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THE NEW YORK CITY COUNCIL

COMMITTEE ON ENVIRONMENTAL PROTECTION
JAMES F. GENNARO, CHAIRMAN

BRIEFING PAPER OF THE INFRASTRUCTURE DIVISION

ROBERT NEWMAN, LEGISLATIVE DIRECTOR

January 31, 2012

PRECONSIDERED
RESOLUTION NO. :

By Council Member Gennaro

TITLE:

Resolution authorizing the Council to file an amicus brief at each stage of the litigation captioned *State of New York v. United States Army Corps of Engineers, et al.*, Index No. CV-11-2599, currently pending in the Eastern District of New York, in support of the State Attorney General's position that the court should enjoin the Delaware River Basin Commission from issuing regulations governing natural gas development until the Commission prepares a draft environmental impact statement.

INTRODUCTION:

On January 31, 2012, the Committee on Environmental Protection, chaired by Council Member James Gennaro, will hold a hearing on a Preconsidered Resolution

authorizing the Council to file an amicus brief at each stage of the litigation captioned *State of New York v. United States Army Corps of Engineers, et al.*, Index No. CV-11-2599, currently pending in the Eastern District of New York, in support of the State Attorney General's position that the court should enjoin the Delaware River Basin Commission from issuing regulations governing natural gas development until the Commission prepares a draft environmental impact statement.

BACKGROUND:

This resolution authorizes the Council to file amicus briefs at any stage of a lawsuit challenging proposed regulations issued by the Delaware River Basin Commission ("DRBC"). The DRBC is a regional entity that oversees management of the water resources of the Delaware River Basin ("Basin"), and is comprised of five commissioners representing New York, New Jersey, Pennsylvania, Delaware, and the federal government. The DRBC's proposed regulations would authorize natural gas drilling in the Basin, which is expected to be performed via high-volume hydraulic fracturing, or "hydrofracking".

On May 31, 2011, the New York State Office of the Attorney General ("OAG") filed a complaint in the Eastern District of New York alleging, among other things, that DRBC violated the provisions of the National Environmental Policy Act of 1969 ("NEPA") by issuing proposed regulations without undertaking environmental review or preparing a draft environmental impact statement ("EIS") for public review and comment. Under NEPA, a draft EIS must include a detailed statement of the environmental impacts of a proposed action, adverse environmental effects that cannot be

avoided, alternatives to the proposed action, including the “no action” alternative, and mitigation measures.

The amicus brief(s) will argue that environmental review of the impact of the proposed regulations is important due to the high likelihood that hydraulic fracturing in the Basin will lead to an increase in City air pollution. Specifically, the briefs will cite evidence demonstrating the connection between hydraulic fracturing and air pollution, the harmful effects of such pollutants on human health, and the evidence that such pollutants can travel hundreds of miles. The brief will then argue that because the City already suffers from pollutants being blown downwind from Pennsylvania, there is a high probability of hydrofracking-related pollutants affecting City residents. Given the potential risks to the public’s health, safety, and quality of life that may result if the proposed regulations are enacted without any environmental review, the brief will argue that there is a compelling public interest weighing in favor of undertaking such a review.

PRECONSIDERED RESOLUTION:

This Preconsidered Resolution authorizes the Council to file an amicus brief at each stage of the litigation captioned State of New York v. United States Army Corps of Engineers, et al., Index No. CV-11-2599, currently pending in the Eastern District of New York, in support of the State Attorney General’s position that the court should enjoin the Delaware River Basin Commission from issuing regulations governing natural gas development until the Commission prepares a draft environmental impact statement.

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Whereas, The Delaware River Basin is an area of 13,359 square miles, draining parts of Pennsylvania, New Jersey, New York, and Delaware; and

Whereas, The Upper Delaware River within the Basin is renowned for its pristine waters, which serve as a popular recreation area for New York City residents, offering activities such as fishing, boating, birding, hiking, camping and sightseeing; and

Whereas, New York City gets approximately half its water from four large reservoirs located on tributaries to the Delaware; and

Whereas, The Delaware River Basin Commission ("DRBC" or "Commission") was established in 1961 when the federal government and the states of Delaware, New Jersey, and New York and the Commonwealth of Pennsylvania enacted concurrent legislation creating a regional body to oversee a unified approach to managing the water resources of the Delaware River; and

Whereas, The DRBC is comprised of five commissioners: one appointed by each governor of the member states and one appointed by the President of the United States; and

Whereas, The DRBC's purpose is to "develop and effectuate plans, policies and projects relating to the water resources of the basin" and to "adopt and promote uniform and coordinated policies for water conservation, control, use and management in the

basin”; and

Whereas, The Commission issued draft proposed regulations on December 9, 2010, and revised draft proposed regulations on November 8, 2011, which would allow natural gas companies to drill within the Delaware River Basin; and

Whereas, There is currently a de facto moratorium on natural gas drilling in New York State, and the New York State Department of Environmental Conservation (“NYSCDEC”) has issued a draft supplemental environmental impact statement and draft regulations which would prohibit drilling for natural gas in the New York City and Syracuse watersheds; and

Whereas, However, if DRBC’s regulations are approved then natural gas development will be allowed to proceed in other areas of the Basin, including in Pennsylvania, which is likely to significantly affect both the Upper Delaware River and New York City’s air supply; and

Whereas, Natural gas development in the Basin is expected to employ high volume hydraulic fracturing or “hydrofracking,” which entails pumping large quantities of water, sand and chemicals deep underground to cause fractures along a horizontal well bore within the shale to release the natural gas trapped within; and

Whereas, The potential contamination of the Delaware River Basin from gas exploration and production using hydraulic fracturing could include air pollution emissions, which would likely pose a significant risk to the health and safety of the residents of New York City; and

Whereas, Hydrofracking in the Basin will also threaten the pristine conditions of the Upper Delaware River and its appeal as a recreational area for City residents; and

Whereas, The DRBC's issuance of proposed regulations without undertaking environmental review or issuing an environmental impact statement ignores the strong concerns expressed by the U.S. Environmental Protection Agency, the NYSDEC, the New York City Department of Environmental Protection ("NYCDEP") and the Council; and

Whereas, On May 31, 2011, the New York State Office of the Attorney General ("OAG") filed a complaint in the Eastern District of New York against several federal agencies to whom the federal member of the DRBC reports; and

Whereas, On November 12, 2011, the OAG filed an amended complaint, adding the DRBC and its executive director as defendants; and

Whereas, The Amended Complaint alleges, among other things, that DRBC violated the provisions of the National Environmental Policy Act of 1969 ("NEPA") by issuing proposed regulations without undertaking environmental review or preparing a draft environmental impact statement ("EIS") for public review and comment; and

Whereas, Under NEPA, a draft EIS must include a detailed statement of the environmental impacts of a proposed action, adverse environmental effects that cannot be avoided, alternatives to the proposed action, including the "no action" alternative, and mitigation measures; and

Whereas, Given the potential risks to the public's health, safety, and quality of life that may result if the proposed regulations are enacted without any environmental review, there is a compelling public interest weighing in favor of undertaking such a review; now, therefore, be it

RESOLVED, That the Council of the City of New York is authorized to file an

amicus brief at each stage of the litigation captioned *State of New York v. United States Army Corps of Engineers, et al.*, Index No. CV-11-2599, currently pending in the Eastern District of New York, in support of the State Attorney General's position that the court should enjoin the Delaware River Basin Commission from issuing regulations governing natural gas development until the Commission prepares a draft environmental impact statement.