

DELAWARE RIVER BASIN COMMISSION

MEETING OF SEPTEMBER 7, 2023

Minutes

Commissioners Present: Jeffrey L. Hoffman, State Geologist, New Jersey, Chair
Kenneth Kosinski, New York, Vice Chair
Steven Smailer, Delaware, Second Vice Chair
Bevin Buchheister, Pennsylvania
Lieutenant Colonel Jeffrey Beeman, United States

DRBC Staff Participants: Steven J. Tambini, Executive Director
Kenneth J. Warren, DRBC General Counsel
Pamela Bush, Commission Secretary and Assistant General Counsel
David Kovach, Manager, Project Review
Amy Shallcross, Manager, Water Resource Operations
Chad Pindar, Manager, Water Resource Planning

Chair *pro tem* Jeff Hoffman, State Geologist, New Jersey Geological & Water Survey, called the meeting to order, introducing himself as the alternate commissioner for Governor Phil Murphy. Mr. Hoffman announced that the meeting was being held remotely, had been advertised as such on the DRBC website, and was open to the public via Zoom webinar and the DRBC YouTube channel. The meeting agenda was available on the DRBC website.

The other alternate commissioners introduced themselves as: Steve Smailer, Delaware Department of Natural Resources and Environmental Control, representing Governor John Carney; Ken Kosinski, New York State Department of Environmental Conservation, representing Governor Kathy Hochul; Bevin Buchheister, Deputy Secretary, Office of Water Programs, Pennsylvania Department of Environmental Protection, representing Governor Josh Shapiro; and Lt. Col. Jeffrey Beeman, Philadelphia District Commander, U.S. Army Corps of Engineers (“USACE”) representing USACE North Atlantic Division Commander Col. John Lloyd on behalf of the United States. DRBC’s Executive Director Steve Tambini, General Counsel Ken Warren, and Commission Secretary and Assistant General Counsel Pam Bush also introduced themselves.

Mr. Hoffman thanked the public for attending. He paused to allow time for the resolution of any technical issues related to the remote platform, then noted that once the business meeting was adjourned, Mr. Tambini would review the procedures for open public comment and would moderate an open public comment session.

Minutes. Ms. Bush said she had circulated draft Minutes for the Commission’s business meeting of June 7, 2023 to the commissioners and had received no comments or corrections to date. She recommended that the Minutes be approved as drafted. Mr. Kosinski so moved, Mr. Smailer offered a second, and without further discussion, the Minutes of the Commission’s June 7, 2023 business meeting were approved by unanimous vote.

Announcements. Ms. Bush announced that DRBC’s Water Management Advisory Committee would meet virtually on October 12, 2023, at 10:00 a.m., remotely. She added that details, including staff liaison contact information, a Zoom registration link, and an agenda when available, would be posted on the Commission’s website.

Hydrologic Conditions. Water Resource Operations Manager Amy Shallcross offered a presentation on basin hydrologic conditions. Ms. Shallcross’s PowerPoint slides are archived at: https://www.nj.gov/drbc/library/documents/HydrologicConditions_Shallcross090723.pdf.

Hydrologic Cycle. Ms. Shallcross reviewed the hydrologic cycle, by which water enters a water body, then evaporates and remains in the air until it accumulates and falls to the ground as precipitation. Precipitation can either infiltrate, run off, or become surface water or groundwater, and the cycle starts anew.

Precipitation. Rainfall averaged 18.7 inches across the basin over the previous 90 days, which was 5.8 inches above normal for the time of year.

Basin Reservoirs. Storage in thirteen major reservoirs in the basin is integral to the DRBC’s drought management plan. Stored water is released when needed to maintain minimum flows, primarily in the mainstem Delaware River. The basin’s three largest reservoirs, all located in the New York portion of the basin, are the Cannonsville, Pepacton, and Neversink reservoirs, owned and operated by the City of New York. Five federal reservoirs owned and operated by the U.S. Army Corps of Engineers are located in the Pennsylvania portion of the basin: Jadwin and Prompton, dry dams providing flood control protection along the Lackawaxen River; F.E. Walter, a recreational and flood control reservoir in the Lehigh Valley; and Beltsville and Blue Marsh reservoirs, which are multi-purpose (water supply, flood control and recreation) reservoirs sited in the Lehigh and Schuylkill valleys, respectively. The basin’s major hydropower reservoirs are also part of the Commission’s drought management plan. They include the Mongaup system reservoirs in Sullivan County, New York, which are conjunctively operated for hydropower and Lake Wallenpaupack in Pennsylvania’s Lackawaxen River drainage. Lake Nockamixon, in upper Bucks County, Pennsylvania, is a recreation reservoir with a small flood control management pool. Marsh Creek Reservoir in Chester County, Pennsylvania is used to support flows in the Brandywine Basin.

Flow Objectives. Flow objectives have been established at two locations in the mainstem Delaware River—one at Montague, New Jersey, where the boundaries of the states of New York, Pennsylvania and New Jersey come together, and the another at Trenton, New Jersey, approximately two-thirds of the way from the top of the main stem, at Hancock, New York, to the mouth of Delaware Bay. The transition between the tidal and non-tidal river occurs at Trenton, and on the Pennsylvania side of the mainstem, Morrisville. Above this point, the main stem is a freshwater river. Below it, the river’s salinity varies depending upon a balance between freshwater inflow and the tide.

To maintain the targeted flow at Trenton, the Commission directs releases from storage it owns in the Beltzville and Blue Marsh multi-purpose federal reservoirs. Planned recreational releases from the Corps' F.E. Walter Reservoir, and in the case of a serious drought, releases from F.E. Walter requested by the DRBC, also augment mainstem flows. A large release for whitewater rafting, known as the "mega release," is made annually from F.E. Walter in early October.

Reservoir Storage. Under the Commission's drought management plan, management stages—normal, watch, warning, and emergency—are based on combined storage in the basin's three largest reservoirs, those owned and operated by the City of New York. Storage in the three reservoirs is recorded daily. As of the meeting date, the City's Neversink, Pepacton, and Cannonsville reservoirs were at 96.3, 94.4 and 84.1 percent of their capacities, respectively. Total combined storage in the three reservoirs was 91 percent (243.5 billion gallons ("BG")) of their combined capacity of 267.4 BG.

The combined storage in New York City's Delaware Basin reservoirs is tracked against the daily median combined storage based on 60 years of data, and against the regulatory drought management stages. Ms. Shallcross displayed a graph on which combined storage in the three reservoirs over the preceding twelve months was represented by a blue line, median combined storage over the same period by a gray line, and the "watch," "warning," and "drought" management levels by yellow, orange and red lines, respectively. The periods of below median storage—from August through December of 2022, and from May through July of 2023—were evident, along with the intervening periods when rainfall replenished the water supply. The graph indicated that as of the meeting date, reservoir storage was 43.8 BG above the median for this date, and 76.3 BG above the storage level on the same date in 2022.

Streamflow. Streamflow measures the amount of surface water flowing through rivers and streams. Ms. Shallcross displayed a map on which dots of different colors represented the observed flow in streams throughout the basin as of the meeting date relative to "normal" flows at each location. Aqua and green dots, signifying above normal and normal flows, respectively, predominated in the upper and middle regions of the basin, while gold, maroon, and red dots, signifying below normal, much below normal, and low flows, respectively, were increasingly prevalent in the lower basin, and particularly in southern New Jersey. Ms. Shallcross noted that mainstem flows at Montague and Trenton were at 115 and 113 percent of normal, respectively, while the Schuylkill River at Philadelphia was at only 57 percent of its normal flow that day. A graph of flows at Montague over the period from September 2022 to the meeting date showed recent spikes in flows, possibly associated with recent thunderstorms, in the upper basin. Similar spikes appeared on a corresponding graph showing flows at Trenton, illustrating that the contributions from rainfall in the upper basin were eventually felt downstream as well.

The Lehigh and Schuylkill rivers are the largest tributaries to the mainstem Delaware River. Ms. Shallcross noted that the Schuylkill's flow was low for this time of year, because the Schuylkill region had received slightly less precipitation from the rain that had recently fallen on most of the basin. She noted that the southeastern portion of the basin in Pennsylvania had been in a drought watch condition and was the last part of Pennsylvania to emerge from that condition.

Salinity. By augmenting flows in the mainstem through directed releases from basin reservoirs, the Commission helps to repel salinity in the Delaware Estuary, the portion of the mainstem below Trenton-Morrisville, which is tidally influenced. Industrial and drinking water intakes in the urbanized region of the estuary could be harmed by corrosion, and drinking water supplies could be compromised if ocean salinity were to travel far enough upstream during the fluctuating tides to invade these intakes. Because salt can be removed from water only with expensive treatment processes, the location of the “salt front”—the 250 mg/L isochlor—is monitored daily to determine whether and when releases from reservoirs upstream are needed to augment freshwater flows into the estuary to push the saltier water downstream.

Groundwater. Ms. Shallcross apologized that due to technical problems, she was unable to obtain information on groundwater levels for her presentation that day.

Drought and tropical storm outlook. At the Commission’s previous meeting in June, Ms. Shallcross had noted that conditions were abnormally dry. But as of the meeting date, conditions had rebounded throughout most of the basin. The NOAA Center for Weather and Climate Prediction (“CPC”) drought outlook for the next six months indicated the basin would not go into a drought.

September 10 is the midpoint of the hurricane season. Ms. Shallcross noted that the CPC was predicting between 12 and 17 named storms and between 5 and 9 hurricanes along the Atlantic coast during 2023, with as many as 4 of these becoming major hurricanes. She pointed out that in the past, the basin had experienced major impacts from named storms beginning with the letter “I”. Hurricane Irene struck in 2011, Isaias in 2020, Ida in 2021, and Ian in 2022. As of the meeting date, a hurricane developing in the Atlantic had the potential to affect the East Coast, with several possible storm tracks crossing the lower portion of the basin.

Three-month outlook. The CPC placed the probability of above normal temperatures at 40 to 50 percent across the basin through November. The CPC’s seasonal precipitation outlook was for equal chances of above and below normal precipitation across most of the basin, with a 33- to 50-percent chance of above normal precipitation in the very southernmost region.

Ms. Shallcross concluded her presentation by wishing everyone a wonderful fall season.

Executive Director Report. Mr. Tambini’s Executive Director’s report is summarized below:

- *Federal Community Project Funding.* On August 11 in Trenton, New Jersey, DRBC celebrated with the basin community the award of federal community project funds comprising the federal government’s signatory member contribution to the Commission for fiscal year 2023. Mr. Tambini recognized and thanked U.S. Representative Bonnie Watson Coleman for her leadership in securing this critical funding. With this award, Congress appropriated the federal government’s signatory party funding for the DRBC for the second time in 27 years. The funds will be used to bolster DRBC’s science-based

programs and policies for providing clean, sustainable, secure, and equitable water resources for the region.

- *Delaware Watershed Conservation Fund Grant.* The Commission was also successful in securing a \$500,000 grant from the Delaware Watershed Conservation Fund, administered by the U.S. Fish and Wildlife Service and the National Fish and Wildlife Foundation. The grant will support the Commission’s work to assess contaminants of emerging concern, complete estuary water quality modeling to understand the potential effects of anticipated climate change on fish habitat, and complete research, monitoring and evaluation work to support equitable recreation access to the Delaware River.
- *Tour of Blue Marsh Dam and Reservoir.* On August 3, Mr. Tambini welcomed USACE District Commander Lieutenant Colonel Beeman to the basin, and joined him and members of the DRBC and District staff for a round table discussion and tour of the Blue Marsh Dam and Reservoir in Berks County, Pennsylvania. U.S. Representative Madeleine Dean of Pennsylvania’s fourth congressional district joined the group. Other participants included state representatives from the region, county parks representatives, local water utilities, and representatives of the Schuylkill River Greenways National Heritage Area. Panelists described their roles in managing and protecting water resources and discussed how communities recreate and otherwise connect with the region’s shared waters. Mr. Tambini had the opportunity to share with attendees the role of Blue Marsh Reservoir in the Commission’s flow management program, and the importance of ensuring a sustainable supply of water in the basin to meet current and future needs. Speakers also addressed challenges such as equitable access and the migration of harmful algae blooms brought on by warmer temperatures, higher volumes of stormwater, and fertilizer runoff.
- *DRBC Honored by NJ-AWRA.* The New Jersey Section of the American Water Resources Association (NJ-AWRA) announced it would honor the Commission with its 2023 “Excellence Award” for the project “Improving Dissolved Oxygen and Aquatic Life Uses in the Delaware River Estuary.” The award is given to activities that “exemplify outstanding management of water resources.” Dr. Namsoo Suk, Director of the DRBC’s Science and Water Quality Management branch, planned to accept the award at AWRA’s nineteenth annual New Year’s Eve celebration (marking the eve of the new water year) on September 27, 2023.
- *Upper Delaware Council Recreation Award.* Mr. Tambini congratulated DRBC’s Kate Schmidt and her colleagues on the Delaware River Sojourn Steering Committee on the Committee’s receipt of a Recreation Achievement Award from the Upper Delaware Council. The award honors the event organizers “for heightening stewardship of the Delaware River through an annual paddling excursion with educational programming since 1995.” The award was presented at the Council’s 35th annual awards ceremony in Beach Lake, Pennsylvania on August 24, 2023.

- *Staff Changes.* Mr. Tambini announced that Amber Munchback had recently joined the DRBC staff as the new Finance and Administration Specialist. He announced that Karl Heinicke, DRBCs IT Specialist, would be retiring from DRBC at the end of September after 35 years of dedicated service with the Commission. Mr. Tambini thanked Karl for his many and valued contributions to the Commission and extended his best wishes to Karl and his family for a well-deserved retirement.

General Counsel’s Report.

Wayne Land and Mineral Group (WLMG) vs. DRBC. Mr. Warren reported that the case of *Wayne Land and Mineral Group (WLMG) v. DRBC* in the United States District Court for the Middle District of Pennsylvania was the only litigation matter pending. The case involves an energy developer who commenced a challenge to DRBC’s exercise of its project review authority over a high-volume hydraulic fracturing project that WLMG plans to conduct within the basin. DRBC in 2021 adopted a regulation prohibiting high-volume hydraulic fracturing within the basin, and following that action, filed a motion to dismiss the WLMG case as moot. DRBC’s motion remains pending before the court.

Amendment of a Settlement Agreement. In accordance with Resolution No. 2015-3, authorization by the Commission is required for the executive director to enter into a settlement in lieu of penalties for alleged violations of DRBC rules or docket conditions when the amount involved exceeds \$10,000. Ms. Bush explained that the commissioners’ approval of an amendment to such a settlement agreement was needed.

In September 2018, the Commission authorized the executive director, on behalf of DRBC, to enter into a settlement with Nestlé Purina Pet Care Company (“Nestlé”) to resolve alleged violations of effluent limits in the docket issued for the company’s industrial wastewater treatment plant discharge to an unnamed tributary of Jordan Creek in Lehigh County, Pennsylvania. This agreement was last before the commissioners in September 2021. At that time, the Commission authorized an extension from October 31, 2021 to October 31, 2023 of the date by which Nestlé would achieve compliance with effluent limits for nitrogen, phosphorus, and total suspended solids. However, the detailed engineering and design work necessary to complete the project plan were delayed by events that included the pandemic and Nestlé’s decision, in which DRBC concurred, to evaluate a possible connection to the municipal wastewater treatment facility in South Whitehall Township. Ms. Bush explained that more recently, Nestlé had undertaken significant engineering studies and alternative evaluations necessary for determining how to achieve thermal discharge limits and other preliminary effluent limits established by the Pennsylvania Department of Environmental Protection (“DEP”) in April 2022. Procurement of the equipment needed to upgrade the Nestlé industrial wastewater treatment plant had also been significantly delayed due to ongoing supply chain disruptions. To comply with DEP’s thermal limits, Ms. Bush said, the company was compelled to acquire land and relocate its outfall, a process that had not yet been completed.

The DEP, DRBC, and docket holder all wished to allow adequate time for Nestlé to obtain the approvals from DEP required to construct the upgrades to the facility's industrial wastewater treatment plant, and time to account for any delays beyond Nestlé's control that could occur during construction. Ms. Bush noted that as in 2021, because DEP approvals are also required, the Commission staff coordinated closely with DEP in considering the amendments being advanced, which would provide for full compliance by the end of the year 2027. Ms. Bush recommended and requested that the commissioners authorize the executive director to amend the settlement agreement with Nestlé Purina Pet Care Company accordingly.

Ms. Buchheister so moved, Mr. Kosinski offered a second, and in the absence of further discussion, the commissioners unanimously agreed to authorize the executive director to amend the DRBC's settlement agreement with Nestlé Purina Pet Care Company by extending the date of full compliance with the Commission's effluent limitations to December 31, 2027.

A Resolution for the Minutes to support regulatory efficiency, intergovernmental coordination, and clarity to the public in connection with water quality standard amendments to better support aquatic life in the Delaware River Estuary. Mr. Tambini said that each of the commissioners had had an opportunity to review and consider the proposed resolution, and a copy would be posted on the DRBC website at the conclusion of the meeting. He noted the "Whereas" clauses recited milestones and key events in the course of DRBC's priority work to revise and update water quality standards in the urban reaches of the Delaware River Estuary, including the following:

- In 2017 the Commission approved Resolution No. 2017-4, supporting further study of the inclusion of propagation as a designated use in Estuary water quality zones 3, 4 and the upper portion of zone 5 in consultation with co-regulators and dischargers. Resolution No. 2017-4 also directed the executive director to initiate rulemaking to revise the designated uses for these reaches to include propagation based upon the results of studies enumerated in the resolution.
- In 2020, the Commission adopted a Resolution for the Minutes, providing for the Commission to adopt a final rule to revise the designated uses and supporting water quality criteria for the noted reaches by March of 2025.
- The DRBC staff completed the scientific, engineering, and socioeconomic studies enumerated in Resolution No. 2017-4, consistent with the schedule outlined in the September 2020 resolution.
- On April 29, 2022 a group of non-governmental organizations submitted a petition to the U.S. Environmental Protection Agency ("EPA") seeking to bypass the Commission's ongoing studies and rulemaking processes and requesting EPA to commence a separate rulemaking to revise the designated uses and dissolved action criteria for the Delaware River Estuary.

- On December 1, 2022, EPA issued an Administrator’s determination (“Determination”) concluding that revised water quality standards for the protection of aquatic life in the Delaware River Estuary are necessary to satisfy the requirements of the Clean Water Act. The Determination made clear that based on that conclusion, EPA must promptly prepare and publish proposed regulations setting forth revised or new water quality standards. EPA’s Determination also recognized the value of the foundational science developed by DRBC and made clear that the Commission and EPA could proceed with a coordinated, yet separate, rulemaking to revise the designated uses and corresponding water quality criteria for the affected reaches.

The proposed resolution emphasizes that the DRBC, EPA, and the estuary state agencies will continue to work collaboratively to develop water quality standards based on sound science to meet the goals of the Clean Water Act and the Commission’s Comprehensive Plan. However, the resolution also recognizes that concurrent rulemaking by two agencies would not be the most efficient means of revising the estuary aquatic life water quality standards and has the potential to confuse the public.

After reading aloud the “Be it resolved” section of the proposed resolution, Mr. Tambini asked the commissioners to consider and approve it.

Ms. Buchheister so moved, Mr. Smailer offered a second, and without further discussion, the Resolution for the Minutes to support regulatory efficiency, intergovernmental coordination, and clarity to the public in revising the aquatic life designated uses to provide for fish propagation and corresponding water quality criteria for dissolved oxygen in the Delaware River Estuary was approved by a vote of 4 in favor and none opposed. On behalf of the federal government, Lt. Colonel Beeman abstained.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes to support regulatory efficiency, intergovernmental coordination, and clarity to the public in revising the aquatic life designated uses to provide for fish propagation and corresponding water quality criteria for dissolved oxygen in the Delaware River Estuary (“Estuary”).

WHEREAS, on September 13, 2017, the Commission adopted [Resolution No. 2017-4](#), which recognized that evidence supported further study on the inclusion of propagation as a designated use in Water Quality Zones 3 and 4 and the upper portion of Zone 5, located in the Estuary, provided for such studies to be undertaken in consultation with co-regulators and dischargers, and 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, to satisfy their obligation under the CWA and its implementing regulations to establish, periodically review, and where appropriate revise water quality standards for their surface waters within the Delaware River Basin, the States of Delaware and New Jersey and the Commonwealth of Pennsylvania either defer to water quality standards that they have jointly established through the Commission or provide for application of the more stringent of state and Commission standards;

WHEREAS, the longstanding arrangement by which the Commission establishes surface water quality standards and performs water quality monitoring and assessment for the interstate Delaware River has served the Commission's members and the region's environment and economy well, including by achieving remarkable water quality improvements over the course of 60 years;

WHEREAS, in accordance with the schedule set forth in the Resolution for the Minutes dated September 10, 2020, the Commission completed the scientific studies outlined in Resolution No. 2017-4, which entailed: developing a linked, three-dimensional hydrodynamic and water quality model with the input of a panel of experts; researching dissolved oxygen requirements for key sensitive species to support establishment of water quality criteria protective of these species; collaborating on an ichthyoplankton survey; performing ambient nutrient monitoring and primary productivity and algal speciation studies to support model calibration; identifying feasible advanced treatment technologies and developing estimates of the associated capital and operating costs for their implementation at twelve wastewater treatment plants; and conducting an initial evaluation of the physical, chemical, biological, social and economic factors affecting the attainment of uses in the affected water quality zones;

WHEREAS, as required by Resolution No. 2017-4, DRBC has issued the following reports or draft reports containing the results of its studies supporting the inclusion of propagation as a designated use in the Estuary:

- Hydrodynamic Model Report, [Modeling Eutrophication Processes in the Delaware River Estuary: Three-Dimensional Hydrodynamics Model](#) (DRAFT; December 2021) & [Appendices A-N](#) (DRAFT; December 2021; zip)
- Water Quality Model Report, [Modeling Eutrophication Processes in the Delaware Estuary: Three-Dimensional Water Quality Model](#) (DRAFT; September 2022; pdf) & [Appendices A-H](#) (DRAFT; September 2022; zip)
- Analysis of Attainability Report, [Analysis of Attainability: Improving Dissolved Oxygen and Aquatic Life Uses in the Delaware River Estuary](#) (DRAFT; September 2022; pdf)

- Linking Aquatic Life uses with Dissolved Oxygen Conditions, [Linking Aquatic Life Uses with Dissolved Oxygen Conditions in the Delaware River Estuary](#) (DRAFT; November 2022; pdf)
- Socio-Economic Analysis Report, [Social and Economic Factors Affecting the Attainment of Aquatic Life Uses in the Delaware River Estuary](#) (DRAFT; September 2022; pdf)
- Nitrogen Reduction Cost Estimation Study, [Nitrogen Reduction Cost Estimation Study: Final Summary Report](#) (submitted to the DRBC by Kleinfelder, Inc.; January 2021; pdf);

WHEREAS, on April 29, 2022, a group of non-governmental organizations submitted a petition to the United States Environmental Protection Agency (“EPA”) seeking to bypass the Commission’s ongoing studies and rulemaking processes and requesting EPA to commence a separate rulemaking to revise the designated uses and dissolved oxygen criteria in the Delaware River Estuary;

WHEREAS, on [December 1, 2022, EPA issued a determination](#) (the “Determination”) concluding that revised water quality standards for a portion of the Delaware River Estuary to protect aquatic life are necessary to satisfy the requirements of the CWA. Recognizing the value of the foundational science performed by the Commission, the Determination nevertheless noted that EPA is required to develop proposed regulations to comply with Section 303(c)(4) of the Clean Water Act, which provides that “the [EPA] Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the Clean Water Act]”;

WHEREAS, on December 1, 2022, the DRBC issued a statement, in part explaining that the Commission “viewed the petition as unnecessary,” and adding that “while EPA's decision has the potential to create a duplicative regulatory process, the DRBC is committed to continuing to work jointly with EPA and state co-regulatory agencies in Delaware, New Jersey and Pennsylvania to develop water quality standards using sound science to meet the goals of the CWA and the Delaware River Basin Comprehensive Plan”;

WHEREAS, both before and since EPA issued its Determination, the Commission, EPA, and state co-regulators have worked cooperatively and collaboratively to develop dissolved oxygen criteria that support propagation as an aquatic life use for portions of Estuary that are currently designated for fish maintenance only; and

WHEREAS, although the Determination recognized that both the Commission and EPA could proceed with coordinated, yet separate, rulemakings to revise the designated use and corresponding water quality criteria, a parallel and duplicative process is not the most efficient method for revising the Estuary aquatic life water quality standards and presents the potential to confuse the public;

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

1. The Commission hereby suspends, effective immediately, its own actions to develop proposed regulations for public comment upgrading the designated aquatic life use for Water Quality Zones 3 and 4 and the upper portion of Zone 5 to include propagation, and:
 - a. will continue to provide its scientific, technical, and engineering assistance to support EPA's process for revising the aquatic life designated uses and corresponding criteria for Water Quality Zones 3 and 4 and the upper portion of Zone 5 of the Delaware River to attain and maintain propagation of aquatic life, consistent with the staff's best professional judgment and expertise.
 - b. will continue to coordinate and collaborate with state and federal co-regulators during EPA's rulemaking process.
 - c. withdraws its scheduled commitment to adopt revised DRBC water quality standards for the Delaware River Estuary by March 2025.
2. In accordance with Articles 5.2 and 13.1 of the [Delaware River Basin Compact](#), the Commission retains the authority to update its Comprehensive Plan and [Water Quality Regulations](#) for the Delaware River Basin to include designated uses and criteria (in DRBC parlance, "stream quality objectives") for the Estuary, including establishing propagation of aquatic life as a designated use for all water quality zones with corresponding dissolved oxygen criteria to protect that use, at a date to be determined after EPA's rulemaking process is complete.
3. The Commission commits, effective immediately, to working with the EPA, co-regulator states, and interested stakeholders through the Water Quality Advisory Committee to develop plans, analyses, and, if appropriate, related regulations for the implementation of new aquatic life uses and criteria in the Delaware River Estuary. Implementation measures to be considered may include, but are not necessarily limited to, wasteload allocations, effluent limitations, capital improvement schedules, and variances. The schedule for completing such plans and promulgating related regulations as appropriate will depend upon the timing of completion of EPA's rulemaking process and will be determined at a later date.

Resolution for the Minutes authorizing the executive director to enter into a contract with the Partnership for the Delaware Estuary for mussel restoration projects required by a Consent Order and Agreement and natural resource damage assessment. Mr. Pindar explained that the resolution would authorize the executive director to enter into an agreement with the Partnership for the Delaware Estuary ("PDE") to purchase 5,000 freshwater mussels derived from Delaware River brood stock and to complete a mussel re-stocking project. The project was to be undertaken pursuant to a Consent Order and Agreement between the Commonwealth of Pennsylvania, Martins Creek LLC, and Talen Generation LLC to resolve natural resource damages associated with a 2005 fly ash slurry spill into the Delaware River near Lower Mount Bethel Township, Northampton

County, Pennsylvania. The settlement funds, totaling approximately \$950,000, were allocated primarily to dam removal projects in the basin. A portion of the funds not to exceed \$50,000 was reserved for freshwater mussel restoration.

In 2015, the Commission entered into an agreement with the Pennsylvania DEP and the Pennsylvania Fish and Boat Commission by which the Commission agreed to serve as the administrator of the funds furnished by the settlement. Mr. Pindar confirmed that the Commission has in hand the sum of \$50,000 required for the project. The Commission issued a request for proposals in April 2023 to furnish the mussels. The Partnership of the Delaware Estuary was the sole qualified bidder in response to that solicitation. Mr. Pindar asked the Commissioners for their favorable consideration of the proposed resolution.

Mr. Kosinski so moved, Ms. Buchheister offered a second, and without further discussion, the Resolution for the Minutes authorizing the executive director to enter into a contract with the Partnership for the Delaware Estuary for mussel restoration projects required by a Consent Order and Agreement between the Commonwealth of Pennsylvania and Settlers Martin Creek, LLC and Talen Generation, LLC was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing the Executive Director to enter into a contract with the Partnership for the Delaware Estuary for mussel restoration projects required by a Consent Order and Agreement between the Commonwealth of Pennsylvania and Settlers Martins Creek, LLC and Talen Generation, LLC.

WHEREAS, on April 28, 2016 the Commonwealth of Pennsylvania entered into a Consent Order and Agreement (“CO&A”) with Martins Creek, LLC and Talen Generation, LLC (“Settlers”) to resolve natural resource damage claims associated with a 2005 ash slurry spill to the Delaware River from the Martins Creek Steam Electric Station in Lower Mount Bethel Township, Northampton County, Pennsylvania; and

WHEREAS, the CO&A provides in part for the Settlers to pay the sum of \$952,150 (“the Funds”) for dam removal projects in Pennsylvania and mussel restoration projects in either Pennsylvania or New Jersey (“Projects”); and

WHEREAS, by an Agreement dated November 25, 2015 with the Pennsylvania Department of Environmental Protection and the Pennsylvania Fish and Boat Commission (“Agreement”), the Commission agreed to function as the recipient and distributor of the Funds and to administer the Projects; and

WHEREAS, the Agreement provides for the Funds to be allocated as follows: Dam Removal – \$741,000, Dam Removal Contingency – \$111,150, Mussel Restoration – \$50,000 and Commission Administrative Fee – \$50,000; and

WHEREAS, the Settlers have remitted the Funds to the Commission; and

WHEREAS, on April 30, 2023 the Commission duly noticed and advertised for a qualified firm to facilitate the mussel restoration projects; and

WHEREAS, the Partnership for the Delaware Estuary was the sole qualified bidder to respond to the solicitation; now therefore,

BE IT RESOLVED that the Executive Director is authorized to enter into a contract with the Partnership for the Delaware Estuary at a cost not to exceed \$50,000 to fully perform the mussel restoration projects consistent with the CO&A and the Agreement as the Funds allow.

This resolution shall be effective immediately.

Project Review Docket Applications. Mr. Kovach reported that 21 draft dockets had been subjects of a duly noticed public hearing on August 9, 2023. The same 21 dockets, all of them located in Pennsylvania, were included on the day's business meeting agenda for the Commission's consideration and possible action. Eleven (11) were for wastewater discharge projects and ten (10) for water withdrawals. However, one of the dockets—item 13, comprised of docket D-2010-038 CP-4 for the Department of the Navy—was to be postponed to allow additional time for review. Mr. Kovach noted that after revisiting the draft docket, DRBC staff realized pertinent details regarding a groundwater withdrawal had inadvertently been excluded. Mr. Kovach said staff intended to revise the draft docket, subject the revised draft to a public hearing in November 2023, and address any comments and present the docket for the Commission's consideration at a subsequent business meeting.

Mr. Kovach reported that the Commission had received no comments on docket items 1 through 12 and 14 through 21. He recommended that the Commissioners approve these 20 twenty dockets.

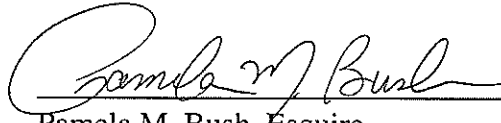
Ms. Buchheister so moved, Mr. Kosinski offered a second, and without further discussion, docket items 1 through 12 and 14 through 21 were approved by unanimous vote.

Remarks of Mr. Hoffman. Mr. Hoffman noted that this would be his last DRBC meeting representing New Jersey, as he would be retiring as of December 1. He thanked the DRBC staff and his fellow commissioners for their support throughout his tenure, adding that it had been an enjoyable time. Mr. Tambini offered congratulations and thanked Mr. Hoffman for his support of the DRBC and the Delaware Basin and his many years of public service at New Jersey DEP and as the state geologist.

Adjournment. Mr. Kosinski moved to adjourn the meeting, and Mr. Smailer seconded his motion. Without further discussion, the Commission's business meeting of September 7, 2023 was adjourned by unanimous vote at approximately 11:20 a.m.

Audio Recording. Audio recordings of the public hearing of August 9, 2023 and business meeting of September 7, 2023 are on file with the Commission Secretary.

Open Public Comment. Following the business meeting, Mr. Tambini hosted an open public comment session for off-the-record comment by stakeholders on water resource issues affecting the basin.

A handwritten signature in cursive script, reading "Pamela M. Bush", written over a horizontal line.

Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel

ATTACHMENT A

DESCRIPTION OF PROJECTS APPROVED BY THE COMMISSION DURING THE BUSINESS MEETING OF September 7, 2023

Background. Projects subject to Commission review in accordance with the Delaware River Basin Compact and Commission regulations must have the Commission's approval in the form of a docket, permit or resolution (collectively, "docket").

The Commission's project review process takes six to nine months to complete, and the public is informed of the status of project applications by a variety of means during that period:

- Each project for which an application is received is added to the "Project Review Status Report" maintained at https://www.nj.gov/drbc/programs/project/project-review_status_pg.html. This report, updated approximately once a month, includes the applicant's name and project location, a description of the proposed project, the docket number assigned to the project, and the name of the staff member reviewing the project.
- A list of applications received is compiled and posted as a "Notice of Applications Received" (NAR) at <https://www.nj.gov/drbc/programs/project/nar.html>, approximately once per month.
- Anyone interested in receiving notices about projects under review as the notices are posted on the Commission's website, may sign up for the Commission's "Most Recent Notice of Applications Received" listserv at <https://www.nj.gov/drbc/contact/interest/index.html>.
- Members of the public seeking additional information about a project may contact the staff member reviewing the project or arrange by appointment to review the relevant Project Review file at any time that is mutually convenient for the staff and the party.
- Approximately six weeks before the Commission's scheduled public hearing date, draft dockets are circulated to the Commission's members for review and comment by the appropriate state and federal agencies.
- Ten days prior to the hearing date, the hearing notice, along with draft dockets, is posted on the Commission's website. A public hearing and meeting notice also appears in the Federal Register and certain state registers in accordance with the respective schedules of these publications. The register notice directs readers to the Commission's website for links to the draft dockets available for comment.

Written comment on hearing items is ordinarily accepted until 5 p.m. on the Monday of the week following the public hearing.

At the Commission's regularly scheduled public meetings, the Commissioners may approve, disapprove, or postpone consideration of any docket for which a hearing has been completed. Approved dockets are posted on the Commission's website as quickly as possible following the

date on which the Commission acted. Delay of a few days may occur to complete clerical work, particularly in instances in which the Commissioners approve a docket with modifications.

The projects are customarily considered in three categories: Category A—project renewals with no substantive changes; Category B—project renewals with substantive changes; and Category C—projects not previously reviewed by the Commission. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on September 7, 2023 are presented below.

A. Renewals with No Substantive Changes (Items 1 through 14).

1. Coaldale-Lansford-Summit Hill Sewer Authority, D-1964-027 CP-4. An application to renew the approval of the applicant's existing 1.65 mgd WWTWTP and its discharge. The WWTWTP will continue to discharge treated effluent to Panther Creek at River Mile 92.47 – 99.0 – 22.0 – 2.4 (Delaware River - Schuylkill River - Little Schuylkill River - Panther Creek), via Outfall No. 001, in Coaldale Borough, Schuylkill County, Pennsylvania.
2. Palmerton Borough, D-1964-028 CP-4. An application to renew the approval of the applicant's existing 0.75 mgd WWTWTP and its discharge. The WWTWTP will continue to discharge treated effluent to Aquashicola Creek at River Mile 183.7-36.3-0.8 (Delaware River - Lehigh River - Aquashicola Creek) via Outfall No. 001, within the drainage area to the classified Lower Delaware Special Protection Waters (SPW), in the Palmerton Borough, Carbon County, Pennsylvania.
3. Cleveland Cliffs Plate LLC, D-1979-026 -4. An application to renew the approval of the docket holder's existing 1.2 mgd IWTP and its discharge. The IWTP will continue to discharge treated industrial wastewater effluent and non-contact cooling water to the Schuylkill River at River Mile 92.47 - 21.5 (Delaware River - Schuylkill River) in Plymouth Township, Montgomery County, Pennsylvania.
4. Catasauqua Borough, D-1987-060 CP-5. An application to renew the approval of an existing groundwater withdrawal of up to 41.33 mgm to supply the applicant's public water supply distribution system from existing Well Nos 1, 2 and 4. The project wells are completed in the Epler Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Catasauqua Creek in the Borough of Catasauqua, Lehigh County, Pennsylvania within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
5. Jim Thorpe Borough, D-1996-019 CP-4. An application to renew the approval of the applicant's existing 0.92 mgd WWTWTP and its discharge. The WWTWTP will continue to discharge treated effluent to the Lehigh River at the River Mile 183.66 – 47.0 (Delaware River - Lehigh River), via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW), in the Borough of Jim Thorpe, Carbon County, Pennsylvania.
6. TPT Partners, L.P., D-1999-041 -3. An application to renew the approval of an existing groundwater withdrawal of up to 6.20 mgm to irrigate the applicant's golf course from existing Wells PW-1 and PW-2. The project wells are completed in the Brunswick Formation. The

requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Schuylkill River Watershed in North Coventry Township, Chester County, Pennsylvania.

7. Kimberton Golf Club, D-2001-004 -3. An application to renew the approval of an existing groundwater withdrawal of up to 4.34 mgm to irrigate the applicant's golf course from existing Well No. PW-1. The project well is completed in the Stockton Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the French Creek Watershed in East Vincent Township, Chester County, Pennsylvania.
8. Jeffersonville Golf Club, D-2002-030 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 8.928 mgm to irrigate the applicant's golf course from existing Wells PW-1 and PW-3. The project wells are completed in the Stockton Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Indian Creek Watershed in West Norriton Township, Montgomery County, Pennsylvania.
9. Pennsylvania American Water Company, D-2003-006 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 9.63 mgm to supply the applicant's Mid-Monroe public water supply distribution system from existing Well Nos. 1, 2, 3, 5 and Birch Acres Well No. 2. The Mid-Monroe wells are completed in the Lower Member Mahantango Formation. Birch Acres Well No. 2 is completed in the Buttermilk Falls/ Esopus Formation. The requested allocation is not an increase from the previous allocation. The Mid-Monroe wells are located in the Pond Creek Watershed and Birch Acres Well No. 2 is located in the Sambo Creek Watershed in Smithfield Township, Monroe County, Pennsylvania within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which is classified as Special Protection Waters.
10. Hydro Extrusion USA, LLC, D-2005-001 -6. An application to renew the existing discharge from the 0.1 mgd Hydro Extrusions USA industrial wastewater treatment plant (IWTP) and continue the current daily maximum TDS determination of 2,000 mg/l. The IWTP will continue to discharge treated process industrial wastewater and noncontact cooling water (NCCW) to the West Branch Schuylkill River at River Mile 92.47 - 115 - 0.5 (Delaware River - Schuylkill River - West Branch Schuylkill River), via Outfall No. 002, in Cressona Borough, Schuylkill County, Pennsylvania.
11. Jackson Township Authority, D-2007-004 CP-4. An application to renew the approval of the applicant's existing 0.5 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) of Tulpehocken Creek, upstream of Blue Marsh Reservoir at River Mile 92.5 - 76.8 - 6.5 - 6.5 - 14.4 - 3.3 - 0.1 (Delaware River - Schuylkill River - Tulpehocken Creek - Blue Marsh Reservoir - Tulpehocken Creek - Owl Creek - UNT of Tulpehocken Creek) via Outfall No. 1, in Jackson Township, Lebanon County, Pennsylvania.

12. Schuylkill County Municipal Authority, D-2010-019 CP-4. An application to renew the approval of the applicant's existing 1.0 mgd Deer Lake WWTP and its discharge. The Deer Lake WWTP will continue to discharge treated effluent to Pine Creek via Outfall No. 002, Outfall No. 003 will continue to serve as an emergency discharge point for stormwater overflow conditions, both outfalls are located at River Mile 92.47 - 106.8 - 2.3 (Delaware River – Schuylkill River – Pine Creek), in West Brunswick Township, Schuylkill County, Pennsylvania.
13. Department of the Navy, D-2010-038 CP-4. An application to renew the approval of an existing discharge of treated groundwater from the Department of the Navy, Warminster Groundwater Treatment Plant (GWTP). The existing GWTP will continue to pump and treat an average annual flow of 0.216 mgd of contaminated groundwater from 29 on-site wells for discharge to an unnamed tributary (UNT) of the Little Neshaminy Creek, a tributary of the Neshaminy Creek, at River Mile 115.6 – 23.6 – 3.3 – 1.4 (Delaware River – Neshaminy Creek – Little Neshaminy Creek – UNT), via Outfall No. 002, relocated for federal permitting requirements in Warminster Township, Bucks County, Pennsylvania.
(Postponed for additional review.)
14. Lehigh Valley Zoo, D-2013-006 CP-3. An application to renew the applicant's existing 0.021 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Jordan Creek at River Mile 183.7 – 16.3 – 18.0 (Delaware River – Lehigh River – Jordan Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW), in North Whitehall Township, Lehigh County, Pennsylvania.

B. Renewals with Substantive Changes (Items 15 through 20)

15. Schuylkill County Municipal Authority, D-2013-013 CP-3. An application to renew the approval of the applicant's existing 0.072 mgd Mt. Laurel Water Filtration Plant (WFP) and its discharge. The existing Mt. Laurel WFP will continue to discharge backwash wastewater from its water treatment facility via Outfall No. 001 to Mud Run, at River Mile 92.47- 125.2 - 4.0 - 1.4 - 0.57 (Delaware River - Schuylkill River - Mill Creek - Stony Creek - Mud Run), in New Castle Township, Schuylkill County, Pennsylvania.
16. Saucon Valley Country Club, D-1967-022 -3. An application to renew the approval of an allocation of 34.5 million gallons per month of surface water from existing intakes 1 and 2 and to approve the withdrawals from new intake 3 located in an expanded irrigation pond and new wells TW-1, TW-3 and TW-8 for alternative backup groundwater supply. The total surface water allocation from intakes 1, 2 and 3 will remain at the currently approved allocation of 34.5 mgm. The total allocation of groundwater from the new groundwater sources is 36.143 mgm to account for water lost to evaporation and leakage from the proposed expanded irrigation pond. The groundwater wells are completed in outcrop area of the Epler and Allentown Formations. The project is located in the Saucon Creek Watershed, within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters, in Upper Saucon Township, Lehigh County and Lower Saucon Township, Northampton County, Pennsylvania.

17. Community Utilities of Pennsylvania, Inc., D-1989-033 CP-5. An application to renew the approval of an existing groundwater withdrawal of up to 21.01 mgm to supply the applicant's public water supply distribution system from existing Well Nos 1R, 2 and 3. Well 1R was constructed to replace Well 1. Well 1 will be removed from the approval. The project wells are completed in the Towamensing Member of the Catskill Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Little Bushkill Watershed in Lehman Township, Pike County, Pennsylvania within the drainage area to section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters.
18. Grand View Hospital, D-1992-063 CP-4. An application to renew the approval of an existing groundwater withdrawal with an increase in allocation from 4.464 mgm to 5.0 mgm to supply the applicant's hospital facility from existing Wells Nos. PW-4 and PW-5. The project wells are completed in the Brunswick Formation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the East Branch of the Perkiomen Creek Watershed in West Rockhill Township, Bucks County, Pennsylvania.
19. Buckingham Township, D-2003-013 CP-8. An application to renew the approval of an existing groundwater withdrawal of up to 43.4 mgm to supply the applicant's public water supply distribution system from Well Nos. F-1 through F-8, CS-1 through CS-5, BV-1, BV-2, FS-1, FS-2, FG-1, FG-2, L-1, L-2 and new well L-3. The approval will also remove Well No. F-9 from the docket. The project wells are completed in the Stockton, Brunswick and Lockatong Formations. New Well No. L-3 and Well No. F-8 are completed in the Limeport Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Neshaminy, Pine Creek, Mill Creek, Lahaska Creek, Watson Creek and Robin Run Watersheds in Buckingham Township, Bucks County, Pennsylvania.
20. Camp Morasha, D-2018-005 -2. An application to renew the approval of the existing 0.045 mgd Camp Morasha WWTP and its discharge. The approval will include an upgrade of the WWTP's disinfection system from a liquid chlorine tank to an ultra-violet disinfection system. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) of Equinunk Creek at River Mile 321.9 - 7.6 - 1.9 (Delaware River - Equinunk Creek - UNT Equinunk Creek) which is located within the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which the Commission has designated as Special Protection Waters, in Buckingham and Preston Townships, Wayne County, Pennsylvania.

C. Projects Not Previously Reviewed by the Commission (Item 21)

21. Carpenter Technology Center, D-2022-001-1. An application to approve an existing groundwater withdrawal of up to 43.4 mgm from existing Wells 2, 3, 4, 5, 6, and 7 for industrial cooling at the applicant's steel manufacturing facility. The application also includes a separate existing withdrawal from five recovery wells for groundwater remediation purposes. The project wells are completed in the Allentown Formation and are located in the Schuylkill River Watershed in the City of Reading, Berks County, Pennsylvania.