

**DELAWARE RIVER BASIN COMMISSION**

**MEETING OF SEPTEMBER 13, 2017**

**Minutes**

Commissioners Present: Jennifer Orr, Pennsylvania, Chair  
Daniel M. Kennedy / Jeffrey L. Hoffman, New Jersey, Vice Chair  
Mark Klotz, New York, Second Vice Chair  
Kara S. Coats, Delaware  
Lieutenant Colonel Kristen N. Dahle / Henry W. Gruber, United States

DRBC Staff Participants: Steven J. Tambini, Executive Director  
Pamela M. Bush, Commission Secretary & Assistant General Counsel  
Kenneth J. Warren, Warren Environmental Counsel, LLC, General Counsel  
Thomas J. Fikslin, Director, Science and Water Quality Management  
Elba L. Deck, Director, Finance and Administration  
David Kovach, Manager, Project Review  
Kenneth F. Najjar, Director, Water Resource Management  
Amy Shallcross, Manager, Water Resource Operations

The Commission met at the Links Pavilion on the Bucks County Community College campus in Newtown, Pennsylvania on September 13, 2017.

Minutes. The Minutes for the Commission's regularly scheduled Business Meeting of June 14, 2017 were unanimously approved.

Announcements. There were no upcoming events to report.

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

All counties in the Delaware River Basin that had been under state-declared drought conditions have returned to normal status. The last remaining county, Hunterdon County, New Jersey, was returned to normal status by the New Jersey Department of Environmental Protection (NJDEP) on August 11, 2017.

The average observed precipitation for the portion of the Basin above Montague, New Jersey for the period January 1, 2017 through September 11 was 36.64 inches, or 5.40 inches above normal. The observed precipitation for the Basin above Trenton for the same period was 36.60 inches, or

3.59 inches above normal and for the Basin above Wilmington, Delaware for this period was 33.11 inches or 2.77 inches above normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in August 2017 was 3,058 cubic feet per second (cfs), or 141 percent of the long-term average for the month. The average observed streamflow of the Delaware River at Trenton, New Jersey for the same period was 7,369 cfs, or 166 percent of the long-term average for the month.

For September 1 through 11, the average observed streamflow at Montague was 2,518 cfs, or 125 percent of the long-term average for the month. The average streamflow at Trenton, New Jersey during the same period was 6,116 cfs, or 138 percent of the long-term average for the month.

In the Lower Basin, as of September 12, 2017, Beltzville Reservoir contained 13.51 bg usable, or 100.2 percent of usable storage; Blue Marsh contained 5.81 bg usable, or 100.9 percent of summer pool usable storage. As of September 11, Merrill Creek contained 13.70 bg usable, or 87.3 percent of usable storage.

In the Upper Basin, as of September 12, Pepacton Reservoir contained 119.9 bg usable or 85.5 percent of usable storage; Cannonsville contained 73.4 bg usable, or 76.7 percent of usable storage. Neversink contained 31.1 bg usable or 89.0 percent of usable storage. The total New York City Delaware Basin reservoir storage was 224.49 bg usable or 82.8 percent of usable storage.

The long-term median storage for the New York City Delaware Basin reservoirs for September 12 is 195.1 bg, or 72.0 percent.

During the month of August 2017, the location of the seven-day average of the 250-parts-per-million (ppm) isochlor, also known as the “salt front,” fluctuated between River Miles (RM) 70 and 71. The normal location of the salt front during August is RM 74, which is four miles downstream of the Delaware-Pennsylvania state line.

As of September 12, the salt front is estimated to be at River Mile 71, which is five miles downstream of the normal location of the salt front during September.

Resolution Authorizing the Executive Director to Enter into a Contract with the Wildlands Conservancy for Dam Removal Projects Required by a Consent Order and Agreement Between the Commonwealth of Pennsylvania and Settlers Martins Creek, LLC and Talen Generation, LLC.

Dr. Najjar explained that the proposed resolution would authorize the Executive Director to enter into a contract with the Wildlands Conservancy to remove dams along the Bushkill Creek in the Lehigh sub-basin. The dam removals will be funded with proceeds from a 2016 Consent Order and Agreement between the Commonwealth of Pennsylvania and Martins Creek, LLC and Talen Generation, LLC (“Settlers”) to resolve the natural resource damage claims associated with a 2005 ash slurry spill to the Delaware River from the Martins Creek Steam Electric Generating Station in Lower Mount Bethel Township, Northampton County. The agreement provides in part for the Settlers to pay the sum of \$952,150 for dam removals in Pennsylvania and mussel restoration projects in either Pennsylvania or New Jersey. Under an Agreement dated November 25, 2015 between the Pennsylvania Department of Environmental Protection (PADEP), the Pennsylvania Fish & Boat Commission (PFBC) and the DRBC, the Commission will function as the recipient and distributor of the funds and will administer the projects. The funds are allocated as follows:

\$741,000 for dam removal, \$111,150 for dam removal contingency, \$50,000 for mussel restoration and an administrative fee of \$50,000 for the Commission. The funds have been remitted to the Commission, and three eligible dam removal projects have been identified in the Bushkill Watershed. On April 3, 2017, the Commission published a request for qualifications for non-governmental organizations interested in facilitating the dam removal projects. The sole qualifying submission was made by the Wildlands Conservancy. Dr. Najjar asked the Commissioners to authorize the Executive Director to enter into a contract with the Wildlands Conservancy for an amount not to exceed \$741,000, with contingency of no more than \$111,150 to perform as many removals as the funds allow, using construction and design contractors. The Wildlands Conservancy has the ability to solicit and accept additional funds for the projects.

Ms. Orr invited comments or questions from the Commissioners. Hearing none, she requested a motion to adopt the resolution as proposed. Ms. Coats so moved, Mr. Klotz seconded her motion and the Resolution for the Minutes authorizing the Executive Director to enter into a contract with the Wildlands Conservancy for dam removal projects required by a Consent Order and Agreement between the Commonwealth of Pennsylvania and Settlers Martins Creek, LLC and Talen Generation, LLC was adopted by unanimous vote.

The text of the resolution follows:

A RESOLUTION authorizing the Executive Director to enter into a contract with the Wildlands Conservancy for dam removal projects required by a Consent Order and Agreement between the Commonwealth of Pennsylvania and Settlers Martins Creek, LLC and Talen Generation, LLC.

WHEREAS, on April 28, 2016 the Commonwealth of Pennsylvania entered into a Consent Order and Agreement (“CO&A”) with Martins Creek, LLC and Talen Generation, LLC (“Settlers”) to resolve natural resource damage claims associated with a 2005 ash slurry spill to the Delaware River from the Martins Creek Steam Electric Station in Lower Mount Bethel Township, Northampton County, Pennsylvania; and

WHEREAS, the CO&A provides in part for the Settlers to pay the sum of \$952,150 (“the Funds”) for dam removal projects in Pennsylvania and mussel restoration projects in either Pennsylvania or New Jersey (“Projects”); and

WHEREAS, by an Agreement dated November 25, 2015 with the Pennsylvania Department of Environmental Protection and the Pennsylvania Fish and Boat Commission (“Agreement”), DRBC agreed to function as the recipient and distributor of the Funds and to administer the Projects; and

WHEREAS, the Agreement provides for the Funds to be allocated as follows: Dam Removal – \$741,000, Dam Removal Contingency – \$111,150, Mussel Restoration – \$50,000 and Commission Administrative Fee – \$50,000; and

WHEREAS, the Settlers have remitted the Funds to the Commission; and

WHEREAS, the Commission has identified three dam removal projects in the Bushkill Watershed in Northampton County, Pennsylvania, that are consistent with the terms of the CO&A and the Agreement; and

WHEREAS, on April 3, 2017 the Commission duly noticed and advertised for a qualified non-governmental organization (NGO) to facilitate the dam removal projects; and

WHEREAS, the Wildlands Conservancy was the sole qualified bidder to respond to the solicitation; now therefore,

BE IT RESOLVED that the Executive Director is authorized to enter into a contract with the Wildlands Conservancy at a cost not to exceed \$741,000, with contingency of no more than \$111,150, to fully perform through the use of subcontractors as many dam removal projects consistent with the CO&A and the Agreement as the Funds in combination with other funding sources allow.

This RESOLUTION shall take effect immediately.

Resolution Authorizing the Executive Director to Contract with Vendors Associated with the State of New Jersey Energy Incentive Programs to Replace Components of the Heating, Ventilating and Air-Conditioning (HVAC) System and to Update Lighting to Conserve Energy in the Commission's West Trenton Headquarters Building. Dr. Najjar presented a resolution providing for an upgrade of the HVAC and lighting system in the Commission's 40-year-old office building. The New Jersey Board of Public Utilities (NJBPU) in 2016 performed an energy audit on the Commission's headquarters through the New Jersey Clean Energy Program. The audit report, dated February 28, 2017, indicated that certain HVAC system components, some of which dated back to 1970, have exceeded their useful life and should be replaced. The report further indicated that the replacement of existing fluorescent lighting components with higher efficiency components (LED) would greatly conserve energy in the building. In consultation with the NJBPU staff and contractors, DRBC has determined that installing a new boiler and replacing the lighting components could be completed at a cost of \$120,000. Incentives available through the state's "Direct Install" and "Smart Start" programs would cover approximately \$71,500 of the expense, potentially bringing the cost to DRBC down to \$48,500.

Hearing no comments or questions from her fellow Commissioners, Ms. Orr requested a motion to approve the proposed resolution. Mr. Kennedy so moved, and Mr. Klotz seconded his motion. The Resolution for the Minutes authorizing the Executive Director to contract with vendors associated with the State of New Jersey energy incentive programs to replace components of the heating, ventilating and air-conditioning (HVAC) system and to update lighting to conserve energy in the Commission's West Trenton headquarters building was approved by unanimous vote.

The text of the resolution follows:

A RESOLUTION authorizing the Executive Director to contract with vendors associated with the State of New Jersey energy incentive programs to replace components of the heating, ventilating and air conditioning (HVAC) system and to update lighting to conserve energy in the Commission's West Trenton headquarters building.

WHEREAS, in 2016, the New Jersey Board of Public Utilities (BPU) sponsored a Local Government Energy Audit of the Commission's headquarters building in West Trenton through New Jersey's Clean Energy Program; and

WHEREAS, the resulting Energy Audit Report (February 28, 2017) (“Report”) indicates that certain of the building’s HVAC system components, some of which date from its construction in 1970, have exceeded their useful life and should be replaced; and

WHEREAS, the Report also indicates that replacement of existing lighting components with higher efficiency components would greatly conserve energy; and

WHEREAS, in consultation with BPU staff and contractors, DRBC staff have determined that the installation of a new boiler and replacement of existing lighting components with high efficiency components could be completed at a total cost of \$120,000, and that after incentives from New Jersey’s Direct Install and Smart Start programs, the Commission’s net cost for these replacements would be \$48,500; and

WHEREAS, the timing is right for this investment; now therefore,

BE IT RESOLVED that the Executive Director is authorized and directed to:

1. enter into contracts with vendors participating in New Jersey’s energy incentive programs for the installation of a new boiler and the replacement of existing lighting components with high efficiency components, at a total cost not to exceed \$120,000;
2. apply for incentives from the State of New Jersey in the amount of approximately \$71,500 for these expenditures.

This RESOLUTION shall take effect immediately.

Resolution to Amend the *Administrative Manual – By-Laws, Management and Personnel* by the Addition of a New Chapter 9, Entitled “Purchasing Cards,” and to Update Chapters 5 and 6 for Consistency with the New Chapter. Ms. Deck explained that the proposed resolution would approve amendments to Chapter 9 of DRBC’s *Administrative Manual – Bylaws, Management and Personnel* to authorize the use of purchase cards or “P-Cards,” and would approve related updates to Chapters 5 and 6. Ms. Deck explained that the use of P-Cards is expected to reduce costs and increase efficiency by reducing the number of manual checks and individual expense reports required. The change will also improve internal control over expenditures and eliminate employee reimbursement lag and will eliminate the payment of credit card fees. The P-cards are proposed to be issued by DRBC’s commercial banker, Wells Fargo.

Ms. Orr requested a motion to adopt the resolution as presented. Ms. Coats so moved, Mr. Kennedy seconded her motion, and the Resolution for the Minutes to amend the *Administrative Manual – By-Laws, Management and Personnel* by the addition of a new Chapter 9, entitled “Purchasing Cards,” and to update Chapters 5 and 6 for consistency with the new chapter was approved by unanimous vote.

The text of the resolution (without attachments) follows:

A RESOLUTION to amend the *Administrative Manual – By-Laws, Management and Personnel* by the addition of a new Chapter 9, entitled “Purchasing Cards,” and to update Chapters 5 and 6 for consistency with the new chapter.

WHEREAS, the Commission has determined that use of a purchase card (“P-Card”) system will: reduce costs and increase efficiency by reducing the need for manual expense reports and checks; provide better internal controls over expense approvals; eliminate employee reimbursement lag time for many or most expenses; and create opportunities for the payment of routine vendors through P-cards; and

WHEREAS, in addition to providing the above-described efficiencies, the Business Elite Credit Card Program offered by Wells Fargo, with which the Commission has a longstanding relationship, would cost the Commission less than our current credit card memberships and also provide cash rebates; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

The Commission’s *Administrative Manual – By-Laws, Management and Personnel* is hereby amended by:

- (a) the addition of a new Chapter 9, entitled “Purchasing Card,” the text of which is attached hereto as ATTACHMENT A.
- (b) the addition to Chapter 5, Section 5.13 B. “Causes for Disciplinary Action,” of a new paragraph 9, reading, “Failure to comply with the policies set forth in Chapter 9 relating to the employee’s use of a Purchase Card (P-Card).”
- (c) changes to Chapter 6 (“Travel Regulations”) consistent with ATTACHMENT B.

These amendments shall take effect immediately.

Resolution Authorizing the Executive Director to Enter into a Joint Funding Agreement with the U.S. Geological Survey for the Development of Additional Years of Historic Precipitation and Temperature Data to be Used for Water Supply Planning Simulations. Ms. Shallcross presented a draft resolution authorizing the Executive Director to enter into a joint funding agreement with the U.S. Geological Survey (USGS) for the development of additional years of historic precipitation and temperature data to be used in the DRBC’s water supply planning simulations. She explained that the Commission is in the process of evaluating future water supply availability through a project entitled *Strategy for Sustainable Water Resources – 2060*. In October 2015, the USGS pursuant to the federal Secure Water Act, completed a hydrologic model known as “WATER” (an acronym for “Water Availability Tool for Environmental Resources”), which can be used to simulate a variety of potential future hydrologic conditions based on different climate scenarios and land use changes. DRBC staff is using WATER to generate climate-driven in-flows for the planning support tool for simulating current and alternative flow management scenarios under potential future hydrologic conditions. These simulations can provide invaluable information regarding water supply availability and the operation of Commission-owned reservoir storage. The precipitation and temperature data provided with WATER do not include the drought of record, which occurred in the 1960’s, and these data must be added to WATER to allow for consistency among models. The USGS is qualified to develop a historic record of precipitation and temperature data that includes the 1960’s. Moreover, the USGS has a shared interest in ensuring that the best available data are used. The Compact allows for the DRBC to enter into agreements with agencies and signatory parties to provide technical services. This resolution would authorize the Executive Director to enter into a joint funding agreement with the USGS to develop the required data. The

value of the project is \$47,000, of which DRBC proposes to contribute \$33,010; the USGS will contribute the remainder. The funds for this effort will be disbursed from the Commission's Water Supply Storage Fund.

Ms. Orr requested a motion to approve the resolution as described by Ms. Shallcross. Mr. Kennedy so moved, Ms. Coats seconded his motion, and the Resolution for the Minutes authorizing the Executive Director to enter into a Joint Funding Agreement with the USGS for the development of additional years of historic precipitation and temperature data to be used for water supply planning simulations was adopted by unanimous vote.

The text of the resolution follows:

A RESOLUTION authorizing the Executive Director to enter into a joint funding agreement with the U.S. Geological Survey for the development of additional years of historic precipitation and temperature data to be used for water supply planning simulations.

WHEREAS, the Commission is in the process of evaluating water supply availability for the future in the context of the DRBC study entitled *Strategy for Sustainable Water Resources – 2060*; and

WHEREAS, in October of 2015, the U.S. Geological Survey (USGS) completed a hydrologic model of the Delaware River Basin known as "WATER" (an acronym for "Water Availability Tool for Environmental Resources") that can be used to model a variety of potential future hydrologic conditions based on different climate scenarios and future land use changes; and

WHEREAS, DRBC staff are currently using WATER to generate climate-driven hydrologic input data for the Delaware River Basin Planning Support Tool (DRB-PST) for the purpose of simulating current and alternative flow management scenarios under potential future hydrologic conditions; and

WHEREAS, such simulations, including under potential worst-case and future hydrologic conditions, can provide invaluable information regarding water supply availability and the operation of Commission-owned reservoir storage; and

WHEREAS, the precipitation and temperature data provided with WATER do not include the drought of record, which occurred in the 1960s; and

WHEREAS, as the original developer of WATER and the associated data, the USGS is singularly qualified to develop a historic record of precipitation and temperature that includes the 1960's-drought period for use by WATER to generate input data for DRB-PST; USGS also has a clear understanding of the scope of services involved and has worked with DRBC staff on similar efforts; and

WHEREAS, the USGS has a shared interest in ensuring that the best available data are used in DRBC's analysis and is able to provide a portion of the funds required for this effort; and

WHEREAS, section 11.5 of the Compact provides in relevant part for the DRBC and authorized agencies of the signatory parties to provide one another with technical services, advice and consultation within the limits of available appropriations; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is hereby authorized to enter into a joint funding agreement with the USGS for the development of temperature and precipitation data sets for use in the WATER model (the "Project").
2. The value of the Project shall not exceed \$47,000 of which the DRBC will contribute no more than \$33,010, with the balance to be contributed by USGS.
3. DRBC funds for this effort will be disbursed from the Commission's Water Supply Storage Fund.

This RESOLUTION shall take effect immediately.

Resolution Authorizing and Directing the Executive Director to Require Additional Nutrient Monitoring for Point Source Discharges to the Delaware River Estuary and Bay (Water Quality Zones 2 – 6) for Development and Calibration of the Delaware Estuary Eutrophication Model. Dr. Fikslin explained that this resolution would authorize the Executive Director to require additional nutrient monitoring for point source discharges, including industrial and municipal discharges, to the Delaware River Estuary and Bay for the development and calibration of the Delaware Estuary Eutrophication Model. The Commission's Water Quality Advisory Committee (WQAC) has identified monitoring of point source discharges as an important component in managing nutrient levels in the Estuary. In 2010, the Commission adopted a resolution authorizing the Executive Director to require an initial round of nutrient monitoring for these point sources. Pursuant to that resolution, a two-year monitoring program was conducted for approximately seventy industrial and municipal discharges. The data were used to rank the nutrient loadings and to identify the appropriate frequency for further study in development of a eutrophication model.

The Commission has since convened an expert panel of modelers from across the nation – some of them nationally and internationally known – which has recommended the collection of additional point source monitoring data. In the spring of 2017, DRBC also engaged the modeling consultant firm of LimnoTech to advise staff on development of the model. Hydrologic and scheduling factors dictate that monitoring for development and calibration of the model be undertaken during 2018 and 2019. In cooperation with the USGS and the Philadelphia Water Department (PWD), DRBC is concurrently undertaking enhanced ambient monitoring and other studies.

The resolution directs the Executive Director to reach out to selected dischargers to inform them of the need for additional data to characterize their point source loadings of nutrients and related parameters during 2018 and 2019, and requests the dischargers' cooperation and assistance. Following the described outreach, the Executive Director is authorized to require dischargers to collect at their own cost and expense such data as are needed in the Commission's view for the purposes of development and calibration of the eutrophication model, and to submit these data to



the Commission. The Commission acknowledges and values the cooperation and service of the estuary point source dischargers, many of whom have recognized the need for this monitoring and have participated and continue to participate in work of the WQAC to characterize Estuary point source nutrient loads.

Hearing no inquiries or comments, Ms. Orr requested a motion to adopt the resolution as described by Dr. Fikslin. Ms. Coats so moved, Mr. Kennedy seconded her motion and the Resolution for the Minutes authorizing and directing the Executive Director to require additional nutrient monitoring for point source discharges to the Delaware River Estuary and Bay (Water Quality Zones 2 - 6) for development and calibration of the Delaware Estuary eutrophication model was adopted by unanimous vote.

The text of the resolution follows:

A RESOLUTION authorizing and directing the Executive Director to require additional nutrient monitoring for point source discharges to the Delaware River Estuary and Bay (Water Quality Zones 2 – 6) for development and calibration of the Delaware Estuary Eutrophication Model.

WHEREAS, previous studies indicate that relative to other estuaries of the United States, point sources are significant contributors to the high nutrient concentrations observed in the Delaware River Estuary and Delaware Bay (also herein, “Estuary” and “Bay”); and

WHEREAS, the Commission’s Water Quality Advisory Committee has identified the monitoring of point source discharges as an important component in managing nutrient levels in the Estuary; and

WHEREAS, Resolution No. 2010-5 authorized the Executive Director to require an initial round of nutrient monitoring for point source discharges to the Estuary and Bay; and

WHEREAS, the data from that two-year study have been used to rank the loadings of nutrients from the approximately 70 participating dischargers, and to develop specific monitoring requirements for subsets of these dischargers; and

WHEREAS, the Commission’s Eutrophication Model Expert Panel has endorsed the collection of additional point source discharge data as both necessary and appropriate for development and calibration of the model; and

WHEREAS, in consultation with the Commission’s modeling consultant LimnoTech, Commission staff who are engaged in developing the model have identified the specific additional point source discharge monitoring needed to reduce and characterize uncertainties associated with point discharge loads; and

WHEREAS, hydrologic and scheduling factors dictate that targeted nutrient monitoring for development and calibration of the eutrophication model be undertaken during the period from January 1, 2018 through December 31, 2019; and

WHEREAS, in cooperation with the U.S. Geological Survey, the City of Philadelphia Water Department (PWD) and others as appropriate, DRBC is concurrently undertaking enhanced ambient monitoring, to include: extension of the Estuary “Boat Run” water quality modeling program from a seasonal to a year-round effort from January 2017 through December 2019; twice-per-month monitoring of the Delaware River at Trenton (begun in January 2017) and the Schuylkill River at Philadelphia (beginning in January 2018) (largest freshwater inflows); expansion of the locations and frequency of tributary monitoring (performed quarterly for key tributaries in 2017); USGS deployment of spectral analyzers for continuous rate nitrate monitoring in the Delaware at Trenton and Chester beginning in 2018; through PWD, collection of sediment oxygen demand and sediment flux data as well as continuous monitoring data for dissolved oxygen and chlorophyll-a; and additional primary productivity monitoring during the summer of 2018; and

WHEREAS, the Commission’s Water Quality Regulations at Section 4.30.8 authorize the Commission to require sampling by point source dischargers; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Executive Director is hereby directed to contact selected dischargers to the Delaware River Estuary (Water Quality Zones 2 – 6) to inform them of the need for additional data to characterize their point source loadings of nutrients and related parameters during the model development and calibration period running from January 1, 2018 through December 31, 2019, and to request the dischargers’ cooperation and assistance in gathering such data.
2. Following the outreach described above, the Executive Director is authorized to require the dischargers during the specified period to collect at their own cost and expense such effluent data as are needed in the Commission’s view for purposes of development and calibration of the model, and to submit these data to the Commission.
3. The Commission acknowledges and values the cooperation and service of the Estuary point source dischargers, many of whom have recognized the need for nutrient monitoring and have participated and continue to participate in the work of the Commission’s Water Quality Advisory Committee to systematically characterize and manage nutrient loads to the Estuary.

This RESOLUTION shall take effect immediately.

Resolution to Recognize That Evidence Supports Further Study on the Inclusion of Propagation as a Designated Use in Zones 3 and 4 and the Upper Portion of Zone 5 of the Delaware River Estuary; to Provide for Such Studies to be Undertaken in Consultation with Co-Regulators and Dischargers; and to Direct the Executive Director to Initiate DRBC Rulemaking to Revise the Designated Aquatic Life Uses Consistent with the Results of the Identified Studies and the Objectives and Goals of the Federal Clean Water Act. Dr. Fikslin explained that the resolution would recognize that evidence supports further study on the inclusion of propagation as a designated use in DRBC Water Quality Zones 3 and 4 and the upper portion of Zone 5. He noted that Zone 3 comprises an area around the City of Philadelphia; Zone 4 extends from Zone 3 downstream to the Delaware-Pennsylvania state line; and the upper portion of Zone 5 is in the vicinity of Wilmington. The resolution provides for studies to be undertaken in consultation with

DRBC's co-regulators, including the federal agencies and state environmental protection agencies, and with dischargers. It directs the Executive Director to initiate rulemaking to revise designated aquatic life uses consistent with the results of the identified studies and the objectives and goals of the federal Clean Water Act. The resolution was publicly noticed in February 2017. A public hearing date was set for March but was postponed until April 6 due to inclement weather. The public comment period closed on Thursday, April 13 at 5:00 p.m. During the comment period, the Commission received oral testimony from six individuals and substantive or unique written comments from eleven entities, five of whom were individuals who commented orally. There were 142 additional comments, primarily from members of the Delaware Riverkeeper Network. Commission staff prepared a comment and response document for review by the Commissioners, and presented four themes identified in the comments. Dr. Fikslin briefly summarized the comment themes.

**Theme One.** A number of comments highlighted the Estuary's remarkable recovery from conditions that prevented the survival and reproduction of fish in the Estuary through much of the 20<sup>th</sup> century, into the 1980's and 1990's. For decades, the Delaware River Estuary around Philadelphia and south toward Wilmington was completely anoxic between mid-April and mid-October, a condition that prevented the survival of anadromous fish species – in particular, the American shad – which move into the river to spawn and whose young must swim downstream to return to the sea. Thanks to efforts of the Commission, state and federal agencies and public and private entities that upgraded wastewater treatment plants, in the early 1990's the target water quality conditions the Commission established in the 1960's were achieved. DRBC acknowledges these achievements, the continuing study by regulators and academic institutions to document the return of fish and other aquatic life to the Estuary, and the public support for restoration.

**Theme Two.** Many public comments asserted that science has demonstrated that propagation is occurring and that elevating the dissolved oxygen criteria is required to support it. These comments protested that DRBC has not yet formally recognized propagation as a use, and urged that new standards to upgrade water quality be adopted as soon as administratively possible. Staff agrees that the DRBC has been monitoring water quality and aquatic life in the Estuary for many years, beginning in the 1960s. Notably, in the late 1980s the Commission conducted a use attainability study that concluded that improved oxygen levels could be achieved, although the adequacy of the level deemed attainable then is under question today. However, the report concluded that upgrades to treatment plants should be delayed until a final decision concerning dissolved oxygen criteria could be made. In 1993, the Commission determined that before higher dissolved oxygen concentrations in target water quality zones could be achieved, a new water quality model for the Delaware Estuary would be needed.

Priorities shifted during the 2000s, however, and the Commission devoted that decade to working closely with its signatory parties, particularly those bordering the Estuary, to investigate, identify and reduce estuary PCB contamination. As part of that effort the Commission developed total maximum daily loads (TMDLs) for PCBs in Zones 2 through 6 (the Estuary and Bay) and implemented requirements that between 2005 and 2016 achieved a 76-percent reduction in PCB loadings to the Estuary from point sources. In the late 2000s, the Commission's Water Quality Advisory Committee (WQAC) turned its focus to nutrients, which have been a priority of the U.S. Environmental Protection Agency (EPA). The improved model identified as critical to elevating dissolved oxygen levels is now under development. Commissioners and staff believe that a

deliberate scientific evaluation is needed to determine the appropriate value for dissolved oxygen criteria and the critical times (months or seasons) during which these criteria must be attained. Currently, the Commission's dissolved oxygen criteria are the same throughout the year. However, oxygen requirements vary during the life stages of different fish species. Staff believes additional study on dissolved oxygen requirements is needed.

**Theme Three.** Some commenters urged that the Commission should evaluate the attainability of any proposed changes to the designated aquatic life uses and associated criteria for the Estuary prior to taking any regulatory action. These commenters maintained that designated uses should not be established without a rigorous and comprehensive assessment of attainability. The Commission agrees, and the proposed resolution lays out the process to be followed.

**Theme Four.** Some commenters suggested that the proposed schedule was too ambitious. They questioned whether three-and-a-half years would be sufficient to complete the modeling, technical and economic studies that comprise an attainability analysis, and whether the additional two-and-one-half years allocated to rulemaking in the resolution would be sufficient. One commenter suggested that the time frame be compressed. Staff's response is that the proposed six-year time frame for completion of the studies and rulemaking is reasonable given the resources available. They caution, however, that the three-and-one-half-year period for completion of the technical studies is resource-dependent, and may not be sufficient if the required resources are not provided.

The resolution contains eleven elements: (1) acknowledgment of significant historical improvement in water quality; (2) recognition that this is a shared achievement; (3) a statement of shared goals among the signatory parties; (4) a finding that evidence supports further study on the inclusion of propagation as a designated use in Estuary Zones 3 and 4 and the upper portion of Zone 5; (5) a directive for DRBC rulemaking; (6) a list of the actions, including studies to be performed, before new rules are proposed or finalized; (7) establishment of a 3.5-year timeframe for completion of a draft analysis of attainability; (8) a plan for early action to reduce oxygen depleting discharges; (9) recognition of the PWD's "D.O. Partnership" initiative; (10) recognition of the work of the WQAC; and (11) setting of a target date for adoption of a final rule within six years.

Ms. Orr requested a motion to adopt the resolution as outlined by Dr. Fikslin. Mr. Kennedy so moved and Mr. Klotz seconded his motion. Ms. Coats of Delaware explained that Delaware would vote in favor of the pending resolution. She added, however, that if the resolution were adopted, Delaware encouraged all parties to move expeditiously on implementing it. Hearing no further comment from the Commissioners, Ms. Orr requested a vote. Resolution No. 2017-4 was adopted by majority vote, with the four states voting in favor and the federal government opposed.

Resolution Directing the Executive Director to Publish for Public Comment Revised Draft Regulations Regarding Certain Natural Gas Development Activities in the Delaware River Basin (DRB). Mr. Tambini presented the proposed resolution, which had been posted on the DRBC website few days earlier. He explained that the resolution had not undergone any changes and thus he would not read every word, but only parts of it. He added that the beginning of the resolution recites some of the history of natural gas development in the Delaware Basin. He urged interested parties to refer to the DRBC website (drbc.net) for accurate information regarding this history. Mr. Tambini read the text of the resolution aloud beginning with the fifth "Whereas" clause.

Ms. Orr requested a motion to adopt the Resolution for the Minutes as presented by Mr. Tambini. Mr. Klotz so moved and Ms. Coats seconded his motion. Ms. Orr invited discussion of the resolution by the Commissioners.

Mr. Klotz stated that in June 2015, the New York State Department of Environmental Conservation (NYSDEC) officially prohibited high-volume hydraulic fracturing in New York when it issued a finding statement concluding that no feasible alternatives to high volume hydraulic fracturing exist that adequately address environmental impacts and risks to public health. Mr. Klotz said the resolution directing the DRBC to publish revised draft regulations that prohibit the development of natural gas utilizing horizontal drilling and hydraulic fracturing due to the risks this activity poses to water resources of the basin is consistent with New York's findings. As such, he said the State of New York is strongly supportive of the resolution.

Ms. Coats stated that Governor John C. Carney of Delaware would vote "yes" on the resolution to work towards permanently banning fracking in the Delaware River Basin. She said this vote is consistent with the Delaware River Basin Conservation Act, a bill introduced by Governor Carney and passed by the U.S. Congress in 2016, by helping to ensure that the water resources of the Basin are protected for present and future generations.

Ms. Bush conducted a roll-call vote, with each vote recorded: Delaware – Yes; New Jersey – Abstain; New York – Yes; Pennsylvania – Yes; and the federal government – No. The Resolution for the Minutes to publish for public comment revised draft regulations regarding certain natural gas development activities in the Delaware River Basin was adopted by majority vote.

The text of the resolution follows:

A RESOLUTION directing the Executive Director to publish for public comment revised draft regulations regarding certain natural gas development activities in the Delaware River Basin.

WHEREAS, at a Delaware River Basin Commission ("DRBC") business meeting on May 5, 2010, the DRBC commissioners unanimously directed DRBC staff "to develop draft regulations on well pads in the shales for notice and comment rulemaking".

WHEREAS, by Resolution and Order dated December 8, 2010, the Commission postponed the decision on its authority to review natural gas exploratory well activities in shale formations until either the promulgation of final natural gas regulations or the submission of an application;

WHEREAS, the Commission published draft natural gas development regulations on December 9, 2010, and the comment period closed on April 15, 2011. Nearly 69,000 comments were submitted, and revised draft natural gas development regulations were issued on November 8, 2011;

WHEREAS, since the comment period closed, the Commission has continued to receive comments and information from many stakeholders with diverse views about natural gas development activities within the Delaware River Basin and has closely followed the evolving scientific literature on the impacts of natural gas development on water resources;

WHEREAS, the combination of hydraulic fracturing with horizontal drilling and related activities for extracting natural gas from tight shale formations presents risks, vulnerabilities and impacts to surface and ground water resources across the country;

WHEREAS, the DRBC commissioners have conferred in good faith on the complex and evolving science and policy questions related to natural gas development;

WHEREAS, the Delaware River Basin supplies drinking water to over 15 million people, and the health, safety and welfare of the region's population as well as the viability of its commerce and industry depend upon the use, conservation, management and control of the basin's water and related natural resources;

WHEREAS, the DRBC's state and federal commissioners have for decades acted jointly through the DRBC to protect the basin's shared water resources, for example by adding to the Commission's Comprehensive Plan the designation of the entire non-tidal main stem Delaware River as DRBC "Special Protection Waters"; by developing and implementing innovative approaches for restoring water quality in the Delaware River Estuary to revive basin fisheries; by cooperatively managing state and federal pollution control regulatory programs; and by managing stored water and water withdrawals to maintain adequate freshwater flows;

WHEREAS since 2010, among the Basin states, Pennsylvania has advanced statutory and regulatory actions regarding natural gas drilling, and New York has completed a state environmental impact analysis to preclude certain natural gas development activities;

WHEREAS, further revision of the draft regulations that the Commission published in 2011 is warranted.

Now therefore, BE IT RESOLVED by the Delaware River Basin Commission that:

1. No later than November 30, 2017, the Executive Director shall prepare and publish for public comment a revised set of draft regulations to address certain natural gas development activities within the Delaware River Basin.
2. The draft regulations directed by this Resolution shall include and seek comment on:
  - a. prohibitions related to the production of natural gas utilizing horizontal drilling and hydraulic fracturing within the Basin;
  - b. provisions for ensuring the safe and protective storage, treatment, disposal and/or discharge of wastewater within the Basin associated with horizontal drilling and hydraulic fracturing for the production of natural gas where permitted;
  - c. regulation of the inter-basin transfer of water and wastewater for purposes of natural gas development where permitted.

3. The Executive Director, in consultation with the Commissioners, may also include in the draft regulations other proposed revisions or additions to DRBC rules and regulations.
4. Public comment on the revised draft natural gas regulations will be included in the Commission's official rulemaking record only if it is submitted in accordance with the procedures set forth in the notice of proposed rulemaking to be issued by DRBC no later than November 30, 2017.

This RESOLUTION shall be effective immediately.

Executive Director's Report. Mr. Tambini's remarks focused on the resolution directing him to publish for public comment revised draft regulations regarding certain natural gas development activities in the Delaware River Basin. His comments are summarized below:

Mr. Tambini referred the public to DRBC's website for the most accurate information on the Commission's actions regarding natural gas and other DRBC matters. In particular, he noted that a set of frequently-asked questions (FAQs) regarding the resolution had been posted to the site and would be updated as issues emerge. He said the first update would happen soon, as he had read inaccurate information in some reports and comments. Mr. Tambini proceeded to share some of the FAQs and to lay out next steps. His remarks are summarized as follows:

- *Did the Commission make a final decision to adopt rules?* No. What the Commissioners did today was not finalize rules but begin the rulemaking process. The Commission will not adopt final rules until it has published draft rules and has gathered and considered public comment on them. There are people commenting on draft regulations that they have not yet seen. Once the draft rules are published and the public has had an opportunity to comment, the Commission will consider any changes to the draft rule that may be appropriate based on the comments received. The public process will not start until the rule is published, on or before November 30, 2017.
- *Will there be hearings, and how many?* The public process will include one or more public hearings and ample opportunity for written comment. There are no details yet about when and where the public hearings will be, but ample notice will certainly be provided.
- *Why can't I submit my comments for the record right now?* Members of the public may send comments to government officials at any time; however, those comments will not be included in the rulemaking record. DRBC will open the record and provide more details about the public process when we publish the draft regulations.
- *Will DRBC staff meet with representative of my organization on this issue?* The good news is that I have an outstanding staff who does incredible work. But it's not a big staff. We recognize that there is tremendous interest in this matter, but the Commission staff is unable to schedule meetings with everybody who requests one. There will be ample opportunity for public comment once the rule has been published. Staff has been directed to proceed with rulemaking, and now we must work with the Commissioners to do just that.

- *Who makes the final decision for the Commission on this matter?* Only the Commissioners are empowered by the Delaware River Basin Compact to adopt new rules or modify existing ones. The Commissioners are the governors of the four basin states (DE, NJ, NY and PA) and the Division Commander of the U.S. Army Corps of Engineers, North Atlantic Division, representing the United States. Presently seated here with me are the alternate representatives of those Commissioners. A majority vote of three Commissioners is required for Commission action.
- *Where can I find historical background on the Commission's de facto moratorium and its authority?* Information about the *de facto* moratorium, the Commission's regulatory process, its organic statute the Delaware River Basin Compact, and DRBC's regulations are all available on the Commission's website. Spend some time viewing the website. It will help you understand the issues going forward. From the website, you can also subscribe to DRBC's list serves to receive email notifications as an interested party, read additional FAQs, and find related links to keep you informed and up-to-date.
- *Is there currently a moratorium or a de facto moratorium on the disposal of wastewater from hydraulic fracturing within the Delaware River Basin or on the export or inter-basin transfer of water for uses related to hydraulic fracturing?* No. Currently, discharges of wastewater in the basin are subject to DRBC, state and federal regulations, including those implementing the federal Clean Water Act. Transfers of water into and out of the basin above certain thresholds are currently subject to DRBC regulations. Now that the Commission has provided direction to staff to issue revised draft rules addressing these subjects, DRBC must determine what additional regulations if any are needed. Keep in mind that there are already some existing rules related to wastewater discharges and exports of water and inter-basin transfers of water. This will all be part of our work over the next several months.
- *Why will the revised draft regulations include provisions related to hydraulic fracturing wastewater?* DRBC regulations currently apply to many wastewater discharges in the basin as well as to some proposed inter-basin transfers of water and wastewater. As directed by this resolution, revisions to existing DRBC regulations will be developed to specifically address the risks to water resources of the basin associated with the treatment and disposal of wastewater from hydraulic fracturing, and the transfer of water from the basin for purposes of hydraulic fracturing. The public is asked not to judge the effect of the proposed rules before they are published. Please be patient, we will meet the November 30 publication deadline, but the draft rules simply are not ready yet.
- *When does DRBC expect the Commissioners to vote on the draft rules?* Because rulemaking generally takes six months or longer, I hope for the Commissioners to adopt the final rule sometime in 2018. The rulemaking process will include one or more public hearings and a written comment period. After the close of the comment period, the Commissioners and staff will review the oral and written comments received and prepare a comment-and-response document that may include appropriate changes to the draft rule. As previously indicated, details about the hearings and the length of the comment period are not yet available and will only be available after the draft rule is published on or before



November 30. The length of the rulemaking process will be announced at that time, and as always, the Commission may adopt a final rule only at a duly noticed public meeting.

Mr. Tambini said he knew there would be many questions. He again emphasized that the DRBC website would continue to be the best source of accurate information throughout the rulemaking process.

General Counsel Report. Mr. Warren's report is summarized below:

Mr. Warren noted that the single matter in litigation was of-a-piece with the natural gas theme of the Commission's immediately preceding action and Mr. Tambini's remarks. He explained that a landowner brought a case in federal district court seeking a declaration that DRBC has no authority to review natural gas exploration and production activities, even if those activities employ hydraulic fracturing techniques. The Delaware Riverkeeper Network intervened on the side of the DRBC. Ultimately, the federal district court dismissed the case. The plaintiff landowner has a right to appeal to the Court of Appeals for the Third Circuit and has done so. The case has been fully briefed before the Third Circuit by the parties to the case and by two amici ("friends of the court"), who may file briefs even if they are not parties. Those amici included Damascus Citizens for Sustainability, which filed a brief supporting the DRBC's position, and a group of Pennsylvania legislators, who filed a brief supporting the landowner's position. The court will decide whether to hold oral argument. If oral argument takes place, it most likely will be held during the week of November 6. A decision by the Third Circuit will follow whenever the court decides to rule. At this point, the parties are waiting for further instructions from the Third Circuit.

Statement of Lieutenant Colonel Kristen N. Dahle. LTC Dahle explained that Mr. Hank Gruber, the North Atlantic Division Deputy Chief of the Planning and Policy Division, would vote in her place on the project review applications to remove any perception of conflict regarding possible future permitting actions in which the Philadelphia District regulatory team might be involved.

Chairwoman Orr recognized Mr. Gruber as the voting representative of the United States for the agenda item concerning project review applications.

Project Review Applications. Mr. Kovach of the DRBC staff reported that the Commission had received comments on three (3) of the 25 draft dockets that were the subject of the Commission's duly noticed public hearing on August 16, 2017. He noted that the hearing on item number 6, the draft docket for Catasauqua Borough (D-1986-032 CP-3), had been postponed to allow additional time for review.

The Commission received comments on hearing items (1) Mount Airy #1, LLC (D-1977-058-5) wastewater treatment plant; (24) DTE Midstream Appalachia, LLC (D-2016-008-1) Birdsboro Power Facility; and (25) Sunoco Logistics Partners, LP (D-2016-010-1) pipeline and navigational channel. In consultation with the Commissioners, staff developed comment and response documents on all three.

Regarding hearing item number (1) the draft docket for Mount Airy #1, LLC (D-1977-058-5), the comments received were from the Brodhead Watershed Association and a neighbor, Ms. Edie Stevens. The commenters requested that the Commission require UV disinfection in lieu of chlorine disinfection, and the use of a non-discharge alternative – spray-irrigation – in place of the

discharge of wastewater treatment plant effluent to surface water. The application was for a renewal docket. Mr. Kovach explained that the requested changes are not in accordance with DRBC regulations. He noted that if a new wastewater treatment plant or substantive alterations or additions to an existing plant are proposed involving a discharge to DRBC Special Protection Waters (SPW), then UV disinfection and the analysis of non-discharge alternatives would be required. The Mt. Airy plant is an existing facility proposing no substantive alterations or additions, however, and it discharges to an intra-state stream that is not eligible for SPW designation because it is not within a national park or part of a national wild and scenic river. Accordingly, the requirements proposed by the commenters could appropriately be imposed only by the state permitting agency if required by state law.

With respect to hearing item (24), the draft docket for DTE Midstream Appalachia, LLC (D-2016-008-1), staff received comments from the Delaware Riverkeeper Network (DRN) alleging that this project and the Birdsboro Power Facility, were improperly segmented and should have been reviewed as a single project. Mr. Kovach noted that the docket for Birdsboro Power had been approved last year. He stated that the DTE pipeline project and the Birdsboro Power Facility project had been treated separately from the outset, because they were owned and to be operated by separate entities and had been applied for at separate times. That the two projects are connected has been no secret. Mr. Kovach noted that the DTE pipeline in and of itself would not require the Commission's review. However, staff elected to review it because of its relationship to the Birdsboro Power project. He noted that the Compact expressly provides that "any work, service or activity which is separately planned, financed, or identified by the commission ... for the conservation, utilization, control development or management of water resources which can be established or utilized independently or as an addition to an existing facility, can be considered as a separate entity for purposes of evaluation." He explained that the comments focused primarily on pipeline safety and risk assessment, which are not aspects of DRBC regulation.

DRN also commented on hearing item (25), the draft docket for Sunoco Logistics Partners, LP (D-2016-010-1), a pipeline replacement project for which DRBC issued an emergency approval. Mr. Kovach explained that the docket would formalize the emergency approval in accordance with Commission regulations. DRN commented that the emergency approval process does not allow for public comment. Mr. Kovach explained that in the instance of an emergency approval, the opportunity for public comment is provided in the normal course of docket review. The applicant proceeds with the project at its own risk, because the Commission reserves its discretion to disapprove the project. DRN also objected that portions of the replaced Sunoco pipeline would remain buried in the Delaware riverbed, where they have been for many years. Only the portion of the pipeline located within and slightly beyond the boundaries of the navigation channel will be removed, because the state agencies reviewing this project determined that leaving the remaining pipeline in place, once it has been cleaned and properly abandoned, will best limit disturbance to the stream bed.

Mr. Kovach stated that staff recommended no material changes to the draft dockets be made in response to the public comments. He recommended that the Commissioners approve hearing items 1 through 25, with the exception of postponed hearing item number 6.

Ms. Orr thanked Mr. Kovach and requested a motion to approve the 24 dockets that had been subjects of the public hearing on August 16. Mr. Gruber so moved, and Ms. Coats seconded his

motion. Hearing no further comments, the 24 docket applications were approved by unanimous vote. Ms. Orr remarked that at the discretion of the federal government, LTC Dahle might wish to re-join the Commissioners. She did so.

Adjournment. Ms. Orr asked the Commissioners and staff whether there were any other matters to be considered that day. Hearing none, she thanked Mr. Tambini and staff for their excellent work, both in preparation for today's meeting and on an ongoing basis. Ms. Orr requested a motion to close the business meeting prior to the commencement of the Open Public Comment session. Mr. Klotz so moved, Mr. Kennedy seconded his motion, and the business meeting was adjourned by unanimous vote at 11:40 a.m.

Audio Recording. An audio recording of the public hearing of August 16, 2017 and of the business meeting of September 13 are on file with the Commission Secretary. A description of each of the applications for the dockets approved during the Business Meeting of September 13, 2017 is provided as an attachment to these Minutes.

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

/s/ Pamela M. Bush

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

## ATTACHMENT

### DESCRIPTIONS OF PROJECTS APPROVED BY THE COMMISSION DURING THE BUSINESS MEETING OF SEPTEMBER 13, 2017

*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. All the projects approved by the Commission on September 13, 2017 were subjects of a duly noticed public hearing on August 16, 2017, apart from hearing item number 6, Catasauqua Borough, D-1986-032 CP-3, for which consideration of the docket had been postponed allowing additional time for review, although publication had occurred before the decision to postpone was reached. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on September 13 are listed below, in the order in which the dockets were presented at the August 16 public hearing.

A. *Renewals with No Substantive Changes (hearing items 1 through 5, and 7 through 19).*

1. Mount Airy #1, LLC, D-1977-058-5. An application to renew the approval of the existing 0.22 million gallons per day (mgd) Mount Airy wastewater treatment plant (WWTP) and its discharge. The WWTP will continue to discharge treated effluent to Forest Hills Run, which is a tributary of Paradise Creek which is a tributary of Brodhead Creek, at River Mile (RM) 213.2 - 10.5 - 4.4 - 2.8 (Delaware River - Brodhead Creek - Paradise Creek - Forest Hills Run). The WWTP is located within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in Paradise Township, Monroe County, Pennsylvania.
2. Arcelor Mittal Plate, D-1979-026-3. An application to renew the approval of the applicant's existing 1.2 mgd Conshohocken industrial wastewater treatment plant (IWTP) and its discharge. The IWTP will continue to discharge treated industrial wastewater effluent and non-contact cooling water (NCCW) to the Schuylkill River at RM 92.47 - 21.5 (Delaware River - Schuylkill River) in Plymouth Township, Montgomery County, Pennsylvania.
3. Chester County Department of Facilities Management, D-1983-015 CP-5. An application to renew the approval of the applicant's existing 0.2 mgd Pocopson Home and Prison WWTP and its discharge to land via spray-irrigation. The WWTP will continue to discharge treated effluent to 34.1 acres of spray-irrigation fields located in the Pocopson Creek Watershed in Pocopson Township, Chester County, Pennsylvania.
4. Robeson Township Municipal Authority, D-1983-034 CP-4. An application to renew the approval of the applicant's existing 0.3 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Schuylkill River at RM 92.47 - 65.8 (Delaware River - Schuylkill River) in Robeson Township, Berks County, Pennsylvania.
5. Aqua Pennsylvania, Inc., D-1985-055 CP-4. An application to renew the approval of an existing groundwater withdrawal (GWD) and decrease the allocation from 5.5 million gallons per 30 days (mg/30 days) to 5.0 million gallons per month (mgm) to supply the applicant's public water supply system from the existing Lily Street Well No. 1, Lily Street Well No. 2 and Anchorage Well No. 2. The application also requests to add new wells Lily Street Well No. 2 and Anchorage Well No. 2 to the applicant's public water supply system. Anchorage Well No. 2 has replaced the old Anchorage Road Well and Lily Street Well No. 2 will replace Lily Street Well No. 1 once it is operational. The project wells are located in the Marcellus Formation in the Buckwha Creek Watershed, 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 Ross and Hamilton townships, Monroe County, Pennsylvania.
6. Catasauqua Borough, D-1986-032 CP-3. *Consideration of this docket has been postponed to allow additional time for review.*

7. Bath Borough Authority, D-1988-051 CP-3. An application to renew the approval to upgrade the applicant's existing 0.51 mgd WWTP and its discharge by constructing a new 0.51 mgd WWTP to replace the existing WWTP. DRBC Docket No. D-1988-051 CP-2 approved the WWTP reconstruction. The WWTP will continue to discharge treated effluent to Monocacy Creek, which is a tributary of the Lehigh River, at RM 183.7 - 11.5 - 13.2 (Delaware River - Lehigh River - Monocacy Creek) 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 Bath Borough, Northampton County, Pennsylvania.
8. Brodhead Creek Regional Authority, D-1991-001 CP-4. An application to modify DRBC Docket No. D-1991-001 CP-3 to approve an expansion of the docket holder's public water supply service area into a limited area of Paradise Township, Monroe County. The docket is also modified to update the docket holder's increase in its bulk water purchase from East Stroudsburg Borough from a monthly maximum average of 0.250 mgd to 0.400 mgd in accordance with the amended water service agreement between East Stroudsburg Borough and the docket holder. No increase in the previously approved combined total allocation of 217.97 mgm from the existing water sources is requested. The existing project withdrawals are located in the Brodhead Creek and McMichael Creek watersheds, within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in Stroud Township, Monroe County, Pennsylvania.
9. Freeland Borough Municipal Authority, D-1994-063 CP-3. An application to renew the approval of a GWD project to continue to supply up to 17.2 mgm of water to the applicant's public water supply system from existing Wells Nos. 9, 12 and 14 (also known as Well No. 17). The wells are completed in the Mauch Chunk Formation in the Sandy Run Watershed, in Freeland Borough and Foster Township, Luzerne County, Pennsylvania, 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.
10. North Coventry Municipal Authority, D-1997-001 CP-4. An application to renew the approval of the applicant's existing 2.01 mgd WWTP and its discharge. The WWTP will continue to discharge to the Schuylkill River at RM 92.47 - 52.0 (Delaware River - Schuylkill River), in North Coventry Township, Chester County, Pennsylvania.
11. Aqua Pennsylvania Wastewater, Inc., D-2001-054-3. An application to renew the approval of the applicant's existing 0.145 mgd Little Washington WWTP and its discharges to subsurface disposal beds and surface water. The WWTP will continue to discharge treated effluent to subsurface disposal beds and to Culbertson Run, which is a tributary of East Branch Brandywine Creek, which is a tributary of Brandywine Creek, which is a tributary of the Christina River, at RM 70.7 - 1.8 - 20.0 - 14.2 - 2.3 (Delaware River - Christina River - Brandywine Creek - East Branch Brandywine Creek - Culbertson Run) in East Brandywine Township, Chester County, Pennsylvania.

12. Spring Ford Country Club, D-2006-016-2. An application to renew the approval of an existing groundwater and surface water withdrawal of up to 22.32 mgm to irrigate the applicant's golf course from existing Well No. 1 and an existing intake on an unnamed tributary (UNT) to Mingo Creek. The approval will also renew the GWD from Well No. 1 of up to 11.57 mgm. Well No. 1 is completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Ground Water Protected Area (GWPA) in the Mingo Creek Watershed in Limerick Township, Montgomery County, Pennsylvania.
13. Vogel Farm and Broad Mountain Spring Water Companies, D-2007-010-2. An application to renew the approval of an existing GWD of up to 6.47 mgm to supply the applicant's bottled water facilities from existing Wells Nos. VF-PW-1, VF-PW-2 and BM-PW-1. The requested allocation is not an increase from the previous allocation. The project wells are completed in the Mauch Chunk Formation. The project is located in the Quakake Creek Watershed in Packer Township, Carbon County, Pennsylvania 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.
14. Upper Makefield Township, D-2007-025 CP-3. An application to renew the approval of the applicant's existing 0.055 mgd The Enclave WWTP (previously referred to as the Gray Tract WWTP) and its discharge. The WWTP will continue to discharge treated effluent to Houghs Creek at River Mile 140.5 - 3.7 (Delaware River - Houghs Creek), 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 Upper Makefield Township, Bucks County, Pennsylvania.
15. Pennsylvania American Water Company, D-2008-002 CP-3. An application to renew the approval of the applicant's existing 6.0 mgd Yardley Water Filtration Plant (WFP) and its discharge of up to 0.402 mgd of filter backwash and settling lagoon supernatant. The WFP will continue to discharge to Brock Creek, which is a tributary of Buck Creek, at RM 138.0 - 0.54 - 1.6 (Delaware River - Buck Creek - Brock Creek), 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 Lower Makefield Township, Bucks County, Pennsylvania.
16. Keystone Mobile Home Park, D-2008-007 CP-3. An application to renew the approval of the applicant's existing 0.0375 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Lehigh River at River Mile 183.66 - 26.4 (Delaware River - Lehigh River), 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 North Whitehall Township, Lehigh County, Pennsylvania.
17. Aqua Pennsylvania, Inc., D-2008-025 CP-3. An application to renew the approval of the applicant's existing 6.0 mgd Ridley Creek WFP and its discharge of up to 0.150 mgd of filter backwash. The WFP will continue to discharge to Ridley Creek at RM 83.80 - 8.61

(Delaware River - Ridley Creek), in Middletown Township, Delaware County, Pennsylvania.

18. London Grove Township Municipal Authority, D-2008-033 CP-3. An application to renew the approval of the applicant's existing 0.143 mgd WWTP and its discharge to land via spray-irrigation. The WWTP will continue to discharge treated effluent to the Kauffman Farms spray fields, located in the Middle Branch White Clay Creek Watershed, in London Grove Township, Chester County, Pennsylvania.
19. Lower Bucks County Joint Municipal Authority, D-2012-001 CP-2. An application to renew the approval of the applicant's existing 16.0 mgd WFP and its discharge of up to 0.7 mgd of filter backwash. The WFP will continue to discharge directly to Delaware River Water Quality Zone 2 at RM 122.3, in Tullytown Borough, Bucks County, Pennsylvania.

*B. Renewals with Substantive Changes (hearing items 20 through 25).*

20. Giorgio Foods, Inc., D-1988-043-6. An application to upgrade the docket holder's existing 0.5 mgd IWTP. The upgrade consists of replacing the existing filter building with a new chilled water plant, replacing the existing outfall pipe with an insulated effluent pipe, and appurtenant improvements. The IWTP will remain at 0.50 mgd and continue to discharge treated effluent to Willow Creek, which is a tributary of Maiden Creek, which is a tributary of the Schuylkill River, at RM 92.47 - 86.7 - 0.6 - 2.4 (Delaware River - Schuylkill River - Maiden Creek - Willow Creek), in Maiden Creek Township, Berks County, Pennsylvania.
21. Pennsylvania American Water Company, D-1990-028-3. An application to approve an upgrade to the applicant's existing Marcel Lakes WWTP and its discharge. The upgrade consists of replacing the existing sequencing batch reactor (SBR) decanters and ultra-violet (UV) disinfection system, converting the tertiary clarifier to an effluent equalization basin, adding a polymer feed system and a re-aeration system, and replacing the existing aerobic digesters. The WWTP is designed and will remain designed for an annual average flow of 0.1 mgd. The WWTP will continue to discharge treated effluent to Dingmans Creek at RM 239.5 - 7.2 (Delaware River - Dingmans Creek) within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in Delaware Township, Pike County, Pennsylvania.
22. Borough of Fleetwood, D-1995-058 CP-3. An application to renew the approval of an existing GWD and decrease the allocation from 54.39 mg/30 days to 22.61 mgm to supply the applicant's public water supply system from existing Wells Nos. 1, 2, 6, 10, 11, 12, 13, 14, 15 and Springs Nos. 10, 11 and 12. The requested allocation is not an increase from the previous allocation. The project wells are completed in Granitic Gneiss, except for Wells Nos. 13 and 15, which are completed in the Leithsville Formation and Allentown Formation, respectively. The project is located in the Willow Creek Watershed in the Borough of Fleetwood, Ruscombmanor and Richmond Townships, Berks County, Pennsylvania.



23. Pennsylvania American Water Company, D-2006-025 CP-2. An application to approve new Well No. 5A for inclusion into the applicant's public water supply system and to renew the approval of an existing GWD of up to 10.26 mgm from Well No. 3 and new Well No. 5A. Existing Well No. 5 is being replaced by Well No. 5A due to screen failure in Well No. 5. The requested allocation is not an increase from the previous allocation. The project wells are completed in Quaternary sands and gravels in the Delaware River Watershed, within the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which is classified as Special Protection Waters, in Westfall Township, Pike County, Pennsylvania.
  24. DTE Midstream Appalachia, LLC, D-2016-008-1. An application to approve the construction of the Birdsboro pipeline project consisting of approximately 13.2 miles of new 12-inch diameter natural gas pipeline and associated above-ground facilities including a meter/interconnect site and pig launcher, pig receiver and four mainline valves. The project is designed to provide approximately 79,000 dekatherms per day of natural gas transportation capacity which will be used to fuel the proposed Birdsboro Power facility. The pipeline will extend from the existing Texas Eastern Transmission Company pipeline in Rockland Township to the proposed Birdsboro Power facility in the Borough of Birdsboro. The project is located within the Schuylkill River Watershed in the townships of Rockland, Oley, Amity, Union and the Borough of Birdsboro, Berks County, Pennsylvania.
  25. Sunoco Logistics Partners, LP, D-2016-010-1. An application to approve the relocation and replacement of approximately 6,500 linear feet of existing 8-inch and 12-inch diameter liquid petroleum pipelines to provide adequate burial and clearance distance under the Delaware River federal navigation channel meeting United States Army Corps of Engineers (USACE) requirements. Recent dredging in the Delaware River performed by the USACE has left the existing pipelines with inadequate cover. Both pipelines will be installed in a single horizontal directional drill. Following the installation of the new pipelines, the existing pipelines within and adjacent to the navigation channel will be removed and the remainder of the former pipelines in the Delaware River will be cleaned, plugged and abandoned in place. The pipelines cross the Delaware River at RM 90.6 between Tinicum Township, Delaware County, Pennsylvania and West Deptford Township, Gloucester County, New Jersey. The Commission issued an Emergency Certificate for the replacement project on December 7, 2016 to allow sufficient time for the applicant to satisfy USACE's project completion date.
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