Series 2023
Number 1

DELAWARE RIVER BASIN COMMISSION

MEETING OF MARCH 8, 2023

Minutes

Commissioners Present:	Lisa Daniels, Pennsylvania, Chair Jeffrey L. Hoffman, New Jersey, Vice Chair Kenneth Kosinski, New York, Second Vice Chair Steve Williams, Delaware Lieutenant Colonel Ramon Brigantti, United States
DRBC Staff Participants:	Steven J. Tambini, Executive Director Kenneth J. Warren, DRBC General Counsel Pamela Bush, Commission Secretary and Assistant General Counsel David Kovach, Manager, Project Review Amy Shallcross, Manager, Water Resource Operations John Yagecic, Manager, Water Quality Assessment

Lisa Daniels called the meeting to order, introducing herself as the Acting Deputy Secretary, Office of Water Programs, Pennsylvania Department of Environmental Protection, and the Commission's chair *pro tem*, representing Governor Josh Shapiro of the Commonwealth of Pennsylvania. She announced that the meeting was being held remotely, had been advertised as such on the DRBC website, and was open to the public via Zoom webinar and the DRBC YouTube channel. The meeting agenda was available on the DRBC website.

The four alternate commissioners introduced themselves as: Steve Williams, Delaware Department of Natural Resources and Environmental Control, representing Governor John Carney; Jeff Hoffman, New Jersey State Geologist, representing Governor Phil Murphy; Ken Kosinski, New York State Department of Environmental Conservation, representing Governor Kathy Hochul; and Lt. Col. Ramon Brigantti, representing the North Atlantic Division Commander of the U.S. Army Corps of Engineers, Col. John Lloyd. DRBC's Executive Director Steve Tambini, General Counsel Ken Warren, and Commission Secretary and Assistant General Counsel Pam Bush also introduced themselves.

Ms. Daniels thanked the public for attending. She paused to allow time for resolution of technical issues related to the remote platform, then noted that once the business meeting agenda was adjourned, Mr. Tambini would review the procedures for open public comment and would moderate an open public comment session.

Minutes. Ms. Bush had received no comments or corrections to date on the draft Minutes of the Commission's December 7, 2022 business meeting, which had been circulated previously to the Commissioners. In the absence of any comments or corrections, she recommended that the

Minutes be approved. Mr. Hoffman so moved, Mr. Kosinski offered a second, and without further discussion, the Minutes of the Commission's December 7, 2022 business meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following scheduled advisory committee meetings, noting that details, including staff liaisons, Zoom registration links as appropriate, and agendas when available, would be available on the Commission's website:

- DRBC Water Quality Advisory Committee (WQAC), March 23, 2023 at 9:30 a.m., both via Zoom webinar and in person at the Commission's West Trenton office building.

- DRBC Regulated Flow Advisory Committee (RFAC), April 26. 2023 at 1:00 p.m. via Zoom webinar.

- DRBC Monitoring Advisory and Coordination Committee (MACC) and PDE Science and Technical Advisory Committee (STAC) jointly, May 17, 2023 at 11:00 a.m. via Zoom webinar.

- DRBC Water Management Advisory Committee (WMAC), June 15, 2023 and October 12, 2023, both at 10:00 a.m., via Zoom webinar.

Hydrologic Conditions. Water Resource Operations Manager Amy Shallcross offered a presentation on basin hydrologic conditions. Ms. Shallcross's PowerPoint slides are archived at: HydrologicConditions_shallcross_030823.pdf (nj.gov)

Hydrologic Cycle. Ms. Shallcross projected a graphic of the hydrologic cycle, which describes how and where water interacts among the atmosphere, land, and water bodies. Water evaporates from a water body, forming clouds; it eventually condenses and falls as precipitation; and when it reaches the ground, it may either run off into a surface water body or infiltrate into groundwater. Once water enters a stream or other surface water, the cycle starts anew.

Precipitation. From March 7, 2022 to March 7, 2023 the lower basin received approximately 40 inches of precipitation. Much of the upper basin received approximately 60 inches, with a small area in the upper basin receiving 68 inches. A range of departures from normal precipitation were observed in the basin over the year. In the western portion of the basin, precipitation was up to 10 inches below normal, whereas in the upper basin, some areas received as much as 10 inches more than normal. Ms. Shallcross displayed monthly precipitation bar charts illustrating data from March of 2022 through February of 2023 for the upper and lower basin, respectively. These showed how conditions across the basin changed over the course of the previous twelve months, depicting precipitation much below normal throughout the summer in the upper and lower basin, and fairly dry conditions in January and February, particularly in the lower basin.

The normal 90-day precipitation across the basin is approximately 12 inches of rainfall. Ms. Shallcross displayed graphics indicating below normal levels of precipitation in some locations and above normal levels in others over the previous 90 days. Over the previous month, the basin

received between 3 and 4 inches of rain, but Ms. Shallcross described the middle and lower basin as dry. Observed snowfall for the 2022-2023 season was much below average. Although the potential existed for storms over the few days following the Commission's meeting, no accumulation in the middle or upper basin was expected. One model indicated the potential for snowfall from a storm during the week after the March 8 meeting.

Groundwater. Once precipitation falls to the ground, it can infiltrate and be observed as groundwater conditions, measured by levels in indicator wells. Monitoring wells are located at more than a dozen locations throughout the basin. Levels in the majority of these were in the normal range as of the meeting date. However, two were in "drought watch." This is not a formal category but is a term used to describe well water elevations relative to where they would be normally. Ms. Shallcross presented a graphic showing groundwater conditions in all basin counties on December 6, 2022, January 26, 2023, and March 6, 2023. She noted that in January the middle basin had recovered from the dry conditions of the fall, but conditions in the lower basin had worsened. As of March 6, although a few wells in the middle and upper basin were at above normal levels, the lower basin was still experiencing dry conditions.

Another graphic illustrated fluctuations in ground water elevations over the previous 12 months in two monitoring wells – those for Wayne County, Pennsylvania and Cumberland County, New Jersey. Elevations in the Wayne County well ranged from above normal in March, April and June of 2022 and January of 2023 to slightly below normal in August of 2022. Dryer conditions prevailed in the observation well in Cumberland County over the same period.

Streamflow. Ms. Shallcross noted that if water does not infiltrate into the ground, it runs off and contributes to streamflow. Streamflow is also monitored throughout the basin. As of March 8, 2023, the lower basin was experiencing many instances of below normal streamflow, while in the middle and upper portions of the basin normal streamflow conditions were observed.

Ms. Shallcross displayed hydrographs of streamflows on the main stem Delaware River at Montague, New Jersey, where the states of Pennsylvania, New Jersey and New York abut one another, and at Trenton, New Jersey, the approximate location of the head of tide, where the main stem changes from a freshwater river to an estuary. When necessary, releases from reservoirs in the basin are made to ensure that flow targets established for these locations are attained. Three of the largest basin reservoirs are Cannonsville, Pepacton, and Neversink. These facilities are located in New York State, are owned and operated by the City of New York, and provide half of the City's drinking water. Two other reservoirs, Beltzville and Blue Marsh, are located in the Lehigh and the Schuylkill basins, respectively, in Pennsylvania, and are owned and operated by the U.S. Army Corps of Engineers. Releases from both help to meet the Trenton flow objective. The hydrographs clearly showed spikes in streamflow resulting from a Nor'easter during April 18-19, 2022, followed by steep declines in streamflow during the summer of 2022, during which reservoir releases were required to meet the flow objectives.

In addition to Blue Marsh and Beltzville reservoirs in the Schuylkill and Lehigh basins, the U.S. Army Corps of Engineers owns and operates the F.E. Walter Reservoir, a facility used primarily

for flood control and recreation in the Lehigh. Storage in the F.E. Walter Reservoir is also part of DRBC's drought management plan and has been used repeatedly over time to augment main stem flows during times of severe drought. As of March 8, 2023, the water level in F.E. Walter was near the winter pool elevation, which the DRBC considers to be zero percent storage. Ms. Shallcross explained that it would climb to a recreation pool elevation, from which springtime releases would be made to support fisheries and recreation. As of the meeting date, the Beltzville pool was slightly above normal, and runoff was occurring as the result of a recent snow event.

NYC Reservoirs. DRBC's basinwide drought management program is based on combined storage in New York City's three Delaware Basin reservoirs, which has been recorded since 1965. Ms. Shallcross displayed a graph showing observed combined storage in the three reservoirs for the previous 12 months. The graph made clear when storage was above and below the median and showed storage levels corresponding to the three stages of drought reservoir operations – watch, warning and emergency – under applicable operating plans. The graph illustrated the decline in storage to below median levels during the dry summer of 2022, when releases and diversions of stored water were not matched by inflow, and the rate at which storage recovered when precipitation returned to normal levels. As of the meeting date, combined storage in the three reservoirs was at approximately 95 percent of capacity. The combined capacity of the three reservoirs is 320.4 billion gallons.

Delaware Aqueduct Tunnel Project. Over the next twelve months, storage in New York City's Delaware Basin reservoirs was to be affected by an aqueduct shutdown and repair project. The three reservoirs provide water to New York City via the Delaware aqueduct, an 85-miles- (137 km) long tunnel, 13.5 feet (4.1 m) in diameter. The aqueduct was constructed during the period 1939-1945 through geology that in a few locations consisted of fractured rock. Leaks developed in these locations. In response, between 2013 and 2019, the City constructed a bypass around the compromised section of the aqueduct. To complete the project by connecting the bypass to the main tunnel, the tunnel must be temporarily shut down. When completed, the bypass project will result in the recapture of the approximately 20 – 30 million gallons per day (mgd) of water that is currently lost to leaks. The tunnel shutdown was to occur during 2022 but the project was delayed when hydrologic conditions were forecast to remain unusually dry. The City planned to reassess the situation in May of 2023 and to make a decision to move ahead with the shutdown or again postpone it at that time.

Ms. Shallcross explained that if the tunnel shutdown occurs, diversions from the City's Delaware Basin reservoirs from June through September will be maximized and water stored in the City's Croton and Catskill system reservoirs during the shutdown period. That period is expected to last between six and eight months, beginning in October 2023. During the shutdown, no water from the City's three Delaware Basin reservoirs will be diverted from the basin via the aqueduct. Although reservoir releases will continue to be made, storage in three reservoirs will recover during this period. Because the City will draw more than the customary amount of water from its Delaware system reservoirs during June through September, there is a possibility, though low, that the Delaware Basin could enter drought operations during this period. According to extensive modeling performed by the City and by the DRBC, only a slight increase in flood risk will exist

during the shutdown. That risk is for flooding in the least serious categories, those termed "action" and "minor" stages.

The Commission's Regulated Flow Advisory Committee was scheduled to meet on April 26, 2023, and New York City was scheduled to provide a presentation on the status of the aqueduct repair project and provide more detail on the project during that meeting.

Salinity. The combined freshwater flows from the Schulykill and Delaware rivers have a significant impact on the location of the "salt front," defined by the seven-day average location of the 250 milligram per liter chloride concentration (or "isochlor") in the Delaware River Estuary. The salt front is monitored to ensure it remains sufficiently far downstream to protect public water supply intakes in Philadelphia, Pennsylvania and Delran, New Jersey, as well as intakes for certain industries in this region. When these flows are low due to dry conditions in the middle and upper basin, reservoir releases are used to augment flows to achieve a flow objective at the head of tide (top of the Estuary), at Trenton. Salinity affects the taste and odor of drinking water and may cause issues for users on dialysis and those with certain medical conditions. It cannot be removed from water without costly desalinization. During the drought of record in the basin during the 1960s, the salt front migrated upstream as far as River Mile 102, which is located above the Ben Franklin Bridge. The location of the salt front on the March 8, 2023 meeting date was River Mile 70.

Seasonal Outlook. According to the National Weather Service Climate Prediction Center, the outlook for the 90 days following the meeting date included a higher than normal chance of warmer than normal air temperatures. A greater than normal chance of above normal precipitation was also predicted. However, seasonal outlook indicators suggested the region would return to normal conditions. Ms. Shallcross noted that the Farmers' Almanac predicted mild temperatures and near normal precipitation.

Executive Director's Report. Mr. Tambini's report is summarized below:

Attendance. Including Mr. Tambini, the Commissioners and counsel, the meeting included 33 attendees via Zoom, and 10 via YouTube.

DRBC Groundwater Availability Report. In December 2022 DRBC issued a technical report entitled *Estimated Groundwater Availability in the Delaware River Basin 2020-2060,* which is available on the DRBC website. In 2020, groundwater made up about 7 percent of withdrawals throughout the basin, or about 450 million gallons per day (mgd), of which 75 percent was used to meet drinking water needs. The report concluded that groundwater resources are and will continue to be used at sustainable rates throughout the basin. The report also focuses on the Southeastern Pennsylvania Groundwater Protected Area ("SEPA GWPA"), which the Commission established at the request of Pennsylvania in 1980 to address unsustainable groundwater depletion in a 1,200 square mile high-growth region. Groundwater use in the SEPA GWPA has stabilized under DRBC's management. The primary authors of the report are Michael Thompson, Sara Sayed, Sarah Beganskas, and Chad Pindar.

Forum on Climate Change. In January 2023, the DRBC Advisory Committee on Climate Change hosted its Forum on Climate Change and the Delaware River Basin in Atlantic City, as a part of the Partnership of the Delaware Estuary's Science and Environmental Summit. The 2023 forum featured two keynote speakers. NASA scientist Dr. Philippe Hensel discussed the important interconnection between sea level rise and land movement. Journalist Catrin Einhorn of *The New York Times* climate desk spoke on the topic of communicating climate science. A highlight of the forum was a conversation among government leaders about planning and adaptation strategies throughout the Delaware River Basin. Panelists included Commissioner Shawn LaTourette of the NJDEP; Secretary Shawn Garvin of Delaware DNREC; Rohit Aggarwala, Chief Climate Officer of New York City and Commissioner of the New York City DEP: and Regional Administrator Adam Ortiz of EPA Region 3. The panel was moderated by DRBC Deputy Executive Director Kristen Bowman Kavanagh, who is also the staff liaison to the Commission's Advisory Committee on Climate Change. DRBC staff presented extensively at the Climate Forum and the Science Summit, including at a detailed technical session focused on DRBC's ongoing effort to improve dissolved oxygen levels in the urban reaches of the Delaware River.

Estuary Aquatic Life Uses and Criteria. Mr. Tambini reiterated a prior statement of his that DRBC science has illuminated the path forward for attaining water quality that supports propagation of all species – i.e., "fishable waters" – in the urban Estuary. He reported that DRBC and its co-regulator agencies, the U.S. EPA, NJ DEP, PA DEP and DE DNREC, were working cooperatively to develop revised water quality standards consistent with this goal. He thanked the staff of those agencies and the DRBC staff for their collective efforts and outstanding progress in ensuring that new designated uses and water quality criteria protective of aquatic life are supported by the best available science and applicable law.

A Resolution for the Minutes approved by the Commission on September 10, 2020 set forth DRBC's objective of finalizing new water quality standards for the Estuary by March 2025. Mr. Tambini said that schedule had not changed. He expected DRBC to issue its rulemaking proposal by December 2023, consistent with the EPA's schedule for publication of proposed new water quality standards.

June Business Meeting. Mr. Tambini noted that the Commission's June 7, 2023 business meeting would take place in person at the Rutgers Camden Campus Center. Those interested in further details were instructed to visit the DRBC website closer to the meeting date or sign up any time to receive notices about future DRBC meetings.

Honoring Women. Acknowledging that March is Women's History Month and March 8, International Women's Day, Mr. Tambini recognized women's contributions in American history and the "rich and long" list of women who have played critical roles in managing, protecting, and improving the shared water resources of the Delaware River Basin. Noting the latter included Commissioners past and present, he named: New York Governor Kathy Hochul; Pennsylvania's DRBC alternate Commissioner and the day's meeting chair, Lisa Daniels; New Jersey alternate Commissioner Patricia Gardner; and federal alternate Commissioner Valerie Cappola. Mr. Tambini also named women on the DRBC staff, including former Executive Director Carol

Collier, the first woman to serve in that role; and current staff members Kristen Bowman Kavanagh, Pamela Bush, Beth Brown, Elba Deck, and Amy Shallcross. Mr. Tambini said he was extremely privileged to work with these women every day. He further recognized women leaders in the basin community, including Kathy Klein of the Partnership for the Delaware Estuary, Skelly Holmbeck of the Water Resources Association of the Delaware River Basin, Laurie Ramie of the Upper Delaware Council, and Maya van Rossum, the Delaware Riverkeeper. He thanked all for their many and valued contributions.

General Counsel's Report. DRBC's General Counsel Kenneth Warren reported on the following litigation matters involving the Commission.

Yaw vs. DRBC. This lawsuit, brought by two Pennsylvania State Senators, the Pennsylvania Republican Senatorial Caucus, and certain municipalities, challenged the DRBC's prohibition of high-volume hydraulic fracturing (HVHF) in the basin. The District Court dismissed the case in June and July of 2021 for lack of standing. On September 16, 2022, a panel of the Court of Appeals for the 3rd Circuit unanimously affirmed the District Court's judgement. There have been no further appeals and this case is closed.

Wayne Land and Mineral Group (WLMG) vs. DRBC. The status of this matter remained unchanged since Mr. Warren's report of December 2022. A landowner commenced this case in 2016 in the U.S. District Court for the Middle District of Pennsylvania, challenging the DRBC's authority under Section 3.8 of the Delaware River Basin Compact to review HVHF projects. Following the DRBC's adoption in 2021 of a regulation prohibiting HVHF in the basin, the DRBC filed a motion to dismiss the case as moot. With the advice of the court, the parties agreed to stay the matter until the *Yaw* litigation was decided. After the Third Circuit's September 2022 decision in *Yaw*, DRBC suggested to the parties that the case be dismissed without prejudice. WLMG rejected this approach. In status reports submitted to the court in early December, WLMG asked the court to decide the pending motion to dismiss the case as moot. It is likely that the next step in the litigation will be a court decision on DRBC's mootness motion.

Delaware Riverkeeper Network vs. DRBC. The status of this matter also remained unchanged since Mr. Warren's report to the Commissioners in December 2022. In this case, the Delaware Riverkeeper Network appealed the December 9, 2020 decision of the commission affirming the DRBC's issuance of a docket to Delaware River Partners for the Gibbstown Logistic Center Dock 2 project. The project involves dredging and construction of a deepwater berth at the Gibbstown Logistics Center in Gibbstown, New Jersey. The case was fully briefed in the United States District Court for the District of New Jersey on cross motions for summary judgment. As of the meeting date, the parties continued to await the decision of the District Court on the summary judgment motions.

Damascus Citizens for Sustainability vs. DRBC. This case, filed in January 2023, challenges the regulations DRBC adopted on December 7, 2022, prohibiting the discharge of wastewater from HVHF and HVHF related activities to waters or land within the basin. The regulations also establish standards for the importation or exportation of water and wastewater into or from the

basin. These new standards did not alter DRBC's policy of discouraging the importation of wastewater. Rather they specify criteria that must be met before the DRBC would approve an importation request. Damascus describes itself as a nonprofit organization established to protect the basin from the risks associated with oil and natural gas development and operations, and to promote the health and prosperity of basin communities. It acknowledges that DRBC has prohibited HVHF in the basin and has also prohibited the discharge of HVHF and HVHF wastewater to waters or land within the basin. Nevertheless, Damascus's complaint challenges the December 22 regulations in two respects. First, it contends that DRBC must single out and prohibit the importation of all oil and gas waste and wastewater, not merely subject a proposed importation to the standards in the new regulations that apply equally to all wastewater. Second, the complaint challenges what Damascus misperceives as DRBC's intent to exempt certain HVHF discharges from the HVHF discharge prohibition. Mr. Warren reported that DRBC would mount a vigorous defense to the suit. DRBC's response was to be filed by March 28, 2023.

Mr. Warren concluded by stating that to ensure the basin community understands the DRBC's commitment to implement its new regulations fully and as adopted, DRBC was considering issuing further guidance, most likely in the form of frequently asked questions and responses.

A Resolution for the Minutes authorizing the Executive Director to enter into an agreement with the Environmental Finance Center at the University of Maryland to identify sources of funding to support wastewater treatment upgrades. DRBC's Water Quality Assessment Manager John Yagecic explained that the Environmental Finance Center at the University of Maryland ("EFC-UMD") had prepared a brief cost mitigation section for the draft report, *Social and Economic Factors Affecting the Attainment of Aquatic Life Uses in the Delaware River Estuary,* published by the Commission in September 2022. Subsequently, the Commission applied for, and as of the March 8, 2023 meeting date expected, to receive a grant from the Delaware Watershed Conservation Fund (through the Bipartisan Infrastructure Law) to expand on EFC-UMD's work. EFC-UMD is one of ten regional centers founded by the U.S. Environmental Protection Agency to deliver targeted technical assistance to and partner with states, tribes, and local governments. Mr. Yagecic asked the Commissioners to approve a Resolution for the Minutes that would authorize and direct the Executive Director to enter into an agreement with the EFC-UMD in an amount not to exceed $80,000, to investigate and report on alternative sources of infrastructure funding in support of wastewater upgrades to meet future dissolved oxygen targets, and to mitigate the cost of additional wastewater treatment at facilities discharging to the Estuary.

Mr. Yagecic added that pursuant to sub-paragraphs one and five of Section 14.9 of the Delaware River Basin Compact, the resolution would waive the competitive bidding requirements of that section. He asked the Commissioners' for their favorable consideration of the resolution.

Mr. Kosinski so moved, and Mr. Hoffman offered a second. In the absence of further discussion, the Resolution for the Minutes authorizing the Executive Director to enter into an agreement with the Environmental Finance Center at the University of Maryland to identify sources of funding to support wastewater treatment upgrades was approved by unanimous vote.

The text of the Resolution follows:

RESOLUTION FOR THE MINUTES

A RESOLUTION for the Minutes authorizing the Executive Director to enter into an agreement for professional services with the Environmental Finance Center at the University of Maryland to identify sources of funding to support wastewater treatment upgrades.

WHEREAS, in support of an eventual rulemaking to revise the designated aquatic life uses in Water Quality Zones 3 and 4 and the upper portion of Zone 5 of the Delaware River Estuary, the Commission by Resolution No. 2017-4 called for multiple studies, including an evaluation of the social and economic factors affecting the attainment of uses in these zones ("socioeconomic evaluation"); and

WHEREAS, Kleinfelder prepared a report on behalf of the Commission entitled *Nitrogen Reduction Cost Estimation Study* dated January 2021, estimating the cost of additional effluent treatment by twelve "Tier 1" wastewater treatment facilities; and

WHEREAS the Commission prepared a draft report entitled *Social and Economic Factors Affecting the Attainment of Aquatic Life Uses in the Delaware River Estuary* dated September 2022, evaluating the financial impact on residential ratepayers of installing advanced wastewater effluent treatment; and

WHEREAS, the Environmental Finance Center at the University of Maryland ("EFC-UMD") under direction of the Commission prepared a brief "Cost Mitigation" section for the above report; and

WHEREAS, the capital, operations, and maintenance costs of advanced wastewater treatment in support of improvements in Delaware Estuary dissolved oxygen are significant; however, cost and affordability mitigation resources are available at the utility level, community level, and household level, and final costs to taxpayers or ratepayers will depend upon many factors, including the use of federal, state, and local programs that influence affordability for utilities, communities, or individuals; and

WHEREAS, the Commission has applied for and expects to receive grant funding from the Delaware Watershed Conservation Fund and through the Bipartisan Infrastructure Law to investigate and report on alternative sources of infrastructure funding in support of wastewater upgrades to meet future dissolved oxygen targets and mitigate the cost of additional wastewater effluent treatment; and

WHEREAS, the EFC-UMD is one of ten regional centers founded by the EPA to deliver targeted technical assistance to, and to partner with states, tribes, local governments, and the private sector in providing innovative solutions to help manage the costs of environmental financing and program management; and

WHEREAS, the EFC-UMD serves EPA Region 3, which includes both Pennsylvania and Delaware, and has more than 30 years of experience working cooperatively with EPA to help communities protect natural resources by strengthening the

capacity of decision-makers to assess needs, develop effective financing methods, and catalyze action; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Executive Director is hereby authorized and directed to enter into an agreement with the Environmental Finance Center at the University of Maryland in an amount not to exceed $80,000 to investigate and report on alternative sources of infrastructure funding in support of wastewater upgrades to meet future dissolved oxygen targets and mitigate the cost of additional wastewater effluent treatment.

2. The authorized contract shall be funded with the proceeds of grants awarded by the Delaware Watershed Conservation Fund and through the Bipartisan Infrastructure Law for this purpose, unless additional funds are allocated to augment this sum.

3. In accordance with sub-paragraphs (1) and (5) of Section 14.9 of the Delaware River Basin Compact, the competitive bidding requirements of that section are hereby waived.

Project Review Docket Applications. Project Review Manager David Kovach reported that seventeen draft dockets had been subjects of a duly noticed public hearing on February 8, 2023 and a written comment period that extended through Monday, February 13, 2023. Sixteen of the subject projects were located in the Commonwealth of Pennsylvania, and one was located in the State of New York. Of the seventeen projects, eleven were for wastewater discharges and six for water withdrawals. DRBC received substantive comments on only one of the draft dockets – Docket D-2002-038 CP-4 for renewed approval and an upgrade of the wastewater treatment plant owned and operated by the Nazareth Borough Municipal Authority (docket item 8). The draft docket included approval of a proposal to replace the plant's disinfection system with an ultraviolet light disinfection system.

The Delaware Riverkeeper Network (DRN) submitted comments on the Nazareth Borough docket,

a) seeking clarification of requirements for implementing the non-point source pollution control provisions of the DRBC's Special Protection Waters ("SPW") regulations;

b) recommending that DRBC impose more stringent limits to protect aquatic life in the receiving stream;

c) requesting clarification of an error (regarding beneficial use of biosolids) in the NPDES permit application that was included as an attachment to the applicant's DRBC application; and

d) recommending that the docket include PFOS monitoring limits and treatment requirements.

Staff's responses were set forth in a comment and response document that was furnished to and discussed with the DRBC Commissioners in advance of the March 8, 2023 meeting. Mr. Kovach summarized staff's responses verbally, as follows:

First, a typographical error in Section B.1. of the draft docket and a condition in Section C.4. had created ambiguity as to whether the docket holder would be subject to a non-point source pollution control plan ("NPSPCP") requirement under DRBC's SPW regulations. Mr. Kovach explained that the proposed construction would not result in an increase in impermeable surface area warranting post-construction stormwater management and that any earth disturbance that could result in a non-point source pollutant load during construction was being mitigated by implementation of an erosion and sediment control plan. DRBC staff also had reviewed the stormwater management plan and associated ordinances for the municipalities in the area served by the plant and concluded that the applicable plan and ordinances satisfied the NPSPCP requirement at section 3.10.3.A.2.e.1 of the Commission's Water Quality Regulations. Accordingly, in response to DRN's comment, staff revised the draft docket by correcting the typo in Section B.1. and removing condition C.4. to make clear that the requirement was not applicable.

With respect to DRN's request that more stringent limits be imposed on the docket holder's discharge to protect aquatic life in the receiving stream, Mr. Kovach explained that the limits DRBC had included in both the current and draft revised dockets consisted of fixed value limits, much like technology standards, and limits calculated from a no measurable change evaluation conducted pursuant to DRBC's SPW regulations. The latter are used to ensure no measurable change except toward natural conditions in existing water quality at a boundary control point established by the DRBC just upstream of the confluence of Bushkill Creek and the (interstate) main stem Delaware River designated by the DRBC as SPW. Neither of the types of effluent limits imposed by the DRBC were based on stream quality objectives applicable to the receiving stream. Rather, where required by state law, limits of that kind are imposed by the state and not by the DRBC.

Regarding DRN's comment concerning biosolids, Mr. Kovach explained that the PA DEP permit application that was included as an attachment to the applicant's DRBC renewal application included an error. The applicant had erroneously checked "none" in response to a question regarding the beneficial use of biosolids generated by the Nazareth Borough plant. DRBC staff consulted with both PA DEP and the applicant and confirmed that the plant does land-apply its biosolids for beneficial use under a PA DEP general permit. The applicant's representative had simply checked the wrong box in the PA DEP application.

Finally, with respect to monitoring and treatment to remove PFOS, as the DRBC has explained in the past, the DRBC will continue to support state and federal efforts in relation to these chemicals, including by performing ambient monitoring in the main stem Delaware River and by sharing data and expertise with co-regulators.

Mr. Kovach concluded by stating that the DRBC staff recommended no changes to the Nazareth Borough Municipal Authority draft docket other than those concerning the nonpoint source

pollution control plan requirement. He recommended that the Commissioners approve the dockets identified as project review agenda items one through 17.

Mr. Hoffman so moved, Mr. Kosinski offered a second, and without further comment or discussion, project review agenda items 1 through 17, described in Attachment A of these Minutes, were approved by unanimous vote.

Adjournment. Mr. Kosinski moved for adjournment, and Lt. Colonel Brigantti seconded his motion. Without further discussion, the Commission's business meeting of March 8, 2023 was adjourned by unanimous vote at approximately 11:35 a.m.

Audio Recording. Audio recordings of the public hearing of February 8, 2023 and business meeting of March 8, 2023 are on file with the Commission Secretary.

Open Public Comment. Following the business meeting, Mr. Tambini hosted an open public comment session for off-the-record comment by stakeholders on water resource issues affecting the basin.

Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel

ATTACHMENT A

DESCRIPTION OF PROJECTS APROVED BY THE COMMISION DURING THE BUSINESS MEETING OF March 8, 2023

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:

o Each project for which an application is received is added to the "Project Review Status Report" maintained at https://www.nj.gov/drbc/programs/project/project-review_status-pg.html. This report, updated approximately once a month, 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.

o A list of applications received is compiled and posted as a "Notice of Applications Received" (NAR) at https://www.nj.gov/drbc/programs/project/nar.html, approximately once per month.

o Anyone interested in receiving notices about projects under review as the notices are posted on the Commission's website, may sign up for the Commission's "Most Recent Notice of Applications Received" listserv at https://www.nj.gov/drbc/contact/interest/index.html.

o 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.

o 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.

o Ten days prior to the hearing date, the hearing notice, along with draft dockets, is posted on the Commission's website. A public hearing and meeting notice also appears in the Federal Register and certain state registers in accordance with the respective schedules of these publications. The register notice directs readers to the Commission's website for links to the draft dockets available for comment.

Written comment on hearing items is ordinarily accepted until 5 p.m. on the Monday of the week following the public hearing.

At the Commission's 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. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals on March 8, 2023 are presented below.

A. Renewals with No Substantive Changes (Items 1 through 17)

1. Borough of Phoenixville, D-1967-080 CP-5. An application to renew the approval of the existing 4.0 million gallons per day (mgd) Phoenixville Borough WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 35.0 (Delaware River - Schuylkill River) in the Borough of Phoenixville, Chester County, Pennsylvania.

2. Northampton Borough - Northampton, PA, D-1987-046 CP-3. An application to renew the approval of the existing 1.5 mgd Northampton Borough WWTP and its discharge. The WWTP will continue to discharge to Hokendauqua Creek, which is a tributary of the Lehigh River, at River Mile 183.7 - 22.1 - 0.3 (Delaware River - Lehigh River - Hokendauqua Creek) 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 Northampton Borough, Northampton County, Pennsylvania.

3. Panther Creek Power Operating, LLC, D-1987-066 -7. An application to renew the approval of an allocation of 69.2 mgm of groundwater from the Lausanne Tunnel mine pool overflow and up to 1.2 mgd, based on a 30-day average, of surface water purchased from Nesquehoning Borough Authority for use at the applicant's electric generating facility. No changes to the facility operations or water allocations are proposed. The project, including the associated withdrawal, is located within the Lehigh River Watershed in the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters, in Nesquehoning Borough, Carbon County, Pennsylvania.

4. Pennsylvania American Water Company, D-1990-028 -4. An application to renew the approval of the existing 0.1 mgd Marcel Lakes WWTP. The WWTP will continue to discharge treated effluent to Dingmans Creek at River Mile 239.5 - 7.2 (Delaware River - Dingmans Creek) which is located within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has designated as Special Protection Waters, in Delaware Township, Pike County, Pennsylvania.

5. Lyons Borough Municipal Authority, D-1994-080 CP-5. An application to renew the approval of an existing 0.375 mgd WWTP and its discharge. Effluent limits are currently based upon

an average annual flow of 0.3 mgd. The WWTP will continue to discharge treated effluent to Sacony Creek, which is a tributary of Maiden Creek, itself a tributary of the Schuylkill River at River Mile 92.47 - 86.7 - 11.3 - 12.2 (Delaware River - Schuylkill River - Maiden Creek - Sacony Creek) via Outfall No. 001 in the Borough of Lyons, Berks County, Pennsylvania.

6. Community Utilities of Pennsylvania, Inc., D-1999-020 CP-5. An application to renew the approval of the applicant's existing 0.56 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary (UNT) of Brodhead Creek at River Mile 213.0 - 8.7 - 1.5 (Delaware River - Brodhead Creek - UNT of Brodhead Creek) via Outfall No. 1, within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters, in Stroud Township, Monroe County, Pennsylvania.

7. East Marlborough Township, D-2000-043 CP-5. An application to renew the approval of the existing 0.440 mgd Unionville Regional Sewage WWTP and its discharge to land. The WWTP will continue to discharge treated effluent to land via spray irrigation near the West Branch Red Clay Creek, within the drainage area to Water Quality Zone C5, in East Marlborough Township, Chester County, Pennsylvania.

8. Nazareth Borough Municipal Authority, D-2002-038 CP-4. An application to renew approval of the docket holder's existing 1.6 mgd WWTP and its discharge and to upgrade the disinfection system from chlorine disinfection to ultraviolet (UV) disinfection. The WWTP will continue to discharge treated effluent to Shoeneck Creek, via Outfall No. 001, at River Mile 184.1 - 5.9 - 3.2 (Delaware River - Bushkill Creek - Shoeneck Creek) , in Lower Nazereth Township, Northampton County, Pennsylvania, in the drainage area to the Lower Delaware Special Protection Waters (SPW) area.

9. Schwenksville Borough Authority, D-2003-029 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 15.29 mgm to supply the applicant's public water supply distribution system from Well Nos. 3, 4, 5, 7 and 9. The project wells are completed in the Brunswick Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Perkiomen Creek Watershed in Borough of Schwenksville, Montgomery County, Pennsylvania.

10. Pennsylvania American Water Company, D-2006-045 CP-4. An application to renew the approval of the existing 1.0 mgd Royersford Borough WWTP and its discharge. No modifications to the WWTP are proposed. The WWTP will continue to discharge treated effluent to the Schuylkill River at River Mile 92.47 - 41.5 (Delaware River - Schuylkill River) via Outfall No. 001, in Upper Providence Township, Montgomery County, Pennsylvania.

11. Pennsylvania American Water Company, D-2008-002 CP-4. An application to renew the approval of the applicant's existing 5.4 mgd Yardley Water Filtration Plant (WFP) and its discharge of up to 0.402 mgd of water treatment effluent. The WFP will continue to discharge

to Brock Creek, which is a tributary of Buck Creek, at River Mile 138.0 - 0.54 - 1.6 (Delaware River - Buck Creek - Brock Creek), within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters, in Lower Makefield Township, Bucks County, Pennsylvania

12. Aqua Pennsylvania, Inc., D-2008-025 CP-4. An application to renew the approval of an existing discharge of up to 0.15 mgd of filter backwash from the applicant's 6.0 mgd water filtration plant (WFP). The WFP will continue to discharge to Ridley Creek, which is a tributary to Water Quality Zone 4 of the Delaware River at River Mile 83.80 - 8.61 (Delaware River - Ridley Creek) via Outfall No. 001 in Middletown Township, Delaware County, Pennsylvania.

13. Kennett Square Borough, D-2012-003 CP-2. An application to renew the approval of an existing groundwater withdrawal of up to 35.712 mgm to supply the applicant's public water supply distribution system from Well Nos. 1 and 2. The project wells are completed in the Cockeysville Marble and Mafic Gneiss. The requested allocation is not an increase from the previous allocation. The project is located in the Red Clay Creek Watershed in Borough of Kennett Square, Chester County, Pennsylvania.

14. The College Golf Course at Delhi, D-2012-006 CP-2. An application to renew the approval of an existing surface water withdrawal of up to 6.975 million gallons per month (mgm) from an irrigation intake in the Little Delaware River and up to 0.30 mgm of groundwater from an existing on-site well. The water is used for irrigation and potable supply at the College Golf Course at Delhi. The project is located in the West Branch Delaware River and Little Delaware River Watersheds, within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware, which the Commission has designated as Special Protection Waters, in the Town of Delhi, Delaware County, New York.

15. Ambler Borough, D-1975-016 CP-6. An application to approve a proposed increase in flow from the docket holder’s facility to accommodate the acceptance of flow from the existing UDT WWTP, operated by the Bucks County Water & Sewer Authority (BCWSA). To accommodate the increase in flow (approximately 1.28 mgd diverted from UDT WWTP), the docket holder proposes to expand its existing influent pump station and increase the existing annual average flow of the facility from 6.5 mgd to 7.7 mgd. The WWTP will continue to discharge treated effluent to the Wissahickon Creek, at River Mile 92.5 - 12.8 - 12.7 (Delaware River - Schuylkill River - Wissahickon Creek), located in in Upper Dublin Township, Montgomery County, Pennsylvania.

16. Aqua Pennsylvania, Inc., D-1975-078 CP-6. An application to renew the approval of an existing groundwater withdrawal with an increase in allocation from 22.28 mgm to 25.048 mgm to supply the applicant's public water supply distribution system from four (4)existing wells, an existing Spring and new Well 7. The project also includes an existing importation of up to 0.494 mgd of groundwater from the Susquehanna River Basin from Wells SCI 1 and 2 in the Aqua PA Waymart SCI System. The project wells are completed in the Duncannon,

Polar Gap and Packerton members of the Catskill Formation. The project is located in the Van Auken Creek Watershed in Waymart Borough and Canaan Township, Wayne County, Pennsylvania within the drainage area of the section of the main stem Delaware River known as the Upper Delaware, which is classified as Special Protection Waters.

17. PEL Pharma, Inc., D-1996-049 -5. An application to renew the approval of an existing groundwater withdrawal with an increase in allocation from of up to 2.3 mgm to 3.45 to continue to supply the applicant's industrial facility from existing Wells Nos. 1, 2, and 3. The project wells are completed in the Lockatong and Brunswick Formations. The project is located in the Commission's designated Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the East Branch Perkiomen Creek Watershed in West Rockhill Township, Bucks County, Pennsylvania.

B. Renewals with Substantive Changes (None)

C. Projects Not Previously Reviewed by the Commission (None)