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Unity For Strong Community

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For Immediate Release

More than a dozen landowner, economic development and agricultural associations in the Upper Delaware region have joined forces to urge the Delaware River Basin Commission (DRBC) to adopt as quickly as possible reasonable regulations that will allow responsible development of the natural-gas resources in the upper river basin.

The landowner organizations represent more than 2,000 property owners from six counties in New York and Pennsylvania, people who have combined holdings that exceed 200,000 acres. Joining them are economic-development entities from the two states.

Gas-leasing activity began in the Upper Delaware region more than three years ago, but the DRBC has yet to put regulations in place even while banning most gas-related activities. This unending "moratorium by inaction" is not acceptable, the organizations say. The delay is crippling our region.

Household incomes in the three principal counties in the Upper Delaware region -- Delaware, Sullivan and Wayne -- now range from 30 percent to 65 percent below those found in the remainder of the DRBC area, the groups say. The median household income in the three counties is just \$44,000 a year.

The Upper Delaware region needs the unparalleled economic opportunities offered by the natural-gas industry and needs them now. To that end the dozen-plus organizations have put together a list of ten concerns and ways to address them and they've sent the document to the DRBC and its staff and to federal, state and county legislators representing the region.

The groups that have joined in preparing the list and its contents are the Bethel Landowners Coalition, the Broome-Delaware Landowners Coalition, the Delaware County Industrial Development Agency, the Delaware County Office of Economic Development, the Jefferson & Madison Townships Gas Group, the Lackawaxen-Honesdale Shippers Association, the Lower Wayne Property Owners Association.

Also the Northern Wayne Property Owners Alliance, the Starlight Forum landowners group, the Sullivan-Delaware Property Owners Association, the Wayne County Chamber of Commerce, the Wayne County Economic Development Corporation, the Wayne Pike County Farm Bureau and the Wayne-Lackawanna Forest Landowners Association.

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The Northern Wayne Property Owners Alliance represents some 1,500 landowning families and organizations and more than 100,000 acres, chiefly in northern Wayne and Susquehanna counties. The Alliance can be found on the Web at www.nwpoa.info

JOINT STATEMENT – SEPTEMBER 9, 2010

**Bethel Landowners Coalition
Broome-Delaware Landowners Coalition
Delaware County Industrial Development Agency
Delaware County Office of Economic Development
Jefferson & Madison Townships Gas Group
Lackawaxen-Honesdale Shippers Association
Lower Wayne Property Owners Association
Northern Wayne Property Owners Alliance
Sullivan-Delaware Property Owners Association
The Starlight Forum (Landowners Group)
Wayne County Chamber of Commerce
Wayne County Economic Development Corporation
Wayne-Lackawanna Forest Landowners Association
Wayne Pike County Farm Bureau**

ABSTRACT

The Upper Delaware region suffers from extraordinarily poor economic conditions, with incomes 30-65% below those of the remainder of the Delaware River Basin Commission (DRBC) region. The natural gas industry offers unparalleled economic opportunities. No industry offers so much, with so small a footprint. Natural gas drilling, moreover, is advancing rapidly and constantly reducing both water use and risks to water quality.

DRBC regulations should build upon and complement those of other regions having experience with shale gas. They must not exacerbate the punishing effects of existing special protection waters designations. DRBC and state regulations must be seamless and avoid redundancy. They should observe the Upper Delaware River Management Plan, which provides for natural gas development.

Moratorium by inaction is unacceptable and an interim rule may be necessary. DRBC procedures must provide for timely review and action upon applications. Water uses for natural gas should, likewise, not be subject to stricter regulations than other comparable withdrawals. All regulations must be balanced and demonstrate benefits exceeding costs. Precautionary principles assigning infinite costs to environmental risk without considering economic benefits are inappropriate as a basis for regulation.

DRBC regulations should allow for coordination but defer to the states on the particulars of matters states have traditionally regulated (e.g. well casing standards). Regulations of natural gas uses must allow for evolving technology and adaptation to such new technology. Evaluation of impacts must be continuing rather than cumulative.

Natural gas is an industry with the potential to extract resources of tremendous value using less than half of one percent of the land on which it is located. DRBC regulations must not arbitrarily deny our region this opportunity on the basis of meaningless speculation about increasingly small impacts.

STATEMENT

We join in this statement as an expression of our concern with the slow pace of development and the specific nature of natural gas industry regulation by the Delaware River Basin Commission (DRBC). We represent a broad base of businesses, communities, industries, landowners and non-profit economic development groups from several counties and two states who recognize the need for responsible natural gas exploration and development as a solution to the severe economic challenges our region faces. We look to you for leadership. Specifically, we request prompt development of reasonable DRBC regulations that will allow responsible drilling to go forward without further delay or disincentives for the industry to invest in our region.

The Upper Delaware region suffers from extraordinarily poor economic conditions. Our three principal counties (Delaware, Sullivan and Wayne) suffer from incomes that are 30-65% below those of the remainder of the DRBC region, with a median household income of only \$44,000 per year. The region is also characterized by a high median age (44 years), declining school enrollment, a low paying, service-based economy, a collapsed construction industry and ever shrinking numbers of farms. We need help and we need it now!

The natural gas industry offers unparalleled economic opportunities for the region with extremely limited impacts on the natural environment. No industry offers so much, with so small a footprint on the land that supports our tourism industry and lifestyle. Natural gas drilling technology, moreover, is advancing rapidly and constantly reducing both water use and the environmental footprint. Neither rise anywhere close to the levels associated with other energy producing industries or most other economic activities. This combination of economic opportunity with low risk is unusual. The benefits to the nation from development of such clean energy here at home and close to metropolitan markets compel us to insist the DRBC move forward promptly with regulation to ensure responsible gas drilling can take place now. If that requires an interim rule while more permanent regulations are being finalized, we support it, but we need regulations now that will allow natural gas development to proceed. This region may never again see an opportunity with this economic potential.

Not just any regulations will do. They must be reasonable, fair and in-line with standards used in other shale gas regions where development is already underway, such as in the Susquehanna River Basin. Put simply, our communities can ill-afford to miss out on such a opportunity for arbitrary and unfound reasons. Accordingly, we express the following concerns and ask these be addressed in the regulations as they are shaped by the DRBC:

- DRBC Regulations Should Build Upon and Complement Those of Other Regions Having Experience with Shale Gas**

Neither shale gas, nor the processes used to extract it, are new. There are other regions, including but not limited to the Susquehanna River Basin, with

considerable experience. That experience should be utilized and DRBC rules should build upon this work, incrementally improving regulation without reinventing it or establishing an entirely different regulatory scheme that will create a disincentive to invest in the Delaware River Basin. The record of the SRBC is a good one and should be built upon. The DRBC should move forward together with the SRBC in refining their approaches so there is predictability for parties involved. DRBC regulations must not our region one to be avoided or discourage activity, thereby driving gas companies, capital and jobs elsewhere.

2. **Any Regulations Must Avoid Exacerbating the Punishing Effects of Special Protection Waters Designations Already in Effect**

Existing high quality stream classifications within both New York and Pennsylvania have led to much higher costs of doing business for every industry, from agriculture, which is constantly facing new mandates, to second home development. These classifications make infrastructure investments, building homes and simply living in the Upper Delaware River region much more expensive. Regional businesses and landowners have being repeatedly punished for maintaining high water quality for the use of downstream populations who have not done the same. We, too, appreciate our high quality water and, more importantly, desire to protect it, but that protection cannot come at the expense depriving the region of economic opportunity. Both are essential.

Regulations must be balanced and any restrictions imposing a higher standard on our water than others must be offset by provisions that also give economic development a higher priority here and make it easier, not harder, for business and industry that seeks to locate here. Regulations regarding stream classifications, moreover, must be simplified and not made more complicated. We cannot afford further punishment for having clean water.

3. **DRBC and State Regulation Must Be Seamless in Nature and Avoid All Unnecessary Redundancy**

The DRBC should not be interfering with state regulation, imposing a different standard or substituting its judgment for that of its member states or their instrumentalities. States have traditionally regulated matters of health, for example, and municipalities have regulated land use. These responsibilities should not be usurped by the DRBC, which would result in differing health or land use standards in one part of a state than another.

The DRBC cannot be a super-agency imposing its will on the states and municipalities. Rather, it needs to be a coordinating entity that addresses those issues that cannot be effectively handled by states working alone. These include ensuring water quantity and water quality in the shared Delaware River. They do not include oversight of every detail on every tributary, where the impacts on water quantity and quality are nebulous at best and cannot be demonstrated to

materially impact upon the shared resource. This means staying out of land use issues, matters of health and safety regulations, stormwater management, forest management and financial regulation, concentrating instead strictly on the water use and quality of the water discharged as a result of the drilling process.

We are especially concerned with speculation that DRBC regulations may address tree canopy protection and other issues of forest preservation. Not only is this clearly a matter for states to regulate, as it would intrude upon land use regulation, but it is also unnecessary. The impact of a gas well pad and access road construction is absolutely minimal, as noted elsewhere herein, far less than almost anything else. Most importantly, however, forest cover is anything but threatened in the region. A detailed land use study by the Wayne County Planning Department found forest cover ***increased*** by 44,458 acres or 16.7% between 1959 and 2008, as pasture and brush land reverted to forest. Forestland accounts for 65% of the County. Forests are valuable and require management, but there are far more important issues facing our population at the moment (e.g. making a living, addressing our 8-10% unemployment rates and raising our very low incomes). Forest preservation should not, therefore, be a subject of DRBC regulation.

4. **DRBC Regulations Should Follow the Upper Delaware River Management Plan, Which Provides for Natural Gas Development**

The *Upper Delaware River Management Plan* provides for natural gas development, allowing for both drilling and local collection lines within the Upper Delaware Scenic and Recreational River corridor and establishing criteria for this. While, today, natural gas extraction from the corridor can be accomplished in many cases without drilling within it, the *River Management Plan* fully anticipated such activity and provides for it. This indicates not only that the industry was compatible with protection of the region's open spaces and natural environment, but that it could even extend to within the river corridor in large respects. There is no conflict between the objectives of river protection and natural gas development and none should be created or implied in DRBC regulations.

5. **DRBC Regulations and Procedures Must Provide for Timely Review and Action Upon Applications**

The DRBC process to date has effectively created a moratorium by inaction, although recent decisions with respect to assessment wells are encouraging. The DRBC has had two years to develop regulations and only recently produced a draft not yet shared with the public. This is irresponsible with respect to the Commission's mandate, which includes ensuring water for economic development. The DRBC is not an environmental agency. Rather, it is water management authority with a serious responsibility to produce timely regulations and act promptly upon applications in a deliberate but thorough manner.

We cannot tolerate endless reviews and shifting positions if we expect to accommodate the needs of potential investors in our regional economy - our need for economic development. The regulations must include time limits on reviews and actions taken by the DRBC, similar to those imposed by states on localities with regard to land use approvals. That is to say there must be a deemed approval procedure for the applicant to exercise where the DRBC has taken too long to make a decision. The DRBC must be responsible to all the citizens of the basin and recognize those responsibilities are not limited to water quality. They also include economic development and a balancing of water use.

6. **Water Uses for Natural Gas Should Not Be Subject to Stricter Regulations Than Other Comparable Magnitude Withdrawals or Uses.**

Discussions with DRBC officials suggest the agency intends to impose higher standards on the natural gas industry than other water users. Indeed, the agency has, to our great detriment, arbitrarily abolished the thresholds for review of natural gas projects, already treating this industry differently than others. This cannot stand. Treating natural gas water uses differently is discriminatory not only to the applicants involved but, especially, to our region, where natural gas offers the economic opportunities enjoyed by others and heretofore denied to us. If the development of a natural gas well requires comparable or less water than routine golf course maintenance, the natural gas industry should not be held to a different standard. If a natural gas use produces smaller or less potentially problematic water discharges than a sewage treatment plant, it should not be subject to harsher limitations. Doing so would be expressly unfair to those counties where the natural gas resource is the comparative economic advantage they must employ to achieve economic parity with others.

It is critical, in this respect, to note natural gas can be recovered with far less energy and water use, and far fewer land use impacts, than any other energy source. It requires 0.84 to 3.70 gallons of water to produce one million BTU's of natural gas energy, as compared, for example, to more than 2,500 gallons per one million BTU's of biofuels energy. Natural gas development should be encouraged for this reason alone. Its environmental footprint is small by any measure.

7. **All Regulations Must Be Balanced and Demonstrate Benefits Exceeding Costs**

There is no room in the regulations for exercise of a precautionary principle that would assign infinite costs to environmental risk without considering economic benefits, or to put in another way, infinite benefits from regulation without considering economic costs. All regulations have limits to their benefits. They must, therefore, be reasonable and balanced. Every aspect of the DRBC regulations should demonstrate benefits exceeding costs. Regulations that cannot pass this test will invariably cost our region more than it can afford. We cannot travel by air or by car without incurring risks and we cannot develop an economy without taking risks. The question is not whether regulations are

needed, but how much risk is acceptable compared to the benefit to be obtained from gas drilling. We submit the benefits are very large indeed. Therefore, the regulations must be focused on the essentials and not the frivolous.

8. Regulations Must Be Consistent Among States But Also Flexible

All parties involved will benefit from regulations for natural gas that are consistent from state to state but this must not prohibit the tailoring of regulations to the needs of each state or the ability of a given state to innovate. The DRBC regulations should serve as a basis of coordination but defer to the states on the particulars of matters states have traditionally regulated (e.g. well casing standards). The states already do this well and should continue to do so by reflecting their individual geologies, patterns of development and other state specific issues. There is a role for the DRBC in establishing the need for such standards but any regulations it might enact should be automatically repealed or rendered moot where a given state has its own, such that health standards are consistent throughout such state. This is akin to provisions in Pennsylvania Law with respect to county land use regulations that are automatically repealed whenever a municipality in such county enacts its own.

9. Regulations of Natural Gas Uses Must Allow for Evolving Technology and Adaptation To Such New Technology

The science of shale gas exploration and development is rapidly evolving, requiring ever smaller amounts of water, employing fewer chemicals and producing smaller discharges. This will clearly lead to the need for different and probably less regulation in the future. Regulations enacted now will quickly become obsolete. Therefore, provisions need to be incorporated that will allow for adaptation and revision on a timely basis going forward. It would be unacceptable to require going through the same regulatory process to revise and update standards where technology is so rapidly advancing.

Therefore, the regulations require a mechanism to adjust with circumstances and allow for use of new technologies. This can be accomplished, once again, by employing concepts from land use regulation where combinations of objective standards and discretionary processes are often used to set thresholds, but allow for modification of standards with demonstration of need or a better standard. Imposition of conditions that provide for testing and permit renewals based on such testing can also work. The DRBC permit by rule process can be employed in this manner. Such approaches are absolutely essential given how very long it has taken the DRBC to produce even draft regulations for internal review.

10. Evaluation of Impacts Must Be Continuing Rather Than Cumulative

Because the industry is rapidly changing, regulation development must be incremental in nature based upon experience. A fair assessment of cumulative

impacts is impossible because the technology keeps changing. Three years ago, the speculation was that each gas well might serve 40 acres. Two years ago, a 640 acre unit with four wells became the standard. Today, Marcellus Shale drilling companies are proposing 1,280 acre units on which they can potentially drill dozens of wells on less than a single five acre pad (a footprint of less than 0.5% of the land base). If the cumulative impact had been evaluated three years ago that evaluation would be irrelevant today.

Context is also key. Almost any other use of land (e.g., housing, commercial development, recreation) will have far greater impacts on the land, making cumulative analyses of any one of these uses, at any given point in time, futile.

Therefore, the regulations must be based on continuing evaluation and data gathering that allows for incremental regulatory improvements adapted to circumstances and technology. Natural gas is an industry with the potential to extract resources of tremendous value using less than half of one percent of the land on which it is located. Nothing else comes close in maximizing economic opportunity while minimizing environmental impact. Nothing in the DRBC regulations, therefore, should arbitrarily deny our region this opportunity on the basis of meaningless speculation about increasingly small cumulative impacts.

We urge you to consider these concerns and act quickly for the good of our region.

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