



For Immediate Release
October 4, 2010

Contacts:

Maya van Rossum, the Delaware Riverkeeper 215 369 1188 ext 102
Tracy Carluccio, Deputy Director for the Delaware Riverkeeper Network
(Office) 215-369-1188x104 (cell) 215-692-2329

Press Statement from Delaware Riverkeeper Network:

**Army Corps of Engineers
Emerges as Rogue Agency**

Philadelphia, PA – The Army Corps of Engineers is the “ex officio” appointee that represents the federal government vote on the Delaware River Basin Commission, one of the five votes on the Commission that make decisions about the water resources of the Delaware River Watershed. In that role, the federal member is representing the President of the United States.

The federal representative is supposed to confer with and reflect the input of other federal partners such as the National Park Service and the U.S. Fish and Wildlife Service in its deliberations regarding DRBC policies, projects and voting matters. Unfortunately, as the natural gas industry chafes at the bit, anxious to start drilling here in the Delaware River Watershed where there is a moratorium in place on gas production wells, pressure is building.

Recently New Jersey pushed the DRBC to fast track gas regulations before an essential cumulative impact study is done. Then the Army Corps sent a letter to Congressman Maurice Hinchey glorifying “economic development” over scientific study and a measured approach to gas drilling regulation and oversight. These and other poor policy decisions are beginning to unravel the DRBC’s ability to protect the water supply for 15 million people and the outstanding features and ecosystems of the Delaware River watershed, the very mission that the DRBC is mandated to fulfill.

Delaware Riverkeeper Network
300 Pond Street, Second Floor
Bristol, PA 19007
tel: (215) 369-1188
fax: (215) 369-1181
drkn@delawariverkeeper.org
www.delawariverkeeper.org

Congressman Hinchey had written the Corps as a federal lawmaker asking that they support the completion of the federally funded cumulative impact study he and other members of the Delaware River Congressional delegation are marshalling through the appropriations process and urging that the study be completed prior to the promulgation of gas regulations by the DRBC.

In addition to disregarding the requests of Congressman Hinchey, the Corps also notably ignored the written requests of the National Park Service and Department of the Interior for the completion of the cumulative impact study of the potential impacts of gas development on the “water quality and scientific features” of the River Basin and its Special Protection Waters, and to include all natural gas projects, including all exploratory wells, in their review and regulation, not allowing any to start construction at this time. In addition, the Corps has ignored the public voice, expressed for months in thousands of submitted letters and by the appearance of hundreds of residents attending DRBC public meetings advocating for “Study first, a full moratorium now during the course of that study, and once study information is available then regulate to prevent pollution”.

Says Maya van Rossum, the Delaware Riverkeeper, “The Army Corps has emerged as a rogue agency, ignoring input from other federal partners and pushing instead for fast tracking regulations before a cumulative impact assessment is completed.”

The Army Corps approved the water withdrawal for Stone Energy on July 15 (.70 million gallons of water per day from the West Branch Lackawaxen River for fracking their wells) and voted to deny Delaware Riverkeeper Network’s “Request for Hearing” (a legal challenge to the Stone water approval). They also voted to deny the joint request by Delaware Riverkeeper Network and Damascus Citizens for Sustainability for a stay to keep a group of grandfathered “exploratory” wells from moving ahead in Bucks and Wayne Counties, PA. And they say they are doing it all for “economic development” and to “secure energy reserves”, despite the fact that there is no provision for such considerations by the DRBC; the DRBC exists for water resource and watershed protection according to its Compact.

“It is essential that a cumulative impact assessment of the potential impacts of gas development be completed and this study needs to be used as the basis for the new DRBC regulations. Right now, being pushed by the Army Corps, the DRBC is planning to do it backwards – to allow drilling first, and do the study of the harms of gas drilling later when it is too late to take advantage of its findings in crafting their gas rules,” said van Rossum, the Delaware Riverkeeper.

“Delaware Riverkeeper Network thanks Congressman Hinchey and our other elected officials who are working to assure that this crucial assessment is completed for the Watershed in order to inform the DRBC gas rulemaking so regulations that prevent pollution and degradation can be adopted and that no gas-related projects proceed while the study is underway,” said van Rossum.

Congressman Hinchey replied to the Army Corp’s letter on September 30. In a strong rebuff of the Corp’s errant actions, Congressman Hinchey cited the underlying regulations that created and guide the DRBC and challenged the Corps with several questions. The text of his letter follows.

September 30, 2010

Brigadier General Peter A. DeLuca
Commander and Division Engineer, North Atlantic Division
U.S. Army Corps of Engineers
302 General Lee Avenue
Brooklyn, NY 11252

Dear General DeLuca:

Thank you for your prompt response to my recent letter regarding regulations for gas exploration and drilling in the Delaware River Basin. While I appreciate learning your views on this matter, your letter raises very serious and troubling questions about the role of the Delaware River Basin Commission's (DRBC) federal representative, how the views of other federal agency partners are represented at the DRBC, and the obligations of the DRBC to protect one of our country's largest sources of drinking water.

In the recent letter, you note, "The federal family of agencies that I represent on the commission are collectively charged with a requirement to support the economic needs of the region and our nation's need to secure energy reserves while protecting the environment." While this charge may be legislatively specified for other federal and state agencies, there is no legislative authorization for the DRBC that supports such an interpretation of the federal representative's role on that commission. In fact, this statement contradicts Congressional intent and ignores the specific interests that Congress cited in creating the DRBC and in establishing multiple federal designations and protections along the length of the Delaware River. These designations include the Upper Delaware Scenic and Recreational River, the Delaware Water Gap National Recreation Area, the Middle Delaware National Scenic River, and the Lower Delaware Wild and Scenic River.

As you know, the DRBC was established by Congress in 1961 and signed into law by President John F. Kennedy to protect and manage the waters of the Delaware River Basin. The Compact specifies the DRBC's role in protecting and managing key interests such as water supply, pollution control, flood protection, watershed management, recreation, hydroelectric power, and regulation of withdrawals and diversions. The Compact between the federal government and four basin states specifically notes:

"Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirement of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from rivers, streams, and water in the basin...^[1]"

The Compact provides no charge or direction to the DRBC to "secure energy reserves," other than hydroelectric power, particularly if such activities jeopardize the federally-protected Special Protection Waters of the basin. This charge is explicitly cited numerous times in the law. Unfortunately, without the benefit of a cumulative impact study of gas exploration and drilling in the Basin, the DRBC cannot accurately assess how the development of up to 30,000 gas drilling wells will impact the Basin's water resources or fully protect the Basin's invaluable water and natural resources.

In terms of representing other federal interests, the interpretation cited in your letter also contradicts the Wild and Scenic Rivers Act of 1968 and the inclusion of large segments of the Delaware River in that federal system. The Act describes the "Congressional declaration of policy" as follows:

"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."^[2]

^[1] Delaware River Basin Compact, Public Law 87-328, Approved 1961. 75 Stat. 688. Section 5.3 Cooperative Legislation and Administration

^[2] U.S. Code, Title 16, Chapter 28 - Wild and Scenic Rivers, Section 1271(b)

Widespread reports of water contamination and adverse impacts, however, raise serious questions as to whether the use of hydraulic fracturing for gas exploration and drilling in the Delaware River Basin is consistent with this policy.

As I noted in my prior letter, the National Park Service (NPS) and U.S. Fish and Wildlife Service (USFWS) have also conveyed to the Army Corps of Engineers (ACE) their agencies' concerns about drilling activities in this basin, citing the federal protective designations and other important national interests and supporting a cumulative impact study^[3]. However, your letter makes no mention of the concerns publicly expressed by any of the "family of federal agencies" that you indicate the Army Corps represents.

At a time when the wells of private citizens near gas drilling sites in Pennsylvania and many other states are being investigated by the U.S. Environmental Protection Agency and state regulatory bodies for contamination by methane and fracking fluids, we should be doing everything we can to ensure that the Special Protected Waters (SPW) of the Delaware River Basin, which supplies drinking water to millions of people, is home to endangered fish and wildlife, and supports the local recreation and tourism economies for scores of local communities, is protected against the risks of natural gas drilling.

Given the serious nature of this issue and the vagueness of your prior response, I request that you please provide answers to the following questions:

- What are the "federal agencies" you represent at the Delaware River Basin Commission?
- What is the legal basis, be that statutory or regulatory, on which you based your statement that the "family of federal agencies" you represent are charged with supporting "the economic needs of the region and our nation's need to secure energy reserves?"
- What is the legal basis, be that statutory or regulatory, on which you based your statement: "This balancing [environmental protection to proceed together with economic development] was an underlying reason for the creation of the Commission?"
- How have you complied with your agency's environmental review requirements and other responsibilities under the National Environmental Policy Act?
- Did you, or anyone in your agency, conduct any environmental reviews on the cumulative impact of gas drilling on the Delaware River Basin's water quality, drinking water supplies, or fish and wildlife?
- Did your agency conduct any analysis of the potential negative economic consequences of gas drilling to other sectors of the economy, including tourism, recreation, second home construction, and agriculture?
- How did you incorporate the views of other federal agencies before making a decision to approve a water withdrawal for gas drilling (Stone Energy Docket D-2009-01301, approved 7.14.10) and to support the "grandfather" exceptions to the Supplemental Executive Director Determination for a number of exploratory wells?
- Did you consult with other federal agencies prior to drafting and sending your response to my letter?
- Was your response to my letter approved by any superior officers at the Army Corps of Engineers, the Department of the Army, or senior administration officials before it was sent?
- Can you provide the schedule that shows that "several public hearings as well as a written comment period sometime later in the calendar year" have been arranged to address drilling in the Delaware River Basin?

I look forward to your timely response.

Sincerely,

Maurice D. Hinchey

^[3] June 25, 2010 Letter from USFW and NPS to Carol Collier.

###