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RECEIVED/DELAWARE RIVER
BASIN COMMISSION

December 2, 2009

2009 DEC -4 P 1: 35

ADMINISTRATIVE DIVISION

Pamela M. Bush
Commission Secretary
Delaware River Basin Commission
25 State Police Drive
P.O. Box 7360
West Trenton, New Jersey 08628

Re: New York City comments on DRBC
Docket No. D-2009-13-1: Stone Energy Corporation

Dear Ms. Bush:

The New York City Department of Environmental Protection (DEP) submits the following comments concerning the above-referenced matter. Based upon DEP's significant concerns related to this proposed project and similar consumptive withdrawal requests that are likely to be made in the future, for their potential effect on flows in the Delaware River the DEP respectfully requests that the Delaware River Basin Commission (DRBC) provides a period of additional review for this docket matter. It is essential that there be sufficient time for this and other consumptive withdrawal requests to be considered in the framework of a basin wide analysis of depletive use as recommended in the 1982 Good Faith Agreement. For the reasons detailed below, DEP further believes that at a minimum, consumptive withdrawals should be permitted only when New York City is not required to make releases as directed by the Delaware River Master to meet the Montague flow objective.

Stone Energy Corporation has proposed, for DRBC approval, surface water withdrawal in connection with natural gas exploration and development projects. Although this proposed project standing alone may not represent a significant withdrawal, given the potential for additional natural gas development in the Marcellus Shale, there exists the likelihood of a significant number of future applications to DRBC for additional consumptive withdrawals. The City has considerable concerns related to the effect that this application and future applications may have on the Delaware River and DEP's obligations under the Flexible Flow Management Plan (FFMP). The minimum year round pass-by flow for this consumptive withdrawal is set at the very low level of 1.4 cfs. Such a low by-pass requirement will negatively impact downstream flows requiring increased compensating releases by the City to meet the Montague flow objective. The City seeks a postponement to allow time for an adequate evaluation to determine a more appropriate minimum pass-by flow.

With respect to this particular matter, DEP recommends the following:

1. To enable DRBC, and all interested parties, including DEP, to fully understand the potential impact of these takings, all consumptive use and out of basin diversions should be evaluated in totality for their effect on the Montague and Trenton flow objectives. Additionally, DRBC should develop a depletive use budget for the basin as recommended in Section V, *Depletive Water Use Budget*, Recommendation 13, of the 1982 Good Faith Agreement.
2. In order for the Commission and other stakeholders to discern potential impacts of this withdrawal, DRBC should mandate, as a condition of approval, that Stone Energy Corporation take water only during times when DEP is not required to make releases to the Delaware River.

Thank you for your consideration of these comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul V. Rush", with a long horizontal flourish extending to the right.

Paul V. Rush, P.E.