

DELAWARE RIVER BASIN COMMISSION

MEETING OF MAY 11, 2011

Minutes

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

Commissioners Present: Brigadier General Peter A. DeLuca, United States, Acting Chair
Kelly J. Heffner, Pennsylvania, Second Vice Chair
John Plonski, New Jersey
Angus Eaton, New York
Kathleen Stiller, Delaware

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, Manager, Modeling, Monitoring & Assessment Branch
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Manager, Water Resources Management Branch
Hernan Quinodoz, Senior Engineer/Hydrologist

Acting Chair Brigadier General Peter A. DeLuca convened the business meeting at 1:30 p.m., and opened with several announcements. Regarding the hearing scheduled that day on a proposed surface water withdrawal from the Oquaga Creek by XTO Energy, Inc. (“XTO”), BG DeLuca explained that due to the volume of written comments submitted in advance of the scheduled hearing and the number of individuals who had requested an opportunity to comment orally on the project, the Commissioners would proceed with the hearing as planned but would not vote on the docket that day. BG DeLuca added that for purposes of the hearing, the Commission would adhere to a strict three-minute rule because of the large number of people who wished to speak. In the interests of hearing as many different opinions and concerns as possible, he also asked speakers to refrain from repeating points made by others who had addressed the Commission before them. BG DeLuca further announced that in order to allow the maximum amount of time for oral comment before the Commission had to relinquish the meeting hall, the Commission would complete its other business before commencing the XTO docket. Finally, he announced that the Commissioners would not vote that day on the Commission’s draft fiscal year 2012 operating budget pending further consideration of that item.

Minutes. The Minutes for the meeting of March 2, 2011 were approved unanimously on a motion by Mr. Plonski, seconded by Ms. Heffner.

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

- *DRBC Water Management Advisory Committee Meeting.* Tuesday, May 17, 2011 at 10:00 a.m. in the Goddard Conference Room of the DRBC's West Trenton office building. Staff contact: Donna Barnett, (609) 883-9500, extension 308.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, June 8, 2011 at 10:00 a.m. in the Goddard Conference Room of the DRBC's West Trenton office building. Staff contact: Amy Shallcross, (609) 883-9500, extension 232.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, October 19, 2011 at 10:00 a.m. in the Goddard Conference Room of the DRBC's West Trenton office building. Staff contact: Laura Tessieri, (609) 883-9500, extension 304.

Hydrologic Conditions. Mr. Quinodoz 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 9, 2011 was 19.73 inches or 5.74 inches above normal. The observed precipitation for the Basin above Trenton for the same period was 20.50 inches or 5.68 inches above normal and for the Basin above Wilmington, Delaware for this period, 15.56 inches or 0.76 inches above normal.

The average observed streamflow of the Delaware River at Montague in April 2011 was 16,288 cubic feet per second (cfs) or 143 percent of the long-term average for the month. For the same period, the average observed streamflow at Trenton was 31,430 cfs, or 156 percent of the long-term average for the month.

For the period of May 1-9, the average observed streamflow at Montague was 17,122 cfs, or 250 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 31,022 cfs, or 227 percent of the long-term average for the month.

In the Lower Basin, as of May 10, 2011, Beltzville Reservoir contained 13.03 billion gallons (bg) usable, or 100.2 percent of usable storage, and Blue Marsh contained 6.61 bg usable, or 101.7 percent of winter pool usable storage. As of May 9, Merrill Creek contained 15.28 bg usable, or 97.4 percent of usable storage.

In the Upper Basin, as of May 10, 2011, Pepacton Reservoir contained 140.765 bg usable or 100.4 percent of usable storage. Cannonsville contained 98.329 bg usable, or 102.7 percent of usable storage. Neversink contained 34.248 bg usable or 98.0 percent of usable storage. The total New York City Delaware Basin reservoir storage was 273.342 bg usable or 100.9 percent of usable storage.

During the month of April 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) 68 to downstream of RM 54. The normal location of the salt line during April is RM 61, a location which is 17 miles downstream of the Delaware-Pennsylvania state line.

As of May 9, the salt line remained downstream of RM 54. The normal location of the salt front during May is RM 64. High streamflow along the main stem Delaware River during March and April has kept the salt line downstream of its normal location.

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

- *DRBC Staffing Addition and Special Acknowledgement.* Ms. Collier introduced a new staff member, Bob Damiani, who has joined the Project Review Section. Mr. Damiani is a geologist with ten years of experience in the private sector.

Ms. Collier also acknowledged Bob Limbeck for completing 25 years of service with DRBC.

- *Delaware River Sojourn 2011.* The Sojourn will take place from June 18 through June 25. Registration is now open and there is a \$10 discount per day for those who register before June 5. The Delaware is Pennsylvania's River of the Year this year, the year of DRBC's 50th anniversary, and the theme of the Sojourn is "River of Life." Ms. Collier noted that several special programs were planned.

General Counsel's Report. Mr. Warren reported on the status of two lawsuits pending against the Commission and the Executive Director in her official capacity in the United States District Court for the District of New Jersey. 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 Corporation. The second, initiated by the Riverkeeper and Damascus Citizens for Sustainability, appears to be an appeal of the provision of the Supplemental Executive Director's Determination of June 2010 consisting of a grandparenting clause that allowed exploratory wells with state approval to proceed. With both of these cases the defendants, the DRBC and Ms. Collier in her official capacity filed motions stating that the drilling companies need to be joined as defendants in the case because they are the real parties at interest here. The motions were fully briefed and are currently pending before Judge Thompson in the District of New Jersey.

Mr. Warren said that a pending request filed by the DuPont Corporation some time ago concerns the dilution factor used in determining the mixing zone for the diffuser to be installed at DuPont's Chambers Works facility in Deepwater, New Jersey. The Commission previously postponed a decision on DuPont's request for hearing because a docket was being developed. That docket would undergo a public hearing today. Prior to the meeting, DuPont's counsel requested that the request for hearing be postponed again, at least until DuPont had the opportunity to review the final docket as approved. Mr. Warren explained that it was possible that the request would be mooted by the docket but advised that it was in everyone's interest to preserve DuPont's rights until it had an opportunity to review the final docket. Accordingly, Mr. Warren recommended that the Commissioners again postpone DuPont's request. Mr. Plonski so moved, Ms. Stiller seconded and the motion to postpone DuPont's request for hearing was unanimously approved.

The next item was a rule to show cause scheduled for hearing with respect to the Lambertville Municipal Utilities Authority. Mr. Warren related that DRBC staff and the Authority had worked out an agreement in principle to resolve that matter subject to the development of a full settlement agreement which would be presented to the Commissioners for approval. While the settlement agreement is being developed, he said, a hearing on the rule to show cause had been postponed. There was no need for further action by the Commissioners that day.

The next item was a request for hearing filed by Birdsboro Slag Products Company. A change of ownership and control had occurred with respect to the company, and the Executive Director had advised Birdsboro that this event extinguished its entitlement. An entitlement is an exemption from paying water supply charges for certain withdrawals that pre-dated formation of the Commission, and was provided by the original Compact. The request for hearing was filed without some of the information required by DRBC's Rules of Practice and Procedure – specifically, the basis for the appeal was not stated. Birdsboro was requested to provide the Commission with the basis for its appeal in writing. It did so, and it appears that the company's objection is essentially that it disagrees with DRBC's regulations terminating its entitlement. Mr. Warren recommended that rather than deciding on the request for hearing that day, the Commission should postpone its decision without prejudice to decide whether the initial appeal was full and adequate, and instruct the staff to reach an agreement with Birdsboro regarding the facts. In that event, there will be a legal decision for the Commissioners to make without need for a full evidentiary hearing. If disagreement emerges concerning the facts, he advised, the question of whether a hearing is required can be addressed at the next Commission meeting. Again, Mr. Warren recommended that the request for a hearing be postponed without prejudice to deciding whether that request was valid from the start.

BG DeLuca asked for a motion to that effect. Ms. Heffner so moved, Mr. Plonski seconded the motion, and the motion recommended by Mr. Warren was approved by unanimous vote.

The final matter reported on by Mr. Warren involved a determination by the Commission staff that the City of Philadelphia International Airport Capacity Enhancement Program is subject to review and approval by the Commission and that accordingly, the City needs to submit an application with respect to that project. The City filed what it termed a protective request for appeal, because it wishes to meet with DRBC staff to see whether any differences can be worked out concerning the requirement that an application be filed. Based on the City's request that its request for hearing be viewed simply as a protective appeal and that the Commission not decide the matter at this time, Mr. Warren recommended that there be a motion to postpone a determination on whether the request for hearing should be granted.

BG DeLuca requested a motion to that effect. Mr. Eaton so moved, Ms. Stiller seconded his motion, and the motion was approved by unanimous vote.

In a departure from the sequence presented on the agenda, before beginning the public hearing portion of the meeting, BG DeLuca asked the Commission to take up the two items that did not require a public hearing. These consisted of authorization to proceed with a janitorial services contract, and election by the Commissioners of the Commission's officers for the fiscal year 2011-2012.

Resolution for the Minutes Authorizing the Executive Director to Award a Contract for Janitorial Services. Mr. Gore explained that the proposed resolution would authorize the Executive Director to enter into an agreement for janitorial services at the Commission's facilities for a two-year period with an option for extension by an additional two years. The Commission issued a request for proposals to which it received 21 responses, and staff were in the process of performing a due diligence review of the lowest bidders. Upon completion of that review, Mr. Gore explained, staff proposed to award a contract to the lowest responsible bidder. The expiring contract has an annual value of \$19,000. Mr. Gore said staff believed the new contract with the lowest responsible bidder should be in the area of \$17,000 annually.

Hearing no questions or comments, BG DeLuca requested a motion to approve the resolution. Ms. Stiller so moved, Mr. Eaton seconded her motion, and the Resolution for the Minutes authorizing the Executive Director to award a contract for janitorial services was unanimously approved.

The complete text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION authorizing the Executive Director to enter into a contract for janitorial services for the Commission's West Trenton office building.

WHEREAS, on February 25, 2011 the Commission staff issued a Request for Proposal for Janitorial Services for the period May 1, 2011 through April 30, 2013 with an option at the end of that term to renew the agreement for two additional years; and

WHEREAS, prospective vendors were required to submit their proposals on or before 12:00 noon on Friday, April 8, 2011; and

WHEREAS, the Commission received and is evaluating 21 proposals; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that the Executive Director is authorized to issue to the lowest responsible bidder a contract consistent with the above.

This Resolution shall take effect immediately.

Resolution Approving Election of the Commission Chair, Vice Chair and Second Vice Chair for FY2012. Ms. Bush explained that this resolution was consistent with the Commission's practice every year of holding an election for the offices of Chair, Vice Chair and Second Vice Chair of the Commission based on a simple rotation. Consistent with that pattern, the U.S. Government representative would become Chair, the Governor of Pennsylvania would become Vice Chair

and the Governor of New Jersey would become Second Vice Chair for the term July 1, 2011 through June 30, 2012.

Hearing no comments on the resolution, BG DeLuca requested a motion. Mr. Eaton so moved, Ms. Stiller seconded, and the Resolution No. 2011-06 approving election of the Commission Chair, Vice Chair and Second Vice Chair for FY 2012 was approved by unanimous vote.

Public Hearing: Project Review Applications. William Muszynski of DRBC presented 18 of the originally noticed 19 dockets, explaining that the hearing on Docket No. D-1974-189-2 for Lafarge North America (hearing item 14), was being postponed to allow additional time for review. Mr. Muszynski reiterated that the hearing on Docket No. D-2010-022-1 for XTO Energy, Inc. (hearing item 17) would be reserved until the Commission had completed its other business, consistent with the Chair's announcement earlier in the meeting. The dockets were presented for the Commissioners' consideration in three groups: Category A, consisting of docket renewals involving no substantial changes (hearing items 1 through 4); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (hearing items 5 through 13); and Category C, consisting of projects not previously reviewed by the Commission (hearing items 15 through 19).

A. *Renewals with No Substantive Changes (hearing items 1 through 4).* The Commission received no comments on these projects.

1. U.S. Steel, D-1978-068-3. An application to renew DRBC approval for the discharge of up to 0.163 million gallons per day (mgd) of treated sanitary wastewater from the applicant's wastewater treatment plant (WWTP) via Outfall No. 203 and 3.75 mgd of treated industrial wastewater and non-contact cooling water from the applicant's industrial wastewater treatment plant (IWTP) via Outfall No. 103 as well as to continue a TDS Determination that allows TDS effluent concentrations of up to 1,100 mg/l as a monthly average; 2,200 mg/l as a daily maximum; and 2,750 mg/l as an instantaneous maximum, via combined Outfall No. 003. Internal Outfalls Nos. 103, 203, and 303 (stormwater only) will continue to discharge to the Delaware River via combined Outfall No. 003. The combined discharge from the applicant's WWTP and IWTP is made via Outfall No. 003 to the tidal region of Water Quality Zone 2 of the Delaware River at River Mile 127.0. The WWTP and IWTP are located in Falls Township, Bucks County, Pennsylvania.
2. French Creek State Park, D-1980-007 CP-4. An application to renew DRBC approval to continue to withdraw up to 3.1 million gallons per month (mgm) of groundwater to supply the French Creek State Park from existing wells in the Hammer Creek Formation. The project is located in the French Creek Watershed in Union Township, Berks County, Pennsylvania, within the Southeastern Pennsylvania Ground Water Protected Area.
3. GenOn Energy, Inc., D-1987-26-3. An application to renew DRBC's approval of discharges of treated industrial wastewater effluent from the Titus Generating Station (TGS) to the Schuylkill River as follows: the TGS IWTP via Outfall 002; coal-ash leachate from the Beagle Club Ash Disposal (BCAD) site via Outfall 004; and combined

non-contact cooling water (NCCW), intake screen backwash, and stormwater via Outfall 001. The applicant has requested that the intermittent discharge from Outfall 004 continue to have an effluent limit of 3,500 mg/l of TDS as a monthly average. Effluent limits for the existing NCCW discharge (Outfall 001), IWTP (Outfall 002) and BCAD site (Outfall 004) will continue to be based on average annual flows of 1.469 mgd, 2.149 mgd and 1.007 mgd, respectively. The IWTP is hydraulically designed for 3.2 mgd. The TGS facilities will continue to discharge to the Schuylkill River. The project is located in Cumru Township, Berks County, Pennsylvania.

4. Bedminster Municipal Authority – Pennland Farms, D-2006-010 CP-2. An application to renew DRBC approval of the existing 0.06 mgd Pennland Farms WWTP. The WWTP discharges to an unnamed tributary of Deep Run Creek at River Mile 157.0 – 4.7 – 7.1 – 0.1 (Delaware River – Tohickon Creek – Deep Run Creek – UNT). It is located in Bedminster Township, Bucks 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 Protection Waters.

Mr. Muszynski recommended that the Commissioners approve hearing items 1 through 4, consisting of docket renewals without substantive changes. Upon a request by the Chair, Mr. Plonski so moved, Ms. Heffner seconded his motion, and hearing items 1, 2, 3 and 4 were approved by unanimous vote.

B. Renewals with Substantive Changes (hearing items 5 through 13). Mr. Muszynski said that because several people had requested an opportunity to speak concerning draft docket D-1997-029 CP-4 for the Portland Borough Authority (hearing item 10), he would ask the Commissioners to conduct the hearing on this item following their consideration of the other items in the group.

5. Exelon Generation Company, LLC – Schuylkill Generating Station, D-1964-074 CP-2. An application requesting that the approved surface water withdrawal (SWWD) allocation associated with Intake No. 1 be decreased to 5,180 mgm, of which 2,483 mgm would be for use at the Schuylkill Generating Station (SGS). Intake No. 1 supplies water to the Grays Ferry Cogen Facility (GFCF) and the Tri-Gen Corporation Facility (Tri-Gen) as well as to the SGS. The three facilities are located adjacent to one another on a Schuylkill River site formerly owned and operated by the Philadelphia Energy Company (PECO). The GFCF and Tri-Gen generating stations and corresponding subsidiary water allocations were approved on June 28, 1995 by Dockets Nos. D-95-32 and D-95-10, respectively. DRBC staff evaluated the current and 10-year projected uses for all three facilities. The current average and maximum SWWDs are 2,982 mgm and 4,473 mgm, respectively. The 10-year combined maximum SWWD is estimated to be 5,180 mgm, less than the 8,277 mgm formerly approved by DRBC in the facilities' three separate dockets. The SGS is located in the City of Philadelphia, Pennsylvania.
6. E.I. du Pont de Nemours and Company (DuPont), D-1988-085-3. An application to renew DRBC approval of discharges from the DuPont Chambers Works IWTP and to approve modifications to the IWTP, including the construction of a new 48" diameter

IWTP outfall pipe with a multi-port diffuser and additional modifications to accommodate the new outfall. The proposed outfall will be located approximately 400 feet south of the existing outfall. By supplemental submission filed on July 22, 2010, the docket holder also seeks approval for an alternative mixing zone in accordance with section 4.20.5.A.1.f of the Water Quality Regulations. The IWTP outfall will continue to discharge treated effluent from the IWTP, non-contact cooling water, and stormwater to the Delaware River Estuary in Water Quality Zone 5. The project IWTP is located in Pennsville and Carneys Point Townships, Salem County, New Jersey.

7. Middletown Township, Middletown Country Club, D-1996-032 CP-2. An application for approval of an existing groundwater withdrawal project to continue to supply up to 4.13 mgm of water to the applicant's golf course from existing Well No. 1-G. The project is located in the Precambrian Felsic Gneiss in the Neshaminy Creek Watershed in Middletown Township, Bucks County, Pennsylvania within the Southeastern Pennsylvania Ground Water Protected Area.
8. Sunnybrook Golf Club, D-1997-007-2. An application to approve an existing GWD project of up to 4.6 mgm for irrigation of the applicant's golf course from existing Wells Nos. 1 and 2. The previous Commission approval expired before a renewal application was received. The project is located in the Ledger Dolomite in the Wissahickon Creek Watershed in Whitmarsh Township, Montgomery County, Pennsylvania, within the Southeastern Pennsylvania Ground Water Protected Area.
9. Concord Township Sewer Authority, D-1997-019 CP-3. An application for approval to continue discharging 1.8 mgd of treated effluent from the Concord Township WWTP. The WWTP will continue to discharge to the West Branch Chester Creek at River Mile 82.93 – 8.9 – 5.4 (Delaware River – Chester Creek – West Branch Chester Creek) in Concord Township, Delaware County, Pennsylvania.
11. Johnson Matthey, Inc., D-1999-038-3. An application for approval of the existing IWTP. The IWTP will continue to treat 0.08 mgd of industrial wastewater generated by its pharmaceutical manufacturing facility. The previous DRBC approval – Docket No. D-1999-038-2 issued on May 10, 2007 – expired on April 30, 2010. The IWTP will continue to discharge to the Schuylkill River via the Matsunk Creek culvert. The project is located in Upper Merion Township, Montgomery County, Pennsylvania.
12. Reading Area Water Authority (RAWA), D-2000-059 CP-2. An application for approval of the bulk sale interconnection and transfer up to 1.5 mgd of potable water from the RAWA system to the Pennsylvania American Water Company (PAWC) Glen Alsace District water distribution system. Some of the water supply is also needed to serve PAWC's customers in its Douglassville District via an existing interconnection. The application includes the revision of the RAWA Operating Plan to reflect conservation release modifications from the Lake Ontelaunee Reservoir. The reservoir is located in Ontelaunee Township, Berks County, Pennsylvania and is situated on Maiden Creek in the Schuylkill River Watershed.

13. Buckingham Township, D-2004-015 CP-2. An application for approval of the existing Buckingham Village WWTP and Furlong Sewage Treatment Lagoon System (Furlong WWTP). The previous DRBC approval – Docket No. D-2004-015 CP-1 issued October 27, 2004 – expired on October 27, 2009. The Buckingham Village WWTP will continue to discharge up to 0.236 mgd of treated sewage effluent to Mill Creek, a tributary of the Neshaminy Creek; however, from April 1 to November 30, the Buckingham Village WWTP will divert the treated sewage effluent for spray irrigation to spray fields associated with the Furlong WWTP. The Furlong WWTP is designed to treat a flow of up to 302,268 gpd and is currently permitted by PADEP to treat up to 257,000 gpd. The facility is located in Buckingham Township, Bucks County, Pennsylvania.

Mary Ellen Noble of the Delaware Riverkeeper Network queried Mr. Muszynski and the panel regarding the application of Clean Water Act section 316(b) to Exelon's Schuylkill Generating Station (hearing item 5). Section 316(b) provides that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact (primarily, impingement and entrainment of fish and shellfish and their eggs). On a previous occasion the Commissioners had explained that the states and not DRBC would implement section 316(b). Ms. Heffner said that the Pennsylvania Department of Environmental Protection (PADEP) is currently evaluating facilities subject to section 316(b) in light of information recently issued by EPA. Ms. Noble asked whether a review of the SGS was coming up in the next five years. Mr. Muszynski said the state actually was looking at the matter now and would address it in the NPDES permit cycle of March 2013.

Mr. Schneider also commented on the application of section 316(b) to Exelon's SGS, and Mr. Muszynski repeated that the 316(b) decision would be by the state and not the DRBC. Mr. Schneider commented that the diffuser sounded good but would not change the mass loading of pollutants, which he alleged has increased since 2000. Mr. Muszynski explained that the facility's discharge to date has lacked a diffuser, and that the diffuser would help reduce the potential toxicity of the plant's effluent to organisms by providing more rapid dilution. He added that the treatment facility is designed for approximately 30-40 million gallons per day. The volume of the discharge varies because the facility is a centralized waste treatment facility under federal and state regulations, which not only treats waste from its associated industrial facility but accepts for treatment wastes generated at other sites, both within and outside the Delaware Basin. The Commission must approve the importation of wastes from outside the basin, which are subject to specific docket conditions.

Commissioner Eaton of New York State asked whether the toxicity limits for the discharge effectively limit the discharge of TDS constituents that might not otherwise be named. Mr. Muszynski explained that the docket places conditions on the discharge of chemicals including but not limited to copper, zinc, and cadmium. He said that the facility did not previously have a toxicity limit and this would be an added restriction. He confirmed that although not every possible constituent of TDS is listed, the toxicity limit affords protection from toxic discharges, effectively limiting all constituents.

Mr. Muszynski recommended that the Commission approve the eight dockets consisting of renewals involving substantive changes. On a motion by Mr. Plonski, seconded by Ms. Heffner, hearing items 5, 6, 7, 8, 9, 11, 12, and 13 were approved by unanimous vote.

Mr. Muszynski next offered a description of the draft docket for the Portland Borough Authority.

10. Portland Borough Authority, D-1997-029 CP-4. Application for approval of a GWD project to increase the existing allocation from all system wells from 5.7 million gallons per 30 days (mg/30 days) to 12.4 mgm. The increased allocation is requested in order to meet projected increases in service area demand. Docket No. D-1997-029 CP-3 approved the current groundwater allocation of up to 4.32 mgm of water from new Well No. 4 to serve the applicant's public water supply system. The project well is completed in the Martinsburg Formation and is located in the Slateford Creek Watershed in Upper Mount Bethel Township, Northampton County, Pennsylvania. The site 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.

Mr. Muszynski explained that the draft docket initially had stated incorrectly that the project was located within the drainage area of the portion of the non-tidal Delaware known as the "Lower Delaware." The National Park Service later submitted a correction, noting that the project is located within the area draining to the Middle Delaware. In either case, the area drains to a section of the main stem that is classified as Special Protection Waters.

Commenters opposing the project included Dr. Charles Cole, a Ph.D. environmental scientist and environmental engineer, chair of the Upper Mount Bethel Township Environmental Advisory Council and a director of the Martins-Jacoby Watershed Association (MJWA); John Mauser, project manager for the MJWA; MJWA's hydrogeologist Tim Higgins of Geo Services, who performed a groundwater study for the township; Judith Henckel, director and secretary for the MJWA and a supervisor of Upper Mount Bethel Township; and Maya Van Rossum of the Delaware Riverkeeper Network (DRN). Commenters supporting the project were Peter Layman, the solicitor for Portland Borough Authority (PBA), PBA's hydrologist Dr. Robert Cook; and Russell Scott, a professional engineer with R.K.R. Hess Associates, consultants to the PBA. Mary Ellen Noble of DRN asked factual questions about the project, to which Mr. Muszynski responded.

A professional transcript of the hearing on the Portland Borough Authority docket was created, copies of which are on file with the Commission Secretary and the Water Management Branch, Project Review Section.

At the conclusion of the Commissioners' and the public's comments and questions, BG DeLuca asked the panel for a motion. Ms. Heffner moved that the Commission approve the docket as drafted, with the proviso that she would consult PADEP staff concerning any pending state authorizations for the project and would report back to the Portland Borough Authority and the watershed association regarding such authorizations. Mr. Plonski seconded her motion and hearing item 10, Docket No. D-1997-029 CP-4 for the Portland Borough Authority, was approved by unanimous vote.

C. *New Projects (hearing items 15 through 19).* These projects comprised new discharges or withdrawals or constituted projects new to the Commission. Mr. Muszynski described all but hearing item number 17, XTO Energy, Inc., D-2010-022-1, which the Chair had earlier stated would be reserved as the last item addressed during the business meeting that day.

15. City of Trenton, D-1998-009 CP-2. An application for approval of an existing SWWD project to withdraw up to 1,350 mgm of surface water through one existing surface water intake. The application includes a request to retroactively approve the construction of an expansion and upgrade of the existing water filtration plant (WFP) from 45 mgd to 60 mgd. The allocation and expansion and upgrade of the WFP are required in order to meet projected increases in service area demand. The surface water intake withdraws water from the main stem Delaware River. The project is located in the Delaware River Watershed in the City of Trenton, Mercer County, New Jersey, 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.
16. Butter Valley Golf Port, D-2010-013-1. An application for a new GWD and SWWD project to supply the applicant's golf course irrigation system with up to 5.89 mgm of water as a combined total from all sources. Sources are proposed to include one existing surface water intake (Pond Intake No. 1), one new surface water intake (Pond Intake No. 2), and one new groundwater well (Well B). The project well is located in the Brunswick Group in the West Branch Perkiomen Creek Watershed in Upper Hanover Township, Montgomery County, Pennsylvania within the Southeastern Pennsylvania Ground Water Protected Area.
18. Exelon Generation Company, LLC – Schuylkill, D-2010-040 CP-1. An application for the approval of an existing combined discharge of up to 231.84 mgd of NCCW and traveling screen backwash from the Schuylkill Generating Station (SGS) via Outfall No. 001. Outfall No. 001 discharges to the tidal portion of the Schuylkill River at River Mile 92.47 – 5.6 (Delaware River – Schuylkill River) in Water Quality Zone 4 in the City of Philadelphia, Pennsylvania.
19. South Jersey Port Corporation, D-2010-044 CP-1. An application for approval of the Paulsboro Marine Terminal dredging and wharf construction project. The proposed project includes: the construction of a deep water marine terminal consisting of a 150-foot wide by 2,850-foot long wharf providing for: four berths for the loading and unloading of a variety of general bulk and break bulk cargo; dredging of approximately 334,000 cubic yards in the Delaware River; the construction of a public, bi-directional access roadway between Paradise Road in the Township of West Deptford and Universal Road in the Borough of Paulsboro; and the construction of a 25-foot high, three span composite steel plate girder bridge across Mantua Creek just upstream of its confluence with the Delaware River. The proposed Paulsboro Marine Terminal site is located at the former 130-acre BP Oil Terminal site and adjacent 60-acre Essex Industrial Chemicals site in the Borough of Paulsboro, Gloucester County, New Jersey, along the Delaware River in Water Quality Zone 4 at approximately River Mile 90.

Mr. Muszynski recommended that the Commissioners approve hearing items 15, 16, 18 and 19, consisting of new projects and projects not previously reviewed by the Commission. In the absence of further comments or questions, Chairman DeLuca requested a motion for approval of the four dockets. Mr. Eaton so moved, Mr. Plonski seconded his motion, and hearing items numbers 15, 16, 18 and 19 were approved by unanimous vote.

Consistent with the Chair's announcement at the outset of the meeting, the Commission proceeded with the remaining items on the agenda before conducting the public hearing on Docket D-2010-022-1 for XTO Energy, Inc.

Resolution to Increase the Maximum Daily Surface Water Withdrawal from the Schuylkill River by Exelon's Limerick Generating Station (LGS), Without Increasing LGS's Total Monthly Allocation. Mr. Muszynski explained that the resolution would modify Docket D-1969-210 CP-12 (Final Revision) for Exelon's Limerick Generating Station (LGS) to temporarily increase the daily maximum withdrawal from the Schuylkill River without increasing allowable monthly withdrawals. Exelon requested this flexibility in order to respond to conditions of high air temperature combined with low relative humidity, based on Exelon's experience with operating under such conditions in 2010. At that time, consumptive use approached the daily limitation currently in effect. Exelon seeks flexibility to increase the facility's daily consumptive use without altering the total consumptive use that would be permitted based on current daily limits. Exelon's current docket allows it to withdraw up to 56.2 million gallons per day (mgd), of which 42 mgd is deemed to be consumptive use and 14.2 mgd is deemed to be non-consumptive use. The proposed resolution would allow the operator to take a maximum of 58.2 mgd, consisting of 44 mgd consumptive and 14.2 non-consumptive in any single day, but would restrict monthly usage to 31 times the current limit of 56.2 mgd comprised of 42 mgd of consumptive use and 14.2 of non-consumptive use. The proposed maximum monthly withdrawal rate is 1.7442 billion gallons per month. Exelon will be required to increase its augmentation flows to the Schuylkill River commensurate with its daily consumptive use. Augmentation is made through releases from the Wadesville Mine Pool and/or from the Tamaqua Reservoir. Exelon may not increase its withdrawals from either the Perkiomen Creek or the Delaware under the proposal. The approval would expire on the sooner of December 31, 2011 or the date of Commission approval of a revised docket. Mr. Muszynski reminded the Commissioners that DRBC is processing a revised docket that would consolidate all of the prior dockets and resolutions for LGS into a single instrument. Commission consideration of the revised docket is expected to occur in December of 2011.

Ms. Noble commented that although she had no objection to the proposed action today, she wanted the Commissioners to consider that approval of the proposal on a temporary basis today would not commit them to extending it when the full docket revision comes before them in December. She asked Mr. Warren to confirm that her assumption was reasonable as a matter of law. Mr. Warren said that because the resolution by its terms would expire "upon the sooner of" December 31, 2011 or the approval of a revised docket, Ms. Noble's statement appeared to be accurate. Ms. Noble reiterated that approval by the Commissioners today did not require that they approve the same condition in a final docket. She urged the Commissioners to keep that in mind and offered no further comments.

Hearing no other comments or questions, General DeLuca requested a motion to approve the resolution to increase LGS's maximum daily surface water withdrawal from the Schuylkill River without increasing its total monthly allocation. Ms. Stiller so moved, Ms. Heffner seconded her motion, and Resolution No. 2011-04 was adopted by unanimous vote.

Resolution Authorizing the Executive Director to Enter into Agreements for Information Technology Upgrades to Improve Data Management and Retrieval. Dr. Najjar explained that this resolution would authorize the Executive Director to contract for professional services to enhance and update the Commission's information technology capabilities. DRBC has improved its technology over the years; however, additional improvements are needed to better manage data and information securely and in an interactive fashion. To date, DRBC has used a paper-based system for all filings. DRBC seeks to take the significant step of digitizing existing files and adding capability to accept applications, reports and other information through the web so that this material can be stored, analyzed and retrieved more efficiently and where appropriate, shared. Database security would of necessity be a component of such a system.

DRBC issued a request for proposals on January 14, 2011 and on February 4, conducted a mandatory pre-bid meeting attended by 30 firms. Twelve firms ultimately submitted proposals by the deadline of February 25, 2011. A committee comprised of Commission staff and IT and water resource management professionals from DRBC and member states participated in evaluating the proposals. The top five were invited for interviews, which took place between April 15 and April 18 in West Trenton. The five interviewed firms were then re-ranked, with URS Corporation receiving the highest ranking. The cost proposals were also opened. The Commissioners were informed of the estimated cost, but because the Commission will be negotiating a contract with the top-ranked firm, cost is not being disclosed publicly at this time.

The proposed resolution would authorize the Executive Director to negotiate and enter into a contract with URS Corporation or the next-highest-ranked qualifying firm with which an agreement can be reached.

Mr. Plonski moved that the Commission approve the resolution but proposed that the Executive Director be directed to poll the Commissioners before entering into any contract to ensure that they are comfortable that they are proceeding within the agency's budget. Ms. Heffner seconded his motion and Resolution No. 2011-05 was adopted by unanimous vote, subject to the condition that the Executive Director poll the Commissioners prior to executing an agreement.

Hearing on Docket No. D-2010-022-1 for XTO Energy, Inc. Chairman DeLuca instructed the public that those interested in providing oral testimony on the XTO Energy, Inc. docket application would be limited to three minutes each to allow adequate time for as many individuals as possible to be heard and he requested that speakers not repeat comments made by those who spoke before them. Earlier, he had announced that the Commissioners would not take action on the docket that day.

Mr. Muszynski offered the following description of draft docket D-2010-022-1 for XTO Energy, Inc.

17. XTO Energy, Inc., D-2010-022-1. An application for approval of a SWWD project to supply up to 0.25 mgd or 7.50 mgm of water for the applicant's natural gas exploration and production activities in Broome and Delaware Counties in the State of New York. Surface water will be withdrawn at a site on Oquaga Creek within the Oquaga Creek Watershed in the Town of Sanford, Broome County, New York. Oquaga Creek drains to the West Branch Delaware River. The withdrawal 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.

Thirty-nine individuals – all who had requested to speak that day – offered oral comment on the proposed docket. A professional transcript of the proceeding was created and remains on file with the Commission Secretary.

Mr. Plonski moved that the comment period be kept open until the Commission could hold a second hearing on the draft XTO withdrawal docket in the vicinity of Broome County, New York, sometime within the next 30 days, to give interested parties who were unable to attend the West Trenton hearing an opportunity to be heard on this issue. Mr. Eaton seconded his motion, and the motion carried by unanimous vote.

Brigadier General DeLuca adjourned the meeting of May 11, 2011 at 5:30 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire
Commission Secretary