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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**DELAWARE RIVERKEEPER NETWORK
and the DELAWARE RIVERKEEPER,**

Plaintiffs,

v.

**DELAWARE RIVER BASIN COMMISSION
and CAROL COLLIER, Executive Director (in
her official capacity),**

Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Civ. No.:

INTRODUCTION

1. In this action, Plaintiffs Delaware Riverkeeper Network and the Delaware Riverkeeper challenge the Delaware River Basin Commission's (DRBC)'s approval of Stone Energy Corporation's water withdrawal docket, D-2009-13-1. The docket, issued pursuant to DRBC's authority under the Delaware River Basin Compact, approves the withdrawal of up to 0.7 million gallons of water per day (mgd) from the West Branch of the Lackawaxen River (WBLR) in Mount Pleasant Township, Wayne County, Pennsylvania, within the watershed of the Delaware River. This water will be used in Stone's natural gas development and extraction activities targeting shale formations in the Marcellus Shale. According to the final docket decision, "natural gas development and extraction activities include or are associated with: mud rotary/air rotary natural gas well drilling, hydraulic fracturing well stimulation, mixing cement for well construction, mixing drilling mud/fluid, support vehicle tire cleaning, dust control and site construction and reclamation on associated well pad sites and access roads." Defendants approved this massive extractive use of the Delaware River's aquatic resources without full compliance with applicable procedural and substantive requirements and without ensuring required levels of protection for water quality in Special Protected Waters areas. Accordingly, Plaintiffs file this action for declaratory and injunctive relief to have Defendants' approval of docket 2009-13-1 declared unlawful and set aside.

PARTIES

2. Plaintiff Delaware Riverkeeper Network (DRN) is a non-profit organization established in 1988 to protect and restore the Delaware River, its tributaries and habitats. To achieve these goals, DRN organizes and implements streambank restorations, a volunteer monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and

environmental law enforcement efforts throughout the entire Delaware River watershed – an area which includes portions of New York, New Jersey, Pennsylvania and Delaware. The DRN is a membership organization with 6,500 members throughout the Delaware River watershed.

3. Plaintiff the Delaware Riverkeeper is a full-time privately funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper, Maya van Rossum, advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its tributaries and habitats.

4. DRN petitioned DRBC to grant the Upper and Middle Delaware Wild and Scenic River segments Special Protection Waters (SPW) status. DRBC took this action in 1992. In 2001, DRN again petitioned DRBC to classify the Lower Delaware as SPW. As a result of DRN's efforts, the DRBC permanently designated the Lower Delaware as Significant Resource Waters, a type of SPW, in July 2008. DRN also requested in its 2001 petition that DRBC fulfill the requirements for prioritization of the Upper and Middle Delaware Wild and Scenic River segments. The entire non-tidal Delaware River is now protected by SPW anti-degradation regulations.

5. Not only was DRN directly involved in applying SPW status to the non-tidal Delaware, but the Delaware Riverkeeper, DRN, and DRN's members all enjoy the water quality values of the Delaware River, particularly within the drainage area of SPW. DRN members boat, fish, canoe, birdwatch, hike, and participate in other recreational activities throughout the watershed, particularly within the drainage areas of SPW, and including the West Branch of the Lackawaxen River and areas downstream. Our members will be adversely affected by any change in water quality and flow to the West Branch of the Lackawaxen River and areas

downstream and subsequent impacts to habitat, boating, fishing, and other recreational and aesthetic uses of the waters within the Delaware River watershed because of DRBC's approval of Stone Energy Corporation's water withdrawal docket D-2009-13-1.

6. The Delaware Riverkeeper, Ms. van Rossum, regularly visits the Delaware River for personal and professional reasons and her use and enjoyment of the River will be diminished by DRBC's approval of Stone Energy Corporation's water withdrawal docket D-2009-13-1 and the impacts to the West Branch of the Lackawaxen River and areas downstream resulting from this approval.

7. Defendant Delaware River Basin Commission is an agency and instrumentality created by the signatory parties to the Delaware River Basin Compact of 1961. It consists of the four governors of Delaware, New Jersey, New York, and Pennsylvania, ex officio, and the Division Engineer, North Atlantic Division, U.S. Army Corps of Engineers, who serves as the federal representative. The DRBC is charged with conserving and managing the water resources of the Delaware River and its watershed.

8. Defendant Carol R. Collier is the Executive Director of the Delaware River Basin Commission and is named in her official capacity.

JURISDICTION AND VENUE

9. This Court has jurisdiction of this action under 28 U.S.C. 1331 (federal question jurisdiction), by virtue of the Delaware River Basin Compact, 75 Stat. 688, Pub. L. 87-328 (Sept. 27, 1961). Compact Article 15.1(p) reads in relevant part: "The United States district courts shall have original jurisdiction of all cases or controversies arising under the Compact..."

10. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2202 (declaratory and injunctive relief).

11. DRBC Rule of Practice and Procedure Section 2.6.10, 18 C.F.R. § 401.90, provides:

Any party participating in a hearing conducted pursuant to the provisions of this article may appeal any final commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of the final Commission action.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because it is the judicial district within which Defendants Delaware River Basin Commission and Carol Collier, Executive Director of DRBC, are located, and Defendants' actions approving D-2009-13-1 giving rise to this complaint occurred within this judicial district.

13. Plaintiffs have timely filed this action within 45 days of Defendants' denial on September 15, 2010, of Plaintiffs' request for a hearing on D-2009-13-1. Plaintiffs have exhausted their administrative remedies and have no adequate remedy at law. Unless the Court grants the requested relief, Defendants' actions will allow irreparable harm to the environment, to Plaintiffs, and to the public. No monetary damages or other legal remedy can adequately compensate Plaintiffs or the public for these harms.

STATUTORY FRAMEWORK

14. Section 3.8 of the Delaware River Basin Compact requires that

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation, or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

See also 18 C.F.R. § 401.32.

15. The Comprehensive Plan is established by Article 13.1 of the Compact:

The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management and control of the water resources of the basin to meet present and future needs.

16. The DRBC implements the Delaware River Basin Compact through the Delaware River Basin Water Code (W.C.), 18 C.F.R. Part 410, as well as the Delaware River Basin Administrative Manual: Rules of Practice and Procedure.

17. W.C. Section 2.30.4 states: “All projects involving a transfer of water into or out of the Delaware Basin must be submitted to the Commission for review and determination under Section 3.8 of the Compact, and inclusion within the Comprehensive Plan.”

18. An exportation of water is defined as: “[W]ater taken from within the Delaware River Basin and transferred or conveyed to an area outside the drainage area of the Delaware River and its tributaries, including the Delaware Bay, and not returned to the Delaware River Basin.” W.C. Section 2.30.1.

19. Exportations of water are a form of consumptive use. Consumptive use is “loss of water from a groundwater or surface water source through a manmade conveyance system . . . due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion out of a basin, or any other process to the extent that the water withdrawn is not returned to the waters of a basin.”

20. W.C. Section 2.30.2 establishes the “Policy of Protection and Preservation”:

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the

policy of the Commission to discourage the exportation of water from the Delaware River Basin.

21. W.C. Section 2.30.3 (“Safeguard Public Interest”) requires the DRBC’s “review and consideration of any public or private project involving the importation or exportation of water [to] be conducted pursuant to this policy and shall include assessments of the water resource and economic impacts of the project and of all alternatives to any water exportation or wastewater importation project.”
22. W.C. Section 2.30.4 requires the applicant to address eight issues, including:
 - A. Efforts to first develop or use and conserve the resources outside of the Delaware River Basin.
 - B. Water resource impacts of each alternative available including the "no project" alternative.
 - C. Economic and social impacts of the importation or exportation and each of the available alternatives including the "no project" alternative.
 - D. Amount, timing and duration of the proposed transfer and its relationship to passing flow requirements and other hydrologic conditions in the Basin, and impact on instream uses and downstream waste assimilation capacity.
 - E. Benefits that may accrue to the Delaware River Basin as a result of the proposed transfer.
 - F. Volume of the transfer and its relationship to other specified actions or Resolutions by the Commission.
 - G. Volume of the transfer and the relationship of that quantity to all other diversions.
 - H. Any other significant benefit or impairment which might be incurred to the Delaware River Basin as a result of the proposed transfer.
23. W.C. Section 2.30.8 states the DRBC’s “Conservation Requirements”: “It is the policy of the Commission that all applications involving out-of-the Basin transfers indicate the conservation measures which have been taken to forestall the need for a transfer of Delaware River Basin water.”

24. W.C. Section 3.10.3.A.2.b.1 applies to Special Protection Waters and requires that the commission must review and condition approvals based on insuring that no measureable change to existing water quality “occurs at Boundary and Interstate Control Points” for these waters.

25. W.C. Section 3.10.3A.2.e. requires that “Projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the project’s service area which is also located within the drainage area of Special Protection Waters.”

26. By regulation, the DRBC requires permit applicants to address the impact of their proposed projects on the basin. Specifically, “applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the basin.”

Rules of Practice and Procedure Section 2.3.7(A).

FACTS

27. On March 5, 2009, Stone Energy Corporation, upon information and belief a Louisiana corporation, submitted a docket to the DBRC for review of a surface water withdrawal of up to .70 million gallons of water per day from the West Branch of the Lackawaxen River (WBLR). The withdrawal will be used to support Stone’s natural gas development and extraction activities targeting shale formations within the drainage area of Special Protection Waters within the Delaware River Basin in the Commonwealth of Pennsylvania. The WBLR is part of the Delaware River watershed and is classified by Pennsylvania Department of Environmental Protection (PADEP) as a high quality cold water fishery stream.

28. Since 2008, the entire non-tidal Delaware River has been protected by Special Protection Waters anti-degradation regulations. On May 19, 2009, the DRBC promulgated an Executive

Director Determination that recognized, inter alia, that as “a result of water withdrawals, wastewater disposal and other activities, natural gas extraction projects in these shale formations may individually or cumulatively affect the water quality of Special Protection Waters by altering their physical, biological, chemical or hydrological characteristics.”

29. Flow levels in the WBLR have been consistently below the 25% average at the Aldenville Gage, which is the minimum pass by flow rate to withdraw water. Stone Energy Corporation has been authorized by DRBC through Docket 2009-13-1 to remove 39% of the total flow of the WBLR. This diminution could contribute to excessive stress on the WBLR, causing additional harm to the sensitive aquatic community downstream. Higher temperatures, low flow conditions, and the potential shift of benthic life suggest that DRBC’s approval may jeopardize water quality in the WBLR.

30. The DRBC held a public hearing on the Stone Docket on February 24, 2010. The DRN and its members participated in this hearing. The DRN submitted extensive written regarding the proposed water withdrawal docket on April 12, 2010.

31. On July 14, 2010 the Delaware River Basin Commission made public its decision to approve Stone’s docket, D-2009-13-1.

32. On August 13, 2010, the DRN submitted a hearing request to the DRBC regarding the Stone Energy Water Withdrawal Docket.

33. On September 15, 2010, the DRBC denied the DRN’s request for a hearing regarding the Stone Energy Water Withdrawal Docket.

34. With the DRBC’s denial of this hearing request, Defendants’ action approving D-2009-13-1 constitutes final agency action and is ripe for judicial review. Plaintiffs have exhausted all administrative remedies and timely file this complaint.

CLAIMS FOR RELIEF

COUNT ONE:

Defendants' Approval of Stone Energy Corporation Docket 2009-13-1 Failed to Meet the Procedural and Substantive Requirements of the Water Code and Rules of Procedure and Practice and is therefore Arbitrary, Capricious, an Abuse of Discretion, and Otherwise Not In Accordance with Law

35. The allegations in paragraphs 1 through 34 are hereby incorporated by reference as if fully stated herein.

36. W.C. Section 2.30 applies to D-2009-13-1 because the project entails a transfer of water out of the Delaware River Basin. Upon information and belief, Stone Energy Corporation failed to provide Defendants with all of the information required by W.C. Section 2.30.4 governing applications for dockets entailing transfers of water out of the Delaware River Basin.

37. Defendants' approval of D-2009-13-1 failed to include a determination that the Docket meets the standards of W.C. Section 2.30.3. Defendants failed to assess the water resource, the economic impacts of the project, and all alternatives to the water exportation caused by the project.

38. Defendants violated W.C. Section 2.30.2, which states the policy of the DRBC to discourage exportation of waters from the Delaware River Basin due to frequent drought and limited quantity of water, by failing to ensure that water conservation and flow considerations were fully considered and addressed prior to approval of D-2009-13-1.

39. Defendants failed to require Stone Energy Corporation to meet all of the requirements of Rule of Practice and Procedure Section 2.3.8(A) governing the information and exhibits that must be included with a docket application. Upon information and belief, Stone Energy Corporation did not submit and Defendants did not require prior to approving D-2009-13-1, full information on 2.3.8.(A)(7) "[an] estimate of the cost of completing the proposed project, and

sufficient data to indicate a workable financial plan under which the project will be carried out,” and on 2.3.8.(A)(8) “analyses and conclusions of regional water supply and wastewater investigations.”

40. Accordingly, Defendants’ approval of D-2009-13-1 was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and Plaintiffs are entitled to relief.

COUNT TWO

Defendants’ Approval of Stone Energy Corporation Docket 2009-13-1 Failed to Meet the Additional Legal Requirements Regarding Water Quality Impacts to Special Protection Waters and is therefore Arbitrary, Capricious, an Abuse of Discretion, and Otherwise Not In Accordance with Law

41. The allegations in paragraphs 1 through 34 are hereby incorporated by reference as if fully stated herein.

42. The WBLR is located within the drainage area of an area designated as Special Protection Waters. Accordingly, the DRBC was required to ensure that the Stone water withdrawals from the WBLR would result in “no measurable change” to existing water quality at “Boundary and Interstate Control Points” for these exceptional waters. W.C. Section 3.10.3.A.2.b.1.

43. Defendants’ approval of the Stone Energy Corporation Docket is likely to have substantial effects on the water resources of the Delaware River Basin by reducing the flow in the stream and/or depleting the groundwater, by adding, discharging, or causing the release of pollutants into the groundwater or surface water, or by other means. Therefore, Defendants have failed to ensure that approval of the Final Docket would result in no measurable change to existing water quality in the SPW.

44. Defendants were required by W.C. Section 3.10.3.A.2.e.1 and W.C. Section 3.10.3.A.2.e.2 to require that Stone Energy Corporation submitted for approval a non-point source pollution control plan (NPSPCP) to control new or increased non-point source loads,

including erosion and sediment controls as well as post-construction stormwater controls.

Defendants approved D-2009-13-1 with a condition that Stone Energy Corporation submit its NPSPCP for approval at a future date. D-2009-13-1 at C.I.i. Thus, Defendants did not review and approve the applicant's NPSPCP for conformity with all legal requirements prior to issuing the Final Docket, in violation of law.

45. Accordingly, Defendants' approval of D-2009-13-1 was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and Plaintiffs are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaratory judgment that Defendants' approval of the Stone Energy Corporation Docket 2009-13-1 was arbitrary and capricious, an abuse of discretion, without sufficient justification in the administrative record, or otherwise not in accordance with all procedures required by law;
2. For injunctive relief enjoining Defendants from permitting Stone Energy Corporation to proceed with water withdrawals as described in Docket 2009-13-1 until such times as Defendants have fully complied with all statutory and regulatory requirements under the Delaware River Basin Compact, Water Code, and Delaware River Basin Administrative Manual: Rules of Practice and Procedure;
3. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein;
4. For an award of Plaintiffs' costs of litigation, including reasonable attorney's fees; and
5. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

Respectfully submitted,
/s/ Elizabeth Koniers Brown
Elizabeth Koniers Brown, Esq.
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300 Pond St., 2nd Floor
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Attorney for Plaintiffs

DATED: October 29, 2010

FED. R. CIV. P. 7.1 DISCLOSURE

I am the senior attorney with Delaware Riverkeeper Network, having offices 300 Pond St., 2nd Floor, Bristol, Bucks County, Pennsylvania, 19007, am familiar with the proceedings and documents related to the above-captioned matter, and declare that the following is true and accurate to the best of my knowledge: the Delaware Riverkeeper Network is a non-profit organization. There is no corporation or parent corporation that owns stock in the Delaware Riverkeeper Network.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Elizabeth Koniers Brown
Elizabeth Koniers Brown, Esq.
Delaware Riverkeeper Network
300 Pond St., 2nd Floor
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Attorney for Plaintiffs

DATED: October 29, 2010

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I hereby certify pursuant to L. Civ. R. 11.2 that I am currently aware of no other pending actions or administrative proceedings related to the subject matter of this litigation.

/s/ Elizabeth Koniers Brown
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DATED: October 29, 2010