

For Immediate Release
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Hinchey Challenges Assertions of Army Corps of Engineers Regarding Federal Role in DRBC Regulation of Gas Exploration and Drilling in Delaware River Basin

Middletown, NY - Congressman Maurice Hinchey (D-NY) today sent a letter to Brigadier General Peter DeLuca, Commander and Division Engineer for the North Atlantic Division of the U.S. Army Corps of Engineers, challenging and questioning assertions the general recently made regarding his role as the federal government's representative to the Delaware River Basin Commission (DRBC).

Earlier this month Hinchey wrote to DeLuca, a voting member of the five-person commission, urging him to push the DRBC to wait for the completion of a cumulative impact study of hydraulic fracturing gas drilling in the Delaware River Basin prior to finalizing regulations governing the process or issuing permits for drilling activities. In a response, DeLuca indicated that he was not in favor of waiting for the results of such a study, citing a purported requirement that he support the economic needs of the region and our nation's need to secure energy reserves. Hinchey today responded noting that under the DRBC Compact and other federal designations impacting the Delaware River Basin, such an interpretation of the federal role has no basis in statute or regulation.

In July, Hinchey announced that he had secured approval from a key House panel of \$1 million for the U.S. Geological Survey (USGS) to conduct the study. The funding is now moving through the normal legislative process and final passage of the funding is expected later this year. In May, Hinchey also urged DRBC Executive Director Carol Collier to conduct the study before approving water withdrawals.

The full text of Hinchey's response to DeLuca is below.

September 30, 2010

Brigadier General Peter A. DeLuca
Commander and Division Engineer, North Atlantic Division
U.S. Army Corps of Engineers
302 General Lee Avenue
Brooklyn, NY 11252

Dear General DeLuca:

Thank you for your prompt response to my recent letter regarding regulations for gas exploration and drilling in the Delaware River Basin. While I appreciate learning your views on this matter, your letter raises very serious and troubling questions about the role of the Delaware River Basin Commission's (DRBC) federal representative, how the views of other federal agency partners are represented at the DRBC, and the obligations of the DRBC to protect one of our country's largest sources of drinking water.

In the recent letter, you note, "The federal family of agencies that I represent on the commission are collectively charged with a requirement to support the economic needs of the region and our nation's need to secure energy reserves while protecting the environment." While this charge may be legislatively specified for other federal and state agencies, there is no legislative authorization for the DRBC that supports such an interpretation of the federal representative's role on that commission. In fact, this statement contradicts Congressional intent and ignores the specific interests that Congress cited in creating the DRBC and in establishing multiple federal designations and protections along the length of the Delaware River. These designations include the Upper Delaware Scenic and Recreational River, the Delaware Water Gap National Recreation Area, the Middle Delaware National Scenic River, and the Lower Delaware Wild and Scenic River.

As you know, the DRBC was established by Congress in 1961 and signed into law by President John F. Kennedy to protect and manage the waters of the Delaware River Basin. The Compact specifies the DRBC's role in protecting and managing key interests such as water supply, pollution control, flood protection, watershed management, recreation, hydroelectric power, and regulation of withdrawals and diversions. The Compact between the federal government and four basin states specifically notes:

"Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirement of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from rivers, streams, and water in the basin...[\[1\]](#)"

The Compact provides no charge or direction to the DRBC to "secure energy reserves," other than hydroelectric power, particularly if such activities jeopardize the federally-protected Special Protection Waters of the basin. This charge is explicitly cited numerous times in the law. Unfortunately, without the benefit of a cumulative impact study of gas exploration and drilling in the Basin, the DRBC cannot accurately assess how the development of up to 30,000 gas drilling wells will impact the Basin's water resources or fully protect the Basin's invaluable water and natural resources.

In terms of representing other federal interests, the interpretation cited in your letter also contradicts the Wild and Scenic Rivers Act of 1968 and the inclusion of large segments of the Delaware River in that federal system. The Act describes the "Congressional declaration of policy" as follows:

"It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.^[2]"

Widespread reports of water contamination and adverse impacts, however, raise serious questions as to whether the use of hydraulic fracturing for gas exploration and drilling in the Delaware River Basin is consistent with this policy.

As I noted in my prior letter, the National Park Service (NPS) and U.S. Fish and Wildlife Service (USFWS) have also conveyed to the Army Corps of Engineers (ACE) their agencies' concerns about drilling activities in this basin, citing the federal protective designations and other important national interests and supporting a cumulative impact study^[3]. However, your letter makes no mention of the concerns publicly expressed by any of the "family of federal agencies" that you indicate the Army Corps represents.

At a time when the wells of private citizens near gas drilling sites in Pennsylvania and many other states are being investigated by the U.S. Environmental Protection Agency and state regulatory bodies for contamination by methane and fracking fluids, we should be doing everything we can to ensure that the Special Protected Waters (SPW) of the Delaware River Basin, which supplies drinking water to millions of people, is home to endangered fish and wildlife, and supports the local recreation and tourism economies for scores of local communities, is protected against the risks of natural gas drilling.

Given the serious nature of this issue and the vagueness of your prior response, I request that you please provide answers to the following questions:

- What are the "federal agencies" you represent at the Delaware River Basin Commission?
- What is the legal basis, be that statutory or regulatory, on which you based your statement that the "family of federal agencies" you represent are charged with supporting "the economic needs of the region and our nation's need to secure energy reserves?"
- What is the legal basis, be that statutory or regulatory, on which you based your statement: "This balancing [environmental protection to proceed together with economic development] was an underlying reason for the creation of the Commission?"
- How have you complied with your agency's environmental review requirements and other responsibilities under the National Environmental Policy Act?
- Did you, or anyone in your agency, conduct any environmental reviews on the cumulative impact of gas drilling on the Delaware River Basin's water quality, drinking water supplies, or fish and wildlife?
- Did your agency conduct any analysis of the potential negative economic consequences of gas drilling to other sectors of the economy, including tourism, recreation, second home construction, and agriculture?

- How did you incorporate the views of other federal agencies before making a decision to approve a water withdrawal for gas drilling (Stone Energy Docket D-2009-01301, approved 7.14.10) and to support the "grandfather" exceptions to the Supplemental Executive Director Determination for a number of exploratory wells?
- Did you consult with other federal agencies prior to drafting and sending your response to my letter?
- Was your response to my letter approved by any superior officers at the Army Corps of Engineers, the Department of the Army, or senior administration officials before it was sent?
- Can you provide the schedule that shows that "several public hearings as well as a written comment period sometime later in the calendar year" have been arranged to address drilling in the Delaware River Basin?

I look forward to your timely response.

Sincerely,

Maurice D. Hinchey