

DELAWARE RIVER BASIN COMMISSION

MEETING OF MAY 10, 2007

Minutes

The Commission met at the offices of the Delaware River Basin Commission in West Trenton, New Jersey.

Commissioners present: William A. Gast, Acting Chairman, Pennsylvania
Mark N. Mauriello, Second Vice Chair, New Jersey
Michele Putnam, New Jersey
Joseph Miri, New Jersey
Mark Klotz, New York
Kevin C. Donnelly, Delaware
Harry W. Otto, Delaware
No Federal commissioner was present.

DRBC Staff participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Kenneth J. Warren, DRBC General Counsel, Wolf, Block, Schorr &
Solis-Cohen
Pamela M. Bush, Commission Secretary/Assistant General Counsel
Thomas J. Fikslin, Modeling and Monitoring Branch Head
Richard K. Fromuth, Operations Branch Head
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Project Review Branch Head
Kenneth F. Najjar, Planning and Implementation Branch Head

Acting Chairman William A. Gast, representing Vice Chair of the Commission Governor Edward G. Rendell of Pennsylvania, convened the business meeting at 1:30 p.m. The Commission's Chairman *Pro Tem*, Brigadier General Todd T. Semonite, Commander of the North Atlantic Division of the U.S. Army Corps of Engineers, on behalf of the U.S. Government, was unable to attend the meeting, as were his designated alternates.

Minutes. Mr. Gast asked for a motion to approve the Minutes of the Commission's meeting of February 28, 2007. Mr. Donnelly so moved, Mr. Klotz seconded his motion, and the Minutes of the February 28, 2007 Commission Meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following meetings:

- *Delaware River Clean-up.* "River Bright," a bi-annual Delaware River clean-up sponsored by the Delaware River Greenway Partnership, will take place on Saturday, June 9, 2007.

Additional details and contact information for this event are posted on the Commission's web site at www.drbc.net.

- *Delaware River Sojourn 2007.* The Delaware River Sojourn will take place from Sunday, June 24 through Saturday, June 30, 2007. The theme of the 2007 Sojourn is celebrating Native American culture.
- *DRBC Flood Advisory Committee (FAC) Meeting.* The FAC will meet on Wednesday, August 8, 2007 at 10:00 a.m. in the Goddard Room of the Commission's office building at 25 State Police Drive, West Trenton, New Jersey. Staff contact is Rick Fromuth, (609) 883-9500, extension 232.
- *Next Commission Meeting.* The next Commission meeting will be held on Wednesday, July 18, 2007 in the Goddard Conference Room of the Commission's office building at 25 State Police Drive, West Trenton, New Jersey.

Hydrologic Conditions. Mr. Fromuth reported on hydrologic conditions in the Basin.

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period January 1 through May 8, 2007 was 15.51 inches or 1.65 inches above normal. For the same period, rainfall for the Delaware River Basin above Trenton, New Jersey was 16.69 inches or 2.00 inches above normal. The observed precipitation for Wilmington, Delaware was 18.62 inches or 3.95 inches above normal for the same period.

The average observed streamflow of the Delaware River at Montague, New Jersey in April 2007 was 17,862 cubic feet per second (cfs), or 156.9 percent of the long-term average for the month. For the same period, the average observed streamflow at Trenton, New Jersey was 35,003 cfs, or 174.1 percent of the long-term average for the month.

For the period from May 1 through May 8, 2007, the average observed streamflow of the Delaware River at Montague was 5,808 cfs, or 84.6 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 14,938 cfs, or 109.5 percent of the long-term average for the month.

In the Lower Basin, as of May 9, 2007, Beltzville Reservoir contained 13.18 billion gallons (bg) usable, or 101.4 percent of usable storage, and Blue Marsh contained 6.67 bg usable, or 102.6 percent of summer pool usable storage. As of May 7, Merrill Creek contained 15.447 bg usable, or 98.5 percent of usable storage.

In the Upper Basin, as of May 9, 2007, Pepacton Reservoir contained 139.951 bg usable, or 99.8 percent of usable storage. Cannonsville contained 95.478 bg usable, or 99.8 percent of usable storage. Neversink contained 34.404 bg usable, or 98.5 percent of usable storage. Total New York City Delaware Basin reservoir storage was 269.833 bg usable, or 99.6 percent of usable storage.

As of May 9, 2007 the average ground water level in eight reported USGS observation wells in the Pennsylvania portion of the Basin was slightly above the long-term average. Water levels expressed as 30-day moving averages at six of these wells were within their normal ranges for this time of the year.

Water levels at the well in Wayne County were below their normal range while the water levels at the well in Bucks County were above their normal range. Water levels at the Cumberland County, New Jersey coastal plain observation well were above their normal range. Water levels at the New Castle County, Delaware coastal plain observation well were within their normal range.

During the month of April 2007, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the “salt line,” ranged from river mile (RM) <54 to RM 70. The normal location of the salt line during April is RM 61, a location which is 17 miles downstream of the Delaware-Pennsylvania state line. As of May 8, 2007, the salt line was located at RM 57, seven miles downstream of the normal location for May.

Executive Director’s Report. Ms. Collier’s remarks are summarized below:

- *Interstate Flood Mitigation Task Force; Flexible Flow Management Plan.* Staff has focused on finalizing the Flood Mitigation Task Force Report and on providing technical support to the Decree Parties for development of a revised Flexible Flow Management Program.
- *DRBC Personnel.* A new staff member, Paul Britt, has joined the Project Review Branch. Paul is a hydrogeologist who earned his degree at the Richard Stockton College of New Jersey.
- *DRBC Photo Boards.* New photo boards have been mounted in the lobby of the Commission’s office building, displaying digital reprints of the Commission’s historic photographs. The boards convey a great deal of basin history.
- *Emergency Response and Drinking Water Program.* On March 21, 2007 DRBC in cooperation with the Philadelphia Water Department and the Water Resource Association of the Delaware River Basin hosted an Emergency Response and Drinking Water program. Bob Tudor and John Yagecic participated in the event, the organization of which involved many staff members.
- *U.S. Army Corps of Engineers.* On April 11, Clarke Rupert and Ms. Collier visited the U.S. Army Corps of Engineers Philadelphia District for an informative session held by the Corps to educate new legislative staff members.
- *Water Resources Development Act (WRDA).* Today, May 10, 2007, WRDA is being discussed on the floor of the U.S. Senate. The House of Representatives passed the legislation on April 19. Staff is following the legislation’s progress closely, as it includes some important initiatives for DRBC and the basin.
- *Delaware River Water Trail Guide and Recreation Maps.* On April 20 a large press event was held at the Washington Crossing Historic Park in Washington Crossing, PA to launch the new Delaware River Water Trail Guide and River Recreation Maps. Speakers included Executive Director of the American Canoe Association Pam Dillon, Director of the Bureau of Recreation and Conservation of the Pennsylvania Department of Conservation and Natural Resources Cindy Dunn, National Park Service Partnership Programs Manager Joe DiBello, representatives of the New Jersey Department of Environmental Protection and the Pennsylvania Fish & Boat Commission. Pam Bush of the DRBC served as master of ceremonies. Cindy Dunn of DCNR presented the Delaware River Greenway Partnership with a check in the amount of \$45,000 to

develop signage and marketing programs for the water trail. The Water Trail Guide developed by the Delaware River Greenway Partnership is available as a poster and in folded copies from the DRBC, DCNR, PFBC and other state and regional agencies, at no charge. The DRBC's Delaware River Recreation Maps can be ordered using a form available on the Commission's web site, for the price of \$25.00. Proceeds from the map sales will be dedicated to the Commission's public outreach and education efforts.

- *DelTRiP Report.* The 2007 report of the Delaware Estuary Toxics Reduction Program is now available on the web. It has a listing of hazardous waste sites and identifies sites with the potential for PCB releases.
- *Shad Festival 2007.* Commission staff attended the Lambertville Shad Festival on April 28-29. They reported that the event was a success, although the DRBC outreach table could not be located on Lewis Island because of the recent flooding.
- *Legislative Meetings.* DRBC staff members visited members of Congress and state legislators to respond to questions they raised concerning flooding and flow management. Ms. Collier also traveled to Albany, New York to thank New York State legislators for restoring in the state's FY 2008 budget New York State's signatory party contribution to DRBC operating expenses. The legislature maintained funding at the FY 2007 level.
- *Yangtze River Conference, China.* Ms. Collier reported that she had represented the Commission at the week-long Yangtze River Conference in China, though at no cost to the Commission. She explained that a number of river basins throughout the world were represented at this interesting event. Ms. Collier remarked that some of the stories she heard helped to place the Delaware Basin's water management challenges into perspective. For instance, Ms. Collier's counterpart with the Murray-Darling Basin in Australia explained to her that when he returned to his country, he would be explaining to farmers in the Murray-Darling Basin that no water whatsoever for irrigation purposes would be available this year. Portions of Australia are experiencing the drought of the century.
- *Delaware River Sojourn 2007.* The 2007 Delaware River Sojourn will celebrate Native Americans. It is being held during the third week in June, beginning June 24. Information about the Sojourn is available on the Commission's web site at www.drbc.net and also on www.delawareriversojourn.org. Ms. Collier encouraged everyone to "get out on the river."

General Counsel's Report. Mr. Warren reported on the status of a request for hearing in the Moyer Packing Company (MOPAC) matter. Because MOPAC supplied the Mainland Golf Course with an alternative water source, in accordance with Docket D-96-21-2 issued to MOPAC in September of 2006, the Executive Director elevated MOPAC's TDS effluent limit. The Executive Director's action seems to render MOPAC's request for hearing moot. However, because the Commission lacks official confirmation from MOPAC in that regard, no action will be taken to dismiss the matter until the Commission's next meeting, in July.

Public Hearing: Project Review Applications. The hearing included 25 dockets. Mr. Muszynski presented them in three categories – (A) docket renewals involving no significant changes, such as a replacement well with no increase or decrease in allocation; (B) docket renewals involving

significant changes, such as an increase or decrease in an authorized withdrawal or discharge; and (C) projects not previously reviewed by the Commission.

A. *Renewals with No Substantive Changes (6).*

1. Pen Argyl Municipal Authority D-75-28 CP-2. An application for approval to upgrade the Pen Argyl Municipal Authority WWTP. The WWTP design capacity will remain at 0.95 mgd. The project involves replacement of the existing contact aeration/trickling filter processes with a sequencing batch reactor process. The treatment process change is needed to improve nutrient removal. The WWTP will continue to discharge to an unnamed tributary of Waltz Creek in the Martins Creek Watershed, which is located within the drainage area to a section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters. The WWTP serves the Borough of Pen Argyl and portions of Plainfield and Washington Townships, all located within Northampton County, Pennsylvania.
2. Mt. Airy #1, LLC D-77-58-3. An application to modify an existing wastewater treatment plant to replace aged equipment and provide more reliable operation of the treatment facility. The modifications include installation of new fine screening equipment to replace the comminutor; replacement of the existing air supply system, including the blowers and air diffusers in the aeration basins; installation of new alum, polymer, alkalinity and sodium hypochlorite systems for process control and disinfection; construction of a new sludge holding tank; and miscellaneous improvements to controls, power supply and alarms throughout the treatment facility. No change is proposed to the existing effluent limits or design capacity of 0.220 million gallons per day. The project effluent discharges to Forest Hills Run in the drainage area of DRBC Special Protection Waters. The project is located at the former Mount Airy Lodge property in Paradise Township, Monroe County, Pennsylvania. In addition to serving a proposed hotel and casino, the project will continue to serve the adjacent golf course clubhouse and Our Lady of the Poconos Convent, also in Paradise Township.
3. West Deptford Township D-79-82 CP-4. An application for the renewal of a ground water withdrawal project to continue withdrawal of 108.5 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 3, 4, 5, 6, 7 and 8 in the Potomac-Raritan-Magothy Formation. The project is located in the Mantua Creek and Woodbury Creek watersheds in West Deptford Township, Gloucester County, New Jersey.
4. Lake Wynonah Municipal Authority D-91-20 CP-3. An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's public water supply distribution system from new Well No. 8 and to retain the existing withdrawal from all wells of 12 mg/30 days. The project is located in the Long Run Member of the Catskill Formation in the Plum Creek Watershed in Wayne and South Manheim Townships, Schuylkill County, Pennsylvania.
5. City of Philadelphia – Division of Aviation D-96-36 CP-2. An application for the renewal of a ground water withdrawal project to continue the withdrawal of 29.7 mg/30 days to supply the applicant's western boundary area mitigation system from existing Wells Nos.

EW-A, EW-1, EW-2 and EW-3 in the Pleistocene Sand and Gravel Formation. The project is located in the Delaware River Watershed in the City of Philadelphia, Philadelphia County, Pennsylvania.

6. Buckingham Township D-2003-13 CP-4. An application for approval of a ground water withdrawal project to supply up to 3.24 mg/30 days of water to the applicant's public water supply distribution system from new Well No. CS-5 and to retain the existing total withdrawal allocation from all wells of 42 mg/30 days. The project is located in the Stockton, Brunswick and Lockatong formations in the Pine Creek, Neshaminy Creek and Robin Run watersheds in Buckingham Township, Bucks County, PA and is located in the Southeastern Pennsylvania Ground Water Protected Area. (This project was originally noticed on 8/18/2005 as part of Docket D-2003-13 CP-2.)

Hearing no questions or comments, upon Mr. Muszynski's recommendation, Mr. Gast asked for a motion to approve the six dockets. Mr. Klotz so moved, Mr. Donnelly seconded the motion, and hearing items 1, 2, 3, 4, 5 and 6 were approved by unanimous vote.

B. Renewals with Substantive Changes (11).

7. Borough of Bridgeport D-70-81 CP-2. An application for approval to rerate a 0.77 million gallons per day (mgd) wastewater treatment plant (WWTP) to operate at its design capacity of 0.9 mgd. The project is located off River Road just south of the Pennsylvania Turnpike in the Schuylkill River Watershed in Upper Merion Township, Montgomery County, Pennsylvania. The WWTP will continue to serve Bridgeport Borough and discharge to the Schuylkill River through the existing outfall. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.
8. Mount Holly Municipal Utilities Authority D-70-133 CP-3. An application for approval to expand a 5 mgd WWTP to treat 6 mgd. The project is located in the Rancocas Creek Watershed in Mount Holly Township, Burlington County, New Jersey. The expanded WWTP will continue to serve Mount Holly Township and portions of Eastampton, Mount Laurel, Hainesport, Lumberton, Moorestown, and Westampton Townships, all within Burlington County. The existing powdered activated carbon treatment system will be replaced by a conventional activated sludge process. Following chlorine disinfection, the WWTP effluent will be aerated and discharged to North Branch Rancocas Creek within the tidal reach of DRBC Water Quality Zone 2.
9. Borough of National Park D-77-18 CP-2. An application for approval of a ground water withdrawal project to supply up to 12 million gallons per thirty days (mg/30 days) of water to the applicant's public supply distribution system from new Well No. 6 and existing Well No. 5, formerly known as Well No. 4. The requested allocation of 12 mg/30 days constitutes a decrease from the existing allocation of 22.5 mg/30 days. The project is located in the Potomac-Raritan-Magothy Formation in the Woodbury Creek Watershed in National Park Borough, Gloucester County, New Jersey.
10. Waste Management Disposal Services of Pennsylvania, Inc. D-91-47 PA-3. An application for renewal of a ground water withdrawal project at Pottstown Landfill to continue withdrawal of up to 0.6 mg/30 days of water to the docket holder's contaminant

extraction system from new recovery well RW-7 and from six existing recovery wells (RW-1 through RW-6). The docket holder seeks to retain the existing withdrawal limit from all wells of 0.6 mg/30 days, notwithstanding that its current need is less than 10,000 gpd. The project is located in the Brunswick and Lockatong Formations in the Manatawny Creek Watershed in West Pottsgrove Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area. (This was NAR'd as D-97-47 PA-3.)

11. Pennsylvania American Water Company D-98-16 CP-2. An application for the renewal of a ground water withdrawal project to increase withdrawal from 36 mg/30 days to 61.5 mg/30 days. The requested allocation includes the existing allocation of 36 mg/30 days from Wells PCP No. 2, PCP No. 3, PCP No. 4, PFE No. 2, PFE No. 4, Pine Hill, Summit Point, PMIPA, and Coolbaugh No. 1, all approved by Docket No. D-98-16 CP, in addition to the existing allocation of 15.75 mg/30 days for Wells Nos. 1, 2, 3, 4, 5, and 7 of the Pocono Farms Water Company, approved by Docket No. D-94-65 CP-2, which was recently acquired by the applicant. The applicant is also seeking approval for a new well, which is designated as the Mt. Pocono Field Office well. The wells are located in the Polar Gap and Catskill Formations in the Tobyhanna Creek, East Branch Tobyhanna Creek, Devils Hole Creek, Red Run, and Indian Run Watersheds in Coolbaugh Township and Mt. Pocono Borough, Monroe County, Pennsylvania. This withdrawal project is located within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
12. Downingtown Area Regional Authority D-98-33 CP-2. An application for approval of the rerate of the existing Downingtown Area Regional Authority's WWTP. The discharge from the applicant's WWTP will increase from an average annual flow of 7.134 mgd to 7.5 mgd and will continue to be discharged to the East Branch Brandywine Creek. Additional solids handling improvements are also included in the project. The facility is located in East Caln Township, Chester County, Pennsylvania.
13. Dow Reichhold Specialty Latex LLC D-99-32-2. An application for approval of a ground water withdrawal project to supply up to 5.4 mg/30 days of water to the applicant's reverse osmosis facility from new Well No. 18 and to increase the existing withdrawal from all wells from 17 mg/30 days to 22.4 mg/30 days. The water will be used to create distilled water for the applicant's latex manufacturing facility. The project is located in the Magothy Aquifer in the Fork Branch Watershed in Kent County, Delaware.
14. Lonza, Inc. D-99-38-2. An application requesting approval for an increase in the average monthly and maximum daily TDS limit for the docket holder's industrial waste treatment plant (IWTP) discharge. The request is to increase the average monthly limit from 17,500 mg/l to 20,000 mg/l and to increase the maximum daily limit from 35,000 mg/l to 40,000 mg/l. The docket holder has requested that the average monthly and maximum daily mass loading rates for TDS be increased to 13,344 lb/day and 26,688 lb/day, respectively. The docket holder's IWTP treats effluent from the production of pharmaceutical products. The IWTP discharges to the Schuylkill River. The facility is located in Upper Merion Township, Montgomery County, PA.

15. Upper Saucon Township D-2000-51 CP-2. An application for approval of a ground water withdrawal project to supply up to 32.16 million gallons per thirty days (mg/30 days) of water to the docket holder's public supply distribution system through one new well (Well No. CC2) and two existing wells (Wells Nos. CC1 and Abandoned Mine Shaft). The individual allocation for the Abandoned Mine Shaft Well is a reduction from the previous allocation of 30 mg/30 days to 3 mg/30 days; however, the proposed total allocation for all sources is an increase from the previous total allocation for all sources of 30 mg/30 days. The project is located in the Brunswick Formation in the Saucon Creek Watershed in Upper Saucon Township, Lehigh County, Pennsylvania.
16. Upper Bern Township D-2001-2 CP-2. An application for approval to expand a 0.055 mgd WWTP to treat 0.155 mgd. The project will continue to serve only a portion of Upper Bern Township, Berks County, Pennsylvania. The project is needed to serve future growth in the township and to connect some on-lot septic systems to the WWTP. The existing sequencing batch reactor plant will be supplemented by a 0.1 mgd biologically engineered single sludge treatment system, which is a modification of the conventional activated sludge process. The existing chlorine disinfection system will be replaced by an ultraviolet light system and the existing headworks will be replaced by a new Rotomat unit. The project is located off the intersection of Main Street and Wolf Creek Road in Upper Bern Township upstream from Blue Marsh Reservoir in the Tulpehocken Creek Watershed. The WWTP will continue to discharge to Wolf Creek, a tributary of Northkill Creek.
17. The Upper Hanover Authority D-2002-10 CP-2. An application for the renewal of a ground water withdrawal project to increase the total system withdrawal from 32.12 mg/30 days to 43.113 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. RH-1, RH-2, RH-3, TUHA-1, TUHA-2, TUHA-3, TUHA-4 and Kemmerer Spring in the Brunswick, Leithsville and Hardyston Quartzite formations. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Perkiomen and Macoby Creek watersheds in Upper Hanover Township, Montgomery County and Hereford Township, Berks County, Pennsylvania and within the Southeastern Pennsylvania Ground Water Protected Area.

Mr. Muszynski reported that the Commission had received one public comment that morning regarding Docket D-2000-51 CP-2 for Upper Saucon Township (hearing item no. 15). A resident phoned to relate that the Township had not installed the electrical lines required to power a new domestic well it had drilled for him. The Township drilled the new private well to address the owner's concern that the Township's new public water supply well would interfere with his existing well. The matter of the electrical line was subsequently resolved.

Hearing no further questions or comments, Mr. Gast requested a motion to approve the group of dockets consisting of renewals with substantive changes. Mr. Donnelly so moved, Mr. Klotz seconded his motion, and the eleven dockets, comprising hearing items numbers 7 through 17, were approved by unanimous vote.

C. New Projects (8). Mr. Muszynski explained that hearing item number 22, Hudson Valley Foie Gras, LLC, Docket No. D-2006-37-1 would be addressed last and voted on separately, because several comments on the draft docket were submitted and the issues involved were complex.

18. Blair Academy D-76-89. An application for approval of the existing Blair Academy WWTP. The WWTP is permitted to discharge 50,000 gallons per day (gpd) to Blair Creek, a tributary of the Paulins Kill River. The facility is located in Blairstown Township, Warren County, New Jersey, within the drainage area to a section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
19. Mirant NY-Gen, LLC D-2001-38 CP-1. An application for approval of the continued operation and remediated control measures of the applicant's Mongaup hydropower and reservoir system. The project is located in the Mongaup River Watershed in Orange and Sullivan Counties, New York in the drainage area of the Upper Delaware portion of DRBC's Special Protection Waters. The project facilities include the Toronto, Cliff Lake and Swinging Bridge Reservoirs, the latter of which provides hydroelectric power and receives flows from the former. In addition, the applicant makes releases from and generates hydroelectric power via its Mongaup Falls and Rio Reservoir facilities, also in the Mongaup River Basin. This application modifies an application originally noticed on August 20, 2001, which requested approval of an operating plan for the applicant's Mongaup hydropower and reservoir system. Mirant's Swinging Bridge Reservoir has two powerhouses (Units No. 1 and 2). The modified application includes eliminating the use of Unit No. 1 by filling the gate tower, penstock and tunnel with light-weight concrete. As a result, Unit No. 2 operating time is proposed to be increased from 13% to 30% and to use approximately 97% of the available inflow to the site, with only minor losses of power generation capability. Remedial control measures, including sinkhole back-filling, filter installation to stabilize material movement, and the conduit-related grouting, are being undertaken with the approval of the Federal Energy Regulatory Commission (FERC) to provide structural repair at the dam, which had undergone subsidence. Mirant determined that complete filling of the conduit would further assure that future subsidence would not recur. Mirant applied for an Emergency Certificate from DRBC to implement the Swinging Bridge Dam modification project in an expeditious manner. The Emergency Certificate was approved by the DRBC on February 13, 2007. The project will not change reservoir volumes or affect reservoir level maintenance, and will not change the regulated flow from the Mongaup River System to the Delaware River.
20. Pocono Manor Investors, LP. D-2006-26-1. An application for approval of the existing Pocono Manor Resort WWTP discharge of 0.140 mgd. The WWTP will continue to discharge to Swiftwater Creek, which is a tributary to the Brodhead Creek. The Brodhead Creek is a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Pocono Township, and currently serves Pocono Manor Village and the Pocono Manor Inn. The facility was built to service the 3,000 acre Pocono Manor property that is located in Pocono Township, Mount Pocono Borough and Tobyhanna Township, Monroe County, Pennsylvania.
21. Alcan Global Pharmaceutical Packing, Inc. D-2006-30-1. An application for the approval of the existing discharge from the applicant's Millville Tube Drawing facility. The facility discharges 84,500 gpd of contact and non-contact cooling water to Petticoat Stream, which is a tributary of the Maurice River. The facility manufactures pressed and blown

glassware, and cooling water is used to cool the glass furnace and compressors. The facility is located in Millville City, Cumberland County, New Jersey.

23. Joshmor, Inc. D-2007-5-1. An application for approval to construct a 0.047 mgd WWTP to serve 207 single family homes in the proposed Emerson Chase Development. The project is located in the McMichael Creek Watershed in Jackson and Chestnuthill Townships, Monroe County, Pennsylvania. Following treatment in a 3-cell lagoon and a filter system, disinfected effluent will be spray applied to approximately 13 acres of adjacent woodland in the drainage area of the Middle Delaware portion of DRBC's Special Protection Waters. Because the proposed lagoon will be lined with synthetic material and will provide up to 177 days of storage, no discharge to McMichael Creek is proposed.
24. Golden Pheasant Golf Course D-2007-9-1. An application for approval of a surface water withdrawal project to supply up to 15.4 mg/30 days of water to the applicant's golf course irrigation system from 4 surface water intakes. The project is located in the South Branch Rancocas Creek Watershed in Lumberton and Medford Townships, Burlington County, New Jersey.
25. Unimin Corporation D-2007-14-1. An application for approval to discharge up to 2.275 mgd to Dividing Creek from a hydraulic dredging operation. After neutralization and sedimentation, wash water from sorted dredge material (slurry sand) along with scalping screen separator water, stormwater, and infiltration groundwater is discharged to Outfall 001A. The applicant also discharges to Cub Swamp, a tributary of Dividing Creek, through Outfall 002A during 10-year storm events. The facility is located in the tidal Delaware Bay Watershed in Commercial and Downe townships, Cumberland County, New Jersey.

Mr. Gast invited comments or questions. With respect to Docket No. D-2001-38 CP-1 for Mirant NY-Gen, LLC (hearing item number 19), Elaine O'Neil of the Delaware Riverside Conservancy inquired as to whether the reservoir operating plan provides for flood mitigation or a safety void. Mr. Muszynski replied that the operating plan includes no provision for a flood void. Rather, flow management releases from the Mongaup system are in accordance with the Commission's Water Code, and any change to the releases program would entail a change to the regulations. Mr. Muszynski added that the reservoir elevations are set forth in the docket. Elevations for the Swinging Bridge Reservoir include a maximum of 1,070 feet and a minimum of 1,048 feet. Ms. O'Neil asked the percentages of storage capacity represented by these numbers. The staff said they were unable to provide that answer on the spot. Ms. O'Neil said that absent such information she objected to the docket. She added that following the public comments submitted on the Flexible Flow Management Program, the Commission should understand that owners of property located below the reservoir, some of whom are members of Ms. O'Neil's organization, are concerned about reservoir levels, including levels in the Mongaup system. These owners want to see safety voids imposed on reservoir operators, which in the view of the owners would protect downstream residents whose property was inundated during floods in September 2004 and April 2005. Mr. Muszynski explained that the reservoir storage levels were not a part of today's action, and that a new operating plan was not being approved today. In many instances, an operating plan is approved only after the docket approval process has been completed. Mr. Muszynski advised Ms. O'Neil that her name would be added to the Interested Parties List and she would be afforded an opportunity to comment

on the draft of the new operating plan before it is considered for approval. The Commissioners' action at this hearing would be limited to approving reconstruction undertaken at one of the power generating units, Unit No. 1. The Commission was simultaneously requiring Mirant for the first time to develop a single integrated operating plan for the five reservoirs comprising its system.

Mr. Gast asked whether approvals also would be required by the Federal Energy Regulatory Commission (FERC). Mr. Muszynski explained that Mirant's Mongaup System is a FERC-licensed facility and that Mirant had taken the position that its reconstruction project should not entail re-licensing. The project involves removing power Unit No. 1 from operation and compensating for the loss of generating capacity by increasing the use of Unit No. 2. No net increase or decrease in power generation is anticipated. Mr. Muszynski did not rule out the possibility that the new operating plan might trigger FERC review, but said that it was too early to know. Rick Fromuth of the Commission staff will take the lead in the Commission's review of the new operating plan. Mr. Fromuth noted that a Commission objective is to adopt as part of its Water Code a drought operating component for the Mirant system similar to the one already incorporated in the Water Code for PPL's Lake Wallenpaupack. The thrust of the plan is to establish minimum release requirements for the Mirant system during drought conditions as severe as those recorded during the drought of record. Mr. Fromuth said that staff is in the process of developing an understanding of the capabilities of the Mirant system during drought. Once it has done so, it will consider spill mitigation opportunities within the system. Ms. O'Neil urged the Commission not to postpone consideration of flood mitigation plans.

Mary Ellen Noble of the Delaware Riverkeeper Network cited a statement on page 3 of the draft docket relating to minimum pass-by flows. She wished to know the source of the pass-by flow requirements. Mr. Fromuth said minimum conservation releases by Mirant from the Mongaup system had been established by New York State in the course of FERC licensing. He said these pass-by flow requirements currently are not a part of the Commission's Water Code. The minimum release at Rio Dam currently is 100 cfs. Ms. Noble said she believed this should be increased and added that she would like to see the pass-by flows reviewed in the course of the Commission's review of the operating plan. Mr. Muszynski agreed that this could be done.

Hearing no further comments or questions, Mr. Gast requested a motion for approval of seven of the eight dockets for new projects. Mr. Donnelly moved for approval of hearing item numbers 18, 19, 20, 21, 23, 24 and 25. Mr. Mauriello seconded his motion, and the seven dockets were approved by unanimous vote.

22. Hudson Valley Foie Gras, LLC D-2006-37-1. An application for approval to increase an existing discharge from the applicant's WWTP from 4,000 gpd to 20,000 gpd. The WWTP will continue to discharge to the Middle Mongaup River, which is a tributary of the Mongaup River. The Mongaup River is a tributary to the Upper Delaware River which is designated as Special Protection Waters. The facility is located in Ferndale, Sullivan County, New York.

Mr. Muszynski explained that because the applicant's WWTP is located above an impoundment that is listed at Section 3.10.3 A.2.g.5 of DRBC's Special Protection Waters (SPW) regulations, the facility is not required by these regulations to have a non-point source control plan. Nor is the facility required to demonstrate that its expansion will result in no measurable change to existing water quality. The assumption at the time the SPW regulations were approved, he noted, was that

projects discharging into large reservoir systems would have relatively little impact on water quality in the main stem. The applicant's facility is subject to the SPW requirements for an emergency power supply, remote alarms and other operating safeguards.

The Commission received a letter from the Delaware Riverkeeper Network urging the Commission to obtain detailed information regarding point and non-point source discharges from the applicant's facility before approving the docket. The letter alleges that the facility has a record of non-compliance over the five-year period from July 2001 through July 2006, with over 850 violations. These allegedly include discharges of chlorine residuals, phosphorus, coliform, nitrogen and solids. Both DRKN and the Humane Society of the United States have threatened the applicant's operation with lawsuits. Mr. Muszynski said the Commission looked into the matter and learned that the State of New York took enforcement action against the applicant, resulting in a compliance agreement in February of 2007 with respect to past point source and non-point source violations. A new non-point source plan is to be submitted by June 1, 2007. Commission staff also examined all of the discharge monitoring reports for the facility for the period June 2006 through March 2007 and found no violations. Because the facility is currently in compliance but lacks a docket, staff's recommendation is that the Commission issue a docket, which would reinforce and augment the controls imposed by the state.

The chair recognized Marcus Henley of Hudson Valley Foie Gras, LLC. Mr. Henley said that the Humane Society and the Riverkeeper wished to put his company out of business for reasons having little to do with water quality. He said NYSDEC had investigated the farm and the system and that the operation had been consistently reporting to NYSDEC for the past seven years. An evaluation by the Humane Society of those seven years of records had uncovered errors in reporting by the contractor operating the plant. The operator manages municipal systems throughout the Hudson River Valley. Mr. Henley said that of the hundreds of violations alleged by DRKN, 14 involved very small exceedences of the fecal coliform limit of 200 on just two occasions, when the counts were between 210 and 215. According to Mr. Henley, many of the other so-called violations involved reporting errors in connection with a disinfection requirement. The operator tested and reported on the chlorine residual in the final contact tank, but he failed to test for chlorine removal. When informed of the reporting error, the operator promptly initiated testing in the outfall basin, where it applies sodium metabisulfite. No violations were found. Mr. Henley said that the balance of the violations – some 400 in number – were temperature violations. According to Mr. Henley, these occurred only because the operator was sampling at the wrong location. His contention is that at the outfall point, the discharge is in compliance. Mr. Henley said the plant was professionally designed and installed and is professionally managed. In his view, it has operated consistently and well. He offered to answer any remaining questions. In an exchange with Ms. Noble, Mr. Henley offered to speak with her about the plant's nutrient management program and address any additional concerns she might have. Ms. Noble accepted this offer.

Hearing no further comments or questions, Mr. Gast requested a motion for approval of this final docket in the new projects category. Mr. Klotz so moved, Mr. Donnelly seconded the motion and hearing item number 22 was approved by unanimous vote.

Resolution Regarding an Interim Releases Program for the New York City Delaware Basin Reservoirs, Pending Notice and Comment Rulemaking on a Revised Proposal for a Flexible Flow Management Program (FFMP). Mr. Gast reported that this resolution would extend through September 30, 2007 the Commission's resolutions approving Revision 7 of Docket D-77-20 CP – a fisheries management program – and Revision 9 of the same docket – a spill mitigation program. Revision 9 would be extended as amended by Revision 10 in January of 2007, which changed maximum flows below the City's reservoirs in accordance with new flood stages approved by FEMA. In the absence of Commission action to extend the two resolutions, the programs are due to expire on May 31, 2007. Mr. Gast said that the parties required additional time to develop a revised FFMP that would respond to issues raised by the public and new concerns raised by the Decree Parties themselves since their draft plan was submitted to the Commission in February of 2007. Mr. Gast said the Commission hoped a revised FFMP would be ready for consideration at its September meeting.

In extending Revision 9, Mr. Gast explained that the Commission also was authorizing and requesting the Decree Parties to provide spill mitigation release rates for the three New York City Delaware Basin reservoirs for the summer months. These rates were not included in Revision 9, adopted in the fall of 2006, because the spill mitigation program approved at that time was to expire at the end of May 2007, when it was expected to be replaced by the FFMP.

Jim Serio of the Delaware River Foundation asked the Commissioners to elaborate on the "Whereas" clause of the draft resolution referencing "a request by New Jersey for reexamination of the Commission's current drought operations plan, in order to better address water supply and flood mitigation needs throughout the basin." He said it seemed this was something that could take years to resolve, and asked why the issue had arisen in the spring of 2007 rather than in 2004 when the process to develop the FFMP was put into place. Mr. Mauriello replied that during the year and a half that he had been involved with the Decree Parties and the Commission all the parties had been tireless in their efforts to develop the FFMP. In the process, however, New Jersey has recognized some difficult aspects of the competing demand for stored water in the basin for water supply, drought mitigation, flooding, and fisheries. In particular, as NJDEP staff re-examined the terms of the Decree and the 1983 Good Faith Agreement and listened to questions like Mr. Serio's, they began to question some of the assumptions and findings that led to an operating plan that is now 25 years old. As a result, he said New Jersey requested that any new reservoir management agreement include agreement on a comprehensive re-examination of water management in the basin. He acknowledged that the scope of such a study did seem daunting, and the parties had just begun to discuss what might be achieved within a reasonable timeframe and budget and to focus on exactly what they hoped to learn from the study. Mr. Mauriello said that in the end, the parties wish to identify changes to the operating plan that will address Mr. Serio's concern about the health of the tailwater fisheries. New Jersey is particularly concerned about the reductions to its diversion that resulted from the Good Faith Agreement, because the state now faces a water supply plan that may call for huge expenditures on infrastructure to meet demands the state is uncertain can be accommodated. He said the Parties hoped to flesh out the scope of the study within the next few weeks.

Mr. Serio said that it seemed possible to him that such an assessment could be undertaken after the FFMP or some other improved program was approved. Mr. Mauriello said he could appreciate Mr. Serio's view, but that New Jersey's concern was that to defer agreement on this issue might mean that the issue would not be addressed. New Jersey felt obligated to raise the matter. It hopes the parties can

reach agreement on a revised plan that, in addition to addressing fisheries and flood mitigation, includes the scope of a comprehensive study and the time frame for such a study.

Nat Gillespie of Trout Unlimited asked whether the resolution would affect the size of the banks provided in Revision 7. Mr. Gast said Revision 7 would be extended without any alteration in the size of the banks. When an FFMP is approved and implemented, releases will be based upon storage levels rather than on banks of water. Such a program can be put into effect at any point, based on the level of storage then in the system.

Hearing no further questions or comments, Mr. Gast called for a motion to adopt the proposed resolution extending Revisions 7 and 9 of Docket D-77-20 CP. Mr. Klotz so moved, Mr. Gast seconded the motion, and Resolution No. 2007-7 was approved by unanimous vote.

Resolution Authorizing the Executive Director to Engage the U.S. Geological Survey as Prime Contractor, in Collaboration with NOAA/National Weather Service, the U.S. Army Corps of Engineers and DRBC, for Development of a Model for Evaluating the Potential for Delaware Basin Reservoirs to be Used to Mitigate Flooding. Mr. Fromuth provided background on the status of the flood analysis model requested by the basin state Governors in Resolution No. 2006-20 in September of 2006. The Governors pledged combined funds of \$500,000 for the project – \$150,000 each from New York, Pennsylvania, and New Jersey and \$50,000 from Delaware. The model will facilitate evaluation of the effects of different reservoir voids and release operations on downstream flood crests for different storm events. It will provide an analytical tool for the development of flood operating plans for the reservoirs. The model and data sets will be capable of modification and refinement as new information and technology become available. In addition, the results of evaluations performed with the model are expected to improve understanding of how the basin responds to different hydrologic events. The model's components will include rainfall runoff processes, reservoir operations and flow values. The model will be capable of predicting flood crests at the locations from which the National Weather Service currently forecasts. The model development team will include members of the U.S. Geological Survey, the U.S. Army Corps of Engineers, and the National Weather Service. Products of the study will include a user's manual and training for DRBC staff on how to use the model.

By augmenting the \$500,000 contributed by the states with \$100,000 in in-kind services from the DRBC for a combined "local match" of \$600,000, the states and DRBC were able to secure an additional \$600,000 in federal funds through the Corps of Engineers. In addition, a proposed agreement with the USGS provides for \$100,000 in USGS funds and in-kind services totaling approximately \$65,000 from the USGS and the National Weather Service. The USGS funds and in-kind services, plus approximately \$100,000 of the Corps funds will be used to develop the Flood Analysis Model, for a total project cost of \$765,000. The balance of the funds will be used for the development of flood inundation maps. The Corps has received its FY 2007 share of the funds for the combined modeling and mapping project, or \$300,000. It will receive the balance of the funds (an additional \$300,000) in FY 2008.

Mr. Mauriello noted that it would be important for the states to have some input on the selection of stream reaches for the prototype flood inundation mapping included in the project. Mr. Tudor explained that the resolution provides for coordination through the Flood Advisory Committee, on

which each of the states is represented. He noted, however, that the selection of stream reaches will be constrained by available data and information.

Ms. Noble asked whether the project will have a public education component at this stage. She said she thought it would be desirable to have outputs that would show the expected stream elevation at a particular gauge, given a specified level of precipitation and a given antecedent condition in the reservoir. Mr. Tudor explained that readings or predicted readings from gauges would be available through the Advanced Hydrologic Prediction Service (AHPS) web page of the National Weather Service. Over time, the agencies and the Commission will attempt to integrate the model outputs with AHPS and inundation mapping to create user-friendly products that can be accessed on the web. Kirk White of the USGS reiterated that the intent of the agencies is to make certain that the model outputs are understandable to lay audiences.

Tom Brand of the NJDEP asked whether the reservoir model would be confined to the demand pattern reflected in the current OASIS model. Mr. Fromuth said that water demands would not be a part of this model. Rather, the reservoir void condition will be independent of demand. Antecedent conditions will be aligned with soil moisture conditions and associated runoff.

Skip Garlitz, a stakeholder, said he would encourage DRBC to move forward with the flood analysis model immediately. He added that he would like to see whether it would be possible to build in provisions for adding potential new storage, such as the project he has proposed at Walpack Bend. Mr. White replied that the modeling effort currently is limited to existing impoundments. Mr. Gast explained that OASIS has the capability of adding storage, and this could be done with additional funds. Mr. Fromuth concurred. Mr. Garlitz suggested that a fast estimate of the additional cost be made, but he urged that the project should be started without delay. Jim Serio of the Delaware River Foundation agreed that the project should begin without delay but added that he had been frustrated in his extensive work with OASIS over the difficulty in integrating that model with the Decision Support System (DSS) (a post-processor for OASIS output that relates that output to habitat quality). He asked whether OASIS model outputs would be capable of becoming flood model inputs. Mr. Gast said the flood model would look at specific flood events, involving much smaller time steps than the OASIS model, so he thought it unlikely that OASIS outputs would make for likely flood model inputs or vice versa. Mr. Fromuth said that an OASIS output might show certain reservoir voids, which might then be put into the flood model as simple reservoir storage levels.

Mr. Tudor acknowledged Kirk White's substantial effort in coordinating among the four agencies involved in the model development project to bring it to this point. He said the scope of work included three six-month status reports over the 18-month term of the project.

Hearing no further questions or comments, Mr. Gast called for a motion to approve the proposed resolution authorizing the Executive Director to engage the U.S. Geological Survey as prime contractor, in collaboration with NOAA-National Weather Service, the U.S. Army Corps of Engineers and DRBC, for development of a model to evaluate the potential for Delaware Basin reservoirs to be used to mitigate flooding. Mr. Donnelly so moved, Mr. Mauriello seconded his motion, and Resolution No. 2007-8 was approved by unanimous vote.

Resolution Re-authorizing the Toxics Advisory Committee. Mr. Tudor said the Toxics Advisory Committee (TAC) has been an effective standing committee of the DRBC. He noted the value

added by the committee to the states' efforts to develop water quality criteria for toxics, total maximum daily loads (TMDLs) and wasteload allocations. DRBC standing committees are customarily authorized for no more than five years, in order to give the Commissioners an opportunity to re-evaluate a committee's composition and charge. The TAC originally was put in place to work with the Delaware Estuary Program, but its concerns have expanded into Zone 1 (the non-tidal Delaware River). The composition of the committee is proposed to remain unchanged, and authorization for another five years is proposed. The fourth "Whereas" clause of the proposed resolution begins to frame an agenda for the TAC, including the tasks of updating the water quality criteria for toxics; moving forward with the Stage 2 TMDL for PCBs, with which the TAC has been actively involved; and developing an implementation plan for the new PCB criterion. With respect to the latter task, the Commission has an understanding with dischargers that it will not adopt a new PCB criterion in the absence of a plan for implementing it. An issue that has not been addressed by the TAC but is on the committee's future agenda is addressing emerging contaminants such as flame retardants and pharmaceuticals. Within the next five years, the Commission will likely need to begin to address emerging contaminants that manifest themselves in fish tissue concentrations and human health concerns. Finally, chronic toxicity is an issue that has been addressed in the past by the TAC and with respect to which it will have a continuing role. Mr. Tudor noted that the TAC re-authorization is overdue, and for this reason it is proposed to be retroactive. The proposed resolution would reauthorize the TAC through 2012.

Mr. Donnelly commended Tom Belton of the NJDEP for his presentation on PCB trackdown for the Camden County Municipal Utilities Authority, delivered during the morning conference session. Mr. Donnelly said he was certain the TAC would value the presentation in its deliberations on the Stage 2 TMDL for PCBs.

Hearing no further questions or comments, Mr. Gast called for a motion to adopt the proposed resolution reauthorizing the Toxics Advisory Committee. Mr. Donnelly so moved, Mr. Gast seconded the motion, and Resolution No. 2007-9 was approved by unanimous vote.

Resolution for the Minutes Authorizing the Executive Director to Engage Contractors to Replace Aging HVAC Units to Improve Energy Efficiency and Reduce Cost, and to Develop RFPs for Construction. Mr. Gore explained that in the latter part of 2005 the Commission issued an RFP for an evaluation of mechanical and electrical systems in its West Trenton office building, with the goal of improving energy efficiency and reducing cost. As a result of that RFP, in May 2006 the Commission awarded a contract to the firm of El Taller Colaborativo, P.C. (ETC) and assembled an internal working group, comprised of Bob Tudor, Ken Najjar and Chad Pindar, to engage with the consultants. The contractor's report and recommendations are now complete. Jim Casey of ETC was present to respond to technical questions.

Ken Najjar explained that ETC was asked to look at both immediate needs and longer term needs for energy conservation, including the application of innovative technologies. ETC provided eight options for moving forward, and offered five recommendations: (1) lighting changes for energy and cost savings; (2) replacement of the 40-year-old boiler system; (3) replacement of the 15-20-year-old chiller; (4) replacement of the air handling and distribution system; and (5) installation of photovoltaic cells on DRBC's roof. Other possibilities were evaluated, including cogeneration and installation of a gas-fired unit. Dr. Najjar presented four alternatives for the Commissioners' review, in the form of a graph comparing costs and operating expenses over time for each of the alternatives.

The graph included a baseline option to demonstrate the comparative cost of no action. The “no action” alternative is not considered a viable option, however, because the 40-year-old boiler is near the end of its operating life. Its efficiency will continue to deteriorate and the costs of keeping it in operation will continue to rise. Dr. Najjar said that the recommended alternative is installation of a new air handling systems with controllers, a new chiller and boiler, replacement lighting and photovoltaic cells. The cost of this alternative during the first year is expected to be approximately \$550,000. Subsequent costs are much flatter than for the other options, however, because the Commission would be generating electricity to supply approximately half of its total use. After approximately 15 years, costs would drop because the Commission will have re-paid all financing and will own all components. The cost to purchase the system outright would be \$1 million, beyond the Commission’s means. The alternatives to the recommended approach entail smaller initial outlays – approximately \$450,000 – but cost more in the longer term. The proposed resolution would authorize the Executive Director to engage ETC to design the system, excluding the photovoltaic cells. The latter component would be added when state rebates, which have been offered in the past for such projects, are again available.

The project would require staging over a period of approximately 18 months. Approximately \$150,000 was reserved for the project in FY 2006 and the same sum will be reserved in 2007. It is hoped that the balance of the required funding can be provided in 2008.

In response to a query from Mr. Donnelly, Mr. Casey said that no samples of the existing insulation had yet been analyzed for asbestos, but the material does not appear to contain asbestos. Mr. Casey said ETC did not recommend removal of the existing air distribution system. Rather, it would be retired in place, and all of the ceiling diffusers would be replaced with variable volume diffusers. Thus, if asbestos were found in the duct work, it would remain undisturbed.

Mr. Gore asked the Commissioners for their approval to engage ETC to develop the design and bidding documents. Mr. Donnelly praised the work completed.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing the Executive Director to engage the firm of El Taller Colaborativo, P.C. (ETC) to perform Task 6 of ETC’s November 2005 proposal.

WHEREAS, by Resolution dated May 10, 2006, the Commission authorized the Executive Director to enter into an agreement with El Taller Colaborativo, P.C. for the evaluation of the mechanical and electrical systems (heating, ventilating, air conditioning and other power-using equipment) of the Commission’s office building in West Trenton, New Jersey in order to identify and evaluate opportunities for improving efficiency and reducing cost; and

WHEREAS, ETC offered its evaluations and recommendations in a report to the Commission dated April 2007, which calls for replacement of the current failing HVAC systems with a new package air cooled chiller, new natural gas boiler, and

new variable frequency drive air handling units with variable air volume devices, at a total estimated cost of \$500,000; and

WHEREAS, ETC's report confirms the financial feasibility of meeting a portion of the electrical requirements of the Commission's office building through the use of photovoltaic cells, a renewable energy source; however, the status of a rebate program for this technology in the State of New Jersey has recently come into question and requires further investigation; and

WHEREAS, replacement of the building's HVAC equipment must be staged to coincide with the heating and cooling seasons; and

WHEREAS, from design to final installation, this project is anticipated to require approximately twenty months; now therefore,

BE IT RESOLVED that the Executive Director is authorized to:

1. retain El Taller Colaborativo, P.C. to prepare bid documents for the replacement, repair and routine maintenance of the HVAC equipment at the Commission's office building, in accordance with Task 6 of ETC's proposal dated November of 2005, at a cost of \$32,000;
2. secure bids based on the documents prepared by El Taller Colaborativo, P.C. and award contracts for the purchase and installation of the specified HVAC equipment, provided the cost falls within design estimates; and
3. continue to investigate the option of installing a photovoltaic system on the Commission's property, and obtain the Commission's approval before awarding a contract or contracts for the purchase and installation of such a system.

This RESOLUTION shall take effect immediately.

Hearing no further questions or comments, Mr. Gast called for a motion to adopt the proposed resolution for the minutes authorizing the Executive Director to engage contractors to replace aging HVAC units to improve energy efficiency and reduce cost, and to develop RFPs for construction. Mr. Donnelly so moved, Mr. Klotz seconded the motion, and the resolution for the minutes was approved by unanimous vote.

A discussion followed about the stormwater retrofit project under way on the front portion of the Commission's property, to bring the site into conformance with stormwater management rules adopted by New Jersey after construction of the DRBC office building. Dr. Najjar explained that the project was designed two years ago, in accordance with a concept plan that was presented to the Commissioners on one or more occasions.

Mr. Gore said the Commission is under no obligation to retrofit the property but it wishes to demonstrate how a stormwater retrofit can be accomplished and how effective it can be. The plan

and a portion of the first phase of construction were funded through a Section 319 non-point source program grant from New Jersey in 2003.

The first phase of the project will be completed this year. It involves construction of an extended retention basin at the front (east) end of the property to reduce peak flows from the site. The runoff otherwise causes erosion of a nearby stream and other problems downstream. The first phase of the project also entails construction of a sloped walkway to provide wheelchair access at the front entrance to the building. Natural landscaping, using native plants will create a “rain garden.” The project reflects state-of-the-art technology in stormwater management. Phase 2 of the project will entail installation of a bio-filtration basin and a bio-swale to improve the quality of water flowing off the side (south) parking lot. A third phase will involve changes to the back (west side) of the property, where the soils with the best percolation are located. An infiltration basin will be constructed there to allow stormwater to infiltrate into the ground, reducing runoff from the site to pre-development levels. The driveway on the north side of the building will be removed, leaving a single impervious driveway through the site. The plan and was designed by the firms of Princeton Hydro, LLC and Pickering, Corts and Summerson, LLC and construction oversight was provided by these firms.

Ms. Collier explained that the site improvements have multiple objectives: (1) to do the right thing; (2) to provide an opportunity for visitors to the site to see different PMPs; and 3) to reduce energy consumption and shift reliance to renewable energy sources. Dr. Najjar said that the Commission is pursuing funding for Phases 2 and 3 of the stormwater retrofit, as well as for improvements to the courtyard, educational signage and a lobby display that will explain what is being done and why.

Add-On: Resolution for the Minutes Amending Resolution No. 2007-3 to Increase Funding for Water Quality Analysis in the Non-Tidal Delaware River. Mr. Gore explained that the resolution for the minutes would amend Resolution No. 2007-3 of February 28, 2007. That resolution authorized the executive director to execute contracts not to exceed \$70,000 for the analysis and evaluation of biological and ambient water samples collected from the non-tidal Delaware River for an initial period of three years, with optional annual extensions for two additional years. During their discussion of the resolution, the Commissioners asked staff to re-evaluate the approach to analyzing water samples for bacterial indicators such as E.coli, and in particular to include source identification for those parameters using DNA and RNA analysis. These analyses can cost as much as \$60,000 for a single survey.

In response, staff asked laboratories bidding on the project to submit costs for preparing samples for potential E. coli analysis at a later date. Staff proposes that a pilot study be conducted at a cost of up to \$10,000 for 2007, in which samples will be analyzed for selected locations and selected events. The proposed resolution also would authorize the creation of a library of DNA sources over the next five years at a cost of \$10,000. Excluding the cost of the pilot study and the DNA library, the bids for the analytical work approved in Resolution No. 2007-3 came in above the authorized amount – at approximately \$90,000 a year. The additional \$20,000 required for two E.coli components would result in a total cost of \$110,000.

Hearing no comments or questions, Mr. Gast requested a motion to approve the resolution for the minutes amending Resolution No. 2007-3 to increase funding for water quality analysis in the non-

tidal Delaware River. Mr. Klotz so moved, Mr. Mauriello seconded his motion and the resolution for the minutes was approved by unanimous vote.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes to amend Resolution No. 2007-3 by increasing the funding authorized for laboratory analysis of water quality samples from the non-tidal Delaware River.

WHEREAS, Resolution No. 2007-3, approved on February 28, 2007, authorized the Executive Director to enter into contracts for bacteriological analysis, benthic algae taxonomy, and nutrient/water chemistry analyses; and

WHEREAS, the Commission issued requests for proposals and bids on March 5, 2007; and

WHEREAS, staff estimated that the annual cost of this work would be approximately \$70,000; and

WHEREAS, the cost proposals submitted to the Commission exceeded staff's estimate, coming in at an annual cost of approximately \$90,000; and

WHEREAS, the Commission wishes to establish a pilot program to link bacteriological monitoring with recently developed molecular analysis techniques (DNA/RNA) to identify sources of observed bacteriological contamination at an estimated cost of \$10,000 annually; and

WHEREAS, the Commission wishes to use the analytical results of the pilot program to establish a DNA marker library for E.coli and Enterococcus for the Upper Delaware River, at an estimated one-time cost of \$10,000; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

Resolution No. 2007-3 is amended to authorize the Executive Director to execute contracts for biological and ambient water samples in an amount not to exceed \$110,000 for the first contract year, and \$100,000 for subsequent years, which may be augmented by any funds expressly awarded to the Commission or allocated by it for the purposes stated in Resolution No. 2007-3 as amended hereby.

This Resolution shall take effect immediately.

Add-On: Resolution for the Minutes Providing for Annual Salary Rates of Commission Employees for Fiscal Year 2008. Mr. Gore explained that the proposed resolution for the minutes would approve a cost-of-living adjustment for Commission employees of 2 percent. This increase is consistent with the budget approved by the Commission for FY 2008. The resolution also would

approve a corresponding adjustment to the Commission's general salary schedule, by increasing all rates by grade by 2 percent. The increases would be effective as of July 1, 2007.

Hearing no comments or questions, Mr. Gast requested a motion to approve the resolution for the minutes providing for annual salary rates of Commission employees for Fiscal Year 2008. Mr. Klotz so moved, Mr. Donnelly seconded his motion and the resolution for the minutes was approved by unanimous vote.

The complete text follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes, providing for annual salary rates of Commission employees for Fiscal Year 2008.

WHEREAS, the Commission desires to adjust the salary rates of Commission employees commensurate with the budget, recognizing the high level of competence, dedication and professionalism exhibited by the Commission staff; and

WHEREAS, a 2.0% salary increase can be accommodated within the Fiscal Year of 2008 budget authority; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. All Full Time and Part Time Permanent Employees are to receive a 2.0% salary increase effective July 1, 2007.
2. Accordingly, the General Salary Schedule of Annual Salary Rates by Grade for Fiscal Year 2006 is hereby increased by 2.0% for Fiscal Year 2008.
3. This Resolution shall take effect immediately.

Resolution Providing for Election of the Commission Chair, Vice Chair and Second Vice Chair for the Year Commencing July 1, 2007. Ms. Bush explained that the Commission's longstanding practice has been for the Chair, Vice Chair and Second Vice Chair positions to rotate, in order to provide each of the States and the Federal Government with the opportunity to chair the Commission every five years. In accordance with this custom, Fiscal Year 2008, commencing on July 1, 2007 should be Pennsylvania's year as Chair, New Jersey's as Vice Chair and New York's as Second Vice Chair.

Hearing no questions or comments, Mr. Gast called for a motion to adopt the proposed resolution providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2007. Mr. Donnelly so moved, Mr. Klotz seconded his motion, and Resolution No. 2007-10 was approved by unanimous vote.

Add-On: Resolution Honoring the Public Service Career of William A. Gast Upon His Retirement.
During the morning conference session Mr. Donnelly presented a resolution honoring Mr. Gast for his long career in public service.

The complete text follows:

RESOLUTION

WHEREAS, William A. Gast has devoted nearly 40 years of distinguished public service to the people of Pennsylvania while working for the Department of Environmental Resources and the Department of Environmental Protection; and

WHEREAS, Bill has served as Chief of the Commonwealth's Division of Water Use Planning since 1980 and in that capacity has managed its surface water allocation, water planning, and data management programs, in addition to acting as Pennsylvania's drought coordinator; and

WHEREAS, Governor Robert P. Casey appointed Bill as his Second Alternate on the Delaware River Basin Commission (DRBC) from 1993 to 1995; and

WHEREAS, Bill has served as Second Alternate since 1998, representing Governors Tom Ridge, Mark S. Schweiker, and Edward G. Rendell on the DRBC; and

WHEREAS, Bill has been an active participant on numerous DRBC committees, including the Flow Management Technical Advisory Committee (FMTAC), which he chaired for many years, and its successor, the Regulated Flow Advisory Committee, on which he also served as chair, along with the Water Management Advisory Committee; and

WHEREAS, Bill provided important contributions to the Interstate Flood Mitigation Task Force and as the Pennsylvania commissioner liaison and FMTAC liaison to the Watershed Advisory Council, which helped to guide the development of the 30-year Water Resources Plan for the Delaware River Basin; and

WHEREAS, as Pennsylvania's representative during the ongoing, complex negotiations taking place among the five parties to the U.S. Supreme Court Decree of 1954, Bill has repeatedly earned the respect of his peers as he leads by example and works tirelessly towards the goal of reaching common ground among the Basin States and New York City over streamflows and reservoir operations, while taking into account the wide range of public opinions regarding competing water demands and needs; and

WHEREAS, over the past four years Bill helped the Decree Parties and Commission to reach consensus in favor of initiating a non-binding collaborative process to develop flow management options for the Delaware River and its regulated tributaries, to approve a three-year Interim Fisheries Protection Program, to negotiate

interim snowpack and temporary non-snowpack void programs to enhance flood protection in communities below the Pepacton and Neversink reservoirs, and to agree on a temporary spill mitigation program with the goal of reducing the likelihood that the three New York City Delaware Basin reservoirs could be full and spilling coincident with a major storm or thaw; and

WHEREAS, most recently Bill has been using his outstanding negotiation and writing skills in working with the other Decree Party technical representatives to attempt to craft a Flexible Flow Management Plan to provide a more adaptive means for managing multiple and competing uses of storage with sustainable sources of water while protecting the water supply rights of the four basin states and New York City under the Supreme Court Decree; and

WHEREAS, it is rumored that Bill has established dual residency at West Trenton due to the amount of time he has spent at the DRBC offices over these past many years; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

Commission members and staff join the entire Delaware River Basin community in expressing sincere appreciation to Bill Gast for his contributions and insights in water resources planning and management, his diplomatic and consensus-building skills, and his commitment to excellence in public service. We wish him and his wife Donna good health and much happiness as they prepare to relocate to the warmer climate of South Carolina.

The resolution honoring the public service career of William A. Gast upon his retirement was approved unanimously.

Public Dialogue. Mr. Gast opened the floor to comment.

Ms. Noble explained that the Delaware Riverkeeper, Maya Van Rossum, would have attended in person but has a small child who is ill. Ms. Noble read a letter to the Commissioners from Ms. Van Rossum:

It's been 6 years since we petitioned the DRBC to designate the Lower Delaware River as Special Protection Waters. At the time we submitted our petition we were told the Commission could not act until it had undertaken years of additional study and effort. It's been six years now. The data is in. The quality of the Lower Delaware more than demonstrates its entitlement to Special Protection Waters designation.

We are thankful to the DRBC for putting in place interim protections to preserve the quality of the Lower Delaware while the finishing touches were put on the final designation. Once again that interim protection is soon to be up.

So I urge you today, to act at the July meeting to grant permanent Special Protection Waters status to the Lower Delaware River. We understand there are a few outstanding issues. We are happy to continue to work with the Commission to come to some sort of final resolution

on these matters. But it is important that we commit to final resolution of all issues in time to start to act at the July meeting. Can we count on each and all of you to make that commitment to do that and to start all necessary action at the July meeting to provide permanent Special Protection Waters protection to the Lower Delaware River?

Ms. Noble asked the Commissioners if they could answer Ms. Van Rossum's question. Mr. Mauriello said that at the Commission's February meeting, the members had reached a consensus that permanent Special Protection Waters (SPW) designation would be proposed. Some unresolved issues remained, however, relating to the existing regulations, and in particular to the language triggering certain SPW requirements. Mr. Donnelly said his recollection was that the ball was in the states' court to provide some guidance to the Commission staff about the types of actions that would trigger the requirements. He noted that Bill Muszynski of Project Review had provided the Commissioners with a draft guidance manual on or about April 25, 2007, the date by which he had promised to do so. The Commissioners were to coordinate with one another in providing Bill with suggested language regarding triggers. He said that if the Commissioners could reach agreement on that issue, then there were few obstacles remaining in moving forward. Ms. Noble said she would be delighted to report that.

Comments offered by Mr. Richard Schneider of Delaware Common Cause, focusing on the issue of impingement and entrainment, are provided as an attachment.

Ms. Noble said that she applauded Mr. Schneider's thinking. She said the recent court decision on EPA's rules regarding impingement and entrainment is an important one that the Riverkeeper Network would be following up on. She thanked him for his concise and compelling summary of complex reports.

Mr. Serio offered his thanks to Mr. Gast for his hard work.

Hearing no further comments, Mr. Gast adjourned the Commission's business meeting at 4:27 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

Attachment
To the Minutes of the Commission Meeting of May 10, 2007
Comments of Richard Schneider, Delaware Common Cause

I have some public comments and I also have some information that I'd like to submit to the Commission in reference to my comments. It's a newspaper article and also some fish kill data from the official EPA fish kill from a couple of facilities in Delaware that I will be referring to.

Hello, my name is Richard Schneider. First I'd like to make a suggestion for funding for the Commission: to apply for grants from foundations like you see on PBS. That show is funded by this environmental foundation. I think the Commission should pursue that. They have the money, this is such a great organization and maybe you two can get together and provide some funding. A couple of emails might not hurt.

I'm a concerned citizen from Delaware. I'm here again today to talk about two important subjects concerning the Delaware River. One is protecting the aquatic life. The other is protecting the water quality.

Protecting the water quality; fish, plankton, shellfish, crabs and oysters.

Business and industry draw in billions of gallons of water a day and as a result kill billions of fish a year, year after year. The life of the river is being sucked out of the river. A way to greatly reduce this killing is to use cooling towers, a closed loop system.

I'd like to submit to the Commission a copy of a *News Journal* article from March 4, 2007, by Molly Murray. Murray describes the severe decline of sea trout in the Delaware Bay.

I'd also like to quote from the official Connectiv Power Plant, in Edgemooore, Delaware, Fish Kill Report: "Weak fish is highly valued as an important commercial and recreational fishing resource. The weak fish has experienced a drastic decline since 1980. Research by Vaughn, Seagraves and West concluded that weak fish were overexploited and at a low abundance level by 1990. Landing estimates decreased from 35 million kilograms in 1980 to less than 4.5 million kilograms in 1992. Recreational landings have also decreased significantly since 1986."

The total weak fish landings dropped in 1992 to 1/8 the levels of 1980. That is a drastic drop in just 10 years. You can talk to any Delaware River and Bay fisherman or fisherwoman, and they will tell you how much weak fish have declined and how few they are catching. It's not just weakfish; it's all the fish and crabs.

As recommended by the Atlantic States Marine Fisheries Commission, Delaware adopted a 5 year moratorium, from 1985 to 1989, on the harvest of commercial stripped bass to allow the species to recover. Recreational limits are 2 catches per day. Stripers were so few that commercial striper fishermen were put out of business. The commercial and recreational fishing industry was forced to reduce and even eliminate their catch to save the fish. Industry, such as electric power plants and oil refineries, did nothing to save the fish. They continued and still continue to senselessly and needlessly kill massive amounts of fish by not having cooling towers. How is that fair? How is that right? Not having cooling towers is so wrong and harmful for the river.

I'd like to submit to the Commission the data from the fish kill reports for the Valero Refinery in Delaware City, Delaware and the Connectiv power plant in Edgemooore, Delaware. These are only two of the many facilities along the Delaware River that kill fish by water intakes.

It is important to note that the reports only count a few species of fish. There are 53 species of fish and crabs that are killed. So the actual amounts are many times higher. Also, all stages of fish life are killed, eggs, larvae, juveniles and adults as well as plankton and shellfish.

Valero's fish kill data was from a two year study, 1998 to 2000. The study showed that 39,000 striped bass, 219,000 white perch, 1,500,000 bay anchovy and 50,000 weakfish were killed in Valero's worst year. These numbers are the adult equivalent which means the ones that would have survived to adulthood. For example, out of 3,160,000 ages 0 to juveniles, those 3 million that are killed are only counted as 27,713 adult equivalents. The Valero refinery in Delaware City, Delaware, draws in from 250 to 450 million gallons of water a day.

The Connecticut Electric Generating station in Edgemore, Delaware, worst year kills are 56,000 river herring, 1,337,000 bay anchovy, 50,000 white perch, 60,000 striped bass, and 455,000 Atlantic Croaker. The Connecticut Electric Generating station's maximum water intake is 837 million gallons of water a day. The daily average is 420 million gallons of water a day.

These are only a few of the 53 species that are killed. The actual fish kill and shellfish kill is many times higher. The numbers are the adult equivalent; eggs, larvae, juveniles and adults are all killed. These are only two of the many facilities that are killing fish by water intake. It is the cumulative effect that is so devastating. It's all the facilities, year after year. The destruction is massive. This massive destruction can be reduced greatly by using cooling towers.

A federal judge ruled recently that the Environmental Protection Agency (EPA) must require electric generating power plants to use best available technology, not second or third best. The best available is cooling towers. The commission is familiar with this recent ruling. The public, fishermen and environmental groups want cooling towers. The federal courts ordered cooling towers. The Delaware River desperately needs cooling towers at all the facilities.

The next subject of concern is the quality of the water. Above the Chesapeake and Delaware Canal, the water is so toxic that you can't eat the fish. It's been this way for years. It's so depressing walking along the shoreline and seeing signs saying; 'Caution: Don't eat the fish.' Industries are a major source of the problem. The number one source of toxins into the Delaware River is the DuPont Chambers Works in New Jersey. DuPont has recently been on a publicity campaign to make themselves look good. They are offering a review of the Delaware Estuary. It is just an attempt to deflect attention from DuPont and put blame on everyone else. Words are cheap and mean nothing. Action is what counts. DuPont's actions are not good. The real data shows what is really going on.

A *News Journal* article on May 2, 2007 by Jeff Montgomery explains this. Environmental Protection Agency records released last month show the company ranked as the nation's sixth largest individual source of legal pollution discharge to water in 2005 and the largest on the Delaware River. DuPont Chambers Works on the Delaware River in New Jersey released more than 4.1 million pounds of toxic chemicals into the water in 2005, up 45% from the previous year and the highest amount reported since EPA record keeping began in 1989. Instead of making things better, DuPont is making things worse. Instead of decreasing toxins, DuPont is increasing the amount of poisons into the Delaware River. DuPont is actively pursuing more money-making opportunities to put toxins into the river. DuPont wins, the Delaware River loses. The idea of processing hazardous wastes is so that toxins don't get into the environment. The processing is supposed to collect the toxic stuff, for proper disposal, and not have any go into the river. Approximately 4 million pounds of toxins make it into the river. Their cleansing technique is not working. Filters are supposed to collect the toxins before they reach the river, yet 4.1 million pounds of toxins are left over and dumped into the river. It's obvious their methods are not working and need drastic improvement. The reason DuPont is increasing toxins into the river is because

they can. There is nothing stopping them. They have the green light. There is no limit to their toxic dumping and no regulation to protect the public from these practices.

The way to make the river cleaner and less toxic is to have regulatory enforcement in the public's interest, not the special interest. Regulatory oversight must incrementally decrease the toxic discharges over time. The public asks the Delaware River Basin Commission to implement and enforce such regulations. The regulations should allow wastes only from the Delaware River Basin be processed, not wastes from all over the country.

The damage to the river is silent, unseen and out of view of the public's eye. The water intakes are under the water, out of sight. The dead fish are dumped back into the river, out of sight. The toxins dumped into the river are under the water, out of sight. The evidence is washed away. There are no giant smoke stacks billowing smoke. The dead fish aren't lying out on the road for the public to see. Every indication shows that the river is in bad shape. The fish are disappearing. The water is so toxic that the fish are unfit to eat when caught in the river above the Chesapeake and Delaware Canal.

The Delaware River needs fixing; the solutions are straightforward common sense. To stop the unnecessary, harmful killing of fish, crabs and other aquatic life, industry must use cooling towers. To clean up the river and make it so you can safely eat the fish, industry must stop the increased dumping of toxins into the river. A cap limit and a mandatory steady decrease of toxins is the solution. Industry should be doing the right actions to protect and improve the river. They are not. Industry is not building cooling towers or reducing toxic dumping. They continue to abuse the river. Industry has not volunteered. If anything, they have strongly opposed any measure that protects the river. The public can voice their concerns but the public does not have the power or authority to make industry do the right thing. The Delaware River Basin Commission does have the power and authority to make industry do the right thing. The public, commercial and recreational fishermen and environmental groups ask the commission for your help in this effort. The Delaware River used to be a great source of joy and could be again. The water used to be so clean you could swim in it, catch many fish and eat the fish you caught. Many great experiences and memories were made at the Delaware River. The river is so bad now it only brings sadness. The Delaware River is a great natural resource. Let's make it a river we can be proud of for us and future generations. Thank you.