

DELAWARE RIVER BASIN COMMISSION

MEETING OF SEPTEMBER 11, 2019

Minutes

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

DRBC Staff Participants: Steven J. Tambini, Executive Director
Pamela M. Bush, Commission Secretary and Assistant General Counsel
Kenneth J. Warren, DRBC General Counsel
David Kovach, Manager, Project Review
Amy Shallcross, Manager, Water Resource Operations
John Yagecic, Manager, Water Quality Assessment

The Commission met at The Conference Center at Mercer, Mercer County Community College, West Windsor, New Jersey. Kenneth Kosinski, P.E., Chief, Watershed Implementation Section, New York State Department of Environmental Conservation and Alternate Commissioner for Governor Andrew M. Cuomo of New York, presided. Mr. Kosinski welcomed everyone, thanked the college 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.

Mr. Hoffman announced that the day's meeting was taking place within New Jersey's 15th Legislative District and introduced New Jersey State Senator Shirley K. Turner of that district (D-Hunterdon/Mercer), who was serving her seventh term in the New Jersey Senate. Prior to serving in the Senate, Senator Turner served two terms in the Assembly from 1993-1995. During the 208th Legislature, she became the first woman and the first African-American to be elected as Senate President *pro tem*. Senator Turner is Vice Chair of the Senate Education Committee and also serves on the Economic Growth Committee, the Government Wagering, Tourism and Historic Preservation Committee and the Joint Committee on Economic Justice and Equal Employment Opportunity. She is a member of the legislative Black Caucus and a commissioner of the Education Commission of the States, a national, nonpartisan, interstate compact commission devoted to education. Senator Turner has worked in a bipartisan fashion to build a record of legislative accomplishments that enhance the health, safety and well-being of New Jersey's children, strengthen families, promote public education and affordable health care, develop and support small businesses and foster economic development. On a personal note, Mr. Hoffman added that Senator Turner is his senator in the New Jersey Legislature. He thanked her for her service and

invited her to share remarks about her district and lead everyone in a moment of silence for Patriot Day, in remembrance of the events of September 11, 2001.

Senator Turner welcomed everyone and stated that she is deeply committed to education and to the 15th Legislative District. She noted that her district contains the finest education institutions, including Princeton University, which recently was again named the top educational institution in the country if not the world; Thomas Edison University; Rider University; and Mercer County Community College. She noted that without the Battle of Trenton, the Union Jack might be flying in this place instead of the American flag.

The Senator recognized this day as the 18th anniversary of 9/11. Like this day, she said, the weather that day was beautiful; the sun was shining, and she was preparing to leave her house to speak to a class of West Windsor school children about her job as a New Jersey legislator. She received a phone call from her daughter in North Carolina, telling her to look at the TV for news of an accident—a passenger jet had flown into the World Trade Center. The Senator said she started watching while on the phone, saw the second plane hit the second tower, and knew this was not an accident. She said it was uncanny to think of the changes that horrific incident made—how all our lives were changed forever. Throughout that day and week, the Senator said, she attended prayer and candlelight vigils throughout the county. What struck her as she reflected on these events was how different things were at that time, because “we were not Democrats or Republicans. We were not blue states, red states or purple states. We were not black, we were not white, we were not brown or yellow. We were all Americans and that solidarity and unity is where we should be today because we have more in common than we have differences.”

Senator Turner asked everyone to recognize those who died on September 11, 2001—about 2,977 people—to acknowledge their families and friends, and to recognize that the list of victims 9/11 continues to grow, as every year more and more of the first responders die from the injuries they suffered that day. She acknowledged the suffering of the families for whom this anniversary brings back painful memories. She asked for a moment of silence for those families, those victims, and those friends.

The Senator welcomed everyone again and said how proud she was that the Commission was meeting in her district. She encouraged participants to enjoy themselves and keep doing what they are doing, because without them, she said, we would not have clean water to drink. “You sustain our rivers—our water supply—and provide our families with recreational opportunities. At one time we could not use our rivers because they were polluted. But now families and the children are enjoying the use of those vital rivers that you maintain for all of us to enjoy.” She closed by thanking her listeners and assuring them that the meeting would be successful.

Mr. Kosinski took up the business meeting agenda and explained that once the business was completed, and as time allowed, he would ask Mr. Tambini to moderate an Open Public Comment session.

Minutes. The Minutes of the Commission’s regularly scheduled Business Meeting of June 12, 2019 were unanimously approved.

Announcements. Ms. Bush announced the following advisory committee meetings. She noted that additional information, including contact information for committee staff liaisons, could be found on the Commission's website, www.drbc.gov. Ms. Bush said that unless she noted otherwise, all advisory committee meetings would be held in the Goddard Conference Room at the Commission's office building in West Trenton, NJ.

- *DRBC Subcommittee on Ecological Flows (SEF).* The SEF, a subcommittee of the Regulated Flow Advisory Committee (RFAC), will meet on Tuesday, September 17, 2019 from 10:00 a.m. to 3:30 p.m. at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA.
- *DRBC Water Quality Advisory Committee (WQAC).* The WQAC will meet on Monday, September 30 at 9:30 a.m., Thursday, November 14 at 1:30 p.m., and finally for the year, on Thursday, December 5 at 1:00 p.m. The latter will be a joint meeting of the WQAC and the Eutrophication Model Expert Panel.
- *DRBC Water Management Advisory Committee (WMAC).* The WMAC will meet on Tuesday, October 22 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 past 90 days was above normal, ranging from 8.3 to 23.2 inches. The larger amounts of precipitation occurred in the western part of the Basin.

Based on historical data, September 10, 2019 marked the peak of hurricane season. In 2004 Hurricane Ivan caused flooding in the Delaware River Basin. Soils were already saturated with run-off from Tropical Storm Frances. The Poconos and Catskills saw rainfall at rates of up to 5 inches in 12 hours. Parts of the Basin experienced 7-8 inches of rainfall. However, flows were high only in the main stem portion of the river.

In 2019, parts of the Basin experienced flooding at different times. In January flooding occurred above Cannonsville Reservoir in Walton, New York on the West Branch Delaware River, and near Norristown, Pennsylvania along the Schuylkill River. In April, flooding occurred in the Beaver Kill at Cooks Falls, New York, a tributary of the East Branch Delaware River. Between May and September, additional flooding was experienced in several Pennsylvania tributaries, including along the Neshaminy Creek in Langhorne and along the Brandywine Creek and Christina River in Chadds Ford. In New Jersey, the North Branch Rancocas Creek in Pemberton saw flooding; and by mid-July, flooding had occurred in Pennsylvania along Perkiomen Creek, Graterford; Neshaminy Creek, Langhorne; and the Schuylkill River at Pottstown, Norristown and Philadelphia.

Ms. Shallcross displayed hydrographs—plots of daily flow over the past year—for the Delaware River at Montague and Trenton, and the Schuylkill River at Philadelphia. Streamflows at many locations in the Basin as of the meeting date were above normal to well-above normal range. Ms. Shallcross explained that releases are made from the New York City Delaware Basin reservoirs to meet a flow objective at Montague that ensures sufficient streamflow in the main stem

downstream. Since the beginning of August, 8.6 million gallons (mg) had been used to maintain flow at Montague. Ms. Shallcross presented a figure showing the sources that contribute to streamflow at Montague, which include instream flow, runoff, hydropower releases, and releases from the New York City reservoirs.

Releases from the City's reservoirs are also made for thermal mitigation to protect the large trout fishery in the Upper Basin. Trout fare best at water temperatures below 75 degrees. Thermal releases during July kept the average daily water temperature below that level. In spite of the releases, the maximum temperature on some days exceeded 75°F, which is not healthy for the fish.

Just as releases from the New York City reservoirs in the Upper Basin are made to meet a flow objective of approximately 1,190 gallons per day (gpd) at Montague, releases from the Beltzville and Blue Marsh reservoirs in the Lower Basin are made to meet a flow objective of about 1,940 gpd—3,000 cubic feet per second (cfs)—at Trenton.

Ms. Shallcross presented a summary of storage in the Basin's largest reservoirs as of September 11. The combined storage of the three New York City reservoirs—Neversink, Pepacton and Cannonsville—was equal to about 74 percent of their combined capacity. Beltzville and Blue Marsh were at 100 percent of capacity. Ms. Shallcross also pointed out F.E. Walter, a flood control and recreational reservoir, from which releases may be made during extreme dry periods to support flows at Trenton, and Lake Wallenpaupack, a hydropower reservoir that was nearly full. When storage at Wallenpaupack becomes very high, Ms. Shallcross explained, the reservoir's gates are lowered to reduce the water elevation and avoid overtopping of the dam.

Drought status for the purpose of reservoir operating plans is determined using the total combined storage of the New York City Delaware River Basin reservoirs. Displaying a graph, Ms. Shallcross explained that when storage in these reservoirs drops below the level corresponding to a yellow line on the graph, the major reservoirs are in "Drought Watch" operations. Combined storage on September 11, 2019 was at 73.6 percent of normal for this time of year. A Drought Watch last occurred in 2016; however, a similar decline in storage levels appeared to be underway.

One of the reasons releases are made for Trenton is to repel the migration of salty ocean water too far upstream within the Delaware Estuary. The "salt front" is the location of the 250 milligrams per liter (mg/l) chloride concentration. This chloride concentration is of concern because it is a secondary drinking water standard that can affect the ability of different water utilities to treat the water. At 250 mg/l, water begins to have a salty taste. Currently, the salt front is at River Mile (RM) 72, near the Christina River. Normally for this time of year, it would be slightly farther upstream, at RM 76.

Groundwater level constitutes another indicator of hydrologic conditions. Currently, 14 different indicator wells are observed. In the Upper Basin, because of normal or slightly less than normal rainfall, the groundwater observation well levels were normal for this time of year. Upper Basin water levels were well above normal for most of the year but were now declining toward the normal range. In the Middle-Upper Basin, the Monroe County, Pennsylvania observation well displayed levels above normal, but lower than those for the Upper Basin and likewise moving into the normal range. Similarly, in the Middle-Lower Basin, the Bucks County, Pennsylvania observation well showed groundwater levels of above normal for most of the year to date, but

moving into the normal range. Finally, the observation well in the Lower Basin in Cumberland County, New Jersey, registered water levels well above normal for the year, remaining high.

Displaying the U.S. Seasonal Drought Outlook map, Ms. Shallcross noted that the forecast for this region predicts no development of drought conditions.

She noted that the 7-day precipitation forecast indicated the possibility of some rain. In the Upper and Middle Basin, precipitation of between 0.25 and 0.50 inches was expected, while in the Lower Basin, more than 0.50 to 0.75 inches of precipitation was expected. Compared to normal conditions, Ms. Shallcross observed, the Basin will be a little dry.

Ms. Shallcross displayed a one-month outlook map for temperature and precipitation, showing normal temperatures and a greater than 50 percent chance of above-normal precipitation for the month. A map from the Climate Prediction Center indicated dry conditions for the next month. The three-month outlook map showed that temperatures were expected to remain warm for the next three months.

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

- *New Jersey Senator Shirley K. Turner (D – 15th District).* Mr. Tambini thanked Senator Turner for her words of reflection earlier and for welcoming the Commission to her district.
- *DRBC 2019 State of the Basin Report.* On July 25 the Commission released its 2019 State of the Basin Report, the third such report since 2004, which is available on the DRBC website. Mr. Tambini noted that although a summary version is provided, the full version is not terribly long and is recommended. The report benchmarks the condition of the Basin's water resources and tracks progress toward achieving key DRBC water resource management goals, including, importantly, maintaining an adequate supply of suitable quality water to meet the region's diverse needs. Overall, the majority of indicators received a good or very good rating, and the reported trends were predominately stable or improving. Lower ratings were assigned some indicators, including for example, those tracking impervious cover, salinity, Atlantic sturgeon and invasive species. These show us where we need more focus collectively as a basin community. Mr. Tambini said staff would present highlights of the report at the annual conference of the Water Resources Association of the Delaware River Basin on November 6 at the EcoComplex in Bordentown, New Jersey.

When DRBC began work on the State of the Basin Report earlier in 2019, Mr. Tambini said, staff wanted to expand the effort to include a variety of perspectives from many people and organizations that live, work and play within the Basin, including non-governmental organizations, water purveyors, government organizations and as many as possible of the Basin's eight million residents. They introduced "Our Shared Waters," this summer and fall with our partners at various events throughout the Basin. Mr. Tambini urged those interested to stop by, say hello and pick up materials from DRBC staff at such events and ask how they might participate. He also suggested people visit DRBC's *Our Shared Waters* page on Facebook, which has about 1,400 followers, and noted that business cards for the project were available on the registration table. The *Our Shared Waters* page will feature

great work being done by partners all around the Basin and will include opportunities for individuals to comment directly about the state of the Basin. Mr. Tambini said that through *Our Shared Waters*, the perspectives of multiple individuals and organizations would complement DRBC's State of the Basin Report, providing a more complete and comprehensive view of the Basin.

- *DRBC Advisory Committee on Climate Change.* Mr. Tambini announced that at the November hearing, the public would have an opportunity to comment on a resolution forming a new advisory committee to inform the Commission on topics related to climate change.
- *DRBC Summer 2019 Photo Contest.* New Jersey Assemblywoman Carol A. Murphy, (D – 7th District – Hunterdon/Essex/Morris/Somerset/Union/Warren), herself an amateur photographer, graciously agreed to serve as a guest judge for DRBC's Summer Photo Contest. Assemblywoman Murphy serves the constituents of New Jersey's 7th District alongside Senator Troy Singleton and Assemblyman Rob Conway. Although serving her first term as an elected official, the Assemblywoman worked in public service for years as an aide, successively, to Assemblywoman Gabriella Mosquera and Senator Linda Greenstein. She currently serves as vice-chair of the Judiciary Committee and as a member of the Budget and Financial Institutions and Insurance committees. Mr. Tambini welcomed Assemblywoman Carol Murphy to speak about the DRBC Summer 2019 photo contest and present the winners.

Assemblywoman Murphy thanked the Commission for inviting her. She said she lives on the Rancocas Creek, a choice she considers one of the best she has ever made. In observance of 9/11, she noted that during the preceding weeks she had had the opportunity to recognize the contributions of first responders, EMS, EMT personnel and firefighters and their families in her district. She thanked LTC Park for his service to the United States, and acknowledged all service members and their families for their dedication and sacrifices during a challenging time for our country.

Assemblywoman Murphy said that as an amateur photographer, one of her biggest passions is seeing diverse landscapes. She said that when the judges looked at the top two entries, two things came to mind: uniqueness and what the images conveyed about the photographers' thoughts. She noted that the first prize photo, by Carl LaVO, was taken somewhere in the Lambertville area. Upon first seeing this image, she recalled wondering how Mr. LaVo managed to place chairs at the base of the waterfall. She appreciated that his photo captured something unusual that evokes curiosity and conversation, and said she was disappointed that Mr. LaVo was unable to accept his prize in person, because she would have liked to ask him how he made the picture.

The second place photograph was taken by DRBC staffer Scott Jedruziak at Crosswicks Creek. Assemblywoman Murphy said the judges liked this shot because it captured a change in the weather, the light, and the entire atmosphere. She said that both photos in her view capture what DRBC represents—a changing climate, a changing environment, and striving to ensure the sustainability of our water resources. She invited the audience to join her in applauding the two winners of the photo contest. Because both images were

taken in New Jersey, she also presented New Jersey Senate resolutions honoring the photographers. She expressed her hope that the photo contest will continue, highlighting how people feel about the Basin's water resources and our environment.

Mr. Tambini thanked Assemblywoman Murphy, and the two posed for a snapshot as the Assemblywoman and the winning photos received a round of applause.

Recommendation by the Subcommittee on Ecological Flows (SEF) Related to the Flexible Flow Management Program (FFMP) Thermal Mitigation Guidelines. Mr. Tambini noted that DRBC's advisory committees are extremely valuable to the Commission. The newest such committee, authorized in 2018, is a reinstated form of the Subcommittee on Ecological Flows (SEF), which the Regulated Flow Advisory Committee (RFAC) has charged with reviewing guidelines for use of a thermal mitigation bank and a rapid change mitigation bank, both created in accordance with the Flexible Flow Management Program of 2017 ("FFMP"). Although RFAC's chair, Steve Domber of the New Jersey Department of Environmental Protection, was not present as planned to update the Commission on the SEF's work, Jennifer Garigliano, Chief of Staff of the Bureau of Water Supply, New York City Department of Environmental Protection, stepped in to provide the update. Mr. Tambini thanked Ms. Garigliano for providing a report on little notice.

The RFAC is comprised of the members of the 1954 U.S. Supreme Court Decree (the "Decree")—Delaware, New Jersey, New York City, New York State, and Pennsylvania ("Decree Parties")—along with the DRBC, Philadelphia Water Department and Office of the Delaware River Master. Its purpose is on an ongoing basis to evaluate the adequacy of the water supply resources of the Delaware River Basin to meet the needs of all users. In October 2017, the Decree Parties signed the 2017 FFMP, which governs releases from the New York City reservoirs into the Delaware River. Among other things, the FFMP created two banks of water within the Excess Release Quantity (ERQ) established by the Decree. Twenty-five hundred (2,500) cubic feet per second (cfs) of water are banked for thermal mitigation to relieve temperature stress on aquatic habitat, and 1,000 cfs days are assigned to a rapid flow change bank to mitigate the sometimes abrupt changes in flow that can occur when in accordance with the terms of the Decree and FFMP, the Office of the Delaware River Master directs releases from the New York City reservoirs to meet a flow objective.

After the Commission in March of 2018 directed the RFAC by Resolution No. 2018-2 to reestablish the SEF, RFAC appointed 13 members to this subcommittee. The members consist of "reserved members," designated by the Decree Parties, DRBC, Philadelphia Water Department, and Office of the Delaware River Master, and "non-reserved" members representing non-governmental organizations, academia and other stakeholder groups. The mix of expertise is wide. In accordance with the RFAC's charge, the SEF met seven times over the course of the past year to discuss guidelines for implementation of the thermal mitigation and rapid flow change banks.

SEF's investigation of the thermal bank protocol relied on stream analysis, simulations, and statistical probability ratings, as well as the development of a thermal dynamic heat flux model. After reviewing and analyzing several alternative management protocols, SEF

members conducted a detailed analysis of two management alternatives—the Interim Protocol and the “Simple 75” Protocol.

The Interim Protocol has two phases—a phase 1 during which a mitigation release is made when water temperature reaches 75°F at Lordville during a single day, and a phase 2 during which a mitigation release is triggered when water temperature reaches 75°F at Lordville during two consecutive days or 77°F at Lordville during a single day. The amount of water in the thermal bank is set at 2,500 CFS days beginning on June 1, and any unreleased balance is reserved through May 31 of the following calendar year. The amount of the thermal bank that can be expended during phase 1 is limited to 1,250 CFS days.

Under the Simple 75 Protocol, a release from the bank is made after water temperature reaches 75°F at Lordville on two successive days.

On June 9, 2019 RFAC held a special meeting to receive and consider the SEF’s recommendations. Daryl Pierce of the Pennsylvania Fish and Boat Commission (PFBC) on that occasion gave an overview of the thermal bank protocols. The SEF recommended that the Simple 75 Protocol be adopted and that further analysis be conducted to determine whether improvements to this protocol could be made. RFAC agreed to take the Simple 75 Protocol back to the Decree Parties, who adopted and implemented it several times during the summer of 2019.

The SEF also considered the capability of the thermal bank to prevent the average water temperatures at Lordville from exceeding 72°F over a 24-hour period. An evaluation of other more protective triggers focused on the adequacy of a thermal mitigation bank of 2,500 cfs days to protect the upper main stem Delaware River in a manner consistent with the goals identified in the FFMP. To perform such an evaluation, SEF proposed to develop and evaluate thermal dynamic models that would be complementary to the statistical probability model it was already using in its evaluation.

Over the course of the year, SEF focused heavily on the thermal mitigation bank and did not make as much progress in evaluating the rapid flow change bank. RFAC agreed to recommend that the Decree Parties continue to utilize this bank in accordance with interim guidance that provides for incremental flow change steps when large decreases or increases in releases from the City reservoirs are needed. Ms. Garigliano noted that the rapid flow change bank had not yet been used during the water year running from June 1, 2019 through May 31, 2020. She added that the period during which releases above those required for conservation typically may be required was just beginning, such that use of the bank might yet occur. SEF’s priority for the next calendar year will be further evaluation of protocols for use of the rapid flow change bank.

The next SEF meeting is scheduled for Tuesday, September 17, 2019 at the Lake Wallenpaupack Environmental Learning Center. The SEF is expected to provide RFAC with further recommendations by April 15, 2020 for use of the two banks of ERQ water. The RFAC will consider SEF’s recommendations and make any further recommendations to the Decree Parties next spring for implementation during the 2020-21 water year. Ms. Garigliano thanked the Commissioners for their attention.

Mr. Tambini thanked Ms. Garigliano again and commented that her report provided a glimpse of the complexity involved in balancing competing demands for water within the Basin and the important role of the Commission's technical advisory committees in responding to such challenges.

General Counsel Report.

Wayne Land and Mineral Group v. DRBC. Mr. Warren reported that the Commission continues to have pending in litigation the case *Wayne Land and Mineral Group v. the DRBC*, in which plaintiff WLMG is challenging DRBC's project review authority over the plaintiff's planned high-volume, hydraulic fracturing project. The cut-off date for fact discovery in this matter was September 9, 2019, and Mr. Warren said that only a few fact discovery issues remained. The latter included a motion by WLMG to obtain copies of certain documents that DRBC asserted are protected by the deliberative process privilege. That issue had been briefed before Judge Mariani, and the parties were awaiting his decision. In addition, a deposition of one of WLMG's investors was scheduled for Monday, September 9, but neither the investor nor WLMG's counsel appeared. That matter also remained to be worked out, either cooperatively or by asking the judge to intervene. Finally, with respect to the deposition of a "Rule 30(b)(6)" witness—a witness designated by a party to speak on the party's behalf—the witness designated and produced by WLMG for several subject matter categories had done no investigation and was uninformed as to most of the categories. This issue likewise will be resolved by the parties cooperatively or by asking the judge to intervene. Upon the September 9 fact discovery cut-off, the expert phase of discovery began. During this phase, in early October each of the parties—DRBC, DRN (which is an intervenor) and the plaintiff—may produce expert reports. A period of time will then be provided for the development of rebuttal expert reports, which will likely be followed by depositions of the experts. Mr. Warren promised to keep the Commissioners informed as the case progresses.

Requests for Hearing on Docket D-2017-009-2. Warren next reported that the Commission had received two requests for an administrative hearing to review the Commission's approval of Docket D-2017-009-2 issued on June 12, 2019 to Delaware River Partners, LLC for the project known as Gibbstown Logistics Center Dock 2. The first request was filed on July 12, 2019 by the Delaware Riverkeeper Network and Maya van Rossum (collectively "DRN"). This was a timely request under DRBC's Rules of Practice and Procedure. The second request was filed by Damascus Citizens for Sustainability ("DCS") on August 7, 2019 and was untimely under the rules. DRBC's regulations provide that an untimely request is deemed denied unless the Commission by unanimous vote otherwise directs. The rules identify three reasons for the Commission to grant a timely request for hearing: (1) an adequate record is not available; (2) the Executive Director or staff decision that was made requires further action; or (3) the Commission has found that an administrative hearing is necessary or desirable. Mr. Warren addressed the two requests separately. Regarding the untimely request by DCS, he recommended that the Commission take no action, as he saw no basis for the untimeliness and thus no reason to recommend that the Commission proceed otherwise. No action would have the effect of denying the request. As to the request by DRN, he advised that an administrative hearing is desirable under the circumstances of this specific docket approval and that the Commission grant the hearing request on this ground.

Mr. Warren noted that granting a request for hearing does not mean that the Commission believes its initial decision was incorrect. Rather, granting the hearing affords the appellants an opportunity to show by means of the process set forth in DRBC's rules, that the Commission's decision should be changed. Mr. Warren next recommended the following motion for the Commissioners' consideration, noting that if the Chair so chose, he could request that the motion be made, seconded, discussed and voted upon:

that with respect to the July 12, 2019 request of the Delaware Riverkeeper Network and Maya van Rossum for an administrative hearing to review the Commission's approval of Docket D-2017-009-2 issued on June 12, 2019 to Delaware River Partners, LLC for the Gibbstown Logistics Center Dock 2:

1. The Commission finds that an administrative hearing is desirable under the circumstances of this specific docket approval.
2. The request for an administrative hearing is granted.
3. The Commission's Executive Director is authorized to take appropriate steps consistent with the Rules of Practice and Procedure to facilitate the hearing process and to assist the Chair of the Commission designate the Hearing Officer.

Mr. Kosinski thanked Mr. Warren and requested such a motion. Mr. Ashby so moved and LTC Park offered a second. In the absence of any requests for discussion, the chair called for a vote, and the motion was unanimously approved.

Settlement in Lieu of Penalty. Ms. Bush said that in accordance with the Compact, the staff presents settlement agreements in lieu of penalties for the violation of a rule, regulation or order of the Commission that requires the Commission's approval. If the Executive Director determines that settlement by agreement in lieu of a penalty is in the best interest of the Commission, then in accordance with Resolution No. 2015-3 he may execute any such agreement involving a payment of \$10,000 or less. Otherwise, he may execute the agreement with the Commission's authorization. Accordingly, Ms. Bush explained, the Commission's authorization was requested for a settlement resolving alleged violations of Docket D-2015-018-1 issued to Energy Transfer (formerly known as Sunoco Pipeline, L.P.) on December 9, 2015 for its project known as "Mariner East 2" or the "Pennsylvania Pipeline Project." She explained that following an internal audit, the docket holder in April 2019 reported to the DRBC that it had violated the condition of its docket concerning discharge of hydrostatic test water and had failed to identify and report this violation promptly as the docket requires. To the knowledge of the staff, Ms. Bush said, no adverse impact to water quality resulted. The docket holder acknowledged its obligation to comply with the conditions of the docket on a going-forward basis, and agreed to pay a settlement sum of approximately \$59,000. Ms. Bush asked the Commissioners to authorize the Executive Director to enter into the draft settlement agreement with Energy Transfer.

Mr. Kosinski requested the motion articulated by Ms. Bush. Ms. Atkinson offered the motion and Mr. Hoffman seconded it. Hearing no discussion or comments, Mr. Kosinski requested a vote,

and the motion authorizing the Executive Director to enter into a settlement agreement with Energy Transfer was unanimously approved.

A Resolution Authorizing the Executive Director to Enter into Contracts for Analytical Services Relating to the Control of Toxic Substances in the Delaware River and Bay. Mr. Yagecic explained that this proposed resolution would authorize the Executive Director to enter into contracts for analytical services specifically for toxic substances. The resolution was presented at the Commission's public hearing on August 14, 2019 and staff received no comments. The contracts that would result from this resolution will allow DRBC to continue the important work in monitoring for toxic substances including PCBs, polyfluorinated compounds like PFAS, pharmaceuticals and personal care products and other emergent contaminants both in response to DRBC's water resources program and in support of the basin states. The resulting contract would be for an initial period of three years with an option for two additional years. The Commission would engage the services under this contract via task orders and the primary funding source would be the Section 106 grant under the Clean Water Act. The total cost shall not exceed the Section 106 grant amount allocated to it unless other funds are awarded or allocated by the Commission. On July 11, 2019 staff issued a request for proposal and quotation for these services, confident that a qualified vendor is available and that DRBC would meet the competitive bidding requirements. Staff recommends approval for this resolution.

Hearing no comments or questions, Mr. Kosinski requested a motion to approve the resolution for entering into contracts as presented. LTC Park so moved, Ms. Atkinson seconded his motion, and without further discussion, Resolution No. 2019-6, adopting the Resolution authorizing the Executive Director to enter into contracts for analytical services relating to the control of toxic substances in the Delaware River and Bay was unanimously approved.

A Resolution Authorizing the Executive Director to Enter into a Contract with Temple University's Water and Environmental Technology (WET) Center for Analysis of Delaware River Estuary Water Samples for Microplastics. Mr. Yagecic explained that the proposed resolution would authorize the Executive Director to enter into a contract with Temple University's Water and Environmental Technology (WET) Center for the analysis of microplastics in Delaware River Estuary water samples. Staff received no oral or written comments on the resolution during its public hearing on August 14, 2019 or during the comment period. The National Oceanic and Atmospheric Administration (NOAA) has indicated that plastic is the most prevalent pollution type in our oceans. Although other organizations are investigating plastics in the upper portion of the basin and in Delaware Bay, Mr. Yagecic said, a gap in information exists in the most urbanized portion of the basin—the Estuary—where the potential for microplastics pollution is high. DRBC applied for and received a grant from the National Fish and Wildlife Foundation's Delaware Watershed Conservation Fund that would cover the cost of this contract. The contract amount would not exceed \$37,500 unless additional funds are awarded to the Commission or allocated by it for this purpose. Because the analytical process to be performed by Temple's WET Center is specialized, the agreement is exempt from competitive bidding requirements under Article 14.9 of the Compact. Mr. Yagecic recommended approval of the draft resolution.

Mr. Kosinski requested a motion to approve the resolution presented by Mr. Yagecic. Mr. Hoffman so moved, Mr. Ashby seconded his motion, and without further discussion Resolution No. 2019-7 authorizing the Executive Director to enter into a contract with Temple University's Water and

Environmental Technology (WET) Center for analysis of Delaware River Estuary water samples for microplastics was approved by unanimous vote.

Project Review Applications. Mr. Kovach reported that 22 draft dockets were the subjects of a duly noticed public hearing on August 14, 2019 with a written comment period that closed on August 19. Staff received comments on agenda items 11 and 20—Docket D-2000-064 CP-4 for Quakertown Borough, and Docket D-1975-070 CP-2 for the Village of Delhi.

Regarding Quakertown Borough, the Delaware Riverkeeper Network (DRN) submitted comments to the effect that approximately 13 of the Borough's wells had shown contamination by PFNA and PFAS compounds. In response, the Commission staff investigated the matter and determined that even if the 13 wells in which PFNA and PFAS was detected were removed from operation, the Borough would still have available approved allocation of 77.7 million gallons per month (mgm) from other sources to meet a total demand from all sources of 52.8 mgm. Staff is confident that the Borough has sufficient excess allocation to meet its needs, especially since rehabilitation projects planned for some of the wells will improve their yields.

Regarding the Village of Delhi, the Village's renewal application was not supported by a thorough assessment of its ten-year demand. Accordingly, DRBC included an allocation of 21 mgm in the draft renewal docket, 13 mgm less than had been allocated previously. The Village of Delhi, Delaware County Watershed Affairs and SUNY Delhi all submitted comments to the effect that developments planned for the Village required that the previous allocation of 34 mgm be renewed in full. The Village has since provided a more robust and thorough assessment of its ten-year demand, demonstrating that the 34 mgm allocation is warranted. The docket has been modified to approve an overall allocation of 34 mgm.

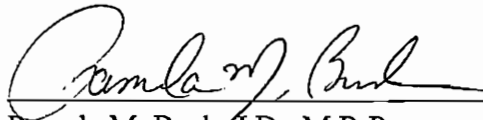
Mr. Kovach reported that at the June 12, 2019 meeting, he had recommended postponement of a decision on Docket D-1999-012 CP-4 for Warrington Township (a subject of the Commission's public hearing on May 15, 2019) to allow the Commission more time to respond to a comment submitted by the Delaware Riverkeeper Network on that project. Mr. Kovach said his staff had since reviewed the matter, which was similar to one raised in connection with Bristol Borough's wastewater treatment discharge during a previous quarter. PFOS and PFOA contamination were detected in wells within the service areas of both facilities, and in both cases, the contamination was ultimately conveyed to the respective wastewater treatment plants. In each instance, DRN proposed that an effluent limitation and monitoring and reporting requirements be placed on the discharge. As it has in the past, staff recommended that no monitoring requirements or effluent limits be imposed piecemeal without an overarching strategy to ensure uniform treatment of all dischargers and to ensure DRBC's efforts complement those of DRBC's member state and federal agencies. Accordingly, Mr. Kovach recommended that the Commissioners approved the draft dockets comprising items 1 through 23 on the agenda.

Mr. Kosinski thanked Mr. Kovach and requested a motion to approve the 23 dockets identified as items 1 through 23 on the meeting agenda. Mr. Ashby so moved, Ms. Atkinson seconded his motion, and without any further comment, the draft dockets comprising items 1 through 23 of the meeting agenda were approved by unanimous vote.

Adjournment. Mr. Kosinski 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. Hoffman so moved, Ms. Atkinson seconded his motion, and the meeting was adjourned by unanimous vote at 11:41 a.m.

Audio Recording. Audio recordings of the public hearings of May 15 and August 14 and the business meeting of September 11, 2019 are on file with the Commission Secretary. A description of each of the applications for dockets approved during the Business Meeting of September 11, 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.



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 SEPTEMBER 11, 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, 22 of the 23 docket decisions approved by the Commission on September 11, 2019 were subjects of a duly noticed public hearing on August 14, 2019. One—Docket D-1999-012 CP-4 for Warrington Township—was the subject of a public hearing on May 15, 2019. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on September 11 are presented below.

A. Renewals with No Substantive Changes. (All subjects of a public hearing on August 14, 2019).

1. Bridgeport Borough, D-1970-081 CP-4. An application to renew the approval of the applicant's existing 0.9 million gallons per day (mgd) Wastewater Treatment Plant

(WWTP) and its discharge. The WWTP will continue to discharge treated wastewater effluent to the Schuylkill River at River Mile 92.5 - 22.6 (Delaware River - Schuylkill River) in Upper Merion Township, Montgomery County, Pennsylvania.

2. South Coatesville Borough, D-1974-039 CP-6. An application to renew the approval of the applicant's existing 0.5 mgd WWTP and its discharge. The WWTP will continue to discharge to West Branch Brandywine Creek at River Mile 70.7 - 1.5 - 20.0 - 14.3 (Delaware River - Christina River - Brandywine Creek - West Branch Brandywine Creek), in the Borough of South Coatesville, Chester County, Pennsylvania.
3. Ambler Borough, D-1985-026 CP-6. An application to renew the approval of an existing groundwater withdrawal of up to 93 million gallons per month (mgm) to supply the applicant's public water supply distribution system from existing Wells Nos. 2, 4, 6, 7, 8, 9, 11, 12 and 14 and the Whitmarsh Spring Well. The project wells are completed in the Stockton Formation. The requested allocation is not an increase from the previous allocation. The project is located within the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (GWPA) in the Wissahickon Creek Watershed, Borough of Ambler, Montgomery County, Pennsylvania.
4. Central Wayne Regional Authority, D-1986-009 CP-5. An application to renew the approval of the existing 2.2 mgd Honesdale WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Lackawaxen River at River Mile 277.7 - 24.6 (Delaware River - Lackawaxen River) via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, at the border between Honesdale Borough and Texas Township, Wayne County, Pennsylvania.
5. Kutztown Borough, D-1989-039 CP-4. Application to renew the approval of the existing 1.5 mgd Kutztown Borough WWTP and its discharge. The existing WWTP will continue to discharge treated effluent to Sacony Creek at River Mile 92.47 - 86.2 - 2.9 - 5.4 - 2.1 - 7.1 (Delaware River - Schuylkill River - Maiden Creek - Lake Ontelaunee - Maiden Creek - Sacony Creek) via Outfall No. 001, in Maxatawny Township, Berks County, Pennsylvania.
6. Downingtown Municipal Water Authority, D-1989-063 CP-3. An application to modify Docket No. D-1989-063 CP-2 to approve the use of Well No. DPW-1 as a duplicate water supply. Currently the well is permitted to be used only as an emergency/backup supply when the docket holder's existing surface water withdrawal is disrupted, or to blend with surface water during periods of high turbidity following heavy precipitation events, and during occasional releases of water of poor quality from Marsh Creek Reservoir. The system will continue to be supplied by one surface water intake located in the East Branch Brandywine Creek and Well No. DPW-1. No changes in the previously approved groundwater allocation of 44.64 mgm, surface water allocation of 77.5 mgm and total combined source allocation of 77.5 mgm is requested. Well No. DPW-1 is completed in the Ledger Formation within the drainage area of the East Branch Brandywine Creek in Downingtown Borough, Chester County, Pennsylvania.

7. Hamburg Municipal Authority, D-1992-073 CP-5. An application to renew the approval of the existing 1.5 mgd Hamburg WWTP and its discharge. The WWTP will continue to discharge to the Schuylkill River, at River Mile 92.47 - 98.7 (Delaware River - Schuylkill River) in the Borough of Hamburg, Berks County, Pennsylvania.
8. Lower Providence Township Municipal Authority, D-1999-021 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 3.41 mgm to irrigate the applicant's The Club at Shannondell golf course from existing Well No. Egypt Road 1 and Rittenhouse Well No. 2. The project wells are completed in the Stockton Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania GWPA in the Mine Run and Schuylkill River watersheds in Lower Providence Township, Montgomery County, Pennsylvania.
9. The Pines at West Penn, LLC, D-1999-025 CP-3. An application to renew the approval of the existing 0.060 mgd The Pines at West Penn WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) of Lizard Creek at River Mile 183.7 - 38.2 - 15.2 (Delaware River - Lizard Creek - UNT Lizard Creek), via Outfall No. 001, within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in West Penn Township, Schuylkill County, Pennsylvania.
10. Chalfont-New Britain Township Joint Sewage Authority, D-1999-063 CP-4. An application to renew the approval of the existing 4.625 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Neshaminy Creek at River Mile 115.6 - 37.4 (Delaware River - Neshaminy Creek) via Outfall No. 001, in New Britain Township, Bucks County, Pennsylvania.
11. Quakertown Borough, D-2000-064 CP-4. An application to renew the approval of an existing groundwater withdrawal of up to 52.8 mgm to supply the applicant's public water supply system from existing Wells Nos. 7, 8, 9, 10, 11, 12, 13A, 14A, 15A, 17 and 19. The project wells are completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project wells are located in the Commission's designated Southeastern Pennsylvania GWPA in the Tohickon Creek Watershed in the Borough of Quakertown, Bucks County, Pennsylvania.
12. The Upper Hanover Authority, D-2002-010 CP-4. An application to renew the approval of an existing groundwater and surface water withdrawal of up to 58.776 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. RH-2, RH-3, TUHA-1, TUHA-2, TUHA-3 and TUHA-4 and the Kemmerer Spring source. The project wells are completed in the Brunswick Formation, except for Wells Nos. TUHA-1 and TUHA-2, which are completed in the Leithsville Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's Southeastern Pennsylvania GWPA in the Perkiomen and Macoby Creek watersheds in Red Hill Borough, Upper Hanover, Hereford and Upper Milford townships, Montgomery, Berks and Lehigh counties, Pennsylvania.

13. Portland Borough, D-2003-009 CP-5. An application to renew the approval of the existing 0.105 mgd Portland Borough WWTP and its discharge. The WWTP will continue to discharge treated effluent to Delaware River Water Quality Zone 1D at River Mile 206.9, in the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in the Borough of Portland, Northampton County, Pennsylvania.
14. Community Utilities of Pennsylvania, Inc. – Penn Estates, D-2003-036 CP-3. An application to renew the approval to withdraw a total of up to 12.426 mgm of groundwater from existing Wells Nos. 2, 3, 4, 5, 6, 7 and 8 for continued use in the docket holder's public water system. The wells are completed in the Catskill and Trimmers Rock formations in the Lower Brodhead Creek and Lower Pocono Creek watersheds, within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in Stroud Township, Monroe County, Pennsylvania.
15. Camp Ramah in the Poconos, D-2005-030-4. An application to renew the approval of the existing 0.030 mgd Camp Ramah WWTP and its discharge. Treated effluent will continue to be discharged to an UNT of Equinunk Creek at River Mile 322 - 8.5 - 0.5 (Delaware River - Equinunk Creek - UNT Equinunk Creek), via Outfall No. 001, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Buckingham Township, Wayne County, Pennsylvania.
16. White Haven Borough, D-2008-012 CP-2. An application to renew the approval of a groundwater withdrawal of up to 4.189 mgm from existing Wells Nos. 1 and 2 used for bottled water operations. The project wells are completed in the Mauch Chunk Formation and are located in the Linesville Creek Watershed, a tributary of the 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 Foster Township, Luzerne County, Pennsylvania.
17. Lakeview Estates Homeowner's Association, D-2010-032 CP-3. An application to renew the approval of the existing 0.054 mgd Lakeview Estates WWTP and its discharge. The WWTP will continue to discharge to an UNT of the Lehigh River at River Mile 183.7 - 101.3 - 1.2 (Delaware River - Lehigh River - UNT 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 Lehigh Township, Wayne County, Pennsylvania.
18. Pennsylvania Department of Conservation and Natural Resources (Beltzville), D-2013-008 CP-2. An application to renew the approval of the existing 0.025 mgd Beltzville State Park WWTP and its discharge. The WWTP will continue to discharge treated effluent to Pohopoco Creek, a tributary of the Lehigh River, at River Mile 183.66 - 40.8 - 4.9 (Delaware River - Lehigh River - Pohopoco Creek) via Outfall No. 001, in Franklin Township, Carbon County, Pennsylvania, 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.

19. Pennsylvania Department of Conservation and Natural Resources (Washington Crossing), D-2015-007 CP-2. An application to renew the approval of the applicant's existing 0.025 mgd Washington Crossing Historic Park Upper WWTP and its discharge. The WWTP will continue to discharge treated effluent to Delaware River Water Quality Zone 1E at River Mile 146.6, in the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Solebury Township, Bucks County, Pennsylvania.

B. Renewals with Substantive Changes. (All subjects of a public hearing on August 14, 2019).

20. Village of Delhi, D-1975-070 CP-2. An application to renew the approval of an allocation of groundwater from existing Wells Nos. 1 and 2, and to approve the withdrawals from new Well No. 3 for public water supply. The docket approves a total system allocation of 15.5 mgm, based on the projected demands. This is a reduction from the previously approved allocation of 34 million gallons per 30 days (mg/30 days). The project wells are screened in unconsolidated valley fill deposits in the West Branch Delaware Watershed within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in the Village of Delhi, Delaware County, New York.

21. Pike County Environmental Enterprises, LLC, D-1989-082-4. An application to approve an upgrade to the docket holder's existing 0.049 mgd WWTP and its discharge. The proposed upgrade consists of repairing and modifying an existing treatment lagoon with a biological nutrient removal (BNR) treatment system, and appurtenant improvements. The repairs and modifications are intended to return the existing WWTP treatment system to its original treatment design and capacity. The WWTP will continue to discharge treated effluent to Delaware River Water Quality Zone 1B at River Mile 256.5 in the section of the non-tidal Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, via Outfall No. 001 in Westfall Township, Pike County, Pennsylvania.

C. New Projects. Projects not previously reviewed by the Commission. (Subject of a public hearing on August 14, 2019).

22. Camp Morasha, D-2018-005-1. An application to approve the existing 0.045 mgd Camp Morasha WWTP and its discharge. The WWTP will continue to discharge treated effluent to an UNT of Equinunk Creek at River Mile 321.9 - 7.6 - 1.9 (Delaware River - Equinunk Creek - UNT Equinunk Creek), within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which the Commission has classified as Special Protection Waters, in Buckingham and Preston townships, Wayne County, Pennsylvania.

A. *Renewal with No Substantive Changes. (Subject of a public hearing on May 15, 2019 as hearing item 11).*

23. Warrington Township, D-1999-012 CP-4. An application to renew the approval of the existing 0.33 mgd Tradesville WWTP and its discharge. The WWTP will continue to discharge treated effluent to Mill Creek at River Mile 115.6 - 36.4 - 1.5 (Delaware River - Neshaminy Creek - Mill Creek) in Warrington Township, Bucks County, Pennsylvania.
