

September 14, 2010

Via E-Mail and Federal Express

Pamela Bush
Secretary and Assistant General Counsel
Delaware River Basin Commission
P.O. Box 7360
25 State Police Drive
West Trenton, NJ 08628-0360

**Re: Request for Supersedeas filed by Delaware River Keeper Network and
Damascus Citizens for Sustainability**

Dear Secretary Bush:

We write on behalf of Newfield Appalachia PA, LLC ("Newfield") in opposition to the Supersedeas Request filed on September 10, 2010 (hereinafter "Supersedeas") by Delaware River Keeper Network and Damascus Citizens for Sustainability ("DCS") (collectively the "Petitioners"). Although Petitioners claim to seek a Supersedeas intended to "preserve the status quo," in truth Petitioners are seeking an expansion of the Executive Director's decision by seeking to include a small number of already permitted exploratory wells within the scope of Commission review. The current "status quo," which should remain in effect, permits operators to proceed with a limited number of exploratory wells for which the Pennsylvania Department of Environmental Protection ("PADEP") has issued permits. Contrary to Petitioners claims, any disruption to the current status quo will result in irreparable harm to Newfield in the form of safety risks and financial costs.

In their untimely and inappropriate request to stop the drilling of a few test wells, Petitioners claim alleged harm that is beyond the purview of the DRBC, such as "noise, dust, disturbance by heavy traffic, loss and/or interruption of sleep from high intensity lighting and drilling activity." (Supersedeas, p. 3) The extremely limited activity that is yet to be completed will result in no substantial impact to the waters of the Delaware River Basin. Thus, for these reasons, which are set forth in detail below, the Commission should deny Petitioners' request for Supersedeas.

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I. Background

On May 19, 2009, the Executive Director issued the 2009 Determination that specifically and expressly permitted all exploratory wells, deeming them not subject to the Commission's project-approval requirements recognizing that hydraulic fracturing and further development of the natural gas resource cannot occur without Commission approval. As a result, project sponsors were cleared to continue to pursue their exploratory well projects within the Basin without approval of the Commission. The Petitioners did not request a hearing or a supersedeas at that time.

A year later, at its May 5, 2010, meeting, the Commission adopted a motion deferring approval of any project approval dockets for well pads (*i.e.*, for the actual drilling of extraction wells) until the Commission developed and adopted regulations setting forth the criteria for, and procedures to be followed to obtain, such approvals. This decision to defer approval did not include exploratory wells and such wells continued to be permitted to proceed without review by the Commission. Again, the Petitioners did not request a hearing or a supersedeas at that time.

On May 27, 2010, the Petitioners filed a request for a hearing. At that time, however, they did not request a supersedeas. Shortly thereafter, on June 14, 2010, the Executive Director issued a Supplemental Determination explaining that "wells intended solely for exploratory purposes" were subject to the Commission's project-approval process going forward. However, the Supplemental Determination stated that those projects which obtained state approval for exploratory wells on or before June 14, 2010, were not included in the expanded determination and could, as originally intended, proceed without further Commission approval.

At its July 14, 2010 meeting, the Commission granted the Petitioners' request for a hearing. At that time, the "status quo," that has been in effect since the inception of DRBC approval in this context and *that continues today*, was that operators that obtained state approval for exploratory wells on or before June 14, 2010, could proceed without further Commission approval.

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II. Petitioners are not seeking to preserve the status quo; but are seeking a reversal of the Executive Director's Determinations in advance of the hearing.

In their request, the Petitioners state that they are asking the Commission to preserve the "status quo." However, as noted above, the status quo has always been that Newfield's exploratory wells could proceed. The May 19, 2009 Determination and subsequent decision to require Commission approval of well pads specifically did not include exploratory wells. The June 14, 2010 Supplemental Determination subjected exploratory wells that had not yet been permitted to the new approval process, but specifically did not require projects that had already obtained state approvals to await Commission review and approval. Thus, at no point in time did the status quo prevent Newfield's "grandfathered" projects from going forward.

III. If the Commission grants the Supersedeas, Newfield will suffer irreparable harm.

The Petitioners argue that a delay in operations will not impair the drilling projects. That assertion is contrary to that set forth in the June 14, 2010 Supplemental Determination, wherein the Executive Director stated that "where entities have invested in exploratory well projects in reliance on my May 2009 Determination and information from staff, there are countervailing consideration that favor allowing these projects to move ahead." These countervailing considerations presumably include the effect a change in position would have on Newfield, its contractual obligations and the benefit gained from these few and modest exploratory well projects. In the event the Commission grants the Supersedeas, a decision which would delay operations for three months or longer, Newfield will suffer irreparable harm including, but not limited to, the following:

- Suspension of operations midway through the drilling process is contrary to generally accepted safe industry practices and may precipitate PADEP enforcement actions. Wells that are currently being drilled cannot be mechanically stabilized satisfactorily until planned total depth is reached;
- A delay of several months would cause drilling activity to resume in mid-winter. Mid-winter operations pose more risks due to adverse weather conditions;
- A mere three month delay in operations would cost the company approximately \$1.8 million (\$20,000 a day) in idle rig time, and will adversely impact Newfield's contractual obligations to third-parties.

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In addition to the direct increased risks and financial damages listed above, a suspension of drilling would result in numerous secondary costs and damages inherent in the stopping and restarting of any sizable operation. A suspension of drilling will have an effect on Newfield's employees' livelihoods. Additionally, an injunction preventing operations at the exempted wells would impair Newfield's abilities to meet its contractual obligations with leaseholders.

IV. The conditions of which the Petitioners complain are not within the purview of the DRBC.

As noted above, the Petitioners argue that the Supersedeas should be granted because the Petitioners have suffered "noise, dust, disturbance by heavy traffic, loss and/or interruption of sleep from high intensity lighting and drilling activity" among other things, outside the scope of the Commissions' purview. Petitioners have not argued that a stay is required to protect water resources. In fact, it should be noted that most of the work that would be related to water resources has been completed, and the remainder will be insignificant and will have minimal if any impact on the water resources in the Basin.

For these reasons, Newfield respectfully submits that the Commission deny the Petitioners' Supersedeas Request as contrary to and not within the authority of the Commission to grant.

Respectfully Submitted,



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