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VIA ELECTRONIC FILING

November 11, 2019

Andrew D. Dehoff
Executive Director
Susquehanna River Basin Commission
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Harrisburg PA 17110-1788

Aneca Atkinson
Commissioner
Susquehanna River Basin Commission
16th Floor, RCSOB
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: SRBC Proposed Project Review Regulation Amendments and Proposed Consumptive Use Mitigation Policy

Dear Mr. Dehoff and Commissioner Atkinson:

The Pennsylvania Chamber of Business & Industry (“**Chamber**”) appreciates the opportunity provided by the Susquehanna River Basin Commission (“**SRBC**”) to review and provide comments on the proposed amendments to the SRBC project review regulations (18 C.F.R. Parts 806) and the related proposed *Consumptive Use Mitigation Policy* (the “**CU Policy**”).

As SRBC is aware, the Chamber has worked with a coalition of industries and associations across the spectrum of the regulated community in reviewing and providing comments on these proposed rule changes and the CU Policy, along with prior policy proposals, such as the 2012 Low Flow Protection Policy. As expressed in the Chamber’s previous comments on various SRBC proposals, the Chamber and its members recognize that the development, use and stewardship of the Basin’s water resources are essential to the health, success and vitality of every community, industry and enterprise within the Susquehanna River watershed. With that recognition, we understand that stewardship of our water resources requires a delicate, but essential, balancing of environmental and economic considerations.

The PA Chamber and its membership also very much appreciate the stakeholder outreach conducted by the SRBC’s executive staff to refine these proposals and to engage in deliberative conversations with the regulated community in order to address the concerns the Chamber raised when these regulations and policies were proposed for revision two years ago.

We offer the following comments on the revised proposed regulatory changes and CU Policy.

Among other improvements, we support elements of the revised proposals that:

- (1) Retain the past practice of having SRBC take the lead in developing most mitigation projects, and eliminate the concept of project sponsors being required to prepare individual consumptive use mitigation plans that evaluate the feasibility of various mitigation options. For the reasons stated in the PA Chamber’s January 27, 2017 comments, individual project sponsors have limited capabilities to implement significant consumptive use mitigation projects, and even most larger water users would have no or limited capabilities to successfully undertake physical mitigation measures.

- (2) Including acid mine drainage abatement, groundwater recharges, water reuse, and water conservation projects that serve to reduce existing consumptive use.
- (3) Modify 18 C.F.R. §806.22(b)(1)(i) to allow for consideration of use of alternative sources, such as groundwater, unless the impacts to nearby surface water will not likely be at a magnitude or in a timeframe what would exacerbate low flow conditions. The current criterion, requiring essentially no “impact to surface water flows,” is overly stringent. Many groundwater withdrawals, for example, will have at best attenuated and delayed impacts on surface stream flows, and those impacts may well have no effect on the low flows that consumptive use regulations are intended to protect.
- (4) Clarify and reiterate that the option of consumptive use “discontinuance” applies where a user can reduce consumptive use to below the 20,000 gpd threshold for consumptive use regulation.
- (5) Modify the manner in which the required amounts of mitigation are measured, from the amount required to cover 90 continuous days of consumptive use to 45 continuous days of consumptive use.
- (6) Reflect the expression of creativity and flexibility shown in Policy §V.E and VI.C and D, toward consideration of other alternatives for consumptive use mitigation, including demand reduction alternatives, water reuse and recycling, increased groundwater recharge, and other alternatives. The PA Chamber supports efforts to open the door for consideration of a broader array of mitigation measures that may compensate for consumptive use and/or add to basinwide or local water resiliency. As we noted in some recent meetings with SRBC staff, among the opportunities that might be considered are projects that serve the dual purpose of addressing Chesapeake Bay TMDL nutrient reduction objections and water resiliency, such as stormwater BMPs that reduce runoff and recharge groundwater. SRBC should look for opportunities to pilot such dual purpose projects in collaboration with the operators of MS4 stormwater systems.

The PA Chamber would offer several comments and suggestions on particular items in the draft Policy:

- In §806.22(b)(1)(i), we would recommend that the phrase “exacerbate *present* low flow conditions” be clarified, since the word “present” could be ambiguous. A possible alternative phrasing would be “exacerbate the low flow conditions that would otherwise occur absent the use of such alternative sources for consumptive use or consumptive use mitigation.”
- Currently, neither §806.22(b) nor the draft Policy provide an answer to the question of precisely when a project sponsor must either make compensating releases from storage or discontinue use – how that mitigation will be triggered and when the requirement will end. While the Policy provides for acceptance of mitigation premised on providing compensation storage must be sufficient to cover up to 45 continuous days of consumptive use, it is not clear how and when a project sponsor would be required to start or stop such releases. Further, if low flow conditions persist and compensating storage is exhausted, we assume that the project sponsor would be relieved of obligations to make such releases until storage is again available, but that should be clarified in the Policy.
- While Policy §V.A provides that project sponsors who chose to provide storage for compensating releases are only required to cover 45 continuous days of consumptive use, the “discontinue consumptive use” discussion in §V.B does not establish a similar 45-day duration. The net effect

of both methods of mitigation on stream flows would seem to be the same; that is, 45 days of releases equal to consumptive use should equate to the same as 45 days without the consumptive use. It would seem fair to have the same criteria apply to either method. However, if not, the rationale for differentiating between compensating releases on the one hand and discontinued use on the other needs to be explained. And if such a different approach is applied to discontinued use, then it is all the more important that the SRBC delineate for project sponsors the likely duration of periods when discontinuance of use would be triggered and applicable – that is, what is the duration of “Commission low flow periods.”

In closing, we reiterate our appreciation for the Commission’s staff in addressing the comments we and others raised during the prior comment period and we thank the staff and Commissioners for their attention to these comments. Should you have any questions concerning our comments, please do not hesitate to reach out to either myself or Tim Weston, Partner at KL Gates and chair of the Chamber’s water policy workgroup.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday". The signature is written in a cursive, flowing style.

Kevin Sunday
Director, Government Affairs

cc: Tim Weston, Partner, K&L Gates