

**DELAWARE RIVER BASIN COMMISSION**

**MEETING OF SEPTEMBER 8, 2022**

**Minutes**

Commissioners Present: Lisa Daniels, Pennsylvania, Chair  
Jeffrey L. Hoffman, New Jersey, Vice Chair  
Kenneth Kosinski, New York, Second Vice Chair  
Shawn M. Garvin, 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  
Kristen B. Kavanagh, Deputy Executive Director  
Elba Deck, Director of Finance and Administration  
David Kovach, Manager, Project Review  
Amy Shallcross, Manager, Water Resource Operations

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

The Commission's four other members introduced themselves: Shawn Garvin, Secretary, Delaware Department of Natural Resources and Environmental Control, representing Governor John Carney; Jeff Hoffman, New Jersey State Geologist, representing Governor Phil Murphy; Ken Kosinski, Bureau Director, Bureau of Flood Protection and Dam Safety, New York State Department of Environmental Conservation, representing Governor Kathy Hochul; and Lt. Col. Ramon Brigantti, Philadelphia District Commander, U.S. Army Corps of Engineers, representing Col. John Lloyd, North Atlantic Division Commander, U.S. Army Corps of Engineers. 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 and asked for patience in the event of any technical or procedural issues related to the remote platforms. She noted the business meeting was being recorded. She further noted that: a toll-free number provided on the DRBC website was available; remote meeting attendees would not have camera or microphone access during the business

meeting; and participation in the open public comment session following the business meeting was possible only by phone or through the Zoom app, but not through the YouTube channel. Ms. Daniels noted that other routine business meeting and open public comment procedures, which could be found on the DRBC website, would apply. She explained that once the business meeting agenda was concluded and the business meeting adjourned, Executive Director Steve Tambini would moderate the open public comment session.

Minutes. Ms. Bush said the draft minutes had been circulated to the Commissioners some weeks before and two minor corrections had been made. She recommended that the Minutes now be adopted. Mr. Hoffman so moved. Mr. Kosinski offered a second, and without further discussion, the Minutes of the June 8, 2022 business meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following scheduled advisory committee meetings, all to be conducted *via* Zoom webinar. She noted that additional details for each, including staff liaisons and registration links, could be found on the DRBC website.

- *DRBC Water Quality Advisory Committee* – Tuesday, September 13 and Wednesday, October 12, both from 9:30 until noon.
- *DRBC Advisory Committee on Climate Change* – October 12 from 1:00 – 3:00 p.m.
- *DRBC Water Management Advisory Committee* – Thursday, October 13 from 10:00 a.m. until noon.

Hydrologic Conditions. DRBC’s Water Resource Operations Manager, Amy Shallcross, reported on the Basin hydrologic conditions. Ms. Shallcross’s PowerPoint slides are available at: [https://www.nj.gov/drbc/library/documents/HydrologicConditions\\_Shallcross090822.pdf](https://www.nj.gov/drbc/library/documents/HydrologicConditions_Shallcross090822.pdf)

*Water Cycle.* Ms. Shallcross explained that as the agency responsible for managing the Basin’s water resources, the Commission is concerned with the hydrologic cycle, which describes how and where water interacts among the atmosphere, land, and water bodies. Displaying an illustration of the cycle, Ms. Shallcross explained that water evaporates from a water body and becomes clouds, it condenses and falls as precipitation, and when it hits the ground, it may either run off into a surface water body or infiltrate into groundwater. As surface water, it may flow into a lake or stream, and then the cycle starts anew.

*Precipitation.* Ms. Shallcross recalled that a year before, on September 3, 2021, the Basin experienced flooding due to Hurricane Ida. In contrast, on September 3, 2022, people were observed standing in the middle of the river at Frenchtown, New Jersey, in water that was only chest deep.

Maps showing precipitation basin-wide over the previous 90 days and precipitation departures (i.e., above or below the norm for this period) indicated regions of dryness. Ms. Shallcross noted that the upper basin had recently received above-normal precipitation amounts, while the middle basin had received less rain and was still relatively dry, even after a Labor Day rain event that had

caused flooding or near-flooding. She noted that the southern portion of the basin, especially in New Jersey, was experiencing very dry conditions.

Ms. Shallcross added that parts of the upper basin, as well as the Lehigh and Schuylkill sub-basins, had received more than five inches of rain during the Labor Day storm event. Other areas of the basin received between an inch and three inches during the event. The Pennypack Creek in Philadelphia reached minor flood stage, with some action stage activity on the East Branch Brandywine below Downingtown, Pennsylvania. In the upper basin, the East Branch Delaware at Harvard, which is just downstream of Pepacton Reservoir, and the Schuylkill River on the Schuylkill Expressway, experienced flooding.

Maps of 30-day precipitation and 30-day precipitation departures showed above normal precipitation in the upper basin, with dry conditions in the middle and lower portions of the basin.

*Streamflow.* When water from the water cycle flows into surface water bodies and streams, it can be measured as streamflow. As of the meeting date, many areas of the basin were experiencing normal or above normal streamflows. Ms. Shallcross presented hydrographs showing the observed, average, and median flows over the preceding twelve months for each of three key gage locations – Montague, Trenton and Philadelphia. She pointed to various storm events evident on the graphs, including the rain event of November 12, 2021 and nor'easters of late January and April 18-19, 2022.

*Reservoir storage.* As of the meeting date, storage in the basin reservoirs was below normal. Usable storage in the lower basin was 94.2 percent at Blue Marsh, 94.5 percent at Beltzville, and 14 percent at F.E. Walter. Combined storage in the New York City DRB reservoirs was 164.8 billion gallons (BG), equal to 61.6 percent of the reservoirs' combined capacity, 7.5 BG lower than the previous week, and 33.1 BG above drought watch. Storage levels in the individual reservoirs were: Cannonsville – 45.9 percent, Pepacton – 69.9 percent, and Neversink – 70.8 percent. The combined New York City DRB storage was below the long-term median value by 31.5 BG, and 91.0 BG lower than at the same time in 2021.

When flows fall below 1750 cubic feet per second (cfs) at Montague, New Jersey, water is released from New York City's Delaware Basin reservoirs to meet the 1750 cfs flow objective. The Office of the Delaware River Master works with New York City to determine the amount of water needed to meet the objective. The DRBC directs releases from storage it owns in Beltzville and Blue Marsh Reservoirs to meet the Trenton flow objective of 3,000 cfs. The importance of meeting the Trenton flow objective is to ensure a certain amount of fresh water reaches the Estuary for salt repulsion, as salinity can cause issues with corrosion of intakes and problems with drinking water treatment, taste, and odor.

Ms. Shallcross noted that 20 BG in releases from the New York City DRB reservoirs were made to meet the Montague flow objective between late July and just a few days before Labor Day. Releases totaling 2.1 BG from Beltzville and Blue Marsh reservoirs were made to meet the Trenton flow objective between August 14 and September 1. Although not specifically for Trenton,

recreation releases from F.E. Walter Reservoir of 1.8 BG over several weekends offset the amount of water required from Blue Marsh and Beltzville. An additional 0.52 BG was released from a bank of water in the New York City reservoirs reserved to support the Trenton flow objective.

*Salt front.* One of the major drivers for the development of a Trenton flow objective was high salinity concentrations in the Delaware River Estuary during periods of drought. The Trenton flow objective ensures a certain amount of freshwater inflow into the Estuary to repel the salinity. The “salt front,” which is based on the location in the Estuary at which the concentration of chloride becomes greater than 250 mg/l for 7 days, is used as an indicator of salinity intrusion. For the most part, water in the Estuary at Philadelphia, Pennsylvania and Delran, New Jersey is fresh enough for use by industry and for drinking water serving the Philadelphia metropolitan area and central New Jersey. However, if the saltwater-freshwater interface migrates too far upstream, the use of this water may be compromised. On the meeting date, the salt front was at River Mile (RM) 79.3. The typical location for September is RM 76.

*Groundwater.* Groundwater conditions in the Basin are measured by eleven indicator wells. The water levels in these wells reflect the amount of precipitation received over the past several months. As of the meeting date, two wells, in Wayne and Delaware counties, Pennsylvania, and one in Burlington County, New Jersey, were at drought watch levels. The well in Cumberland County, New Jersey, much below its normal levels, was considered to be in drought warning. The levels of these monitoring wells were consistent with the below-normal precipitation experienced over the previous 90 days. Ms. Shallcross noted that the groundwater drought categories she shared are those defined by the USGS and unrelated to drought categories of the states or the DRBC.

*Drought outlook.* As of the meeting date, with the exceptions of Chester, Pennsylvania and New Castle, Delaware, all counties of the Delaware Basin were in a drought watch as defined by the individual states. Ms. Shallcross presented NOAA-National Weather Service (NOAA-NWS) Drought Monitor graphics from July 5, July 26, August 16, and August 30 to show the progression of drought development in the basin. As of the meeting date, the seasonal drought outlook prepared by NOAA-NWS indicated that drought conditions may persist in the New Jersey portions of the basin and may develop in northern Delaware. However, the same source predicts above normal temperatures and above normal rainfall over the course of fall.

*Hurricane season.* Hurricane Season runs from June 1 through November 30. Originally, NOAA’s National Hurricane Center anticipated an active hurricane season, but it issued a revised forecast in August when the predicted storms had not materialized. The norm is for eight tropical storms by September 8, three hurricanes by September 7 and one major hurricane by September 1. As of the meeting date, there had been five, two and zero, respectively. The new forecast was for 14-20 storms (14 is normal); 6-10 hurricanes (7 is normal); and 3-5 major hurricanes (3 is normal).

*Additional information.* Some of the graphics presented by Ms. Shallcross may be accessed on the DRBC Hydrologic Snapshot for Flow and Drought Management at [www.hydrosnap.drbc.net](http://www.hydrosnap.drbc.net). The Commission’s website also includes a flood portal, where users can access flood information, sign up for alerts from the National Weather Service, and find links to flood forecasts and FEMA

projects. The portal is located in the Hydrological Information tab on DRBC's homepage, at <https://www.nj.gov/drbc/hydrological/river/portal-flood.html>.

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

- *Meeting attendance.* Data from Zoom indicated that excluding the commissioners, executive director and counsel, attendance at the meeting of September 8, 2022, was 77.
- *Dry conditions.* Until just days before the meeting, the Basin had been experiencing extremely dry conditions. Although the recent rainfall was helpful, Mr. Tambini cautioned that overall dry conditions could continue and that DRBC and its state and federal partners had begun to coordinate drought planning and preparedness measures. DRBC drought operations are based upon the amount of water stored in key reservoirs, including New York City's Delaware Basin reservoirs. Mr. Tambini explained that if drought conditions persisted, actions might be needed to preserve storage and manage the salt front in the Delaware Estuary. Information about current hydrologic conditions is posted on the DRBC web site. Water users were encouraged to maximize water efficiency and cooperate with state-issued drought watch alerts.
- *Water Quality Advisory Committee.* Mr. Tambini noted that the agenda for the Water Quality Advisory Committee (WQAC) meeting to take place virtually on Tuesday, September 13, included items related to DRBC's review of aquatic life uses and corresponding water quality standards for the Delaware River Estuary. DRBC staff were slated to offer a preview of their analysis of attainability, a report on which was to be issued later in the month. The September 13 meeting was the latest next in a series of meetings held routinely throughout 2022 to provide the committee, stakeholders and the general public with the opportunity to view and discuss the science, modeling, and planning that will support important changes to water quality standards in the Estuary. All DRBC advisory committee meetings are open to the public. Registration for this meeting was open through the DRBC web site.
- *Microplastics.* The DRBC technical report, *Reducing Microplastics in the Delaware River Estuary* was published recently. The Commission's research sought to characterize the distribution of microplastics in surface water between Trenton, New Jersey and the Chesapeake and Delaware Canal. Microplastics were prevalent in all samples collected at 15 sites in Pennsylvania, New Jersey, and Delaware. Mr. Tambini thanked the principal investigators for this research, Jake Bransky and Dr. Fanghui Chen. The work was funded in part by the U.S. Fish and Wildlife Service through the National Fish and Wildlife Foundation's Delaware Watershed Conservation Fund. More information and access to the report were available on the DRBC website.
- *Water Resources Association Recognition Dinner.* The annual recognition dinner of the Water Resources Association of the Delaware River Basin was to be held on October 21 at the Fairmount Waterworks in Philadelphia. Awardees included the DRBC for its innovative and collaborative work to reduce pollution from polychlorinated biphenyls

(PCBs) in the Delaware River Estuary and DRBC's colleague and counsel, Pam Bush, for her significant contributions to public water resource policy. Mr. Tambini congratulated Ms. Bush and the DRBC staff—present and past—who have worked to reduce PCBs in the Delaware River Estuary.

- *Watershed Forum for the Delaware River Basin.* Registration opened on September 8 for the tenth annual Watershed Forum, to be held on November 3-4 in Philadelphia. DRBC was scheduled to host a forum session on water equity. Additional information could be found on the web site of the Coalition for the Delaware River Watershed.
- *Hispanic Heritage Month.* September is Hispanic Heritage Month, an important time to reflect on contributions and achievements of Hispanic and Latinx members of our basin communities. According to the 2020 census, Spanish is the most commonly spoken language after English in the Delaware River Basin. In Philadelphia, the basin's most populous city, the Hispanic and Latinx population is almost 15 percent of residents. In 2021, DRBC added translation services in multiple languages to its website and piloted live Spanish translation during rulemaking hearings. DRBC was to be a participant in New Jersey Governor Murphy's Hispanic State Resource Fair, produced in partnership with the New Jersey Puerto Rico Commission, on September 23. Mr. Tambini said that during this month-long recognition and throughout the year, we celebrate and support Hispanic heritage and our valued colleagues in the Latinx community.

Ms. Daniels noted that the General Counsel's report would include consideration by the Commission of a request by docket holder Delaware River Partners for an extension of Docket D-2017-009 -2 for the Gibbstown Logistics Center Dock 2 project.

General Counsel's Report. Mr. Warren began his report by reviewing the litigation matters then pending, which were the same matters pending at the Commission's previous quarterly meeting:

*Yaw vs. DRBC*, commenced in 2021 by Senators Gene Yaw and Lisa Baker, the Pennsylvania Republican senatorial caucus, and certain municipalities, challenges the DRBC's regulation prohibiting high-volume hydraulic fracturing in the basin. The case was dismissed by the district court on grounds that the plaintiffs lacked standing to bring their claims, and the plaintiffs appealed the case to the Court of Appeals for the Third Circuit, where the matter was fully briefed and on March 31, 2022, argued. During the few weeks preceding the Commission's meeting date, appellants filed a motion for additional briefing; however, before DRBC's response to that motion was due, the Third Circuit denied the motion. Thus, as of the meeting date, the parties were still awaiting a substantive decision by the Third Circuit on the appeal.

*Wayne Land and Mineral Group (WLMG) vs. DRBC*, commenced in 2016 by WLMG, challenges DRBC's authority under Section 3.8 of the Delaware River Basin Compact to review high-volume hydraulic fracturing (HVHF) projects. By agreement of the parties the case was stayed pending resolution of the Yaw case. DRBC filed a motion to dismiss the case on the grounds that the prohibition on HVHF in the basin made a review of any of those projects moot. (DRBC will not

be reviewing HVHF projects as long as there is a ban on such projects in the Basin.) With the advice of the court, the parties agreed to stay the case until the Yaw case is decided.

*Delaware Riverkeeper Network (DRN) vs. DRBC*, commenced in 2021 by DRN, is a case related to the Gibbstown Logistics Center (GLC), Dock 2 project. Because of its relationship to the request by docket holder Delaware River Partners (DRP) for an extension of Docket D-2017-009-2 issued by the Commission for that project, Mr. Warren described the case in more detail.

The Dock 2 project involves dredging and the construction of a deep water berth at the Gibbstown Logistics Center (GLC) in Gibbstown, New Jersey. The Commission issued a docket approval for the project on June 12, 2019. Thereafter, administrative appeals of that docket were filed, which resulted in a lengthy hearing before an appointed hearing officer. The hearing officer recommended that the docket approval be affirmed. On December 9, 2020, the Commission issued its final docket decision adopting the recommendation of the hearing officer to affirm the June 12, 2019 docket approval. DRN appealed the Commission's decision to federal court in the District of New Jersey. The case was fully briefed on cross motions for summary judgment, and as of the Commission meeting date, the litigants were awaiting the decision of the district court on those motions. Meanwhile, on June 2, 2022, DRP filed an application to extend the Commission's project approval until June 12, 2025.

DRP's request was based upon Section 401.41(a) of the Commission's Rules of Practice and Procedure, which reads:

Approval by the Commission under these regulations shall expire three years from the date of Commission action, unless prior thereto, the sponsor has expended substantial funds in relation to the cost of the project in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

Having received that application and consistent with the Commission's longstanding practices, on June 16, 2022, the executive director granted the extension. Various environmental organizations quickly objected to the executive director's decision as exceeding his authority and incorrect. The executive director responded to those objections, stating that it would be beneficial for DRP's extension request to be considered by the commissioners. He invited the objectors and DRP to submit their positions in writing and asked DRP to provide updated project cost information. The submissions of the parties were made and furnished to the commissioners. Mr. Warren advised that should the commissioners choose to approve or disapprove the requested extension, their action would render the question of the executive director's authority moot, because it would be a decision by the commissioners as the DRBC's governing body.

The objectors argued that Section 14.4(b) of the Compact, and Section 401.5 of the Rules of Practice and Procedure require the Commission to conduct a public hearing before it may act on a request for a docket extension. Mr. Warren explained that the cited provisions apply to the adoption of the Commission's comprehensive plan or the consideration of projects for inclusion in the

comprehensive plan. The Commission's approval of the docket for the GLC Dock 2 was based upon the commissioners' determination under Section 3.8 of the Compact that the project would not substantially impair or conflict with the comprehensive plan. The Commission did not *add* the project to the comprehensive plan. Accordingly, the public hearing requirements cited by the objectors were not applicable to this project. That said, Mr. Warren explained, the Commission's practice is to conduct public hearings when approving projects or making material modifications to the requirements contained in a docket approval. Whether or not the DRP's extension request were granted would make no difference to the terms of the docket issued for the GLC Dock 2; the docket would remain unchanged.

Mr. Warren explained that under the circumstances, in his view the opportunity afforded the objectors and DRP to make written submissions to the commissioners provided sufficient process. He advised that it was within the commissioners' discretion to do more, including granting a public hearing, but added that this had not been DRBC's practice in the past, and he did not recommend it.

The next question was whether DRP had expended substantial funds in relation to the cost of the Dock 2 project. The record showed that DRP had expended \$1,813,949 out of estimated project costs of \$113,497,584. As the objectors emphasized, the expenditures comprised only 1.6 percent of the total estimated project cost; yet expenditures of \$1.8 million demonstrated a substantial commitment to complete the project. Mr. Warren added that a good explanation existed for why DRP had not expended more.

The Commission has no regulation or guidance explaining how substantial funds in relation to the cost of a project should be determined, making this a matter for the Commissioners' discretion. Mr. Warren advised that in his view, the expenditure of \$1.8 million under the circumstances satisfied the test. He noted that the delay in making further expenditures was in part explained by the pendency of appeals of various government permits necessary for DRP to undertake the project. If the appeals were successful, an expenditure of more of the \$113 million needed to complete the project would be wasteful. Mr. Warren opined that these circumstances supported granting the extension under Section 401.41(a) of the Rules of Practice and Procedure (Rules) and waiving the three-year expiration date pursuant to Section 401.123 of the Rules, at least until June 12, 2025.

Objectors had further argued that DRBC should review DRP's new plans to construct an upland rail loop located primarily outside of the GLC's original footprint. Under Section 3.8 of the Compact, the Commission reviews only projects having a substantial effect on the water resources of the basin. Mr. Warren opined that an upland rail loop is not a project having a substantial effect on the water resources of the basin and is not among the types of activities identified in the Rules as subject to the Commission's review.

Mr. Warren stated that he had provided the commissioners with a draft resolution approving the requested extension, setting forth much of the information he had provided orally. He recommended that the commissioners adopt the resolution.

Mr. Kosinski offered instead a motion that DRBC delay action on the requested extension of the GLC Dock 2 docket so that the Commission could accept public comments on the draft resolution and hold a virtual public hearing before considering the matter on its merits at a later DRBC business meeting, possibly on December 7, 2022. He said that due to the high-profile nature of the Dock 2 project and ongoing concerns expressed by stakeholders, New York was of the opinion that public comments on the draft resolution should be accepted and a virtual public hearing held before Commission action. Mr. Kosinski added that New York viewed its proposed approach as consistent with the DRBC's longstanding commitment to transparency and strong stakeholder engagement. He said New York continued to have the concerns it had articulated when the Commission affirmed its approval of the Dock 2 docket in 2020—concerns going to the adequacy of the process to explore, present, and fully consider potential environmental impacts associated with the GLC Dock 2, in particular, matters relating to greenhouse gas emissions and dredging in an area of the Delaware River affected by legacy industrial activity. There being no second, the motion offered by Mr. Kosinski failed.

Ms. Daniels asked whether there was another motion. Lt. Col. Brigantti moved that an extension of the GLC Dock 2 docket be approved in accordance with the draft resolution circulated previously by Mr. Warren. Mr. Hoffman offered a second. Without further discussion, the Resolution for the Minutes regarding the request of Delaware River Partners pursuant to Section 401.41(a) of the Commission's Rules of Practice and Procedure for an extension of the expiration date of Docket D-2017-009-2 issued for the Gibbstown Logistics Center Dock 2 was approved by a vote of four in favor, with Mr. Kosinski, on behalf of New York, abstaining.

The text of the Resolution follows:

#### RESOLUTION FOR THE MINUTES

A Resolution for the Minutes regarding the request of Delaware River Partners pursuant to Section 401.41(a) of the Commission's *Rules of Practice and Procedure* for an extension of the expiration date of Docket D-2017-009-2 issued to Delaware River Partners LLC for the Gibbstown Logistics Center Dock 2.

WHEREAS, on June 12, 2019, the Commission issued Docket D-2017-009-2 (the "Docket") to Delaware River Partners LLC ("DRP") approving a dredging and deep water berth construction project known as the Gibbstown Logistics Center Dock 2 ("GLC Dock 2"); and

WHEREAS, following a lengthy administrative hearing granted by the Commission to resolve administrative appeals of the Docket, on December 9, 2020 the Commission entered its final decision affirming the Docket; and

WHEREAS, Section 401.41(a) of the Commission's *Rules of Practice and Procedure*, 18 C.F.R. Part 401 (the "RPP") provides as follows: "Approval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the

cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.”; and

WHEREAS, on June 2, 2022, while preserving its position that the three-year expiration period in Section 401.41(a) commenced on December 9, 2020, DRP wrote to the Commission “to request an extension of Docket No. D-2017-009-2” until June 12, 2025 pursuant to Section 401.41(a), offering evidence to demonstrate that it had expended sufficient funds to satisfy the showing required by Section 401.41(a); and

WHEREAS, DRP’s request for an extension under Section 401.41(a) does not seek to modify the GLC Dock 2 project or a Docket condition but only to extend the three-year expiration period in Section 401.41(a) by virtue of DRP’s expenditure of substantial funds; and

WHEREAS, based upon the information presented by DRP and consistent with the Commission’s past practice, the Executive Director approved the requested extension by letter dated June 16, 2022; and

WHEREAS, by letters dated July 27 and August 12, 2022, respectively, the Delaware Riverkeeper Network (“DRN”) and a group of environmental organizations under the name “Delaware River LNG Coalition” (collectively the “Objectors”) submitted letters to the Commission objecting to the Executive Director’s action as exceeding his authority, challenging DRP’s demonstration that it had expended substantial funds in relation to the cost of the GLC Dock 2 project, and requesting Commission consideration of the matter after a public hearing as allegedly required by 18 C.F.R. 401.5; and

WHEREAS, by letter dated August 15, 2022, the Executive Director responded that it would be beneficial for DRP’s request to be considered by the Commissioners, invited DRN and DRP to submit their positions in writing for consideration by the Commissioners, and requested DRP to include in its submission an updated estimate of the cost of the project and a statement of the amount of project costs expended after issuance of the Docket; and

WHEREAS, the Commission received written submissions from DRN on August 17, 2022, and from the Delaware River LNG Coalition on August 25, 2022, disputing the authority of the Executive Director to issue his June 16, 2022 approval, asserting that Section 401.5 of the RPP and Section 14.4(b) of the Delaware River Basin Compact require the Commission to conduct a public hearing on DRP’s extension request, disputing that DRP had expended substantial funds in relation to the cost of the GLC Dock 2 project, and contending that the Commission should review a modified plan for rail infrastructure on the upland portion of the Gibbstown Logistics Center site; and

WHEREAS, by letter dated August 29, 2022, DRP responded to the Objectors’ submissions and provided an updated statement of GLC Dock 2 project costs and expenditures made to date in reliance on the Commission’s Docket approval.

NOW THEREFORE, BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Commission incorporates the WHEREAS Clauses above as though fully set forth herein.
2. In reliance on the Commission's Docket approval, DRP has expended \$1,813,949 to date in engineering, licensing, and tax costs. The balance of the \$113,497,584 of project costs are for in-water dredging and construction work and planning, engineering, and other construction-related costs. The in-water work remains the subject of multiple legal challenges which DRP continues to defend at considerable expense.
3. The costs DRP has expended in reliance on the Commission's Docket approval are substantial in relation to the total estimated cost of the GLC Dock 2 project.
4. The rail plans that are the subject of the Objectors' challenge do not require Commission review because the rail loop is upland of the GLC Dock 2 project, is separate from the activities the Commission authorized for the GLC Dock 2 project and does not constitute a "project" requiring review under Section 3.8 of the Compact as it has no substantial effect on the water resources of the Basin.
5. The Commission approved the GLC Dock 2 project under Section 3.8 of the Compact after a public hearing and an additional extensive administrative hearing based on the Commission's determination that the project, as limited by the conditions in the Docket, did not impair or conflict with the Comprehensive Plan. The Commission did not add the project to the Comprehensive Plan.
6. Section 14.4(b) of the Compact requires the Commission to hold at least one public hearing prior to the adoption of the Comprehensive Plan. Section 401.5 of the RPP requires the Commission to conduct public hearings on each project application for projects that are considered for inclusion in the Comprehensive Plan. Because the GLC Dock 2 project is not part of the Comprehensive Plan, the Compact and the RPP do not require the Commission to conduct a public hearing. When, as here, a request by a project sponsor does not seek a change to the terms and conditions of a Docket previously issued following public hearing, the Commission's practices likewise do not require the Commission to conduct an additional public hearing.
7. DRP demonstrated that it expended substantial funds in relation to the cost of the project within the three years following the Commission's approval, and that it was entitled to an extension of the three-year period in Section 401.41(a) of the RPP.
8. The pending appeals of federal and state approvals of the GLC Dock 2 project provide an independent ground for the Commission to extend the three-year expiration period in Section 401.41(a) or to waive the expiration period in accordance with Section 401.123 of the RPP.
9. DRP's request for an extension until June 12, 2025 of the three-year period set forth in Section 401.41 is approved.

10. This action supersedes and replaces the Executive Director's action taken by letter dated June 16, 2022.

A Resolution for the Minutes to Authorize Replacement of the Chiller Component of the HVAC System at the Commission's Headquarters Building on a "Sole Supplier" and "Public Exigency" Basis. Ms. Deck stated that the commissioners had been briefed at the June caucus on the matter of the urgent need for replacement of the chiller component of the HVAC system at DRBC's headquarters building in West Trenton. She said that shortly thereafter, staff had sent the commissioners correspondence on the matter, including a draft of the proposed resolution. Ms. Deck recited the following points regarding the need for replacement of the chiller:

- Many of the components of the HVAC system that currently serves the Commission's West Trenton office building date from 1970 – the year the building was constructed. The chiller was replaced in 1992 and is now 30 years old.
- Due to its age, the system is becoming increasingly unreliable and costly to keep in service, as replacement parts are scarce or unavailable and few technicians are capable of servicing the antiquated equipment.
- A draft resolution and supporting memorandum provided to the commissioners in June 2022 describes in detail staff's efforts through fall of 2021 and early spring of 2022 to competitively bid the work of replacing the chiller unit and related parts, as Section 14.9 of the Compact ordinarily requires, or to proceed under an existing state or federal contract. These extraordinary efforts over the course of seven months were unsuccessful.
- The sole willing vendor staff could find was Sander Mechanical Services of Branchburg, New Jersey, the firm that replaced the building's original furnace in 2017. But Sander declined to participate in a competitive bidding process.
- During May 2022, the chiller unit ceased to function and remained inoperable for several days. The unit was restored to service, but because a key replacement part could not be found, it could operate at only fifty percent of its capacity after the May 2022 repair. It became evident in May that the chiller and related elements of the system were urgently in need of replacement.
- An estimate from Sander dated June 7, 2022 and valid for 30 days proposed to replace the chiller at a cost equal to \$278,000 plus ten percent for contingencies. Sufficient funds were approved in the FY 2023 budget to replace the chiller at that cost.
- The draft resolution and supporting documents furnished to the Commission in June would authorize the executive director to enter into a contract with Sander, and in accordance with Section 14.9 of the Compact, waive the competitive bidding requirement of that section on grounds that "the public exigency requires the immediate delivery of the articles or performance of the service;" (sub-paragraph 2) and "only one source of supply is available"

(sub-paragraph 3). Ms. Deck noted that at least four members of the commission had responded without objection to the proposed resolution circulated to them in June 2022.

Ms. Deck said that staff had finalized the contract with Sander in July and expected to have the new chiller in place before summer of 2023. The proposed resolution would authorize the executive director, retroactive to June 1, 2022 to enter into an agreement with Sander to (1) replace the roof-mounted chiller with all due speed, subject to contingency costs of up to 10 percent of the quoted sum; and (2) replace the four air handling units and accompanying controls, subject to a reasonable cost update, at such time in the future as the necessary funds become available.

Ms. Deck requested the commissioners' favorable consideration of the proposed resolution. Secretary Garvin so moved. Mr. Hoffman offered a second, and without further discussion, the Resolution for the Minutes to authorize replacement of the chiller component of the heating, ventilating and air conditioning (HVAC) system at the Commission's headquarters building on a "sole supplier" and "public exigency" basis was approved by unanimous vote.

The text of the Resolution follows:

#### RESOLUTION FOR THE MINUTES

A Resolution for the Minutes to authorize replacement of the chiller component of the heating, ventilating and air conditioning (HVAC) system at the Commission's headquarters building on a "sole supplier" and "public exigency" basis.

WHEREAS, the Commission's headquarters building is served by a roof-mounted HVAC system, multiple components of which were constructed along with the building in 1970; the boiler unit was replaced in 2017, but the chiller, replaced in 1992, is now 30 years old; and

WHEREAS, because of its age, the system has become increasingly unreliable and costly to keep in service, as replacement parts are scarce or unavailable and few technicians are capable of servicing the antiquated equipment; and

WHEREAS, Section 14.9 of the *Delaware River Basin Compact*, on purchasing, provides in part that a contract for "the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars . . . shall be advertised and let upon sealed bids to the lowest responsible bidder"; and

WHEREAS, in accordance with the process set forth in the Compact, during the fourth quarter of 2021, the Commission staff developed a Request for Proposal and Quotation (RFP) for replacement of the chiller and related equipment; the RFP was published on the Commission's website and in the *Bucks County Courier Times* on November 4, 2021, and in the *Trenton Times* on November 5, 2021, and the staff also sent it to five prospective bidders; and

WHEREAS, by the deadline for submittal of bids on December 20, 2021, the staff had received no inquiries or proposals, and the bid process was terminated; and

WHEREAS, a representative of Sander Mechanical Services of Branchburg, New Jersey (“Sander”), which had performed competently in replacement of the Commission’s boiler unit in 2017, advised the staff that although Sander was willing to perform the work, the company would under no circumstances participate in a competitive bidding process; and

WHEREAS, because Section 14.9 of the Compact provides for waiver of the competitive bid requirement when a contract is to be made pursuant to an open end bulk purchase contract of the federal government or a state or local government, the staff investigated the possibility of hiring a qualified contractor through the National Cooperative Purchasing Alliance (NCPA), in which both New Jersey and New York participate; however, due to limitations on the scope of New Jersey’s program and eligibility for use of New York’s, the HVAC equipment and services the Commission requires could not be procured through either; and

WHEREAS, staff investigated state vendors more broadly and invited several contractors to provide quotes, to no avail; one New Jersey vendor visited the building for a walk-through but afterward declined to provide a quote; and

WHEREAS, during May of 2022, the chiller unit ceased to function and remained inoperable for several days while replacement parts were located to repair it; upon completion of a partial repair, the Commission’s HVAC service provider, Honeywell, informed the staff in writing that because a key replacement part could not be found, the cooling system is currently operable at only 50 percent of its capacity and is not capable of cooling the building on a hot and humid summer day; and

WHEREAS, Honeywell further advised that the required part may be custom fabricated at significant expense for installation during the fall of 2022 at the earliest, but that the chiller and four air handling units (AHUs) that comprise the cooling system have exceeded their useful life and should be replaced; and

WHEREAS, if staff is to have use of the Commission’s headquarters building, including the fish laboratory, library, office, and conference facilities, to perform its critical work during the summer months, the chiller must be repaired or replaced; and

WHEREAS, based on staff’s conversations with the representative of Sander and others, current long lead times for equipment orders, a tight labor market, and high demand for contractors have combined to deter qualified firms from participating in competitive bidding processes such as that the Commission attempted to use; and

WHEREAS, at staff’s request, on June 1, 2022 Sander sent a team to walk through the West Trenton building, and on June 7, 2022, Sander submitted a proposal (provided as Attachment 2 of attached staff memo), including detailed cost estimates effective for 30 days, for replacement of the chiller, AHUs, and controls system; Commission staff reviewed the Sander proposal and found it reasonable; and

WHEREAS, Sander subsequently confirmed that the project could be undertaken in two phases, with the chiller replacement (at a cost of \$278,000) comprising an initial

phase, and the AHUs and controls system (at a combined cost of \$855,820) comprising a later phase; and

WHEREAS, the Commission's fiscal year 2022 financial statement includes "assigned funds" in the amount of \$200,000 for the purchase and installation of a replacement chiller; and as detailed in the attached memorandum dated June 14, 2022, the Commission's approved and "management scenario" expense budgets for fiscal year 2023 include sufficient funds to make up the balance of the cost of the chiller replacement as set forth in the June 7 proposal by Sander, even allowing for contingent costs equal to ten percent of the quoted amount; 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 Sander Mechanical Service of Branchburg, New Jersey in accordance with Sander's proposal dated June 7, 2022 for replacement of the HVAC components described in that proposal and listed below, and subject to the timing and limitations set forth below:
  - a. the roof-mounted chiller unit, subject to contingency costs of up to ten percent of the quoted sum, with all due speed; and
  - b. the four air handling units (AHUs) and accompanying controls system, subject to a reasonable cost update, at such time as the necessary funds become available.
2. This authorization is retroactive to June 1, 2022.

A Resolution for the Minutes Recognizing the 50<sup>th</sup> Anniversary of the Clean Water Act. Mr. Tambini recited key portions of a draft resolution highlighting the 50<sup>th</sup> anniversary of the Clean Water Act and recommended that the commissioners approve the resolution. Mr. Kosinski so moved, Lt. Col. Brigantti offered a second, and without further discussion, the Resolution for the Minutes recognizing the 50<sup>th</sup> Anniversary of the federal Clean Water Act was adopted by unanimous vote.

The text of the Resolution follows:

#### RESOLUTION FOR THE MINUTES

A Resolution for the Minutes recognizing the 50<sup>th</sup> Anniversary of the federal Clean Water Act.

WHEREAS, on October 18, 1972, the United States adopted significant, extensive, and wide-ranging amendments to the Federal Water Pollution Control Act of 1948. As amended, the law became known as the Clean Water Act;

WHEREAS, the overarching goal of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters” with an objective of ensuring that surface waters are fishable and swimmable;

WHEREAS, the Clean Water Act has been a foundational and galvanizing tool for improving the quality and health of our Nation’s rivers, streams, lakes, wetlands, and watersheds;

WHEREAS, the Clean Water Act recognizes the value of interstate commissions in affording states a means to act jointly to reduce and prevent pollution and restore impaired waters; and

WHEREAS, the Delaware River Basin Commission, the Delaware Department of Natural Resources and Environmental Control, the New Jersey Department of Environmental Protection, the New York State Department of Environment Conservation the Pennsylvania Department of Environmental Protection, the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“USACE”) have worked in partnership to implement the Clean Water Act since its inception; now therefore,

BE IT RESOLVED that the Delaware River Basin Commission recognizes:

1. The water quality achievements of the Commission, EPA, USACE, the State of Delaware, the State of New Jersey, the State of New York, and the Commonwealth of Pennsylvania, acting independently, jointly through the Commission, and cooperatively, both prior to and since adoption of the Clean Water Act in 1972 to: reduce water pollution; institute antidegradation and other regulatory protections for the Delaware River, Estuary and Bay; restore habitats benefiting diverse water-dependent species; and improve the health and well-being of the millions of Americans who rely upon the life sustaining water resources of the Delaware River Basin.
2. The value of the authority conferred by Article 5, Pollution Control, of the Delaware River Basin Compact, enacted in 1961, in enabling the Basin states and the United States to act jointly through the DRBC to accomplish shared Clean Water Act goals.
3. The Commission’s commitment to continued collaboration and cooperation with co-regulators and the Basin community to achieve the Clean Water Act’s objectives.
4. The 50th anniversary of the Clean Water Act and its transformative, positive impact on the quality of our Nation’s waters.

Project Review Docket Applications. Project Review Manager David Kovach related that at the Commission’s duly noticed August 10, 2022 public hearing, he had presented for public comment the draft dockets listed in the September 8 business meeting agenda as items 1 through 20. All of the associated projects were located in the Commonwealth of Pennsylvania. Eleven involved wastewater discharges, eight, water withdrawals, and docket item number 19 involved the

consumptive use of water for electric generation. DRBC had received no public comments on any of these.

Mr. Kovach then addressed docket agenda item 21, for the renewal of a water withdrawal by Holcim (U.S.) Inc. in Whitehall Township, Lehigh County, Pennsylvania. This docket was a subject of the Commission's public hearing of May 11, 2022. In order to allow additional time to complete their review, the staff had not presented it for Commission consideration at the business meeting of June 8, 2022. Mr. Kovach explained that condition number 23 of the draft docket directed the docket holder to consult with the Pennsylvania Fish and Boat Commission (PFBC) and the Pennsylvania Department of Environmental Protection (PADEP) regarding further actions or requirements related to modification or removal of the Northampton Dam to accommodate fish passage. Both PFBC and PADEP wanted the condition to include more detail with respect to the requirement. Staff worked with the two agencies to arrive at a revised condition that would require the docket holder to convene a meeting by December 31, 2023 with PADEP, PFBC, and other stakeholders for the purpose of developing a plan to address fish passage at the Northampton Dam.

Mr. Kovach recommended that the Commissioners approve the draft dockets comprising docket agenda items 1 through 21 on the business meeting agenda. Mr. Hoffman so moved. Secretary Garvin offered a second, and without further discussion, docket items 1 through 21 as presented were approved by unanimous vote.

Mr. Warren noted that the resolution adopted that morning with respect to the Gibbstown matter would be posted on the DRBC website by the end of the next business day.

Adjournment. Mr. Kosinski moved that the business meeting of September 8, 2022 be adjourned; Lt. Col Brigantti seconded his motion, and without further discussion, the motion was adopted by unanimous vote.

Audio Recording. Audio recordings of the public hearing of May 11, 2022 and business meeting of June 8, 2022 are on file with the Commission Secretary. A description of each of the applications for dockets approved during the business meeting of June 8, 2022 is provided as Attachment A of these Minutes.

Open Public Comment. Upon adjournment of the business meeting, Mr. Tambini hosted an Open Public Comment session of approximately one hour for off-the-record comment by stakeholders on water resource issues affecting the basin.

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

## ATTACHMENT A

### DESCRIPTION OF PROJECTS APPROVED BY THE COMMISSION DURING THE BUSINESS MEETING OF SEPTEMBER 8, 2022

*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 at [https://www.nj.gov/drbc/programs/project/project-review\\_status-pg.html](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.
- 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.
- 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>.
- 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.
- 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 9, 2022 are presented below.

*A. Renewals with No Substantive Changes (Items 1 through 15 and 21)*

1. Befesa Zinc US Inc., D-1967-196 -4. The purpose of this docket is to renew approval of the docket holder's existing discharges of 0.15 million gallons per day (mgd) and 0.432 mgd of NCCW from its Palmerton facility at two separate outfalls. This docket also recognizes the transfer in ownership of the plant from the Horsehead Corporation to Befesa Zinc US Inc. The facility will continue to discharge NCCW to Aquashicola Creek, via Outfalls No. 004 (up to 0.15 mgd) and 005 (up to 0.432 mgd), at River Mile 183.6 - 36.3 - 1.0 (Delaware River - Lehigh River - Aquashicola Creek), is located in the drainage area to the Lower Delaware Special Protection Waters (SPW), in Palmerton Borough, Carbon County, Pennsylvania.
2. Mount Airy #1, LCC, D-1977-058 -6. An application to renew the approval of the existing 0.22 mgd Mount Airy WWTP and its discharge. The WWTP will continue to discharge treated effluent to Forest Hills Run, which is a tributary of Paradise Creek and Brodhead Creek, at River Mile 213.2 - 10.5 - 4.4 - 2.8 (Delaware River - Brodhead Creek - Paradise Creek - Forest Hills Run). The WWTP 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 Paradise Township, Monroe County, Pennsylvania.
3. Robeson Township Municipal Authority, D-1983-034 CP-5. The purpose of this docket is to renew approval of the docket holder's existing 0.30 million gallons per day (mgd) WWTP and its discharge. The WWTP will continue to discharge treated effluent to the Schuylkill River, via Outfall No. 001, at River Mile 92.47 - 65.8 (Delaware River - Schuylkill River), in Robeson Township, Berks County Pennsylvania.
4. Blue Ridge Real Estate Company, D-1985-025 -5. The purpose of this docket is to renew approval of the docket holder's existing 0.225 million gallons per day (mgd) WWTP and its discharge. This docket continues the Commission's previous approval from Docket No. D-1985-025-4, to expand the facility to 0.265 mgd and discharge the first 0.04 mgd of treated effluent to land via absorption beds. The WWTP will continue to discharge 0.225

mgd of treated effluent to an unnamed tributary (UNT) to Tunkhannock Creek at River Mile 183.7 - 83.5 - 5.6 - 2.5 - 0.9 (Delaware River - Lehigh River - Tobyhanna Creek - Tunkhannock Creek - UNT Tunkhannock Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW), in Kidder Township, Carbon County, Pennsylvania.

5. Pennsylvania American Water Company, D-1986-059 CP-4. An application to renew the approval of an existing groundwater withdrawal of up to 6.696 mgm to supply the applicant's Merlin Hills public water supply system from existing Well No. EP-1 completed in Graphitic Gneiss. The Pennsylvania American Water Company Merlin Hills system serves customers in portions of East Pikeland Township and East Vincent Township. The requested allocation is not an increase from the previous allocation. The well is located in the French Creek Watershed in East Pikeland Township, Chester County, Pennsylvania.
6. Giorgio Foods, Inc., D-1988-043 -7. The purpose of this docket is to renew approval of the docket holder's existing 0.50 million gallons per day (mgd) IWTP and its discharge. The IWTP will continue to discharge treated effluent to Willow Creek, via Outfall No. 00, at River Mile 92.5 - 86.7 - 0.6 - 2.4 (Delaware River - Schuylkill River - Maiden Creek - Willow Creek) in Maiden Creek Township, Berks County, Pennsylvania.
7. Bath Borough Authority, D-1988-051 CP-4. The purpose of this docket is to renew the approval of the docket holder's 0.51 million gallons per day (mgd) WWTP and its discharge. The WWTP will continue to discharge treated effluent to Monocacy Creek, which is tributary to the Lehigh River, at River Mile 183.7 - 11.5 - 13.2 (Delaware River - Lehigh River - Monocacy Creek) and is located in the drainage area to the Lower Delaware Special Protection Waters (SPW), in Bath Borough, Northampton County, Pennsylvania.
8. Nesquehoning Borough, D-1990-107 CP-4. The purpose of this docket is to renew the approval of the existing 0.65 mgd Nesquehoning Borough WWTP and its discharge. The WWTP will continue to discharge treated effluent to Nesquehoning Creek at River Mile 183.7 - 48.5 - 1.6 (Delaware River - Lehigh River - Nesquehoning Creek) via Outfall No. 001, within the drainage area to the Lower Delaware Special Protection Waters (SPW), in Nesquehoning Borough, Carbon County, Pennsylvania.
9. Upper Gwynedd Township, D-1991-088 CP-10. The purpose of this docket is to renew the existing 7.5 mgd Upper Gwynedd Township WWTP and its discharge. The WWTP will continue to discharge to Wissahickon Creek, via Outfall No. 001, at River Mile 92.5 - 12.8 - 12.7 (Delaware River - Schuylkill River - Wissahickon Creek) in Upper Gwynedd Township, Montgomery County, Pennsylvania.
10. Bethlehem City, D-1995-019 CP-3. An application to approve an expansion of area served through a new interconnection in Lehigh Township, Northampton County, Pennsylvania. The docket also renews an allocation of 12 million gallons per day (mgd), based on an

annual average, of surface water from Tunkhannock Creek and an allocation of 30.32 mgd (939.92 million gallons per month) of surface water from the Wild Creek Reservoir on Wild Creek for continued use in the docket holder's existing public water supply system. The Wild Creek intake is located in the Pohopoco Creek Watershed in Towamensing Township, Carbon County, Pennsylvania and the Tunkhannock Creek intake is located in the Tobyhanna Creek Watershed in Tunkhannock Township, Monroe 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.

11. BlueTriton Brands, Inc., D-1998-027 -5. An application to renew the approval of a groundwater withdrawal of up to 9.3 mgm to continue to supply the applicant's bottled water operations from existing Hoffman Springs Nos. 1, 2 and 3 and up to 2.015 mgm from Mattos Catchment No. 1 to augment flows in Ountelaunee Creek. The project is located in the Ountelaunee Creek watershed in Lynn Township, Lehigh County, Pennsylvania.
12. Collegetown-Trappe Joint Public Works Department, D-2000-057 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 33.7 mgm to supply the applicant's public water supply distribution system from Well Nos. CT-3, CT-4, CT-5, CT-6A, CT-7, CT-8, CT-9, CT-10, CT-11, CT-12, CT-14 and CT-15. The project wells are completed in the Brunswick Formation. The requested system 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 Little Perkiomen Creek Watersheds in Collegetown and Trappe Boroughs, Montgomery County, Pennsylvania.
13. Schuylkill County Municipal Authority, D-2001-047 CP-2. The renewed approval of the docket holder's existing 0.45 million gallons per day (mgd) Branch/Cass WWTP and its discharge. The WWTP will continue to discharge treated effluent to West Creek, via Outfall No. 001, at River Mile 92.47 - 5.5 - 2.3 - 0.85 (Delaware River - Schuylkill River - West Branch Schuylkill River - West West Branch Schuylkill River - West Creek), in Branch Township, Schuylkill County, Pennsylvania.
14. West Bradford Township, D-2004-022 CP-4. The purpose of this docket is to renew the approval of the existing 0.1465 mgd DuPont Property WWTP and its discharge via spray irrigation. The WWTP will continue to discharge treated effluent to two spray fields located in the Broad Run Watershed, in West Bradford Township, Chester County, Pennsylvania.
15. Tamaqua Area Water Authority, D-2010-028 CP-2. An application to renew the approval of an existing surface water withdrawal of up to 155 million gallons per month (mgm) from an existing surface water intake located on the docket holder's Still Creek Reservoir for public water supply and to continue reservoir releases of up to 36 million gallons per day (mgd) from Still Creek Reservoir and up to 8 mgd from Owl Creek Reservoirs not to exceed a total of 43.3 mgd for cooling water needs at the Limerick Generating Station. The project

is located in the Still Creek and Owl Creek Watersheds in Rush Township and Tamaqua Borough, Schuylkill County, Pennsylvania.

21. Holcim (US) Inc., D-1974-189 -3. An application to renew the approval of an existing groundwater and surface water withdrawal of up to 70.68 mgm from Wells 1 and 2 and a surface water intake on the Lehigh River for use at the applicant's cement manufacturing plant. The project wells are completed in the Jacksonburg Formation and are located in the Coplay Creek and Lehigh River Watersheds in Whitehall Township, Lehigh County, Pennsylvania within 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.

*B. Renewals with Substantive Changes (Items 16 through 18)*

16. Bethlehem City, D-1971-078 CP-5. The purpose of this docket is to approve a modification to increase primary settling in the docket holder's existing 20.0 million gallons per day (mgd) WWTP. The proposed modifications consist of increasing primary settling by the addition of a coagulant and polymer at the primary clarifiers and generally involve the following elements: new concrete tank pad and spill containment wall, new 12,500-gallon bulk coagulant storage tank, new coagulant feed pumps, piping, induction mixer and appurtenances, new polymer building, two new polymer totes, polymer blend units and feed piping, associated electrical and instrumentation/SCADA system updates. The WWTP will continue to discharge treated effluent to Lehigh River, via Outfall No. 001 at River Mile 183.7 - 9.5 (Delaware River - Lehigh River). The WWTP also has an emergency outfall, Outfall No. 006, which is permitted to discharge treated effluent to Saucon Creek at River Mile 183.7-9.5-0.3 (Delaware River -Lehigh River - Saucon Creek). The WWTP discharge is located in the drainage area to the Lower Delaware Special Protection Waters (SPW), in the City of Bethlehem, Northampton County, Pennsylvania.
17. Aqua Pennsylvania, Inc., D-1985-029 CP-2. An application to renew the approval of an existing surface water withdrawal with an allocation of up to 248 mgm ( 8 mgd) to supply the applicant's Main Division public water supply distribution system from existing surface water intakes on Chester Creek and Ridley Creek. The docket holder can withdraw up to 6.0 million gallons per day (mgd) from Chester Creek and 3.0 mgd from Ridley Creek. The project is located in the Chester Creek and Ridley Creek Watersheds in Middletown Township, Delaware County, Pennsylvania.
18. Richland, Borough of, D-1992-001 CP-4. An application to renew the approval of an existing groundwater withdrawal of up to 5.4 mgm to supply the applicant's public water supply distribution system from existing Wells 2, 3, 6, an existing spring source and new Well 9. Wells 2 and 3 are completed in Crystalline Rock, Well 6 is completed in the Hardyston Formation and new Well 9 is completed in the Buffalo Springs Formation. The requested system allocation is not an increase from the previous allocation. The project is

located in the Mill Creek Watershed in Millcreek Township, Lebanon County, Pennsylvania.

*C. Projects Not Previously Reviewed by the Commission (Items 19 and 20)*

19. Wheelabrator Falls Company, LP, D-2019-003 -1. An application to approve an existing 53-megawatt waste-to energy electric generating facility and a consumptive use of up to 6.30 million gallons per month of water purchased from the Township of Falls Authority for industrial cooling and processes. The docket approves a consumptive use allocation of 27.90 mgm that will expire following installation and operation of equipment needed to complete a cooling tower water conservation project. The facility is located in Falls Township, Bucks County, Pennsylvania.
  
20. Cobbs Creek Restoration and Community Foundation, D-2021-005 -1. An application to approve a groundwater and surface water withdrawal of up to 12.0 mgm to irrigate the applicant's Cobbs Creek Golf Club from Well No. IW-1 and a proposed intake on Cobbs Creek. Well IW-1 is located in Springfield granodiorite at the surface and completed in Wissahickon Schist. The proposed intake at the confluence of Cobbs Creek and Indian Creek is set to be constructed in 2023. The project is located in the Cobbs Creek Watershed in the City of Philadelphia, Philadelphia County, Pennsylvania.