

**TESTIMONY OF
STEVE TAMBINI, EXECUTIVE DIRECTOR, DELAWARE RIVER BASIN COMMISSION,
BEFORE THE HOUSE STATE GOVERNMENT COMMITTEE OF THE
PENNSYLVANIA GENERAL ASSEMBLY
MONDAY, JUNE 11, 2018**

Chairman Metcalfe, Democratic Chair Bradford, State Government Committee Members, and State Representatives:

Thank you for the opportunity to offer testimony today on behalf of the Delaware River Basin Commission. In addition to my remarks, I have provided supporting documents for the members' review as part of your deliberations.

My comments will focus primarily on two areas – providing clean water and ensuring a sustainable supply of water for approximately 15 million people, including approximately 5.5 million Pennsylvanians. Some 43 percent of the population of the Commonwealth lives in the Delaware River Basin.

I suspect that all of us can admit to taking water for granted much of the time. Blessed as we are with abundant rainfall and a temperate climate, we do so with good reason. When we open the tap, clean, potable water reliably issues forth. Our local streams and major rivers like the Delaware seemingly flow uninterrupted, constant features of the landscape. Unfortunately, we seem to need crises to appreciate the value of our water resources and the importance of managing them responsibly. The lead contamination in Flint, Michigan, the Deepwater Horizon oil spill in the Gulf of Mexico, and the severe droughts and subsequent fires in some of America's western states all demonstrate how sensitive and vulnerable our water resources are, and how they can be impacted by both man-made and natural events.

The waters of the Delaware River Basin are not without vulnerabilities. The DRBC was formed after decades of costly litigation among the basin states over water rights, and after pollution in the Delaware River Estuary had rendered reaches of the main stem dead zones, incapable of supporting aquatic life. The Commission was created in response to these persistent water resource crises, to enable the member states and federal government to accomplish together what none could achieve on its own. The terms of the agreement among them took the form of a compact – concurrent legislation enacted by the United States and by each of the four basin states in 1961.

What has the DRBC meant to Pennsylvania? To accompany my testimony, I have provided you with a paper that outlines the valuable benefits that DRBC provides to the Commonwealth. I encourage you to read this more detailed submission, from which I offer the following highlights.

First, I offer examples of DRBC's effective management for clean water:

- Before DRBC was created, reaches of the Delaware River Estuary near Philadelphia were so polluted that they lacked sufficient dissolved oxygen to sustain aquatic life. DRBC provided the scientific foundation and leadership for water quality improvements that have reduced pollution in the Estuary to the point where the river and riverfront communities are thriving environmentally and economically. If your reaction is, "That's old news; today, EPA and DEP have these problems covered," I ask you to look again. DRBC continues to focus the best that we *and EPA and DEP and* the other basin state agencies have to offer to address new and persistent pollution challenges in the Estuary. DRBC provides science, standards and program leadership to ensure that water quality in the Estuary continues to improve.
- At the request of Pennsylvania, Delaware, New Jersey, and the U.S. EPA, DRBC is leading a groundbreaking program to reduce contamination from PCBs (a known human

carcinogen) in the tidal Delaware River and Bay. As a result of this unique initiative, PCB loadings from the top ten dischargers contributing 90 percent of total point source loadings decreased by 76 percent between 2005 and 2016. In 2018, two states relaxed their fish consumption advisories because of improved water quality in the Estuary.

- From the basin's headwaters in New York State downstream to Morrisville, PA and Trenton, NJ, DRBC's Special Protection Waters program has "kept the clean waters clean" in the non-tidal main stem river and portions of its tributaries. These exceptionally clean waters support recreation, healthy ecosystems, a vibrant water-based economy, and water quality improvements downstream.
- DRBC performs a biennial water quality assessment of the interstate Delaware River and Bay, the results of which are provided to Pennsylvania and other basin states to help them meet Clean Water Act requirements. DRBC's interstate water quality monitoring program, which is essential to water resources management in the basin, includes assessments of biological health, traditional pollutants from wastewater discharges and non-point source runoff, and contaminants of emerging concern, such as perfluorinated compounds ("PFCs"), that have been known to impact drinking water supplies.
- Finally, DRBC has a long history of working collaboratively with the PADEP to regulate point source discharges from municipal and industrial wastewater treatment facilities, and to support the goals of the Clean Water Act. The basin states through DRBC set uniform water quality standards for interstate waters. However, the DRBC's project reviews do not duplicate those conducted by Pennsylvania under the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program. PADEP relies upon DRBC's expertise for the complex modeling required to effectively control wastewater discharges to the Delaware Estuary, the only tidally influenced system in Pennsylvania, and to implement the Special Protection Waters program in the non-tidal river.

Clean water is vital. But how do we ensure that there will be *enough* water to sustain our region's growth into the future? If the basin experiences eight years in a row of below normal rainfall, as it did during the drought of record in the 1960's, will we have a sufficient supply of clean water? Can we use our water more efficiently? And how do we manage water that is used consumptively – that is, water withdrawn from but not returned to the basin's surface waters or aquifers after use? Answers to these questions are needed to ensure a sustainable water future for the Delaware Basin. DRBC is managing water withdrawals today and developing management plans for the coming decades in ways that consider these long-term concerns. Among DRBC's programs and policies for ensuring a sustainable water supply are the following:

- The non-tidal main stem Delaware River – some 152 miles long – is free of dams and has been included in the National Wild and Scenic Rivers system. It is no surprise that many assume the river is an entirely natural system. The truth is that the Delaware River's flows are managed through releases from multiple reservoirs located on tributaries. To maintain flows sufficient to meet local and regional water supply needs during periods of low flow and drought, DRBC directs releases from storage in the Beltzville and Blue Marsh reservoirs located on the Lehigh and Schuylkill Rivers, respectively, and operated by the U.S. Army Corps of Engineers. These releases protect the City of Philadelphia's Delaware River water supply intake from the migration of salt water upstream from Delaware Bay; and ensure an uninterrupted supply for domestic, commercial and industrial withdrawers. At the same time, the reservoir releases benefit Pennsylvania water users on the two tributaries on which the dams are located.
- DRBC pays the federal government over \$1.6 million annually to support the operation, maintenance, capital improvements, and debt service on our water supply storage in the Beltzville and Blue Marsh reservoirs, using fees paid by water withdrawers in all four basin states.

- DRBC drought plans include access to additional emergency storage in public and private reservoirs throughout the basin.
- To ensure that power generation and other vital uses in the basin are not interrupted during periods of drought or low flow, DRBC requires power generators to replace the water they consumptively use during dry periods. Many generators satisfy this requirement with storage in the Merrill Creek Reservoir in New Jersey, which was constructed in 1994 in fulfillment of a provision of DRBC's Comprehensive Plan. Replacement water is released during low flow conditions in accordance with DRBC requirements. DRBC's consumptive use replacement policy ensures that large consumptive water users such as the Exelon Limerick Generating Station can continue operating without adversely affecting other users.
- DRBC's leadership has ensured that every public water supply system in all four basin states performs an annual audit of lost water, based upon national standards set by the American Water Works Association. Reducing lost water not only benefits the resource, but it helps to reduce the cost of energy and treatment at drinking water treatment plants.

The water quality and water supply benefits I have described are just a few examples of how DRBC programs support the vital water resource interests of the Commonwealth and the region.

Understandably, those who are regulated by state agencies and the DRBC are at times confused about our unique roles and responsibilities. DRBC regulates only those projects that could have a "substantial effect on the water resources of the basin." These are defined by DRBC regulations and consist, for the most part, of large ongoing water withdrawals and wastewater discharges. Although the DRBC and state programs are not duplicative, and we have good working relationships with the water resource agencies of all four basin states, including the

PADEP, we have certainly heard the “duplication” theme before. For this reason, over the past several years DRBC has worked with our commissioners and state agencies to find ways to improve and streamline the regulatory process. In 2015, we initiated a program called “One Process One Permit,” whereby the DRBC works with each state agency that elects to participate, to ensure that DRBC standards are included in the agency’s permits. Regulated entities apply to just one agency and receive a single approval that contains all state and DRBC requirements. In addition, where this program has been implemented in New Jersey and New York, the applicant pays just one application fee – the state fee. Pennsylvania agencies to date have not availed themselves of the One Process One Permit Program; however, DRBC is more than willing to work with the PADEP to implement this program in Pennsylvania when and if the Department so requests.

Even without One Process One Permit in Pennsylvania, DRBC generally has a good working relationship with our regulated community. We are not perfect. I am sure that someone can find applicants – whether they be water users or wastewater dischargers – who have not been pleased with DRBC’s policies, responses or fees. Based upon the multiple letters (copies attached) advanced to your Committee by DRBC’s regulated community, planning agencies and local legislators in Pennsylvania, those who understand what we do and who work with us on a routine basis to maintain clean and sustainable water supplies recognize the value that DRBC has brought to basin water users. These entities also recognize and value the comprehensive and basin-scale approach to water resources management that DRBC provides.

We strive to be fair, responsive, open, and solution-oriented. We invite the regulated community and other stakeholders to serve on our water resources advisory committees, and we ensure the DRBC commissioners receive the committees’ input, including dissenting views. We understand – as do our commissioners and advisory committee members – that these committees are *not* decision makers. For example, an *ad hoc* advisory committee developed and reported out recommendations in 2014 to restructure and increase the DRBC’s surface

water supply charges. The commissioners heard the recommendations but did not implement them and have no plans to do so.

Not only does DRBC work collaboratively with PADEP, we step up and step in when asked to help. When explosive growth in Southeastern Pennsylvania was resulting in groundwater withdrawals that threatened to exceed the yield of local aquifers, Pennsylvania asked DRBC to use its authority to set up and manage a groundwater protected area covering 127 municipalities in five counties. The result has been continued economic growth in the region, supported by effective planning, regulation and groundwater management.

I recognize that this Committee has also held hearings on the SRBC and that the differences between our agencies can at times be blurry. The two interstate compacts are structurally similar, but there are important differences between them. These differences are rooted in geography. The Delaware River is an interstate boundary for its entire 330-mile length. The Susquehanna River is a state boundary only at the two points at which it flows into Pennsylvania from New York and flows out of the Commonwealth into Maryland. The Delaware River Basin Compact was created in part for the purpose of empowering the states and federal government jointly to address severe water quality problems – both actual and potential – that no one of them could resolve by itself. The Susquehanna River Basin Compact was not. The Delaware River Basin Compact provides that the commissioners of the member states *are* the duly elected governors of each state. Under the SRB Compact, the member state commissioners are individuals *appointed by* the governors.

Accordingly, the governors of the four basin states, including Pennsylvania, decide when DRBC authority should be used to address water resource matters that affect the basin as a whole. DRBC's small and dedicated staff of 39 engineers, planners, scientists and support personnel evaluates proposals and implements the rules, policies, and regulations that the commissioners adopt. All votes of the Commission occur at meetings open to the public.

I recognize that this hearing may be as much about hydraulic fracturing as it is about DRBC's relationships and interactions with those we regulate. Members of the State Government Committee are no doubt familiar with the status of proposed DRBC regulations that, if adopted, would prohibit high volume hydraulic fracturing in the basin. I suspect that your questions and concerns are largely about that issue. Please understand that although I will answer your questions to the best of my ability, I cannot speak on behalf of the governors who initiated the rulemaking, and I may not be able to answer certain questions that relate to ongoing litigation or deliberative processes. As you may be aware, in response to the rule proposal the Commission has received nearly 9,000 submissions of comments, which are under review by the DRBC commissioners and staff. The commissioners will not render a decision until they have considered all of the legal, technical and other issues the commenters raise.

Finally, DRBC values its relationship with all of its state and federal partners. We have worked with Pennsylvania and the other basin states to address interstate water resource problems such as droughts, floods, sustainable water supply, severe pollution in shared waters, the protection of drinking water sources and the protection of water resources of exceptional value. DRBC has produced outstanding results through planning, science, engineering and regulation. DRBC has provided, and continues to provide, invaluable water resource management to the region as a whole, directly benefiting approximately 15 million water users, including 5.5 million Pennsylvanians.

Thank you again for the opportunity to submit this testimony.