

DELAWARE RIVER BASIN COMMISSION

MEETING OF JUNE 12, 2019

Minutes

Commissioners Present: Jeffrey L. Hoffman, New Jersey, Chair
Kenneth Kosinski, New York, Vice Chair
Bryan A. Ashby, Delaware, Second Vice Chair
Lieutenant Colonel Kristen N. Dahle, United States
Aneca Y. Atkinson, Pennsylvania

DRBC Staff Participants: Steven J. Tambini, Executive Director
Pamela M. Bush, Assistant General Counsel and Commission Secretary
Kenneth J. Warren, DRBC General Counsel
Elba L. Deck, Director, Finance and Administration
David Kovach, Manager, Project Review
Amy Shallcross, Manager, Water Resource Operations
Namsoo Suk, Director, Science and Water Quality Management

The Commission met at the West Trenton Volunteer Fire Company in Ewing, New Jersey. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection and Alternate Commissioner for Governor Philip D. Murphy of New Jersey, presided. Mr. Hoffman thanked the West Trenton Volunteer Fire Company for the use of the space and noted the exits and safety procedures. The Commissioners and senior staff introduced themselves, and all stood for the Pledge of Allegiance.

Minutes. The Minutes of the Commission's regularly scheduled Business Meeting of March 13, 2019 were unanimously approved.

Announcements. Ms. Bush announced the following advisory committee meetings to take place in the Goddard Conference Room of the Commission's West Trenton office building. She noted that additional information, including contact information for committee staff liaisons, could be found on the Commission's website, www.drbc.gov.

- *DRBC Monitoring Advisory and Coordination Committee (MACC).* Monday, June 17, 2019 at 9:30 a.m.
- *DRBC Toxics Advisory Committee (TAC).* Tuesday, June 18 at 9:30 a.m.
- *DRBC Subcommittee on Ecological Flows (SEF).* The SEF is a subcommittee of the Regulated Flow Advisory Committee. June 19, 2019 from 10:00 a.m. to 3:30 p.m.

- *DRBC Water Management Advisory Committee (WMAC)*. Thursday, June 20 at 10:00 a.m.

Hydrologic Conditions. Ms. Shallcross reported on the hydrologic conditions in the Delaware River Basin as follows:

Precipitation in the basin over the last 90 days was between 15-20 inches, with larger amounts in a few locations. These amounts were between 125 and 150 percent of normal precipitation.

Streamflow at many locations in the basin is in the above normal to much above normal range. Ms. Shallcross displayed hydrographs – plots of daily flow over the past year – for the Delaware River at Montague, NJ and Trenton, NJ and the Schuylkill River, at Philadelphia, PA. Except for a brief period in April, the flows were above the median value, based on the period of record for each location.

Ms. Shallcross cautioned that people should always wear a life jacket during river recreation. The Delaware River can be dangerous, because on the surface, the water is moving much more quickly than it appears to be. The National Park Service has a program that emphasizes the importance of wearing a life jacket. She noted that rafting in the Lehigh River was enhanced following a recreational release from the F.E. Walter Reservoir.

Storage is created at a reservoir when water is impounded behind a dam. The storage in the basin includes several major categories: (1) three water supply reservoirs operated by New York City – Cannonsville, Pepacton and Neversink – which have a combined storage of 267 billion gallons (bg) when full; (2) storage that the DRBC pays for in the U.S. Army Corps of Engineers (USACE) reservoirs, consisting of about 13 bg in the Beltzville Reservoir and 2-4 bg in the Blue Marsh Reservoir, depending on the time of year; (3) drought emergency storage in other basin reservoirs from which the DRBC can request releases, including the Mongaup system, Lake Wallenpaupack, F.E. Walter and Nockamixon Reservoirs; and (4) the Merrill Creek Reservoir, from which power companies release water equal to their consumptive water use during drought conditions so that they may continue to operate without conservation restrictions.

In addition to each reservoir's primary purpose, water is released to maintain streamflow in the river. This is accomplished by releases for water to meet two flow objectives, one at Montague, NJ in the upper basin and the other at Trenton, NJ above the Delaware Estuary and Bay. For Montague, the River Master requests releases from the New York City reservoirs to maintain a flow of 1,750 cubic feet per second (cfs), which is equivalent to 1,130 million gallons per day (mgd). At Trenton, DRBC releases water to maintain 3,000 cfs, which is equivalent to 1,940 mgd. During very dry periods, the flow at Trenton may be 60 percent or more from reservoir releases.

The New York City Delaware River Basin reservoirs are essentially full, and Pepacton Reservoir is spilling. The Commission uses its storage in the Blue Marsh and Beltzville reservoirs to maintain flows at Trenton.

The anatomy of a reservoir consists of the bottom of the dam, called sediment storage. This is the volume of water below the outlet from which water is released to the river. The part of the reservoir that is used for available storage is between the bottom of the outlet pipe and a specified elevation and is often called the normal pool. In water supply reservoirs, that elevation is at the location of

the Spillway, which is well below the top of the dam. In flood mitigation reservoirs, the normal pool elevation is at a level maintained for docks and recreation. Flood mitigation storage is located above what is referred to as the spillway.

Ms. Shallcross explained how storage in a reservoir is calculated. Recently, both the USACE, for the federal reservoirs, and the City of New York, for its Delaware Basin reservoirs reevaluated the reservoir storage volumes because sometimes after reservoirs have been around for a while, sediment accumulates and may reduce the available storage.

DRBC's drought management program is essentially a reservoir and streamflow management program that is based on the level of combined storage in the three largest reservoirs in the basin – those owned by New York City. Currently, the New York City reservoirs are at 265 bg, which is about 99.3 percent full, or 76 bg above the “drought-watch” line.

In the Delaware Basin, reservoir releases are used in large part to meet a flow objective at Trenton. The Trenton flow objective was established to determine when releases should be made to repel the “salt front.” Fresh water inflows into the Estuary keep the salty ocean water from migrating upstream. In the 1965 drought, which is the worst drought of record in the basin, the salt front migrated as far upstream as River Mile (RM) 102. The salty water damaged industrial intakes and posed a threat to the City of Philadelphia's Torresdale drinking water intake. For this time of year, the salt front would normally be at RM 69. It is currently at RM 62.

Of the fourteen groundwater indicator wells in the basin, two are at normal levels and the rest are at levels above normal. The Bucks County Observation Well elevation levels show high water levels for the past 360 days.

The seasonal drought outlook prepared by NOAA indicates that drought conditions are not expected to occur anytime soon in our region. However, NOAA predicts that temperatures will be above normal. NOAA is predicting an equal chance for normal amounts of precipitation.

Executive Director's Report. Mr. Tambini's remarks are summarized below:

- *DRBC Spring 2019 Photo Contest.* The photograph entitled “Tulipes á Frenchtown,” by Laura Orbine was selected as the winner of the Commission's 2019 Spring Photo Contest. Enjoy Laura's winning photograph on the DRBC website and consider entering DRBC's next seasonal photo contest.
- *Governors' Summit.* On May 16, 2019 Delaware Governor John Carney, New Jersey Governor Phil Murphy and Pennsylvania Governor Tom Wolf met in Philadelphia for a Governors' Leadership Summit on the Delaware River. In an historic reaffirmation of the governors' commitment to a healthy Delaware River Watershed, the three executives signed a proclamation recognizing their collective work through the Delaware River Basin Commission to ensure that high water quality is maintained and aquatic life supported in the Delaware River Watershed. I was pleased to join the governors at the event and am thankful for their continued support.

- *Advancing High Water Quality Standards.* DRBC's ongoing efforts to improve and preserve water quality are exemplified by the Commission's Resolution No. 2017-4 of September 2017, which charts a path forward for the next chapter in water quality improvements in the Delaware River Estuary. Adopted by unanimous vote of the Commission's five members, the resolution recognized that evidence supports further study on the inclusion of propagation as a designated use in Estuary Water Quality Zones 3 and 4 and the upper portion of Zone 5 – the urbanized reaches of the basin's industrial and port complex. The resolution also recognized the importance of determining the appropriate designated uses for Estuary waters and the criteria necessary to protect these uses, and the importance of reaching these determinations through a collaborative process informed by scientific and engineering expertise.

Since September of 2017, DRBC staff and others have been working intensively to complete the program of work outlined in the resolution. DRBC contracted with the Academy of Natural Sciences of Drexel University (ANSDU) to compile information on the dissolved oxygen needs of Estuary aquatic species. The ANSDU report, completed in November 2018, is posted on the Commission's website. DRBC also contracted with an engineering firm, and in the summer of 2018, initiated an engineering evaluation and cost projection for achieving reductions in the discharges of ammonia and total nitrogen to the Estuary by the largest dischargers. A final report on this analysis is due next summer.

Staff also have been working intensively on the development of a hydrodynamic and water quality model for determining the pollutant load reductions needed to achieve higher concentrations of dissolved oxygen in the Estuary. Tremendous amounts of data and analysis are going into this undertaking. Monitoring to support the effort has included additional nutrient monitoring in the Delaware and Schuylkill rivers and smaller tributaries, light extinction monitoring and primary productivity monitoring. The seasonal Estuary "boat run" has been extended to a year-round effort and expanded to include algal speciation. DRBC also has required the largest point source dischargers to monitor their effluent for a two-year period beginning in 2018 and continuing through 2019. For additional insight and information about data collection and how the model is being developed, Steve encouraged interested parties to attend the Commission's Water Quality Advisory Committee meetings.

The Commission has convened a Dissolved Oxygen Early Action Workgroup that includes representatives of the DRBC, PADEP, NJDEP, DNREC and USEPA, to continue to look for opportunities to improve Estuary dissolved oxygen concentrations in the short term. The Commission appreciates the input of member experts on its Water Quality Advisory Committee and is also fortunate to have a panel of nationally-recognized experts to guide the DRBC staff in the development of the hydrodynamic and water quality model. The Commission's multiple studies, reports and model development efforts are expected to be completed in 2021.

- *DRBC Regulatory Program Fees.* In accordance with the *Rules of Practice and Procedure*, the Commission's regulatory program fees and schedule of water charges are revised annually effective July 1 to adjust for inflation, based upon increases in the local Consumer Price Index (CPI). This year's adjustment will be 1.86%.

- *25th Anniversary of the Delaware River Sojourn.* Friday, June 14 marks the 25th Anniversary of the Delaware River Sojourn. This year's 8-day event starts with a cleanup on the 14th. Paddlers launch in Narrowsburg, New York and pull out in Florence, New Jersey on the event's last day, Saturday, June 22. One of the best ways to understand the importance of the Delaware River is to paddle or float down it in a kayak, canoe or raft.

Steve offered a special thank-you to Kate Schmidt of the Commission staff, who has served on the Delaware River Sojourn Steering Committee for 13 years. He praised Kate's tremendous contribution to the Sojourn and noted that she is even getting him out on the river in 2019.

- *Farewell to Lieutenant Colonel Kristen N. Dahle.* Noting that this would be the last Commission meeting in which Philadelphia District Commander LTC Kristen Dahle would serve as an alternate DRBC commissioner representing the federal government, Mr. Tambini thanked her for her service to the country and to the Delaware River Basin, and on behalf of the Commission, presented her with a certificate of recognition and appreciation for her leadership.

General Counsel Report. Mr. Warren reported that the Commission continues to have pending in litigation the case *Wayne Land and Mineral Group v. the DRBC*. He noted the following developments in the case:

- Three Pennsylvania state senators moved to intervene in the matter to support the plaintiff's position that DRBC has no ability to review hydraulic fracturing projects. DRBC and the Delaware Riverkeeper Network (DRN) oppose that motion, and the district court recently issued a fairly lengthy opinion denying the motion. In an appeal to the Third Circuit, the senators argue that they have a right to intervene.
- DRBC filed a motion to compel responses to discovery that DRBC had served on the plaintiff, and DRN filed a similar motion. Much of the discovery was focused on the specific facts of plaintiff's hydraulic fracturing plans, such as how much water the plaintiff intends to use, how much wastewater the plaintiff's activities will generate, and how the plaintiff intends to manage that wastewater. The DRBC and DRN filed motions to compel because the plaintiff for the most part refused to provide any responses. The court granted DRBC's motion in almost all respects.
- The court also imposed a schedule in the case. Plaintiffs must respond within fourteen days of the court's order to the discovery they have not yet produced. A fact discovery deadline of September 9, 2019 has been set, and there are further deadlines for expert discovery. All discovery must conclude by January 8, 2020, at which point the court has given the parties the opportunity to file dispositive motions if they choose to do so. Such motions must be filed by February 7, 2020.

Mr. Warren in conclusion reported that the Commission continues to defend the case vigorously, and that it appreciates DRN's support and intends to prevail.

A Resolution to Adopt the Commission's Annual Current Expense and Capital Budgets for the Fiscal Year Ending June 30, 2020 (July 1, 2019 through June 30, 2020). Ms. Deck reported that in accordance with the *Delaware River Basin Compact* (“Compact”) and the *Administrative Manual – By-Laws, Management and Personnel* (“Administrative Manual”), the Commission held a public hearing on May 15, 2019 on the Current Expense and Capital Budgets for Fiscal Year 2020. The Commission’s Current Expense Budget for the fiscal year ending June 30, 2020 is in the aggregate amount of \$6,759,000. The Capital Budget (Water Supply Storage Facilities Fund) reflects revenues of \$4,391,800 with expenditures of \$3,638,000. Details are provided in the document dated June 12, 2019, titled *The Delaware River Basin Commission Current Expense and Capital Budgets for the Period of July 1, 2019 through June 30, 2020*.

In addition to funds in the amount of \$3,107,500 apportioned by the signatory parties by separate resolution, the Commission by the proposed budget resolution identifies its projected revenue as follows: Transfer in from the Water Supply Storage Facilities Fund of \$2,130,700; Transfer in from the Special Projects Fund (typically, grants) of \$350,000; and Other Income of \$1,170,800, for a total of \$3,651,500 in revenues.

The resolution provides that to the extent that revenue received during fiscal year 2020 under any federal or state grant-in-aid program exceeds the revenue budgeted from such source, the excess is appropriated for additional uses or programs related to the original grant.

The resolution also authorizes and directs the Executive Director to transmit to the principal budget officers of the respective signatory parties certified copies of the budget once adopted, together with a certified statement of the amount apportioned to each signatory party (by separate resolution) in accordance with the Compact and the Administrative Manual.

Should signatory party revenue fall below the budgeted amount, the Executive Director is authorized and directed to reevaluate the annual work plan, and after consultation with and concurrence by the Commission, to implement any or all actions that are deemed necessary to maintain the financial stability of the General Fund.

The Commission will continue to operate the Pennsylvania Groundwater Protected Area Program in fiscal year 2020. The estimated cost of the program, a sum which is apart from the Commonwealth’s fair share signatory party contribution to the Commission’s operating expenses, is \$153,800.

Ms. Deck requested that the Commissioners vote to adopt the draft resolution as proposed.

Hearing no comments or questions, Mr. Hoffman requested a motion to approve the resolution for adoption of the Commission’s Annual Current Expense and Capital Budgets for the Fiscal Year ending June 30, 2020 as proposed. LTC Dahle so moved, Mr. Kosinski seconded her motion, and without further discussion, Resolution No. 2019-4, adopting the Annual Current Expense and Capital Budgets for the Fiscal Year ending June 30, 2020 (July 1, 2019 through June 30, 2020) was unanimously approved.

A Resolution to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets for the Fiscal Year Ending June 30, 2020 (July 1, 2019 through June 30, 2020). A unanimous vote of the Commission’s five members is required to

apportion among the signatory parties the amounts required for support of the Current Expense and Capital Budgets. In accordance with the Compact and the Administrative Manual, the Commission on May 15, 2019 held a duly noticed public hearing on the budgets.

Ms. Deck explained that the resolution apportions among the signatory parties the amounts set forth below, together with such other funds as are made available to the Commission for the support of the budget for the fiscal year ending June 30, 2020. The resolution recognizes that all requested contributions are subject to the executive branch prerogatives of the member jurisdictions in formulating annual budgets and that the resolution is not intended to be an endorsement of any appropriation request to the extent that it is inconsistent with such executive branch priorities or policies.

The State of Delaware - \$447,000; the State of New Jersey - \$693,000; the State of New York - \$359,500; the Commonwealth of Pennsylvania - \$893,000; and the Federal Government - \$715,000. The total combined signatory party contribution provided for by the resolution is \$3,107,500.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Kosinski so moved, Mr. Ashby seconded his motion, and without further discussion a roll call vote was taken. Resolution No. 2019-5 apportioning among the signatory parties the amounts required for the support of the Current Expense and Capital Budgets for the fiscal year ending June 30, 2020 (July 1, 2019 through June 30, 2020) was approved by unanimous vote.

A Resolution for the Minutes Authorizing the Executive Director to Retain an Accounting Firm to Perform the Commission's Annual Independent Audits. The Compact requires the Commission as soon as practicable after the close of each fiscal year to undergo an audit by a qualified certified public accountant. The Commission issued a Request for Proposal (RFP) on February 20, 2019 soliciting these professional services for the fiscal years ending June 30, 2020 through June 30, 2022, with an option to continue these services for two additional years. In response to its RFP the Commission received several proposals prior to the deadline of Friday, March 21, 2019. The firm Zelenkofske Axelrod, LLC was determined to be the lowest responsible bidder, with a fee proposal of \$16,750 per year for three years, and an option for two additional years at \$17,500 per year. Ms. Deck recommended that the Commissioners approve the resolution authorizing the Executive Director to engage an accounting firm to perform the Commission's annual independent audit.

Mr. Hoffman requested a motion to approve the proposed resolution as presented by Ms. Deck. LTC Dahle so moved, Ms. Atkinson seconded her motion, and without further discussion, the Resolution for the Minutes authorizing the Executive Director to retain an accounting firm to perform the Commission's annual independent audits was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION authorizing the Executive Director to retain an accounting firm to perform the Commission's annual independent audits.

WHEREAS, Section 14.11 of the *Delaware River Basin Compact* requires that the Commission undergo an audit as soon as practicable after the closing of each fiscal year, by qualified certified public accountants selected by the Commission; and

WHEREAS, the Commission issued a Request for Proposal (“RFP”) on February 20, 2019, soliciting the professional services of certified public accountants to perform the required audits for fiscal years ending June 30, 2020 through June 30, 2022, with an option to continue these services for two additional years; and

WHEREAS, in response to its RFP, the Commission received seven proposals prior to the deadline of Friday, March 21, 2019, and the firm of Zelenkofske Axelrod LLC was determined to be the lowest responsible bidder, with a fee proposal of \$16,750 per year for three years with an option for two additional years at \$17,500 per year; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that the Executive Director is authorized to award a professional services contract to Zelenkofske Axelrod LLC for auditing services for the five-year period.

This Resolution shall take effect immediately.

A Resolution for the Minutes Authorizing the Executive Director to Enter into a Specialized Services Contract for Enhancements to the Source Code for the Hydrodynamic Model Known as the Environmental Fluid Dynamics Code (EFDC). Dr. Suk explained that pursuant to Resolution No. 2017-4, adopted by the Commission in September 2017, the staff have been working intensively on the development of hydrodynamic and water quality models to determine the designated aquatic life uses and associated dissolved oxygen criteria of the Delaware River Estuary. The staff have determined that enhancements to the source code for the hydrodynamic model are required to link it seamlessly with the water quality model, and have further determined that for the reasons set forth in the draft resolution, the firm GHD is uniquely qualified to perform these enhancements. Dr. Suk requested that the Commissioners approve the proposed Resolution for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Ashby so moved, LTC Dahle seconded his motion, and without further discussion, the Resolution for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model known as the Environmental Fluid Dynamics Code (EFDC) was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing the Executive Director to enter into a specialized services contract with GHD for enhancements to the source code for the hydrodynamic model known as the Environmental Fluid Dynamics Code (EFDC).

WHEREAS, by Resolution No. 2017-4, DRBC recognized the importance of determining the appropriate designated aquatic life uses of the Delaware River Estuary and

the water quality criteria necessary to protect these uses, as well as the importance of reaching these determinations through a collaborative process informed by technical studies and specialized scientific and engineering expertise; and

WHEREAS, also by Resolution No. 2017-4 the Commission recognized the need for a new water quality (eutrophication) model linked with a hydrodynamic model of the Delaware Estuary to assess the attainability of higher levels of dissolved oxygen; and

WHEREAS, the hydrodynamic model known as EFDC and the water quality model known as the Water Quality Analysis Simulation Program (WASP), both of which are supported by the United States Environmental Protection Agency (EPA), were selected to be used in this effort; and

WHEREAS, the DRBC staff have identified the need for validation of certain subroutines and enhancements to the source code for the EFDC hydrodynamic model to apply selective model options to the Delaware Estuary and to seamlessly link EFDC with the WASP model; and

WHEREAS, GHD is uniquely qualified to provide the specialized services required for validation and enhancement of the EFDC model code, including among other superb qualifications, the firm's:

- multi-decade long experience in enhancement of the EFDC hydrodynamic code;
- in-depth knowledge of the requirements for linking EFDC and WASP models; and
- close working relationships with the current WASP water quality model developer; and

WHEREAS, the success of the estuary designated use project as a whole depends upon the successful development of linked hydrodynamic and water quality models within a compressed period of time; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is hereby authorized to enter into an agreement with GHD to provide technical support to the Commission for enhancement of the EFDC hydrodynamic model code.
2. The value of the agreement is not to exceed \$20,000 or the amount awarded to the Commission or allocated by it for this purpose.
3. 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 provided.

This resolution shall take effect immediately.

A Resolution for the Minutes Providing for Election of the Commission Chair, Vice Chair and Second Vice Chair for the Year Commencing July 1, 2019 and Ending June 30, 2020 (NY, DE, U.S.). Ms. Bush explained that before the commencement of the Commission's new fiscal year

on July 1, the Commissioners consider a resolution providing for the election of the Commission's officers for the new fiscal year. In accordance with the customary rotation, the resolution provides for election of the following officers to serve during the fiscal year commencing July 1, 2019 and ending June 30, 2020: as Chair, the Governor of New York; as Vice Chair, the Governor of Delaware; and as Second Vice Chair, the Commission's federal representative, the Commander, North Atlantic Division, United States Army Corps of Engineers.

Mr. Hoffman requested a motion to approve the resolution as presented. Mr. Kosinski so moved, Ms. Atkinson seconded his motion, and without further discussion, the Resolution for the Minutes providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2019 was approved by unanimous vote.

The text of the resolution follows:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2019 and ending June 30, 2020.

WHEREAS, Article 2, Section 2.6 of the *Delaware River Basin Compact* (Compact) states that the Commission shall provide for its own organization and procedure; and

WHEREAS, the Compact further requires the annual election of the Chair and Vice Chair, which historically has been based upon rotation of the signatory parties; and

WHEREAS, the Commission has further determined that a Second Vice Chair, to preside in the absence of the other officers, should also be elected; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Governor of New York is hereby elected to serve as Chair for the term July 1, 2019 through June 30, 2020.
2. The Governor of Delaware is hereby elected to serve as Vice Chair for the term July 1, 2019 through June 30, 2020.
3. The United States Member is hereby elected to serve as Second Vice Chair for the term July 1, 2019 through June 30, 2020.

Project Review Applications. Mr. Kovach reported that 27 draft dockets were the subjects of a duly noticed public hearing on May 15, 2019 and a written comment period that closed on May 20. An additional draft docket was the subject of a special hearing on June 6, 2019. The Commission received comments on two of the proposed dockets – dockets D-1969-210 CP-15 for the Exelon Generation Company, LLC Limerick Generating Station (hearing item 2 on May 15) and D-2017-099-2 for the Gibbstown Logistics Center Dock 2 (hearing item 1 on June 6).

Written comments on the draft docket for the Limerick Generating Station were submitted by one individual. By way of summary, the commenter opposed the existing facility, objected to its continued water withdrawal, and recommended that it be shut down. The project was added to the

Commission's Comprehensive Plan decades ago and since then has operated in accordance with DRBC docket decisions approving its water withdrawals, consumptive and non-consumptive uses and discharges. The Commission on numerous previous occasions has determined that when operated in accordance with its docket approvals, the project does not impair or conflict with the Comprehensive Plan.

The commenter expressed concern that the Limerick project withdraws a great deal of water and returns little to the river. Mr. Kovach confirmed that the facility's water use is largely consumptive because the water is used for cooling and lost to evaporation. He explained that the docket includes provisions for flow augmentation from various sources to replace water that is consumed. The project's withdrawals are also subject to a passing flow restriction designed to maintain adequate flow in the river. With respect to its discharges, the project has undergone multiple DRBC reviews and has consistently met DRBC's water quality regulations.

The commenter alleged that the DRBC is selling water and questioned whether this creates a conflict of interest for the Commission. The commenter also asked whether Exelon pays a fair amount for the water. Mr. Kovach clarified that the Commission does not sell water. In accordance with the *Administrative Manual – Basin Regulations – Water Supply Charges* (18 CFR Part 420) the Commission collects a fee for surface water withdrawals and uses the proceeds to pay the debt service, maintenance, repair and replacement, and operations costs associated with storage owned by the Commission in the Blue Marsh and Beltzville reservoirs. These two facilities, both located in Pennsylvania, were constructed by the federal government and are operated by the U.S. Army Corps of Engineers. Like other similarly situated surface water withdrawers in the Basin, the docket holder pays \$82.14 per million gallons for surface water that it uses consumptively and \$0.82 per million gallons for surface water that it uses non-consumptively (i.e., that is returned to the river). Mr. Kovach noted that all large withdrawers of surface water that were not withdrawing their water prior to enactment of the Compact, pay surface water charges.

The commenter also asked how the Wadesville Mine Pool and Tamaqua and Merrill Creek reservoirs (sources of flow augmentation water under the docket) are refilled. Mr. Kovach explained that these reservoirs are replenished primarily by rainfall. Rain water also infiltrates the ground and is stored in aquifers, which replenish the Wadesville Mine Pool.

Mr. Kovach noted that consideration of dockets D-1999-012 CP-4 for Warrington Township (hearing item 11 on May 15) and Docket D-2017-002 CP-1 for Gan Eden Estates (hearing item 25 of May 16, 2018), both of which were to be considered at this meeting, were being postponed to allow additional time for review.

Mr. Kovach recommended that the Commissioners approve the 26 dockets identified as hearing items 1 through 10 and 12 through 27 of May 15, 2019.

Mr. Hoffman thanked Mr. Kovach and requested a motion to approve the 26 dockets that had been subjects of the public hearing on May 15. Mr. Kosinski so moved, Mr. Ashby seconded his motion, and without any further comment, the draft dockets comprising hearing items 1 through 10 and 12 through 27 of the hearing on May 15, 2019 were approved by unanimous vote.

Mr. Kovach next presented draft docket D-2017-009-2 for the Delaware River Partners, LLC Gibbstown Logistic Center, Dock 2. This docket was the subject of a hearing on June 6, 2019 for which notice was published on May 24, 2019. The Commission accepted written comment on the docket through 5:00 p.m. on June 7. At the June 6, 2019 public hearing, nineteen commenters addressed the Commission, of whom several represented non-governmental organizations. Before the close of the comment period, DRBC received 119 written comments on the draft docket, of which seven consisted of letters from trade organizations (iron workers, carpenters, electrical workers, ship pilots), elected officials (Gloucester County Board of Freeholders), and economic development organizations (Chamber of Commerce of Southern New Jersey, Maritime Exchange for the Delaware River and Bay) expressing support for the project. The balance of the commenters opposed the draft docket, citing the following: (a) inadequate public notice; (b) inadequate time for review and comment; (c) lack of key approvals from other agencies; (d) health and safety hazards unrelated to water resources; (e) air quality and climate effects; (f) water quality impacts; and (g) aquatic life impacts. Staff in consultation with the Commissioners prepared a comment and response document to address those concerns.

Mr. Kovach explained that in response to the comments received on the draft docket, he had made and was recommending adoption of modifications consisting of the following:

- Amendment of Section A. 4. Project Description by the addition of a statement based on information provided to staff by the applicant, clarifying that Dock 2 will support the transloading of a variety of bulk liquid products, including butane, isobutane, and propane (collectively liquified petroleum gas, or LPG), liquified natural gas (LNG) and ethane. The products will arrive at the site via truck and/or rail car. Once at the site, the products will be transferred to vessels via onsite infrastructure. There will be no manufacturing of any bulk liquid products at the site. There will be no bulk storage of LNG at the site.
- Amendment of Table B-1 by changing the status of the Waterfront Development Permit and Water Quality Certificate required by the New Jersey Department of Environmental Protection (NJDEP) from “issued” to “suspended”; and by the addition of a U.S. Coast Guard Letter of Recommendation (for operations), the status of which is “future” to indicate that Delaware River Partners has not yet applied for the required letter.
- Amendment of Section A. 2. Location by the correction of a latitude coordinate, which was off by one digit in the published draft.
- Amendment of Section C. Decision by the addition of a new condition 15, which provides that the Commission reserves the right to open the docket at any time and to reconsider its decision and any and all conditions imposed thereunder in light of further information developed by or decisions rendered in pending or future proceedings conducted by other state and federal agencies concerning the development and operation of the Gibbstown Logistic Center, Dock 2 and related facilities.

Mr. Kovach summarized the responses prepared by staff in consultation with the Commissioners to the issues raised by objectors. The responses as set forth in DRBC’s written response to comments are reprinted below:

Comment: Commenters alleged that neither the draft docket, nor the public notices and file materials provided by the DRBC, federal, state, and local agencies adequately reflected that the Project is to be used as a liquified natural gas (LNG) terminal.

DRBC Response: The Commission can respond only for itself and not for the agencies of its members. All of the application materials the Commission received were shared with the public. The Commission's Notice of Application Received ("NAR") [attachment omitted] was posted on DRBC's website and distributed via social media and listservs on March 25. The NAR provided a brief though accurate description of the Project as presented in the application, including the details most pertinent to DRBC's review. In accordance with the Commission's *Rules of Practice and Procedure*, 18 CFR Part 401, Subpart C, such review is required for any project that entails deepening or dredging a portion of the Delaware River or that substantially encroaches on the river. The project review file that was furnished to interested parties in response to records requests under Subpart H of the *Rules of Practice and Procedure* contained all the information furnished by the applicant, including a detailed dredge management plan describing how the dredge and construction operations for the Project are to be performed. A site plan drawing for the Project was also provided. The text of the draft Docket includes relevant portions of the applicant's project description, explaining that Dock 2 is designed for the loading of bulk liquid products directly from railcar or truck onto ocean-going vessels for export and includes infrastructure for transloading operations (draft Docket, page 2, bottom). The Commission does not review or approve the cargo that moves through a marine terminal.

Comment: Commenters objected that the amount of time provided by the DRBC for review and comment on the application and draft docket was inadequate.

DRBC Response: The Commission received the Project application on March 12, 2019. As noted above, a Notice of Application Received ("NAR") for the Project was posted on DRBC's website and distributed via social media and listservs on March 25. The NAR invited "[i]ndividuals or organizations having a special interest in [any of the projects listed] or information relating to a project's impacts on water and related land resources of the Delaware River Basin" to "submit written comments to the Water Resource Management Branch." DRBC's Notice of Public Hearing and draft Docket D-2017-009-2 were posted on the Commission's website and on Eventbrite on May 24, 2019. That day or the following day, the notice and draft docket also were circulated via Twitter, LinkedIn, and RSS, as well as by email to more than 900 individuals or entities, including members of the press, that have opted to participate in DRBC's listservs. These measures more than satisfied the Compact's requirement that 10 days' notice be given "by posting at the offices of the [C]ommission." Compact § 14.4. The comment period remained open until 5:00 p.m. on June 7, 2019. After the comment period on a matter has closed, the DRBC may approve, approve with conditions, or disapprove an item at any subsequent duly noticed public meeting of the Commission. The Commission has no rules establishing the length of a public comment period.

Comment: Commenters alleged that the Commission cannot act on a project review application before all other required federal and state approvals for the project have been

issued and supplied to the Commission. The applicant has not yet obtained all other approvals needed for the Project.

DRBC Response: DRBC requires applicants to identify necessary approvals, including, where applicable, approvals that have been issued. Where applicable to DRBC's review, the Commission may rely on information contained in approvals issued by other agencies. DRBC routinely approves projects either before state and federal agencies have acted or afterward, generally based on the preferences of the host state under the particular circumstances. DRBC docket conditions always provide that the project sponsor must obtain all necessary federal, state and local approvals. Specifically, Condition C.8. of Docket No. D-2017-009-2 provides, "Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project."

Comment: Commenters raised safety and related public health concerns associated with the transport of LNG, but which are unrelated to water resources, including the risks that LNG will explode or spill from trucks transporting it, especially given the proximity of the Project to residences, bridges and the Philadelphia Airport.

DRBC Response: In accordance with Section 3.8 of the Delaware River Basin Compact ("Compact"), the Commission's review must ensure that the Project does not impair or conflict with the Commission's Comprehensive Plan ("Plan"). Along with the Commission's policies and regulations, the Plan includes those public and private projects and facilities that "are required, in the judgment of the Commission, for the optimum planning, conservation, utilization, management and control of the water resources of the basin to meet present and future needs..." (Compact § 13.1). Section 3.8 provides that the Commission "shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the [C]omprehensive [P]lan ...", and further, that the Commission may "modify [a project] and approve [the project] as modified" to ensure the project does not impair or conflict with the Plan. Accordingly, the Commission's dockets include any provisions and conditions that in the Commission's view are required to ensure a project does not impair or conflict with the Plan. The public safety concerns, although legitimate concerns of government, are unrelated to the water resources facilities and water quality, quantity and flow management matters included in the Comprehensive Plan.

To the extent, if any, that the noted concerns overlap with matters addressed by the Comprehensive Plan, the Compact expressly authorizes and directs the Commission to "utilize and employ such offices and agencies for the purpose of this [C]ompact to the fullest extent it finds feasible and advantageous." Compact, § 1.5. The Compact further provides that the Commission may "[e]mploy any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, ... for any ... purpose;" (Compact § 3.9(b)). For matters related to public safety and emergency management in the context of commercial shipping, the Commission defers to agencies of its member states and the federal government that possess expertise the Commission lacks in these areas. Specifically, it is the Commission's understanding that the applicant must obtain from the United States Coast Guard (USCG) a Letter of Recommendation ("Letter") to the effect that the waterway to be

utilized (the Delaware River and Bay) is suitable for the type and frequency of commercial vessel traffic expected to accompany the Project. The USCG, in consultation with state and local agencies and stakeholders, will make this assessment for the GLC Dock 2. Permit Status Table B-1 of the draft docket has been modified to include the required Letter.

Comment: Commenters stated that LNG export activities associated with the Project would contribute to greenhouse gas emissions and the other negative effects of climate change, because the Project will drive the increased production of fossil fuels and reliance on these fuels and will inevitably result in additional leakage of methane gas, thereby impeding the development of sustainable and renewable energy sources.

DRBC Response: The issues raised by commenters, while important public policy concerns, are among a larger set of energy policy matters being studied, debated and incrementally resolved at state, interstate, and national levels. The Commission's evaluation under Section 3.8 of the Compact is limited to determining whether the Project substantially impairs or conflicts with the Commission's Comprehensive Plan. Our evaluation is thus focused on management of the Basin's water resources and not on wider energy policy questions.

Comment: Commenters expressed concern over the potential for water quality impacts resulting from sediment disturbance and pollution/contamination caused by dredging;

DRBC Response: The applicant submitted protective dredging procedures and a Dredged Material Management Plan (DMMP), which detail sediment and discharge controls to be used during construction of the Project to protect water quality. Section C.6. of the Docket requires the use of these procedures.

The 665,000 cubic yards of dredged material to be removed from the berthing facility were sampled in accordance with an NJDEP-approved Sediment Sampling and Analysis Plan dated December 24, 2018. The analytical results of the sampling were included in the DMMP submitted with the application. Analytical testing results were compared to the following remediation standards, as applicable: (a) New Jersey Non-Residential Direct Contact Soil Remediation Standards ("NRDCSRS"); (b) New Jersey Residential Direct Contact Soil Remediation Standards ("RDCSRS"); (c) New Jersey Default Impact to Groundwater Soil Screening Level ("IGWSSL") 1; (d) New Jersey Default Impact to Groundwater Screening Level for Synthetic Precipitation Leaching Procedure ("SPLP") Analyses (for SPLP samples only); and (e) 2005 toxic equivalence (TEQ) (tetrachlorodibenzo para dioxin (TCDD) TEQ) for dioxins and furans. The results of bulk sediment chemistry analyses performed on composite samples are summarized below:

- Semivolatile organic compounds (SVOCs): All sample concentrations were either "non-detect" (below the laboratory detection limit) or detected at concentrations below applicable standards.
- Polychlorinated biphenyls (PCBs) (209 congeners): Congener-specific standards are not available for comparison; however, no individual PCB congener concentration exceeded the remediation standard established for total PCB congeners, and the sum of individual

PCB congeners within each composite sample was below the remediation standard for total PCB congeners.

- Organochlorine pesticides: All sample concentrations were either “non-detect” (below the laboratory detection limit) or detected at concentrations below applicable standards.
- Inorganics: All sample concentrations were either “non-detect” (below the laboratory detection limit) or detected at a concentration below applicable NRDCSRS and RDCSRS. Contaminant concentrations, except those for manganese, were either “non-detect” (below the laboratory detection limit) or below the IGWSSL for all samples. Manganese was identified at concentrations slightly exceeding its IGWSSL of 430 mg/kg, with concentrations ranging from 490 to 750 mg/kg.
- Polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs): Several PCDD and PCDF compounds were detected at low concentrations; however, the TEQ concentration for each sample was below the applicable remediation standard. As described in the docket, dredged sediments are expected to be sent to the Fort Mifflin Confined Disposal Facility (CDF) or Whites Rehandling Basin.

The remediation underway at the former Repauno site under the direction of NJDEP includes groundwater treatment, contaminated soil removal and capping of contaminated areas. These measures will reduce contamination at the site and reduce contaminants leaving the site.

Comment: Commenters stated that dredging, dock construction, and increased ship traffic will have adverse impacts on aquatic life and aquatic habitat, including on threatened and endangered species such as the Atlantic sturgeon and short nose sturgeon, as well as on freshwater mussels and resident fish. The commenters also expressed concerns regarding impacts to bald eagles and osprey.

DRBC Response: The *Delaware River Basin Water Code* (incorporated by reference at 18 CFR Part 410) provides in relevant part that “The quality of Basin waters shall be maintained in a safe and satisfactory condition for ... wildlife, fish and other aquatic life.” (Water Code § 2.20). To protect water quality and aquatic life during construction of the Project, condition C.6 of the docket requires the applicant to use the protective measures outlined in Sections B.1. and B.2. for dredging and wharf/berth construction, respectively.

As noted above, Sections 1.5 and 3.9(b) of the Compact authorize and direct the Commission to use the agencies, offices and instrumentalities of its state and federal members for purposes of the Compact to the extent the Commission finds feasible and advantageous. To address potential impacts of the Project on federally listed threatened or endangered species and their habitat, the Commission is deferring to the National Marine Fisheries Service (NMFS), the federal agency responsible for listing the species as threatened or endangered and designating their critical habitat areas. Before the U.S. Army Corps of Engineers (USACE) can issue the Clean Water Act Section 404 permit and Rivers and Harbors Act Section 10 approval required for the Project, in accordance with the Endangered Species Act, USACE must consult with the NMFS concerning potential effects of the Project on the Atlantic sturgeon

and short nose sturgeon and their habitat. That consultation process is not yet complete. Section C.8 of the docket states expressly that the docket does not exempt the docket holder from obtaining all necessary permits and approvals from other state, federal or local government agencies having jurisdiction over the Project.

Mr. Kovach also summarized the Commission's response to a lengthy set of written comments dated June 7, 2019 by the Delaware Riverkeeper Network. The Commission's response, which is included in its written response to all comments received on Docket D-2017-009-2, is re-printed below:

DRN Comment 1: DRN stated that section C.I.(c) of DRBC Docket D-2017-009-1 (approving the Gibbstown Logistics Center's Dock 1) requires that detailed site plans be provided by applicant Delaware River Partners LLC (DRP) for its upland facilities. DRN states that on the basis of file reviews its members performed after Docket D-2017-009-1 was issued, DRP has not satisfied this condition. DRN said its representative saw nothing in the DRBC's files disclosing DRP's plans to include LNG as a cargo.

DRBC Response: Condition C.I.(c) of Docket D-2017-009-1 (issued on December 13, 2017) required DRP to submit "detailed project site plans ... for the remainder of the [Gibbstown Logistics Center] not submitted with the DRBC application, including the proposed: automobile import area/parking lot; processing facilities; perishables, bulk-liquids and gases, and bulk cargo handling areas; warehouses and associated buildings; stormwater management system (including stormwater outfalls); and the associated infrastructure." Those plans were submitted to the Commission on December 20, 2018 and were among the records furnished to DRN for inspection on June 4, 2019. In compliance with condition C.I.(c) of the docket, the plans included bulk liquid tank locations, liquid rail lines, sphere tank locations, butane rack location, vehicle processing building, car wash facility, body shop building, stormwater facilities, and other associated infrastructure.

DRN Comment 2: DRN asks why the site plans show a bulk liquid tank area, a sphere tank area and the on-site cavern for bulk liquids storage if, as DRBC staff stated at the public hearing on June 6, there will be no bulk liquid storage on site and only truck or rail transloading directly to ships.

DRBC Response: As the video of the June 6, 2019 public hearing makes clear, DRBC staff stated at the June 6, 2019 public hearing that *no bulk storage of LNG* would occur at the site. That statement was and is accurate.

DRN Comment 3: The DRBC draft docket fails to acknowledge that the federal government established the Delaware Estuary as critical habitat for the New York Bight DPS of Atlantic Sturgeon in August 2017. DRBC's *Water Quality Regulations* at § 4.30.5-B.1 acknowledge that the Commission must evaluate critical habitat, and that this evaluation must follow its *Rules of Practice and Procedure*. Despite the federal ruling, DRBC has yet to initiate its procedures for verifying the critical habitat established by the federal government, and the role that critical habitat will play in docket decisions.

DRBC Response: As noted above, the *Water Code* provides in relevant part that “The quality of Basin waters shall be maintained in a safe and satisfactory condition for ... wildlife, fish and other aquatic life.” (WC § 2.20). In the context of the Commission’s *Water Quality Regulations* for the tidal Delaware River concerning exceedance of stream quality objectives for the protection of aquatic life from acute effects (mixing zones) (WQR § 4.20.5 A.1.), DRBC regulations also provide that “[s]tream quality objectives shall not be exceeded in areas designated as critical habitat for fish and benthic organisms” (WQR § 4.20.5 A.1.b.). In other words, a mixing zone is not permitted within an area designated by the Commission as critical habitat. No mixing zone is proposed for the Project. Federally listed endangered species and their habitat in the Delaware River Estuary are protected under the Endangered Species Act (ESA).

Also as noted above, before the U.S. Army Corps of Engineers (USACE) can issue the Clean Water Act Section 404 permit and Rivers and Harbors Act Section 10 approval required for the Project, in accordance with the ESA, USACE must consult with the National Marine Fisheries Service (NMFS) to ensure the Project does not jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat on which the species depends. As the federal agency responsible for listing the species as threatened or endangered and designating critical habitat areas, NMFS possesses the requisite expertise to provide such guidance. The ESA consultation process for the Project is underway, although it is not yet complete. In accordance with Sections 1.5 and 3.9(b) of the Compact, which authorize and direct the Commission to use the agencies, offices and instrumentalities of its state and federal members for purposes of the Compact to the extent the Commission finds feasible and advantageous, the Commission is deferring to the ESA consultation process in this context.

DRN Comment 4: More shipping vessels mean more ballast water needs, discharges, and impacts, including impingement and entrainment and introduction of exotic species.

DRBC Response: In accordance with Sections 1.5 and 3.9(b) of the Compact, the Commission is relying on the agencies, offices and instrumentalities of its state and federal members to address issues regarding ballast water discharges, the introduction of exotic species associated with such discharges, and the issues of impingement and entrainment by ballast water intakes. Pursuant to the [Vessel Incidental Discharge Act of 2018](#), ballast water discharges currently are subject to the requirements of the [2013 Vessel General Permit \(VGP\)](#) issued by the United States Environmental Protection Agency (EPA), pending the development by EPA of performance standards for such discharges and the promulgation by the United States Coast Guard (USCG) of implementation, compliance and enforcement regulations to support the EPA standards. Such discharges are also subject to existing regulations of the USCG codified at 33 CFR Part 151. Subpart D of Part 151 of these regulations consists of provisions for Ballast Water Management for Control of Nonindigenous Species in Waters of the United States. The applicant’s Atlantic Sturgeon and Shortnose Sturgeon Impact Assessment (February 2019) submitted as Appendix D of its NJDEP Waterfront Development Individual Permit application for the Project thus correctly

states that vessels calling at the proposed Dock 2 will be required by law to comply with USCG regulations for avoiding the introduction of invasive species through ballast water, which include practices for ballast water uptake as well as for ballast water discharges. Under USCG regulations, the majority of ballast water exchanges for vessels calling on Dock 2 will occur in off-shore marine waters. (*See* 33 CFR § 151.1510(a)(1)). In accordance with the VGP, while at berth, discharges and intake of ballast water are limited to the minimum needed to assure vessel stability.

DRN Comment 5: DRBC required in Docket D-2017-009-1 (issued in December 2017 for GLC Dock 1), condition C.I.I., that a PCB sampling program was to be conducted by docket holder Delaware River Partners (“DRP”); and a NJPDES permit was to be issued requiring DRP to assess PCB migration from the site and potentially requiring DRP to develop and implement a separate pollutant minimization plan for its stormwater outfalls from the site. However, the project is currently under construction while no NPDES permit is in place that requires sampling and monitoring of the release of PCBs during this critical disturbance phase of the project.

DRBC Response: DRBC Docket D-2017-009-1 Condition C.I.I. provides that in accordance with a NJPDES permit when issued, DRP “shall perform an investigation of the site to assess the disposition of stormwater outfalls either directly or indirectly to the Delaware River in order to develop and implement a PCB stormwater sampling plan” and further, that “[u]pon evaluation of the sampling results by the NJDEP in consultation with the DRBC, DRP may be required to develop and implement a separate PMP for PCBs in accordance with Section 4.30.9 of the Commission’s *Water Code* and *Water Quality Regulations* (18 CFR Part 410).” The docket and condition remain in effect; however, the condition does not apply to the construction phase of the re-development.

In accordance with section 4.30.9 of the Commission’s *Water Quality Regulations* and *Water Code*, a PCB pollutant management plan was developed in 2005 for the entire Repauno property, including the area to be developed by DRP under Docket D-2017-009-1 (“GLC 1 site”). Implementation of that plan has been ongoing, including the submission to NJDEP and the DRBC of annual reports by DuPont and its successor in interest Chemours. Under NJDEP’s oversight and in accordance with the PMP, Chemours has removed or capped PCB-contaminated soil and sediment. Under the PMP, Chemours continues to monitor outfalls 008A, 0010A and 0012A for PCBs, upstream and downstream of DRP’s GLC 1 site on the former Repauno property.

The investigation and development of a stormwater sampling plan for the GLC 1 site are to be performed after re-development of the GLC 1 site has occurred, to provide assurance that the additional capping and elevation with clean fill of this portion of the former Repauno property has reduced or eliminated PCB loadings from this area. If a NJPDES permit including the condition set forth in Condition C.I.I. of Docket D-2017-009-1 is not forthcoming, then DRBC will implement the condition pursuant to its authority under Sections 4.30.8 (Tests, Sampling and Analysis Procedures) and 4.30.9 A.2. (Pollutant Minimization Plans for Toxic Pollutants; Applicability) of the Commission’s *Water Quality*

Regulations or will modify the docket to effectuate the requirement directly. Under remedial action permits that will be issued after the completion of remediation activities by the prior owner (Chemours), DRP will also maintain and monitor the effectiveness of all caps.

Mr. Kovach concluded by recommending approval of Docket D-2017-009-2 for the Delaware River Partners, LLC, Gibbstown Logistic Center.

Mr. Hoffman requested a motion to the effect that New Jersey as Chair would turn over the gavel to Vice Chair New York for this matter. Ms. Atkinson so moved, Mr. Ashby seconded her motion and the Chairmanship was transferred to New York's alternate Commissioner, Mr. Kosinski.

Mr. Kosinski requested a motion to approve Docket D-2017-009-2 for the Delaware River Partners, LLC, Gibbstown Logistic Center, in accordance with staff's recommendation. Mr. Hoffman so moved, and Mr. Ashby seconded his motion. LTC Dahle on behalf of the federal government, noted for the record that her vote on the docket today would be cast in her capacity as a DRBC Commissioner and would be based on the Commission's standards of review, which are different from those applicable to the permit then pending before the USACE on this project. The Delaware River Partners, LLC, Docket D-2017-009-2 was approved by unanimous vote. Mr. Hoffman resumed his position as Chair of the Commission.

Mr. Hoffman requested clarification of the status of draft Docket D-2017-002 CP-1 for Gan Eden Estates, a groundwater withdrawal project in the State of New York, which had been the subject of a hearing in May of 2018 and was to be considered for action at this meeting. Mr. Kovach reiterated that this project was being postponed allowing additional time for review.

Adjournment. Mr. Hoffman asked the Commissioners and staff whether any other matters required the Commissioners' consideration that day. Hearing none, he requested a motion to adjourn the business meeting. Mr. Kosinski so moved, Ms. Atkinson seconded his motion, and the meeting was adjourned by unanimous vote at 2:45 p.m.

Audio Recording. Audio recordings of the public hearings of May 15 and June 6 and the business meeting of June 12, 2019 are on file with the Commission Secretary. A description of each of the applications for dockets approved during the Business Meeting of June 12, 2019 is provided as an attachment to these Minutes.

Open Public Comment. After the business meeting adjourned, Mr. Tambini conducted an Open Public Comment session for off-the-record comment by stakeholders on water resource issues affecting the Basin.

/s/ Pamela M. Bush

Pamela M. Bush, J.D., M.R.P.

Commission Secretary and Assistant General Counsel

ATTACHMENT

DESCRIPTIONS OF PROJECTS APPROVED BY THE COMMISSION DURING THE BUSINESS MEETING OF JUNE 12, 2019

Background. Projects subject to Commission review in accordance with the *Delaware River Basin Compact* and Commission regulations must have the Commission's approval in the form of a docket, permit or resolution (collectively, "docket"). The Commission's project review process takes six to nine months to complete, and the public is informed of the status of project applications by a variety of means during that period. Each project for which an application is received is added to the "Project Review Status Report" maintained on the DRBC website. This report includes the applicant's name and project location, a description of the proposed project, the docket number assigned to the project, and the name of the staff member reviewing the project. A list of applications received also is compiled approximately five times a year and posted on the Commission's website as a "Notice of Applications Received" (NAR). An "Interested Parties List" (IPL) is created for each project under review. Anyone can have his or her name added to the IPL for a given project. All those listed on the IPL receive email notification of public notices for the project as they are posted on the Commission's website, including the notice advertising the public hearing. Members of the public seeking additional information about a project may contact the staff member reviewing the project or arrange by appointment to review the relevant Project Review file at any time that is mutually convenient for the staff and the party.

Approximately six weeks before the Commission's scheduled public hearing date, draft dockets are circulated to the Commission's members for review and comment by the appropriate state and federal agencies. Shortly thereafter, a public notice, including descriptions of the draft dockets, is filed with state and federal bulletins or registers. Ten or more business days prior to the hearing date, the hearing notice, along with draft dockets, is posted on the Commission's website. Written comment on hearing items is accepted through the close of the public hearing. At the Commissioners' regularly scheduled public meetings, the Commissioners may approve, disapprove or postpone consideration of any docket for which a hearing has been completed. Approved dockets are posted on the Commission's website as quickly as possible following the date on which the Commission acted. Delay of a few days may occur to complete clerical work, particularly in instances in which the Commissioners approve a docket with modifications.

The projects are customarily considered in three categories – *Category A* – project renewals with no substantive changes; *Category B* – project renewals with substantive changes; and *Category C* – projects not previously reviewed by the Commission. In total, 26 of the 27 docket decisions approved by the Commission on June 12, 2019 were subjects of a duly noticed public hearing on May 15, 2019. One – Docket D-2017-009-2 for Delaware River Partners, LLC – was the subject of a public hearing on June 6, 2019. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on June 12 are presented below.

A. *Renewals with No Substantive Changes (all subjects of a public hearing on May 15, 2019).*

1. William Henry Gardens, LLC, D-1968-092 CP-4. An application to renew the approval of the existing 0.069 million gallons per day (mgd) Frazer Crossing Apartments Wastewater Treatment Plant (WWTP) and its discharge. The WWTP will continue to discharge to an unnamed tributary (UNT) of Ridley Creek at River Mile 84.0 - 20.8 - 0.6 (Delaware River – Ridley Creek – UNT Ridley Creek), via Outfall No. 001, in East Whiteland Township, Chester County, Pennsylvania.
2. Exelon Generation Company, D-1969-210 CP-15. An application to renew the approval of the applicant's existing Limerick Generating Station (LGS) and its related water withdrawals and discharge. Approved withdrawals include: (a) surface water withdrawals from the Schuylkill River, Perkiomen Creek, Wadesville Mine Pool, and the Tamaqua Area Water Authority's Still Creek Reservoir and Owl Creek Reservoir of up to 58.2 mgd and 1,742.2 million gallons per month (mgm); and (b) groundwater withdrawals from Wells Nos. 1 and 3 of up to 3.2 mgm and 2.9 mgm, respectively. The approved discharge consists of up to 14.2 mgd of non-contact cooling water (NCCW) and treated industrial wastewater via Outfall No. 001. The wells are located in the Schuylkill – Sprogels Run Subbasin of the Southeastern Pennsylvania Groundwater Protected Area (GWPA). The LGS will continue to discharge NCCW and treated industrial wastewater to the Schuylkill River at River Mile 92.47 - 48.01 (Delaware River – Schuylkill River) in Limerick Township, Montgomery County, Pennsylvania.
3. Bethlehem City, D-1971-078 CP-4. An application to renew the approval of the existing 20.0 mgd Bethlehem WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Lehigh River at River Mile 183.66 - 9.51 (Delaware River – Lehigh River), within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in the City of Bethlehem, Northampton County, Pennsylvania.
4. Berks-Montgomery Municipal Authority, D-1973-060 CP-4. An application to renew the approval of the applicant's existing 0.32 mgd Morysville WWTP and its discharge. The WWTP will continue to discharge treated effluent to Ironstone Creek at River Mile 92.5 - 54.1 - 4.0 - 4.1 (Delaware River – Schuylkill River – Manatawny Creek – Ironstone Creek) in Colebrookdale Township, Berks County, Pennsylvania.
5. Doylestown Borough, D-1979-018 CP-6. An application to renew the approval of an existing groundwater withdrawal with a decrease in allocation from 50.6 million gallons per 30 days (mg/30 days) to 48 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. 7, 8, 9, 10 and 12. The project wells are completed in the Stockton Formation. The project is located in the Commission's Southeastern Pennsylvania GWPA in the Neshaminy Creek Watershed, Borough of Doylestown, Bucks County, Pennsylvania.
6. Blue Ridge Real Estate Company, D-1985-081-2. An application to approve a proposed revision to the docket holder's existing service area and renew the approval of the 0.4 mgd Jack Frost WWTP and its discharge. The proposed revision will include the partial removal

of existing service area and the addition of area with equivalent acreage to offset and maintain the docket holder's existing total acres served. The Jack Frost WWTP will continue to discharge treated effluent to Porter Run, upstream of the F.E. Walter Reservoir, at River Mile 183.66 - 82.9 - 1.5 (Delaware River – Lehigh River – Porter Run) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Kidder Township, Carbon County, Pennsylvania.

7. Reading Regional Airport Authority, D-1986-038 CP-4. An application to renew the approval for the existing 0.42 mgd Reading Regional Airport Authority (RRAA) WWTP and its discharge. The RRAA WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 80.3 (Delaware River – Schuylkill River) via Outfall No. 001, in Bern Township, Berks County, Pennsylvania.
8. Monroe Energy, LLC, D-1986-041-3. An application to renew the approval of the docket holder's existing 4.3 mgd Trainer Industrial Wastewater Treatment Plant (IWTP) and its discharges of treated industrial wastewater, NCCW, steam condensate and backwash. The project will continue to discharge via Outfall No. 001 to Marcus Hook Creek at River Mile 80.2 - 0.5 (Delaware River – Marcus Hook Creek) and via Outfall No. 002 to Stony Creek at River Mile 80.4 - 0.2 (Delaware River – Stony Creek). The discharges are located in the tidal portion of Water Quality Zone 4 of the Delaware River in the Borough of Trainer, Delaware County, Pennsylvania. This docket also updates the DRBC approval to reflect an ongoing project to install three cooling towers and a closed-loop cooling system to replace the existing once-through cooling system.
9. Rohm and Haas Chemicals, LLC, D-1989-002-4. An application to renew the approval of the applicant's existing 3.7 mgd IWTP and its discharges of treated industrial wastewater effluent and NCCW. The WWTP will continue to discharge treated industrial wastewater to Delaware River Water Quality Zone 2 at River Mile 117.0 - 0.3 (Delaware River – Hog Run Creek) via Outfall No. 009, and NCCW to Water Quality Zone 2 at River Mile 118.9 - 0.4 (Delaware River – Otter Creek) via Outfall Nos. 003 and 008. All three outfalls are located in Bristol Township, Bucks County, Pennsylvania.
10. New Castle County Department of Special Services, D-1993-006 CP-4. An application to renew the approval of the existing 2.5 mgd Middletown–Odessa–Townsend (MOT) Regional WWTP and spray-irrigation facility and its discharge. When the treated effluent cannot be spray-irrigated, the WWTP will continue to discharge to an UNT of Appoquinimink River, at River Mile 50.88 - 6.2 - 0.2 (Delaware River – Appoquinimink River – UNT Appoquinimink River), in New Castle County, Delaware.
11. Northeastern Schuylkill Joint Municipal Authority, D-1999-033 CP-3. An application to renew the approval of the existing 0.245 mgd Northeastern Schuylkill Joint Municipal Authority (NESJMA) WWTP and its discharge. The WWTP will continue to discharge treated effluent to Pine Creek at River Mile 92.47 - 102.1 - 27.6 - 1.2 (Delaware River – Schuylkill River – Little Schuylkill River – Pine Creek) via Outfall No. 001, in Rush Township, Schuylkill County, Pennsylvania.

12. Sanofi Pasteur, Inc., D-1999-071-5. An application to renew the approval of the existing 0.95 mgd Sanofi Swiftwater IWTP and its discharges. The IWTP will continue to discharge treated industrial process water to land (via spray irrigation), and to Swiftwater Creek, at River Mile 213.0 - 11.4 - 4.4 - 3.5 (Delaware River – Brodhead Creek – Paradise Creek – Swiftwater Creek). The IWTP is located within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in Pocono Township, Monroe County, Pennsylvania. The application also includes a request to continue approval of a total dissolved solids (TDS) determination consisting of an average monthly effluent concentration limit of 1,200 mg/l and a daily maximum effluent concentration limit of 1,752 mg/l.
13. Muhlenberg Township Authority, D-2001-030 CP-3. An application to renew the approval of a groundwater withdrawal from existing Wells Nos. 1, 2, 6, 8, 9, 12, 13, 14 and 15 and decrease the total combined allocation from 168.5 mg/30 days to 119.9 mgm for continued use in the docket holder's public water system. The wells are completed in the Allentown, Leithsville and Hardyston formations and the Hamburg Sequence in the Laurel Run – Schuylkill River and Willow Creek watersheds in Muhlenberg and Ontelaunee townships and Laureldale Borough, Berks County, Pennsylvania.
14. Bedminster Municipal Authority, D-2003-014 CP-3. An application to renew the approval of the applicant's existing 0.436 mgd Bedminster WWTP and its discharge. The WWTP will continue to discharge treated effluent to an UNT of Deep Run at River Mile 157.0 - 6.1 - 3.8 - 1.1 (Delaware River – Tohickon Creek – Deep Run – UNT Deep Run) within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Bedminster Township, Bucks County, Pennsylvania.
15. Upper Hanover Authority, D-2004-017 CP-4. An application to renew the approval of the existing 0.098 mgd Perkiomen WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to Perkiomen Creek at River Mile 92.5 - 31.2 - 26.5 (Delaware River – Schuylkill River – Perkiomen Creek), via Outfall No. 001, in Upper Hanover Township, Montgomery County, Pennsylvania.
16. Pennsylvania Department of Conservation and Natural Resources, D-2005-008 CP-3. An application to renew the approval of the existing 0.06 mgd Hickory Run State Park WWTP and its discharge. The Hickory Run WWTP will continue to discharge treated effluent to Hickory Run at River Mile 183.7 - 67.3 - 1.7 (Delaware River – Lehigh River – Hickory Run) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Kidder Township, Carbon County, Pennsylvania.
17. Downingtown Municipal Water Authority, D-2006-031 CP-3. An application to renew the approval of the docket holder's 2.5 mgd Water Treatment Plant (WTP) and its discharge of 0.466 mgd backwash filtrate and supernatant. The WTP will continue to discharge water filtration backwash to an UNT of the East Branch Brandywine Creek at River Mile 70.7 - 1.5 - 20.0 - 9.0 - 0.4 (Delaware River – Christina River – Brandywine Creek – East Branch

Brandywine Creek – UNT East Branch Brandywine Creek) via Outfall No. 001, within the drainage area of Delaware River Water Quality Zone C7, in Downingtown Borough, Chester County, Pennsylvania.

18. Wallenpaupack School District, D-2009-027 CP-3. An application to renew the approval for the existing 0.01 mgd New Foundland Elementary School WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to Wallenpaupack Creek, upstream of Lake Wallenpaupack at River Mile 277.7 - 15.8 - 1.4 - 12.7 - 7.8 (Delaware River – Lackawaxen River – Wallenpaupack Creek – Lake Wallenpaupack – Wallenpaupack Creek) via Outfall No. 001, in the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Dreher Township, Wayne County, Pennsylvania.
19. Aqua Pennsylvania Wastewater, Inc., D-2014-005 CP-2. An application to renew the approval of the existing 0.15 mgd Woodloch Springs WWTP and its discharge. The existing WWTP will continue to discharge treated effluent for seasonal spray irrigation and to Teedyuskung Creek at River Mile 277.7 - 9.9 - 0.35 (Delaware River – Lackawaxen River – Teedyuskung Creek) via Outfall No. 001, within the drainage area of the main stem Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Lackawaxen Township, Pike County, Pennsylvania.
20. Concord Township, D-2014-012 CP-2. An application to renew the approval of the existing 0.0635 mgd Riviera at Concord WWTP and its discharge. The WWTP will continue to discharge treated effluent to Green Creek at River Mile 82.9 - 8.9 - 3.3 - 0.9 (Delaware River – Chester Creek – West Branch Chester Creek – Green Creek), via Outfall No. 001, in Concord Township, Delaware County, Pennsylvania.
21. Lloyd's Otto, LLC, D-2014-017 CP-2. An application to renew the approval of the 0.019 mgd recreational vehicle park WWTP and its discharge. The WWTP will continue to discharge treated effluent to Pohopoco Creek at River Mile 183.7 - 40.9 - 2.8 (Delaware River – Lehigh River – Pohopoco Creek) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Franklin Township, Carbon County, Pennsylvania.
22. Becker, Richard. C., D-2014-021 CP-2. An application to renew the approval of the existing 0.05 mgd Walnutport Mobile Court WWTP and its discharge. The WWTP will continue to discharge treated effluent to Bertsch Creek at River Mile 183.7 - 30.7 - 0.16 (Delaware River – Lehigh River – Bertsch Creek) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Lehigh Township, Northampton County, Pennsylvania.

B. Renewals with Substantive Changes (subject of a public hearing on May 15, 2019).

23. Arrowhead Sewer Company, Inc., D-2003-010-2. An application to renew and approve upgrades to the existing 0.525 mgd Arrowhead Sewer Company WWTP. The upgrades consist of adding new influent pumps and splitter boxes, improving the aeration blowers, adding new return activated sludge pumps, adding sludge holding tanks, installing a supervisory control and data acquisition (SCADA) alarm system, and improving chemical addition. The WWTP will remain designed for 0.525 mgd and continue to discharge treated effluent to the Lehigh River upstream of the F.E. Walter Reservoir, at River Mile 183.7 - 90.5 (Delaware River – Lehigh River), within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Coolbaugh Township, Monroe County, Pennsylvania.

C. New Projects (projects not previously reviewed by the Commission) (subjects of public hearings on May 15 (items 24-26) and June 6 (item 27)).

24. Centerport Borough Municipal Authority, D-2018-006 CP-1. An application to approve the existing 0.06 mgd Centerport Borough Municipal Authority (CBMA) WWTP and its discharge. The WWTP will continue to discharge treated effluent to Irish Creek at River Mile 92.47 - 89.6 - 2.8 (Delaware River – Schuylkill River – Irish Creek) via Outfall No. 001, in Centre Township, Berks County, Pennsylvania.

25. Berkshire Country Club, D-2018-010-1. An application to approve a surface water withdrawal of up to 9.3 mgm to irrigate the applicant's golf course from Intake No. 001 located on the Schuylkill River. The project is in the Schuylkill River Watershed in Bern Township, Berks County, Pennsylvania.

26. Downe Township, D-2019-001 CP-1. An application to include the proposed 0.17 mgd Fortescue WWTP and sewage collection and conveyance system in the Delaware River Basin Commission's Comprehensive Plan. The new package plant will serve approximately 390 developed lots in Fortescue and Gandy's Beach, in Downe Township, Cumberland County, New Jersey. Section 3.8 Review of the project will be conducted in accordance with the 2015 Administrative Agreement (AA) between the New Jersey Department of Environmental Protection (NJDEP) and the DRBC. Treated effluent will be discharged to Fortescue Creek at River Mile 28.0 - 0.5 (Delaware River - Fortescue Creek) in Water Quality Zone 6.

27. Delaware River Partners, LLC (NJ) Gibbstown Logistics Center Dock 2, D-2017-009-2. An application for a new dredging project at the Delaware River Partners (DRP) Gibbstown Logistics Center, a multi-use deep-water seaport and international logistics center currently under development, located at River Mile 86.5 of the Delaware River in Greenwich Township, Gloucester County, New Jersey. The new project consists of the construction of an additional dock/wharf containing two deep-water berths, which will include the dredging of approximately 665,000 cubic yards of sediment from the Delaware River to a depth of 43 feet below mean lower low water (MLLW) elevation.