

DELAWARE RIVER BASIN COMMISSION

**MEETING OF DECEMBER 9, 2020**

**Conducted Virtually, on Zoom**

**Minutes**

Commissioners

Present:

Shawn Garvin, Delaware, Chair  
Lieutenant Colonel David C. Park, United States, Vice Chair  
Aneca Y. Atkinson, Pennsylvania, Second Vice Chair  
Jeffrey L. Hoffman, New Jersey  
Kenneth Kosinski, New York

DRBC Staff

Participants:

Steven J. Tambini, Executive Director  
Kristen Bowman Kavanaugh, Deputy Executive Director  
Kenneth J. Warren, DRBC General Counsel  
Pamela M. Bush, Commission Secretary and Assistant General Counsel  
Elba L. Deck, Director, Finance and Administration  
David Kovach, Manager, Project Review  
Amy Shallcross, Manager, Water Resource Operations  
Namsoo Suk, Director, Science and Water Quality Management

The Commission held its quarterly Business Meeting virtually to comply with guidelines in effect within one or more of the basin states during the Covid-19 pandemic. Shawn Garvin, Secretary, Delaware Department of Natural Resources and Environmental Control and Alternate Commissioner for Governor John C. Carney of Delaware, presided as the Commission's chair *pro tem*. Secretary Garvin welcomed attendees and noted that the virtual Business Meeting had been advertised on the DRBC website, in the member state and federal registers, by email, and via social media. In addition to the Zoom webinar platform and telephone access, the meeting was broadcast on YouTube on a trial basis and was recorded. Secretary Garvin asked that phones be muted and explained that the "chat" function on Zoom should be used only to alert IT staff to technical issues and would not otherwise be monitored. Attendees were encouraged to use their computer connection for both audio and video. Secretary Garvin further noted that after all business items were completed, and as time allowed, Mr. Tambini would lead an Open Public Comment session, during which microphones would be enabled for recognized speakers.

Minutes. The Minutes of the Commission's regularly scheduled Business Meeting of September 10, 2020 were unanimously approved without addition or correction.

Announcements. Ms. Bush announced the following advisory committee meetings, noting that details for all meetings could be found on the Commission's website.

- DRBC’s Advisory Committee on Climate Change – Thursday, December 17, 2020 from 9:00 am until 12:30 pm. Staff contact: DRBC Deputy Executive Director Kristen Bowman Kavanagh.
- DRBC Toxic’s Advisory Committee (“TAC”) – Thursday, January 28, 2021 from 1:30 pm until 4:00 pm. Staff contact: Dr. Ron MacGillivray.
- DRBC Water Management Advisory Committee (“WMAC”) – Thursday, February 25, 2021. Details to be posted on the DRBC website when available.

Hydrologic Conditions. Hydrologic Conditions. Ms. Shallcross explained that as the agency responsible for managing the Basin’s water resources, the Commission is concerned with the hydrologic cycle, which describes how and where water interacts among the atmosphere, land and water bodies. Highlights of Ms. Shallcross’s report follow, and graphics from the presentation can be found at:

[https://www.nj.gov/drbc/library/documents/HydrologicConditions\\_shallcross\\_120920.pdf](https://www.nj.gov/drbc/library/documents/HydrologicConditions_shallcross_120920.pdf).

*Precipitation.* As of the meeting date, year-to-date precipitation across the Basin totaled between 35 and 70 inches, with higher precipitation occurring in the lower Basin. Normal annual precipitation in the Basin is between 40 and 45 inches depending on location. The lowest precipitation levels in calendar year 2020 were along the Basin’s western boundary and a line from southwest Schuylkill County northeast through Pike County (in Pennsylvania) and Sullivan County (in New York). Year-to-date, precipitation in the lower Basin, from the mouth of the Bay upstream through Allentown, received between 5 and 20 inches more precipitation than normal, or 110% to 150% above normal precipitation. Areas that experienced the lowest amounts of precipitation received approximately 5 inches below normal or 90% of normal.

For the 90-day period preceding the business meeting, approximately 10 inches of rain would be expected; however, areas in the western Basin received approximately 2 inches of rain while areas to the south saw as much as 16 inches. Wet areas in the lower Basin received 1.5 to 2 times the normal amount of precipitation for the three-month period. In contrast, areas to the west, including parts of Schuylkill and Carbon counties, received only a quarter to a half of the normal amount. Drought conditions were declared in some areas, including in the northeast, north and west. The U.S. Drought Monitor (at <https://www.drought.gov/>) shows areas considered to be abnormally dry, dry, or in moderate drought in the Susquehanna River Basin, which adjoins the Delaware Basin to the west, and drought watches have been declared in areas of Pennsylvania and New York outside the Delaware River Basin. Moderate drought may result in crop damage, water shortage, and voluntary water restrictions. While conditions have improved somewhat in southwestern Pennsylvania, some public water supplies in that region remain subject to voluntary and mandatory use restrictions. Ms. Shallcross said she would participate in a Pennsylvania Drought Task Force call later in the day.

The Delaware River Basin also experienced some hurricane impact during 2020, along with significant flooding in the lower Basin from both hurricanes and other storms. The national hurricane center predicted between 22 and 35 named storms during the 2020; 30 were observed. Three to six hurricanes were expected; six occurred. For only the second time, a Category 5 hurricane—Iota (one of eight storms in 2020 named using the Greek alphabet)—developed in the

Atlantic in November, eventually weakening before it hit Columbia and Nicaragua. Ms. Shallcross displayed graphics showing rainfall amounts in the Basin from tropical storm Isaias and a table of flood locations. Parts of the basin, particularly in Pennsylvania, received over 5 inches of rain. Ten locations in the Basin reached flood stage or greater. Jordan Creek in Allentown and Perkiomen Creek in Graterford saw flooding that broke previous records.

Photographs from the flooding in the Allentown area showed massive amounts of water flowing over a road and extensive post-flood damage of a road that washed out near the Saucon Creek in the Lehigh Valley. Graphs show major flooding of the Schuylkill River near Norristown and moderate flooding near Philadelphia. A barge that had been placed to perform dredging work near Fairmount dam broke loose from its moorings and struck a bridge. Ms. Shallcross presented a list of locations that experienced minor flooding, including many in the lower Basin, due to amount and intensity of rainfall.

*Stream flows.* Many of the streams in the Basin were experiencing normal or above normal streamflow for the time of year. Consistent with the amount of rain in the lower Basin, streamflows in that region were above and much above normal, while in areas to the north and east, which had experienced dryer conditions streamflows were low.

A hydrograph (a time-series depicting streamflow throughout the year), was presented for the Delaware River at Montague, New Jersey. This location is significant because in accordance with the Supreme Court Decree of 1954, releases are made from the New York City reservoirs to ensure a flow of 1,750 cubic feet per second or 1,130 million gallons per day past the Montague gage. On the graph, the observed streamflow for each day of the year is plotted, along with the median value for the same day of the year. The median value is the middle-ranked flow for each day of the year for the 81 years of record. The hydrograph shows that in 2020, the flow has typically been above normal, except for part of the Spring (March – April) and part of the Summer and Fall (August – October). Today the flow is 4,450 million gallons per day. A large portion of the flow at Montague during the summer consisted of hydropower releases due to the heat. The large peak in August was from Hurricane Isaias.

Ms. Shallcross also displayed the hydrograph for Trenton, noting that observations exist for 108 years at this location. The flow pattern for Trenton during 2020 was similar to that for Montague: the flows were generally above normal except in March and April and August through October. Again, the August peak consisted of rain from Isaias. Ms. Shallcross noted that on the meeting date, the flow at Trenton was 7,950 million gallons per day.

*DRBC reservoir storage.* The DRBC owns storage in two federal reservoirs in Pennsylvania—Blue Marsh and Beltzville—which the Commission uses to meet a flow objective at Trenton. To ensure minimum freshwater inflows into the Delaware River Estuary, DRBC may request releases of water from Blue Marsh and Beltzville to meet a flow objective of 3,000 cubic feet per second (“cfs”), equal to about 1,940 million gallons per day (“mgd”) at the Trenton gage. Blue Marsh also has a recreation pool, and in October, the Corps will begin releasing water to bring the pool down to its winter elevation, providing capacity to store snow melt and late-season hurricanes. During a drought emergency, the Commission also may ask the Corps of Engineers to store water for low flow augmentation in the F.E. Walter Reservoir, which is otherwise used for flood control and recreation. The F.E. Walter pool is maintained at an elevation of approximately 1,370 feet in the

early spring through July. From July until October, recreation releases are made, and a lower, winter pool elevation is achieved and maintained until spring, allowing the greatest amount of capacity in the reservoir for flood control.

*New York City Delaware Basin storage.* The New York City (“NYC” or “City”) Delaware Basin reservoirs—Pepacton, Cannonsville and Neversink—are the three largest impoundments in the Basin. Their combined storage is used to define different drought stages for basin reservoir operations. To ensure that water from the headwaters of the Basin reaches the downstream states, the City is required to make releases from these reservoirs to meet a flow objective of 1,750 cfs (equal to 1,130 mgd) at Montague, New Jersey. During dry periods, 60 percent or more of the flow at Montague may be attributable to releases from the NYC reservoirs. For much of the year, City reservoir storage was near normal. The exceptions were earlier in the summer, during the dry period in the fall, and as the result of water withdrawals to meet the high summer demand.

*Salt front.* The Trenton flow objective was established to maintain sufficient freshwater flows to the Delaware River Estuary to push the saltwater from the ocean downstream. The normal range of the “salt front,” defined as the 250 mg/l chloride concentration, is from river mile (“RM”) 67 to RM 76, near Wilmington, Delaware. The 250 mg/l value is based on a secondary drinking water standard that was established by the U.S. Department of Health during the early part of the Twentieth Century. The “salt front” is normally located at RM 69 in December, and on the meeting date was located at RM 65.

*An image from space.* Ms. Shallcross noted that as listeners likely knew, SPACEX recently sent astronauts to the International Space Station. Ms. Shallcross presented a photo from space, showing the Delaware and Chesapeake Bays, and in which the Lehigh and Schuylkill rivers were visible, along with the C&D canal, connecting the two bays. She pointed out that that the image showed no indication of the salt front.

*Groundwater.* Groundwater across the Basin is measured by levels in 11 indicator wells. As of December 9, groundwater levels were normal or above normal and had been so since the Commission’s previous meeting, in September.

*Drought outlook.* The United States Drought Monitor (“USDM”) is published every Thursday at 8 a.m. As of September 10, the USDM showed most water levels in the Basin as normal or above normal. Hurricane Isaias, which resulted in as much as 7 inches of rain in some areas of the Basin, increased water levels across much of the Basin.

*Three-month outlook.* The National Weather Service predicts warmer temperatures and above normal precipitation for our region. We are also in a La Niña pattern, which means a stormier winter and a wilder, less stable jet stream. The direction of the jet stream, from the north or from the south, will determine whether the precipitation is snow or rain. The original Old Farmer’s Almanac indicates the Basin region will see sleet, which typically happens during a mild winter when the temperature is around freezing. Ms. Shallcross noted that The Farmer’s Almanac was predicting snow, including a blizzard in February.

*Graphics.* Current versions of some of the graphics presented by Ms. Shallcross may be accessed on the DRBC Hydrologic Snapshot for Flow and Drought Management at

[www.hydrosnap.drbc.net](http://www.hydrosnap.drbc.net), a page developed by Anthony Preucil and Karen Reavy of the DRBC. The Commission's website also includes a flood portal, where users can access flood information, sign up for alerts from the National Weather Service, and find links to flood forecasts and FEMA projects. The portal is located in the Hydrological Information tab on DRBC's homepage, and can be accessed directly at <https://www.nj.gov/drbc/hydrological/river/portal-flood.html>.

Executive Director's Report. Mr. Tambini's remarks are summarized below:

- *Participation.* Mr. Tambini noted that Zoom data indicated there were a total of 217 participants in attendance, including the Commission's members.
- *Advisory Committee on Climate Change.* On March 2, 2021 the DRBC Advisory Committee on Climate Change will host its first Climate Forum for the Delaware River Basin. The DRBC and Advisory Committee are pleased to collaborate with the Partnership for the Delaware Estuary ("PDE") in hosting this virtual event. The Climate Forum will be part of PDE's long-running Science Summit. For more information and to register, visit the DRBC website or the PDE website.
- *DRBC 2020 Water Quality Assessment.* The DRBC will issue its latest Water Quality Assessment Report by the end of 2020. Based upon five years of data ending in 2019, the report evaluates water quality in the main stem Delaware River, the Delaware Estuary, and Delaware Bay for attainment of the designated uses defined in DRBC's water quality regulations. These water quality assessments are performed every two years and remain available on the DRBC website.
- *Fee for Late-Filed Docket Renewal Applications.* In March of 2020 the DRBC suspended its fee for late-filed docket renewal applications. Beginning January 1, 2021 this fee will be reinstated.
- *Delaware Basin Compact.* The Delaware River Basin Compact became law on October 27, 1961, creating the DRBC as the nation's first inter-state and federal basin-scale water resource agency. We look forward to celebrating our 60<sup>th</sup> anniversary in 2021 as the Commission continues to manage, protect, and improve the water resources of the Delaware River Basin.

General Counsel's Report. Mr. Warren summarized two pieces of litigation in which the DRBC is involved:

*Wayne Land and Mineral Group (WLMG) v. DRBC.* In the *Wayne Land* matter, which has been pending for some years in the U.S. District Court for the Middle District of Pennsylvania, plaintiff WLMG seeks a declaration that the well pad and fracking activities it intends to undertake in Wayne County are not a project subject to DRBC review under Section 3.8 of the Compact. WLMG further contends that DRBC has no ability to exercise its project review jurisdiction because, in plaintiff's view, its planned activities are not a project. The DRBC believes that high-volume hydraulic fracturing is a project subject to DRBC review.

On May 19, the Third Circuit Court of Appeals issued an opinion in the *Wayne Land* case that arose because three Pennsylvania state senators—Senators Scarnati, Baker and Yaw—sought to intervene on the side of the plaintiff. Previously, the District Court had denied the senators’ motion to intervene under Rule 24 of the Federal Rules of Civil Procedure, which specifies certain criteria that a proposed intervener must meet. The Court of Appeals did not reach the question of whether Rule 24 was satisfied, but raised a preliminary question of whether the senators even had standing to bring their claim. Standing is a constitutional doctrine that underlies the “case and controversy” clause of the Constitution. If there is no standing, then the federal court has no jurisdiction to decide anything about the claim other than that the court lacks jurisdiction. As of December 9, the senators’ have withdrawn their motion. Currently, the status of the case is that DRBC’s motion for partial summary judgment is pending before the District Court. Also pending before the court is a motion for summary judgment by the Delaware Riverkeeper Network, an intervenor in the case. We are awaiting a decision on both motions by Judge Mariani.

*Gibbstown Logistics Center Dock 2.* This matter involves the administrative appeal of Docket D-2017-009-2 for the Dock 2 Project at the Gibbstown Logistics Center (“GLC”). The GLC is a multi-use deep-water seaport and industrial logistics center located on a portion of the former 1,630-acre DuPont Repauno Works site. The project involves the dredging of Delaware River sediments and the construction of a wharf to be located approximately 650 feet from the shoreline. The wharf will include two deep-water berths in the Delaware River to accommodate the export of bulk liquid products by vessel. The Commission issued Docket D-2017-009-2 for the GLC Dock 2 project on June 12, 2019, an action that was appealed the following month.

An administrative hearing under Article 6 of the Commission’s Rules of Practice and Procedure (18 C.F.R. Part 401, Subpart F) was held, and a Report of Findings and Recommendations was prepared by the Hearing Officer. The parties to the case filed briefs on whether or not the Hearing Officer’s findings and recommendation should be adopted. At the Commission’s September 2020 meeting, the Commissioners adopted a motion providing that in order to protect the water resources of the Basin pending the Commission’s determination resolving the administrative appeal, the Commission’s approval of Docket D-2017-009-2 was stayed until such time as the Commission issued a final determination resolving the administrative appeal. Mr. Warren explained that by virtue of the language of the motion adopted in September, a vote today would automatically terminate the stay.

A Resolution for the Minutes acting upon the findings and recommendations of the Hearing Officer in the matter of Docket D-2017-009-2 for the Gibbstown Logistics Center Dock 2 and affirming the Commission’s Docket approval. Mr. Warren offered a proposed Resolution for the Minutes and accompanying opinion (“Opinion”) adopting the Hearing Officer’s findings with certain exceptions and affirming the Commission’s June 12, 2019 docket approval.

Mr. Kosinski proposed as an alternative motion “that DRBC delay action on the resolution regarding the Gibbstown Logistics Center until recent concerns regarding potential water quality impacts have been fully addressed as well as determining whether the potential implications this project may have on climate change should be evaluated in the context of this docket.” Receiving no second, Mr. Kosinski’s motion “fell to the floor,” receiving no vote.

Lieutenant Colonel Park moved for adoption of the resolution presented by Mr. Warren. Ms. Atkinson seconded his motion.

Mr. Hoffman stated that while New Jersey acknowledged the large amount of criticism surrounding the proposed operations of the project, the issue presented to the Commission was the narrow one of whether or not to affirm its prior decision that dredging activities related to the construction of a second dock at the marine terminal complex in Gibbstown, New Jersey satisfied the Commission's water quality standards. He added that New Jersey had thoroughly reviewed the Hearing Officer's report and concurred with its recommendation and would vote to affirm the docket decision. Mr. Hoffman thanked the Hearing Officer and Commission staff for their assistance with New Jersey's review.

Secretary Garvin stated that for the reasons explained in the Opinion accompanying the resolution presented by Mr. Warren, Delaware would support the resolution accepting the Hearing Officer's findings as modified and affirming the docket for the Gibbstown Logistics Center Dock 2 project approved by the Commission on June 12, 2019 and which was subsequently appealed. Secretary Garvin noted his appreciation for the time afforded the Commission to review the record in this matter. He also thanked the Hearing Officer, the Commission staff, the interested parties and the concerned citizens who participated in the process, noting that there were many issues raised that were informative, and a number that did not fall under the Commission's jurisdiction. After careful review of the extensive record, he said, Delaware had determined that the Commission possessed sufficient information to render its decision on the docket and that in affirming the docket decision, the Commission was discharging its responsibility consistent with its authorities and the Comprehensive Plan.

Hearing no further discussion, the following Resolution for the Minutes was approved by a vote of four to zero, with Mr. Kosinski on behalf of Governor Andrew Cuomo of New York, abstaining. Mr. Warren noted that both the Resolution for the Minutes and the Opinion would be posted on the Commission's website shortly after the meeting.

#### RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes acting upon the findings and recommendations of the Hearing Officer in the matter of Docket D-2017-009-2 for the Gibbstown Logistics Center Dock 2 and affirming the Commission's Docket approval.

WHEREAS, on June 12, 2019, following a duly noticed public comment period and public hearing, the Commission (also herein, "DRBC") issued Docket D-2017-009-2 (the "Docket") pursuant to Section 3.8 of the Delaware River Basin Compact ("Compact"), approving a project at the Gibbstown Logistics Center ("GLC") known as the "Dock 2" project; and

WHEREAS, the Delaware Riverkeeper and Delaware Riverkeeper Network (collectively, "DRN") submitted written and oral comment opposing the Dock 2 project during the public comment period, and after the Docket was issued, pursued their objections through a request for administrative hearing under Article 6 of the Commission's Rules of Practice and Procedure ("RPP"), 18 C.F.R. Part 401; and

WHEREAS, in accordance with Section 2.6.3 of the RPP (18 C.F.R. § 401.83), the Commission at its quarterly business meeting on September 11, 2019 granted DRN's hearing request, and with the consent of Pennsylvania, the Commission Chair on November 1, 2019 designated John D. Kelly, Esquire, then serving as a hearing officer with the Pennsylvania Department of State, as the Commission's Hearing Officer for purposes of this administrative appeal; and

WHEREAS, in accordance with Section 2.6.4 of the RPP (18 C.F.R. § 401.84), after pre-hearing proceedings were completed, over an eight-day period from May 11 through May 15, 2020 and May 18 through May 20, 2020 the Hearing Officer afforded DRN and Docket holder Delaware River Partners LLC ("DRP") (collectively, the "interested parties") the opportunity to introduce evidence, whether or not previously offered to the Commission, and to cross-examine witnesses; the Commission Secretary, Pamela M. Bush, Esquire, also participated in the hearing as counsel for the DRBC staff; and

WHEREAS, in accordance with Section 2.6.5 of the RPP (18 C.F.R. § 401.85), the Hearing Officer heard testimony from thirteen expert witnesses and three fact witnesses, including witnesses from DRN and DRP and the Commission's project review manager; ; and

WHEREAS, other persons submitted written statements as permitted by Section 2.6.4 of the RPP (18 C.F.R. § 401.84), and neither interested party requested the opportunity to cross-examine the authors of these statements; and

WHEREAS, due to the onset of the Covid-19 pandemic in March of 2019, the Hearing Officer conducted the hearing via video conference; a video recording was made of each day's proceedings, and all recordings were posted to the Commission's website, drbc.gov, within 48 hours of the close of the day's proceedings; and

WHEREAS, transcripts of the hearing were also created and furnished to the interested parties, the Hearing Officer and the Commission; and

WHEREAS, following post-hearing briefing, in accordance with Section 2.6.8 of the RPP (18 C.F.R. § 401.88), the Hearing Officer on July 21, 2020 issued his Report of Findings and Recommendations ("Report"), containing 385 Proposed Findings ("Findings"), a Discussion, and a Conclusion and Recommendation; and

WHEREAS, the Hearing Officer recommended that "the Dock 2 Docket should remain as previously approved by the Commission" (Report, p. 101); and

WHEREAS, in accordance with Section 2.6.8 of the RPP (18 C.F.R. § 401.88), on August 10, 2020, DRN served objections to the Report, and DRP served objections limited to certain proposed Findings in the Report, and on August 21, 2020, the Commission's Executive Director, Steve Tambini, acting through Ms. Bush, served staff comments on the Report to which the interested parties responded on August 31, 2020; and



WHEREAS, upon the response of the interested parties to staff's comments on the Report, the administrative appeal became ripe for decision by the DRBC Commissioners (*see* RPP § 2.6.9 (18 C.F.R. § 401.89)); and

WHEREAS, upon receipt of the Report, the briefs and objections of the interested parties, and the comments of the Commission staff, and with the assistance of the Commission's General Counsel, the Commissioners each have carefully reviewed the Hearing Officer's findings and recommendations and the administrative record; and

WHEREAS, based on their review, the Commissioners have concluded that the Dock 2 project as conditioned by the Docket would not substantially impair or conflict with the Commission's Comprehensive Plan for the immediate and long range development and uses of the water resources of the basin (*see* Compact, §§ 3.8, 3.2(a), and 13.1); now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission adopts the findings of the Hearing Officer except as specified in the Opinion attached hereto and incorporated herein, and for the reasons stated in the Opinion the Commission adopts as its final determination the recommendation of the Hearing Officer to affirm the June 12, 2019 Docket approval.
2. The Commission hereby finds and determines that DRN has failed to meet its burden of demonstrating either that the Dock 2 project as conditioned in the Docket would substantially impair or conflict with the Comprehensive Plan or that the administrative record for the Docket contains insufficient information to support the Docket approval.
3. This Resolution constitutes the Commission's final determination in this matter pursuant to Section 2.6.9 of the RPP (18 C.F.R. § 401.89).

The Opinion accompanying the above resolution is provided as Attachment A.

A Resolution for the Minutes amending the Administrative Manual – Bylaws, Management and Personnel with respect to approved holidays. After summarizing the proposed changes and reasons therefor as set forth in the draft resolution, DRBC's Director of Finance & Administration, Elba Deck, requested that the Commissioners adopt the resolution.

Secretary Garvin requested a motion. Mr. Hoffman moved to approve the Resolution as proposed, Ms. Atkinson offered a second, and without further discussion, the following Resolution for the Minutes was approved by unanimous vote:

#### RESOLUTION FOR THE MINUTES

A Resolution A RESOLUTION for the Minutes amending the Administrative Manual – Bylaws, Management and Personnel with respect to approved holidays.

WHEREAS, the organization, management and personnel practices of the Commission are governed by the Administrative Manual; and

WHEREAS, the Administrative Manual establishes personnel policies that include leave and holiday benefits; and

WHEREAS, Section 5.14 of the Administrative Manual lists the holidays recognized by the Commission; and

WHEREAS, the Commission has determined that revisions to the Administrative Manual are required to recognize holidays that may be observed by a diverse workforce and, without increasing the number of paid holidays, to provide flexibility to eligible staff members who wish to use their holiday or other accrued leave time to celebrate these holidays; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that effective January 1, 2021, Section 5.7 F.14. of the Administrative manual shall be replaced by the text set forth below.

14. *Approved Holidays* – The Commission recognizes the annual holidays set forth in two groups below. The Commission’s offices will be closed to the public and employees on each of the six holidays in the first group. The Commission’s offices will be closed to the public on the five holidays in the second group; however, eligible employees may take holiday leave on any four of the five holidays in the second group. On the remaining day in the second group, eligible staff may work or use up to 7.5 hours of vacation credits (par. 5.7 F.6), personal leave (5.7 F.12) or earned compensatory time off.

New Year’s Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Martin Luther King Jr.’s Birthday

Presidents Day

Juneteenth

Columbus Day/ Indigenous Peoples’ Day

Veterans Day

When any of the above listed holidays falls on a Saturday, it shall be observed on the previous Friday.

When any of the above listed holidays falls on a Sunday, it shall be observed on the following Monday.

In each calendar year, the Executive Director will authorize one additional holiday in conjunction with a national holiday.

The Executive Director may also authorize such other Commission holidays, as circumstances dictate, commensurate with special observances or occasions appropriate to any of the signatory parties.

The Commission recognizes that in addition to the traditional government holidays listed above, individuals and groups from diverse backgrounds celebrate other holidays throughout the year that are not listed. Employees may request leave to celebrate these holidays using available vacation, personal leave, earned compensatory time off, or unpaid leave. Unless there are critical needs that would prevent approval of requested leave time, direct supervisors are encouraged to support these holidays.

A Resolution for the Minutes authorizing the Executive Director to accept a grant from the William Penn Foundation in continued support of the public education campaign known as “Our Shared Waters.” After summarizing the proposal as set forth in the draft resolution, DRBC’s Director of External Affairs and Communication, Peter Eschbach, asked the Commissioners to approve the resolution.

Secretary Garvin requested a motion. Mr. Kosinski moved to approve the resolution as proposed, Lieutenant Colonel Park offered a second, and without further discussion, the following Resolution for the Minutes was approved by unanimous vote:

#### RESOLUTION FOR THE MINUTES

A Resolution for the Minutes authorizing the Executive Director to accept a grant from the William Penn Foundation in continued support of the public education campaign known as “Our Shared Waters.”

WHEREAS, Key Result Area 5 – Education and Involvement for Stewardship (“KRA 5”) – of the 2004 Water Resources Plan for the Delaware River Basin established as a desired outcome that: “The Basin community share a collective understanding and appreciation of the Basin’s water resources and a commitment to their restoration, enhancement, and protection” and further, that “[t]his community value[] the water resources and understand[] the personal responsibilities needed to protect the resource”; and

WHEREAS, KRA 5 further stated that, “A basic premise of water resource stewardship is to learn two things — that we live in a watershed and that we understand how to live within the limits of our water resource system” and explained that among the key elements of a good water resource education are: first, [r]aising and promoting basic awareness and an understanding of water resources [to] give[] people the tools to investigate avenues for change [and] “[e]ducating citizens about the individual roles they play in water resource stewardship ..., [to] inspire[e] personal action; and

WHEREAS, the Commission reaffirms the importance of public education in the continued sound management of the Basin's shared water resources; and

WHEREAS, on March 13, 2019, the Commissioners authorized the executive director to accept a grant of \$530,000 from the William Penn Foundation (the "Foundation") to support the production of a State of the Basin Report and to undertake the "Our Shared Waters" education campaign ("OSW"). OSW focuses on providing Delaware River Basin audiences with important messages around improving water quality, the importance of water conservation, and the need for continued stewardship of the water resources of the Delaware River Basin; and

WHEREAS, the William Penn Foundation in April 2020 responded favorably to a letter of inquiry from the DRBC and invited the Commission to submit a full application for continued support of the OSW campaign. Submitted in late July 2020, the Commission's proposal among other things requested funds to enhance the "Rate Your Waters" crowdsourcing project, which provides an opportunity for diverse stakeholders to share information on water quality; and funds for public outreach to engage lay audiences in particular in learning about the water resources of the Delaware River Basin; and

WHEREAS, on Nov. 6, 2020, the Foundation approved a grant in the amount of \$315,000 to support continuation of the OSW program; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

The Executive Director is authorized to enter into an agreement with the William Penn Foundation to accept the awarded grant funds for the purposes described above.

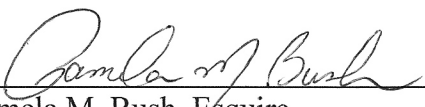
Project Review Applications. DRBC's Project Review Manager, David Kovach, reported that 16 draft dockets had been the subjects of a duly noticed public hearing on November 12, 2020 and that the Commission had received no comments on these dockets. Mr. Kovach recommended that the Commissioners approve the 16 draft dockets as proposed.

Thanking Mr. Kovach, Secretary Garvin so moved. Mr. Hoffman so moved, Lieutenant Colonel Park seconded his motion, and without further discussion, the draft dockets comprising agenda items 1 through 16 were approved by unanimous vote. A description of each of the applications for dockets approved during the Business Meeting of December 9, 2020 is provided as an attachment to these Minutes.

Adjournment. Secretary Garvin asked the Commission and staff to identify any other matters requiring the Commissioners' consideration that day. Hearing none, he requested a motion to adjourn the business meeting. Mr. Kosinski so moved, Mr. Hoffman seconded his motion, and the meeting was adjourned by unanimous vote of the Commissioners at 11:30 a.m.

Audio Recording. Audio recordings of the public hearing of November 12, 2020 and the Business Meeting of December 9, 2020 are on file with the Commission Secretary.

Open Public Comment. After adjournment of the business meeting, Mr. Tambini conducted an Open Public Comment session for off-the-record comment by stakeholders on water resource issues affecting the Basin.

  
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Pamela M. Bush, Esquire  
Commission Secretary and Assistant General Counsel

**ATTACHMENT A**

**IN RE DOCKET D-2017-009-2  
GIBBSTOWN LOGISTICS CENTER DOCK 2  
ADMINISTRATIVE APPEAL**

**OPINION**

BEFORE THE DELAWARE RIVER BASIN COMMISSION

In re: DRBC Docket D-2017-009-2 }  
Gibbstown Logistics Center Dock 2 } Administrative Appeal  
}

OPINION

I. Background

On June 12, 2019, the Delaware River Basin Commission (“DRBC” or “Commission”) issued Docket D-2017-009-2 (the “Docket”) pursuant to Section 3.8 of the Delaware River Basin Compact (“Compact”) approving a project at the Gibbstown Logistics Center (“GLC”) known as the “Dock 2” project. Hearing Exhibit (“Ex.”) J-1 (“Docket”). The GLC is a multi-use, deep-water seaport and industrial logistics center located in Gibbstown, New Jersey. The GLC is situated on a portion of the 1630-acre Repauno facility formerly owned and operated by DuPont and thereafter by Chemours.

On March 12, 2019, Delaware River Partners (“DRP”) submitted an application to DRBC seeking approval of the Dock 2 project. DRP proposed to dredge Delaware River sediments and construct a pile-supported wharf at River Mile 86.5 providing two deep-water-berths and associated infrastructure. As stated in the Application, “The purpose of Dock 2 is to develop a marine facility capable of accommodating the export of bulk liquid products by vessel, including infrastructure necessary for transloading operations which will allow vessels to be loaded directly from railcar or truck.” Ex. J-2 (Application) at p. AR000011.<sup>1</sup> The Dock 2 wharf will

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<sup>1</sup> The liquids to be transloaded to marine vessels at Dock 2 include liquefied hazardous gas (“LHG”) and liquified natural gas (“LNG”). *See, e.g.*, Ex. DRP-132 at p. 1. LHGs are

be located approximately 650 feet from the shoreline and connected by a trestle to landside infrastructure at the GLC. Ex. DRP-14 at ¶ 17.

The GLC was also the subject of Docket D-2017-009-1 that DRBC issued to DRP for the “Dock 1” project and land-side development on December 13, 2017. *See* Ex. J-24 (DRBC docket for Dock 1). The Dock 1 project is located upriver of Dock 2 and involved construction of a new multi-use, deep-water port and logistics center to accommodate ocean-going vessels. As part of the Dock 1 project, DRP performed Delaware River dredging, and constructed a one-ship berth on a pile-supported wharf structure, a stormwater management system and other features. Unlike Dock 2 which will transload only bulk liquid products, the materials transloaded at the Dock 1 facility include a variety of products such as bulk liquids and gases, automobiles, perishable commodities and bulk cargo. *Id.*

On March 25, 2019, the Commission published on its website a Notice of Applications Received that included the Dock 2 project. On May 24, 2019, the Commission published notice of a public hearing and a draft docket for Dock 2. During the public hearing on June 6, 2019 and the public comment period which closed on June 7, 2019, the Delaware Riverkeeper Network and the Delaware Riverkeeper (collectively “DRN”) and certain other members of the public submitted written and oral comments opposing the Dock 2 project.

DRN pursued its objections to the Dock 2 project after the Docket was issued through a request for an administrative hearing pursuant to Article 6 of the Commission’s Rules of Practice and Procedure (“RPP”), 18 C.F.R. Part 401. On September 11, 2019, the Commission granted DRN’s hearing request. On November 1, 2019, with the consent of Pennsylvania, the

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components of natural gas in the ground and include, among others, liquified butane and propane. *Id.* at 6. For a definition of these terms, *see* 33 C.F.R. § 127.005.



Commission Chair designated John D. Kelly, Esquire, then serving as a hearing officer with the Pennsylvania Department of State, as the Commission's Hearing Officer for purposes of this administrative appeal.

After pre-hearing proceedings were completed, on May 11 through May 15, 2020 and on May 18 through May 20, 2020, the Hearing Officer afforded DRN and DRP (collectively, the "interested parties") the opportunity to introduce evidence whether or not previously offered to the Commission and to cross-examine witnesses. The Commission's Secretary and Assistant General Counsel, Pamela M. Bush, Esquire, also participated in the hearing as counsel for DRBC staff. The Hearing Officer heard testimony from thirteen expert witnesses and three fact witnesses, including DRN Deputy Director Tracy Carluccio and DRP's principal consultant with the engineering, architecture and consultancy firm Ramboll. At the request of the Executive Director, the Commission's Project Review Manager, David Kovach, also testified and was cross-examined. Other persons submitted written statements as permitted by Section 2.6.4 of the RPP, and neither interested party requested the opportunity to cross-examine the authors of these statements.

The logistics and timing of the hearing were complicated by the onset of the Covid-19 pandemic. As a result, the Hearing Officer conducted the hearing via video conference. The Commission expresses its appreciation to the Hearing Officer, the interested parties, DRBC staff, and to the counsel and witnesses, all of whom worked cooperatively to establish and implement the video conferencing procedures that allowed the hearing to proceed in a professional and safe manner.

On July 21, 2020, the Hearing Officer issued his Report of Findings and Recommendations (“Report”).<sup>2</sup> *See* RPP § 2.6.8. The Report contains a list of exhibits, biographical information on witnesses, a Procedural History, 385 Proposed Findings (“Findings”), a Discussion, and a Conclusion and Recommendation. The Hearing Officer recommended that “the Dock 2 Docket should remain as previously approved by the Commission.” Report at 101.

In accordance with Section 2.6.8 of the RPP, on August 10, 2020, DRN served objections to the Report, and DRP served objections limited to certain proposed Findings in the Report. On August 21, 2020, the Commission’s Executive Director, Steve Tambini, acting through Assistant General Counsel Pamela M. Bush, Esquire, served staff comments on the Report to which the interested parties responded on August 31, 2020. The administrative appeal is now ripe for decision by the DRBC Commissioners. *See* RPP § 2.6.9.

## II. Burden of Proof and Standard of Review

The interested parties have spent considerable time debating the burden of proof and standard of review. The Hearing Officer appropriately placed the burden of persuasion on DRN as the party challenging the Docket approval issued by the Commission. DRP agrees with this burden allocation and DRN seems to agree as well. *See* DRN Brief in Support of Objections (August 10, 2020) at 4. The Hearing Officer also correctly allocated the burden of production to DRP to the extent the relevant information was in its exclusive possession or in its possession and not reasonably available to DRN. *See* Hearing Officer Order dated December 12, 2019.

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<sup>2</sup> Following the conclusion of the hearing but before submission of his Report, the Hearing Officer retired from service with the Pennsylvania Department of State. On the recommendation of the Commissioner’s General Counsel and with the concurrence of the interested parties and the Executive Director, the Commission Chair continued the designation of Mr. Kelly as the Hearing Officer in the present administrative appeal.

The interested parties disagree on what DRN must prove to meet its burden of proof. At least until its August 31, 2020 submission, DRP contended that DRN must show that the Dock 2 project would substantially impair or conflict with DRBC's Comprehensive Plan. *See, e.g.*, letter from counsel for DRP dated August 10, 2020 (DRN "bore the burden by proving by a preponderance of the evidence that the Project will substantially impair or conflict with the Comprehensive Plan, and DRN failed to carry this burden."). In contrast, DRN argues that "[t]he Commission has a burden ... to determine whether or not the project will substantially impair or conflict with the Comprehensive Plan," *see* DRN Brief in Support of Objections (August 10, 2020) at 5, and that absent such proof, a docket approval cannot properly be issued.<sup>3</sup>

Although in many circumstances the difference between the parties' positions would have little practical consequence, here it may be of import. DRN contends that the Commission approval should be vacated because the Commission has insufficient information to grant the approval, while DRP asserts that while sufficient information exists, the approval should also be affirmed on the ground that DRN failed to meet its burden to show that the Dock 2 project would substantially impair or conflict with the Comprehensive Plan. The Hearing Officer appears to have placed the burden of proving substantial impairment of, or conflict with, the Comprehensive Plan on DRN, and also stated that proof that DRBC abused its discretion would not be a sufficient ground on which to vacate the Docket. *See* Report, Section V.A. At other times, the Hearing Officer apparently considered and rejected DRN's abuse of discretion argument on the merits. *See* Report at 93 ("DRBC's disinclination to duplicate the work of other

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<sup>3</sup> By "burden" we assume DRN means "statutory duty" in that DRBC performs an adjudicatory role under Section 3.8 of the Compact – DRBC is not a party bearing a "burden."

agencies or to doubt their integrity was a reasonable exercise of its discretion under Section 3.8”).

We agree with the Commission staff that DRN’s burden is to prove based on all evidence of record, including evidence presented at the hearing, that the Commission erred in issuing the Docket. *See* DRBC Staff Comments on Hearing Officer’s Report and Interested Party Objections; Recommended Commission Action (“DRBC Staff Comments”) at 2.<sup>4</sup> Evidence that the Docket decision was based on erroneous findings of fact, conclusions of law or an abuse of discretion would be relevant to satisfying this burden. For DRN to prevail, DRN must show that the Commission’s error warrants opening, vacating, or modifying the Docket.

To be sure, proof that the Dock 2 project would substantially impair or conflict with the Comprehensive Plan would satisfy this burden. But a government agency decision such as the issuance of the Docket must be based on supporting information contained in an administrative record. Section 2.3.8 of the RPP, 18 C.F.R § 401.39, specifies the documentation that must accompany a project application, and affords the Executive Director discretion to require additional supporting documentation. Docket decisions are made by vote of the Commissioners based on recommendations of the Executive Director and Commission staff. DRN can prevail in its administrative appeal if it can show that the Commission abused its discretion by approving the Dock 2 project without first obtaining sufficient information to make a reasoned decision.

This principle does not mean that the Commission must require submission of all information that may be relevant. In most docket reviews, there is additional information that

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<sup>4</sup> In its August 31, 2020 Letter Response to the Staff Comments, DRP stated that staff had properly characterized DRN’s burden as a requirement to prove “that the Commission erred” in issuing the Docket. It thus seems that DRP may now agree with the Commission staff’s formulation of the standard.

could be obtained and considered. Commission staff and the Commissioners must exercise their professional judgment to decide whether sufficient information has been submitted, or whether the applicant should be required to supplement its application. To prevail on an argument that DRBC abused its discretion by not obtaining additional information, the DRN must show that without first obtaining and evaluating more information, DRBC could not reasonably conclude whether the Dock 2 project would substantially impair or conflict with the Comprehensive Plan. And because this administrative appeal affords the interested parties the opportunity to supplement the administrative record with documents and testimony, the relevant question before us is whether after consideration of the evidence presented at the hearing, there is now sufficient information to support the Docket approval.

As the Hearing Officer recognized, Sections 1.5 and 3.9(b) of the Compact authorize the Commission to utilize and employ the offices and agencies of the Basin states and federal government “to the fullest extent it finds feasible and advantageous.” The Commission frequently implements this authority in the context of performing its project reviews under Section 3.8 of the Compact, particularly where state and federal government agencies are performing environmental reviews of the same project pursuant to their own statutory authorities. This coordination eliminates or reduces duplicative reviews and affords DRBC the benefit of the expertise of these agencies.

In the present case, the relevant state and federal actions included, among others, permitting decisions by the New Jersey Department of Environmental Protection (“NJDEP”) and the U.S. Army Corps of Engineers (“USACE”), two agencies of the signatory parties to the Compact whose professional staff evaluated water quality and other aspects of the Dock 2 projects as part of their own permit reviews. The information submitted to and reviewed by

those agencies, and the results of their evaluations, are important components of the information supporting DRBC’s Docket approval.

DRN argues that when implementing Sections 1.5 and 3.9(b) of the Compact, DRBC accorded excessive deference to other agencies,<sup>5</sup> and that *no* deference is due to the Commission itself. *See* DRN brief in support of objections to the July 21, 2020 report of findings and recommendations of the Hearing Officer (August 10, 2020) at 15. The Conditions section of the Docket stated that the docketholder was not exempt from obtaining all necessary permits and/or approvals from other agencies. All of the permits applicable to the Dock 2 project were issued before the conclusion of the administrative hearing and are part of the administrative record for the Docket. *See* Findings ¶¶ 373 and 374. In challenging the weight DRBC afforded to reviews by other agencies, DRN asserts that the Compact is merely a contract, not a statute, *see* DRN brief in support of objections to the July 21, 2020 report of findings and recommendations of the Hearing Officer (August 10, 2020) at pp. 16 and 18, and that as a result, deference principles such as those in *Chevron*<sup>6</sup> and *Auer*<sup>7</sup> are inapplicable, *id.* at p. 15.

We agree in part and disagree in part with DRN’s arguments. As enacted by the legislatures of the Basin states and the U.S. Congress, the Compact is both statute and a contract, not merely a contract as DRN asserts. *See, e.g., Kansas v. Nebraska*, 135 S. Ct. 1042, 1053 (2015) (Compact is federal law); *Alabama v. North Carolina*, 130 S. Ct. 2295, 2312 (2010) (“But

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<sup>5</sup> DRN’s June 17, 2020 and August 31, 2020 submissions clarify this position by stating that DRBC may defer to other agencies, but must review their work and determine whether it is complete enough for the Commission to understand the impact of the project on the Comprehensive Plan. *See* DRN Post-Hearing Brief (June 17, 2020) at 99; DRN Response to DRBC Staff Comments (August 31, 2020) at 25.

<sup>6</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

<sup>7</sup> *Auer v. Robbins*, 519 U.S. 452 (1997). *See also, Kisor v. Wilkie*, 139 U.S. 2400 (2019).

an interstate compact is not just a contract, it is a federal statute enacted by Congress”). Nevertheless, pursuant to the Third Circuit’s decision in *Wayne Land and Mineral Group LLC v. DRBC*, 894 F. 3d 509 (3<sup>rd</sup> Cir. 2018), the Compact is interpreted in accordance with contractual principles, and *Chevron* deference does not apply. These propositions do not, however, resolve the weight the Commission may give to the determinations of other agencies or Commission staff. *Chevron* deference relates to an agency’s interpretation of the ambiguous provisions of a statute the agency is administering. Similarly, *Auer* deference relates to an agency’s interpretation of an ambiguous provision of its regulations. Here, the “deference” objections DRN raises mostly pertain to the weight given to professional judgment exercised by the staff of the Commission or other expert government agencies on matters within their technical competence, not to interpretation of an ambiguous statutory or regulatory term.<sup>8</sup>

Particularly in light of the express authority given to DRBC in Sections 1.5 and 3.9(b) of the Compact to utilize the agencies of government including the Compact’s signatory parties, it is appropriate under the present circumstances for the Commission to give weight to the decisions of the Commission’s member state and federal agencies when acting in their areas of scientific and technical expertise. DRBC will ordinarily accept the results of the analyses and judgments of these agencies that it has found “advantageous” to utilize. Although when making a decision under the Compact DRBC maintains the authority to review the work of other agencies and reach a different conclusion where warranted, in many instances doing so is unnecessary and would result in duplication of effort. In accordance with the Compact, in this

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<sup>8</sup> One exception is whether the word “substantially” in the phrase “substantially impair or conflict” in Section 3.8 of the Compact modifies both the word “impair” and the word “conflict.” DRBC’s course of performance shows that DRBC has interpreted “substantially” as modifying both terms.

case DRBC reached its Docket decision based upon the facts, sound science, professional judgment, and policy considerations, utilizing the reviews by other government agencies as to specific aspects of the Dock 2 project where, but only where, DRBC found it “advantageous” to do so.<sup>9</sup>

### III. Findings of Fact

DRBC commends the Hearing Officer for his thorough consideration of the hearing record and his extensive Findings of Fact (“Findings”). DRBC adopts the Findings set forth in the Hearing Officer’s Report, except to the limited extent identified in Appendix A to this Opinion.

### IV. DRN’s Objections

In response to the Hearing Officer’s Report, DRN submitted various objections. *See* DRN Objections dated August 10, 2020.<sup>10</sup> Objections relating to the burden of proof and standard are addressed by the discussion in Section II above.

DRN also raises a series of objections aimed at potential harms to water resources that DRN contends may result from implementation of the Dock 2 project. In DRN’s view, the evidence shows that the project will substantially impair or conflict with the Comprehensive Plan, or that DRBC abused its discretion in issuing the Docket without first acquiring

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<sup>9</sup> DRN also notes that it is inappropriate for the Hearing Officer to defer to the Commission. As the governing body of the Commission, the Commissioners issuing this Opinion do not “defer” to the Commission or its staff, but rather are guided by the factors discussed in this Opinion. Of course, the Commissioners value, consider, and where appropriate rely on the work, professional judgment and recommendations of Commission staff.

<sup>10</sup> To the extent DRN has not raised by way of objections certain issues that it contested before the Hearing Officer, DRBC considers them waived. To the extent that these issues are addressed on the merits in the DRBC Staff Comments, in addition to finding them waived, DRBC adopts the reasoning in the Staff Comments.



information necessary to its decision. DRN's post-hearing briefs focused principally on the latter argument that DRBC issued the Docket based on insufficient information. The Hearing Officer rejected DRN's arguments and recommended that the Commissioners affirm the decision approving the Dock 2 Docket. Report at 101.

After reviewing all of the evidence adduced at the hearing, the Commission's Executive Director submitted to the Hearing Officer the comments of the DRBC staff stating in part that staff "concur in the Hearing Officer's recommendation that the Commission affirm its decision of June 12, 2019, and the Docket remain unchanged." With the assistance of the Commission's General Counsel, the Commissioners have reviewed the hearing record, the objections and briefs of the interested parties, the DRBC Staff Comments, and the responses of the interested parties to the DRBC Staff Comments. The Commissioners agree with the recommendations of the Hearing Officer and DRBC staff that the Commission's June 10, 2019 decision approving the Docket for the Dock 2 project be affirmed. The Commission has determined that the administrative record contains sufficient information to support the decision to affirm the Docket and adopts the DRBC Staff Comments which identify certain of the evidentiary bases for the Commission's determination.<sup>11</sup> Without restating the entirety of the DRBC Staff Comments, this Opinion emphasizes certain of the reasons for the Commission's determination.

Pursuant to Section 3.8 of the Compact, the Commission reviews projects having a substantial effect on the water resources of the Basin to determine whether such projects would substantially impair or conflict with the Comprehensive Plan. As developed over the course of the Commission's 59 years of existence, the Comprehensive Plan "for the immediate and long

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<sup>11</sup> The Commission does not similarly adopt the discussion in the Hearing Officer's Report, although like the Hearing Officer and Commission staff, the Commission has concluded that the Docket Decision should be affirmed.

range development and uses of the water resources of the basin” includes various public and private projects and facilities and the Commission’s regulations and policies. *See* Compact, §§ 3.2(a), 13.1. DRN does not contend that the Dock 2 project would substantially impair or conflict with any projects included in the Comprehensive Plan. The thrust of DRN’s objections is focused on potential violations of DRBC’s Water Quality Regulations (“WQR”) and Water Code, 18 C.F.R. Part 410, which have been incorporated into the Comprehensive Plan. The provisions relevant to DRN’s objections are those establishing designated uses to be protected in Zone 4 of the Delaware Estuary where the Dock 2 project will be located and corresponding stream quality objectives. The designated uses include, among others, maintenance of aquatic life and navigation. *See* Water Code § 2.200; WQR §§ 3.10.3.C, 3.30.4.B.2.a, 3.30.4.B.4.a. and 3.30.4.C.

The harms and the impairments to the Comprehensive Plan DRN foresees are primarily those it contends may result from dredging of sediment in and around the planned location of Dock 2.<sup>12</sup> DRP intends to dredge approximately 665,000 cubic yards of Delaware River sediment in a 45-acre area no closer than 600 feet from the shoreline. *See* Findings ¶¶ 16 and 38. The construction will also temporarily disturb approximately 0.8 acres of land. *See* Findings ¶ 38. DRN is concerned with the potential for contaminated sediments to be resuspended by the dredging and thereby increase the toxicity and turbidity of the surrounding waters.

Dredging for channel deepening or maintenance occurs from time to time in the Delaware River Estuary. As DRP noted, the Delaware River Deepening Project involved

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<sup>12</sup> In its comments submitted to the Commission during the public comment period on the Docket, DRN expressed particular concern about one of the products to be exported from the GLC, liquefied natural gas (“LNG”). The evidence at the hearing showed that any releases of LNG or LHG at the GLC are unlikely to pose a risk to water resources. *See* Findings ¶¶ 304 and 385.

dredging over 10,000 acres in the Delaware River; DRP's Dock 1 project approved by the Commission likewise involved dredging Delaware River sediments. *See* DRP Post-Hearing Brief at 14. With these examples, and there are others, it is clear that dredging can be conducted under some circumstances without substantially impairing or conflicting with the Comprehensive Plan. *See also*, Section 2.3.5.A.8 of the RPP (maintenance dredging). After examining the details of the proposed Dock 2 project, the Commission concludes that the proposed dredging for Dock 2 under the conditions imposed in the Docket would not substantially impair or conflict with the Comprehensive Plan.

We turn first to the potential impact of the Dock 2 project on resuspension of PCBs and other contaminants in the Delaware River sediments. The Delaware River Estuary is impaired for PCBs, and the Commission in cooperation with the Basin States has implemented a program to reduce discharges of PCBs by requiring dischargers to submit and implement pollutant minimization plans. *See* WQR § 4.30.9. DRN contends that resuspension of sediments containing PCBs from dredging activity may adversely affect water quality.

The Commission does not have specific programs for managing dredging in the Delaware River or protecting endangered or threatened species. New Jersey regulates dredging in its waters pursuant to its Coastal Management Program, and likewise has a mature program for the protection of endangered and threatened species. The NJDEP Dredging Manual provides guidance and criteria for, among other things, sediment sampling and testing for dredging projects. *See, e.g.*, Findings ¶ 213; Ex. DRP-39 (NJDEP Dredging Manual); N.J.A.C. 7:7 (NJDEP Coastal Zone Management Rules). The USACE regulates dredging under its Section

10/404 program<sup>13</sup> and also performs dredging activities of its own. When required by the Endangered Species Act, the USACE consults with the National Marine Fisheries Service (“NMFS”) which reviews potential adverse impacts of federal actions on threatened and endangered species.

In the case of the Dock 2 project, all three of these agencies reviewed DRP’s plans to dredge the Dock 2 area. After examining potential water quality impacts, the NJDEP, and the USACE after consulting with NMFS, approved the project by issuing a Waterfront Development Permit (“WDP”), Ex. J-3 and J-33, and a Section 10/404 Permit, respectively. *See* Findings ¶¶ 359 and 371. The WDP includes a state water quality certificate under section 401 of the Clean Water Act.<sup>14</sup> *See* Findings ¶ 373(a). The approvals are subject to temporal (seasonal) restrictions on construction activities and use of best management practices (“BMPs”). *See, e.g.,* Findings ¶¶ 85, 90, 99, 124, and 125.

The record evidence supports the weight given by DRBC to these approvals. With respect to PCBs and other toxic substances, the evidence showed that sediment resuspension is unlikely to cause or significantly contribute to a violation of DRBC water quality standards for PCBs or any other constituent. As explained in the DRBC Staff Comments, the New Jersey WDP for the Dock 2 project requires DRP to use a closed clamshell environmental bucket with limits on the rate of descent and lift and to implement other BMPs that will limit total suspended solids roughly to background levels. *See* Findings ¶¶ 191 and 358(a); Ex. J-50 (NJDEP

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<sup>13</sup> Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403; Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

<sup>14</sup> 33 U.S.C. §1341. A water quality certificate from New Jersey was required because DRP sought a permit from the USACE. The New Jersey certificate constitutes a determination by the state that the discharge meets applicable effluent limitations and water quality standards. *See, e.g., PUD No. 1 of Jefferson County v. Washington Dept. of Ecology*, 511 U.S. 700 (1994).

responses to comments on the WDP) at 4 and DRBC Staff Comments at 7. The WDP also requires DRP to retain an independent dredging inspector. *See* Findings ¶ 359. The area of increased turbidity is expected to be small.<sup>15</sup> Recognizing that dredging will permanently remove from the Delaware River those dredged sediments sent to disposal locations, the Hearing Officer found that properly executed dredging and removal of PCB-contaminated sediments will confer a net water quality benefit. *See* Findings ¶¶ 58 and 249. *See also*, DRBC Staff Comments at 8.<sup>16</sup>

The Hearing Officer cited the “Versar” report which examined the USACE’s Delaware River main channel deepening project. The Versar report concluded that sediments containing concentrations of PCBs (as determined by bulk sediment data) when suspended by a bucket dredge (not an environmental clamshell bucket) would not cause DRBC’s water quality criteria to be exceeded using worst case assumptions. *See* Ex. DRN-25 (Versar Report – PCB Mobilization During Dredging Operations and Sequestration by Upland Confined Disposal Facilities) at 9-18; Findings ¶ 175. The record also shows that concentrations of PCBs found in the Dock 2 dredging area are expected to be at a range typical of the Delaware River Estuary. *See* Findings ¶ 246.<sup>17</sup> Likewise, the evidence showed that the detected concentrations of metals in the bulk sediment data do not present any water quality concerns. *See* Findings ¶ 248. In light

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<sup>15</sup> DRP’s expert Ramboll concluded that “elevated concentrations of TSS [total suspended solids] would extend ‘only a small area around the dredge’ resulting in maximum concentrations of TSS up to 120 mg/L above background, which would drift no further than approximately 328 feet down-current from the dredge bucket before returning to background levels.” Findings ¶ 197.

<sup>16</sup> The Commission recognizes that dredging has been used as a method of remediating sediments contaminated with PCBs. *See, e.g.*, [www.epa.gov/hudsonriverpcbs](http://www.epa.gov/hudsonriverpcbs).

<sup>17</sup> DRP’s PCB expert, Gregory Cavallo, P.E., testified that the detected concentrations of PCBs in the bulk sediment data were “commensurate with background concentrations.” Findings ¶ 171. He also opined that the probability of having a material adverse impact to water quality during dredging “is almost non-existent.” Findings ¶ 173.

of the typical concentrations of PCBs in the sediments, the requirements imposed by NJDEP to utilize an environmental clamshell bucket and other BMPs, and the location of the dredging at least 600 feet from the shore, the water quality impacts from the Dock 2 dredging are unlikely to create concentrations of PCBs or other toxic substances that would substantially impair or conflict with the Comprehensive Plan.

DRN challenges this conclusion on the ground that DRP improperly relied on the results of composite sampling to show that the concentration of contaminants in sediments would not harm water quality. Pursuant to a Sediment Sampling and Analysis Plan (“SSAP”) approved by the NJDEP and also submitted to DRBC, *see* Findings ¶¶ 223 and 242, DRP collected 17 composite samples which were analyzed for bulk chemistry. The sampling results were presented to the NJDEP in DRP’s Dredged Material Management Plan for the Dock 2 project and approved as part of the WDP. According to DRN, these composite samples are taken solely to characterize sediments for disposal and are of no value in evaluating the potential impacts of dredging on water quality in the area to be dredged. *See* DRN Objections 21-23.

The testimony of the USACE Philadelphia District’s Chief of the Environmental Resources branch and of an analytic chemist refuted DRN’s contention. According to their testimony, the bulk sediment data, which are primarily used to characterize dredged sediment for purposes of disposal, also provide information about contaminants that may be resuspended during dredging. *See* Staff Comments at 6 and citations therein; Tr. 1842: 4-10 (Pasquale). Here, the results showed contaminant concentrations typical of sediments for this section of the Delaware River. *See* Findings ¶ 246 and Ex. DRP-127 at pp. 1 and 9. In light of the BMPs required for dredging, these concentrations do not present water quality concerns. *See* DRBC Staff Comments at 5-6 and evidence cited therein. Although DRBC or NJDEP could have

required additional sampling if circumstances warranted, here they did not. The totality of record evidence shows that DRBC did not abuse its discretion by not requiring further and different sediment sampling in conjunction with the Dock 2 project.

DRN also contends that turbidity created during dredging for the Dock 2 project will harm aquatic life in the Delaware River Estuary. For purposes of analysis under Section 3.8 of the Compact, this contention was evaluated under Section 2.200 of the Water Code, 18 C.F.R. Part 410, which provides: “the quality of Basin waters shall be maintained in a safe and satisfactory condition for... wildlife, fish and other aquatic life.” Section 3.30.4 of the Water Quality Regulations implements this Water Code provision by requiring that water quality in Zone 4 be maintained in a safe and satisfactory condition, for, among other uses, “maintenance of resident fish and other aquatic life.” *See also*, additional WQR provisions cited on page 12 of this Opinion.

As an initial matter, the record evidence showed that the turbidity created by the dredging will be localized, temporary, and of low concentration. *See Findings ¶¶ 152, 197, 307, 308, 316.* The environmental bucket required for the Dock 2 project will retain more than 95% of sediment *See Findings ¶ 189.* Significantly, in the course of its own permit review of the Dock 2 project, the USACE conferred with the NMFS in accordance with the requirements of Section 7 of the Endangered Species Act. NMFS issued a Biological Opinion in 2017 in conjunction with the Dock 1 project, which it amended and reaffirmed in a 2019 Letter of Concurrence addressing the cumulative effects of the Dock 1 and Dock 2 projects. *See Findings ¶¶ 96-98.* NMFS found the levels of total suspended solids (TSS) were expected to be well below the threshold known to elicit harmful effects to benthic habitat or aquatic life. *See Exhibits J-51 (USACE biological assessment), J-53 (NMFS Letter of Concurrence); J-38 (NMFS Biological Opinion for Dock 1)*

and Findings ¶¶ 208, 209. Nonetheless, NMFS recommended and USACE imposed a prohibition on construction between March 15 and September 15 to protect juvenile sturgeon. NMFS characterized the effects of the project as “insignificant and/or discountable,” and concluded that effects to sturgeon will be too small to be meaningfully measured, detected or evaluated.<sup>18</sup>

DRN contends that the Dock 2 project will violate the requirement in the Water Quality Regulations for maintenance of aquatic life because it will allegedly harm submerged aquatic vegetation (“SAV”). SAV is a form of aquatic biota classified as aquatic life under Section 1.20.6.E of the Water Quality Regulations. “Vegetated shallows,” which may contain SAV, are designated by the U.S. Environmental Protection Agency as a special aquatic site under § 404(b)(1) of the Clean Water Act. These shallow, vegetated areas provide habitat for aquatic species and other ecological benefits. *See* 40 C.F.R. § 230.43 and Findings ¶ 135. DRN’s expert witness James A. Schmid, Ph.D. opined that sediment resuspension and turbidity, destabilization of the shoreline and stormwater discharges from the Dock 2 project will cause adverse impacts to

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<sup>18</sup> DRN objects to the reliance by NJDEP, NMFS, USACE and DRBC on data from a different waterbody, the Arthur Kill, to estimate the extent of turbidity that will result from the Dock 2 dredging. DRN contends that DRP should have been required to demonstrate to DRBC the applicability of the Arthur Kill data to conditions in the Delaware River, or should have been required to perform site-specific modeling and monitoring. NMFS and NJDEP, whose staff have expertise on endangered and threatened species, concluded that the data had sufficient relevance to the Delaware River conditions to warrant their consideration. Based on their evaluation of the evidence presented at the hearing, neither the Hearing Officer nor DRBC staff were persuaded that this conclusion was incorrect or sufficiently uncertain to necessitate further study. It was appropriate for DRBC to rely on NJDEP and NMFS. *See* Compact §§ 1.5 and 3.9(b). In addition, although the Hearing Officer recognized that juvenile sturgeon may not be able to swim away if an area of high turbidity were to be created during dredging, *see* Findings ¶ 289, NMFS found the expected TSS levels would not adversely affect juvenile and adult estuarine fish. Findings ¶ 305. The restriction on dredging between March 15 and September 15 required by USACE and the BMPs required by NJDEP should also serve to avoid harm to early life stages of sturgeon and render insignificant any impacts to juvenile and other life stages of sturgeon in the area. Ex. J-53 at p. 3.



SAV. *See* Ex. DRN-14 at pp. 6-12 (Schmid Report) and DRN-22 at 7-9 (Schmid rebuttal report).

As NJDEP noted in its response to comment document regarding its WDP (J-50), DRP reduced potential impacts to SAV by repositioning Dock 2 to avoid SAV beds. *See* Findings ¶¶ 147-149 and ¶ 358(c). The area of SAV to be impacted by the Dock 2 project is less than 0.1 acres. *See* Findings ¶ 138. The prohibition the USACE imposed on construction between March 15 and September 15 protects SAV during much of its growing season. With respect to any remaining SAV in the project area, use of the environmental bucket and other dredging BMPs required by NJDEP will minimize the area of SAV impacted by resuspended sediment. DRP's consultant Laura George of Ramboll testified that based on studies of other dredging projects, Ramboll concluded that elevated TSS concentrations would extend on a temporary basis to only a small area around the dredge and not impact SAV beds located near the shore which were the focus of the concerns of DRN's expert. *See* Tr.1451:7-1452:7; 1562:23-1563:8. *See also*, DRP Post-Hearing Brief, n.15 (USACE endorsed Ramboll's assessment in its Biological Assessment (J-51 at 19), and NMFS concurred, J-53 at 3 (Letter of Concurrence) and accompanying text); and evidence cited in *id.*, Attachment A at 1. Based on the record evidence, the impact of dredging on SAV would be minimal and would not substantially impair or conflict with the Comprehensive Plan.

Likewise, the evidence did not show that the ongoing contaminated soil remediation work at the GLC undertaken in accordance with NJDEP requirements<sup>19</sup> or the temporary disturbance of 0.8 acres of land for the Dock 2 project (*see* Findings ¶ 271) posed sufficient risk

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<sup>19</sup> The contaminants present in soils and groundwater in the GLC due to historic industrial activities are being remediated under the New Jersey Department of Environmental Protection's Site Remediation Program.

to SAV to require further investigation or denial of project approval. A new stormwater collection, conveyance, and treatment system to be installed has been approved by NJDEP and its plans have been submitted to DRBC as required by the docket for GLC Dock 1. This system is expected to improve the quality of stormwater runoff or discharges. *See* DRBC Staff Comments at 15-17 and citations therein. No additional stormwater outfalls or controls are required for the Dock 2 project. *See* Findings ¶ 267. The sediment will be dredged to a standard 3:1 slope, and sloughing will be minimal. *See* Findings ¶¶ 202, 203, and 205. The evidence shows that the potential impact to SAV is not a valid basis for denying approval of the Dock 2 project.

DRN further asserted for the first time on administrative appeal that mussels, including state-listed threatened or endangered freshwater mussels, will be harmed. While the Comprehensive Plan designates maintenance of aquatic life as a use in Zone 4, it does not contain a specific program for threatened and endangered species or for mussels. As such, DRBC ordinarily relies on state and federal endangered species programs to provide any protections for these species beyond those DRBC would ordinarily require. The Commission retains authority to impose additional requirements supported by the particular circumstances of a proposed project.

DRN did not produce evidence of the quantity or types of freshwater mussels that may be present in and around the dredged area. It argues that there is sufficient evidence of the possibility of the presence of mussels to warrant requiring DRP to conduct a mussel survey. DRN's expert acknowledged the difficulty in conducting such a survey in Zone 4 of the Estuary which contains waters that are deep and turbid. *See* Findings ¶ 338.

Searches of New Jersey's National Heritage Program database were performed on DRP's behalf in conjunction with DRP's New Jersey WDP application. *See* DRBC Staff Comments at 18 and citations therein; Findings ¶¶ 117, 348. No threatened or endangered mussel species were identified within or near the area to be dredged. After consulting with New Jersey's Endangered and Non-Game Species Program led by a biologist who specializes in the distribution and biology of freshwater mussels, NJDEP did not request additional surveying. *See* DRBC Staff Comments at 16. DRBC staff properly utilized the NJDEP to determine whether additional information on mussels should be gathered.

Evidence introduced at the hearing supported the decision of these agencies not to request a site-specific mussel survey. The evidence showed that the dredging will occur in waters approximately 20-40 feet deep with little or no SAV present, in sediment that is fine grained, and in open water near the Federal Navigation Channel. *See* DRP Proposed Findings of Fact 364-368 and record citations therein. These conditions do not provide favorable mussel habitat. *See* Findings ¶ 346. Staff reasonably concluded that the testimony at the hearing from DRN's expert regarding data collected from areas that differ markedly from the Dock 2 project area in water depth, sediment material, and shoreline development did not warrant requiring a mussel survey in the Dock 2 area. Under these circumstances, the decision not to require further sampling was reasonable.

#### V. Conclusion

As a whole, the administrative record supporting the Docket decision demonstrates that the Commission had sufficient information from which to conclude that the Dock 2 project would not substantially impair or conflict with the Comprehensive Plan. The Docket decision is affirmed in accordance with the Commission's Resolution of this date.

Dated: December 9, 2020

**JOINED IN FULL:** By those  
Signatory Parties to the Compact  
voting in favor of the Resolution  
adopting this Opinion.

APPENDIX A – MODIFIED FINDINGS OF FACT

Findings are numbered identically to Hearing Officer’s Proposed Findings of Fact

3. DRN is a non-profit organization established in 1988 to protect and restore the Delaware River, its tributaries and habitats. Maya van Rossum serves as the Delaware Riverkeeper and is an employee and officer of the Delaware Riverkeeper Network (“DRN”). The Delaware Riverkeeper is a full-time privately-funded ombudsman whose stated mission is the protection of the waterways in the Delaware River Watershed. (Request for Hearing. pp. 2-3)

104. The tidal Delaware River and its tidal tributaries near the Site provide habitat for a group of bivalves (clams) known as freshwater or “pearly” mussels which were once more abundant in the region. (DRN-15, p. 2)

106. Freshwater mussels play an important role in the diversity and function of the freshwater ecosystems in which they live. (DRN-15, p.3)

118. NJDEP concluded that any potential effects on mussels from transitory increases in TSS concentrations resulting from the dredging of Dock 2 or from any alleged increased ship traffic were insufficient to preclude issuance of the WDIP permit. (Exhibit J-3).

135. The U.S. Environmental Protection Agency has designated vegetated shallows as a special aquatic site under § 404(b)(1) of the Clean Water Act. The vegetation in the shallows, which may include SAV, has value for nesting, spawning, nursery, cover, forage, and protection of shorelines from erosion and wave action. (40 C.F.R. § 230.43)

137. Add at the beginning: Depending on the extent of dredging and the dredging methodology and BMPs used, it is possible that....

140. Dredging for the construction of Dock 2 as well as any future maintenance dredging will generate turbidity and decrease water transparency to the extent further described in these Findings of Fact. (DRN-14, p.6 and other Findings herein).

142. Add at end: although the BMPs and temporal restrictions required by NJDEP and USACE will reduce any adverse impact.

143. Add at end: although as a result of the BMPs and temporal restrictions required by NJDEP and USACE, and DRP's relocation of its planned structures, no significant adverse impacts on SAV are expected.

155. Although the potential impact of stormwater discharge from the Site on wild celery beds outside the Dock 2 dredging area have not been quantified, the stormwater management system and discharges approved by NJDEP will likely reduce any stormwater discharge impacts that would occur absent construction and operation of the stormwater management system. (DRN-14, p. 6)

182. Add: DRBC's Docket does not exempt DRP from complying with the terms of its NJDEP permits, including a NJPDES stormwater permit.

185. By using a closed clamshell environmental bucket during construction of Dock 2, DRP will conduct dredging by a method protective of the environment. (Tr. 1788:12-17 (DePasquale); DRP-131, p. 9)

187. After "river water" add: -- i.e., will have only low concentrations of dredged sediments --.

192. The above-described BMPs are in accord with national and international industry practices and represent a stringent set of requirements. (DRP-131, p. 8)

289. Add sentence: Sea level rise due to climate change has by far the most substantial effect, possibly rendering the cumulative effect of all dredging in the Delaware River insignificant.

290. Delete Finding

293. Since the industrial revolution, the Delaware River Estuary has experienced significant dissolved oxygen sags. (DRN-12, p. 2)

299. It is possible for salt line incursion and dissolved oxygen sags to occur at the same time, potentially leaving sturgeon with no suitable refuge. (DRN-12, p. 2)

300. Change “clarification letter” to “letter of concurrence”.

334. Change ““project reach”” to “Delaware River Estuary”.

337. Two of the more detailed shallow water collections from these surveys were conducted within approximately 1 to 2 miles of the Dock 2 facility. (DRN-19 at 3; Tr. 91:6-8)

355. As of 1961, forty-three State agencies, fourteen interstate agencies, and nineteen Federal agencies exercised a multiplicity of powers and duties regarding the water resources of the Basin. (Compact, Preamble, ¶ 5). Many government agencies have such duties at the present time.

**ATTACHMENT B**  
**DESCRIPTIONS OF PROJECTS APPROVED BY THE COMMISSION DURING THE**  
**BUSINESS MEETING OF DECEMBER 9, 2020**

*Background.* Projects subject to Commission review in accordance with the *Delaware River Basin Compact* and Commission regulations must have the Commission's approval in the form of a docket, permit or resolution (collectively, "docket"). The Commission's project review process takes six to nine months to complete, and the public is informed of the status of project applications by a variety of means during that period. Each project for which an application is received is added to the "Project Review Status Report" maintained on the DRBC website. This report includes the applicant's name and project location, a description of the proposed project, the docket number assigned to the project, and the name of the staff member reviewing the project. A list of applications received also is compiled approximately five times a year and posted on the Commission's website as a "Notice of Applications Received" (NAR). An "Interested Parties List" (IPL) is created for each project under review. Anyone can have his or her name added to the IPL for a given project. All those listed on the IPL receive email notification of public notices for the project as they are posted on the Commission's website, including the notice advertising the public hearing. Members of the public seeking additional information about a project may contact the staff member reviewing the project or arrange by appointment to review the relevant Project Review file at any time that is mutually convenient for the staff and the party.

Approximately six weeks before the Commission's scheduled public hearing date, draft dockets are circulated to the Commission's members for review and comment by the appropriate state and federal agencies. Shortly thereafter, a public notice, including descriptions of the draft dockets, is filed with state and federal bulletins or registers. Ten or more business days prior to the hearing date, the hearing notice, along with draft dockets, is posted on the Commission's website. Written comment on hearing items is accepted through the close of the public hearing. At the Commissioners' regularly scheduled public meetings, the Commissioners may approve, disapprove or postpone consideration of any docket for which a hearing has been completed. Approved dockets are posted on the Commission's website as quickly as possible following the date on which the Commission acted. Delay of a few days may occur to complete clerical work, particularly in instances in which the Commissioners approve a docket with modifications.

The projects are customarily considered in three categories – *Category A* – project renewals with no substantive changes; *Category B* – project renewals with substantive changes; and *Category C* – projects not previously reviewed by the Commission. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals at the Business Meeting listed above are presented below.

*A. Renewals with No Substantive Changes (Items 1 through 8).*

1. Abington Township, D-1973-191 CP-6. An application to renew the approval of the docket holder's existing 3.91 mgd WWTP and its discharge. Treated effluent will continue to be discharged to Sandy Run at River Mile 92.47 - 12.8 - 11.2 - 4.4 (Delaware River - Schuylkill River - Pine Run - Sandy Run), via Outfall No. 001, in Upper Dublin Township, Montgomery County, Pennsylvania.
2. Hawley Area Authority, D-1981-029 CP-3. An application to renew the approval of the docket holder's existing 0.20 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Lackawaxen River at River Mile 277.7 - 16.2 (Delaware



River - Lackawaxen River) via Outfall No. 001, within the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters in Lackawaxen Township, Pike County, Pennsylvania.

3. Pennsylvania American Water Company, D-1992-003 CP-3. An application to renew and approve an upgrade to the applicant's existing 7.1 mgd Exeter Township WWTP. The upgrade consists of adding a dechlorination system to the existing chlorine contact disinfection system. The WWTP will continue to discharge treated wastewater effluent to the Schuylkill River at River Mile 92.5 – 65.3 (Delaware River – Schuylkill River) in Exeter Township, Berks County, Pennsylvania.
4. GenOn REMA, LLC., D-1993-071 -2. An application to renew the approval of a surface water withdrawal of up to 94 million gallons per month (mgm) from the Delaware River and a groundwater withdrawal of up to 3.3 mgm from the Stag Well for cooling and industrial processes at the existing 450-megawatt Gilbert Generating Station. The surface water allocation approved by this docket is a reduction of the previously approved total allocation of 2,700 million gallons per 30 days because of the closure of three stream units and the associated once-through, non-contact cooling requirements. The existing withdrawal is located in Zone 1-E within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters in Holland Township, Hunterdon County, New Jersey.
5. Broad Run Golfers Club, D-1999-036 -3. An application to renew the approval of an existing groundwater withdrawal of up to 4.75 mgm to irrigate the applicant's golf course from existing Well Nos. IW-1 and IW-2. The project wells are completed in the Cockeysville Marble Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (GWPA) in the Broad Run Watershed in West Bradford Township, Chester County, Pennsylvania.
6. Upper Tulpehocken Township, D-2005-006 CP-4. An application to renew the approval of the existing 0.065 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Jackson Creek at River Mile 92.47 - 76.8 - 15.4 - 0.8 - 6.5 - 0.4 (Delaware River - Schuylkill River - Tulpehocken Creek - Northkill Creek - Little Northkill Creek) via Outfall No. 001, in Upper Tulpehocken Township, Berks County, Pennsylvania.
7. West Deptford Energy, D-2008-027 CP-4. An application to renew the approval to withdraw up to 374.914 million gallons per month (mgm) and consumptively use up to 273.7 mgm of treated effluent from GCUA's effluent pipeline for use at the West Deptford Energy Station (WDES). The project's existing discharge of industrial wastewater back into GCUA's effluent pipeline prior to discharge into the Delaware River is approved by the NJDEP and will continue to be regulated in accordance with the AA entered into on December 18, 2009, amended May 8, 2013 by the Commission and the State of New Jersey (OP-2008-027 CP-3). The WDES is located adjacent to Water Quality Zone 4 of the Delaware River at River Mile 89.7 in West Deptford Township, Gloucester County, New Jersey.

8. Camp Moshava, D-2015-014 -2. An application to renew the approval of the applicant's existing 0.036 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary of Indian Orchard Brook at River Mile 277.7 - 23.1 - 1.8 - 0.5 (Delaware River - Lackawaxen River - Indian Orchard Brook - UNT Indian Orchard Brook) located within the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Berlin Township, Wayne County, Pennsylvania.

*B. Renewals with Substantive Changes (Items 9 through 16).*

9. Hickory Hills MHC, D-1973-079 -2. An application to approve the proposed modification of the docket holder's existing 0.06 mgd Hickory Hills WWTP and its discharge. The modification will include the replacement of an existing treatment train with a new packaged extended aeration system. The WWTP will continue to discharge to an unnamed tributary to East Branch Monocacy Creek at River Mile 183.66 - 11.5 - 10.1 - 6.3 - 0.35 (Delaware River - Lehigh River - Monanocacy Creek - East Branch Monocacy Creek - UNT East Branch Monocacy Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters, in Moore Township, Northampton County, Pennsylvania.
10. Reading Alloys, Inc. (Ametek), D-1979-044 -4. An application to renew the approval of the docket holder's existing 0.24 mgd discharge of non-contact cooling water (NCCW) and the modification of effluent requirements. The docket holder will continue to discharge NCCW to an unnamed tributary (UNT) to Spring Creek at River Mile 92.47 - 76.8 - 6.65 - 5.9 - 3.9 - 1.5 (Delaware River - Schuylkill River - Tulpehocken Creek - Blue Marsh Reservoir - Spring Creek - UNT to Spring Creek) via Outfall No. 001, in South Heidelberg Township, Berks County, Pennsylvania.
11. Quakertown Borough, D-1984-026 CP-2. An application to renew the approval of the applicant's existing 4.0 mgd WWTP and approve the proposed project to increase the WWTP hydraulic capacity to 5.0 mgd, and average annual flow from 3.15 mgd to 3.84 mgd. The WWTP will continue to discharge treated effluent to Tohickon Creek, upstream of Lake Nockamixon, at River Mile 157.0 - 23.4 (Delaware River - Tohickon Creek) via Outfall No. 001, in Richland Township, Bucks County, Pennsylvania, within the drainage area to the Lower Delaware Special Protection Waters (SPW).
12. Aqua Pennsylvania, Inc., D-1990-050 CP-4. An application to renew the approval of an existing groundwater withdrawal of up to 92.0 mgm to supply the applicant's public water supply system from existing Wells Bell Tavern Well 1, Shoen Rd Well 3, Robert Dean Well 5, Robert Dean Well 6, Milford Well 7, Stonehedge Well 8, Saybrooke Well 9, Saybrooke Well 10 and new well Bell Tavern Well 11 which are all completed in Cambrian Quartz Dolomite and Granitic Gneiss. New well Bell Tavern Well 11 will be replacing Well Nos. 2 and Shoen Rd Well 4, which will be abandoned as soon as Bell Tavern Well 11 is put into operation. The requested system allocation is not an increase from the previous allocation. Wells Shoen Rd Well 3, Robert Dean Well 5 and Robert Dean Well 6 are located within the Commission's designated GWPA in the West Valley Creek Watershed. Well Bell Tavern Well 1 and Bell Tavern Well 11 are located in the East Brandywine Creek Watershed, Wells Milford Well 7 and Stonehedge Well 8 are located in the Marsh Creek Watershed and Wells Saybrooke Well 9 and Saybrooke Well 10 are located in the Black Horse Creek Watershed all in Upper Uwchlan Township, Chester County, Pennsylvania.

13. Aqua Pennsylvania, Inc., D-1990-079 CP-2. An application to renew the approval of an existing groundwater withdrawal with a decrease in system allocation from 216 mg/ 30 days to 42.41 mgm to supply the applicant's West Chester public water supply system from existing White Well Nos. 1, 2, 4 and 5, Pomona Well No. 1 and Willowdale Well Nos. 2 and 6 which are completed in the Wissahickon and Cockeysville Marble Formations. The approval will also remove the Fern Hill - Airport Road Reservoir intake, Fern Hill Well Nos. 1 and 2 and Lake-in-the-Woods Well Nos. 1 and 2 from the docket. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (GWPA) within the Taylor Run, Plum Creek and West Branch Red Clay Creek Watersheds in East Bradford, East Marlborough and West Goshen Townships, all in Chester County, Pennsylvania.
14. Jackson Township Municipal Utilities Authority, D-1994-018 CP-4. An application to renew the approval of an existing import of up to 0.792 mgd of groundwater from the Atlantic Basin to supply water to the Six Flags Great Adventure Theme Park Complex. The application will also approve the export of up to 0.500 mgd of wastewater to the Atlantic Basin and the withdrawal of an existing groundwater withdrawal of up to 30 mgm to the docket holder's theme park complex from existing Wells Nos. 7, 12 ASR and 17 completed in the Upper Potomac-Raritan-Magothy Formation. The groundwater withdrawal will continue to be regulated by NJDEP in accordance with the Administrative Agreement (AA) between DRBC and NJDEP dated March 2015. The project is located in the Crosswicks Creek Watershed in the Jackson Township, Monmouth County, New Jersey.
15. Roxbury Town, D-2002-014 CP-3. An application to renew the approval of an allocation of 13.0 million gallons per month (mgm) of groundwater from existing wells PW-1 and PW-2 and Mountain Springs No. 1 and No. 2 and to approve the withdrawals from new well PW-3 for use in the docket holder's public water system that serves the Roxbury and the Grand George Water Districts. Well PW-3 will be used as a redundant source with no increase in the total allocation. The docket also renews the approval of an exportation of up to 0.3 million gallons per day (mgd) of water, half in the form of wastewater and half as groundwater supply, from the Hamlet of Roxbury in the Delaware River Basin to the Hamlet of Grand George in the Mohawk-Hudson River Basin. The project wells are screened in glacial stratified outwash deposits in the East Branch Delaware River watershed, within the drainage area to the Upper Delaware, which is classified as Special Protection Waters, in the Town of Roxbury, Delaware County, New York.
16. Lake Bryn Mawr Camp, Inc., D-2017-011 -2. An application to approve the installation of UV disinfection system at the existing WWTP. The installation will replace the existing chlorine disinfection unit. The docket holder's existing WWTP will continue to discharge to an Unnamed Tributary (UNT) to Big Brook at River Mile 277.8 - 26.1 - 4.9 - 0.75 - 0.68 (Delaware River - Lackawaxen River - Dyberry Creekr - Big Brook - UNT Big Brook) via Outfall No. 001, within the drainage area to the Upper Delaware Special Protection Waters (SPW) in Oregon Township, Wayne County, Pennsylvania.