

DELAWARE RIVER BASIN COMMISSION

MEETING OF FEBRUARY 25, 2021

Conducted Virtually on Zoom

Minutes

Commissioners Shawn Garvin, Delaware, Chair
Present: Brigadier General Thomas Tickner, United States, Vice-Chair
 Patrick McDonnell, Pennsylvania, Second Vice-Chair
 Shawn LaTourette, New Jersey
 Basil Seggos, New York

DRBC Staff Steven J. Tambini, Executive Director
Participants: Kenneth J. Warren, DRBC General Counsel
 Pamela M. Bush, Commission Secretary and Assistant General Counsel

The Commission held this special public meeting to consider the Commission’s final action on DRBC’s Proposed Amendments to the Administrative Manual and Special Regulations Regarding Hydraulic Fracturing Activities; Additional Clarifying Amendments (“Draft Rule”), which had been published for comment on November 30, 2017. A notice for this special meeting was posted on the DRBC website on February 17, 2021 and was distributed that day via the DRBC’s email list serves and social media accounts. The special meeting was conducted virtually to comply with mitigation measures in effect within one or more of the basin states during the Covid-19 pandemic. Information on how to access the meeting was included in the Commission’s meeting notice.

Secretary Shawn Garvin of the Delaware Department of Natural Resources and Environmental Control presided on behalf of Governor John C. Carney of Delaware, the Commission’s chair *pro tem*. Secretary Garvin convened the special business meeting at 10:30 a.m.

At Secretary Garvin’s request, Commission Secretary and Assistant General Counsel Pam Bush called the roll, noting for each of the states’ representatives in attendance the name of the DRBC Commissioner—the governor—on behalf whom each served as a duly appointed alternate under Section 2.3 of the Delaware River Basin Compact. Brigadier General Tom Tickner, the Commission’s vice chair *pro tem*, attended on behalf of the United States. Secretary of the Pennsylvania Department of Environmental Protection Patrick McDonnell attended on behalf of Governor Tom Wolf, the Commission’s second vice chair *pro tem*; Acting Commissioner of the New Jersey Department of Environmental Protection Shawn LaTourette was present on behalf of Governor Phil Murphy; and Commissioner of the New York State Department of Environmental Conservation Basil Seggos attended on behalf of Governor Andrew Cuomo. Thus, all five commissioners or their duly appointed alternates authorized to vote on their behalf were in attendance on Zoom.

After additional introductions and preliminaries concerning the meeting format, Secretary Garvin explained that the Commission would consider two resolutions, complete copies of which would be available on the DRBC website that afternoon.

Resolution to amend the Comprehensive Plan and adopt implementing regulations with respect to high volume hydraulic fracturing and to finalize amendments to the Administrative Manual – Rules of Practice and Procedure concerning project review classifications and fees. The draft amendments to the Comprehensive Plan and draft implementing regulations, along with proposed amendments to the Rules of Practice and Procedure, were the topics of a notice of proposed rulemaking published on November 30, 2017, six public hearings in January, February and March of 2018, and a written comment period which closed on March 30, 2018. For the benefit of the Commissioners and members of the public in attendance, Mr. Tambini summarized the resolution, which provided for adoption of the proposed amendments with modifications.

At Secretary Garvin's invitation, a motion to adopt the resolution was offered by Mr. Seggos and seconded by Mr. McDonnell. Ms. Bush conducted a roll-call vote, noting that the Commission's members might offer remarks with their votes.

In casting Delaware's vote in support of the resolution, Secretary Garvin read the following statement from Governor Carney: "As DRBC Chair, I welcome this opportunity to provide the fullest protection to more than 13 million people who rely upon the Delaware River Basin's water for their drinking water. This collaborative, multi-state and federal action through the DRBC also complements the goal of the Delaware River Basin Conservation Act, a bill I introduced and which was passed by Congress in 2016, by helping to ensure that the watershed and water resources of the Basin will be protected from these potential sources of pollution."

Brigadier General Tickner stated that the United States was abstaining from the day's vote, "due to the need for additional time to coordinate with the new administration." Thanking the chair and his colleagues, BG Tickner noted, "We respect the outcome of this vote as determined by each respective state commissioner."

Casting Pennsylvania Governor Tom Wolf's vote in favor of the resolution, Secretary McDonnell read a statement from the Governor: "After careful analysis and consideration of the unique geographic, geologic, and hydrologic characteristics of the Delaware River Basin, the DRBC Commissioners are acting today under the authority of the Delaware River Basin Compact to protect the water resources of the Basin, the source of drinking water for millions of Pennsylvanians. I am proud to join with the other DRBC Commissioners in preserving the water resources of this unique region for generations to come."

On behalf of Governor Murphy of the State of New Jersey, Acting Commissioner LaTourette voted in support of the resolution. Speaking for Governor Murphy and the New Jersey DEP, he thanked "the DRBC staff who worked tirelessly on this effort, including the evaluation of considerable public comment and scientific information." Acting Commissioner LaTourette added, "I don't need to inform many of you here that the State of New Jersey has a strong and proud history of

setting protective standards that safeguard our water resources—standards that often exceed the baseline set by the federal government and that the New Jersey Department of Environmental Protection has only made more protective under Governor Murphy’s leadership.” He said the DRBC’s final rules prohibiting high volume hydraulic fracturing within the Delaware River Basin would “further protect the water resources of the Basin by avoiding the unnecessary risk of degradation of the environment and public health posed by the discharge of fracking fluids.”

Speaking for Governor Andrew Cuomo of the State of New York, Commissioner Seggos also voted in support of the resolution. He offered the following statement: “On behalf of the Governor and the people of the State of New York, I’m proud to support the resolution to ban high volume hydraulic fracturing within the Delaware River Basin, the source of drinking water for 13 million people. In 2015, New York adopted a ban on fracking after a multi-year technical assessment and expert review determined that the potential risks to the environment, especially water quality, could not be adequately abated or mitigated.” He added, “The risks of spills, deforestation, soil erosion, forest fragmentation, and chemical release [associated with high volume hydraulic fracturing] do not align with our collective mission and commitment to protect the Basin and the present and future generations that call it home. Building on our environmental legacy—and that’s all of our states—New York is proud to join our fellow states in voting yes.”

Resolution No. 2021-01 to amend the Comprehensive Plan and adopt implementing regulations with respect to high volume hydraulic fracturing and to finalize amendments to the Administrative Manual – Rules of Practice and Procedure concerning project review classifications and fees was thus adopted by a vote of four in favor and none opposed, with one abstention. A copy of the approved resolution is provided as an Attachment to these Minutes.

Secretary Garvin asked Mr. Tambini to present the second agenda item, a proposed resolution for the Minutes.

Resolution for the Minutes directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin.

Mr. Tambini read into the record nearly the entire text of the proposed resolution, which appears below.

RESOLUTION FOR THE MINUTES

A RESOLUTION directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin.

WHEREAS, by Resolution No. 1991-9 on June 19, 1991, the Commission amended the Comprehensive Plan by the addition of policies and regulations codified at Section 2.30 of the [Commission’s Water Code](#), relating to transfers of water and wastewater from and to the Delaware River Basin; and

WHEREAS, on November 30, 2017 the Commission proposed new rules, including new Part 440 of Title 18, Chapter III, Subchapter B of the Code of Federal Regulations, which in part concerned inter-basin transfers of water and wastewater, to protect the water resources of the Basin from adverse impacts associated with water withdrawals and wastewater treatment and disposal to support hydraulic fracturing; and

WHEREAS, after carefully considering the public comments received on the November 2017 draft rules, the Commission by Resolution No. 2021 - 01 on February 25, 2021 withdrew from consideration the provisions of such draft rules relating to the exportation of water and the importation, treatment, and discharge of “produced water” as defined therein; and

WHEREAS, the Commission’s current policies on the transfer of water and wastewater from and into the Delaware River Basin as set forth at Section 2.30.2 of the Water Code, provide:

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Commission to discourage the exportation of water from the Delaware River Basin.

...[T]he Basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin....

and

WHEREAS, the Commission’s Comprehensive Plan currently includes the following classes of transfers of water from the Basin:

- Out-of-basin diversions by New York City and the State of New Jersey authorized by the [1954 United States Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 \(“Decree”\)](#), as subsequently modified by the Commission with the unanimous consent of the parties to the Decree, in accordance with Section 3.3 of the Delaware River Basin Compact;
- Out-of-Basin transfers approved on a long-term basis pursuant to Section 3.8 of the Compact to meet the needs of public water systems with service areas straddling or adjacent to a Delaware River Basin boundary;
- Out-of-Basin transfers approved on a temporary and/or emergency basis pursuant to Section 3.8 of the Compact to ensure the public health and safety of communities adjacent to or straddling a Delaware River Basin boundary;

and

WHEREAS, to date the Commission has approved no transfers of water and/or wastewater from or into the Delaware River Basin to support hydraulic fracturing for the extraction of oil or natural gas, and no applications for such transfers are currently under consideration; and

WHEREAS, since 2009, the Commission has in many instances conditioned its approvals of wastewater discharge projects on a requirement that no importation, treatment and/or discharge of hydraulic fracturing wastewater may be undertaken by the docket holder without the Commission's prior review and approval; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. No later than September 30, 2021 the Executive Director shall prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update its policies and provisions concerning inter-basin transfers of water and wastewater from and to the Delaware River Basin.
2. The proposed rule amendments directed by this Resolution shall include and the public notice shall solicit comment on:
 - a. Conditions under which an exportation of water from the Basin may be approved or prohibited;
 - b. Conditions under which an importation of wastewater into the Basin may be prohibited;
 - c. Any other provisions concerning inter-basin transfers of water and wastewater that commenters believe are necessary and appropriate to protect the public health or to preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.
3. The Executive Director, in consultation with the Commissioners, may include in the draft regulations such other proposed amendments of DRBC's rules and regulations as they deem necessary or appropriate.
4. To ensure that all public comments on the proposed amendments are captured and included in the Commission's official rulemaking record, public comments on the proposed amendments will be included in such record only when submitted in accordance with the procedures set forth in the notice of proposed rulemaking to be issued by the DRBC.

Secretary Garvin requested a motion. Acting Commissioner LaTourette offered a motion to adopt the resolution for the Minutes as proposed. Secretary McDonnell offered a second, and without further discussion the Resolution for the Minutes directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin was unanimously approved by a roll call vote.

There being no additional items on the agenda and no additional business to be conducted, Mr. Garvin noted that the two resolutions adopted during the day's Special Meeting, along with supporting information, would be available on the DRBC's website following the close of the meeting.

Commissioner Seggos moved for adjournment, and Brigadier General Tickner seconded his motion. All voted in favor, and the Special Business Meeting of February 25, 2021 was adjourned at 10:58 a.m.

An audio recording of the meeting remains on file with the Commission Secretary.

/s/ Pamela M. Bush

Pamela M. Bush, J.D., M.R.P.
Commission Secretary and Assistant General
Counsel