



## *Theodore Gordon Flyfishers, Inc.*

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*"I love these old streams- Neversink, Beaverkill, Willowemoc, etc.- and they have given much sport and pleasure to thousands of anglers." - Theodore Gordon 1907*

March 30, 2018

Commissioners  
Delaware River Basin Commission  
West Trenton, NJ

**RE: Proposed Amendments to the Administrative Manual and Special Regulations Regarding Hydraulic Fracturing Activities; Additional Clarifying Amendments**

Dear Commissioners,

I am writing regarding the Delaware River Basin Commission's ("DRBC" or "Commission") proposed regulations concerning natural gas development and hydraulic fracturing in the Delaware River Basin watershed (the "Basin") on behalf of Theodore Gordon Flyfishers, Inc. ("TGF"). We are an organization formed over 50 years ago whose mission is to protect cold water fisheries. Our members have a significant interest in protecting the waters of the Basin. We write to address current rulemaking regarding the permitting of water use as it related to high volume hydraulic fracturing.

We support the Commission's proposal to exclude hydraulic fracturing ("fracking") from the Basin, however, we also express our concern for certain aspects of the DRBC's proposed regulations. Therefore, we request that the DRBC enact a complete and permanent prohibition on natural gas development and hydraulic fracturing and all related activities; including without limitation, drilling, fracking, wastewater processing and discharges from and water withdrawals for drilling and fracking operations) throughout the Basin.

As an avid angler, I and my fellow TGF members are frequent visitors to the Delaware River Basin. We highly value and enjoy the Wild and Scenic Delaware River and its outstanding recreational resources. The entire drainage area that flows to the non-tidal Delaware River, which extends from Hancock NY to Trenton NJ, is designated as Special Protection Waters and is the longest stretch of river enjoying that protected designation in the country. These prized assets provide important economic benefit to all four states whose tributaries flow to the Delaware River and thus, deserve the utmost protection.

## **Historical Background**

As the federal-interstate agency formed under a Compact in 1961<sup>1</sup> to manage the water resources of the Watershed, the Commission members – the Governors of Pennsylvania, New York, New Jersey, and Delaware and the federal government – take action to protect the shared waters that provide over 15 million people with drinking water, including New York City and Philadelphia. The DRBC acts based on its powers to establish standards, plans, rules and regulations, and to control, prevent and abate pollution from activities that may have a substantial effect on the water resources of the Basin.<sup>2</sup> Through these means the DRBC works to protect public health and preserve basin waters<sup>3</sup> to meet “present and future needs”.<sup>4</sup> We support the DRBC’s mission to protect the shared watershed for the benefit of those who live, work and recreate here now and for future generations.

There is significant evidence that natural gas development, and its related operations have a substantial negative effect on public health, property interests, agriculture, and on our air, water, and land.<sup>5</sup> These harms flow from all the phases of the hydraulic fracturing process, from the first stage of industrial land preparation; to the storage, handling and use of chemicals and additives for extraction and stimulation; to drilling and fracking; to the withdrawal of and degradation of large volumes of water and to its discharge and disposal as waste. There are significant exemptions to environmental and public health regulations for operations associated with natural gas extraction, including to the Safe Drinking Water Act, Clean Air Act, and the Clean Water Act.<sup>6</sup> This is of grave concern since fracking fluids and wastewater from fracking operations contain a host of hazardous materials that present a serious danger if mishandled.

We applaud the DRBC’s currently prohibition on permitting for natural gas extraction projects in the Delaware River Basin. The Commissioners enacted a drilling moratorium by Resolution in May 2010<sup>7</sup>. Executive Director Carol Collier first removed the thresholds for project review in 2009. After considering the potential negative impacts of natural gas extraction from shale formations she determined that as a result of water withdrawals, wastewater disposal, and other activities, natural gas extraction projects in shale formations may individually or cumulatively affect the water quality of Special Protection Waters by altering their physical,

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<sup>1</sup> United States: Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688; Delaware: 53 Delaware Laws, Chapter 71, Approved May 26, 1961; New Jersey: Laws of 1961, Chapter 13, Approved May 1, 1961; New York: Laws of 1961, Chapter 148, Approved March 17, 1961; Pennsylvania: Acts of 1961, Act No. 268, Approved July 7, 1961.

<sup>2</sup> Delaware River Basin Compact, 1961 <http://www.nj.gov/drbc/library/documents/compact.pdf>.

<sup>3</sup> Delaware River Basin Compact, 1961 Section 5.2

<sup>4</sup> Delaware River Basin Compact, 1961, Section 13.1

<sup>5</sup> PSE Healthy Energy Library, [https://www.zotero.org/groups/pse\\_study\\_citation\\_database/items](https://www.zotero.org/groups/pse_study_citation_database/items); See Compendium, <http://concernedhealthny.org/compendium/>, p. 4; Environmental Protection Agency (EPA). 2015. U.S. EPA. Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-16/236F, 2016. Available at: [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy) and <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>; PADEP, accessed 10.25.2017 at: [http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/OilGasReports/Determination\\_Letters/Regional\\_Determination\\_Letters.pdf](http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/OilGasReports/Determination_Letters/Regional_Determination_Letters.pdf)

<sup>6</sup> NRDC Policy Basics, 2013. Available at: <http://bit.ly/2yPF7Re>

<sup>7</sup> DRBC Meeting Minutes of May 10, 2010, accessed at: <http://bit.ly/2yOjPmC>

biological, chemical or hydrological characteristics.<sup>8</sup> The current *de facto* moratorium on gas drilling, fracking, and associated activities includes wastewater discharges and water withdrawals. DRBC permits for wastewater discharges since 2010 have been conditioned on the prohibition of fracking wastewater to prevent degradation.

### **Water Withdrawals and Wastewater**

The DRBC's proposed regulations of exportation/withdrawal of waters from the Basin are not based on the kind of in-depth analysis that is necessary to understand the hydrogeologic and hydrologic traits of the Basin and surrounding areas under the pressure of voluminous withdrawals. At the watershed and sub-watershed level, allowing removal of water in the volumes required for fracking operations will endanger the high-quality ground and surface water resource for four states that the DRBC has worked hard to protect.

Further, substantive issues such as injury to ecosystems and stormwater management are not addressed by the proposed regulations. Impacts to native organisms as well as the potential introduction of invasive species must be addressed. Potential damage to the river from erosion and sedimentation that could result from industrial activities must also be addressed in a comprehensive manner in the proposed regulations. Based on the current regulations, we are not convinced that high volume water withdrawals are safe for the Basin. For example, invasive aquatic species introduced by the transfer of water into and out of the Basin can be devastating. One species of algae, *Didymosphenia geminata*, commonly known as Didymo or simply "Rock Snot" can be inadvertently introduced during transfer of water by the water itself or by equipment moved between watersheds. For the trout anglers like myself that frequent the Delaware River Basin, the impacts can make a beautiful river unfishable, with huge negative economic impacts.

The DRBC's proposed policy to "discourage the importation of wastewater into the Basin" and the proposed regulations of section 440.5 will not provide effective protection for the Basin from the impacts of wastewater. In protecting a waterway that is of the high environmental quality of the Delaware River Basin, fracking wastewater presents a looming disaster. The numerous potential negative impacts from hydraulic fracturing wastewater outweigh the effort to regulate same. Among the various issues, we note that the categories of chemicals, and the type of facility (and permitting) required for effective treatment, present enormous hurdles for high quality cold water fisheries. Simply stated, treated wastewater poses a significant threat to the fishery. Whether treated inside the Basin watershed, or already treated and imported by private companies (which, could be just as, if not more dangerous due to

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<sup>8</sup> Extracted from DRBC website 9.14.17: <http://www.nj.gov/drbc/programs/natural/archives.html#2> as per "Determination of The Executive Director Concerning Natural Gas Extraction Activities in Shale Formations Within The Drainage Area of Special Protection Waters", Carol R. Collier, Executive Director, May 19, 2009

potential poor quality control practices),<sup>9</sup> wastewater treatment is an imperfect science and the degradation of watersheds due to allowance of wastewater management is not uncommon.

### Conclusion

It is clear that the proposed regulations in the current form do not fully protect the Delaware River Basin's watershed. The comments submitted by this letter identify substantive and significant issues relating to Sections 440.4 and 440.5 of the proposed regulations and generally, regarding any fracking related activities in the Basin. After exhaustive study, the State of New York prohibited fracking based on environmental and public health analysis. The NY Department of Health concluded that the overall weight of the evidence demonstrated the likelihood of the occurrence of adverse health outcomes and environmental impacts from fracking could not be prevented, leading to the Governor's decision to ban high volume hydraulic fracturing in the state.<sup>10</sup> The potential negative impacts stemming from these activities would have long-term consequences for the Delaware River Basin.

Therefore, I respectfully request that the DRBC strike Sections 440.4 and 440.5 from the proposed regulations and revise the proposed regulations to prohibit any activities related to natural gas development and hydraulic fracturing; including without limitation, the storage, treatment, disposal and/or discharge of fracking wastewater within the Basin and the withdrawal of water from the Basin for fracking. Additionally, I fully support the DRBC in upholding the proposed prohibition to hydraulic fracturing in the Basin.

Thank you for your considerations.

Very truly yours,



Bert Darrow  
President, Theodore Gordon Flyfishers, Inc.

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<sup>9</sup> I note that section 440.5(b) appears to prohibit the importation of treated fracking wastewater from outside of the Basin, however, if an interpretation finds ambiguity with this subsection, the Commission should take into account the potential dangers of accepting imported treated fracking wastewater from outside of the Basin.

<sup>10</sup> [http://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/findingstatevhf62015.pdf](http://www.dec.ny.gov/docs/materials_minerals_pdf/findingstatevhf62015.pdf)  
[http://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf)