I am the Secretary of Maryland's Department of Natural Resources.

Please allow me a personal moment to reflect on the long standing leadership of the Chairman on Chesapeake Bay issues. Twenty-five years ago Senator Cardin was the Speaker of the Maryland House of Delegates and I was on the staff of then-Governor Harry Hughes. I had worked with the Governor's cabinet and other staff to develop a series of legislative and budgetary initiatives to respond to the results of the eight-year U.S. Environmental Protection Agency (EPA) study of the reasons for the declines in the Chesapeake Bay.

I can state unequivocally that without the leadership of then-Speaker Cardin, many of these initiatives — in particular our Critical Areas program and our phosphate ban — would have failed.

The Chesapeake Bay is an unparalleled resource — possibly the most productive and fragile ecosystem on the planet. Years ago, the States of Maryland, Pennsylvania and Virginia, along with Washington D.C. and the Federal Government, realized that they could wait no longer to preserve this great resource. The leaders of these jurisdictions recognized that the Bay's problems could not be solved by any one of them acting alone, so they resolved to act together. It was their belief then, and it is our belief now, that without leadership from all levels of government — federal, state, and local — we will not realize our goal of restoring and protecting this most vital resource... an effort that, if successful, will serve as a model for the nation and the world.

To that end, we are very encouraged by President Obama's new Executive Order on the Chesapeake Bay and the unprecedented level of Federal cooperation and leadership for which it calls. At the State level, under the leadership of Governor Martin O'Malley, we recently set plans to accelerate — significantly — the Bay restoration effort. For Maryland, our commitment represents a 138 percent increase in our rate of nitrogen reduction and an over 500 percent increase in our rate of phosphorus reduction, to put Maryland on a pace to meet our Bay Restoration Goals by 2020.

We share your sense of urgency for a renewed effort to restore the Chesapeake Bay at all levels of government – federal, state and local. Now, some 25 years since the first Chesapeake Bay Agreement, what can be done to further accelerate progress in restoring this treasured ecosystem? We are in an exceptionally enviable position compared to other large-scale ecosystem restoration efforts around the nation and the world. We have a very clear sense as to what actions are necessary to meet our water quality objectives. We know what it will cost. We have most of the delivery mechanisms already in place at federal, state and local government levels. The path ahead will not be easy, cheap or without controversy, and we would respectfully request that this Subcommittee and the Congress play a catalytic role for action in the region and consider the following ideas in the reauthorization of the Chesapeake Bay Program.

This effort will not succeed unless we garner widespread public support for bold action to restore the Chesapeake.

Establish a Restoration Deadline

We recommend that the Subcommittee adopt new language in the reauthorization of Section 117 of the Clean Water Act that requires a deadline of no later than 2025 to meet the nutrient reduction goals of the Chesapeake Bay Agreement. Such a statutory deadline would allow us to place a stake in the ground, without which each State's new milestones become somewhat meaningless.

Establish Independent Scientific Evaluation

We further recommend that the language call for the National Academy of Sciences to serve as an independent scientific and programmatic evaluator of the Bay Program and its partners, as was already called for by Congress to ensure timely and successful restoration of the Everglades.

Provide Adequate Funding

It is also important to assure that adequate funding for this Program is authorized under section 117. Our understanding is that the funding for the Bay program has remained steady at approximately \$20 million for well over a decade, while the authorized spending level is \$40 million. We believe that the Program should be fully funded at its authorized level of \$40 million, with the increases provided to the States through their implementation grants. In Maryland, we are using our Implementation Grant to assist local communities in taking the necessary steps to control and abate non-point source pollution. We recommend that any increase in funding to the States require an equal match from each State, and that the increases in funding provided to jurisdictions be proportional to the nutrient allocations.

Urban/Suburban Runoff

Our efforts to accelerate the restoration of the Chesapeake Bay must address pollution from urban and suburban waters because they contribute almost a quarter (23 percent) of the Bay's pollution. Cleaning and restoring urban rivers and greening urban infrastructure also helps to make these areas attractive for infill development, which is much needed in the Bay watershed. For example, today we are sitting in a building that is located in the Anacostia Watershed, which is the focus of a major restoration effort by the Federal government, Maryland and the District of Columbia. The Anacostia Watershed Restoration Plan is a comprehensive approach for restoring the watershed.

The team that developed the plan has identified over 5,000 restoration projects needed — the highest priority of these are over 1,700 stormwater retrofit projects. Every time it rains, polluted runoff from Washington D.C. and the surrounding suburbs flows into the Anacostia and the Potomac Rivers, just like every other urban and suburban area in the Bay watershed. Much of the land in the Anacostia Watershed that contributes this polluted runoff is owned or controlled by the Federal government. Federal leadership as well as technical and financial support is critical to the success of the Anacostia restoration and other similar urban/suburban areas throughout the Bay watershed.

To restore the Anacostia and Potomac Rivers' water quality, and ultimately the Bay, we must control the combined sewer system overflows (CSOs) from the District's part of the watershed and sanitary sewer overflows (SSOs) from the suburban area in Prince Georges and Montgomery Counties. We must also complete the upgrade of the Blue Plains wastewater treatment plant. Urban and suburban areas must be retrofitted with green roofs, rain gardens, and other low impact design features to reduce runoff. At the same time, the Federal government must follow through with stronger air pollution controls to reduce the nitrogen emissions and resulting deposition to the watershed, which is particularly problematic in our highly impermeable urban/suburban watersheds like the Anacostia. Maryland recently implemented the Healthy Air Act for power plant emission controls, as well as the Clean Cars Act.

We know that the State of Maryland, District of Columbia, Montgomery County, and Prince George's County will do what they can to fund and implement these projects, but they will need the support and help of the Federal government as well. A reauthorization of Section 117 could include provisions for funding and other authorities needed to help implement the plan when it is completed. These authorities might also extend to Baltimore Harbor and the Elizabeth River as they are the two other priority urban waters that have been identified in the Bay.

In addition to Section 117, it is a fact that over the past eight years the core water programs implemented by the States have been crumbling around us. You have heard many times that mandates for States have increased while funding to States from the EPA has decreased. This is reaching a critical tipping point in what we call the core water programs — NPDES permitting, stormwater, wastewater and others. At a time when the Bay jurisdictions are accelerating efforts on top of already depleted programs, this is becoming more critical to our success. Restoring EPA funding through increases in the CWA Section 106 and other program support grants is critical to our future success — as well as that of the EPA — in restoration efforts.

Create Greater Accountability

Bay related agencies in Maryland have come to appreciate the value and importance of Governor O'Malley's BayStat program. Lessons can be learned and practices adapted from this program. BayStat is being used to advance accountability and coordination among key government agencies, to evaluate on a regular basis State initiatives directed at improving the health of the Chesapeake Bay, and to ensure these programs are coordinated and operating at the highest efficiency. Most importantly, we monitor our progress against established benchmarks and make adjustments where necessary. In other words, we are building into BayStat the whole concept of adaptive management. Over the past two and a half years, BayStat has helped Maryland State agencies work smarter...

- basing decisions on the best available science,
- targeting resources to get the biggest bang for the buck, and

- o being more open and accountable to Maryland citizens.

We in Maryland are very heartened that President Obama and EPA Administrator Jackson have elevated the BayStat concept regionally in the new Chesapeake Bay Executive Order.

Require Binding and Enforceable Implementation Plans

Finally, there is a need for new language to ensure the development of an enforceable and effective Total Maximum Daily Load (TMDL) plan for the Chesapeake, one containing requirements for specific implementation plans with short term deadlines which will ultimately achieve our nutrient and sediment reduction goals. These plans must be binding and enforceable. The EPA Administrator needs the clear authority to require and enforce the implementation of these plans and identify appropriate consequences if they are not successfully implemented.

The Clean Air Act is a good model upon which to pattern amendments to the Clean Water Act. During the period from 1990 to 2008, the Clean Air Act successfully reduced ozone levels by 40 percent. The Clean Air Act uses many of the same permitting and planning tools that are prevalent in the Clean Water Act, but there is one critical difference between the two environmental statutes. If a State fails to produce an air quality control plan that demonstrates the State's ability to achieve attainment with Federal ambient air quality standards, the Clean Air Act imposes meaningful sanctions on the State, including loss of transportation and other Federal funding, more stringent permit requirements on new and modified regulated facilities in the non-attainment area and limits on initiation of new transportation projects.

It is less clear what the ramifications are for failure to meet Clean Water Act standards, or to have a credible plan to do so. We urge the Subcommittee to establish clear requirements for the States to develop implementation plans subject to approval and enforcement by the EPA if plans are not approved or satisfactorily implemented. Perhaps the most effective sanctions for non-compliance that we would recommend the committee consider are the suspension of authority to issue new hook-ups to public wastewater systems and the ability of local governments to issue building permits.

Mr. Chairman, we in Maryland are grateful to you and the Members of your Subcommittee for your commitment to the Chesapeake Bay restoration effort. We urge this Subcommittee to fully explore opportunities to strengthen the restoration effort and the mechanisms by which all levels of government will be held accountable for accelerating restoration.

I will be pleased to answer any questions that you or Members may have.

Thank you.

