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Petition Filed for Writ to Force Decision on Proposed Deepening

Delaware Audubon Society * Delaware Nature Society * Delaware Riverkeeper Network

For Immediate Release

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Contacts:

Maya K. van Rossum, the Delaware Riverkeeper

Elizabeth Koniers Brown, Senior Attorney, Delaware Riverkeeper Network

Nick DiPasquale, Delaware Audubon Society

Richard A. Fleming, Delaware Nature Society

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Dover, Delaware – On December 15, the Delaware Riverkeeper, Delaware Riverkeeper Network, Delaware Audubon Society, and Delaware Nature Society filed a Petition for a Writ of Mandamus, asking the Superior Court, New Castle County, to force Delaware's Secretary of the Department of Natural Resources and Environmental Control to issue a decision regarding the subaqueous lands and wetlands permit and water quality certification application for the proposed Delaware River Deepening project.

"It has been five and a half years since the hearing officer recommended that this permit application be denied; eight years since this whole process began; it's not just that we got tired of waiting, rather, forcing us to wait was denying us our rights and abilities to take action to protect our natural resources. Without a decision, we have been unable to advance our efforts to defeat this boondoggle, and instead it has allowed the Army Corps to continue to monkey around with the record and the politics in order to force this project forward." declared Maya van Rossum the Delaware Riverkeeper and head of the Delaware Riverkeeper Network.

Nick DiPasquale, Conservation Chair for the Delaware Audubon Society noted, "secret meetings between Secretary Hughes and the Corps of Engineers on this project have cast a cloud over the decision-making process. We believe the Secretary should make his decision based on the record that is presently before him and the Hearing Officer's report and recommendations. To do otherwise would be a violation of the public trust."

Delaware Riverkeeper Network

300 Pond Street, Second Floor
Bristol, PA 19007

tel: (215) 369-1188

fax: (215) 369-1181

drkn@delawareriverkeeper.org
www.delawareriverkeeper.org

Delaware Nature Society's Richard A. Fleming stated "It is in the best interests of the Corps – as well as DNREC and the public -- that the Secretary promptly issue his decision on the current application. After five years of inaction it is time for resolution."

The attorney representing the organizations, Elizabeth Koniers Brown, Senior Attorney with the Delaware Riverkeeper Network, stated that "The petitioners have taken this extraordinary step because they feel that the public deserves a decision from DNREC on this deeply contentious issue. Through a writ of mandamus, the Court has the power to restore a sense of fairness and accountability to the permitting process by ordering the Secretary of DNREC to act upon the permit application." Mid-Atlantic Environmental Law Center, which shares a long history of involvement in the opposition to the Deepening project, serves as local counsel in the case.

William Moyer, retired Environmental Program Manager with DNREC's Wetlands and Subaqueous Lands Section stated that, "this project received the most thorough evaluation and public participation of any project that my office reviewed in my thirty years at DNREC. For its efforts and involvement, the public deserves and is entitled to a timely permit decision."

According to van Rossum, "the agency's failure to issue a decision is putting the State's permitting authority in jeopardy. As a result of the dramatic delay in decisionmaking the Army Corps is making public threats to bypass the State altogether and to move the project forward without any permit decision at all."

The proposal to deepen the Delaware River's main navigation channel was first put forth officially in 1992.

The Army Corps submitted an application to the DNREC seeking a subaqueous lands and wetlands permit and water quality certification for the project in January 2001. In December 2003 the administrative hearing officer issued a report to the Secretary of DNREC recommending the Secretary deny the Corps' permit application finding that the Army Corps failed to provide "sufficient and necessary information to meet the regulatory burden to obtain a permit under the authority of Chapter 66, as potential adverse effects have not been proven to be minimized." (Hearing Officer's Report, p. 58).

To date, Secretary John Hughes has not rendered any decision on the permit application. Recent newspaper articles have reported that the Secretary has met with the Army Corps and been given new information about the project; the public asserts that it has been denied similar meetings with the Secretary and that the materials received are ex parte communications which the Secretary may not consider in his decisionmaking.