



WATER RESOURCES ASSOCIATION OF THE DELAWARE RIVER BASIN

P.O. Box 1267
Telephone: 610.917.0090
Email: wra@wradrb.org

Exton, PA 19341
Fax: 610.917.0091
Website: www.wradrb.org

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Ms. Pamela Bush, Esq.
Commission Secretary
Delaware River Basin Commission
P.O. Box 7360
West Trenton, NJ 08628-0360

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BASIN COMMISSION
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RE: Comments on Natural Gas Development Regulations

Dear Ms. Bush,

On behalf of the Water Resources Association of the Delaware River Basin (WRA), I would like to offer our organization's comments on the Commission's proposed Natural Gas Development Regulations dated December 9, 2010. WRA represents a broad cross section of water and electric utilities, municipal authorities, industry, consultants, academics and others interested in sound water resources management in the Delaware River Basin. WRA believes that natural gas development is an important part of this country's energy future that can, and needs to be, conducted in a responsible and sustainable manner. We appreciate the effort DRBC has made in developing these regulations in an effort to protect the Basin's water resources, and we hope that our comments are helpful to the Commission.

Administration -- PA/DRBC Administrative Agreement -- Most of the proposed natural gas drilling in the Delaware Basin is currently in Pennsylvania. Pennsylvania's state and local governments have developed regulations dealing with: the permitting, siting and construction of gas wells; the use and disposal of water; background and surveillance water testing; and protection of water resources. Pennsylvania agencies have worked with the Susquehanna River Basin Commission for several years to develop a framework for regulating drilling activity that manages and protects potentially affected water resources with minimal conflict and duplication. It is critical that DRBC engage Pennsylvania promptly in negotiations over the appropriate roles and responsibilities of DRBC and various Pennsylvania agencies to avoid conflict and duplication in regulation of natural gas resource development. WRA believes that authority over land development and siting aspects of gas well development should rest with state and local government, just as that authority is presently exercised over mineral and coal extraction and forest harvesting activities. To avoid or mitigate potential impacts on water resources from all of these activities, it is incumbent on DRBC to inform and work cooperatively with Pennsylvania governments and agencies as they exercise their authority, and not to duplicate that authority.

DRBC has been working with member states for several years to revisit, revise and update Administrative Agreements with the Compact states, most of which date back to the 1970's. Revised agreements have been signed with New Jersey and Delaware, but

not with Pennsylvania or New York. We believe that an Administrative Agreement between the Commission and Pennsylvania is critical to proper regulation of activities related to natural gas drilling and extraction, and we urge the Commission to put a high priority on reaching such an agreement.

Administration – Impact on Other DRBC Regulatory Programs -- The proposed regulations are far-reaching and will require a substantial commitment of DRBC resources to administer efficiently and effectively. Already, WRA members have seen that the drafting of the proposed regulations and the accommodation of public comment has detracted from the efficient and effective conduct of other business before the Commission. For several years, WRA and its members have been concerned about prolonged project reviews of new and renewed projects at the Commission, the expansion of DRBC's regulatory purview, and DRBC's imposition of new and costly permit conditions. The proposed new natural gas regulations, together with diminished funding from the signatory parties, threatens to further erode the ability of the Commission to provide the basic services authorized and required under the Compact. Any new regulatory program upon which DRBC embarks, including the regulation of natural gas development, must not be undertaken at the cost of delays in project reviews, less effective management of Delaware Basin water resources, eroded capacity to deal with drought or flood emergencies, deferred maintenance on storage facilities funded by user charges, or degraded ability to deliver timely and accurate water resources data and information.

Administration -- Cost- Although project review and other fees are to be collected according to proposed requirements in Section 7.3(l), no analysis has been provided to demonstrate that these fees will be sufficient to cover the Commission's expenses related to this new program. WRA's specific concern is that resources from other programs not be diverted to make up for a shortfall in funding generated under Section 7.3(l). WRA members are especially concerned about potential misapplication of funds from the Water Supply Storage Facilities Fund (WSSFF). WRA submitted comments related to accounting practices for the WSSFF in April 2010 when the Commission was proposing changes to its water use charges. At their September 2010 meeting the Commissioners committed to setting up a Water Use Charges Advisory Committee. This has yet to be accomplished. The WUCAC was to provide comment and guidance on how funds in the WSSFF are being used or allocated and suggestions on reasonable procedures for estimating and funding future long-term capital costs associated with Beltsville, Blue March, and possibly other facilities that support water allocations on which the charges are assessed. If DRBC's cost for administration of new regulations is not self-sustaining, and the states and federal government cannot or will not provide supplemental funding to make up any shortfall, DRBC should not plan on "raiding" the WSSFF, either directly, or through accounting changes that shift costs covertly. Strict accounting rules, processes and procedures should be implemented to assure that all costs and revenue associated with the proposed new program are properly captured and transparently reported.

Well Pad Siting- We believe that Section 7.5(c) does not have a regulatory foundation supported by the Compact and should be removed from the proposed regulation. Section 7.5(c) describes extensive new regulations for the submittal of Natural Gas Development Plans (NGDP) including the siting of related facilities. The authority to propose such requirements for this type of project is not explicit in the Compact and has not been previously exercised for activity outside the clear scope of DRBC jurisdiction. WRA views the provisions of Section 7.5(c) as comparable to hypothetical Commission regulations for

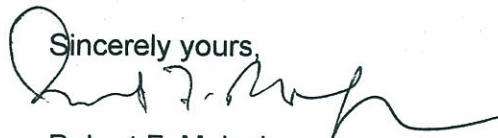
the siting of facilities such as industrial and commercial office parks, electric substations, transportation projects, residential developments, and so forth. Siting regulations for small projects (occupying a few acres) should be the domain of the appropriate local and county governments. WRA believes that applying the principles outlined in Section 1.3(e) of the Delaware River Basin Compact that includes the "principal [sic] of equal and uniform treatment to all water users who are similarly situated" legally limits the ability of the Commission to regulate the siting of natural gas development in the manner proposed under proposed Section 7.5(c).

Well Pad Setbacks- Notwithstanding our comment above that well pad siting and NGDP should be a state or local responsibility, Section 7.5(b)(4)(i-ii) requires a 500-foot setback from a water body/wetlands. "Water body" is so broadly defined in the proposed regulation that finding a suitable location in the upper Basin to locate a one-to-five-acre well pad could be difficult, if not impossible. If well pad setback requirements are to be included in the Commission's regulations, WRA urges DRBC to work with Pennsylvania DEP to develop rational and defensible setback requirements that would be supported by state regulatory authority. At most, such requirements could be incorporated by reference. Without such supporting state regulatory authority, and without provision for mitigation or avoidance, DRBC could find itself expending substantial resources fighting claims of regulatory takings.

Water Storage Tank Requirement- Section 7.4(d)1 (viii) requires a temporary transfer of water taken from a source (well/surface water) to a water storage tank or tanks, before it is transferred to hauling vehicles or a pipeline. This requirement seems arbitrary and unnecessary, and could have the unintended consequence of increasing costs and environmental footprint of water management operations related to gas drilling activity. As long as water is metered at the point of withdrawal and again as it is transferred into hauling vehicles or pipelines, there seems to be no justification from a water management perspective for requiring construction of intermediate storage tanks at a point of transfer.

WRA appreciates the opportunity to comment on these proposed regulations and would welcome an opportunity to discuss our comments with your Staff.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert F. Molzahn", written over the typed name.

Robert F. Molzahn
President