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December 6, 2010

VIA EMAIL ONLY: Pamela.Bush@drbc.state.nj.us

Pamela M. Bush, Esquire
Commission Secretary and
Assistant General Counsel
Delaware River Basin Commission
25 State Police Drive
West Trenton, NJ 08628-0360

**Re: Delaware River Basin Commission "DRBC"
Hearing Officer Assignment re: Natural Gas
Exploratory Wells within the Jurisdiction of the
Delaware River Basin Commission**

Dear Attorney Bush:

On November 17, 2010, at 4:03 p.m. you received a letter from David G. Mandelbaum, Esquire which contained the following proposal:

Accordingly, NWPOA proposes that the Commission agree to defer any hearing on the Executive Director acted properly under 18 C.F.R. § 401.35(b)(18) to subject exploratory natural gas wells to the Commission's review and approval jurisdiction when she issued the SEDD. That deferral would continue until a person applied to the Commission for approval to develop an exploratory natural gas well subject to the SEDD but not excepted from the SEDD under the "grandparenting" provision, and the Commission either denied that approval or refused to consider the application because of a moratorium such as that in place since May 2010. At that time, the issues of the propriety of the SEDD could be re-raised in a hearing by any party to this proceeding. Adoption of regulations or a new Executive Director's Determination that superseded the SEDD and ASEDG would also end the deferral.

Prior to this proposal, I had arranged for a telephone conference with the attorneys for all interested parties, including you and Mr. Warren on behalf of the Commission. At that telephone



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conference held earlier on November 17, 2010, the attorneys for the environmental interests objected to a deferral of the hearings based on mootness concerns. After hearing further comments from all counsel, I entered an Interim Order dated November 17, 2010, a copy of which is attached to this correspondence.

On November 22, 2010, I received a letter from Mr. Mandelbaum and a joint letter from Mr. Wilson and Mr. Overstreet advising that they, on behalf of their clients, NWPOA, Hess, and Newfield, would not be filing the motions contemplated by Paragraph 2 of the Interim Order. The Mandelbaum letter suggested that the mootness contention is not now ripe for adjudication but that mootness will occur prior to the hearings scheduled before me in January of 2011. Both of the November 22, 2010 letters seem to request deferral of any hearings on the issues set forth in the Commission's Referral Motion and the Referral of the two Hess wells until drilling of the exploratory wells is complete. Both letters urge that consideration of mootness issues should be determined at a later date either before the Hearing Officer or the Commission.¹ Consequently, on November 23, 2010 the Hearing Officer scheduled a telephone conference for November 29, 2010 at 10:00 a.m. involving all counsel.

By letter dated November 26, 2010, Attorney Jordan B. Yeager, on behalf of the Delaware Riverkeeper Network and Damascus Citizens for Sustainability, objected to a continuance or cancellation of the hearings scheduled for December 6, 2010 before the Hearing Officer.

During the November 29, 2010 telephone conference counsel for all parties and counsel for the Commission presented their respective positions to the Hearing Officer. The drilling interests and the NWPOA contended that the December 6, 2009 Hearing should be cancelled and that the Hearings scheduled for January 2011 should be limited. Attorneys Yeager and Zimmerman, along with Attorney Davenport, contended that the Hearings should proceed as scheduled and that all issues before the Hearing Officer should be heard. They also argued that either the Hearing Officer or the Commission should enter a Cease and Desist Order to preserve

¹ The issue in 1.(a) of the Commission's Referral Motion is not before me because Arbor Operating LLC by letter dated September 24, 2010 elected not to participate as an interested party in this proceeding. My understanding is that Arbor Operating LLC is not proceeding with the Nockamixon Township well. On September 15, 2010 the Commission referred the two Hess wells subject to the Executive Director's Amended Supplemental Determination of July 23, 2010 to the Hearing Officer with instructions to consolidate with this proceeding.

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the Commission's and the Hearing Officer's jurisdiction over the claims they are making on behalf of their clients.

During the Telephone Hearing on November 29, 2010, it became clear that the drilling of the exploratory natural gas wells may be completed by the Hearing Date in January of 2011, but that thereafter the wells would be utilized for monitoring purposes. As the transcribed record will reflect, all Counsel were given an ample opportunity to discuss these issues with the Hearing Officer and set forth contentions on behalf of their clients. Attorneys Bush and Warren presented tentative views on behalf of the Commission.

The Hearing Officer now, after receiving further correspondence from all parties, makes the following recommendations to the Delaware River Basin Commissioners:

1. There are really two mootness issues. One deals with Mr. Mandelbaum's request in his November 22, 2010 letter to me to defer the jurisdictional issue of whether the Commission has a basis to exercise review and approval jurisdiction over exploratory natural gas wells. This issue was referred to me in Paragraphs 1.(c) and 1.(d) of the Referral Motion. While Mr. Mandelbaum's letters suggest a deferral of a hearing on this contention, there is a potential for the Commission to withdraw its reference of issues 1.(c) and 1.(d) and address those issues during its rule making procedure. The parties have referred to this issue as the "jurisdictional issue." The Hearing Officer recommends that the Commission withdraw the reference of 1.(c) and 1.(d) following a request by Mr. Mandelbaum to do so. An alternative open to the Commission would be to continue the reference to the Hearing Officer with directions to him to address the jurisdictional issue following an evidentiary hearing. The recommendation, but not the alternative, is premised on the understanding that any withdrawal of the reference or a withdrawal of 1.(c) and 1.(d) by Mr. Mandelbaum's clients would be without prejudice. Furthermore, if any party to these proceedings should proceed to construct a natural gas exploratory well that is not among those currently deemed "grandfathered" the Hearing Officer would be available for a reference of those matters.
2. The second mootness issue relates to the Newfield and Hess exploratory wells. It has been represented to the Hearing Officer that the drilling of these wells will be completed by early January 2011 and that they will remain in use for monitoring

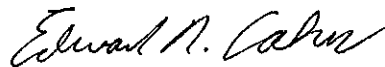
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purposes. The evidentiary record before me on this matter is incomplete. The drilling interests suggest that there will be no impact on the Special Protection Waters of the Delaware River from the continued monitoring of these wells and that little or no remediation will be required. The environmental interests dispute those assertions. All parties understand that the evidentiary record is incomplete. The Hearing Officer recommends to the Commission that, if the drilling companies voluntarily opt to submit their exploratory wells for the Commission's review, issue 1.(b) and the referral of the Hess wells would no longer be before me. If they do not, the Hearing Officer remains available to hold the hearings as scheduled in January, 2011 to address item 1.(b) in the Referral Motion and the Hess wells.

3. The Hearing Officer recommends that the Commission deny the environmental interests request for an Order to Cease and Desist from any further continuation of the exploratory wells under consideration. If these wells are submitted for the Commission's review, you will have an adequate record to make determinations and may use that record as being informative for other issues. If the issue remains with the Hearing Officer, I will meet with counsel to determine the scope of the January Hearings.

The Commission and the parties should note that the Hearing for December 6, 2010 was cancelled. All parties have been given a preliminary draft of this recommendation and have been given an opportunity to comment upon it before submission.

Sincerely yours,



Edward N. Cahn

ENC:jmb

Attachment: *Interim Order dated November 17, 2010*

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cc: David G. Mandelbaum, Esquire mandelbaumd@gtlaw.com
Craig P. Wilson, Esquire craig.wilson@klgates.com
David Overstreet, Esquire david.overstreet@klgates.com
Kenneth Warren, Esquire kwarren@hangle.com
Jeff Zimmerman, Esquire jjzimmerman@comcast.net
Jordan B. Yeager, Esquire JBY@curtinheefner.com
Jane P. Davenport, Esquire jane@delawareriverkeeper.org

DELAWARE RIVER BASIN COMMISSION

EXPLORATORY WELL HEARING : Edward N. Cahn, Hearing Officer

INTERIM ORDER

1. The Revised Scheduling Order dated November 2, 2010 will remain in effect, except that the Commission may file final expert reports with the Hearing Officer and all Counsel by the close of business on Tuesday, November 23, 2010.

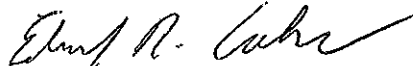
2. On or before the close of business on Monday, November 22, 2010, Mr. Mandelbaum, on behalf of Northern Wayne Property Owners Alliance, may file a Petition, including affidavits and documentary evidence, with the Hearing Officer for a determination that some or all of the issues referred to the Hearing Officer are or will become moot. Any other interested party in these proceedings may join in Mr. Mandelbaum's Petition or may file a similar Petition.

3. On or before the close of business on Tuesday, December 2, 2010, any parties opposed to the Petition referred to in the previous paragraph may file an Answer in opposition, including affidavits and documentary evidence.

4. On Monday, December 6, 2010, an in-person Hearing before the Hearing Officer will be held in Courtroom 4A, Edward N. Cahn Federal Building, Fifth and Hamilton Streets, Allentown, Pennsylvania, at 10:30 a.m.

5. Any filings and notices pursuant to this Interim Order may be accomplished by email.

BY THE HEARING OFFICER:



Edward N. Cahn

DATED: November 17, 2010