

DELAWARE RIVER BASIN COMMISSION

MEETING OF MAY 10, 2012

Minutes

The Commission met at the Commission's office building in West Trenton, New Jersey.

Commissioners Present: Lieutenant Colonel Philip M. Secrist, United States, Chair
Kelly J. Heffner, Pennsylvania, Vice Chair
Michele N. Siekerka, New Jersey, Second Vice Chair
Angus Eaton, New York
Kathleen M. Stiller, Delaware

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

Commission Chairman Lieutenant Colonel Philip M. Secrist convened the business meeting at 1:30 p.m.

Following introductions by the Commissioners, Executive Director and counsel, Chairman LTC Secrist reported briefly on the status of the natural gas development regulations, which remain under consideration in the revised form published on November 8, 2011. He related that the Commissioners are convening meetings with and among their respective technical staffs to reconcile the members' concerns regarding aspects of the draft rule.

Minutes. The Minutes for the Commission Meeting of March 7, 2012 were approved unanimously on a motion by Ms. Stiller, seconded by Ms. Siekerka.

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

- *DRBC Flood Advisory Committee Meeting.* Tuesday, May 15, 2012 at 10:00 a.m. in the Goddard Conference Room. Staff contact: Laura Tessieri, (609) 883-9500, extension 304.
- *New Jersey Water Environment Association (NJWEA) Annual Conference and Exposition.* On May 14 – 18, 2012 the NJWEA will hold its 97th Annual Conference at

Bally's in Atlantic City, New Jersey from Monday, May 14 through Friday, May 18. This conference offers continuing education credits for professional engineers.

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 May 8, 2012 was 9.75 inches or 4.11 inches below normal. The observed precipitation for the Basin above Trenton for the same period was 9.10 inches or 5.59 inches below normal and for the Basin above Wilmington, Delaware for this period, 8.99 inches or 5.68 inches below normal.

The average observed streamflow of the Delaware River at Montague in April 2012 was 3,356 cubic feet per second (cfs) or 29.5 percent of the long-term average for the month. For the same period, the average observed streamflow at Trenton was 6,634 cfs, or 33.0 percent of the long-term average for the month.

For the period of May 1 through May 8, the average observed streamflow at Montague was 4,804 cfs, or 70.0 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 8,826 cfs, or 64.7 percent of the long-term average for the month.

In the Lower Basin, as of May 9, 2012, Beltzville Reservoir contained 14.07 billion gallons (bg) usable, or 101.0 percent of usable storage, and Blue Marsh contained 5.76 bg usable, or 102.7 percent of summer pool usable storage. As of May 7, Merrill Creek contained 15.21 bg usable, or 97.0 percent of usable storage.

In the Upper Basin, as of May 9, 2012, Pepacton Reservoir contained 131.113 bg usable or 93.6 percent of usable storage. Cannonsville contained 89.910 bg usable, or 93.9 percent of usable storage. Neversink contained 31.461 bg usable or 90.0 percent of usable storage. The total New York City Delaware Basin reservoir storage was 252.484 bg usable or 93.2 percent of usable storage.

During the month of April 2012, 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 74. The normal location of the salt line during April is RM 61, which is 17 miles downstream of the Delaware-Pennsylvania state line.

As of May 8, the salt line was located at RM 71. The normal location of the salt front during May is RM 64.

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

- *DRBC Memorial Bench.* A bench has been placed outside the southeast corner of the building, accompanied by dedication plaques to honor and memorialize members of the Commission staff whom we have lost over the last few years. Staff and family members attended a dedication ceremony on April 20 for this memorial.

- *Richard “Dick” Rhodes.* A veteran of the paddling community, Dick Rhodes also passed away recently. Dick spent 33 years on the river and was a founding member of the National Safety Patrol in the Lackawaxen area. A *Richard Rhodes River Rescue Scholarship Fund* has been established in his honor. Information on the fund is available on the DRBC website.
- *DRBC Budget Issues.* On the agenda for the afternoon business meeting is DRBC’s FY-2013 budget. The sum of \$400,000 of the Pennsylvania share of the DRBC budget for FY-2012 remains “frozen”. The Upper Delaware Council wrote letters to the governors of both Pennsylvania and New York to request full funding for DRBC.
- *Meeting with Deputy Secretary of Interior.* Ms. Collier said she also had had an opportunity to meet with Deputy Secretary David Hayes of the U.S. Department of the Interior in late April to look at how DOI and DRBC work together and to work at building partnerships.
- *National Surveys.* On three recent occasions DRBC staff has been interviewed for national surveys regarding aspects of water resource management. One was a U.S. Government Accounting Office survey, with questions about the draft natural gas regulations. The second was a National Drought Mitigation Center inquiry about drought planning. The third survey, by Floods.org, concerned inter-agency floodplain management.
- *William Penn Foundation Grant.* On the recommendation of an *ad hoc* landscape expert advisory committee convened in connection with a previously announced grant by the William Penn Foundation for development of a GIS tool, staff is looking into higher resolution mapping. An RFP has been issued for a mitigation consultant to assist with assessments of land and water resources, mitigation needs, benchmarking, and compiling information for us.
- *Flexible Flow Management Plan (FFMP) Status.* As you know the current Flexible Flow Management Plan (or “FFMP”) will expire at the end of May. The parties to the U.S. Supreme Court Decree of 1954 have reached an agreement in principle for a modified FFMP. A press release will be issued on the Decree Parties’ consensus product when it is completed, and a press release will be issued, to which a link will be provided on the DRBC website.
- *Fisheries.* Good news on the fishery front. At Lake Morris soon after DRBC’s March meeting, a staff member noticed short-nosed sturgeon spawning under the Calhoun Street Bridge in Trenton. DRBC staff took lunch hour field trips to view the sturgeon firsthand, an exciting event.
- *Lambertville Shad Festival.* The Shad Festival took place three weeks ago – the shad are biting. Steve Meserev, a son of Fred Lewis’ of Lewis Island in Lambertville, said last year that he caught only 52 shad and that during just one week in April of this year, he had caught double that amount.

- *Drinking Water Week.* Ms. Collier flagged that it was Drinking Water Week and urged everyone to think about their source water and talk to people about their source water and watershed planning.
- *2012 Delaware River Sojourn.* The 2012 Sojourn will take place from June 24 through June 30, 2012. Details and on-line registration are available on the web at riversojourn.com. Recreation maps for the Delaware and Schuylkill rivers are on sale at DRBC.
- *Baseball, Clean Water and AmeriCorps.* About six years ago, DRBC's AmeriCorps Watershed Coordinator coordinated with the minor league baseball team, the Trenton Thunder a program in which students who signed a Clean Water Pledge received two complimentary tickets to a ball game. DRBC's current Watershed Coordinator Allison Kohler is keeping that program going. Over 200 students have taken the Clean Water Pledge.
- *Farewell to Lieutenant Colonel Philip M. Secrist.* Ms. Collier noted that this would be LTC Secrist's last meeting before he moved on to a new U.S. Army Corps of Engineers assignment. In recognition of his service as a DRBC Commissioner, Ms. Collier presented LTC Secrist with a framed photograph of the Delaware Memorial Bridge at sunset, taken by Dr. Fikslin of the DRBC staff. She told LTC Secrist she hoped he would keep this on his wall and that it would remind him of us as he continues his adventures with the USACE.

Chairman Secrist acknowledged the gift and announced that his replacement as Commander of the Philadelphia District and as Alternate DRBC Commissioner for the federal government will be Lieutenant Colonel Chris Becking. The Change of Command ceremony will take place on June 26 and LTC Becking will attend the Commission's July meeting. LTC Secrist will be moving on to Fort Leonard Wood, Missouri, also known as "Fort Lost-in-the-Wood" within the Army. LTC Secrist said he would be working directly once again with North Atlantic Division Commander General DeLuca, the former DRBC federal Commissioner. LTC Secrist said he would miss DRBC and the Delaware River Basin.

General Counsel's Report. Mr. Warren reported that pending litigation remained in the same status as when the Commission last met. There are three consolidated cases pending in the Eastern District of New York, in which plaintiffs claim that DRBC should have followed the National Environmental Policy Act (NEPA) in conjunction with its proposed Natural Gas Development Regulations. DRBC and the federal government have filed motions to dismiss in that case, and plaintiffs have filed cross-motions for summary judgment. Oral argument on at least some of the issues raised in those motions has been scheduled for July 24 in the federal courthouse in Brooklyn. It is open court and members of the public are welcome to attend.

Also pending is a case brought by the Riverkeeper in the District of New Jersey, challenging the Executive Director's Supplemental Executive Director Determination with respect to natural gas. Briefs and motions have been filed in that case and are pending before the District Court.

Finally in a case in which the Riverkeeper has appealed the surface water withdrawal docket that the Commission issued to Stone Energy Corporation, the administrative record has been provided. The plaintiff is reviewing it and we will eventually proceed to briefing in that case.

Mr. Warren noted for the record that he was recusing himself from hearing item numbers 21, Borough of Kennett Square, and 23, American Household, Inc.

Assistant General Counsel Report on Settlements. Ms. Bush reported on three settlement agreements executed by docket holders and DRBC staff for violations that were relatively minor and about which there were no contested facts. All three agreements have been signed by the docket holders and Carol Collier and will be final and effective upon the Commissioners' ratification. The three settlements involve Little Washington Wastewater Company, Philadelphia Water Department and Spring Mill Country Club, all in Pennsylvania. They are for amounts authorized by the Civil Penalty Matrix that the Commissioners adopted by Resolution No. 2009-13 in 2009, and they are consistent with Section 2.7.8 of the *Rules of Practice and Procedure*, which provides for settlements in lieu of a penalty proceeding wherever it is in the interest of the Commission and the regulated party.

The settlement amounts correspond to violations classified as minor or moderate on the penalty matrix. They are the lowest amounts authorized under circumstances where the docket holder has no record of previous violations, has cooperated in good faith with the Commission, has not willfully violated Commission requirements, has incurred only minor economic benefits as a result of the alleged violations and where limited or no adverse effects on water resources have occurred as a result of the violations. One of the three matters consisted of a failure to monitor. Another involved a late filing of a plan or report, and the third arose from a failure to submit an application. Ms. Bush said that if the three settlements were acceptable to the Commissioners, their ratification was requested.

Mr. Eaton so moved, Ms. Heffner seconded his motion and the three settlement agreements, concerning Little Washington Wastewater Company (D-2003-025-3), Philadelphia Water Department (D-2008-009-1), and Spring Mill Country Club (D-2011-013-1), respectively, were ratified by unanimous vote.

Public Hearing: Project Review Applications. Mr. Stoller of DRBC presented for the Commissioners' consideration 20 of the 23 dockets originally listed in the public hearing notice. Consideration of three of the dockets noticed for hearing – those for Veolia Energy Tri-Gen Facility (D-1995-010 CP-2) (hearing item 4); ArcelorMittal Plate, LLC (D-1979-026-2) (hearing item 9); and City of Salem (D-1987-037 CP-2) hearing item 11 – were postponed to allow additional time for review. The remaining dockets were presented in three groups: Category A, consisting of docket renewals involving no substantive changes (hearing items 1, 2, 3, 5, 6 and 7); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 8, 10, 12, 13, 14 and 15); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 16 through 23).

A. *Renewals with No Substantive Changes (hearing items 1, 2, 3, 5, 6 and 7).* The Commission received no comments on these projects.

1. Mount Airy #1, LLC, D-1977-058-4. An application to renew the approval of an existing discharge from the 0.22 million gallons per day (mgd) Mount Airy Wastewater Treatment Plant (WWTP) via Outfall No. 001. The discharge is in the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters. The WWTP will continue to discharge treated effluent to Forest Hills Run at River Mile 213.0 - 3.6 - 0.85 - 8.6 - 0.83 - 0.1 (Delaware River - Brodhead Creek - McMichael Creek - Pocono Creek - Reeders Run - Forest Hills Run), in Paradise Township, Monroe County, Pennsylvania.
2. Nestlé Purina Petcare Co., D-1984-002-5. An application to renew the approval of an existing groundwater withdrawal (GWD) of up to 26.784 million gallons per month (mgm) to supply the applicant's manufacturing facility from existing Wells Nos. 2, 5, 6 and 7 completed in the Martinsburg Shale Formation and the underlying Beekmantown Group Limestone and Dolomite. The requested allocation is not an increase from the previous allocation. The wells are located in the Jordan Creek Watershed in South Whitehall Township, Lehigh County, Pennsylvania.
3. Central Wayne Regional Authority, D-1986-009 CP-3. An application to renew the approval of an existing discharge from the 2.2 mgd Honesdale Borough WWTP. The discharge is in 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 will continue to discharge treated effluent to the Lackawaxen River at River Mile 277.7 - 24.6 (Delaware River - Lackawaxen River), in Honesdale Borough, Wayne County, Pennsylvania.
5. Veolia Energy, D-1995-032 CP-2. An application to renew the approval of the Grays Ferry Cogeneration Facility (GFCF) and its subsidiary water allocation of up to 2,480 mgm provided from Exelon's Schuylkill Generating Station (SGS) Intake No. 1 to the GFCF. The water is used for cooling purposes associated with power generation. The requested allocation is not an increase from the previous allocation. The GFCF is located on the former PECO - Schuylkill site alongside Exelon's SGS and Veolia's Tri-Gen facility in the City of Philadelphia, Pennsylvania.
6. Downingtown Area Regional Authority, D-1998-033 CP-3. An application to renew the approval of an existing discharge from the 7.5 mgd Downingtown Regional Water Pollution Control Center (DRWPCC) WWTP. The WWTP will continue to discharge treated effluent to the East Branch Brandywine Creek at River Mile 70.73 - 1.5 - 20.0 - 7.65 (Delaware River - Christina River - Brandywine Creek - East Branch Brandywine Creek), in East Caln Township, Chester County, Pennsylvania.
7. Pocono Manor Investors, L.P., D-2006-026 CP-2. An application for the renewal of the existing 0.14 mgd Pocono Manor WWTP. The WWTP discharge is located in the drainage area of the non-tidal Delaware River known as the Middle Delaware, which is

classified as Special Protection Waters. The WWTP will continue to discharge treated effluent to the Swiftwater Creek, which is a tributary of Paradise Creek, itself a tributary of the Brodhead Creek, which drains to the Delaware River at River Mile 213.0 - 11.4 - 4.4 - 5.3 (Delaware River - Brodhead Creek - Paradise Creek - Swiftwater Creek). The existing WWTP is located in Pocono Township, Monroe County, Pennsylvania.

Mr. Stoller recommended that the Commissioners approve hearing items 1, 2, 3, 5, 6 and 7, consisting of docket renewals without substantive changes. Ms. Stiller so moved, Ms. Heffner seconded her motion, and hearing items 1, 2, 3, 5, 6 and 7 were approved by unanimous vote.

B. Renewals with Substantive Changes (hearing items 8, 10, 12, 13, 14 and 15). Mr. Stoller introduced the next category of dockets consisting of renewals involving significant changes. He explained that Ms. Collier would first present items 10 and 13, which concern a major facility undergoing a transition. This is the Conoco Phillips Refinery in the Borough of Trainer, Delaware County, Pennsylvania. A planned closure of the refinery would have meant a major economic loss for the region. Instead, the facility is being sold to Delta Airlines, which will now have its own jet fuel refinery. Many livelihoods will be preserved.

There are two dockets: the first is hearing item number 10, for the industrial wastewater treatment plant. The facility was first docketed in 1986. The proposed docket is an update and a transfer of the approval to Phillips 66, a holding company within Conoco Phillips. Following this transfer, there will be a second transfer to Delta Airlines. This project will be a continuation of the existing discharge to tidal Marcus Hook Creek of 4.3 mgd of treated industrial wastewater via Outfall 201, and non-contact cooling water, regenerated wastewater and storm water to tidal portions of the Marcus Hook and Stony Creeks, all within DRBC Water Quality Zone 4. The Pennsylvania Department of Environmental Protection (PADEP) and DRBC effluent limits are based on loadings associated with an average discharge of 3.5 million gallons per day. PADEP issued the corresponding NPDES permit on February 14, 2012, to become effective on March 1, 2012. DRBC has coordinated closely with Pennsylvania on this project.

Ms. Collier explained that the NPDES permit for the facility provides for a study to address Clean Water Act Section 316(b) impingement and entrainment issues. The study may result in changes to both in-flow and effluent. Accordingly, the DRBC docket approval provides that DRBC will receive the study results so that DRBC, PADEP and the docket holder can work cooperatively to ensure that any improvements undertaken for purposes of Section 316(b) also will ensure compliance with DRBC Water Quality Standards. The docket description follows:

10. Phillips 66, D-1986-041-2. An application to modify an existing docket to reflect modifications that have occurred since the facility's 1986 Commission approval. Inclusion of non-contact cooling water discharge outfalls and revised design criteria are among the modifications. The project will continue to discharge to the tidal Delaware River via ten existing outfalls in Water Quality Zone 4 at or near River Mile 80.2 (Delaware River), in the Borough of Trainer, Delaware County, Pennsylvania. The

docket holder also has requested relief from the 89.25% BOD20 removal requirement for Water Quality Zone 4 discharges.

The second Phillips docket is for an existing industrial surface water withdrawal on the Delaware River at River Mile 80.64. The water is used primarily for once-through cooling purposes. No increase in the previously approved withdrawal quantity is proposed. This docket requires a Drought Management and Contingency Plan to be submitted within six months after the resumption of refining operations or the date of approval of the docket transfer, whichever occurs first. A description of the docket approval follows:

13. Phillips 66, D-1996-052-2. An approval of an existing surface water withdrawal (SWWD) of up to 151.7 mgd (4,701.7 mgm) from the Delaware River at the applicant's Trainer Refinery. The refinery has been idle since September 29, 2011. This application was made to allow operations to resume in substantially the same manner as the previous docket and to facilitate a sale of the refinery. Most of the water is used for once-through cooling. The project intake is located approximately 1,500 feet upstream of the Marcus Hook Creek confluence in the tidal portion of the Delaware River in the Borough of Trainer, Delaware County, Pennsylvania.

Ms. Collier recommended that the Commissioners approve hearing items 10 and 13, both consisting of renewals with substantive changes, allowing for the Conoco Phillips Refinery transition. Colonel Secrist requested a motion. Ms. Heffner so moved, Mr. Eaton seconded her motion and hearing items 10 and 13 were approved by unanimous vote.

Mr. Stoller presented the remaining dockets in Category B:

8. Aqua Pennsylvania, Inc., D-1975-078 CP-3. An application to renew the approval of an existing GWD and to increase the withdrawal allocation from 8.58 mgm to 11.68 mgm to supply the applicant's public water supply system from existing Wells Nos. 2, 3, and 4, an existing pring source and new Well No. 5 completed in the Catskill Formation. The increased allocation is requested in order to meet projected increases in service area demand. The project also includes an existing importation of 0.494 mgd of GW from the Susquehanna River Basin. The wells are located 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, in Wayne Borough and Canaan Township, Wayne County, Pennsylvania.
12. BP Oil Company, D-1991-032-6. An application to renew the approval of an existing discharge of treated groundwater from the existing 1.0 mgd WWTP. The WWTP discharges to Water Quality Zone 4 of the Delaware River at River Mile 89.3, in Paulsboro Borough, Gloucester County, New Jersey.
14. Pennsylvania American Water Company, D-2003-006 CP-2. An application to renew the approval of an existing GWD to continue to supply up to 9.63 mgm of water from the applicant's Wells Nos. 1, 2, 3, and 5 and to interconnect the existing Birch Acres Well No. 2 to the Mid-Monroe Public Water Supply System. There is no requested increase in

allocation. The Birch Acres well is located in Smithfield Township, Monroe County, Pennsylvania in the Sambo Creek Watershed. The project is located 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.

15. FPL Energy, D-2008-021 CP-2. An application to renew the approval of an existing discharge of up to 4.32 mgd of cooling tower blowdown (CTB) from the existing Marcus Hook Cogeneration Facility (MHCF) and to approve a dechlorination system that was installed in 2009. The MHCF will continue to discharge to Water Quality Zone 4 of the Delaware River at River Mile 78.74 via Outfall No. 001, in Marcus Hook Borough, Delaware County, Pennsylvania.

Mr. Stoller recommended that the Commissioners approve these four dockets consisting of renewals involving substantive changes. Ms. Heffner so moved, Ms. Stiller offered a second, and hearing items 8, 12, 14 and 15 were approved by unanimous vote.

- C. *New Projects (hearing items 16 through 23).* These eight projects comprised new discharges or withdrawals or constituted projects new to the Commission.

16. Lafarge North America, D-1974-189-2. An application to renew the approval of an existing GWD and SWWD of up to 70.68 mgm from existing groundwater Wells Nos. 1 and 2 and an existing surface water intake for the applicant's cement manufacturing plant. The project wells are completed in the Jacksonburg Formation and are located in the Coplay Creek and Lehigh River watersheds 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, in Whitehall Township, Lehigh County, Pennsylvania.

17. Lake Adventure Community Association, D-2011-002 CP-1. An application for approval of an existing GWD to supply up to 5.55 mgm of water to the applicant's existing public water supply system from existing Wells Nos. 1, 2 and 3. The project wells are completed in the Catskill Formation and located in the Birchy Creek Watershed in Dingman Township, Pike County, Pennsylvania. The site is located 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.

18. Spring Mill Associates, D-2011-013-1. An application to approve a GWD of up to 7.75 mgm to supply the applicant's golf course irrigation system from existing Wells Nos. 10 and 18, completed in the Stockton Formation. The wells are located within the Commission's designated GWPA in the Little Neshaminy Creek Watershed in Northampton Township, Bucks County, Pennsylvania.

19. Delaware River Joint Toll Bridge Commission, D-2011-018 CP-1. An application to approve construction of a new bridge adjacent to the existing Scudder Falls Bridge to form the new Scudder Falls Bridge and related roadway improvements along 4.4 miles of I-95 from Pennsylvania Route 332 in Lower Makefield Township, Bucks County, Pennsylvania to Bear Tavern Road in Ewing Township, Mercer County, New Jersey.

The project will add one travel lane in each direction and three auxiliary lanes to the Scudder Falls Bridge and increase the number of lanes on I-95 while improving entrance and exit ramps along the 4.4 mile stretch. The Scudder Falls Bridge spans the Delaware River at River Mile 139.0 (Delaware River) and shall continue to be located in a recreational area within the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

20. Eagle Creek Hydro Power, LLC, D-2011-020 CP-1. An application to approve the construction and operation of an 800 kW hydro-electric turbine on the Rio Dam. The turbine is designed to utilize the minimum flow release water required to maintain river flow in the Mongaup system to produce energy for the grid. Additionally, the applicant has requested the transfer of ownership of the existing 4.0 MW Mongaup Falls and 5,000 kW Rio hydro-electric turbines from Mirant NY-Gen, LLC, which were approved by the Commission on May 10, 2007 via Docket No. D-2001-038 CP-1. The Rio Dam is located at River Mile 261.1 - 4.6 (Delaware River - Mongaup River), in the Town of Deerpark, New York on the border of Sullivan and Orange Counties. The Mongaup Falls Dam is located at River Mile 261.1 - 4.6 - 3.37 - 1.29 (Delaware River - Mongaup River - Rio Reservoir - Mongaup River), in the Town of Lumberland, Sullivan County, New York. Both dams and the subsequent hydro-electric projects are located 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.
21. Kennett Square Borough, D-2012-003 CP-1. An application to approve a GWD of up to 35.712 mgm to supply the applicant's public water supply system from existing Wells Nos. 1 and 2 completed in the Cockeysville Marble. The Kennett Square Municipal Water Works serves customers in the Borough of Kennett Square, East Marlborough Township and Kennett Township, Chester County, Pennsylvania. The wells are located in East Marlborough Township and Kennett Township in the East Branch Red Clay Watershed.
22. Buckeye Partners, L.P., D-2012-004-1. An application to construct and install a new, 8-inch diameter petroleum pipeline beneath Water Quality Zone 4 of the Delaware River at approximately River Mile 88.4. The new pipeline is approximately 5,600 linear feet in length and will convey fuel from the Paulsboro Refinery located in the Borough of Paulsboro, Gloucester County, New Jersey to the Philadelphia International Airport located in Tinicum Township, Delaware County, Pennsylvania. The pipeline will be located in a new 24-inch diameter borehole to be directionally drilled beneath the Delaware River via a Horizontal Directional Drill, approximately 50 feet to 120 feet below the Delaware River bottom, and will replace and be located adjacent to an existing 8-inch diameter pipeline that is located beneath the Delaware River, in order to meet the requirements of the Pipeline and Hazardous Materials Safety Administration. The river crossing portion of the pipeline is approximately 5,000 feet long. The project does not involve construction in the Delaware River.
23. American Household, Inc., D-2012-005-1. An application for approval of the discharge of remediation water from the existing 0.432 mgd groundwater treatment plant (GTP), as

well as the withdrawal of up to 10.044 mgm of groundwater from Remediation Well MUN-3. The GTP discharges to the West Branch of the Perkiomen Creek at River Mile 92.47 - 32.08 - 18.65 - 5.2 - 6.75 (Delaware River - Schuylkill River - Perkiomen Creek - Green Lane Reservoir - West Branch perkiomen Creek), in Bally Borough, Berks County, Pennsylvania.

Mr. Stoller recommended that the Commissioners approve hearing items 16, 17, 18, 19, 20, 21, 22 and 23, consisting of new projects and projects not previously reviewed by the Commission. Chairman Secrist asked if there were any questions or comments.

Fred Stine of the Delaware Riverkeeper Network (“DRN”) requested to speak on hearing item number 19, Delaware River Joint Toll Bridge Commission (D-2011-018 CP-1). He said that he would highlight key points of a three-page letter DRN had distributed to the Commissioners before lunch. In the view of DRN, approval of the docket at this time would be premature because neither the Commissioners nor the staff had received the information they required to make an informed decision. In particular, he said that the applicant had not yet produced or submitted for review its Nonpoint Source Pollution Control Plan (“NPSPCP”), which is required by the Special Protection Waters (“SPW”) provisions of DRBC’s Water Quality Regulations (“WQR”), to ensure that nonpoint source runoff resulting from the project’s construction and operation does not degrade the high existing water quality of the Lower Delaware River. Mr. Stine said the NPSPCP was critical to ensuring protection of the Lower Delaware SPW and urged the Commissioners to delay action until the document could be produced and evaluated by the DRBC staff. Mr. Stine added that a stormwater management plan to avoid or minimize the increased surface water runoff that otherwise would result from the increased impervious surface area associated with the bridge and road widening had yet to be created and/or provided, and in his view and that of DRN, the Commissioners should not be signing off on the project until they can ensure that the optimal measures are in place to limit stormwater discharges. DRBC review is all the more critical, he said, because PENNDOT claims only that it will follow its design manuals and policies that provide strict guidelines for reducing run-off volumes and pollution input. In reality, he said, DRN already had sued PENNDOT for the latter’s deliberate and egregious failures to adhere to these guidelines.

Mr. Stine also pointed out that the Scudder Falls project had not yet been submitted to other state and federal agencies, including NJDEP, PADEP, and the USACE, for their review and input, when these agencies have expertise and knowledge that would be valuable to DRBC’s review. To issue an approval now would be to deny DRBC the benefit of this vital expert feedback and potentially puts DRBC in conflict with other agencies on elements of the project about which some of the Commission’s members might well have concerns, Mr. Stine asserted. In the absence of critical elements such as a NPSPCP and stormwater plans to address runoff, Mr. Stine said, the docket finding that the project is designed to prevent substantial adverse impact to water resources is at best premature.

In conclusion, Mr. Stine said, the stormwater management, non-point source pollution control, and spill prevention aspects of the project must be presented in their entirety for DRBC’s consideration before the Commission considers or approves this project. DRBC must not issue

its approval first, thereby losing any leverage it would otherwise have with the project sponsor to obtain needed enhancements.

Hearing no further questions or comments, Lieutenant Colonel Secrist requested a motion to approve the eight dockets. Mr. Eaton so moved, Ms. Siekerka seconded his motion, and hearing items 16 through 23 were approved by unanimous vote.

During the morning Conference Session Ms. Collier presented resolutions recognizing the contributions of Gary Paulachok, former Deputy Delaware River Master, U.S. Geological Survey, and William Douglass, former Executive Director of the Upper Delaware Council. Mr. Paulachok attended the meeting in person and accepted a framed copy of his resolution. Mr. Douglass was unable to be attend but will be presented with a framed resolution at a later date. Both resolutions were approved by unanimous vote.

The complete text of these resolutions follows:

RESOLUTION

WHEREAS, William E. Douglass, a native of New York State, earned a Bachelor of Arts degree in geology from the University of Pennsylvania in 1971;

WHEREAS, Bill began his career with an engineering firm and as a professional land surveyor before serving as the Director of Planning for Wayne County, Pennsylvania for 11 years;

WHEREAS, on March 13, 1989, Bill became the first executive director of the Upper Delaware Council, which had been established the previous year;

WHEREAS, UDC was created to facilitate local participation in the conservation and protection of the natural and cultural resources of the Upper Delaware Scenic and Recreational River following the river's designation by President Carter and the U.S. Congress in 1978 as the 19th component of the National Wild and Scenic Rivers System;

WHEREAS, formation of the UDC as an alternative to sole federal management of the 73.4-mile river corridor was a central recommendation of the 1986 River Management Plan for the Upper Delaware Scenic and Recreational River;

WHEREAS, in coordinating the various stakeholders tasked with implementing the goals and objectives of the River Management Plan the UDC forged a model partnership that has been recognized both locally and nationally;

WHEREAS, because the Delaware River Basin Commission is a non-voting member on the Upper Delaware Council, Commission members and staff have had the opportunity to work with Bill and observe the fine leadership he provided as UDC's executive director for over 22 years;

WHEREAS, as a member of the DRBC's Watershed Advisory Council, Bill helped to develop the "Water Resources Plan for the Delaware River Basin," a 30-year,

goal-based framework completed in 2004 that serves as a guide for all governmental and non-governmental stakeholders whose actions affect water resources in the basin;

WHEREAS, Bill regularly attended DRBC business and advisory committee meetings over the years to enhance communications between the Commission and UDC members;

WHEREAS, Bill's commitment to serving his community, his dedication to UDC, his hard work and solid understanding of issues, and his dependable good nature all have earned him the admiration and respect of his colleagues at the Commission and throughout the upper basin;

WHEREAS, Bill retired from the Upper Delaware Council on January 1, 2012; now, therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

Commission members and staff extend their sincere appreciation to William E. Douglass for his many contributions to protect and preserve the Upper Delaware for present and future generations, his commitment to excellence in public service that spanned more than 30 years, and his friendship. We wish him and his wife Mary Ellen good health and much happiness as they begin to enjoy a well-deserved retirement.

ADOPTED: May 10, 2012

RESOLUTION

WHEREAS, Gary N. Paulachok, a Licensed Professional Geologist in Delaware and Pennsylvania, earned his undergraduate degree in environmental geology with highest honors from Temple University in 1977 and a master's degree in engineering geology from Drexel University in 1986;

WHEREAS, Gary built upon his academic training to forge a 34-year career as a water resources scientist with the U.S. Geological Survey, where he served the public with distinction in a variety of capacities;

WHEREAS, from the mid-1990's until 1999, Gary served as District Chief and State Representative of the Water Resources Division of the USGS in Pennsylvania, where he was responsible for hydrologic data collection, studies, and research programs conducted by a staff of 125 scientists, technicians, and support personnel;

WHEREAS, from 1999 through 2011, Gary served as the USGS Deputy Delaware River Master and as the River Master's official representative on the DRBC's Regulated Flow Advisory Committee and Flow Management Technical Advisory Committee;

WHEREAS, as Deputy Delaware River Master, Gary used his expertise to oversee the out-of-basin diversions from New York City's Cannonsville, Pepacton, and Neversink reservoirs as well as releases from those reservoirs into the Delaware River to

maintain a minimum streamflow objective at Montague, New Jersey for the benefit of downstream users in accordance with the U.S. Supreme Court Decree of 1954;

WHEREAS, under Gary's day-to-day leadership the Office of the Delaware River Master directed annual releases totaling as much as 101 billion gallons from the New York City Delaware Basin reservoirs during the drought year 2001 to protect millions of downstream users as required by the decree;

WHEREAS, Gary has provided vital technical advice and administrative support to the decree parties, consisting of the four basin states and New York City, during their complex efforts to reach agreement on more adaptive means of managing competing uses of the City's water supply reservoirs while recognizing the legal rights established by the 1954 decree;

WHEREAS, in addition to his service with USGS, Gary has taught graduate courses in hydrology at Drexel, has trained personnel of the U.S. Environmental Protection Agency, the Delaware Department of Natural Resources and Environmental Control, and the New Jersey Department of Environmental Protection, and has authored or coauthored numerous publications on water resource issues;

WHEREAS, throughout his career, Gary has exhibited the highest professional standards, good nature and personal commitment, earning him the deep respect and affection of his colleagues;

WHEREAS, Gary retired from the USGS at the end of 2011; now, therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

The Commissioners and staff extend their sincere appreciation to Gary N. Paulachok for his many contributions to the entire Delaware Basin community, his commitment to excellence in water resource management, and his friendship. We wish him good health and much happiness in the years ahead.

ADOPTED: May 10, 2012

Public Hearing: Resolution to Adopt the Commission's Annual Budget for the Fiscal Year Ending June 30, 2013 and to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets. Mr. Gore explained that this resolution would provide for the adoption and approval of both the Fiscal Year 2013 Current Expense Budget for the General Fund and the Capital Budget for the Water Supply Storage Facilities Fund. The budget document was posted on the Commission's website ten days in advance of the meeting. The aggregate amount of the proposed General Fund Budget for fiscal year 2013 is \$5,824,350. The proposed revenue and expense budget for the Water Supply Storage Facilities Fund is \$3,738,500. The sum of \$2,434,350 of the proposed expense budget is to be apportioned among the signatories for fiscal year 2013. These amounts represent the staff's best information on the status of the budgetary processes for the states of Delaware, New Jersey and Pennsylvania, and the adopted budget for the State of New York, which has a fiscal year that is somewhat ahead of DRBC's. The proposed budget continues the North Eastern Pennsylvania Groundwater Protected Area program for fiscal year 2013. DRBC anticipates additional revenue

in the amount of approximately \$85,650 from the Commonwealth of Pennsylvania for support of that program.

From other revenue sources for fiscal year 2013, the Commission anticipates the following: (a) a transfer from the Water Supply Storage Facilities Fund in the amount of \$2,009,000 and (b) Other Income of \$1,381,000. The category of Other Income includes two one-time items totaling \$506,000. These are monies being transferred back into the General Fund from two Special Project funds. The first, in the amount of \$227,000, is associated with the heating, ventilation and air-conditioning (HVAC) system. The second comprises residual funds of \$279,000 that had supported a Comprehensive Plan study that the Commission concluded approximately two years ago.

Commissioner Eaton on behalf of the State of New York noted that significant budget shortfalls were closed using options that will no longer be available in future years' budgets. He emphasized that in future years the Commissioners will need to work hard to ensure the sustainability of the Commission. He said that given the severity of the shortfalls, difficult decisions would have to be made as part of the FY2014 budget.

Commissioner Siekerka of the State of New Jersey thanked the staff for working with the Commissioners to close the fiscal gap for FY2013; a task she said was not easy. She said a lot of options had been put on the table. She said those options will continue to be considered in the future to achieve sustainability.

Mr. Gore said staff looked forward to working with the Commissioners to address the many challenges that lie ahead.

Mary Ellen Noble of the Delaware Riverkeeper Network said she did not understand Mr. Eaton's comment. She asked for clarification as to whether he meant New York could not give as much money in the future as it had in the past or if New York was not going to give any more money in the future. Mr. Eaton said the budget this year was closed with sources that would not be available again, making decisions all the more difficult in future years. Ms. Noble asked whether he was speaking about the DRBC budget or the New York State budget. Mr. Eaton replied he was talking about both DRBC's and the state's budgets.

Chairman Secrist added that the Commissioners had the option this year to close the gap in the budget with \$500,000 that will not be available next year. Ms. Noble mentioned the "fair share," the largest portion of which is the federal government's share, for which the government had entered into a covenant. She said she realized that the federal fair share was subject to legislative appropriation, a process about which she lacks a detailed understanding, but she observed that notwithstanding the problems the other members all face, each manages to make some contribution, while the Corps never seems to manage that. She said she wished to challenge the Colonel, noting that since he would be off to Missouri she hoped he would pass this on, to actually submit the funding request to Congress. She noted that somehow it never manages to get that far. Ms. Noble said that in her view, the Corps is covenanted to make the request, just as the other signatory parties are, and she challenged him and his successors to honor that covenant and make the request.

Hearing no further comments or questions, Chairman Secrist requested a motion to approve the resolution to adopt the Commission's annual budget for the fiscal year ending June 30, 2013 and to apportion among the signatory parties the amounts required for the support of the current expense and capital budgets. Mr. Eaton so moved and Ms. Siekerka seconded his motion. Ms. Bush took a roll call vote of the Commissioners, and the tally was as follows: Delaware – yes; New Jersey – yes; New York – yes; Pennsylvania – yes; and the federal government – yes. Resolution No. 2012-2 was adopted by unanimous vote.

Public Hearing: Resolution to Approve Election of the Commission Chair, Vice Chair and Second Vice Chair for Fiscal Year 2013. Ms. Bush explained that the Commission each year elects as officers a chair, vice chair and second vice chair to run meetings and perform other coordinating tasks. She said that in the customary rotation beginning on July 1, the Governor of Pennsylvania would take on the role of Chair, the Governor of New Jersey would assume the role of Vice Chair, and the Governor of New York would serve as second vice chair. She invited the Commissioners to vote on that slate. Ms. Heffner so moved, Mr. Eaton seconded her motion and Resolution No. 2012-3 was adopted by unanimous vote.

Resolution to Authorize Participation in the New Jersey State Health Benefits Program for SHBP Dental Plan Coverage. Mr. Gore reported that this was a corporate resolution required by the State of New Jersey for entities such as the Commission to participate in the State Health Benefits Program. He explained that the Commission has participated for some 50 years in the state program but has historically had a stand-alone dental program for employees. When renewal of that enrollment was considered for calendar year 2012, however, the Commission's insurance broker recommended that the Commission migrate to the New Jersey State Dental Plan. The recommendation was made in November of 2011, but because the corporate resolutions could not be completed prior to January 1, 2012, and a lapse of several months in coverage would have resulted, a conscious decision was made to join the plan effective January 1, 2013. The proposed corporate resolution allows DRBC to join the State of New Jersey Health Benefit Program for Dental coverage. The move effects a savings of about \$1,500 annually relative to the cost of the coverage DRBC employees currently have, with some enhanced benefits.

Chairman Secrist requested a motion to adopt the resolution authorizing participation in the New Jersey State Health Benefits Program for dental plan coverage. Ms. Siekerka so moved, Ms. Stiller seconded her motion and Resolution No. 2012-4 was adopted by unanimous vote.

Resolution for the Minutes Authorizing the Executive Director to Terminate a Purchase Order Agreement with One Firm and Retain Another to Complete the Design of the Ruth Patrick River Garden. Mr. Gore explained that in 2006 the Commission had undertaken several projects on the office building site, including the stormwater management program for which Phase I was the creation of the retention pond with native plantings on the front (east) side of the building. He said that at the time a courtyard improvement program also was launched, to make this unused space both educational and functional. The courtyard was dedicated in honor of Dr. Ruth Patrick of the Academy of Natural Sciences of Philadelphia. An engineering firm was engaged to assist with conceptual designs and fundraising was undertaken to implement those designs. A

sufficient amount has been raised in donations to support the construction. Unfortunately, however, the engineering firm no longer has the unique skill required to implement the bid design. The proposed resolution would allow the Commission to terminate its contract with the existing firm, the skilled staff members of which have now moved to another firm. The existing firm will return to us any and all of the work product generated to date. We will give it to the new firm and for \$9,000 they will complete the design of the courtyard. The total cost will be approximately \$2,300 more than the amount of the initial contract in 2006.

Lieutenant Colonel Secrist requested a motion to adopt the resolution authorizing the Executive Director to terminate a purchase order agreement with one firm and retain another to complete the design of the Ruth Patrick River Garden. Ms. Heffner so moved, Ms. Stiller seconded her motion and the Resolution for the Minutes was adopted by unanimous vote.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A Resolution authorizing the Executive Director to terminate a purchase order agreement with Pickering, Corts and Summerson, Inc. for the design of the Ruth Patrick River Garden and enter into an agreement to retain the professional services of T&M Associates to complete the design.

WHEREAS, by Resolution No. 2006-7 on March 1, 2006, the Commission established an intention to enhance the underutilized courtyard of the DRBC headquarters building by connecting this space to the mission of river basin management, and resolved that the re-developed courtyard would be called the "Ruth Patrick River Garden" in honor of Dr. Ruth Patrick's dedication to the Delaware River Basin; and

WHEREAS, in June of 2006, the Commission transferred \$150,000 in General Fund/ unrestricted equity to a Special Projects Fund dedicated to completion of the Ruth Patrick River Garden; and

WHEREAS, as Resolution No. 2007-18 records, the Executive Director solicited donations and grants from individuals and non-regulated entities, and to date has received contributions of \$119,906 for the project; and

WHEREAS, the first phase of the project, including design and construction modifications to the DRBC headquarters building, has been completed at a cost of \$112,904; and

WHEREAS, by Resolution No. 2006-15 the Commission authorized the Executive Director to enter into an agreement with the firm of Pickering, Corts and Summerson, Inc. ("PCS") for development of a detailed design, construction plans, and a phasing schedule for development of the Ruth Patrick River Garden at a cost not to exceed \$25,000; and

WHEREAS, the Commission entered into an agreement with PCS and issued Purchase Order No. 072706C, dated July 27, 2006 ("the Purchase Order"), to PCS for professional services to develop a detailed design, construction plans and a phasing

schedule for the development of the Ruth Patrick River Garden at a cost not to exceed \$20,000; and

WHEREAS, DRBC staff and PCS have now mutually agreed to terminate the Purchase Order; and

WHEREAS, the lead planner for the project at PCS has left PCS and is now employed in a similar capacity by T&M Associates (“T&M”); and

WHEREAS, T&M has agreed to complete for the sum of \$8,916 the final design and documentation begun by PCS; and

WHEREAS, the estimated total design cost for this project is now \$22,694; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Executive Director is authorized to terminate the Purchase Order with PCS.
2. The Executive Director is further authorized to enter into an agreement with the firm of T&M Associates for completion of the final design and documentation for the Ruth Patrick River Garden at a cost not to exceed \$9,000.
3. Because the services to be provided are of a specialized nature, the competitive bidding requirements of Section 14.9 of the Compact are waived, in accordance with subsection (5) of that section.

This resolution shall take effect immediately.

Resolution for the Minutes Authorizing the Executive Director to Execute an Agreement for the Preparation of an Actuarial Evaluation for the Commission’s Post-Retirement Benefits in Accordance with Government Accounting Standards Board Statement No. 45 (“GASB 45”). Mr. Gore reported that the Commission maintains its financial records in a manner consistent with generally accepted governmental accounting standards. One of these standards, set forth in Government Accounting Standards Board Statement No. 45 (“GASB 45”), provides for recognition of the entity’s post-retirement liabilities. The Commission adopted that standard effective in fiscal year 2010. Compliance with the standard requires an actuarial calculation of post-retirement liabilities triennially. For the period from 2004 through 2009, the Commission used the firm of Brown & Brown Consulting of Philadelphia to assist us in measuring this liability. As the Commission is again at the 3-year point, Mr. Gore said he was looking into retaining Brown & Brown for the triennial evaluation.

Chairman Secrist requested a motion to adopt the proposed resolution authorizing the Executive Director to execute an agreement for the preparation of an actuarial evaluation for the Commission’s post-retirement benefits in accordance with GASB 45. Ms. Heffner so moved,

Ms. Stiller seconded her motion and the Resolution for the Minutes was adopted by unanimous vote.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION authorizing the Executive Director to execute an agreement for the preparation of an actuarial evaluation for the Commission's post-retirement benefits in accordance with Government Accounting Standards Board Statement No. 45 ("GASB 45").

WHEREAS, Resolution No. 2009-9 adopted on October 22, 2009 authorized the Commission to establish an IRC Section 115 Integral Part Trust and to adopt the VantageCare Retirement Health Savings Employer Investment Program offered by ICMA Retirement Corporation (ICMA-RC); and

WHEREAS, the Commission has complied with generally accepted accounting standards required by GASB 45; and

WHEREAS, the Commission secured the professional services of Brown & Brown Consulting of Philadelphia, Pennsylvania to prepare an actuarial report measuring the Commission's GASB 45 liabilities and expenses for the fiscal year beginning July 1, 2009; and

WHEREAS, in accordance with GASB 45, a triennial actuarial evaluation is required; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is hereby authorized to procure the services of Brown & Brown Consulting of Philadelphia, Pennsylvania for the preparation of an actuarial evaluation as required by GASB 45, consistent with their proposal dated April 3, 2012, and in an amount not to exceed \$6,500;
2. In accordance with Section 14.9(5) of the Compact, the competitive bidding provisions of the Compact are hereby waived in view of the specialized and professional nature of the services to be procured.

This Resolution shall take effect immediately.

Public Dialogue Session. Tracy Carluccio of the Delaware Riverkeeper called on the Commission to conduct an investigation to determine any instances of improper importation, treatment and discharge of natural gas wastewater in the Basin and to take appropriate enforcement action in such cases. She further requested that the Commission formally prohibit the discharge of natural gas wastewater – treated or untreated – to basin waters and the disposal of natural gas well drill cuttings in landfills within the basin. Richard Schneider of New Castle County, Delaware thanked the Pennsylvania Department of Environmental Protection for requiring a study of impingement and entrainment reduction options at the Trainer Refinery at

Marcus Hook, and called upon the Commission to ban once-through cooling by facilities in the Delaware Estuary. A recording of the comments offered during the Public Dialogue portion of the meeting is on file with the Commission Secretary. Like all public records of the Commission, this recording is available for inspection by appointment.

At the conclusion of the Public Dialogue Session, Lieutenant Colonel Secrist requested a motion to adjourn the meeting, Ms. Siekerka so moved, Mr. Eaton seconded her motion and the Delaware River Basin Commission Meeting of May 10, 2012 was adjourned at 3:00 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire
Commission Secretary