

Response to Comments Document

Date: September 2025

To: DRBC Commissioners, Kristen Bowman Kavanagh, File

From: Pamela M. Bush and Naomi Mendelsohn

RE: Response to Comments on the request for an extension of Docket D-2017-009-2

I. Summary

On March 14, 2025, Delaware River Partners, LLC (“DRP”) submitted a request to the Delaware River Basin Commission (“DRBC” or “Commission”) for a three-year extension of Docket No. D-2017-009-2 (the “Docket”) for the Gibbstown Logistics Center (“GLC”) Dock 2 project (“Dock 2” or “Project”). In accordance with DRBC’s *Rules of Practice and Procedure* as amended in June 2024 (“RPP”), the Commission published notice of the extension request on its website and announced that written comment on the request would be accepted through DRBC’s web-based comment collection system, SmartComment, until 5:00 p.m. on April 24, 2025. DRBC received 862 written comments prior to the close of the comment period and an additional 51 written comments shortly after the comment period ended. Also in accordance with the RPP, staff furnished DRP with a set of all comments received, and DRP provided a written response in the form of a letter to DRBC dated May 16, 2025. DRP’s response is provided as Attachment 1 hereto. DRBC’s responses to the comments submitted by the public and the applicant are set forth in Section IV below.

II. Procedural Background

Docket D-2017-009-2 has a lengthy procedural history, which is summarized below.

Original application. In March 2019, DRP submitted an application to DRBC for approval to construct the Dock 2 project, a dredging and wharf construction project, at the existing GLC, a multi-use marine terminal and international logistics center located at the former DuPont/Chemours Repauno site in Greenwich Township, Gloucester County, New Jersey. The Project involves dredging 665,000 cubic yards of sediment from the Delaware River and constructing a deep-water two-berth, pile-supported wharf structure and supporting infrastructure consisting of a trestle pier, loading platforms, breasting and mooring dolphins, and walkways between platforms and dolphins. Dock 2 is to be located slightly downstream of a one-berth deep-water wharf that the Commission approved by Docket D-2017-009-1 on December 13, 2017. The construction of the GLC and Dock 1 was substantially complete at the time DRBC received DRP’s Dock 2 application.

The Commission published its draft docket for the Project on May 24, 2019, along with notice that written and oral comment would be accepted on the draft. A public hearing took place on June 6, 2019, and written comment was accepted through 5:00 p.m. on June 7, 2019.

At the Commission’s June 2019 business meeting, DRBC staff provided the Commission with a summary of the public comments received and recommended certain changes to the draft docket as a result of

public input. With these changes, the draft docket was unanimously approved by the Commission on June 12, 2019.

Evidentiary administrative hearing. By letter dated July 19, 2019, the Delaware Riverkeeper and Riverkeeper Network (collectively, “DRN”) requested an administrative hearing on the Commission’s Docket approval. At its quarterly public meeting in September 2019, the Commission voted to grant the hearing. The Commonwealth of Pennsylvania contributed the services of an administrative hearing officer, John D. Kelly, whose appointment was accepted by all parties. In May 2020, Mr. Kelly presided over an eight-day evidentiary hearing on the matter. Thirteen expert witnesses and three fact witnesses provided written testimony, and the hearing consisted of cross-examination, re-direct and rebuttal testimony.

On July 21, 2020, the Hearing Officer issued a 102-page Report of Findings and Recommendations (“F&R”), concluding that DRN had not demonstrated that the Dock 2 project would substantially impair or conflict with DRBC’s Comprehensive Plan. The Hearing Officer recommended no changes to the Docket as approved on June 12, 2019.

In accordance with DRBC’s rules governing adjudicatory hearings, the parties were afforded—and availed themselves—of an opportunity to submit objections to the Hearing Officer’s F&R, and the staff submitted a set of comments on the F&R, along with a recommendation. With the assistance of the Commission’s General Counsel, the Commissioners reviewed the hearing record and prepared a written opinion. By unanimous vote on December 9, 2020, the Commission issued its opinion and decision upholding the Docket approval. The Commission found that DRN failed to demonstrate that the Project would substantially impair or conflict with the Comprehensive Plan or that the administrative record was insufficient to support approval.

Federal district court challenge. In January 2021, DRN filed a complaint against DRBC and DRP in the United States District Court for the District of New Jersey appealing the Commission’s decision to approve the Docket. In an opinion and order dated March 31, 2023, the District Court affirmed the Commission’s Docket approval. *Delaware Riverkeeper Network v. Delaware River Basin Comm’n and Delaware River Partners, LLC*, Civ. No. 21-CV-1108 (D.N.J.), Docket Nos. 61 & 62.

Extension of approval. On June 2, 2022, while the litigation was pending in District Court, in accordance with the version of section 401.41(a) of the RPP in effect at that time (hereinafter, “unamended section 401.41(a)”), DRP submitted to DRBC a request for a three-year extension of the Docket. In relevant part, unamended section 401.41(a) provided that “[a]pproval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.” In support of its June 2022 extension request, DRP provided evidence purportedly demonstrating that: (1) DRP had expended substantial funds in relation to the cost of the project within three years following the Commission’s approval; and (2) no changes to the project material to the Commission’s approval had occurred or were proposed.

On September 8, 2022, following an opportunity for written comment by DRN and an opportunity for the Docket holder to respond to such comment, the Commission approved DRP’s request for a three-year

extension of the Docket, through June 12, 2025, on two distinct grounds: (1) that DRP demonstrated it had expended substantial funds in relation to the cost of the project within the three years following the Commission's approval, and that it was thus entitled to an extension of the three-year period in section 401.41(a) of the RPP; and (2) that the pending appeals of federal and state approvals of the GLC Dock 2 project provided an independent ground for the Commission to extend the three-year expiration period in section 401.41(a) or to waive the expiration period in accordance with section 401.123 of the RPP.

DRBC rule amendment. In June 2024, the Commission amended section 401.41(a) (hereinafter "amended section 401.41(a)") in an effort to update and clarify the provision. In relevant part, amended section 401.41(a) provides for extension of an approval:

for an additional period of up to five years, based upon a written request from the project sponsor accompanied by supporting documentation demonstrating that the following criteria have been met:

- (i) No material changes to the project as approved are proposed;
- (ii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan;
- (iii) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan; and
- (iv) The project sponsor is diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals. The project sponsor is not required by this [subsection] to conduct activities that it is not legally authorized to conduct or that it demonstrates would be unreasonable for it to conduct before obtaining all necessary final government approvals.

18 C.F.R. § 401.41(a).

Request for extension under amended rule. In accordance with amended section 401.41(a), on March 14, 2025, DRP submitted its second request for an extension of Docket 2017-009-2. In particular, DRP averred that: (1) no material changes to the Project were proposed, and DRP intended to construct the Project as approved; (2) the condition of the Project site had not changed in a manner that would "impact the project's conformance with the Commission's Comprehensive Plan;" (3) the Project had not changed since the original approval, and thus, the Project remained "in conformance with the Comprehensive Plan last

updated in July 2001;”¹ and (4) DRP was “diligently pursuing the Project, including by working to secure and extend the requisite government approvals.” On April 15, 2025, the Commission published notice of DRP’s request for an extension of Docket D-2017-009-2 and announced that written comment would be accepted through 5:00 p.m. on April 24, 2025.

DRBC received 862 comments prior to the close of the comment period and an additional 51 comments shortly thereafter. The comments received by the Commission fall into the following issue categories:

- Process and procedure
- Material changes to the project
 - Construction of two additional storage caverns
 - Transport of LNG to site by truck instead of rail
- Docket holder’s diligent pursuit of the project
- Other concerns
 - Health and safety hazards
 - Air quality and climate change
 - Water quality
 - Aquatic life
 - Economic impact
 - Environmental justice
 - Other

Multiple individual commenters and the following organizations submitted written comment on DRP’s March 2025 request for an extension of the Docket: Delaware Riverkeeper Network (“DRN”), Schuylkill Pipeline Awareness, Damascus Citizens for Sustainability, Berks Gas Truth, Food & Water Watch, Environment New Jersey, Pathways Institute of Metaphysics, and Surfrider Foundation.

Pending adjudications. DRP’s Dock 2 project requires, among other approvals, a permit from the United States Army Corps of Engineers (also herein, the “Corps” and “Corps of Engineers”) pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403. An appeal of the Corps permit issued on January 10, 2020, has been stalled in the United States District Court for the District of New Jersey over jurisdictional questions that turn on the pending response of the Federal Energy Regulatory Commission (“FERC”) to a petition filed by the docket holder in 2020. *See Delaware Riverkeeper Network v. U.S. Army Corps of Engineers*, No. 1:20-cv-4824 (D.N.J.). Until the FERC process and adjudication of the Corps permit are completed and the Corps permit is in place, the Project cannot proceed.

III. DRP’s Response to Comments

By letter dated May 16, 2025 (provided as Attachment 1), DRP provided DRBC with its response to the public’s comments on the extension request. DRP’s points are summarized below.

¹ The Comprehensive Plan (also herein, “Plan,”) is actually updated whenever the Commission issues a revised docket for a project included in the Plan or conducts a rulemaking (e.g., by amending its water quality regulations) that expressly amend the Plan.

DRP observed that a majority of the comments raised objections to the energy industry generally, and “express a generalized opposition to liquefied natural gas (‘LNG’),” in particular. DRP also averred that many of the comments were unrelated to the “scope and purpose of the Docket or the specific activities that are authorized by the Docket, which pertains solely to the dredging and construction of a dock, nor are they relevant to DRP’s request to extend the Docket.” DRP further noted that many of the concerns voiced by commenters had been fully considered during the Commission’s 2020 administrative hearing and the judicial appeal that followed, both of which affirmed the Commission’s approval of the Docket.

In addressing the comments specifically related to DRP’s extension request, DRP stated that it had made no material changes to the Dock 2 project or the Project site. In particular, DRP stated that its proposal to construct two underground storage caverns at the GLC, for which DRP’s application to the New Jersey Department of Environmental Protection (“NJDEP”) remains pending, is unrelated to the Docket, which approved only the dredging and construction activities involved in the development of Dock 2. Indeed, DRP noted that the “Project Area” as defined in the Docket did not “have any connection to the upland portion of the GLC where the proposed caverns would be constructed.” Moreover, with regard to LNG specifically, DRP explained that “Dock 2 is designed to handle a variety of cargoes, including bulk liquids and bulk gases,” and that it would “be capable of handling LNG because LNG is one of several liquid[] products that require similar types of facilities.” Finally, DRP noted that “any cargo that may be handled in the future when Dock 2 is in service is completely independent from the subject of the Docket itself.”

Next, DRP stated that it was diligently pursuing the Dock 2 project within the meaning of amended section 401.41(a) of the RPP. For example, DRP explained that it was actively participating in the ongoing appeal (noted above) of its permit issued by the Corps of Engineers pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (the “Corps of Engineers Permit”), which authorized the dredging and construction of Dock 2. *See Delaware Riverkeeper Network v. U.S. Army Corps of Engineers*, No. 1:20-cv-4824 (D.N.J.). DRP further noted that the appeal was being held in abeyance while the FERC determined whether it has jurisdiction over the GLC. *See id.*, Docket No. 44. In addition to its participation in litigation related to Dock 2, DRP noted that it had spent more than \$8 million in support of the Project.

Finally, DRP addressed the remainder of the comments, generally noting that objectors “used the pending extension request to re-raise a panoply of concerns related to” the Dock 2 project and the GLC that “have already been thoroughly considered and rejected by the Commission and by the many other agencies with jurisdiction over the Project.” In particular, DRP pointed to objectors’ concerns over:

- Impact on water and air quality, habitat, marine mammals, birds, and aquatic vegetation;
- Potential release of PCBs and other pollutants currently contained in sediment;
- Interference with remediation being conducted on the upland portion of the GLC;
- Impact to recreation and tourism in the region;
- Negative impact on climate due to increasing fossil fuel infrastructure;
- Accidents and safety issues related to LNG and the transport of LNG by rail, truck and/or ship.

DRP explained that these issues had been thoroughly considered and rejected during an exhaustive administrative hearing before the Commission and on appeal to the United States District Court in *Delaware Riverkeeper Network v. Delaware River Basin Comm’n*, No. 1:21-cv-1108 (D.N.J.).

Ultimately, DRP averred that the Dock 2 project was unchanged from DRBC’s initial approval of the Docket, that it otherwise satisfied the conditions set forth in amended section 401. 41(a) of the RPP, and that the Commission should, therefore, approve its request for an extension of the Docket.

IV. Statements of Concern and DRBC Responses

As noted above, the Commission received 862 comments during the public comment period concerning DRP’s March 2025 request for an extension of Docket D-2017-009-2. The Commission received an additional 51 comments after the close of the public comment period.

The comments the Commission received were wide-ranging, but a majority of the comments raised similar – if not identical – concerns. To efficiently capture and respond to multiple similar comments, DRBC staff screened and grouped comments with similar themes and from these, developed one or more “statements of concern” comprised of paraphrased versions and representative quotations from these comments. Where more particular and individualized comments were submitted, staff excerpted and quoted the relevant portion of the comment and provided a response to it. The statements of concern and responses are set forth below, along with supporting references as applicable.

A. Comments Related to Process and Procedure

SC-1a. Process - One extension only: (DRN) “This docket has already been extended once. The Rules of Practice and procedure do not provide for a second extension. Although DRP’s request presumed that the criteria listed in 18 C.F.R. § 401.41(a)(1)(i) through (iv) apply to the Dock 2 Docket, they in fact do not. Section 401.41(a) makes clear that approvals are subject to a single extension.”

DRBC Response: The rule contains no language to the effect that DRBC approvals are limited to a single extension. The rule in effect prior to the Commission’s 2024 amendment included no such limitation. Imposing a limitation of this kind would have been a noteworthy change that the Commission would have called out in the Preamble to the proposed amendments if this were intended. The Commission did not call it out (*see, e.g., [Background and Summary of Proposed Amendments](#)*), because it did not intend such a change. Nor did this issue arise during the comment period on the proposed rule. (*See [Comment and Response Document dated June 5, 2024](#) (“CRD”)*). Notably, the State of New Jersey limits in-water construction permits to a single extension.² On May 23, 2024, NJDEP approved an [extension](#) of its Waterfront Development In-Water permit for Dock 2.

² N.J.A.C. §§ 7:7-8.2(a); 7:7-27.3(a).

SC-1b. Process - Pending Corps of Engineers permit extension: (Multiple Commenters) “The required Army Corps of Engineers approval for the project has expired and DRP’s application is under administrative review; it is unknown if this approval will be issued and/or will change fundamentally.”

DRBC Response: Condition C.8. of Docket D-2017-009-2 provides, “[n]othing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.” Notwithstanding that every project sponsor is required to obtain all requisite approvals, DRBC routinely reviews and approves projects either before state and federal agencies have acted or afterward, generally based on the preferences of the host state under the particular circumstances.

The existence of a pending technical review by another agency or a pending adjudication is not a unique circumstance for the DRBC, and the Commission has provided two avenues for addressing it. First, by Condition C.15. of the Docket, the Commission has reserved the right to open the Docket “at any time, and to reconsider its decision and any and all conditions imposed hereunder in light of further information developed by, or decisions rendered in, pending or future proceedings conducted by DRBC member state and federal agencies concerning the development and operation of the GLC Dock 2 and related facilities.” Second, recognizing that a challenge to the Corps of Engineers Permit remains pending (and that during the pendency of the challenge, the permit has expired), staff has recommended that as a condition of any extension the Commission may grant under section 401.41(a) of the RPP, DRP be required to inform DRBC promptly of any change to the Project as approved by the Docket, whether arising from the pending appeal or for any other reason, if the change could affect the Commission’s determination that the Project does not substantially impair or conflict with the Commission’s Comprehensive Plan.

SC-1c. Process - NEPA: (Surfrider Foundation) “Surfrider is concerned with a range of negative impacts from the Project on marine and riverine ecosystems, and requests a full NEPA review.”

DRBC Response: DRBC acknowledges Surfrider’s concern. DRBC is not a federal agency subject to NEPA. Rather, DRBC’s review is limited by the Compact to evaluating whether a project would substantially impair or conflict with the Commission’s Comprehensive Plan. However, Dock 2 also requires a permit from the U.S. Army Corps of Engineers, which is a federal agency subject to NEPA. In connection with the Corps of Engineers Permit issued pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 for dredging in connection with an initial dock (“Dock 1”) constructed at the GLC, the Corps performed an Environmental Assessment (“EA”) under NEPA. The Corps also undertook a Section 7 consultation with the National Marine Fisheries Service (“NMFS”) under the Endangered Species Act for the GLC and Dock 1, which resulted in a Biological Opinion dated December 8, 2017, evaluating the effects of the GLC and Dock 1 on the Atlantic sturgeon. The consultation was re-initiated upon DRP’s application to the Corps for a permit to construct Dock 2. The re-opened consultation resulted in a letter opinion from NMFS dated November 19, 2019, which concluded that “the level of adverse

effects already considered in the 2017 biological opinion and amount and extent of take related to operational vessel traffic previously considered, remains unchanged.”

The Commission recognizes that the extent of the NEPA process undertaken by the Corps for Dock 2 is a subject of litigation that is pending in the United States District Court for the District of New Jersey (see response to SC-1b above). As we note in that response, staff has recommended that as a condition of any extension the Commission may grant under section 401.41(a) of the RPP, the DRP be required to inform DRBC promptly of any change to the Project as approved by the Docket, arising from the pending appeal or for any other reason, if the change could affect the Commission’s determination that the Project does not substantially impair or conflict with the Commission’s Comprehensive Plan.

SC-1d. Process - Hearing needed: (Schuylkill Pipeline Awareness) “A public hearing is also critical if you do not reject the extension outright.”

DRBC Response: Amended section 401.41 of the Commission’s *Rules of Practice and Procedure*, 18 C.F.R., Part 401, governs DRP’s pending request for an extension of Docket D-2017-009-2. In relevant part, amended section 401.41(a)(4) provides:

[a]n opportunity for written comment of at least ten days’ length will be provided on a request for extension. . . . A public hearing will be provided if three or more Commission members ask the Executive Director in writing to schedule one or vote during a public meeting of the Commission to provide one.

The Commission provided due notice of the requested extension and the opportunity to comment in writing on the request through its web-based comment collection system during the period from April 15 through April 24, 2025. Although the duly noticed comment collection period closed at 5:00 p.m. on April 24, the Commission also has considered and has in this document addressed 51 comments submitted by email after the close of the comment period. (The Commission makes no commitment to do likewise in future comment periods.) No Commission members asked the Executive Director to schedule a public hearing, possibly because the public’s substantive concerns were thoroughly considered during the Commission’s full evidentiary hearing on the Project, conducted in 2020.

SC-1e. Process - Permit violations: (R. Darlington) “DRP’s failure to meet permit requirements and their letting earlier permits expire should be grounds enough for denying this permit extension under DRBC’s regulations.”

DRBC Response: To DRBC’s knowledge, Docket holder DRP has not “let[] earlier permits expire” for its Dock 2 project. To the contrary, as discussed above, DRP timely applied for and received an extension of the Docket in June 2022. This extension, granted by a [DRBC Resolution for the Minutes of September 8, 2022](#), is among the materials the Commission re-posted when it invited comment on DRP’s request for extension that is the subject of the commenter’s remark. By [letter](#)

[dated March 14, 2025](#), DRP again applied for an extension of its DRBC approval before the three-year extension the Commission issued in 2022 for the Docket expired.

As explained above, amended section 401.41(a) of the Commission's *Rules of Practice and Procedure* provides for a docket extension of up to five years if specific criteria have been met. These criteria in relevant part include that the sponsor must demonstrate that it is "diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals." Among the materials made available to the public in connection with the request for an extension of the DRBC Docket were:

- a [letter dated May 23, 2024](#) from the NJDEP to DRP, approving DRP's request for a five-year extension of its New Jersey Waterfront Development In-Water Permit; and
- a [letter dated September 19, 2024](#) from DRP's consulting engineer, Ramboll, to the Corps, requesting an extension of the Corps of Engineers Permit issued on January 20, 2020.

These documents make clear that DRP has not allowed its "earlier permits [to] expire." Documents available on the federal court system's Public Access to Court Electronic Records ("PACER") website make clear that DRP is diligently defending its Corps permit issued in 2020, which, as noted above, is a subject of ongoing litigation in a federal district court in New Jersey.

DRBC is not aware of any failures by DRP to meet permit requirements.

B. Comments Alleging Material Changes to the Project (amended RPP § 401.41(a)(i))

SC-2b. Material change to site - caverns: (DRN) Commenters averred that the condition of the GLC has changed in a manner important to determining whether Dock 2 would substantially impair or conflict with the Commission's Comprehensive Plan because of the proposed vast cavern network for storage of liquified petroleum gases. DRN wrote:

DRP has been working to secure approval from NJDEP for the construction of two new 640,000-barrel hard rock underground storage cavern system[s] . . . just a few days ago NJDEP issued a draft permit. Long-term plans for the site include the construction of two additional caverns The combined effects of cavern construction and dredging activities for Dock 2 must be evaluated in order to determine whether the project substantially impairs or conflicts with the Comprehensive Plan. According to the draft NJDEP permit, DRBC staff is well aware of this requirement and recommended to NJDEP that the project does not substantially impair or conflict with the Commission's Comprehensive Plan. This recommendation in a draft permit, however, is not yet a 'Section 3.8 Finding' . . . Any such finding should be based on the cumulative impacts of both Dock 2 and the new caverns....[T]he need for a Section 3.8 finding completely negates DRP's assertion that the

‘condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission’s Comprehensive Plan.’

DRBC Response: Some commenters, including DRN, suggested that the Project materially changed when DRP applied to the NJDEP for a permit to construct two underground caverns for the storage of liquified petroleum products on the upland portion of the GLC.

Although underground storage caverns are projects subject to review under Section 3.8 of the Compact, in accordance with the Commission’s [Administrative Agreement with the NJDEP](#),³ these structures are reviewed under DRBC’s one permit program, regulations for which are set forth at section 401.42 of the RPP, [18 C.F.R. § 401.42](#). The agreement designates NJDEP as the lead reviewer for these projects, and except under circumstances not applicable here (*see id.*, § 401.42(d)(4) and Section VII of the above-referenced administrative agreement), no separate DRBC docket is issued for them. NJDEP’s regulations at Title 7, Chapter 1F, of the New Jersey Administrative Code, which were [finalized on May 1, 2023](#), include detailed requirements for the construction, operation and de-commissioning of underground storage caverns. The Commission has no substantive regulations for underground storage caverns.

It is noteworthy that in entering into the Delaware River Basin Compact, the signatory parties expressly undertook to avoid Commission duplication of state and federal agency effort. Section 1.5 of the Compact, in particular, provides that “the commission is authorized and directed to utilize and employ [existing] offices and agencies of government to the fullest extent it finds feasible and advantageous.” The Commission’s one permit program and its administrative agreement with the NJDEP are means by which the Commission implements that directive.

Also noteworthy, the Compact expressly defines the term “Project” to allow the Commission latitude in defining which components of a multi-faceted enterprise it will review. In relevant part, the definition states that “‘Project’ shall mean any work, service or activity that is separately planned, financed, or identified by the commission, . . . which can be established and utilized independently *or as an addition to an existing facility*, and *can be considered as a separate entity for purposes of evaluation*.” (Emphasis added). The definition supports the view that DRP’s proposal to add storage caverns to those already present on the upland GLC site does not constitute a “material change” to the project the Commission reviewed, which focused almost exclusively on the in-water activities of dredging and wharf construction.

To the extent the commenter suggests the Commission must independently consider the “cumulative impacts of both Dock 2 and the new caverns” in determining whether the Project would substantially impair or conflict with the Commission’s Comprehensive Plan, the Commission respectfully disagrees. DRBC technical staff are not of the view that construction and

³ Following a duly noticed public hearing, the Commission by Resolution No. 2023-05 on December 6, 2023 authorized and directed the Executive Director to execute an administrative agreement with NJDEP adding storage caverns to the one permit program after NJDEP finalized detailed regulations for such structures on May 1, 2023 (*see* 55 N.J.R. 905(a); N.J.A.C. § 7:1F-1 et seq.).

operation of the proposed caverns will in any way exacerbate the impacts of dredging and wharf construction on water quality in the Delaware River (including re-suspension of buried pollutants and migration of salinity) or aquatic life, impacts that DRBC carefully considered in its evaluation of Dock 2. The Commission is also confident that the NJDEP's detailed regulations governing the construction and operation of storage caverns are protective of groundwater. Effects of DRP's proposed upland activities on local traffic and air quality, concerns raised in other comments, are outside the scope of the Commission's expertise and authority.

SC-2a. Material change to project - trucks vs. rail: Numerous commenters, including DRN, asserted that a prohibition on the transport of LNG by rail resulted in a material change to the Project. Specifically, DRN commented:

The Dock 2 Docket describes DRP's project as 'a wharf featuring two deep water berths to accommodate a range of ocean-going vessels. Designed for the loading of bulk liquid products directly from railcar or truck onto ocean-going vessels for export and includes infrastructure for transloading operations.' . . . On January 17, 2025, the U.S. Court of Appeals for the D.C. Circuit vacated the rule allowing LNG by rail due to PHMSA's [U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration] failure to prepare an EIS. Accordingly, transportation of LNG by rail is currently prohibited. . . . In sum, because the Dock 2 Project must now rely entirely on trucks to transport and transload the entire amount of LNG it intends to export from the GLC, the project has materially changed from the original proposal. The risks associated with on-shore activities, as well as the risks associated with a higher frequency of engaging and disengaging transloading equipment, would be drastically increased. This changed circumstance militates in favor of the commission rejecting DRP's extension request.

DRBC Response: Commenters assert the Project materially changed when a federal court vacated the U.S. Department of Transportation's rule allowing rail transport of LNG without a special permit. However, the Docket clearly contemplated *either* truck or rail transport of bulk liquid products (including LNG), or both. Section A.4. of the Docket, "Project Description," provides, "Dock 2 is designed for the loading of bulk liquid products directly from railcar *or truck* onto ocean-going vessels for export The products will arrive at the site via *truck and/or* railcar." Docket No. D-2017-009-2 (emphasis added).

Moreover, while the Docket recognized that both truck and rail transport were contemplated, the activities the Commission reviewed and authorized by the Docket consisted of dredging and in-water construction activities. The Commission has never identified the transport of materials by rail as "having a substantial effect on the water resources of the Basin" and thus subject to review under Section 3.8 of the Delaware River Basin Compact.

C. Comments Concerning Diligent Pursuit of the Project (amended RPP § 401.41(a)(iv))

SC-3a. No Diligent Pursuit: DRN commented that DRP is not diligently pursuing the project, apparently on grounds that DRP has not commenced construction of Dock 2, “despite having all necessary approvals.” DRN contended:

DRP admittedly has not initiated any planning, construction, or project operational activities, although it has all the permits and authorizations necessary to begin construction at any time...Instead, DRP has admitted in its application for a second extension that the true reason it hasn’t built Dock 2 is because of ‘market conditions and other factors.’ In other words, it has decided that building Dock 2 is not currently worth it. However, DRP wishes to extend all of its permits, including the Dock 2 Docket, in the hopes that construction of Dock 2 is worth it at some point in the future.

Relatedly, DRN questioned the relevance of the expenditures spreadsheet submitted with DRP’s extension request, because in DRN’s view: (1) many of the listed expenditures pre-date DRP’s last extension request, and (2) counting current expenditures, it is unclear whether the listed expenditures relate in whole or in part to the Dock 2 project.

DRBC Response: Amended section 401.41(a)(iv) requires a demonstration that the project sponsor is diligently pursuing the project by any, but not necessarily *all* of a list of means that include, in addition to “planning, construction or project operational activities” and “project expenditures”, “efforts to secure government approvals necessary for the project” and “its active participation in appeals of government decisions on its applications for government approvals.” Section 401.41(a)(iv) expressly recognizes that a “project sponsor is not required . . . to conduct activities that it is not legally authorized to conduct or that it demonstrates would be unreasonable for it to conduct before obtaining all necessary final government approvals.”

As discussed above, since the Commission approved an initial, three-year extension of the Dock 2 Docket in September 2022, in the capacity of defendant-intervenor, DRP has continued to defend a 2020 federal district court challenge to its Corps of Engineers permit issued for the construction of Dock 2 pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. *Delaware Riverkeeper Network v. United States Army Corps of Engineers*, 1:20-cv-4824 (D.N.J). As of this writing, the litigation in the District of New Jersey remains in abeyance pending a decision by FERC.

Also since 2022, DRP:

- timely applied for and obtained an extension of its NJDEP Waterfront Development In-Water Permit for the Dock 2 project. [NJDEP’s letter of May 23, 2024 extending the permit](#) is among the materials made available to the public through DRBC’s website in connection with the request for an extension of the Docket.
- timely applied for an extension of its Corps of Engineers permit that is the subject of the litigation noted above. [DRP’s application for an extension of this permit, dated September](#)

[19, 2024](#), is likewise among the materials made available to the public during the comment period on DRP's extension request.

Prior to 2022, DRP:

- defended administrative and state court appeals of its NJDEP Waterfront Development In-Water Permit issued on May 20, 2019. *In the Matter of Challenge of Delaware Riverkeeper Network to Delaware River Partners Permit No. 0807-16-0001.2 WFD 19001*, Docket No. A-0709-19 (N.J. Sup. Ct. App. Div. June 23, 2021) (unpublished).
- defended administrative and federal court appeals of its DRBC Docket. See [DRBC Resolution for the Minutes of December 9, 2020](#), and *Delaware Riverkeeper Network v. Delaware River Basin Comm'n and Delaware River Partners, LLC*, Civ. No. 21-CV-1108 (D.N.J.).

The level of engineering and design work required for local, state, federal and DRBC approvals for the Project was completed at an earlier stage. The vast majority of the total Project costs are those associated with dredging, dredge spoil disposal, and construction of the wharf and appurtenant facilities, none of which can reasonably begin when the legal challenge to a key permit remains pending. Until all legal challenges to its approvals are resolved, DRP cannot reasonably be expected to engage in activities or incur expenses for the Dock 2 project other than those associated with renewing, extending or defending its key approvals. Under the applicable provisions of the RPP, then, in the view of the Commission, DRP's efforts and expenditures for these limited purposes demonstrate diligent pursuit of the Project.

SC-3b. No Diligent Pursuit: (Surfrider Foundation) "[T]he methane liquefaction plant that was supposed to be built in Wyalusing Township, PA four years ago for transport to Gibbstown, has not been constructed and the permits have expired. There is no information available about where DRP would get LNG to transport to the Gibbstown facility, demonstrating a lack of project viability and diligence by the company."

DRBC Response: DRP's application and the approved Docket describe the Dock 2 project in relevant part as follows:

Dock 2 is designed for the loading of bulk liquid products directly from railcar or truck onto ocean-going vessels for export and includes infrastructure for transloading operations. **Dock 2 will support the transloading of a variety of bulk liquid products**, including butane, isobutane, propane (collectively liquefied petroleum gas, or LPG), liquefied natural gas (LNG), and ethane.

(Emphasis added.) Whether or not a methane liquefaction plant is developed in Wyalusing Township, Pennsylvania, is not relevant to use of the proposed wharf for export of any of the variety of bulk liquid products other than LNG that the applicant (or the Docket) has identified. Commenters have noted that "DRP has been working to secure approval from NJDEP for the construction of two new 640,000-barrel hard rock underground storage cavern system[s]"

Since the GLC will not provide bulk storage of LNG (see Docket, p. 3), such caverns, if constructed, would store other bulk liquid products for export. The viability of the Dock 2 project is thus not clearly contingent on development of a methane liquification plant in Wyalusing Township, Pennsylvania.

D. Comments Related to Other Concerns

SC-4a. Public health and safety - LNG: A number of commenters raised public health and safety concerns associated with the transport of LNG, including the risks that LNG will explode, or that it will leak or spill from trucks or ships transporting it. They note the proximity of the Project to densely populated communities, schools, residences, bridges, roads, highways and the Philadelphia Airport.

DRBC Response: Many of the public safety and health concerns relating to the transport of LNG, although legitimate concerns of government, are unrelated to the water resources facilities and water quality, quantity and flow management matters addressed by the Commission's Comprehensive Plan. To the extent that the commenters' concerns do relate to water resources, the Commission considered them during its initial review of the Project in 2019. Commenters offered no new information that would warrant reconsideration of the Commission's 2019 responses. Accordingly, the Commission incorporates herein the responses set forth in the Minutes from the June 12, 2019 Commission Business Meeting, which are incorporated herein and provided as Attachment 2 (see Min. pp. 12-20).

Testimony on the risks to water resources with which the Comprehensive Plan is concerned was also provided during the Commission's evidentiary hearing on its decision to approve the Dock 2 Docket. Such testimony included that of Captain Jerzy J. Kichner, formerly of the U.S. Coast Guard, a federal agency charged with matters related to public safety and emergency management in the context of commercial shipping. The Coast Guard is responsible for issuing a Letter of Recommendation confirming that the Delaware River and Bay is suitable for the type and frequency of commercial vessel traffic expected as part of the Project. With respect to the risks posed to water quality due to the chemical and physical properties of LNG, Captain Kichner opined that because LNG is non-toxic and vaporizes quickly, it does not pose a water quality risk. He explained:

"When spilled as a liquid, [LNG] float[s] on water and quickly vaporize[s] leaving behind no residue In case of accidental release, LNG will completely evaporate, leaving no residue or lasting impacts on land or water. If spilled on the ground, LNG will either vaporize immediately, or if large quantities are released, will temporarily form a liquid pool but continue to vaporize rapidly until it completely vaporizes. If spilled on water, LNG will float on top as a liquid pool and very rapidly vaporize LNG is not an acute or chronic carcinogen and is not toxic to fish, mammals, the environment or the food chain. For this reason, it is not regulated in the United States or internationally as a marine environmental hazard or pollutant."

Captain Jerzy J. Kichner, USCG (ret), *Evaluation of Ballast Water Discharges and Potential for Water Quality Impacts from LHG or LNG Spills*, March 16, 2020, § 2.2.

At the conclusion of the evidentiary hearing, citing the hearing officer's report, the Commission found that "the evidence at the hearing showed that any releases of LNG or LHG [(liquified hazardous gas)] at the GLC are unlikely to pose a risk to water resources." In re: DRBC Docket D-2017-009-2, Gibbstown Logistics Center Dock 2 ([Opinion of the Commission affirming the June 12, 2019 Docket approval](#)), Dec. 9, 2020, note 12.

SC-4b. Health and safety – caverns: (Multiple Commenters) "A NJ Dept of Environmental Protection draft permit for the proposed caverns is currently out for public review. It would be the largest cavern system in the state and compounds the site's unacceptable dangers and pollution potential."

DRBC Response: Please see the response to SC-2b above, which includes a link to New Jersey's comprehensive regulations on underground storage caverns, finalized by the NJDEP on May 1, 2023. Consistent with those regulations, the NJDEP provided an opportunity for public comment, including a public hearing (see [Notice of Draft Permit PI 1032630 CAV230001](#)) on its draft permit ([DRAFT Permit PI 1032630 CAV230001](#)) concerning DRP's application to construct underground caverns for the storage of liquified petroleum products at the GLC.

SC-4c. Health and safety - airport: (C. Pryde) "It should also be noted that this site is close enough to Philadelphia International Airport that it could affect landing patterns."

DRBC Response: The Commission's evaluation under Section 3.8 of the Compact is limited to determining whether the Project substantially impairs or conflicts with the Commission's Comprehensive Plan. See, e.g., Compact §§ 3.8 and 13.1 The potential impact of the Project on landing patterns at Philadelphia Airport is outside the scope of Commission review of the Project. Please also see the Commission's response at SC-5a, above.

SC-4d. Air quality and climate change: Commenters stated that LNG export activities associated with the Project, including the transport of LNG by truck, would contribute to greenhouse gas emissions, sea level rise and other negative effects of climate change. Relatedly, commenters averred that the Project supports the increased production of and reliance on fossil fuels and will impede the development of sustainable and renewable energy sources.

DRBC Response: The Commission addressed similar oral and written comments on its draft docket for the Dock 2 Project in 2019. Because commenters have provided no information that would warrant reconsideration of these concerns, the Commission relies on, and incorporates herein, its response as set forth in the Minutes of the June 12, 2019 Commission Business Meeting, which are provided as Attachment 2 (see Min. p. 15).

SC-4e. Water quality: Commentors expressed concern over the potential for water quality impacts resulting from sediment disturbance and pollution/contamination caused by dredging.

DRBC Response: Following a public comment period and public hearing in 2019, the Commission responded to concerns that the Project would adversely affect water quality due to re-suspension of buried contaminants during dredging. These concerns were also fully litigated during an administrative hearing in 2020 and ensuing appeal to a federal district court. The Commission's eight-day evidentiary hearing included testimony from numerous expert and fact witnesses, including experts on the issues of sediment disturbance and re-suspension of contaminants. The hearing officer produced a 102-page set of findings and recommendations, to which the parties responded with post-hearing objections and briefs. On December 9, 2020, the Commission issued a [decision affirming its approval of the Docket and voted to uphold the approval](#). In the subsequent appeal, the Court affirmed the Commission's approval of the Docket. *See Delaware Riverkeeper Network v. Delaware River Basin Commission and Delaware River Partners, LLC.*, No. 1:21-cv-1108. In its March 2023 opinion, the Court in relevant part held that:

- Substantial evidence supported the Commission's conclusions concerning the effects on groundwater and stormwater. *Delaware Riverkeeper Network*, No. 1:21-cv-1108, Docket No. 61 at 22, 26.
- Substantial evidence supported the Commission's reliance on composite sediment testing to determine that the proposed dredging would not conflict with the Comprehensive Plan. *Id.*, Docket No. 61 at 18.
- The Commission correctly considered impacts of PCB contamination as part of the Docket review and approval. In particular, the Court explained that "the Commission did consider effect of PCBs and pointed to substantial evidence in support of its conclusion that the Dock 2 Project did not present concerns related to PCB contamination of the water such that the Dock 2 Project would conflict with the Comprehensive Plan." *Id.*, Docket No. 61 at 37.

SC-4f. Aquatic life: Commenters expressed concern over the Project's adverse impact on aquatic life and habitat, including on threatened and endangered species such as the Atlantic sturgeon, as well as rare aquatic vegetation, marine mammals, turtles, birds and fish.

DRBC Response: Following a public comment period and public hearing in 2019, the Commission responded to concerns that the Project would adversely affect aquatic life and aquatic habitat, including threatened and endangered species. Because these concerns were already considered by the Commission in relation to the Docket, and because commenters have not identified any information regarding a material change to the Docket or an extension of the Docket that would warrant reconsideration, the Commission relies on, and incorporates herein, its response as set forth in the Minutes from the June 2019 Commission Business Meeting (provided as Attachment 2 hereof).

The concerns related to aquatic life and habitat were also fully litigated during the 2020 administrative hearing and subsequent district court litigation. *See Delaware Riverkeeper Network v. Delaware River Basin Commission and Delaware River Partners, LLC.*, No. 1:21-cv-1108 (D.N.J.). In particular, as relevant here, in its Opinion affirming the Commission's approval of the Docket, the Court held that:

- The Commission properly consulted with and relied upon other agencies with particular expertise in endangered and threatened species, including National Marine Fisheries Service (“NMFS”) and NJDEP, to support its analysis and findings with regard to the effect of the Project on aquatic life and habitat. *Id.*, Docket No. 61 at 19-21, 29-32.
- Substantial evidence supported the Commission’s finding that any impact to submerged aquatic vegetation due to sediment and turbidity was limited, and that the restrictions put in place by other agencies including the Army Corps, NMFS, and NJDEP would further prevent harm. *Id.*, Docket No. 61 at 26-28.

SC-4g. Economic impact: Commenters expressed concern that LNG export activities would provide no economic benefit to communities in the Delaware River Basin. Relatedly, commenters expressed concern that the Project would jeopardize tourism and riverine recreation in the Delaware River Basin.

DRBC Response The Commission’s review is limited to determining whether proposed activities would substantially impair or conflict with the Commission’s Comprehensive Plan (also herein, “Plan”). See Compact § 3.8 and RPP, 18 C.F.R. Part 401, Subpart C. Although some state and federal agencies perform economic analyses, neither the Plan nor the Commission’s regulations for implementing it require the Commission to do so. It is assumed that markets will determine which privately-sponsored projects are undertaken.

With respect to recreational use, the Commission appropriately considered that the Project is located at the former Chemours Repauno industrial site (also known as the “DuPont Repauno Works”) in Greenwich Township, Gloucester County, New Jersey. Between 1880 and 1954, the Project site was used by various DuPont entities for chemical research, manufacturing, and related purposes, including the testing of explosives. After 1954, the Project site was used primarily for production of commodity chemicals. The former DuPont Repauno Works industrial facility included an industrial process wastewater treatment system and an underground cavern for the storage of anhydrous ammonia. DuPont’s successor in interest, Chemours, operates a groundwater remediation withdrawal and treatment system on-site for the remediation of DuPont’s former industrial operations. The site of the Project has been used primarily for industrial purposes without significant riverine recreation or tourism in the vicinity of the Project site for many decades.

SC-4h. Economic impact: (D. Ward) “[I]ssues with the creditworthiness of the parent company, Fortress Investment Group LLC, should be considered as it currently stands at a BB rating. It’s recent restructuring has resulted . . . in [ownership by] Mubadala Investment Company PJSC, Arabic state-owned global investment firm that acts as one of the sovereign wealth funds of the government of Abu Dhabi, as the major shareholder. The requested extension of DOCKET NO. D-2017-009-2 also needs to be reviewed in light of the DRP’s new foreign owners.”

DRBC Response: Amended section § 401.41 of the Commission’s *Rules of Practice and Procedure* provides for a docket extension of up to five years based on a written request from the project sponsor if certain criteria, discussed above, have been met. A change in the corporate or financial

structure of the project sponsor is outside the scope of the criteria that the Commission must consider in evaluating DRP's request for an extension of Docket D-2017-009-2.

SC-4i. Environmental justice: Commenters expressed concern about the adverse and inequitable impact on communities adjacent to LNG export activities.

DRBC Response: Although concerns over potentially inequitable impact of industrial activities on communities are proper concerns of government, the Commission exercises no control over the siting of projects except as they may affect water resources to the extent provided for in the Comprehensive Plan. That Plan focuses primarily on water quality, water supply, and flow management matters that the Commission fully addressed in its Section 3.8 review in 2019 and 2020.

SC-4j. Other - PA Constitution: "The Pennsylvania Environmental Rights Amendment give us the right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. As a resident I demand my rights to a clean Delaware River Waterway."

DRBC Response: DRBC is an interstate and federal entity created by concurring legislation of the Congress and the legislatures of the states of Delaware, New Jersey, New York and Pennsylvania under Article 1, Section 10, Clause 3 (the "Compact Clause") of the United States Constitution. Although each state's DRBC Commissioner and alternate Commissioners are bound by the constitution of the state they represent and may exert their influence on the other voting members, none of the members is bound by the constitution of any other state. Nevertheless, to the extent this comment raises concerns related to water quality, the Commission has carefully considered and addressed those concerns. Please see the response to SC-4e above.

Scenic, historic and aesthetic values along much of the non-tidal main stem Delaware River are protected by national Wild and Scenic Rivers designations, the federal, state and local laws applicable to such designations, and in some instances, the DRBC's Flood Plain Regulations, 18 C.F.R. Part 415 ("FPR"). The tidal river does not have designations of this type that the Commission is empowered to implement, and the FPR do not apply in the tidal river.

SC-4k. Other - Municipalities opposed: "More than 16 NJ municipalities have passed formal resolutions opposing the project, citing the extreme risks to water quality, public health, safety and the environment that are associated with this project."

DRBC Response: The purpose of the Commission's approval is limited to ensuring that the activities subject to the Commission's review—dredging and construction of a wharf and appurtenant facilities for two deepwater berths—do not substantially impair or conflict with the Comprehensive Plan "for the immediate and long range development and uses of the water resources of the basin." Compact § 3.2 (*see also* §§ 3.8, 13.1). The matters addressed by the Comprehensive Plan primarily concern water quality, water supply, and flow management, which the Commission has thoroughly addressed.

Like most dockets issued by the DRBC, the GLC Dock 2 Docket expressly requires the project sponsor to obtain all other local, state and federal approvals required for the project to proceed. *See* Docket condition C.8. These include the federal, state, county and township approvals listed in Table B-1 of the Docket. To the extent that the concerns raised by the commenter focus on air quality, storage and transportation of petroleum products, navigational safety, and community planning, they are appropriately addressed by other authorities.

ATTACHMENT 1

**LETTER OF MAY 16, 2025 FROM
DELAWARE RIVER PARTNERS TO DRBC**



David Kovach, P.G.
Project Review Section Manager
Delaware River Basin Commission
PO Box 7360
25 Cosey Road
West Trenton, NJ 08628-0360

Sent by email only, to: David.Kovach@drbc.gov cc: Pam.Bush@drbc.gov

Dear Mr. Kovach:

Please accept this letter as the response of Delaware River Partners LLC (“DRP”) to public comments received by the Delaware River Basin Commission (“DRBC” or the “Commission”) in respect of DRP’s request for an extension of Docket Number D-2017-009-2 (the “Docket”).

The Docket authorizes DRP to perform dredging and deep-water construction activities in the Delaware River in support of a second dock (“Dock 2”) at the Gibbstown Logistics Center (“GLC”) at 200 North Repauno Avenue, Gibbstown, New Jersey (the “Dock 2 Project”). DRBC issued the Docket on June 12, 2019. By way of a Resolution adopted on September 8, 2022 (superseding and consistent with an extension approval granted by DRBC Executive Director Steven J. Tambini on June 16, 2022), the Commission approved an extension of the Docket through June 12, 2025. On March 14, 2025, DRP submitted a request to DRBC for a further extension of the Docket in accordance with 18 C.F.R. § 401.41(a)(1).

DRBC recently provided DRP with a copy of comments submitted to DRBC during the public comment period for the Docket extension. DRP recognizes the value of community engagement, and appreciates the opportunity to review these comments and provide DRBC with a response. DRP’s review identified eight organizations that submitted comments to DRBC in response to the extension request.¹ The remaining comments were submitted by individuals, most of whom conveyed the same points, often using identical language borrowed from a template comment letter that appears to have been circulated for that purpose by the Delaware Riverkeeper Network.

Whether submitted on behalf of an organization or an individual, most of the comments that express opposition to extending the Docket raise objections to the energy industry, the presence of the GLC generally, or the potential use of Dock 2 for certain products. In particular,

¹ The organizations are the Delaware Riverkeeper Network, Food & Water Watch, Pathways Institute of Metaphysics, Surfrider Foundation, Schuylkill Pipeline Awareness, Damascus Citizens for Sustainability, Berks Gas Truth, and Environment New Jersey.

many of the comments express a generalized opposition to liquefied natural gas (“LNG”). As discussed further below, LNG is not handled at the GLC and the focus on this product with respect to Dock 2 is misplaced. More importantly, the comments regarding these topics do not relate to the scope and purpose of the Docket or the specific activities that are authorized by the Docket, which pertains solely to the dredging and construction of a dock, nor are they relevant to DRP’s request to extend the Docket. As the Commission will recall, these same concerns were thoroughly considered, and rejected, during the 2020 Commission hearing relating to Dock 2, the findings from which were affirmed by the District of New Jersey in *Delaware Riverkeeper Network v. Delaware River Basin Comm’n*, No. 21-CV-01108 (RBK), 2023 WL 2728802, at *1 (D.N.J. Mar. 31, 2023).

In light of the broad scope of topics mentioned in the public comments, a brief restatement of the principles relevant to the extension is merited. DRP’s extension request is governed by 18 C.F.R. § 401.41(a)(1), which provides that the Commission can extend a docket if four conditions are satisfied:

- (i) No material changes to the project as approved are proposed;
- (ii) The condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan;
- (iii) The Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan; and
- (iv) The project sponsor is diligently pursuing the project as shown by its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, or its active participation in appeals of government decisions on its applications for government approvals....

18 C.F.R. § 401.41(a)(1)(i)-(iv).

DRP has satisfied each of the requisite conditions for extension of the Docket, and DRBC should therefore grant the extension request.

1. There have been no material changes to the Dock 2 Project or the Project site.

Many commenters urge DRBC to deny DRP’s extension request because they claim there have been material changes to the Dock 2 Project and/or to the site of the Dock 2 Project within the meaning of 18 C.F.R. § 401.41(a)(i)-(ii). Specifically, commenters point to: (i) DRP’s planned construction of two underground storage caverns at the GLC; and (ii) the lack of federal approval to transport LNG by rail to the GLC. These comments are incorrect and fail to demonstrate that there have been any material changes to the Dock 2 Project or to the Project site.

First, DRP's planned construction of underground storage caverns to store liquefied petroleum gas at the GLC has no relationship to the Docket, which only grants DRP approval to conduct dredging and construction activities necessary to construct Dock 2. In this regard, the Docket defines the "Project Area" as the location at Thompson's Point where Dock 2 will be built, as well as the 45-acre area in the Delaware River where dredging and construction will take place. *See* Docket, Section A.1 & 3. Thus, the Docket does not have any connection to the upland portion of the GLC where the proposed caverns would be constructed.²

Second, commenters argue that because federal law currently prohibits LNG transport by rail, the transloading of LNG at Dock 2 will require LNG to be transported by truck to the GLC, which could cause logistical and environmental issues. This type of objection is not only hypothetical and speculative, it is also factually misplaced. Dock 2 is designed to handle a variety of cargoes, including bulk liquids and bulk gases. It is not, as many commenters suggest, an LNG dock. Rather, it will be capable of handling LNG because LNG is one of several liquids products that require similar types of facilities. Additionally, and importantly, any cargo that may be handled in the future when Dock 2 is in service is completely independent from the subject of the Docket itself and thus irrelevant to DRP's request for an extension.

When properly focusing on the Dock 2 Project, which is the subject of the pending extension request, it is clear that there have been no material changes to it or to the project site: the planned dredging and construction activities that are authorized by the Docket remain unchanged, as does the condition of the site itself. Accordingly, the first two conditions for granting the requested extension are satisfied.

2. DRP is diligently pursuing the Dock 2 Project.

Many commenters also urge DRBC to deny DRP's request for extension because the commenters do not believe that DRP is diligently pursuing the Dock 2 Project within the meaning of 18 C.F.R. § 401.41(a)(1)(iv). The commenters make various allegations in support of that claim, including that DRP has failed to spend sufficient funds in support of the Dock 2 Project. They further theorize that DRP has not constructed Dock 2 due to negative LNG market conditions and a lack of an LNG supply source, focusing in particular on plans for a third-party methane liquefaction plant in Wyalusing Township, PA.

These objections are not only highly speculative and subjective, but they also once again disregard the nature, scope and purpose of the Docket, as well as DRBC's regulations governing docket extensions. Under Section 401.41(a)(1)(iv), a project sponsor can demonstrate that it is diligently pursuing its project in variety of ways, including:

² The underground caverns are also subject to their own separate permitting process and a comprehensive set of regulations adopted by the New Jersey Department of Environmental Protection ("NJDEP"). *See* N.J.S.A. 58:10-35 *et seq.* and N.J.A.C. 7:1F-1.1 *et seq.* In accordance with DRBC's Administrative Agreement with the State of New Jersey, underground storage cavern projects are subject to the One Permit Program, with NJDEP having the primary authority for reviewing and approving such projects.

its planning, construction or project operational activities, its project expenditures, its efforts to secure government approvals necessary for the project, ***or its active participation in appeals of government decisions on its applications for government approvals.***

18 C.F.R. § 401.41(a)(1)(iv) (emphasis added). In addition, the regulations expressly state that a project sponsor “is not required by this paragraph (a)(1)(iv) to conduct activities that it is not legally authorized to conduct or that it demonstrates would be unreasonable for it to conduct before obtaining all necessary final government approvals.” *Id.*

Here, DRP is actively participating as a defendant-intervenor in an ongoing appeal of a permit issued by the United States Army Corps of Engineers (the “Army Corps”) pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (the “Army Corps Permit”), which authorized the dredging and construction of Dock 2. The Delaware Riverkeeper Network filed an appeal of the Army Corps Permit in 2020, which remains pending before the U.S. District Court for the District of New Jersey. *See Delaware Riverkeeper Network v. U.S. Army Corps of Engineers*, No. 1:20-cv-4824-NLH-MJS (D.N.J.). The appeal is currently being held in abeyance while the Federal Energy Regulatory Commission (“FERC”) considers whether it has jurisdiction under the Natural Gas Act over the Gibbstown Logistics Center. If FERC concludes that it has jurisdiction (which DRP contends it does not), then FERC’s ruling could raise a question as to district court jurisdiction over the appeal.³ *See id.*, Doc. No. 44.

DRP’s engagement in an ongoing appeal of a permit authorizing the dredging and construction of Dock 2 fits squarely within the Commission’s definition of “diligent pursuit.” As DRBC noted in its September 8, 2022 Resolution granting DRP’s initial request for an extension of the Docket, the Dock 2 Project is projected to cost well in excess of \$100 million. If DRP were forced to incur these costs to build Dock 2 while a major federal permit remains subject to challenge, it would be conducting that work and investing those dollars at risk. Under these circumstances, it would be “unreasonable” for DRP to take further action to conduct the activities authorized by the Docket “before obtaining all necessary final government approvals.” 18 C.F.R. § 401.41(a)(iv).

In addition to DRP’s active participation in the Delaware Riverkeeper Network’s pending appeal of the Army Corps Permit, DRP has also spent significant sums of money in furtherance of the Dock 2 Project. Indeed, as set forth in DRP’s supplemental submission to DRBC on March 20, 2025, DRP has already incurred more than \$8 million in expenditures in support of the Project. Such a significant sum speaks for itself and should be deemed sufficient for demonstrating DRP’s diligent pursuit of the Dock 2 Project and its continued commitment to the Project.

³ The Delaware Riverkeeper Network has also urged DRBC to reconsider its decision to issue the Docket because the Dock 2 Project could somehow change under FERC oversight. *See Delaware Riverkeeper Network Comment Letter*, p. 2. Not only is this argument premature, as FERC has not yet asserted jurisdiction let alone provided any indication that it might require changes to the Dock 2 Project, but it is also precisely why an extension is justified. DRP continues to defend the Delaware Riverkeeper Network’s appeal, and while the appeal remains pending, it would be unreasonable and unjustified to force DRP into a Hobson’s choice, where its only options are to move forward with Dock 2 construction while the appeal is pending or to apply for a new Docket for the same project the Commission has already approved.

3. There is no other legitimate reason to deny the pending extension request.

Finally, commenters used the pending extension request to re-raise a panoply of concerns related to the impact the Gibbstown Logistics Center and/or the Dock 2 Project may have on the Delaware River and surrounding area, all of which have already been thoroughly considered and rejected by the Commission and by the many other agencies with jurisdiction over the Project. These concerns include:

- negative environmental impacts to water quality, air quality, habitat, marine mammals and organisms, birds, and aquatic vegetation;
- the potential release of PCBs and other toxic pollutants that are currently contained in sediments;
- disturbance to and interference with remediation that has been conducted on the uplands portion of the Gibbstown Logistics Center;
- impacts to recreation in the area, including, fishing, boating, hiking, wildlife viewing, swimming, photography, beach going, surfing, diving, kayaking, and paddleboarding, and resultant impacts to tourism in the region;
- the exacerbation of climate change by increasing fossil fuel infrastructure and utilizing natural gas; and
- the possibility of accidents and safety issues due to the flammability and volatility of LNG, the planned transportation of LNG by truck or rail, the presence of vessels transporting large quantities of LNG, the overall increase in river vessel traffic, and the fact that LNG facilities could be targeted by terrorists.

After an extensive administrative hearing in which these issues were raised, the Commission concluded in 2020 that the Dock 2 Project, as limited by the conditions in the Docket, did not impair or conflict with the Comprehensive Plan. The Commission's decision was then affirmed on appeal by the U.S. District Court for the District of New Jersey in *Delaware Riverkeeper Network v. Delaware River Basin Comm'n*, No. 21-CV-01108 (RBK), 2023 WL 2728802, at *1 (D.N.J. Mar. 31, 2023).

In the federal court appeal of the Docket, the Court specifically evaluated the same or similar environmental claims that are being re-raised now and concluded that none of the claims had merit and that the Commission's decision to approve the Dock 2 Project was well-supported. *See, e.g., id.* at *11 ("The Commission's conclusion that there would be limited effects of stormwater resulting from the Dock 2 Project is supported by substantial evidence in the record."); *13 ("Because the Commission's analysis of the effects of groundwater was based on expert testimony as well as reliance on conclusions by the NJDEP, this Court finds that it was supported by substantial evidence."); *16 ("[T]he record demonstrates that in making its final determination the Commission did not look at the effects of Dock 2 in a vacuum."); & *18 ("[T]he Commission did consider the effect of PCBs and pointed to substantial evidence in support of its conclusion that the Dock 2 Project did not present concerns related to PCB contamination of the water[.]").

Further, the Court held as a matter of law that the Delaware River Basin Compact “authorizes the Commission to rely upon other agencies,” and regarding the Dock 2 Project specifically, found that it was proper for the Commission to rely upon NJDEP, the Army Corps, and the National Marine and Fisheries Service (“NMFS”) on issues within those agencies’ particular areas of expertise. *Id.* at *9-10; *see also id.* at *14 (“The Commission pointed to substantial evidence in support of its analysis of impact to SAV [submerged aquatic vegetation], including the positions of the USACE and NMFS, the fact that the potentially impacted SAV was limited, and the restrictions put in place by other agencies to prevent harm to SAV.”) & *15 (“The Commission explains that it relied upon NJDEP’s review and USACE’s representations in support of its determination that there would be no harm to mussels.”).

In addition to the bulleted list of issues raised above, some comments refer in passing to potential harms from the Dock 2 Project to Atlantic sturgeon, including potential impacts to sturgeon habitat and possible marine vessel strikes. While there have been no material changes to the Dock 2 Project, NMFS is nevertheless reevaluating the potential for impacts to Atlantic and shortnose sturgeon in the context of DRP’s pending request for an extension of the Army Corps Permit. Per the Court’s opinion in *Delaware Riverkeeper Network, supra*, it is entirely appropriate for the Commission to rely on the expertise of the Army Corps and NFMS, who have the technical expertise to evaluate any claimed impacts to aquatic life. Moreover, given that the Dock 2 Project has not changed, DRP expects that NMFS will again conclude that Project is not likely to adversely affect Atlantic or shortnose sturgeon or their habitat.

Based on the foregoing, the same generalized concerns raised in opposition to the Docket’s issuance do not provide any basis for the Commission to deny the requested extension. The Dock 2 Project remains unchanged from when the Commission first approved it, and the extension should therefore be granted.

* * * * *

DRP is grateful for the opportunity to provide this response. Please do not hesitate to contact me if you have any questions or if you wish to request additional information. My direct contact information is provided in the email to which this letter is attached.

Respectfully submitted,



Sarah Hurt
Senior Vice President and General Counsel

ATTACHMENT 2

MINUTES OF THE COMMISSION'S BUSINESS MEETING OF JUNE 12, 2019

Responses to comments on the Dock 2 Docket
appear on pp. 12-20.

DELAWARE RIVER BASIN COMMISSION

MEETING OF JUNE 12, 2019

Minutes

Commissioners	Jeffrey L. Hoffman, New Jersey, Chair
Present:	Kenneth Kosinski, New York, Vice Chair
	Bryan A. Ashby, Delaware, Second Vice Chair
	Lieutenant Colonel Kristen N. Dahle, United States
	Aneca Y. Atkinson, Pennsylvania
DRBC Staff	Steven J. Tambini, Executive Director
Participants:	Pamela M. Bush, Assistant General Counsel and Commission Secretary
	Kenneth J. Warren, DRBC General Counsel
	Elba L. Deck, Director, Finance and Administration
	David Kovach, Manager, Project Review
	Amy Shallcross, Manager, Water Resource Operations
	Namsoo Suk, Director, Science and Water Quality Management

The Commission met at the West Trenton Volunteer Fire Company in Ewing, New Jersey. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection and Alternate Commissioner for Governor Philip D. Murphy of New Jersey, presided. Mr. Hoffman thanked the West Trenton Volunteer Fire Company for the use of the space and noted the exits and safety procedures. The Commissioners and senior staff introduced themselves, and all stood for the Pledge of Allegiance.

Minutes. The Minutes of the Commission's regularly scheduled Business Meeting of March 13, 2019 were unanimously approved.

Announcements. Ms. Bush announced the following advisory committee meetings to take place in the Goddard Conference Room of the Commission's West Trenton office building. She noted that additional information, including contact information for committee staff liaisons, could be found on the Commission's website, www.drbc.gov.

- *DRBC Monitoring Advisory and Coordination Committee (MACC).* Monday, June 17, 2019 at 9:30 a.m.
- *DRBC Toxics Advisory Committee (TAC).* Tuesday, June 18 at 9:30 a.m.
- *DRBC Subcommittee on Ecological Flows (SEF).* The SEF is a subcommittee of the Regulated Flow Advisory Committee. June 19, 2019 from 10:00 a.m. to 3:30 p.m.

- *DRBC Water Management Advisory Committee (WMAC). Thursday, June 20 at 10:00 a.m.*

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

Precipitation in the basin over the last 90 days was between 15-20 inches, with larger amounts in a few locations. These amounts were between 125 and 150 percent of normal precipitation.

Streamflow at many locations in the basin is in the above normal to much above normal range. Ms. Shallcross displayed hydrographs – plots of daily flow over the past year – for the Delaware River at Montague, NJ and Trenton, NJ and the Schuylkill River, at Philadelphia, PA. Except for a brief period in April, the flows were above the median value, based on the period of record for each location.

Ms. Shallcross cautioned that people should always wear a life jacket during river recreation. The Delaware River can be dangerous, because on the surface, the water is moving much more quickly than it appears to be. The National Park Service has a program that emphasizes the importance of wearing a life jacket. She noted that rafting in the Lehigh River was enhanced following a recreational release from the F.E. Walter Reservoir.

Storage is created at a reservoir when water is impounded behind a dam. The storage in the basin includes several major categories: (1) three water supply reservoirs operated by New York City – Cannonsville, Pepacton and Neversink – which have a combined storage of 267 billion gallons (bg) when full; (2) storage that the DRBC pays for in the U.S. Army Corps of Engineers (USACE) reservoirs, consisting of about 13 bg in the Beltzville Reservoir and 2-4 bg in the Blue Marsh Reservoir, depending on the time of year; (3) drought emergency storage in other basin reservoirs from which the DRBC can request releases, including the Mongaup system, Lake Wallenpaupack, F.E. Walter and Nockamixon Reservoirs; and (4) the Merrill Creek Reservoir, from which power companies release water equal to their consumptive water use during drought conditions so that they may continue to operate without conservation restrictions.

In addition to each reservoir's primary purpose, water is released to maintain streamflow in the river. This is accomplished by releases for water to meet two flow objectives, one at Montague, NJ in the upper basin and the other at Trenton, NJ above the Delaware Estuary and Bay. For Montague, the River Master requests releases from the New York City reservoirs to maintain a flow of 1,750 cubic feet per second (cfs), which is equivalent to 1,130 million gallons per day (mgd). At Trenton, DRBC releases water to maintain 3,000 cfs, which is equivalent to 1,940 mgd. During very dry periods, the flow at Trenton may be 60 percent or more from reservoir releases.

The New York City Delaware River Basin reservoirs are essentially full, and Pepacton Reservoir is spilling. The Commission uses its storage in the Blue Marsh and Beltzville reservoirs to maintain flows at Trenton.

The anatomy of a reservoir consists of the bottom of the dam, called sediment storage. This is the volume of water below the outlet from which water is released to the river. The part of the reservoir that is used for available storage is between the bottom of the outlet pipe and a specified elevation and is often called the normal pool. In water supply reservoirs, that elevation is at the location of

the Spillway, which is well below the top of the dam. In flood mitigation reservoirs, the normal pool elevation is at a level maintained for docks and recreation. Flood mitigation storage is located above what is referred to as the spillway.

Ms. Shallcross explained how storage in a reservoir is calculated. Recently, both the USACE, for the federal reservoirs, and the City of New York, for its Delaware Basin reservoirs reevaluated the reservoir storage volumes because sometimes after reservoirs have been around for a while, sediment accumulates and may reduce the available storage.

DRBC's drought management program is essentially a reservoir and streamflow management program that is based on the level of combined storage in the three largest reservoirs in the basin – those owned by New York City. Currently, the New York City reservoirs are at 265 bg, which is about 99.3 percent full, or 76 bg above the “drought-watch” line.

In the Delaware Basin, reservoir releases are used in large part to meet a flow objective at Trenton. The Trenton flow objective was established to determine when releases should be made to repel the “salt front.” Fresh water inflows into the Estuary keep the salty ocean water from migrating upstream. In the 1965 drought, which is the worst drought of record in the basin, the salt front migrated as far upstream as River Mile (RM) 102. The salty water damaged industrial intakes and posed a threat to the City of Philadelphia's Torresdale drinking water intake. For this time of year, the salt front would normally be at RM 69. It is currently at RM 62.

Of the fourteen groundwater indicator wells in the basin, two are at normal levels and the rest are at levels above normal. The Bucks County Observation Well elevation levels show high water levels for the past 360 days.

The seasonal drought outlook prepared by NOAA indicates that drought conditions are not expected to occur anytime soon in our region. However, NOAA predicts that temperatures will be above normal. NOAA is predicting an equal chance for normal amounts of precipitation.

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

- *DRBC Spring 2019 Photo Contest.* The photograph entitled “Tulipes á Frenchtown,” by Laura Orbine was selected as the winner of the Commission's 2019 Spring Photo Contest. Enjoy Laura's winning photograph on the DRBC website and consider entering DRBC's next seasonal photo contest.
- *Governors' Summit.* On May 16, 2019 Delaware Governor John Carney, New Jersey Governor Phil Murphy and Pennsylvania Governor Tom Wolf met in Philadelphia for a Governors' Leadership Summit on the Delaware River. In an historic reaffirmation of the governors' commitment to a healthy Delaware River Watershed, the three executives signed a proclamation recognizing their collective work through the Delaware River Basin Commission to ensure that high water quality is maintained and aquatic life supported in the Delaware River Watershed. I was pleased to join the governors at the event and am thankful for their continued support.

- *Advancing High Water Quality Standards.* DRBC's ongoing efforts to improve and preserve water quality are exemplified by the Commission's Resolution No. 2017-4 of September 2017, which charts a path forward for the next chapter in water quality improvements in the Delaware River Estuary. Adopted by unanimous vote of the Commission's five members, the resolution recognized that evidence supports further study on the inclusion of propagation as a designated use in Estuary Water Quality Zones 3 and 4 and the upper portion of Zone 5 – the urbanized reaches of the basin's industrial and port complex. The resolution also recognized the importance of determining the appropriate designated uses for Estuary waters and the criteria necessary to protect these uses, and the importance of reaching these determinations through a collaborative process informed by scientific and engineering expertise.

Since September of 2017, DRBC staff and others have been working intensively to complete the program of work outlined in the resolution. DRBC contracted with the Academy of Natural Sciences of Drexel University (ANSDU) to compile information on the dissolved oxygen needs of Estuary aquatic species. The ANSDU report, completed in November 2018, is posted on the Commission's website. DRBC also contracted with an engineering firm, and in the summer of 2018, initiated an engineering evaluation and cost projection for achieving reductions in the discharges of ammonia and total nitrogen to the Estuary by the largest dischargers. A final report on this analysis is due next summer.

Staff also have been working intensively on the development of a hydrodynamic and water quality model for determining the pollutant load reductions needed to achieve higher concentrations of dissolved oxygen in the Estuary. Tremendous amounts of data and analysis are going into this undertaking. Monitoring to support the effort has included additional nutrient monitoring in the Delaware and Schuylkill rivers and smaller tributaries, light extinction monitoring and primary productivity monitoring. The seasonal Estuary "boat run" has been extended to a year-round effort and expanded to include algal speciation. DRBC also has required the largest point source dischargers to monitor their effluent for a two-year period beginning in 2018 and continuing through 2019. For additional insight and information about data collection and how the model is being developed, Steve encouraged interested parties to attend the Commission's Water Quality Advisory Committee meetings.

The Commission has convened a Dissolved Oxygen Early Action Workgroup that includes representatives of the DRBC, PADEP, NJDEP, DNREC and USEPA, to continue to look for opportunities to improve Estuary dissolved oxygen concentrations in the short term. The Commission appreciates the input of member experts on its Water Quality Advisory Committee and is also fortunate to have a panel of nationally-recognized experts to guide the DRBC staff in the development of the hydrodynamic and water quality model. The Commission's multiple studies, reports and model development efforts are expected to be completed in 2021.

- *DRBC Regulatory Program Fees.* In accordance with the *Rules of Practice and Procedure*, the Commission's regulatory program fees and schedule of water charges are revised annually effective July 1 to adjust for inflation, based upon increases in the local Consumer Price Index (CPI). This year's adjustment will be 1.86%.

- *25th Anniversary of the Delaware River Sojourn.* Friday, June 14 marks the 25th Anniversary of the Delaware River Sojourn. This year's 8-day event starts with a cleanup on the 14th. Paddlers launch in Narrowsburg, New York and pull out in Florence, New Jersey on the event's last day, Saturday, June 22. One of the best ways to understand the importance of the Delaware River is to paddle or float down it in a kayak, canoe or raft.

Steve offered a special thank-you to Kate Schmidt of the Commission staff, who has served on the Delaware River Sojourn Steering Committee for 13 years. He praised Kate's tremendous contribution to the Sojourn and noted that she is even getting him out on the river in 2019.

- *Farewell to Lieutenant Colonel Kristen N. Dahle.* Noting that this would be the last Commission meeting in which Philadelphia District Commander LTC Kristen Dahle would serve as an alternate DRBC commissioner representing the federal government, Mr. Tambini thanked her for her service to the country and to the Delaware River Basin, and on behalf of the Commission, presented her with a certificate of recognition and appreciation for her leadership.

General Counsel Report. Mr. Warren reported that the Commission continues to have pending in litigation the case *Wayne Land and Mineral Group v. the DRBC*. He noted the following developments in the case:

- Three Pennsylvania state senators moved to intervene in the matter to support the plaintiff's position that DRBC has no ability to review hydraulic fracturing projects. DRBC and the Delaware Riverkeeper Network (DRN) oppose that motion, and the district court recently issued a fairly lengthy opinion denying the motion. In an appeal to the Third Circuit, the senators argue that they have a right to intervene.
- DRBC filed a motion to compel responses to discovery that DRBC had served on the plaintiff, and DRN filed a similar motion. Much of the discovery was focused on the specific facts of plaintiff's hydraulic fracturing plans, such as how much water the plaintiff intends to use, how much wastewater the plaintiff's activities will generate, and how the plaintiff intends to manage that wastewater. The DRBC and DRN filed motions to compel because the plaintiff for the most part refused to provide any responses. The court granted DRBC's motion in almost all respects.
- The court also imposed a schedule in the case. Plaintiffs must respond within fourteen days of the court's order to the discovery they have not yet produced. A fact discovery deadline of September 9, 2019 has been set, and there are further deadlines for expert discovery. All discovery must conclude by January 8, 2020, at which point the court has given the parties the opportunity to file dispositive motions if they choose to do so. Such motions must be filed by February 7, 2020.

Mr. Warren in conclusion reported that the Commission continues to defend the case vigorously, and that it appreciates DRN's support and intends to prevail.

A Resolution to Adopt the Commission's Annual Current Expense and Capital Budgets for the Fiscal Year Ending June 30, 2020 (July 1, 2019 through June 30, 2020). Ms. Deck reported that in accordance with the *Delaware River Basin Compact* ("Compact") and the *Administrative Manual – By-Laws, Management and Personnel* ("Administrative Manual"), the Commission held a public hearing on May 15, 2019 on the Current Expense and Capital Budgets for Fiscal Year 2020. The Commission's Current Expense Budget for the fiscal year ending June 30, 2020 is in the aggregate amount of \$6,759,000. The Capital Budget (Water Supply Storage Facilities Fund) reflects revenues of \$4,391,800 with expenditures of \$3,638,000. Details are provided in the document dated June 12, 2019, titled *The Delaware River Basin Commission Current Expense and Capital Budgets for the Period of July 1, 2019 through June 30, 2020*.

In addition to funds in the amount of \$3,107,500 apportioned by the signatory parties by separate resolution, the Commission by the proposed budget resolution identifies its projected revenue as follows: Transfer in from the Water Supply Storage Facilities Fund of \$2,130,700; Transfer in from the Special Projects Fund (typically, grants) of \$350,000; and Other Income of \$1,170,800, for a total of \$3,651,500 in revenues.

The resolution provides that to the extent that revenue received during fiscal year 2020 under any federal or state grant-in-aid program exceeds the revenue budgeted from such source, the excess is appropriated for additional uses or programs related to the original grant.

The resolution also authorizes and directs the Executive Director to transmit to the principal budget officers of the respective signatory parties certified copies of the budget once adopted, together with a certified statement of the amount apportioned to each signatory party (by separate resolution) in accordance with the Compact and the Administrative Manual.

Should signatory party revenue fall below the budgeted amount, the Executive Director is authorized and directed to reevaluate the annual work plan, and after consultation with and concurrence by the Commission, to implement any or all actions that are deemed necessary to maintain the financial stability of the General Fund.

The Commission will continue to operate the Pennsylvania Groundwater Protected Area Program in fiscal year 2020. The estimated cost of the program, a sum which is apart from the Commonwealth's fair share signatory party contribution to the Commission's operating expenses, is \$153,800.

Ms. Deck requested that the Commissioners vote to adopt the draft resolution as proposed.

Hearing no comments or questions, Mr. Hoffman requested a motion to approve the resolution for adoption of the Commission's Annual Current Expense and Capital Budgets for the Fiscal Year ending June 30, 2020 as proposed. LTC Dahle so moved, Mr. Kosinski seconded her motion, and without further discussion, Resolution No. 2019-4, adopting the Annual Current Expense and Capital Budgets for the Fiscal Year ending June 30, 2020 (July 1, 2019 through June 30, 2020) was unanimously approved.

A Resolution to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets for the Fiscal Year Ending June 30, 2020 (July 1, 2019 through June 30, 2020). A unanimous vote of the Commission's five members is required to

apportion among the signatory parties the amounts required for support of the Current Expense and Capital Budgets. In accordance with the Compact and the Administrative Manual, the Commission on May 15, 2019 held a duly noticed public hearing on the budgets.

Ms. Deck explained that the resolution apportions among the signatory parties the amounts set forth below, together with such other funds as are made available to the Commission for the support of the budget for the fiscal year ending June 30, 2020. The resolution recognizes that all requested contributions are subject to the executive branch prerogatives of the member jurisdictions in formulating annual budgets and that the resolution is not intended to be an endorsement of any appropriation request to the extent that it is inconsistent with such executive branch priorities or policies.

The State of Delaware - \$447,000; the State of New Jersey - \$693,000; the State of New York - \$359,500; the Commonwealth of Pennsylvania - \$893,000; and the Federal Government - \$715,000. The total combined signatory party contribution provided for by the resolution is \$3,107,500.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Kosinski so moved, Mr. Ashby seconded his motion, and without further discussion a roll call vote was taken. Resolution No. 2019-5 apportioning among the signatory parties the amounts required for the support of the Current Expense and Capital Budgets for the fiscal year ending June 30, 2020 (July 1, 2019 through June 30, 2020) was approved by unanimous vote.

A Resolution for the Minutes Authorizing the Executive Director to Retain an Accounting Firm to Perform the Commission's Annual Independent Audits. The Compact requires the Commission as soon as practicable after the close of each fiscal year to undergo an audit by a qualified certified public accountant. The Commission issued a Request for Proposal (RFP) on February 20, 2019 soliciting these professional services for the fiscal years ending June 30, 2020 through June 30, 2022, with an option to continue these services for two additional years. In response to its RFP the Commission received several proposals prior to the deadline of Friday, March 21, 2019. The firm Zelenkofske Axelrod, LLC was determined to be the lowest responsible bidder, with a fee proposal of \$16,750 per year for three years, and an option for two additional years at \$17,500 per year. Ms. Deck recommended that the Commissioners approve the resolution authorizing the Executive Director to engage an accounting firm to perform the Commission's annual independent audit.

Mr. Hoffman requested a motion to approve the proposed resolution as presented by Ms. Deck. LTC Dahle so moved, Ms. Atkinson seconded her motion, and without further discussion, the Resolution for the Minutes authorizing the Executive Director to retain an accounting firm to perform the Commission's annual independent audits was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION authorizing the Executive Director to retain an accounting firm to perform the Commission's annual independent audits.

WHEREAS, Section 14.11 of the *Delaware River Basin Compact* requires that the Commission undergo an audit as soon as practicable after the closing of each fiscal year, by qualified certified public accountants selected by the Commission; and

WHEREAS, the Commission issued a Request for Proposal (“RFP”) on February 20, 2019, soliciting the professional services of certified public accountants to perform the required audits for fiscal years ending June 30, 2020 through June 30, 2022, with an option to continue these services for two additional years; and

WHEREAS, in response to its RFP, the Commission received seven proposals prior to the deadline of Friday, March 21, 2019, and the firm of Zelenkofske Axelrod LLC was determined to be the lowest responsible bidder, with a fee proposal of \$16,750 per year for three years with an option for two additional years at \$17,500 per year; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that the Executive Director is authorized to award a professional services contract to Zelenkofske Axelrod LLC for auditing services for the five-year period.

This Resolution shall take effect immediately.

A Resolution for the Minutes Authorizing the Executive Director to Enter into a Specialized Services Contract for Enhancements to the Source Code for the Hydrodynamic Model Known as the Environmental Fluid Dynamics Code (EFDC). Dr. Suk explained that pursuant to Resolution No. 2017-4, adopted by the Commission in September 2017, the staff have been working intensively on the development of hydrodynamic and water quality models to determine the designated aquatic life uses and associated dissolved oxygen criteria of the Delaware River Estuary. The staff have determined that enhancements to the source code for the hydrodynamic model are required to link it seamlessly with the water quality model, and have further determined that for the reasons set forth in the draft resolution, the firm GHD is uniquely qualified to perform these enhancements. Dr. Suk requested that the Commissioners approve the proposed Resolution for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Ashby so moved, LTC Dahle seconded his motion, and without further discussion, the Resolution for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model known as the Environmental Fluid Dynamics Code (EFDC) was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model known as the Environmental Fluid Dynamics Code (EFDC).

WHEREAS, by Resolution No. 2017-4, DRBC recognized the importance of determining the appropriate designated aquatic life uses of the Delaware River Estuary and

the water quality criteria necessary to protect these uses, as well as the importance of reaching these determinations through a collaborative process informed by technical studies and specialized scientific and engineering expertise; and

WHEREAS, also by Resolution No. 2017-4 the Commission recognized the need for a new water quality (eutrophication) model linked with a hydrodynamic model of the Delaware Estuary to assess the attainability of higher levels of dissolved oxygen; and

WHEREAS, the hydrodynamic model known as EFDC and the water quality model known as the Water Quality Analysis Simulation Program (WASP), both of which are supported by the United States Environmental Protection Agency (EPA), were selected to be used in this effort; and

WHEREAS, the DRBC staff have identified the need for validation of certain subroutines and enhancements to the source code for the EFDC hydrodynamic model to apply selective model options to the Delaware Estuary and to seamlessly link EFDC with the WASP model; and

WHEREAS, GHD is uniquely qualified to provide the specialized services required for validation and enhancement of the EFDC model code, including among other superb qualifications, the firm's:

- multi-decade long experience in enhancement of the EFDC hydrodynamic code;
- in-depth knowledge of the requirements for linking EFDC and WASP models; and
- close working relationships with the current WASP water quality model developer; and

WHEREAS, the success of the estuary designated use project as a whole depends upon the successful development of linked hydrodynamic and water quality models within a compressed period of time; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is hereby authorized to enter into an agreement with GHD to provide technical support to the Commission for enhancement of the EFDC hydrodynamic model code.
2. The value of the agreement is not to exceed \$20,000 or the amount awarded to the Commission or allocated by it for this purpose.
3. In accordance with Section 14.9(5) of the Compact, the competitive bidding provisions of the Compact are hereby waived in view of the specialized and professional nature of the services to be provided.

This resolution shall take effect immediately.

A Resolution for the Minutes Providing for Election of the Commission Chair, Vice Chair and Second Vice Chair for the Year Commencing July 1, 2019 and Ending June 30, 2020 (NY, DE, U.S.). Ms. Bush explained that before the commencement of the Commission's new fiscal year

on July 1, the Commissioners consider a resolution providing for the election of the Commission's officers for the new fiscal year. In accordance with the customary rotation, the resolution provides for election of the following officers to serve during the fiscal year commencing July 1, 2019 and ending June 30, 2020: as Chair, the Governor of New York; as Vice Chair, the Governor of Delaware; and as Second Vice Chair, the Commission's federal representative, the Commander, North Atlantic Division, United States Army Corps of Engineers.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Kosinski so moved, Ms. Atkinson seconded his motion, and without further discussion, the Resolution for the Minutes providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2019 was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2019 and ending June 30, 2020.

WHEREAS, Article 2, Section 2.6 of the *Delaware River Basin Compact* (Compact) states that the Commission shall provide for its own organization and procedure; and

WHEREAS, the Compact further requires the annual election of the Chair and Vice Chair, which historically has been based upon rotation of the signatory parties; and

WHEREAS, the Commission has further determined that a Second Vice Chair, to preside in the absence of the other officers, should also be elected; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Governor of New York is hereby elected to serve as Chair for the term July 1, 2019 through June 30, 2020.
2. The Governor of Delaware is hereby elected to serve as Vice Chair for the term July 1, 2019 through June 30, 2020.
3. The United States Member is hereby elected to serve as Second Vice Chair for the term July 1, 2019 through June 30, 2020.

Project Review Applications. Mr. Kovach reported that 27 draft dockets were the subjects of a duly noticed public hearing on May 15, 2019 and a written comment period that closed on May 20. An additional draft docket was the subject of a special hearing on June 6, 2019. The Commission received comments on two of the proposed dockets – dockets D-1969-210 CP-15 for the Exelon Generation Company, LLC Limerick Generating Station (hearing item 2 on May 15) and D-2017-099-2 for the Gibbstown Logistics Center Dock 2 (hearing item 1 on June 6).

Written comments on the draft docket for the Limerick Generating Station were submitted by one individual. By way of summary, the commenter opposed the existing facility, objected to its continued water withdrawal, and recommended that it be shut down. The project was added to the

Commission's Comprehensive Plan decades ago and since then has operated in accordance with DRBC docket decisions approving its water withdrawals, consumptive and non-consumptive uses and discharges. The Commission on numerous previous occasions has determined that when operated in accordance with its docket approvals, the project does not impair or conflict with the Comprehensive Plan.

The commenter expressed concern that the Limerick project withdraws a great deal of water and returns little to the river. Mr. Kovach confirmed that the facility's water use is largely consumptive because the water is used for cooling and lost to evaporation. He explained that the docket includes provisions for flow augmentation from various sources to replace water that is consumed. The project's withdrawals are also subject to a passing flow restriction designed to maintain adequate flow in the river. With respect to its discharges, the project has undergone multiple DRBC reviews and has consistently met DRBC's water quality regulations.

The commenter alleged that the DRBC is selling water and questioned whether this creates a conflict of interest for the Commission. The commenter also asked whether Exelon pays a fair amount for the water. Mr. Kovach clarified that the Commission does not sell water. In accordance with the *Administrative Manual – Basin Regulations – Water Supply Charges* (18 CFR Part 420) the Commission collects a fee for surface water withdrawals and uses the proceeds to pay the debt service, maintenance, repair and replacement, and operations costs associated with storage owned by the Commission in the Blue Marsh and Beltzville reservoirs. These two facilities, both located in Pennsylvania, were constructed by the federal government and are operated by the U.S. Army Corps of Engineers. Like other similarly situated surface water withdrawers in the Basin, the docket holder pays \$82.14 per million gallons for surface water that it uses consumptively and \$0.82 per million gallons for surface water that it uses non-consumptively (i.e., that is returned to the river). Mr. Kovach noted that all large withdrawers of surface water that were not withdrawing their water prior to enactment of the Compact, pay surface water charges.

The commenter also asked how the Wadesville Mine Pool and Tamaqua and Merrill Creek reservoirs (sources of flow augmentation water under the docket) are refilled. Mr. Kovach explained that these reservoirs are replenished primarily by rainfall. Rain water also infiltrates the ground and is stored in aquifers, which replenish the Wadesville Mine Pool.

Mr. Kovach noted that consideration of dockets D-1999-012 CP-4 for Warrington Township (hearing item 11 on May 15) and Docket D-2017-002 CP-1 for Gan Eden Estates (hearing item 25 of May 16, 2018), both of which were to be considered at this meeting, were being postponed to allow additional time for review.

Mr. Kovach recommended that the Commissioners approve the 26 dockets identified as hearing items 1 through 10 and 12 through 27 of May 15, 2019.

Mr. Hoffman thanked Mr. Kovach and requested a motion to approve the 26 dockets that had been subjects of the public hearing on May 15. Mr. Kosinski so moved, Mr. Ashby seconded his motion, and without any further comment, the draft dockets comprising hearing items 1 through 10 and 12 through 27 of the hearing on May 15, 2019 were approved by unanimous vote.

Mr. Kovach next presented draft docket D-2017-009-2 for the Delaware River Partners, LLC Gibbstown Logistic Center, Dock 2. This docket was the subject of a hearing on June 6, 2019 for which notice was published on May 24, 2019. The Commission accepted written comment on the docket through 5:00 p.m. on June 7. At the June 6, 2019 public hearing, nineteen commenters addressed the Commission, of whom several represented non-governmental organizations. Before the close of the comment period, DRBC received 119 written comments on the draft docket, of which seven consisted of letters from trade organizations (iron workers, carpenters, electrical workers, ship pilots), elected officials (Gloucester County Board of Freeholders), and economic development organizations (Chamber of Commerce of Southern New Jersey, Maritime Exchange for the Delaware River and Bay) expressing support for the project. The balance of the commenters opposed the draft docket, citing the following: (a) inadequate public notice; (b) inadequate time for review and comment; (c) lack of key approvals from other agencies; (d) health and safety hazards unrelated to water resources; (e) air quality and climate effects; (f) water quality impacts; and (g) aquatic life impacts. Staff in consultation with the Commissioners prepared a comment and response document to address those concerns.

Mr. Kovach explained that in response to the comments received on the draft docket, he had made and was recommending adoption of modifications consisting of the following:

- Amendment of Section A. 4. Project Description by the addition of a statement based on information provided to staff by the applicant, clarifying that Dock 2 will support the transloading of a variety of bulk liquid products, including butane, isobutane, and propane (collectively liquified petroleum gas, or LPG), liquified natural gas (LNG) and ethane. The products will arrive at the site via truck and/or rail car. Once at the site, the products will be transferred to vessels via onsite infrastructure. There will be no manufacturing of any bulk liquid products at the site. There will be no bulk storage of LNG at the site.
- Amendment of Table B-1 by changing the status of the Waterfront Development Permit and Water Quality Certificate required by the New Jersey Department of Environmental Protection (NJDEP) from “issued” to “suspended”; and by the addition of a U.S. Coast Guard Letter of Recommendation (for operations), the status of which is “future” to indicate that Delaware River Partners has not yet applied for the required letter.
- Amendment of Section A. 2. Location by the correction of a latitude coordinate, which was off by one digit in the published draft.
- Amendment of Section C. Decision by the addition of a new condition 15, which provides that the Commission reserves the right to open the docket at any time and to reconsider its decision and any and all conditions imposed thereunder in light of further information developed by or decisions rendered in pending or future proceedings conducted by other state and federal agencies concerning the development and operation of the Gibbstown Logistic Center, Dock 2 and related facilities.

Mr. Kovach summarized the responses prepared by staff in consultation with the Commissioners to the issues raised by objectors. The responses as set forth in DRBC’s written response to comments are reprinted below:

Comment: Commenters alleged that neither the draft docket, nor the public notices and file materials provided by the DRBC, federal, state, and local agencies adequately reflected that the Project is to be used as a liquified natural gas (LNG) terminal.

DRBC Response: The Commission can respond only for itself and not for the agencies of its members. All of the application materials the Commission received were shared with the public. The Commission's Notice of Application Received ("NAR") [attachment omitted] was posted on DRBC's website and distributed via social media and listservs on March 25. The NAR provided a brief though accurate description of the Project as presented in the application, including the details most pertinent to DRBC's review. In accordance with the Commission's *Rules of Practice and Procedure*, 18 CFR Part 401, Subpart C, such review is required for any project that entails deepening or dredging a portion of the Delaware River or that substantially encroaches on the river. The project review file that was furnished to interested parties in response to records requests under Subpart H of the *Rules of Practice and Procedure* contained all the information furnished by the applicant, including a detailed dredge management plan describing how the dredge and construction operations for the Project are to be performed. A site plan drawing for the Project was also provided. The text of the draft Docket includes relevant portions of the applicant's project description, explaining that Dock 2 is designed for the loading of bulk liquid products directly from railcar or truck onto ocean-going vessels for export and includes infrastructure for transloading operations (draft Docket, page 2, bottom). The Commission does not review or approve the cargo that moves through a marine terminal.

Comment: Commenters objected that the amount of time provided by the DRBC for review and comment on the application and draft docket was inadequate.

DRBC Response: The Commission received the Project application on March 12, 2019. As noted above, a Notice of Application Received ("NAR") for the Project was posted on DRBC's website and distributed via social media and listservs on March 25. The NAR invited "[i]ndividuals or organizations having a special interest in [any of the projects listed] or information relating to a project's impacts on water and related land resources of the Delaware River Basin" to "submit written comments to the Water Resource Management Branch." DRBC's Notice of Public Hearing and draft Docket D-2017-009-2 were posted on the Commission's website and on Eventbrite on May 24, 2019. That day or the following day, the notice and draft docket also were circulated via Twitter, LinkedIn, and RSS, as well as by email to more than 900 individuals or entities, including members of the press, that have opted to participate in DRBC's listservs. These measures more than satisfied the Compact's requirement that 10 days' notice be given "by posting at the offices of the [C]ommission." Compact § 14.4. The comment period remained open until 5:00 p.m. on June 7, 2019. After the comment period on a matter has closed, the DRBC may approve, approve with conditions, or disapprove an item at any subsequent duly noticed public meeting of the Commission. The Commission has no rules establishing the length of a public comment period.

Comment: Commenters alleged that the Commission cannot act on a project review application before all other required federal and state approvals for the project have been

issued and supplied to the Commission. The applicant has not yet obtained all other approvals needed for the Project.

DRBC Response: DRBC requires applicants to identify necessary approvals, including, where applicable, approvals that have been issued. Where applicable to DRBC's review, the Commission may rely on information contained in approvals issued by other agencies. DRBC routinely approves projects either before state and federal agencies have acted or afterward, generally based on the preferences of the host state under the particular circumstances. DRBC docket conditions always provide that the project sponsor must obtain all necessary federal, state and local approvals. Specifically, Condition C.8. of Docket No. D-2017-009-2 provides, "Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project."

Comment: Commenters raised safety and related public health concerns associated with the transport of LNG, but which are unrelated to water resources, including the risks that LNG will explode or spill from trucks transporting it, especially given the proximity of the Project to residences, bridges and the Philadelphia Airport.

DRBC Response: In accordance with Section 3.8 of the Delaware River Basin Compact ("Compact"), the Commission's review must ensure that the Project does not impair or conflict with the Commission's Comprehensive Plan ("Plan"). Along with the Commission's policies and regulations, the Plan includes those public and private projects and facilities that "are required, in the judgment of the Commission, for the optimum planning, conservation, utilization, management and control of the water resources of the basin to meet present and future needs..." (Compact § 13.1). Section 3.8 provides that the Commission "shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the [C]omprehensive [P]lan ...", and further, that the Commission may "modify [a project] and approve [the project] as modified" to ensure the project does not impair or conflict with the Plan. Accordingly, the Commission's dockets include any provisions and conditions that in the Commission's view are required to ensure a project does not impair or conflict with the Plan. The public safety concerns, although legitimate concerns of government, are unrelated to the water resources facilities and water quality, quantity and flow management matters included in the Comprehensive Plan.

To the extent, if any, that the noted concerns overlap with matters addressed by the Comprehensive Plan, the Compact expressly authorizes and directs the Commission to "utilize and employ such offices and agencies for the purpose of this [C]ompact to the fullest extent it finds feasible and advantageous." Compact, § 1.5. The Compact further provides that the Commission may "[e]mploy any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, ... for any ... purpose;" (Compact § 3.9(b)). For matters related to public safety and emergency management in the context of commercial shipping, the Commission defers to agencies of its member states and the federal government that possess expertise the Commission lacks in these areas. Specifically, it is the Commission's understanding that the applicant must obtain from the United States Coast Guard (USCG) a Letter of Recommendation ("Letter") to the effect that the waterway to be

utilized (the Delaware River and Bay) is suitable for the type and frequency of commercial vessel traffic expected to accompany the Project. The USCG, in consultation with state and local agencies and stakeholders, will make this assessment for the GLC Dock 2. Permit Status Table B-1 of the draft docket has been modified to include the required Letter.

Comment: Commenters stated that LNG export activities associated with the Project would contribute to greenhouse gas emissions and the other negative effects of climate change, because the Project will drive the increased production of fossil fuels and reliance on these fuels and will inevitably result in additional leakage of methane gas, thereby impeding the development of sustainable and renewable energy sources.

DRBC Response: The issues raised by commenters, while important public policy concerns, are among a larger set of energy policy matters being studied, debated and incrementally resolved at state, interstate, and national levels. The Commission's evaluation under Section 3.8 of the Compact is limited to determining whether the Project substantially impairs or conflicts with the Commission's Comprehensive Plan. Our evaluation is thus focused on management of the Basin's water resources and not on wider energy policy questions.

Comment: Commenters expressed concern over the potential for water quality impacts resulting from sediment disturbance and pollution/contamination caused by dredging;

DRBC Response: The applicant submitted protective dredging procedures and a Dredged Material Management Plan (DMMP), which detail sediment and discharge controls to be used during construction of the Project to protect water quality. Section C.6. of the Docket requires the use of these procedures.

The 665,000 cubic yards of dredged material to be removed from the berthing facility were sampled in accordance with an NJDEP-approved Sediment Sampling and Analysis Plan dated December 24, 2018. The analytical results of the sampling were included in the DMMP submitted with the application. Analytical testing results were compared to the following remediation standards, as applicable: (a) New Jersey Non-Residential Direct Contact Soil Remediation Standards ("NRDCSRS"); (b) New Jersey Residential Direct Contact Soil Remediation Standards ("RDCSRS"); (c) New Jersey Default Impact to Groundwater Soil Screening Level ("IGWSSL") 1; (d) New Jersey Default Impact to Groundwater Screening Level for Synthetic Precipitation Leaching Procedure ("SPLP") Analyses (for SPLP samples only); and (e) 2005 toxic equivalence (TEQ) (tetrachlorodibenzo para dioxin (TCDD) TEQ) for dioxins and furans. The results of bulk sediment chemistry analyses performed on composite samples are summarized below:

- Semivolatile organic compounds (SVOCs): All sample concentrations were either "non-detect" (below the laboratory detection limit) or detected at concentrations below applicable standards.
- Polychlorinated biphenyls (PCBs) (209 congeners): Congener-specific standards are not available for comparison; however, no individual PCB congener concentration exceeded the remediation standard established for total PCB congeners, and the sum of individual

PCB congeners within each composite sample was below the remediation standard for total PCB congeners.

- Organochlorine pesticides: All sample concentrations were either “non-detect” (below the laboratory detection limit) or detected at concentrations below applicable standards.
- Inorganics: All sample concentrations were either “non-detect” (below the laboratory detection limit) or detected at a concentration below applicable NRDCSRS and RDCSRS. Contaminant concentrations, except those for manganese, were either “non-detect” (below the laboratory detection limit) or below the IGWSSL for all samples. Manganese was identified at concentrations slightly exceeding its IGWSSL of 430 mg/kg, with concentrations ranging from 490 to 750 mg/kg.
- Polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs): Several PCDD and PCDF compounds were detected at low concentrations; however, the TEQ concentration for each sample was below the applicable remediation standard. As described in the docket, dredged sediments are expected to be sent to the Fort Mifflin Confined Disposal Facility (CDF) or Whites Rehandling Basin.

The remediation underway at the former Repauno site under the direction of NJDEP includes groundwater treatment, contaminated soil removal and capping of contaminated areas. These measures will reduce contamination at the site and reduce contaminants leaving the site.

Comment: Commenters stated that dredging, dock construction, and increased ship traffic will have adverse impacts on aquatic life and aquatic habitat, including on threatened and endangered species such as the Atlantic sturgeon and short nose sturgeon, as well as on freshwater mussels and resident fish. The commenters also expressed concerns regarding impacts to bald eagles and osprey.

DRBC Response: The *Delaware River Basin Water Code* (incorporated by reference at 18 CFR Part 410) provides in relevant part that “The quality of Basin waters shall be maintained in a safe and satisfactory condition for ... wildlife, fish and other aquatic life.” (Water Code § 2.20). To protect water quality and aquatic life during construction of the Project, condition C.6 of the docket requires the applicant to use the protective measures outlined in Sections B.1. and B.2. for dredging and wharf/berth construction, respectively.

As noted above, Sections 1.5 and 3.9(b) of the Compact authorize and direct the Commission to use the agencies, offices and instrumentalities of its state and federal members for purposes of the Compact to the extent the Commission finds feasible and advantageous. To address potential impacts of the Project on federally listed threatened or endangered species and their habitat, the Commission is deferring to the National Marine Fisheries Service (NMFS), the federal agency responsible for listing the species as threatened or endangered and designating their critical habitat areas. Before the U.S. Army Corps of Engineers (USACE) can issue the Clean Water Act Section 404 permit and Rivers and Harbors Act Section 10 approval required for the Project, in accordance with the Endangered Species Act, USACE must consult with the NMFS concerning potential effects of the Project on the Atlantic sturgeon

and short nose sturgeon and their habitat. That consultation process is not yet complete. Section C.8 of the docket states expressly that the docket does not exempt the docket holder from obtaining all necessary permits and approvals from other state, federal or local government agencies having jurisdiction over the Project.

Mr. Kovach also summarized the Commission's response to a lengthy set of written comments dated June 7, 2019 by the Delaware Riverkeeper Network. The Commission's response, which is included in its written response to all comments received on Docket D-2017-009-2, is re-printed below:

DRN Comment 1: DRN stated that section C.I.(c) of DRBC Docket D-2017-009-1 (approving the Gibbstown Logistics Center's Dock 1) requires that detailed site plans be provided by applicant Delaware River Partners LLC (DRP) for its upland facilities. DRN states that on the basis of file reviews its members performed after Docket D-2017-009-1 was issued, DRP has not satisfied this condition. DRN said its representative saw nothing in the DRBC's files disclosing DRP's plans to include LNG as a cargo.

DRBC Response: Condition C.I.(c) of Docket D-2017-009-1 (issued on December 13, 2017) required DRP to submit "detailed project site plans ... for the remainder of the [Gibbstown Logistics Center] not submitted with the DRBC application, including the proposed: automobile import area/parking lot; processing facilities; perishables, bulk-liquids and gases, and bulk cargo handling areas; warehouses and associated buildings; stormwater management system (including stormwater outfalls); and the associated infrastructure." Those plans were submitted to the Commission on December 20, 2018 and were among the records furnished to DRN for inspection on June 4, 2019. In compliance with condition C.I.(c) of the docket, the plans included bulk liquid tank locations, liquid rail lines, sphere tank locations, butane rack location, vehicle processing building, car wash facility, body shop building, stormwater facilities, and other associated infrastructure.

DRN Comment 2: DRN asks why the site plans show a bulk liquid tank area, a sphere tank area and the on-site cavern for bulk liquids storage if, as DRBC staff stated at the public hearing on June 6, there will be no bulk liquid storage on site and only truck or rail transloading directly to ships.

DRBC Response: As the video of the June 6, 2019 public hearing makes clear, DRBC staff stated at the June 6, 2019 public hearing that *no bulk storage of LNG* would occur at the site. That statement was and is accurate.

DRN Comment 3: The DRBC draft docket fails to acknowledge that the federal government established the Delaware Estuary as critical habitat for the New York Bight DPS of Atlantic Sturgeon in August 2017. DRBC's *Water Quality Regulations* at § 4.30.5-B.1 acknowledge that the Commission must evaluate critical habitat, and that this evaluation must follow its *Rules of Practice and Procedure*. Despite the federal ruling, DRBC has yet to initiate its procedures for verifying the critical habitat established by the federal government, and the role that critical habitat will play in docket decisions.

DRBC Response: As noted above, the *Water Code* provides in relevant part that “The quality of Basin waters shall be maintained in a safe and satisfactory condition for ... wildlife, fish and other aquatic life.” (WC § 2.20). In the context of the Commission’s *Water Quality Regulations* for the tidal Delaware River concerning exceedance of stream quality objectives for the protection of aquatic life from acute effects (mixing zones) (WQR § 4.20.5 A.1.), DRBC regulations also provide that “[s]tream quality objectives shall not be exceeded in areas designated as critical habitat for fish and benthic organisms” (WQR § 4.20.5 A.1.b.). In other words, a mixing zone is not permitted within an area designated by the Commission as critical habitat. No mixing zone is proposed for the Project. Federally listed endangered species and their habitat in the Delaware River Estuary are protected under the Endangered Species Act (ESA).

Also as noted above, before the U.S. Army Corps of Engineers (USACE) can issue the Clean Water Act Section 404 permit and Rivers and Harbors Act Section 10 approval required for the Project, in accordance with the ESA, USACE must consult with the National Marine Fisheries Service (NMFS) to ensure the Project does not jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat on which the species depends. As the federal agency responsible for listing the species as threatened or endangered and designating critical habitat areas, NMFS possesses the requisite expertise to provide such guidance. The ESA consultation process for the Project is underway, although it is not yet complete. In accordance with Sections 1.5 and 3.9(b) of the Compact, which authorize and direct the Commission to use the agencies, offices and instrumentalities of its state and federal members for purposes of the Compact to the extent the Commission finds feasible and advantageous, the Commission is deferring to the ESA consultation process in this context.

DRN Comment 4: More shipping vessels mean more ballast water needs, discharges, and impacts, including impingement and entrainment and introduction of exotic species.

DRBC Response: In accordance with Sections 1.5 and 3.9(b) of the Compact, the Commission is relying on the agencies, offices and instrumentalities of its state and federal members to address issues regarding ballast water discharges, the introduction of exotic species associated with such discharges, and the issues of impingement and entrainment by ballast water intakes. Pursuant to the [Vessel Incidental Discharge Act of 2018](#), ballast water discharges currently are subject to the requirements of the [2013 Vessel General Permit](#) (VGP) issued by the United States Environmental Protection Agency (EPA), pending the development by EPA of performance standards for such discharges and the promulgation by the United States Coast Guard (USCG) of implementation, compliance and enforcement regulations to support the EPA standards. Such discharges are also subject to existing regulations of the USCG codified at 33 CFR Part 151. Subpart D of Part 151 of these regulations consists of provisions for Ballast Water Management for Control of Nonindigenous Species in Waters of the United States. The applicant’s Atlantic Sturgeon and Shortnose Sturgeon Impact Assessment (February 2019) submitted as Appendix D of its NJDEP Waterfront Development Individual Permit application for the Project thus correctly

states that vessels calling at the proposed Dock 2 will be required by law to comply with USCG regulations for avoiding the introduction of invasive species through ballast water, which include practices for ballast water uptake as well as for ballast water discharges. Under USCG regulations, the majority of ballast water exchanges for vessels calling on Dock 2 will occur in off-shore marine waters. (*See* 33 CFR § 151.1510(a)(1)). In accordance with the VGP, while at berth, discharges and intake of ballast water are limited to the minimum needed to assure vessel stability.

DRN Comment 5: DRBC required in Docket D-2017-009-1 (issued in December 2017 for GLC Dock 1), condition C.I.I., that a PCB sampling program was to be conducted by docket holder Delaware River Partners (“DRP”); and a NJPDES permit was to be issued requiring DRP to assess PCB migration from the site and potentially requiring DRP to develop and implement a separate pollutant minimization plan for its stormwater outfalls from the site. However, the project is currently under construction while no NPDES permit is in place that requires sampling and monitoring of the release of PCBs during this critical disturbance phase of the project.

DRBC Response: DRBC Docket D-2017-009-1 Condition C.I.I. provides that in accordance with a NJPDES permit when issued, DRP “shall perform an investigation of the site to assess the disposition of stormwater outfalls either directly or indirectly to the Delaware River in order to develop and implement a PCB stormwater sampling plan” and further, that “[u]pon evaluation of the sampling results by the NJDEP in consultation with the DRBC, DRP may be required to develop and implement a separate PMP for PCBs in accordance with Section 4.30.9 of the Commission’s *Water Code* and *Water Quality Regulations* (18 CFR Part 410).” The docket and condition remain in effect; however, the condition does not apply to the construction phase of the re-development.

In accordance with section 4.30.9 of the Commission’s *Water Quality Regulations* and *Water Code*, a PCB pollutant management plan was developed in 2005 for the entire Repauno property, including the area to be developed by DRP under Docket D-2017-009-1 (“GLC 1 site”). Implementation of that plan has been ongoing, including the submission to NJDEP and the DRBC of annual reports by DuPont and its successor in interest Chemours. Under NJDEP’s oversight and in accordance with the PMP, Chemours has removed or capped PCB-contaminated soil and sediment. Under the PMP, Chemours continues to monitor outfalls 008A, 0010A and 0012A for PCBs, upstream and downstream of DRP’s GLC 1 site on the former Repauno property.

The investigation and development of a stormwater sampling plan for the GLC 1 site are to be performed after re-development of the GLC 1 site has occurred, to provide assurance that the additional capping and elevation with clean fill of this portion of the former Repauno property has reduced or eliminated PCB loadings from this area. If a NJPDES permit including the condition set forth in Condition C.I.I. of Docket D-2017-009-1 is not forthcoming, then DRBC will implement the condition pursuant to its authority under Sections 4.30.8 (Tests, Sampling and Analysis Procedures) and 4.30.9 A.2. (Pollutant Minimization Plans for Toxic Pollutants; Applicability) of the Commission’s *Water Quality*

Regulations or will modify the docket to effectuate the requirement directly. Under remedial action permits that will be issued after the completion of remediation activities by the prior owner (Chemours), DRP will also maintain and monitor the effectiveness of all caps.

Mr. Kovach concluded by recommending approval of Docket D-2017-009-2 for the Delaware River Partners, LLC, Gibbstown Logistic Center.

Mr. Hoffman requested a motion to the effect that New Jersey as Chair would turn over the gavel to Vice Chair New York for this matter. Ms. Atkinson so moved, Mr. Ashby seconded her motion and the Chairmanship was transferred to New York's alternate Commissioner, Mr. Kosinski.

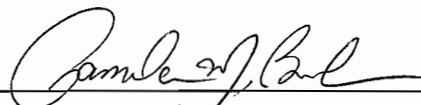
Mr. Kosinski requested a motion to approve Docket D-2017-009-2 for the Delaware River Partners, LLC, Gibbstown Logistic Center, in accordance with staff's recommendation. Mr. Hoffman so moved, and Mr. Ashby seconded his motion. LTC Dahle on behalf of the federal government, noted for the record that her vote on the docket today would be cast in her capacity as a DRBC Commissioner and would be based on the Commission's standards of review, which are different from those applicable to the permit then pending before the USACE on this project. The Delaware River Partners, LLC, Docket D-2017-009-2 was approved by unanimous vote. Mr. Hoffman resumed his position as Chair of the Commission.

Mr. Hoffman requested clarification of the status of draft Docket D-2017-002 CP-1 for Gan Eden Estates, a groundwater withdrawal project in the State of New York, which had been the subject of a hearing in May of 2018 and was to be considered for action at this meeting. Mr. Kovach reiterated that this project was being postponed allowing additional time for review.

Adjournment. Mr. Hoffman asked the Commissioners and staff whether any other matters required the Commissioners' consideration that day. Hearing none, he requested a motion to adjourn the business meeting. Mr. Kosinski so moved, Ms. Atkinson seconded his motion, and the meeting was adjourned by unanimous vote at 2:45 p.m.

Audio Recording. Audio recordings of the public hearings of May 15 and June 6 and the business meeting of June 12, 2019 are on file with the Commission Secretary. A description of each of the applications for dockets approved during the Business Meeting of June 12, 2019 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.



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 JUNE 12, 2019

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. In total, 26 of the 27 docket decisions approved by the Commission on June 12, 2019 were subjects of a duly noticed public hearing on May 15, 2019. One – Docket D-2017-009-2 for Delaware River Partners, LLC – was the subject of a public hearing on June 6, 2019. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on June 12 are presented below.

A. Renewals with No Substantive Changes (all subjects of a public hearing on May 15, 2019).

1. William Henry Gardens, LLC, D-1968-092 CP-4. An application to renew the approval of the existing 0.069 million gallons per day (mgd) Frazer Crossing Apartments Wastewater Treatment Plant (WWTP) and its discharge. The WWTP will continue to discharge to an unnamed tributary (UNT) of Ridley Creek at River Mile 84.0 - 20.8 - 0.6 (Delaware River – Ridley Creek – UNT Ridley Creek), via Outfall No. 001, in East Whiteland Township, Chester County, Pennsylvania.
2. Exelon Generation Company, D-1969-210 CP-15. An application to renew the approval of the applicant's existing Limerick Generating Station (LGS) and its related water withdrawals and discharge. Approved withdrawals include: (a) surface water withdrawals from the Schuylkill River, Perkiomen Creek, Wadesville Mine Pool, and the Tamaqua Area Water Authority's Still Creek Reservoir and Owl Creek Reservoir of up to 58.2 mgd and 1,742.2 million gallons per month (mgm); and (b) groundwater withdrawals from Wells Nos. 1 and 3 of up to 3.2 mgm and 2.9 mgm, respectively. The approved discharge consists of up to 14.2 mgd of non-contact cooling water (NCCW) and treated industrial wastewater via Outfall No. 001. The wells are located in the Schuylkill – Sprogels Run Subbasin of the Southeastern Pennsylvania Groundwater Protected Area (GWPA). The LGS will continue to discharge NCCW and treated industrial wastewater to the Schuylkill River at River Mile 92.47 - 48.01 (Delaware River – Schuylkill River) in Limerick Township, Montgomery County, Pennsylvania.
3. Bethlehem City, D-1971-078 CP-4. An application to renew the approval of the existing 20.0 mgd Bethlehem WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Lehigh River at River Mile 183.66 - 9.51 (Delaware River – Lehigh River), within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in the City of Bethlehem, Northampton County, Pennsylvania.
4. Berks-Montgomery Municipal Authority, D-1973-060 CP-4. An application to renew the approval of the applicant's existing 0.32 mgd Morysville WWTP and its discharge. The WWTP will continue to discharge treated effluent to Ironstone Creek at River Mile 92.5 - 54.1 - 4.0 - 4.1 (Delaware River – Schuylkill River – Manatawny Creek – Ironstone Creek) in Colebrookdale Township, Berks County, Pennsylvania.
5. Doylestown Borough, D-1979-018 CP-6. An application to renew the approval of an existing groundwater withdrawal with a decrease in allocation from 50.6 million gallons per 30 days (mg/30 days) to 48 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. 7, 8, 9, 10 and 12. The project wells are completed in the Stockton Formation. The project is located in the Commission's Southeastern Pennsylvania GWPA in the Neshaminy Creek Watershed, Borough of Doylestown, Bucks County, Pennsylvania.
6. Blue Ridge Real Estate Company, D-1985-081-2. An application to approve a proposed revision to the docket holder's existing service area and renew the approval of the 0.4 mgd Jack Frost WWTP and its discharge. The proposed revision will include the partial removal

of existing service area and the addition of area with equivalent acreage to offset and maintain the docket holder's existing total acres served. The Jack Frost WWTP will continue to discharge treated effluent to Porter Run, upstream of the F.E. Walter Reservoir, at River Mile 183.66 - 82.9 - 1.5 (Delaware River – Lehigh River – Porter Run) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Kidder Township, Carbon County, Pennsylvania.

7. Reading Regional Airport Authority, D-1986-038 CP-4. An application to renew the approval for the existing 0.42 mgd Reading Regional Airport Authority (RRAA) WWTP and its discharge. The RRAA WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 80.3 (Delaware River – Schuylkill River) via Outfall No. 001, in Bern Township, Berks County, Pennsylvania.
8. Monroe Energy, LLC, D-1986-041-3. An application to renew the approval of the docket holder's existing 4.3 mgd Trainer Industrial Wastewater Treatment Plant (IWTP) and its discharges of treated industrial wastewater, NCCW, steam condensate and backwash. The project will continue to discharge via Outfall No. 001 to Marcus Hook Creek at River Mile 80.2 - 0.5 (Delaware River – Marcus Hook Creek) and via Outfall No. 002 to Stony Creek at River Mile 80.4 - 0.2 (Delaware River – Stony Creek). The discharges are located in the tidal portion of Water Quality Zone 4 of the Delaware River in the Borough of Trainer, Delaware County, Pennsylvania. This docket also updates the DRBC approval to reflect an ongoing project to install three cooling towers and a closed-loop cooling system to replace the existing once-through cooling system.
9. Rohm and Haas Chemicals, LLC, D-1989-002-4. An application to renew the approval of the applicant's existing 3.7 mgd IWTP and its discharges of treated industrial wastewater effluent and NCCW. The WWTP will continue to discharge treated industrial wastewater to Delaware River Water Quality Zone 2 at River Mile 117.0 - 0.3 (Delaware River – Hog Run Creek) via Outfall No. 009, and NCCW to Water Quality Zone 2 at River Mile 118.9 - 0.4 (Delaware River – Otter Creek) via Outfall Nos. 003 and 008. All three outfalls are located in Bristol Township, Bucks County, Pennsylvania.
10. New Castle County Department of Special Services, D-1993-006 CP-4. An application to renew the approval of the existing 2.5 mgd Middletown–Odessa–Townsend (MOT) Regional WWTP and spray-irrigation facility and its discharge. When the treated effluent cannot be spray-irrigated, the WWTP will continue to discharge to an UNT of Appoquinimink River, at River Mile 50.88 - 6.2 - 0.2 (Delaware River – Appoquinimink River – UNT Appoquinimink River), in New Castle County, Delaware.
11. Northeastern Schuylkill Joint Municipal Authority, D-1999-033 CP-3. An application to renew the approval of the existing 0.245 mgd Northeastern Schuylkill Joint Municipal Authority (NESJMA) WWTP and its discharge. The WWTP will continue to discharge treated effluent to Pine Creek at River Mile 92.47 - 102.1 - 27.6 - 1.2 (Delaware River – Schuylkill River – Little Schuylkill River – Pine Creek) via Outfall No. 001, in Rush Township, Schuylkill County, Pennsylvania.

12. Sanofi Pasteur, Inc., D-1999-071-5. An application to renew the approval of the existing 0.95 mgd Sanofi Swiftwater IWTP and its discharges. The IWTP will continue to discharge treated industrial process water to land (via spray irrigation), and to Swiftwater Creek, at River Mile 213.0 - 11.4 - 4.4 - 3.5 (Delaware River – Brodhead Creek – Paradise Creek – Swiftwater Creek). The IWTP 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 Pocono Township, Monroe County, Pennsylvania. The application also includes a request to continue approval of a total dissolved solids (TDS) determination consisting of an average monthly effluent concentration limit of 1,200 mg/l and a daily maximum effluent concentration limit of 1,752 mg/l.
13. Muhlenberg Township Authority, D-2001-030 CP-3. An application to renew the approval of a groundwater withdrawal from existing Wells Nos. 1, 2, 6, 8, 9, 12, 13, 14 and 15 and decrease the total combined allocation from 168.5 mg/30 days to 119.9 mgm for continued use in the docket holder's public water system. The wells are completed in the Allentown, Leithsville and Hardyston formations and the Hamburg Sequence in the Laurel Run – Schuylkill River and Willow Creek watersheds in Muhlenberg and Ontelaunee townships and Laureldale Borough, Berks County, Pennsylvania.
14. Bedminster Municipal Authority, D-2003-014 CP-3. An application to renew the approval of the applicant's existing 0.436 mgd Bedminster WWTP and its discharge. The WWTP will continue to discharge treated effluent to an UNT of Deep Run at River Mile 157.0 - 6.1 - 3.8 - 1.1 (Delaware River – Tohickon Creek – Deep Run – UNT Deep Run) within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Bedminster Township, Bucks County, Pennsylvania.
15. Upper Hanover Authority, D-2004-017 CP-4. An application to renew the approval of the existing 0.098 mgd Perkiomen WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to Perkiomen Creek at River Mile 92.5 - 31.2 - 26.5 (Delaware River – Schuylkill River – Perkiomen Creek), via Outfall No. 001, in Upper Hanover Township, Montgomery County, Pennsylvania.
16. Pennsylvania Department of Conservation and Natural Resources, D-2005-008 CP-3. An application to renew the approval of the existing 0.06 mgd Hickory Run State Park WWTP and its discharge. The Hickory Run WWTP will continue to discharge treated effluent to Hickory Run at River Mile 183.7 - 67.3 - 1.7 (Delaware River – Lehigh River – Hickory Run) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Kidder Township, Carbon County, Pennsylvania.
17. Downingtown Municipal Water Authority, D-2006-031 CP-3. An application to renew the approval of the docket holder's 2.5 mgd Water Treatment Plant (WTP) and its discharge of 0.466 mgd backwash filtrate and supernatant. The WTP will continue to discharge water filtration backwash to an UNT of the East Branch Brandywine Creek at River Mile 70.7 - 1.5 - 20.0 - 9.0 - 0.4 (Delaware River – Christina River – Brandywine Creek – East Branch

Brandywine Creek – UNT East Branch Brandywine Creek) via Outfall No. 001, within the drainage area of Delaware River Water Quality Zone C7, in Downingtown Borough, Chester County, Pennsylvania.

18. Wallenpaupack School District, D-2009-027 CP-3. An application to renew the approval for the existing 0.01 mgd New Foundland Elementary School WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to Wallenpaupack Creek, upstream of Lake Wallenpaupack at River Mile 277.7 - 15.8 - 1.4 - 12.7 - 7.8 (Delaware River – Lackawaxen River – Wallenpaupack Creek – Lake Wallenpaupack – Wallenpaupack Creek) via Outfall No. 001, in the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Dreher Township, Wayne County, Pennsylvania.
19. Aqua Pennsylvania Wastewater, Inc., D-2014-005 CP-2. An application to renew the approval of the existing 0.15 mgd Woodloch Springs WWTP and its discharge. The existing WWTP will continue to discharge treated effluent for seasonal spray irrigation and to Teedyuskung Creek at River Mile 277.7 - 9.9 - 0.35 (Delaware River – Lackawaxen River – Teedyuskung Creek) via Outfall No. 001, within the drainage area of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Lackawaxen Township, Pike County, Pennsylvania.
20. Concord Township, D-2014-012 CP-2. An application to renew the approval of the existing 0.0635 mgd Riviera at Concord WWTP and its discharge. The WWTP will continue to discharge treated effluent to Green Creek at River Mile 82.9 - 8.9 - 3.3 - 0.9 (Delaware River – Chester Creek – West Branch Chester Creek – Green Creek), via Outfall No. 001, in Concord Township, Delaware County, Pennsylvania.
21. Lloyd's Otto, LLC, D-2014-017 CP-2. An application to renew the approval of the 0.019 mgd recreational vehicle park WWTP and its discharge. The WWTP will continue to discharge treated effluent to Pohopoco Creek at River Mile 183.7 - 40.9 - 2.8 (Delaware River – Lehigh River – Pohopoco Creek) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Franklin Township, Carbon County, Pennsylvania.
22. Becker, Richard. C., D-2014-021 CP-2. An application to renew the approval of the existing 0.05 mgd Walnutport Mobile Court WWTP and its discharge. The WWTP will continue to discharge treated effluent to Bertsch Creek at River Mile 183.7 - 30.7 - 0.16 (Delaware River – Lehigh River – Bertsch Creek) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Lehigh Township, Northampton County, Pennsylvania.

B. Renewals with Substantive Changes (subject of a public hearing on May 15, 2019).

23. Arrowhead Sewer Company, Inc., D-2003-010-2. An application to renew and approve upgrades to the existing 0.525 mgd Arrowhead Sewer Company WWTP. The upgrades consist of adding new influent pumps and splitter boxes, improving the aeration blowers, adding new return activated sludge pumps, adding sludge holding tanks, installing a supervisory control and data acquisition (SCADA) alarm system, and improving chemical addition. The WWTP will remain designed for 0.525 mgd and continue to discharge treated effluent to the Lehigh River upstream of the F.E. Walter Reservoir, at River Mile 183.7 - 90.5 (Delaware River – Lehigh River), within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Coolbaugh Township, Monroe County, Pennsylvania.

C. New Projects (projects not previously reviewed by the Commission) (subjects of public hearings on May 15 (items 24-26) and June 6 (item 27)).

24. Centerport Borough Municipal Authority, D-2018-006 CP-1. An application to approve the existing 0.06 mgd Centerport Borough Municipal Authority (CBMA) WWTP and its discharge. The WWTP will continue to discharge treated effluent to Irish Creek at River Mile 92.47 - 89.6 - 2.8 (Delaware River – Schuylkill River – Irish Creek) via Outfall No. 001, in Centre Township, Berks County, Pennsylvania.
25. Berkshire Country Club, D-2018-010-1. An application to approve a surface water withdrawal of up to 9.3 mgm to irrigate the applicant's golf course from Intake No. 001 located on the Schuylkill River. The project is in the Schuylkill River Watershed in Bern Township, Berks County, Pennsylvania.
26. Downe Township, D-2019-001 CP-1. An application to include the proposed 0.17 mgd Fortescue WWTP and sewage collection and conveyance system in the Delaware River Basin Commission's Comprehensive Plan. The new package plant will serve approximately 390 developed lots in Fortescue and Gandy's Beach, in Downe Township, Cumberland County, New Jersey. Section 3.8 Review of the project will be conducted in accordance with the 2015 Administrative Agreement (AA) between the New Jersey Department of Environmental Protection (NJDEP) and the DRBC. Treated effluent will be discharged to Fortescue Creek at River Mile 28.0 - 0.5 (Delaware River - Fortescue Creek) in Water Quality Zone 6.
27. Delaware River Partners, LLC (NJ) Gibbstown Logistics Center Dock 2, D-2017-009-2. An application for a new dredging project at the Delaware River Partners (DRP) Gibbstown Logistics Center, a multi-use deep-water seaport and international logistics center currently under development, located at River Mile 86.5 of the Delaware River in Greenwich Township, Gloucester County, New Jersey. The new project consists of the construction of an additional dock/wharf containing two deep-water berths, which will include the dredging of approximately 665,000 cubic yards of sediment from the Delaware River to a depth of 43 feet below mean lower low water (MLLW) elevation.