

DELAWARE RIVER BASIN COMMISSION

MEETING OF SEPTEMBER 10, 2020

Via GoToMeeting

Minutes

Commissioners

Present:

Shawn Garvin, Delaware, Chair
Lieutenant Colonel David C. Park, United States, Vice Chair
Aneca Y. Atkinson, Pennsylvania, Second Vice Chair
Jeffrey L. Hoffman, New Jersey
Kenneth Kosinski, New York

DRBC Staff

Participants:

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

The Commission held its quarterly Business Meeting virtually to comply with guidelines in effect within one or more of the basin states during the Covid-19 pandemic. Shawn Garvin, Secretary, Delaware Department of Natural Resources and Environmental Control and Alternate Commissioner for Governor John C. Carney of Delaware, presided as the Commission's chair *pro tem*. Secretary Garvin welcomed everyone and noted that the virtual Business Meeting had been advertised on the DRBC website, in the member state and federal registers, by email, and via social media, and that the meeting was open to the public on the GoToMeeting (GTM) platform. He added that the meeting was being recorded, asked that phones be muted, and explained that the GTM "Chat" function would be available exclusively to alert IT staff to technical issues and would not otherwise be monitored. Secretary Garvin explained that after all business items were completed, and as time allowed, Mr. Tambini would lead an Open Public Comment session.

Minutes. The Minutes of the Commission's regularly scheduled Business Meeting of June 10, 2020 were unanimously approved without addition or correction.

Announcements. Ms. Bush announced a single upcoming advisory committee meeting—that of the Commission's Water Management Advisory Committee (WMAC)—to take place on Wednesday, October 21, 2020 at 10:00 a.m. on GoToMeeting. She noted that details, including an agenda, would be posted on the Commission's website.

Hydrologic Conditions. Hydrologic Conditions. 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. Highlights of Ms. Shallcross's report follow:

- *Precipitation.* As of the meeting date, year-to-date precipitation across the Basin totaled between 14 and 30 inches, with higher precipitation occurring in the lower Basin as a result of hurricanes Laura and Isaias. Thus, in the lower Basin, year-to-date precipitation was 25 percent above normal, while in the central Basin it was normal. For the balance of the Basin, precipitation was about 25 percent below normal. At the Philadelphia Airport, precipitation was below normal for most of the year until June, when the region became dry. This trend shifted in July and August, when two large storms increased the accumulated rainfall at the airport to 3.66 inches above normal. For the 90-day period preceding the business meeting, basin-wide precipitation was 4.34 inches above normal. The U.S. Drought Monitor (at drought.gov) showed areas of northeastern Pennsylvania and adjoining portions of New York in a drought watch.
- *Stream flows.* Due to rain preceding the September meeting, the Basin was experiencing above normal stream flows by September 10. In the main stem at Montague, New Jersey, where the states of New York, New Jersey and Pennsylvania meet, water levels had been normal, except during and immediately after a few major storm events over the summer.
- *DRBC reservoir storage.* The DRBC owns storage in two federal reservoirs in Pennsylvania—Blue Marsh and Beltzville—which the Commission uses to meet a flow objective at Trenton, New Jersey. To ensure minimum freshwater inflows into the Delaware River Estuary, DRBC may request releases of water from Blue Marsh and Beltzville to meet a flow objective of 3,000 cubic feet per second (“cfs”), equal to about 1,940 million gallons per day (“mgd”), at Trenton, New Jersey. Blue Marsh also has a recreation pool, and beginning in October, the Corps will begin releasing water to bring the pool down to its winter elevation, providing capacity to store snow melt and late-season hurricanes. During a drought emergency, the Commission also may ask the Corps of Engineers to store water for low flow augmentation in the F.E. Walter Reservoir, which is otherwise used for flood control and recreation. The F.E. Walter pool is maintained at an elevation of approximately 1370 in the early spring through July. From July until October, recreation releases are made, and a lower, winter pool elevation is achieved and maintained until spring.
- *New York City Delaware Basin storage.* The New York City (“NYC” or “City”) Delaware Basin reservoirs—Pepacton, Cannonsville and Neversink—are the three largest impoundments in the Basin. Their combined storage is used to define different drought stages for basin reservoir operations. To ensure that water from the headwaters of the Basin reaches the downstream states, the City is required to make releases from these reservoirs to meet a flow objective of 1,750 cfs—or 1,130 mgd—at Montague, New Jersey. During dry periods, 60 percent or more of the flow at Montague may be attributable to releases from the NYC reservoirs. Combined storage in the City’s three reservoirs as of September 10 was normal—76.8 percent—with Neversink at 84.9 percent, Pepacton at 81.0 percent, and Cannonsville at 67.5 percent of capacity, respectively.
- *Salt front.* The Trenton flow objective was established to maintain sufficient freshwater flows to the Delaware River Estuary to push the saltwater from the ocean downstream. The normal range of the “salt front,” defined as the 250 mg/l chloride concentration, is from river mile (“RM”) 67 to RM 76, near Wilmington, Delaware. The 250 mg/l value is based on a secondary drinking water standard that was established by the U.S. Department of Health during the early part of the Twentieth Century. The “salt front” is normally located at RM 76 in September, and on the meeting date was located at RM 69.

- *Groundwater.* Groundwater across the Basin is measured by levels in 14 indicator wells. As of September 9, only the Lehigh, Pennsylvania and Lebanon, Pennsylvania wells were not within a normal range. Both were above normal.
- *Drought outlook.* The United States Drought Monitor (“USDM”) is published every Thursday at 8 a.m. As of September 10, the USDM showed most water levels in the Basin as normal or above normal. Hurricane Isaias, which resulted in as much as 7 inches of rain in some areas of the Basin, increased water levels across much of the Basin. Jordan Creek at Allentown and Perkiomen Creek at Graterford both experienced record-breaking flooding.
- *Hurricane season forecast.* In June, NOAA’s Hurricane Season Outlook forecasted between 13 and 19 named storms, including from 6 to 10 hurricanes. Three (3) to six (6) of these were expected to be major hurricanes, but not all were necessarily expected to hit land. The forecast was updated on August 6 to predict between 19 and 25 named storms, including 7 to 11 hurricanes and 3 to 6 major hurricanes. By September 10, exactly mid-way through the hurricane season, there had already been 17 named storms, including two major hurricanes. The month of September typically accounts for 35 percent of all tropical activity in the Atlantic. At the time of the Commission meeting there was storm activity in the tropics and more storms were likely.
- *Three-month outlook.* As of September 10, NOAA was predicting a much greater chance of above-normal temperatures accompanied by normal precipitation over the next three months.
- *Winter outlook.* The Old Farmer’s Almanac (founded in 1792) was predicting “sheets of sleet” for the winter of 2020-21 and forecasting temperatures that could be above normal but near freezing, potentially causing a lot of ice with precipitation events. The Farmers’ Almanac (est. 1818) predicted a “snowy comeback,” after the almost snow-free winter of 2019-20 in the Northeast, including the possibility of a blizzard over the mid-Atlantic and Northeast states during the second week of February that may result in 1 to 2 feet of snow in locations along the east coast. These predictions were presented as light-hearted information.

Current versions of 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, a page developed by Anthony Preucil and Karen Reavy of the DRBC. 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, and can be accessed directly at <https://www.nj.gov/drbc/hydrological/river/portal-flood.html>.

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

- *Welcome.* Mr. Tambini welcomed Governor Carney to the role of Commission Chair *pro tem* for the fiscal year ending June 30, 2021, and thanked Secretary Garvin and the Governor for their consistent support of the Delaware River Basin and the Commission.
- *Staff.* Mr. Tambini thanked the staff for their adaptability, creativity and hard work as they continued to work remotely to meet DRBC’s mission of managing, protecting and

improving the Basin's water resources. In the spirit of continuous improvement, he noted that not only were the staff using technology for remote meetings such as this, but had developed new technology-based workflows and collaboration tools that would help them to work smarter when a return to the office was possible. He noted two staff changes since June: Shane McAleer and SeungAh Byun had left the Commission for new opportunities. On behalf of the staff and Commissioners, he wished them well in their new roles.

- *Water Quality Monitoring.* Mr. Tambini reported that the pandemic was having an impact on quality monitoring efforts in the Basin in a few different ways. First, he noted that DRBC staff had resumed monitoring in July, with new and Covid-safe field practices. He invited attendees to visit DRBC's social media accounts for photos of the field staff practicing safe procedures while collecting and/or testing samples. As of September, monitoring work was focused on additional near-shore bacteria monitoring in the urban portions of the Estuary, and additional nutrient monitoring in the main stem, Schuylkill River, and other tributaries to the Estuary. These data sets will be used as model inputs and in investigations for protecting and improving Estuary water quality. The Estuary water quality monitoring program known as the "Boat Run," resumed in August. The Boat Run, which has monitored the Delaware River Estuary each year since 1967 without fail, was interrupted temporarily in 2020 due to Covid-19 mitigation measures. Mr. Tambini thanked the Delaware Department of Natural Resources and Environmental Control for its partnership on this critical program.
- *Annual Forum.* The Annual Forum run by the Coalition for the Delaware Watershed was to be held virtually from September 14-17, 2020. John Yagecic, Amy Shallcross, and Steve Tambini all were slated to speak on Thursday, September 17 at 1:00 p.m. about fishable, swimmable, and drinkable waters in the Delaware River Estuary
- *Grant Award.* The DRBC was awarded a \$200,000 grant from the federal Delaware River Conservation Fund for a project entitled Improving Water Resource Management in the Delaware River Basin via Data Access.
- *Advisory Committee on Climate Change.* The inaugural meeting of the Advisory Committee on Climate Change, comprised of climate experts from throughout the Basin, took place on August 4, 2020. The committee's second meeting was not yet scheduled, but at least one more meeting in 2020 was expected. Mr. Tambini encouraged the public to join that and other DRBC advisory committee meetings on virtual platforms during the pandemic and in person when everyone returns to the office.
- *Resolution for the Minutes.* Mr. Tambini proposed a RESOLUTION for the Minutes to honor Michele Putnum for her service to the State of New Jersey and the Delaware River Basin Commission. Ms. Putnam retired in September after a long career of service to the State of New Jersey and the DRBC. Secretary Garvin requested a motion to approve the resolution as proposed. Mr. Hoffman so moved, Mr. Kosinski seconded his motion, and without further discussion, the following Resolution was approved by unanimous vote:

RESOLUTION FOR THE MINUTES

A RESOLUTION honoring Michele Putnam for her service to the State of New Jersey and the Delaware River Basin Commission.

WHEREAS, Michele Putnam has made it a life's mission to protect the environment and water resources through her career public service at the U.S. Environmental Protection Agency and the New Jersey Department of Environmental Protection; and

WHEREAS, Michele served as an alternate DRBC Commissioner on behalf of Governors Corzine, Christie and Murphy of the State of New Jersey over a period of approximately 15 years, from 2006 through 2020. In that role she provided leadership on numerous water resource challenges and labored to improve the working relationships between DRBC staff and state agencies, including by spearheading the first DRBC One Process One Permit program in New Jersey; and

WHEREAS, for over 40 years Michele used her commitment and expertise to protect and improve the water resources of New Jersey and the Delaware River Basin by supporting and leading programs that addressed hazardous waste management, water infrastructure financing, safe drinking water, watershed management, and water quality; and

WHEREAS, Michele was appointed by Governor Murphy and prior Governors to serve as a principal representative of New Jersey under the 1954 U.S. Supreme Court Decree, which governs diversions of water from the Delaware River Basin. In that capacity she served as one of the architects of the original Flexible Flow Management Program in 2007; and

WHEREAS, after serving most recently as the Assistant Commissioner for Water Resource Management, Michele retired from the New Jersey Department of Environmental Protection, effective September 1, 2020; now, therefore,

BE IT RESOLVED that the Commissioners and DRBC staff extend their sincere thanks to Michele Putnam for her dedication to water resources and the environment and for her multiple contributions to the Delaware River Basin throughout her career. We wish Michele and her husband Ed good health and much happiness as they embark together on a well-deserved retirement.

General Counsel's Report. Mr. Warren summarized two pieces of litigation in which the DRBC is involved:

Wayne Land and Mineral Group (WLMG) v. DRBC. In the *Wayne Land* matter, which has been pending for some years in the U.S. District Court for the Middle District of Pennsylvania, plaintiff WLMG seeks a declaration that the well pad and fracking activities it intends to undertake in Wayne County are not a project subject to DRBC review under Section 3.8 of the Compact. WLMG further contends that DRBC has no ability to exercise its project review jurisdiction because, in plaintiff's view, its planned activities are not a project. The DRBC believes that high-volume hydraulic fracturing *is* a project subject to DRBC review.

On May 19, the Third Circuit Court of Appeals issued an opinion in the case that arose because three Pennsylvania state senators, Senators Scarnati, Baker and Yaw, sought to intervene on the side of the plaintiff. Previously, the District Court had denied the senators' motion to intervene under Rule 24 of the Federal Rules of Civil Procedure, which specifies certain criteria that a proposed intervener must meet. The Court of Appeals did not reach the question of whether Rule

24 was satisfied but raised a preliminary question of whether the senators even had standing to bring their claim. Standing is a constitutional doctrine that underlies the “case and controversy” clause of the Constitution. If there is no standing, then the federal court has no jurisdiction to decide anything about the claim other than that the court lacks jurisdiction. As of September 10, the senators’ motion remained pending before the District Court, which is charged by the Third Circuit with deciding whether the senators have standing.

Mr. Warren explained that the discovery stage of the *Wayne Land* case was complete, and as of June 10, the court was considering motions for summary judgment. DRBC brought a motion for partial summary judgment, contending that the wastewater management activities that WLMG intends to conduct at its site constitute a project under the meaning of the Compact. In light of other Third Circuit opinions, DRBC limited its motion to WLMG’s proposed wastewater management activities, but, as DRBC told the district court, we continue to contend that HVHF as a whole is a project, and DRBC will be arguing that at trial.

Intervenors the Delaware Riverkeeper Network and Delaware Riverkeeper Maya van Rossum filed a motion for summary judgment contending that all WLMG’s activities are subject to DRBC’s review under the Compact. The briefing on this motion was to conclude by the end of the month.

Mr. Warren said the District Court might or might not conduct oral argument but would be considering the described motions. Assuming that a piece of the case remains unresolved after the motions are decided, the Court will schedule a trial. As of September 10, the motions remained pending and no trial date had been set.

Gibbstown Logistics Center Dock 2. This matter involves the administrative appeal of Docket D-2017-009-2 for the Dock 2 Project at the Gibbstown Logistics Center (GLC). GLC is a multi-use deep-water seaport and industrial logistics center located on a portion of the former 1,630-acre DuPont Repauno Works site. The project involves the dredging of Delaware River sediments and the construction of a wharf to be located approximately 650 feet from the shoreline. The wharf will include two deep-water berths in the Delaware River to accommodate the export of bulk liquid products by vessel. The GLC was previously the subject for a docket for the Dock 1 project, which the Commission approved on December 13, 2017. On March 25, 2019, DRBC published notice that it received an application for the Dock 2 Project. DRBC published a draft docket on May 24, 2019 and accepted public comments over a 14-day period; DRBC also conducted a public hearing.

At its meeting on June 12, 2019, the Commission approved the docket for the GLC Dock 2 under Section 3.8 of the Compact. Within 30 days, the Delaware Riverkeeper Network (“DRN”) and the Delaware Riverkeeper requested an administrative hearing in accordance with Article 6 of the Commission’s Rules of Practice and Procedure (“RPP”). On September 11, 2019, the Commission granted DRN’s hearing request and thereafter designated John D. Kelly, Esquire, who was then serving as a hearing examiner with the Pennsylvania Department of State as the Commission’s Hearing Officer for purposes of this administrative appeal. In accordance with the process set forth in the Commission’s RPP, the Hearing Officer held an evidentiary hearing during which the interested parties were permitted to introduce evidence, whether or not previously presented to the Commission, and to present and cross-examine witnesses. The hearing took place over 8 days in May 2020, during the Coronavirus pandemic. Thirteen experts and three fact witnesses testified, and numerous exhibits were introduced into evidence. The public was afforded a 55-day period immediately preceding the hearing to submit written statements, and many persons did so as provided by the applicable rules. Mr. Warren commended the Hearing Officer, parties, attorneys and witnesses for conducting the hearing virtually in an expeditious and professional manner.

On July 21, 2020, based on the hearing record, the Hearing Officer issued a 101-page report which included, among other things, 385 separate findings of fact, a discussion, and a recommendation that the Dock 2 docket be affirmed. On August 10, 2020, DRN filed objections to the Hearing Officer's report and the supporting brief. On August 21, 2020, in accordance with the process set forth in the RPP, DRBC staff filed comments in support of the Hearing Officer's recommendation. On August 31, 2020, DRN filed a response to the comments of the staff. Docket holder DRP also filed comments on August 10 and August 31. The Commission's current task is to review the report and the hearing record and make a final determination.

As is apparent from Mr. Warren's account, the evidentiary record and the legal arguments of the interested parties in the matter of the GLC Dock 2 are extensive. In accordance with the RPP, the Commission Chair asked Mr. Warren to assist in the Commissioners' review of the full administrative record and to prepare documentation of the Commissioners' decision on the administrative appeal. Given the size of the record, the technical nature of much of the extensive evidence and the submission of briefs just over a week before the quarterly business meeting, a careful and thorough review by all of the Commissioners was not possibly prior to this meeting; rather, additional time for review and deliberation was required.

Mr. Warren noted that among the evidence in the hearing record is the Section 404/10 permit issued by the U.S. Army Corps of Engineers for the Dock 2 project. Pursuant to this permit, DRP is prohibited from conducting in-water work during the period from March 15 through September 15. Given its existing government approvals, however, DRP could commence construction any time after September 15. Mr. Warren advised that the Commissioners might wish to preserve the status quo by staying the docket approval until their final determination resolving the administrative appeal is issued. This would not be intended to signal how the appeal would be resolved upon completion of such review. Mr. Warren instructed that if the Commissioners wished to issue a stay, this could be done by the proposal and adoption of a motion.

Mr. Kosinski offered the following motion: In order to protect the water resources of the Basin pending the Commission's determination resolving the administrative appeal of Docket D-2017-009-2, the Commission's approval of Docket D-2017-009-2 for the Dock 2 Project at the Gibbstown Logistics Center is stayed effective upon the adoption of this motion and terminating at such time as the Commission makes a final determination resolving the administrative appeal. Mr. Hoffman seconded this motion, and without further discussion, the panel approved the motion on a 3-1-1 vote, with the United States opposed and Pennsylvania abstaining. Secretary Garvin commented that the action should be read as nothing more than an affirmation that the Commissioners must give themselves adequate time to fully and thoughtfully review the information provided to them.

A Resolution for the Minutes authorizing the Executive Director to execute all forms and documents required for the purpose of assisting the Pennsylvania Emergency Management Agency in fulfilling its obligations under certain federal flood mitigation grant program awards. DRBC's Deputy Executive Director Kristen Bowman Kavanagh recommended that the Commissioners approve a resolution authorizing the Commission staff to assist with flood preparedness planning support and assistance to Pike, Monroe, Wayne and Lackawaxen counties within the Lackawaxen River Watershed in Pennsylvania.

Secretary Garvin requested a motion to approve the resolution as proposed. Mr. Kosinski so moved, Mr. Hoffman seconded his motion, and without further discussion, the following Resolution for the Minutes was approved by unanimous vote:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes authorizing the Executive Director to execute all forms and documents required for the purpose of assisting the Pennsylvania Emergency Management Agency (“PEMA”) in fulfilling its obligations under certain federal flood mitigation grant program awards.

WHEREAS, the Delaware River Basin Compact (“Compact”) among other things provides that the Commission “shall develop and effectuate plans, policies and projects relating to the water resources of the basin” (§ 3.1); that it may “negotiate for such loans, grants, services, or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact ... and [may] receive and accept such aid upon such terms and conditions ... as may be required by federal or state law or as the commission may deem necessary or desirable” (§ 3.6(g)); that it shall “promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the basin” (§ 3.9); and that it may “employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation and maintenance of structures ... or for any other purpose” (§ 3.9); and

WHEREAS, the Compact further specifies that the Commission may “plan, design, construct and operate and maintain projects and facilities, as it may deem necessary or desirable for flood damage reduction” (§ 6.1); and

WHEREAS, at PEMA’s invitation and request pursuant to the 2019 Flood Mitigation Assistance (“FMA”) Grant Program and the 2019 Pre-Disaster Mitigation (“PDM”) Grant Program, the Commission on July 13, 2020 submitted a proposed scope of work and an accompanying budget for the provision of technical assistance to PEMA in developing and implementing the Upper Delaware/Lackawaxen Watershed Projects (“Projects”), the purpose of which is to provide flood preparedness planning support and assistance to four Pennsylvania counties in the Lackawaxen Watershed; and

WHEREAS, PEMA proposes to enter into a contract with the DRBC in an amount not to exceed \$200,000 for technical and communication services, and to supplement DRBC’s assistance with the in-kind services of PEMA and local stakeholders; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission that:

1. The Executive Director is authorized to enter into an agreement with PEMA for federal mitigation grant program funds in exchange for the provision of DRBC staff services consisting of flood preparedness planning support and assistance for four Pennsylvania counties in the Lackawaxen Watershed.
2. The attached Designation of Agent form authorizing the Commission’s Executive Director Steve Tambini or his designee “to execute all required forms and documents for the purpose of obtaining financial assistance for” the federal mitigation grant programs listed therein is hereby approved.
3. The Executive Director is further authorized hereby to enter into an agreement with the North Atlantic Division, U.S. Army Corps of Engineers (“Corps”) to complete elements of the scope of work to be undertaken with the grant proceeds.

4. Expenditures pursuant to this authorization may not exceed the grant funds awarded to the Commission.
5. In accordance with Section 14.9 of the Delaware River Basin Compact, the competitive bidding requirement does not apply to purchases from or agreements with an agency or political subdivision of the federal or any state government.
6. This resolution shall take effect immediately.

The form referenced in numbered paragraph 2 above is provided as Attachment 2 of these Minutes.

A Resolution for the Minutes amending the schedules adopted by Resolution No. 2017-04 for completing studies on the inclusion of propagation as a designated use in Zones 3 and 4 and the upper portion of Zone 5 of the Delaware River Estuary and for initiating DRBC rulemaking to revise the designated aquatic life uses consistent with the identified studies and the objectives and goals of the federal Clean Water Act. After briefly describing the schedule changes and reasons therefor as set forth in the draft resolution, DRBC's Director of Science and Water Quality, Namsoo Suk, requested that the Commissioners adopt the resolution.

Secretary Garvin requested a motion. Mr. Kosinski moved to approve the Resolution as proposed, Mr. Hoffman offered a second, and without further discussion, the following Resolution for the Minutes was approved by unanimous vote:

RESOLUTION FOR THE MINUTES

A Resolution for the Minutes amending the schedules adopted by Resolution No. 2017-04 for completing studies on the inclusion of propagation as a designated use in Zones 3 and 4 and the upper portion of Zone 5 of the Delaware River Estuary and for initiating DRBC rulemaking to revise the designated aquatic life uses consistent with the identified studies and the objectives and goals of the federal Clean Water Act.

WHEREAS, the DRBC reaffirms the shared goals set forth in Resolution No. 2017-04; it continues to recognize the vital importance of determining the appropriate designated aquatic life uses of the Delaware River Estuary and the water quality criteria necessary to protect these uses; and it appreciates the importance of reaching these determinations through a collaborative process informed by technical studies and specialized scientific and engineering expertise; and

WHEREAS, since 2017 the Commission has expended significant sums from its general operating fund to pay for the DRBC staff and external resources needed to meet the objectives set forth in Resolution No. 2017-04; and

WHEREAS, to augment its general fund contributions, the Commission has pursued and has been awarded grants and contracts from multiple public and private sources, including: the New Jersey Department of Environmental Protection, the Pennsylvania Department of Environmental Protection, the Pennsylvania Coastal Resources Management Program, the U.S. EPA Clean Water Act Section 106 program, the Delaware Watershed Research Fund, and the Delaware Watershed Conservation Fund; and

WHEREAS, the Commission and its contractors have completed or made substantial progress on a majority of the scientific studies and tasks outlined in Resolution No. 2017-04, including: obtaining input from an expert panel on modeling

the water quality impacts of nutrient loadings; researching the dissolved oxygen requirements of key sensitive species; obtaining ichthyoplankton data; conducting ambient nutrient monitoring and primary productivity and algal speciation studies to support model calibration; developing a hydrodynamic and eutrophication model; identifying and evaluating the capital and operating costs required for twelve wastewater treatment plants to implement technologies for achieving higher levels of dissolved oxygen; and initiating an evaluation of the physical, chemical, biological, social and economic factors affecting attainment of uses; and

WHEREAS, the Eutrophication Model Expert Panel identified additional model development tasks that the staff agrees are necessary for development of a robust model; and in consultation with the model expert panel, the DRBC staff also has identified the need for and is implementing model code revisions that enhance the linkage between the hydrodynamic and water quality models; and completing these additional tasks will extend the timeline for model development; and

WHEREAS, during the planned 2018-2019 calibration period, conditions were exceptionally wet and thus were not representative of the critical environmental conditions for evaluating the impact of nutrient loadings on aquatic life uses; for purposes of the eutrophication model, additional time is needed to develop the dry to normal conditions observed in prior years; and

WHEREAS, shortfalls in signatory party operating fund contributions since 2017, coupled with budget uncertainties and cutbacks by the signatory parties associated with the COVID-19 pandemic during fiscal year 2020 reduced the funds available to fully engage the Eutrophication Model Expert Panel, modeling consultant, and interagency support; and

WHEREAS, supplemental data collection for development of the eutrophication model, including monitoring of light extinction parameters and an algal speciation study, were temporarily suspended due to the COVID-19 pandemic in 2020; and

WHEREAS, additional time beyond that anticipated by Resolution No. 2017-04 is needed to generate additional general fund revenue and other sources of funding and to allow the DRBC staff the time and resources required to complete a full draft analysis of attainability and to promulgate a final rule and an implementation strategy; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The schedule set forth in Resolution No. 2017-04 for completing a full draft analysis of attainability for aquatic life uses is amended to provide for completion by September of 2022.
2. The goal set forth in Resolution No. 2017-04 for issuance of a final rule and an implementation strategy is similarly revised. The Commission seeks to achieve these objectives by March of 2025.
3. These goals continue to depend upon the availability of resources and the resumption of normal laboratory and data collection activities that were temporarily suspended due to the COVID-19 pandemic.
4. This resolution shall take effect immediately.

A Resolution to adopt the Commission’s annual current expense and capital budgets for the fiscal year ending June 30, 2021 (July 1, 2020 through June 30, 2021). DRBC’s Director of Finance and Administration Elba Deck summarized the Commission’s proposed current expense and capital budgets for the fiscal year ending June 30, 2021, which had been subjects of a public hearing on August 12, 2020. The proposed fiscal year 2021 current expense budget provided for revenues and expenses in the aggregate amount of \$5,904,600, and the capital budget (also referred to as the Water Supply Storage Facilities Fund), for revenues of \$3,038,300 and expenses of \$3,686,800. Budgeted current expense (operating) revenues include: \$2,431,500 apportioned by the signatory parties by separate resolution; a transfer from the Water Supply Storage Facilities Fund in the amount of \$1,849,900; special project funds (consisting of grants for specific activities) in the amount of \$502,600 in; and \$1,120,600 in other income (including regulatory program fees, compliance revenue, and investment income).

Secretary Garvin requested a motion to approve the resolution as proposed. Mr. Hoffman so moved, Mr. Kosinski seconded his motion, and without further discussion, **Resolution No. 2020-02 to adopt the Commission’s annual current expense and capital budgets for the fiscal year ending June 30, 2021 (July 1, 2020 through June 30, 2021)** was approved by unanimous vote.

A Resolution to apportion among the signatory parties the amounts required for the support of the Current Expense and Capital Budgets for the fiscal year ending June 30, 2021 (July 1, 2020 through June 30, 2021) as set forth in Resolution No. 2020-02. DRBC’s Director of Finance and Administration Elba Deck explained that the proposed resolution, which was the subject of a public hearing on August 12, 2020, would approve the contributions for support of the current expense budget to be included by the respective signatory parties in their corresponding annual budgets, subject to the review and approval required by their respective budgetary processes. Ms. Deck requested that the Commissioners approve the resolution as proposed.

Secretary Garvin requested a motion to approve the resolution as presented by Ms. Deck. Mr. Kosinski so moved, and Ms. Atkinson seconded his motion. In the absence of further discussion, the Commission Secretary, Ms. Bush, conducted a roll call vote. **Resolution No. 2020-03 to apportion among the signatory parties the amounts required for the support of the Current Expense and Capital Budgets for the fiscal year ending June 30, 2021 (July 1, 2020 through June 30, 2021)** as set forth in Resolution No. 2020-02 was approved by unanimous vote.

Project Review Applications. DRBC’s Project Review Manager, David Kovach, reported that 23 draft dockets had been the subjects of a duly noticed public hearing on August 12, 2020. (A twenty-third docket had been noticed for hearing but such hearing had been postponed to allow additional time for review of the application.) The Commission received comments on just one draft docket—D-1989-037-4 for the renewal of a surface and ground water withdrawal by Mount Airy #1 L.L.C. The commenter, the Delaware Riverkeeper Network (“DRN”), questioned the proposed modification of a condition that in the Commission’s previous docket approval had required the docket holder to analyze land discharge alternatives to the direct discharge of the incremental increase in effluent resulting from a proposed expansion of its wastewater treatment plant. Mr. Kovach explained that the proposed expansion never occurred. Accordingly, the condition was modified to simply remind the docket holder that consistent with DRBC’s regulations for the protection of water quality in interstate waters designated by the Commission as Special Protection Waters, an analysis of natural wastewater treatment system alternatives

would be required for the incremental load resulting from a treatment plant expansion or substantive alteration or addition *if* undertaken in the future. Mr. Kovach recommended that the docket be approved as proposed.

Mr. Kovach concluded by recommending that the Commissioners approve as proposed the 23 draft dockets comprising items 1 through 6 and 8 through 24 on the Business Meeting Agenda.

Thanking Mr. Kovach, Secretary Garvin requested a motion to approve the 23 dockets so identified. Mr. Kosinski so moved, Ms. Atkinson seconded his motion, and without further discussion, the draft dockets comprising agenda items 1 through 6 and 8 through 24 were approved by unanimous vote.

Adjournment. Secretary Garvin asked the Commission and staff to identify any other matters requiring the Commissioners' consideration that day. Hearing none, Secretary Garvin requested a motion to adjourn the business meeting. Mr. Hoffman so moved, Ms. Atkinson seconded his motion, and the meeting was adjourned by unanimous vote of the Commissioners at 11:46 a.m.

Audio Recording. Audio recordings of the public hearing of August 12, 2020 and the Business Meeting of September 10, 2020 are on file with the Commission Secretary. A description of each of the applications for dockets approved during the Business Meeting of September 10, 2020 is provided as an attachment to these Minutes.

Open Public Comment. After the business meeting adjourned, Mr. Tambini held 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 1
DESCRIPTIONS OF PROJECTS APPROVED BY THE COMMISSION DURING THE
BUSINESS MEETING OF SEPTEMBER 10, 2020

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

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

The projects are customarily considered in three categories – *Category A* – project renewals with no substantive changes; *Category B* – project renewals with substantive changes; and *Category C* – projects not previously reviewed by the Commission. Descriptions of the projects (based on the applications received, which may vary from final projects) for which the Commission issued approvals at the Business Meeting listed above are presented below.

A. Renewals with No Substantive Changes (Items 1 through 6 and 8 through 22).

1. Martins Creek, LLC / Talen Energy, D-1970-025 CP-2. An application to renew DRBC Docket No. D-1970-025 CP, which approved the construction of additional electric generating facilities, a surface water withdrawal and discharge of cooling water, and consumptive use at the Martins Creek Generating Station. The application was submitted as required by Section VIII.B. of Resolution No. 2018-5, adopted by the Commission on June 13, 2018. The applicant requested a total allocation of 785.54 million gallons per month of surface water from the Delaware River for industrial cooling of the electric generating facilities known as Martins Creek and Lower

Mount Bethel Energy. The project is located in Lower Mount Bethel Township, Northampton County, Pennsylvania 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.

2. Birdsboro Municipal Authority, D-1974-126 CP-4. An application to renew the approval of the applicant's existing 1.35 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Hay Creek at River Mile 92.5 - 63.1 - 0.3 (Delaware River - Schuylkill River - Hay Creek) in the Borough of Birdsboro, Berks County, Pennsylvania.

3. West Grove Borough Authority, D-1987-024 CP-4. An application to renew the approval of the docket holder's existing 0.25 mgd WWTP and its discharge. The existing WWTP will continue to discharge to Middle Branch White Clay Creek at River Mile 70.2 - 10.0 - 15.9 - 9.5 (Delaware River - Christina River - White Clay Creek - Middle Branch White Clay Creek) via Outfall No.001, in London Grove Township, Chester County, Pennsylvania.

4. Mount Airy #1, LCC, D-1989-037 -4. An application to renew the approval of an existing groundwater withdrawal of up to 9.82 mgm to supply the applicant's public water supply distribution system from existing Wells Nos. 1 and 2 and to renew the approval of an existing surface water withdrawal of up to 14.47 mgm to irrigate the applicant's golf course from an existing intake in Mount Airy Lake. The requested allocations are not an increase from the previous allocations. The project wells are completed in the Long Run Member of the Catskill Formation. The project is located in the Forest Hills Run Watershed in Paradise Township, Monroe County, Pennsylvania within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters.

5. Manwalamink Water Co., D-1989-050 CP-6. An application to renew the approval to withdraw up to 15.0 million gallons per month (mgm) of groundwater from existing Wells Nos. 1, 2, 3, 5 and 6 for continued use in the docket holder's public water system. Wells Nos. 1 and 2 are screened in sand and gravel and Wells Nos. 3, 5 and 6 are completed in the Ridgeley-Coeymans Formation in the Shawnee Creek and Delaware River watersheds, within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters in Smithfield Township, Monroe County, Pennsylvania.

6. Aqua Pennsylvania, Inc., D-1993-083 CP-3. An application to renew the approval of an existing groundwater withdrawal of up to 40.3 mgm to supply the applicant's Chalfont public water supply distribution system from existing Wells Nos. 8A, 11, 12, 13 and 14. The project wells are completed in the Stockton Formation. The project is located in the Commission's Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) within the North Branch Neshaminy Creek, Pine Run and Neshaminy Creek Watersheds in the Borough of Chalfont, Bucks County, Pennsylvania.

8. Sunnybrook Golf Club, D-1997-007 -3. An application to renew the approval of an existing groundwater withdrawal of up to 4.65 mgm to irrigate the applicant's golf course from existing Wells Nos. 1 and 2. The project wells are completed in the Ledger Dolomite Formation. The requested allocation is not an increase from the previous allocation. The project is located in the Commission's Southeastern Pennsylvania Ground Water Protected Area (SEPA GWPA) in the Wissahickon Creek Watershed in Whitmarsh Township, Montgomery County, Pennsylvania.

9. Northampton Generating Company, D-1998-040 -2. An application to renew the approval of an existing surface water withdrawal of up to 77.5 mgm to supply the applicant's 112 megawatt cogeneration facility from an existing intake on the Lehigh River. The requested allocation is not an increase from the previous allocation. The project is located in the Lehigh River Watershed in Northampton Borough and Allen Township, both in Northampton County, Pennsylvania 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.
10. New Hanover Township Authority, D-1999-040 CP-5. An application to renew the approval of the applicant's existing 1.925 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Swamp Creek at River Mile 92.5 - 32.3 - 12.9 - 4.8 (Delaware River - Schuylkill River - Perkiomen Creek - Swamp Creek) in New Hanover Township, Montgomery County, Pennsylvania.
11. Fairless Energy, LLC, D-2001-028 CP-3. An application to renew the approval of the existing Fairless Energy Electric Generating Station and its use of up to 356.5 million gallons per month (mgm) of surface water from the U.S. Steel Delaware River Intake. The electric generating station is located adjacent to Delaware River Water Quality Zone 2 in Falls Township, Bucks County, Pennsylvania.
12. Bedminster Municipal Authority, D-2006-010 CP-4. An application to renew the approval of the applicant's existing 0.06 mgd Pennland Farms WWTP and its discharge. The WWTP will continue to discharge treated wastewater effluent to an unnamed tributary (UNT) of Deep Run Creek at River Mile 157.0 - 4.7 - 7.1 - 0.1 (Delaware River - Tohickon Creek - Deep Run Creek - UNT) via Outfall No. 001, within the drainage area of the section of the main stem Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters, in Bedminster Township, Bucks County, Pennsylvania.
13. East Brandywine Township Municipal Authority, D-2007-002 CP-4. An application to renew the approval of the existing 0.3 mgd Applecross WWTP and its discharges to land and to surface water. The WWTP will continue to discharge treated effluent to land via spray irrigation and drip disposal and to Beaver Creek at River Mile 70.7 - 1.7 - 20.2 - 8.8 - 6.1 (Delaware River - Christina River - Brandywine Creek - East Brandywine Creek - Beaver Creek) in East Brandywine Township, Chester County, Pennsylvania.
14. Franconia Sewer Authority, D-2007-041 CP-3. An application to renew the approval of the applicant's existing 0.15 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Skippack Creek at River Mile 92.5 - 32.3 - 3.0 - 12.5 (Delaware River - Schuylkill River - Perkiomen Creek - Skippack Creek) in Franconia Township, Montgomery County, Pennsylvania.
15. US Steel Real Estate, D-2009-006 -2. An application to renew the approval of a total allocation of 7,288.1 million gallons per month of surface water from two intakes for industrial processes, cooling, fire suppression and potable water supply at the docket holder's industrial park facility. The surface water withdraw is located in Water Quality Zone 2 of the Delaware River at River Mile 127.0 in Falls Township, Bucks County, Pennsylvania.
16. Pineville Facility Company, LLC, D-2009-031 -2. An application to renew the approval of an existing groundwater withdrawal with a total system allocation of 4.4 million gallons per month for nurse stock irrigation from existing Wells Nos. 1, 2, 3, 4, 5, and 6. The project

wells are completed in the Brunswick Formation. The wells are located in the Commission's designated Southeastern Pennsylvania Groundwater protected Area (SEPA GWPA) in the Pidcock and Mill Creek Watersheds in Buckingham Township, Bucks County, Pennsylvania.

17. Beaver Lake Estates, D-2009-038 CP-3. An application to renew the approval of the existing 0.14 million gallons per day (mgd) Beaver Lake Estates WWTP and its discharge. The WWTP will continue to discharge to an UNT of Barnum Brook at River Mile 253.6 - 25.2 - 2.0 - 1.1 (Delaware River - Neversink River - Barnum Brook - UNT) within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in the Town of Thompson, Sullivan County, New York.

18. Reading Area Water Authority, D-2010-009 CP-3. An application to renew approval of the applicant's existing 35 mgd Maiden Creek water filtration plant (WFP) and its discharge of 3.26 mgd of filter backwash and process water. The WFP will continue to discharge from two existing outfalls to Maiden Creek at River Mile 92.5 - 85.6 - 0.2 (Delaware River - Schuylkill River - Maiden Creek) in Ontelaunee Township, Berks County, Pennsylvania.

19. RALHAL Corp. and Concord Estates Condominiums LLC, D-2012-019 CP-2. An application to renew the approval of the applicant's existing 0.137 mgd WWTP and its discharge. The WWTP will continue to discharge treated effluent to Sheldrake Stream at River Mile 253.6 - 27.3 - 2.7 (Delaware River - Neversink River - Sheldrake Stream) within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters, in the Town of Fallsburg, Sullivan County, New York.

20. MHC Lil Wolf, LP, D-2015-005 CP-2. An application to renew the approval of the existing 0.07 mgd Li'l Wolf MHP WWTP and its discharge. The WWTP will continue to discharge treated effluent to an unnamed tributary to Coplay Creek at River Mile 183.7 - 21.1 - 9.9 - 0.6 (Delaware River - Lehigh River - Coplay Creek - UNT) and is located in 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 North Whitehall Township, Lehigh County, Pennsylvania.

21. Pechiney Plastic Packaging, Inc., D-2015-013 -2. An application to renew the approval of a 0.72 mgd groundwater remediation industrial wastewater treatment plant (IWTP) and its discharge to groundwater via injection wells. The IWTP will continue to treat groundwater from the Pohatcong Valley Groundwater Contamination Superfund Site utilizing airstripping, after which the treated groundwater will be reinjected into the regional groundwater aquifer. The project IWTP and its discharge are located in the Pohatcong Creek Watershed 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 Washington Township, Warren County, New Jersey. Wells Nos. 1 and 2 are screened in sand and gravel, and Wells Nos. 3, 5 and 6 are completed in the Ridgeley-Coeymans Formation in the Shawnee Creek and Delaware River watersheds, within the drainage area of the section of the main stem Delaware River known as the Middle Delaware, which the Commission has classified as Special Protection Waters in Smithfield Township, Monroe County, Pennsylvania.

22. Pottstown Borough Water Authority, D-1989-055 CP-4. An application to renew approval of the applicant's existing 12.85 mgd WWTP and its discharge. The WWTP will continue to

discharge treated effluent to the Schuylkill River at River Mile 92.5 - 51.3 (Delaware River - Schuylkill River) in the Borough of Pottstown, Montgomery County, Pennsylvania. The application also includes a request to renew a total dissolved solids (TDS) determination consisting of effluent limits of 3,000 milligrams per liter (mg/l) when the WWTP flow is less than or equal to 8.935 mgd and 2,238 mg/l when flow is greater than 8.935 mgd.

C. Projects Not Previously Reviewed by the Commission (Item 23 and 24).

23. Municipal Authority of the Borough of Milford, D-1965-168 CP-2. An application to approve a surface water withdrawal of up to 6.0 mgm to supply water to the applicant's public water supply distribution system from existing Springs 1 and 2. The springs are located in the drainage area of Vantine Brook within the Sawkill Creek Watershed in the Borough of Milford, Pike County, Pennsylvania 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.

24. Aqua Pennsylvania, Inc., D-2019-007 CP-1. An application to approve an existing discharge from the 0.220 mgd Aqua Pennsylvania Ingram's Mill Water Filtration Plant. Filtered backwash will continue to discharge to the East Branch Brandywine Creek at River Mile 70.6 - 1.8 - 20.0 - 3.9 (Delaware River - Christina River - Brandywine Creek- East Branch Brandywine Creek) in West Chester Borough, Chester County, Pennsylvania.

ATTACHMENT 2

ATTACHMENT TO RESOLUTION FOR THE MINUTES
OF SEPTEMBER 10, 2020 – PEMA DESIGNATION OF AGENT FORM

DESIGNATION OF AGENT

RESOLUTION

BE IT RESOLVED _____ OF _____
(Governing Body) (Public Entity)

THAT _____,
(Name) (Title)

is hereby authorized to execute for and in behalf of

a public entity established under the laws of the Commonwealth of Pennsylvania, all required forms and documents for the purpose of obtaining financial assistance for the Hazard Mitigation Grant Program (HMGP) or the Pre-Disaster Mitigation (PDM) program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288 as amended by Public Law 100-707) or the Flood Mitigation Assistance (FMA) program, Repetitive Flood Claims (RFC) program or Severe Repetitive Loss (SRL) program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq), National Flood Insurance Reform Act of 1994 (Public Law 103-325) and the Flood Insurance Reform Act of 2004 (Public Law 108-264), as pertains to federal mitigation grant programs indicated below (check all that apply):

- HMGP PDM FMA RFC SRL

Passed and approved this _____ day of _____, 20_____.

CERTIFICATION

I, _____, duly appointed and _____
(Name) (Title)

of _____, do hereby certify that the above is a true and correct copy of
(Public Entity)

a resolution passed and approved by the _____
(Governing Body)

of _____ on the _____ day of _____ 19____.

(Signature) (Official Position) (Date)