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November 22, 2016

The Honorable Patrick Morrisey
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305

Dear Attorney General Morrisey:

We are writing in response to your letter concerning West Virginia's water withdrawals from the Potomac River. Maryland officials have long acknowledged that West Virginia has the same rights on the Potomac River as those described by the Supreme Court in *Virginia v. Maryland*. Since that case was decided in 2003, the Maryland Department of the Environment ("MDE") has issued water appropriation permits to West Virginia users, but only to those who have *requested* MDE to do so. MDE has made it clear to West Virginia users that they are not required to come to Maryland for permits, but West Virginia landowners have continued to come to Maryland because West Virginia has traditionally not taken an active role in the management of this critical public resource.

As you can appreciate, the vital role that the Potomac plays in the water supply system of the Maryland-Virginia-West Virginia region makes it essential that our states regulate withdrawals to maximize the river's beneficial uses, whether those uses be industrial, residential, agricultural or environmental. The Maryland permitting process balances those competing uses to ensure that Potomac remains a regional and national resource.

Until receiving your letter, Maryland had no indication that West Virginia intended or desired to exert sovereignty over its riparian rights on the Potomac River. When the Supreme Court decision was handed down, the Commonwealth of Virginia took steps to implement a robust program to regulate and manage surface water withdrawals. Maryland and Virginia regularly meet to discuss water appropriation from the Potomac River. While it is our understanding that West Virginia now requires users of more than 300,000 gallons over any 30-day period to report their water use, the state has not yet developed a program to regulate surface or groundwater withdrawals.

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We invite West Virginia, as a member of the federal Interstate Compact for the Potomac River Basin, to join Virginia and Maryland in taking the measures necessary to ensure that these resources are adequately managed and protected. If West Virginia wishes to take that step, representatives of MDE are prepared to provide whatever assistance they can in transitioning the regulation of water appropriations. But whatever approach West Virginia decides to take, Maryland is prepared to cease reviewing and issuing water appropriation and use permits for West Virginia users on the Potomac.

West Virginia's rights, like those of Virginia, are already enshrined in the Compact of 1785, as interpreted and applied by the United States Supreme Court. There does not appear to be a need to enter into any other compact.

We trust that this letter resolves your concerns. Please contact us if you wish to discuss next steps.

Very truly yours,



Brian E. Frosh
Attorney General



Ben Grumbles
Secretary, Maryland Department of
the Environment