

**TESTIMONY**  
**HOUSE REPUBLICAN POLICY COMMITTEE**  
**DELAWARE RIVER BASIN COMMISSION**  
**WAYMART, PA**  
**OCTOBER 31, 2017**

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Representing  
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Thank you for reviewing my testimony today.

For the record, I am Vince Phillips, a registered lobbyist for the PA Septage Management Association (PSMA) and also for the PA State Grange.

As you may know, **PA State Grange** was founded in 1873 in order to serve as an advocate for rural Pennsylvanians – both farmers and non-farmers alike. In the Delaware River Basin, there are 61 Grange chapters . Our member families who live in the upper Delaware River Basin are directly affected by policy decisions regarding natural gas. As leaseholders, as community businesspeople, as community servants and as individuals, PA State Grange members will be impacted by anything that upsets the economic underpinnings of this region, i.e. Marcellus Shale.

**PA Septage Management Association** represents firms that install and service onlot septic systems but also perform other services such as application of Biosolid (treated waste) to farms. In addition, many of our member firms serve municipality facilities that discharge into the Delaware River and tributaries. Our members have both professional and personal interests in conserving natural resources and the quality of Pennsylvania’s waters. A good number of our member firms also help service the development of natural gas by transporting water and waste.

**Both the PA State Grange and the PA Septage Management Association are frankly deeply concerned about the Delaware River Basin Commission’s September 13, 3-1 decision to push a regulation that would ban fracking in much of northeast Pennsylvania.** Other witnesses at this hearing have described economic impacts if no further development of this natural resource is permitted. This is a huge overreach which shows disrespect to northeast PA and its economy.

### **Economics**

Don’t forget that policy decisions have real consequences. It is not rocket science to figure this out since an economic downturn caused by the Delaware River Basin Commission means more forced reliance on property taxes which particularly hurts older residents. Economic impact also means job losses, struggling businesses and a continued drift of young people to other areas. Rather than arbitrarily saying ‘NO!’, perhaps the Commission should learn about current fracking practices to better understand how potential environmental impacts can be addressed. That is wishful thinking since the Delaware River Basin Commission also tried to ban fracking in 2010.

Lest anyone should doubt the economic impact, please consider Article 2 of the 1961 Compact.

#### 2.7 Jurisdiction of the Commission.

The commission shall have, exercise and discharge its functions, powers and duties within the limits of the basin.

Let’s break this down. “Within the limits of the basin” sounds like a limited area but it is not.

The DRBC website says that 11 PA counties are in the basin. Of these, eight have Marcellus Shale formations. This covers well over 2/3 of the ground area in the Basin. (Source: DRBC <http://www.nj.gov/drbc/basin/map> Map Showing DRBC Special Protection Waters (SPW), SPW Drainage Area, and Marcellus Shale Formation )

Someone saying that impact would be minimal should dig deeper. The area covered by the Delaware River Basin HAS A HUGE POTENTIAL FOR ECONOMIC DEVELOPMENT.

But others have testified about all that.

### **Limits to Commission Authority**

The action by the Delaware River Basin Commission is not on sound footing. Anti-fracking advocates claim that the Commission has carte blanche to do what it wants. The original 1961 Compact as ratified by Pennsylvania Act 268 of 1961 (July 7, 1961) suggests that there are limits to this authority as shown by the following references:

Delaware River Basin Compact

Act 268 (PA) July 7, 1961

Article 1: 1.3 Purpose and Findings

( c ) In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.

<http://www.state.nj.us/drbc/library/documents/compact.pdf>

To remove causes of present and future controversy? To provide for cooperative planning? Clearly, something like fracking does not reduce controversy. There would be controversy no matter what, so why is the Commission upholding a strong anti-fracking view? It is certainly not based on this section. Some would say that Vince is playing semantic games saying that the Commission's anti-fracking bent violates the spirit of the Compact, but let's dig deeper.

Article 5: Pollution Control

5.5 Further Jurisdiction.

Nothing in this compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

The Commission action clearly violates this section of the Compact. Pennsylvania's Act 13 sets forth a regulatory framework for extraction of natural gas in all of Pennsylvania. It does NOT exempt the Delaware River Basin Commission as taking precedence over Pennsylvania law.

(Source:

<http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/OilGasReports/2012/act13.pdf> )

APPENDIX TO TITLE 58 OIL AND GAS

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Supplementary Provisions of Amendatory Statutes

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2012, FEBRUARY 14, P.L. 87, NO. 13

§ 5. Application of law.

The addition of 58 Pa.C.S. Ch.23 shall apply to **all oil and gas deposits and oil and gas development activities and operations subject to the jurisdiction of the Commonwealth.** With respect to oil and gas deposits on national forest lands identified under section 17(o) of the Mineral Leasing Act (106 Stat. 3108, 30 U.S.C. § 226(o)), the application of regulations and statutes adopted by the Commonwealth shall be the exclusive method and means by which any requirements may be imposed on any feature, aspect or process of oil and gas operations pertaining to the development of the deposits. (*emphasis added*)

The original enabled legislation which entered Pennsylvania into the Delaware River Basin Commission is Act 268 of 1961. Section 7.4 Water Management reads:

Section 7.4. Cooperative Planning and operation

- (a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.
- (b) The commission **shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency is available** to operate the same under reasonable conditions... (*emphasis added*)

Trying to repeal Pennsylvania's Act 13 simply because the Delaware River Basin Commission is anti-fracking does not show willingness to cooperate with other public and private agencies if one includes the PA General Assembly as an interested party. In addition, (b) says that the commission cannot implement anti-fracking depending on the legal definition of "project" unless no other suitable unit or agency is available. PA Department of Environmental Protection and the Environmental Quality Board are quite "suitable" and should the General Assembly change Act 13, DEP will implement those changes.

## **Conclusion**

The September 13 vote by the Delaware River Basin Commission was grounded in a philosophy that fracking is bad. The vote was three to one with one abstention (New Jersey). Voting for the resolution were New York's Governor who has banned fracking in New York State and Delaware's Governor where Marcellus Shale activity does not and cannot occur. PA Governor Tom Wolf voted with the other Democratic Governors against fracking.

New York's Governor should have excused himself from voting because he had a clear conflict of interest, in effect saying, "What's good for New York **WILL** be good for everyone else and I don't care what Pennsylvania's elected lawmakers think."

Delaware's interest is ideological given the fact that very little of the Delaware River Basin involves that state.

In voting for the resolution, PA Governor Tom Wolf did fill a campaign promise to have a moratorium per a May 8, 2014 interview with WITF and State Impact Pennsylvania..

**Q: Do you support any changes to any of the current moratoriums?** *Note: There is currently a moratorium on new oil and gas leasing in state parks and forests and on hydraulic fracturing in the Delaware River Basin.*

A: There's a moratorium on the Delaware River Basin. I support continuation of that moratorium and I support a moratorium on drilling in any state lands, forests.

(Source: <https://stateimpact.npr.org/pennsylvania/2014/05/08/meet-the-candidates-tom-wolf> )

However, Governor Wolf's September 13 vote was his choice to make an end-run around the will of the General Assembly (Act 13). That's the real tragedy where a Governor tries to circumvent existing Pennsylvania statute.

Independent as where anyone stands on fracking, circumventing Pennsylvania law simply because you think you can is not the best way to serve the public's interest.

**\*\*\*House Republican Policy Committee (New)**

**10:00 a.m., PARC Pavilion, Camp Ladore, 287 Owego Turnpike, Waymart**

Public hearing to accept testimony on the impact of a permanent drilling ban being proposed by  
the Delaware River Basin

Commission (DRBC)