

DELAWARE RIVER BASIN COMMISSION

MEETING OF JULY 14, 2010

Minutes

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

Commissioners present: Katherine E. Bunting-Howarth, Chair, Delaware
Brigadier General Peter A. DeLuca, Vice Chair, United States
Lt. Colonel Philip M. Secrist, United States
John T. Hines, Second Vice Chair, Pennsylvania
John Plonski, New Jersey
Fred Sickels, New Jersey
The State of New York did not participate due to state employee travel restrictions.

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

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

Minutes. It was agreed the draft Minutes for the meeting of May 5, 2010 would be posted on the DRBC website the following week, once all Commissioners had had an opportunity to review them. The Commissioners agreed they would approve the May Minutes (along with the Minutes for the July 14 meeting) during the meeting of September 15, 2010.

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

- *DRBC Water Management Advisory Committee Meeting.* Tuesday, July 27, 2010 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact -- Donna Barnett -- (609) 883-9500, extension 308.

- *DRBC Water Quality Advisory Committee Meeting.* Tuesday, August 3, 2010 at 9:30 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact -- Donna Barnett – (609) 883-9500, extension 308.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, August 25, 2010 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact -- Laura Tessieri -- (609) 883-9500, extension 304.
- *DRBC Water Quality Advisory Committee Meeting.* Tuesday, October 19, 2010 at 9:30 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact -- Donna Barnett -- (609) 883-9500, extension 308.

Hydrologic Conditions. This segment of the meeting was dropped in order to allow more time for public dialogue.

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

- *Delaware River Basin Flood Analysis Model.* A peer review of the Delaware River Basin Flood Analysis Model (FAM) will be performed by a contractor to the Federal Emergency Management Agency who is experienced in the use of HEC-ResSim (the model platform utilized for the FAM).
- *Amendments to Water Quality Regulations.* A notice of proposed rulemaking will be published shortly to update DRBC's stream quality objectives for human health and aquatic life in the Delaware Estuary (Water Quality Zones 2 – 5) and extend application of the criteria to the Delaware Bay (Zone 6). Changes are proposed to bring the Commission's criteria for toxic pollutants into conformity with current guidelines published by the U.S. Environmental Protection Agency (EPA) and to provide a consistent regulatory framework for managing the tidal portion of the shared waters. The revisions will establish uniform criteria for the Estuary and Bay. The notice will appear in the *Federal Register* and state bulletins between July 15 and August 2 and will be posted on the DRBC website on July 15, 2010. A public hearing on the proposed amendments is scheduled for Thursday, September 23, 2010 at 2:30 p.m. in the Goddard Room of the Commission's office building. Written comments will be accepted through the close of business on Friday, October 1.
- *Natural Gas Well Drilling Activity.* Three items concerning natural gas drilling:
 - *U.S. Environmental Protection Agency.* The EPA will hold a public meeting on August 12, 2010 at SUNY Binghamton in Binghamton, New York to receive public input for a study on the potential impacts of hydraulic fracturing on water resources. Additional information is available on the EPA web site.
 - *Exploratory Wells.* The Supplemental Executive Director Determination (SEDD) was published on June 14, 2010. DRBC subsequently received a request from the Hess Corporation to authorize two additional exploratory wells to be allowed to go forward without DRBC review. Hess had obtained PADEP Sediment and Erosion

Control Permits for the two wells before the date of issuance of the SEDD and was awaiting PADEP issuance of the corresponding drilling permits. Hess had planned to drill six exploratory wells and requested to move forward on these two for the following reasons: (1) PADEP's permit review was in its final stages, with drilling permits expected to be issued this month; and (2) the proposed wells are located in the north-northwest portion of Wayne County, Pennsylvania, where no exploratory wells have yet been drilled. There is a need for scientific information from this region. Ms. Collier announced that she would be modifying the SEDD to allow development of these two wells to proceed.

- *Regulatory Update.* On May 5, 2010 the Commissioners voted to take no action on natural gas well pad dockets until DRBC has regulations in place for natural gas well drilling. DRBC staff was asked to expedite the development of those draft regulations. Ms. Collier announced that staff's draft had been forwarded to the Commissioners for their review. She said the Commission intended to have the draft regulations out for public review by the end of summer, for action in December.

Ms. Collier thanked the (estimated 600-person crowd) for attending the Commission's meeting. She said that she knew people were not of one mind as to how natural gas well drilling should be conducted in the Basin. She acknowledged that there is a lot at stake, that staff have learned a great deal from the public through dialogue with different groups, public meetings and correspondence, and that the public's input had contributed greatly to the staff's understanding over the past two years and had informed their work in developing the regulations. She said that she and the DRBC staff want to keep that dialogue going and to meet with all of the parties with different points of view on the matter. She again thanked the crowd for coming to the meeting.

General Counsel's Report. Mr. Warren said he would speak on two issues -- the first, a matter concerning Lambertville, New Jersey, and the second, concerning several hearing requests filed with the Commission relating to natural gas drilling in shale formations.

As to Lambertville, Mr. Warren explained that DRBC had issued the city's municipal utility authority (LMUA) an order to show cause, arising from a difference of opinion between the LMUA and the DRBC relating to improvements made to the city's wastewater treatment plant and whether Commission review of those modifications was required. Mr. Warren explained that earlier in the week, Lambertville had submitted a letter to the DRBC explaining its position and offering some compromise. LMUA's obligation to appear before the Commission was postponed ("continued") until the September meeting to allow time for discussions between representatives of the two agencies. Accordingly, Mr. Warren explained, no action with respect to Lambertville was needed at the July 14 meeting.

With respect to the requests for hearing concerning natural gas development, Mr. Warren said he would attempt to place these in context for the attendees. Many people probably don't even know who the Delaware River Basin Commission is, he observed. A rough transcript of Mr. Warren's comments follows:

DRBC is a government agency formed in 1961 by concurrent legislation in the United States Congress and the states of Pennsylvania, New York, New Jersey and Delaware. We are known as a federal interstate compact agency and we exercise the joint sovereign authority of each of our members. The DRBC was formed to manage the water and related resources of the basin under a comprehensive multi-purpose plan. When you hear multi-purpose, each of you is probably thinking in your own mind of a different purpose, but among those purposes are flood damage reduction, conservation and development of surface and groundwater supplies, promotion of related forestry, soil conservation and watershed projects, abatement and control of stream pollution, and regulation of stream flows. It is a very broad compact, which gives the DRBC wide authority. There are three particular areas in which the DRBC acts, or three ways in which it acts. The first is through the development of a comprehensive plan and so one could consider the DRBC in part to be a planning agency. The second is that the *Delaware River Basin Compact* (Compact) allows the DRBC to establish standards of planning, design and operation of all projects and facilities in the basin that affect water resources. To some extent you might consider us to be a regulatory agency. Finally, there is Section 3.8 of the Compact, which prohibits any project from going forward in the basin without first obtaining Commission approval if that project may have a substantial effect on the water resources of the basin. The project review function is really akin to an adjudicatory function or a permit-granting function, so you might consider us in part to be an adjudicatory agency. In fact we are all of those.

We've been faced with the question of why to regulate natural gas extraction and development activities at all, and when we see that there may be as many as 10,000 wells put in the basin – and estimates have varied but we've heard those kinds of numbers – we have to look at three different aspects of those projects that might affect water resources. The first are the water withdrawals themselves. The second is the well pad construction, which might involve landscape changes that can have an impact on water resources, or bringing fracking fluids into and out of the ground, which can have effects as well. The third aspect is wastewater disposal. So we are looking at all of those various aspects. Back in May 2009 the Executive Director issued a Determination which said that she has concluded that all projects involving production wells in particular, but not exploratory wells, may have a substantial impact on the water resources of the basin and therefore should come in for review under our Section 3.8 project review authority. On June 14 of this year, the Executive Director expanded her determination to say that even exploratory wells may have a substantial impact on the water resources of the basin and therefore they also should come in for review. Now the Executive Director in her June Determination understood that a very limited number of projects, particularly with respect to exploratory wells, were already underway, and so she “grandfathered” those projects.

And one of the contentions that we have today is whether those projects should or should not have been grandfathered. The projects involved that we're going to be focusing on today are in the area of the basin that has been designated as Special Protection Waters. Those are areas of the basin that have high water quality value, where water quality is above standards. Our Special Protection Waters program is designed to protect that area of the basin in ways that the estuary is not protected because the estuary has not been so designated. Much of the Upper Basin is also designated as Wild and Scenic Rivers, there's a national park program, etc., and so there is a major federal interest in that protection. DRBC also has various other regulations currently existing that are implicated, for example, our groundwater protection program, our effluent limits and stream quality objectives and our floodplain regulations. We are dealing in an area which is highly regulated by the Commission because of its special status. Now it's in that context that I present to you on behalf of the Executive Director the various hearing requests that have been submitted. Because of time – and I know lots of people here want to speak – I won't go through each of them individually and explain what they say. I'll characterize them generally. We have some folks who have objected to individual exploratory wells that are currently going forward on the ground that those individual wells should have been subjected to our project review authority and should have been approved by the Commission specifically before they go forward. We have people who have objected to the Supplemental Determination of the Executive Director – particularly the grandfathering provision – on the grounds that it allows certain exploratory wells to go forward, and in the view of those folks who are asking for a hearing, no exploratory wells – even the grandfathered ones – should go forward absent Commission review. We then have requests from what I'll call the other side of the spectrum. We have people who have objected to the Supplemental Determination of the Executive Director on the ground that no exploratory wells should be subject to review because in the view of those particular applicants for a hearing, no water resources effects whatsoever will occur from exploratory wells.

Now I want to give you a little bit more context in the sense that we have received comments from the National Park Service and also separate comments jointly by the National Park Service and the U.S. Fish and Wildlife Service. While I won't go through them in detail, I will say that the National Park Service on May 26, 2010 wrote to us and asked that all exploratory wells be subjected to the Commission's review on the grounds that they may have water resource impacts. The impacts that the National Park Service focused on were the landscape changes involved in placing the well pads, which can cause erosion and sedimentation which then in the view of the National Park Service can degrade streams and interstitial habitats that are critical for fish spawning, juvenile mussels and macroinvertebrates. It was following the May 26 National Park Service letter that the Executive Director issued her Supplemental Determination, which covered at that point all exploratory wells

except for a few that she grandfathered. We received a subsequent letter from the National Park Service dated June 25, 2010 – and the U.S. Fish and Wildlife Service joined in that letter – which strongly supported the June 14 Supplemental Determination of the Executive Director and suggested that the exploratory wells that had been grandfathered should be subject to Commission review under the new regulations that are being drafted. That appeared to be a slight change in position by the Park Service in the sense that their second letter suggested that the way to review the exploratory wells, including grandfathered wells, was under the new regulations.

Now what I'm going to do is to make a recommendation in the form of a motion, but since I'm the general counsel I'm not the one who actually makes a motion. Someone on the Commission will have to make it. But to make it easy for someone who might want to follow my recommendation, I'm going to read this as a form of a motion and in that way I can mention specifically each of the requests, and people will realize that their requests are in fact being covered by any decision that the Commissioners should choose to make.

Mr. Warren summarized the elements of the recommended form of motion, the final text of which appears below. He described each of the requests for hearing and noted that he was recommending that each of them be granted, with the exception of that portion of the request by Mr. Nowicki concerning the May 2009 Executive Director Determination, because a request as to that action would be untimely. (Requests for hearing must be filed with the Commission Secretary within 30 days of the action or decision that is the subject of the request. *See* DRBC Rules of Practice and Procedure, sec. 2.6.1C.) Mr. Warren also noted that he was recommending that the Commission not grant a request by the Northern Wayne Property Owners Alliance that the Commission reverse the Executive Director's Determination *without* a hearing.

Mr. Plonski offered the motion in the form recommended by Mr. Warren, and Mr. Hines seconded this. Mr. Plonski recommended that the Commission conduct the hearing as quickly as possible. He also asked whether it would be possible for the hearing to be located in northeastern Pennsylvania. Mr. Plonski moved to amend the motion accordingly. Mr. Hines seconded this request and all agreed. No further comments were offered, and the motion as amended, which appears below, was approved unanimously.

MOTION

I move that:

1. The Commission grant the following requests for hearing:
 - a. The request of the Delaware Riverkeeper Network and Nockamixon Township regarding the Executive Director's decision not to require the sponsor of the Arbor Operating LLC Cabot #2 Exploration Hydrocarbon Test Well to obtain Commission approval pursuant to §3.8 of the *Compact*.

- b. The request of Damascus Citizens for Sustainability, Inc. regarding the Executive Director's decision not to require the sponsor of the Newfield Appalachia PA, LLC Exploratory Wells, including DL Teeple, Rutledge, Crum and Schweighofer, to obtain Commission approval pursuant to §3.8 of the *Compact*, and a subsequent request of Damascus Citizens for Sustainability, Inc. to add exploratory wells Woodland Management Partners 1-1 and DL Teeple 1-2H to the list of wells to be reviewed.
 - c. The request of Starlight Forum and the request of the Northern Wayne Property Owners Alliance regarding the Executive Director's decision in the Supplemental Executive Director's Determination dated June 14, 2010 to require sponsors of exploratory wells, other than those exploratory wells for which a state drilling permit had been issued as of June 14, 2010, to obtain Commission approval.
 - d. The request of Allan J. Nowicki, Dyberry 33, LLC, Pennswood Oil and Gas, LLC, Pleasant Mount 10, LLC, Preston 38, LLC and Stockport Associates regarding only the Executive Director's decision in the Supplemental Executive Director's Determination dated June 14, 2010 to require sponsors of exploratory wells, other than those exploratory wells for which a state drilling permit had been issued as of June 14, 2010, to obtain Commission approval. To the extent the request is intended to address the Executive Director's May 2009 Determination regarding Commission review of production wells, the request be denied as untimely.
 - e. The requests of (i) Damascus Citizens for Sustainability Inc. and Friends of the Upper Delaware River, Inc. and (ii) the Delaware Riverkeeper Network and the Delaware Riverkeeper regarding the Executive Director's decision in the Supplemental Executive Director's Determination dated June 14, 2010 entitled "Reservation for Existing State-Approved Projects" not to prohibit exploratory natural gas well pad projects that received state drilling permits as of June 14, 2010 from proceeding. *[In other words they are objecting to the grandfathering provision in the Determination and I am recommending that they be granted a hearing on that question.]*
2. The various hearings allowed by this Motion be consolidated and assigned to a single hearing officer to be selected by the Chair of the Commission, with leave to the Hearing Officer to divide the hearing by issue, parties or otherwise if and as the Hearing Officer deems appropriate.
 3. The sponsors of the projects and the property owners which may be directly affected by the hearing be deemed interested parties and may participate fully in the hearing procedure. The Hearing Officer shall allow any other persons falling within the definition of "interested parties" under Article 6 of the Commission's Rules of Practice and Procedure to participate.

4. The hearing be scheduled at a location or locations in northeastern Pennsylvania to be determined by the hearing officer with due regard for the convenience of the witnesses and the parties.
5. The Secretary of the Commission, after conferring with the Commission's Administrative Officer, furnish to the project applicant and interested parties a reasonable estimate of the costs that are within the scope of Section 2.6.7 of the Rules of Practice and Procedure to be incurred in conjunction with the hearings and require security for such costs from the applicant and/or interested parties as she may determine, subject to appeal pursuant to Section 2.6.7.C., and utilize such security to pay valid costs as they are incurred.

Stone Energy Corporation, Surface Water Withdrawal for Natural Gas Exploration and Development Projects, West Branch Lackawaxen River Withdrawal Site, Mount Pleasant Township, Wayne County, Pennsylvania, Docket No. D-2009-013-1. Mr. Muszynski explained that the purpose of the project is to withdraw up to 0.7 million gallons per day of surface water from the West Branch of the Lackawaxen River to support Stone Energy's natural gas development and extraction activities targeting shale formations within the drainage area of the Commission's Special Protection Waters. A public notice, along with a draft docket were published on the Commission's website on February 9, 2010, and a hearing on the draft docket was held on February 24, 2010 at the Best Western Inn in Matamoras, Pennsylvania. The comment period, which was originally scheduled to run through March 12, 2010, was extended through April 12, 2010 at the request of a number of commenters. DRBC staff received over 2,000 written and oral comments, including letters, hearing testimony, emails, and supporting materials. Commission staff reviewed all the comments and as a result of the comments, proposed several revisions to the draft docket. In early July Mr. Muszynski offered the Commissioners his recommendations concerning revisions to the draft docket.

Mr. Muszynski explained that in the view of staff the proposed revisions did not touch on any issues outside the scope of the original public notice and thus did not require a supplemental notice and opportunity for public comment. He briefly described each of the recommended changes, which are summarized here:

- A provision requiring Stone Energy to obtain the Executive Director's approval of the final plans and specifications for the withdrawal site prior to commencing any site-clearing or construction activities was added as Condition "e." A statement to this effect had been included in the draft docket but some commenters believed it was not sufficiently clear. The addition of Condition "e" clarifies and strengthens the requirement.

- In recognition of the fact that portions of the project are located in the 100-year floodplain as delineated on Federal Emergency Management Agency (FEMA) maps, a condition was added requiring that the facilities at the withdrawal site be designed and constructed in accordance with the Commission's Flood Plain Regulations (FPR). For example, the lowest operating floor of any facility located within the floodplain must be above the floodplain elevation. In addition, facilities must be flood-proofed and emergency procedures established in the event of a flooding event.
- Language was added to the draft to highlight that Commission approval of the water withdrawal would not prejudice the Commission's future decisions on well pad docket. Mr. Muszynski explained that Stone had applied for both a withdrawal docket and a well pad docket and that both had been subjects of the hearing on February 24 in Matamoras. However, consistent with the Commissioners' direction announced during the public meeting on May 5, 2010, consideration of the Stone well pad project and any other well pad projects in the Basin was suspended pending the adoption of Commission regulations governing natural gas development in the basin.
- A condition was added prohibiting the withdrawal of water at the site until such time as the docket holder receives well pad approvals from both the Commission and the PADEP.
- The minimum stream flow required for resuming withdrawals following low-flow conditions was increased (from 8 cfs to 8.2 cfs) and the condition was modified to provide that stream flow must remain at or above the minimum for a period of at least 24 hours before withdrawals could resume.
- Finally, a condition was added as a result of comments received, providing that any water withdrawn from the site may only be transported in water-hauling vehicles that are free of contaminants, except to the extent that chemicals are added for purposes of an invasive species control plan.

Mr. Muszynski recommended that the Commissioners approve the docket as revised in accordance with the foregoing.

Dr. Howarth asked for a motion, and Mr. Hines moved that the docket be approved with the revisions proposed by Mr. Muszynski. Mr. Plonski offered a second. Mr. Hines asked Mr. Muszynski if he could clarify that as a technical matter this docket was not unlike any other withdrawal approval by the Commission. He asked Mr. Muszynski to confirm that at this point the Commission was being asked to approve the withdrawal but not the use of the water for any drilling purpose. Mr. Muszynski confirmed this. He reiterated that the docket provided that operation of the withdrawal was not permitted until such time as Stone had obtained approvals for wells or well pads from the Commission and the Commonwealth of Pennsylvania.

Dr. Howarth said the State of Delaware very much appreciates the ongoing efforts by Pennsylvania and New York in overseeing natural gas development activity. Delaware supports DRBC moving forward with a comprehensive regulatory program that addresses all aspects of

natural gas well drilling; however, Delaware is not comfortable with approval of Stone water withdrawal docket until the full regulatory scheme is in place. Dr. Howarth said Delaware wants to ensure that the necessary scientific inquiries have been made and that the regulations are in place in order to avoid any unintended consequences and protect water resources for all parts of the basin. Accordingly, she said that Delaware would not vote in favor of this docket today. She next called for a vote. Docket D-2009-013-1 approving Stone Energy's surface water withdrawal from the West Branch Lackawaxen River was adopted by a vote of 4 to 1, with Delaware casting the single "no" vote.

Meeting Interrupted to Address Fire Code Violation. Approximately 200 of the approximately 600 attendees were required to leave the building in order to comply with the fire code. The meeting was recessed to allow staff to work out a plan for calling speakers in from outside in the order they had signed up to comment. The meeting resumed with the hearing on project approval dockets.

Public Hearing: Project Review Applications. Chad Pindar of the Commission staff announced that hearings on five of the projects scheduled for hearing and included in the public notice for the day were postponed to allow additional time for review: They were Borough of Dublin, D-2000-011 CP-2 (hearing item 3); Plumstead Township, D-1997-033 CP-3 (hearing item 13); Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station, D-2009-003-1 and D-2009-004-1 (hearing items 19 and 20); and Deb-El Food Products, D-2009-036-1 (hearing item 22).

The remaining 21 projects were presented for the Commission's consideration in three groups: Category A, consisting of docket renewals involving no substantial changes (hearing items 1, 2 and 4); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 5 through 12 and 14 through 16); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 17, 18, 21, 23, 24, 25 and 26).

A. *Renewals with No Substantive Changes (hearing items 1, 2 and 4).* No comments were submitted to the Commission on these projects.

1. Honey Brook Borough Authority, D-1991-099 CP-2. An application for renewal of an existing groundwater withdrawal project to continue to supply up to 12 million gallons per month (mgm) of water to the applicant's public water supply system from existing Wells Nos. 5, 6, 7, and 8. The project wells are completed in Precambrian gneiss. The project is located in the West Branch Brandywine Creek Watershed in Honeybrook Township, Chester County, Pennsylvania.
2. Hatfield Quality Meats, LLC, D-1999-072-2. An application for the renewal of a groundwater withdrawal to supply up to 20.57 mgm of water to the docket holder's meat processing system from Wells Nos. H-1, H-3, H-4, H-8, H-10 and H-12. No increase in the current allocation is proposed. The six project wells are constructed in the Brunswick Formation. The project is located in the Upper Reach Skippack Creek Watershed in

Hatfield Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

4. United Mobile Homes, D-2005-003-2. An application for approval to continue discharging 79,500 gallons per day (gpd) of treated effluent from the Kinnebrook WWTP. The WWTP is located at River Mile 261.1 – 16.0 – 3.62 – 1.17 (Delaware River – Mongaup River – Kinne Brook – Unnamed Tributary). The facility discharges to an unnamed tributary of Kinne Brook. It is located within in the Town of Thompson, Sullivan County, New York in the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.

Mr. Pindar recommended that the Commissioners approve hearing items 1, 2 and 4. Hearing no questions or comments from the Commissioners or the public, Dr. Howarth requested a motion to approve the three docket renewals with no substantive changes. Mr. Hines so moved, General DeLuca seconded his motion, and hearing items 1, 2 and 4 were approved by unanimous vote.

B. Renewals with Substantive Changes (hearing items 5-12 and 14-16).

5. Borough of Freeland Municipal Authority, D-1965-052 CP-3. An application for approval of an expansion of the existing Borough of Freeland Municipal Authority Wastewater Treatment Plant (WWTP) from 0.75 mgd to 1.2 mgd and to replace the existing trickling filter treatment system with a conventional activated sludge treatment process. The WWTP will continue to discharge to Pond Creek, a tributary of Sandy Run, which is a tributary of the Lehigh River. The facility is located in Foster Township, Luzerne County, Pennsylvania within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
6. City of Burlington, D-1973-046 CP-2. An application for a surface water withdrawal (SWWD) project to reduce the total system allocation from 120 million gallons per month (mgm) to 80 mgm from existing Intakes Nos. 2 and 3. The project is located in the City of Burlington, Burlington County, New Jersey, within the Delaware River Watershed.
7. Lynn Township Sewer Authority, D-1977-041 CP-2. An application for approval of an expansion of the existing Lynn Township Sewer Authority WWTP. The 0.08 mgd WWTP will be expanded to treat an average annual daily flow rate of 0.16 mgd. The facility will continue to discharge to Ontelaunee Creek, which is a tributary of the Schuylkill River. The facility is located in Lynn Township, Lehigh County, Pennsylvania.
8. Pottstown Borough Authority, D-1989-055 CP-2. An application for the renewal of an existing 12.85 mgd discharge from Outfall No. 001. Additionally, the applicant has requested a Total Dissolved Solids (TDS) Determination, which is required for any discharge of more than 1,000 mg/l (the basin-wide monthly average effluent limit). The monthly average and daily maximum TDS effluent limit concentrations requested are

2,235 mg/l and 3,000 mg/l, respectively. The project will continue to discharge to the Schuylkill River at River Mile 92.47 – 51.3 (Delaware River – Schuylkill River) in the Borough of Pottstown, Montgomery County, Pennsylvania.

9. Upper Gwynedd Township, D-1991-088 CP-5. An application for approval of the modification of the Upper Gwynedd Township Wastewater Treatment Plant (WWTP). The docket holder proposes to replace the current disinfection system (chlorine contact tanks) with an ultraviolet light (UV) disinfection system. The WWTP will continue to treat an average annual flow of 5.7 mgd and discharge treated sewage effluent to the Wissahickon Creek, a tributary of the Schuylkill River. The facility is located in Upper Gwynedd Township, Montgomery County, Pennsylvania.
10. Hamburg Municipal Authority, D-1992-073 CP-3. An application for approval of the Hamburg Municipal Authority WWTP. This WWTP was approved by DRBC Docket No. D-1992-73 CP-2 on March 1, 2006; however that docket expired on September 30, 2009. The facility will continue to discharge 1.5 mgd of treated sewage effluent to the Schuylkill River. The facility is located in the Borough of Hamburg, Berks County, Pennsylvania.
11. Borough of Bally, D-1994-044 CP-2. An application for approval to increase the discharge from the Bally WWTP from 0.2 mgd to 0.5 mgd. Docket No. D-1994-044 CP-1 approved the construction of a 0.5 mgd WWTP but limited the discharge to 0.2 mgd. In 1996 the Borough of Bally Municipal Authority obtained PADEP approval to discharge at the design flow of 0.5 mgd. The Borough now seeks DRBC's approval for the larger discharge. In addition, the Borough of Bally has requested that DRBC issue a Transfer of Ownership to record that the Borough and not the Municipal Authority (which no longer exists) currently owns the facility. The Bally WWTP will continue to discharge to the West Branch of the Perkiomen Creek at River Mile 92.47 – 32.08 – 18.65 – 5.20 – 3.55 (Delaware River – Schuylkill River – Perkiomen Creek – Green Lane Reservoir – West Branch Perkiomen Creek) and is located in Washington Township, Berks County, Pennsylvania.
12. Lyons Borough Municipal Authority, D-1994-080 CP-2. An application for approval to expand and upgrade the Lyons Borough Municipal Authority WWTP from 0.2 mgd to 0.3 mgd. Modifications will include phosphorous removal by chemical precipitation, effluent filtering, and replacement of the existing gas chlorination system with UV disinfection. The increase in annual average flow is proposed to treat additional industrial process water from East Penn Manufacturing Company, an industrial wastewater discharger to the WWTP. The WWTP will continue to discharge to Saucony Creek, a tributary of Maiden Creek, which is a tributary of the Schuylkill River. The project is located in the Borough of Lyons, Berks County, Pennsylvania.
14. Superior Water Company, D-2001-015 CP-2. An application for the renewal of a groundwater withdrawal, consolidation of one docket and two GWPA permits, and to increase the withdrawal from all wells from 23.4 million gallons per 30 days (mg/30 days) to 36.82 million gallons per month (mgm) to serve the docket holder's

distribution system. The increased allocation is requested in order to meet projected increases in service area demand. The ten project wells are constructed in the Brunswick, Lockatong and Leithsville Formations. The project is located in the Zacharias Creek, Scioto Creek and Minister Creek watersheds in Upper Frederick, Douglass, New Hanover, and Worcester townships in Montgomery County, Pennsylvania within the Southeastern Pennsylvania Ground Water Protected Area.

15. Tidewater Utilities, Inc. – Camden District, D-2004-024 CP-3. An application for modification of an existing groundwater withdrawal project to include new Wells Nos. 222367 and 178898 completed in the Cheswold and Frederica aquifers, respectively. No increase is proposed in the previous allocation of 88.977 mg/30 days. The wells were installed to meet projected increases in service area demand. The project is located in the Saint Jones River Watershed in Dover West Township, Kent County, Delaware.
16. Camp Ramah in the Poconos, D-2005-030-2. An application for approval of the Camp Ramah in the Poconos WWTP. The project WWTP was approved by DRBC Docket No. D-2005-030-001 on March 1, 2006; however, the docket expired on April 30, 2007. The project WWTP will continue to discharge 30,000 gpd of treated sewage effluent to an unnamed tributary of the Equinunk Creek, which is a tributary of the Delaware River. The facility is located in Buckingham Township, Wayne County, Pennsylvania, and is located within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.

Mr. Pindar said that the Commission had received no comments on these proposed renewal projects with substantive changes. He recommended that the Commission approve hearing items 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16. Hearing no other questions or comments, Dr. Howarth requested a motion for approval of the entire group of eleven dockets. Mr. Plonski so moved, Mr. Hines seconded his motion, and hearing items 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 were approved by unanimous vote.

C. New Projects (hearing items 17, 18, 21 and 23-26). These seven projects comprised new discharges or withdrawals or constituted projects new to the Commission.

17. Town of Bethel – Kauneonga Lake, D-1974-196 CP-2. An application for the approval of an existing 0.6 million gallons per day (mgd) discharge from the Kauneonga Lake WWTP. The Kauneonga Lake WWTP discharges to the Delaware River at River Mile 261.10 – 16.21 – 5.43 (Delaware River – Mongaup River – White Lake Brook) and is located in the Town of Bethel, Sullivan County, New York. The project is located within the drainage area of the section of the Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.
18. East Vincent Municipal Authority, D-2005-007 CP-1. An application to rerate a 48,800 gpd sewage treatment plant (STP) to process a maximum monthly flow of 52,900 gpd, while continuing to provide tertiary treatment. The project will continue to serve flows from the built-out residential development known as Bartons Meadows in East Vincent Township, Chester County, Pennsylvania. The additional 4,000 gpd is needed to handle

wet weather related flows due to inflow and infiltration. Following ultraviolet light disinfection, STP effluent will continue to be discharged to subsurface seepage beds in the drainage area of French Creek, which is designated as a Scenic River in the DRBC *Comprehensive Plan*. The project is located in the Schuylkill River Watershed within the Southeastern Pennsylvania Ground Water Protected Area, off Sheeder Road just north of its intersection with Pughtown Road.

21. Wallenpaupack Area School District, D-2009-027 CP. An application for approval of the existing Newfoundland Elementary School WWTP. The WWTP will continue to discharge an average annual flow of 0.01 mgd of treated sewage effluent to Wallenpaupack Creek, a tributary of the Lackawaxen River. The facility is located in Dreher Township, Wayne County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.
23. ArcelorMittal Plate, LLC – Conshohocken, D-2009-039-1. An application for approval of a groundwater and surface water withdrawal project to supply up to 13.4 mgm of groundwater and 46.5 mgm of surface water to the applicant's industrial process from the existing Q&T Well and existing surface water intake. Surface water will be withdrawn from the Schuylkill River in the Schuylkill-Crow Creek Watershed. The well is located in the Elbrook Formation in the Schuylkill-Crow Creek Watershed in Plymouth Township, Montgomery County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

Mr. Pindar noted that staff received comments from the applicant on July 13, 2010 and again on the 14th prior to the hearing. In response to the applicant's concerns, a revision was made to language relating to the ability of the docket holder and inspectors to access the existing groundwater well for such purposes as metering and maintenance. The well is currently lodged under a heavy steel box. A condition of the docket was modified to provide that upon rehabilitation or modification of the well, access to the well must be improved.

24. Lehigh County Authority, D-2010-001 CP-1. An application for approval of the existing 0.06 mgd Wynnewood Terrace WWTP. The Wynnewood Terrace WWTP discharges to the Lehigh River at River Mile 183.66 – 28.14 (Delaware River – Lehigh River) and is located in North Whitehall Township, Lehigh County, Pennsylvania within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
25. Green Top Management, LLC, D-2010-002 CP-1. An application for approval of an expansion of the Green Top Mobile Home Park WWTP from 12,000 gpd to 18,000 gpd. The expansion includes the addition of a sequencing batch reactor unit. The WWTP will continue to discharge to an unnamed tributary of the Tohickon Creek, which is located upstream of Lake Nockamixon. The facility is located in West Rockhill Township, Bucks County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

26. NIS Hollow Estates, LLC, D-2010-003 CP-1. An application for approval of the existing NIS Hollow Estates, LLC WWTP. The WWTP will continue to discharge 18,000 gpd of treated sewage effluent to an unnamed tributary of the Lehigh River. The facility is located in East Penn Township, Carbon County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

Mr. Pindar said that with the exception of the noted comment on hearing item 23, DRBC had received no comments on any of the draft dockets in this group. He recommended that the Commissioners approve hearing items 17, 18, 21, 23, 24, 25 and 26 as proposed.

Kendra Sherman, counsel for ArcelorMittal Plate, LLC said that with respect to Docket No. D-2009-039-1 her client had one further comment for the record, concerning condition “q” of the docket. She said the company had requested that three sentences of that provision be deleted. They read:

The docket holder shall provide the potentially impacted user(s) of wells or surface water supplies with copies of correspondence submitted to the Commission. Any ground or surface water user which is substantially adversely affected, rendered dry or otherwise diminished as a result of the docket holder’s project withdrawal shall be repaired, replaced or otherwise mitigated at the expense of the docket holder in accordance with Sections 2., 6.D., 10.B., and 13.A of the *GWPAR*. A report of investigation and/or mitigation plan prepared by the hydrologist shall be submitted to the Executive Director as soon as practicable.”

Ms. Sherman noted that even without these sentences, the condition provides any affected water user with the ability to submit a complaint alleging interference, and further provides, “The Executive Director shall make the final determination regarding the validity of such complaint, the scope or sufficiency of investigations and the extent of the appropriate mitigation measures if required.” Mr. Pindar said that staff had reviewed the applicant’s comment but had recommended no change because the conditions cited are standard conditions reviewed by the Commission’s counsel that have been included in several hundred dockets issued to water withdrawers within the Southeastern Pennsylvania Ground Water Protected Area. Accordingly, staff did not believe a change was necessary or appropriate.

Hearing no further comments or questions, Dr. Howarth requested a motion for approval of hearing items 17, 18, 21, 23, 24, 25 and 26. Mr. Plonski so moved, Mr. Hines seconded his motion and the seven dockets were approved by unanimous vote.

Public Hearing: Resolution to Approve the FY 2010-2015 Water Resources Program. Mr. Tudor explained that the *Compact* requires the Commission to annually adopt a Water Resources Program (WRP), which is in effect a strategic plan that outlines in fairly detailed fashion the programs, activities and initiatives that staff anticipates engaging in over the next six years. The WRP aligns with the Water Resources *Plan* – often called the “Basin Plan” – adopted in 2004, which outlines principles, goals and objectives for guiding water resources planning and

management in the basin. The Basin Plan was approved not only by the DRBC Commissioners, but also by the U.S. EPA, National Park Service, U.S. Fish & Wildlife Service, Natural Resources Conservation Service and U.S. Geological Survey. The draft FY 2010-2015 Water Resources Program was posted on the Commission's website in May 2010, and the Commissioners have had additional time to review and comment on it. Mr. Tudor recommended that the FY 2010-20105 WRP be approved.

Elaine Reichart asked whether the Water Resources Program included a calculation of water withdrawals on a cumulative basis from the main stem Delaware River and tributaries. Mr. Tudor replied that in the context of its water supply analyses, the Commission does assesses depletive and consumptive uses and projects water demand and availability into the future. However, he said the WRP does not include such detailed accounting. That is, a quantitative analysis of the type Ms. Reichart described is not part of the WRP, but it is referenced in the WRP as part of the water supply and demand analysis, to be routinely updated. DRBC has developed information about uses of the basin's water and can supply it if asked. The analysis includes projections extending out 30 years.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution adopting the FY 2010-2015 Water Resources Program. Mr. Plonski so moved, Mr. Hines seconded his motion and Resolution No. 2010-4 was approved by unanimous vote.

Public Hearing: Resolution Authorizing the Executive Director to Require Nutrient Monitoring for Point Source Discharges to the Delaware Estuary and Bay (Water Quality Zones 2 – 6). Dr. Fikslin said that this resolution would authorize the Executive Director to require nutrient monitoring for point source discharges to the Delaware Estuary and Bay, the portion of the river between Trenton and the Atlantic Ocean. He noted that in December of 2009 the Commission heard a presentation by Dr. John Jackson of the Stroud Water Research Center, the chair of the Commission's Water Quality Advisory Committee (WQAC), recommending five steps to further investigate nutrients that might affect the Delaware Estuary and Bay. The first of those recommendations was for the Commission to require monitoring by municipal and industrial point source dischargers. The proposed resolution would authorize and direct the Executive Director to require point source dischargers to monitor selected parameters in their discharges for a period of up to 24 months. The Water Quality Advisory Committee has discussed the frequency of sampling and the parameters to be sampled for different categories of dischargers (most recently at a meeting on June 23, 2001) but has not yet finalized these recommendations. Dr. Fikslin noted that as part of the WQAC's discussions, the regulated community, represented by municipal and industrial wastewater treatment plant operators, fully supported the monitoring proposal.

Dr. Fikslin explained that in the short term, the nutrient monitoring data would help to characterize loads to different regions of the estuary. In the long term, these data would be used to develop a water quality model to help evaluate the impacts of nutrient loads. Dr. Howarth asked whether there had been any discussion of conducting a similar effort in the non-tidal portions of the basin. Dr. Fikslin said that the WQAC had discussed this possibility, but because of the number of dischargers and because the states themselves were gathering data in non-tidal areas, the WQAC had recommended that the scope of the current effort be limited to the estuary.

Dr. Fikslin added that the committee members agreed during a meeting in the fall of 2009 that the head of tide of each of the tributaries to the estuary (including the main stem Delaware River) should be sampled in order to measure tributary loadings.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution authorizing the Executive Director to require nutrient monitoring for point source discharges to the Delaware Estuary and Bay (Water Quality Zones 2–6). Mr. Hines so moved, General DeLuca seconded his motion and Resolution No. 2010-5 was approved by unanimous vote.

Public Hearing: Resolution Authorizing and Directing the Executive Director to Enter into a Revised Administrative Agreement with the State of Delaware for the Submission and Review of Projects in Accordance with Section 3.8 of the Compact. Mr. Muszynski explained that with the exception of the administrative agreement between DRBC and the State of New Jersey approved in December of 2009, the agreements between DRBC and the state environmental agencies relating to project review are decades old and out of date. For the past couple of years, staff has been working with state counterparts to update these agreements. Objectives include reducing redundant reviews and streamlining the review process so that DRBC's resources can be focused on priorities such as shared interstate waters and the Special Protection Waters areas, among others.

The revision process involves a review of each state's statutes and regulations and input from the Commission's Water Management Advisory Committee (WMAC) and Water Quality Advisory Committee (WQAC). Over the past six months DRBC staff have worked with staff of the Delaware Department of Natural Resources and Environmental Control (DNREC) to develop the new agreement that is recommended today for the Commission's approval. Mr. Muszynski thanked the staff of DNREC, in particular Stewart Lovell and John Deference, for their contributions to the process. He explained that the agreement provides that certain types of water withdrawals and discharges will no longer receive automatic Commission review. However, the Commission will continue to review all withdrawal and discharge projects that involve shared waters and the tidal portions of tributaries and that meet the thresholds set forth in DRBC's Rules of Practice and Procedure (RPP). Inter-basin transfers of water and wastewater that meet the RPP thresholds also will continue to receive Commission review.

Mr. Muszynski noted that the agreement contains a provision allowing any Commissioner or the Executive Director to request that a project be reviewed, even if in accordance with the agreement, such review is no longer automatic. A process will be used to advise the Commissioners and the public of which projects have been proposed that will not automatically receive review. A similar notification process is in place for New Jersey. Under that process, DRBC staff recently posted on the project review status page of the Commission's website a list of projects located in New Jersey that DRBC will not automatically review. Delaware projects no longer subject to DRBC review will be posted in the same manner.

Mr. Muszynski noted that at the request of the Chair, the draft administrative agreement was posted on DRBC's website two weeks before the July 14 meeting to allow all those interested an opportunity to review it. Mr. Muszynski said that no comments on the agreement had been

received, and he recommended that the Commission approve the resolution authorizing the Executive Director to execute the agreement with Delaware.

Dr. Howarth thanked Mr. Muszynski for his work, noting in particular that a flow chart had been developed to make the agreement more understandable to agency staff and to members of the public who monitor project review activities.

In response to ensuing questions and a short dialogue with Mary Ellen Noble of the Delaware Riverkeeper Network, a change was made to certain public notice provisions included in appendices of the draft agreement. Currently, when the Commission receives a docket application, this information is posted on the Project Review status page of the Commission's website. However, in accordance with the new administrative agreements, DRBC will no longer receive applications for all of the projects that meet Section 3.8 thresholds. Accordingly, a different method is needed for notifying the Commissioners and the public that these projects have been proposed and are under state review. The draft Administrative Agreement between DRBC and DNREC (and the agreement between DRBC and the New Jersey DEP approved in December of 2009) provided that the state agency would advise DRBC's Project Review Section (PRS) of applications filed with the state for projects located in the basin. The PRS staff would then advise the other Commissioners and the Executive Director of these projects. If after 15 days, the PRS received no comments from the Commissioners or the Executive Director, the PRS would post a list on the Project Review Status page of the Commission's website of those projects under state review that would not automatically undergo Commission review. Consistent with the agreed-upon modification, the Administrative Agreement with DNREC will provide notice simultaneously to the public and the Commissioners of project applications filed with the state that will not automatically undergo Commission review. A description of each project and a citation to the relevant section of the Administrative Agreement will be posted on the Project Review status page of the Commission's website as DRBC staff receive this information from the states.

Mr. Muszynski said that the administrative agreements with New Jersey and now Delaware provide for the PRS to receive reports on water use by state-approved water withdrawal users so that DRBC can maintain its tracking capability. For wastewater discharges DRBC has access to the states' automated data systems. Mr. Muszynski noted that as to New Jersey, all Special Protection Waters projects will continue to be reviewed by the DRBC. The projects for which DRBC no longer will receive water use information directly from docket holders will be limited to those located below Trenton that are not on the shared or tidal tributary waters.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution authorizing and directing the Executive Director to enter into a revised Administrative Agreement with the State of Delaware for the submission and review of projects under Section 3.8 of the *Compact*. Mr. Plonski so moved, adding that the change to the DNREC agreement concerning public notice should also be made to the agreement with New Jersey, Mr. Hines seconded his motion and clarified that Pennsylvania's agreement had not yet been updated but would be in the near future. Resolution No. 2010-6 was adopted by unanimous vote.

Resolution Authorizing the Executive Director to Enter into a Contract for Laboratory Analysis of Soil and Water Samples in Connection with the Control of Polychlorinated Biphenyls (PCBs) in the Delaware Estuary. Dr. Fikslin explained that this resolution would authorize the Executive Director to enter into a contract for laboratory services. The Commission, the states and the U.S. EPA have been working to reduce PCBs in the Delaware Estuary for over a decade. DRBC assisted the EPA in establishing total maximum daily loads (TMDLs) for estuary PCBs in 2003 and 2005 and is currently working on a second stage of those TMDLs. In connection with this effort, DRBC has purchased laboratory services for the analysis of samples of ambient water collected from the non-tidal river and the estuary, as well as for the analysis of sediment samples; however its current contract for such services is expiring. DRBC issued a Request for Proposal (RFP) for the required services and is considering proposals submitted by two laboratories. The resolution would authorize the Executive Director to enter into a contract with the successful lab for a period of up to 18 months, the value of which contract could not exceed \$106,000 or the sum of that amount and any additional funds expressly awarded by the Commission or another entity for that purpose.

Hearing no comments or questions, Dr. Howarth requested a motion to approve the resolution authorizing the Executive Director to enter into a contract for laboratory analysis of soil and water samples in connection with the control of polychlorinated biphenyls in the Delaware Estuary. Mr. Hines so moved, Mr. Plonski seconded his motion and Resolution No. 2010-7 was adopted by unanimous vote.

Public Dialogue. Because a great many individuals signed up to address the Commissioners on issues related to natural gas drilling, Dr. Howarth established a strict time limit of two minutes per speaker. Over the next three hours, the Commissioners heard from 82 speakers, slightly fewer than half of those who had signed up. Dr. Howarth apologized to those who did not have an opportunity to address the Commissioners and invited them to send their comments in writing to the Commission Secretary.

The meeting of July 14, 2010 was adjourned at 6:00 p.m. in order to accommodate another scheduled use of the meeting hall.

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