

June 11, 2018

The Pennsylvania State Senate

Dear Senator,

We are opposed to Senate Bill 1189, legislation cited as “The Delaware River Basin Commission Eminent Domain Activity Act”. This dangerous and uniformed legislation would designate the enactment of a ban on hydraulic fracturing activities in the Delaware River Basin (DRBC) as a “taking” and “the exercise of the power of eminent domain that entitles the owners of the property in questions to appropriate and just compensation.”

The Delaware River’s waters are protected under the terms of the Delaware River Compact, the DRBC’s Special Protection Waters Program, and regulations adopted in its Comprehensive Plan and its Rules of Practice and Procedure. The bill reflects a lack of correct interpretation of the DRBC’s authority and its decision making process. Furthermore, it demonstrates a lack of understanding of the functions of government in general.

It is important to note that the bill would violate the separation of powers doctrine as it is the role of the courts, not the legislature, to determine whether a regulation constitutes a taking.

Regarding the DRBC’s authority, the bill would violate the Compact and principles of federalism, as a state can’t unilaterally impose requirements on an interstate compact commission.

DRBC is considering a ban on high volume hydraulic fracturing in the Delaware River Basin through their standard regulatory process. The public has participated in the process by commenting from November 30, 2017 to March 30, 2018 on publicly noticed draft regulations entitled “Proposed New 18 CFR Part 440 - Hydraulic Fracturing in Shale and Other Formations; Proposed revisions and additions to section 18 CFR 401.35 relating to project review classifications”. DRBC is currently considering the comments received and is expected to vote on the proposed regulations by the end of 2018. All actions of the DRBC on these proposed regulations have been carried out according to their rules and established process.

Furthermore, government agencies, including DRBC, make decisions that impact land use, water resources, and property as a matter of course, it would be impossible to carry out government functions without regulations that effect what activities can and cannot occur on land, including on private property. It is a matter of settled law that these functions are proper and necessary to protect the public and the environmental resources.

As is made clear by the Pennsylvania Constitution Article 1, Section 27:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

We respectfully request that you vote against the adoption of SB1189 and not allow this ill-informed bill to advance any further through the legislative process. The resources of the Senate should be spent on efforts that have merit and benefit the people of the Commonwealth, neither of which this bill does.

Thank you for your consideration,

Respectfully submitted,



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CC: The Honorable Tom Wolf, Governor, Commonwealth of Pennsylvania