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Correspondence Text

The proposed regulatory process is exactly backwards. The regulations superimpose standards on the states to be enforced by DRBC staff who are completely inexperienced with regulating oil and gas. It should be exactly the opposite, with the states in charge and the DRBC serving as an interested agency to suggest higher or different standards that should be considered by the states prior to permitting individual wells. This would put experienced regulators in charge, allow a meaningful DRBC role and provide a basis for DRBC appeals of decisions. It would deliver certainty without compromising standards and ensure competent enforcement by knowledgeable staff. It would require only simple agreements between the DRBC and states. It would avoid "one-size-fits-all" standards and redundant pre-construction reviews of well pads. We need regulations that complement the states, rather than interfere with what is already working. Section 7.5, at a minimum, needs to be completely deleted.

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DRBC regulation of any water use for gas, regardless of amount, is discriminatory and works against the compelling economic interests of the Upper Delaware region. The amount of water use involved in gas drilling is small compared to other uses (e.g., golf courses, car washes, power generation or big city commercial uses). Reducing the regulatory threshold from the normal 100,000 gpd to any amount of water is not supported by the data. The DRBC's assertion that normal thresholds do not adequately protect water resources and its suggestion other uses don't consume water in a like manner are both disingenuous. Other users such as power plants, consume far greater quantities of water. Moreover, if water quality and safety are already heavily regulated by the states, and water allocation is not the issue they would have it be, exactly why is it we need the DRBC? Revise your regulations to defer to the states and delete Section 7.5 in its entirety.

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Correspondence Text

The draft regulations incorrectly construe the task of the DRBC as being limited to the narrow goal of protecting water quality, as if this were all there was to its job. The page 3 statement of purpose doesn't even hint at the need to allocate water resources, let alone address the economic side of the DRBC mission, which is clearly articulated in Part I of the Compact. That Compact requires you to address water needs related to "employment, industry, and economic development" of our region. Yet, the regulations ignore the economic development side of the equation and maintain the pretense water quality is all there is. Statements of purpose need to be amended to indicate the primary function of the regulations is allocation of water resources for the development of natural gas resources, as a matter of economic development, while preserving water quality for other uses. Section 7.5 also needs to be deleted.

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Well pad standards duplicate state regulations and are unnecessary. Moreover, proposed standards are completely unrealistic - particularly the 500 feet setback from water bodies and wetlands. A typical 5-acre well pad would be 467 feet squared in size and a 500 feet buffer around such a pad would require roughly a 40-50 acre site that is free of any water bodies or wetlands. While this might sound reasonable, the definition of water body encompasses seasonal and intermittent depressions, channels, ditches and "similar drainageways," as well as all wetlands. There are virtually no areas in the Upper Delaware region where 40-50 contiguous acres of land lacking these features can be found. No existing well sites could meet the standard due to the nearby presence of small ponds, streams, ditches, terraces or wetlands. These standards would prevent all Approvals By Rule and, therefore, stop all drilling. Revisions are needed to defer to the states and Section 7.5 needs to be wholly deleted.

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The variance procedure should be for exceptions and not the rule. The flawed standards found in Section 7.5 ensure all power is discretionary and in the hands of the Executive Director and should be completely deleted. This section gives the Executive Director unprecedented power to impose additional conditions in all instances. This is because there are NO instances, under these regulations, that will not require variances. This is a recipe for bureaucratic abuse. Additionally, the Approval By Rule provisions on page 55, specifically sub-section (6), require the setbacks to be met. Therefore, Approval by Rule will not be available as an option. It is nothing more than a mirage. Without Approval By Rule, there will be no drilling, because no bonding or drilling company will sign on for what is a completely open-ended process. The DRBC needs to reduce discretion and ensure Approval By Rule is possible by deferring to the states on well pad standards and deleting Section 7.5.

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Section 7.5 ignores the needs of upper basin residents and should be completely deleted. Sub-section (a)(1) articulates the needs of those who live outside the basin, but completely excludes any mention of our needs, in the Upper Delaware region, to be able to develop our resources. Instead, we are viewed as nothing more than "source watersheds" for the benefit of downstream and out-of-basin waters users - source watersheds that cannot be disturbed. The "sparsely populated" explanation on the top of page 36 says it all - our future doesn't matter because there aren't many of us. Where is the balance? Where is the consideration of our needs? These regulations must be revised to recognize our needs and they must be reasonable. This version is unreasonable and tries to supersede state regulations that are already working. Section 7.5 must be deleted.

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Section 7.5 asserts, with no evidence, that well pads "may have a substantial impact on the water resources of the basin" and should be deleted altogether. How can this be, if the amount of disturbance is limited to a mere 5-6 acres out of 1,280 acres in a production unit? How can this be when both states already impose some of the toughest stormwater management rules in the nation? How can this be when our forested land has been steadily growing over the last half-century? There is simply no basis for a statement that well pads could have a substantial impact on water resources of the basin. There is no need for separate DRBC well pad standards and the regulations should be revised accordingly, with Section 7.5 completely deleted.

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If the states are to implement Section 7.5, as suggested by these regulations, they would be unnecessary because there are very few items that are not ALREADY regulated by the states. Section 7.5 should, therefore, be completely deleted. Additionally, those matters that aren't already regulated by the states relate to land use questions, which have always been a state matter. Also, the states already regulate floodplain development and do natural diversity searches. There should be no mention of either in these regulations. What are we doing here? Why are creating a new unnecessary bureaucracy? These regulations should be stripped of all well pad standards and simply defer to the states on these issues, with Section 7.5 completely deleted.

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Correspondence Text

The entire purpose of Section 7.5 is to insert the camel's nose under the tent with respect to land use, under the ruse that well pads are something that need to be further regulated, when they are already heavily regulated. Section 7.5 should, therefore, be wholly deleted. The emphasis, on page 51, on "constraints analysis" and mapping of leaseholds that are constantly changing is further indication of this, as is the statement on page 7 that removes Section 7.5 provisions from state administration, in direct contrast to earlier suggestions. These regulations would set the DRBC up as a super-agency to regulate land use and supersede state environmental regulations. We cannot have still another agency deciding matters of land use in the Upper Delaware region. Section 7.5, therefore, should simply be deleted.

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The regulations have been fashioned to serve too many interests at once and are not only redundant with state regulations, but also internally so. Section 7.5 is a particular problem and should be completely deleted. The regulations are not clear and the procedures overlap and are intertwined to such a degree they are sometimes incomprehensible. They are naive in supposing natural gas development is a static rather than dynamic process. They make little allowance for evolution of technology. They establish arbitrary standards and requirements with no foundation in science or industry best practices. They are fee-driven in many places. They are impractical in others. They do not achieve the proper balance between objective standards and discretionary review authority. They include no duty on the part of the DRBC to act in a reasonable time frame. They set the stage for endless controversy and should be revised to defer to the states and delete Section 7.5.

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There is far too much emphasis on pollution in these regulations, as if it was a given, when it is anything but. Page 4 includes meaningless buzz words such as "sustainable manner" that have no place in this document. Sub-section (1) perpetuates the myth that protection of water quality is the only foundation for natural gas standards, the only part to water resource management. Finally, what is the point of sub-section (2), which suggests water resource management is matter of linking to the the "management of other resources" and recognition of "social and institutional systems"? Such drivel should be removed. It illustrates the utter incompetence of the DRBC staff in dealing with natural gas regulation, yet the agency wants to be in charge. The regulations should be revised these to defer to the states, which have demonstrated competence of several decades, and completely delete Section 7.5.

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Correspondence Text

The language of these regulations is far too vague and sets the stage for endless future regulation. Sub-section (3) on page 5, for example, talks about "improving the conditions of water resources." What does this mean? It appears to beg for more back door land use regulation by the DRBC. Sub-section (4) extols the importance of protecting "instream living resources," "downstream withdrawers" and "environmentally sensitive landscapes" but says nothing about the needs of the people of the Upper Delaware to secure water for their livelihood. All these subsections (1 through 4) are both biased and extraneous. They should be deleted. If kept, they should be revised to exhibit the necessary balance and avoid the meaningless bureaucratic jargon that pervades these regulations. All standards based on such language, including all of Section 7.5, should be deleted.

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There are several excellent provisions in these regulations that allow for deference to the states, but the exception for Section 7.5 regulations is a land mine that can destroy everything. This is why it so critical to delete all of Section 7.5. Moreover, without knowing precisely what will, and will not, be addressed by proposed agreements with states, it is impossible to know what standards will actually apply. The language on page 7 needs to be explicit in restricting the DRBC from regulating any activity the states already regulate, without exceptions, loopholes or vague language that can be later interpreted to impose multiple layers of redundant regulation.

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Critical habitat discussions have absolutely no place in this set of regulations. The US Fish and Wildlife Service and the states already handle this and it falls far outside the scope of what the DRBC should be addressing. It is another open invitation to manipulation of the approval process by those with special interest agendas. Moreover, the statement on page 9 that critical habitat need not actually be habitat at all reveals the opportunity for such manipulation. This language, and all of Section 7.5, should be deleted, along with all references to critical habitat in the regulations. This is a matter for the states. The definition of earth disturbance is also far too broad, encompassing normal farm practices and even stockpiling of material, which is ludicrous. It is, likewise, already regulated by the states and should be deleted. Stop trying to re-invent what the states and others are already doing!

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Correspondence Text

The definition of forested site is poorly worded, includes standards that belong elsewhere and is, date specific, which fails to reflect the continually increasing forestation of the area. The intent of the page 10 language is to avoid forested areas, but this is unnecessary given the natural incentive drillers already have to select unwooded sites and the increasing forestation of the area. We are adding more forest annually - an average of 907 acres per year in Wayne County alone over the last 49 years - than gas drilling will ever remove. The regulations also fail to recognize forested ridge land is often where it is most possible to avoid wetlands. The regulations simultaneously push drilling toward and away from forested areas. The DRBC can't have it both ways and this obsession with preserving already growing forest land is absurd. All forest preservation provisions and every regulation found in Section 7.5 should completely be deleted. They have no place here.

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Correspondence Text

The definition of high volume fracturing is different from the states and completely unjustified by the facts. Moreover, if fracturing is not limited by these regulations, which do no more than require disclosure that is already occurring, why is there a distinction between low and high volume? The answer is obvious - this is simply an attempt to say fracturing is being regulated, when in fact it is only be made more difficult. Hydraulic fracturing has never polluted a well. The DRBC knows this, yet is pursuing a policy of classifying it, superseding state regulation of the process and making it more difficult, without doing anything meaningful to change the process. This is, of course, because it doesn't need changing. These classifications are meaningless and should be deleted along with all duplication of state regulation of fracturing. Other duplications should also be eliminated and Section 7.5 deleted altogether.

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Correspondence Text

The definition of Natural Gas Development Project is far too inclusive, encompassing everything from pipelines and compressor stations to "support vehicle tire cleaning" and "dust control on access roads." This is totally unacceptable and puts the DRBC in charge of activities that can and should be regulated by municipalities and the states (if at all). Since when does the DRBC mission have anything to do with compressor stations or tire cleaning? This is a totally absurd attempt to become the master of everything having to do with natural gas. It cannot stand. The project definition should be limited to the water withdrawals and discharges and to those of 100,000 gallons per day or more. We have gone from this common sense threshold to the point where the DRBC is seriously proposing to regulate dust control, which is simply beyond the pale. These regulations should defer to the states and Section 7.5 should be deleted.

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These regulations are absurd. The definition of pollutants, for example, lists rock and sand. This exemplifies the "reach too far" that this set of regulations represents. It is utterly ridiculous and should be corrected. The regulations have also been sloppily assembled in a cut and paste fashion. In addition to problems with the definition of water body, which is perhaps the single most serious problem with these regulations, there are numerous conflicts. As an example, it is suggested on page 26, that well pad approvals can be deferred to the states, which would good, but this is directly counter to the language of Section 7.5 and on page 7. Which is it? If the DRBC can write better than this, why should we suppose it can regulate better than the states? The answer is self-evident. Section 7.5 is a disaster and should be completely deleted.

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There are, incredibly, no time limits, in these regulation, on DRBC review of applications. There are several references on page 17 to time limits imposed on applicants, but no time limits on action by the DRBC. The inexcusable delay by the Commission in dealing with the Stone Energy application illustrates the need for deadlines as a simple matter of ensuring due process for applicants. We must have accountability and deadlines on DRBC action, with deemed approvals for failures to act. Any open-ended process is no process - it's nothing but bureaucratic tyranny and must be corrected by adding enforceable time limits on the DRBC. The best way to do this is to make it an advisor to the states, rather than the super-agency it supposes itself. It is also clear these regulations must be streamlined by the complete deletion of Section 7.5.

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Docket modification procedures and notice requirements in these regulations are far too subjective and far-reaching. Sub-section (h) on page 18 gives the Executive Director too much arbitrary power, which should be carefully limited. Moreover, Section 7.5 should be wholly deleted. Also, the public notice procedure is almost guaranteed to produce controversy as every landowner within 2,000 feet is required to be given notice, which naturally inspires the belief on their part that they have some standing and right to veto an application in their back yard. It is impossible to reliably notify everyone within that distance and the failure to reach some will become a basis for lawsuits alleging improper notice. Moreover, the regulations are inconsistent as to proof of notice. Such notice should be limited to directly adjoining landowners and notice in local newspapers. Anything more is bureaucratic overkill that will complicate everyone's life for no good reason.

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The financial assurance requirements in these regulations are unnecessary, redundant with state regulation (Section 7.5 should be totally eliminated) and likely to discourage drilling. The financial assurance provisions on page 19 are an exercise in matters that are properly the purview of the states and have nothing to do with the core mission of the DRBC, which imposes no similar requirements on most other water uses under its jurisdiction. Sub-section (6) on page 20 fails to provide for notice and, therefore, is a violation of due process rights that must be corrected. The $125,000 per well financial assurance would, on a 1,280 acre unit pad with 20 wells, require $2.5 million of guarantees. That is clearly excessive. Sub-section (9) on page 21 indicates financial guarantees required by the DRBC will be in addition to state requirements. What possible justification exists for this overkill, especially when the regulations are supposed to defer to the states on most matters? There is none. DRBC guarantees should only apply to items not already covered by the states.

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The provisions for reducing financial guarantee amounts based upon performance are very good and are practical but do not justify the regulation itself, given what the states already do. Additionally, the provisions on page 24 for "excess financial assurance" are never defined, explained or justified. They are very poorly explained. They are excessive and require every company doing business to contribute to a fund of $25 million, when they may only be engaging in minimal activity. Yet, they allow major operators to cap their expenditures at some proportion of the $25 million. The whole section is obtuse and of dubious value. It needs complete reworking or should be dropped in deference to the states, as with Section 7.5, which should also be totally deleted.

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The Natural Diversity Index provisions of these regulations duplicate what states are already doing and involve the DRBC in something where it adds no value and has no business being involved. There should be no separate Natural Diversity Index Assessment (see pages 27, 31, 42 and 55) and no fee for it, as the states already do this. Suggestions to the contrary only confuse matters and raise the possibility of DRBC duplication and interference. This is far outside the core mission of the DRBC, yet it comes up again and again in the regulations, as if it were not already being performed by the states, suggesting an ulterior motive of frustrating well development. This illustrates a fundamental problem with the regulations. They add no value to what the states are doing. Therefore, let's drop all provisions that go beyond water allocation, particularly Section 7.5, which should be totally deleted, in favor of agreements that recognize the DRBC as an involved agency with the rights to recommend to the states as they process applications.

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There are numerous issues with these regulations. They appear to be fee driven and are one-sided in their application. Sub-section (5) on page 27 relating to alternative fees, for example, should work both ways and allow for the same approach when costs are likely to be less than standard fees. Otherwise, this is an invitation to open-ended fees. Also, on page 29, what does the $2,000 fee apply to - each well, each pad or each company's program? This is unclear and should be addressed. The violation reporting system is ripe for abuse, requiring an investigation and mitigation plan in the case of virtually any complaint. There needs to be a method of dismissing frivolous complaints. The language on page 32 is far too loose. Also, there needs to be a mechanism for discouraging such complaints. The failure to address these sorts of issues illustrates DRBC incompetence with this type of regulation and indicates a need for serious streamlining, including the complete deletion of Section 7.5.

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A landowner with a pond on their property ought to be able to supply some water for natural gas development without DRBC approval, as is the case now for several other activities than can easily require more water than gas development. Yet, the language on page 35 would not permit this. The regulations also make misleading unsupported statements about the amount of drilling that is expected to place, as if to justify over-the-top regulations. The statements, on page 35, to the effect "thousands" of natural gas projects are expected, is not warranted and very inappropriate. Major companies are estimating no more than 300 projects in Northern Wayne County, which is the primary gas region. It could be far less. There is no need for hyperbole in these regulations and all guesses as to the number of projects should be deleted. Likewise, it is not clear compressor stations will have any impact on water resource management and they should be deleted from the list. All such regulations and all of Section 7.5 should be deleted.

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These regulations are stretched to the limit in a search for legitimacy, especially Section 7.5, which should be wholly deleted. They also fail to account for advances in technology that are rapidly reducing the impact of natural gas drilling. The justifications made today for regulations are even less likely to be legitimate five years from now than today. The regulations need to anticipate this and allow for the future reduction in the scope of regulations as advances are made. We should not be handicapped in the future with levels of regulation based on today's technology and impacts. Revisions along this line are needed today - that is to say flexibility is needed now to reduce regulations later, if there are no longer circumstances warranting them. The regulations also make long-term assumptions that are highly questionable. Is it true, for example, that no portion of the water used for gas projects will be returned to the aquifer or surface water? It may be today, but will that be the case tomorrow as recycling of the water used becomes more common and water treatment processes are improved?

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The regulations inappropriately insert the DRBC into private contracts and are highly discriminatory. Is it really necessary to interfere with contracts between private parties, as set forth on pages 38 and 40? Also, pass-by flow requirements reveal the inherent discrimination, in these regulations, against natural gas drilling as compared to other water uses, which is why Section 7.5 should also be entirely deleted. The pass-by flow requirements on page 39 give a lot of attention to what is a minimal water use and do not take into account the much greater distortions of flow rates related to New York City's withdrawals of water from the basin. The City, of course, stole most of our water and now wants to prevent us from using the rest. Natural gas is made the lowest priority under these regulations, while out-of-basin consumption by the City has a much greater impact. This is inherently unfair and suggests the DRBC needs to put much more pressure on New York City as a means of securing more water for gas. The City withdrawals are controllable and should be addressed as part of a comprehensive solution to make room for gas.

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Special protection waters designation should not be a club with which to beat down the economic development of the upper basin. The language on page 41, seems to require additional planning due to special protection waters designations. However, non-point source pollution control is already done by the states. Additionally, the Upper Delaware region should not be punished for having clean water, which is what Section 7.5 strongly suggests and why it should be completely deleted. The regulations also include unusual provisions that have only a tangential relationship to gas drilling. The invasive species provisions on page 43 are unnecessary and not typical of what is required with other water uses but, in any case, may well require the use of the very chemicals that many anti-drilling advocates despise. This provision need to be justified or deleted. Finally, water well monitoring is an important part of the continuous monitoring, which we see as far preferable to any cumulative impact analysis. The water well monitoring provisions on page 46 should be strengthened by specifying a distance of no less than 1,000 feet.

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DRBC's standards are ambiguous with respect to what is subject to state regulation and what is not, which is one of the many reasons Section 7.5 should be deleted altogether. Why are some setbacks listed as "defer to host state" on page 49, for example? Simply eliminate them. Otherwise it must be assumed the other standards supersede the state standards. Likewise, the Natural Gas Drilling Plan is written awkwardly and is completely unworkable. Language on page 50 assumes a company's land interest will be relatively contiguous, but they may not be at all. Also, some companies may hold positions in both Marcellus and Utica Shales in different areas of the basin and positions are constantly changing. This entire process needs more thought and more flexibility. As written, it is far too complicated and is still another open door to unwarranted land use regulation. It should not be drafted as a back door cumulative impact analysis (which is bound to become outdated by technology the day it is completed) but, rather, as a means of streamlining approvals.

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The regulations require too much extraneous data be submitted with applications. There is no reason to identify slopes between 15% and 20% slope or to map critical habitat, as required on page 53. The former aren't strictly regulated and the latter is outside the core DRBC mission. There is, likewise, no need to map forested areas as required on page 54 (forests are anything but threatened, as noted above) or natural heritage areas. More importantly, the relevance of mapping them for constantly changing leased areas is not at all apparent. The obsession with forest cover on page 55 and elsewhere, despite such cover increasing in acreage every year, is not warranted and the preference for sites that are not forested should be deleted, They will be naturally preferred but forested sites have advantages in certain circumstances and there is simply no threat involved when forestland is increasing. Also, why are lease area maps (see page 56) necessary? This is not the business of the DRBC and such maps are constantly changing. Finally, why is the DRBC requiring a circulation plan over which it has zero authority to enforce? This is a inexcusable grabbing of authority from states. These types of regulations and all of Section 7.5 should be deleted.

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The regulations incorrectly assume all gas drilling water use is consumptive. The water conservation provisions on page 58, while good, raise the question of how water used for gas production is 100% consumptive, as implied earlier, if the water is to be recycled and why the Commission proposes to charge a fee each time it is used. The self-contradictions in these policies seem not to have occurred to the DRBC, illustrating regulatory incompetence. The regulations, also, unfortunately, contribute to the fallacy that hydraulic frcaturing threatens water well supplies. Provisions on page 61 for water well monitoring are good, but for reasons having nothing to do with hydraulic fracturing, as suggested by the title. We don't need to further confuse shallow gas migration, which is the real reason for this monitoring, with fracking, as the Dimock case has already done via the deliberate distortions of anti-drilling advocates. The regulations need to be revised accordingly and all such provisions and all of Section 7.5 which exhibits these problems throughout, should be deleted.

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There should be an incentive, in these regulations, for use of closed loop systems. Closed loop systems should be more easily permitted and this is the type of criteria that should qualify applicants for Approval By Rule approvals, as opposed to the poorly thought out site requirements laid out in the regulations now. The regulations on page 65 and 66 also need to provide for some on-site treatment via the portable treatment units GE is now producing and/or such innovative measures as using wood chips to absorb fluids, which chips are then hauled off-site and burned in units with scrubbers. The failure to address these types of matters indicates the DRBC is marching headlong into a matter in which it has no technical competence. It should defer to the states and greatly streamline these regulations, deleting all of Section 7.5 in the process.

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The combination of several definitions, literally interpreted, could regulate forestry and farming out of existence, with no supporting evidence that they have caused a water quality problem. The "earth disturbance activity" definition includes anything that "disturbs the surface of the land." This should be more specific so mowing, brushhogging or cutting trees are not held to be disturbance. It also states "disturbed area is devoid of trees greater than 5 meters in height and substantially devoid of native woody vegetation." This definition would include hay fields and lawns. The final site restoration definition says the site needs to be returned to its "condition prior to the commencement of gas drilling operations" rather than a stable vegetative cover as provided by DEP. This could mean an access road would have to be abandoned and reforested over the objections of landowner and contrary to the Clean Water Act. Such definitions could rule out all of northern Wayne County for gas drilling and should be revised. Section 7.5 should be completely deleted.

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Projected water use for gas drilling is minimal but, under these regulations, the natural gas industry is treated as if it were a major water user. Water use for natural gas should be evaluated and compared with other industries, land uses and baseline flows. There are far too many words such "significant" or "potential impact" strewn throughout the regulations. These are used to justify complete control over water use by the gas industry and it is simply not justified. A quick calculation reveals the water falling on the upper third of the Delaware River watershed during a single 1" rain event could provide the water required to drill almost 16,000 wells, far more than will ever be drilled in the upper basin. The regulations desperately need balance and we suggest the DRBC stop trying to reinvent the subject of regulating gas drilling. Our states already do it well and these regulations should defer to them, with Section 7.5, in particular, fully deleted.

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Delaware County Department of Watershed Affairs and Delaware County Department of Economic Development:

April 12, 2011

Delaware River Basin Commission
Commission Secretary
P.O. Box 7360
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West Trenton, NJ 08628

Commissioners:

The Delaware County Department of Watershed Affairs was established in 1999 with the mission "to assist Delaware County's residents, farmers, businesses, and communities in meeting water quality restrictions and objectives without loss of economic vitality". To accomplish this mission, the county created a comprehensive action plan that has been extremely successful at protecting water resources based on land management, through scientifically and economically sound governance based on local democracy. The county, to ensure science-based, defendable position relied on scientists from the land grant universities of Pennsylvania State and Cornell University. We also relied on scientist from Syracuse University, NYSDEC, NYSDOH as well as NYCDEP to provide us a clear understanding of water quality protection. Once we had solid information we reached out to all the stakeholders as well as regulators from EPA, New York State and Army Corps of Engineers to include all the agencies to create an action plan that is the only comprehensive management program for watershed protection

under local auspices in the New York City watershed, the largest unfiltered watershed in the United States.

When reading through the proposed natural gas regulations we are struck by the lack of respect that the commission has for its member states. In New York State, even though the Supplemental Generic Environmental Impact Statement (SGEIS) for horizontal drilling have not been completed, it would be a safe position to believe the regulations will be more stringent than the 1992 version and most likely will have stronger regulatory language than the draft SGEIS proposed in 2009. With that assumption it would appear that the entire Section 7.5 is redundant and unnecessary when regulating activities related to drill pad construction, the actual drilling activity and the subsequent steps to stimulate the well to production levels. In addition, in New York State, drill pad construction as well as access roads for the pad will require a Stormwater Pollution Prevention Plan (SWPPP) under the SPDES General Permit No. GP-0-10-001. These permits require that SWPPP must be consistent with standards set forth in the New York State Stormwater Management Design Manual (August 2010) which requires that the use of all "green" solution must be examined before traditional stormwater infrastructure may be considered.

When examining the definitions provided as part of the regulations, this department is disappointed with the lack of detail and specificity. Working within the context of the New York City Department of Environmental Protection Watershed Rules and Regulations, the staff in this county continues to struggle with their definitions especially with respect to watercourses, and NYCDEP has provided a great deal of guidance and specificity with their definition. The definition provided by commission staff appears to be broad in nature which a cynical person could believe was written purposely to give staff wide purview over a project. While the current staff may have a definition in mind consistent with good water quality principles, a future staff could interpret the definition differently.

Delaware County understands that, at times, there are conflicting interest and goals within a watershed. An example of how the county responded to these challenges can be found in the Memorandum of Agreement (MOA) between New York City and the upstate communities of the watershed where it was stated in the agreement that "the parties recognize that the goals of drinking water protection and economic vitality within the watershed communities are not inconsistent". Likewise, the compact of the Delaware River Basin Commission states "the government, employment, industry and economic development of the entire region and the health, safety and general welfare of its population are and will continue to be vitally affected by the use, conservation, management and control of the water and related sources of the Delaware River Basin" The compact recognizes the importance of linking economic development and water quality. Unfortunately, the proposed regulations ignore the economic needs of the upper basin while at the same time giving undue deference to water quality. The regulations should provide a balance between these two goals.

In closing, while there were a number of issues we felt might be construed as unreasonable, one of the biggest challenges we objected to be the powers provided to the staff or the Executive Director. Much of the regulations are subjective, very broad and ill-defined. Since the DRBC is likely to be around for decades, many of the decisions will be based on staff and Directors opinions at the time of their employment. Regulations should be narrow in scope, purposeful and necessary. Section 7.5 appears not to meet any of those parameters since NYS laws already regulates the activities described therein. Unfortunately, the purpose and scope of many of the remaining sections are not very clear either.

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Commissioner, Delaware County Department of Watershed Affairs

Glenn Nealis,

Director, Delaware County Department of Economic Development