RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing and directing the Executive Director, in consultation with the Estuary states and the U.S. Environmental Protection Agency ("EPA"), to develop a wasteload allocation ("WLA") study to assist the Estuary states in attaining the dissolved oxygen ("DO") criteria promulgated by EPA on September 29, 2025, in the tidal Delaware River.

WHEREAS, on September 13, 2017, the Commission adopted Resolution No. 2017-4, which: (a) recognized that evidence supported 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; (b) provided for specific studies to be undertaken in consultation with co-regulators and dischargers; and (c) directed the Executive Director to initiate rulemaking to revise the designated uses for these reaches to include propagation of aquatic life consistent with the results of the identified studies and the objectives and goals of the federal Clean Water Act ("CWA");

WHEREAS, by a Resolution for the Minutes dated September 10, 2020, the Commission amended the goals established by Resolution No. 2017-4, to provide that the Commission would complete a draft analysis of attainability for aquatic life uses in Zones 3, 4 and upper Zone 5 by September of 2022 and would adopt a final rule to revise the designated uses and supporting water quality criteria by March of 2025;

WHEREAS, on April 29, 2022, a group of non-governmental organizations petitioned the EPA to revise the designated uses and dissolved oxygen criteria for Zones 3, 4 and upper Zone 5 of the Delaware River on a faster timeline;

WHEREAS, in an Administrator's Determination dated December 1, 2022, EPA concluded that a revised designated use to protect aquatic life propagation and corresponding dissolved oxygen criteria to protect that use were necessary in the specified zones to satisfy the requirements of the CWA, and, recognizing the value of the foundational science performed by the Commission, agreed with the petitioners that Section 303(c)(4) of the Clean Water Act required EPA to revise the Estuary aquatic life water quality standards;

WHEREAS, to promote regulatory clarity and efficiency, by a Resolution for the Minutes dated September 7, 2023, the Commission suspended its directive for DRBC to undertake rulemaking with respect to aquatic life water quality standards in Water Quality Zones 3, 4 and the upper portion of Zone 5, while directing DRBC staff to continue to provide technical support for the EPA-led rulemaking process;

WHEREAS, EPA published its proposed rule, "Water Quality Standards To Protect Aquatic Life in the Delaware River," on December 21, 2023;

WHEREAS, the DRBC continued to provide scientific, technical and engineering assistance to EPA to meet the shared goal of updating Estuary water quality standards to improve protections for aquatic life, including by developing the following final technical reports, all published in September of 2024:

- A Pathway for Continued Restoration: Improving Dissolved Oxygen in the Delaware River Estuary (the "Pathway Report")
- Modeling Eutrophication Processes in the Delaware River Estuary: Three-Dimensional Hydrodynamic Model

- Modeling Eutrophication Processes in the Delaware River Estuary: Three-Dimensional Water Quality Model and Appendices

WHEREAS, while DRBC performed the study documented in its Pathway Report to characterize the degree and extent of improved DO levels that would be associated with reducing impactful effluent ammonia nitrogen discharges to specific concentration levels, the study documented in the Pathway Report was not designed to satisfy any particular DO criteria in the Estuary;

WHEREAS, in response to comments received from stakeholders, DRBC is finalizing significant enhancements to its water quality model such that the latest version of the model simulates nutrient and DO dynamics in the sediment layer and integrates them with related processes in the water column, resulting in a more comprehensive model that reduces uncertainties in future DO predictions;

WHEREAS, EPA published its final rule, Water Quality Standards To Protect Aquatic Life in the Delaware River, in the Federal Register on September 29, 2025, promulgating an aquatic life designated use of "Protection and propagation of resident and migratory aquatic life" and corresponding dissolved oxygen criteria;

WHEREAS, to identify specific allocations that will result in attainment of the magnitude, duration and frequency of EPA's new seasonal DO criteria, to incorporate the regulatory requirements and policies of each of the three basin states, and to allow for input from stakeholders, a wasteload allocation study is the essential next step;

WHEREAS, DRBC staff, in close coordination with the Estuary states of Delaware, Pennsylvania, and New Jersey, developed A Strategy to Implement New Dissolved Oxygen Criteria in the Delaware River Estuary, published on the DRBC website in October of 2025, outlining an approach that the three Estuary states may use, in reliance on the latest version of the model, to implement the new DO criteria through the National Pollutant Discharge Elimination System ("NPDES") program administered by each state under the CWA;

NOW THEREFORE, BE IT RESOLVED by the Delaware River Basin Commission:

1. Finding. Working closely with EPA and the Estuary states of Delaware, New Jersey, and Pennsylvania, and guided by a highly credentialed expert panel comprised of leaders in their field, the Commission has developed a three-dimensional hydrodynamic and water quality model (the "eutrophication model") that is a suitable tool for identifying combinations of effluent levels that will lead to attainment of the DO criteria recently promulgated by the EPA to support an aquatic life designated use of protection and propagation of resident and migratory aquatic life in the main stem portions of Zone 3, Zone 4, and upper Zone 5 of the tidal Delaware River (river miles 108.4 to 70.0).

2. Directive. The Executive Director and DRBC staff are directed to continue working closely with and to support the Estuary states and the EPA by employing the eutrophication model and other scientific, technical, and engineering tools to prepare a WLA study to assist the Estuary states in implementing the new DO criteria consistent with the October 2025 Implementation Strategy, in the manner and with the objectives set forth below.

a. Technical method. Commission staff will utilize the most recent and appropriate published version of its eutrophication model to iteratively identify combinations of effluent levels that will lead to attainment of the new DO criteria.

b. Stakeholder participation. The Commission will inform and solicit input from its Water Quality Advisory Committee regularly in the course of developing the WLA study.

c. Deliverable. A WLA study that the Estuary states in their discretion may utilize to derive valid numerical effluent limitations for inclusion, as appropriate, in their respective pollutant discharge elimination system permits.

d. Schedule. The target completion date for the study will be no more than 18 months from today.

ADOPTED: December 10, 2025