

Testimony of Thomas J. Shepstone
Pennsylvania House State Government Committee Hearing
Harrisburg, Pennsylvania - June 11, 2018

My name is Thomas J. Shepstone and I'm a professional planner from Northeast Pennsylvania. I have over 40 years of experience working with communities throughout the Commonwealth. I also represent numerous private clients, including some in the natural gas industry. I publish a blog advocating for natural gas development in our region. 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 a Delaware River Basin Commission usurping your authority. It's your job to reassert your authority and protect us from what is a purely political power play.

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

The Commission members are allowing natural gas development on the Susquehanna side of a mountain ridge and denying it on our side, in the Delaware River Basin. This is despite the fact they have the evidence in hand, from their own ongoing continuous water quality investigations, to show there's been "no discernible impact on the quality of water resources" on the Susquehanna side. That's not equal justice under law.

They claim, falsely, the DRBC has additional authority and responsibility for water quality protection. They then propose to use it to ban an otherwise legal activity despite the evidence to the contrary from the SRBC experience.

More importantly, they ignore the water quality standards already applied in both basins under the Clean Water Act and the Clean Streams Law, standards any water user must meet without discrimination. The natural gas industry is able to meet the very highest of these. That, of course, is why they now seek to throw those standards to the wind and impose a ban being imposed on no other industry or land use. That's not equal justice under law.

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The DRBC proposes to abscond with the full value of the holdings of some property owners by enacting a ban on natural gas development. Those who only own natural gas rights will lose 100% of what they own.

Those property owners, who, I might add, possess the dominant legal estate under Pennsylvania law, will, therefore, have cause to file takings claims. They will, though, have lost all they own and may well not have the funds or the endurance for the lawsuits necessary to get back what is rightfully theirs. That's not equal justice under law, not when government can steal what is yours and force you to spend your estate on legal fees to get it back. It's simply theft.

It's also theft for those who own both land and natural gas rights. Why? Because regulating away those rights, to leave landowners with only the residual value of the land for other uses, must be based on some evidence of an actual case for regulation. Read the DRBC justification singling out one county in Pennsylvania to disallow natural gas development and you'll be shocked at how shallow it is.

Indeed, the DRBC justification barely exceeds 9th grade competency in logic. It argues, for example, the risk of accidents and spills is too big. Yet, we're drinking water here today that comes from the Susquehanna River Basin, where we have a decade of experience with fracking and no one seriously worries about drinking it. Otherwise, you wouldn't be serving it to us. The proposed regulations, in fact, are based on purely speculative risks.

Something happened in Wayne County last week that illustrates. A line painting truck lost control coming down a hill, sideswiped another vehicle and tipped over into a pond creating a hazmat situation as paint and fuel seeped into the pond. It was a relatively big deal that brought out numerous agencies to supervise. Are we to now ban line painting? Are we to ban line painting trucks?

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There are myriad other examples of barge accidents on the Lower Delaware, train derailments on the Upper Delaware and truck accidents everywhere. These are accidents that result in stuff—bad stuff—going directly into the Delaware. There have been fires at chemical plants on the Delaware that have resulted in spills directly into the river. There have been overfeeds of chemicals into drinking water at treatment plants along the Delaware.

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

The DRBC also proposes stricter regulations on the exporting of water to other basins for natural gas development than exports of water for other purposes. Think about for a moment. If exports need to be governed than why in the world wouldn't the same rule apply to all. It's patently clear from this the DRBC is acting ideologically and politically, not scientifically or in accord with its compact. That's not equal justice under law.

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

Worse, it used the money to supposedly study gas issues and provide an excuse not to act on gas drilling regulations sitting on the shelf since 2011 with no end in sight. It's conflicts and collusion everywhere you look at the DRBC.

The DRBC state members have also engaged in a completely sham public hearing process with respect to the proposed fracking ban, with all four governors proudly and stupidly announcing how they'll vote before the hearings even began. Where is the equal justice under law in such sham hearings?

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

It's also assuming your police powers, deciding it has the power to control even land use within your jurisdiction. It is leaving you, and us, in the dust as it pulls more and more power to itself; to the corridors of an office building in West Trenton where unelected bureaucrats keep warm in winter with a newly installed gas heating system.

You can and must reassert your own authority; the authority to establish standards for natural gas development in all of Pennsylvania, not just those outside the DRBC region. Those standards can and are being met across Pennsylvania, in sub-watersheds already classified as Exceptional Value and subject to the highest threshold criteria. If the DRBC supposes it needs even higher standards let them develop them and apply them equally to all industries. That's equal justice. The DRBC is pursuing something else.

How do you do this? Multiple legislative initiatives are underway to ensure Pennsylvania retains its sovereignty and property owners get paid for what they are being asked to sacrifice. I support those bills. I also strongly suggest you take some other measures as well, including the reduction of Pennsylvania contributions to the DRBC to \$1.00 per year. They're sitting on tens of millions of dollars of unreserved funds they're wasting on denying us our rights. Giving them more money is a sacrilege, an insult to Pennsylvanians.

I also suggest the legislature immediately initiate a professional study of how to extricate itself from the DRBC. The agency has outlived its usefulness. Pennsylvania is more impacted by it than any other state and should assume the DRBC responsibilities itself, which it could presumably do if it honored its

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portion of any debt obligations. It could also enter into individual agreements with other states that do not compromise its sovereignty or sell out its citizens.

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