



May 2, 2019

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington D.C. 20426

**RE: PennEast Pipeline Project & Tree Felling Docket No. CP15-558**

Dear Secretary Bose,

On April 3, 2018 the Delaware River Basin Commission's (DRBC) Executive Director, Steven Tambini, sent a letter to the Federal Energy Regulatory Commission (FERC) urging FERC to amend its approval of the PennEast Pipeline Project to prohibit tree felling and to condition other future approvals of similar projects by prohibiting project sponsors from felling trees within the Delaware River Basin until such time as the DRBC issues an approval for the project or activity. This letter was complimented by a February 8, 2018 letter from the Pennsylvania Department of Environmental Protection urging FERC to specifically prohibit alteration of removal of vegetative cover until such time as the project secures all final approvals and permitting from the state. In addition, the DRBC letter was re-submitted on September 27, 2018 after the Delaware Riverkeeper Network alerted the DRBC, FERC, the press and the public that FERC had not placed the April 3, 2018 letter on the PennEast docket and was apparently choosing to ignore the request because it did not conform to FERC's rules of submission. DRBC was never notified by FERC of the error in submission – a minor infraction of the rules that certainly did not warrant FERC ignoring the significant request by a cooperating agency.

Our review of the PennEast FERC docket and FOIA requests to DRBC demonstrate that FERC has yet to respond to either the DRBC or the state of Pennsylvania on these letters. We would like to know why FERC is failing to respond? We urge FERC to modify the PennEast Certificate approval to ensure no tree felling or vegetative alteration will be allowed until such time as ALL state, federal and DRBC approvals have been received for the project.

Respectfully,

A handwritten signature in blue ink that reads "Maya K. van Rossum".

Maya K. van Rossum  
the Delaware Riverkeeper

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Bristol, PA 19007  
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fax: (215) 369-1181  
drn@delawareriverkeeper.org  
www.delawareriverkeeper.org

**Attachments:**

April 3, and September 27, 2018 Letters from DRBC to FERC, Re: Recommendation and Request Concerning Tree-Felling by Sponsors of FERC-Approved Pipeline Projects

February 8, 2018 letter from PADEP to FERC Re: Request for FERC Consideration Recommendation Regarding Vegetative Cover Alteration or Removal

September 19, 2018 Bucks County Courier Times Article, Regulator Seeks to Prevent “Premature” Tree-clearing for PennEast Pipeline

September 12, 2018 Press Release: *Delaware Riverkeeper Network Petitions DRBC on PennEast Pipeline: Regulate Entire Project & Prohibit Tree Clearing, Petition Demands*



## Delaware River Basin Commission

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West Trenton, New Jersey

08628-0360

Phone: (609) 883-9500 Fax: (609) 883-9522

Web Site: <http://www.drbc.gov>

**Steven J. Tambini, P.E.**  
Executive Director

September 27, 2018

***Via eFile***

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: **PennEast Pipeline Project, FERC Docket No. CP15-558-000**  
**Re-Submission of DRBC Letter Dated April 3, 2018**

Dear Ms. Bose:

On April 3, 2018, through its Executive Director Steve Tambini, the Delaware River Basin Commission (DRBC) wrote to FERC Outreach Coordinator David Hanobic, with a "Recommendation and Request Concerning Tree-Felling by Sponsors of FERC-Approved Pipeline Projects" (copy provided as Attachment A). The DRBC's letter referenced a similar request submitted on February 8, 2018 by the Pennsylvania Department of Environmental Protection, Pennsylvania Department of Conservation and Natural Resources, and Pennsylvania Fish and Boat Commission (copy provided as Attachment B).

The DRBC proposed in our April 3 letter to coordinate a meeting among representatives of FERC and other resource agencies with jurisdictions overlapping DRBC's to discuss a mutually agreeable approach to our concern that the premature felling of trees before all federal and state approvals are issued for interstate transmission projects such as the PennEast Pipeline, could result in water resource impacts that could go unmitigated unless and until such projects are actually built. We requested that FERC amend its PennEast approval and condition future approvals of similar projects by prohibiting the project sponsors from felling trees within the Delaware River Basin within delineated wetlands and floodplains, in riparian areas (extending 150 feet from either bank of any stream), and within reservoir and recreation areas that have been designated in the DRBC's Comprehensive Plan, until such time as DRBC has approved the project or activity in accordance with Section 3.8 of the Delaware River Basin Compact and DRBC's implementing regulations.

Kimberly D. Bose, Secretary  
FERC Docket No. CP15-558-000  
September 27, 2018  
Page 2

The DRBC received no response. We recently learned through the statements of a FERC spokeswoman (see Attachment C), that because the PennEast proposal was being considered for rehearing, letters concerning the project must be sent to the FERC secretary, not a staff member, and that all such letters must include the FERC docket number. FERC's spokeswoman reportedly stated that "if the DRBC resends the letter in accordance with the [FERC's] Rules ... their request will be taken into consideration."

I am surprised that we received no response, at least to the portion of our letter that addressed a *class* of projects rather than the PennEast Pipeline in particular. With all due respect, we note that FERC's Rules of Practice and Procedure provide that when a document is rejected for failure to conform to the rules, "the Secretary, or the office director to whom the filing has been referred, will notify the submitter and indicate the deficiencies in the filing and the reason for the rejection." 18 C.F.R. 385.2001(b)(3). The DRBC received no such notification.

I am hereby re-submitting our letter, provided as Attachment A, with the request that it be included in the PennEast docket along with our other attachments and this transmittal. I am also respectfully requesting a response to the DRBC's more general request for a meeting. I can be reached at the address on this letterhead and by phone at 609-883-9500. Thank you.

Sincerely,



Steven J. Tambini  
Executive Director

Attachments

c: DRBC Commissioners



**Delaware River Basin Commission**  
DELAWARE • NEW JERSEY  
PENNSYLVANIA • NEW YORK  
UNITED STATES OF AMERICA

**Delaware River Basin Commission**

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**ATT. A**

**Steven J. Tambini, P.E.**  
Executive Director

April 3, 2018

**Via U.S. Mail**

Mr. David Hanobic  
Office of Energy Projects  
Federal Energy Regulatory Commission (FERC)  
888 First Street NE  
Washington, DC 20426

Re: Recommendation and Request Concerning Tree-Felling by Sponsors of FERC-Approved Pipeline Projects

Dear Mr. Hanobic:

I am writing you on behalf of the Delaware River Basin Commission (DRBC) to request your assistance in addressing the potential problem of premature tree-felling for the construction of FERC-approved transmission lines that are subject to and/or currently under review by DRBC. The DRBC is concerned that the felling of trees for such projects months or years before essential DRBC and state approvals have been issued can cause unnecessary or long-term and potentially substantial impacts to water resources, particularly in the context of very large projects involving hundreds of river, stream and wetland crossings.

As FERC has recognized, proposals for the construction of interstate electrical and natural gas transmission lines traversing the Delaware River Basin are in many instances required to obtain the approval of the DRBC as well as permits from state and federal agencies. In particular, Section 3.8 of the Delaware River Basin Compact, the DRBC's organic statute, provides in relevant part that:

*[n]o 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.... 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.*

FERC's certificates of public convenience and necessity for interstate transmission projects, including its Order issued on January 19, 2018 for the natural gas transmission line proposed by the PennEast Pipeline Company, LLC ("PennEast"), have been silent on the matter of tree-felling before all federal and state approvals are issued. DRBC anticipates that having obtained its FERC certificates, and in view of the many months required to construct its pipeline, PennEast, like other transmission and pipeline project sponsors, may seek to initiate tree felling for its project as early as possible. The DRBC is concerned that the

premature felling of trees could result in water resource impacts related to streambank stability, soil erosion, and instream sedimentation that could go unmitigated unless and until the pipeline is actually built.

In view of this concern, we respectfully request that FERC amend its PennEast approval and condition future approvals of similar projects by prohibiting the project sponsors from felling trees within the Delaware River Basin, including within delineated wetlands and flood plains, in riparian areas (extending 150 feet from either bank of any stream), and within reservoir and recreation areas that have been designated in the DRBC's Comprehensive Plan, until such time as the DRBC issues an approval for the project or activity.

Please note that this request echoes a similar request submitted jointly by the Pennsylvania Department of Environmental Protection, Pennsylvania Department of Conservation and Natural Resources, and Pennsylvania Fish and Boat Commission. We would be pleased to coordinate a meeting among representatives of FERC and these and other resource agencies with jurisdictions overlapping DRBC's to discuss a mutually agreeable approach to this concern.

Sincerely,

A handwritten signature in black ink, appearing to read "Stambini", with a large, sweeping flourish on the left side.

Steven J. Tambini, P.E.  
Executive Director

c: Commissioners



February 8, 2018

Federal Energy Regulation Commission  
Attn: Mr. David Hanobic  
888 First Street, NE  
Washington, DC 20426

RE: Request for FERC Consideration  
Recommendation Regarding Vegetative Cover Alteration or Removal

Dear Mr. David Hanobic:

The Pennsylvania Department of Environmental Protection (PADEP), the Pennsylvania Department of Conservation and Natural Resources and the Pennsylvania Fish and Boat Commission are requesting assistance from the Federal Energy Regulatory Commission (FERC) to protect the rights of property owners in Pennsylvania when issuing Certificates of Public Convenience and Necessity (Certificates) for utility infrastructure including interstate natural gas pipeline projects. Because FERC issues its Certificates before PADEP completes its review of all required permits for these projects, applicants often begin what may later become the unnecessary clearing of land based on the location of the final approved project within Pennsylvania.

Pennsylvania's environmental regulatory programs require project applicants to perform proper planning, design, construction, maintenance and monitoring to protect natural resources. Primarily, the regulatory programs managed by PADEP require applicants to avoid and minimize impacts created by water obstructions, wetland encroachments, and earth disturbance activities. These projects will typically be constructed on private or non-applicant owned property. An applicant must obtain the FERC Certificate prior to completing the PADEP permit applications because state permit applications cannot be completed until an applicant has site access to survey, delineate wetlands and obtain other field information required to complete the technical portions of PADEP permit applications.

In Pennsylvania, a project cannot be constructed until *or unless* required state permits are authorized or issued to an applicant as required by conditions to the PADEP State Water Quality Certification. Until PADEP has completed its full review of the permit applications and can assure that the proposal's technical details comply with federal and state environmental law, any project that has been issued a FERC Certificate remains tentative and subject to changes based upon the information revealed by field information obtained after the FERC Certificate is issued.

Property rights flow from the Certificate based upon the original, but not yet final, project proposals and assumes that the construction of the project will proceed or occur without modifications to the project's location or technical details.

Mr. David Hanobic

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February 8, 2018

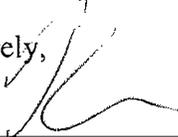
The problem arises when a Certificate holder is authorized to alter the vegetation in rights-of-way or easements that cross private and public property before the applicant has final state permits that delineate the final location of the project authorized by the FERC Certificate. This enables the Certificate holder to temporarily or permanently alter resources and environmental features based upon a premature assumption that the Certificate holder will be constructing its project along the proposed right-of-way or easement or, frankly, at all. In reality, the project location may change during the PADEP permit review process to minimize the impacts to sensitive resources and environmental features.

PADEP cannot prevent a Certificate holder from altering the resources and environmental features if the Certificate holder conducts its activities in a manner that does not necessitate the issuance of a state permit, e.g., cutting mature trees by hand. However, FERC has the authority to prevent the premature alteration of environmental features located in what can best be described as a tentative project location by not allowing such alteration until the entire project is properly permitted by the PADEP.

For the reasons articulated above, the Commonwealth of Pennsylvania requests that FERC prohibit or condition alteration or removal of vegetative cover along the proposed project rights-of-way or easements on PADEP's final approval and permitting of the project or portion of the project in Pennsylvania. Absent this prohibition, private and public property owners may experience the unnecessary alteration of their property and/or loss of resources for a project that may either ultimately not be constructed or not be constructed in the location originally proposed by the Certificate holder in its application to FERC.

If you have questions related to this request, please do not hesitate to contact PADEP's Aneca Atkinson at 717.772.1839.

Sincerely,

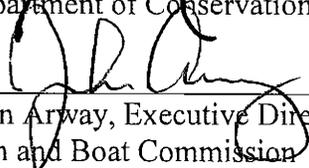
  
\_\_\_\_\_  
Timothy Schaeffer, Acting Deputy Secretary for Water  
Department of Environmental Protection

2/8/18

Date

  
\_\_\_\_\_  
John Norbeck, Deputy Secretary for Parks and Forestry  
Department of Conservation & Natural Resources

2/8/18  
Date

  
\_\_\_\_\_  
John Arway, Executive Director  
Fish and Boat Commission

15 Feb 2018  
Date

# BUCKS COUNTY Courier Times

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## Regulator seeks to prevent 'premature' tree-clearing for PennEast pipeline

By Kyle Bagenstose

Posted Sep 19, 2018 at 2:15 PM

In a letter obtained by an environmental nonprofit, the Delaware River Basin Commission asks federal regulators to ensure no trees are cleared for the controversial pipeline before the commission considers the project.

The main regulatory agency tasked with protecting the Delaware River has asked the federal government to prevent "premature" tree clearing associated with the proposed PennEast natural gas pipeline, according to a letter sent by the agency.

The letter was sent in April by Steven Tambini, executive director of the Delaware River Basin Commission, to an employee within the Federal Energy Regulatory Commission. It was publicly released last week by the Bristol Borough-based Delaware Riverkeeper Network, after having been obtained by the nonprofit via a Freedom of Information Act Request.

In January, FERC approved the \$1 billion pipeline, which if constructed would carry Marcellus Shale natural gas from northwest Pennsylvania to Mercer County, New Jersey, passing through the far northern corner of Bucks County along the way. However, the pipeline has yet to win approval from the DRBC, which also has federal standing.

"The DRBC is concerned that the felling of trees for such projects months or years before essential DRBC and state approvals have been issued can cause unnecessary or long-term and potentially substantial impacts to water resources," Tambini wrote in the letter. "Particularly in the context of very large projects involving hundreds of river, stream and wetland crossings."

The Riverkeepers and other environmental groups have vigorously opposed the pipeline since it was first proposed four years ago. Earlier this year, the groups urged DRBC to prohibit any tree clearings prior to full approval. They claimed that in the past such activities have been used as an intentional tactic.

“We know the pipeline company playbook,” wrote Maya van Rossum, head of the Riverkeepers, in a prepared statement. “First they get FERC approval, then they get eminent domain, then they cut the trees, and then they tell the other agencies and the judge that the project is too far along to stop or say no to and urge the granting of all permits and denial of all legal challenges.”

Reached by email Monday, van Rossum added that the DRBC letter seemed to suggest the DRBC was changing its approach from past projects.

“I am hopeful that they are trying to avoid the errors of the past,” van Rossum wrote.

According to the Riverkeepers and DRBC, no tree clearing has yet taken place.

Pat Kornick, a spokeswoman for the PennEast Pipeline Co., did not provide a direct response when asked if any tree clearing has begun. However, her responses suggested no such work has yet taken place.

“PennEast is working with landowners to complete the remaining land and environmental surveys, which are necessary to help minimize impacts, update data and adhere to federal and state permitting guidelines,” Kornick wrote via email. “At the appropriate time, PennEast will proceed within the limits of the approvals that have been granted.”

The January approval by FERC was a major milestone for the pipeline, as it granted PennEast the power of eminent domain to access and survey property whose owners had not previously allowed the company to do so. Approximately 200 eminent domain proceedings were then filed against landowners in Pennsylvania and New Jersey, including a pair in Durham and land owned by the state of New Jersey.

Court records show the proceedings have continued throughout the summer, with several already being completed. According to Kornick, approximately 85 percent of landowners have provided survey access, and the company is aiming

to start construction in 2019.

However, several hurdles remain in the way. New Jersey Attorney General Gurbir Grewal is contesting PennEast's use of eminent domain on approximately 40 parcels owned by the state. Leland Moore, a spokesman for Grewal's office, said Tuesday the matter is pending before the court, and that the state is also suing FERC in federal court over its original approval of PennEast.

Without access to all lands, it remains to be seen whether PennEast can obtain the data needed to receive approvals from the DRBC or the New Jersey Department of Environmental Protection. The NJDEP has regulatory authority delegated from the federal government in regards to crossings of streams and wetlands.

Kate Schmidt, a spokeswoman for the DRBC, said the commission has received application materials from PennEast but has requested more. If such materials are received, it will begin a public process that includes written comments and public hearings.

Larry Hajna, a spokesman for the NJDEP, said PennEast pulled its most recent filing several months ago and has not resubmitted any materials.

Whether or not New Jersey's permits are needed appears to be the subject of debate. In its order, FERC wrote that it "encourages cooperation between interstate pipelines and local authorities."

"However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operations of facilities approved by this commission," its order continued.

The issue of tree clearing too, has ambiguity. When first pressed by activists on the issue earlier this year, the DRBC said it was studying whether tree felling constitutes significant construction activity, which is prohibited by DRBC until it approves a project. The DRBC said this week it has not yet made a determination and has not received a reply from its April letter to FERC.

"The commissioners are waiting to hear FERC's reply before making any determinations," wrote Schmidt.

In his letter, the DRBC's Tambini wrote that FERC's January approval makes no reference to tree-clearing and that his commission "anticipates" PennEast would do so for its project "as early as possible."

"The premature felling of trees could result in water resource impacts related to stream bank stability, soil erosion, and in-stream sedimentation that could go unmitigated unless and until the pipeline is actually built," Tambini said.

Asked about the letter, FERC spokeswoman Tamara Young-Allen said it was sent to the wrong place. At the time it was sent, Young-Allen said the PennEast proposal was being considered for a rehearing, meaning letters had to be sent the commission's secretary, not a staff member. It also did not include the "docket" number assigned to PennEast's application.

"Communications not adhering to our Rules of Practice and Procedure are not considered," Young-Allen wrote in an email. "If the DRBC resends the letter in accordance with the Commission's Rules of Practice and Procedure, their request ... will be taken into consideration."

Young-Allen wrote that FERC has not received any requests for tree-felling activities from PennEast, nor a plan pertaining to how the company will mitigate the environmental impacts of any such activities.

Document Content(s)

DRBC STambini to FERC KBose - CP15-558-000 (09-27-2018).PDF.....1-10



**For Immediate Release:**  
September 12, 2018

**Contact:**

Maya van Rossum, the Delaware Riverkeeper, 215-369-1188 x 102

**Delaware Riverkeeper Network Petitions DRBC on PennEast Pipeline:  
*Regulate Entire Project & Prohibit Tree Clearing, Petition Demands***

**West Trenton, NJ / Bristol, PA** – The Delaware Riverkeeper Network has learned that the Delaware River Basin Commission (DRBC) has urged the Federal Energy Regulatory Commission (FERC) to prohibit tree felling for pipeline projects like PennEast within the boundaries of the Delaware River Watershed. Despite the letter having gone out April 3, 2018, the Delaware Riverkeeper Network only recently secured the document as a result of a Freedom of Information Act request filed with the DRBC. The document does not appear to have been placed on the FERC docket for the PennEast Pipeline, nor does a response from FERC appear on the FERC PennEast docket or in the DRBC files.

“Importantly, this demonstrated development continues to show the importance of public engagement in the PennEast battle and that ideas and information being advanced by the public are resulting in substantive and meaningful outcomes that could dictate whether or not the PennEast pipeline is ever allowed to proceed. We have been urging for months that the Delaware River Basin Commission take this important stance through the filing of petitions and letter requests. We are pleased to see the DRBC defending its authority, our water resources and our communities so firmly, as is reflected in this letter,” **said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

February 15, 2018, the Delaware Riverkeeper Network submitted a petition to the DRBC executive director and commissioners urging, amongst other things:

“The Commission Must Ensure That No Construction Activities, Including Tree Clearing or Felling, Take Place Prior to Issuance of a DRBC Docket.”

Among the reasons cited in the petition for why this action was so important:

⇒ “Construction activities associated with PennEast will inflict adverse impacts on water quality in the basin.”

- ⇒ “Tree felling removes forest and forest cover, resulting in increased runoff and pollution to adjacent waterbodies, including streams and rivers.”
- ⇒ “[T]ree felling activities involve permanently converting forested wetlands into nonforested emergent wetlands, forever degrading the functions and values that those wetlands are capable of providing. Such tree felling necessarily results in discharges to and from these wetlands in at least two ways.”
- ⇒ “Because tree felling necessarily results in measurable and significant discharges to waterbodies and degrades their quality and health, the Commission must prohibit any such activities until a docket is ruled upon by the Commission.”

A second petition was submitted on March 1, 2018. This time the Delaware Riverkeeper Network’s request was joined by 28 organizations and 484 members of the public.

As the result of a Freedom of Information Act request, the Delaware Riverkeeper Network has learned that the DRBC wrote to the Federal Energy Regulatory Commission on April 3, 2018 asking FERC to modify the PennEast Certificate to prohibit tree felling within the boundaries of the Delaware River Basin until such time as DRBC has granted approval for the project. Specifically the letter states:

“I am writing you on behalf of the Delaware River Basin Commission (DRBC) to request your assistance in addressing the potential problem of premature tree-felling for the construction of FERC-approved transmission lines that are subject to and/or currently under review by DRBC. The DRBC is concerned that the felling of trees for such projects months or years before essential DRBC and state approvals have been issued can cause unnecessary or long-term and potentially substantial impacts to water resources, particularly in the context of very large projects involving hundreds of river, stream and wetland crossings.”

“...we respectfully request that FERC amend its PennEast approval and condition future approvals of similar projects by prohibiting the project sponsors from felling trees within the Delaware River Basin, including within delineated wetlands and flood plains, in riparian areas (extending 150 feet from either bank of any stream), and within reservoir and recreation areas that have been designated in the DRBC’s Comprehensive Plan, until such time as the DRBC issues an approval for the project or activity.”

Our FOIA request did not show that any response from FERC was received. As a result the Delaware Riverkeeper Network is following up to attempt to learn the outcome of this important request by the DRBC to FERC.

In addition, a review of the FERC docket for the PennEast pipeline indicates that FERC never filed this letter on the docket for the public at large to see, nor does there seem to be a response on FERC’s PennEast docket either.

“We know the pipeline company playbook: first they get FERC approval, then they get eminent domain, then they cut the trees, and then they tell the other agencies and the judge that the project is too far along to stop or say no to and urge the granting of all permits and denial of all legal challenges. Now that PennEast has secured FERC approval and is advancing multiple cases of eminent domain in order to collect more data to advance its project, we are anticipating a request to FERC for approval of tree felling. It is critical that the DRBC seems to be advancing a strong position that would prevent this

activity. **The DRBC taking such a strong and principled stance is an important development, we support the DRBC and the four states that are the Commissioners in advancing this request,” said Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network.**

A copy of the original Delaware Riverkeeper Network petition including the two referenced DRBC letters can be found at:

<http://www.delawariverkeeper.org/sites/default/files/DRN%20Petition%20to%20DRBC%20re%20PennEast%20Docket%20%282018-02-15%29.pdf>

A copy of the DRBC letter to FERC can be found at:

<http://cqrcengage.com/delawariverkeeper/file/MPNzPeGd17w/FERCTreeFelling%20Ltr 4.18.pdf>

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*Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.*