



April 14, 2011

Carol Collier
Delaware River Basin Commission
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Comments of Audubon New York and Audubon Pennsylvania Re. DRBC's Draft Natural Gas Development Regulations

Pursuant to the notice of the Delaware Regional Basin Commission (DRBC) regarding proposed new water quality regulations of gas drilling in the basin, Audubon New York and Audubon Pennsylvania respectfully submit the following comments.

Audubon New York and Audubon Pennsylvania, state programs of the National Audubon Society representing 48 local chapters and 80,000 members, are deeply concerned with the impacts increased natural gas development could have on birds, other wildlife and their habitats in the region. This large scale energy development could have serious impacts to important forest and wetland habitats that support many Species of Greatest Conservation Need as well as risks to water quality of importance to ecosystems and human communities alike.

Using internationally accepted criteria, Audubon has identified Important Bird Areas across the nation – areas that represent the most important habitats for birds of conservation concern. Of these, 45 Important Bird Areas are in the portion of the Delaware River Basin likely to be impacted by Marcellus shale drilling. These Areas include some of the region's best remaining unfragmented forests which are critical for the viability of forest-breeding birds. These same forests provide critical ecological benefit to our watersheds and our communities as well, maintaining the high water quality which distinguishes so much of the Basin. Our comments focus most heavily on those proposed regulations that most directly affect these resources in the Basin.

Overview

The rapid escalation of regional gas drilling activity introduces new uses of, and risks to, the land and water resources of our states at a scale which far outpaces other development activities today. In the face of this situation, Audubon strongly supports the Commission's efforts to establish, under its statutory authority, appropriate regulation and oversight of the siting, construction and use of drill sites and over the associated water withdrawals and wastewater disposal activities. As the Commission noted, at the expected buildout of 15,000 to 18,000 horizontal wells, shale gas drilling is expected to result in upward of 2,000 wellpads, a footprint of more than 10,000 acres and tens of billions of gallons of water use. The footprint estimates rise substantially as associated infrastructure is factored in. It is therefore important to establish, without delay, stronger oversight with the necessary safeguards to

ensure better protection against pervasive and irreversible consequences of poorly controlled shale gas development.

Replacing piecemeal well-by-well permitting with a more systematic and comprehensive approach is an important step toward more effective regulation. Audubon strongly supports the Commission's initiative to oversee drilling activities on a basin-wide scale as a strategy that will better avert undesirable impacts from large scale changes in land use and water withdrawals. With the cross-jurisdictional authority granted to it under the DRBC Compact, the Commission has a responsibility to address water protection at this larger scale. The DRBC's obligation to take a holistic view must be built upon an effective enabling framework, including the analytical tools necessary for basinwide assessment and oversight. Accordingly, we view the provisions requiring the preparation of Natural Gas Development Plans and the examination of cumulative impacts as foundational to the execution of the Commission's duties.

Setbacks and Exclusions

Sensitive areas and priority conservation sites must be avoided in the siting of wellpads and associated infrastructure. We therefore support the Commission in excluding wellpads from flood hazard areas, wetlands, steep slopes, and critical habitat areas for threatened and endangered (T&E) species. We note that the regulations, while promoting the avoidance of areas with T&E species, do allow for mitigation. Because mitigation cannot always compensate for losses of critical habitat areas, it is critical that determinations on mitigation options only be made by the respective agencies with trust responsibilities for those species. We call upon DRBC to clarify the language on T&E species mitigation decisionmaking to clearly identify that these decisions rest with the respective state or federal agencies.

We further support DRBC in establishing defined setbacks from wetlands, water bodies, and other features, creating important protective buffer zones which will lessen water quality degradation due to runoff and sedimentation. We recognize that DRBC is balancing both environmental and water quality considerations against gas resource development considerations in its buffering guidelines. We would ask that the monitoring requirements stipulated in the guidelines be used to scrutinize whether these buffers are sufficient to achieve the desired protective outcomes, and that provisions be made for strengthening these buffering requirements in one to two years after the regulations go in to effect if the buffers do not provide adequate performance. In particular, we ask that the Commission plan to re-examine floodplain siting outside the flood hazard areas, as well as the buffers around wetlands, and to strengthen these provisions in the future if need is demonstrated.

Natural Gas Development Plan

Adverse impacts from siting in high value ecosystems can best be avoided by early consideration of known landscape features via constraints mapping. Consequently, in our view, DRBC's requirements for constraints mapping and for early basinwide planning via the Natural Gas Development Plan (NGDP) process are instrumental to improving oversight of Basin resources. Without the NGDP, the Commission's ability to effectively carry out its mandate will be substantially impaired. The NGDP must be the central mechanism by which DRBC oversight of drilling is implemented.

To improve the proposed NGDP process, the requirements to map Natural Heritage Program areas should be expanded to include Conservation Opportunity Areas (or other designations of State Wildlife Action Plans) as well as areas of concern to federal authorities. Further, we ask DRBC to strengthen this provision to require that the developer avoid those resources or provide proofs why such avoidance is not feasible. Where these resources can be avoided, we urge the Commission to use its approval authority for such protection.

Approval By Rule (ABR)

Audubon supports DRBC's incentivizing ecologically sound siting by use of the streamlined Approval By Rule permitting process while maintaining its standard docket approval process for projects involving forested areas. The tiered ABR-Docket permitting framework will help lessen forest loss and fragmentation by expediting approvals in less sensitive, non-forested locations. Absent such incentives, the region may see a widespread pattern of placing drilling pads every square mile, with accompanying new access roads and pipeline rights-of-way. Forest fragmentation of this scale and magnitude is not conducive to sustainable forest management and will negatively impact species of conservation concern, including many Neo-tropical migrant bird populations. The degradation of the interior forest and its associated functions and processes from such large scale change would precipitate substantial increases in runoff and sedimentation and an overall deterioration in stream quality.

Further, the ABR considerations should be expanded to add an exclusion for priority Natural Heritage Program areas and Conservation Opportunity Areas, as determined by the respective state agency, from ABR-eligible projects. Frequently, these resource areas will include the forests and wetlands that also help maintain the higher water quality of Basin waters and hence their early identification is congruent with the Commission's water quality protection obligations.

While we support the ABR provisions in most regards, we have serious reservations about allowing exploratory wells to be approved under ABR. We do not feel that ABR provisions should be available to exploratory wells unless they meet the same siting standards applied to other projects. We are concerned that this streamlined permitting for exploratory wells glosses over the similar disturbance impacts at these sites, undercutting the comprehensive planning benefits of the NGDP to a substantial degree. Other agencies, such as the Pennsylvania Department of Environmental Protection, do not provide a looser standard of oversight for exploratory wells.

The majority of activities associated with exploratory and production gas well construction are virtually identical and will create similar potential for adverse environmental impacts. Compounding these impacts, past experience indicates that a large majority of wells initially labeled as exploratory are later converted to production wells. Given the high likelihood that exploratory wells will be converted to production wells, a separate approval process seems to make allowances for a distinction which is not real and to tie the hands of the Commission in the execution of its duties. We urge DRBC to enforce regulation of exploratory wells under the same standard used for production wells. If the Commission proceeds to allow ABR approvals for exploratory wells, at minimum it must establish a trigger to require similarly stringent approvals and regulation at the time of well conversion. We call upon DRBC to clarify its treatment of converted exploratory wells with respect to the ABR and NGDP processes.

Wastewater

We commend the Commission for prohibiting the storage of production and flowback fluids in open containment pits as is commonplace elsewhere and for requiring production waters to be reused or taken off site for proper treatment at facilities that are equipped and properly regulated to treat these toxic waste waters. Storing 'flowback' water in open sites would generate the greatest risks to wildlife and water quality, and the proposed prohibitions are highly justified.

We also commend DRBC for its extensive reporting and tracking systems, essential for ensuring the proper disposition of the billions of gallons of wastewater. We are, however, concerned about the adequacy of the proposed regulations with respect to tracking re-use when fluids are re-used at other

sites outside of the Basin. There appear to be gaps in the reporting requirements for exported reuse waters, a loophole which undermines the Commission's proposed oversight of wastewater disposal. We urge the Commission to strengthen provisions covering exported wastewaters.

EPA Study

While Audubon fully supports the immediate issuance and enforcement of regulations using the information available to us today, we believe that the public interest can only be served by continuing to incorporate the best available impacts information in to the region's regulatory framework as that information becomes available. We urge DRBC to re-examine the adequacy of its regulations again at the time of the completion of EPA's Hydraulic Fracturing Study and to incorporate additional safeguards as suggested by the study findings. Until such time as those study findings become available, the DRBC's oversight will provide essential safeguards not otherwise available under other permitting authorities. The regulations now being finalized by DRBC should include language stipulating that regulation adequacy will be revisited post-release of EPA's study, and adjustments made accordingly.

Conclusion

Pennsylvania and New York State residents deserve strong safeguards to make sure our natural resources and our communities are adequately protected from adverse impacts. DRBC's regulations will provide needed protections, and Audubon supports their implementation with the modifications we have described to further strengthen certain provisions and to re-open the regulations for further requirements should new findings suggest greater stringency is required. The oversight DRBC will be providing on behalf of the residents in all Basin states must be based on solid information and these regulation create the framework needed to accomplish this.

Respectfully submitted,

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April 14, 2011

Commission Secretary
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Dear Commission Secretary:

Please find enclosed two CDs (identical copies) containing a Microsoft Excel file (.xls format) containing 1,479 comments of National Audubon Society supporters about on the draft natural gas development regulations proposed by the Delaware River Basin Commission. We ask that you withhold the personal addresses of our supporters from the public record.

Many people submitted personalized comments, which you will find in the "Personalized Comments" tab of the spreadsheet, but most, found on the "Unedited Comments" tab, signed on to the comments below:

Thank you for the opportunity to provide the following letter in support of the detailed comments provided by the National Audubon Society regarding the DRBC's proposed Natural Gas Development Regulations.

As I am deeply concerned with the impacts increased natural gas development could have on birds, other wildlife, and their habitats in the region, I agree with Audubon that sensitive areas and priority conservation sites must be avoided in the siting of well pads and associated infrastructure. I support the Commission's proposal to exclude wellpads from flood hazard areas, wetlands, steep slopes, and critical habitat areas for threatened and endangered (T&E) species, as well as establishing defined setbacks from wetlands, water bodies, and other features, creating important protective buffer zones.

However, the DRBC should clarify that state and federal agencies are in charge of T&E species mitigation decisions. Also, the requirements to map Natural Heritage Program areas in the Natural Gas Development Plan should be expanded to include Conservation Opportunity Areas (or other designations of State Wildlife Action Plans) as well as areas of concern to federal authorities. Developers should be required to avoid these areas. In addition, exploratory wells should be required to meet the same siting standards applied to other projects and not be approved under the Approval By Rule (ABR) permitting process.

I commend the Commission for prohibiting the storage of production and flowback fluids in open containment pits, and for requiring production waters to be reused or taken off site for proper treatment at facilities that are equipped and properly regulated to treat these toxic waste waters. Lastly, I urge the DRBC to re-examine the adequacy of its regulations again at the time of the completion of EPA's Hydraulic Fracturing Study and to incorporate additional safeguards as suggested by the study findings. The regulations now being finalized by DRBC should include language stipulating that regulation adequacy will be revisited post-release of EPA's study, and adjustments made accordingly.

Thank you for consideration of these comments.

If you have any questions about the comments, or prefer to receive them in a different format, please do not hesitate to contact me. I can be reached via e-mail at lpomper@audubon.org or by telephone at (202) 861-2242 ext. 3022.

Please accept our thanks for your agency's collaboration in ensuring that the voices of these concerned individuals are heard.

Sincerely yours,

Elizabeth H. Pomper
Director of Online Outreach