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BASIN COMMISSION
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February 23, 2011

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

RE: Starlight Forum's Position Statement
Regarding Proposed New Article 7

Dear Commissioners:

On behalf of the Starlight Forum¹, please accept this as our position statement of the proposed new Article 7 rules as it relates to Water Quality Regulations, in particular, the section entitled Natural Gas Development Regulations.

At the outset, we, as landowners, benefit from the resources of our lands including the resources of the Delaware River which is recognized as having high scenic, recreational, ecological and/or water supply values. We derive tangible and intangible gains from our lands by engaging in activities such as timber harvesting, rock quarrying, hunting, gardening, fishing, etc. Therefore, it is in our direct interest to ensure that these resources are protected with reasonable regulations and we will not hesitate to challenge any activity undertaken which we believe pose a clear threat to our ability to continue to enjoy the benefits from these resources.

We now face the most pressing challenge associated with our continued use and enjoyment of our lands – natural gas exploration and proposed regulations by the

¹ Starlight Forum is an informal association of land owners located in Wayne County, Pennsylvania. Our group comprises of individuals who own approximately 3,000 acres of land and have joined together to maximize the use of our respective properties with respect to the development and sale of our minerals; in particular, natural gas from the Marcellus Shale basin. Members in our organization who support this application include James and Denise Kilgore, Richard Whitmore, Barbara Whitmore, Carole Gangadeen, Sal Mauro, Karen Mauro, Robert B. Welsh, Jr., William Macintosh, Lucy Wing, Robert Weber, Phyllis Weber, Vergil Faigle, Steven Whitmore, Irene Savvas, Krzystozof Smiertelny, George Banicky, Irene Banicky, Dale Peters, Kathy Peters, Frank Zito, Russ Mosher, Marion Oppelt and Karl Oppelt.

Delaware River Basin Commission concerning natural gas development projects. By introducing the proposed new regulation, the DRBC appears to have accepted the proposition that natural gas extraction projects should proceed forward. There is no doubt that the development of this important resource will contribute directly and indirectly to many disenfranchised economies by allowing us to produce our own domestic energy while generating income and wealth within those areas fortunate enough to possess this resource. Shale gas production in Pennsylvania means more energy independence for the United States and because natural gas is the cleanest burning fossil fuel, there are positive implications for air quality. Recent turmoil in the Middle East and fluctuating oil prices reinforce why developing this abundant resource is important to the national security of this country.

We are now faced with action by the Delaware River Basin Commission (hereinafter "DRBC"), a United States Government Agency which until recently was relatively obscure. This agency has elected to introduce broad and sweeping regulations aimed at seizing control of natural gas development within the entire geographic location of the basin by asserting that the justification for its action is that "[t]he Commission has ... determined that all natural gas development projects *may* have a substantial effect on the water resources of the Basin." Proposed §7.1(C) (emphasis added). It is worth noting that the DRBC was one of the federal government's first attempts to address the problem of water pollution and this agency predates Congress' later action of creating the EPA and the Clean Water Act. When Congress originally created the DRBC, it limited this agency's authority with §3.8 of the Compact which states, "The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project *would* substantially impair or conflict with such plan." (emphasis added). Not only has the DRBC failed to demonstrate that natural gas development in the basin "would" substantially impair the comprehensive plan, but by its own published statements in support of its new proposed regulations, the DRBC can only offer that that natural gas development only "may" have a substantial impact. Pursuant to the Compact, the burden is on the DRBC to show that this threshold has been met before any project may be modified or disapproved and mere speculation is wholly insufficient. The DRBC has failed to demonstrate, or at a minimum, make the argument that its actions and the proposed changes to the regulations are permitted by the authority granted to it by Congress and the failure to do so would be considered to be an abuse of discretion and not in accordance with the law. As per 5 U.S.C. §706(2)(a), any action by a government agency deemed "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" will be found unlawful and will be set aside by a court of law.

From the immortal words of former President Ronald Reagan, "[t]he nine most terrifying words in the English language are: 'I'm from the government and I'm here to help.'" The DRBC's proposed new Article 7 regulations, therefore, appear to be yet another example of a government agency adding more layers of unnecessary bureaucracy designed to create additional hurdles to an already lawful and highly regulated activity. For an analogy, we question how this country would have progressed if governmental agencies pounced on oil development while it was in its early stages prior to becoming a primary source of energy in America. It is worth noting that Pennsylvania's DEP has been successfully regulating natural gas development projects throughout the state for decades.

In fact, Scott Perry, the Pennsylvania DEP Director of Oil & Gas Management appeared at a presentation on May 26, 2010 at Misericordia University wherein he stated that there are currently 122 active wells in Pennsylvania and 11,000 permitted deep wells. He also recognized that coal bed horizontal drilling has been utilized in Pennsylvania for decades and fracking has been utilized as standard operating procedure since the 1950s. Mr. Perry also highlighted the fact that Marcellus operators are successfully building wells that exceed DEP's Bureau of Oil and Gas Management standards, and that the DEP has never seen an impact to fresh groundwater directly from fracking. Thus, while the actions of the DRBC may be well intentioned, as will be demonstrated below, it is clear to the members of the Starlight Forum that these regulations are unworkable and will cause irreparable harm to the already fragile local economies where we so desperately need economic revitalization.

The members of our organization have spent considerable time reviewing these proposals as well as comments from other organizations and individuals. For the sake of brevity, we incorporate by reference those critiques identified by the Northern Wayne Property Owners Association in its publication, "These are the key problems to the draft of the DRBC regulations" a copy of which is attached to this document.

As landowners, we believe that a number of provisions are highly problematic and pose a direct threat to our continued use and enjoyment of lands, i.e. the responsible development of Pennsylvania's natural resources. In fact, the proposed regulations, in its current form, present itself as a major property rights issue for the landowner since said regulations are not only taking away our rights to develop the minerals but are also taking away the property rights of the landowners, and their rights to derive an economic value from their lands by imposing unneeded regulations that curtail land use and impair land values.

For instance, in its UDC Committee Briefing of February 10, 2011, it shows that the DRBC regulations are premised on the assumption that expected natural gas development would entail the construction of 15,000-18,000 horizontal wells, 2,000 to 2,200 well pads and 10,000 to 12,000 acre well pads. However, the DRBC's proposed regulations ensure that no natural gas development projects will take place within the drainage area of the basin and in particular, on any lands owned by a member of the Starlight Forum. This is because these presumptive figures are extremely unrealistic since unfavorable geologic properties have resulted in the energy companies being unable to pursue gas exploration activities south of Wayne County. In addition, the energy companies have been put on notice that they are not welcome to pursue drilling activities in the lands that make up the NYC watershed based on regulatory and political challenges. These two factors alone will result in substantially less acreage available for natural gas development within the drainage basin. The proposed regulations also impose a 500 feet setback from any water body, however small. This would have the effect of allowing drilling to only a limited portion of the lands left eligible for natural gas exploration. These regulations would also prohibit clearing of more than 3 acres of land for a well pad even though the industry considers 4 to 5 acres to be appropriate. Moreover, the siting restrictions, which prohibit the construction of a well, pad with a 20-degree or greater pre-alteration grade further reduces the lands left available for natural gas development. Of critical concern for our group is that engineering studies referenced by the NWPOA in its website and media briefing documentation show that a typical 1,000 acre tract in Wayne County finds no

qualified sites are available where the aforementioned proposed regulations of set backs and slope restrictions are utilized.

Thus, even if the proposed regulations were found to be an authorized activity by Congress, a careful review of its content proves these rules serve the unintended consequence of stifling the development of an abundant, economically viable natural resource and quashing the benefits that would have been derived from the development of same. The Starlight Forum has deemed the DRBC's proposed new Article 7 regulations to constitute a de facto taking and seizing of landowner property rights since the proposed rules arbitrarily and unreasonable restrict the landowner's ability to properly develop the minerals and to derive an economic value from his/her lands by imposing unneeded regulations that curtail land use and impair land values.

Very truly yours,



Michael L. Gangadeen, Esq.

These are the key problems with the draft DRBC regulations:

1. The proposed process is backwards. The regulations superimpose standards on the states to be enforced by DRBC staff inexperienced in regulating oil and gas. The states should control, with the DRBC authorized to suggest higher or different standards prior to state permitting of wells. This would put experienced regulators in charge, allow a meaningful DRBC role and provide a basis for DRBC appeals. It would deliver certainty without compromising standards and ensure competent enforcement. It would require only simple Memorandums of Understanding, avoiding all arbitrary one-size-fits-all standards and redundant separate pre-construction review of well pads.
2. The excessive setbacks (500 feet) and all-inclusive definition of what constitutes a water body will prevent drilling on virtually all land in the upper Delaware River basin. These setbacks and restrictions on forest clearing will rule out more than 99.5% of all land for drilling purposes, 97.5% from just the setbacks and the 20% slope restrictions. Forest clearing restrictions rule out the remainder due to lack of Approval By Rule for such applications and the inability to access these areas (the only areas lacking water/wetland issues being forested plateaus).
3. States' rights as well as property owners' rights are not being protected. The DRBC cannot be allowed to develop into an unaccountable super-agency that renders states as little more than potted plants.
4. DRBC is overstepping the limitations of its Compact by getting involved in land use issues and it is completely ignoring its responsibility for the economic development of the basin, which goes unmentioned in these regulations.
5. Tremendous discretionary power is given to the DRBC Executive Director and staff. There is enormous potential for abuse of discretion and this lack of certainty will discourage long-term investment in our region.
6. There is far too much duplication of what is already well regulated by the states. We don't need redundant regulations by still another bureaucracy.
7. Other industries will be adversely affected, including timbering, farming and construction, if the DRBC employs this precedent to enlarge the scope of its jurisdiction on other matters, as it will inevitably do.
8. The regulations are discriminatory against the oil and gas industry, holding it to a far different and more severe standard than any other water user, large or small.
9. The regulations discriminate against landowners in the upper Delaware River basin who will not be able to benefit economically in the manner of their downstream neighbors. The region is losing its agriculture, its manufacturing and its construction industry. School enrollments are falling, growth has been stymied and incomes are far below par.
10. The concerns of those downstream appear to supersede those of the taxpayers and residents of the headwaters. Locals are viewed only as a "sparsely populated" "source watershed" as if the economy of the our region and our needs were secondary to everything else.
11. The regulations are fee driven, without regard for industry best practices or technological advancements. As a result, the DRBC may no longer be dependent on states for funding and could become a super agency answering to no one.
12. The regulations are so vague in so many places that no one can realistically be expected to follow them. Moreover, how will a company obtain bonding in such circumstances?
13. There are no time limits on the DRBC to act, ensuring death by delay for all significant projects, which will be immersed in a regulatory quagmire from which few will escape.

You can obtain much more information by visiting [**www.naturalgasnow.info/DRBC**](http://www.naturalgasnow.info/DRBC)