

DELAWARE RIVER BASIN COMMISSION

**MEETING OF FEBRUARY 25, 2021**

**Conducted Virtually on Zoom**

**Minutes**

Commissioners Present: Shawn Garvin, Delaware, Chair  
Brigadier General Thomas Tickner, United States, Vice-Chair  
Patrick McDonnell, Pennsylvania, Second Vice-Chair  
Shawn LaTourette, New Jersey  
Basil Seggos, New York

DRBC Staff Participants: Steven J. Tambini, Executive Director  
Kenneth J. Warren, DRBC General Counsel  
Pamela M. Bush, Commission Secretary and Assistant General Counsel

The Commission held this special public meeting to consider the Commission’s final action on DRBC’s Proposed Amendments to the Administrative Manual and Special Regulations Regarding Hydraulic Fracturing Activities; Additional Clarifying Amendments (“Draft Rule”), which had been published for comment on November 30, 2017. A notice for this special meeting was posted on the DRBC website on February 17, 2021 and was distributed that day via the DRBC’s email list serves and social media accounts. The special meeting was conducted virtually to comply with mitigation measures in effect within one or more of the basin states during the Covid-19 pandemic. Information on how to access the meeting was included in the Commission’s meeting notice.

Secretary Shawn Garvin of the Delaware Department of Natural Resources and Environmental Control presided on behalf of Governor John C. Carney of Delaware, the Commission’s chair *pro tem*. Secretary Garvin convened the special business meeting at 10:30 a.m.

At Secretary Garvin’s request, Commission Secretary and Assistant General Counsel Pam Bush called the roll, noting for each of the states’ representatives in attendance the name of the DRBC Commissioner—the governor—on behalf whom each served as a duly appointed alternate under Section 2.3 of the Delaware River Basin Compact. Brigadier General Tom Tickner, the Commission’s vice chair *pro tem*, attended on behalf of the United States. Secretary of the Pennsylvania Department of Environmental Protection Patrick McDonnell attended on behalf of Governor Tom Wolf, the Commission’s second vice chair *pro tem*; Acting Commissioner of the New Jersey Department of Environmental Protection Shawn LaTourette was present on behalf of Governor Phil Murphy; and Commissioner of the New York State Department of Environmental Conservation Basil Seggos attended on behalf of Governor Andrew Cuomo. Thus, all five commissioners or their duly appointed alternates authorized to vote on their behalf were in attendance on Zoom.

After additional introductions and preliminaries concerning the meeting format, Secretary Garvin explained that the Commission would consider two resolutions, complete copies of which would be available on the DRBC website that afternoon.

Resolution to amend the Comprehensive Plan and adopt implementing regulations with respect to high volume hydraulic fracturing and to finalize amendments to the Administrative Manual – Rules of Practice and Procedure concerning project review classifications and fees. The draft amendments to the Comprehensive Plan and draft implementing regulations, along with proposed amendments to the Rules of Practice and Procedure, were the topics of a notice of proposed rulemaking published on November 30, 2017, six public hearings in January, February and March of 2018, and a written comment period which closed on March 30, 2018. For the benefit of the Commissioners and members of the public in attendance, Mr. Tambini summarized the resolution, which provided for adoption of the proposed amendments with modifications.

At Secretary Garvin's invitation, a motion to adopt the resolution was offered by Mr. Seggos and seconded by Mr. McDonnell. Ms. Bush conducted a roll-call vote, noting that the Commission's members might offer remarks with their votes.

In casting Delaware's vote in support of the resolution, Secretary Garvin read the following statement from Governor Carney: "As DRBC Chair, I welcome this opportunity to provide the fullest protection to more than 13 million people who rely upon the Delaware River Basin's water for their drinking water. This collaborative, multi-state and federal action through the DRBC also complements the goal of the Delaware River Basin Conservation Act, a bill I introduced and which was passed by Congress in 2016, by helping to ensure that the watershed and water resources of the Basin will be protected from these potential sources of pollution."

Brigadier General Tickner stated that the United States was abstaining from the day's vote, "due to the need for additional time to coordinate with the new administration." Thanking the chair and his colleagues, BG Tickner noted, "We respect the outcome of this vote as determined by each respective state commissioner."

Casting Pennsylvania Governor Tom Wolf's vote in favor of the resolution, Secretary McDonnell read a statement from the Governor: "After careful analysis and consideration of the unique geographic, geologic, and hydrologic characteristics of the Delaware River Basin, the DRBC Commissioners are acting today under the authority of the Delaware River Basin Compact to protect the water resources of the Basin, the source of drinking water for millions of Pennsylvanians. I am proud to join with the other DRBC Commissioners in preserving the water resources of this unique region for generations to come."

On behalf of Governor Murphy of the State of New Jersey, Acting Commissioner LaTourette voted in support of the resolution. Speaking for Governor Murphy and the New Jersey DEP, he thanked "the DRBC staff who worked tirelessly on this effort, including the evaluation of considerable public comment and scientific information." Acting Commissioner LaTourette added, "I don't need to inform many of you here that the State of New Jersey has a strong and proud history of

setting protective standards that safeguard our water resources—standards that often exceed the baseline set by the federal government and that the New Jersey Department of Environmental Protection has only made more protective under Governor Murphy’s leadership.” He said the DRBC’s final rules prohibiting high volume hydraulic fracturing within the Delaware River Basin would “further protect the water resources of the Basin by avoiding the unnecessary risk of degradation of the environment and public health posed by the discharge of fracking fluids.”

Speaking for Governor Andrew Cuomo of the State of New York, Commissioner Seggos also voted in support of the resolution. He offered the following statement: “On behalf of the Governor and the people of the State of New York, I’m proud to support the resolution to ban high volume hydraulic fracturing within the Delaware River Basin, the source of drinking water for 13 million people. In 2015, New York adopted a ban on fracking after a multi-year technical assessment and expert review determined that the potential risks to the environment, especially water quality, could not be adequately abated or mitigated.” He added, “The risks of spills, deforestation, soil erosion, forest fragmentation, and chemical release [associated with high volume hydraulic fracturing] do not align with our collective mission and commitment to protect the Basin and the present and future generations that call it home. Building on our environmental legacy—and that’s all of our states—New York is proud to join our fellow states in voting yes.”

Resolution No. 2021-01 to amend the Comprehensive Plan and adopt implementing regulations with respect to high volume hydraulic fracturing and to finalize amendments to the Administrative Manual – Rules of Practice and Procedure concerning project review classifications and fees was thus adopted by a vote of four in favor and none opposed, with one abstention. A copy of the approved resolution is provided as an Attachment to these Minutes.

Secretary Garvin asked Mr. Tambini to present the second agenda item, a proposed resolution for the Minutes.

Resolution for the Minutes directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin.

Mr. Tambini read into the record nearly the entire text of the proposed resolution, which appears below.

#### RESOLUTION FOR THE MINUTES

A RESOLUTION directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin.

WHEREAS, by Resolution No. 1991-9 on June 19, 1991, the Commission amended the Comprehensive Plan by the addition of policies and regulations codified at Section 2.30 of the Commission’s Water Code, relating to transfers of water and wastewater from and to the Delaware River Basin; and

WHEREAS, on November 30, 2017 the Commission proposed new rules, including new Part 440 of Title 18, Chapter III, Subchapter B of the Code of Federal Regulations, which in part concerned inter-basin transfers of water and wastewater, to protect the water resources of the Basin from adverse impacts associated with water withdrawals and wastewater treatment and disposal to support hydraulic fracturing; and

WHEREAS, after carefully considering the public comments received on the November 2017 draft rules, the Commission by Resolution No. 2021 - 01 on February 25, 2021 withdrew from consideration the provisions of such draft rules relating to the exportation of water and the importation, treatment, and discharge of “produced water” as defined therein; and

WHEREAS, the Commission’s current policies on the transfer of water and wastewater from and into the Delaware River Basin as set forth at Section 2.30.2 of the Water Code, provide:

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Commission to discourage the exportation of water from the Delaware River Basin.

...[T]he Basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin....

and

WHEREAS, the Commission’s Comprehensive Plan currently includes the following classes of transfers of water from the Basin:

- Out-of-basin diversions by New York City and the State of New Jersey authorized by the 1954 United States Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (“Decree”), as subsequently modified by the Commission with the unanimous consent of the parties to the Decree, in accordance with Section 3.3 of the Delaware River Basin Compact;
- Out-of-Basin transfers approved on a long-term basis pursuant to Section 3.8 of the Compact to meet the needs of public water systems with service areas straddling or adjacent to a Delaware River Basin boundary;
- Out-of-Basin transfers approved on a temporary and/or emergency basis pursuant to Section 3.8 of the Compact to ensure the public health and safety of communities adjacent to or straddling a Delaware River Basin boundary;

and

WHEREAS, to date the Commission has approved no transfers of water and/or wastewater from or into the Delaware River Basin to support hydraulic fracturing for the extraction of oil or natural gas, and no applications for such transfers are currently under consideration; and

WHEREAS, since 2009, the Commission has in many instances conditioned its approvals of wastewater discharge projects on a requirement that no importation, treatment and/or discharge of hydraulic fracturing wastewater may be undertaken by the docket holder without the Commission's prior review and approval; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

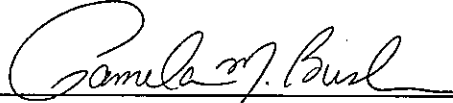
1. No later than September 30, 2021 the Executive Director shall prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update its policies and provisions concerning inter-basin transfers of water and wastewater from and to the Delaware River Basin.
2. The proposed rule amendments directed by this Resolution shall include and the public notice shall solicit comment on:
  - a. Conditions under which an exportation of water from the Basin may be approved or prohibited;
  - b. Conditions under which an importation of wastewater into the Basin may be prohibited;
  - c. Any other provisions concerning inter-basin transfers of water and wastewater that commenters believe are necessary and appropriate to protect the public health or to preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.
3. The Executive Director, in consultation with the Commissioners, may include in the draft regulations such other proposed amendments of DRBC's rules and regulations as they deem necessary or appropriate.
4. To ensure that all public comments on the proposed amendments are captured and included in the Commission's official rulemaking record, public comments on the proposed amendments will be included in such record only when submitted in accordance with the procedures set forth in the notice of proposed rulemaking to be issued by the DRBC.

Secretary Garvin requested a motion. Acting Commissioner LaTourette offered a motion to adopt the resolution for the Minutes as proposed. Secretary McDonnell offered a second, and without further discussion the Resolution for the Minutes directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin was unanimously approved by a roll call vote.

There being no additional items on the agenda and no additional business to be conducted, Mr. Garvin noted that the two resolutions adopted during the day's Special Meeting, along with supporting information, would be available on the DRBC's website following the close of the meeting.

Commissioner Seggos moved for adjournment, and Brigadier General Tickner seconded his motion. All voted in favor, and the Special Business Meeting of February 25, 2021 was adjourned at 10:58 a.m.

An audio recording of the meeting remains on file with the Commission Secretary.

A handwritten signature in cursive script, reading "Pamela M. Bush", written over a horizontal line.

Pamela M. Bush, J.D., M.R.P.

Commission Secretary and Assistant General Counsel

**NO. 2021-01**

A RESOLUTION to amend the Comprehensive Plan and adopt implementing regulations with respect to high volume hydraulic fracturing and to finalize amendments to the *Administrative Manual – Rules of Practice and Procedure* concerning project review classifications and fees.

WHEREAS, at the business meeting of the Delaware River Basin Commission (“DRBC” or “Commission”) on May 5, 2010, the DRBC Commissioners unanimously directed DRBC staff “to develop draft regulations on well pads in the shales for notice and comment rulemaking;” and

WHEREAS, the Commission on December 9, 2010 published draft regulations concerning natural gas development on which it subsequently received nearly 69,000 comments, and on November 8, 2011 the Commission published revised draft natural gas development regulations; and

WHEREAS, the Minutes for DRBC’s business meetings of March, May and July of 2012 record that the Commissioners and members of their technical staffs continued to consult with one another and work in good faith toward consensus on technical aspects of the Commission’s natural gas development regulations; and

WHEREAS, in December 2013, DRBC Alternate Commissioner Angus Eaton of the New York Department of Environmental Conservation (“Department” or “NYSDEC”) on behalf of Commission Chair *pro tem* Governor Andrew Cuomo of the State of New York reported that the Commission would rely on the results, when published, of studies that had been initiated by state and federal agencies for guidance in setting minimum standards for natural gas development in the Basin; and

WHEREAS, in June 2015, the NYSDEC issued its *Final Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program* (“FSGEIS”), which concluded that, “[e]ven with the implementation of an extensive suite of mitigation measures considered by the Department . . . , the significant adverse public health and environmental impacts from allowing high-volume hydraulic fracturing to proceed under any scenario cannot be adequately avoided or minimized to the maximum extent practicable in accordance with [the State Environmental Quality Review Act];” and

WHEREAS, in December 2016, the U.S. Environmental Protection Agency (“U.S. EPA”) published its report entitled, *Hydraulic Fracturing for Oil and Gas: Impacts From the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States*, which concluded that “the uses of water in hydraulic fracturing, from water withdrawals . . . through mixing and injection . . . to the collection and disposal or reuse of produced water . . . can impact drinking water resources under some circumstances;” and that such impacts “can range in frequency and severity, depending on the combination of hydraulic fracturing water cycle activities and local- or regional-scale factors;” and

WHEREAS, in March of 2017, DRBC Alternate Commissioner LTC Michael A. Bliss of the United States Army Corps of Engineers, Philadelphia District, acting on behalf of Commission Chair *pro tem* Maj. Gen. William H. Graham for the United States, announced that the Commissioners continued to confer in good faith on a path forward for adoption of rules regarding natural gas development and hydraulic fracturing in the Basin; the Commission at that time had no plans to vote on the draft rules

published in 2011; and any new or continued rulemaking by the Commission would be subject to further public notice and comment; and

WHEREAS, by Resolution for the Minutes on September 13, 2017, noting that the combination of hydraulic fracturing with horizontal drilling and related activities for natural gas extraction presents risks, vulnerabilities and impacts to surface and ground water resources in the Delaware River Basin (“Basin”), the Commission directed the Executive Director to publish no later than November 30 of that year a set of revised draft regulations regarding certain natural gas development activities in the Basin; and

WHEREAS, on November 30, 2017 the Commission issued a Notice of Proposed Rulemaking, FAQs, proposed rule text, and technical guidance to:

- amend its Special Regulations by the addition of a part on hydraulic fracturing, including: the prohibition of high volume hydraulic fracturing (“HVHF”) in shale and other tight formations within the Basin, and conditions relating to water use for hydraulic fracturing and the management of hydraulic fracturing wastewater;
- amend its *Administrative Manual – Rules of Practice and Procedure* (“RPP”) by the addition of project review classifications and fees related to the management of water for and produced water from hydraulic fracturing of hydrocarbon bearing rock formations; and
- amend the RPP by revising certain project review classifications unrelated to hydraulic fracturing; and

WHEREAS, prior to the close of the comment period on March 30, 2018, six public hearings on the draft rules were held – two in Waymart, Pennsylvania in January 2018; two in Philadelphia, Pennsylvania the same month; one in February 2018 in Schnecksville, Pennsylvania, and another, telephonically, on March 6, 2018; and

WHEREAS, during the comment period, the Commission heard oral comment on the draft rules from approximately 223 individuals and received 8,679 written submissions, many of which included multiple comments. Transcripts from each of the public hearings and copies of all the written comments were posted on the DRBC website on April 10, 2018; and

WHEREAS, in the course of carefully reviewing the comments submitted on the draft rules, the Commission also has considered the large body of scientific research published since NYSDEC issued its FSGEIS in June 2015 and the U.S. EPA released its final report on the impacts of the hydraulic fracturing water cycle on drinking water in December 2016, largely confirming and expanding upon the findings of those reports and supporting the conclusion that HVHF poses immediate and long-term risks to water resources, human health and aquatic life in the Delaware River Basin; and

WHEREAS, in developing the revised rules, the Commission has considered its Comprehensive Plan, which among other things contains:



- a. provisions codified in the Commission's Water Code, 18 C.F.R. Part 410, protecting the uses of groundwater for domestic, agricultural, industrial and public water supplies and as a source of surface water suitable for recreation, wildlife, fish and other aquatic life (Water Code § 3.40.3 A.), and authorizing the Commission to establish requirements, conditions, or prohibitions which in its judgment are necessary to protect ground water quality (Water Code § 3.40.5 B.3.). *See also*, Water Code provisions:
- § 2.20.5, protecting recharge areas and prohibiting pollution of underground waters and surface waters replenishing underground waters;
  - § 3.40.4 A., protecting groundwater from the introduction of substances in concentrations that are toxic or harmful to human, animal, plant or aquatic life or that exceed federal drinking water standards;
  - § 3.40.4 B., prohibiting degradation of groundwater quality including any degradation that may be injurious to any designated present or future ground or surface water use;
  - § 3.40.5 B.1., prohibiting any person from permitting substances in harmful or toxic concentrations to become groundwater; and
  - § 3.40.5 A., requiring persons to conduct their activities in compliance with Commission regulations so as to prevent requirements of Water Code § 3.40 (relating to groundwater) from being violated; and
- b. provisions codified in the Water Code protecting the quality of the Basin's surface waters, including for example:
- § 3.10.2 B., providing that uses to be protected in all surface waters of the Basin include, among others, public water supplies (except where natural salinity precludes such use) and aquatic life;
  - §§ 3.20.2 through 3.20.6, protecting interstate, non-tidal surface waters for, among other uses, public water supply and maintenance and propagation of aquatic life; and
  - § 3.10.3 A.2., protecting waters classified by the Commission as Special Protection Waters by establishing for such waters a management objective of "no measurable change . . . except toward natural conditions."; and

WHEREAS, the Commission staff, in consultation with the Commissioners and their technical and policy advisors, has developed a detailed response to comments and set of revised rules responsive to the comments received; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

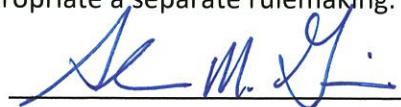
- A. The Commission hereby finds and determines that:
1. As the scientific and technical literature and the reports, studies, findings and conclusions of other government agencies reviewed by the Commission have documented, and as the

more than a decade of experience with high volume hydraulic fracturing in regions outside the Delaware River Basin have evidenced, despite the dissemination of industry best practices and government regulation, high volume hydraulic fracturing and related activities have adversely impacted surface water and groundwater resources, including sources of drinking water, and have harmed aquatic life in some regions where these activities have been performed.

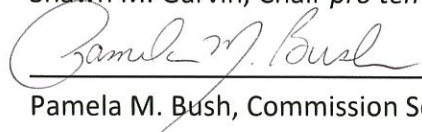
2. The region of the Delaware River Basin underlain by shale formations is comprised largely of rural areas dependent upon groundwater resources; sensitive headwater areas considered to have high water resource values; and areas draining to DRBC Special Protection Waters.
3. The geology of the region in which shale formations potentially containing natural gas are located in the Basin is characterized by extensive geologic faults and fractures providing preferential pathways for migration of fluids (including gases).
4. If commercially recoverable natural gas is present in the Delaware River Basin and if high volume hydraulic fracturing ("HVHF") were to proceed in the Basin, then:
  - a. Spills and releases of hydraulic fracturing chemicals, fluids and wastewater would adversely impact surface water and groundwater, and losses of well integrity would result in subsurface fluid (including gas) migration, impairing drinking water resources and other uses established in the Comprehensive Plan.
  - b. The fluids released or migrating would contain pollutants, including salts, metals, radioactive materials, organic compounds, endocrine-disrupting and toxic chemicals, and chemicals for which toxicity has not been determined, impairing the water uses protected by the Comprehensive Plan.
  - c. HVHF activities and their impacts would be dispersed over and adversely affect thousands of acres of sensitive water resource features, including, among others, forested groundwater infiltration areas, other groundwater recharge locations, and drainage areas to Special Protection Waters, where few existing roads are designed to safely carry the heavy industrial traffic required to support HVHF, prevent dangerous spills or provide access to remediate spills that occur.
5. For the foregoing reasons and other grounds described in the administrative record for this rulemaking:
  - a. High-volume hydraulic fracturing and related activities pose significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values.
  - b. Controlling future pollution by prohibiting high volume hydraulic fracturing in the Basin is required to effectuate the Commission's Comprehensive Plan, avoid injury to

the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

- B. The Commission hereby withdraws from further consideration the draft natural gas development regulations it published on November 8, 2011; and
1. Adopts the February 25, 2021 Comment and Response Document in its entirety.
  2. Adopts the revised rules attached hereto as its final rules and incorporates 18 CFR Part 440 into the Comprehensive Plan. The final rules at 18 CFR Part 440.3 provide that high volume hydraulic fracturing in hydrocarbon-bearing rock formations is prohibited within the Delaware River Basin.
  3. Underscores that the final rules include the following noteworthy changes from those proposed on November 30, 2017:
    - a. Within final Part 440 - High Volume Hydraulic Fracturing, of Title 18 of the Code of Federal Regulations ("CFR"), proposed sections 440.4 – Exportation of water for hydraulic fracturing and 440.5 – Produced water have been removed in their entirety, and section 440.2 – Definitions has been revised to eliminate terms associated solely with the two deleted sections.
    - b. Within Part 401 of Title 18 of the CFR, comprising the Commission's Rules of Practice and Procedure, proposed amendments to section 401.35 – Classification of Projects for Review concerning the importation and exportation of water and wastewater into and from the Basin have been withdrawn.
    - c. Also, within Part 401, proposed amendments to section 401.43 – Regulatory Program Fees related to wastewater treatability studies have been withdrawn.
- C. The Comprehensive Plan amendments and final rules adopted today replace the Executive Director Determinations of May 19, 2009, June 14, 2010 and July 23, 2010. The Resolution for the Minutes of May 5, 2010, which postponed the Commission's consideration of well pad projects until the adoption of final rules, expires by its own terms.
- D. The Commission's regulations concerning the exportation from and importation into the Basin of water and wastewater to support hydraulic fracturing will be addressed through one or more separate Commission actions, including if appropriate a separate rulemaking.



Shawn M. Garvin, Chair *pro tem*



Pamela M. Bush, Commission Secretary

ADOPTED: February 25, 2021