

The Commissioners at the December 8, 2011 meeting unanimously approved the following Resolution for the Minutes:

A RESOLUTION FOR THE MINUTES to postpone the Commission's consideration of applications for water withdrawals within the State of New York to serve natural gas development activities, pending completion of New York's environmental quality review process.

WHEREAS, on May 5, 2010, the Commission unanimously approved a resolution "(1) direct[ing] staff to develop draft regulations on well pads in the shales for notice and comment rulemaking; (2) "postpon[ing] the Commission's consideration of well pad dockets until regulations are adopted [by the Commission]; and (3) [providing that the Commission] will move forward with water withdrawal dockets in due course"; and

WHEREAS, the Commission has received three applications, as follows, for water withdrawals located in the State of New York to serve natural gas development activities at sites both within and outside the Delaware River Basin:

- (1) an application by F.E. Kamp, Inc. for approval of a groundwater withdrawal project in the Town of Deposit, New York to serve natural gas development activities both within and outside the Delaware River Basin;
- (2) an application by XTO Energy, Inc. ("XTO") for approval of a surface water withdrawal project to supply water from Oquaga Creek in Sanford, New York to support its natural gas exploration and production activities within the State of New York; and
- (3) an application by the Village of Deposit, New York for the renewal of an existing groundwater withdrawal project within the Village, including modification of the Village's approved service area, in order to authorize service for natural gas development activities; and

WHEREAS, by letter dated May 31, 2011, Commissioner Joseph Martens of the New York State Department of Environmental Conservation (NYSDEC) requested "that all Delaware River Basin Commission water withdrawal applications within New York that are associated with high-volume hydraulic fracturing be postponed until completion of the New York environmental impact review process"; and

WHEREAS, the Commission developed its draft natural gas development regulations and draft project approvals to be consistent with its practice of allowing each Basin state to adopt and/or impose regulations, conditions or approvals applicable to activities within its borders that are more stringent than the Commission's, and it remains the intent of the Commission to allow each Basin state to do so; and

WHEREAS, the Commission intends to continue its practice of including in Commission natural gas dockets and other approvals a provision requiring the project sponsor to secure all necessary permits and approvals from state, federal and local agencies; and

WHEREAS, until New York State completes its ongoing environmental review process, uncertainty remains as to the requirements that New York State will impose on natural gas development activities within its borders; and

WHEREAS, accordingly, the Commission will grant NYSDEC Commissioner Martens's request; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. Until the State of New York notifies the Commission that the State has completed its environmental impact review process with respect to potential adverse impacts associated with high volume hydraulic fracturing for natural gas development, the Delaware River Basin Commission will postpone consideration of applications for the approval of water withdrawals within the State of New York to serve "high volume hydraulic fracturing" as New York State defines that term.
2. As to such proposed withdrawals, this Resolution supersedes the third element of the Commission's Resolution of May 5, 2010 cited above.