

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

HOUSE STATE GOVERNMENT COMMITTEE HEARING

STATE CAPITOL  
RYAN OFFICE BUILDING  
ROOM 205  
HARRISBURG, PENNSYLVANIA

MONDAY, JUNE 11, 2018

IN RE: DELAWARE RIVER BASIN COMMISSION

BEFORE:

HONORABLE DARYL METCALFE, MAJORITY CHAIRMAN  
HONORABLE MATTHEW BRADFORD, MINORITY CHAIRMAN  
HONORABLE CRIS DUSH  
HONORABLE KRISTIN HILL  
HONORABLE JERRY KNOWLES  
HONORABLE BRETT MILLER  
HONORABLE BRAD ROAE  
HONORABLE FRANK RYAN  
HONORABLE THOMAS SANKEY  
HONORABLE CRAIG STAATS  
HONORABLE JUDY WARD  
HONORABLE MARY JO DALEY  
HONORABLE PAMELA DeLISSIO  
HONORABLE STEPHEN McCARTER

---

*JEAN DAVIS REPORTING*  
POST OFFICE BOX 125 • HERSHEY, PA 17033  
Phone (717) 503-6568

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**COMMITTEE STAFF PRESENT:**

**SUSAN BOYLE, EXECUTIVE DIRECTOR, REPUBLICAN CAUCUS  
MIKE HECKMANN, RESEARCH ANALYST, REPUBLICAN CAUCUS  
PAM NEUGARD, ADMINISTRATIVE ASSISTANT, REPUBLICAN CAUCUS**

**BRIDGET LAFFERTY, EXECUTIVE DIRECTOR, DEMOCRATIC CAUCUS  
SHARON HOUSSOU, LEGISLATIVE ASSISTANT, DEMOCRATIC CAUCUS  
MATT HURLBURT, RESEARCH ANALYST, DEMOCRATIC CAUCUS  
KATHY SEIDL, RESEARCH ANALYST, DEMOCRATIC CAUCUS**

**JEAN M. DAVIS, REPORTER  
NOTARY PUBLIC**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X  
T E S T I F I E R S

NAME	PAGE
HONORABLE JONATHAN FRITZ	5
HONORABLE DAN MOUL	6
KYLE GALLAGHER, PLANT OPERATOR, APPALACHIAN UTILITIES, INC.	10
JOSEPH ADAMS, COMMISSIONER, WAYNE COUNTY	20
BETTY SUTLIFF, UDRBC SECRETARY	38
STEVE TAMBINI, EXECUTIVE DIRECTOR, DELAWARE RIVER BASIN	54
TOM SHEPSTONE, PRINCIPAL, SHEPSTONE MANAGEMENT CO, INC.	73
DAVID SPIGELMYER, PRESIDENT, MARCELLUS SHALE COALITION	86
NED LANG, VICE PRESIDENT, PA SEPTIC MANAGEMENT ASSOCIATION, AND PRESIDENT, UPPER DELAWARE RIVER BASIN CITIZENS ASSOCIATION	105

1 P R O C E E D I N G S

2 \* \* \*

3 MAJORITY CHAIRMAN METCALFE: This meeting of the  
4 State Government Committee is called to order for our  
5 hearing today.

6 Before we get started hearing from the prime  
7 sponsor of one of the bills that's been drafted and also  
8 from Representative Fritz, who originally asked me to hold  
9 this hearing, before we hear from them this morning, if I  
10 could ask everyone to please rise.

11 Representative Hill, would you lead us in the  
12 pledge?

13 (Pledge of Allegiance)

14 MAJORITY CHAIRMAN METCALFE: Thank you,  
15 Representative Hill.

16 If I could also ask our Member Secretary,  
17 Representative Hill, to call the roll before we get started.

18 (Roll call)

19 MAJORITY CHAIRMAN METCALFE: Thank you,  
20 Representative Hill.

21 This morning's public hearing is on the Delaware  
22 River Basin Commission. And we've held a hearing last year  
23 on the Susquehanna River Basin Commission -- actually two  
24 hearings last year. That was part of our four-hearing  
25 special on regulatory environment in Pennsylvania.

1           And Representative Moul has worked on legislation  
2 as a result of the issue with the Susquehanna River Basin  
3 Commission and, based on a review of that legislation,  
4 thought that it was something that might be of interest to  
5 Representative Fritz and others who had some concerns about  
6 the Delaware River Basin Commission.

7           So we're asking Representative Moul to give us  
8 some opening remarks this morning. But first we'll go to  
9 Representative Fritz, who asked me to have the hearing, and  
10 ask Representative Fritz to give us a few opening remarks  
11 and then we'll go to Representative Moul and then we'll ask  
12 both the gentlemen, Representatives, to sit with the  
13 Committee if they choose to join us for the hearing this  
14 morning.

15           Representative Fritz.

16           REPRESENTATIVE FRITZ: Thank you, Mr. Chairman.  
17 Good morning.

18           And good morning as well to my esteemed  
19 colleagues and members of the State Government Committee.  
20 Additional appreciation needs to be extended to our  
21 testifiers, many of whom traveled a good distance to be here  
22 with us in Harrisburg this morning.

23           The theme for this morning will be to illustrate  
24 the fact that the Delaware River Basin Commission and  
25 (unintelligible) in their original intended purpose as an

1 agency. In doing so, the Delaware River Basin Commission  
2 has morphed into a dangerously unaccountable and rogue  
3 entity that is increasingly void of objectivity.

4 The result of their policy, their actions, and  
5 their inaction has truly harmed my constituents and  
6 landowners. That damage rendered has been made doubly  
7 painful given the fact that my landowners are treated  
8 differently than those elsewhere in the Commonwealth.

9 The theme today is injustice, hypocrisy, and  
10 discrimination. My constituents and landowners do not  
11 deserve to be treated as second-class citizens but that,  
12 friends, has become the reality. I urge my colleagues to  
13 stand up for what's right. Really it's that basic. It's  
14 that simple.

15 Thank you again for the opportunity, Mr.  
16 Chairman. The residents of the 111th District are most  
17 grateful.

18 MAJORITY CHAIRMAN METCALFE: Thank you,  
19 Representative Fritz.

20 Representative Moul.

21 REPRESENTATIVE MOUL: Thank you, Mr. Chairman.

22 I'd like to thank you and Acting Minority  
23 Chairman McCarter and the rest of the State Government  
24 Committee for having this hearing on my House Bill today. I  
25 certainly do appreciate addressing this quite needed

1 legislation.

2 House Bill 2222 will reform the way groundwater  
3 is regulated within the Commonwealth. Currently there are  
4 several entities that issue this type of regulation,  
5 including DEP, the Susquehanna River Basin, and the Delaware  
6 River Basin Commission. This joint authority often requires  
7 water users to engage in duplicate efforts in attempting to  
8 comply with overlapping regulations leading to great expense  
9 to the water users in our communities.

10 My legislation would make DEP the exclusive  
11 authority to regulate groundwater within the Commonwealth  
12 and to impose fees, fines, or penalties on the use,  
13 withdrawal, or retention of groundwater.

14 Additionally, it would require DEP to submit any  
15 new or amended regulations regarding groundwater to the  
16 House and Senate Environmental Resources and Energy  
17 Committee for the committee's approval before the regulation  
18 could be promulgated.

19 Brought to my attention by a small town in Adams  
20 County, over-the-top fees for review and re-permitting on  
21 wells, which some have been in production for more than half  
22 a century, tens of thousands of dollars in fees, which gets  
23 passed along to the ratepayers. This is bad enough but the  
24 sad part of the story is that it is totally redundant. The  
25 same data which is collected for the SRBC and DRBC is also

1 collected for DEP.

2 When these compacts were created, they were  
3 created to regulate usage of surface water so that the users  
4 upstream did not remove more than necessary leaving ample  
5 supply for aquatic life and other users downstream. It  
6 wasn't until several years later that the SRBC realized that  
7 the compact referred to water resources instead of surface  
8 water resources. And they got the idea of regulating well  
9 water and also then the empire was born.

10 We have had several hearings on this issue and  
11 listened to operators of municipal and private systems  
12 complain as to the treatment by their Commissions. What was  
13 all-telling is that we were told by many that they were  
14 afraid to testify due to the fear of retribution.

15 These compacts were born with absolutely no  
16 oversight from the General Assembly and they have since  
17 abused their authority and amassed a treasure trove. SRBC  
18 at last count was sitting on \$70 million of ratepayer money.  
19 These compacts lack oversight, transparency, and  
20 accountability that is common in our government agencies.

21 They are not required to adhere to Pennsylvania  
22 Right-To-Know Law, nor is it accountable to the Independent  
23 Fiscal Office or the Independent Regulatory Review  
24 Commission. No government entity should go unchecked.

25 I'll read you two sections very quickly out of



1 the SRBC's Compact. Section 1.36 of the SRBC Compact states  
2 that it is the express intent of the signatory parties that  
3 the Commission shall engage in the construction, operation,  
4 and maintenance of a project only when the project is  
5 necessary to the execution of the comprehensive plan and no  
6 other competent agency is in a position to act or such  
7 agency fails to act.

8 Section 3.2 of the SRBC Compact states that it is  
9 the policy of the signatory parties to preserve and utilize  
10 the functions, powers, and duties of the existing offices  
11 and agencies of the government to the extent consistent with  
12 this Compact and the Commission is directed to utilize those  
13 offices and agencies for the purpose of this Compact.

14 Now, I would read you the ones out of DRBC's  
15 Compact as well; however, that in itself would be redundant  
16 because they say almost exactly the same thing.

17 In other words, if there's a government agency  
18 that has the ability or is already engaged in this  
19 permitting process, there is no reason nor should these two  
20 Compacts also engage in it. It becomes redundant,  
21 overstepping, and expensive for our communities when our  
22 private systems that we have around the Commonwealth of  
23 Pennsylvania, i.e., our constituents, all pay the bills for  
24 this when it is totally not necessary.

25 With that, I thank you, Mr. Chairman, for

1 allowing me to share my thoughts on House Bill 2222 today.

2 MAJORITY CHAIRMAN METCALFE: Thank you,  
3 Representative Moul.

4 As I mentioned, both of you gentlemen,  
5 Representatives, are invited to sit with the Committee if  
6 you'd like to this morning to hear testimony.

7 REPRESENTATIVE MOUL: Thank you, Mr. Chairman.

8 MAJORITY CHAIRMAN METCALFE: Our first testifier  
9 will be Mr. Kyle Gallagher. He's a plant operator at  
10 Appalachian Utilities, Incorporated.

11 We thought it would be good to ask Mr. Gallagher  
12 to come in and talk with us this morning. He's here. There  
13 he is. You can join us at the microphone, sir.

14 Mr. Gallagher had testified last year regarding  
15 the Susquehanna River Basin Commission issues that he was  
16 experiencing and having problems with. And I invited him to  
17 join us again to give us kind of a summary of the issues he  
18 brought up to us in the past to get the members back up to  
19 speed and get us back in that mindset that we left the  
20 hearings with last June as we start to listen to some of the  
21 issues around the Delaware River Basin Commission.

22 Mr. Gallagher, you can begin when you're ready,  
23 sir.

24 MR. KYLE GALLAGHER: Okay. Good morning.

25 Thank you all for coming and thank you for your

1 work to correct a very serious problem affecting three and a  
2 half million Pennsylvania residents living and working  
3 inside the Susquehanna River Basin. This problem directly  
4 affects Democrats and Republicans equally. It affects all  
5 citizens that use a public water supply.

6 Appalachian Utilities is a small public water  
7 supply company in Central Pennsylvania. We maintain three  
8 PA DEP-approved source groundwater wells, roughly 30 miles  
9 of water main line, and roughly 1,450 service connections in  
10 Avis, Woolrich, and portions of Pine Creek and Dunstable  
11 Townships.

12 I have provided a copy of our 1997 DEP-issued  
13 permit to operate the three source groundwater wells. That  
14 is found as Attachment 1 in my written testimony. Please  
15 keep in mind SRBC failed to contact Appalachian until 2016.

16 Appalachian is a very small company. We have  
17 four employees. We work very hard to maintain the water  
18 system. And we pay special attention to the delicate  
19 balance of maintaining the water system to the best of our  
20 ability while simultaneously keeping the water rates down  
21 for our customers. This balance is not easy. And  
22 overregulation by the SRBC and the PUC make it near  
23 impossible.

24 Pennsylvania residents in the Susquehanna River  
25 Basin have had their water rates stolen. And those rights

1 are being sold back to unsuspecting ratepayers, communities,  
2 and business owners at a very, very high cost. The SRBC has  
3 decided that they own all the water in the Basin and you  
4 must pay to use their water.

5 For me to explain everything I have discovered  
6 about this Commission would take about four hours, so please  
7 take some time to read my original June 2017 testimony and  
8 this new 2018 testimony. Please do not hesitate to contact  
9 me with any questions. I will be happy to schedule a  
10 private meeting at a date, time, and location that is  
11 convenient for you.

12 My written testimony will convey our terrible  
13 treatment and awful ongoing experience with this  
14 out-of-control government entity that creates rules,  
15 regulations, fees, and fines without the consent or  
16 supervision of any elected official. They make rules  
17 however and whenever they choose to benefit themselves with  
18 no voice representing the good people of Pennsylvania.

19 As far as I can tell, we have no voice for  
20 Pennsylvania residents and we are not being represented at  
21 all. Appalachian is being forced by the SRBC to perform  
22 totally unnecessary science experiments that will not  
23 improve the service for our customers. We have no choice.  
24 We either pay the Commission the \$65,000 they demand for  
25 their extremely expensive application fees and then go on to

1 complete pointless aquifer testing that could easily exceed  
2 several hundred thousand dollars or we'll be fined a huge  
3 amount or worse yet it is possible the SRBC will not allow  
4 us to use the groundwater wells, which means the community  
5 water supply will be closed.

6 If we don't pay up, the community will not have  
7 water. If we don't pay off the Commission to be allowed to  
8 access our groundwater, they will fine us. A very brief  
9 history on our communication with this Commission will  
10 follow.

11 Attachment 2 in my written testimony are SRBC and  
12 Appalachian letters from October 24th, 2017, to May 15th,  
13 2018. You will see that they refused to answer common-sense  
14 questions. In December of 2016, the Commission issued  
15 Appalachian an NOV threatening a fine over \$1.8 million to a  
16 small water company that supplies water to our small  
17 community in a relatively low-household-income rural  
18 setting.

19 October 2017, the Commission offered a settlement  
20 supposedly seeking resolution to the problems that they have  
21 created for our community. In this offer, Appalachian must  
22 pay a \$1,000 settlement in lieu of civil penalties. The  
23 Commission also offers to reduce our operating capacity in  
24 all three DEP permitted wells.

25 A very simple way to explain this offer from the

1 Commission, imagine you have a water well at your home and  
2 you can safely pump 100 gallons per day for use in your  
3 home. The SRBC comes knocking on your door and informs you  
4 that all of a sudden for no apparent reason from now on you  
5 can only pump 50 gallons per day and they will fine you if  
6 you go over their limit.

7 They are reducing our operating capacity so far  
8 that if we have a mainline break and we need to replenish  
9 the pressure sustaining storage reservoir, they can fine us  
10 for doing that. They can fine us for properly operating the  
11 water system with DEP-permitted wells. They can fine us if  
12 we do our very best to quickly and safely refill a storage  
13 reservoir that not only provides drinking water but is a  
14 critical component to our community fire suppression system.

15 In November of 2017, I responded with a  
16 counteroffer where Appalachian could possibly afford their  
17 expensive application fees if they apply a 90-percent  
18 discount to the fees. More on this later.

19 I explained that Appalachian has unintentional  
20 non-compliance of their regulations; therefore, no fine is  
21 appropriate in this case. I also asked for a letter to be  
22 authored by the Pennsylvania Commissioner of the SRBC to  
23 explain the purpose of the DEP permit Appalachian was issued  
24 in 1997 and the purpose of the clearly duplicative SRBC  
25 permit that he is directing the SRBC employees to force us

1 to do.

2 In April of 2018, the SRBC informed Appalachian  
3 that the Commissioners have rejected the counteroffer  
4 entirely; negotiations are closed; and that the Executive  
5 Director will be issuing an order in coming weeks.

6 To summarize the underlying message in this  
7 letter from the SRBC, Pennsylvania water ratepayers',  
8 Pennsylvania taxpayers', and Pennsylvania businessowners'  
9 questions and concerns will not be answered or addressed by  
10 these government employees. The SRBC is a non-transparent  
11 commission and they will do as they please and do not need  
12 to explain their actions, decisions, or policies to anyone.

13 May 2018, Appalachian requested to start the  
14 application process in the beginning of 2019 so we have time  
15 to complete a very important mainline replacement and a fire  
16 hydrant replacement this summer.

17 May 2018, the SRBC informs Appalachian that the  
18 Commission is agreeable to that time and they will draft the  
19 COA.

20 Attachment 3 in my written testimony is an SRBC  
21 chart of municipal fees paid to the SRBC from 2012 to 2017.  
22 This chart illustrates the highly erratic assessment of fees  
23 and issuance of refunds and credits. A neighboring water  
24 company to Appalachian received a 100 percent refund on  
25 their application fees. Elizabethtown Area Water Authority

1 received a 90 percent refund or credit on their application  
2 fees. Many other towns pay everything full price with no  
3 discount.

4 SRBC continues to demand that Appalachian pay  
5 full price with no offer of a refund or credit even after we  
6 have explained that funding is not available to comply with  
7 their unreasonable demands.

8 Attachment 4 is the SRBC regulatory program fee  
9 schedule. In my June 2017 testimony, I pointed out that  
10 this Commission is openly prejudiced against all private  
11 business, even if the business performs the exact same  
12 service as a municipal equivalent. I have received no  
13 explanation from this Commission about why they do this.

14 Attachment 5 is an SRBC response to questions I  
15 had in my June 2017 testimony. The second sentence of the  
16 document is, quote, SRBC is providing responses so that  
17 Mr. Gallagher and committee members have all the information  
18 they seek, end quote.

19 That was a nice attempt. But the document is  
20 full of misleading and untrue information and they never  
21 sent it to me. I had to run across this document while  
22 talking with people about these many problems. They never  
23 sent me a copy of this. I would also like to know who wrote  
24 it. The author did not bother to put his name on it to  
25 claim ownership of the document.



1           In the closing of my written testimony, I have a  
2           number of unanswered questions for your consideration. It  
3           is well documented in my letters to this Commission they  
4           refuse to answer or have any discussion on common-sense  
5           questions from the public about what they are doing.

6           **MAJORITY CHAIRMAN METCALFE:** Thank you, Mr.  
7           Gallagher.

8           Questions from any of the members?  
9           Representative Daley.

10          **REPRESENTATIVE DALEY:** Thank you, Mr. Chairman.  
11          Mr. Gallagher, I just have a question related to  
12          -- do you have any dealings at all with the DRBC? because  
13          your testimony seemed related to just SRBC.

14          **MR. KYLE GALLAGHER:** Correct. It's only related  
15          to the SRBC.

16          **MAJORITY CHAIRMAN METCALFE:** As I explained as we  
17          started the hearing, we were having Mr. Gallagher back to  
18          give the members an overview of what we had talked about  
19          last June and to kind of put you in the right mindset there  
20          as we talked about what was going on with the Delaware River  
21          Basin Commission, which Representative Moul believes that  
22          legislation he drafted to address the Susquehanna River  
23          Basin Commission may also address some of the problems that  
24          some members are having with the Delaware River Basin  
25          Commission.

1                   REPRESENTATIVE DALEY: All right. I guess I  
2 understand that, except that a lot of us were in attendance  
3 at the Susquehanna River Basin Commission hearings that we  
4 had last summer.

5                   Thank you for the refresher. I'm not sure how it  
6 applies but thank you for the refresher.

7                   MAJORITY CHAIRMAN METCALFE: Well, you will see  
8 that the Chairman's wisdom in having Mr. Gallagher come will  
9 pay off in the end.

10                  Thank you.

11                  Any other members?

12                  Representative Miller.

13                  REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

14                  And thank you for your testimony. I appreciate  
15 that. The testimony that you provided is very, I think,  
16 appropriate for this particular hearing as it relates to the  
17 overall issue that I think we face with both of these  
18 Commissions.

19                  The question I have for you is, has there been  
20 any attempt by anyone to have a meeting with the members of  
21 the SRBC representatives? I know here in Lancaster County  
22 we had a meeting with the Secretary of DEP and the entire  
23 Lancaster Delegation Senators and State Representatives.

24                  I'm wanting to know if maybe such a meeting could  
25 be set up with you? I know several members of this

1 Committee would be interested in attending, having a  
2 representative of the SRBC present to answer questions  
3 directly in front of the elected officials.

4 MR. KYLE GALLAGHER: I think that would be a good  
5 idea. We haven't had any meetings since 2016, I guess. We  
6 had one meeting at the SRBC office. That didn't answer any  
7 of our questions.

8 REPRESENTATIVE MILLER: Okay.

9 MR. KYLE GALLAGHER: I'm open to a meeting at any  
10 time.

11 REPRESENTATIVE MILLER: It might be something for  
12 you to consider, maybe contacting your particular State  
13 Representative and others and sending out invitations.

14 Thank you.

15 MR. KYLE GALLAGHER: Thank you.

16 REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

17 MAJORITY CHAIRMAN METCALFE: Thank you,  
18 Representative Miller.

19 Any other members?

20 Thank you, sir, for joining us today. We  
21 appreciate it.

22 MR. KYLE GALLAGHER: Thank you.

23 MAJORITY CHAIRMAN METCALFE: Our next testifier  
24 is Mr. Joseph Adams, Commissioner from Wayne County.

25 Mr. Adams, thank you for joining us.

1 Commissioner Adams, you can begin when ready, sir.

2 MR. JOSEPH ADAMS: Thank you.

3 My name is Joe Adams. I'm a Wayne County  
4 Commissioner.

5 Good morning, Mr. Chairman and House Committee  
6 members. I appreciate the invitation to present to you this  
7 morning. I also want to call out our Senator and  
8 Representatives from Wayne County; Senator Lisa Baker;  
9 Jonathan Fritz, who is the Representative; and Michael  
10 Peiffer. They represent us very well. They know the  
11 issues. They are extremely supportive of our constituency.

12 My topic today is the economic impact that the  
13 DRBC has on impeding new businesses and growing existing  
14 businesses within our county.

15 DRBC was created in 1961, primarily to restore  
16 life to one of America's most polluted rivers. As per the  
17 DRBC website, the results have been dramatic. There has  
18 been dramatic improvement every decade for the last 50  
19 years. A large portion of that improvement is due to the  
20 upper and central region. Wayne County is in the upper  
21 region. And that happens to be the only region that has the  
22 DRBC designation of good status regarding dissolved oxygen  
23 and nutrients.

24 We in Wayne County are the stewards of good water  
25 quality management with the entire basin being the

1 benefactor. We feel we're being penalized for our good  
2 behavior and the resulting good status that we created. The  
3 original mission of the DRBC was to restore life to the  
4 polluted Delaware River. And that has been met. Yet the  
5 DRBC continues to increase its burdensome regulations and  
6 restrictions on land use.

7 Here are some of the examples over the past 50  
8 years: In 1977, prohibit any development in the flood  
9 plain; in 1986, new regulations on water use; in 1992,  
10 high-quality designation in the upper and middle region; in  
11 1996, 23 new objectives to be pursued; in 2003, new flow  
12 requirements for aquatic ecosystems; in 2008, special  
13 protection programs from the Delaware Water Gap to Trenton  
14 with additional regulations from Hancock, New York, to  
15 Trenton; in 2009, the banning of natural gas development  
16 inaction; in 2016, proposing permanent ban on natural gas  
17 development.

18 We live in a county that cherishes Democracy and  
19 what is just and fair, as everybody in this room does. It's  
20 perplexing to me that the DRBC, when it come to natural gas  
21 development and land use and all other items that it  
22 addresses, has five equal votes: PA, New York, Delaware,  
23 New Jersey, and the Army Corps of Engineers all equal at 20  
24 percent.

25 Pennsylvania has 50.3 percent of the land mass;

1 New Jersey, 20.3 percent; New York, 18.5 percent; and  
2 Delaware, 7.9 percent. Population numbers are even more out  
3 of balance with PA at 66 percent, New Jersey at 24 percent,  
4 Delaware at 9 percent, and New York at 1 percent.

5 I'm not sure how that's fair and just. PA has  
6 50.3 percent of the land and 66 percent of the population,  
7 yet only 20 percent of the vote. That obviously should be a  
8 topic for a future discussion. I just wanted to point that  
9 out.

10 So if you're a business and you want to expand or  
11 start up or relocate to Wayne County, what are you looking  
12 for -- I think this is very much so no matter where you are  
13 in our Commonwealth -- strong public schools. Wayne County  
14 has some of the most outstanding public schools in our  
15 Commonwealth.

16 Good and improving health care. Wayne Memorial  
17 Health Care system is financially strong, dramatically  
18 growing, and investing in doctors, technology, and  
19 facilities.

20 Highway access. Route 84, 81, 80, 380, Casey  
21 Highway, and PA Turnpike are all close by.

22 The reliable power grid. We have it and it's  
23 consistently being updated.

24 High speed broadband, which I gave testimony to  
25 the Broadband Committee of the House. We're okay in

1 southern Wayne and we're very weak up north.

2 Low and stable taxes. We're outstanding in that  
3 realm.

4 Strong work ethic. We have it throughout. All  
5 you have to do is work on a dairy farm to find out what a  
6 strong work ethic is about.

7 Reasonable, supportive, and cooperating  
8 governments and communities. We certainly have that.

9 Clean air, clean water, and plentiful land. We  
10 are outstanding.

11 Access to natural gas pipelines and distribution  
12 of natural gas, which we are very weak.

13 And then lastly reasonable environmental  
14 regulation. The DRBC chokes us with no natural gas  
15 development, although great economic potential impact for  
16 landowners as well as other ancillary growth for hotels,  
17 restaurants, housing, health care, retail, service sectors,  
18 and all other areas of the economy.

19 So if you go to the DRBC website and click on  
20 Watershed/Stakeholder Groups and Partners tab, you will see  
21 there are 110 separate conservation and environment groups  
22 listed with all of their contact data. There is not a  
23 single county, municipality, school, economic development  
24 group, downtown partnership, Chamber of Commerce, or any  
25 other business listed as stakeholders or partners. I think

1 that's a little bit unreasonable.

2 If you want to scare off a new business from  
3 coming to your community and your county, all you need to do  
4 is send them to the DRBC website. And you'll see if you're  
5 in Wayne County that all of the things that you are going to  
6 face regarding those 110 conservation and environmental  
7 groups, you might choose to take your business elsewhere.

8 The DRBC is so restrictive and obtrusive that it  
9 has stopped landowners and communities from having any  
10 economic benefit of natural gas development and  
11 distribution. There are others here to present on the  
12 scientifically proven safe processes, so I won't spend any  
13 time on that inequality and injustice and the legal issues  
14 that surround it all.

15 I would like to thank Senator Lisa Baker for  
16 sponsoring Senate Bill 1189, which makes this taking of  
17 landowner rights and the economic benefits to be recognized  
18 as an act of eminent domain and compensate the landowner for  
19 the lost benefit. We hope that Senate Bill 1189 gains  
20 traction and is approved and funded. It would provide  
21 amazing economic stimulus for our county, community, and  
22 people.

23 I'll comment on the DRBC regulations and  
24 restrictions on other economic engines. It hurts the  
25 forestry industry, the construction industry, and the



1 farming industry and all other related and ancillary  
2 businesses.

3 Do you know that Wayne County used to have 1,200  
4 working farms with good family jobs and sustaining community  
5 jobs around agriculture? Now we have 59. The next  
6 generation of farmers has moved elsewhere to find  
7 employment. And much to the contrary of what is out there,  
8 Wayne County is actually a growing land mass of forest, not  
9 depleting it as many of the environmental groups propose.

10 As for economic driver of impact fees on the  
11 natural gas development industry, which is one of the things  
12 that happens when you do allow natural gas development, our  
13 neighboring county to the west, which is Susquehanna County,  
14 received in 2016 alone \$4,863,000 and its municipalities  
15 received in 2016 alone \$8,284,000 as per the PUC website.  
16 Wayne County received \$36,000.

17 The money in Susquehanna County can and has been  
18 used over the past ten years for public infrastructure  
19 construction, stormwater and sewer projects, emergency  
20 preparedness/public safety, environmental programs, tax  
21 reductions, information technology development, social  
22 services, capital reserve funds, career and tech centers,  
23 which Wayne and Pike County do not have because we cannot  
24 afford it, and other planning initiatives.

25 All of these expenditures drive economic

1 activity, economic opportunity, business expansion and new  
2 business, and therefore population attraction. Wayne County  
3 gets nothing.

4 Obviously, lease and royalty payments from the  
5 natural gas developers being paid to the landowners has an  
6 incredible multiplying effect on economic activity and  
7 stability and sustainability for our communities. And again  
8 the DRBC stands in the way of this in Wayne County.

9 Interesting, in the Scranton paper, the Sunday  
10 paper, you know, there's an article on page A-8 called  
11 Fracture. And it's somehow related to the Russian meddling  
12 now from a standpoint of social media and trying to really  
13 fire up the economic -- or the ecological groups and the  
14 environmental groups in our country so that they can  
15 maintain a stranglehold on their European but also all other  
16 natural gas markets.

17 Just an interesting article. And I'll leave that  
18 here for all of you to see as well.

19 So in conclusion, what's the economic impact of  
20 the DRBC on Wayne County and its residents? Here's the  
21 harsh reality. We're 59th lowest in income out of 67  
22 counties. We have the 67th fastest declining student-aged  
23 population of 67 counties in the state. And there is a  
24 definite disincentive to start or move a business to our  
25 communities. We're becoming a county that struggles to have

1 our families survive and businesses relocate, people and  
2 community to have sustainable jobs.

3 It's amazing to me how such a beautiful place  
4 with 9 out of the 11 major factors that businesses and  
5 communities need to be outstanding attractors of new  
6 business and economic development are not moving ahead and  
7 in many areas are declining, even though we're one hour and  
8 45 minutes from New York City and two hours from  
9 Philadelphia. One of the very big answers is the economic  
10 stranglehold that the DRBC has with its overreaching,  
11 restrictive rules and regulations that it has on residents  
12 of Wayne County.

13 Thank you very much. I appreciate the  
14 opportunity.

15 MAJORITY CHAIRMAN METCALFE: Thank you,  
16 Commissioner Adams.

17 Our first question will be from Representative  
18 Bradford.

19 MINORITY CHAIRMAN BRADFORD: Thank you, Chairman.  
20 And thank you, Commissioner. I appreciate the  
21 work you do for the people of your county.

22 Let me ask you a pretty direct question because I  
23 think we've talked about some things that are ancillary to  
24 the topic at hand.

25 Do you propose bringing fracking to the Delaware

1 River Basin?

2 MR. JOSEPH ADAMS: I propose that using  
3 scientific methods of reasonableness should be applied as  
4 opposed to a complete ban on whatever happens in the future.

5 MINORITY CHAIRMAN BRADFORD: You don't support a  
6 ban, any permanent ban?

7 MR. JOSEPH ADAMS: Correct, I do not.

8 MINORITY CHAIRMAN BRADFORD: Okay. Now, you  
9 realize the Legislature has taken certain steps. Those of  
10 us in the Southeast who obviously draw a lot of our water  
11 from the waters that are created from New York and you folks  
12 as well have very heightened concerns about fracking in the  
13 Basin.

14 What you believe is the DRBC stands in the way of  
15 bringing fracking to the Basin?

16 MR. JOSEPH ADAMS: Do they stand in the way?  
17 Right now they have no regulations so therefore no natural  
18 gas development can happen in the Basin. So de facto  
19 they're standing in the way, yes.

20 MINORITY CHAIRMAN BRADFORD: Okay. Have you  
21 spoken to the shale coalition about what their plans are for  
22 Wayne County, what they'd like to do in Wayne County?

23 MR. JOSEPH ADAMS: I have not spoken directly  
24 but, you know, it's pretty obvious that with the people that  
25 are sitting behind me that are definitely more attuned to

1 that, that's probably a better question to ask them. But I  
2 have not spoken with the Marcellus Shale people directly.

3 MINORITY CHAIRMAN BRADFORD: You don't share the  
4 environmental concerns that have been raised about fracking  
5 in the Delaware River Basin?

6 MR. JOSEPH ADAMS: What was that? Do I share the  
7 environmental --

8 MINORITY CHAIRMAN BRADFORD: Do you share the  
9 environmental concerns that have been raised?

10 MR. JOSEPH ADAMS: I very much share  
11 environmental concerns. We have a -- our family has an  
12 82-acre spring-fed lake that's 62 feet deep. My wife and I  
13 are on the deed of over 5,000 acres in Wayne County. I fly  
14 fish. I had fly fished the Delaware River hundreds of  
15 times. We drink the water right from that lake.

16 I don't think anybody who is anywhere in Wayne  
17 County is looking at not wanting to protect the land and not  
18 wanting to protect the water. We live there. I'm a  
19 fifth-generation Wayne County resident. There's seven  
20 generations of our family living in Wayne County. The last  
21 thing that any of us want to do is destroy the land and the  
22 water.

23 And I think that we are amazing stewards but I'm  
24 also a person who believes that science matters. And I'm  
25 also somebody that believes that if there's a track history

1 of other places in the state and other places in the country  
2 that have consistently improved water quality that that  
3 might be something that needs to be considered along the way  
4 as well.

5 MINORITY CHAIRMAN BRADFORD: Well, make no doubt  
6 you have a lot of allies in those who believe that science  
7 should drive public policy in this room. Don't miss that  
8 point for a second.

9 I notice you mentioned you're an outdoorsman. I  
10 think you are maybe a member of Trout Unlimited and some of  
11 these other environmental groups. Are you aware of what  
12 their position is on bringing fracking to the Basin?

13 MR. JOSEPH ADAMS: Sure. I'm very much aware.

14 MINORITY CHAIRMAN BRADFORD: And how do you  
15 square that with your membership with the proposal you're  
16 making today to bring fracking to the Basin?

17 MR. JOSEPH ADAMS: I'm not proposing to bring  
18 fracking to the Basin. I'm proposing to have reasonable  
19 scientific regulations that are based in science. I'm not  
20 saying that -- and there might be other opportunities for  
21 later on in the future. Certainly fracking is what seems to  
22 be your concern and obviously some of the other  
23 environmental groups. But a permanent ban on natural gas  
24 development is something that I think oversteps anybody's  
25 bounds because the world changes over time.

1                   MINORITY CHAIRMAN BRADFORD: No, absolutely.

2                   MR. JOSEPH ADAMS: So are there environmental  
3 groups that hunt and fish and everything else that, you  
4 know, wanted to be protected from a standpoint of complete  
5 banning, I'm sure there are. But then again I think with  
6 Senate Bill 1189, everybody who benefits from the drinking  
7 water that's primarily created in the north for all of the  
8 citizens of southern PA and New York City and New Jersey,  
9 well, that's fine. If you want to, you know -- I think the  
10 basis for that Senate Bill -- and I don't want to put words  
11 in anybody's mouth. But if you're going to permanently ban  
12 something and there is scientific proof over a 10-year  
13 period and a 40-year period nationally that it does not  
14 harm, then there ought to be economic benefits to the  
15 landowner for taking their land rights and restricting them  
16 from allowing them to benefit economically from something  
17 that they own.

18                   And there's a real simple way to pay for that. I  
19 mean, I'm an MBA. I went to the University of Pennsylvania,  
20 University of Scranton, 12-year administrator in public  
21 schools so I believe in public education. I'm a 15-year  
22 corporate banker and now County Commissioner. The reality  
23 is, if you're going to take something from somebody that has  
24 very, very restrictive things attached to it that the rest  
25 of the state doesn't have restrictive things attached for

1 it, then you need to compensate people. So take the net  
2 present value of a 15-year gas well per square mile or  
3 whatever the standard is and apply a discount rate to it at  
4 a reasonable price per million BTU and do the math and then  
5 say, okay, if you want to take all of the benefit away from  
6 economically depriving people of their right, then you need  
7 to pay for it.

8 Well, how do you need to pay for it? Just like  
9 stranded costs for the PUC. You take whatever that value  
10 drives, thirty-five, forty thousand dollars an acre -- I  
11 don't know what the number is -- do that math. And then  
12 assess everybody who drinks from the well water and the  
13 public water systems and the Delaware River Basin a monthly  
14 user fee, which I think if you do the math is less than \$20  
15 a month, and do it over a 15-year period, do a bond issue  
16 and fund the people for their economic loss. I mean, one  
17 way or the other. Either don't permanently ban it or if  
18 you're going to permanently ban it, then provide the  
19 economic assistance and the economic eminent domain payment  
20 to the people who have had their economic rights taken away  
21 and landowner rights taken away.

22 MINORITY CHAIRMAN BRADFORD: Right. And I  
23 appreciate you're taking a very expansive view of the taking  
24 clause. I understand.

25 MR. JOSEPH ADAMS: Sure.



1           MINORITY CHAIRMAN BRADFORD: You have a learned  
2 view on that. I think I would probably disagree. I don't  
3 think there's a -- there's not even an actual taking  
4 obviously. And to the extent regulation interferes with the  
5 value every time, you know, my zoning ordinance prohibits me  
6 from building a skyscraper.

7           MAJORITY CHAIRMAN METCALFE: Representative  
8 Bradford, thank you for your questions. But as is --  
9 typically what I ask for members to do is to not engage in  
10 debate with our guests. They're invited as guests to  
11 testify before the Committee. So if you have an additional  
12 question, that would be great. If you don't, we do have  
13 other questions that need to be asked.

14           MINORITY CHAIRMAN BRADFORD: I do, Chairman.  
15 This is obviously an issue that we're in this together. And  
16 I appreciate that. Those of us in southeastern Pennsylvania  
17 have strong opinions on this.

18           You mentioned the issue of Democracy ruling on  
19 this issue. The population in Wayne County, could you give  
20 that to me?

21           MR. JOSEPH ADAMS: 52,000.

22           MINORITY CHAIRMAN BRADFORD: 52,000. The Basin  
23 obviously you mentioned is about 66 percent populated in  
24 Pennsylvania.

25           MR. JOSEPH ADAMS: Correct.

1                   MINORITY CHAIRMAN BRADFORD: And in land mass  
2 50.3. And you mentioned that the people of Wayne County  
3 cherish Democracy. I think that's true throughout the  
4 Basin. I think if one was to take a poll and ask people  
5 throughout the Basin what their opinion of bringing fracking  
6 to southeastern Pennsylvania is, I don't think it would be  
7 in the 60 or the 50 percent number. I think it would be  
8 considerably lower.

9                   And as one of those representatives, I think we  
10 have sincere concerns about doing that. Obviously Wayne  
11 County is part of our great Commonwealth and we want to look  
12 out for the economic interest of all of our counties. But  
13 for most of us who get our water, including for our largest  
14 city and for our economic engine, we have sincere concerns.

15                   So I appreciate this sincerity of which you're  
16 advocating on behalf of your county and your people. I just  
17 hope you understand that for those of us in southeastern  
18 Pennsylvania who have a sincere worry about our drinking  
19 water that those interests are balanced in this discussion.

20                   MR. JOSEPH ADAMS: Certainly.

21                   MAJORITY CHAIRMAN METCALFE: Thank you,  
22 Representative Bradford. I appreciate that last question.

23                   And I think -- I join the Commissioner in wanting  
24 to ensure that the folks in his county that their rights  
25 aren't taken away because you have a lot of people in

1       southeastern Pennsylvania that might want to outvote them in  
2       survey. I think we still have a Constitution that should  
3       protect their rights.

4               Representative Dush.

5               REPRESENTATIVE DUSH: Thank you, Mr. Chairman.

6               First of all, Commissioner Adams, I want to thank  
7       you. You've done a great job of outlining how the  
8       conservation efforts in your district, similar to mine out  
9       in western Pennsylvania, go above and beyond what the  
10      government does. We have local organizations, things like  
11      Trout Unlimited, that were mentioned.

12              But something that Chairman Bradford just raised,  
13      we are a Republic. We are not a Democracy. This nation is  
14      a Republic. When we just pledged allegiance to that flag,  
15      it was to the Republic for which it stands.

16              Our founding fathers had a unique understanding  
17      of things like administrative law and the law of absolutism  
18      that was exercised by kings. Professor Phillip Hamburger up  
19      at Columbia Law School, the Hilda Freeman professor has an  
20      excellent article from back in 2014. There are many  
21      complaints about administrative law including that it's  
22      arbitrary, that it is a burden on the economy, that it's an  
23      intrusion on freedom.

24              The question I address here is whether  
25      administrative law is unlawful and I will focus on

1 constitutional history.

2 MAJORITY CHAIRMAN METCALFE: Representative Dush

3 --

4 REPRESENTATIVE DUSH: I've submitted --

5 MAJORITY CHAIRMAN METCALFE: -- the question.

6 REPRESENTATIVE DUSH: Well, I submitted it to --  
7 Chairman, I'd like to have it distributed for the record to  
8 the rest of the Committee.

9 But my question to you is, do you have any point  
10 on whether or not you believe this is constitutional based  
11 on the fact that the Commission is something that's set up  
12 to arbitrarily put these kinds of regulations on local  
13 government without any -- as you pointed out, there are no  
14 elected stakeholders in this process and yet they have  
15 administrative authority and are practicing administrative  
16 law.

17 MR. JOSEPH ADAMS: I'm not a lawyer as many of  
18 you are. But a common-sense approach would be if you are  
19 not elected to that position representing constituents, I  
20 don't know how especially when it comes to people who are in  
21 different states have the authority to overstep their bounds  
22 and overstep what you do for a living and representing your  
23 people. The common-sense approach to me -- it's an -- it's  
24 overstepping, you know, what it was originally designed to  
25 do.

1           Again, I'm not a lawyer. I'm not going to argue  
2           constitutionality and any of that. But the common-sense and  
3           the common person is going to look at this and say, all  
4           right. The rest of the state has the ability for natural  
5           gas development. It's highly regulated. DEP has done a  
6           great job doing so. The Susquehanna River Basin water  
7           quality has been improving since the natural gas industry  
8           has been there for a lot of reasons.

9           And there's been a lot of economic benefit not  
10          only in impact fees and rent and royalty and leases, but  
11          also economic benefit to everybody in the Commonwealth for  
12          lower energy costs, which will allow more industry and more  
13          employment and lower costs for the taxpayers.

14          So do I think it's an overstepping of bounds?  
15          Yes. Do I know the constitutionality and the law? I do  
16          not.

17          REPRESENTATIVE DUSH: Thank you.

18          And thank you, Mr. Chairman.

19          MAJORITY CHAIRMAN METCALFE: Sure.

20          REPRESENTATIVE DUSH: Just something that I would  
21          ask that --

22          MAJORITY CHAIRMAN METCALFE: Thank you,  
23          Representative Dush.

24          Thank you, sir, for your testimony today.

25          We had a couple other members that wanted to ask

1 questions but we're out of time for this testifier. They'll  
2 be held over for the next testifier if they'd like to ask a  
3 question.

4 Thank you, Commissioner.

5 MR. JOSEPH ADAMS: Thank you.

6 MAJORITY CHAIRMAN METCALFE: Thank you for taking  
7 the time to be with us today and sharing your expertise and  
8 your experience.

9 MR. JOSEPH ADAMS: Thank you.

10 MAJORITY CHAIRMAN METCALFE: And also thank you  
11 to Senator Baker for joining us. And Representative Peiffer  
12 is also here. Thank you both for joining us today.

13 MR. JOSEPH ADAMS: Thank you.

14 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

15 Our next testifier will be Mrs. Betty Sutliff.  
16 And she is the UDRBC Secretary.

17 MS. BETTY SUTLIFF: That is correct.

18 MAJORITY CHAIRMAN METCALFE: Thank you, ma'am.

19 You can begin when you're ready.

20 MS. BETTY SUTLIFF: I'd like to say good morning  
21 to you, Chairman Metcalfe and members of the State House  
22 Government Committee. As he said, my name is Betty Sutliff.  
23 And I would like to thank you for the opportunity to speak  
24 today.

25 I would like to address the double standard that

1 exists between the Delaware River Basin and the Susquehanna  
2 River Basin in Pennsylvania with regard to the extraction of  
3 natural gas and the injustice of that double standard.

4 As a retired teacher, my first step in preparing  
5 for today, of course, was to consult Merriam-Webster and  
6 others with my sights focused on the words unjust and  
7 injustice. The definition of injustice is the state of  
8 being unfair or unjust. Synonyms are inequity, unfairness,  
9 and unjustness. Unjust is defined as not just, not acting  
10 justly or fairly as persons, not in accordance with justice  
11 or fairness, as actions. Synonyms are inequitable, partial,  
12 unfair, wrong.

13 I would like to give you specific examples of how  
14 the people of my county, Wayne County, are being treated  
15 unjustly or with injustice by Governor Wolf and the Delaware  
16 River Basin Commission.

17 As we speak, natural gas is being successfully  
18 extracted in many parts of Pennsylvania using the technique  
19 called hydraulic fracturing, or fracking. Governor Wolf has  
20 lauded the development of natural gas as a clean source of  
21 energy and criticized New York State for their strict  
22 stance.

23 The following are excerpts of his quotes:  
24 They're a lot more restrictive, Wolf griped at a July event  
25 when asked about Cuomo's policies. It's so restrictive in

1 New York that we can't even pipe our gas across its borders  
2 to New England, which really needs a clean source of energy.  
3 City and State Pennsylvania, May 20, 2016.

4 New York's policy is because they are concerned  
5 about how advanced the drilling techniques are in fracking  
6 to assure themselves that they have a good clean  
7 environment, Wolf said. But I don't know how you can assure  
8 yourself of that without actually doing it and regulating it  
9 and overseeing it and making sure you're doing things right.  
10 So that's the big distinction as I see it. Their policy is  
11 to not do it at all. Mine is to do it and do it right.  
12 City and State Pennsylvania, May 20, 2016.

13 I'm a very strong environmentalist, but I believe  
14 with the right regulations, the right oversight, and right  
15 enforcement that we can do gas drilling, Wolf told City and  
16 State last month. Most people, I think, want to do it, but  
17 they want to do it right. And that's where I come down.  
18 City and State Pennsylvania, May 20, 2016.

19 Governor-elect Wolf opposes a ban, and he will  
20 work hard to make sure the process is safe, responded  
21 Jeffrey Sheridan, Press Secretary for Wolf's transition  
22 team.

23 Pennsylvania's natural resources should help the  
24 Commonwealth become an energy leader, including renewable  
25 energy and energy efficiency, as well as a magnet for



1 investment and job creation, he continued. Governor-elect  
2 Wolf's priority is to ensure that Pennsylvania is an energy  
3 leader with all Pennsylvanians sharing in the prosperity.

4 Governor-elect Wolf will work to strengthen the  
5 rules governing drilling, increase enforcement of the rules,  
6 hire more inspectors, and create a health registry to  
7 monitor health issues, Sheridan concluded. Politics PA,  
8 December 17, 2014.

9 In Governor Wolf's inaugural address, he said  
10 that Pennsylvania has to offer a level playing field, making  
11 sure all businesses, all Pennsylvanians, have a chance to  
12 get ahead and that all Pennsylvania's families deserve the  
13 same opportunities. He also said we needed to be willing to  
14 listen to each other and learn from each other and work  
15 together to give all Pennsylvanians a shot at a great life.  
16 He didn't say all Pennsylvanians except Wayne County.

17 On June 8, 2015, along with six others, I met  
18 with Governor Wolf regarding natural gas development. And  
19 what was very telling in that meeting was not so much what  
20 was discussed, but what was never mentioned by him, a  
21 concern for water quality. The meeting was all about his  
22 desire for a Severance Tax.

23 Saying that the Basins are to be treated  
24 differently based on their compacts, Susquehanna being  
25 concerned about quantity of water only and Delaware is

1 quantity and quality of water, is a ruse because the SRBC  
2 has been monitoring the quality of the river. And I quote,  
3 the Commission's monitoring programs have not detected  
4 discernible impacts on the quantity of the Basin's water  
5 resources as a result of natural gas development.

6           There is water of exceptional quality in both  
7 watersheds. So are the people downriver in the Delaware  
8 Basin somehow different or more privileged than the people  
9 downriver of the Susquehanna, including the Governor  
10 himself? How can it be that if a raindrop rolls down the  
11 western side of a mountain into the Susquehanna Watershed,  
12 it can be used safely to extract natural gas but if it rolls  
13 down the eastern slope, it can't?

14           The people on the eastern side of the mountain  
15 have lost out on an economic opportunity that the rest of  
16 the state enjoys. They are not allowed to harvest and  
17 profit from what is rightfully theirs.

18           Last fall my husband and I attended the Harford  
19 Fair in Susquehanna County and spoke to many vendors. One  
20 vendor who sells farm equipment told us that he doesn't even  
21 set up at the Wayne County Fair because there is no money  
22 there. Farmers are hurting. And the economic disparity  
23 between those who get Governor Wolf's yea vote and those who  
24 get his nay vote is unjust.

25           You can see from the map provided of leased land

1 in Wayne County that most landowners favored the exploration  
2 of and extraction of natural gas. I actually did the  
3 courthouse work that went into the making of that map so we  
4 could plot which companies were leased and in what areas.  
5 These same people, the Northern Wayne Property Owners  
6 Alliance, NWPOA, of which I was on the Executive Committee  
7 at the time, those colored in yellow, cared so much about  
8 their land that they spent over two years and three-quarters  
9 of a million dollars to construct a lease that was so  
10 environmentally protective that it was way ahead of DEP at  
11 the time and it's gone. These folks, who did due diligence  
12 and put the environment ahead of their wallets, have all  
13 been released.

14 Especially disheartening is the fact that the  
15 members of just the NWPOA, whose lease bonus payments for  
16 the second half of the lease, an estimated \$187 million,  
17 lost all that future income when the de facto moratorium set  
18 in and the gas companies left. Those folks have already  
19 been wronged.

20 For my husband and me that amounted to \$150,000  
21 of lost income. And that's not counting any possible future  
22 royalties that we may have achieved. I have three sisters  
23 who, as a result of inheritance, own only mineral rights to  
24 family land. A ban renders their inheritance of those  
25 rights worthless.

1                   Who gave Tom Wolf and Andrew Cuomo the right to  
2 choose prosperity for some and poverty for others? What is  
3 the rationale they use to vote one way in one basin and the  
4 opposite in another? Why do they treat the lives of those  
5 of us in the DRB with a different standard? Why is  
6 opportunity afforded or denied based on which side of a  
7 mountain water descends?

8                   This discriminatory treatment of a couple of  
9 counties in Pennsylvania is totally inequitable, partial,  
10 unfair, and wrong. The DRBC is operating in a fashion  
11 completely the opposite of the SRBC, even though it is  
12 composed of the same governing majority of members.

13                   How can the very same individuals who sit on the  
14 DRBC vote the exact opposite when they sit on the SRBC?  
15 Both basins supply drinking water and contain special  
16 protection waters. If the SRBC's remote water quality  
17 monitoring network has not detected discernible impacts on  
18 the quality of the basin's water resources as a result of  
19 natural gas development, then what would make anyone think  
20 that it would be dangerous in the DRB?

21                   All 67 counties in Pennsylvania should be ruled  
22 by the same law, Pennsylvania law, and not be superseded by  
23 the DRBC and people they never elected. What is good for  
24 the vast majority of the 67 counties should be good for all.  
25 A complete ban in part of Pennsylvania, depriving

1       Pennsylvanians and others of their rights and thereby  
2       rendering them second-class citizens, is a fundamental  
3       breach of equal protection under the law and is clearly  
4       unconstitutional. I challenge anyone to tell me of another  
5       industry that is allowed in all of Pennsylvania save one or  
6       two counties.

7               I began my testimony with the definition of and  
8       synonyms for unjust and injustice and defended my position  
9       that that is how the people of Wayne County are being  
10      treated by this Administration and the DRBC. I would like  
11      to close with the definition of just and justice. Justice,  
12      the quality of being just, righteousness, equitableness, or  
13      moral righteousness. Just, based on or behaving according  
14      to what is morally right and fair. Synonyms include upright  
15      or righteous, equitable, fair, and impartial.

16              Please deal justly and with justice regarding  
17      this issue and the people of Wayne County because that is  
18      how the people of Wayne County expect to be and deserve to  
19      be treated. The Governor and the DRBC need to stop playing  
20      politics with our lives and our livelihoods.

21              Once again, I would like to thank the Committee  
22      for this opportunity to represent my fellow Wayne countians  
23      and speak before you today. I would be happy to answer any  
24      questions you may have.

25              Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MAJORITY CHAIRMAN METCALFE: Thank you.

Representative DeLissio had been on the list for the last testifier.

Would you like to ask this testifier a question, Representative DeLissio?

REPRESENTATIVE DeLISSIO: Yes, Mr. Chairman, I would like that.

MAJORITY CHAIRMAN METCALFE: You may proceed, ma'am.

REPRESENTATIVE DeLISSIO: Thank you.

Ms. Sutliff, good morning and thank you for being here today.

MS. BETTY SUTLIFF: Sure.

REPRESENTATIVE DeLISSIO: I've been in -- this is my fourth term. I've been in the Legislature eight years. What is the -- I don't remember hearing from a lot of drilling companies saying that this -- not accessing Wayne County has somehow been a problem for their industry. Is there any type of published estimate of what type of volume of gas is available if access were permitted?

MS. BETTY SUTLIFF: There are probably people who can address that better than I can as far as how much gas there is there. Is that what your question is?

REPRESENTATIVE DeLISSIO: Yes. One would think -- I'm thinking that if over the last eight years if this

1 were, you know, a hot bed of opportunity for the drillers  
2 that this would be -- the cry would be very loud. I haven't  
3 been aware of that. So I was wondering if there is any type  
4 of estimate of what's there. I know it's not only Wayne  
5 County or the SRB.

6 MS. BETTY SUTLIFF: There were test wells that  
7 were done back at the time. I know some of that is kept  
8 totally secret for a period of time.

9 So I'm not sure if there's really -- I'm sure  
10 that there are other people that can speak to that better  
11 than I can. But I know as soon as the de facto moratorium  
12 came in, they just weren't allowed to work. There's no  
13 point in staying there. If they're not allowed to be there,  
14 they can't make money so there's really no point.

15 So if it were opened up again, you know, then,  
16 you know, we were told that they would come back.

17 REPRESENTATIVE DeLISSIO: Told by whom?

18 MS. BETTY SUTLIFF: One of the companies that we  
19 were leased with at the time. Again, you know, because they  
20 would want to come and explore more, I would think.

21 REPRESENTATIVE DeLISSIO: And, Ms. Sutliff, do  
22 you happen to know, is part of the county under the  
23 Susquehanna River Basin Commission where drilling would be  
24 permitted?

25 MS. BETTY SUTLIFF: There is a little bit of

1 Wayne County that, yes, that is in the Susquehanna  
2 watershed.

3 REPRESENTATIVE DeLISSIO: And do you happen to  
4 know if there's any drilling occurring in that?

5 MS. BETTY SUTLIFF: It's getting very close.  
6 Very close. I believe other people could probably address  
7 that better than I can.

8 REPRESENTATIVE DeLISSIO: Close to being able to  
9 be drilled or somebody being --

10 MS. BETTY SUTLIFF: Well, my understanding is --  
11 and again, I think there's somebody who will testify later  
12 that can probably speak to this better than I can. My  
13 understanding is that Cabot, who is, you know, heavily  
14 drilling in Susquehanna County, is moving closer and closer  
15 east toward Wayne County.

16 REPRESENTATIVE DeLISSIO: I see. Thank you.

17 MS. BETTY SUTLIFF: You're welcome.

18 REPRESENTATIVE DeLISSIO: Thank you, Mr.  
19 Chairman.

20 MAJORITY CHAIRMAN METCALFE: Thank you,  
21 Representative DeLissio.

22 Representative Daley, do you have a question for  
23 this testifier?

24 REPRESENTATIVE DALEY: No.

25 MAJORITY CHAIRMAN METCALFE: Any other members?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Representative Miller.

REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

Thank you for your testimony.

MS. BETTY SUTLIFF: Sure.

REPRESENTATIVE MILLER: Question. Can you, in your opinion, give a synopsis of why you think Governor Wolf has decided to ban in the DRBC?

MS. BETTY SUTLIFF: I can't read his mind or speak for him. It would only be hypothetical. But as far as my own personal opinion, as a teacher, retired teacher, I know some of the talk that has been. And what he said, like he wanted to spread the money out to everybody and even in his commercials for his next coming election is telling people that what's under the ground in Pennsylvania belongs to all of Pennsylvania, which sounds to me like you're appealing to a voter base.

Again, I hate to call them environmentalists because I think we are all environmentalists. We're the ones who have been good stewards. And that's why the water is the exceptional quality as it is.

Like the people downriver cry to be the environmentalists and that's where the river is so polluted. So I hate to really refer to them as environmentalists. But as a political block, I will refer to them as environmentalists. And I think it's pleading to that vote

1 and the vote downriver.

2           Although, when we had the testimonies to be given  
3 -- and they always claim that the drinking water -- every  
4 time it grows, it's 15 million people, it's 17 million  
5 people that drink the water down river. But when they went  
6 -- and we had these public comment times, grand total -- I  
7 mean we commented in Waymart. They had another one that was  
8 closer in Lehigh Valley to Philadelphia. Grand total, pro  
9 and con, 218 people testified.

10           They keep claiming all these millions of people  
11 downriver who drink the water who are against it but where  
12 were they? You know, they didn't come out in droves to  
13 speak out against it. But I think as far as I'm concerned,  
14 it's a political issue.

15           REPRESENTATIVE MILLER: And thank you.

16           One follow-up question. Your homework here in  
17 the quotes you provided from the Governor making very  
18 supportive statements to this policy, is it your opinion  
19 that he could, if he wanted to, ban fracking and the SRBC as  
20 well?

21           MS. BETTY SUTLIFF: I would think that that would  
22 be a concern, you know. But he's apparently in favor of it  
23 and they are with what he said. You know, he's in favor of  
24 it, having it and lauding it. But where would it go if the  
25 pressure starts coming from this, what I would call the

1 environment block?

2 REPRESENTATIVE MILLER: Okay. Thank you.

3 MS. BETTY SUTLIFF: Chairman, if you would --

4 MAJORITY CHAIRMAN METCALFE: Thank you,  
5 Representative Miller.

6 MS. BETTY SUTLIFF: If you could kindly indulge  
7 me. I do have --

8 MAJORITY CHAIRMAN METCALFE: Ma'am, we don't have  
9 -- we're in a Q&A period.

10 MS. BETTY SUTLIFF: Okay.

11 MAJORITY CHAIRMAN METCALFE: And I do have a  
12 question for you.

13 MS. BETTY SUTLIFF: Okay.

14 MAJORITY CHAIRMAN METCALFE: Because you made a  
15 comment on how can the various individuals who sit on the  
16 DRBC vote the exact opposite when they sit on the SRBC. So  
17 my understanding is the Susquehanna River Basin Commission,  
18 the DEP Secretary, by our law, is the voting member on that  
19 Commission; whereas, on the Delaware River Basin Commission  
20 it appears that the Governor is the Chairman of the Delaware  
21 River Basin Commission and is a member there on that  
22 Commission on behalf of Pennsylvania.

23 So some of the issues that we talked about at the  
24 Susquehanna River Basin Commission hearing last year was the  
25 fact that it didn't appear that our DEP Secretary was

1 showing up to do his job at those meetings but was sending a  
2 proxy and that the proxy had been changed in the recent past  
3 to where another individual had been sent as a proxy.

4 My question was, did we allow in the Compact or  
5 in the law for a proxy and allowing somebody to shirk their  
6 duties like that? And it appears that the Governor has  
7 three proxies that he has listed, the DEP Secretary, I  
8 believe, being one of them and two additional proxies that  
9 he can send to do his bidding on the Delaware River Basin  
10 Commission.

11 Are you familiar with who's been casting those  
12 votes? Has it been literally the Governor sitting there  
13 casting that vote against natural gas development in the  
14 Delaware River Basin Commission or has it been one of his  
15 proxies?

16 MS. BETTY SUTLIFF: Anytime I have ever testified  
17 before the Delaware River Basin Commission, there have  
18 always been their alternates. I don't think I have ever  
19 seen a Governor sit ever on one of those.

20 MAJORITY CHAIRMAN METCALFE: So he is a  
21 designated member but has proxies. So another reform is  
22 needed I think or speaks to another reform that might be  
23 needed.

24 If you had a closing comment you want to make, go  
25 ahead.

1 MS. BETTY SUTLIFF: If you would just kindly  
2 indulge me with one request. This is very near and dear to  
3 me as a public school teacher. These are my friends and  
4 neighbors, you know, the farmers. We have a small farm,  
5 too. Farmers work around large machinery moving parts and  
6 unpredictable animals daily.

7 My own experience -- my summers -- I'm not the  
8 usual school teacher. My summers were spent tending and  
9 raking hay, maneuvering a farm animal or a Massey Ferguson  
10 around woodchuck holes strategically placed in the steepest  
11 part of a terrace or a steep side hill. My heart would be  
12 in my throat on many occasions wondering if I was going to  
13 tip over.

14 And I can think of three farmers who lost their  
15 lives when tractors either upset on them or got away from  
16 them while hauling heavy loads. I know two small children  
17 in our neighborhood who were run over by tractors. One  
18 survived and one did not. The parents of the little boy who  
19 did not survive are former students of mine.

20 I know farmers who have lost fingers and limbs to  
21 power take-off shafts. Our next-door neighbor lost an ear.  
22 Three little girls that I taught, former students of mine,  
23 lost their dad when the youngest girl was nine years old and  
24 in my classroom, lost their dad when he was gored by a bull.

25 Farming comes with a lot of risks but is not

1 banned. And I'm speaking here for the farmers of Wayne  
2 County. So my request is this: Please do not allow the  
3 DRBC to use possible risk as an excuse for banning the  
4 production of natural gas.

5 Thank you.

6 MAJORITY CHAIRMAN METCALFE: Thank you, ma'am.

7 Thank you for your testimony today.

8 Our next testifier will be Mr. Steve Tambini,  
9 Executive Director, Delaware River Basin Commission.

10 Thank you, sir, for joining us.

11 MR. STEVE TAMBINI: Thank you.

12 Chairman Metcalfe, Democratic Chairman Bradford,  
13 State Government Committee members, State Representatives,  
14 and Senator Baker, thank you for your invitation to address  
15 the Committee on behalf of the Delaware River Basin  
16 Commission.

17 I've submitted my testimony along with several  
18 supporting documents. And I'll trust that you'll review it  
19 as part of your deliberations. I'll try and keep my remarks  
20 as brief as possible to allow time for your questions.

21 Now, before I joined the DRBC about four years  
22 ago, despite working in the water industry for over 30  
23 years, I was probably like many of you in that I really  
24 didn't know what DRBC was, what it did, and how it fit in  
25 with the other multiple government agencies that are out

1       there.

2                       Needless to say, I now know a great deal more and  
3 I'd like to briefly share with you some of the rich history  
4 of this unique Federal and interstate agency and the  
5 exceptional results it has achieved.

6                       My comments will focus primarily on two areas,  
7 providing clean water and ensuring a sustainable supply of  
8 water for about 15 million people, including about 5.5  
9 million Pennsylvanians. In fact, some 43 percent of the  
10 population of the Commonwealth lives in the Delaware River  
11 Basin.

12                      Now, I suspect that we all take water for granted  
13 a good deal of the time and with good reason. When we open  
14 the tap, it comes out, water flows. We head down to our  
15 creek or our favorite stream and we cross the river like the  
16 Delaware and it's always flowing. Unfortunately, it seems  
17 to take one or more crises for us to appreciate the value of  
18 our water resources and the importance of managing them  
19 responsibly.

20                      The lead contamination in Flint, Michigan, the  
21 Deepwater Horizon oil spill in the Gulf, and the droughts in  
22 western U.S. are all examples of how sensitive and  
23 vulnerable our water resources are and how they can be  
24 impacted by both manmade and natural events.

25                      History shows us that the Delaware River Basin

1 has its own vulnerabilities. The DRBC was formed after  
2 decades of costly litigation among the basin states over  
3 water rights, other states trying to take water that  
4 Pennsylvania thought should be coming to them, and severe  
5 pollution. That topic was already talked about. And those  
6 were crises.

7 In response to these challenging conditions, the  
8 Commission was created under the terms of an agreement  
9 between Pennsylvania, New Jersey, Delaware, New York, and  
10 the Federal Government in the form of a Compact, legislation  
11 that was adopted by the United States and each of the four  
12 basin states in 1961.

13 So what has the DRBC meant to Pennsylvania? I've  
14 attached to my written testimony a paper that outlines the  
15 numerous and valuable benefits that the DRBC provides to the  
16 Commonwealth. I encourage you to read the details and allow  
17 me to highlight some of the DRBC's key accomplishments and  
18 benefits starting with clean water.

19 As was noted earlier, before the DRBC was formed,  
20 reaches of the Delaware River Estuary near Philadelphia were  
21 so polluted that the river lacked sufficient dissolved  
22 oxygen required to sustain aquatic life.

23 Since its inception, DRBC has provided the  
24 science and the leadership for water quality improvements  
25 that have reduced pollution and effectively restored the



1 Estuary to the point where the river and riverfront  
2 communities are thriving not just environmentally but  
3 economically.

4 DRBC's groundbreaking program to reduce  
5 contamination caused by PCBs, a legacy pollutant, a known  
6 human carcinogen in the tidal Delaware River, has produced  
7 exceptional results working together. PCB pollution  
8 loadings from the top 10 dischargers decreased by 76 percent  
9 between 2005 and 2016.

10 The other great news -- and for these fishermen,  
11 I think this is great news -- in 2018, two states relaxed  
12 their fish consumption advisories because of improved water  
13 quality conditions in the Estuary directly related to the  
14 PCB effort.

15 DRBC's Special Protection Waters Program has kept  
16 clean waters clean in the mainstem and portions of its  
17 tributaries. These exceptionally clean waters that have  
18 been talked about support recreation, healthy ecosystems, a  
19 vibrant water-based economy, and water quality improvements  
20 downstream.

21 Now, clean water is essential. But as the region  
22 continues to grow, will it be enough water for the future?  
23 If we experience an eight-year drought such as the drought  
24 that inflicted this basin in the 1960s, the drought of  
25 record, will we have enough water? These are challenging

1 questions that the Basin faces in order to ensure a  
2 sustainable water future.

3 Some of the sustainable water programs and  
4 policies include the following examples: Flow management is  
5 critical, a critical DRBC responsibility. When you go down  
6 to the river and you look at it, it seems like a natural  
7 system but I can assure you, and what most people don't  
8 realize, is that during periods of low flow and drought, the  
9 flow in the river is managed through releases from multiple  
10 reservoirs located throughout the Basin.

11 DRBC directs releases from the reservoir on the  
12 Lehigh River in Pennsylvania and the Blue Marsh Reservoir on  
13 the Schuylkill River in Pennsylvania to ensure flow  
14 sufficient to meet local and regional water supply needs and  
15 to protect water supply intakes on the Delaware River from  
16 the migration of salt water from the Delaware Bay.

17 What's more, the DRBC pays the Federal Government  
18 over \$1.6 million annually to support the costs for water  
19 supply storage in Beltzville and Blue Marsh Reservoirs. In  
20 addition, the DRBC's drought management plans, if we were to  
21 see that eight-year drought again, includes access to about  
22 65 billion gallons of emergency storage from public and  
23 private reservoirs throughout the Basin. Clean water and  
24 sustainable water are our prime objectives. The benefits  
25 I've described are just a few examples of how DRBC programs

1 support the vital water resources of the region and of the  
2 Commonwealth.

3 Now, it's certainly understandable that those who  
4 are regulated by state agencies and DRBC may be confused  
5 about our unique roles and responsibilities. DRBC's  
6 regulatory programs are not duplicative with Pennsylvania  
7 DEP; however, our regulated communities asked to find ways  
8 to work closer with state agencies and we listened.

9 We have worked with the Commissioners and the  
10 state agencies to find ways to improve and streamline the  
11 regulatory process. In 2015 we initiated a program called  
12 One Process One Permit whereby under agreement with the  
13 state agencies, the DRBC effectively works in the background  
14 to ensure that standards are included in the agencies'  
15 permits so that those being regulated have to apply to just  
16 one agency and receive a single approval that contains all  
17 state and DRBC requirements.

18 Right now Pennsylvania agencies have not availed  
19 themselves of the One Process One Permit program; however,  
20 DRBC is very willing to work with Pennsylvania DEP to  
21 initiate this program when and if the Department so  
22 requests.

23 DRBC has a good working relationship with our  
24 regulated community. We strive to be fair, responsive,  
25 open, and solution-oriented. We're not perfect. I'm sure

1 you can find some applicant water user dischargers who have  
2 not been pleased with DRBC. That being said, based upon the  
3 multiple letters that have been advanced to your Committee  
4 from our regulated community in Pennsylvania, those who  
5 understand what we do and those who work with us routinely  
6 to provide clean and sustainable water recognize the value  
7 of DRBC's water management and the value it's brought to  
8 their communities and to the Commonwealth.

9 I recognize that this committee held hearings  
10 last year about the SRBC, and from time to time the DRBC is  
11 compared to the SRBC like it was today. I agree that we  
12 have similar Compact structure but we are not the same.

13 Delaware River forms an interstate boundary for  
14 its entire 330 miles. Susquehanna River does not. The  
15 Delaware River Basin Compact was structured to allow the  
16 State and Federal Government to cooperatively address  
17 through the Commission water quality and pollution risk.  
18 The SRBC compact was not.

19 The Basin State Commissioners, as the Chair has  
20 reminded us, for the DRBC are the duly-elected Governors of  
21 each state. SRBC State Commissioners are individuals  
22 appointed by the Governors. All the policies, rules,  
23 regulations, fees adopted by DRBC must be approved by the  
24 Commissioners at a public meeting. Collectively the  
25 Governors of the Basin states, including Pennsylvania,

1 decide when DRBC authority shall be used to solve water  
2 resource issues that affect the Basin as a whole.

3 Now, I recognize this hearing may be as much  
4 about hydraulic fracturing as it is about it DRBC's  
5 relationships and interactions with those we regulate. The  
6 members of the State Government Committee have heard  
7 testimony and are no doubt familiar with the status of the  
8 proposed DRBC regulations that, if adopted, would prohibit  
9 high-volume hydraulic fracturing in the Basin.

10 I suspect your questions and concerns will  
11 largely be about that issue. Please understand that  
12 although I'll answer your questions to the best of my  
13 ability, I cannot speak on behalf of the Governors who  
14 initiated the rulemaking and I may not be able to answer  
15 certain questions that relate to ongoing litigation or  
16 delivery of processes.

17 As you may be aware, in response to the rule  
18 proposal, the Commissioners received nearly 9,000  
19 submissions of comments, which are under review by the DRBC  
20 Commissioners and staff. The Commissioners will not render  
21 a decision until they have considered all of the legal,  
22 technical, and other issues that commenters raise.

23 DRBC has worked with Pennsylvania and the other  
24 basin states to address interstate water resource problems  
25 such as droughts, floods, sustainable water supply, severe

1 pollution in shared waters, protection of drinking water  
2 sources, and protection of exceptionally high-value water  
3 resources.

4 I mentioned the fact that you received many  
5 letters. I think the count is up to about 30. There's  
6 probably more coming from our regulated community. I just  
7 want to read from one of them. It's a quote from the North  
8 Wales Water Authority.

9 It says, the Delaware River Basin Commission has  
10 proven over many years to be an efficiently and fairly run  
11 organization. We readily admit that we've never found this  
12 agency to be heavy-handed, uncooperative, or unresponsive to  
13 the needs of our organization or more importantly to the  
14 best interests of the public we serve. We lend our voice in  
15 support of the Delaware River Basin Commission and urge the  
16 State Government Committee and all of our Legislators to  
17 continue your full support to this essential and important  
18 agency.

19 I thank you for the opportunity to speak to you  
20 this morning and I'll answer your questions.

21 Thank you.

22 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

23 So at the end of the testimony, you said that you  
24 cannot speak on behalf of the Governors who initiated the  
25 rulemaking. That would be the ban that's being proposed to

1 drilling in the Delaware River Basin.

2 Did the Governors initiate it? Did any one  
3 Governor attend the meeting where this was initiated or were  
4 they all proxies that were sitting there initiating it?

5 MR. STEVE TAMBINI: So the Governors typically  
6 don't attend the Commission meetings. You're correct about  
7 that. Typically what Governors do is they provide an  
8 alternate to attend the meetings. I can assure you on this  
9 matter that those issues are brought back up to the  
10 Governors' Offices.

11 If there's a routine groundwater withdrawal,  
12 let's say, I can assure you that those matters are not  
13 brought up to the Governors' Offices. And those  
14 alternatives are very capable of dealing with those issues  
15 day to day.

16 But let me give you a couple other facts.

17 MAJORITY CHAIRMAN METCALFE: Okay.

18 MR. STEVE TAMBINI: In September of 2017, the  
19 Commissioners passed a resolution directing me and my staff  
20 to put together a rulemaking on this matter. And the  
21 rulemaking was in general related to a prohibition in the  
22 Delaware River Basin. So they passed a resolution for the  
23 rulemaking. The rulemaking was presented to the public for  
24 comment. The public comment period went I think 120 maybe  
25 -- I think it was 120 days. It went until March 30th of

1 this year, of 2018.

2 And right now staff is looking at all the  
3 comments that have come in. I can assure you that on this  
4 particular matter we've got comments from here to here that  
5 we're looking at. We're looking at all the science and all  
6 the data that's been provided.

7 MAJORITY CHAIRMAN METCALFE: So when this was  
8 initiated, did all the Commissioners or their proxies vote  
9 in favor of initiating it?

10 MR. STEVE TAMBINI: I'll give you the vote. The  
11 vote went like this: There were five votes. There are five  
12 members on the DRBC. Federal Government was a no vote, New  
13 Jersey was an abstained vote, Pennsylvania was a yes vote,  
14 New York was a yes vote, and Delaware was a yes vote.

15 MAJORITY CHAIRMAN METCALFE: So Governor Wolf,  
16 through his proxy, voted to initiate the rulemaking for  
17 banning drilling in the Delaware Basin which extends up into  
18 the northeastern part of Pennsylvania?

19 MR. STEVE TAMBINI: Yes, Mr. Chairman.

20 MAJORITY CHAIRMAN METCALFE: Thank you.

21 I appreciate your clarification.

22 MR. STEVE TAMBINI: Sure.

23 MAJORITY CHAIRMAN METCALFE: Representative Daley  
24 is still on the list. Were you interested in asking this  
25 testifier a question? I had you on the list for the



1       testifier before last. It's up to you in case you wanted to  
2       follow up with a question. You can be first on the list.

3                REPRESENTATIVE DALEY: Thanks, Mr. Chairman. I  
4       wasn't expecting that. But I appreciate the opportunity.

5                Thank you.

6                MAJORITY CHAIRMAN METCALFE: You're welcome.

7                Any other members?

8                REPRESENTATIVE DALEY: Oh, I was going to ask a  
9       question.

10               MAJORITY CHAIRMAN METCALFE: Representative  
11       Daley.

12               REPRESENTATIVE DALEY: Thank you.

13               Sorry. I didn't make that really clear.

14               Mr. Tambini, thank you for your testimony.

15               MR. STEVE TAMBINI: You're welcome.

16               REPRESENTATIVE DALEY: And as a resident of  
17       Montgomery County I was pleased to see that the Montgomery  
18       County Planning Commission was one of the organizations that  
19       did submit a letter espousing to the long-term relationship  
20       that we have had.

21               And I think that it's -- you know, as someone who  
22       lives in the southeast and considering myself an  
23       environmentalist, I actually am grateful to those folks who  
24       are in the northern, you know, parts of the State where the  
25       headwater starts. I also have creeks that go through my

1 community and flow into the Delaware River.

2 So, you know, we take our watershed really  
3 seriously where I live. And I think that one of the  
4 concerns, if I can speak for people that I represent, is  
5 that they really are interested in this rule and how its  
6 going to be determined because it's water that we drink and  
7 it's our area and it's a shared resource. It's not  
8 something that's a statistic. And I think that being  
9 downriver, you're always aware of what's coming from  
10 upstream.

11 So can you just go over again the differences  
12 between the SRBC and the DRBC in terms of water quality and  
13 how that is a part of the DRBC mission?

14 MR. STEVE TAMBINI: Sure. And I think it starts  
15 with the river itself. Hydrologically, geographically, they  
16 are a little bit different. No matter where you stand on  
17 the Delaware River, the Delaware River is 330 miles long  
18 from the ocean to the headwaters. No matter where you  
19 stand, you're always -- if you stand on one bank, you're  
20 always looking at another state. So think about that.

21 There's inherent conflicts potentially. There's  
22 potential issues. I gave an example about cleaning up PCBs.  
23 We work with all the states in the Estuary to clean up PCBs.  
24 But if -- I'll get to your question. But if, for example,  
25 Pennsylvania DEP wanted to clean up the PCBs in the Delaware

1 River Estuary and New Jersey didn't and there were landfills  
2 in New Jersey that were leaching PCBs into the Estuary, the  
3 Estuary wouldn't be clean. So it's truly an interstate  
4 water from end to end.

5 And I think, as has been talked about more than  
6 once, the Compacts were set up a little bit differently.  
7 The Compact for the Delaware River Basin Commission  
8 specifically talks about the Commission's role in abating  
9 and controlling existing and future sources of pollution;  
10 whereas, the SRBC Compact, when it got to the point in their  
11 Compact about water quality, yes, they do have a role in  
12 terms of monitoring water quality. But it clearly talks  
13 about deferring to the states in terms of water quality  
14 jurisdiction.

15 So the jurisdictions are different in the  
16 Compacts. I think that's -- you know, when it comes to  
17 water quality, that's the primary geographical difference,  
18 legal difference.

19 Again, I think I tried to give examples where you  
20 might say, well, Pennsylvania DEP can handle this. But  
21 you've got another state, whether it's New York or whether  
22 it's New Jersey right across the way. And it does give  
23 Pennsylvania an opportunity to work an interstate matter to  
24 control all the sources of pollution.

25 I know that there's a laser focused on the

1 hydraulic fracturing issue at this hearing. But the way  
2 this is approached typically has been to do it in a way that  
3 controls the pollution throughout the watershed.

4 REPRESENTATIVE DALEY: And can I just ask one  
5 very quick followup. It's just about -- I know that a  
6 portion of the river is designated as a national wild and  
7 scenic river system. Does that bring an economic benefit to  
8 the states that are along -- to the areas that are along  
9 that?

10 MR. STEVE TAMBINI: So I'll qualify by saying I'm  
11 not an expert on that specific matter. Yes, there is an  
12 area from Trenton to the headwaters that have been  
13 classified as national wild and scenic. And I'm sure that  
14 if you had people here from national parks and state parks,  
15 they would suggest that that classification and what goes  
16 along with it to make sure those waters are healthy does  
17 have some economic benefit. But I'm really not an expert in  
18 that.

19 REPRESENTATIVE DALEY: It would be interesting to  
20 know that.

21 Thank you.

22 MR. STEVE TAMBINI: Thank you.

23 MAJORITY CHAIRMAN METCALFE: Thank you, sir.  
24 Representative Miller.

25 REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Thank you, Mr. Tambini, for your testimony.

I plugged the DRBC for their One Permit program. I found that interesting in your testimony. I appreciate that. I think that's helpful for all involved.

The question I have for you in regard to the Governor's direction and the vote that there be a ban on hydraulic fracturing, do you agree with that opinion?

MR. STEVE TAMBINI: I will say that my opinion doesn't matter in any of this. You know, I work for the Commissioners. So what we do as a staff, what we do technically, is give them science, give them advice, provide information to them. My personal opinion about this doesn't matter.

REPRESENTATIVE MILLER: In regard to the SRBC, since you're not in that region, do you think that hydraulic fracturing should be banned in the SRBC region?

MR. STEVE TAMBINI: Again, that's for me. That's nowhere for me to -- No. 1, that's not an area that I even work in and, No. 2, that has nothing to do with my position or my opinion.

REPRESENTATIVE MILLER: Well, you would be free to comment on that since you're not in that region.

MR. STEVE TAMBINI: I'm not going to do that.

REPRESENTATIVE MILLER: Thank you, Mr. Chairman.

MAJORITY CHAIRMAN METCALFE: Thank you,

1 Representative Miller.

2 Representative McCarter.

3 REPRESENTATIVE McCARTER: Thank you, Mr.  
4 Chairman.

5 And again, thank you, Mr. Tambini, for your  
6 testimony today. We've heard a lot today about economic  
7 impact obviously in Wayne County in terms of what happens.

8 And I know Representative Daley alluded to this  
9 as well. But through that whole of the 330 miles of the  
10 river, many other industries and many other businesses have  
11 been impacted by obviously the change in the river from back  
12 in 1961 to the present day.

13 I for one have surely benefited from the  
14 opportunity to canoe on a river that is scenic and also to  
15 tube on that river as well at various times with my  
16 grandchildren. I know that many other businesses have  
17 sprung up along the river and also down toward the Delaware  
18 Estuary as well have developed as a result of having that  
19 clean water and the development that's happened over those  
20 years.

21 It seems to me -- and I'd like to hear you  
22 comment on the economic impact overall that has taken place  
23 since we've seen this development over the past almost 60  
24 years now.

25 MR. STEVE TAMBINI: Sure. And I think a -- if

1 you take the time to read some of the letters that you  
2 received from some of the municipalities who run the river,  
3 the planning commissions who know the value of water  
4 resources to the economic development of the region, the  
5 Delaware Valley Regional Planning Commission, you can see  
6 it. If you visit it, you can see it as well. It's been an  
7 amazing transformation.

8 We talked first about the severe pollution in  
9 Estuary. And that's been an amazing story of recovery.  
10 Yes, over the years after DRBC, certainly EPA and  
11 Pennsylvania DRP and New Jersey DEP and DNREC and Delaware  
12 have all helped to work together to restore the Delaware.  
13 The DRBC has always been a leadership position.

14 In fact, still today the standards we set for the  
15 interstate water as set by the Delaware River Basin  
16 Commission and the state agencies defer to the Delaware  
17 River Basin Commission and the result of that has been again  
18 economic development.

19 If you were to go -- again, I moved to the  
20 Philadelphia area about 35 years ago. And when I first  
21 moved down there it was, don't go near the river. Don't  
22 drink the water. Don't swim. Don't do it. Now you go down  
23 there and, you know, my kids live down there. Everyone  
24 wants to be down by the water. We scratch our heads now and  
25 say, you know, how did we not take advantage of this amazing

1 resource?

2 If you go further upstream, we talked about some  
3 of the restrictiveness associated with the special  
4 protection waters. There are strict standards for special  
5 protection waters in our Basin, very strict standards. But  
6 I can assure you that the Lehigh Valley is growing. We work  
7 with the Lehigh Valley.

8 You can see the letters from the Lehigh Valley  
9 Authority here as to how we work with them to ensure that  
10 again we're not another DEP. We're a water resource  
11 management agency so we look at the issues of quality and  
12 quantity.

13 And the Lehigh Valley has grown. The Poconos  
14 area has grown. And much of that is because it has valuable  
15 water resources even though again standards could be strict  
16 or considered strict. It clearly has an economic benefit.

17 Finally, as I mentioned, we had 9,000 comments on  
18 the hydraulic fracturing rule. Clearly the comments you  
19 will hear from the witnesses behind me and the comments that  
20 you've heard from the witnesses in front of me, they've all  
21 been reflected in those comments.

22 You've always gotten comments on the economic  
23 potential harm and the economic value of the Basin and the  
24 resources that water brings into the Basin. So we're  
25 dealing with both sides of the economic issue.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPRESENTATIVE McCARTER: Could I, Mr. Chairman

--

MAJORITY CHAIRMAN METCALFE: We are out of time for this testifier. Thank you, Representative McCarter.

Thank you, sir, for joining us today. We appreciate your testimony.

MR. STEVE TAMBINI: Thank you.

MAJORITY CHAIRMAN METCALFE: Thank you.

Our next testifier will be Mr. Tom Shepstone, Principal, Shepstone Management Company, Incorporated.

You can begin when you're ready, sir.

MR. THOMAS SHEPSTONE: Thank you very much.

My name is Tom Shepstone and I'm a professional planner from Northeastern Pennsylvania. I have over 40 years' experience working with communities throughout the Commonwealth. I also represent numerous private clients, including some in the natural gas industry. I also publish a blog advocating for natural gas development in our region. And finally I'm a landowner with a natural gas lease that has been in limbo for nearly a decade.

Like those who spoke before me, I am here today for justice, equal justice under law. Those of us who reside and have to make a living in the Delaware River Basin have been denied that justice by the DRBC usurping what is your authority. It's your job to reassert your authority

1 and protect us from what is a purely political power play.

2 The DRBC, which is run by the same governing  
3 majority of members as the SRBC, is picking economic winners  
4 and losers in Pennsylvania based on political ideology,  
5 something even you don't have the authority to do.

6 The Commission members are allowing natural gas  
7 development on the Susquehanna side of the mountain ridge  
8 and denying it on our side, the Delaware River Basin. This  
9 is despite the fact they have the evidence in hand from  
10 their own ongoing continuous water quality studies.

11 And I would point out here that the key point  
12 here is not who has the authority to set standards but who  
13 is actually monitoring the water quality and who is  
14 protecting it. It's the SRBC. The SRBC is allowing the  
15 fracking and the result has been there is no discernible  
16 impact on the quality of water resources on the Susquehanna  
17 side.

18 The DRBC ignored, absolutely ignored that  
19 evidence that the same governing majority has in their hands  
20 when they developed the justification for that fracking ban.  
21 That is outrageous. It's not equal justice under the law.  
22 They claim falsely the DRBC has additional authority and  
23 responsibility for water quality protection.

24 They then propose to use it to ban an otherwise  
25 legal activity despite the evidence to the contrary from the

1 SRBC experience. More importantly, they ignore the water  
2 quality standards already applied in both basins under the  
3 Clean Water Act and the Clean Streams Law, standards any  
4 water user must meet without discrimination.

5 The natural gas industry is able to meet the very  
6 highest of these and, in fact, is. In fact, the  
7 Representative from Williamsport, I wish he was still here  
8 because he could tell you that they're doing exceptional in  
9 Lycoming County right now and with no discernible impact.

10 That is why, of course, the DRBC now seeks to  
11 throw those standards to the wind and impose a ban being  
12 imposed on no other industry or land use. That's not equal  
13 justice under the law.

14 The DRBC proposes to abscond with the full value  
15 of the holdings of some property owners by enacting a ban on  
16 natural gas development. Those who only own natural gas  
17 rights, such as Betty's sisters, will lose 100 percent of  
18 what they own.

19 Those property owners, who, I might add, possess  
20 the dominant legal estate under Pennsylvania law, will,  
21 therefore, have cause to file takings claims. They will  
22 though have lost all they own and may well not have the  
23 funds or endurance for the lawsuits necessary to get back  
24 what is rightfully theirs. That's not equal justice under  
25 the law, not when the government can steal what is yours and

1 force you to spend your estate on legal fees to get it back.  
2 It's simply theft. That's what it is. Theft.

3 It's also theft for those who own both land and  
4 natural gas rights. Why? Because regulating away those  
5 rights, to leave landowners with only the residual value of  
6 the land for other uses, must be based on some evidence of  
7 an actual case for regulation.

8 Read the DRBC justification singling out one  
9 county in Pennsylvania to disallow natural gas development.  
10 You'll be shocked at how shallow it is. I truly urge you to  
11 read it.

12 Indeed, the DRBC justification barely exceeds 9th  
13 Grade competency in logic. It argues, for example, the risk  
14 of accidents and spills is too big. Yet -- I expected that  
15 we'd have a pitcher of water here. There isn't one. But I  
16 know you get water in this building and you don't  
17 necessarily get it from a bottle either. You can get it in  
18 a jug. And that water comes from the Susquehanna River  
19 Basin.

20 Harrisburg is served drinking water from the  
21 Susquehanna River Basin. You drink water from a basin  
22 that's had fracking in it and yet you would serve it to me,  
23 serve it to others. Obviously, you don't think there's a  
24 problem. No one seriously worries about drinking, in fact.

25 The proposed regulations, in fact, are based on

1 purely speculative risk. Something happened in Wayne County  
2 last week and in fact it happened in Beaver County four  
3 years ago that illustrates. A line painting truck lost  
4 control coming down a hill, side-swiped another vehicle, and  
5 tipped over into a pond, creating a Hazmat situation as  
6 paint and fuel seeped into the pond. Same thing happened to  
7 Beaver County.

8 It was a relatively big deal that brought out  
9 numerous agencies to supervise. Are we to now ban line  
10 painting? Are we to ban line-painting trucks?

11 There are a myriad other examples of barge  
12 accidents on the lower Delaware, train derailments on the  
13 upper Delaware, which I'm very familiar with, truck  
14 accidents everywhere. These are accidents that result in  
15 stuff, bad stuff, going directly into the Delaware.

16 There have been fires at chemical plants on the  
17 Delaware that have resulted in spills directly into the  
18 river. There have been overfeeds of chemicals into drinking  
19 water at treatment plants along the Delaware.

20 Are we to ban all these things as well based on  
21 the mere speculation they could happen again? No, of course  
22 not. Only in the case of fracking does the DRBC insist a  
23 ban alone will do. That's not equal justice under the law.

24 The DRBC also proposes stricter regulations on  
25 the exporting of water to other basins for natural gas

1 development that are stricter than the exports of water for  
2 other purposes. Think about that for a moment. If exports  
3 of water need to be governed, then why in the world wouldn't  
4 the same rule apply to all? It's patently clear from this  
5 that the DRBC is acting ideologically and politically, not  
6 scientifically or in accord with its Compact. That's not  
7 equal justice under the law.

8           There's also no equal justice when it comes to  
9 process. The DRBC has stacked almost all its committees  
10 with representatives of the Delaware Riverkeeper, a  
11 special-interest, anti-gas advocacy group that sued it over  
12 gas-drilling issues and put them on the committees. It has  
13 actually taken money from the same William Penn Foundation  
14 that has funded the Riverkeeper and numerous other anti-gas  
15 groups.

16           Worse, it actually used the money to supposedly  
17 study gas issues and provide an excuse not to act on gas  
18 drilling regulations sitting on the shelf since 2011 with no  
19 end in sight. It's conflict and collusion everywhere with  
20 the DRBC.

21           The DRBC state members have also engaged in a  
22 completely sham public hearing process with respect to this  
23 proposed fracking ban, with all four Governors proudly and I  
24 must stay stupidly announcing how they'll vote before the  
25 hearings even began. Where is the equal justice under the

1 law in such sham hearings?

2 The DRBC, in other words, is on an out-of-control  
3 plunge down the hill just like that line-painting truck in  
4 our county last week. It's on a slippery slope of  
5 ideological opposition to natural gas designed to appease  
6 certain political special interests. All law, all rights,  
7 and all justice have been sacrificed in the trip downhill.

8 It's also assuming your police powers, deciding  
9 it has the power to control even land use within your  
10 jurisdiction. It's leaving you and us in the dust as it  
11 pulls more and more power to itself, pulls it to the  
12 corridors, I might add, of an office building in west  
13 Trenton where unelected bureaucrats keep warm in the winter  
14 with a newly installed gas heating system.

15 You can and must reassert your own authority, the  
16 authority to establish standards for natural gas development  
17 in all of Pennsylvania, not just those outside the DRBC  
18 region. Those standards can and are being met across  
19 Pennsylvania, in sub-watersheds already classified as  
20 exceptional value and subject to the highest threshold  
21 criteria.

22 If the DRBC supposes it needs even higher  
23 standards, let them develop them and apply them equally to  
24 all industries. The gas industry can meet them. It already  
25 meets them. There's no problem with that. They don't want

1 equal justice. They want unequal justice.

2 How do you this? How do you solve this problem?  
3 Multiple legislative initiatives are underway -- House Bill  
4 2222, I believe, and Senate Bill 1189 -- to ensure  
5 Pennsylvania retains its sovereignty and property owners get  
6 paid for what they are being asked to sacrifice. I support  
7 both those bills.

8 I also strongly suggest you take some other  
9 measures as well, including the reduction of Pennsylvania  
10 contributions to the DRBC to \$1 a year. They're sitting on  
11 tens of millions of dollars of unreserved funds they're  
12 wasting on denying us our rights. Giving them more money is  
13 a sacrilege, an insult to Pennsylvanians.

14 I also suggest the Legislature immediately  
15 initiate a professional study of how to extricate itself  
16 from the DRBC. The agency has outlived its usefulness.  
17 Pennsylvania is more impacted by it than any other state and  
18 should assume the DRBC responsibilities itself, which it  
19 could presumably do if it honored its portion of any debt  
20 obligations. It could also enter into individual agreements  
21 with other states that do not compromise its sovereignty or  
22 sell out its citizens.

23 It's time to take this step. It's time for equal  
24 justice under law.

25 Thank you.



1 MAJORITY CHAIRMAN METCALFE: Thank you, sir, for  
2 your testimony today.

3 MR. THOMAS SHEPSTONE: You're welcome.

4 MAJORITY CHAIRMAN METCALFE: Representative  
5 Miller.

6 REPRESENTATIVE MILLER: Thank you, Mr. Chairman.  
7 Thank you, Mr. Shepstone. I appreciate your  
8 testimony.

9 MR. THOMAS SHEPSTONE: Sure.

10 REPRESENTATIVE MILLER: I have a question for  
11 you. Your understanding of the science behind the dangers  
12 and the effective manner in which hydraulic fracturing can  
13 be conducted, is the science the same for the SRBC and the  
14 DRBC regions?

15 MR. THOMAS SHEPSTONE: Well, they're both subject  
16 to water quality standards. The DRBC has a water quality  
17 program that they established, special protection waters.  
18 In the SRBC it's a little bit different in that they have  
19 what are known as exceptional value and high quality  
20 streams, which is essentially what special protection waters  
21 are in the DRBC.

22 So it's a little different language but the end  
23 result is the same. You have the same basic water quality  
24 criteria applying and they already exist. They already  
25 exist. And we know from the SRB experience -- and they're

1 the ones that are doing the big-time water quality  
2 monitoring. All this talk about the DRBC being worried  
3 about water quality, who's doing the water quality  
4 monitoring? It's the SRBC for a decade.

5 And as a result of that, no discernible impact on  
6 the quality of water resources. I find it highly unusual  
7 and again almost insulting. The DRBC -- we were lectured  
8 here today of what a wonderful job they have done cleaning  
9 PCBs up. But they haven't cleaned them all up.

10 So they're worrying about fracking in the  
11 Delaware when they have evidence from their own members that  
12 there's no problem with it in the Susquehanna. And instead  
13 of the PCBs, where are the priorities here?

14 REPRESENTATIVE MILLER: The science is basically  
15 the same?

16 MR. THOMAS SHEPSTONE: Yes.

17 REPRESENTATIVE MILLER: But the treatment is  
18 different?

19 MR. THOMAS SHEPSTONE: Yes.

20 REPRESENTATIVE MILLER: Thank you.

21 MR. THOMAS SHEPSTONE: Sure.

22 MAJORITY CHAIRMAN METCALFE: Thank you,  
23 Representative Miller.

24 Representative McCarter.

25 REPRESENTATIVE McCARTER: Thank you, Mr.

1 Chairman.

2 Again, just a couple of quick questions. And  
3 again, thank you for coming today, Mr. Shepstone.

4 MR. THOMAS SHEPSTONE: Sure.

5 REPRESENTATIVE McCARTER: Are you aware that  
6 there are, following up on Representative Miller's question  
7 in terms of the science involved, recent reports that have  
8 been issued that say -- and I'll quote from one of the  
9 reports -- the existing surface water quality data in the  
10 SRB are insufficient to detect water quality change related  
11 to shale and gas development?

12 MR. THOMAS SHEPSTONE: Who says that?

13 REPRESENTATIVE McCARTER: It's one of the recent  
14 reports that came out.

15 MR. THOMAS SHEPSTONE: I believe that report came  
16 through the Delaware Riverkeeper. And this is the kind of  
17 thing the Delaware Riverkeeper does all the time. There's a  
18 lot of junk science out there. I think --

19 REPRESENTATIVE McCARTER: Well, it's from -- if  
20 I'm not mistaken, it's USGS in the northeast, mid-east.

21 MR. THOMAS SHEPSTONE: No, they cited the USGS.  
22 I'm familiar with that quote. They cited the USGS Report.  
23 That is not an accurate rendering of what the USGS Report  
24 says. There are numerous USGS Reports, including some on  
25 what's going on in both Wayne County, Pike County, and in

1 various parts of the Susquehanna River Basin Commission.  
2 Those reports do not indicate any serious problem with  
3 fracturing.

4 And I would also point out that one of the most  
5 common complaints started with gas land was about the  
6 methane problem, shale and methane migration and, in fact,  
7 the USGS Report for Pike and Wayne Counties show that's even  
8 there. That was a problem long before fracturing.

9 REPRESENTATIVE McCARTER: If I understand also  
10 correctly, only 8 percent of Wayne County actually is the  
11 area that we're talking about here in terms of in the  
12 Delaware River Basin; is that correct?

13 MR. THOMAS SHEPSTONE: 8 percent?

14 REPRESENTATIVE McCARTER: 8 percent.

15 MR. THOMAS SHEPSTONE: Of?

16 REPRESENTATIVE McCARTER: Of the county is  
17 actually impacted.

18 MR. THOMAS SHEPSTONE: Oh, no. It's more than  
19 that. Nobody knows until you do actual drilling and  
20 hydraulic fracturing as to how much there is.

21 But I can tell you I lease my property in  
22 Damascus Township, which is about a third of the way down  
23 the county. And I would say, based on what knowledge I have  
24 and it's just preliminary stuff that's available to  
25 everybody, that it's probably from Route 371, which is kind

1 of the dividing line between north and south. So it's much  
2 more than 8 percent.

3 REPRESENTATIVE McCARTER: Just one last question.  
4 In terms of the impact of that though, you're saying it's  
5 more than 8 percent. However, I believe that's what has  
6 been developed. Have you seen the data that came back from  
7 those test drillings many years ago? Eight years ago, it  
8 was done. Has that been presented to you?

9 MR. THOMAS SHEPSTONE: I have not personally seen  
10 that. However, you know, we do know from -- I've talked  
11 with, for example, Terry Engelder of Penn State. I've  
12 talked with him about it. And the answer is always the  
13 same, that until you do the drilling and the hydraulic  
14 fracturing, you really don't know what you have. It's all  
15 speculation.

16 So I can tell you that, as Betty said earlier,  
17 companies are willing to come here. And, in fact, one  
18 company has sued the DRBC because they intend to drill and  
19 they cannot under the current regulations.

20 REPRESENTATIVE McCARTER: And are you part of any  
21 suits currently against the DRBC?

22 MR. THOMAS SHEPSTONE: I'm not a part of a suit.  
23 I did put my land into a fund or a portion of my land to  
24 help support it but I'm not one of the parties.

25 REPRESENTATIVE McCARTER: Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. THOMAS SHEPSTONE: You're welcome.

REPRESENTATIVE McCARTER: Thank you, Mr. Chairman.

MAJORITY CHAIRMAN METCALFE: Thank you, Representative McCarter.

Thank you, sir, for testifying today.

MR. THOMAS SHEPSTONE: Thank you.

MAJORITY CHAIRMAN METCALFE: Our next testifier is Mr. David Spigelmyer, President of Marcellus Shale Coalition and also one of my constituents.

MR. DAVID SPIGELMYER: Thank you, Mr. Chairman.

MAJORITY CHAIRMAN METCALFE: Welcome.

MR. DAVID SPIGELMYER: Good morning, Mr. Chairman.

MAJORITY CHAIRMAN METCALFE: Good morning.

MR. DAVID SPIGELMYER: Chairman Metcalfe, Chairman Bradford, members of the House State Government Committee, thank you for the opportunity to testify this morning regarding the significant economic ramifications of the moratorium placed on responsible and unconventional shale gas development imposed by the Delaware River Basin Commission, DRBC.

My name is Dave Spigelmyer. I'm the President of the Marcellus Shale Coalition headquartered in Pittsburgh, Pennsylvania. The MSC is a statewide trade association

1 representing nearly 200 energy producing, midstream,  
2 transmission, and small- to medium-sized supply chain  
3 members who are fully committed to working with local,  
4 county, state, and Federal Government officials to  
5 facilitate the development of our natural gas resources in  
6 the Marcellus, Utica, and related shale formations here in  
7 Pennsylvania.

8 As you may or may not know, Pennsylvania has  
9 become the second largest producer of natural gas in the  
10 United States with over 8,000 producing unconventional or  
11 horizontally drilled wells amounting to 5.36 trillion cubic  
12 feet of natural gas development in Pennsylvania.

13 Pennsylvania is responsible for almost 20 percent  
14 of our country's total natural gas production, as we produce  
15 gas and liquids in at least 33 of our 67 counties here in  
16 the Commonwealth.

17 My testimony has been submitted for the record  
18 and I appreciate the opportunity to be with you this  
19 morning. Since the unconventional industry began to ramp up  
20 in 2008, citizens of our Commonwealth have enormously  
21 benefited from this development. Consumer-purchased natural  
22 gas rates in Pennsylvania have dropped anywhere from 57 to  
23 81 percent depending on which utility serves your area.

24 Today natural gas is the fuel of choice for power  
25 generation because of the enormous environmental benefits of

1 burning this fuel and because of the robust supply of  
2 natural gas here in our Commonwealth. Gas is indeed now the  
3 primary fuel in generation with wholesale electric costs  
4 down some 41 percent in PJM, saving the average customer in  
5 the Commonwealth \$1,500 annually on their household electric  
6 bill. The savings for business and manufacturers are far  
7 greater.

8 While some in the Capitol have attempted to  
9 minimize the jobs generated from our industry, more than  
10 100,000 Pennsylvanians are directly or indirectly working in  
11 industry-related jobs supporting hundreds of thousands of  
12 their family members and paying Pennsylvania income taxes  
13 here in the Commonwealth.

14 Furthermore, nearly \$1.5 billion in tax revenue  
15 has been paid by unconventional natural gas producers  
16 through Pennsylvania's unique impact fee passed in 2012,  
17 benefiting every single county in the Commonwealth.

18 It was clear in 2012 that this unique approach of  
19 driving revenue into our county and local governments was  
20 Pennsylvania's version of a severance tax. It was and  
21 continues to be a winner for Pennsylvania and has  
22 dramatically outpaced the collections of our neighbors in  
23 Ohio and West Virginia, both with severance taxes.

24 Through the impact fee, more than \$400 million  
25 has been invested in statewide environmental initiatives



1 including \$6 million to annually carve out to fund the DEP.  
2 Some lawmakers have commented that the DEP does not have the  
3 adequate staffing to police this industry. Facts be known,  
4 Pennsylvania's natural gas industry is the only industry  
5 that self-funds DEP's oversight, and staffing at the oil and  
6 gas section has tripled, growing from 60 compliance and  
7 inspection staff in 2008 to over 225 in 2011, No. 2 in the  
8 United States for the size of its oil and gas compliance  
9 staff behind Texas.

10 Today the oil and gas section has a complement of  
11 190 staff. And last year with 812 wells drilled in the  
12 Commonwealth, the industry was inspected more than 16,000  
13 times. Over \$3 billion have been collected in other  
14 business, corporate, and income taxes generated by the  
15 natural gas industry. Over a billion has been paid directly  
16 to the Commonwealth for leasing and development of our  
17 natural gas resources underlying public owned lands  
18 including nearly \$100 million collected annually to both  
19 DCNR and the Pennsylvania Game Commission in royalty revenue  
20 for state lands development.

21 Over a billion dollars has been invested in road  
22 infrastructure improvements all funded by the industry. And  
23 what has been extraordinary has been the nearly \$10 billion  
24 in royalty and bonus payments made to the Commonwealth  
25 leaseholders, including many farmers who now have a path

1 forward to the proceeds of natural gas development.

2           Unfortunately, one can look to Wayne and Pike  
3 Counties or to the southern tier of New York State to see  
4 the stark economic differences that this industry has made.  
5 Shale development has provided an influx of game-changing  
6 capital into many communities across our state.

7 Unfortunately, Wayne and Pike Counties have been excluded.

8           Pennsylvania has also helped lead the United  
9 States in the reduction of emissions thanks to our increased  
10 use of natural gas in the power generation sector and in our  
11 transportation sector.

12           Air quality has improved substantially and by  
13 historic proportions due to the increased utilization of  
14 natural gas. For example, according to the Pennsylvania  
15 DEP, just between 2014 and 2015, sulfur dioxide emissions  
16 declined by 25 percent, particulate emissions declined by 23  
17 percent, and nitrogen oxide emissions declined by 19  
18 percent.

19           Additionally, according to the U.S. EPA, carbon  
20 emissions are at a 25-year low. And most importantly  
21 natural gas can and has made a huge difference across the  
22 globe. However, today 1.3 billion people across our planet  
23 live in energy poverty, meaning they have no available fresh  
24 running water that we take for granted and rely upon each  
25 and every day. They have no sewage systems or refrigeration

1 to store their foods and keep them fresh. They have no  
2 advanced medical care and medications manufactured through  
3 the use of natural gas that are life-sustaining, and many  
4 energy-staved regions heat their huts with wood and dung  
5 when temperatures are cold and when hot, they have no  
6 cooling.

7 As a result, those living in energy poverty have  
8 much shorter lifespans than the residents of countries like  
9 us living in a land of energy abundance and affordability.

10 Our enormous new-found supplies of natural gas  
11 can and will power the planet and change the human condition  
12 for millions if we're allowed to prosper. In the area of  
13 the resource potential in this region, while I cannot  
14 exactly predict what the race horse potential of  
15 unconventional shale gas is within the Delaware River Basin,  
16 we have a reason to believe it's significant.

17 One of the earliest state publications examining  
18 the natural gas potential of the Marcellus Shale was  
19 published in the spring of 2008 by the Bureau of Topography  
20 and Geologic Survey of the DCNR. The report examined  
21 historical data on shale gas exploratory wells in  
22 Pennsylvania, some dating back 70 years.

23 The report observed the key to the prolific  
24 natural gas production is the higher-than-normal gamma ray  
25 responses found in gamma ray logs, which is indicative of

1 rich organic shales. Contrary to the conventional belief  
2 that the thickness of the shale is the greatest indicator of  
3 gas potential, the report concluded that we should be  
4 looking for where it's most rich in organic matter.

5           Importantly, the report noted that while the  
6 Marcellus Shale underlies much of Pennsylvania, the  
7 organic-rich portion reaches its maximum development in the  
8 northeastern part of the state. Indeed, an accompanying map  
9 illustrating the thickness sequence of organic-rich shale  
10 shows some of the greatest thickness of Marcellus Shale  
11 throughout all of Wayne County and the northwestern part of  
12 Pike County.

13           DRBC's 2008 report didn't get everything correct.  
14 The report noted that the Marcellus will probably not be  
15 quite as productive as the hype suggests and that the peak  
16 petroleum production for the United States is past. A  
17 decade later we know those assertions to be wholly  
18 underestimated and false, due to a new horizontal drilling  
19 technology and greater understanding of the resources  
20 beneath our feet. We now find ourselves in a period of  
21 over-reliance of energy from foreign nations, many of them  
22 not friendly to our country, to a period now of energy  
23 security where the United States can fully meet our own  
24 energy needs and help supply the world.

25           If one looks geographically, the county seat of

1 Wayne County, Honesdale, is just 45 miles from Montrose, the  
2 county seat of Susquehanna County. Why do I bring this to  
3 your attention? Susquehanna County may have some of the  
4 most prolific dry natural gas shale wells that exist in the  
5 world today. While a direct correlation cannot be  
6 predicted, there's a strong probability that significant  
7 resource potential exists in the Wayne and Pike County  
8 region.

9 Tunkhannock, the county seat of Wyoming County,  
10 is also just an hour's drive from Honesdale or a short 45  
11 miles in distance. In 2010 and 2011, mineral leases were  
12 taken in Wyoming County and bonus payments paid to mineral  
13 owners that top \$5,000 an acre in many cases.

14 Those fees were paid to reserve the right to one  
15 day drill on a property held by lease. Leases taken in that  
16 region were economically game-changing for private mineral  
17 owners, including farmers and residents of the counties.

18 In 2013 when speaking to the economic potential,  
19 Hess and Newfield, two leading natural gas producers,  
20 announced that after four years of uncertainty and  
21 stagnation by the DRBC, they were leaving Pennsylvania.  
22 More than \$150 million had been invested in northeast  
23 Pennsylvania to secure leases, plan for development, and  
24 drill several exploratory wells.

25 Yet with no end to the uncertainty and a de facto

1 moratorium in sight and plenty of options elsewhere, the  
2 companies vacated those leases and the economic  
3 opportunities lost for those mineral owners.

4 Economically, this inability to develop the  
5 resource was devastating. Initial bonus lease payments  
6 totaled over \$100 million but another nearly \$187 million  
7 was never paid due to the invocation of force majeure. Over  
8 1,500 leases affecting thousands of landowners were  
9 terminated. The total economic impact to the region, the  
10 loss of upward of \$8 million into the local economy per  
11 well, and hundreds of millions of dollars in lost royalty  
12 revenue is impossible to calculate.

13 As for DRBC, we need to look no further than the  
14 Susquehanna River Basin to realize the absurdity of the  
15 DRBC's actions. For more than a decade now the SRBC has  
16 safely managed water resources while allowing for  
17 responsible development of property rights.

18 Indeed, the unconventional natural gas industry  
19 has worked closely with the SRBC to ensure that our  
20 operations, our water withdrawals, and our water usage  
21 within the Basin are done in a safe and responsible manner.  
22 SRBC has adopted a regulatory framework that is workable,  
23 flexible, and protects our water resources and respects the  
24 needs of other users.

25 To date, the DRBC has squandered this incredible

1 opportunity and neglected their obligation to build a  
2 similar relationship with industry in order to mirror  
3 responsible development within that Basin.

4 This decade of experience bolstered by repeated  
5 scientific studies undertaken by SRBC has demonstrated that  
6 unconventional natural gas development has occurred within  
7 the Susquehanna River Basin with no discernible impact on  
8 our water resources. This is a testament to both our  
9 industry, our DEP, and the SRBC, and a model that should  
10 have been emulated within the DRBC.

11 The uncertainty created by government and the  
12 actions of the DRBC has stripped away the many opportunities  
13 presented to local residents through the action of imposing  
14 a moratorium in the DRBC, or in the Delaware River Basin.  
15 Make no mistake, the landowners and property owners of Wayne  
16 and Pike Counties have suffered under this moratorium, not  
17 to mention the loss of communities in Pike and Wayne  
18 Counties that were hopeful to enjoy the economic  
19 opportunities witnessed in neighboring shale-producing  
20 counties in the Susquehanna River Basin.

21 Today, capital is being invested in other shale  
22 opportunities in Pennsylvania, with our neighbors to the  
23 south and west in West Virginia and Ohio, as well as other  
24 shale-producing regions across the country.

25 At the end of the day, capital investment will be

1 made somewhere. In this case, like we've seen in New York  
2 State, it is the local residents that are deprived of these  
3 economic benefits the most. The farmers and business owners  
4 need government on their side, not stripping them of their  
5 rights and taking away their economic property rights.

6 We have already lost ten years of capital  
7 investment in this region. We've starved our nation of the  
8 added resources to move us closer to position of complete  
9 energy security for our country. We also know that ten  
10 years of job opportunities, lease bonus payments, and  
11 royalty income for landowners has been lost.

12 This has translated itself into deferred  
13 retirement, deferred college, inability to pass down the  
14 family farm, loss of stronger and more vibrant communities,  
15 and many other detriments that need not have happened if the  
16 DRBC had simply done its job instead of playing politics  
17 with the people's livelihoods.

18 I appreciate the Committee shining a light on  
19 this important matter and I welcome your questions.

20 MAJORITY CHAIRMAN METCALFE: Thank you very much  
21 for your testimony.

22 Our first question would be from Representative  
23 Bradford.

24 MINORITY CHAIRMAN BRADFORD: Thank you, Chairman.  
25 And thank you, sir.



1 MR. DAVID SPIGELMYER: You're welcome.

2 MINORITY CHAIRMAN BRADFORD: I'm going to circle  
3 back actually to following up on a point that Representative  
4 McCarter made as well.

5 And one of the things that Mr. Shepstone -- and I  
6 believe actually our first speaker -- talked about is kind  
7 of the politicalization of science in this regard. You  
8 know, we can't all have our own facts. The report I believe  
9 Representative McCarter was talking about was entitled Water  
10 Data To Answer Urgent Water Policy Questions, a report  
11 published by the Northwest Institute in Collaboration with  
12 the U.S. Geological Society. I believe it's in the summary.  
13 I guess that's Roman numeral page 4. Among the significant  
14 findings of the case study are the following -- and actually  
15 the preface to that is, in this report, the NEWMI, in  
16 cooperation with the USGS, investigates the minimum quantity  
17 of water quality data that would be necessary to detect a  
18 statistically significant change in water quality related to  
19 shale gas development in the Susquehanna River Basin and  
20 analyzes whether those data are currently being generated.

21 Among the significant findings of the case study  
22 are the following: The existing surface-water quality data  
23 in the Susquehanna River Basin Commission are insufficient  
24 to detect water-quality change related to shale gas  
25 development. It goes on to make other points. I'll say

1 it's not a slam dunk one way or the other. I'm not here to  
2 tell you I'm an expert on this particular report or that  
3 I've read it cover to cover because I have not.

4 But one of the things that is problematic in this  
5 debate is there is a lack of, frankly, trust. And largely  
6 in my neck of the woods -- and I'll be the first to admit  
7 that -- in southeastern Pennsylvania, the industry is often  
8 looked at with some suspicion. The Act 13 debacle was not a  
9 real confidence-building time for many of us in the  
10 southeast who have questions about the industry and believe  
11 that it's problematic.

12 But I think I've heard the same quote used by  
13 yourself as well as others who are advocates for the  
14 industry talking about no discernible impact on the water  
15 quality. There's obviously a USGS Study that kind of says  
16 something different. It says the jury is out. And I think  
17 we should be honest about that. I do believe science should  
18 drive this.

19 Listen, I think your industry has a role to play  
20 when we talk about climate change. But I see an industry  
21 that sometimes is not willing to use science as the arbiter  
22 of how we do public policy in related issues of great  
23 environmental impact to the Commonwealth and frankly to our  
24 nation and our world.

25 So I think there's a lack of trust in this issue

1 that really stands out. You mentioned an impact fee which  
2 many of us believe is de minimis and has almost no revenue  
3 coming into my neck of the woods. And again, I don't  
4 begrudge those parts of the Commonwealth that are doing  
5 quite well under the impact fee.

6 But when we talk about opening up a river basin,  
7 that water that southeastern Pennsylvania gets would be  
8 greatly impacted. That impact fee does nothing. A robust  
9 severance tax, which industry has fought against  
10 vociferously and irrationally for a decade -- you talk about  
11 missed opportunities -- I think that's one of the great  
12 missed opportunities of all time.

13 So I know the Chairman is going to be upset that  
14 I don't have much of a question here.

15 MAJORITY CHAIRMAN METCALFE: You don't have any  
16 question. You just have a lecture.

17 MINORITY CHAIRMAN BRADFORD: Oh, I've got  
18 questions.

19 MAJORITY CHAIRMAN METCALFE: So if you could get  
20 to the question, I think Representative Miller might have  
21 another question.

22 MINORITY CHAIRMAN BRADFORD: Well, let me get to  
23 the question.

24 MAJORITY CHAIRMAN METCALFE: Please do.

25 MINORITY CHAIRMAN BRADFORD: Listening to what

1 I've said, do you think I have any point or is this just  
2 misguided and this is just the ramblings of those who oppose  
3 fracking irrationally? because I will tell you that I don't  
4 think all of us are irrational. I think there's science on  
5 both sides that need to be noted and taken into  
6 consideration. And when we play this game of your scientist  
7 versus mine and your MSNBC versus my Fox News, I think we do  
8 a real disservice to the public.

9 MR. DAVID SPIGELMYER: Mr. Chairman, I'm happy to  
10 respond to your question.

11 First of all, I was born and raised in Central  
12 Pennsylvania in the heart of natural gas development  
13 country. I grew up in Clearfield County. I'm active in a  
14 number of organizations that are focused on conservation and  
15 protecting our environment.

16 I would tell you we organized the Marcellus Shale  
17 Coalition with the primary purpose of advancing regulation  
18 for our industry. We knew we needed to modernize  
19 regulations for this industry. And I think we have the most  
20 robust framework for development of shale resources of any  
21 place in the country.

22 Do I think that shale resources are being  
23 developed in an environmentally responsible fashion? I do.  
24 And I think over 16,000 inspections at 812 well locations  
25 last year is indicative of a 97 percent rate of acceptance

1 for drilling in a favorable fashion with our environmental  
2 rules of the Commonwealth.

3 When it comes to shale gas development and  
4 taxation that was mentioned over and over again, we have the  
5 highest corporate net income tax rate in the country. We  
6 have an impact fee that was passed in 2012. Clearly in  
7 House Bill 1950, if you read the statute again, there's  
8 evidence to suggest that the Legislature felt this was our  
9 version of a severance tax because it states in there that  
10 if a severance tax passes at some future date, the impact  
11 fee goes away. That was the intention of the Legislature  
12 because they knew it was the approach.

13 What's seldom mentioned is more than 40 percent  
14 of the proceeds are carved off to fund State agencies,  
15 including the \$6 million that goes to DEP to self-fund that  
16 agency. Again, we're No. 2 in size in inspection staff of  
17 any agency in the country over oil and gas development. I  
18 think it's the only part of the agency that's specifically  
19 designated for one specific industry.

20 We have an oil and gas section broken down in the  
21 region that has a specific role to play in oversight of  
22 natural gas development. I think we're doing it right. I  
23 think we've made game-changing opportunities. I think it's  
24 a crying shame that the residents of Wayne and Pike Counties  
25 haven't had the opportunity to enjoy the same benefits the

1 other parts of the Commonwealth have.

2 MAJORITY CHAIRMAN METCALFE: Thank you,  
3 Representative Bradford.

4 Representative Ryan.

5 REPRESENTATIVE RYAN: Mr. Chairman, thank you.  
6 May I ask you a question, Representative  
7 Bradford?

8 MAJORITY CHAIRMAN METCALFE: Representative Ryan,  
9 it's time to ask questions of the testifier. If we started  
10 asking Representative Bradford questions, based on his  
11 answers, we could be here the rest of the day and we go into  
12 session at 1.

13 MINORITY CHAIRMAN BRADFORD: You're smarter for  
14 it though.

15 REPRESENTATIVE RYAN: Very good. Thank you.

16 The reason I was asking is that -- and I'll go to  
17 the question -- there is a U.S. Geological Survey and  
18 there's a U.S. Geological Society. And they are different  
19 groups. I wasn't sure which one he's referring to.

20 Do you by any chance know?

21 MR. DAVID SPIGELMYER: I think the comment  
22 Chairman Bradford mentioned was Society, not the U.S.  
23 Geological Survey.

24 REPRESENTATIVE RYAN: Because one is a  
25 governmental agency and one is not.

1 MAJORITY CHAIRMAN METCALFE: Representative  
2 Bradford, would you like to -- which one did you mention?  
3 Was it society?

4 MINORITY CHAIRMAN BRADFORD: Survey, sir.

5 REPRESENTATIVE RYAN: Thanks. That helps me for  
6 later on.

7 But then the questions that I actually have  
8 relate to this issue. You know, those of us in rural areas  
9 and in Southcentral Pennsylvania and other areas have a  
10 different take on this obviously than our dear friends in  
11 the southeast.

12 You know, we've seen situations where the impact  
13 fee is designed to help our communities because that's where  
14 the natural gas is being drilled and in my mind was a  
15 logical approach to an issue. A severance tax in my mind is  
16 a much more deeper constitutional perspective of who really  
17 is the owner of those resources. I would be vehemently  
18 opposed to a severance tax.

19 But when you look at this area and these issues  
20 about the DRBC, the theft of property rights -- and it's a  
21 sensitive area. I know people in other areas may not feel  
22 as empathic towards us, but we're struggling. As Warren  
23 County had happened, with the reduction in a number of farms  
24 and things like that, we're seeing the same thing in my  
25 area.

1           So, you know, I applaud the testimony. Hopefully  
2 we can come up with a successful resolution to it because  
3 the theft of property rights and the liberty of those assets  
4 that are owned by the individual that are then taken by a  
5 committee that's not even represented in the State and we  
6 have limited opportunity to have any recourse to it gives  
7 us, I think, the responsibilities as a legislative body to  
8 say, we should not be delegating that type of authority over  
9 Commonwealth citizens without having some ability to deal  
10 with it.

11           So the question I would ask you is, have you done  
12 any economic analysis of the amount of harm that's been done  
13 to that area that the DRBC is dealing with from this  
14 moratorium that's not been something that's been approved by  
15 the legislative bodies or the executive branch?

16           MR. DAVID SPIGELMYER: I think it would be a  
17 determination based upon the kind of production we would  
18 find. And although the circumstances look very good, we  
19 don't have a good analysis that I would share with you.

20           There was a previous comment that I think relates  
21 here that there was -- how come drill ers weren't drilling  
22 in 2009 and 2010 when this industry began? There was an  
23 executive director determination May 19th of 2009 and a  
24 supplemental executive director determination on June 10th  
25 of 2010 that basically placed a de facto moratorium in place



1 for development in that region that basically took away  
2 those property rights and it's been under litigation since  
3 back in 2009 when this industry was first getting off the  
4 ground.

5 So companies that had invested, a number of those  
6 companies I have had a chance to work closely with, one of  
7 them I worked directly for, had leases taken in Wayne County  
8 and basically lost their economic investment in that region  
9 as a result.

10 MAJORITY CHAIRMAN METCALFE: Thank you,  
11 Representative Ryan.

12 REPRESENTATIVE RYAN: Thank you.

13 MAJORITY CHAIRMAN METCALFE: Thank you,  
14 Mr. Spigelmyer, for testifying today. We appreciate it.

15 MR. DAVID SPIGELMYER: Mr. Chairman, I appreciate  
16 it.

17 MAJORITY CHAIRMAN METCALFE: Have a good day,  
18 sir.

19 MR. DAVID SPIGELMYER: You, too.

20 MAJORITY CHAIRMAN METCALFE: Our next and last  
21 testifier for today's hearing is Mr. Ned Land, Vice  
22 President, Pennsylvania Septic Management Association, and  
23 President of the Upper Delaware River Basin Citizens.

24 You can begin when you're ready, sir.

25 MR. NED LANG: Thank you, Chairman.

1                   Good afternoon. I want to thank Chairman  
2 Metcalfe and Chairman Bradford for this opportunity to speak  
3 to the Representatives and also Senator Baker's Office for  
4 allowing us the time today to give our testimony.

5                   I'm President of the Upper Delaware River Basin  
6 Citizens Association and Vice President of the Pennsylvania  
7 Septic Management Association.

8                   I come before you today though as President of  
9 the Upper Delaware River Basin Citizens Association, which  
10 represents the landowners throughout the Delaware River  
11 Basin, their rights, lifestyle, and heritage. Our  
12 organization is comprised of landowners whom are responsible  
13 for the clean air, water, and overall quality of the  
14 environment that we all enjoy today.

15                   We are the stewards of the land, many of whom  
16 have lived, worked, and raised their families in the  
17 Delaware Basin for generations. The UDRBC is in support of  
18 sustainable natural gas exploration throughout the Basin  
19 just like our neighbors in the Susquehanna River Basin.

20                   The 2015 report by the SRBC Executive Director  
21 states, based on the analysis of the SRBC's nutrient and  
22 sedimentation data, the health of the Susquehanna overall is  
23 improving.

24                   The fact that three Commissioners on the SRBC,  
25 whom voted yes to natural gas exploration, yet on the DRBC,

1 vote no to natural gas exploration because they care so much  
2 about the water quality in the Delaware River are about to  
3 be exposed for who they are. It's a facade. Nothing more  
4 than a lie.

5 Let me tell you why. The Barnes Landfill is an  
6 abandoned landfill built on the side of a mountains back in  
7 1947 overlooking the Delaware River in Barryville, New York.  
8 It was operated until approximately 1989 and was in the  
9 closure process until the money ran out in 2003.

10 New York State then found that the pollutants  
11 contained in the landfill were so hazardous that they  
12 declared it a superfund site in 2004. Apparently no further  
13 work for closure and containment were undertaken and the  
14 leachate, thousands of gallons per day, was allowed to flow  
15 from the base of the landfill into the nearby creek, then  
16 into the Delaware, not a quarter mile away.

17 Unfortunately, it is still flowing into the  
18 Delaware as we speak. You can go to YouTube, Barnes  
19 Landfill leachate, and see for yourself.

20 I became aware of this environmental nightmare in  
21 2012 and wrote a letter to Governor Cuomo -- it's my Exhibit  
22 A -- and copied every Governor and Attorney General from  
23 each state affected downstream as well as Carol Collier, the  
24 former Executive Director of the DRBC, alerting them to this  
25 environmental tragedy.

1 I would like to read you an excerpt from the  
2 letter to Governor Cuomo which reads as follows:

3 I have written you numerous letters in the past  
4 year and a half pointing out just how hypocritical you are  
5 when it comes to protecting New Yorkers and our fellow  
6 Americans downstream in the Delaware River Basin. I have  
7 learned that there's not one landfill superfund site but two  
8 landfill superfund sites in the Delaware River Basin that  
9 are spewing their hazardous compounds into the drinking  
10 water of millions of people downstream.

11 In March of 2011, Willie Janeway, the Director of  
12 New York State Region 3's Department of Environmental  
13 Conservation, came up to my DEC Part 360 permitted solid  
14 waste facility and we traveled down to the old Barnes  
15 Landfill in Barryville, New York, and we walked through the  
16 site. I showed him exactly where at the base of the  
17 landfill the large holding tank would overflow, dumping  
18 thousands, ultimately millions, of gallons of contaminated  
19 hazardous waste effluent from the collection system down  
20 through the woods, crossing numerous private properties into  
21 the brook and shortly thereafter into the Delaware River.

22 Mr. Janeway assured me that the New York State  
23 DEC would be taking some sort of action to mitigate this  
24 problem, preventing these chemicals and pollutants from  
25 entering the drinking water of millions of Americans

1 downstream. However, to date, nothing has been done and  
2 this landfill continues to spew its pollutants into the  
3 Delaware River on a daily basis for the past decade.

4 It is almost beyond comprehension. However, I  
5 only received one reply to my letter and that was from the  
6 New York DEC staff person, Martin Brand. I have his letter  
7 marked as Exhibit B for your review. I would like to read  
8 you a small excerpt from the New York DEC staffer Mr. Martin  
9 Brand:

10 The Barnes Landfill site is a former private  
11 municipal landfill operated from 1947 to 1989 regulated  
12 under the solid waste rules at 6 NYCRR Part 360. The site  
13 is not an inactive hazardous waste disposal site or  
14 superfund site, and there is no indication that hazardous  
15 materials were ever disposed of in the landfill.

16 The Department is aware that there are continuing  
17 issues over the control of leachate from the leachate  
18 collection system and leachate storage tank. You pointed  
19 out these concerns during a site visit with then regional  
20 director William Janeway during a site visit with him in  
21 March of 2011.

22 My staff from the Division of Material Management  
23 subsequently inspected the site on September 22, 2011.  
24 These inspections revealed some concerns regarding the  
25 stability of the soil cover and vegetative layers over the

1 existing synthetic geomembrane. The geomembrane is exposed  
2 in several areas, though it is apparently intact and  
3 functioning. And leachate was observed in the vicinity of  
4 the leachate storage tank and downgradient property line.  
5 The vegetation is uncontrolled due to lack of routine  
6 maintenance.

7 While a significant concern, none of the areas  
8 exhibit the magnitude of potential environmental impact as  
9 characterized in your letter. Our inspections have not  
10 revealed any leachate or groundwater discharges to the  
11 Delaware River tributaries or other surface water bodies,  
12 and we have not observed damage to neighboring properties.

13 It should be noted that the leachate flows at the  
14 site, while still of concern, have improved markedly since  
15 the cap was completed in May of 1992.

16 He just contradicted himself.

17 We are evaluating appropriate actions to solve  
18 the problems noted by you and my staff. With our  
19 assistance, the New York State Office of Attorney General is  
20 investigating past and current owners and potentially  
21 responsible parties that could be approached, from a legal  
22 perspective, to take responsibility for the site.

23 As you know, the escrow fund established years  
24 ago to provide funds for maintenance has been depleted.  
25 Unfortunately, there are currently no funding mechanisms

1 available to the State for those types of situations.

2 That's unbelievable.

3 So New York State with a \$96 billion budget in  
4 2004 didn't and still isn't doing the right thing and the  
5 DRBC, with \$30 million in the bank, won't spend a dollar  
6 protecting the drinking water of millions of people  
7 downstream. How many people south of Barryville, New York,  
8 have suffered health effects from exposure to the superfund  
9 leachate over the past 15 years? We will never know.  
10 However, litigation may be the only answer to stop this  
11 travesty and hold these individuals, states, and the DRBC  
12 accountable for poisoning millions of people downstream whom  
13 the DRBC was chartered for and given the responsibility of  
14 ensuring clean water to drink, fish, and recreate in.  
15 That's my Exhibit C.

16 I find this statement from Governor Cuomo's  
17 Department of Environmental Conservation staff most  
18 reprehensible, callous, and irresponsible. I know firsthand  
19 how concerned the New York State DEC was with the  
20 containment and treatment of this leachate, as my  
21 environmental company performed services for Mr. Ligouri,  
22 whom owned the landfill from the mid-'90s until he passed  
23 away prior to 2003.

24 It was during the closure of the landfill we had  
25 a heavy rain event and it was impossible to contain and

1 remove leachate flowing to the two 5,000-gallon holding  
2 tanks. The leachate overflowed from these tanks just one  
3 time and the New York DEC arrested Mr. Ligouri and hit him  
4 with a felony charge and a heavy fine for violating the  
5 Federal Clean Water Act. Mr. Ligouri passed away soon after  
6 this. This is Exhibit D.

7 Governor Cuomo is a Commissioner on the DRBC and  
8 has stated he will vote for the fracking ban along with  
9 current Governors of PA and New Jersey with the pretense  
10 that they are concerned about the water quality of the  
11 Delaware River and the possibility of a potential accident  
12 if natural gas exploration is allowed in the Basin.

13 The hypocrisy and arrogance of these Governors is  
14 shameful and is a rallying cry for landowners and the  
15 politicians who represent us throughout the Basin. The DRBC  
16 is an agenda-driven, rogue Federal agency, bullied by  
17 biased, self-serving environmentalists that operate at the  
18 whim of organizations such as the William Penn Foundation to  
19 do their bidding.

20 Why has the Delaware Riverkeeper or the Catskill  
21 Mountainkeeper, whom they claim are champions of the  
22 environment, why are they not campaigning like our  
23 organization, the UDRBC, to clean up the Barnes Landfill and  
24 prevent leachate from a New York State superfund site from  
25 entering the Delaware River and potentially harming so many



1 people downstream? That is my Exhibit E.

2 I'm presenting these facts to the PA State  
3 Government Committee to illustrate the hypocrisy of the DRBC  
4 so you can better understand the intent of the DRBC, which  
5 is not about the water quality in the Delaware Basin. It's  
6 about their true agenda, which is about regulation, control,  
7 and incursion into the sovereignty of Pennsylvania law.

8 On behalf the all Pennsylvania landowners in the  
9 Delaware River Basin, we implore you to protect the  
10 sovereignty of the Pennsylvania law, our rights as  
11 landowners, and hold the DRBC responsible for allowing the  
12 pollution of the drinking water of millions of  
13 Pennsylvanians downstream for a decade and a half.

14 That's my presentation. I thank you.

15 MAJORITY CHAIRMAN METCALFE: Thank you for your  
16 testimony, Mr. Lang.

17 Members with questions?

18 No member on the Committee has a question but  
19 Representative Moul is ready to ask a question.

20 Representative Moul.

21 REPRESENTATIVE MOUL: Thank you. I appreciate  
22 it.

23 That's the second time I have heard that story.  
24 I just leaned over and looked at the Executive Director and  
25 said, is that true? Do they know about this? Has anybody

1 testified directly to the DRBC about this landfill leaching  
2 this poison directly into the stream that goes directly into  
3 the Delaware River?

4 MR. NED LANG: Yes, sir.

5 REPRESENTATIVE MOUL: So they are on notice about  
6 it and they are doing nothing?

7 MR. NED LANG: Nothing. And I wrote -- in this  
8 letter I copied Carol Collier. And this is 2012. I copied  
9 her. Carol Collier, Executive Director of Delaware River  
10 Basin Commission, PO Box 7360, West Trenton, New Jersey.  
11 She got a copy of this letter.

12 REPRESENTATIVE MOUL: That's 2012. So it's been  
13 leaking in there since before 2012?

14 MR. NED LANG: Yes, sir.

15 REPRESENTATIVE MOUL: So we're at least -- since  
16 when?

17 MR. NED LANG: 2004 exactly.

18 REPRESENTATIVE MOUL: So we're 14 years into this  
19 thing leaching this poison and DRBC is expending their  
20 energy putting a moratorium on drilling, which there's  
21 absolutely no documentation yet that's even killed a fish  
22 let alone poison an aquifer or a water system and they're  
23 sitting back idle, letting this day by day, rainstorm by  
24 rainstorm, leach directly into the Delaware River and  
25 they're walking around touting that they're

1 environmentalists?

2 MR. NED LANG: I did a site inspection with  
3 another member a month ago and, yes, I can personally tell  
4 you that that leachate is bubbling and running right across  
5 Kittatinny properties right straight into the Delaware.

6 REPRESENTATIVE MOUL: And all of this is  
7 non-debatable? This is definitely happening? It's not a  
8 story. It's definitely something?

9 MR. NED LANG: You can go right to YouTube, sir.

10 REPRESENTATIVE MOUL: I don't think hypocritical  
11 even comes close to describing the ideology behind this.

12 Thank you very much.

13 We did stray away, however, from the original  
14 intent of the bill, which is fine, because I really needed  
15 to hear a lot of this because I am in the SRBC area myself.  
16 But this just goes to prove that at least drilling holes in  
17 the ground, which is what my bill addresses, we need to  
18 bring that home and stop letting hypocrites, especially from  
19 other states, dictate how we do business here in  
20 Pennsylvania.

21 I think that would be my closing argument to the  
22 Chairmen and hopefully move this bill forward, amend it so  
23 that we can absolutely bring it home, lay it on the  
24 Governor's desk and say, now, Governor, make your choice.  
25 You either stand behind the people of Pennsylvania or you're

1 standing behind a bunch of hypocrites.

2 Thank you.

3 Thank you, Mr. Chairman. I appreciate it.

4 MAJORITY CHAIRMAN METCALFE: Thank you,  
5 Representative Moul.

6 Have you had any correspondence with Governor  
7 Wolf as Chairman of the Delaware River Basin Commission  
8 related to the leachate issue?

9 MR. NED LANG: Sir, I wrote this letter back in  
10 2012. I testified in Waymart and brought it to their  
11 attention. I brought it to the DRBC's attention when I  
12 presented this at their hearings in Waymart. So twice now I  
13 talked about it. This is the third time publicly.

14 Before the meeting up in Waymart before the  
15 Republican Caucus, I believe, and then I also testified at  
16 the DRBC hearings in Waymart during the hearing process  
17 about the fracking ban.

18 MAJORITY CHAIRMAN METCALFE: You testified before  
19 the Republican Policy Committee related to it?

20 MR. NED LANG: Yes.

21 MAJORITY CHAIRMAN METCALFE: Okay.

22 MR. NED LANG: And at the DRBC hearings in  
23 Waymart and now again today.

24 MAJORITY CHAIRMAN METCALFE: So there was a  
25 Delaware River Basin Commission hearing that you testified

1 to this fact?

2 MR. NED LANG: And also --

3 MAJORITY CHAIRMAN METCALFE: Was that part of the  
4 testimony they received related to the regulatory process  
5 that they're engaging in or proposed regulations that they  
6 might initiate?

7 MR. NED LANG: I also gave Secretary McDonald a  
8 copy of the complete file. I have a really thick complete  
9 file of all the inner-workings between my company and the  
10 DEC for approximately ten years until the money ran out in  
11 2003 and 2004.

12 And when I met with Secretary McDonald on behalf  
13 of our organization, the UDRBC, he also received a complete  
14 dossier, if you will.

15 MAJORITY CHAIRMAN METCALFE: So you met with him  
16 personally and gave him the information?

17 MR. NED LANG: Yes, sir.

18 MAJORITY CHAIRMAN METCALFE: That this leaching  
19 is an issue still?

20 MR. NED LANG: Yes.

21 MAJORITY CHAIRMAN METCALFE: Thank you.

22 Thank you for your testimony today.

23 MR. NED LANG: You're welcome. Thank you.

24 MAJORITY CHAIRMAN METCALFE: Thank you to the  
25 members for their time. We'll look forward to following up

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

with members as we consider the information received today.

Motion to adjourn by Representative Ryan.

REPRESENTATIVE RYAN: Yes.

MAJORITY CHAIRMAN METCALFE: Seconded by  
Representative Bradford?

MINORITY CHAIRMAN BRADFORD: Yes.

MAJORITY CHAIRMAN METCALFE: This meeting is  
adjourned. Everyone, have a good day.

(Whereupon, the hearing concluded.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I hereby certify that the proceedings and  
evidence are contained fully and accurately in the notes  
taken by me on the within proceedings and that this is a  
correct transcript of the same.

\_\_\_\_\_  
Jean M. Davis  
Notary Public