

DELAWARE RIVER BASIN COMMISSION

MEETING OF SEPTEMBER 15, 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
Lt. Colonel Philip M. Secrist, Vice Chair, United States
Dana Aunkst, Second Vice Chair, Pennsylvania
John Plonski, New Jersey
Fred Sickels, New Jersey
Mark Klotz, New York
Peter Freehafer, New York

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

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

Minutes. The Minutes for the meeting of May 5, 2010 along with the Minutes for the July 14, 2010 meeting were approved unanimously on a motion by Mr. Plonski, seconded by Mr. Klotz.

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

- *DRBC Notice of Proposed Rulemaking and Public Hearing.* A public hearing on the Commission's Amendments to its Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and to Extend These Criteria to Delaware Bay. September 23, 2010 at 2:30 p.m. in the Goddard Conference Room of the Commission's West Trenton office building.
- *DRBC Water Quality Advisory Committee Meeting.* Tuesday, October 19, 2010 at 9:30 a.m. in the Goddard Conference Room. Staff contact – Donna Barnett – (609) 883-9500, extension 308.

- *DRBC Water Management Advisory Committee Meeting.* Wednesday, October 20, 2010 at 10:00 a.m. in the Goddard Conference Room. Staff contact – Donna Barnett – (609) 883-9500, extension 308.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, November 17, 2010 at 10:00 a.m. in the Goddard Conference Room. Staff contact – Laura Tessieri – (609) 883-9500, extension 304.
- *DRBC Water Management Advisory Committee Meeting.* Tuesday, February 1, 2011 at 10:00 a.m. in the Goddard Conference Room. Staff contact – Donna Barnett – (609) 883-9500, extension 308.

Hydrologic Conditions. Ms. Shallcross offered the following report on hydrologic conditions in the Basin:

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period January 1 through September 13, 2010 was 29.86 inches or 0.68 inches below normal. The observed precipitation for the Delaware River Basin above Trenton, New Jersey for the same period was 29.84 inches or 1.80 inches below normal and for Wilmington, Delaware for this period, 28.15 inches or 2.27 inches below normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in August 2010 was 2,489 cubic feet per second (cfs) or 117 percent of the long-term average for the month. For the same period, the average observed streamflow of the Delaware River at Trenton, New Jersey was 3,804 cfs, or 75 percent of the long-term average for the month.

For the period of September 1-13, the average observed streamflow of the Delaware River at Montague was 2,075 cfs, or 96 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 2,955 cfs, or 59 percent of the long-term average for the month.

In the Lower Basin, as of September 14, 2010, Beltzville Reservoir contained 10.19 billion gallons (bg) usable, or 78.4 percent of usable storage, and Blue Marsh contained 5.08 bg usable, or 78.2 percent of summer pool usable storage. As of September 13, Merrill Creek contained 14.97 bg usable, or 95.4 percent of usable storage.

In the Upper Basin, as of September 14, 2010, Pepacton Reservoir contained 98.168 bg usable or 70.0 percent of usable storage. Cannonsville contained 45.523 bg usable, or 47.6 percent of usable storage. Neversink contained 24.711 bg usable or 70.7 percent of usable storage. The total New York City Delaware Basin reservoir storage was 168.402 bg usable or 62.2 percent of usable storage.

During the month of August 2010, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the “salt line,” ranged from River Mile (RM) 73 to RM 80. The normal location of the salt line during August is RM 77, a location which is 1 mile

downstream of the Delaware-Pennsylvania state line. As of September 13, the salt line was located at RM 84, which is five miles upstream of the normal location for September.

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

- *Flood Warning Systems.* An improvement to the Basin's flood warning system goes into effect this month. Inundation maps prepared by the U.S. Army Corps of Engineers for portions of the lower Delaware River may now be accessed through the Advanced Hydrologic Prediction Service ("AHPS") of NOAA-National Weather Service. These inundation maps are the first to be linked to AHPS for the Mid-Atlantic region. They are associated with river gages at Trenton, New Hope, Stockton, Frenchtown and Riegelsville and provide data for both Pennsylvania and New Jersey. If you know the predicted flood crest at the gage location, you will now be able to see the extent and depth of water associated with the crest. This information greatly enhances the communication of flood risk and allows users to better mitigate flood impacts. The enhancement came about through the efforts of DRBC's Interstate Flood Mitigation Task Force, created after the floods of 2004, 2005 and 2006.
- *Flood Warning Presentations for Local Emergency Managers.* Along with roll-out of the inundation maps for the Lower Delaware, DRBC and other agencies and organizations are co-hosting presentations that are specifically tailored for county and local emergency managers. DRBC's partners in these events are NOAA- National Weather Service, the U.S. Geological Survey, the Corps of Engineers, and the Nurture Nature Foundation (creator of the Flood Project, located in Easton, Pennsylvania). An opportunity for local emergency response managers to learn about the latest flood warning tools, the presentations will take place on September 21, 22 and 28 in Easton, PA, Lambertville, NJ and Narrowsburg, NY, respectively. This outreach effort was funded through a federal appropriation for the National Weather Service, of which a portion was allocated to the DRBC for outreach and education. Unfortunately, the request submitted for FY 2011 was not approved, so there are no current plans to expand this effort.
- *Natural Gas Regulations.* Ms. Collier said she had hoped to announce that the draft regulations were completed and posted on the web site and that a period for public review and comment was being initiated, but more time is needed. She said that getting draft regulations out to the public as soon as possible is important, as there is a high level of interest and uncertainty among all interested parties. However, the issues are complicated, and she believes it is better to "get it right" than to rush ahead prematurely. The Commission seeks to protect the Basin's water resources and avoid duplication of state programs that are already in place. The delay in publishing draft regulations will not in any way reduce the time allowed for public review and comment after publication occurs.

General Counsel's Report. A transcript by a court reporter was made of the entire General Counsel's report. This segment of the meeting addressed several matters, one of which involved a short hearing. Copies of the transcript can be obtained from the Commission Secretary. A brief statement of the subject matter and outcomes is provided below.

- M&M Stone Company litigation. Mr. Warren reported that dismissal of all defendants in the M&M Stone litigation was affirmed by the Court of Appeals for the Third Circuit. The Commission and other defendants prevailed in that matter.
- Lambertville Municipal Utilities Authority (LMUA) Show Cause Order. The Commission issued LMUA an order to show cause in connection with the requirement that it apply for a docket to approve changes to its wastewater treatment plant. The appearance was postponed until December. Mr. Warren noted that he hoped an agreement with LMUA could be reached before then.
- Proposed Diffuser for DuPont Chambers Works Outfall. DuPont requested a hearing in connection with a letter from the Executive Director dated August 11, 2010 relating to the dilution factor and mixing zone associated with a proposed diffuser. The diffuser, to be constructed at the outfall of the Chambers Works facility in Deepwater, New Jersey, is currently undergoing review by the Commission in the context of a docket renewal. DuPont believes a higher dilution factor than specified in the August 11, 2010 letter could be achieved within the Commission's regulatory mixing zone. Mr. Warren noted that this issue had arisen in the context of an ongoing review process and that additional issues could arise during that process.

On a motion by Mr. Aunkst seconded by Mr. Klotz, the Commission unanimously agreed to defer a ruling on DuPont's request in order to allow Mr. Warren and the staff, in consultation with DuPont, an opportunity to determine whether a separate hearing on the issue would actually be necessary. Mr. Warren advised that if agreement could not be reached, then DuPont should be given an opportunity in December to explain its position directly to the Commissioners, who could then make a decision as to whether a separate hearing on the matter should be granted.

- Waste Management Protective Appeal of Color Determination. Waste Management filed by hand moments before the start of the business meeting a request for hearing challenging a determination on color issued by the Executive Director in August 2010. It was agreed that any decision on the request would be deferred until December to allow time for the DRBC staff and staff of Waste Management to work out a mutually satisfactory resolution.
- Three Issues Related to Natural Gas Exploratory Well Projects.
 - Request for Hearing on Hess Exploratory Wells. On a motion by Mr. Aunkst, seconded by Lt. Col. Secrist, the Commission unanimously granted a request by the Delaware Riverkeeper Network and Damascus Citizens for Sustainability for a hearing on the Executive Director's Amended Supplemental Determination of July 23, 2010 (the "ASEDD"). The ASEDD allowed two natural gas exploratory well projects sponsored by Hess Corporation to proceed without Commission review under the "grandfathering" provision of the Executive Director's Supplemental Determination issued on June 14, 2010 (the "SEDD"). The approved motion directed that the hearing on the Hess wells be consolidated with other hearings challenging the June 14 SEDD, which the Commissioners granted during their public meeting of July 14, 2010.

- Request for Hearing on Stone Energy Water Withdrawal Docket. On a motion by Mr. Plonski, seconded by Lt. Col. Secrist, the Commission voted unanimously to deny a request for hearing by the Delaware Riverkeeper Network (DRN) on the surface water withdrawal docket approved by the Commission for the Stone Energy Corporation during the Commission's meeting of July 14, 2010. Mr. Warren explained that the denial meant that DRN had exhausted its administrative remedies and would need to seek judicial review if it objected to the action.
- Request for Supersedeas by Delaware Riverkeeper Network (DRN) and Damascus Citizens for Sustainability (DCS). DRN and DCS requested a supersedeas, which would stop the construction of natural gas exploratory wells grandfathered by the Executive Director's Supplemental Determination of June 14, 2010 and Amended Supplemental Determination of July 23, 2010, pending a decision by the Commission in the consolidated adjudicatory hearing granted on July 14, 2010. That hearing, tentatively scheduled for December 2010, will take place before Judge Edward N. Cahn, the hearing officer appointed by Dr. Howarth in her capacity as Commission Chair. Judge Cahn is empowered to hear testimony and offer his recommendations to the Commissioners before they render a decision.

In support of the request for supersedeas, the Commissioners heard testimony from two witnesses for DCS, after which they heard from DRN's attorney Beth Brown. In opposition to the request, they heard from Kenneth Komoroski, counsel for Newfield Appalachia, PA, LLC ("Newfield") on behalf of the natural gas exploratory well project sponsors – Newfield and Hess Corporation – and from David Mandelbaum on behalf of the Northern Wayne Property Owners Alliance (NWPOA), whose members have leased their land to Newfield and Hess. Jeff Zimmerman, counsel for DCS, spoke in rebuttal. A transcript of all testimony is available on request from Commission Secretary Pam Bush.

On a motion by Mr. Plonski, seconded by Mr. Aunkst, New Jersey, New York, Pennsylvania and the Federal Government voted to deny the request for supersedeas. The motion carried by a vote of four members, with Delaware abstaining on procedural grounds.

Public Hearing: Project Review Applications. Project Review Section Supervisor Chad Pindar presented 17 dockets for the Commission's consideration in three categories: Category A, consisting of docket renewals involving no substantial changes (hearing items 1 through 6); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 7 through 10); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 11 through 17).

A. *Renewals with No Substantive Changes (hearing items 1, 2, 3, 4, 5 and 6).* No comments were submitted on these projects.

1. Upper Southampton Municipal Authority, D-1965-023 CP-2. An application for the renewal of a groundwater withdrawal project to supply the docket holder's water supply

distribution system from existing Wells Nos. 3, 7, and 9. The docket holder requested an allocation of 13.53 million gallons per month (mgm). The project wells were constructed in the Stockton Formation and are located in the Southampton and Mill Creek Watersheds in Upper Southampton Township, Bucks County, Pennsylvania, in the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

2. Abington Township, D-1973-191 CP-4. An application for renewal of the Abington Township Wastewater Treatment Plant (WWTP). The existing WWTP will continue to discharge treated effluent at an annual average flow of 3.91 million gallons per day (mgd) to Sandy Run, a tributary of the Wissahickon Creek, which drains to the Schuylkill River. The facility is located in Upper Dublin Township, Montgomery County, Pennsylvania.
3. Lower Moreland Township Authority, D-1987-052 CP-3. An application for the renewal of an existing 0.279 mgd discharge from the Chapel Hill WWTP to an unnamed tributary of Southampton Creek at River Mile 109.75 – 16.1 – 0.71 – 0.5 (Delaware River – Pennypack Creek – Southampton Creek – UNT). The Chapel Hill WWTP is located in Lower Moreland Township, Montgomery County, Pennsylvania.
4. Manwalamink Water Company, D-1989-050 CP-5. An application for renewal of a groundwater withdrawal project to continue to supply up to 15 mgm of groundwater to the public water supply system from existing Wells Nos. 1, 2, 3, 5, and 6. Wells Nos. 1 and 2 are completed in the Pleistocene alluvial sand and gravel aquifer. Wells Nos. 3, 5, and 6 are completed in the Ridgeley-Coeymans Formation. The project is located in the Shawnee Creek and Delaware River watersheds in Smithfield Township, Monroe County, Pennsylvania within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters.
5. Waste Management of Pennsylvania, D-1991-090-2. An application for the renewal of a surface water withdrawal project to continue to supply 6 mgm of water to the applicant's landfill operations from the existing Intake on Manor Lake. The project is located in the Delaware River Watershed in Tullytown and Falls townships, Bucks County, Pennsylvania.
6. Dan Schantz Farm and Greenhouses, D-1999-014-2. An application for the renewal of a groundwater withdrawal project to continue the withdrawal of up to 3.57 mgm of water for irrigation and potable water supply from eight existing wells located in the Brunswick Formation. The project is located in the Hosensach – Indian Creek Watershed in Lower Milford Township, Lehigh County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

Mr. Pindar recommended that the Commissioners approve hearing items 1 through 6. No questions or comments were offered, and on a motion by Lt. Col. Secrist, seconded by Mr. Aunkst, hearing items 1 through 6, consisting of docket renewals with no substantive changes, were approved by unanimous vote.

B. *Renewals with Substantive Changes (hearing items 7, 8, 9 and 10).* No comments were submitted to the Commission on these projects.

7. Borough of Palmerton, D-1964-028 CP-2. An application for approval of an upgrade of the existing Palmerton Borough WWTP. The upgrade includes replacing the existing contact stabilization activated sludge treatment system with a sequencing batch reactor (SBR) treatment system. No increase in the design annual average flow of 0.75 mgd is proposed. The WWTP will continue to discharge to the Aquashicola Creek, a tributary of the Lehigh River, and is located 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. The facility is located in the Borough of Palmerton, Carbon County, Pennsylvania.
8. Upper Gwynedd Township, D-1991-088 CP-6. An application for approval of a modification of the Upper Gwynedd Township WWTP by the addition of a Biomag™ treatment process. The process entails adding magnetite to the aeration tanks in order to enhance solids settling and BOD and nutrient removal. 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.
9. Plumstead Township, D-1997-033 CP-3. An application to approve the addition of new Well No. LG-6 to the applicant's 11 existing wells and to increase the applicant's total groundwater withdrawal allocation from all wells from 15.31 million gallons per 30 days (mg/30 days) to 23.02 mgm. The project wells are located in the Brunswick Group, Lockatong Formation, and Stockton Formation in Plumstead Township, Bucks County, Pennsylvania within four subbasins of the Southeastern Pennsylvania Ground Water Protected Area: Tohickon-Deep Run, Tohickon-Geddes-Cabin Runs, Pine Run, and North Branch Neshaminy Creek.
10. Borough of Bryn Athyn, D-2008-013 CP-3. An application for approval to modify the existing 0.08 mgd New Church WWTP. Modifications include the addition of an equalization tank and a sludge holding tank, to be incorporated into the existing treatment design. The New Church WWTP will continue to discharge to an unnamed Tributary of Huntingdon Valley Creek at River Mile 109.75 – 12.02 – 1.11 – 0.17 (Delaware River – Pennypack Creek – Huntingdon Valley Creek – UNT) in Bryn Athyn Borough, Montgomery County, Pennsylvania. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

Mr. Pindar recommended that the Commission approve hearing items 7, 8, 9 and 10, consisting of renewal projects with substantive changes. No questions or comments were offered, and on a motion by Mr. Aunkst, seconded by Lt. Col. Secrist, hearing items 7, 8, 9 and 10 were approved by unanimous vote.

C. *New Projects (hearing items 11, 12, 13, 14, 15, 16 and 17).* These seven projects comprised new discharges or withdrawals or constituted projects new to the Commission.

11. Premcor Refining Group, D-2009-023-1. An application for approval to increase the dredging depth of the facility's Entrance Channel and Turning Basin by five feet (to a new depth of -37 ft. MLW) and of the Pier Berthing Area by three feet (to a new depth of -40 ft. MLW). Approximately 650,000 cubic yards of new material will be dredged to allow for larger ships to traverse and dock at the facility. The project is located in Water Quality Zone 5 of the Delaware River at River Mile 61.8, in Delaware City, New Castle County, Delaware.

The Commission received a comment advocating that additional seasonal restrictions be placed on dredging to protect sandbar shark, blue crab and horseshoe crab. On the basis of consultations with natural resource agency personnel, DRBC staff concluded that the species noted by the commenter are not prevalent in the project area. Thus, no additional restrictions on dredging windows are proposed.

12. Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station, D-2009-003-1. An application for approval of a surface water withdrawal of up to 1,147.25 mgm from an existing surface water intake to be used for once-through non-contact cooling of land-based test sites (LBTS) for ship systems associated with the Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station (NSWCCD-SSES). The project intake is located in the Navy Reserve Basin, which is connected by a channel to the Schuylkill River, one-half mile upstream of the confluence of the Schuylkill and Delaware rivers. The Navy Reserve Basin is located in the City of Philadelphia, Pennsylvania, in the Schuylkill River Watershed.
13. City of Dover, D-2009-014 CP-1. An application for approval of an existing 0.360 mgd discharge of cooling tower blowdown from Outfalls Nos. 004 and 005 from the applicant's McKee Run Electric Generating Station. The project outfalls are located at River Mile 23.70 – 14.36 – 0.34 (Delaware River – Saint Jones River – McKee Run) in the City of Dover, Kent County, Delaware.
14. Reading Area Water Authority – Maiden Creek, D-2010-009 CP-1. An application for approval of an existing 4.3 mgd discharge from the Maiden Creek Water Filtration Plant (WFP). The discharge consists of filter backwash, pump seal water, chlorine analyses, and diesel generator cooling water from the WFP. Modifications to the backwash treatment process are proposed that will not increase the capacity of the WFP. The project discharges to Maiden Creek at River Mile 92.47 – 85.63 – 0.24 (Delaware River – Schuylkill River – Maiden Creek) in Ontelaunee Township, Berks County, Pennsylvania.
15. Friesland Campino Domo, D-2010-010-1. An application for approval of an existing groundwater withdrawal project to supply up to 31.95 mg/30 days of water to the applicant's vitamin production facility from existing Wells No. 1 and 2. The project is located in the Lower Walton Formation in the West Branch Delaware River Watershed in the Town of Delhi, Delaware County, New York, 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.

16. Schuylkill County Municipal Authority – Deer Lake, D-2010-019 CP-1. An application for approval to expand the existing Deer Lake WWTP from a hydraulic design of 0.229 mgd to 1.0 mgd. Treated wastewater will continue to discharge to Pine Creek at River Mile 92.47 – 106.75– 2.35 (Delaware River – Schuylkill River – Pine Creek) via Outfall No. 001, in West Brunswick Township, Schuylkill County, Pennsylvania.
17. Gloucester County Utilities Authority – Pitman Golf Course, D-2010-029 CP-1. An application for approval to construct and operate the 0.2 mgd Pitman Golf Course (PGC) WWTP. Effluent limits for the PGC WWTP will be based upon a 0.1 mgd discharge, the requested irrigation flow required at the PGC to avoid an increase in withdrawal from New Jersey Critical Water Supply Area 2. The PGC WWTP will receive flow from the Chestnut Branch Interceptor, an existing component of the wastewater collection system for the Gloucester County Utilities Authority (GCUA) WWTP, which discharges to Water Quality Zone 4 in the tidal Delaware River. After treatment, the effluent will be spray-irrigated on the Pitman Golf Course, located in Mantua Township, Gloucester County, New Jersey. Excess wastewater withdrawn from the Interceptor will be returned to the Interceptor for treatment at the GCUA's 27 mgd WWTP located in West Deptford, Gloucester County, New Jersey.

Mr. Pindar recommended that the Commissioners approve the seven new projects – hearing items 11, 12, 13, 14, 15, 16 and 17 – as proposed. No questions or comments were offered. On a motion by Mr. Aunkst, seconded by Mr. Plonski, the seven dockets were approved by unanimous vote.

As to hearing item 12 (Docket No. D-2009-003 CP-1, Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station, Surface Water Withdrawal) Barbara Arrindell of Damascus Citizens for Sustainability asked the Commissioners, how aquatic life is protected by large withdrawals such as this one. The Commission has not adopted impingement and entrainment requirements. Mr. Aunkst explained that cooling water intake structures are subject to the requirements of Section 316(b) of the Clean Water Act, implemented by EPA and the states. He noted that applicable requirements would be imposed through the facility's National Pollutant Discharge Elimination System (NPDES) permit issued by the Pennsylvania Department of Environmental Protection (PADEP). Mr. Muszynski noted that the NPDES permit was not currently up for review, and Mr. Aunkst explained that said it would be issued initially in draft. A notice will appear in the *Pennsylvania Bulletin* when the draft is available for review.

Elaine Reichart requested that the Commission track the cumulative effects of all the water withdrawals and discharges it approves on a month-to-month basis in order to provide a holistic perspective. Dr. Howarth asked if Ms. Reichart was seeking a hydrologic budget of sorts for the entire basin. Ms. Reichart said she was. Dr. Howarth thanked her and asked Ms. Collier to look into the request.

Public Hearing: Resolution Concerning Commission Review of the Southport Marine Terminal Project. This resolution provides that the Commission's review of the Southport Marine Terminal project for consistency with the Comprehensive Plan may be accomplished largely

within the context of the coordinated interagency review process led by the U.S. Army Corps of Engineers. The project would disturb approximately 116 acres for construction of a two-berth pier, and a 35-acre area within the Delaware River by dredging to a depth of 40 feet below mean water. The project is located approximately 400 feet from the edge of an existing navigation channel. It would generate an estimated one million plus cubic yards of dredge materials and would involve filling approximately 16.7 acres of an open water tidal wetland within the fresh water zone of the Delaware River. The project also entails compensating for the loss of wetlands and other shallow water habitats by implementing mitigation projects within or adjacent to freshwater tidal reaches of the Delaware River at the confluence of Neshaminy Creek. Mr. Muszynski explained that the project is reviewable in accordance with Sections 3.8 and 11.2 of the *Delaware River Basin Compact* ("the Compact") and may only proceed after it has been included in the Commission's Comprehensive Plan.

The Corps issued a public notice on August 24, 2010 to the effect that the sponsors of the Southport project have applied for approval under Section 10 of the U.S. Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344), describing the project and the process of evaluation that the Corps will undertake. Accordingly, the DRBC staff believes that all federal and local agencies, Indian tribes and other interested parties have been duly notified that an evaluation of the project's cumulative impacts, addressing conservation, economics, aesthetics, flood hazards, the floodplain, etc., is being performed. In addition, in accordance with the Coastal Zone Management Act, both the Pennsylvania Department of Environmental Protection (PADEP) and the New Jersey Department of Environmental Protection (NJDEP) will review the project for consistency with the Coastal Zone Management Plans of the respective states. The Corps has entered into agreements with the U.S. Environmental Protection Agency and the U.S. Departments of Commerce and Interior that allow those agencies to request a higher level of review if they disagree with the Corps' permitting decision.

Mr. Muszynski said that staff has furnished technical services, advice and consultation to the Corps, and consistent with Sections 1.5 and 3.9 of the *Compact*, which urge DRBC to employ existing offices and agencies of government to the extent feasible and advantageous, staff recommends that DRBC's review be undertaken in the context of the Corps review process. Staff proposes to continue to furnish technical services, advice and consultation to the Corps on the project. In the event the Corps holds a public hearing on the project, staff also proposes that it do so jointly with the Commission to meet the purposes of both. Taking into consideration the comments offered at such a hearing, the Commission staff would again provide the Corps with DRBC's written recommendations for ensuring that the Southport project is consistent with the Commission's Comprehensive Plan. Finally, upon conclusion of that interagency review process and the issuance of approvals, if appropriate, by the Corps, a resolution adopting the project into the Comprehensive Plan would be presented for the Commissioners' consideration. Mr. Muszynski summed up the approach by saying that DRBC and the Corps would conduct a joint review, use a joint hearing process and eventually bring the project back to the Commissioners for incorporation into the Comprehensive Plan.

Lt. Col. Secrist noted that a 30-day comment period on the project application began on August 24, 2010 and that no public hearing was currently scheduled. He noted that the members of the

public could, in their comments, request a hearing based on specific merits or issues. He said that if those issues were deemed to warrant airing in a hearing format, then a hearing would be granted. Dr. Howarth asked whether an environmental assessment (EA) would be used as a basis for the permit decision and Lt. Col. Secrist replied that it would.

Delaware Riverkeeper Maya van Rossum told the Commission that she had submitted written comments in advance by email, but without all of the supporting attachments. She said another set of the comments of the Delaware Riverkeeper Network (DRN), including all attachments was being provided today, along with a letter signed by eleven environmental organizations from the region, all asking the Commission to reject the proposed resolution and undertake an independent DRBC review.

Ms. van Rossum said she wished to make certain everyone present understood what the Southport project consists of. She noted that it would fill in 12.28 acres of open water in the Delaware River, 3.75 acres of nontidal wetlands, nearly an acre of tidal drainage area, and an unspecified area within the floodplain with 3 to 4 feet of fill. Ms. van Rossum said noted that the acreage for the floodplain fill was not precisely specified in the Corps' notice and she did not understand why. She added that 35 acres of the Delaware River would be dredged to a 42-foot depth and approximately 4,600 linear feet of existing shoreline would be damaged by the project. More than an acre of submerged aquatic vegetation would be lost permanently and 116 acres of riverside land would be developed. She said it would be inappropriate for the DRBC to cede any of its authority over a project of this magnitude that affects the mainstem Delaware River, especially at this early stage, when the project has not been discussed at any Commission meetings to date. She said the Commissioners could not yet have the level of knowledge or information necessary to make an informed decision. She added that according to the Commission's Rules of Practice and Procedure (RPP), projects that will "have a substantial effect on the water resources of the basin shall be submitted to the Commission for review and approval." Another section of the RPP identifies those projects that are presumed to have a substantial effect. Most notable in connection with the Southport project is inclusion of projects that involve "deepening or widening of existing streambeds, channels, anchorages or the construction of new or enlarged channels or anchorages when the nature and location of the project would affect the quantity or quality of surface waters or fish and wildlife habitat." Ms. van Rossum said that the documents DRN has reviewed in files requested through the Freedom of Information Act from a variety of natural resource agencies show that there would absolutely be an effect on the aquatic resources of the Delaware River as well as on bird life that depends on the river. She said that as to surface water quality impacts, the record to date appeared to contain little information. She noted that according to the RPP, projects are presumed to have a substantial effect if they "substantially encroach upon the stream or upon the 100-year floodplain of the Delaware River," which Ms. van Rossum said this project clearly would. She said that because of both the floodplain fill and the open waters fill the project required separate DRBC review. Ms. van Rossum noted that none of the RPP exemptions cited by staff in a past email exchange with her would apply to the project.

Ms. van Rossum added that she was concerned that the public had not had an opportunity to become sufficiently informed about the project to comment, and the draft resolution was made available only recently. She said that notwithstanding the lack of information or possibly because

of it, a number of organizations had already gone on the record with their concerns. She herself has been looking at the project for over six years. She urged that the Commissioners should not consider a resolution on the project because they had not yet had the benefit of input from the public or the agencies that might want to inform their decision. She asked that they delay consideration of the resolution to a future Commission meeting.

Ms. van Rossum said she was concerned that the resolution presumes thorough consideration and public review by other agencies or permitting processes applicable to the project. She said this was not a sound basis for denying full DRBC review of a project of this nature and would set very bad precedent when it comes to exercise of the Commission's authority. With all due respect to the Pennsylvania and Army Corps Commissioners, she said, the Commission should not be relying on them to perform a thorough and adequate review of this project. She added that every other agency looking at the project is doing so through the lens of a particular law or the particular mission of that agency and not through the lens of basin-wide effects like the DRBC is required to do. She advised the panel that as DRBC Commissioners they have a unique and irreplaceable perspective and set of regulations for projects of this nature. Moreover, she said that if the Commission were to set aside independent DRBC review of the Southport project merely because other laws apply, it would be setting aside DRBC review of all projects, because nearly every project reviewed by DRBC is subject to other state or federal laws.

Moreover, she said that the documents that she has had the opportunity to review to date show that the process associated with review of the Southport project by other agencies is being inappropriately manipulated and truncated. To the extent that other laws do apply, Ms. van Rossum said that they are not being applied fully or appropriately, and their effect as to the Southport project is being diminished. She noted that the Army Corps' public notice was issued during peak vacation time, just before the Labor Day weekend, at the start of the school year for many, that it contained very little information about the project and little time for people to get acquainted with it or to provide informed public comment. She said that with all due respect, the Corps has a habit of issuing public notices and seeking public comment during very difficult times for people, and in doing so, it does a disservice to everyone.

Ms. van Rossum said that the public notice issued by the Corps concerns Clean Water Act permitting and Rivers and Harbors Act permitting but makes only passing mention that the information submitted will also be used to inform the National Environmental Policy Act (NEPA) process. She said that this emphasis was backwards. NEPA requires an Environmental Assessment for the project because it involves federal agency action. The federal actions include both issuance of an Army Corps permit and provision by the Corps of the fill required to carry out the project, whether that fill is generated by the deepening or is taken from confined disposal facilities. The way NEPA is supposed to work, Ms. van Rossum said, is that before a federal agency makes its decision or takes an action, it performs an environmental assessment (EA). Based on the EA, the agency makes a finding of no significant impact or determines that a full environmental impact study must be performed. The NEPA process is supposed to be public and is supposed to happen first to inform the permitting decisions under the Clean Water Act and Rivers and Harbors Act. It is not intended to occur at the same time as these decisions. To undertake these processes simultaneously is an inappropriate application of two key federal laws that apply to the Southport project. As a result, Ms. van Rossum said, the environmental

analysis, thought, and comment going into the decision are diminished. She said the process was being truncated knowingly, intentionally and illegally.

Ms. van Rossum said the Army Corps had already decided it would be using a modified NEPA process for the project. It has said it will issue something called a “modified environmental assessment” or an “enhanced environmental assessment” or as she believes she saw in one document, a “super-EA”, all of which are undefined. NEPA provides for an environmental assessment – a full, cumulative analysis upon which a finding of no significant impact can be made or an EIS must be developed. It does not talk about “modified EAs” or “enhanced EAs.” Clearly this is a diversion from the normal process intended to make it easier for this project in order to lessen the amount of review applied to the project by the Army Corps of Engineers and to make it easier for the project to obtain approvals. The Army Corps also has committed to doing a piecemeal environmental review, which is not appropriate. An environmental assessment document – an EIS – is to be a comprehensive analysis that is put together as a single document, reviewed as a single document, and decided upon as a single document. Looking at bits and pieces so that the later stages can inform the earlier stages is an inappropriate manipulation of the process and a change that will affect the way the Southport project is reviewed by the Army Corps of Engineers.

Ms. van Rossum said that the draft table of contents for the EA was issued by the project sponsors approximately 18 months ago, before any environmental assessment had been performed. Yet that table of contents identified the project as the appropriate alternative, suggesting that an EA and not a full EIS would be required. She said that the Pennsylvania Department of Environmental Protection (PADEP), the other key agency required to look at the project, already has agreed that it can begin to make permitting decisions about the project with a preliminary design only 15 percent completed. Ms. van Rossum said that permitting decisions should be made on the entire project and not bits and pieces based on speculation about what will come in the future. In addition, she said that memos, emails and other PADEP staff documents over the years make clear that federal Section 404 and state Section 105 decision-making for this project should not be performed jointly. Yet, during July of this year a joint permit application was filed by the project sponsors for Section 404 and 105 permits. In Ms. van Rossum’s view, this approach constitutes a truncation or misapplication of the law that will reduce the opportunity for agency and public review and input. Ms. van Rossum said that an unbiased independent review of this project by the DRBC is needed because PADEP and the U.S. Army Corps of Engineers already have demonstrated that they are manipulating the process to make it as easy as possible for this Southport project to proceed.

Ms. van Rossum said that to the extent information on the Southport project has been made available to the public, it warrants concern for the river and river resources, including the effects of the project on hydrodynamics, sediment accumulation and erosion. She said a wide variety of fish could be adversely affected, including but not limited to spots, striped mullet, bay anchovy, hog choker, channel catfish, large-mouth bass, spot-tail shiner, American shad, blueback herring and striped bass. She said that agency documents show the project site encompasses a nursery area for American shad. The Atlantic States Marine Fishery Commission has analyzed American shad in the Delaware River and found the species to be at very depressed levels compared to historic numbers. Ms. van Rossum also identified concerns for four-spined

stickleback, mud flats, submerged and emergent vegetation, as well as warblers, songbirds and migratory birds because of the damage to riverside lands and vegetation. According to one report, the proposed area is “important for its function as a substrate for macroinvertebrates and as cover for small fish as well as a source of dissolved oxygen for the water, vegetated inter-tidal and shallow subtidal habitat.” Such habitat is not common along the Delaware River in Philadelphia, according to the report “and should be considered ecologically important along this shoreline.” The New Jersey Department of Environmental Protection and the National Marine Fisheries Service both have noted the possible presence of water celery in the project area. Water celery are vitally important because they have very high wildlife value and cannot be readily established at mitigation sites according to the National Marine Fisheries Service. Additional concerns relate to impacts to Atlantic sturgeon and the shortnose sturgeon, which is listed as endangered in the Delaware by the federal government. Listing of the Atlantic sturgeon is under consideration, according to Ms. van Rossum. While fewer than a thousand shortnose sturgeon remain in the Delaware, she said, fewer than 100 Atlantic sturgeon remain. Moreover, the Atlantic sturgeon in the Delaware has been found to be genetically unique. Ms. van Rossum said that if projects are undertaken that hurt and diminish these populations, we may be wiping out a genetically unique population of Atlantic sturgeon. The project also would entail the removal of red-bellied turtles and a bald eagle nesting tree. In sum, she said that in accordance with DRBC regulations, the Commissioners must consider potential harmful impacts to the Delaware River and Delaware Estuary from the Southport project.

Addressing economic impacts of the Southport project, Ms. van Rossum said that she believes the sponsors’ claims concerning jobs are not defensible. She said that if the Commissioners are concerned about port jobs, they should also consider river jobs, because to the extent that the project injures the habitats and aquatic and bird life of the river, it also will hurt the jobs that depend upon the existence of fish, birds, and healthy ecosystems in our region.

Ms. van Rossum said that the proposed mitigation options for the project are not appropriate. She maintains that more habitat will be damaged than replaced, and much of the so-called mitigation that is proposed consists of leaving existing fill and/or wetlands in place, which is not true mitigation at all.

Ms. van Rossum concluded by urging the Commissioners to postpone consideration of the resolution and to conduct a thoughtful independent review of the Southport project.

Lisa Magee, Philadelphia Regional Port Authority special projects engineer and technical lead for the Southport project, said she had been intimately involved in the project’s pre-permitting and permitting phases, involving all interested agencies, for almost six years. According to Ms. Magee, DRBC staff attended every meeting. She said the proposed resolution allowed for a consolidated review through which all comments could be considered, and she offered to respond to any technical questions the Commissioners might have.

Mary Ellen Noble identified herself as associated with the Delaware Riverkeeper Network on an emeritus and part-time basis. She said that she had no knowledge of the Southport project before seeing the proposed DRBC resolution but had two questions and a suggestion. She asked Lt. Col. Secrist whether between now and September 24 she could visit the Wanamaker Building

and review the Corps' project files, to which Lt. Col. Secrist answered yes. Ms. Noble also asked whether the EA would be available for her review before she submitted comments on the application. Lt. Col. Secrist said the Corps was still looking at the EA. Ms. Noble asked whether she would have an opportunity to comment on the EA after it is issued. Lt. Col. Secrist said he was not certain, that the comment period would continue through September 24, and that on the basis of the comments received, the Corps will decide whether a public hearing is needed. Ms. Noble said that her understanding of the resolution suggested to her that the Corps could hold a public hearing on which the DRBC could "piggy-back" and shortly thereafter, a resolution would appear before the Commission to make the project a part of the Comprehensive Plan. At that point, she said, she might be told that a public hearing had already taken place and she would not have an opportunity to comment on the resolution. At a minimum, she said she would like the resolution under consideration today to assure members of the public an opportunity to comment on the eventual resolution to include the Southport project in the Comprehensive Plan. She said it did not appear to her that she would have much of an opportunity between now and September 24 to comprehend the project or comment in detail, and she asked the Commission to revise the resolution before them prior to adopting it.

Victoria Lesser commented that she had seen on the Commission's web site a quotation from U.S. Supreme Court Justice Oliver Wendell Holmes in the 1931 Delaware River case that reads, "A river is more than an amenity, it's a treasure." She asked the Commissioners, "Whose treasure is it? Is it the treasure of the people or is it the treasure of those companies that seem to come in here, whether it be for gas drilling or this other project?" She said that elsewhere on the Commission's website, she read, "In 1961 President Kennedy and the governors of Delaware, New Jersey, Pennsylvania and New York signed concurrent compact legislation into law creating a regional body with the force of law to oversee a unified approach to managing a river system without regard to political boundaries." Ms. Lesser said that when we talk about political boundaries we know that we are watching corporations in this country take over our political system without regard for political boundaries. She said the Commission's programs include water quality protection, water supply allocation, regulatory review, permitting, water conservation initiatives, watershed planning, drought management, flood loss reduction, and recreation. She added that she needed to be reminded, as did the Commissioners, that the Commission's purpose is to protect the river, not to protect the people who want to make money from the river, unless they are involved in recreation, which is part of the DRBC mission.

Mr. Klotz said that he supports avoiding duplication of effort and is comfortable having Pennsylvania DEP and the U.S. EPA evaluate the project. He said the Commission would not provide substantial added benefit through a separate review. He added that he wished to understand how the resolution compares with the Administrative Agreements that DRBC has worked out with some of the states. Because New York is not yet one of those states, he said he is unfamiliar with the details. Specifically, he asked whether in those instances where the Commission defers to the states, it can reassert its authority if a member is not comfortable with the outcome, and if so, how that compares with the approach proposed for Southport.

Mr. Muszynski said that the new Administrative Agreements provide that any project can be required to undergo review at the request of the Executive Director or an individual Commissioner, whether or not the project is located in the Commissioner's home state. He noted

that in the case of the Southport project, the proposed resolution provides in accordance with Article 11 of the Compact, the Commission must hold a public hearing on the project even if the Corps chooses not to hold one. Dr. Howarth asked whether the hearing would be on the draft EA or on the application before the Corps. Mr. Muszynski explained that if the Commission held a separate hearing or even a joint hearing, the Commission's interest in the hearing would be the project's consistency with and proposed inclusion in the Comprehensive Plan. Dr. Howarth asked whether the Commission would be asked to make its decision regarding inclusion of the project in the Comprehensive Plan after other permits were issued. Mr. Muszynski said yes. Mr. Muszynski added that if the DRBC staff did not believe that the project met the requirements of the Comprehensive Plan, his comments to the Corps would say so, and under those circumstances, he would not recommend to the Commission that it include the project in the Comprehensive Plan. Mr. Warren added that following a hearing, the Commission would be asked to vote on the question of whether or not to incorporate the project into the Comprehensive Plan. He said that under the Compact no project may proceed unless it is approved pursuant to Section 3.8 and DRBC's Section 3.8 approval and incorporation into the Comprehensive Plan in this instance were one and the same. Mr. Muszynski added that one of the "whereas" clauses in the proposed resolution provides that in accordance with Section 11.2 of the Compact, a project may proceed to construction only after it has been included in the Comprehensive Plan. He said that staff had concluded the project is reviewable and that question is no longer an issue. He added that his recommendation remained that the Commission proceed in the coordinated review process.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution providing that Commission review of the Southport Marine Terminal Project for consistency with the Comprehensive Plan may be accomplished largely within the context of the coordinated inter-agency review process led by the U.S. Army Corps of Engineers. Mr. Plonski so moved, Lt. Col. Secrist seconded his motion, and Resolution No. 2010-8 was approved by four Commissioners. Pennsylvania, as sponsor of the project, abstained.

Public Hearing: Resolution Amending the Water Charging Rates. Mr. Gore explained that this resolution will provide for an increase in the consumptive and non-consumptive water use fee charged by the Commission. The current use fee has remained unchanged for 33 years. It was last modified in 1978 by Resolution No. 78-14. In addition to the rate change, the resolution authorizes the Executive Director to establish a Water Charging Advisory Committee and to identify and develop proposals for studies addressing the various issues affecting water charges.

Mr. Gore said that Resolution No. 71-4 provided that water rates will consist of the weighted average unit cost of all water stored by or on behalf of the Commission and that the unit cost of water would be determined by dividing all the Commission's annual project costs by the net yield of the water supply in the federal reservoirs authorized in the Commission's Comprehensive Plan. In accordance with this formula, in 1974 a schedule of water charges was established by Resolution No. 74-6 at \$40 per million gallons for consumptive use and \$.40 per million gallons for non-consumptive use. Resolution No. 78-14 increased the water charges to \$60 per million gallons for consumptive use and \$.60 per million gallons for non-consumptive use, where they have remained since 1978.

In order to maintain and ensure the financial stability of the Water Supply Storage Facilities Fund, which includes funds to pay reservoir operation and maintenance costs, the Commission posted on its website in February 2010 a notice of proposed rulemaking and public hearing to amend the Commission's water charging rates. The notice appeared in the Federal Register and the state registers in March. Using the formula established by Resolution No. 71-4, the Commission's proposed rate modifications were as follows: the consumptive use rate was to increase from \$60 to \$90 per million gallons effective January 1, 2011 and from \$90 to \$120 per million gallons effective January 1, 2012. The non-consumptive use rates were proposed to increase from \$.60 to \$.90 per million gallons effective January 1, 2011 and from \$.90 to \$1.20 per million gallons for the non-consumptive on January 1, 2012.

The Commission held a public hearing on April 13, 2010, at which it received testimony and written comments on the proposed amendments. The Executive Director upon review of the public comments asked the Commissioners to consider modifying the proposed increases as follows: increase the consumptive water use rate from \$60 per million gallons to \$80 per million gallons and increase the non-consumptive water use rate from \$.60 per million gallons to \$.80 per million gallons effective January 1, 2011. The Executive Director further recommended that a Water Charging Advisory Committee be established and that proposals be developed for studies addressing the various issues affecting DRBC's water use rates.

Mr. Plonski raised a series of questions, to which Mr. Gore responded. Mr. Plonski asked whether the Water Charging Advisory Committee would review the need for water supply charges over the next two years. Mr. Gore said that the recommended studies would be undertaken over the next two years. Mr. Plonski questioned the timing of the request for an increase in the water supply charge before the advisory committee had had an opportunity to weigh in on the matter. Mr. Gore noted that the proposed studies should not only address the need for increases, but also the methodology for calculation of the charges, which currently consists of the formula set forth in Resolution No. 71-4. He explained that the original proposal was consistent with that formula. Mr. Plonski asked whether in that case a committee was needed. Mr. Gore replied that the question was whether or not the unit cost formula as defined by Resolution No. 71-4 remains appropriate. Mr. Plonski asked whether the Commission risked running out of funds over the next two years while the proposed committee studied the matter. Mr. Gore said that from a net operating perspective, he did not see the Commission running out of funds in any single year over the next two years. However, he said that given the current rate of expenditures, the Commission could see a net loss to the Water Supply Storage Facilities Fund, although the fund was extremely unlikely to be exhausted. Mr. Plonski asked why the staff would not wait until the committee finished its work and submitted its recommendations before seeking a vote on this. Mr. Gore responded that staff believed the increase to be the most prudent thing to do. Mr. Plonski said that in his view in the current economic environment both nationally and in New Jersey, where limited budgets have led to severe cutbacks, no raises, pension take-backs, and high unemployment, it was a tough time for government agencies to be asking their citizens – whether they be businesses, industries or municipal governments – for rate increases for which the had not been fully established. Mr. Plonski advised the Chair that he could not vote in favor of the resolution as proposed.

Dr. Howarth related that a public hearing had been held on April 13, 2010 and that the Corps had sent a letter asserting that a rate increase was seriously needed. Mr. Gore explained that staff had had some dialogue with the Corps concerning the two storage facilities – Blue Marsh and Beltzville – in which the Commission owns storage, and that preliminary estimates utilizing the formula established by Resolution No. 71-4 would result in an increase of approximately 1.3 cents per thousand gallons (\$13 per million gallons) in the existing rate. Dr. Howarth added that the last time the rate was increased was 33 years ago, and even with the proposed increase the Commission’s rate would be substantially lower than that in any other basin. Mr. Gore said that DRBC was not representing that its business model is identical to that of other entities such as the Susquehanna River Basin Commission (SRBC), but he noted that the consumptive use rate charged by the SRBC is \$280 per million gallons. DRBC is proposing an increase from \$60 to \$80. Dr. Howarth said she assumed that once the new committee had completed its work, if the Commission determined that a smaller increase or no increase was needed, the Commissioners could adjust accordingly as well. Mr. Plonski asked whether that might mean rolling the increase back after two years. Dr. Howarth said she did not know the likelihood of such an outcome. Mr. Plonski asked whether this had ever happened or was likely to happen. Dr. Howarth reiterated that the rate had not been changed in 33 years.

Mr. Gore added that in addition to establishing the advisory committee, which would afford the various stakeholders an opportunity to understand the current process, the proposed technical studies would include an analysis of the existing methodology for calculating the water charging rate, along with recommendations as to whether that methodology remains appropriate. He said the studies will help the Commission determine future needs and costs related to the two storage facilities and the appropriate reserve to be maintained in the Water Supply Storage Facilities Fund.

Mr. Plonski again asked his fellow Commissioners whether the proposed increase was not putting the cart before the horse. He said he did not know why the Commission should raise its water charging without a substantiated need for it rather than allowing the proposed advisory committee to conduct its review. If that takes a year or two, he said, DRBC apparently would not be in serious financial need in the interim. Mr. Plonski offered a motion to postpone consideration of the proposed increase for a period of at least six months, at which point the Commission could re-visit the matter.

Lt. Col. Secrist asked Mr. Plonski what additional information the Commission would have at the end of that time. He asked Mr. Gore when the advisory committee would be established. Mr. Gore said he did not think staff could provide the Commission with any additional detail in only six months. Engineering requirements and studies needed for maintenance of Beltzville and Blue Marsh reservoirs in the long term would need to be identified, as would alternative methodologies for calculating the water charging rate. Mr. Gore said that in 2005 staff had provided the Commissioners with a white paper discussion containing recommendations very similar to those being made today, including a recommendation that DRBC evaluate the methodology used to calculate the water charging rate and predict the maintenance needs and long-term operating costs of the two storage facilities. Mr. Plonski asked whether the Commission was worse off financially now than in 2005. Mr. Gore said that the net income to

the Water Supply Storage Facilities Fund had not grown as rapidly as the expenses. Mr. Plonski asked whether the fund balance had dropped significantly. Mr. Gore said it had not.

Ms. Collier said that the original proposal would have doubled the rate in two stages, because it had not been increased in so long. She said that one of the objectives was to maintain a steady rate of growth, because this is the fund that supports water supply management in the basin. In addition to staff effort, she said, it also supports payments to the Corps of Engineers for the water storage that DRBC calls for during droughts. Referring to the Hydrologic Report by Amy Shallcross of the staff earlier in the meeting, she said DRBC calls for releases from storage at times on a daily basis in order to keep salt away from the Philadelphia and New Jersey–American intakes. She said the storage and the funding to support that storage are indeed needed. Dr. Howarth asked whether DRBC was dangerously close to the point where the charges owed the Corps for storage would double because of the quantity of water DRBC required to be released. Ms. Collier said that the Corps had performed an analysis of all its major reservoirs and had found problems with Beltzville and Blue Marsh. She said that as a part owner, DRBC will have to pay to remedy those problems. She added that because of the world economic situation and budget problems regionally, staff considered the matter and concluded the proposal should be revised. Instead of asking for an additional sixty dollars per million gallons, raising the rate to \$120, an increase of only \$20 is requested beginning January 1, 2011. No second stage increase is proposed. At the same time, DRBC proposes to give the stakeholders who pay into the fund more say in how the agency moves forward, through the proposed advisory committee. She said that SRBC had studied its water supply needs and was charging for the projected cost of new storage – not just the cost of maintaining existing storage. Should we look at groundwater in addition to surface water? Should we look at different geography? Ms. Collier said that different strategies needed to be considered. She said the \$20 increase now was needed to keep the fund on a shallow growth curve rather than allowing it to decline. She said the advisory committee would be convened promptly to pull together a scope of work for the various studies required to help the Commission decide how to move forward.

Dr. Howarth noted that there had been a motion with no second. She asked for a second and on hearing none, pronounced the motion dead. Dr. Howarth then asked Vice Chair Lt. Col. Secrist to serve momentarily as chair, to which he agreed, and offered a motion herself to adopt the resolution as written. Mr. Klotz seconded this motion. Hearing no further comments or questions, Lt. Col. Secrist requested a vote. The resolution to amend the Administrative Manual, Part III, Basin Regulations – Water Charges relating to a Schedule of Water Charges, Resolution No. 2010-9, was approved by a majority of four to 1, with New Jersey casting the vote against.

Dr. Howarth left the meeting at this juncture, and Lt. Col. Secrist continued as chair. A ten minute break was called before the Public Dialogue portion of the meeting began at 4:10 p.m.

Public Dialogue. Because at least 43 individuals had registered in advance to address the Commissioners on issues related to natural gas drilling, each was limited to two minutes. The Commissioners heard from these individuals over the course of the next two hours.

The meeting of September 15, 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