



PETITION TO:

- ⇒ **SECURE BASINWIDE AND COMPLETE EXERCISE OF DRBC AUTHORITY WITH REGARDS TO THE PENNEAST PIPELINE,**
- ⇒ **ENSURE NONPOINT SOURCE POLLUTION CONTROL PLAN PURSUANT TO SPECIAL PROTECTION WATERS PROGRAM IS SECURED, REVIEWED AND APPROVED FOR PENNEAST PRIOR TO APPROVAL OF A DRBC DOCKET, AND**
- ⇒ **ENSURE ENFORCEMENT AGAINST ANY FORM OF CONSTRUCTION OF THE PENNEAST PIPELINE WITHOUT COMMISSIONER APPROVAL OF A DRBC DOCKET, INCLUDING TREE FELLING OR CLEARING.**

Dear DRBC Commissioners and Executive Director Tambini,

The Delaware Riverkeeper and the Delaware Riverkeeper Network (collectively, DRN) hereby petition the Delaware River Basin Commission (Commission), pursuant to its authority and obligations under Section 3.8 of the Delaware River Basin Compact (Compact), to exercise its basinwide jurisdiction under the Compact and the Rules of Practice and Procedure (RPP) over the PennEast Pipeline Project, including preventing construction activities such as tree felling/clearing taking place prior to receipt of a DRBC Docket and ensuring a Special Protection Waters Nonpoint Source Pollution Control Plan.

Section 3.8 of the Compact provides in relevant part:

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.

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.

In 1992, in response to a petition filed by DRN, the Commission launched the Special Protection Waters (SPW) program, which established regulations to “keep the clean water clean” in the upper and middle sections of the non-tidal Delaware, portions of which had been designated by the federal government for inclusion in the National Wild and Scenic Rivers System in 1978. In 2008, again in response to a petition filed by DRN, the Commission expanded SPW coverage to include the river from the Delaware Water Gap National Recreation Area downstream to the head of tide at Trenton, New Jersey. The entire 197-mile non-tidal river is now included under the SPW regulations, which is believed to be the longest stretch of anti-degradation protected river in the nation.

Special Protection Waters are waters designated by the Commission, pursuant to the Water Quality Regulations, that have exceptionally high scenic, recreational, ecological, and/or water supply values and are subject to stricter non-point source pollution controls, wastewater discharges, and reporting requirements to prevent degradation.

Article 3 of the Water Code, Section 3.10.3.A.2 establishes the strict anti-degradation standard that the Commission applies to Special Protection Waters of the Basin: “It is the policy of the Commission that there be no measurable change in existing water quality except towards natural conditions . . .” Water Code Article 3, Section 3.10.3.A.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.”

The RPP classifies projects for review under Section 3.8 of the Compact into two categories, those deemed not to have a substantial effect on the water resources of the Basin and therefore not required to be submitted for Commission review, and those deemed to have substantial effects on water resources of the Basin and therefore required to be submitted for Commission review. See RPP Article 3, Section 2.3.5.

With respect to natural gas pipeline projects, the RPP categorizes them as projects that presumptively do not have a substantial effect on the water resources of the Basin and that therefore do not automatically require Commission review:

Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; **natural and manufactured gas transmission lines and appurtenances**; major water transmission lines and appurtenances; **unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources**;

RPP Article 3, Section 2.3.5.A(12) (emphasis added).

But, by its own terms, RPP Article 3, Section 2.3.5.A(12) contains two independent exceptions to the exemption that, if the stated conditions are met, trigger Commission review:

- 1) if the project in question crosses an existing or proposed reservoir or recreation area that has been incorporated into the Comprehensive Plan, and
- 2) if the project involves a significant disturbance of ground cover affecting water resources.

Furthermore, the DRBC issued a letter to the Delaware Riverkeeper Network on January 30, 2013 (*attached Exhibit A*) which provided a description detailing how the Commission considered the portion of 2.3.5.A(12) for projects that “involve a significant disturbance of ground cover affecting water resources.” The DRBC stated in the letter that it was guided by other land disturbance thresholds established in section 2.3.5 (A). One standard described that a significant disturbance threshold was triggered by projects that involved “[d]raining, filling, or otherwise altering marshes or wetlands” in excess of “25 acres.” The DRBC stated that meeting this threshold indicates that the magnitude of disturbance “warrants basin-wide review” – although we note that the Commission did not limit itself to this criteria or that discussed in 2.3.5.A(6), therefore appropriately leaving open other considerations.¹

¹ **For the record, DRN does not agree with DRBC’s limited approach for determining when the significant disturbance of groundcover exception is to be applied:** DRBC, in a January 30, 2012 memo titled “Reviewability of Columbia 1278 Replacement Project and TGP 300 Line,” in which it admits its failure to review two major pipeline projects prior to their construction, and provides arbitrary guidelines that inappropriately characterize when the exception of a “significant disturbance of ground cover affecting water resources” applies. According to the January 30 memo, the language found in RPP Article 3, Section 2.3.5.A found in subsections (6) and (15) should be used to define when there has been “a significant disturbance of ground cover affecting water resources” such that a pipeline would be subject to Section 3.8 review. These unsupported standards dramatically limit the determination of when there has been “a significant disturbance of ground cover affecting water resources.” This is an inappropriate interpretation

The Commission Is Obligated To Exercise Basinwide Review and Jurisdiction Over the PennEast Pipeline.

DRN petitions the DRBC to meet its Compact obligations and exercise its existing authority under the Compact and the RPP to exercise basin-wide review, decisionmaking, regulation and docketing of/over the PennEast Pipeline Project.

The PennEast Project will involve significant disturbance of ground cover affecting water resources of the basin and therefore, pursuant to the legal authorities discussed above, requires basin-wide review, jurisdiction, and docketing before the project may proceed within the boundaries of the basin.

On its face, the PennEast pipeline project will involve significant disturbance of ground cover affecting water resources of the basin thereby triggering basin-wide review. Construction of the PennEast Pipeline project, will impact 1,613.5 acres of land (1,065.2 acres for pipeline facilities, 110.1 acres for access roads; 372.3 acres for pipe and contractor ware yards, 31.1 acres for above ground facilities), the vast majority of which is located within the boundaries of the Delaware River basin. The project will at least cut through 255 waterbodies (including 159 perennial, 45 intermittent, 40 ephemeral, 11 open water), 633 acres of forest, 91 acres of wetlands, impact “several” vernal pools – again, the vast majority of which lie within the boundaries of the Delaware River basin.

In addition, the PennEast Pipeline will result in the alteration or destruction of well over

and application of these provisions

When applied, DRBC’s misapplication of 2.3.5.A.6 and 2.3.5.A.15 to 2.3.5.A.12 limits DRBC review to natural gas pipelines that pass through comprehensive plan areas, that involve the draining, filling or altering of marshes or wetlands in excess of 25 acres, that result in a change in land cover on over three square miles of a major ground water infiltration area, that are specifically noticed by the DRBC Executive Director or referred for review by a state or federal agency under paragraph C of the section. This interpretation is an artificial legal manipulation of the RPP that cannot hold up in the courts of legal or public opinion.

If in fact 2.3.5.A.6 and 2.3.5.A.15 were to be used as the determining factor for the significant disturbance of ground cover pipeline review exception then the RPP provisions would have been explicitly written as such, or incorporated by reference. However, A.6 and A.15 were clearly written as discrete, separate and co-equal exceptions to the exclusion from review, not as further limitations on the exceptions crafted for pipelines found in 2.3.5.A.12.

The DRBC cannot point to a single project where its jurisdiction has been exercised pursuant to the “significant disturbance” language in RPP Section 2.3.5 A.12, and consequently cannot point to a single project where a determination was made that implicated RPP Sections 2.3.5 A.6 or A.15 in that context. Finally, if DRBC indeed interprets that the elements of 2.3.5.A.6 and 2.3.5.A.15 are relevant to the application of RPP Section 2.3.5 A.12, there are a multitude of other pipeline, communications line, water line, and power line projects it would have, under these terms, been required to take jurisdiction over. For example, the recently constructed NorthEast Upgrade Project should have triggered review pursuant to this flawed interpretation of the RPP but failed to do so. These recently conjured standards are post-hoc interpretations that fail to cite any rational basis in fact or law for their application.

25 acres of wetlands. According to the 25-acre standard articulated in the DRBC's January 30, 2013 letter which provided a description detailing how the Commission considered the portion of 2.3.5.A(12) for projects that "involve a significant disturbance of ground cover affecting water resources," the Project thereby involves the magnitude of disturbance that triggers basin-wide review.

The Commission Is Obligated to Ensure Submission and Implementation of a NonPoint Source Pollution Control Plan for the PennEast Pipeline Pursuant to the Special Protection Waters Program.

The PennEast Pipeline project will cross a portion of the Delaware River designated Special Protection Waters and will cause significant disturbance on lands that directly drain to the mainstem river as well as multiple tributaries draining to Commission SPW waters. The removal of vegetation, compaction of soils, and increased runoff that will result will cause and contribute nonpoint source pollution loads to the SPW of the Delaware River and therefore mandate reviews, plans, and approvals that will ensure the project will not adversely impact existing water quality. Because the PennEast project is subject to review under Section 3.8 and will affect SPW waters, the DRBC must ensure that the project, among other things, includes "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.

Furthermore, the requirement to submit a Non-Point Source Pollution Control Plan to the DRBC is not legally or factually satisfied by the contents of the Environmental Construction Plan that PennEast submitted to the Federal Energy Regulatory Commission. Rather, a specific and stand-alone filing is necessary to meet the DRBC's requirements.

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

As stated in DRBC's November 14, 2014 letter to the PennEast Pipeline Company:

"DRBC review and approval are required prior to the commencement of any water withdrawal, discharge, or earth disturbance activities".

(attached Exhibit B)

This requirement comes from Section 3.8 of the Compact which provides in relevant part: "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....”

Construction activities associated with PennEast will inflict adverse impacts on water quality in the basin. Additionally, as described above, DRBC is required to review, approve, and docket the entire length and breadth of the project that crosses within the boundaries of the basin, not just portions in Comprehensive Plan areas or where hydrostatic testing activities are to occur. Therefore, it is essential that the DRBC enforce the legal obligation for PennEast to secure a DRBC docket before engaging in any aspect of construction on any portion of the project within the boundaries of the Delaware River basin. This prohibition on any aspect of construction must include tree felling and/or clearing, anticipated to be among the first construction steps PennEast will seek to advance. Tree felling alone will affect the water resources of the basin, and therefore must not advance without a DRBC docket having been issued.

Tree felling removes forest and forest cover, resulting in increased runoff and pollution to adjacent waterbodies, including streams and rivers. Forests play an essential role in water purification. The relationship between forest loss, degraded water quality, and increased runoff is well-established in the scientific literature. The Commission is well aware of the links between forest cover and water quality, as summarized by Drs. Jackson and Sweeney in the expert report submitted on the Commission’s behalf in the exploratory wells administrative hearing process. (See “Expert Report on the Relationship Between Land Use and Stream Condition, as Measured by Water Chemistry and Aquatic Macroinvertebrates, in the Delaware River Basin,” November 2010). Loss of trees in a watershed, even when there exists a buffer between the cuts and the creek, can still have direct impacts on water quality. For example, a seven-year long hydrological study on water quality demonstrates that cutting trees can increase turbidity in nearby water bodies even if the trees and vegetation are left in place. (See Marrayanna, L. et al, “Water Quality Response To Clear Felling Trees For Forest Plantation Establishment At Bukit Tarek F.R., Selangor,” Vol. 18[1] Journal of Physical Science 33-45 (2007) (experimental plot was clear cut, left in place with a 65.6 foot wide buffer next to river, and river’s turbidity increased on-average by 279%).) Another study, also involving leaving cut trees/vegetation in place, demonstrates that even five months after deforestation, nitrates had increased and pH was altered in a water body, adversely impacting water quality. (See Likens, G.L. et al., “Effects of Forest Cutting and Herbicide Treatment on Nutrient Budgets in the Hubbard Brook Watershed-Ecosystem” 40 Ecol. Monogr. 23-47 (1970) (study also showed large increases for all major ions, except for ammonium, bicarbonate, and sulfate).)

In addition, tree felling activities involve permanently converting forested wetlands into non-forested 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.

- First, tree felling results in the introduction of tree trunks, dead branches, leaves, bark, and numerous other organic matter into the wetlands, thus constituting a

“discharge.” See *Alabama Rivers Alliance v. Federal Energy Regulatory Commission*, 325 F.3d 290, 299 (D.C. Cir. 2003) (finding that the “word ‘discharge’ contemplates the addition . . . of a substance or substances” to a navigable water) (internal quotations and citations omitted); 33 U.S.C. § 1362(6) (the discharge of a pollutant includes “biological material”). Indeed, the case law is clear, the felling of trees and other vegetation in wetlands for a Project constitutes a “discharge” pursuant to the Clean Water Act. In *Avoyelles Sportsmen’s League, Inc. v. Marsh*, the Fifth Circuit found that the clearing of vegetation in wetlands would “significantly alter the character of the wetlands and limit the vital ecological functions served by the tract,” and therefore, when vegetation or other materials are “redeposited” in the wetland, the “discharge” language of the Clean Water Act is triggered. *Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 923-924 (5th Cir. 1983); see also *United States v. Deaton*, 209 F.3d 331 (4th Cir. 2000) (holding that returning “seemingly benign substances like rock, sand, cellar dirt, and biological materials” to a wetland may constitute a “discharge” pursuant to the Clean Water Act.); *Borden Ranch Partnership v. U.S. Army Corps of Engineers*, 261 F.3d 810, 814-815 (9th Cir. 2001) (holding that the removal of a “protective layer of soil” in a wetland triggered the “discharge” language of the Clean Water Act).

- Second, the previously forested wetlands will also be subject to an increased discharge of sediment laden water, and will discharge more sediment laden water to adjacent water bodies and uplands as a result of tree felling activities. Expert analysis confirms that tree felling activities in wetlands impacts the drainage patterns, water quantity, water quality of wetlands, thereby fundamentally altering the physical and biological functions and values of the wetlands. (See *The Effects of the Proposed PennEast Pipeline on Exceptional Value Wetlands in Pennsylvania* - Schmid & Co. 2016, available at <http://www.delawariverkeeper.org/sites/default/files/schmid%20PennEast%20Wetland%20Report%20Final%20July%202016.pdf>). For example, tree felling results in additional discharges of water to the wetland and from the wetland as a result of losses to “aboveground biomass” thereby increasing “erosion and sedimentation” to the wetland, and decreasing “pollution prevention,” “soil stabilization,” “streambank anchoring against erosion,” “nutrient storage,” and “temperature maintenance” wetland functions.

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.

In conclusion, the Delaware Riverkeeper Network petitions the DRBC to:

- 1) exercise its full jurisdiction across the entire length and breadth of the PennEast Pipeline projects, and appurtenances, located within the boundaries of the Delaware River watershed, and not artificially, or illegally, limit the exercise of its

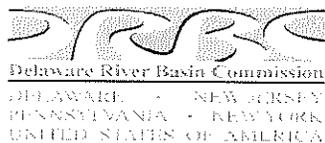
- jurisdiction and docket mandate to specifically designated Comprehensive Plan areas and hydrostatic testing withdrawal and discharge activities;
- 2) ensure a sufficient Non-Point Source Pollution Control Plan is submitted as mandated by the SPW program;
 - 3) enforce the legal obligation that PennEast must secure DRBC review, approval, and a docket “prior to the commencement of any water withdrawal, discharge, or earth disturbance activities”, including tree felling, tree cutting and/or tree clearing on any portion of the project as such activities fall within the definition of earth disturbance or discharges that will have an adverse impact on the water resources of the basin; and that all portions of the pipeline project require DRBC review, approval and a docket.

Respectfully submitted February 15, 2018,



Maya K. van Rossum
the Delaware Riverkeeper

EXHIBIT A



Delaware River Basin Commission

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Carol R. Collier

Executive Director

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January 30, 2013

Via Email and Facsimile

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The Delaware Riverkeeper
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
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SUBJECT: Amended Letter Determination Regarding Tennessee Gas Pipeline 300 Line Extension Project and Columbia 1278 Replacement Project

Dear Ms. van Rossum:

At the Commission's meeting of December 5, 2012, the Commissioners responded in two parts to DRN's request for hearing in connection with my letter to you of July 10, 2012 concerning natural gas pipeline projects:

1. The Commissioners declined as moot DRN's request for hearing with respect to the Tennessee Gas Pipeline ("TGP") Company's Northeast Upgrade Project ("NEUP"), on grounds that the Commission issued Docket D-2011-22-1 for the project on July 11, 2012. The Commission's docket approval superseded my earlier determination and entailed the very review that DRN requested. DRN did not challenge the docket approval.
2. The Commission chair explained that staff had undertaken a thorough re-examination of the review criteria for the two other pipeline projects discussed by name in my letter of July 10, 2012 – the Columbia 1278 Replacement Project and the TGP 300 Line. The Commissioners asked me to examine the additional information furnished by staff and authorized me to revise the determinations set forth in my July 2012 letter on the basis of that information, if appropriate, by January 31, 2013.

In accordance with the Commissioners' direction, I have examined the additional information furnished by my staff (summarized in the attached memo), showing that both the Columbia 1278 Replacement Project and the TGP 300 Line pass through Delaware State Forest in Pennsylvania. Because this state forest is a recreation area that has been incorporated into the Commission's Comprehensive Plan, review of the projects, both of which have been constructed,

was properly triggered under section 2.3.5 A.12 of the Commission's Rules of Practice and Procedure. The status of Delaware State Forest as a recreation area included in the Comprehensive Plan ("CP") was not recognized during our original screening of the two projects. The accompanying staff memorandum sets forth the staff's subsequent analysis and conclusions in detail. It also explains that to ensure an oversight of this nature does not occur again, the Project Review Section is putting in place a checklist process that includes review of the complete list of CP recreation areas when determining whether pipeline and powerline projects traversing the Basin require a docket.

In light of the staff's revised findings, the conclusions set forth in my letter of July 10, 2012 concerning the Columbia 1278 Replacement Project and the TGP 300 Line are hereby amended. Both projects are subject to Commission review in accordance with Section 3.8 of the Delaware River Basin Compact and Article 3 of the Rules of Practice and Procedure. Accordingly, I am directing my staff to undertake reviews of these projects after the fact. The project sponsors will be so informed and will be directed to submit applications that include the projects' as-built characteristics. Commission review will not interrupt operation of the projects, but will involve consideration of any additional conditions that may be necessary to ensure the projects do not impair or conflict with the Comprehensive Plan. As is the case with all Section 3.8 reviews, the process will entail in each instance the development of a draft docket, followed by a duly noticed public hearing, and Commission consideration and action at a public meeting.

Sincerely,



Carol R. Collier
Executive Director

c: DRBC Commissioners

MEMORANDUM

TO: Carol R. Collier, Executive Director
FR:  William Muszynski, Manager, Water Management Branch
DA: January 30, 2013
RE: Reviewability of Columbia 1278 Replacement Project and TGP 300 Line

Introduction and Findings

This is to memorialize the November 2012 reevaluation conducted by Water Resource Management Branch staff of the Commission's criteria for review of projects in accordance with Section 3.8 of the Delaware River Basin Compact, as applied to two natural gas pipeline projects – the Columbia 1278 Replacement Project and the Tennessee Gas Pipeline Company (“TGP” or “Tennessee”) 300 Line Project. Our reevaluation was undertaken in response to a request for hearing in accordance with Article 6 of the *Rules of Practice and Procedure* (“RPP”) on my staff's conclusion, set forth in your letter to Maya von Rossum, Delaware Riverkeeper, of July 10, 2012, that neither of the two projects required a docket.

As discussed in greater detail below, we are amending our original findings. An aspect of both the TGP 300 Line and the Columbia 1278 Replacement Project that the staff overlooked in our initial evaluation – crossing of Delaware State Forest in Pennsylvania – triggers review under an exception to the exclusion for natural gas transmission line projects established by the *Rules of Practice and Procedure* (RPP). Specifically, Section 2.3.5 A.12. of the RPP in relevant part exempts from review all “natural and manufactured gas transmission lines and appurtenances ... *unless* they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan” (Emphasis added). The status of Delaware State Forest as a recreation area included in the Comprehensive Plan (“CP”) was not recognized in our original screening of the two projects.

To ensure that an oversight of this nature does not occur again, we are developing a checklist that will include a listing of the RPP requirements that pertain to pipeline and power line projects, including the complete list and map of CP recreation areas. This checklist will be used to assist the staff in determining whether pipeline and power line projects traversing the Basin require review and approval by the Commission.

The following discussion outlines our November 2012 reviewability screening of the Columbia 1278 Replacement Project and the TGP 300 Line Project in detail.

Discussion

I. DRBC Review Criteria Potentially Applicable to Pipeline Projects

A. Rules of Practice and Procedure

Article 3 of the RPP governs the submission and review of projects under Section 3.8 of the Delaware River Basin Compact. Section 2.3.5A. of that article sets forth classifications of projects that are generally *excluded* from Section 3.8 review, whereas Section 2.3.5B. sets forth classifications that are generally subject to review *if not excluded by Section 2.3.5A.*

Sections 2.3.5A.2, 3, 5, 6, 11, 12 and 15 of Article 3 of the RPP are the exclusions potentially applicable to pipeline projects.

Section 2.3.5 A. provides:

A. Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph C. of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

* * * * *

2. A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;
3. A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

* * * * *

5. The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;
6. A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

* * * * *

11. Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;
12. Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;”

15. Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

Section 2.3.5 B. provides that "All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with these regulations for determination as to whether the project impairs or conflicts with the Comprehensive Plan." Section 2.3.5 B. includes a list of examples of the types of projects deemed subject to the review by the Commission when not excluded from review by Section 2.3.5 A.

B. May 19, 2009 Executive Director Determination

The Executive Director Determination ("EDD") issued on May 19, 2009 concerned natural gas extraction projects in shale formations located in Special Protection Waters. The EDD removed all RPP thresholds for review of natural gas extraction projects. Such projects were defined to include the drilling pad upon which a well intended for eventual production is located, all appurtenant facilities and activities related thereto, and all locations of water withdrawals used or to be used to supply water to the projects. An "appurtenant facility" has since been determined to refer to a facility that is connected directly to the well or well pad and required for the extraction of natural gas.

II. Application of Criteria to Projects

A. Columbia Gas Transmission, LLC Line 1278 to Line K Replacement Project FERC Docket Nos. PF10-6-000 and CP10-492-000

According to Columbia, the Columbia 1278 Replacement Project would allow the company to update its aging pipeline facilities and increase the diameter of the existing pipeline from 14 inches to 20 inches to be consistent with the remainder of the Line 1278 system in Pennsylvania. Columbia is not seeking authorization to increase the transportation capacity within the Line 1278 to Line K system. The portion of the two existing pipelines immediately adjacent to the Delaware River crossing would remain as 10-inch-diameter pipelines, and no construction would occur within the river.

The proposed project includes:

- Abandonment either in-place, by removal, or by replacement of approximately 16.84 miles of 14” diameter natural gas pipeline with 20” diameter pipe
- Temporary workspaces and staging on four previously disturbed areas in Pike County, PA and three previously disturbed areas in Orange County, NY
- Removal of an existing compressor station
- Pipeline located in Pike County, PA and Orange County, NY
- Purchase of 1.292 million gallons of water from public water suppliers (Borough of Milford, PA and Port Jervis, NY) for hydrostatic testing of replaced pipeline sections.
- Discharge of hydrostatic test water to land in-basin, general permits required by states; no direct discharge to water bodies
- Maximum area of disturbance, including staging and storage, of 195.87 acres (0.31 square miles), of which about 103.46 acres (0.16 square miles) would be permanently disturbed
- 75-foot-wide construction right-of-way. In areas of steep and/or side slope construction, an additional 25 feet of temporary construction right-of-way is proposed over short distances to facilitate installation of the replacement pipeline. In all, the total construction right-of-way would be 100-foot-wide at specific areas to accommodate steep slopes, road crossings, and water bodies.
- Wetland crossings and workspaces, limited to a 75-foot-wide construction right-of-way. Columbia has requested additional temporary workspaces within 50 feet of certain specific wetlands, mainly due to topography or road crossings.
- Disturbance of 4.06 acres of wetlands, including 0.61 acres permanently impacted
- Existing project right of way passing through Delaware State Forest, a CP recreation area. No new permanent right-of-way or impacts proposed within Delaware State Forest
- Approximately 0.13 miles of pipeline replacement activities within the boundary of the Upper Delaware Scenic and Recreational River corridor
- E&S control measures to be reviewed by County Conservation Districts
- No proposed direct connections to natural gas extraction wells (thus not subject to EDD for natural gas extraction projects)

Permits required for the project are listed in the following table:

Agency	Permit/Approval/ Consultation	Status
Federal		
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity	Application filed August 26, 2010
USACE, New York District	Section 404 Permit	Anticipated filing date: February 2011
USACE, Philadelphia District	Section 404 Permit	Anticipated filing date: February 2011
U.S. Fish and Wildlife Service, New York Field Office	Section 7 Consultation	Anticipated filing date: January 2011
U.S. Fish and Wildlife Service, Pennsylvania Field Office	Section 7 Consultation	No permit required; Consultation response received January 3, 2011.
National Oceanic and Atmospheric Administration	Section 7 Consultation	No permit required; Consultation response received 2/2/10. No further consultation required.
National Park Service	Upper Delaware Scenic and Recreational River	No permit required; Consultation response received September 30, 2010.

**TABLE 3
Major Permits, Authorizations, and Clearances Required**

Agency	Permit/Approval/ Consultation	Status
New York State		
New York Natural Heritage Program Information Services and Region 3, NYSDEC	Consultation concerning protected and rare species	No permit required; Consultation response received December 15, 2009. Consultation is ongoing.
New York State Office of Parks, Recreation and Historic Preservation, Historic Preservation Field Service Bureau [New York State Historic Preservation Office (SHPO)]	Section 106 Consultation 9/3/2009; 11/23/2009; 2/19/2010 Phase I/II Report: 8/30/2010	No permit required; Consultation responses received 9/28/2009; 11/23/2009; 3/19/2010; and 9/20/2010.
Orange County Health Department	Public and Private Water Supply Consultation	No permit required; Consultation response received December 15, 2009. Consultation is ongoing.
City of Port Jervis, Department of Public Works	Public and Private Water Supply Consultation	No permit required; Consultation response received April 7, 2010.
NYSDEC, Region 3	State Environmental Quality Review	Anticipated filing date: January 2011
	Freshwater Wetland Permit	Anticipated filing date: January 2011
	Protection of Waters Permit	Anticipated filing date: January 2011
	Hydrostatic Test Water Discharge	Anticipated filing date: February 2011
	State Pollution Discharge Elimination System - Notice of Intent for Construction Activities	Permit received: October 28, 2010
Town of Deerpark	State Pollution Discharge Elimination System - Waiver to Disturb more than five acres	Waiver received: October 28, 2010
Town of Deerpark	Planning Commission Consultations	Consultation response received: September 28, 2010
Orange County	Planning Commission Consultation	Consultation response received: April 5, 2010
Pennsylvania State		
Pennsylvania Fish and Boat Commission (PFBC)	Consultation concerning state protected and rare species	Consultation response received December 21, 2009. Consultation ongoing.
Pennsylvania Game Commission	Consultation concerning state protected and rare species	Consultation response received. December 23, 2009. Consultation ongoing.
PADCNR	Consultation concerning state protected and rare species	Consultation response received: December 28, 2009. Consultation ongoing.
PADCNR, Bureau of Forestry, Forest District #19	Delaware State Forest right-of-way agreement	Anticipated filing date: January 2011
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation	Section 106 Consultation	Consultation responses received 9/14/2009; 12/15/2009; 3/19/2010; and 9/21/2010
Pennsylvania Department of Environmental Protection, Northeast Regional Office	Joint Permit Application - Section 404/Chapter 105 Water Encroachment Permit	Anticipated filing date: January 2011
	PAG-10: Hydrostatic Testing of Tanks and Pipelines	Anticipated filing date: February 2011
Pike County Conservation District	Notice of Intent - Erosion and Sediment Control General Permit	Anticipated filing date: December 15, 2010

The following table compares Columbia 1278 Replacement Project features to potentially applicable review thresholds:

RPP § 2.3.5 A. Exclusion	Columbia Gas 1278 to K-Line Replacement
2. A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;	*1.292 million gallons of water will be purchased from public water suppliers (Borough of Milford, PA and Port Jervis, NY) for hydrostatic testing of replaced pipeline sections.
3. A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;	*1.292 million gallons of water will be purchased from public water suppliers (Borough of Milford, PA and Port Jervis, NY) for hydrostatic testing of replaced pipeline sections.
5. The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;	*Discharge to land in-basin, general permits required by PA and NY. Energy dissipation devices and E&S will be implemented. No direct discharge to water bodies or groundwater will occur.
6. A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;	*Maximum area disturbance including staging and storage = 195.87 acres of land (0.31 square miles), of which about 103.46 acres (0.16 square miles) would be permanently disturbed.
11. Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;	*Columbia 1278 to K-line is a natural gas transmission line. Threshold not applicable.
12. Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;”	<p>*The existing project right of way passes through 1.45 miles of Delaware State Forest, a CP recreation area. No new permanent right-of-way or impacts would be created within Delaware State Forest as a result of the Project.</p> <p>*Approximately 0.13 miles of pipeline replacement activities would occur within the boundary of the Upper Delaware Scenic & Recreational River corridor, a CP recreation area. Columbia must address any mitigation or avoidance measures recommended by the NPS. Written NPS approval required before commencement of project construction.</p> <p>*E&S controls will be implemented to mitigate disturbance of ground cover.</p> <p><i>See discussion below relating to the “disturbance of ground cover” exception to the exclusion from review for natural gas pipelines.</i></p>

RPP § 2.3.5 A. Exclusion	Columbia Gas 1278 to K-Line Replacement
<p>15. Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;</p>	<p>*4.06 acres of wetlands are proposed to be impacted during construction, including 0.61 acres of wetlands to be impacted permanently.</p>
EDD Determination	Not applicable – No proposed direct connections to natural gas extraction wells

DRN has argued that natural gas pipeline projects in general fall within the exception to the exclusion set forth at Section 2.3.5A.12 for projects that “involve a significant disturbance of ground cover affecting water resources”. In determining whether a “significant disturbance” would occur, the Project Review staff is guided by two other land disturbance thresholds established by section 2.3.5 A: those that, respectively, exclude from review projects involving “[a] change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles” (RPP § 2.3.5 A.6); and projects that involve “[d]raining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres” (RPP § 2.3.5 A.15). In our view, these thresholds indicate the general magnitude of disturbance that the Commission decided warrants basin-wide review. Neither project exceeds either of these thresholds. As the table of approvals above makes evident, localized water resource risks are ordinarily managed by other government agencies, including federal, state and local environmental agencies.

**B. Tennessee Gas Pipeline (TGP) 300 Line Upgrade Project
FERC Docket No. CP09-444-000**

The proposed Tennessee Gas Pipeline 300 Line Upgrade Project will include construction of approximately 128.7 miles of 30-inch pipeline consisting of seven separate pipeline loops in northern Pennsylvania, totaling approximately 111 miles, and one pipeline loop in northwestern New Jersey totaling approximately 17.3 miles. To the extent practicable and feasible, Tennessee proposes to locate the pipeline loops within and adjacent to the right-of-way (“ROW”) associated with its existing 24-inch pipeline designated as the 300 Line. Additionally, the project includes construction of two new compressor stations near Tennessee’s existing 300 Line ROW in

northwestern Pennsylvania, as well improvements and modifications at seven existing compressor station facilities in Pennsylvania and New Jersey. Tennessee proposes to begin project construction in the second half of 2010 and to place the facilities in-service by November 2011.

The proposed project includes:

- ROW width of 100 feet, generally consisting of 25 feet of existing, permanently maintained ROW, 25 feet of new permanent ROW and 50 feet of temporary construction workspace
- Temporary workspace within wetlands, limited to 75 feet to minimize adverse impacts. Permanent ROW within wetlands also limited to 75 feet. A 10-foot wide area centered over the pipeline will be maintained in an herbaceous or scrub-shrub vegetative state.
- Pipeline through Pike and Wayne Counties, PA in DRB
- Within DRB, 22.28 miles of 30" outer diameter ("O.D.") natural gas transmission pipeline in Loop 321; and 14.89 miles of 30" O.D. natural gas transmission pipeline in Loop 323
- Maximum acreage disturbance including staging and storage = 548.61 acres of land in basin (0.86 square miles), of which about 108.03 acres in basin (0.17 square miles) would be retained as new permanent right-of-way.
- Temporary impact to 15.62 acres of wetlands in DRB during construction phased and permanent impact to 2.44 acres of wetlands
- Withdrawal of 2.14 mg of water for hydrostatic testing in DRB from Lackawaxen River, West Branch Lackawaxen River, Still Water Lake, Dyberry Creek, Lords Creek, Twin Lakes, Savantine Creek. Withdrawals will not exceed 100,000 gpd over a 30-day period.
- Hydrostatic testing discharge to land in-basin, under general permits required by states. No direct discharge to water bodies.
- Pipeline crosses 1.5 miles of Delaware State Forest a CP Recreation project.
- E&S control measures are incorporated into project to be reviewed by County Conservation Districts.
- Project sponsors do not propose to have direct connections to natural gas extraction wells. Therefore, it is not subject to the EDD for natural gas extraction projects.

Permits required for the project are listed in Table 1.6-1 of the TGP document entitled, *Environmental Report, 300 Line Project: Resource Report 1*, pp. 1-63 through 1-66.

The following table compares Tennessee Gas Pipeline 300 Line Project features to potentially applicable review thresholds:

RPP § 2.3.5 A. Exclusion	Tennessee Gas Pipeline Co. 300 Line
2. A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;	*Threshold not applicable
3. A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;	*2.14 mg of water for hydrostatic testing in DRB will be withdrawn from Lackawaxen River, West Branch Lackawaxen River, Still Water Lake, Dyberry Creek, Lords Creek, Twin Lakes, Savantine Creek. Withdrawals will occur at less than 100,000 gpd over a 30-day period.
5. The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;	*Discharge to land in-basin, general permits required by states. Energy dissipation devices and E&S will be implemented. No direct discharge to water bodies or groundwater will occur.
6. A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;	*Maximum acreage disturbance including staging and storage = 548.61 acres of land in basin (0.86 square miles), of which about 108.03 acres in basin (0.17 square miles) would be retained as new permanent right-of-way.
11. Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;	*TGP 300 Line is a natural gas transmission line. Threshold not applicable.
12. Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;”	*300 Line crosses 1.5 miles of Delaware State Forest, a CP recreation area. E&S controls to mitigate disturbance of ground cover will be reviewed by County Conservation Districts. <i>See the last paragraph of the previous section (relating to the Columbia 1278 Replacement Project) for discussion of the “significant disturbance of ground cover” exception to the exclusion from review for natural gas transmission lines.</i>

RPP § 2.3.5 A. Exclusion	Tennessee Gas Pipeline Co. 300 Line
<p>15. Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action (1) where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or (2) when a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;</p>	<p>*15.62 acres of wetlands in DRB are proposed to be temporarily impacted during construction of the TGP 300 Line project. 2.44 acres are to be impacted permanently.</p>
EDD Determination	Not applicable – No proposed direct connections to natural gas extraction wells

III. Conclusions

The above analysis confirms that neither the Columbia 1278 Replacement Project nor the TGP 300 Line involves a water withdrawal, diversion or discharge that triggers Commission review. Nor in the view of staff does either project involve a level of ground cover disturbance that warrants our review, on the basis of land disturbance thresholds the Commission has expressly established for infiltration areas and wetlands. However, both projects trigger review on grounds that they traverse Delaware State Forest, a recreation area incorporated in the Commission's Comprehensive Plan.

EXHIBIT B



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.net>

Steven J. Tambini, P.E.

Executive Director

November 14, 2014

ORIGINAL

Via US Certified Mail, Return Receipt

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Alisa E. Harris, Government and Community Affairs
PennEast Pipeline Company, LLC
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610

SUBJECT: PennEast Natural Gas Transmission Pipeline Project
FERC Docket No. PF15-1-000 ✓
Luzerne, Carbon Northampton and Pike Counties, PA and
Hunterdon and Mercer Counties, NJ

FILED
SECRETARY OF THE
FEDERAL ENERGY
REGULATORY COMMISSION
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Dear Ms. Harris:

The Delaware River Basin Commission staff have examined recent submissions by the PennEast Pipeline Company, LLC ("PennEast") to the Federal Energy Regulatory Commission (FERC) and the New Jersey Department of Environmental Protection (NJDEP), including the "Request for Approval of Pre-Filing Review" ("FERC pre-filing request") dated October 7, 2014, and the Permit Readiness Checklist submitted to NJDEP on October 23, 2014. We have also reviewed route updates submitted by PennEast representatives to DRBC staff since our September 3, 2014 information meeting.

These materials indicate that the PennEast Natural Gas Transmission Pipeline Project ("Project") involves the following components:

- (a) Mainline Route. The mainline route includes construction of approximately 108 miles of 36-inch diameter mainline pipeline that originates near Dallas, Luzerne County, PA, and terminates near Pennington, Mercer County, NJ. Approximately 29 percent of the pipeline is co-located with other utilities. Major water crossings include the Susquehanna, Lehigh, and Delaware Rivers and Beltzville Lake. The system is rated for a maximum allowable operating pressure ("MAOP") of 1,480 pounds per square inch gauge.
- (b) Compressor Station. A Compressor Station is proposed to be located near Blakeslee in Kidder Township, Carbon County, PA. The compressor station will include 3 Taurus 70 units rated at 10,915 horsepower each under international standard (ISO) conditions for a total of 26,733 available horsepower.
- (c) Additional mainline valves and appurtenant facilities.

Alisa E. Harris, PennEast Pipeline Company, LLC

November 14, 2014

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Based on the submissions identified above, DRBC staff have determined that the Project is subject to review under Section 3.8 of the Delaware River Basin Compact and implementing regulations. Specifically:

1. The Commission's Rules of Practice and Procedure (RPP) provide that natural gas transmission lines are subject to Section 3.8 review and approval by the Commission when they pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan. *See* RPP § 2.3.5.A 12.

The currently proposed route of the Project crosses the following reservoirs and recreation areas as designated in the Comprehensive Plan: Beltzville Reservoir (Towamensing Twp., PA), Francis E. Walter Reservoir (Bear Creek Twp. and Kidder Twp., PA), Hickory Run State Park (Kidder Twp., PA), Beltzville State Park (Towamensing Twp., PA), Delaware Canal State Park (Riegelsville Borough, PA), the Lower Delaware River Wild & Scenic Area (Holland Twp., NJ) and potentially, Washington Crossing State Park (West Amwell Twp., NJ). *See* Comprehensive Plan (July 2001), Sections II and III *at*: http://www.state.nj.us/drbc/library/documents/comprehensive_plan.pdf

2. At the September 3, 2014 meeting among PennEast representatives and DRBC staff, the former indicated that hydrostatic testing of the pipeline would be conducted to verify integrity and to ensure the ability of the pipeline to withstand the designed maximum operating pressure. PennEast representatives also indicated that the water would be sourced from either surface water bodies or municipal suppliers along the pipeline route.

PennEast's recent submissions confirm that hydrostatic testing will be performed but do not indicate the sources of the water. Please be advised that:

- a. The RPP provide that Section 3.8 review and approval are required for daily average gross water withdrawals – whether from surface water or groundwater – of more than 100,000 gpd during any 30 consecutive day period. *See* RPP §§ 2.3.5 A 2. and 3.
- b. If hydrostatic test water is drawn from sources that have a current DRBC docket (or dockets) and if no increase in an approved DRBC allocation is needed, then the use of basin water for hydrostatic testing does not require separate DRBC approval. No approval is required for a daily average gross withdrawal that does not exceed 100,000 gallons over any 30 consecutive-day period.
- c. If 100,000 gpd or more of water is to be imported – i.e. drawn from a source (or sources) outside the Delaware River Basin for use within the Basin – or exported – i.e., drawn from a source (or sources) within the Basin for use outside it, then DRBC review and approval are required in accordance with the Water Code (WC) and the RPP. *See* WC § 2.30 and RPP §§ 2.3.4 A.16. and 17.

3. The RPP provides that facilities for the direct discharge of industrial wastewater to surface or ground waters of the basin are subject to Section 3.8 review and approval; however facilities

Alisa E. Harris, PennEast Pipeline Company, LLC

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designed for the direct discharge to surface or ground waters of industrial waste having design capacities of less than 10,000 gpd in the drainage area of Special Protection Waters or less than 50,000 gpd elsewhere in the basin do not require review. *See* RPP § 2.3.5 A.5. Because pipeline hydrostatic testing water is generally discharged at rates exceeding the Commission's exemption thresholds, the Project is expected to be subject to DRBC review and approval on this basis.

We recognize that the Project alignment and other decisions are still undergoing revision and may change. As details are finalized, DRBC staff may identify other aspects of the Project that trigger Commission review and approval. Regardless of the number or nature of review triggers, the Commission will issue a single decision instrument (a "docket"), containing any conditions the Commission deems necessary to ensure that the Project does not impair or conflict with the Comprehensive Plan (CP), consisting of the rules, projects and polices the Commission has adopted "for the optimum planning, development, conservation, utilization, management and control of the water resources of the basin to meet present and future needs." *See* Compact, § 13.1.

I ask that within 90 calendar days of receipt of this letter you complete and submit to the attention of Project Review Section Supervisor David Kovach DRBC application forms for the PennEast Pipeline as listed below. All forms can be downloaded from DRBC's website at <http://www.state.nj.us/drbc/programs/project/application/index.html>.

- Applicant's Statement — Project Review Fee Form
- Discharge Application
- Withdrawal Application

Be advised that DRBC review and approval are required prior to the commencement of any water withdrawal, discharge or earth disturbance activities.

David Kovach will contact you to arrange a pre-application meeting with Commission staff. In the interim, you are welcome to contact me at extension 221 or David at extension 264 with any questions you may have about DRBC's review.

Sincerely,



William J. Muszynski, P.E.

Water Resources Management Branch Manager

c: Bernie Holcomb, URS
Kimberly D. Bose, Secretary, FERC
Medha Kochhar, Project Manager, FERC
DRBC Commissioners

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