

**DELAWARE RIVER BASIN COMMISSION**

**MEETING OF DECEMBER 12, 2007**

**Minutes**

The Commission met at the office of the Delaware River Basin Commission in West Trenton, New Jersey.

Commissioners present: Cathy Curran Myers, Chair, Pennsylvania  
Michele Mateo Putnam, Vice Chair, New Jersey  
Joseph A. Miri, New Jersey  
Mark Klotz, Second Vice Chair, New York  
Kevin C. Donnelly, Delaware  
Harry W. Otto, Delaware  
Brigadier General Todd T. Semonite, United States  
Lieutenant Colonel Gwen E. Baker, United States

DRBC Staff participants: Carol R. Collier, Executive Director  
Robert Tudor, Deputy Executive Director  
Kenneth J. Warren, DRBC General Counsel, Wolf, Block, Schorr & Solis-Cohen LLP  
Pamela M. Bush, Commission Secretary & Assistant General Counsel  
Thomas J. Fikslin, Modeling, Monitoring & Assessment Branch Mgr.  
Richard K. Fromuth, Water Resources Engineer  
Richard C. Gore, Chief Administrative Officer  
William J. Muszynski, Water Resources Management Branch Mgr.  
Kenneth F. Najjar, Planning and Information Technology Branch Mgr.

Chairwoman Myers convened the business meeting at 1:30 p.m.

Minutes. Ms. Myers asked for a motion to approve the Minutes of the Commission's meeting of September 26, 2007. Mr. Klotz so moved, Mr. Donnelly seconded his motion, and the Minutes of the September 26, 2007 Commission Meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following meetings and events:

- *DRBC Informational Meetings on the Proposed Rulemaking to Implement a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs.*
  - Two meetings on Tuesday, December 18, 2007 at the Best Western Inn at Hunt's Landing, 120 Routes 6 and 209, Matamoras, PA: from 3:00 p.m. to 5:00 p.m. and from 6:30 p.m. to 9:30 p.m..
  - Two meetings on Tuesday, January 8, 2008 at the offices of Wolf, Block, Schorr and Solis-Cohen, LLP, 1650 Arch Street, 26<sup>th</sup> Floor, Philadelphia, PA: from 3:00 p.m. to 5:00 p.m. and from 6:30 p.m. to 9:30 p.m.

- *DRBC Regulated Flow Advisory Committee Meeting.* Wednesday, January 16, 2008 at 12:30 p.m. at the West Trenton Volunteer Fire Company, 40 West Upper Ferry Road, West Trenton, NJ.
- *DRBC Public Hearings on the Proposed Rulemaking to Implement a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs.* Two public hearings will be held on Wednesday, January 16, 2008 at the West Trenton Volunteer Fire Company, 40 West Upper Ferry Road, West Trenton, NJ: from 3:00 p.m. to 5:30 p.m. and from 7:00 p.m. to 10:00 p.m.
- *DRBC Flood Advisory Committee Meeting.* Wednesday, February 6, 2008 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ.
- *Joint Meeting of DRBC Monitoring Advisory Committee and Water Quality Advisory Committee.* A joint meeting will be held on Thursday, February 14, 2008 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, NJ. The staff contact is Ed Santoro, (609) 883-9500, extension 268.

Hydrologic Conditions. Rick Fromuth reported on hydrologic conditions in the Basin.

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period of January 1 through December 10, 2007 was 44.27 inches or 3.27 inches above normal. The observed precipitation for the Delaware River Basin above Trenton, New Jersey for the same period was 44.96 inches or 2.52 inches above normal. Also for the same period, the observed precipitation for Wilmington, Delaware was 38.76 inches or 1.75 inches below normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in November 2007 was 6,833 cubic feet per second (cfs) or 157.6 percent of the long-term average for the month. For the same period, the average observed streamflow of the Delaware River at Trenton, New Jersey was 12,836 cfs, or 123 percent of the long-term average for the month.

For the period from December 1 through December 10, 2007, the average observed streamflow of the Delaware River at Montague was 6,082 cfs, or 123.7 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 14,030 cfs, or 124 percent of the long-term average for the month.

In the Lower Basin, as of December 11, 2007, Beltzville Reservoir contained 13.02 billion gallons (bg) usable, or 100.2 percent of usable storage, and Blue Marsh contained 4.84 bg usable, or 101.7 percent of winter pool usable storage. As of December 10, Merrill Creek contained 15.194 bg usable, or 96.9 percent of usable storage.

In the Upper Basin, as of December 11, 2007, Pepacton Reservoir contained 111.138 bg usable, or 79.3 percent of usable storage. Cannonsville contained 84.733 bg usable, or 88.5 percent of usable storage. Neversink contained 30.552 bg usable, or 87.4 percent of usable storage. Total New York City Delaware Basin reservoir storage was 226.423 bg usable, or 83.6 percent of usable storage.

As of November 30, 2007 the average ground water level in eight reported USGS observation wells in the Pennsylvania portion of the Basin was below the long-term average. Water levels expressed as 30-day moving averages at seven of those wells were within their normal range for this time of the year while water levels at the remaining Schuylkill County well was below its normal range. The water levels at the Cumberland County, New Jersey coastal plain observation well were within their normal range. When last observed on November 14, the water levels at the New Castle County, Delaware coastal plain observation well were within their normal range.

During the month of November 2007, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the “salt line”, ranged from River Mile (RM) 72 to RM 76. The normal location of the salt line during November is RM 80, a location which is two miles upstream of the Delaware-Pennsylvania state line. As of December 10, the salt line was located at RM 70, which is four miles downstream of the normal location for December.

Executive Director’s Report. Ms. Collier’s remarks are summarized below:

- *DRBC Staffing.* The technical branches have been consolidated into three, providing staff with the opportunity to have supervisor positions. The Modeling, Monitoring and Assessment Branch has two new supervisors: John Yagecic is head of Standards and Assessments, and Namsoo Suk is head of Modeling. A new staff member – Victoria Pretti – will be joining DRBC in the next month as a Water Quality Scientist under John Yagecic – a geochemist who spent some time with the New York State Department of Environmental Conservation. In the Water Resource Management Branch, Chad Pindar is head of Project Review. A vacancy remains in Project Review for an engineer, and the position of Operations Supervisor is a signature away from being filled.
- *Key DRBC Activities.* Currently staff is engaged in logging in and reviewing public comments on the proposed Special Protection Waters and Flexible Flow Management Program rules. Staff also is developing the agency’s revised multi-year work plan – a task performed annually. An inter-agency implementation plan for the proposed uniform criterion for PCBs for the Delaware Estuary is being refined so that DRBC can proceed to rulemaking on that criterion. Preparation is underway for a second Federal Agency Coordination Summit, scheduled for May 15, to be convened by the U.S. Army Corps of Engineers as the Commission’s federal member. Two years ago during the first Federal Summit, monitoring was flagged as a key area that could benefit from basin-wide coordination. A monitoring workshop involving federal and state agency representatives will take place on March 19, 2008 as a pre-cursor to the Summit.
- *Federal Funding.* The Water Resources Development Act (WRDA) approved by Congress in 2007 included a section providing that the Secretary of the Army “shall” fund the three river basin commissions that were formerly included in the President’s budget – the Potomac, the Susquehanna and the Delaware. Legislators and governors are being asked to write a letter to the Secretary of the Army urging him to include DRBC’s funding in the fiscal year 2009 budget.

General Counsel’s Report. Mr. Warren reported on two appeals from docket decisions – one involving the Borough of South Coatesville and the other involving Congoleum. Both involve a

specific effluent limit or limits. Bill Muszynski, in conjunction with the state agencies, has been working out these problems, and it is expected that by the Commission's next meeting, both will have been resolved to the satisfaction of the states, DRBC and the docket holders, potentially with some slight modification of the dockets. The Commissioners are not being asked to take action on either request at this point.

In another matter, a company called M & M Stone sued the Commonwealth of Pennsylvania and others, including the DRBC and Bill Muszynski individually. DRBC has tendered the matter to its insurance carriers, and it is hoped that one or more of them will provide defense coverage. Because the Commission has not, at least in Mr. Warren's tenure as General Counsel, had previous incidents in which an individual employee of the Commission was sued in addition to the Commission, Mr. Warren requested a motion that the Commission would defend Bill in this particular litigation, subject to whatever assistance is obtained from insurance carriers. Kevin Donnelly so moved and General Semonite offered a second. Hearing no further discussion, Ms. Myers asked for a vote, and the motion was unanimously approved. Ms. Myers noted that Pennsylvania was taking the same approach in defending employees of the Commonwealth. She added that if a conflict should emerge, the matter would be re-examined.

Public Hearing: Project Review Applications. Although the hearing notice listed 14 dockets, consideration of two dockets – those for the Premcor Refining Group, Inc., D-93-4-6 (hearing item 9) and Valero Paulsboro Refinery, D-2006-28-1 (hearing item 10) – was postponed to allow additional time for review. Mr. Muszynski presented the remaining 12 projects in three categories: Category A, consisting of docket renewals involving no substantial changes (items 1 through 5); Category B, consisting of renewals involving significant changes, such as an increase or decrease in an authorized withdrawal or discharge (items 6 through 8); and Category C, consisting of projects not previously reviewed by the Commission (items 11 through 14).

*A. Renewals with No Substantive Changes (items 1-5).*

1. Deptford Township Municipal Utilities Authority D-94-68 CP-2. An application for the renewal of a ground water withdrawal project to continue withdrawal of 123 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 1, 2, 4, 6, 7, 8 and 9R in the Potomac-Raritan-Magothy Formation. The project is located in the Lower Delaware Watershed in Deptford Township, Gloucester County, New Jersey, in New Jersey Critical Water Supply Area 2.
2. City of Vineland D-95-47 CP-2. An application for the renewal of a ground water withdrawal project to continue the withdrawal of 494.5 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 2 through 14 in the Cohansey Formation. The project is located in the Maurice River Watershed in the City of Vineland, Cumberland County, New Jersey.
3. Merchantville-Pennsauken Water Commission D-97-5 CP-2. An application for the renewal of a ground water withdrawal project to continue withdrawal of 335 mg/30 days to supply the applicant's public water supply distribution system from fifteen (15) existing wells in the Potomac-Raritan-Magothy Formation. The project is located in the Pennsauken Creek Watershed in Merchantville Borough and Pennsauken Township, Camden County, New Jersey.

4. Nestlé Waters North America, Inc. D-98-27-3 (3-Month Extension). An application for the renewal of a spring water withdrawal project to continue withdrawal of 9 mg/30 days to supply the applicant's bottled water operations from existing Hoffman Springs Nos. 1, 2 and 3 and new Mattos Catchment No. 1. The project is located in the Ontelaunee Creek Watershed in Lynn Township, Lehigh County, Pennsylvania.
5. Sapa Extrusions, Inc. (formerly Alcoa Extrusions, Inc.) D-2005-1-3. An application to continue to discharge up to 0.10 mgd from an existing outfall to the West Branch Schuylkill River. No expansion of the treatment facility is proposed and no alterations to the existing effluent limits are requested. The treatment facility is located in Cressona Borough, Schuylkill County, Pennsylvania.

Mr. Muszynski recommended approval of the five dockets. Hearing no questions or comments from other Commissioners or the public, Ms. Myers requested a motion to approve the group of dockets consisting of renewals with non-substantive changes. Mr. Klotz so moved, General Semonite seconded, and hearing items 1, 2, 3, 4, and 5 were approved by unanimous vote.

*B. Renewals with Substantive Changes (items 6-8).*

6. E. I. du Pont de Nemours and Company D-71-86-2. An application for the renewal and update of the Edge Moor facility's IWTP and non-contact cooling water discharges and for approval of the installation of an effluent diffuser. The permitted discharges from the applicant's titanium dioxide production facility include a 5.2 mgd discharge of treated IWTP effluent from Outfall 001, a 2.89 mgd discharge of non-contact cooling water and storm water from Outfall 002, and a 5.9 mgd discharge of non-contact cooling water and stormwater from Outfall 003. The facility will continue to discharge to the Delaware River. The facility is located in Edgemoor, Delaware.
7. Warren County (Pequest River) Municipal Authority D-71-96 CP-2. An application to modify an existing docket by providing a Total Dissolved Solids (TDS) determination for the Warren County (Pequest River) Municipal Utilities Authority's Oxford Area Wastewater Treatment Plant (WWTP). The Oxford Area WWTP has a design flow of 0.5 million gallons per day (mgd) and treats primarily domestic sewage prior to discharge to the Pequest River at River Mile 197.8-7.2-0.9. The facility also accepts leachate from a landfill operated by the Pollution Control Financing Authority of Warren County and from Covanta Industry. Because these waste streams can result in a WWTP discharge that exceeds DRBC's basinwide effluent TDS limitation of 1000 mg/L, the applicant has requested a variance in the form of an adjusted effluent TDS limitation of 9,864 pounds per day. DRBC criteria allow for a variance from a TDS effluent limit where the variance would not result in an instream TDS concentration in excess of 500 mg/L or an increase in the instream TDS concentrations of more than 33%. The Pequest is a tributary of the Lower Delaware River, which DRBC has designated on an interim basis as Special Protection Waters with a classification of Significant Resource Waters. The facility is located in Oxford Township, Warren County, New Jersey.

8. County of Chester Department of Facilities Management D-83-15 CP-3. An application for approval to expand a 0.105 mgd WWTP to treat an average flow of 0.13676 mgd. The WWTP will continue to serve only the Pocopson Home and Prison, located in Pocopson Township, Chester County, Pennsylvania. Following advanced treatment, the WWTP effluent will be applied to expanded adjacent spray fields, which are located in the Pocopson Creek Watershed. A new aerated lagoon will be constructed to provide sufficient supplemental effluent storage, so that a WWTP discharge to a stream will not be needed.

Mr. Muszynski recommended that the three dockets be approved.

Mr. Donnelly remarked in connection with the E. I. du Pont de Nemours and Company docket, that he and other DRNEC staff, including senior engineers, had devoted a great deal of time to this issue. Mr. Donnelly noted in particular that Rick Greene of DNREC worked with the Commission staff on the issue of the diffuser and on toxicity calculations. He said DNREC is comfortable with the proposal and appreciated the efforts of the Commission, the staff and the applicant to reach this outcome.

A citizen of Delaware, Richard Schneider, asked whether a closed-loop or an open-loop system was used to cool the facility. He urged that if it is an open-loop system, then a closed-loop should be considered because of the recent federal ruling on Section 316(b) of the Clean Water Act concerning cooling water intake structures. Mr. Muszynski explained that the facility has some closed cooling units but does not use them for the entire facility. He suggested that this issue would be addressed by the Commission in connection with the withdrawal rather than the discharge. He added that as the NPDES program administrator, the state is responsible for applying Section 316(b) to discharges.

Mary Ellen Noble of the Delaware Riverkeeper Network asked whether the Commission had performed any Section 316(b) analysis for this docket. Mr. Donnelly responded that the facility was not subject to the applicable regulations, because it is not a power generating facility. He said he was aware of no specific analysis relating to Section 316(b).

Hearing no other questions or comments, Ms. Myers requested a motion to approve the group of dockets consisting of renewals with substantive changes. Mr. Donnelly so moved, General Semonite seconded, and hearing items 6 through 8 were approved by unanimous vote.

*C. New Projects (items 11-14).* Mr. Muszynski explained that the next four projects were either new discharges or withdrawals or were simply new to the Commission.

11. Exelon Power D-2006-44-1. An application for approval of an existing surface water withdrawal project to supply up to 9,975 mg/30 days of water to the applicant's Cromby Generating Station from the Schuylkill River and to limit the existing withdrawal from all intakes to 9,975 mg/30 days. No increase in withdrawals is requested. The project is located in the Schuylkill River Watershed in East Pikeland Township, Chester County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

12. To-Jo Mushrooms Inc. D-2007-3-1. An application for approval of the rerate of the existing To-Jo Mushroom IWTP from 0.03 mgd to 0.049 mgd and for approval of the existing 0.035 mgd discharge of contact cooling water. The applicant's IWTP serves a mushroom canning facility. The IWTP and contact cooling water will continue to be discharged to Trout Run, a tributary of the White Clay Creek. The facility is located in New Garden Township, Chester County, Pennsylvania.

Mr. Muszynski said the Commission had received a letter concerning the To-Jo Mushrooms application from Linda Stapleford, River Administrator for the White Clay Creek National Wild and Scenic River Watershed Management Committee. In her letter, Ms. Stapleford said she believes the DRBC standards establishing maximum temperature for cooling water discharges are outdated and should be reviewed, although she recognizes that where the state requirements are more restrictive, they are controlling. Second, she notes that the Commission has incorporated the state temperature requirements by reference rather than specifically repeating them in the docket. She finds this confusing and asks DRBC to consider placing such conditions in the docket. As to repeating state permit conditions verbatim in the Commission's dockets, Mr. Muszynski explained that the Commission generally does not do so for several reasons, including the increased risk of error. Instead, as here, the Commission flags its limit with asterisks and provides an explanatory note. He said that in this instance, the Commission's instantaneous maximum restriction of 110° F. is controlling and is repeated in the state permit, because it is the most restrictive instantaneous maximum limit. However, the state permit also includes at least 15 additional daily average temperature limits for different periods of the year or month. Mr. Muszynski said that incorporating the state's additional limits by reference seemed to cover the matter. In response to Ms. Stapleford's suggestion that DRBC temperature requirements should be re-visited, Mr. Muszynski said he believes that is one of the water quality standards that the staff has been directed to look at in updating its regulations.

13. The Asbury Graphite Mills, Inc. D-2007-26-1. An application for approval of a ground water withdrawal project to supply up to 5.65 mg/30 days of water to the applicant's manufacturing facility from Intakes Nos. 1, 2A, 2B and 2C in the Musconetcong River and to supply up to 1.43 mg/30 days from Wells Nos. 1 and 2 completed in the Allentown Dolomite Formation in the Musconetcong River Watershed, for a total allocation of 7.08 mg/30 days. The project is located in Bethlehem Township, Hunterdon County, New Jersey, within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.
14. Woodbourne Correctional Facility D-2007-28 CP-1. An application for approval of a ground water withdrawal project to supply up to 7.20 mg/30 days of water to the applicant's domestic water supply from Wells Nos. 1, 2, 3, 4, 5, 6 and 7 and to limit the existing withdrawal from all wells to 7.20 mg/30 days. The project is located in the Valley Fill Aquifer in the Middle Delaware Watershed in Woodbourne Township, Sullivan County, New York, within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

Mr. Muszynski recommended that the Commission approve the four new projects.

Mr. Donnelly asked Mr. Muszynski to have a member of his staff contact Linda Stapleford to advise her as to the rationale behind the Commission's decision not to attempt to replicate Pennsylvania's requirements in the docket. Mr. Muszynski agreed.

Ms. Noble inquired about a statement in the Exelon Power docket, D-2006-44-1, to the effect that specific location information was withheld for security reasons. Mr. Muszynski explained that this was a practice put in place two years ago, after the Commission received a letter from the U.S. Environmental Protection Agency emphasizing the need to limit publication of water supply intake and discharge locations for security reasons. Ms. Noble asked whether the river mile could be listed. Mr. Muszynski said that would be equivalent to providing the coordinates. Ms. Myers noted that Pennsylvania also had adopted a policy of confidentiality regarding the location of water and wastewater infrastructure, in accordance with recommendations by the Department of Homeland Security. She noted that the policy is very difficult to administer, acknowledging that the reality is that if someone really wants to learn a specific location, they can. In some cases, the information is available in public records, but it is necessary for an individual to come and look at these. The information will no longer be readily available on a website.

Ms. Noble noted that Exelon Power had retrofitted three of four intakes and all but one of the bays at Cromby Generating Station. She asked whether this was done in response to Clean Water Act Section 316(b) language in the facility's discharge permit and asked why only three of the four intakes were modified. Mr. Muszynski said the changes pre-dated the permit. The diameter of the intakes was reduced from 3/8<sup>th</sup> inch to 1/8<sup>th</sup> inch except at Unit No. 2. Ms. Noble asked whether Cromby had received its permit over a year ago and whether the facility was proceeding with demonstrations of "best technology available" (BTA) in accordance with Section 316(b) of the Clean Water Act. Ms. Myers said that litigation involving temperature limits in the state permits had not yet been resolved, but noted that these issues were not before the DRBC. In response to further questions by Ms. Noble, Ms. Myers added that among other things Cromby was appealing the state's "two-degree regulation," which provides that the temperature of the discharge cannot change by more than two degrees Fahrenheit in an hour. Ms. Noble said she was glad to see that the facility was assigned a pass-by flow requirement, and she asked whether there was any reason the requirement could not specify more than the Q<sub>7-10</sub>. Mr. Muszynski explained that the Commission's currently policy is to apply Q<sub>7-10</sub> unless the state has a more restrictive requirement or there are specific known factors that determine a larger pass-by is needed. Ms. Noble said that it seemed to her the streamflow would rarely if ever fall as low as the Q<sub>7-10</sub> because of releases upstream of the intake. Ms. Myers said that on the contrary, flows at the Q<sub>7-10</sub> level would have occurred at least 200 times over the course of the record modeled in developing the docket. Ms. Collier said that one of the items on the Commission's long list of Water Resource Program tasks is to reevaluate instream flow requirements. Ms. Myers added that it was appropriate to question whether the Q<sub>7-10</sub> is the best and most appropriate way to manage pass-by flows, but she noted that this docket is consistent with the state's approach. Mr. Muszynski added that the Chair had last week convened a group in Pennsylvania to discuss this very issue, addressing both the quantity and quality implications of minimum flows. He said there had been a very good discussion about it. Ms. Myers said that in Pennsylvania both DRBC and SRBC are attempting to better understand how flow affects quality, and the state is encouraging discussion, research and synthesis of the current understanding. She added that a joint meeting of DRBC, the Pennsylvania Fish & Boat Commission and PADEP



regional staff was planned to examine this issue and determine the pros and cons of various approaches. A great deal of thinking on the subject is expected within the next few years. Ms. Noble said she hoped an easy rule of thumb might be found. Ms. Myers said she seriously doubted one would be.

Hearing no further comments or questions, Ms. Myers requested a motion for approval of the four dockets for new projects. Mr. Klotz moved for approval of hearing items 11 through 14. General Semonite seconded the motion and the four dockets were approved by unanimous vote.

Resolution Honoring the Career of Kevin C. Donnelly Upon the Occasion of His Retirement from DNREC. During the morning conference session Mr. Donnelly was honored with the following resolution, unanimously approved, recognizing his distinguished years of service:

### RESOLUTION

WHEREAS, Kevin Donnelly has served the people of the State of Delaware over a distinguished 26-year career; and

WHEREAS, following eleven years in the Department of Agriculture, Kevin joined the Delaware Department of Natural Resources and Environmental Control in 1991 as the Soil and Water Program Administrator and became Director of the Division of Water Resources in 1999; and

WHEREAS, Governor Tom Carper appointed Kevin to serve as his Second Alternate on the Delaware River Basin Commission in 1999, and Governor Ruth Ann Minner continued this appointment, making Kevin her alternate when she took office in 2001; and

WHEREAS, during his tenure as a commissioner, Kevin has enhanced regional water resource management and protection across the Delaware Basin in multiple ways:

- Kevin was a lynch pin in the Commission's work with the Delaware Estuary Program, ensuring that the policies and activities of both were complementary and of high quality;
- He led Governor Minner's Delaware Water Supply Coordinating Council, which developed over 1.8 billion gallons of additional water supply to meet water demand forecasts through 2020, including a new 317-million-gallon reservoir in the City of Newark, the first water supply storage reservoir to be constructed in the Basin since the Chester County Water Resources Authority built Hybernia Dam in 1994;
- He served as treasurer of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), playing a vital role in rescuing an important national water policy forum from near dissolution;

- Kevin’s fellow commissioners and the DRBC staff have greatly appreciated his diplomatic and communication skills, especially his knack for cutting to the chase and easing tensions with well-timed doses of humor; and

WHEREAS, the sportsmanship Kevin has exhibited as a Commissioner may owe something to his shadow career as one of Delaware’s top amateur golfers; and

WHEREAS, Kevin was fond of saying “Hey folks, we need to land the plane on this one”; now, therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

As Kevin Donnelly lands the plane on this phase of his distinguished career, Commission members and staff thank him for his many great contributions, assure him that he will be sorely missed in West Trenton, and wish him the very best in all of his future flights.

Public Hearing: Proposed DRBC Fiscal Year 2008-2009 Current Expense and Capital Budgets.

Ms. Myers explained that the Commissioners encouraged discussion on the budget but did not plan to vote on it at this meeting. Mr. Gore acknowledged that this would be a hearing only. He reminded the Commissioners that adoption of the budget requires a unanimous vote of all the signatories.

Mr. Gore explained that the budget was prepared consistent with the assumptions the staff had circulated to the Commissioners in early September of 2007. A critical aspect of the operating budget is the level of signatory funding. The FY 09 budget was prepared with the same level of signatory funding as was included in the budget FY08. The proposed budget assumes funding from all signatories at the level of their “fair share” contributions. Although the Compact is silent as to the how these shares are to be determined, by 1989 a tacit agreement was reached among the parties to define their respective “fair shares” as follows: Pennsylvania and New Jersey – 25 percent each; the Federal Government – 20 percent; Delaware – 12½ percent; and New York – 17½ percent. The operating budget for fiscal year 2009 is in the aggregate amount of \$5,088,000, and the signatory funding component of that sum is \$3,574,000. The budget also provides for an inter-fund transfer from the Water Supply Storage Facilities Fund in the amount of approximately \$810,000. “Other Income” is projected at \$704,000, consisting predominately of Project Review fees. The budget provides for a modest increase in personnel-related expenses to accommodate a cost-of-living adjustment (COLA). The anticipated aggregate value of the COLA in FY09 is approximately \$112,000. The Commission also intends to continue to implement the Southeastern Pennsylvania Ground Water Protected Area Program, for which it is anticipates a payment of \$239,000 from the Commonwealth of Pennsylvania. For several years the Commission has received funds from Pennsylvania to support its development of a state water plan. According to PADEP staff, however, the continuation of this funding stream into fiscal year 2009 is uncertain. The Commission is willing and ready to respond if in fact the funds are made available.

The capital budget consists of the Water Supply Storage Facilities Fund. Revenues of \$3,456,300 and expenditures of \$2,576,000 are anticipated for this fund in fiscal year 2009.

Reviewing the component of the budget entitled “Comparison of Revenue by Source,” General Semonite asked why the “Other Income” line had jumped from \$410,000 in the 2007 “approved” column to more than twice that sum – \$836,281 – in the “actual” column, and from \$505,000 in the fiscal year 2008 approved budget to \$704,000 in actual revenues that year. Mr. Gore noted that project review fees anticipated in FY09 are \$110,000 higher than budgeted in FY08. Ms. Collier added that the Commission was being conservative with budgeted project review fee revenues in light of some uncertainty as to whether the states would move to limit project review activity. Mr. Gore noted that budgets are developed sometimes 24 months in advance of the budgeted-for time period and that project review fees are particularly difficult to predict at the time a budget is developed. He pointed out that historically the Commission has earned project review fees of as little as \$14,000 in a fiscal year, as was the case in 2002. When developing a budget, he noted that prudence demands a conservative projection. Ms. Putnam noted that although the fiscal year 2007 budget as approved included a conservative prediction of \$410,000 in “Other Revenue,” it also included the federal government’s fair share contribution, which has not been paid since 1997. She asked whether the additional project review fee revenue helped to offset the shortfall in signatory party contributions. Mr. Gore said that was a fair assessment. Ms. Putnam noted that the question now to her mind is which revenues can genuinely be expected in a given year, when are these decisions made, and are there other available sources of income? Ms. Collier replied that the Commission uses all the General Fund revenue that it generates and noted that Water Supply Storage Facilities Fund revenues are restricted use funds. Mr. Gore noted that any “surplus” in project review fees contributes to the Commission’s General Fund equity.

General Semonite commented that on behalf of the federal government he wanted to make certain that taxpayers receive their money’s worth and that surplus revenues go to the right place. He asked whether the Commission has ever considered lowering the state or federal contributions by relying instead on Water Supply Storage Facilities Fund revenues and whether, if monies are accumulating in that fund, the Commission eventually will be able to assume more of its own expenses. Mr. Gore explained that the states’ contributions to the General Fund remain unaffected by Water Supply Storage Facilities Fund revenues because of legal restrictions on use of the latter. Ms. Putnam asked why more activities could not be defined as water supply activities. She also noted that the Commission is re-examining its water charging program to see whether the fees it charges for surface water withdrawals are adequate to meet potential expenses. Mr. Gore said that the Fiscal Year 2009 budget anticipates an \$810,000 inter-fund transfer from the Water Supply Storage Facilities Fund to the General Fund for supply-related activities.

General Semonite asked why the “Water Quality Grant” – a significant source of revenue in fiscal year 2007 – was zeroed out for 2008 and 2009. Referencing a footnote to the “Expenditures by Category” table of the FY09 budget, Mr. Gore noted that beginning in FY08, the Commission reclassified the Water Quality Grant, which consists of Clean Water Act Section 106 Grant proceeds, as a “Special Project.” The “Transfers Out” shown in FY08 and FY09 reflect transfers from the General Fund to the Special Project fund to meet the Commission’s obligation to match the 106 Grant. Ms. Collier said she had requested the accounting change because the past practice of including the Water Quality Grant in the General Fund made it

difficult to track the progress of the Commission's performance under the grant. In short, the 106 grant was put into a separate fund to facilitate better tracking by both DRBC and EPA. General Semonite thanked Ms. Collier and said he understood.

Mr. Warren explained that because the Commission lacks taxing authority, it is necessary to look to DRBC's organic statute to determine what fees the Commission is entitled to impose. Section 3.7 of the Delaware River Basin Compact gives the Commission the right to levy fees for the use of facilities it may own or operate and for products and services rendered by those facilities. In conjunction with the U.S. Army Corps of Engineers, the Commission funded construction of the Blue Marsh and Beltzville reservoirs and owns a portion of the storage capacity of those reservoirs. As a result, the Commission makes principal, interest and operating cost payments to the federal government on an annual basis. In addition, there may be unique charges from time to time when capital improvements are required at those reservoirs. Thus, the fund is accumulating monies that will be available at such time as the Corps informs the Commission that it must contribute to the cost of a capital improvement. At times, the Commission takes the valid position that there are some water supply operations that constitute services that can be funded through Section 3.7. The Commission transfers money from the Water Supply Storage Facilities Fund to the General Fund for these purposes, but the transfer must be limited and the Commission must make certain that it is justified by the language of Section 3.7. The Commission also has to make sure that the funds are available when the bill from the Corps comes due, as it will some day, to improve the two reservoirs. Thus, use of the fund is limited to a very specific statutory purpose.

Ms. Putnam returned to the question of how the "Other Income" category for fiscal year 2007 increased from \$410,000 in the approved budget to \$836,281 in the actual. Mr. Gore explained that "Other Income" consisted of \$3,700 from the sale of maps; \$6,896 in miscellaneous income; \$346,000 in interest income; and \$479,000 in Project Review fees. Mr. Tudor explained that the disparity resulted primarily from an increase in Project Review revenue. He said the Commission is migrating to a more vigorous Project Review mode, preparing approximately 20 dockets per meeting, and this can be expected to continue in the absence of significant re-direction in policy. Mr. Gore factored in this shift when he projected \$704,000 in "Other Income" revenue for fiscal year 2009. Nevertheless, the staff is being conservative in projecting project review fee revenues in part because revenues over the past couple of years were unusually high relative to previous years. Mr. Donnelly suggested that it might be helpful at a point halfway through fiscal year 2008 to look at where the Commission stands with respect to "Other Income" relative to its approved budget of \$505,000.

Addressing the chair, General Semonite said he would like to have a discussion at the next opportunity concerning how the Commission might alleviate the burden on taxpayers by shifting more of its operating costs from signatory party contributions to sources like interest and fees. He would like to see a way toward making the Commission self-sustaining and toward placing a greater share of the cost burden on those who receive the benefit. Ms. Myers said she would be happy to have that discussion, adding that it actually has been ongoing since her arrival in 2003. She noted that the fees had been increased, and added that finding the proper balance remains a concern. A discussion followed regarding the possibility of using interest income to sustain the organization. It was noted, however, that interest income generated by the Water Supply Storage Facilities Fund is subject to the same constraints as the fund principal. Mr. Donnelly offered by way of perspective that Commissioners have cautioned one another from time to time against

overly liberal use of some portion of the Water Supply Storage Facilities Fund to help support General Fund activities. One perspective has been that there should be a reverse transfer to that fund for past use rather than greater reliance on the fund.

Returning to the question of project review fees, Ms. Myers said that she would also like the Commissioners to consider the question of what part of the work in reviewing projects is covered by the fee. She added that the fee should be related to the cost of the service provided and noted that the Commission's work benefits applicants in ways that may not be clearly visible to them.

Mary Ellen Noble of the Delaware Riverkeeper Network asked the General whether he would ask the Secretary of the Army to support funding for the Commission in accordance with congressional direction in the Water Resources Development Act (WRDA). General Semonite responded that he would, not only for the Delaware River Basin Commission but also for the Susquehanna and Potomac basin commissions, in accordance with WRDA's directive. He said there is great respect for these commissions in the Department of the Army, specifically in the office of the Assistant Secretary of the Army (ASA) for Civil Works, which he expects to continue. The ASA is in a position to observe that the networking, the relationships and the interaction provided by DRBC and its fellow commissions are not seen elsewhere around the United States. General Semonite added that it would be premature to take a position as to whether the Office of Management and Budget would include federal funding for the Commissions. As the President's appointee, he said, there are clearly given mandates for him to spend time and money to attend Commission meetings, but with no promise as to how the President's budget will play out. He noted that WRDA provided an authorization for funding, but the appropriation must come through the 2009 federal budget process.

Ms. Noble asked whether use of the Water Supply fund would cease if and when full signatory funding were achieved. Ms. Collier said there are legitimate reasons to use the fund to support some of the Commission's activities and staff, so she does not believe the practice will necessarily stop. She said that once the Commission has full funding from the federal government, (1) vacancies for positions not applicable to water supply that have been held open can be filled; and (2) projects that have been put off due to a lack of dollars can move forward. Ms. Myers added that the Water Supply Storage Facilities fund is not only subject to restrictions on its use, but it should be treated like an endowment and used conservatively because it has taken a long time to build. She said that as a rule it is intended for major capital expenses and should be used cautiously and with great care for specified, limited purposes. She said that Mr. Donnelly was correct in observing that the Commission is uncomfortable about spending these funds and that the Commission needs to evaluate its potential liabilities and determine whether the fund will be adequate to meet them. Ms. Noble observed that the interest generated by the fund would drop when a large payment was eventually made from it. Ms. Putnam said that the Commission's annual work plan for FY09 includes an assessment to be completed in 2010 that will give the Commission a better understanding of its potential liability payable from the fund. Mr. Gore said that the Corps had provided to the Commission in September its estimates of the 30-year capital needs for the Blue Marsh and Beltzville reservoirs. They are for the balance of payments on the Commission's outstanding loans. Ms. Myers noted that although totally speculative, it was possible that if the reservoir operations model now under development pointed to improvements that might enhance storage and/or provide space for flood control, the Commission might consider investing in such a project in the next couple of years. Lt. Col. Baker said that looking at capital improvements or increasing capacity could be components of a

sponsored study in the future. Ms. Myers said there were some potential capital investments for which it could be important to have dollars available in the Water Supply Storage Facilities Fund.

Mr. Donnelly asked Mr. Gore whether the interest of \$320,000 projected as part of “Other Income” for FY09 was from the Water Supply fund. Mr. Gore said it was not. Mr. Donnelly said he was concerned that there might be some misunderstanding, and he stressed that as Mr. Gore had noted, the interest revenue listed in the “Other Income” category was not from the Water Supply fund but from other retained earnings that the DRBC has invested in responsibly to generate revenue. Mr. Gore confirmed that these were General Fund monies and not to be confused with the Water Supply Storage Facilities Fund. Ms. Putnam asked whether the budgeted inter-fund transfer of \$810,000 was essentially the interest on the Water Supply fund. Mr. Gore said that it was not. Ms. Putnam asked whether the Commission earned approximately \$1 million a year in interest from the Water Supply fund. Mr. Gore said that the Commission invites the asset managers to report in person to the Commission at least once a year on the performance of their investments of fund assets and many of the Commissioners have had the opportunity to listen to their presentations. He said that the Water Supply Storage Facilities Fund includes approximately \$17 million in cash and investments. The \$810,000 transfer has nothing to do with interest earnings on these holdings, but rather constitutes a transfer to the General Fund that reflects reimbursement for water supply-related services.

Richard Schneider from Delaware said he thought that the Commissioners should seriously consider applying for grants from foundations that fund environmental concerns. He praised the Commission’s work on behalf of the environment and urged it to reach out to the appropriate foundations.

Ms. Myers said the Commission has done that from time to time and has considered pursuing foundation funding more aggressively. However, she noted that too many grants can shift an agency’s direction from serving the interests of the public to serving those of the foundations. By way of example, Ms. Myers cited the Great Lakes Commission (GCL), which was set up to be about 80 percent grant-funded. She said this structure had the unfortunate result of making GCL indifferent to the interests of the public and the states, which contributed only 10 to 15 percent of the organization’s budget. Thirty of the forty-member staff worked on grants for private foundations. In Ms. Myers’s view, GCL went too far in pursuing grants. Mr. Donnelly noted to Mr. Schneider that DRBC’s Executive Director Carol Collier is very knowledgeable about regional foundations, including the William Penn Foundation. He said that foundations look for discrete projects to fund and very rarely are willing to fund the day-to-day activities of an organization, be it the Partnership for the Delaware Estuary or the DRBC. He agreed that for specific projects that would benefit the basin, foundation grants are a great place to seek funds.

Hearing no further questions or comments Ms. Myers reiterated that the Commission would not vote on the FY09 budget today, but expected to be prepared to vote at the next meeting. She said the budget would again be on the agenda at that time, but only for action, not for public hearing.

Add-On: Resolution Authorizing the Executive Director to Enter into an Agreement with the U.S. Army Corps of Engineers for Extension of the Commission’s Daily Flow Modeling Capabilities to Include Hydrologic Records for the Period 2001 through 2006. Mr. Muszynski explained that DRBC performs daily flow modeling to support evaluations of the interstate

reservoirs, particularly the Delaware Basin reservoirs owned and operated by New York City. The Decree Parties also rely on this modeling work to inform their negotiations. Since 2002, the model that staff and the parties rely upon most, known as "OASIS," requires accurate flow gauge information. OASIS was recently updated and now includes an accurate version of all the flow gauge records from 1927 through 2000. From 2001 through 2006 the Basin experienced a severe drought period as well as periods of extremely high flows, and the Commission would like to update OASIS with the data from this recent period so that more accurate predictions can be made. The proposed resolution would authorize the Executive Director to enter into an agreement with the U.S. Army Corps of Engineers to update the model with these inputs at a cost not to exceed \$30,000. Although discussions with the Corps are not yet complete, it is hoped the job can be accomplished within six months. A number of members of the public have questioned why OASIS does not yet include data for this important period.

Ms. Myers said she strongly supported the proposed update. She said that although adding seven or eight years of records to a 73-year database was unlikely to change the model results enormously, these were unusual years and would make the model that much better. Mr. Donnelly noted in light of the earlier budget discussion that the source of funding for this project would be the Water Supply Storage Facilities Fund. Mr. Gore added that the Water Supply fund had been the source for development of the OASIS model as well.

Hearing no further comments or questions, Ms. Myers requested a motion for approval of the resolution authorizing the Executive Director to enter into an agreement with the U.S. Army Corps of Engineers for extension of the Commission's daily flow modeling capabilities to include hydrologic records for the period 2001 through 2006. Mr. Klotz so moved, Mr. Donnelly seconded, and Resolution No. 2007-19 was approved by unanimous vote.

Public Dialogue. Richard Schneider, a concerned citizen from Delaware and a representative of the Coalition to Protect Our Environment related his concerns regarding several industrial facilities and planned projects along the Delaware River. A rough transcript of his testimony is attached.

Mr. Schneider also offered comments in connection with a presentation made during the morning Conference Session by Rebecca L. Schneider, Ph.D., Director of the Department of Natural Resources at Cornell University, entitled "Roadside Ditch Management to Reduce Stormwater Runoff and Mitigate Floods and Droughts." Mr. Schneider described a retrofit project undertaken in Seattle, Washington, using principles similar to those set forth by Dr. Schneider, to reduce urban runoff to tributaries to the Puget Sound. Mr. Schneider urged the Commission to require implementation of like practices for new development throughout the basin to address pollution and flooding.

Ms. Myers replied that the Interstate Flood Mitigation Task Force report of July 2007 includes such a recommendation. She reiterated that Dr. Schneider demonstrated that the type of narrow ditch that is dredged out time and again should be replaced with a broad vegetated swale. She acknowledged that implementation of the Task Force recommendations was the next step and thanked Mr. Schneider for his comment.

Hearing no further requests to comment, Ms. Myers asked for a motion to adjourn. Mr. Donnelly so moved, Mr. Klotz offered a second, and the Commission's business meeting was adjourned at 3:45 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary



**Comments of Richard Schneider, December 12, 2007**

Hello, my name is Richard Schneider, a concerned citizen from Delaware. I'm here to talk about a few things concerning the Delaware River.

First, the need for cooling towers to protect water quality in the Delaware River.

Second, the Valero Delaware City Refinery plans to dump tons of nitrogen into the Delaware River.

Third, plans are in the works to dump millions of tons of toxic coal ash from power plants and businesses onto the banks of the Delaware River adjacent to the Delaware Memorial Bridge. We ask the Commission not to allow this to happen.

And fourth, the DuPont Chambers Works facility in New Jersey, the #1 source of toxins into the Delaware River, is about to make the water quality worse by increasing the levels of toxins into the river.

First, regarding cooling towers, I would like to submit to the Commission's attention a copy of a March 2007 letter from the Delaware Riverkeeper to John Hughes, the Secretary of the Delaware Department of Natural Resources and Environmental Control. This letter is about cooling towers and the recent federal court ruling requiring the "best available technology," cooling towers to help conserve our aquatic life in the river. Many people in Delaware joined with the Riverkeeper and co-signed this letter.

Second, the Valero Delaware City Refinery is going to reduce nitrogen oxide into the air by using scrubbers. The problem is Valero intends to dump the waste from the scrubbers directly into the Delaware River. Valero wants to turn the air pollution into water pollution, a terrible idea.

I would like to bring to the Commission's attention a November 23, 2007 *News Journal* article by Jeff Montgomery documenting this problem. Federal law regulates nitrogen as a toxic pollutant. The Delaware River is greatly damaged by the large amounts of nitrates that are dumped into the River. Valero pumps about 2.7 million pounds of nitrates into the Delaware River, the 17<sup>th</sup> largest source of industrial discharge nationwide. Valero wants to dump even more. Valero's intention is the wrong thing to contemplate. Valero should be making the river quality better, not making it worse.

The Delaware Department of Natural Resources and Environmental Control is very concerned about the Valero Refinery dumping the air pollution into the river and is working hard on this problem.

Third, plans are in the works to dump millions of tons of toxic coal ash from power plants and businesses onto the banks of the Delaware River adjacent to the Delaware Memorial Bridge, at the now closed Pigeon Point landfill.

This toxic ash is mixed with sewage treatment sludge. The sludge is not the problem here, but the toxic ash is the problem. The toxic ash comes from electric power plant incinerators and other industrial processes. The ash is very toxic and laden with poisonous heavy metals. Federal regulators ignore the dangers of toxic ash and do not classify it as hazardous. A decision that is so wrong. Just because it is not labeled bad, does not make it OK. Tests of the toxic ash show it is very bad stuff and a danger to the environment and peoples' health.

I'd like to submit for the Commission's attention three Wilmington, Delaware *News Journal* articles about this problem.

First, is an August 31, 2007 *News Journal* article written by Jeff Montgomery about plans to dump toxic ash at the now closed Pigeon Point landfill in New Castle County, Delaware.

Second, is another *News Journal* article written by Jeff Montgomery on August 22, 2007. This article is about the company handling the toxic ash, VFL Technologies.

The third *News Journal* article is about the nationwide problem of dumping coal ash which contains arsenic, mercury and other heavy metals and toxins. Despite the poisons in the ash, the Environmental Protection Agency (EPA) does not classify coal ash as a hazardous waste. Many national environmental and public health groups are challenging EPA's regulatory laxity by advocating that the ash be classified as toxic and be disposed of safely. The above-mentioned article also states, in part, "This month, the Maryland Department of the Environment ordered the operator of an 80-acre Anne Arundel County ash dump to clean contaminated water near the site. Cancer causing metals were discovered in almost two dozen wells in the area. BBSS Inc. also was fined an undisclosed amount."

Using the banks of the Delaware River to dispose of millions of toxic ash is a terrible idea. Chemical analysis of this ash proves it is toxic and will harm the environment.

The public asks the Delaware River Basin Commission to classify the ash as harmful and toxic and not allow the dumping of this material at the now closed Pigeon Point landfill. The toxic ash should be treated, handled and disposed of properly so it doesn't harm the environment and public health.

The Delaware Department of Natural Resources and Environmental Control is also very concerned about the problem of dumping toxic waste in Delaware and is working hard to help solve this problem.

Fourth, the DuPont Chambers Works facility in New Jersey, the #1 source of toxins into the Delaware River, is about to make the quality worse by increasing the levels of toxins into the River. The Delaware River is so toxic you can't eat the fish from it. Signs along the Delaware River bank warn the public not to eat the fish. This is terrible. The DuPont Chambers Works is making things even worse. A May 2, 2007 Jeff Montgomery *News Journal* article explains this: "Environmental Protection Agency records released last month show the company ranked as the nation's sixth-largest source of legally permitted pollution discharges to water in 2005, the largest on the Delaware River."

In 2005, the DuPont Chambers Works released more than 4.1 million pounds of toxic chemicals into the water. The 2005 pollution releases were a 45% increase from 2004. The 2005 pollution releases were the highest amount reported since EPA recordkeeping began in 1989.

Thousands of citizens who reside in the Delaware River Basin area feel we should be making the Delaware River better, not worse. The Commission should make the DuPont Chambers Works decrease not increase the poisons dumped into the river.

I have a few questions for the Commission and I would like to receive a formal written response to my concerns.

First, how is it possible for DuPont Chambers Works to increase their pollution discharge by 45% from 2004 to 2005? Second, does the DuPont Chambers Works face a limit on the amount of toxins they dump into the Delaware River? Third, if there is no limit on the amount of pollution dumped into the Delaware River, why not? Fourth, how can the public that resides in the Basin Commission area make it so that DuPont Chambers Works decrease the amount of poisons dumped into the Delaware River? Does this action have to originate from the Commission, or through state regulatory action?

The people who reside in the Delaware River Basin Commission area, and others outside the basin, want to make the Delaware River better not worse. That's why I have raised these questions and concerns on their behalf. Thank you.