



For Immediate Release
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**Public to Speak Out at Delaware River Basin Commission
Hearing on XTO Energy Bid
For Frack Water Withdrawal in Broome County, New York**

Broome County, NY – The public is expected to crowd into Deposit High School auditorium tomorrow, June 1, to tell the Delaware River Basin Commission (DRBC) what they think about XTO Energy’s water withdrawal application (171 Second Street, Deposit, NY). XTO is a subsidiary of ExxonMobil and wants the water to hydraulically fracture natural gas wells they plan to drill in Broome and Delaware Counties (and perhaps beyond).

XTO Energy has applied to the DRBC for 0.25 million gallons of water per day from Oquaga Creek, a trout stream in Broome County, New York. The withdrawal site is on land owned by the Town of Sanford, which has given them access. There is no permit required by NY State; the DRBC provides the only review of this withdrawal. The withdrawal is classified as a consumptive/depletive use because it never returns to its source.

The Oquaga Creek flows to the West Branch Delaware River at Deposit above Hancock, New York. Both New York State and the DRBC are supposed to have special protections in place to protect trout and the Creek’s ecology. DRBC has classified the Wild and Scenic Delaware River and its tributaries as Special Protection Waters that cannot be degraded from their exceptional water quality. The proposed permit, issued April 28 for public review, was scheduled to be voted on at the DRBC’s May 11 public meeting after only 10 business days of public comment. An outcry of sentiment for more public input led the DRBC

Commissioners to table the vote and plan a public hearing within the next 30 days in the area of the withdrawal, Broome County. This resulted in the Public Hearing in Deposit. Approximately 10,000 letters have been submitted to the DRBC since the permit was announced, overwhelmingly in opposition.

The Hearing tomorrow will be attended by a wide array of concerned citizens—local residents, fishermen, town officials, and people from throughout the 13,000 square mile Delaware River Watershed. Carpools are coming from New York counties and cities in the region such as Binghamton and Cortland and northern Pennsylvania towns as well. Buses and vans are coming from as far away as Philadelphia, the Lehigh Valley and New York City. 15 million people drink Delaware River water so interest in water withdrawals and gas development in this region - currently under a drilling moratorium - is high.

“This proposed permit violates DRBC’s requirements to protect the outstanding natural resources of the Delaware River by allowing a water withdrawal to harm this important trout stream in the Upper Delaware and by not requiring comprehensive analyses and regulation that prevent pollution and degradation of the water resources of the Basin”, said Maya van Rossum, the Delaware Riverkeeper. “People will be at the Hearing to speak their mind – the Commissioners are required to listen”, concluded van Rossum.

A Coalition of groups is working together to oppose the water withdrawal application. Talking Points prepared by the Delaware Riverkeeper Network follow. A copy of DRN’s comment on the application is available at:

<http://delawareriverkeeper.org/resources/Comments/XTO%20Comment%205.11.11.pdf>

Action Alert with Hearing details is attached.

Talking Points
XTO Energy Application to Delaware River Basin Commission (DRBC)
for Water Withdrawal
from Oquaga Creek, Broome County, NY

XTO Energy wants to take 0.25 million gallons of water per day from Oquaga Creek, a trout stream that flows to the West Branch of the Delaware River in Broome and Delaware Counties to develop gas wells they plan to drill there. DRBC has proposed a permit that violates their own regulations and should be denied.

- ✓ A comprehensive environmental study, including near term and cumulative impacts of gas development on the Oquaga Creek, the West Branch Delaware River and all the water resources of Delaware River, must be done. Some studies such as New York’s

environmental impact study of high volume hydraulic fracturing, EPA's hydraulic fracturing study, and other analyses are already under way. DRBC has a gas drilling moratorium in place and has issued draft natural gas regulations that could change how water withdrawal applications would be handled. New York State has a moratorium on the use of their general permit for high volume hydraulic fracturing that employs horizontal drilling. The New York Attorney General has announced he will file suit against the federal representative on the DRBC for not conducting a full environmental impact study under the National Environmental Policy Act before the DRBC issued its draft gas rules, which could force a comprehensive study in the near future. It is untimely and irresponsible to approve this withdrawal before a full environmental analysis is done and while ongoing deliberations are in process.

- ✓ The Oquaga Creek will be substantially impacted by the withdrawal of 0.25 million gallons of water per day. This creek is a trout stream with a healthy spawning population of both brook trout and brown trout. Rainbow trout may also live and spawn in the Oquaga, according to local reports. Portions of this popular fishing creek are stocked by New York State with brown trout. Under New York regulations, the Oquaga is a "protected" trout stream with "special requirements that support these valuable and sensitive fisheries resources". Yet the habitat and flow regime needed by these fish will be inevitably affected by the withdrawal which will remove water regardless of the season and water quality, including oxygen levels and water temperature. These impacts have not been assessed; indeed there is not even up to date comprehensive data about the life in the creek. There is no evidence of any protection for the fish and aquatic life that live in this stream and there is no mention of their habitat needs. Without this, they are relegated to fend for themselves. This violates DRBC requirements.
- ✓ The Oquaga Creek, one of last larger tributaries of the West Branch with independent flows not affected by the Cannonsville Dam, is an important reproductive resource for trout not only in the creek but in the downstream West Branch, which has few undammed tributaries left.¹ Impacts to the Oquaga will have cascading adverse impacts to the West Branch and potentially to the main stem Delaware.
- ✓ The fresh water flows of the undammed Oquaga provide critical cold water and flow volume that helps to modify the releases from Cannonsville, which enters the West Branch of the Delaware in close proximity², contributing better quality aquatic habitat there and downstream.
- ✓ What matters most? XTO's withdrawal or local well water? There is the potential that XTO's withdrawal will adversely impact water wells for the area and downstream such as the Town of Deposit. The withdrawal of 0.25 million gallons of water will cause increased discharge of groundwater to the stream below the withdrawal site.³ In other words, the stream will try to make up for the upstream withdrawal by discharging from groundwater downstream and could cause diminishment of the aquifer that feeds local and regional wells. This could impact residents with private water wells and/or for municipal wells such as those for the Town of Deposit. Yet this has not been studied or assessed by the DRBC and it must be in order to protect water resources.

¹ Review of Ecological Impacts of XTO Energy, Inc., Draft Docket D-2010-022-1, Surface Water Withdrawal, Piotr Parasiewicz, PhD., Rushing Rivers Institute, 5.9.11, p. 1.

² Review of Ecological Impacts of XTO Energy, Inc. , Draft Docket D-2010-022-1, Surface Water Withdrawal, Piotr Parasiewicz, PhD., Rushing Rivers Institute, 5.9.11, p. 1

³ Review of XTO Energy Oquaga Creek Withdrawal, DRBC Docket D-2010-022-1", Peter Demicco, Demicco and Associates, 5.9.11

- ✓ This withdrawal and the drilling it will support will adversely impact Broome and Delaware Counties where XTO Energy plans to drill and frack gas wells. This is Exxon's first step towards the industrialization of the region. The proposed DRBC permit will also allow, with special approval, this water to be exported elsewhere – even out of state to Pennsylvania – to fuel gas well development.
- ✓ The Oquaga Creek is located in the DRBC's designated Special Protection Waters and flows to the Upper Delaware Wild and Scenic River. This means that this project can "DO NO Harm" to the River and its tributaries, or cause "No Measureable Change" to water quality. The proposed withdrawal violates the DRBC's requirements under SPW by:
 - reducing the flow in the stream and/or depleting the groundwater;
 - removing the natural flow regime, which will adversely impact fish and aquatic life and their habitats;
 - adding, discharging, or causing the release of pollutants into the groundwater or surface water, or by other means.
- ✓ DRBC has essentially given Exxon a free pass by issuing a draft permit without adequate information and with critical data and plans missing. The draft permit is substantially deficient and does not meet the DRBC's own requirements as set forth in their rules. Partial or unsubstantiated information or no information has been provided for, though not limited to, the following:
 - Maps, drawings, specifications and profiles of proposed structures
 - Effects of all structures or non-structural aspects of project
 - Meter, recording devices, and gauge specifications
 - Water intake design
 - Operation plan and truck hauling procedures
 - Distribution plan for the water
 - Map and lands acquired or occupied for the project
 - Cost estimate with financial plan
 - Regional water supply analysis
 - Wastewater disposal
 - Nonpoint source pollution control plan (runoff pollution)
- ✓ No out of basin transfer analysis, as required by the DRBC, has been done even though NONE of the water consumed will return to the Oquaga Creek or Delaware River Watershed. NO analysis of the impacts to the Oquaga Creek area, local community, the regional economy or its water supplies has been conducted. This violates DRBC requirements.
- ✓ NO analysis has been done of the impacts on the water supply of 15 million people, regionally and downstream of the withdrawal. Most of the water will be locked away from the hydrologic cycle and the rest will be irreparably contaminated; the water is an irreplaceable depletive loss. Yet no cumulative analysis has been done, putting at risk the water resource of the Basin, in violation of DRBC requirements.
- ✓ The centerpiece of Special Protection Waters (SPW) is the prevention of pollution and degradation yet the key plan that lays out how the project will prevent polluted runoff from leaving the site and entering surface and groundwater is missing from the application. DRBC proposes it can be approved AFTER THE FACT by the Executive Director, without a

public participation process. Stopping runoff pollution is NOT an afterthought—it is central to the tenants of SPW. This missing piece alone should require the proposed permit to be withdrawn.

- ✓ XTO Energy has not proven it needs this water. XTO has no gas well permits from New York or the DRBC. DRBC rules require that the “Area Served” be mapped to show how the water will be used but this was not done. Does the DRBC simply trust that Exxon needs the water? And who is to say it is more important to use the water for fracking wells instead of to supply drinking water and provide habitat for fish and aquatic life?
- ✓ The way the proposed permit is set up, we won’t know what we’ve got ‘til it’s gone. The water withdrawal will not be monitored as it should be. There should be at least one year of baseline monitoring of the creek’s water chemistry, fish and aquatic life, and flows above, at, and below the site to accurately understand the subwatershed and its surface waters and to therefore insure that the project will not degrade the stream and water supplies. Monitoring by permanent gauges at key points of the stream is needed as is well water monitoring to follow water table impacts; all reports should be public. These are not required in the proposed permit. “Out of sight, out of mind” is not acceptable!
- ✓ Fish and other species will pay the price of this withdrawal. The proposed pass-by flow of 8 cubic feet per second (cfs) and a withdrawal rate of 500 gallons per minute is not based on ecology or the water quality and habitat needs of the Oquaga Creek (the 8 cfs pass-by flow is simply a calculation based on the Q7-10, which is essentially a minimum flow set to meet point discharge water quality standards, not to keep fish alive) yet the DRBC regulations require that the project not have a deleterious effect on the stream. The 8 cfs flow occurs less than 14% of the time at the Deposit gauge; it is commonly referred to as base flow⁴. This will essentially condemn the creek to a flattened low level flow with no seasonal variation and no natural flow regime. DRBC should require an instream flow regime that will protect the fish and aquatic life in the Oquaga Creek, the West Branch, and the Delaware River. Without this habitat protection, sensitive species such as trout, mussels, macroinvertebrates and other species will perish or be diminished.
- ✓ Public fishing rights may be interfered with by the XTO withdrawal site. Who says gas drilling and fracking is more important than public fishing rights? Fishing is a crucial part of the local economy and an important recreational use for the Creek, the State Park, and community.
- ✓ The wastewater plan is flawed. The Pennsylvania facilities named in the permit for the produced gas drilling wastewater currently operate at capacity and there is no proof that they can add wastewater from new XTO gas wells or that the wastewater can be safely processed. In fact, the facilities named all are “grandfathered” from effluent requirements recently adopted by PADEP and the rivers they discharge to are grossly impacted by briny effluents. The DRBC requirement that wastewater must be discharged of in a legal and responsible manner is not met in this permit. In addition to proving safe disposal will occur, DRBC should require a policy that prohibits Delaware River waters to be discharged as gas drilling wastewater contaminants into surface or groundwater.

⁴Review of XTO Energy Oquaga Creek Withdrawal, DRBC Docket D-2010-022-1”, Peter Demicco, Demicco and Associates, 5.9.11.

- ✓ The proposed permit will allow XTO to “reuse” the flowback from fracking operations yet there are no water quality standards for this practice. We cannot risk the pollution of groundwater by the injection of gas drilling wastewater or flowback.
- ✓ DRBC fails to assess the impacts of the use of the water it is allocating to XTO for fracking and drilling. Under DRBC rules, they must address these impacts. Hydraulic fracturing and gas well drilling expose the environment and the water resources of the Basin to pollution and degradation yet DRBC fails to address this. This is a fatal flaw in this proposed permit.
- ✓ The lack of public input into major portions of this proposed docket is shameful. Many of the most important provisions are left to after-the-fact approvals by the Executive Director without a public input process that can influence the decisions that will be made. This is contrary to good government and throws a veil of secrecy over what should be an open, participatory process. The public deeply cares about this issue. Over 10,000 letters have been submitted to the DRBC regarding this permit since April 28 when the proposed docket was announced. This cries out for public input, not behind-the-scenes agency determinations.
- ✓ The public has little opportunity to participate in the decisionmaking process. There has been less than 30 business days available to the public to provide written comments on this important precedent setting water withdrawal, the first in New York State and the first for Exxon, who is pushing to get their foot in the door. The public comment period should be kept open for at least 30 days, more appropriately 60 more days, following the Deposit Hearing since so many people and officials are just finding out about this proposal. One public hearing in West Trenton and one in Broome County is still not enough. Public hearings need to be held throughout the Basin so that all populations affected can participate fully.

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