



July 21, 2024

To Whom it May Concern:

The undersigned members of the Choose Clean Water Coalition (Coalition) write to formally comment on the Chesapeake Bay Program (the Program) Beyond 2025 Steering Committee's recommendation to the Principals' Staff Committee (PSC). The Coalition proposes our own recommendations and a new vision for our work to achieve our goals beyond 2025.

We envision a thriving watershed for people and nature stewarded by a diverse partnership that protects and conserves our land and water resources, promotes innovation, and confronts the impacts from climate change through strong, inclusive, and collaborative leadership.

EXECUTIVE SUMMARY

When the Coalition was created in 2009, our charge was two-fold: 1) provide oversight to ensure the Chesapeake Bay jurisdictions and federal agencies are held accountable to their commitments under the soon to be created Total Maximum Daily Load (TMDL), and 2) advocate for the state and federal resources necessary for those jurisdictions and agencies to achieve those goals. Over the last 15 years, the Coalition, and our now more than 300 member organizations, have worked tirelessly to do both.

The collaboration and partnership provided by the Program has delivered many successes. These include achieving several of its outcomes under the *2014 Chesapeake Watershed Agreement (2014 Agreement)*, including increased public access sites, land under conservation, blue crab abundance, and number of oyster reefs created. While we have made progress, the broader restoration of our rivers, streams, and the Chesapeake Bay is off track, and we will not meet many of the commitments in the *2014 Agreement*.

While goals and outcomes were not met, the Coalition views these difficult moments not as defeats, but rather as opportunities; a chance to celebrate what we have achieved, and more importantly reinvigorate and reimagine our collective work to ensure we achieve a thriving and healthy watershed.

The undersigned members of the Coalition believe this moment calls for innovation, creativity, and bold leadership as we embark down a path to the next era of our work. One that will incorporate new science and research from the *Comprehensive Evaluation*

of *System Response* (CESR) report, consider our work based on the impact of climate change and population growth, address new and emerging challenges in issue areas like toxics and land use, and ensure our work addresses the issues that have the greatest impact on the people in our local communities and watersheds.

The undersigned members appreciate the work of the Beyond 2025 Steering Committee but feel the recommendations do not go far and move quickly enough. The undersigned offer the following alternative recommendations for the Chesapeake Executive Council to consider adopting at their annual meeting in December:

1. At the December 2024 meeting, the Executive Council signs a recommitment to all 31 outcomes in the *2014 Chesapeake Watershed Agreement*.
2. The Executive Council signs a directive to the Principals' Staff Committee to:
 - a. Lead a revision of the current 31 outcomes and identify suggested changes to bring to the Executive Council at their 2025 meeting.
 - Sunset the Beyond 2025 Steering Committee and begin an open stakeholder-centered process.
 - Incorporate the impact of climate and population growth, and ensure our goals are viewed through the lens of diversity, equity, inclusion, and justice.
 - b. By December 2026, facilitate a process to streamline decision-making, eliminate duplicative systems, and ensure the Program is built to advance our ultimate goal of thriving living resources, healthy communities, and clean water.
 - Address barriers to progress within the structure of the Program (Management Board), elevate living resources, and prioritize stakeholder engagement, including the role of the Program's Advisory Committees.
 - Re-engage all federal leadership with consistent convenings of the Federal Leadership Committee.
 - c. By the 2026 Executive Council Meeting, assess the current TMDL Accountability Framework of the Chesapeake Bay Program and identify opportunities for additions and improvements to ensure the signatories are meeting their clean water commitments. Create an implementation structure that tracks progress and provides mutual accountability toward all the goals and outcomes in the *2014 Agreement*.
 - Consistent implementation of the authorities currently outlined in the Accountability Framework
 - Institute currently defunct roles such as the Independent Evaluator and Senior Advisor of the Chesapeake Bay and Anacostia River

- Clearly define the different roles of Region III and EPA Chesapeake Bay Program to ensure broad and consistent enforcement of the Clean Water Act and authorities under other EPA statutes.
- Develop an implementation structure that includes mutual accountability to ensure progress towards all the goals and outcomes in the *2014 Agreement*.

CHOOSE CLEAN WATER RECOMMENDATIONS

For almost a year, the Coalition staff and several members have participated in official convenings within the Program (currently serving as an advisory member of the Beyond 2025 Steering Committee), and have provided formal and informal comments and feedback throughout the Beyond 2025 visioning process. We held several internal discussions among our membership, and we urge the expeditious adoption of these recommendations.

1. Formal recommitment to the *2014 Chesapeake Watershed Agreement*

For 40 years, the Bay jurisdictions and federal agencies have collaborated knowing the work to restore the Chesapeake Bay has tangible benefits to their local waterways. Coalition members can demonstrate how the hundreds of millions of dollars in investments into each state and the District of Columbia have resulted in real improvements in local communities. These include providing much needed flood mitigation, fish and wildlife habitat, public access points, safe drinking water, and more benefits throughout the entire 64,000 square mile watershed.

Out of the 31 outcomes, 18 have been achieved or are on track, and 13 outcomes are off track or have an unknown status. While we should celebrate the 18 outcomes we have accomplished, we must look forward and recalibrate to set our next benchmarks. We must also reassess the 13 outcomes we will not achieve by 2025 and determine the course corrections needed to achieve them by a new deadline.

While work on an amended agreement should begin as soon as possible, **we are asking the Executive Council to formally sign a recommitment to the *2014 Agreement* at their meeting this December.** At this critical juncture, the public and stakeholders need to see that the jurisdictions and federal partners are committed to this partnership and are making the restoration of all the rivers and streams in the watershed a long-term priority.

2. Executive Council Directive to the Principals' Staff Committee

Much has changed since the signing of the *2014 Agreement* a decade ago. Issues that were once deemed “emerging” are now having a measurable impact on the watershed. We face new challenges we are struggling to address, and the restoration and conservation community itself has changed. There is also new science and research we must use to inform our work, including but not limited to the CESR report, the *Rising Watershed and*

Bay Water Temperatures report, and ERG's *Chesapeake Bay Program Beyond 2025 Evaluation* (ERG Report).

Under the *2014 Agreement*, the Program finds itself several years behind the rest of the environmental and conservation community and there will only be continued delay of our success if the Program does not take swift action to recalibrate its work.

The undersigned members of the Coalition ask that the Executive Council lead the Chesapeake Bay Program into this new era by issuing a directive to the Principals' Staff Committee requesting they:

Conduct an evaluation of the current 31 outcomes and identify suggested changes to bring to the Executive Council at their 2025 meeting.

The Coalition is supportive of the signatories using the current *2014 Agreement* to continue to guide our work, but, as reported in ERG's Report, there is widespread concern about the current goals and outcomes. For instance, while there are 10 goals and 31 outcomes in the *2014 Agreement* that span a wide range of issue areas and priorities, the TMDL has dominated the focus of the restoration effort and had the unintended consequence of pulling expertise and resources away from the other goals and outcomes of the *2014 Agreement*. It also alienated certain state and federal partners, stakeholders, and the public who are focused on living resources, like habitats and wildlife.

In addition to the concerns raised in the ERG report, the Program must acknowledge what has changed since the *2014 Agreement* was signed 10 years ago. For instance:

- **Toxic Contaminants:** The current Program outcomes on Toxic Contaminants reference research on contaminants of "emerging and widespread concern," including polyfluoroalkyl substances (PFAS). This issue is no longer considered "emerging", as reflected in the Environmental Protection Agency's (EPA) April 2024 nationwide drinking water standards for PFAS and designation of PFAS as a hazardous waste.
- **Land Conservation:** The Program is set to reach its Land Conservation outcomes by 2025. However, the goal was created long before land conservation commitments were made, like 30x30. The goal was also created years before the proliferation of data centers, warehouses, and utility-scale solar farms in this region. We are now experiencing a rapid conversion of land, which will not only impact water quality, but take us one step forward, two steps back on land conservation.

Stormwater runoff is also the fastest growing source of pollution in the Bay watershed due to ongoing urban and suburban sprawl and the growing conversion of farmland. The jurisdictions must implement real requirements and guidance to curtail this increased source of pollution. This includes requiring actual impervious

surface removal in MS4 permits and prioritizing redevelopment over new development.

- **Climate Resiliency:** The current Program outcomes on Climate Resiliency and Climate Adaptation fail to acknowledge the very real interactions between the pollution of Greenhouse Gases (GHGs) and water quality concerns. Carbon dioxide is the only GHG named in the Management Strategy or Beyond 2025 Climate small group recommendations. Meanwhile, the impact of one pound of nitrous oxide on warming the atmosphere is 265 times that of one pound of carbon dioxide. Nitrogen runoff not only pollutes our waterways but is also consumed by bacteria that produce nitrous oxide as a byproduct contributing directly to climate change.

There is also an incredible opportunity to harness the influx of federal funding for climate resilience if the Program can fully embrace the connection between climate and water quality. For example, investing in regenerative agriculture and local food systems provides co-benefits to people, conservation, and water quality, and can be supported through new USDA climate-centered funding opportunities.

- **CESR Report:** The CESR report is one of the most comprehensive evaluations of the Chesapeake Bay restoration effort. The Program's goals and outcomes must reflect the findings of this report, address the nutrient mass imbalance, and confront the misalignment between modeling and monitoring.
- **Refreshing Achieved Goals:** The Program must refresh goals that are set to be achieved, such as public access and sustainable fisheries, developing new outcomes through the lens of climate and population growth impacts, as well as through the lens of diversity, equity, inclusion, and justice. This is an opportunity to think creatively about new challenges, such as the impact on our fisheries from invasive species like Blue Catfish and how our work is equitably improving all communities across the watershed.

The Bay Program must conduct this audit of the goals and outcomes by the end of 2025 to ensure no more ground is lost against these and other challenges. This review should:

- **Start with a public feedback/engagement period on the 31 outcomes and create an iterative process for feedback.**
Having stakeholders engaged at the beginning of this process not only addresses the concerns raised in the ERG report on how the Program is prioritizing public engagement, it makes the overall product stronger. Stakeholders and communities experience the successes and challenges of the restoration effort firsthand and are already working on new and emerging issues.
- **Be evaluated through the lens of the emerging challenges (climate change conditions, increasing population growth), and diversity, equity, inclusion, and**

justice considerations, as requested by the Executive Council in their 2022 directive.

The 2022 Executive Council directive asked the Principals' Staff Committee (PSC) to "review the work of the program through the lens of climate change, increasing population growth, and diversity, equity, inclusion, and justice (DEIJ)." These three issues have only grown in importance and impact over the last ten years, and we ask that this is the lens through which we review the current outcomes and goals of the agreement.

- **Be done through an inclusive process that utilizes the most publicly accessible aspects of the Chesapeake Bay Program.**

It is critical that the review process for the *2014 Agreement* is done in a way to maximize innovation, expertise, and a diversity of opinions. The Program's Goal Implementation Teams, Advisory Committees, and Workgroups are currently the most accessible way for the public and stakeholders to participate in the Program, which helps foster innovation and is the ideal environment to introduce new ideas.

- **Result in the sunset of the Beyond 2025 Steering Committee.**

With its sunset, interested members of the Steering Committee will have more capacity to engage in the collaborative process outlined above and the recommendations for amendments to the *2014 Agreement* can be brought directly to the Principals' Staff Committee for consideration.

By December 2026, facilitate a process to streamline decision-making, eliminate duplicative systems, and ensure the Program is built to advance our ultimate goal of thriving living resources, healthy communities, and clean water.

Recent reports and discussions suggest that part of the reason the Program is not reaching its goals is due to a lack of focus on the health of living resources and a complicated structure and governance framework. This was made clear throughout the Beyond 2025 process, as both participants in the Partnership, Coalition members, and other stakeholders expressed their frustration with the complexity of the Program and the allocation of capacity and resources.

As states consider how to implement the CESR report and shift focus to shallow water habitats, it's critical to shift our framework for planning, monitoring, and evaluating living resource responses. The ERG report suggests there are too many teams, workgroups, decision making bodies, and ad hoc committees. This expanding bureaucracy is often confusing, not well publicized to stakeholders, and duplicative, resulting in lost time and capacity, as well as frustration from both within and outside the Program.

To address these concerns, the Coalition suggests a reorganization of the Bay Program structure and a revised governance which would:

- **Elevate the emphasis on living resources and healthy communities by revising the structure and governance of the Program to make it more inclusive, efficient, and effective.**

As expressed in the ERG report, current membership of decision-making bodies within the Program (especially the Management Board) prioritize the water quality outcomes and do not provide “the appropriate expertise and experience” necessary for the Program to track **all** goal and outcome progress.

To restore the focus to living resources and address impediments to progress, the Coalition suggests a structure that is based in a social science framework and better reflects all the goals and outcomes within the *2014 Agreement*. This could include changing the membership of the Management Board or elevating the role of the Goal Implementation Teams. A new structure would ensure a diversity of subject matter experts are engaged in the decision-making process and provide increased opportunity for stakeholder engagement and leadership.

- **The new structure and governance should allow for and inform a revised strategy for stakeholder and public engagement within the partnership.**

The existing Advisory Committees (Stakeholder Advisory Committee, Local Government Advisory Committee, and Scientific and Technical Advisory Committee) for the Program include a wide range of stakeholders from across the watershed, but their knowledge and expertise is underutilized. A new structure and governance must include a revised role for these Committees that better incorporates their critical perspectives.

The broader nonprofit and stakeholder community across the watershed can also provide more capacity, knowledge, and resources to the Program if engaged more intentionally. This includes working with existing networks to build capacity and outreach capability and developing a formal process that the Program must follow when it comes to public engagement, feedback, and comment periods. Right now, the Coalition must continually advocate for public and stakeholder engagement, which results in frustration from the stakeholders and a loss in resources for the Program.

- **As directed in Executive Order 13508, regularly convene the Federal Leadership Committee (FLC) to ensure all federal agencies are engaged and to recalibrate the focus of the Program beyond water quality.**

In 2009, the Chesapeake Bay Protection and Restoration Executive Order (E.O. 13508) was issued to bolster the federal agencies’ efforts to collaborate on protection and restoration of the Chesapeake Bay and created the Federal Leadership Committee (FLC). The FLC determined the roles and commitments of the federal agencies leading up to the *2014 Agreement*, which is once again needed as the next chapter of the restoration effort is determined.

Given the current concerns “raised about the dominant role of the Environmental Protection Agency and the lack of input from other federal agencies and partners,” regularly convening the federal partners will help to not only engage all agency leadership, but also ensure that EPA is truly reflecting the position of all of the federal agencies.

By the 2026 Executive Council Meeting, assess the current TMDL Accountability Framework of the Chesapeake Bay Program and identify opportunities for additions and improvements to ensure the signatories are meeting their clean water commitments. Create an implementation structure that tracks progress and provides mutual accountability toward all the goals and outcomes in the 2014 Agreement.

When the TMDL for the Chesapeake Bay was created, it was often called “the last and best hope for the Bay” because there was one thing it could provide when laws and regulations, funding opportunities, legal decisions, executive orders, and studies fell short - real accountability. However, since its inception in 2009, few of the authorities listed in the Accountability Framework have been utilized, and the region has experienced a decline in Clean Water Act permitting, compliance, monitoring, and water quality assessment programs.

Widespread noncompliance and the extent of expired permits shown by federal data (see EPA Environmental Compliance History Online database) is an enduring barrier to achieving our clean water goals. This includes the most recent example of the violations at the Back River and Patapsco Wastewater Treatment Plants in Baltimore, Maryland. The total nitrogen loads discharged illegally from those two plants alone in 2021 exceeded the total amount of nitrogen that was reduced by the entire agricultural sector in Maryland between 2009 and 2021. This is a stark illustration of what could become more common if pollution from point sources is deemed “no longer an issue.”

These failures go beyond not achieving our nitrogen, phosphorus, and sediment reduction goals. Over the last 15 years, the cumulative burdens of toxic pollution have increased, the pace of climate change has accelerated, and the biodiversity crisis has worsened. However, the Partnership has failed to adequately embrace the role its efforts have in creating healthy and resilient communities, while also losing sight of our goals related to living resources.

The Coalition believes the current TMDL Accountability Framework laid out by EPA is strong, and a more faithful adherence to its mechanisms would result in major advancements toward creating thriving waterways and communities across the watershed. The undersigned also believe the Program must fully embrace the recommendations of the CESR report and bring mutual accountability to the living resources and people-centered outcomes of the Bay Agreement. This is reflected in the below recommendations, which include:

- **The TMDL Accountability Framework should include all aspects of Section 117, E.O. 13508, the TMDL, and accountability framework documents, including mandatory reporting, the selection of an Independent Evaluator, and filling the position of the Senior Advisor of the Chesapeake Bay and Anacostia River to the EPA Administrator.**

This recommendation reflects the strength in the current TMDL Accountability Framework and asks for a recommitment to the authorities it contains. There are also several mechanisms not currently being utilized that would provide a great benefit to advancing our collective goals. This includes the selection of an Independent Evaluator (as directed in the E.O 13508 and *Chesapeake Bay Accountability and Recovery Act of 2014*) and the appointment of the Senior Advisor of the Chesapeake Bay and Anacostia River to the EPA Administrator.

- **Clearly define the roles of EPA Region III and that of the EPA Chesapeake Bay Program Office to ensure the Chesapeake TMDL is supplementing, rather than supplanting, the ongoing work of Region III and the states with respect to their statutory obligations.**

The Bay TMDL is not the only justification for oversight and accountability actions in the watershed. Beyond enforcing the Clean Water Act, EPA Region III should look to other tools, such as the Office of General Council's *EPA Legal Tools to Advance Environmental Justice*, which contemplates the full use of EPA authority under multiple bedrock environmental statutes, such as the Clean Air Act and Resource Conservation and Recovery Act. What is good for environmental justice is good for water quality throughout the Bay watershed and we strongly urge EPA to recommit their strategies to advance environmental justice.

The TMDL does not preclude states or the EPA from developing or approving additional TMDLs throughout the Bay watershed, which will only help uplift our restoration effort. We strongly urge EPA Region III to redouble its focus not only on its own compliance activities but, far more importantly, to push the states to adhere to their delegation agreements separate and apart from all of the many "heightened expectations" under the TMDL.

- **State regulators use their own traditional authority under state and federal water quality laws to improve permitting, compliance, and local TMDL development.**

While much attention given to the CESR report has focused on the "response gap," the report also highlighted an equally important "implementation gap" caused by insufficient jurisdictional investments in BMPs, programmatic enhancements, and regulatory decisions.

As support builds for another CESR recommendation that prioritizes shallow waters, we urge the Partnership to consider the importance of establishing new local TMDLs for those areas. This would ensure that any such investments made to restore a specific shallow water are not wasted by inadequate attention to pollution

reductions. By doing so we will fully realize the immeasurable social and environmental co-benefits that comes from a reduction in water pollution.

- **The Partnership will develop an implementation structure that includes mutual accountability to ensure progress towards all the goals and outcomes in the 2014 Agreement.**

The current Strategy Review System process is designed to track progress on all the *2014 Agreement* goals and outcomes. As highlighted in the ERG report, the process needs improvement to strengthen its efficiency and efficacy and ensure challenges to goal and outcome achievement are addressed efficiently.

Creating an implementation structure that requires the signatories to also report on their progress regularly to Program leadership provides mutual accountability to all the *2014 Agreement*. It will also bring more resources and capacity to the program as more state and federal agencies see their knowledge and expertise reflected in the work. This is an opportunity for innovation and creativity, where the jurisdictions can work together to collaborate on programs and projects toward shared goals.

SUMMARY

As a Coalition of more than 300 organizations across the entire region, we are all too aware that the Chesapeake watershed restoration effort is not just about the Bay. While as an environmental and conservation community we care deeply about the Bay's health and sustainability, it is just as important that our work is impactful at the local level, from Cooperstown, New York to Norfolk, Virginia, and everywhere in between. This work is about more than the Bay; people are depending on this movement to ensure they have access to clean drinking water, that their children can safely play in a public greenspace, that their outdoor recreation business can operate, and that their communities develop the resiliency to face stronger and more frequent storms.

There is no other option than to take bold and immediate action to recalibrate our work and the undersigned members of the Coalition are ready to support the Program in these renewed efforts. We have been a supporter and an accountability partner for this movement for the past 15 years and we are ready to continue our important work together. We ask the Executive Council to lead us into this new era by embracing and enacting the Coalition's recommendations outlined in this letter.

Sincerely,

Action Together Northeastern Pennsylvania
Alliance for the Shenandoah Valley
American Canoe Association
American Chestnut Land Trust
American Rivers
Anacostia Parks & Community Collaborative
Anacostia Watershed Society
Audubon Mid-Atlantic
Audubon Society of Northern Virginia
Baltimore Green Space
Baltimore Tree Trust
Beaverdam Creek Watershed Watch Group
Blue Ridge Watershed Coalition
Blue Water Baltimore
Butternut Valley Alliance
Cacapon and Lost Rivers Land Trust
Cacapon Institute
Capital Region Land Conservancy
Casey Trees
Catoctin Land Trust
Centro de Apoyo Familiar
Chapman Forest Foundation
Chesapeake Bay Foundation
Chesapeake Conservancy
Chesapeake Conservation Landscaping Council
Chesapeake Legal Alliance
Chestnut Hill United Church
Citizens to Conserve and Restore Indian Creek
Clean Fairfax Council
Clean Water Action
Coalition for Smarter Growth
Conservation Foundation of Lancaster County
Conservation Voters of Pennsylvania
DC Environmental Network
Defensores de la Cuenca
Delaware Center for Horticulture
Delaware Nature Society
Delaware-Otsego Audubon Society
Earth Force
Eastern Pennsylvania Coalition for Abandoned Mine Reclamation
Eastern Shore Land Conservancy
Environmental Defense Fund
Environmental Integrity Project
Environmental Policy Innovation Center
Envision Frederick County
Forever Maryland
Friends of Accotink Creek
Friends of Dyke Marsh
Friends of Lower Beaverdam Creek
Friends of Quincy Run
Friends of Sligo Creek
Friends of the Cacapon River
Friends of the Chemung River Watershed

Friends of the Nanticoke River
Friends of the North Fork of the Shenandoah River
Friends of the Rappahannock
Friends of the Rivers of Virginia
Interfaith Partners for the Chesapeake
Interfaith Power & Light (MD, DC, NoVA)
Izaak Walton League of America
James River Association
Lancaster Clean Water Partners
Lancaster Farmland Trust
Land Trust Alliance
Latino Outdoors
Lower Shore Land Trust
Lower Susquehanna Riverkeeper Association
Lynnhaven River NOW
Maryland Academy of Science at Maryland Science Center
Maryland Conservation Council
Maryland League of Conservation Voters
Maryland Nonprofits
Maryland Pesticide Education Network
Mattawoman Watershed Society
Montgomery Countryside Alliance
Muddy Branch Alliance
National Aquarium
National Parks Conservation Association
National Wildlife Federation
Nature Forward
Neighbors of the Northwest Branch
New York League of Conservation Voters
Otsego County Conservation Association
Otsego Land Trust
Parks and People Foundation
Patuxent Tidewater Land Trust
PennFuture
Penns Valley Conservation Association
Pennsylvania Council of Trout Unlimited
Pennsylvania Interfaith Power & Light
Phillips Wharf Environmental Center
Piedmont Environmental Council
Potomac Conservancy
Potomac Riverkeeper Network
Potomac Valley Audubon Society
Preservation Maryland
Protect Hanover
Rachel Carson Council
Restore America's Estuaries
Rivanna Conservation Alliance
River Network
Rock Creek Conservancy
Save Our Soils
Scenic Rivers Land Trust
ShoreRivers
Sidney Center Improvement Group

Sierra Club
Sleepy Creek Watershed Association
Southeast Rural Community Assistance Project
Southern Maryland Audubon Society
SouthWings
St. Mary's River Watershed Association
Sussex Preservation Coalition
Sweet Springs Resort Park Foundation Inc.
Sweet Springs Watershed Association
The 6th Branch
The Downstream Project
Theodore Roosevelt Conservation Partnership
Town Run Watershed
Transition Howard County
Trout Unlimited
Virginia Conservation Network
Virginia League of Conservation Voters
Virginia Organizing
Ward 8 Woods Conservancy
Waterkeepers Chesapeake
West Virginia Citizens Action Group
West Virginia Land Trust
West Virginia Rivers Coalition
Wetlands Watch
Wild Virginia