

DELAWARE RIVER BASIN COMMISSION

MEETING OF DECEMBER 8, 2010

Minutes

The Commission met at the West Trenton Volunteer Fire Company in West Trenton, New Jersey.

Commissioners Present: Katherine E. Bunting-Howarth, Chair, Delaware
Lt. Colonel Philip M. Secrist, Vice Chair, United States
Dana Aunkst, Second Vice Chair, Pennsylvania
John Plonski, New Jersey
Fred Sickels, New Jersey
Mark Klotz, New York

DRBC Staff Participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Kenneth J. Warren, DRBC General Counsel, Hanglely Aronchick Segal & Pudlin
Pamela M. Bush, Commission Secretary & Assistant General Counsel
Thomas J. Fikslin, Modeling, Monitoring & Assessment Branch Manager
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Manager, Water Resources Management Branch
Chad Pindar, Supervisor, Project Review Section
Amy Shallcross, Supervisor, Operations Section

Chairwoman Dr. Howarth convened the business meeting at 1:30 p.m.

Minutes. The Minutes for the meeting of September 15, 2010 were still under consideration and would not be ready for formal approval until March, 2011.

Announcements. Ms. Bush announced the following meetings and events:

- *DRBC Regulated Flow Advisory Committee Meeting.* Tuesday, December 14, 2010 at 10:00 a.m. in the Goddard conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Hernan Quinodoz – (609) 883-9500, extension 225.
- *DRBC Water Management Advisory Committee Meeting.* Tuesday, February 1, 2011 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Donna Barnett – (609) 883-9500, extension 308.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, February 16, 2011 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Laura Tessieri – (609) 883-9500, extension 304.

Executive Director's Report. Ms. Collier's remarks are summarized below:

- *DRBC Staffing Change and Job Opening.* Chad Pindar, DRBC's current Project Review Section Supervisor, will become Watershed Planning & Compliance Supervisor within the Planning and Information Technology Branch. The switch will take place as soon as a replacement for Chad as Project Review Section Supervisor is found. That position is advertised on the DRBC web site; applications will be accepted through January 7, 2011.
- *Proposed Regulations for Natural Gas Development Activities.*
 - *Public Process.* Proposed regulations for natural gas development projects in the Basin will be posted on DRBC's website at 9:00 a.m., December 9, 2010. A press release, a fact sheet and flow charts will accompany this posting. A 90-day comment period closing on March 16, 2011 will be established, including public hearings in three locations. DRBC looks forward to receiving comments and is expecting a large volume of them. We will accept comments in three ways. Comments may be filed electronically through the Planning Environment and Public Comment ("PEPC") system of the National Park Service. DRBC thanks the Park Service for the use of this convenient tool. A link to the PEPC comment site will be available from the DRBC website. Commenters may also file paper submissions, either by hand, by U.S. Mail or by delivery service. Oral testimony and hard copy submissions will be accepted at the public hearings. The hearings will take place in February. In addition, DRBC staff will host workshops, focus groups, and congressional briefings. The actual dates and places for the public hearings will be posted as soon as we finalize arrangements with the three venues.
 - *Key Aspects of the Proposed Rules.* The Delaware River Basin provides water to over 15 million people, including residents of New York City and Philadelphia. Three-quarters of the non-tidal river is included in the federal Wild and Scenic Rivers program, and DRBC has established a Special Protection Waters program to protect the exceptional high water quality of these waters. The purpose of the proposed regulations – a new Article 7 of DRBC's Water Quality Regulations – is to protect the water resources of the Basin during construction and operation of natural gas development projects. Article 7 includes provisions relating to the siting, construction, and use of production and exploratory natural gas wells, regardless of the target geologic formation. The rule applies to water withdrawals, well pads and related activities, and wastewater disposal. It relies on the state oil and gas regulatory programs of Pennsylvania and New York where separate administration by the Commission would result in unnecessary duplication. Article 7 jointly implements the authority of the Commission's members – Delaware, New Jersey, New York, Pennsylvania and the federal government, in accordance with the *Delaware River Basin Compact* of 1961, and supplements the Commission's *Comprehensive Plan* with respect to natural gas development projects in the Basin. DRBC regulations are one mechanism by which the basin states and the federal government work together to manage the water resources of the basin in an integrated manner for the benefit of all the Basin's citizens.

- *Water Withdrawal.* Commission regulations established a program for regulating water withdrawals for multiple objectives, including the preservation of minimum streamflows needed to protect aquatic resources and downstream withdrawals and to ensure adequate assimilative capacity for approved discharges. The Commission has established thresholds for project review based on 30-day average volumes to be withdrawn. However, water withdrawals for natural gas development, including high volume, hydraulic fracturing, may have substantial water quality impacts due to their high intermittent daily rate, whether or not the Commission's 30-day average threshold is exceeded. Consequently Article 7 requires water used in natural gas development to come from water sources that have been approved by the Commission. The proposed requirements are intended to protect minimum streamflows, provide a record for water transfers, and otherwise ensure that water resources are not adversely affected. A streamlined process is provided to encourage the use of existing Commission-approved sources and minimize the need for construction and operation of new sources. The proposed regulations also permit flowback and production waters, treated wastewater and mine drainage waters to be reused for natural gas development under certain conditions.

- *Well Pads.* When DRBC looks at well pads there are three different aspects that interest us. First is the siting of the well pads and accompanying changes in land cover, which are addressed by the natural gas development plan portion of the rule. DRBC also is concerned with certain construction and operation procedures and water and wastewater tracking.

The severity of the risk to water resources from well pad construction and operation depends largely on where well pads are placed. Proposed Article 7 seeks to minimize impacts to water resources from natural gas development by establishing requirements for natural gas development plans. When an entity's combined leaseholds in the Delaware Basin exceed 3,200 acres or the entity intends to construct more than five natural gas well pads for any type of gas well, the proposed rule makes preparation of a natural gas development plan (NGDP) mandatory. The idea is to identify foreseeable natural gas development in a defined geographic area. We're not just putting our blinders on and looking at one well pad at a time. Instead, we are looking at the activity over a larger area and encouraging development only in areas where it minimizes impacts to water resources. The NGDP identifies geographic and hydrologic constraints on natural gas development and identifies measures for minimizing those impacts. It also allows the use of local water sources from within the leasehold area through an approval by rule process.

The rule includes some siting restrictions. Well pads will not be eligible for approval by rule if they are sited in flood hazard areas, on steep slopes

or in areas that serve as critical habitat for federal and state designated threatened and endangered species. Minimum setbacks from water bodies, wetlands, surface water supply intakes, and water supply reservoirs are provided; however, DRBC defers to the host states for setbacks from occupied homes, public buildings, public roads, etc.

The proposed rule also includes requirements for pre- and post-construction monitoring of surface and groundwater near well pads involving high-volume hydraulically fractured wells. A characterization of hydrology, water chemistry and biological resources is required for nearby surface waters, and characterization of water chemistry is required for groundwater.

Finally, there are requirements for monitoring, tracking and reporting of water usage and wastewater treatment and disposal. All wastewater must be transported to approved treatment and disposal facilities.

While DRBC is deferring the majority of well construction and operation procedures to the Commonwealth of Pennsylvania and the State of New York, two mandatory practices within the Delaware Basin are proposed. One is that all non-domestic wastewater – including flowback and production water – must be temporarily stored in tanks on the well pad sites or transferred to a centralized wastewater storage facility. That is, impoundments on the well pad site itself are proposed to be banned. Second, the fluids and drill cuttings from horizontal well bores in the target formation must be either beneficially reused or disposed of at an appropriate waste treatment and disposal facility. They may not be buried on site. The purpose of these restrictions is to promote proper withdrawal and use of water and proper disposal of wastewater from these projects.

- *Wastewater Treatment and Disposal.* We all know that the wastewater produced at the well sites contain salts and other chemicals that present water treatment challenges. Proposed Article 7 provides that any wastewater treatment facility within the Basin may accept non-domestic wastewater (i.e., flowback and production water from a natural gas well development project) only if the facility first obtains approval from the Commission in the form of a docket or modification of an existing docket. To obtain that authorization a project sponsor must submit a treatability study to demonstrate that acceptance of this wastewater will not interfere with the facility's operations and also provide information to show that the discharge will not cause exceedances of primary or secondary Safe Drinking Water Act standards or violate zone-specific stream quality objectives and effluent limits.
- There are two possible review procedures. One is an "approval by rule" process, ("ABR"). As applicants know, DRBC's docket reviews ordinarily take six to nine months. Proposed Article 7 includes a more

streamlined process for projects that satisfy certain criteria. The process is intended not only to help applications through more quickly, but to encourage applicants to do a good job for the environment. If the conditions of an ABR are satisfied, the Executive Director can issue an approval in fewer than 30 days. Eligible projects include bulk water sales for uses related to natural gas by the holders of valid Commission allocations when no increase in the allocation is needed. They also include well pad projects that conform to a Commission-approved natural gas development plans. Wells that were contemplated by an NGDP approved by the Commission are eligible for ABR, as are well pad projects that conform to specific restrictions and setback requirements; water supply projects involving the reuse of recovered flowback and production fluids as make-up water for hydraulically fractured wells; and projects that do not involve fracturing or that consist of well pads constructed exclusively for the development and operation of exploratory natural gas wells and that are expected to use no more than 80,000 gallons or equivalent of hydraulic fracturing fluid. "Low-volume" hydraulically fractured wells (those fractured with fewer than 80,000 gallons of water) are eligible for an ABR if they comply with state construction and operating conditions as well as with Commission setbacks. ABR procedures do include a public notice requirement and are not available for projects located in national park management areas or in the watersheds of the New York City reservoirs.

Finally, the proposed regulations include a requirement for financial assurance for plugging, abandonment and restoration of natural gas wells, and to ensure the availability of funds for the remediation of pollution from any natural gas development activity.

Ms. Collier explained that the proposed regulations, along with procedures for commenting on them, would be posted on the Commission's web site by 9:00 a.m. on December 9, 2010. She thanked the Commissioners and state agency staff who worked with DRBC on development of the draft regulations; members of the public who met and discussed the issues with DRBC staff; and especially the DRBC staff members who worked 24/7 on completing the draft and arranging for the regulations to be published.

Pennsylvania's DRBC Commissioner Dana Aunkst also acknowledged the efforts of state and DRBC staff over a period of six to nine months in developing, analyzing and discussing the details of the regulatory package, and ultimately in deciding what should be included and how it should be implemented. He said that Pennsylvania believes the package is ready for public input, that public comment is needed and that Pennsylvania supports release of the draft regulations for comment.

The Federal Commissioner, Lieutenant Colonel Philip Secrist, noted that as the Alternate Commissioner representing General DeLuca, he spoke for all federal agencies. He said that development of the draft regulations had been a collaborative process among these agencies, involving numerous meetings among representatives of the USACE, U.S. EPA

Regions 2 and 3, the U.S. Fish & Wildlife Service, and the National Park Service, among others, to develop a consensus on moving forward. He said the federal agencies collectively believe that the best course is to publish the draft regulations and initiate a broader dialogue; and that although DRBC may be a long way from adopting final rules, the Commissioners look forward to receiving public feedback and an opportunity to address the public's concerns as part of the process. On behalf of the federal agencies, he thanked the staff of DRBC and the states for their hard work, noting that he believed the effort to date had been thorough and that public input was now welcomed.

The New Jersey Commissioner, John Plonski, said that New Jersey looks forward to a lively and dynamic conversation over the next 90 days. He said it was time for the public to speak and he encouraged everyone with an interest in the issue to comment either in writing or in person at the public hearings. He acknowledged the importance of the issue of natural gas development to the states and the region, to our environment and our economy, reiterating that the Commissioners look forward to release of the draft regulations and to a robust public discussion.

On behalf of the State of New York, Mark Klotz said he opposed DRBC's release of draft regulations for natural gas development. Governor David Paterson of New York sent a letter to DRBC on December 6, 2010 requesting that the Commission halt its efforts to adopt natural gas regulations within New York State. Mr. Klotz said that notwithstanding that the staff of the New York State Department of Environmental Conservation (NYSDEC) has decades of experience with natural gas drilling, including hydraulic fracturing, high-volume hydraulic fracturing is not currently allowed in New York and will not be allowed until New York completes a review of all potential environmental impacts associated with the activity. In contrast, he said, the DRBC has no regulatory field presence, no significant experience with natural gas drilling and hydraulic fracturing, and inadequate enforcement capacity and authority, and yet it is going forward with its regulatory program. He said the Commission's program will not have the advantage of the full review and public deliberations still under way in New York, noting that in addition, the proposed DRBC regulations may create confusion and duplication with New York's program, including New York's existing field presence, enforcement staff and enforcement authority. Finally, he said the regulations propose a fee structure that is disproportionate to the value added by the Commission. For these reasons, he said that New York remains opposed to DRBC's issuance of draft regulations for natural gas development activities within New York. Mr. Klotz expressly requested that his statement be included in the official Minutes.

On behalf of the State of Delaware and Governor Jack Markell, Commission Chair Dr. Katherine Bunting-Howarth said she supports going forward with DRBC regulations. She emphasized that Delaware wants the public to inform the debate from this point on, in order to ensure that the regulations are informed by all available expertise, and are complete and protective of the environment, while providing for development of the important energy resources the region needs. Dr. Howarth said Delaware is encouraged that people are still interested in studying the potential impacts of natural gas drilling and supports moving forward with public review of the draft regulations and studies concurrently, to the extent possible. She acknowledged the time and effort invested by

staff of DRBC, the member states and federal agencies in the process to date and said she looks forward to a vibrant and meaningful public process.

Hydrologic Conditions. Ms. Shallcross reported on hydrologic conditions in the Basin:

The observed precipitation for the portion of the Basin above Montague, New Jersey for the period January 1 through December 6, 2010 was 46.16 inches or 5.59 inches above normal. The observed precipitation for the Basin above Trenton for the same period was 46.24 inches or 4.27 inches above normal and for the Basin above Wilmington, Delaware for this period, 42.46 inches or 2.39 inches above normal.

The average observed streamflow of the Delaware River at Montague in November 2010 was 4,790 cubic feet per second (cfs) or 110 percent of the long-term average for the month. For the same period, the average observed streamflow of the Delaware River at Trenton was 9,733 cfs, or 93 percent of the long-term average for the month.

For the period of December 1-6, the average observed streamflow of the Delaware River at Montague was 17,508 cfs, or 356 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 35,650 cfs, or 315 percent of the long-term average for the month.

In the Lower Basin, as of December 7, 2010, Beltzville Reservoir contained 13.17 billion gallons (bg) usable, or 101.3 percent of usable storage, and Blue Marsh contained 4.77 bg usable, or 100.2 percent of winter pool usable storage. As of December 6, Merrill Creek contained 14.87 bg usable, or 94.8 percent of usable storage.

In the Upper Basin, as of December 7, 2010, Pepacton Reservoir contained 127.076 bg usable or 90.6 percent of usable storage. Cannonsville contained 91.036 bg usable, or 95.1 percent of usable storage. Neversink contained 33.901 bg usable or 97.0 percent of usable storage. The total New York City Delaware Basin reservoir storage was 252.013 bg usable or 93.0 percent of usable storage.

During the month of November 2010, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the "salt line," ranged from River Mile (RM) 70 to RM 72. The normal location of the salt line during November is RM 80, a location which is two miles upstream of the Delaware-Pennsylvania state line. As of December 5, the salt line was located at RM 69, which is five miles downstream of the normal location for December.

General Counsel's Report. Mr. Warren reported on several matters, including the status of a conflict with the Lambertville Municipal Utilities Authority over its failure to apply for Commission review of a wastewater treatment plant upgrade; requests for hearing by Waste Management of Pennsylvania, Inc. (WM) concerning a color determination and by DuPont Corporation concerning the dilution factor and corresponding mixing zone applicable to a proposed new effluent diffuser at the Chambers Works facility in Deep Water, NJ; and the recommendation of Judge Edward N. Cahn in his capacity as Hearing Officer in the matter of the Commission's consolidated adjudicatory hearings on natural gas exploratory wells. A

professional transcript, copies of which may be obtained from the Commission Secretary, was made of this segment of the meeting.

Consideration of the two requests for hearing, both dating from September 2010, was deferred – in the case of WM, to allow for possible resolution of the matter through dialogue at the staff level, and in the case of DuPont, to allow Mr. Warren and the staff, in consultation with DuPont, additional time to determine whether a separate hearing on the issue would be necessary.

The sole action taken during this segment was adoption of the following Resolution and Order for the Minutes, by unanimous vote following a motion by Mr. Aunkst, seconded by Mr. Plonski. The Resolution effectively terminated the proceeding before Judge Cahn on grounds of mootness.¹

RESOLUTION AND ORDER FOR THE MINUTES

A RESOLUTION narrowing the issues for review by the Hearing Officer in the matter of the consolidated adjudicatory hearings granted by the Commission on July 14, 2010 relating to natural gas exploratory wells, and providing a process for notification of non-participating party and potential termination of hearings in the event that the non-participating party fails timely to enter an appearance.

Whereas, by letter dated May 21, 2010, the Delaware Riverkeeper Network (“DRN”) and Nockamixon Township (“Nockamixon”) requested a hearing with respect to a natural gas well proposed by Arbor Operating LLC (“Arbor”);

Whereas, by letter dated May 27, 2010, Damascus Citizens for Sustainability (“DCS”) requested a hearing with respect to certain natural gas exploratory wells proposed by Newfield Appalachia PA, LLC (“Newfield”);

Whereas, on June 14, 2010, the Executive Director issued a Supplemental Executive Director’s Determination (“SEDD”) subjecting natural gas well projects intended for exploratory purposes and targeting shale formations to the review and approval jurisdiction of the Commission pursuant to 18 C.F.R. § 401.35(b)(18);

Whereas, the SEDD contained a reservation authorizing certain exploratory wells to proceed without prior Commission review and approval;

Whereas, by letters dated June 29, 2010, Allan J. Nowicki requested a hearing with respect to the assertion of jurisdiction in the SEDD on behalf of himself and the following entities: Dyberry 33, LLC; Pennswood Oil & Gas, LLC; Pleasant Mount 10, LLC; Preston 38, LLC; and Stockport Associates;

Whereas, by letter dated July 1, 2010, the Starlight Forum requested a hearing with respect to the assertion of jurisdiction in the SEDD;

¹ The hearing was terminated subject to two conditions set forth in numbered paragraphs 8 and 9 of the “Be it resolved” section of the Resolution, which conditions were subsequently met.

Whereas, by letter dated July 12, 2010, the Northern Wayne Property Owners Alliance, LLC (“NWPOA”) requested that the Commission reverse the SEDD without an adjudicatory hearing, or in the alternative that the Commission grant a hearing;

Whereas, by letters dated July 13, 2010, DCS, on behalf of itself and Friends of the Upper Delaware River, Inc. (“FUDR”), requested a hearing with respect to the reservation (or “grandparenting provision”) contained in the SEDD, and DCS supplemented its prior request for a hearing with respect to certain natural gas exploratory wells proposed by Newfield;

Whereas, by letter dated July 14, 2010, DRN, the Delaware Riverkeeper (“Riverkeeper”), and Nockamixon requested a hearing with respect to the reservation (or “grandparenting provision”) contained in the SEDD;

Whereas, on July 14, 2010, the Commission adopted a motion granting and consolidating the multiple requests for hearing and decision and referring the requests to a Hearing Officer (the “Referral Motion”);

Whereas, the Commission’s Referral Motion did not explicitly act upon NWPOA’s request that the SEDD be reversed without a hearing, although the minutes reflect the General Counsel’s recommendation that NWPOA’s request for reversal without a hearing be denied;

Whereas, on July 23, 2010, the Executive Director issued an Amended Supplemental Executive Director’s Determination (“Amended SEDD”) authorizing two natural gas exploratory wells by Hess Corporation (“Hess”) to proceed without prior Commission review and approval;

Whereas, by letter dated August 6, 2010, the Alternate Commissioner for Delaware’s Governor Jack A. Markell, Chair of the Commission, confirmed the appointment of the Honorable Edward N. Cahn as Hearing Officer for the consolidated hearings referred to hearing by the Referral Motion;

Whereas, by letter dated August 10, 2010, DRN requested a hearing with respect to the Hess wells authorized by the Amended SEDD;

Whereas, by letter dated August 23, 2010, DCS requested a hearing with respect to the Amended SEDD;

Whereas, on September 2, 2010, the Hearing Officer held an initial conference among the parties to the consolidated hearing (“Exploratory Well Hearing”);

Whereas, Starlight Forum did not enter an appearance in the Exploratory Well Hearing;

Whereas, on September 9, 2010, the Hearing Officer issued a Scheduling Order, which was subsequently amended by The Revised Scheduling Order dated November 2, 2010, the Interim Order dated November 17, 2010 and the orders during the November 29, 2010 telephone conference;

Whereas, pursuant to The Revised Scheduling Order, the Exploratory Well Hearing will be held on January 19, 2011 and continue through January 26, 2011;

Whereas, on September 15, 2010, the Commission adopted a motion granting the requests for hearing by DRN and DCS with respect to the Hess wells and the Amended SEDD and consolidating those requests with the previously consolidated hearing requests and referring them to the Hearing Officer as part of the Exploratory Well Hearing;

Whereas, on September 15, 2010, the Commission denied the requests of DRN and DCS for a supersedeas that DRN and DCS filed on September 10, 2010;

Whereas, Mr. Nowicki is being represented by NWPOA in the proceedings and neither Mr. Nowicki nor the entities on whose behalf he submitted requests for hearing are represented or participating independently in the Exploratory Well Hearing;

Whereas, Arbor has withdrawn its participation in the Exploratory Well Hearing and cancelled the well drilling permit for the well that was the subject of the request for hearing by DRN and Nockamixon;

Whereas, Commission staff identified a total of fifteen wells potentially covered by the reservation in the SEDD or the Amended SEDD;

Whereas, two of the fifteen wells potentially covered were drilled prior to the date of the SEDD;

Whereas, of the thirteen wells that were not drilled prior to the date of the SEDD, Newfield has finished drilling three and Hess has finished drilling one and is in the process of drilling a second;

Whereas, Hess expects to be finished drilling the second of its wells by December 28, 2010;

Whereas, the five wells drilled or being drilled by Newfield and Hess are no longer susceptible to preconstruction review by the Commission;

Whereas, Newfield and Hess have offered to submit these five wells to post-construction, prospective review by the Commission;

Whereas, of the remaining eight wells that have not been drilled and are not in the process of being drilled, one – a Newfield well – is designed as a horizontal production well and, therefore, is not covered by the reservation contained in the SEDD and Newfield has submitted an application for Commission approval of this well;

Whereas, Newfield has agreed that two other wells will not be drilled as grandfathered wells pursuant to the SEDD;

Whereas, as previously noted, Arbor has cancelled its well that was potentially covered by the reservation contained in the SEDD;

Whereas, another operator, Stone Energy Corp., has allowed its well permit to expire for its well that was potentially covered by the reservation contained in the SEDD;

Whereas, Mr. Nowicki and the entities on whose behalf he submitted requests for hearing are not defending the status of the two wells for which they have state-issued permits and that are potentially covered by the reservation contained in the SEDD;

Whereas, Mr. Nowicki has confirmed that neither he nor the entities on whose behalf he submitted requests for hearing intend to rely on the reservation contained in the SEDD to authorize the two wells;

Whereas, Kevin E. Schrader, a person not participating in the Exploratory Well Hearing, is the operator of one well potentially covered by the reservation contained in the SEDD;

Whereas, no sponsor has proposed, and the Commission has not otherwise been made aware, of any exploratory natural gas well other than those identified above, that is covered by the reservation contained in the SEDD;

Whereas, on May 5, 2010, the Commission directed staff to draft regulations on well pads in the shales for notice and comment rulemaking;

Whereas, in recognition of the Commission's direction to staff of May 5, 2010, the Commission will make its final decision as to whether natural gas exploratory well pad projects in shale formations will be subject to Commission review and approval through rulemaking following notice and an opportunity to comment, and any decision made by another process would necessarily be preliminary only;

Whereas, NWPOA has agreed to withdraw its request for a hearing on whether the Executive Director acted properly under 18 C.F.R. § 401.35(b)(18) to subject exploratory natural gas projects to the Commission's review and approval jurisdiction provided that (a) that withdrawal has the effect of narrowing the issues to be addressed by the consolidated hearing to those presented by the Executive Director's determinations to "grandparent" certain wells and (b) that withdrawal does not preclude any party who has to date raised issues in a timely manner from asserting any such issue in any subsequent proceeding;

Whereas, Hess and Newfield support NWPOA's request;

Whereas, Hess and Newfield separately have requested that the Commission withdraw the hearing referral and terminate the Exploratory Well Hearing with respect to any and all Hess and Newfield wells;

Whereas, by letter dated December 6, 2010, the Hearing Officer recommended to the Commission that it withdraw the reference to the Hearing Officer of the requests for a hearing challenging the assertion of Commission jurisdiction in the SEDD upon a request by NWPOA's counsel for withdrawal of the jurisdictional challenge without prejudice;

Whereas, in his December 6, 2010 letter, the Hearing Officer further recommended that if the drilling companies voluntarily opt to submit their exploratory wells for the Commission's review, the requests of DCS regarding the Newfield exploratory wells and the requests of DCS and DRN for a hearing challenging the Hess wells that the Amended SEDD allowed to proceed would no longer be before the Hearing Officer;

Whereas, the Commission accepts these recommendations of the Hearing Officer and desires to take appropriate action based on these recommendations, the requests of Hess, Newfield and NWPOA and developments occurring after the Commission adopted the Referral Motion; now therefore,

BE IT RESOLVED that the Commission orders as follows:

1. NWPOA's request for a hearing on whether the Executive Director acted properly under 18 C.F.R. § 401.35(b)(18) to subject exploratory natural gas projects to the Commission's review and approval jurisdiction is deemed withdrawn without prejudice.
 - a. By "without prejudice" the Commission intends that NWPOA or any other party to the currently scheduled consolidated hearing who has to date raised the issues in a timely manner may assert the same issues of whether exploratory natural gas development projects are properly subject to the Commission's review and approval jurisdiction should a sponsor apply to the Commission for approval to develop an exploratory natural gas well subject to the SEDD but not excluded from Commission review under the SEDD's "grandparenting" provision, and should the Commission either deny that approval or refuse to consider the application because of the Commission's direction to staff of May 5, 2010, as that direction may be amended. At that time, unless the SEDD has been superseded or replaced by regulations promulgated by the Commission, the issues of the propriety of the SEDD may be re-raised in a hearing by NWPOA or any other party to the consolidated hearing who has to date raised the issues in a timely manner.
 - b. NWPOA shall have the aforementioned rights notwithstanding the fact that it did not seek judicial review of the Commission's July 14, 2010 action adopting the Referral Motion, which Referral Motion did not explicitly act upon NWPOA's request that the SEDD be reversed without a hearing although the Commission's meeting minutes reflect the General Counsel's recommendation that NWPOA's request for reversal without a hearing be denied.
 - c. In addition, NWPOA and, subject to any timeliness objections, any other party to the consolidated hearing, could re-raise the issues in connection with adoption by the Commission of regulations or a new Executive Director's Determination that superseded the SEDD and Amended SEDD.
2. The request is denied as moot, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the May 21, 2010 request by DRN and Nockamixon regarding the Arbor well.
3. The request is deemed withdrawn, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the July 1, 2010 request by Starlight Forum regarding the assertion of jurisdiction in the SEDD;
4. The requests are deemed withdrawn, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the June 29, 2010 requests by Allan J. Nowicki, as presented on his behalf and behalf of Dyberry 33, LLC,

Pennswood Oil & Gas, LLC, Pleasant Mount 10, LLC, Preston 38, LLC, and Stockport Associates.

5. Newfield and Hess shall file applications with the Commission for approval of the five natural gas wells spudded to date. Such applications shall be filed on the earlier of thirty (30) days following the Commission's adoption of natural gas regulations or as directed by the Executive Director or Commission. Nothing in this Resolution shall limit the authority of the Executive Director or Commission to take appropriate action to address past or future actions, if any, that may pose a risk to water resources of the Basin whether through any approvals issued in response to the applications or otherwise.
6. By consent of Newfield, the grandfathering provision of the SEDD is vacated as to any Newfield well other than the three Newfield wells spudded to date (VE Crum 1 1 OG Well, Woodland Mgmt. Partners 1 1 OG Well, DL Teeple 1 1 OG Well).
7. The requests are dismissed as moot and/or futile, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to (i) the May 21, 2010 request by DRN and Nockamixon, (ii) the May 27, 2010 request by DCS, (iii) the July 13, 2010 request by DCS and FUDR, (iv) the July 14, 2010 request by DRN, the Riverkeeper and Nockamixon, (v) the August 10, 2010 request by DRN, and (vi) the August 23, 2010 request by DCS, except to the extent those requests relate to Schrader exploratory well (B & E Wells 1 OG Well) as provided in paragraph 10 below, and except with respect to allocation of hearing costs as provided in paragraph 11 below.
8. Commission staff shall provide notice of the Exploratory Well Hearing to Mr. Schrader, by certified mail, affording him the opportunity to enter an appearance in the Exploratory Well Hearing within ten (10) days of receipt of such notice by submitting a written notice of appearance to the Hearing Officer.
9. If Mr. Schrader does not enter an appearance in the Exploratory Well Hearing in the manner and time prescribed above, the grandparenting provision of the SEDD shall be deemed vacated as to the Schrader well, the hearing referral shall be withdrawn and the Exploratory Well Hearing shall be terminated, except with respect to allocation of hearing costs, as provided below.
10. To the extent it proceeds, the Exploratory Well Hearing shall be limited to a hearing regarding (i) the July 13, 2010 request by DCS and FUDR, (ii) the July 14, 2010 request by DRN, the Riverkeeper and Nockamixon, and (iii) the August 23, 2010 request by DCS, but only to the extent those requests relate to the Schrader well.
11. With respect to allocation of the costs of the Exploratory Well Hearing, the Commission requests that the Hearing Officer make a recommendation for allocation of costs among the present and, if appropriate, former parties to the proceeding. The Commission desires the Hearing Officer to consider in the first instance an argument now raised by certain parties that costs incurred after today in connection with the Exploratory Well Hearing shall be separately allocated to DRN, Nockamixon, DCS, FUDR, the Riverkeeper, and Mr. Schrader, if he enters an appearance.
12. The referral to the Hearing Officer is modified accordingly.

Public Hearing: Project Review Applications. William Muszynski of DRBC presented 14 dockets for the Commissioners' consideration in three groups: Category A, consisting of docket renewals involving no substantial changes (hearing items 1 through 4); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 7, through 8); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 9 through 14).

A. *Renewals with No Substantive Changes (hearing items 1, 2, 3 and 4).* The Commission received no comments on these projects.

1. Pennsylvania Utility Company, D-1975-093 CP-4. An application for renewal of the Tamiment Wastewater Treatment Plant (WWTP). The existing 0.25 million gallons per day (mgd) WWTP will continue to spray irrigate treated effluent at the Tamiment Golf Course. Treated effluent that is not spray irrigated discharges to an unnamed tributary to Little Bush Kill, a tributary of the Delaware River. The facility is located in Lehman Township, Pike County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters. The project discharge is located at River Mile 226.9-0.8-1.5-1.85 in the Bush Kill Watershed
2. Pilgrim's Pride – Franconia, D-1989-065-3. An application to renew the discharge of up to 0.3 mgd of treated effluent from Outfall No. 001 at the Franconia Industrial Wastewater Treatment Plant (IWTP). The IWTP will continue to discharge to an unnamed tributary of Indian Creek at River Mile 92.47 – 32.3– 11.3 – 5.5 – 3.4 – 0.8 (Delaware River – Schuylkill River – Perkiomen Creek – East Branch Perkiomen Creek – Indian Creek - UNT), in Franconia Township, Montgomery County, Pennsylvania.
3. Amity Township, D-1990-078 CP-3. An application to renew the approval of the existing 4.0 mgd Amity WWTP. Effluent limits required by PADEP and the DRBC are based upon an average monthly discharge flow of up to 2.2 mgd. Treated effluent will continue to discharge to the Schuylkill River via existing Outfall No. 001 at River Mile 92.47 – 58.35 (Delaware River – Schuylkill River), in Amity Township, Berks County, Pennsylvania.
4. Shoemakersville Borough Authority, D-1993-074 CP-3. An application to renew the discharge of up to 0.75 mgd of treated effluent from existing Outfall No. 001 at the Shoemakersville WWTP. The WWTP discharges to the Schuylkill River at River Mile 92.47 – 92.3 (Delaware River – Schuylkill River), in the Borough of Shoemakersville, Berks County, Pennsylvania.

Mr. Muszynski recommended that the Commissioners approve hearing items 1, 2, 3 and 4. At a request from the Chair, Mr. Plonski so moved, Lt. Col. Secrist offered a second, and hearing items 1 through 4 were approved by unanimous vote.

B. *Renewals with Substantive Changes (hearing items 7, 8, 9 and 10).* The Commission received no comments on hearing items 7, 8 or 9.

7. Penns Grove Sewerage Authority, D-2005-029 CP-2. An application for approval to continue discharging 0.75 mgd of treated effluent from the Penns Grove WWTP. The Penns Grove WWTP will continue to discharge to Water Quality Zone 5 at River Mile 72.0 (Delaware River). The Penns Grove WWTP is located in Penns Grove Borough, Salem County, New Jersey.
8. Exide Technologies, D-1976-097-2. Exide Technologies (Exide) applied to the Commission on February 27, 2007 for renewed approval of the discharge of up to 0.325 mgd of treated wastewater from an existing 0.7 mgd IWTP via Outfall No. 101, along with continuance of its limits for Total Dissolved Solids (TDS). Exide proposes to reduce its average discharge from Outfall No. 101 from 0.325 mgd to 0.25 mgd, while maintaining its current approved monthly and daily average TDS effluent concentration limits of 6,000 mg/l and 7,500 mg/l respectively. Exide also has requested approval to construct a 1.1 mgd stormwater treatment plant (SWTP) designed to remove lead and other heavy metals from stormwater runoff. The SWTP will discharge an average monthly flow of 0.4 mgd of treated stormwater via Outfall No. 201. The existing IWTP and proposed SWTP will discharge to a stormwater conveyance system that discharges to the Schuylkill River at River Mile 92.47 - 78.29 (Delaware River – Schuylkill River) in Muhlenberg Township, Berks County, Pennsylvania.
9. Valley Forge Sewer Authority, D-1995-006 CP-3. An application for approval of the expansion of the Valley Forge Sewer Authority WWTP. The hydraulic design capacity of the existing WWTP is proposed to be expanded from 9.2 mgd to 11.75 mgd. The expansion includes the addition of a second aeration tank and a fourth final clarifier, along with upgrade of the headworks, primary clarifier system, secondary treatment system, sludge handling, and operations facilities of the existing WWTP. The WWTP will continue to discharge to the Schuylkill River. The facility is located in Schuylkill Township, Chester County, Pennsylvania.

Mr. Muszynski recommended that the Commission approve hearing items 7, 8 and 9. In response to a question, he explained that the proposed SWTP for Exide (hearing item 8) would add protection from the discharge of contaminated flood waters without treatment.

Hearing no other questions or comments, Dr. Howarth requested a motion for approval of the three renewal dockets. Mr. Plonski so moved, Lt. Col. Secrist seconded his motion, and hearing items 7, 8 and 9 were approved by unanimous vote.

10. Portland Borough Authority, D-1997-029 CP-2. Application for approval of a ground water withdrawal (GWD) project to supply up to 4.32 mgm of water to the applicant's public water supply system from new Well No. 4 and to increase the existing withdrawal from all wells from 5.7 million gallons per 30 days (mg/30 days) to 12.4 mgm. The increased allocation is requested in order to meet projected increases in service area demand and to replace lost yield from Well No. 3. The project well is completed in the

Martinsburg Formation and is located in the Slateford Creek Watershed in Upper Mount Bethel Township, Northampton County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

The Commission received letters from Upper Mount Bethel Township and the Martins-Jacoby Watershed Association recommending approval of Well No. 4 to make up for lost yield from Well No. 3, but objecting to any increase in the total system allocation. The objectors argued that results from a hydrogeological study undertaken in the summer of 2010 would be available in one to two years. A representative of the engineering consulting firm engaged to perform the study said that he believed the amount of the proposed increase would result in withdrawal of nearly all or all of the recharge to this watershed during a 125-year drought. Mr. Muszynski said that DRBC staff had not had an opportunity to review any material associated with the study, but that the assertion was significant and staff would like the opportunity to review it. Accordingly, Mr. Muszynski recommended that Well No. 4 be approved but that the draft docket be modified to limit the total allocation to the current level of 5.7 mg/30 days. He said that staff would consult with the interested parties, review the information collected to date, hear from Portland Borough on the matter and return to the Commissioners in March with any additional information that might warrant their reconsideration. Based upon existing use, however, he said that the current allocation was sufficient for some future growth and would certainly be sufficient through March of 2011.

In response to a question by Tracy Carluccio of the Delaware Riverkeeper Network, Mr. Muszynski related that Well No. 4 had already been drilled. He noted that in the view of staff, the Borough of Portland had justified its proposed allocation based on growth projected to occur over the next ten years. The question he said the Commission would try to answer is whether the existing three wells plus the new fourth well could deliver the water required to support projected growth without having an impact on the surrounding well systems or the watershed. Based on the available information, he said, no adverse effect was anticipated. However, Upper Mount Bethel Township has new information that in Mr. Muszynski's view the DRBC staff should evaluate before making a recommendation to the Commission. Mr. Muszynski explained that his recommendation was that Well No. 4 be approved for use under the current allocation, without an increase and that any additional allocation be considered only after staff has had an opportunity to look at the new information proffered by Mt. Bethel.

Peter Layman, solicitor of Portland Borough Authority (PBA), noted that the location of a proposed new prison, the subject of some concern in community, was not within PBA's current or proposed service area, and accordingly, PBA would need to seek Commission approval again if it ever wished to serve the prison. He added that the prison project appeared to be dead because it would require county sponsorship and Northampton County was no longer offering that sponsorship. He thanked the Commission for considering approval of the new well. He noted that PBA's consulting engineer Mr. Scott could explain better than he why the yield from Well No. 3 had declined. That well apparently was located above bedrock and was completed in a water pocket from which flow gradually diminished. Mr. Layman said the new well had been fully permitted by the Pennsylvania Department of

Environmental Protection (PADEP) and Upper Mount Bethel Township and had all the approvals other than DRBC's needed to proceed. He added that PBA was comfortable with the DRBC staff recommendation and that the requested increase in allocation was based on the PBA's understanding that DRBC's regulations required it to project total water use over the next decade. He added that the objection was last-minute, cryptic and submitted on behalf of the chairman of Upper Mount Bethel Township's Environmental Advisory Council (EAC) and not by a person authorized to speak for the Township itself.

Also speaking on behalf of PBA, Russell Scott of R.K.R. Hess Associates said that in accordance with the Commission's regulations, the PBA's application projected the ten-year service area and corresponding demand, resulting in a request of up to 12.4 mgd. He noted that pumping all PBA's wells at the capacities approved by the state would result in a slightly higher number – approximately 14.2 mgd. PBA respects the Commission's obligation to limit the total system withdrawal to the demonstrated ten-year service area need of 12.4 mgd and has no objection to that limit. Mr. Scott said that until PBA saw the EAC's email that morning it had no objection to any of the conditions in the draft docket. He noted that the email was sent late the previous day. R.K.R. Hess learned of it in the morning but had not yet had an opportunity to review the data. He said that the EAC's message was short, cryptic and unsubstantiated, making tenuous reference to the data's source as the U.S. Geological Survey. He said the data does not relate to any studies presented to R.K.R. Hess and PBA to date, and is based, according to the EAC chair, upon USGS data showing that "normal" flow of the Slateford Creek Watershed. It goes on to say that during drought such "normal" flow would decline by perhaps 60 percent, and as a result, the amount of total flow sought by PBA would be 88 to 110 percent of predicted drought flow. Mr. Scott said he could not verify the calculations because no references were cited. However, they were based upon the 14.2 mg/30 day total withdrawal that PBA originally requested. Mr. Scott said that all were in agreement with an allocation of 12.4 mg/30 day, which even under the EAC assumptions, would be in the range of 75 percent of the base flow of the stream, a level typically acceptable to DRBC. With this understanding he said that PBA was willing to accept an allocation of 12.4 mg/30 days.

Mr. Scott added that the EAC's email was based upon the requested withdrawal in relation to the surface water flow of the Slateford Creek. The hydrogeological study prepared by Dr. Robert Cook, P.G. of Pennsylvania described the 48-hour pumping test performed by PBA. In the study, Dr. Cook wrote,

Our observations suggest that the surficial till deposits in the Slateford Creek Watershed host a local groundwater and surface water system that is weakly coupled to the regional flow system that dominates the bedrock and buried alluvial aquifers. Furthermore, the system is significantly higher than the water table and pumping of the wells did not have a measureable effect on the streambed gradients.

Mr. Scott explained that what Dr. Cook was saying is that there is a limited connection between the groundwater from Well No. 4 that was recently pump-tested and the surface

water flow in Slateford Creek. Dr. Cook's work suggests that even under drought conditions, pumping the single new well or the entire system would be unlikely to have any significant impact on surface water flows in Slateford Creek. Thank you.

Mr. Muszynski again recommended that the Commissioners provisionally approve use of the well up to the current allocation, allowing staff time to review the new information submitted by the EAC before making a recommendation on the increased allocation.

Hearing no further questions or comments, Dr. Howarth requested a motion for approval of hearing item 10. Mr. Aunkst so moved, Lt. Col. Secrist seconded his motion, and hearing item 10 was approved by unanimous vote.

C. *New Projects (hearing items 12 and 13).* The two projects comprised new discharges or withdrawals or constituted projects new to the Commission.

12. Deb-El Foods, D-2009-036-1. An application for approval to construct a 0.05 mgd IWTP that will discharge to the Neversink River at River Mile 253.64 – 28.7 (Delaware River – Neversink River) in the drainage area of the section of the Non-Tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters. The IWTP is located in the Town of Thompson, Sullivan County, New York.

13. Frenchtown Borough, D-2010-021 CP-1. An application for approval of the upgrade and expansion of the existing Frenchtown Borough WWTP. The proposed upgrade consists of replacing the existing trickling filter treatment system with a new oxidation ditch treatment system. The hydraulic design capacity of the upgraded WWTP is also to be expanded from 0.15 mgd to 0.26 mgd; however, the WWTP does not have planning approval to expand beyond 0.15 mgd, and therefore the WWTP will remain at a permitted flow of 0.15 mgd. The project WWTP was not previously approved by the DRBC. The WWTP will continue to discharge to the Delaware River at River Mile 164.5 in Water Quality Zone 1E, within the section of the non-tidal river known as the Lower Delaware, which is classified by the Commission as Special Protection Waters. The facility is located in Frenchtown Borough, Hunterdon County, New Jersey.

In response to a question, Mr. Muszynski explained that the 0.05 mgd wastewater discharge from Deb-El foods is tied to the applicant's food processing operation. The effluent limitations for the discharge are based upon the size of the loading in pounds per day of various constituents that can be allowed in conjunction with other discharges from existing and proposed facilities in the Neversink drainage without violating the no-measurable-change conditions at the confluence of the Neversink and Delaware rivers. Mr. Muszynski explained that the applicant must design its processes to meet the comparatively strict limits associated with DRBC's no-measurable-change standard as opposed to a technology-based standard.

Mr. Muszynski recommended that the Commissioners approve hearing items 12 and 13 as proposed. In the absence of further comments or questions, the two projects were approved by unanimous vote on a motion of Mr. Aunkst seconded by Mr. Klotz.

Mr. Muszynski explained that the next four hearing items – 11, 6, 5, and 14 – were facilities linked by water withdrawal and utilization through subsidiary agreements, and in some cases, by shared treatment facilities. He noted that some of the facilities also have specific, independent outfalls.

11. United States Steel, LLC, D-2009-006-1. An application for approval of an existing surface water withdrawal project (SWWD) to continue to supply up to 7,288.1 mgm of water to the applicant's U.S. Steel Real Estate Complex. The complex houses four existing users and one new user, which are supplied from two existing intakes. The project SWWD is located in Water Quality Zone 2 of the Delaware River at River Mile 127.0, in Falls Township, Bucks County, Pennsylvania.
6. Dominion Energy Company - Fairless Hills Generation Energy Generating Facility, D-2001-028 CP-2. An application to renew approval of the Fairless Hills Generation Energy Generating Facility (FHG-EGF) and the subsidiary water allocation of 356.5 mgm provided by U.S. Steel Real Estate (U.S. Steel) to the Dominion FHG-EGF. The water is used for cooling purposes associated with power generation. The FHG-EGF is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.
5. Exelon Generation Company, LLC - Fairless Hills Generating Station, D-1996-063 CP-2. An application to renew approval of the Fairless Hills Generating Station (FHGS), which includes a subsidiary water allocation of 4,795.7 million gallons per month (mgm), provided by U.S. Steel Real Estate (U.S. Steel) to the Exelon FHGS. The water is used for cooling purposes associated with power generation. The FHGS is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.
14. Exelon Generation Company, LLC – Fairless Hills, D-2010-036 CP-1. An application for the approval of an existing discharge of up to 37.4 mgd of Power Plant Condenser Cooling Water (PPCCW), non-contact cooling water (NCCW) and stormwater from the Fairless Hills Generating Station (FHGS) via Outfall No. 001. Outfall No. 001 discharges to Water Quality Zone 2 at River Mile 126.85 of the Delaware River. The FHGS is located within the U.S. Steel complex in Falls Township, Bucks County, Pennsylvania.

Mr. Muszynski explained that U.S. Steel has two ways to take water from the Delaware River. The larger of the two is called RPS and the other is the C Well. The C Well is actually a surface water withdrawal from which U.S. Steel takes approximately one million gallons per day. As steel production declined, portions of the Fairless Hills property were leased to other companies. U.S. Steel provides on-site treatment of water withdrawn from the C Well and distributes the treated, potable water to U.S. Steel Galvanizing, all lessees on the property and to the Dominion Energy Company and Exelon's power facility which are co-located on the site.

Because U.S. Steel operated a pre-Compact withdrawal, it has a certificate of entitlement that allows it to continue withdrawing approximately 15 billion gallons per month without paying Commission water charges. The entitlement cannot be transferred and applies only as long as the water is used for the same pre-Compact purpose. Accordingly, water converted to other

uses or operators, including quantities sold to Dominion and Exelon for cooling purposes associated with power generation, will not benefit from the entitlement.

Non-contact cooling water is discharged from the U.S. Steel galvanizing facility through Outfall 002. U.S. Steel also discharges through Outfall 003 approved by DRBC Docket No. D-1978-068-2 on March 11, 2009. Exelon discharges stormwater and non-contact cooling water through Outfall 001. Two previously docketed wastewater treatment plants, one of which is for industrial wastewater including non-contact cooling water, also discharge from the site.

The proposed approvals include U.S. Steel's first withdrawal docket. The proposed allocation for U.S. Steel is 7.23 billion gallons per month (230 million gallons per day) via its two existing surface water intakes – RPS and the C Well – to supply its industrial and domestic uses and to meet its contractual obligations to supply water to the power companies Dominion and Exelon. Because the latter companies are purchasing bulk water from U.S. Steel, their dockets approve subsidiary water allocations, not withdrawals. The Dominion facility is proposed to have a subsidiary allocation of 365 million gallons per month, or approximately 11.5 million gallons per day. The Exelon Generation facility is proposed to have a subsidiary allocation of 4.7 billion gallons per month. U.S. Steel and its users each will have responsibility for ensuring that the Commission's water charges are paid. The U.S. Steel withdrawal docket also requires the company to provide a drought management plan. The plan must include plans for the two power facilities. The power facilities are independently obligated through their subsidiary allocation dockets to furnish these plans. Exelon participates in the Merrill Creek Reservoir facility to meet its drought operating obligations.

Dockets were issued for the U.S. Steel wastewater treatment plants almost a year ago. A docket for Exelon's non-contact cooling water and stormwater discharge via Outfall 001 is now proposed. This docket includes approval for a 1,000 foot heat dissipation area around the outfall. Commission regulations would allow up to 3,500 feet for heat dissipation at this location. DRBC's Modeling, Monitoring and Assessment Branch staff have evaluated the discharge, however, and have concluded that a 1,000-foot area is adequate and satisfies DRBC requirements.

Mary Ellen Noble of the Delaware Riverkeeper Network asked the Commission staff and the Commonwealth of Pennsylvania whether a decision had been made concerning compliance by the intake with Section 316(b) of the Clean Water Act. Mr. Muszynski explained that the Commissioners had determined that the Commission would rely on state agency reviews in accordance with Section 316(b). The state is currently developing a permit that will contain Section 316(b) conditions as appropriate. Mr. Aunkst of the PADEP confirmed this response noting that the state-issued NPDES permit was due for renewal in the spring of 2011 and that Section 316(b) requirements would be included in that permit.

Mr. Muszynski recommended that the Commissioners approve hearing items 11, 6, 5 and 14 as proposed. Hearing no other comments or questions, on a motion by Mr. Aunkst seconded by Mr. Plonski, the Commissioners approved the four dockets by unanimous vote.

Public Hearing: Resolution Extending Docket No. D-69-210 CP Final (Revision 12) for the Exelon Limerick Generating Station Water Supply Modification Demonstration Project and Wadesville Mine Pool Withdrawal and Streamflow Augmentation Demonstration Project. Mr. Muszynski explained that this resolution requested an extension of Docket No. D-69-210 CP Final (Revision 12) for a one-year period. Exelon filed an application several years ago for a revision of its docket to take into account some of the issues addressed by the demonstration project and make them part of a permanent docket. The Commission's review of that application, including the development of conditions to be included in the draft approval, is ongoing. A separate public hearing in the Pottstown area will be held on the docket in response to community concerns raised with the DRBC and elected officials. If the current demonstration projects were not extended, operation of the facility would revert to a system that was much less flexible as to the use of water from the Wadesville Mine Pool, the Tamaqua Water Supply System and the Schuylkill, Perkiomen and Delaware rivers. The greater flexibility afforded by the demonstration project has reduced withdrawals dramatically from the Schuylkill and the Delaware on numerous occasions during periods of low flow in the Schuylkill. Staff recommended that the current docket be extended until December 31, 2011 or until the Commission approves a revised docket. Mr. Muszynski said he anticipated issuing a draft docket early in 2011. A 60-day pre-hearing review period will be provided, with an additional 60-days following the hearing, such that the process of comment, response and Commission consideration will require approximately six months.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution extending Docket No. D-69-210 CP Final (Revision 12) for the Exelon Limerick Generating Station Water Supply Modification Demonstration Project and Wadesville Mine Pool Withdrawal and Streamflow Augmentation Demonstration Project. Mr. Aunkst so moved, Lt. Col. Secrist seconded his motion and Resolution No. 2010-10 was approved by unanimous vote.

Public Hearing: Resolution Authorizing the Executive Director to Enter into an Agreement for the Management of Comments Received on a Proposed Rulemaking. Mr. Tudor reported that earlier in the day the Commission announced its intent to proceed with a notice of proposed rulemaking applicable to natural gas development. He noted that Dr. Howarth and other Commissioners had expressed their hope for a vibrant and meaningful comment process. DRBC anticipates that it could receive over 10,000 comments during a series of six public hearing sessions and 97 days for the submission of written comments. As the Executive Director noted in her remarks, the National Park Service kindly afforded DRBC the use of its electronic Planning, Environment and Public Comment system, or PEPC. Staff also reached out to private firms that have expertise in working with PEPC. In response to a formal solicitation, staff focused on the firm E.A. Engineering, Science & Technology ("EA"), which offered DRBC pricing consistent with the General Services Administration supply schedule. Mr. Tudor asked the Commission for approval to enter into an agreement with E.A. for assistance in compiling and sorting the comments by issue, so that staff and the Commissioners can develop responses. Under the terms of the resolution, the sum of the contract would not exceed \$42,000.

A member of the audience questioned the transparency of the process. Dr. Howarth answered that the Commission's policies and regulations already make the process transparent. She

explained that the use of PEPC and the services of EA would furnish better access to the information, reiterating that DRBC is using the latest technology to provide the most efficient system possible. As with any rulemaking by DRBC, there will be a comment-and-response document. All comments and the comment-and-response document will be available as part of a proposal to the Commissioners to adopt the rule. Ms. Collier added that the contract will provide assistance with organizing the comments but staff and Commissioners would be developing the responses. Ms. Bush said that all of the comments will be on file at the Commission's offices and anybody who wants to look at them will have access to them. She noted that in the past DRBC has made all of the comments submitted by government entities or officials available online. The Commission intends to do that again, provided there is adequate space on the server.

Hearing no further comments or questions, on a motion by Mr. Plonski, seconded by Mr. Aunkst, Resolution No. 2010-11 was adopted by unanimous vote.

Public Hearing: Resolution Authorizing the Executive Director to Enter into an Agreement for the Analysis of Periphyton Samples from the Non-Tidal Delaware River. Dr. Fikslin said the resolution relates to studies conducted over the past five years by DRBC and the National Park Service for the purpose of establishing numeric values for existing water quality for the upper and middle portions of the non-tidal Delaware River. It also encompasses studies performed previously in the lower Delaware that were relate to periphyton, a group of organisms including diatoms and soft algae, that grow on rocks and other submerged surfaces. At the time the studies were initiated in 2006 DRBC had a contract for analysis of the samples. The results showed great promise for using these data to establish biological criteria for the sampled reaches. DRBC's Clean Water Act Section 106 grant from the U.S. Environmental Protection Agency has supported these studies since they began. The proposed resolution would authorize the Executive Director to enter into one or more agreements. The Commission received three proposals in response to a solicitation, and staff are currently evaluating them. The resolution would authorize the Executive Director to enter into an agreement for an initial period of three years plus an optional period of two years. The sum is not to exceed an annual cost of \$25,000.

Hearing no further comments or questions, on a motion by Mr. Klotz, seconded by Col. Secrist, the Commissioners unanimously approved the resolution authorizing the Executive Director to enter into an agreement for the analysis of periphyton samples from the non-tidal Delaware River.

Resolution Amending the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay. Dr. Fikslin reported that there a public hearing on this proposed rulemaking had already taken place, and the proposed resolution would approve amendments of the Commission's Water Code, Water Quality Regulations and comprehensive plan to update the stream quality objectives (also called "water quality criteria" for toxic pollutants in the Delaware Estuary and extend the criteria to Delaware Bay. Dr. Fikslin related that the 1986 amendments to the Clean Water Act required states to adopt criteria for toxic pollutants. In 1989 the Commission directed staff to begin development of toxic pollutants for the area of the river between Trenton and the head of Delaware Bay – Water Quality Zones 2 through 5 – and in 1996 the Commission established water quality criteria for toxic pollutants for those zones. The

Clean Water Act requires states to update their water quality criteria every three years, and the states have done so. In 2007, the Commission's Toxics Advisory Committee (TAC), created a subcommittee to evaluate recent data and to develop recommended revisions to the DRBC criteria using the latest methodologies recommended by EPA. The subcommittee developed the proposed revisions, which subsequently were reviewed by the full TAC. The proposed changes include extending the criteria to Delaware Bay, Water Quality Zone 6. The regulations were published in state and federal registers between July 15 and August 2, 2010. A public hearing took place on September 23, 2010, but no oral testimony was offered. Two sets of written comments were filed during the public comment period, both of which were forwarded to the TAC and its subcommittee for review. The TAC recommended certain minor revisions to the proposed rule on the basis of the comments received. The Commission has considered the comments and concurs in the recommendations of the committee, which are set forth in a comment-and-response document prepared by staff. The resolution would adopt the proposed revisions with minor changes, as set forth in the comment-and-response document. The effective date of the updated criteria may be postponed at the discretion of a member state as to any application pending before the Commission or a signatory party on the date of adoption as well as with regard to any approval previously issued by a signatory party or by the Commission that has not yet expired.

Hearing no further questions or comments, on a motion by Mr. Plonski seconded by Lt. Col. Secrist, the Resolution No. 2010-13 amending the Water Quality Regulations, Water Code and Comprehensive Plan to update water quality criteria for toxic pollutants in the Delaware Estuary and extend these criteria to Delaware Bay was adopted by unanimous vote.

Resolution to Correct a Technical Error in the September 15, 2010 Amendment of the Water Charging Rates. Ms. Bush explained that this resolution was not substantive but purely technical. It would simply move from the text of the rule to the text of the resolution language relating to the effective date of the new water charging rates. The effective date would remain unchanged, at January 1, 2011.

On a motion by Mr. Klotz, seconded by Lt. Col. Secrist, Resolution No. 2010-14 correcting a technical error in the September 15, 2010 amendment of the water charging rates was adopted by unanimous vote.

Public Dialogue. Because at least 22 individuals pre-registered to address the Commissioners on issues related to natural gas drilling, and an additional number of people signed up to speak that day, Dr. Howarth established a time limit of two minutes per speaker. During the remaining time available for the meeting, the Commissioners heard from these individuals.

The meeting of December 8, 2010 was adjourned at 5:30 p.m. in order to accommodate another scheduled use of the hall.

/s/ Pamela M. Bush
Pamela M. Bush, Esquire
Commission Secretary