

DELAWARE RIVER BASIN COMMISSION

MEETING OF MARCH 2, 2011

Minutes

The Commission met at the West Trenton Volunteer Fire Company in West Trenton, New Jersey.

Commissioners Present: Katherine E. Bunting-Howarth, Delaware, Chair
Brigadier General Peter A. DeLuca, United States, Vice Chair
John T. Hines, Pennsylvania, Second Vice Chair
John Plonski, New Jersey
Mark Klotz, New York

DRBC Staff Participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Kenneth J. Warren, Hangley Aronchick Segal & Pudlin, DRBC General Counsel
Pamela M. Bush, Commission Secretary & Assistant General Counsel
Thomas J. Fikslin, Modeling, Monitoring & Assessment Branch Manager
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Manager, Water Resources Management Branch
Amy Shallcross, Supervisor, Operations Section

Chairwoman Dr. Howarth convened the business meeting at 1:30 p.m.

Minutes. The Minutes for the meeting of September 15, 2010 along with the Minutes for the December 8, 2010 meeting were approved unanimously on a motion by Mr. Klotz, seconded by Brigadier General DeLuca.

Announcements. Ms. Bush announced the following meetings and events:

- *DRBC Regulated Flow Advisory Committee Meeting.* Tuesday, March 8, 2011 at 10:00 a.m. in the Goddard conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Hernan Quinodoz – (609) 883-9500, extension 225.
- *DRBC Flood Advisory Committee Meeting.* Tuesday, May 10, 2011 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Laura Tessieri – (609) 883-9500, extension 304.
- *DRBC Water Management Advisory Committee Meeting.* Tuesday, May 17, 2011 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. Staff contact – Donna Barnett – (609) 883-9500, extension 308.

- *Delaware River Basin Drinking Water Forum.* The Source Water Collaborative, a coalition of 23 national organizations and agencies united to protect sources of drinking water, will hold the Delaware River Basin Drinking Water Forum on Thursday, March 10, 2011. This free event will simultaneously take place at eight linked locations around the basin and will also be webcast live. The focus of the forum is to identify and explore issues affecting the quality and quantity of the basin's drinking water, as well as overall sustainability of the basin's water resources.
- *Lehigh Valley Watershed Conference.* The Lehigh County Conservation District (LCCD) will hold the Lehigh Valley Watershed Conference in Bethlehem, Pennsylvania on Friday, March 11, 2011. For further information, contact Rebecca Kennedy, LCCD Watershed Specialist, at rkennedy@lehighconservation.org or (610) 391-9583, ext. 18.
- *Schuylkill Watershed Congress.* The Delaware Riverkeeper Network will hold its annual Schuylkill Watershed Congress in Pottstown, Pennsylvania on Saturday, March 12, 2011 from 8:00 a.m. to 4:00 p.m. at the Montgomery County Community College West Campus. This year's Congress will feature 28 concurrent sessions and 5 poster sessions covering a broad range of watershed topics. For further information contact www.delawareriverkeeper.org, email chari@delawareriverkeeper.org, or call (215) 369-1188, ext. 109.

Hydrologic Conditions. Ms. Shallcross reported on hydrologic conditions in the Basin:

The observed precipitation for the portion of the Basin above Montague, New Jersey for the period January 1 through February 28, 2011 was 5.55 inches or 0.12 inches below normal. The observed precipitation for the Basin above Trenton for the same period was 6.10 inches or 0.01 inches below normal and for the Basin above Wilmington, Delaware for this period, 6.12 inches or 0.12 inches below normal.

The average observed streamflow of the Delaware River at Montague in January 2011 was 3,543 cubic feet per second (cfs) or 71 percent of the long-term average for the month. For the same period, the average observed streamflow of the Delaware River at Trenton was 6,175 cfs, or 48 percent of the long-term average for the month.

For the period of February 1-28, the average observed streamflow of the Delaware River at Montague was 7,289 cfs, or 128 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 10,594 cfs, or 77 percent of the long-term average for the month.

In the Lower Basin, as of March 1, 2011, Beltzville Reservoir contained 13.41 billion gallons (bg) usable, or 103.2 percent of usable storage, and Blue Marsh contained 4.87 bg usable, or 102.3 percent of winter pool usable storage. As of February 28, Merrill Creek contained 14.82 bg usable, or 94.4 percent of usable storage.

In the Upper Basin, as of March 1, 2011, Pepacton Reservoir contained 116.663 bg usable or 83.2 percent of usable storage. Cannonsville contained 80.074 bg usable, or 83.7 percent of

usable storage. Neversink contained 29.172 bg usable or 83.5 percent of usable storage. The total New York City Delaware Basin reservoir storage was 225.909 bg usable or 83.4 percent of usable storage.

During the month of January 2011, 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) 71 to RM 77. The normal location of the salt line during January is RM 68, a location which is ten miles downstream of the Delaware-Pennsylvania state line. As of February 28, the salt line was located at RM 75, which is five miles upstream of the normal location for February.

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

- *DRBC Staffing Additions and Changes.* Ms. Collier announced that Ken Stoller would join the Commission staff on March 14 as Project Review Section supervisor. Chad Pindar, who currently holds that post, will move to the Planning and Information Technology Branch to serve as Watershed Planning Supervisor.
- *Tribute to DRBC Chair.* Ms. Collier announced that at the end of March Kathy Bunting-Howarth of Delaware would leave her post at DNREC to become director of the New York State Sea Grant Program at Cornell University in Ithaca, New York. Ms. Collier praised Dr. Howarth as a born leader who possesses both determination and a great sense of humor. She noted that Dr. Howarth has been involved with the DRBC through some major issues, including the PCB clean-up program, the resolution of flow management conflicts, and the controversy over natural gas drilling. Ms. Collier said Dr. Howarth would be sorely missed but hopefully would stay engaged with basin issues, since there is a New York portion of the Delaware River Basin. Ms. Collier presented Dr. Howarth with a framed photograph of the Delaware River, bearing on an engraved plate the inscription, “Flowing from the mountains to the sea. Thank you for your dedication to DRBC and the protection of the basin waters.”

Dr. Howarth thanked her fellow Commissioners, Ms. Collier, the DRBC staff, and the meeting attendees, with whom she said she had been spending “a lot of time lately,” noting that they had contributed tremendously to her intellectual and professional development. Dr. Howarth thanked the group for all that they had taught her and for all that they do and have done to protect the resources of the Delaware River Basin. She said she was confident that Governor Jack Markell and Secretary of the Environment Collin O’Mara of Delaware would find a qualified division director to provide leadership on the Commission and continue Delaware’s role.

- *Natural Gas Public Hearings.* Ms. Collier related that the hearings on the proposed natural gas development regulations, consisting of six sessions at three different locations, had taken place during the previous week. The sessions were held in the afternoon and evening in Honesdale, Pennsylvania and Liberty, New York on the previous Tuesday and at the Trenton War Memorial building in Trenton, New Jersey on the previous Thursday. In all, a total of 377 people testified and over 1,000 attended. Ms. Collier noted that written comments were still being accepted. To date, the

Commission had received over 1,500 comments via the PEPC system and another 1,000 had in hard-copy, for a total of some 2,500 comments and counting.

Dr. Howarth thanked everyone who submitted comments through PEPC or in hard copy or who had testified in person, noting that she had requested a vibrant public process and viewed the input as invaluable. She acknowledged that DRBC had published a long and technically dense regulation and that the subject of the regulation – natural gas development – was brand new to the basin and had the potential to affect water resources throughout it. Dr. Howarth said it was also her understanding that the State of New York was still working on updates to its Supplemental Generic Environmental Impact Statement (“SGEIS”), that a number of interest groups, including the State of Delaware, were interested in extending the comment period, and that other interests were opposed to such an extension.

Dr. Howarth asked Brigadier General DeLuca to take over as Chair, which he did, to allow her to offer a motion. She then moved that the Commission direct the Executive Director and Delaware River Basin Commission staff to immediately begin sorting and processing the comments submitted to the Commission to date and that the Commission extend the comment period for 45 days to allow the states of New York and Delaware, along with other entities, additional time to prepare and file their comments. Dr. Howarth said that in this way the State of Delaware felt substantive progress in processing the comments could be made while additional time for various entities could be provided to allow them to make technically valid and substantive comments. Mr. Klotz of New York seconded Dr. Howarth’s motion to extend the rulemaking comment period by an additional 45 days.

Brigadier General DeLuca then invited comments and questions from the Commissioners. Mr. Klotz explained that the State of New York supported extending the comment period because it required more time to advance its SGEIS process and to make more detailed comments on DRBC’s regulatory proposal.

John Hines, the Commissioner from Pennsylvania, noted that he was the only Commissioner to attend the public hearings on the draft regulations and that he had concerns about extending the public comment period. He noted that 90 days had been accorded, well over 2,500 comments had been provided to date, and he did not know what else the Commissioners could hear. Mr. Hines said he was concerned that the Commission had come to be at the center of a debate between pro- and anti-drilling interests when it needed instead to focus on its core responsibility – regulating. He said that the rulemaking process would be under way for three years come May of 2011 and it was time to make some decisions and move forward. He said Pennsylvania opposed any extension of the public comment period.

On behalf of Governor Markell of Delaware, Dr. Howarth said that her state had favored a longer comment period from the start, but was trying to meet disparate interests part way while moving forward.

John Plonski, representing Governor Christie of New Jersey, said that his state had been adamant since July of 2010, the date of a letter to the Commission from New Jersey Commissioner of the Environment Bob Martin, that New Jersey's primary objective was to protect the integrity of the Delaware River. He said New Jersey believes the proposed regulations are a good start in establishing robust and rigorous regulations, but at the same time, New Jersey does not seek to impede the development of natural gas in the Commonwealth of Pennsylvania. Accordingly, although New Jersey is interested in making certain that the draft regulations receive a fair hearing and thorough discussion, New Jersey does not wish to drag the process out. Mr. Plonski asked whether the Chair and his fellow Commissioners would consider an amendment to extend the comment period by 30 days rather than 45.

Dr. Howarth and Mr. Klotz both concurred with the proposed amendment.

The Federal Commissioner, Brigadier General DeLuca, said that in spite of media reports to the contrary, his role as Federal Commissioner was to represent the views of the various federal agencies with authorities, responsibilities and interests related to the Commission's deliberations. He said the family of federal agencies was either in favor of an extension of the public comment period or viewed an extension with equanimity. Hearing no further comments from the Commissioners, he asked for a vote on the motion to extend the public comment period by 30 days. The motion carried by a vote of 4 to 1, with Delaware, the Federal Government, New Jersey and New York all in favor, and Pennsylvania opposed.

General Counsel's Report. Mr. Warren reported on the status of two lawsuits pending in the United States District Court for the District of New Jersey against the Commission and the Executive Director in her official capacity. One of the suits, filed by the Delaware Riverkeeper Network, consists of an appeal of a docket issued by the Commission in the summer of 2010, approving a withdrawal from the West Branch Lackawaxen River by Stone Energy. The second, initiated by the Riverkeeper and Damascus Citizens for Sustainability, appears in Mr. Warren's view to be an appeal of the provision of the Supplemental Executive Director's Determination ("SEDD") of June 2010 consisting of a grandparenting clause allowing exploratory wells with state approval to proceed. Mr. Warren noted that this matter had been addressed by a resolution of the Commission in December of 2010. In both matters, the Commission's response is due on April 1st. Mr. Warren said the Commission would vigorously oppose both lawsuits.

Mr. Warren reported that also pending was a request for hearing by DuPont, pertaining to a dilution factor and mixing zone associated with a diffuser to be installed at DuPont's Chambers Works facility in Deepwater, New Jersey. Mr. Warren recommended to the Commissioners that they vote to defer consideration of DuPont's request until the May Commission meeting, because ongoing discussions between DuPont and the Commission staff could obviate the need to consider the request. Mr. Plonski moved that consideration of the request by DuPont be postponed until May, and Mr. Klotz seconded his motion. The motion carried by unanimous vote.

The next matter involved a request for hearing filed by Waste Management. Mr. Warren noted that if a docket that was to be considered by the Commission later in the meeting were in fact approved, Waste Management had indicated it would withdraw its request for hearing. Accordingly, Mr. Warren suggested that the Commissioners wait to see whether the docket was approved, as the matter might then be resolved without the need for consideration of the hearing request.

The last topic of Mr. Warren's report was a rule to show cause sent to the Lambertville Municipal Utilities Authority (LMUA) in early 2010. The matter was to have been heard by the Commission in March of 2011 but was deferred. Mr. Warren explained that the Commission had made extensive efforts to settle the matter with LMUA, but to date these efforts had been unsuccessful, and it appeared at this point that a public proceeding would be needed in May. Mr. Warren explained that the Commission's rules provide for the submission of written evidence, information or positions to the Commission in advance of such a hearing and an opportunity to make a presentation to the Commission at the hearing. He explained that there is also an optional procedure for a full-blown administrative hearing either before the Commissioners or before a hearing officer, if the Executive Director believes that an evidentiary record needs to be established or the Commissioners otherwise order that a full hearing be held. Lambertville had requested a full evidentiary hearing, but Mr. Warren explained that as he understood the matter, no significant disagreement existed as to the underlying fact of the improvements made by LMUA to its wastewater treatment plant. Rather, the issue the Commissioners would have to decide was whether the actions of LMUA were sufficient to trigger a review by the Commission in accordance with Section 3.8 of the Compact, in which case LMUA had an obligation to file an application as the staff of the Commission had directed it to do. Mr. Warren explained that in general, if Section 3.8 is triggered, an application is required whether or not the Special Protection Waters requirements are triggered. He recommended that no action be taken that day – i.e., that the Executive Director and Commissioners not require a full evidentiary hearing. Rather, he said, Lambertville and the Commission staff should be afforded the opportunity to make written submissions to the Commissioners; Lambertville and the staff should appear before the Commissioners at the May meeting; and at that time, the Commissioners would hear argument and would have the evidence before them; and in May or at such time as they chose, they could make a decision with respect to the rule to show cause.

Noting that Mr. Warren had said staff had made extensive attempts to settle the matter with LMUA, Mr. Plonski asked whether Mr. Warren meant that Lambertville had rebuffed these attempts or had been uncooperative. Mr. Warren said it would be unfair to characterize as "uncooperative" LMUA's rejection of an offer of settlement. Rather, he said, the Commission staff had had several meetings with Lambertville and its counsel at which it made different sorts of proposals to Lambertville to attempt to resolve the matter amicably, and Lambertville rejected those proposals. Mr. Plonski said he supposed the Commissioners would have an opportunity to air these differences in May, but he said he believed the staff and the Commission knew that the State of New Jersey has questioned the need for the Commission to proceed so far with this matter with Lambertville in that the New Jersey Department of Environmental Protection has consistently said that the improvements at the Lambertville treatment facility do not constitute a major change and are merely a maintenance upgrade. He said he supposed New Jersey would have an opportunity to state its view to the Commissioners. Mr. Warren said yes it would. Mr.

Warren added that LMUA had replaced the plant's RBCs at a cost of several million dollars, and it was staff's position that such a replacement requires an application. Staff has attempted to work with Lambertville to identify the requirements, if any, beyond those that New Jersey has imposed, that Commission regulations would require, because it was staff's thought that if the additional requirements to be imposed upon Lambertville were not onerous and were easily met by Lambertville, that the matter might be resolved by issuance of a docket that imposed on Lambertville no burden that it was not prepared to bear. Lambertville decided not to go through the process of determining what the Commission requirements would be, so, Mr. Warren said, we are left with the legal question of whether or not LMUA has an obligation to submit an application.

Public Hearing: Project Review Applications. William Muszynski of DRBC presented 14 dockets for the Commissioners' consideration in three groups: Category A, consisting of docket renewals involving no substantial changes (hearing items 1 and 2); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 3 through 6); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 7 through 14).

A. *Renewals with No Substantive Changes (hearing items 1 and 2).* The Commission received no comments on these projects.

1. Warren County (Pequest River) Municipal Utilities Authority, D-1971-094 CP-4. An application for renewal of the Belvidere Wastewater Treatment Plant (WWTP). The existing 0.5 million gallon per day (mgd) WWTP will continue to discharge treated effluent to Water Quality Zone 1D of the Delaware River at River Mile 197.0. The facility is located in White Township, Warren County, New Jersey within the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
2. Fleetwood Borough Authority, D-1987-054 CP-3. An application to renew the approval for discharge of up to 0.7 mgd of treated effluent from existing Outfall No. 001 at the Fleetwood WWTP. The WWTP discharges to Willow Creek at River Mile 92.47 – 86.7 – 0.6 – 6.4 (Delaware River – Schuylkill River – Maiden Creek – Willow Creek), in Richmond Township, Berks County, Pennsylvania.

Mr. Muszynski recommended that the Commissioners approve hearing items 1 and 2. At a request from the Chair, Mr. Plonski so moved, Mr. Klotz offered a second, and hearing items 1 and 2 were approved by unanimous vote.

B. *Renewals with Substantive Changes (hearing items 3, 4, 5, and 6).* The Commission received no comments on these projects.

3. Village of Monticello, D-1981-038 CP-2. An application to approve modifications to the existing 3.1 mgd Monticello WWTP. Modifications include retrofit of three sequencing batch reactors (SBR) in the facility's two existing oxidation ditches and a stormwater retention basin; converting one of the existing clarifiers to an aerobic digester and the other to an equalization basin; and converting sludge lagoon No. 2 into reed beds.

Outfall No. 001 will continue to discharge to Tannery Brook, a tributary of the Neversink River at River Mile 253.64 – 27.3 – 1.91 – 3.24 – 1.54 (Delaware River – Neversink River – Sheldrake Stream – Kiamesha Creek – Tannery Brook). The project is located within the Village of Monticello, Sullivan County, New York in the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protected Waters.

4. Lake Adventure Community Association, D-1993-062 CP-2. An application for approval to modify the treatment process of the existing 0.16 mgd Lake Adventure WWTP from extended aeration to a sequencing batch reactor (SBR). The WWTP will continue to discharge to an unnamed tributary of Shohola Creek at River Mile 273.2 – 13.25 – 0.91 (Delaware River – Shohola Creek – UNT), within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters. The WWTP is located in Dingman Township, Pike County, Pennsylvania.
5. Superior Water Company, D-2001-015 CP-3. An application for approval of an existing groundwater withdrawal (GWD) project to increase an individual well allocation and continue to supply up to 36.82 million gallons per month (mgm) of water to the applicant's public water supply system from 10 existing wells. The applicant requests that the individual allocation for Well No. SWC-8 be increased from 2.2 mgm to 6.7 mgm. The current individual well allocation is below historic use and is inadequate to meet typical peak demands. The project is located in the Brunswick and Lockatong Formations in the Zacharias, Scioto, and Minister Creeks watersheds in Douglass, New Hanover, Upper Frederick, and Worcester townships in Montgomery County, Pennsylvania, within the Southeastern Pennsylvania GWPA.
6. NuStar Asphalt Refining, LLC, D-2001-027-3. An application for renewal of a surface water withdrawal (SWWD) project to supply up to 7.79 mgm of surface water from existing Intakes Nos. 1 and 2 for the applicant's industrial processes, heating, and fire emergency testing. Intake No. 2 was added to the facility in July 2004, a modification that was not reflected in Docket No. D-2001-027-1, the most recent Commission approval for the project. The applicant's pending application was the subject of a previous notice as Docket No. D-2003-021-2. No increase in the applicant's water allocation is proposed. The project intakes withdraw water from the tidal portion of Mantua Creek in the Mantua Creek Watershed in the Borough of Paulsboro, Gloucester County, New Jersey.

Mr. Muszynski recommended that the Commission approve hearing items 3, 4, 5 and 6. The four renewal dockets were approved by unanimous vote on a motion by Mr. Hines, seconded by Mr. Plonski.

- C. *New Projects (hearing items 7, 8, 9, 10, 11, 12, 13 and 14).* These projects comprised new discharges or withdrawals or constituted projects new to the Commission. Mr. Muszynski described all but item 14, Waste Management Disposal Services of Pennsylvania, Inc., D-1988-054-6, which he asked the Commissioners to consider separately.

7. Superior Tube Company, D-1996-013-2. An application for approval of a combined surface and groundwater withdrawal project to continue to supply up to 13.4 mgm of water to the applicant's industrial facility from 11 existing wells and a surface water intake located in Perkiomen Creek. The previous docket approval expired on April 21, 2008. The project wells are located in the Brunswick Formation in Lower Providence Township, Montgomery County, Pennsylvania. The project wells and surface water intake are located in the Perkiomen – Lodal Creeks Subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).
8. Dragon Springs Buddhist, Inc., D-2007-021 CP-2. An application for approval to construct and operate the 0.0184 mgd Dragon Springs WWTP. Treated effluent from the proposed WWTP will discharge to a subsurface leach field located near River Mile 253.64 – 9.5 – 0.4 (Delaware River – Neversink River – Basher Kill River) within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters (SPW). The WWTP will be located in the Town of Deerpark, Orange County, New York. By Docket No. D-2007-021-1 issued on September 26, 2007, DRBC approved the construction of a 0.011 mgd WWTP to discharge to an unnamed tributary of the Basher Kill River; however, that facility was never constructed.
9. Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station D-2009-004-1. An application for approval of an existing and proposed discharge of non-contact cooling water (NCCW) from the Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station from two (2) existing outfalls located in Delaware River Water Quality Zone 4. The project currently discharges up to 24.0 million gallons per day (mgd) of NCCW intermittently from Outfall 001 to the Navy Reserve Basin (which is connected by a channel and tidally linked to the Schuylkill River, one-quarter mile upstream of its confluence with the Delaware River) and discharges 0.60 mgd of process water from Outfall 005 directly to the Delaware River in Water Quality Zone 4. Additional NCCW from the new P-205 Electric Drive land based test site (LBTS) is proposed to be discharged via Outfall 001. The discharge from Outfall 001 will be increased from 24.0 mgd to 36.0 mgd as a result of the project. The discharge from Outfall 005 will remain at 0.60 mgd. The project is located in the Schuylkill River Watershed in the City of Philadelphia, Philadelphia County, Pennsylvania.
10. Blackwood Golf Course, D-2010-024-1. An application for approval of a GWD project to supply up to 3.57 mgm of water to the applicant's golf course irrigation system from existing Wells Nos. 1 and 2. The project is located in the Brunswick Formation in the Schuylkill River Watershed in Union Township, Berks County, Pennsylvania in the Sixpenny Subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).
11. Pennsylvania American Water Company – Stony Garden, D-2010-025 CP-1. An application for the approval of an existing 0.1679 mgd discharge of filter backwash from the Stony Garden WFP. The WFP discharges to the Delaware River at River Mile 183.66 – 36.32 – 20.7 – 0.06 (Delaware River – Lehigh River – Aquashicola Creek –

Ross Common Creek) in Hamilton Township, Monroe County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protected Waters.

12. Thomas & Betts Corporation, D-2010-033-1. An application for approval of an existing 0.255 mgd discharge of NCCW and stormwater via Outfall No. 004A at the Elastimold electronic equipment plant (EEP). The Elastimold EEP is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters. The facility discharges to an unnamed tributary of the Musconetcong River at River Mile 174.6 – 27.9 – 0.12 (Delaware River – Musconetcong River – UNT), in Washington Township, Morris County, New Jersey.
13. Squires Golf Course, D-2010-034-1. An application for approval of a GWD project to supply up to 5 mgm of water to the applicant's golf course irrigation system from existing Well No. 1 and up to 5.7 mgm of water from the pond intake located in the irrigation pond. The project is located in the Stockton Formation in the Park Creek Watershed in Horsham Township, Montgomery County, Pennsylvania, within the Park Creek Subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

Mr. Muszynski reported that the Commission had received one comment concerning the golf course projects, stating that there should be no water approved for golf courses.

Mr. Muszynski recommended that the Commissioners approve hearing items 7, 8, 9, 10, 11, 12 and 13 as proposed. In the absence of further comments or questions, the two projects were approved by unanimous vote on a motion by Mr. Klotz, seconded by Mr. Plonski.

Mr. Muszynski explained that the last docket on the agenda was the Waste Management docket.

14. Waste Management of Pennsylvania, D-1988-054-6. The Delaware River Basin Commission (DRBC or Commission) approved Docket No. D-88-54-5 on July 15, 2009. Waste Management of Pennsylvania ("WM") subsequently filed a request for a Color Determination in accordance with condition II.aa. of the docket. By letter dated August 16, 2010, the Executive Director issued the requested determination, and WM timely appealed. The proposed revised docket would continue the Commission's approval of July 15, 2009 for WM to construct a new 0.3 mgd leachate treatment plant (LTP) to replace its existing 0.1 mgd LTP and to relocate/reconfigure the associated outfall. The revised docket also would continue the total dissolved solids (TDS) determination included in Docket No. D-88-54-5, update the docket compliance dates and provide a revised color determination, thereby resolving WM's appeal.

Mr. Muszynski recommended that the Commissioners approve hearing item 14 as proposed. On a motion by Mr. Plonski seconded by Mr. Klotz, the Commissioners approved the final docket by unanimous vote. Waste Management's attorney, Marc Gold, confirmed that his client's appeal was thus withdrawn.

Public Hearing: Resolution Authorizing the Executive Director to Renew DRBC's 2001 Cooperative Agreement with Rutgers University for the Collection, Analysis and Interpretation of Ambient Air Samples to Support the Control of Toxic Substances in the Delaware Estuary. Dr. Fikslin explained that this resolution would authorize the extension of an agreement originated in 2001 between the Commission and Rutgers University. The agreement established three monitoring sites in the basin – in New Brunswick, Camden and Delaware – to measure long-term air deposition of PCBs. Dr. Fikslin said that the lead principal investigator, Dr. Lisa Rodenberg of Rutgers, had been involved with this sampling project from its inception. Dr. Rodenberg is a recognized expert on toxic air pollutants and their fate and transport. Dr. Fikslin noted that the transfer of toxic PCBs between the air and the water is a significant fate process and that the Commission staff would continue to use the data collected at the three sites for model calibrations. Staff currently is evaluating the trend and PCB air concentrations as PCB reduction activities continue. DRBC's Section 106 grant has provided funds to support the air monitoring program since 2001, and the current grant includes an allocation to continue this work through 2013, with sampling frequency reduced to once every 24 days. Rutgers would continue to perform the analysis, while Commission and DNREC staff would continue to collect the samples. Continuing the sampling through 2013, ten years after the initial PCB TMDLs were established, would contribute vital information to a report on PCB reductions in all media. The resolution would authorize the Executive Director to renew the agreement for sampling, analytical and interpretive services for PCBs for the calendar years 2011 through 2013, at an annual cost not to exceed the amount awarded to the Commission or allocated for these services. In 2011 that amount is \$65,000. Dr. Fikslin noted that he expected the cost to remain about the same for the years 2012 and 2013.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution authorizing the Executive Director to renew DRBC's 2001 Cooperative Agreement with Rutgers University for the collection, analysis and interpretation of ambient air samples to support the control of toxic substances in the Delaware Estuary. Mr. Hines so moved, Mr. Plonski seconded his motion, and Resolution No. 2011-01 was approved by unanimous vote.

Public Hearing: Resolution Authorizing the Executive Director to Amend the Commission's 2007 Agreement with the Academy of Natural Sciences for the Analysis of Ambient Water Samples from the Non-Tidal Delaware River to Include Parameters Specific to Natural Gas Development Activities in the Delaware River Basin. Dr. Fikslin said this resolution concerned an existing contract with the Academy of Natural Sciences ("ANS") of Philadelphia under which the Academy analyzes samples from the Upper, Middle and Lower portions of the non-tidal Delaware River to determine whether existing water quality is being maintained within the Commission's Special Protection Waters (SPW). Samples are collected by the National Park Service (NPS) and the Commission staff. In light of the potential for development of natural gas resources in the basin, baseline information is desired for parameters that could indicate changes in water quality in the main stem Delaware River. Some of the parameters of interest are routinely monitored, while others are not. For instance, the Commission already monitors for total dissolved solids and chlorides, but there are a number of parameters for which no information exists. The Academy possesses frozen samples that were analyzed in 2009 and 2010 for the set of parameters listed in the existing contract. The proposed resolution would authorize the Executive Director to amend the contract to allow for the analysis of the frozen samples for

the additional parameters listed in paragraph 2 of the resolution, consisting primarily of ions that have been measured in high concentrations in natural gas well flowback water. Funding for the project would come from two sources: (a) a current agreement with the National Park Service for the samples from the Lower Delaware; and (b) the Otto Haas Charitable Trust for the balance of the samples. The funds would not come from DRBC's existing Section 106 (Clean Water Act) grant funds.

Hearing no further comments or questions, Dr. Howarth requested a motion to approve the resolution authorizing the Executive Director to enter into contracts for the analysis of water samples for inorganic parameters. Resolution No. 2011-02 was adopted by unanimous vote on a motion by Mr. Klotz, seconded by Brigadier General DeLuca. Mr. Warren noted for the record that he sits on the board of the ANS and played no role in this matter.

Public Hearing: Resolution Reauthorizing the Water Quality Advisory Committee. Dr. Najjar explained that this resolution would continue the Water Quality Advisory Committee ("WQAC"), one of DRBC's six standing advisory committees. The WQAC was last authorized in 2003 and also was the subject of a 2008 resolution to expand its membership to 11. Since 2008, the WQAC consists of one representative from each of the four basin states, one each from the EPA, the National Park Service, a watershed organization and an academic institution, one environmental professional, and two representatives from the regulated community. The proposed resolution would continue the committee, which meets regularly to work on such issues as a nutrient strategy and changes in the dissolved oxygen criteria for the basin's interstate waters.

Hearing no further comments or questions, on a motion by Mr. Klotz seconded by Mr. Hines, the Commissioners unanimously approved Resolution No. 2011-3 reauthorizing the Water Quality Advisory Committee for a term of eight years.

Hearing (no action) on a Resolution to Approve the Delaware River Basin Commission Fiscal Year 2012 Operating Budget. Mr. Gore explained that at today's hearing the Commissioners and the public would have an opportunity to comment on the proposed fiscal year 2012 budget, which would be considered for adoption at the Commission's May 11, 2011 meeting. The FY 2012 operating budget of the Commission is in the aggregate amount of \$8,558,900. It consists in part of a capital budget (relating to the Water Supply Storage Facilities Fund), providing for revenues of \$3,926,000 and expenditures of \$3,501,000, and a General Fund. The General Fund budget for FY 2012 includes in part expenditures of \$2,150,000 and revenues of \$1,748,000 associated with anticipated natural gas development activity in the basin. A schedule found at page 23 of the budget document provides additional background details associated with those figures. As in the past several years, the proposed General Fund also assumes that the signatory parties will contribute respective "fair share" contributions. For 2012, these include the sums of \$447,000 from Delaware, \$893,000 from New Jersey, \$626,000 from New York, \$893,000 from Pennsylvania, and \$715,000 from the Federal Government. These values have remained unchanged for the past six years. DRBC also anticipates operating the Southeastern Pennsylvania Groundwater Protected Area Program, as the Commission has done for the past 20+ years. Pennsylvania contributes the sum of \$127,000 for this activity. As to revenues, DRBC anticipates an interfund transfer of \$1,924,000 from the Water Supply Storage Facilities Fund to

the General Fund and other income, consisting primarily of fees, in the amount of \$2,452,000. To balance, the budget also requires the use of Commission General Fund equity in the amount of \$608,000. The Commission has communicated the signatory party "fair share" allocations to the Commission's members at the highest level.

Mr. Plonski asked whether the proposed FY 2012 budget included any salary increases or staff promotions. Mr. Gore replied that it does not. Mr. Plonski asked whether any increases in health care costs were being absorbed by the Commission on behalf of the employees. Mr. Gore replied that the budget calls for no cost-of-living adjustments for staff members and that performance-related increases had been removed. An increase in the employees' contributions to health benefits is included, the total value of which is approximately \$261,000. At Mr. Plonski's request, Mr. Gore explained that employees currently contribute 25 percent of the cost of their dependents' coverage. The Commission currently picks up the difference and pays the total cost for the employee. However, the FY 2012 budget requires employees to make contributions to their premiums equal to approximately 15 percent of the total employee premium, or \$100 per month. Accordingly, an employee with a dependent spouse will contribute \$100 toward his or her personal coverage plus 25 percent of the cost of the spouse's coverage. Mr. Plonski asked Mr. Gore to describe the outlook for appropriation by the signatory parties of their respective "fair share" contributions to the DRBC. Mr. Gore said that the President's budget for FY2012 provides no funding for the Commission. The same is true for the budget advanced by the Governor of Delaware. The State of New York's approved contribution is \$355,000 or about 57 percent of that state's apportioned share. Mr. Gore said that he believed the Governor of Pennsylvania would be advancing his budget proposal on March 7, 2011 and said that he was pleased to see that the budget advanced by the Governor of New Jersey contains the full fair share for that state of \$893,000. Mr. Plonski noted that although Governor Christie had placed the sum of \$893,000 for the DRBC in New Jersey's FY 2012 budget, New Jersey is not interested in being a lone wolf in supporting the DRBC if its partners are not also contributing their fair shares. He cautioned that the amount of New Jersey's contribution is tentative, not final, and may depend upon the level at which other states participate. Mr. Gore said he understood this and that staff well understands the equity issue among and between the parties.

Mr. Hines asked for a point of clarification. He noted that the budget is based on fees from the Commission's future role in natural gas, and although DRBC regulations were published for comment, they were not yet complete or approved. He asked Mr. Gore whether, if these regulations were adopted with changes, the budget would need to reflect those changes. Mr. Gore said that this was indeed the case, not only from the revenue perspective but also from the expense side. Mr. Hines asked whether the revenue anticipated from natural gas development was attached to existing staff or linked entirely to new staff. Mr. Gore replied that although existing staff would inevitably be supporting the activity, the budget also assumed 12 new positions, including the addition of five in July of 2011 and seven in January of 2012, based on projected activity. Mr. Plonski asked why, if the existing staff would be dedicating some of their time in the coming year to natural gas, as he understood they would, the budget did not assign a certain percentage of anticipated revenue from natural gas activity to the existing staff. Mr. Gore said that if staff members were not addressing the natural gas issues they would be doing other things and this activity would not add to the existing budget. That is, if natural gas activity were

not part of the work plan, in all probability the Commission would have the same level of staff. He said that the budget reflected an understanding that a portion of the time of existing staff would be dedicated to natural gas-related work. However, he said, the budget anticipated the addition of twelve individuals dedicated entirely to natural gas.

Mr. Hines asked whether it was fair to say that the proposed additional staff would be equivalent to a fee-for-service staff that could fluctuate in number based upon the revenue that would come in for the particular activity. Mr. Gore concurred, noting that salary and fringes for natural gas-related staff in the proposed budget equal approximately \$748,000, reflecting the proration involved in bringing staff online for the activity. He added that these were staff's best estimates at this point in time.

Dr. Howarth asked whether the budget also included cuts to the existing staff, to which Mr. Gore replied that two positions left vacant but funded in FY 2011 had been removed.

Mr. Plonski noted that approximately \$2.1 million were projected as expenses associated with natural gas-related activities but that the budget nevertheless showed a \$400,000 revenue shortfall. He asked why. Mr. Gore explained that a robust upgrade to the Commission's information systems was needed, particularly to handle the volume of activity associated with natural gas. Accordingly, a substantial investment was planned to replace the Commission's outdated paper systems.

Mr. Plonski asked how much had been allocated for staff travel and training and whether an itemized budget for those expenditures had been developed. Mr. Gore explained that he believed \$30,000 was currently budgeted for travel and training in FY 2012, adding that a fairly robust process is undertaken by the branch managers to allocate these resources. Planned travel and training budgets are submitted to the Executive Director and reviewed and approved by her prior to the start of the fiscal year and staff follows the approved plans throughout the year.

Mr. Hines said he was concerned that the Commission was sending mixed signals. He said that he and Mr. Gore had worked together for a long time and he had the utmost confidence in Mr. Gore's understanding of the budget. However, he said it was a concern that on the one hand the Commission was voting to extend the public comment period and on the other, it was acknowledging the need and cost of putting a program in place and was making budget decisions that depend on policy decisions not yet made.

Several members of the audience expressed support for funding the Commission fully to enable it to perform its work. Audience comments could not be captured in detail due to a failure of the recording equipment. Mr. Gore wished the best to Dr. Howarth in her future endeavors.

Public Dialogue. Because at least 12 individuals pre-registered to address the Commissioners on issues primarily related to natural gas drilling Dr. Howarth established a time limit of four minutes per speaker reminding everyone that this portion of the meeting was not part of the formal hearing record on any proposed regulation or resolution. During the remaining time available for the meeting, the Commissioners heard from these individuals. A recording of these comments is a public record that remains on file with the Commission Secretary.

Dr. Howarth requested a motion to adjourn the meeting. Mr. Klotz so moved, Mr. Hines seconded his motion and the meeting of March 2, 2011 was adjourned at 4:12 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire
Commission Secretary