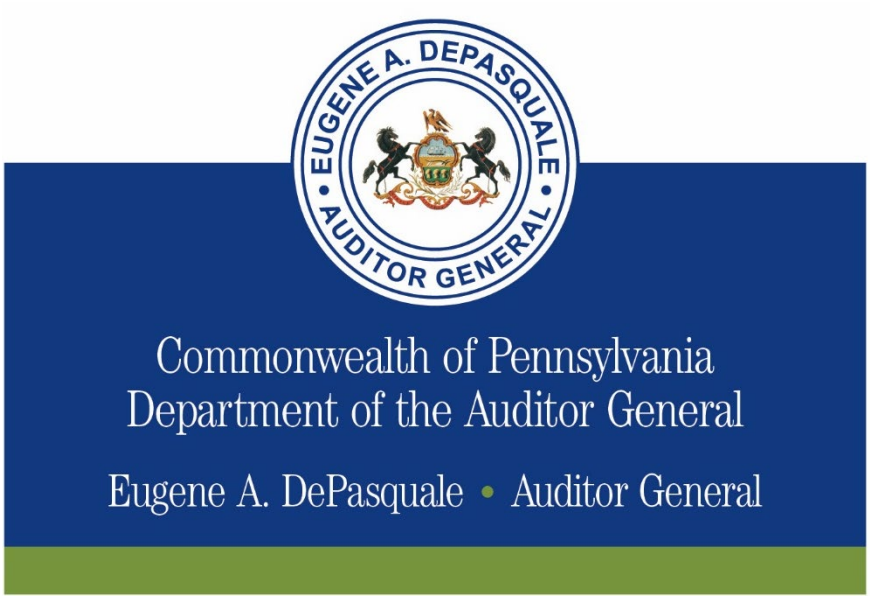
PERFORMANCE AUDIT REPORT

Delaware River Basin Commission

November 2018



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EUGENE A. DEPASQUALE
AUDITOR GENERAL

October 22, 2018

The Honorable Philip D. Murphy
Chair
Delaware River Basin Commission
25 Cosey Road
P.O. Box 7360
West Trenton, NJ 08628-0360

The Honorable Steven J. Tambini, P.E.
Executive Director
Delaware River Basin Commission
25 Cosey Road
P.O. Box 7360
West Trenton, NJ 08628-0360

Dear Governor Murphy and Executive Director Tambini:

This report contains the results of the Department of the Auditor General's performance audit of the Delaware River Basin Commission (DRBC).

This audit was conducted under the authority of Article XVII-F, Subarticle B of The Fiscal Code as enacted by Act 44 of 2017.[1] Specifically, Section 1715-F(2) of The Fiscal Code provides that, "[t]he Auditor General shall audit the Delaware River Basin Commission" during the fiscal year ended (FYE) June 30, 2018. Our audit was limited to the objectives identified below and was not required to be and was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

[1] 72 P.S. § 1715-F(2). Article XVII-F pertains to the 2017-2018 Budget Implementation. Further, pursuant to Section 410 (entitled Audits of interstate commissions) of The Fiscal Code, for purposes of Section 14.11 of the "Delaware River Basin Compact", the Auditor General "shall be deemed to be a duly authorized officer on behalf of the commonwealth as a signatory party for the exclusive purpose of examining and auditing all of the books, documents, records, files and accounts and all other papers, things or property" of the DRBC. The designation shall be in addition to any other duly authorized officer of the commonwealth under the Compact. *See* 72 P.S. § 410(b) and 32 P.S. § 815.101 (DRBC Compact).

The Fiscal Code specified the following six objectives, and the audit period was July 1, 2016 through June 30, 2017:

I. The cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC.
II. The cost of expense reimbursements provided to the officers and employees of the DRBC.
III. Other fixed and variable costs of the DRBC.
IV. The potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services, or personnel with commonwealth and local agencies.
V. Contributions to the DRBC by the commonwealth or any person within this commonwealth, whether via appropriations, fees, penalties or otherwise, in comparison to other signatory parties.
VI. The impact of the fees and penalties of the DRBC on public and private entities within the commonwealth.

We planned and performed audit procedures to obtain sufficient, appropriate evidence to the extent necessary to satisfy the above audit objectives. We believe that the evidence obtained provides a reasonable basis to support our results, findings, and conclusions.

This report presents three findings and offers 10 recommendations, including 9 recommendations to DRBC management and 1 recommendation to the Pennsylvania Department of Environmental Protection (DEP).

We determined the amount of expenses the DRBC paid for salaries, benefits, other compensation, and expense reimbursements to the DRBC's officers and employees; and other fixed and variable DRBC costs. While our review of reimbursement expenses found the charges to be reasonable, auditors were unable to review specific items purchased for $472 because the DRBC does not require staff to submit itemized receipts. The DRBC should ensure itemized receipts are submitted and reviewed for all transactions prior to processing for payment.

We found that a much needed overhaul of the more than 40-year-old Administrative Agreement between the DRBC and the DEP and additional written operational guidance would assist in the cooperative functioning between these entities. In addition, the DRBC has a voluntary One Process/One Permit (OP/OP) Program which would save Pennsylvania organizations that discharge into the Basin the cost of DRBC's application fee. While the DEP has been considering participation in this program since 2015, Pennsylvania still does not participate. We encourage the DRBC and the DEP to urgently work towards determining what efficiencies could be achieved through the OP/OP Program.

With regard to duplication of efforts between DRBC and DEP, management from both agencies stated that the work between the DRBC and the DEP are complimentary and/or augmentative in nature; however, the DEP did identify three areas of overlapping legal authority. The DRBC should memorialize the overlapping areas into written policy and procedures identifying the separate tasks performed by themselves versus those performed by the DEP and publically provide more information regarding their respective responsibilities.

We further determined the amount of revenue the DRBC received from various sources and compared the revenue the DRBC received in fees and penalties from organizations within Pennsylvania to those received from organizations within the other state signatory parties. We also contacted some Pennsylvania organizations that paid fees and/or penalties to the DRBC and inquired regarding what the impact of making those payments had on their organization. We found that only one of the five signatory parties (Delaware) paid the agreed upon amount to the DRBC in the fiscal year ended (FYE) June 30, 2017. Notably, the federal government has not made any annual contribution payments to the DRBC since the FYE June 30, 2010.

To close the funding gap that resulted from most of the signatory parties not paying their annual agreed upon contribution amounts and fluctuations in revenue from project review fees, the DRBC established a new annual monitoring and coordination fee effective January 1, 2017. Therefore, organizations, including those in Pennsylvania that have nearly 50 percent of the dockets with the DRBC, have been assessed fees to compensate for signatory parties collectively, with the notable exception of Delaware, not contributing the agreed upon amount on an annual basis. The DRBC should work with the signatory parties to pay the full amount of their agreed upon contributions while remaining cognizant of the impact that fees and any future fee increases have on organizations working with the DRBC.

In closing, I want to thank the DRBC for their cooperation and assistance during this audit. The DRBC is generally in agreement with our findings and most of our recommendations, and its response is included in this audit report. We will follow up at the appropriate time to determine to what extent all recommendations have been implemented.

Sincerely,

Eugene A. DePasquale
Auditor General

TABLE OF CONTENTS

A Performance Audit

Delaware River Basin Commission

Executive Summary

The Delaware River Basin Commission (DRBC) is a federal-interstate compact commission jointly controlled by the federal government and the four signatory states, including Pennsylvania, New Jersey, New York, and Delaware, that acts as a regional body to oversee the management of the Delaware River Basin (Basin) and its resources. The daily operations of the DRBC are managed by executive staff with support from technical, administrative, and clerical personnel. The Executive Director and the Secretary to the Commission are identified as Officers of the DRBC.

The six objectives of our performance audit of the DRBC were to determine: (1) The cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC; (2) The cost of expense reimbursements provided to the officers and employees of the DRBC; (3) Other fixed and variable costs of the DRBC; (4) The potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services, or personnel with commonwealth and local agencies; (5) Contributions to the DRBC by the commonwealth or any person within this commonwealth, whether via appropriations, fees, penalties or otherwise, in comparison to other signatory parties; and (6) The impact of the fees and penalties of the DRBC on public and private entities within the commonwealth.[2] Our audit period was July 1, 2016 through June 30, 2017.

Our audit results are contained in three findings with 10 recommendations, nine directed to the DRBC and one to the Pennsylvania Department of Environmental Protection (DEP). Overall, the DRBC is in agreement with our three findings and eight of the nine recommendations made directly to the DRBC.

Finding 1 - Determination of the DRBC's costs of salaries, benefits, other compensation; expense reimbursements to the DRBC's officers and employees; and other fixed and variable DRBC costs.

We determined the amount of expenses the DRBC paid for salaries, benefits, other compensation, and expense reimbursements to the DRBC's officers and employees; and other fixed and variable DRBC costs. We specifically report on the amounts paid to the DRBC's two Officers, its employees, and the individual that serves as General Counsel who is not a direct employee of the DRBC but could otherwise be designated as an Officer. Our review of the reimbursement expenses found the charges to be reasonable; however, we were unable to review specific items purchased for $472 because the DRBC did not require staff to submit itemized receipts. DRBC management should ensure that itemized receipts are submitted and reviewed for all transactions prior to being processed for payment.

[2] 72 P.S. § 1715-F(2) (Act 44 of 2017).

Finding 2 – A much needed overhaul of the more than 40-year-old Administrative Agreement between the DRBC and the DEP and additional written operational guidance would assist in the cooperative functioning between these entities.

While we found that the DRBC maintains a comprehensive and detailed *Administrative Manual, Rules of Practice and Procedure*, and has approved resolutions in place, the DRBC's Administrative Agreement with Pennsylvania dates back to 1976 and is in need of a major overhaul to provide clarity to issues regarding who is to perform what services, avoiding the duplication of efforts, and deferring to state entities when applicable. Therefore, the DRBC should work with the DEP to update the Administrative Agreement with an "intergovernmental agreement" as provided for in the Pennsylvania Department of General Services' (DGS) *Procurement Handbook*.

We found that the DRBC has a voluntary One Process/One Permit (OP/OP) Program with a goal of promoting close collaboration and enhance administrative efficiencies between the DRBC and the Basin states while ensuring that equal or better environmental outcomes are obtained. However, as of August 13, 2018, Pennsylvania did not participate in the program. According to DRBC management, implementation of the OP/OP Program would save Pennsylvania organizations that discharge into the Delaware River Basin the cost of the DRBC's application fee, equal to about $1,000 for private organizations and $500 for public projects every five years. Since the DEP has been actively considering participation in the OP/OP Program since 2015, we encourage the DRBC and the DEP to urgently work towards determining what efficiencies could be achieved through the OP/OP Program. Until Pennsylvania decides to participate, as previously stated, an updated Administrative Agreement should be developed.

Management from both agencies stated that the work between the DRBC and the DEP are complimentary and/or augmentative in nature, but the DEP did identify three areas of overlapping legal authority pertaining to water withdrawals, water pollution discharges, and water quality standards protections. While the overlapping of these areas may not be a duplication of efforts, they should be memorialized in written policies and procedures. Management from both agencies stated that sharing personnel or equipment used in daily operations would not be feasible. Further, during a survey from a cross-section of Pennsylvania organizations that hold dockets with the DRBC, one organization had concerns of overlapping authority and appearance of duplication of fees charged by each agency. This confusion could be avoided by posting written guidance explaining the inter-relationships and utilization of resources between the DRBC and the DEP on the DRBC website.

Finding 3 – Signatory parties, including Pennsylvania, are not making agreed upon contributions to the Delaware River Basin Commission, with the federal government making no annual payments since 2010.

We determined the amount of revenue the DRBC received from signatory party contributions, fees, penalties or settlements in lieu of penalties, water supply charges, and other revenue during our audit period, as well as the amounts paid by each signatory party during the last five fiscal years. Only one of the five signatory parties (Delaware) paid the agreed upon amount to the DRBC in fiscal year ended (FYE) June 30, 2017. Of particular note, the federal government has not made any annual contribution payments to the DRBC since the FYE June 30, 2010. To close the funding gap that resulted from the majority of signatory parties not paying the annual agreed upon contribution amounts and fluctuation in revenue from project review fees, the DRBC established a new annual monitoring and coordination fee effective January 1, 2017. Therefore, organizations, including those in Pennsylvania that have nearly 50 percent of the dockets with the DRBC, have been assessed fees to compensate for signatory parties collectively, with the notable exception of Delaware, not contributing the agreed upon amounts on an annual basis. We recommend that the DRBC continue to emphasize to the signatory parties the need for each to contribute its equitable portion of the funds necessary for the DRBC's expense budget and to work with the signatory parties, possibly through the development of new agreements.

We also compared the number of active dockets held by organizations to the total fees and penalties paid by those organizations within each signatory party state for the period July 1, 2016 to June 30, 2017. Pennsylvania had a comparatively larger percentage of fees (60 percent) to the percentage of dockets (50 percent). While the explanations that DRBC management provided appeared reasonable, we do not draw any conclusions in regard to this comparison due to the difficulties in making this state-to-state comparison.

In conducting a survey from a cross-section of Pennsylvania organizations that hold dockets with the DRBC, we found for two of the eight organizations which responded (25 percent), representatives stated that their organizations have been negatively impacted by DRBC fees and penalties. Therefore, the DRBC should remain cognizant of the impact fees, including any future fee increases, have on organizations that work with the DRBC.

Further, we recommend that the DEP strongly consider participating in the OP/OP Program, as mentioned in Finding 2, as a way to reduce fees charged to Pennsylvania organizations.

Introduction and Background

This report by the Department of the Auditor General presents the results of the performance audit of the Delaware River Basin Commission (DRBC).[3] This audit was conducted under the authority of Article XVII-F, Subarticle B of The Fiscal Code as enacted by Act 44 of 2017.[4] Specifically, Section 1715-F(2) of The Fiscal Code provides that, "[t]he Auditor General shall audit the Delaware River Basin Commission" during the fiscal year ended (FYE) June 30, 2018. The Fiscal Code specified the following six objectives, and the audit period was July 1, 2016 through June 30, 2017:

I. The cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC.
II. The cost of expense reimbursements provided to the officers and employees of the DRBC.
III. Other fixed and variable costs of the DRBC.
IV. The potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services, or personnel with commonwealth and local agencies.
V. Contributions to the DRBC by the commonwealth or any person within this commonwealth, whether via appropriations, fees, penalties or otherwise, in comparison to other signatory parties.
VI. The impact of the fees and penalties of the DRBC on public and private entities within the commonwealth.

In the sections that follow, we present background information related to the DRBC.

Delaware River Basin Commission

The Delaware River Basin Commission is a federal-interstate compact commission jointly controlled by the federal government and the four signatory states that acts as a regional body to oversee the management of the Delaware River Basin (Basin) and its resources. The Commission was formed on October 27, 1961, when then President Kennedy and the governors of Delaware,

[3] The Delaware River Basin Compact (32 P.S. § 815.101) and related statutory provisions (32 P.S. § 815.102 – 815.106).

[4] 72 P.S. § 1715-F(2). Article XVII-F pertains to the 2017-2018 Budget Implementation. Further, pursuant to Section 410 (entitled Audits of interstate commissions) of The Fiscal Code, for purposes of Section 14.11 of the "Delaware River Basin Compact", the Auditor General "shall be deemed to be a duly authorized officer on behalf of the commonwealth as a signatory party for the exclusive purpose of examining and auditing all of the books, documents, records, files and accounts and all other papers, things or property of" the DRBC. This designation shall be in addition to any other duly authorized officer of the commonwealth under the Compact. *See* 72 P.S. § 410(b) and 32 P.S. § 815.101 (DRBC Compact).

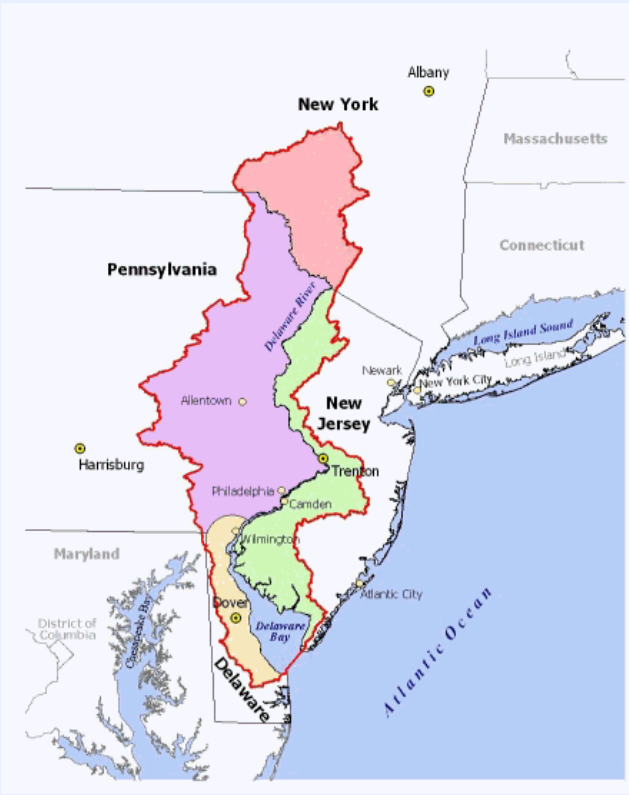
New Jersey, New York, and Pennsylvania (signatory parties) signed concurrent compact legislation (Compact) into law.[5] The DRBC was formed largely in response to three major water resource issues requiring regional solutions. They included water supply shortages and disputes over the apportionment of the Basin's waters, severe pollution in the tidal Delaware River (especially around its urban centers), and the devastating flood of August 1955.[6]

The DRBC's *Administrative Manual, Rules of Practice and Procedure* (18 CFR Part 401) authorizes and directs the Executive Director to enter into administrative agreements (Agreement(s)) with federal and state regulatory agencies to accomplish objectives of the Compact.[7] The DRBC's Agreement with the Commonwealth of Pennsylvania was established in August 1976.

Prior to the DRBC's inception, there were "splintered powers and duties" between 43 state agencies, 14 interstate agencies, and 19 federal agencies overseeing the Basin's operations.[8] The partnership helped to resolve conflicts over the Delaware River waterway, including previous litigation between signatory parties, while also combining efforts to better manage resources.

[5] The DRBC was "created as a body politic and corporate . . . [and] as **an agency and instrumentality** of the governments of the respective signatory parties." [Emphasis added]. *See* Compact, Article 2, Section 2.1.
[6] http://www.state.nj.us/drbc/library/documents/macgillivray_CECpres_CCNJ050316.pdf (accessed October 1, 2018) and https://www.state.nj.us/drbc/home/newsbytes/20140317_FloodSafetyAwareness.html (accessed October 1, 2018).
[7] DRBC's *Administrative Manual, Rules of Practice and Procedure* § 2.3.3 of Article 3 (18 CFR 401.33). Please note that the DRBC also has a separate manual entitled, *Administrative Manual, By-Laws, Management and Personnel* which is cited later in this report.
[8] http://www.state.nj.us/drbc/basin/intergovernmental/ (accessed June 15, 2018).

The following map shows the limits of the Basin and the percentage of land area in the Basin by state. The map also reflects the jurisdictional limits of the DRBC's authority:



% Of Basin's Total Land Area	
Pennsylvania	50.3%
New Jersey	23.3%
New York	18.5%
Delaware	7.9%

Source: http://www.state.nj.us/drbc/about/public/ and http://www.state.nj.us/drbc/basin/ (accessed June 15, 2018).

The Basin covers an area of 13,539 square miles, and the main stem Delaware River stretches approximately 330 miles from its headwaters in New York State to its confluence with the Atlantic Ocean. The Delaware River is an interstate river for its entire length, meaning if one stands on one side of the river, there is always a different state on the other side. The river is fed by 216 tributaries, the largest being the Schuylkill and Lehigh Rivers in Pennsylvania. The DRBC estimates that 15 million people are affected by its control of the Basin's water resources.[9] Specifically for Pennsylvania, it is estimated that 43 percent of the population lives in the Basin.[10]

[9] http://www.state.nj.us/drbc/library/documents/2017AR.pdf (accessed June 14, 2018).
[10] Testimony of Steve Tambini, Executive Director, Delaware River Basin Commission. Pennsylvania General Assembly, House State Government Committee. June 11, 2018.

The ex officio Commissioners of the DRBC include the four Basin state governors (i.e., Delaware, New Jersey, New York, and Pennsylvania) and on behalf of the United States, the Commander of the United States Army Corps of Engineers North Atlantic Division.[11] The five Commissioners appoint alternates, with the state governors generally nominating high ranking officials from state environmental agencies to represent them. As such, the Secretary of the Pennsylvania Department of Environmental Protection (DEP) serves as the first alternate for Pennsylvania with two other members of DEP's management acting as the second and third alternates. Each Commissioner has one vote of equal power, with a majority vote needed to decide most issues. The Compact states that the members of the Commission and alternates shall serve without compensation but may be reimbursed for necessary expense incurred.[12] The daily operations of the DRBC are managed by executive staff with support from technical, administrative, and clerical personnel.

In accordance with the Compact, the DRBC authorities include: water supply, pollution control, flood protection, watershed management, recreation, hydroelectric power, and water withdrawals and diversions. The preamble of the Compact states that "a comprehensive plan administered by a basin wide agency will provide effective flood damage reduction; conservation and development of ground and surface water supply for municipal, industrial, and agricultural uses; development of recreational facilities in relation to reservoirs, lakes, and streams; propagation of fish and game; promotion of related forestry, soil conservation, and watershed projects; protection and aid to fisheries dependent upon water resources; development of hydroelectric power potentialities; improved navigation; control of the movement of salt water; abatement and control of stream pollution; and regulation of stream flows toward the attainment of these goals.[13]

It should be noted that for projects subject to regulatory review by both the DRBC and a Basin state, the DRBC has established an elective One Process/One Permit (OP/OP) Program to provide an administrative agreement for the issuance of a single approval instrument, incorporating the applicable requirements of the two authorities. However, Pennsylvania does not participate in the OP/OP Program. See further details regarding the OP/OP Program, along with Pennsylvania's non-participation, discussed in Finding 2 and Finding 3 of this audit report.

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[11] DRBC Compact, Article 2 "Organization and Area", Section 2.2 entitled, "Commission Membership" provides as follows: "The commission shall consist of the Governors of the signatory states, ex officio, and one commissioner to be appointed by the President of the United States to serve during the term of office of the President." https://www.state.nj.us/drbc/library/documents/compact.pdf (accessed August 30, 2018). *See also* 32 P.S. § 815.101. The Compact was amended by the Water Resources Development Act of 2007 (P.L. 110-114).with respect to the DRBC's federal representative when it provided that "the Division Engineer, North Atlantic Division, Corps of Engineers shall serve ex officio as the United States member" of the DRBC.

[12] DRBC Compact, Article 2 "Organization and Area", Section 2.4 entitled, "Compensation." www.state.nj.us/drbc/library/documents/compact.pdf (accessed February 8, 2018).

[13] DRBC Compact, Part I. "Preamble," https://www.nj.gov/drbc/library/documents/compact.pdf (accessed October 1, 2018).

Water Quality Standards

Water quality was made a priority from the inception of the DRBC, particularly because water pollution in the Basin was a major challenge at the time. In 1967 and 1968, the DRBC implemented comprehensive water quality standards for the Basin and regulations implementing and enforcing its standards. The Federal Water Pollution Control Act Amendments of 1972, commonly referred to as the Clean Water Act, further assisted the implementation of water pollution control efforts in the Basin, as did state-led efforts.[14] In 1992, the DRBC established the Special Protection Waters program, which established regulations to "keep the clean water clean" in the upper and middle sections of the non-tidal Delaware, portions of which had been designated by the federal government as part of the National Wild and Scenic Rivers System in 1978.[15] The DRBC has amended these standards since then and continues to pride itself on the impact of their implementation on the water quality conditions of the Basin. The main goal of the DRBC's water quality standards today is to continue to maintain and improve the high water quality levels that have been achieved since its inception.[16]

Revenue and Expenses[17]

The DRBC's fiscal year runs from July 1st through June 30th of each year. The DRBC is funded by the annual signatory party contributions, regulatory program fees, water supply charges, and penalties or settlements in lieu of penalties (settlements), as well as project-specific federal and state grants, contracts, or purchase orders, and occasionally, private grants.[18] During our audit period, the DEP provided the DBRC with grant funding for the operation of the Southeastern Pennsylvania Ground Water Protected Area program with the stated goal of preventing the depletion of ground water as a result of development in southeast Pennsylvania. The U.S. Environmental Protection Agency also provided the DRBC with a water pollution control grant.

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[14] *See* 33 U.S.C. § 1251 *et seq.*

[15] http://www.state.nj.us/drbc/quality/ (accessed June 27, 2018).

[16] More information about DRBC's current water quality monitoring programs can be found in the *Water Quality Programs of the Delaware River Basin Commission*. http://www.state.nj.us/drbc/library/documents/WQBooklet_final_print.pdf (accessed June 20, 2018).

[17] As reported in the DRBC's audited financial statements for the FYE June 30, 2017 and per GASB, for governmental funds, expenditures are recorded using modified accrual whereas proprietary funds are similar to enterprise accounting and uses accrual accounting recognizing expenses. However, for reporting purposes, we will refer to them all as expenses.

[18] DRBC has three types of regulatory program fees: docket application filing fee, annual monitoring and coordination fee, and additional fees that are further described in the report and in Appendix B. The amounts associated with the docket application filing fee and additional fees are reported in the DRBC's audited financial statements as "Project Review Fees" and the annual monitoring and coordination fee as "Annual Fees." Water supply charges are reported in the DRBC's audited financial statements as "Water Sales." The amounts for penalties and settlements in lieu of penalties are reported in the DRBC's audited financial statements as part of "Fines, Assessments and Other Income." DRBC management stated that although the Compact authorizes the DRBC to seek penalties for violations, virtually all alleged violators request settlement of a penalty proceeding by agreement in lieu of a penalty.

Expenses include personnel services, special and contractual services, other services, supplies and materials, buildings and grounds, communications, travel, maintenance, replacement, acquisitions and rentals, fringe benefits, and other contributions. The DRBC maintains two fund types: the Governmental Funds that report the DRBC's basic services and the Proprietary Fund that reports the DRBC's water supply charge revenue and associated costs as follows: water storage facilities; water conservation and demand activities; and related administrative activities.[19]

The following tables reflect revenue reported in each of the funds for the FYE June 30, 2017. Details related to certain types of revenue are described below and throughout the report. Revenues/contributions are discussed in Finding 3.

[19] As reported in DRBC's financial statements, the DRBC establishes funds to help it control and manage money for particular purposes such as special projects or to show that it is meeting legal responsibilities for using certain grants and other money.

DRBC Revenue – Governmental Funds
FYE June 30, 2017

Types of Revenue	General Fund	Special Projects Fund	Total
Signatory Party Contributions:			
State of Delaware	$447,000	$0	$447,000
State of New Jersey	$693,000	$0	$693,000
State of New York	$359,500	$0	$359,500
Commonwealth of Pennsylvania	$434,000	$118,372[a/]	$552,372
Federal Government of United States	$0	$432,401[b/]	$432,401
Total Signatory Party Contributions	$1,933,500	$550,773	$2,484,273
Regulatory Program Fees[c/]	$833,063	$0	$833,063
Annual Fees	$349,871	$0	$349,871
Settlements, Assessments and Other Income	$118,481[d/]	$662,883[e/]	$781,364
Sale of Publications	$1,726	$0	$1,726
Investment Income	$23,429	$0	$23,429
Total Revenue	$3,260,070	$1,213,656	$4,473,726

[a/] - Funds received from the DEP for the operation of the Southeastern Pennsylvania Ground Water Protected Area program whose main goal is to prevent the depletion of ground water as a result of development in southeast Pennsylvania.
[b/] - Water pollution control grant from the U.S. Environmental Protection Agency.
[c/] - Includes docket application filing fee and additional fees.
[d/] - Amount includes $53,739 for settlements and $64,742 for other income. Examples of other income include lease payments, a legal settlement, and charges levied for time and materials in responding to records requests under *Subpart H - Public Access to Records and Information of the DRBC's Rules of Practice and Procedures* (18 CFR 401.101 – 401.119).
[e/] - The Special Projects Fund recognizes revenue as resources are expended in direct support of special projects and contractual services, such as for U.S. Geological Survey monitors.

Source: This table was compiled by the staff of the Department of the Auditor General based on revenues reported in the DRBC's audited financial statements for the FYE June 30, 2017.

Under authority of the Compact, the DRBC reviews projects that could have a substantial effect on the water resources of the Basin and may seek financial penalties for violations of the Compact or rules, regulations or orders of the Commission.[20] Both public and private entities (e.g., municipal governments, golf courses, wastewater treatment facilities, ski resorts, etc.) who withdraw from or discharge water into the Basin above the thresholds pursuant to the Compact must obtain DRBC approval, usually in the form of a docket. The DRBC's Water Resource

[20] DRBC Compact, 32 P.S. § 815.101, Section 3.8 "Referral and Review" and Section 14.17 "Penal Sanction." DRBC's *Administrative Manual*, *Rules of Practice and Procedure* at 18 CFR 401.35 define which classes of projects are subject to review and approval under Section 3.8. These types of projects include, but are not limited to, significant water withdrawals and wastewater discharges.

Management and Science and Water Quality Management branches review the applications. DRBC Commissioners make decisions about docket applications after conducting public hearings, which occur quarterly. Docket types include renewals with no substantive changes, renewals with substantive changes, and new projects.

Aside from the fees associated with obtaining DRBC approval as required by the Compact and implementing regulations, the DRBC has additional fees for emergency certificates issued when the DRBC needs to approve a docket quickly in the event of a true emergency (e.g., a public health risk). Also, a late filed renewal surcharge is assessed when an organization does not timely renew its docket. Additionally, fees are assessed for modification of a DRBC approval, name change, and change of ownership. Fees charged by the DRBC are included in Appendix B. The following sections describe in further detail some of the specific fees and settlements collected by the DRBC.

Regulatory Program Fees (Docket Application Filing Fee)

The DRBC assesses fees for the review of applications for new and renewal of projects that require approval pursuant to the DRBC Compact and implementing regulations.[21] In May of 2016, the DRBC proposed a comprehensive revision of its fees. The new fee schedule became effective on January 1, 2017. This included an automatic annual indexed inflation adjustment for most fees in order to provide a more predictable and sustainable source of revenue and to close the annual gap in funding that supports the DRBC's project reviews.

During the period July 1, 2016 through December 31, 2016, the DRBC assessed application filing fees based upon the cost of the project; however, as of January 1, 2017, filing fees began to generally be based upon the type of project and amount of water withdrawn.

During the period July 1, 2016 through December 31, 2016, project sponsors were required to submit fees with the project application as illustrated in Appendix B.[22] The DRBC's fees made effective January 1, 2017, are also included in Appendix B.[23]

[21] Pursuant to DRBC Resolution Number 2009-2, effective July 1, 2009, agencies, authorities, or commissions of the signatories to the Compact shall be exempt from such a project fee. Also, pursuant to DRBC Resolution Number 2016-9 effective January 1, 2017, the docket application fee shall not apply to any project for which the Signatory Party Agency serves as lead under the one permit program rule (§ 401.42) or any project for which an agency, authority, or commission of a signatory to the Compact is the primary sponsor. Pursuant to the DRBC Compact, *Project* shall mean any work, service, or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken by the commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently or as an addition to an existing facility and can be considered as a separate entity for purposes of evaluation.

[22] DRBC Resolution Number 2009-2 effective July 1, 2009 for any and all applications submitted on or after July 1, 2009.

[23] DRBC Resolution Number 2016-9 adopted December 14, 2016, and effective January 1, 2017.

As shown in the fee schedules included in Appendix B, the DRBC requires that applicants for water withdrawals from ground or surface water obtain a docket, the application filing fee for which is based on the volume of the water allocation. Additionally, applicants for discharges to Basin waters must obtain a docket, which has a filing fee set at a fixed amount. The DRBC issues ten-year water withdrawal dockets and five-year wastewater discharge dockets. Other projects, such as pipelines, bridges, and dams have non-expiring dockets. DRBC management stated that for wastewater discharge projects, the application filing fee assessed public entities has been about half that assessed private organizations since the DRBC's inception of the fee. The fee dates back to the early 1980s and although the name has changed, the DRBC has not changed the structure of the fee.

Annual Fees (Annual Monitoring and Coordination Fee)

In addition to the revised docket application filing fees, effective January 1, 2017, the DRBC began assessing an Annual Monitoring and Coordination Fee (AMCF) to each active water allocation or wastewater discharge project. According to DRBC management, the AMCF was initiated to account for fluctuations with respect to revenue collected by project review/application fees. Additionally, the DRBC website explains the need for a stable funding source in order to support the expenses to perform monitoring and modelling activities in times when revenues generated from project review fees are low. The AMCF rates are included in Appendix B.

Settlements in Lieu of Penalties

The DRBC's Compact allows the DRBC to seek penalties from any person, association, or corporation who violates any provision of the Compact or a rule, regulation, or order of the DRBC up to $1,000 per offense and $1,000 per day for a continuing violation.[24] The DRBC's Civil Penalty Matrix outlines the penalties per day of violation based on criteria such as the intention and cooperation of the violator, whether the violator is a repeat offender, whether the violator gained any economic benefit, and whether the violation created adverse environmental impact.[25] The penalties outlined in the matrix are: minor ($50-$250), moderate ($251-$750), or severe ($751-$1,000).[26] In accordance with DRBC Resolution, the Executive Director may enter into settlement agreements on the Commission's behalf when the amount to be paid is less than or equal to $10,000.[27] Settlement agreements for amounts greater than $10,000 must first be approved by the Commissioners. According to DRBC management, the bulk of penalties relate to wastewater discharge violations when an organization either fails to monitor or exceeds discharge limitations.

[24] DRBC Compact, 32 P.S. § 815.101, Section 14.17 "Penal Sanction" and DRBC Resolution 2009 – 13 adopted December 9, 2009.
[25] The Civil Penalty Matrix adopted by DRBC Resolution No. 2009-13, December 9, 2009.
[26] http://www.state.nj.us/drbc/library/documents/Res2009-13PenaltyMatrix.pdf (accessed June 20, 2018). The DRBC Civil Penalty Matrix is included in Appendix B.
[27] DRBC Resolution No. 2015-3, adopted March 11, 2015.

DRBC Revenue – Proprietary Fund
FYE June 30, 2017

Types of Revenue	Water Supply Storage Facility
Operating Revenue:	
Water Supply Charges	$3,495,596
Total Operating Revenue	$3,495,596
Non-Operating Revenue:	
Interest Income	$543,891
Realized Gain on Sales of Investments	$310,553
Net Increase in Fair Value of Investments	$246,273
Total Non-Operating Revenue	$1,100,717
Total Revenue	$4,596,313

Source: This table was compiled by the staff of the Department of the Auditor General based on revenue reported in the DRBC's audited financial statements for the FYE June 30, 2017.

Water Supply Charges

According to DRBC management, during periods of droughts and low flows in the Delaware River, water releases from water supply storage facilities and reservoirs help ensure sufficient flow in the river. In order to fund the reservoirs, the DRBC assesses docket holders consumptive use and non-consumptive use water charges. Consumptive use charges cover the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water services, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the surface waters of the Basin undiminished in quantity.[28] The DRBC uses the revenue generated from the water supply charges to pay the federal government for the DRBC's share of the debt service, operations, maintenance, repair, replacement, and improvement costs for two federal reservoirs operated by the U. S. Army Corps of Engineers.[29] The DRBC assesses a lower non-consumptive use charge to docket holders that eventually return water back into the Delaware River Basin. Non-consumptive users do not generally contribute to the need for the DRBC to pay for water storage since it is unlikely that the DRBC will need to release water to augment the stream flow as a result of their use. For example, public water systems withdraw water from the Basin but return the water through the wastewater treatment process.

[28] DRBC *Basin Regulations – Water Supply Charges*, 18 CFR Part 420, § 420.1 "Definitions."
[29] The reservoirs are located at Blue Marsh Lake in Berks County, PA and Beltzville Lake in Carbon County, PA.

There are multiple types of organizations that utilize water as part of their operations. According to DBRC management, the majority of facilities use meters to measure both the surface water withdrawn from the river and the amount of water the facility returns to the river. For power generation facilities and industrial facilities, the water use fee is calculated based on what each facility reports as actual water usage, which is measured by water meters. For power companies, the consumptive use also includes estimates for instream evaporative losses that result from discharging highly heated water into the river.

DRBC management further stated that for those facilities that do not measure water usage through water meters, estimating consumptive use and water returned to the river contains uncertainty. For public water suppliers, the consumptive factor is either based on actual use as determined by meters or a consumptive use percentage, e.g., 10 percent of water withdrawn is not returned to the Basin. While consumptive factors for public water suppliers vary for each individual water system, DRBC management believes that 10 percent is reasonable based on consumptive factors of national public water and sewer providers. For other organizations who do not utilize water meters but draw water from the Basin, the DRBC has established consumptive rates based upon the type of organization. For example, the consumptive use rate for golf courses is 90 percent and the rate for ski resorts is 22 percent.[30] Agricultural water users do not pay water supply charges.

The DRBC rate for water charges during the period July 1, 2016 through June 30, 2017, was $80 per million gallons for consumptive use and $.80 per million gallon for non-consumptive use.[31]

The following tables reflect expenses reported in each of the funds for the FYE June 30, 2017. The DRBC expenses are addressed in Finding 1.

[30] The assumed factor for golf courses used by the DRBC is supported by the irrigation consumptive use coefficient cited in a study by the United States Geological Survey. The ski resort consumptive factor was established through research by DRBC staff, which considered a report submitted by the Camelback Ski Resort in Pennsylvania and the Colorado Ski Country USA Water Management Research Handbook (with consideration of the difference in climate).

[31] *Administrative Manual, Part III, Basin Regulations - Water Supply Charges* (adopted May 22, 1974, with amendments through December 14, 2016) Section 5.3.1 Schedule of Water Charges (18 CFR 420.41). This section also reports that on July 1 of every year, beginning July 1, 2017, the rates established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.

DRBC Expenses – Governmental Funds
FYE June 30, 2017

Expenses	General Fund	Special Projects Fund	Total
Personnel Services	$2,690,575	$390,120	$3,080,695
Fringe Benefits and Other Contributions	$1,566,171	$227,295	$1,793,466
Travel	$47,362	$3,793	$51,155
Special and Contractual Services	$65,728	$1,061,342	$1,127,070
Other Services	$160,880	$97	$160,977
Supplies and Materials	$68,796	$18,708	$87,504
Buildings and Grounds	$191,056	$113,568	$304,624
Communications	$30,606	$8,997	$39,603
Maintenance, Replacements, Acquisitions and Rentals	$51,569	$12,368	$63,937
Total Expenses	$4,872,743	$1,836,288	$6,709,031

Source: This table was compiled by the staff of the Department of the Auditor General based on expenses reported in the DRBC's audited financial statements for the FYE June 30, 2017.

DRBC Expenses – Proprietary Fund
FYE June 30, 2017

Expenses	Water Supply Storage Facility
Operating Expenses:	
Special and Contractual Services	$675,288
Depreciation	$438,748
Total Operating Expenses	$1,114,036
Non-operating Expenses:	
Interest Expense	$360,285
Total Non-operating Expenses	$360,285
Total Expenses	$1,474,321

Source: This table was compiled by the staff of the Department of the Auditor General based on expenditures reported in the DRBC's audited financial statements for the FYE June 30, 2017.

Finding 1 – Determination of the DRBC's costs of salaries, benefits, other compensation; expense reimbursements to the DRBC's officers and employees; and other fixed and variable DRBC costs.

The Delaware River Basin Commission (DRBC) was created on October 27, 1961, when then President Kennedy and the governors of Delaware, New Jersey, New York, and Pennsylvania, signed concurrent compact legislation into law.[32] The members of the DRBC include the four Basin state governors and on behalf of the United States, the commander of the U.S. Army Corps of Engineers North Atlantic Division. The DRBC serves federal, state, and local interests by providing comprehensive, proactive water resources management for the 13,539 square mile Delaware River Basin.[33]

The first three objectives of our audit were to determine:

- The cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC.
- The cost of expense reimbursements provided to the officers and employees of the DRBC.
- Other fixed and variable costs of the DRBC.

In order to determine the above costs, we reviewed the DRBC's audited financial statements, along with supporting financial records and other related documentation. Although we did not perform detailed testing of the DRBC's expenditures, our review of the DRBC's financial records revealed that in some cases itemized receipts were not available to determine the details of the expenses.

Our determination of the DRBC's costs specified in our first three audit objectives, along with our related concern, are detailed in the sections to follow.

Governmental Fund

Salaries, benefits, and other compensation provided to the officers and employees of DRBC

The ex officio members (Commissioners) of the DRBC are the governors of the four signatory states and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who

[32] The DRBC was "created as a body politic and corporate . . . [and] as **an agency and instrumentality** of the governments of the respective signatory parties." [Emphasis added]. *See* Compact, Article 2, Section 2.1. https://www.nj.gov/drbc/library/documents/2014AR.pdf, page 2 (accessed August 16, 2018).
[33] http://www.nj.gov/drbc/about/budget.html (accessed May 17, 2018).

serves as the federal representative. The five members appoint alternate Commissioners, with the governors selecting high-ranking officials from their state environmental agencies, including the Pennsylvania Department of Environmental Protection (DEP). The Commissioners generally meet on a quarterly basis. Each Commissioner has one vote of equal power, with a majority vote needed to decide most issues. The Compact states that the members of the Commission and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred.[34] During our review of expenses, we did not find that the DRBC paid compensation or reimbursed expenses to any of the Commissioners or their alternates.[35]

The daily operations of the DRBC are managed by executive staff with support from technical, administrative, and clerical personnel. The Compact identifies the Executive Director as an officer of the DRBC and "such additional officers, deputies, and assistants as the Commission may determine."[36] The DRBC's *Administrative Manual, By-Laws, Management and Personnel* (administrative manual) states that the Commission will appoint an Executive Director, and all other officers and employees will be appointed by the Executive Director pursuant to the Compact. The administrative manual further specifies that the Executive Director's appointments of the General Counsel and the Secretary to the Commission shall be subject to confirmation by the Commission.[37] Based on a review of the administrative manual and discussion with DRBC management, we have identified the Executive Director and the Secretary to the Commission as DRBC Officers. The General Counsel to the DRBC is a contracted vendor rather than an employee of the DRBC. Although not a recognized Officer of the DRBC, for purposes of this audit, we will report on compensation and reimbursements made to the individual serving as General Counsel to the DRBC. During the audit period, in addition to the two officers, the DRBC employed 46 individuals.[38]

The table below presents salaries, benefits, and other compensation provided to the two officers, the employees of the Commission, and the individual serving as General Counsel during the fiscal year ended (FYE) June 30, 2017:

[34] DRBC Compact, Article 2 "Organization and Area", Section 2.4 entitled, "Compensation." www.state.nj.us/drbc/library/documents/compact.pdf (accessed February 8, 2018). *See also* 32 P.S. § 815.101.
[35] The DRBC, as an agency and instrumentality of the commonwealth and the other signatory parties, is not subject to the Pennsylvania Governor's Gift Ban and the Governor's Code of Conduct. However, it is important to note that the individual DEP Commissioner alternates are subject to these directives. https://www.oa.pa.gov/Policies/eo/Documents/2015_01.pdf and https://www.oa.pa.gov/Policies/eo/Documents/1980_18.pdf (accessed September 4, 2018).
[36] DRBC Compact, Article 14 "General Provisions", Section 14.5 entitled, "Officers Generally." www.state.nj.us/drbc/library/documents/compact.pdf (accessed February 8, 2018).
[37] DRBC's *Administrative Manual, By-Laws, Management and Personnel*, Chapter 3 "Organization and Staff" Section 3.1 entitled, "Officers."
[38] According to DRBC management, this number includes seasonal staff, such as summer interns, and new employees hired for positions being vacated because of retirements or resignations. Generally the number of permanent full-time employees was 38.

DRBC Paid Salaries, Benefits, and Other Compensation

	Salary and Overtime[a/]	Health Benefit Incentive[b/]	Salary and Health Benefit Incentive Total	Fringe Benefits[c/]	Total Compensation
Officers:					
Executive Director	$126,002	$1,150	$127,152	$54,849[d/]	$182,001
Secretary to the Commission	$128,247	$0	$128,247	$74,653[e/]	$202,900
Officers Totals	$254,249	$1,150	$255,399	$129,502	$384,901
Employees Totals	$2,759,108	$3,300	$2,762,408	$1,663,964	$4,426,372
Officer and Employee Totals	$3,013,357	$4,450	$3,017,807[f/]	$1,793,466	$4,811,273
General Counsel Total	$24,301[g/]	$0	$24,301	$0	$24,301

[a/] - DRBC Officers are not eligible to receive overtime. During the FYE June 30, 2017, the DRBC paid approximately $666 in overtime to employees.
[b/] - A coverage waiver is part of the DRBC's health coverage plan. Staff that waive health coverage receive $50 each pay, up to $100 per month. One officer and three employees chose the coverage waiver.
[c/] - Fringe benefits paid by the DRBC include pension, social security, health and dental benefits, unemployment, and long-term disability.
[d/] - Fringe benefit rate of 43.53%, adjusted based on the Executive Director's health coverage waiver.
[e/] - Based on a DRBC fringe benefit rate calculation of 58.21%.
[f/] - The difference in the amount compared to the total personnel services reported in the DRBC audited financial statements is due to accrued leave adjustments totaling $62,888.
[g/] - The individual that serves as the DRBC's General Counsel, which could be designated as an Officer by the Executive Director, is not an employee of the DRBC. Instead, he is compensated at an hourly rate, plus the costs of certain services such as copying, postage, travel, etc. as outlined in a letter of agreement with the DRBC.

Source: This table was compiled by the staff of the Department of the Auditor General based on support documents (e.g. payroll files and fringe benefit rates) provided by the DRBC.

Expense reimbursements provided to officers and employees

In addition to salaries paid to DRBC staff, expenses incurred by staff during the course of business are reimbursed. The DRBC's audited financial statements for the FYE June 30, 2017, included $51,155 of travel expenses, which includes staff transportation, parking, lodging, and food costs, as well as the expenses associated with Commission meetings.

The table below presents payments made by the DRBC for the total amount reported in the DRBC's financial statements as travel for the FYE June 30, 2017:

DRBC Travel Expenses (Including Commission Meetings)

	Lodging	Food	Other	Total
DRBC Officers:				
Executive Director	$925	$266	$920[a/]	$2,111
Secretary to the Commission	$388	$328	$1,363[b/]	$2,079
Total DRBC Officer Expenses	$1,313	$594[c/]	$2,283	$4,190
Total Employee Expenses				$19,458[d/]
Total General Counsel Expenses	$104	$0	$0	$104
Total Commission Meeting Expenses	$1,498	$2,037	$23,868[e/]	$27,403
Total Travel Expenses				$51,155

[a/] - Other expenses include transportation and parking. Also a deposit made for a staff retirement dinner in which the DRBC was reimbursed from collections from DRBC staff.
[b/] - Other expenses include transportation and parking.
[c/] - The DRBC provided documents to support that expenses were for payments to restaurants, however, itemized receipts were not available to determine specific items purchased for $472 of the reimbursements.
[d/] - Travel expenses reimbursed to employees is reported in total, and a breakdown by category was not determined during test work performed.
[e/] - Other costs include $10,016 meeting room rental fees, $12,136 security services for Commission meetings, and officer expenses for parking, gas, and meeting supplies.

Source: This table was compiled by the staff of the Department of the Auditor General based on travel expense support documents (e.g. purchase requisitions, credit card statements, and receipts.)

To evaluate travel and Commission meeting expenses, we reviewed information provided in the general ledger transactions and DRBC credit card statements to determine amounts applicable to each of the two Officers. Additionally, we reviewed support documents, such as purchase requisitions and vendor receipts, to determine what items were purchased. Note that we did not review other specific expenses related to employees and the General Counsel.

Our review of the expenses found the charges related to lodging and food specific to the Officers to be reasonable. Although credit card slips were provided indicating the total amount of the charges, the DRBC did not require staff to submit itemized receipts. Therefore, we were unable to review specific items purchased for $472 of payments made to restaurants. Requiring itemized receipts helps to ensure payments are not made for extravagant or prohibited items. As a result of our audit inquiry, DRBC management indicated that effective April of 2018, they have changed their policy and now require employees to submit itemized receipts. However, we did not review the new policy since it became effective after our testing period.

As previously discussed, the Commissioners of the DRBC are comprised of representatives and alternates from each of the four states in the Compact and the federal government. Commission meetings are held quarterly, with three of the four at a location near the DRBC office and the fourth meeting at a location within the Delaware Basin. DRBC management stated that the meetings take place over two days and the DRBC pays the lodging costs for DRBC staff attending the meetings that are not local to the DRBC office. The DRBC also covers the cost of meals for lunch on day one and breakfast on day two for DRBC staff and Commissioners. The DRBC pays for dinner on day one for DRBC staff but Commissioners pay for their own dinner expenses and, according to DRBC management, Commissioners do not request reimbursement from the DRBC. During our review of expenses, we did not note any expense reimbursements made to Commissioners or their alternates.[39]

Other Fixed and Variable Costs

Other DRBC governmental fund costs (not including personnel, benefits, and travel previously reported) total $1,783,715. DRBC management provided a breakdown of fixed versus variable for all other costs as presented in the table below.[40] Management stated that the basis for identifying a cost as variable as opposed to fixed was related to whether the cost was associated with a certain program in which there would be no associated cost if the program ceased to exist.

	General Fund			Special Projects Fund	Total Governmental Fund Cost
Expenses	**Fixed**	**Variable**	**Total Cost**	**Variable[a/]**	
Special and Contractual Services	$64,718	$1,010	$65,728	$1,061,342	$1,127,070
Other Services	$152,057	$8,823	$160,880	$97	$160,977
Supplies and Materials	$62,556	$6,240	$68,796	$18,708	$87,504
Buildings and Grounds	$191,056	$0	$191,056	$113,568	$304,624
Communication	$30,062	$544	$30,606	$8,997	$39,603
Maintenance, Replacements, Acquisitions and Rentals	$50,080	$1,489	$51,569	$12,368	$63,937
Total	$550,529	$18,106	$568,635	$1,215,080	$1,783,715

[a/] - According to DRBC management, there are no fixed costs in the Special Projects Fund.

[39] Although no related concerns were found in this audit, it must be noted that the individual DEP Commissioner alternates are subject to the Pennsylvania Governor's Gift Ban and the Governor's Code of Conduct. https://www.oa.pa.gov/Policies/eo/Documents/2015_01.pdf and https://www.oa.pa.gov/Policies/eo/Documents/1980_18.pdf (accessed September 4, 2018).

[40] Generally, fixed costs remain constant regardless of activity or production volume and variable costs will change with activity or production volume.

Proprietary Fund

DRBC proprietary fund expenses relate to the costs associated with the water supply storage facilities that are used to release water during times of low flows in the Delaware River. This fund does not include costs for salaries, benefits, compensation, or expense reimbursements. DRBC management provided a breakdown of costs between fixed and variable costs as presented in the table below. Management stated that all payments for principal, interest, and dam operation maintenance are classified as fixed because they are contractually obligated to pay those costs. However, contractual payments made to the U.S. Geological Survey for services are made on a year by year, contract by contract basis and are therefore classified as variable. The table below presents a breakdown of the DRBC's proprietary fund costs by fixed versus variable as identified by DRBC management for the FYE June 30, 2017:

Category	Water Supply Storage Facility		Total
	Fixed	Variable	
Operating Expenses:			
Special and Contractual Services	$634,410	$40,878	$675,288
Depreciation	$438,748	$0	$438,748
Total Operating Expenses	$1,073,158	$40,878	$1,114,036
Non-Operating Expenses:			
Interest Expense	$360,285	$0	$360,285

Conclusion

While our first three audit objectives only required us to determine 1) the cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC; 2) the cost of expense reimbursements provided to the officers and employees of the DRBC; and 3) other fixed and variable costs of the DRBC, based on our limited review, nothing came to our attention which would indicate that expenses were not reasonable. However, we did note that the DRBC could improve its management controls to ensure that reimbursements made to officers and employees are appropriate by requiring itemized receipts to be submitted and reviewed before payment.

Recommendation for Finding 1

We recommend that the DRBC:

1. Ensure that itemized receipts are submitted and reviewed for all transactions prior to being processed for payment.

Finding 2 – A much needed overhaul of the more than 40-year-old Administrative Agreement between the DRBC and the DEP and additional written operational guidance would assist in the cooperative functioning between these entities.

Prior to the signing of the Delaware River Basin Compact (Compact) in 1961, management of the water resources of the Basin involved several governmental agencies whose work was duplicative and uncoordinated due to a splintering of authority and responsibility. The Compact, adopted by the Congress of the United States and the legislatures of Delaware, New Jersey, New York, and Pennsylvania, created the Delaware River Basin Commission (DRBC or Commission), a regulatory intergovernmental agency to provide a unified approach to overseeing river basin planning and development.[41] The significance of the Compact and its emphasis on this approach is underscored by the fact that the DRBC was established as a vital component of each of the signatory states and the federal government.[42] Of particular relevance to this audit is the Compact's focus on effectuating the cooperation and coordination between and among the signatory parties and the "appropriate agencies."[43]

One of the objectives of our audit was to determine the potential for improvement in efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services, or personnel with commonwealth and local agencies. In order to properly evaluate the major components of the above objective, we reviewed the Compact and Administrative Agreement (Agreement) between the DRBC and Pennsylvania, the DRBC administrative manual, resolutions approved by DRBC Commissioners, and conducted interviews with management from the DRBC and the Pennsylvania Department of

[41] *See* 32 P.S. § 815.101 (Act 268 of 1961, as amended by Act 233 of 1982), Compact, Part I. "Preamble", www.state.nj.us/drbc/library/documents/compact.pdf (accessed July 27, 2018). Under Section 1.5 (relating to Existing Agencies; Construction) of its Compact, its purpose is to, in part: "to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with this compact." *See* Compact, Article 1, Section 1.5.

[42] The DRBC was "created as a body politic and corporate…[and] as an agency and instrumentality of the governments of the respective signatory parties." *See* Compact, Article 2, Section 2.1 (32 P.S. § 815.101).

[43] For example, Section 7.4 (relating to Cooperation Planning and Operation [for Watershed Management]) of the Compact provides: "(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. (Emphasis added.) (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 of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in section 1.5 of this compact." *See* Compact, Article 7, Section 7.4. This is entirely consistent with our own Administrative Code relating to "Coordination of work" among departments and commissions which states, in part: "The several administrative departments, and the several independent administrative and departmental administrative boards and commissions, shall devise a practical and working basis for **cooperation and coordination** of work, eliminating, duplicating, and overlapping of functions, and shall, so far as practical cooperate with each other in the use of employees, land, buildings, quarters, facilities, and equipment." (Emphasis added). *See* 71 P.S. § 181 (Adm. Code § 501).

Environmental Protection (DEP), some of whom represent Pennsylvania as Commissioners to the DRBC.[44]

Our review of DRBC operations for the fiscal year ended (FYE) June 30, 2017, included the following areas which are further discussed in the below sections:

- Outdated Agreement between the DRBC and the DEP
- Lack of participation by Pennsylvania in the One Process/One Permit (OP/OP) Program
- Duplication of efforts between the DRBC and the DEP
- Sharing resources between the DRBC and the DEP
- Docket holder response on duplication of services between the DRBC and the DEP

Outdated Agreement between the DRBC and the DEP

The DRBC's Agreement with Pennsylvania dates back over 40 years ago to 1976 and is in need of a major overhaul. This Agreement is in stark contrast with the DRBC's agreements with all other signatory party states, which have been updated within the past five years.[45] Since two of the other signatory party states, New York and New Jersey, participate in the new OP/OP Program (discussed later in this finding), their agreements were updated in March 2016 and March 2015, respectively. The fourth state, Delaware, like Pennsylvania, is not under the OP/OP Program; nevertheless, their agreement was amended in May 2013.

The outdated Agreement between the DRBC and the DEP requires a major modernization by restructuring the Agreement into the form of an "intergovernmental agreement" in order to align the two missions of the governmental entities, as provided for in the Pennsylvania Department of General Services' (DGS) *Procurement Handbook*.[46] The intergovernmental agreement would

[44] The DEP oversees Pennsylvania's membership within interstate river basin organizations, including the DRBC. Additionally, the DEP is the Pennsylvania state agency which oversees departmental programs involving surface and ground water quantity and quality planning, and soil and water conservation; coordinates policies, procedures, and regulations which influence public water supply withdrawals and quality, sewage facilities planning, point source municipal and industrial discharges, encroachments upon waterways and wetlands, dam safety, earth disturbance activities and control of storm water and non-point source pollution; coordinates the planning, design and construction of flood protection and stream improvement projects; and is responsible for the Department's State Water Planning Program that maintains water use data and planning in support of informed decisions on water availability. Per DEP website *https://www.dep.pa.gov/Business/Water/Pages/default.aspx.* (accessed August 28, 2018).

[45] In addition to Pennsylvania, the signatory party states of the **DRBC** include Delaware, New Jersey, and New York.

[46] This agreement applies to any agreement between an "executive agency" as defined under the Commonwealth Attorneys Act and, among others, the federal government or its agencies and any "instrumentality of the Commonwealth" seeking "a binding, contractual agreement" pursuant to 71 P.S. § 732-101 *et seq.* The act defines an "Executive agency" as follows: "The Governor and the **departments** [includes DEP], boards, commissions, authorities and other officers and agencies of the Commonwealth government, but the term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, or any independent agency." [Emphasis added]. *See* 71 P.S. § 732-102.

more clearly define and memorialize the current practices in place regarding work being performed for and in conjunction with the DEP.

Both DEP and DRBC management acknowledged that the Agreement is dated and must be updated. Specifically, DRBC management indicated that there are issues arising out of the Agreement regarding who is to perform what services.

While the DRBC's Agreement with Pennsylvania is woefully outdated, we found that the DRBC maintains an *Administrative Manual, Rules of Practice and Procedure*, which was most recently updated July 1, 2018, and was discussed earlier in this report.[47]

Additionally, the DRBC Commissioners approve resolutions that outline policy and provide guidance regarding topics such as water testing, permitting, and enforcement activities that affect Basin waters or water users.

We commend the DRBC for having such a comprehensive and detailed administrative manual and resolutions in place. However, this administrative manual and the related resolutions do not provide clarity to issues arising out of the outdated Agreement with Pennsylvania regarding who is to perform what services. Furthermore, they do not sufficiently address avoiding the duplication of efforts and deferring to state entities when applicable, as inferred by the Compact and outlined in Pennsylvania Statutes.[48]

[47] DRBC *Administrative Manual – Rules of Practice and Procedure*, 18 CFR Part 401. Topics include comprehensive plan, water resources program, project review, penalties, and public access to the Commission's records and information. A prior update applicable to our audit period occurred on December 14, 2016. Prior to our audit period, the last update occurred on May 31, 2002.

[48] Section 1.5 (relating to Existing Agencies; Construction…) of the Compact provides: "It is the purpose of the signatory parties to preserve and utilize the functions, powers, and duties of existing offices and agencies of government to the extent not inconsistent with the compact, and the commission is authorized and directed to utilize and employ such offices and agencies for the purposes of this compact." *See* Compact, Article 1, Section 1.5. Section 3.9 (relating to Coordination and Cooperation [by the Commission]) of the Compact provides: "The commission shall **promote and aid the coordination** of the activities and programs of federal, state, municipal, and private agencies concerned with water resources administration in the basin**."** [Emphasis added]. *See* Compact, Article 3, Section 3.9.
Title 32, Chapter 32 of the Pennsylvania statutes. Specifically, 32 P.S. § 815.101, Article 3 (Powers and Duties of the Commission), § 3.9 (Coordination and Cooperation).

Lack of participation by Pennsylvania in the One Process/One Permit Program

The goal of the voluntary OP/OP Program is to promote close collaboration and enhance administrative efficiencies between the DRBC and the Basin states while ensuring that equal or better environmental outcomes are obtained. For projects subject to regulatory review by both the DRBC and a Basin state, the program allows for the issuance of a single approval instrument incorporating the applicable requirements of the two authorities. The program does not alter the regulatory standards of the DRBC, or any state agency, and the respective authorities of each agency are expressly preserved.[49]

With regard to Pennsylvania's non-participation in the OP/OP Program, DRBC management stated that in 2015, the DRBC and the DEP began discussing the DEP's potential participation in the program, but as of August 13, 2018, Pennsylvania still has not participated in the OP/OP Program.

According to the DEP, the possibility of adopting a one permit program for issuing wastewater discharge permits through an amendment to the DEP's Agreement with the DRBC has been and is currently being explored. Management further stated that as the DEP and the DRBC work to update the Agreement, discussions will continue regarding this issue.

DRBC management further indicated that it would welcome Pennsylvania's participation in the OP/OP Program. DRBC management stated that implementation of the OP/OP Program would save organizations that discharge into the Basin the cost of the DRBC's application fee, equal to about $1,000 for private projects and $500 for public projects, paid every five years. Since the DEP has been actively considering participation in the OP/OP Program since 2015, or approximately 3 years, we encourage the agency to urgently work towards determining what efficiencies could be achieved through the OP/OP Program. The DEP should also give weight to the potential cost savings for Pennsylvania applicants, as is the case for applicants in New York and New Jersey, during their thorough consideration of whether to participate in the OP/OP Program. However, until such a time that the DEP decides to participate, an updated Agreement should be developed to fully outline current practices in place between the DRBC and the DEP.

Duplication of Efforts between the DRBC and the DEP

We inquired of DRBC and DEP management separately as to whether there are duplication of efforts between them. DRBC and DEP managements' responses were similar, stating that work between the DRBC and the DEP are complimentary and/or augmentative in nature, along with several overlapping areas which are discussed below. Therefore, DEP management generally corroborated, at a high level, DRBC management's statements and therefore, we did not perform additional procedures to validate DRBC's statements regarding duplication of efforts.

[49] https://www.nj.gov/drbc/programs/project/ (accessed August 24, 2018).

DEP management responded that there are many areas in which the DRBC works to advance the DEP's program goals. According to the DEP, the DRBC's efforts are complimentary and/or augmentative of DEP programs and the DEP utilizes DRBC programs to assist in meeting its legal requirements.[50] DEP management stated that the following DRBC activities augment DEP programs:

- Reviewing and approving safe drinking water construction and operations permits and water allocation permits for Public Water Supplies.
- Managing water resources during times of drought.
- Evaluating potential impacts to surface and ground waters during drilling or hydraulic fracturing.

However, our correspondence with the DEP identified the following three major areas in which the DEP and the DRBC have overlapping legal authority:

1. Water withdrawals
2. Water pollution discharges
3. Water quality standards protection

These three overlapping areas are discussed in the sections below. In addition to these areas, we inquired as to any duplication or appearance of duplication of penalties. DRBC management stated that it only seeks financial penalties for violations of the DRBC's regulatory approvals and does not foresee any circumstances where the DRBC and the DEP would both seek penalties for the same violation. Since all drafts of the dockets are submitted to the applicable signatory state for review and comment, the DEP's review of the dockets would help ensure that there is no overlap between the parameters.

Water Withdrawals

According to DRBC management, the DEP regulates the safety of the supply to be consumed. Conversely, the DRBC considers the sustainability of the source regardless of whether the water is going to be used for human consumption. DRBC management stated that the DEP regulates wells from a safety perspective by ensuring that the wells are constructed properly, pumps are sufficient, etc., whereas the DRBC focuses on the resource perspective by regulating the water allocation and how the water is utilized throughout the Basin.

[50] It is important to note that Section 1.5 of the Compact provides for the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the Compact. *See* Compact, Article 1, Section 1.5.

Water Discharges

Regarding wastewater discharge fees, according to DRBC management, it may appear to the average applicant that there is a duplication in payment of some fees to both the DEP and the DRBC; however, DRBC management stated that the DRBC's activities complement the DEP's actions. For example, an applicant might pay both a wastewater discharge fee for the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit to the DEP and a wastewater docket fee to the DRBC for the same discharge. However, DRBC management explained that the fees do not cover the same work since the DRBC is overseeing interstate waters. The work it performs allows them to furnish data and assessments to states so that it can satisfy certain Clean Water Act obligations. Additionally, their work helps to keep high quality interstate waters clean under special programs and provides leadership in significantly improving interstate waters that have been degraded by severe pollution. DRBC management indicated that many services it performs under a separate docket could be incorporated into DEP permits using the OP/OP Program described in a prior section of the finding.

Water Quality

With regard to water quality monitoring that the DRBC conducts, DRBC management stated, and DEP management agreed, that Pennsylvania has an extensive number of waterways and does not have as many resources to allocate to the Delaware River, so the DRBC's presence is important; however, we did note issues between the DRBC and the DEP relating to water quality standards. According to DRBC management, the DRBC water quality standards date back to the 1960s. For interstate waters within the Basin, the DEP's regulations defer to the water quality standards promulgated jointly through the DRBC by the signatory parties, unless Pennsylvania's state-wide standards are more stringent. In this regard, DRBC management admitted that a more clearly defined Agreement with Pennsylvania would be beneficial. We agree with DRBC management in that it may eliminate possible confusion for its docket holders.

Although the practices described above relating to water withdrawals, wastewater discharges, water quality monitoring, and settlements/penalties may not be a duplication of efforts, they should be memorialized in written policies and procedures. The policy should address, for example, which cases should be referred to the DRBC and why, as well as whose authority and fees apply when it is a dual jurisdiction case. Such additions would help to avoid duplicate fees and/or the appearance of duplicate fees.

Sharing Resources between the DRBC and the DEP

In order to determine the potential for overall cost reductions, we inquired of both the DEP and the DRBC regarding the possibility of sharing personnel or equipment used in daily operations. Management from both agencies responded that sharing would not be feasible. DEP management further stated that the DRBC's programs augment its programs and that logistically it would not be possible to reciprocate the same level of sharing resources with the DRBC while

still performing the same level of work. In short, the DEP indicated that it lacks sufficient resources to reciprocate services with the DRBC on an equal footing and that it is in fact dependent on supplemental resources from the DRBC.

Docket Holder Response on Duplication of Services between the DRBC and the DEP

During our audit, we surveyed eight representatives from a cross-section of Pennsylvania organizations that hold dockets with the DRBC.[51] Both public entities and private businesses were contacted with our questions and the results are fully discussed in Finding 3 of this report. The survey included a question pertaining to whether the organizations had any issues or concerns with the fees and penalties charged by the DRBC and the DEP that appear to be duplicative in nature. A representative from one of the organizations surveyed raised the question as to whether the fees could be combined and paid to one agency instead of two agencies since completing the forms can be complicated. This is an example of where the organization's concerns of overlapping authority and duplication of fees charged by each agency could be clarified by the DRBC providing written guidance outlining the specific responsibilities of both the DEP and the DRBC and/or participation by Pennsylvania in the DRBC's OP/OP Program.

An up-to-date Agreement, coupled with increased communication on the DRBC's website, would help eliminate confusion regarding what services the DRBC and the DEP provide and the appearance of any duplication of services, fees, and settlements/penalties.

Recommendations for Finding 2

We recommend that the DRBC:

1. Work with the DEP to update the current outdated "Administrative Agreement" by revamping it into an "intergovernmental agreement" as provided for in the DGS' *Procurement Handbook* to not only modernize the Agreement, but also more clearly define and memorialize the current practices in place regarding work being performed for and in conjunction with the DEP.

2. Create a detailed outline to be prominently posted on the DRBC's website of the responsibilities and procedures being performed by both the DRBC and the DEP and regularly update the outline as these responsibilities and procedures change.

3. Improve media and communications to explain the inter-relationships and utilization of resources between the DRBC and the DEP, including periodically holding geographically dispersed information sessions.

[51] We contacted 11 organizations of which only eight responded.

4. Continue efforts to enter into the OP/OP Program with Pennsylvania, like two of the other Compact signatory states, to streamline procedures and consolidate and reduce fees wherever possible.

Finding 3 – Signatory parties, including Pennsylvania, are not making agreed upon contributions to the Delaware River Basin Commission, with the federal government making no annual payments since 2010.

The Delaware River Basin Commission (DRBC or Commission) was formed by Compact in 1961 and is primarily funded by the annual signatory party contributions, regulatory program fees, water supply charges, and penalties or settlements in lieu of penalties (settlements), as well as project-specific federal and state grants, contracts, or purchase orders, and occasionally private grants.[52]

Two of our audit objectives were to determine:

- Contributions to the DRBC by the commonwealth or any person within this commonwealth, whether by appropriations, fees, penalties or otherwise, in comparison to other signatory parties.
- The impact of the fees and penalties of the DRBC on public and private entities within the commonwealth.

In order to achieve these objectives, we reviewed the DRBC's audited financial statements, along with supporting financial records and other related documentation. We also attempted to contact eleven organizations within the commonwealth that, according to DRBC records, made payments to the DRBC during the audit period.

We found concerns related to three of the four state signatory parties (Pennsylvania, New York, and New Jersey) contributing less funds than what was agreed upon in a "tacit agreement" that is further discussed below, along with the lack of federal government contributions since fiscal year ended (FYE) June 30, 2010. This lack of funding could potentially have a negative effect on Pennsylvania organizations, some of which are already reporting the negative impact from current fees imposed by the DRBC. Additionally, Pennsylvania is not participating with the DRBC in a joint one permit process which could create administrative efficiencies and save Pennsylvania organizations costs in the way of reduced application fees.[53]

[52] DRBC has three types of regulatory program fees: docket application filing fee, annual monitoring and coordination fee, and additional fees that are further described in the report and in Appendix B. The amounts associated with the docket application filing fee and additional fees are reported in the DRBC's audited financial statements as "Project Review Fees" and the annual monitoring and coordination fee as "Annual Fees." Water supply charges are reported in the DRBC's audited financial statements as "Water Sales." The amounts for penalties and settlements in lieu of penalties are reported in the DRBC's audited financial statements as part of "Fines, Assessments and Other Income." DRBC management stated that although the Compact authorizes the DRBC to seek penalties for violations, virtually all alleged violators request settlement of a penalty proceeding by agreement in lieu of a penalty.

[53] One Process/One Permit Program previously discussed in Finding 2.

The following sections identify who contributes to the DRBC and describe concerns related specifically to the signatory parties' contributions as well as the impact of fees and penalties on Pennsylvania organizations.

Revenue/Contributions to the DRBC

DRBC financial statements report two types of funds which support operations: Governmental and Proprietary.[54] The DRBC has two Governmental funds — the General Fund and Special Projects Fund.

The tables below present revenue reported by the DRBC in each of the funds for the FYE June 30, 2017. Detailed descriptions for certain types of revenue listed are included in the Introduction and Background section of this audit report.

[54] The DRBC basic services are reported in the governmental fund and the revenues from the DRBC fees assessed on various entities in the Basin for their consumptive and non-consumptive use of surface water are reported in the proprietary fund.

DRBC Revenue – Governmental Funds
FYE June 30, 2017

Types of Revenue	General Fund	Special Projects Fund	Total
Signatory Party Contributions:			
State of Delaware	$447,000	$0	$447,000
State of New Jersey	$693,000	$0	$693,000
State of New York	$359,500	$0	$359,500
Commonwealth of Pennsylvania	$434,000	$118,372[a/]	$552,372
Federal Government of United States	$0	$432,401[b/]	$432,401
Total Signatory Party Contributions	$1,933,500	$550,773	$2,484,273
Regulatory Program Fees[c/]	$833,063	$0	$833,063
Annual Fees	$349,871	$0	$349,871
Settlements, Assessments and Other Income	$118,481[d/]	$662,883[e/]	$781,364
Sale of Publications	$1,726	$0	$1,726
Investment Income	$23,429	$0	$23,429
Total Revenue	$3,260,070	$1,213,656	$4,473,726

[a/] - Funds received from the Pennsylvania Department of Environmental Protection (DEP) for the operation of the Southeastern Pennsylvania Ground Water Protected Area program whose main goal is to prevent the depletion of ground water as a result of development in southeast Pennsylvania.
[b/] - Water pollution control grant from the United States Environmental Protection Agency.
[c/] - Includes docket application filing fee and additional fees.
[d/] - Amount includes $53,739 for settlements and $64,742 for other income. Examples of other income include payments for leases, a legal settlement, and charges levied for time and materials in responding to records requests under *Subpart H - Public Access to Records and Information of the DRBC's Rules of Practice and Procedures* (18 CFR 401.101 – 401.119).
[e/] - The Special Projects Fund recognizes revenue as resources are expended in direct support of special projects and contractual services, such as for United States Geological Survey monitors.

Source: This table was compiled by the staff of the Department of the Auditor General based on revenues reported in the DRBC's audited financial statements for the FYE June 30, 2017.

DRBC Revenue – Proprietary Fund
FYE June 30, 2017

Types of Revenue	Water Supply Storage Facility
Operating Revenue:	
Water Supply Charges	$3,495,596
Total Operating Revenue	$3,495,596
Non-Operating Revenue:	
Interest Income	$543,891
Realized Gain on Sales of Investments	$310,553
Net Increase in Fair Value of Investments	$246,273
Total Non-Operating Revenue	$1,100,717
Total Revenue – Proprietary Fund	$4,596,313

Source: This table was compiled by the staff of the Department of the Auditor General based on revenues reported in the DRBC's audited financial statements for the FYE June 30, 2017.

Signatory Party Contributions

The respective signatory parties have agreed to make contributions to the DRBC to support its operations.[55] Under the "tacit agreement" reached by the Commission members in 1988 to apportion signatory party contributions, each party has agreed to a specific annual contribution amount in which $3,574,000 is split by the five parties based on specific percentages.

[55] Pursuant to the Section 13.3(c) of the DRBC Compact, the respective signatory parties agree to include the amounts apportioned "for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes." *See* Article 13 "Plan, Program and Budgets", Section 13.3(c) (32 P.S. § 815.101). https://www.nj.gov/drbc/library/documents/compact.pdf (accessed August 30, 2018).

The table below presents actual payments made to the DRBC by each signatory party in comparison to what each party agreed to contribute for the FYE June 30, 2013, 2014, 2015, 2016, and 2017:[56]

Payments to the DRBC by Signatory Parties

FYE June 30	Delaware	%	New York	%	New Jersey	%	Pennsylvania	%	Federal Government	%	Total
Agreed Upon Contribution Amount	$447,000	12.5%	$626,000	17.5%	$893,000	25%	$893,000	25%	$715,000	20%	$3,574,000
2013	$447,000	18%	$246,000	10%	$893,000	35%	$948,350[a/]	37%	$0[b/]	0%	$2,534,350
2014	$447,000	19%	$246,000	10%	$693,000	29%	$998,350[a/]	42%	$0	0%	$2,384,350
2015	$447,000	23%	$359,500	19%	$693,000	36%	$434,000[c/]	22%	$0	0%	$1,933,500
2016	$447,000	23%	$359,500	19%	$693,000	36%	$434,000	22%	$0	0%	$1,933,500
2017	$447,000	23%	$359,500	19%	$693,000	36%	$434,000	22%	$0	0%	$1,933,500

[a/] - According to DEP management, in FYE June 30, 2013 and 2014 it awarded additional funds to the DRBC for special program activities.
[b/] - Beginning with the FYE June 30, 1998, the federal government has not made annual payments to the DRBC except for two payments collectively totaling $715,000 paid in FYE June 30, 2009 and 2010.
[c/] - According to DEP management, the reduction in contributions to the DRBC beginning in FYE June 30, 2015 was due to the difference in the Governor's proposed budget amount of $934,000 and the actual allocated amount in the final enacted budget of $434,000; therefore, the decrease was the result of legislative action. In subsequent years (FYE June 30, 2016 and 2017), the Governor's proposed budget carried forward the same allocation from the previous year's enacted budget.

Source: This table was compiled by the staff of the Department of the Auditor General based on signatory party contribution amounts reported in the DRBC's audited financial statements for the FYE June 30, 2013 through FYE June 30, 2017.

Signatory Parties Not Paying Agreed Upon Amounts

As noted in the prior table, in FYE June 30, 2017, only one of the five signatory parties (Delaware) paid the full amount due in accordance with the tacit agreement. Although Pennsylvania paid $434,000 or 22 percent of the total amount the DRBC received from the signatory parties, this amount is $459,000 less than the agreed upon contribution amount. DRBC management indicated that they have spent a considerable amount of time with the representatives from the signatory parties discussing the issue of the reduced contribution amounts received; however, Pennsylvania, New Jersey, and New York continued to pay less than the agreed upon amount, with the federal government making no annual payments since 2010.

Lack of Federal Contributions

It is particularly troubling that the federal government has not made any contribution payments to the DRBC since the FYE June 30, 2010. DRBC management provided written correspondence it has sent to the federal government each year dating back to October 23, 2014, requesting that the federal government restore its funding to the DRBC.[57] The responses the DRBC received generally state that its request will be considered along with many other

[56] http://www.state.nj.us/drbc/library/documents/ContributionHistoryAug2017.pdf (accessed February 14, 2018).
[57] DRBC correspondence was addressed to either the Secretary or Assistant Secretary of the Army (Civil Works).

worthwhile programs, projects, and activities across the Nation in competition for limited available resources and that no commitments can be made at this time. In addition to its annual letters to the federal government, in 2015, the DRBC, in coordination with the Susquehanna River Basin Commission and the Interstate Commission on the Potomac River Basin, sent a letter to the Assistant Secretary of the Army and to the DRBC's federal Commissioner formally requesting that federal funding be restored. The response the DRBC received was the same as it had received in other years.

To close the funding gap that resulted from the signatory parties not paying the annual agreed upon amounts and the fluctuation in revenue received annually from project review fees, the DRBC established a new annual monitoring and coordination fee (previously discussed in the Introduction and Background section of the audit report) effective January 1, 2017. Therefore, organizations, including those in Pennsylvania that have nearly 50 percent of the dockets with the DRBC, have been assessed fees to compensate for signatory parties collectively, with the notable exception of Delaware, not contributing the agreed upon amount on an annual basis.[58]

Comparison by state of fees and settlements contributed to the DRBC

In addition to the contributions made by signatory parties, the DRBC collects revenue from fees and settlements that are discussed in the Introduction and Background section of the audit report. The table below presents the revenue generated from the fees and settlements the DRBC collected during the period July 1, 2016 through June 30, 2017 from docket holders within each signatory party state:

[58] The DRBC reviews organization's projects that affect the water resources of the Delaware River Basin. For reporting purposes, we will refer to the approved projects as dockets and the organizations whose projects have been approved as docket holders.

Fees and Settlements	PA	NJ	DE	NY	Accrual Entries[a/]	Total
Annual Fees	$251,436	$107,490	$27,970	$22,410		$409,306[b/]
Regulatory Program Fees	$693,092	$26,530	$82,465	$30,976		$833,063
Water Supply Charges	$1,896,237	$509,239	$202,828	$0	$887,292	$3,495,596
Total Fees	$2,840,765	$643,259	$313,263	$53,386	$887,292	$4,737,965
Percentage of Total Fees	59.96%	13.58%	6.61%	1.12%	18.73%	100.00%
Settlements	$17,206	$19,219	$2,008	$15,306		$53,739[c/]
Percentage of Settlements	32.02%	35.76%	3.74%	28.48%		100.00%

[a/]- According to DRBC management, accrual entries account for water supply charge estimates. For example, the DRBC will not receive the water supply charge payments for the quarter ending June 30th until September or October of that year.

[b/] - Amount of payments the DRBC received as of June 30, 2017. The DRBC reported $349,871 in their financial statements to reflect the portion of payments applicable to the half year period, January 1, 2017 to June 30, 2017, because Generally Accepted Accounting Principles requires the amortization of this revenue because it is a yearly fee.

[c/] - This total plus $64,742 of assessments and other income, such as payments from a mobile communications company for the lease of the DRBC's parking lot and a legal settlement, not related to settlements assessed on docket holders, equals the amount $118,481 reported under the General Fund in the Governmental Fund in the DRBC's financial statements.

Source: This table was compiled by the staff of the Department of the Auditor General based on billing reports provided by the DRBC.

The DRBC issues dockets for users whose daily average gross water withdrawal from the Basin during any 30 consecutive day period exceeds 100,000 gallons, withdrawing from the Basin in regions designated as protective areas, and for wastewater discharges into the Basin meeting the DRBC's threshold for review.[59] In order to put into perspective the amount of fees and settlements charged to docket holders within each signatory party state, the following table presents the number of active dockets held by organizations during the period July 1, 2016 through June 30, 2017, compared to the total fees and settlements paid by each state signatory party:[60]

[59] The Southeastern Pennsylvania Ground Water Protected Area is an area of known ground water stress due to intense development pressures. In this area, more stringent regulations apply to ground water withdrawals, requiring new or expanded well water projects involving an average withdrawal of more than 10,000 gallons per day during any consecutive 30-day period from a well or group of wells operated as a system to obtain a DRBC Protected Area Permit rather than a "docket."

[60] *Active dockets* are projects approved by the DRBC. Organizations may have multiple dockets.

Active Users	PA	NJ	DE	NY	Accrual Entries[a/]	Total
Number of Organizations	699	618	127	76		1,520
Percentage of Organizations	45.99%	40.66%	8.35%	5.00%		100.00%
Number of Dockets	1,056	787	176	106		2,125
Percentage of Dockets	49.69%	37.04%	8.28%	4.99%		100.00%
Total Fees	$2,840,765	$643,259	$313,263	$53,386	$887,292	$4,737,965
Percentage of Total Fees	59.96%	13.58%	6.61%	1.12%	18.73%	100.00%
Total Settlements	$17,206	$19,219	$2,008	$15,306		$53,739[b/]
Percentage of Total Settlements	32.02%	35.76%	3.74%	28.48%		100.00%

[a/] - According to DRBC management, accrual entries account for water supply charge estimates. For example, the DRBC will not receive the water supply charge payments for the quarter ending June 30th until September or October of that year.

[b/] - This total plus $64,742 of assessments and other income not related to settlements assessed on docket holders equals the amount $118,481 reported under the General Fund in the Governmental Fund in the DRBC's financial statements.

Source: This table was compiled by the staff of the Department of the Auditor General based on docket, fees and settlement information provided by the DRBC for the FYE June 30, 2017. The data regarding the number of organizations and dockets are of undetermined reliability as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our finding and conclusions.

The above table reflects amounts and percentages for only the FYE June 30, 2017. According to DRBC management, amounts and percentages of dockets and fees fluctuate from year-to-year, which make it difficult to assess state-to-state comparisons. In regard to the comparison of the percentages of dockets to the percentages of fees collected during the period July 1, 2016 to June 30, 2017, DBRC management provided the following reasons that Pennsylvania had a comparatively larger percentage of the fees to the percentage of dockets:

- Total fees for Pennsylvania docket holders were higher because 84 percent of dockets approved during 2017 were issued to facilities in Pennsylvania. Docket application filing fees are not assessed on an annual basis, but instead are dependent upon a new application or a renewal application when a docket expires. DRBC management stated that if and when Pennsylvania elects to enter into an agreement with the DRBC for the One Process/One Permit (OP/OP) Program (fully discussed in Finding 2), the number of DRBC dockets issued for projects in Pennsylvania, and the associated fees, is expected to decrease. The OP/OP Program was implemented by the DRBC in March 2016 and was intended to promote close collaboration and enhance administrative efficiencies between the DRBC and the Basin states. For projects subject to regulatory review by both the DRBC and a Basin state, the program allows for the issuance of a single approval instrument incorporating the applicable requirements of the two authorities. Participation by signatory parties is voluntary and New Jersey and New York currently participate in the program. DRBC management stated that participation in the program has been

offered to Pennsylvania and preliminary discussions have been held. However, as of August 13, 2018, Pennsylvania had not elected to participate in the program.

- Water supply charges were higher in Pennsylvania than in the other states because the withdrawers located in Pennsylvania used more water than in the other states.

- The DRBC's fee structure affects the ability to make a state-to-state comparison with the number of dockets. This is due to the annual monitoring and coordination fees and docket application filing fees being determined on the basis of the quantity of water allocated and/or the capacity of the discharge facility. Therefore the larger projects require higher fees. Also, fees for special projects, such as pipelines, are based on the construction costs of the project while only being associated with a single docket.

While DRBC management's explanations appear reasonable as to why Pennsylvania had a larger percentage of fees compared to the percentage of dockets of the other signatory states for the FYE June 30, 2017, due to the difficulties in making this state-to-state comparison as noted above, we do not draw any conclusions in regard to the comparison. However, as previously noted, DRBC management stated that participation in the OP/OP Program could decrease the total amount of fees paid by Pennsylvania organizations that have dockets with the DRBC. For example, DRBC management stated that implementation of the OP/OP Program would save organizations that discharge into the Basin the cost of the DRBC's application fee, equal to about $1,000 for private projects and $500 for public projects, paid every five years. Therefore, the DEP should give urgent and strong consideration to the feasibility of participating in the OP/OP Program for efficiency and costs savings to Pennsylvania organizations.

Impact of DRBC Fees and Settlements on Pennsylvania Organizations

In order to determine the impact of fees and penalties or settlements charged by the DRBC on entities within Pennsylvania, we surveyed representatives from a cross-section of Pennsylvania organizations, both public entities and private businesses, holding dockets with the DRBC. The questions we asked along with the organizations' responses are discussed below. The purpose of our survey was to obtain each organization's opinion regarding the fees and penalties charged by the DRBC and whether their businesses were negatively impacted by having to pay the fees and penalties. Eight of eleven organizations we contacted replied to our survey. The following paragraphs detail the results of these eight survey responses.

Regarding fees charged by the DRBC, we asked the representative of each organization whether they felt fees were reasonable or too high. The table below represents the responses from the eight organizations as to whether they considered fees to be either reasonable or too high.

Type of Fee	Number of Organizations that Responded, "The Fee is Reasonable."	Number of Organizations that Responded, "The Fee is Too High."	Number of Organizations that Declined to Comment
Annual Compliance & Monitoring Fee	2	2	4
Project Review & Application Fees	2	3	3
Consumptive Use Mitigation Fee	5	0	3

Source: This table was compiled by the staff of the Department of the Auditor General based on responses from the survey mentioned above.

As part of our work performed on the audit objective regarding duplication of services between the DRBC and the DEP (addressed in Finding 2), we also inquired whether each organization had any issues or concerns with fees or penalties charged by both the DRBC and the DEP that appear to be duplicative in nature.

- Six representatives responded that they have no issues or concerns.
- One representative suggested that the DRBC and the DEP combine the charges into one fee rather than submitting multiple fees to separate agencies.
- One representative replied that their organization does not pay any fees to the DEP.

Additionally, we surveyed the representatives to determine whether their organization had been assessed any penalties due to a violation of the terms of their docket with the DRBC. If applicable, we then asked the representatives to describe the process of working with the DRBC and whether the organization considered a court hearing rather than accepting the settlement offered by the DRBC.

- Five organizations responded that they were not assessed any penalties.
- Three organizations paid penalties and agreed to the proposed settlement.

Finally, we asked if their organization has been negatively affected by the fees and any penalties assessed by the DRBC.

- Six representatives stated that their organizations were not negatively affected.
- Two representatives who previously cited fees were too high also stated that their organizations are negatively affected because the fees create a financial burden.

- One representative stated that the DRBC's fees and penalties create not only a financial burden to the organization itself, but also to their customers who ultimately bear the burden.
- The second representative stated that, as a small business, the DRBC's fees result in a financial burden to the business because the expense of the fees cannot be transferred to their customers.

In summary, although representatives from only two of the eight organizations (25 percent) responded that their organizations have been negatively affected by DRBC fees and penalties, the DRBC should remain cognizant of the impact on organizations when fees are increased. Also, the response from one representative suggesting the DRBC and the DEP combine fees supports the benefit of the OP/OP Program that the DRBC offers as previously discussed in this finding and in Finding 2.

Recommendations for Finding 3

We recommend that the DRBC:

1. Work with the signatory parties to ensure that they are including in their respective budget requests the full contribution amount as determined by the agreed upon equitable apportionment percentages.

2. Continue to emphasize to the signatory parties the need for each to contribute its equitable portion of the funds necessary for the DRBC's expense budget.

3. Consider developing a new agreement among the signatory parties that will ensure full payment of each party's contribution amount in order to address the issue of the signatory parties not making their annual required payments to the DRBC.

4. Continue to remain cognizant of the impact fees, and any future fee increases, have on organizations that work with the DRBC.

We encourage the DEP to:

5. Urgently work towards completing an assessment of the feasibility of the OP/OP Program for Pennsylvania, which may provide benefits to not only the DEP, but also to Pennsylvania docket holders by way of reduced fees and efficiencies in the permit application process.

Delaware River Basin Commission's Response and Auditor's Conclusions

We provided copies of our draft audit findings and related recommendations to the Delaware River Basin Commission (DRBC) for its review. On the pages that follow, we included the DRBC's response in its entirety. Following the DRBC's response is our auditor's conclusions.

Audit Response from the Delaware River Basin Commission

Delaware River Basin Commission
DELAWARE • NEW JERSEY
PENNSYLVANIA • NEW YORK
UNITED STATES OF AMERICA

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Web Site: http://www.drbc.gov

Steven J. Tambini, P.E.
Executive Director

October 3, 2018

Via Email

Scott D. King, CPA
Acting Director, Bureau of Performance Audits
Pennsylvania Department of the Auditor General
302 Finance Building
Harrisburg, PA 17120-0018

Re: Delaware River Basin Commission
2018 Performance Audit Report

Dear Mr. King:

Please accept this letter as the response of the Delaware River Basin Commission (DRBC) to the Auditor General's Performance Audit Report for the DRBC's fiscal year ended June 30, 2018 ("Report"). We would like to commend your staff for the professional manner in which they performed the audit, which was both thorough and methodical.

DRBC generally agrees with the Report's findings and recommendations, including that:

- Expenses of the Commission and its officers are reasonable.
- The DRBC and PADEP should update the administrative agreement between the two parties and consider opportunities to implement DRBC's elective One Process/One Permit (OP/OP) program, which became available in 2016.
- Most of the signatory parties to the DRBC, including Pennsylvania, are not paying their agreed upon contributions to support the Commission's annual expense budget. The DRBC should continue to work with the parties to secure equitable contributions from each in accordance with their longstanding agreement for implementing their Compact obligations.

As you know, because the Commission is a federal-state compact agency, the Commissioners must jointly approve the implementation of audit recommendations that would affect our budget and work plans. The DRBC's budget is austere, in significant part as the result of large shortfalls in the Commonwealth's annual signatory party contributions in recent years. DRBC's work plan priorities can be affected by such significant member funding shortfalls.

DRBC's item-by-item response to the Report recommendations follows.

Recommendation for Finding 1

1. **Ensure that itemized receipts are submitted and reviewed for all transactions prior to being processed for payment.**

   DRBC agrees with the recommendation. The audit identified $472 of expenses without itemized receipts. (It should be noted that these expenses are supported by receipts, but the receipts, which are typically for food purchases, do not include some details.) While this variance represents a fraction of one percent of the total funds audited ($6,709,031), we agree that a detailed record of expenses should routinely be provided. As noted in the audit report, DRBC in April 2018 instituted a requirement that itemized receipts be provided for all expenses, including food expenses.

Recommendations for Finding 2

1. **Work with the DEP to update the current outdated "Administrative Agreement" by revamping it into an "intergovernmental agreement" as provided for in the DGS' *Procurement Handbook* to not only modernize the Agreement, but also more clearly define and memorialize the current practices in place regarding work being performed for and in conjunction with the DEP.**

   DRBC agrees with the recommendation. The DRBC staff are prepared to work with the PADEP towards the completion of a new administrative agreement to replace our outdated 1976 instrument. The timing, however, will depend on when the PADEP, which like the DRBC administers multiple vital programs, can prioritize this matter and likewise allocate the resources required to negotiate, execute and implement a new agreement. Notably, an agreement between the DRBC and Pennsylvania, as with any agreement between the Commission and one of its members, is subject to approval by the DRBC Commissioners.

2. **Create a detailed outline to be prominently posted on the DRBC's website of the responsibilities and procedures being performed by both the DRBC and the DEP and regularly update the outline as these responsibilities and procedures change.**

   We generally agree with this recommendation for better communicating the respective roles of the PADEP and DRBC within the Delaware River Basin and recognize that DRBC and PADEP share responsibility for communicating our complementary roles. The DRBC will work with PADEP to communicate more effectively to Pennsylvania stakeholders how our respective programs work together to ensure the best possible water resources management for Pennsylvania water users in the Basin. This effort may be accomplished using a variety of approaches. Modification of the Commission's FYE 2019 budget and work plan to include development of the proposed web-based outline specifically for DRBC's regulated community in Pennsylvania is subject to approval by the five-member Commission.

3. **Improve media and communications to explain the inter-relationships and utilization of resources between the DRBC and the DEP, including periodically holding geographically dispersed information sessions.**

   DRBC generally agrees with the recommendation. We note that the written comments submitted in June of 2018 by more than two dozen members of DRBC's regulated community to the Pennsylvania House of Representatives State Government Committee indicate that major industrial and municipal water users generally appreciate DRBC's role as distinct from and complementary to PADEP's role in ensuring a clean and sustainable water supply in the Delaware Basin. As we discussed in our response to RFI#10 during the audit, DRBC communicates with our regulated community in multiple ways, including through our advisory committees, staff participation in conferences, DRBC's approval instruments and other written communications, our website and social media presence, the Commission's quarterly public meetings, and through long-term relationships with organizations such as the Water Resources Association (WRA) of the Delaware River Basin. WRA was established in 1959 by representatives from industry, public and private utilities and other organizations that had wide-ranging interests in water resources and sought to ensure public participation in the management of the Delaware River and its tributaries. We agree that enhanced communication about the interrelated roles of the PADEP and DRBC would be beneficial.

   As we note in response to the second recommendation in this section, the DRBC's budget is austere, in significant part as the result of large shortfalls in the Commonwealth's annual signatory party contributions beginning in 2015. Pennsylvania's final approved budget for fiscal year 2019 included only $217,000 for the DRBC, less than one quarter of the Commonwealth's fair share contribution of $893,000. The scale of the shortfall in the Commonwealth's signatory party contribution erodes Pennsylvania's ability to allocate DRBC resources for Pennsylvania-specific initiatives such as the media and communication effort the auditors recommend. The DRBC is committed to working with PADEP to find ways for both parties to better communicate our respective roles in ensuring the best possible water resource management for the Basin, to the benefit of Pennsylvania water users. Whether geographically dispersed information sessions for Pennsylvanians will be among the strategies employed must be determined jointly by the DRBC Commissioners as they weigh diverse budget and work plan priorities.

4. **Continue efforts to enter into the OP/OP Program with Pennsylvania, like two of the other Compact signatory states, to streamline procedures and consolidate and reduce fees whenever possible.**

   DRBC agrees with the recommendation. Indeed, the Commissioners recognized the benefits of the program when they unanimously adopted final DRBC regulations authorizing OP/OP in December 2015. Full participation was envisioned at that time. We note that OP/OP requires the development of a new administrative agreement (as discussed in the response to Finding 2, Recommendation 1) and Commission approval of the agreement, followed by execution and implementation of the program. We understand that PADEP may be ready to initiate this

activity. Should that be the case, we will commit to work with them to develop a reasonable work plan and schedule to deliver this program.

Recommendations for Finding 3

1. **Work with the signatory parties to ensure that they are including in their respective budget requests the full contribution amount as determined by the agreed upon equitable apportionment percentages.**

2. **Continue to emphasize to the signatory parties the need for each to contribute its equitable portion of the funds necessary for the DRBC's expense budget.**

3. **Consider developing a new agreement among the signatory parties that will ensure full payment of each party's contribution amount in order to address the issue of the signatory parties not making their annual required payments to the DRBC.**

4. **Continue to remain cognizant of the impact fees, and any future fee increases, have on organizations that work with the DRBC.**

The auditor's recommendations under Finding 3 are closely interrelated, and as such, we are responding to them collectively. DRBC agrees that we should continue to, "work with the signatory parties to ensure that they are including in their respective budgets the full contribution amount as determined by the agreed upon equitable apportionment percentages." As the Auditor General's report reaffirms, the Commission's expenses are reasonable, a finding that is reached without assigning value to the benefits that DRBC provides to the region. When economic, human health and overall quality of life benefits to Pennsylvania residents and businesses are considered, the wisdom of fully funding the cooperative management of shared water resources through the DRBC in our view could not be more evident.

Through the Commission, the five signatories advance together vital water management objectives that no one of them can achieve acting on its own. Principally, these ensure a sustainable supply of suitable quality water to meet diverse and competing needs in four states. To continue to secure these essential benefits for all Basin water users, the signatory parties must meet their statuary obligations under the Compact to fund the Commission's operating expenses. They should do so in a manner consistent with the longstanding, tacit agreement under which Pennsylvania's annual "fair share" contribution is equal to 25 percent of member contributions toward the Commission's expenses, or the sum of $893,000 a year. Although that fair share amount has not changed for more than a decade, the Commonwealth's contribution unfortunately has eroded – as evidenced by annual shortfalls of $459,000 in the period from FY2015 through FY2017 (during which Pennsylvania's contributions equaled $434,000 per year), and further erosion of the Pennsylvania contribution to $217,000 in each of the fiscal years ending in 2018 and 2019. DRBC will continue to work with the legislative and executive branches of Pennsylvania government to restore the full fair share signatory party funding that would more accurately reflect the benefits the DRBC provides to the Commonwealth.

Scott D. King, CPA
October 3, 2018
Page 5

DRBC respectfully disagrees with the recommendation that a new signatory party funding agreement should be negotiated among the Commission's members. Our reasons include, first, that no Commission member has recently suggested, nor does this report indicate, that the longstanding "fair share" allocation of the Commission's operating expenses among the signatory parties is inequitable. Second, it is unclear that a new agreement among the signatories to the Delaware River Basin Compact would resolve the problem of eroding member contributions. Under any circumstance, signatory party funding must be implemented through state and federal budgetary processes. As such, the issues that have hindered contributions under the current agreement might well persist under a new one. Other strategies, including some recommended by this report, will be used to better ensure that participants in the budget processes of the signatory parties understand the Commission's role and value, and that they resume full funding of its vital work.

The Commission has carefully considered revisions to its fee structures in the past and will continue to evaluate sustainable funding options involving all revenue sources, including those affecting our regulated community. The lack of full fair share funding by the Commission's members has had an impact on fees in the past and may continue to do so in the future.

Approximately 43 percent of the population of the Commonwealth lives in the Delaware River Basin. The main stem Delaware River is an interstate water and an interstate boundary for its entire length bordering Pennsylvania. The model of shared federal and interstate management of this unique resource by the Delaware River Basin Commission for over 55 years has provided continuous, and in many respects, remarkable improvement in sustainable water supply and water quality to the Commonwealth and its Basin residents. The recommendations in your report recognize and build upon the longstanding relationship between the DRBC and Pennsylvania, and we look forward to working with you, the PADEP and our other state and federal partners to implement the majority of these recommendations. If you have any questions, please contact me. Thank you again for your valuable effort.

Sincerely,

Steven J. Tambini
Executive Director

c: DRBC Commissioners

Auditor's Conclusions to the Delaware River Basin Commission's Response

The Delaware River Basin Commission (DRBC) indicates in its response letter that its budget is austere in significant part as the result of large shortfalls in the Commonwealth of Pennsylvania's (commonwealth) annual signatory party contributions in recent years. Although it is true that the commonwealth has not contributed its full agreed amount in recent years, it is important to note that in addition to the commonwealth, two of the three other signatory party states have not contributed their full amounts due to the DRBC. Even more significant is the fact that the federal government has not made any contribution payments to the DRBC since the fiscal year ended (FYE) June 30, 2010.

Our audit report contained three findings and 10 recommendations. Nine of the ten recommendations were directed to the DRBC and one to the Pennsylvania Department of Environmental Protection (DEP).[61] DRBC management responded to the nine recommendations specific to them. Based on its response, the DRBC generally agrees with our three findings and eight of our nine recommendations. On the matters in which the DRBC disagreed or had additional comments, we offer the following comments and conclusions:

Finding 1

We are pleased that the DRBC agrees with the recommendation and that it now requires itemized receipts.

Finding 2

We are pleased that the DRBC agrees with the need to work with the DEP to update the current outdated Administrative Agreement, to continue efforts to enter into the One Process/One Permit (OP/OP) Program with Pennsylvania, and to provide enhanced communication about the interrelated roles of the DRBC and the DEP.

The DRBC's response to the third recommendation again states that the DRBC's budget is austere, in significant part as the result of large shortfalls in the commonwealth's annual signatory party contributions beginning in 2015. Specifically, the DRBC notes that Pennsylvania's final approved budget for fiscal year 2019 included only $217,000 for the DRBC, less than one quarter of the commonwealth's fair share contribution of $893,000. According to the DRBC's response, the shortfall in the commonwealth's signatory party contribution erodes Pennsylvania's ability to allocate DRBC resources for Pennsylvania-specific initiatives, such as the media and communication effort recommended in our audit report.

[61] The DEP, even though not the audited organization, is a vital related administrative agency to help oversee the management of the Basin and its resources in Pennsylvania.

As previously discussed, while we recognize that the commonwealth has not paid its full equitable apportionment, neither has two of the three other signatory party states and the federal government has not made any contribution payments to the DRBC since the FYE June 30, 2010. Therefore, we reiterate the critical importance of working with the signatory parties to ensure that they are including in their respective budget requests the full contribution amount as determined by the agreed upon equitable apportionment percentages and continue to emphasize to the signatory parties the need for each to contribute its equitable portion of the funds necessary for the DRBC's expense budget.

Finding 3

The DRBC collectively responded to the four recommendations that were made directly to the DRBC. The fifth recommendation was directed to the DEP and the DRBC did not provide a response on behalf of the DEP. The DRBC agreed with the recommendations relating to working with the signatory parties regarding the need for each to pay its full contribution amount to the DRBC and to continue to remain cognizant of the impact fees, including any future increases, have on organizations. However, the DRBC indicated that it respectfully disagrees with the recommendation that a new signatory party funding agreement should be negotiated among the Commission's members since no signatory party has taken issue that the "fair share" allocation amounts are inequitable. Management also stated it is unclear to the DRBC whether new agreements with the signatory parties would resolve the problem of eroding member contributions. It is important to note that our recommendation was not made due to a question regarding the equitability of the "fair share" allocation amounts of each signatory party, nor do we suggest making a change to the "fair share" allocation amounts. We believe that due to the critical importance of contributions by each signatory party to DRBC operations, the DRBC should consider exhausting all avenues of working with signatory parties in order to receive full contribution payment amounts from each, including the possibility of stronger more binding agreements.

Appendix A Objectives, Scope, and Methodology

The Department of the Auditor General conducted this performance audit under the authority of Article XVII-F, Subarticle B of The Fiscal Code as enacted by Act 44 of 2017.[62] Specifically, Section 1715-F(2) of The Fiscal Code provides that, "[t]he Auditor General shall audit the Delaware River Basin Commission" during the fiscal year ended (FYE) June 30, 2018.

This audit was limited to the objectives identified below and was not required to be and was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. We planned and performed this audit to obtain sufficient, appropriate evidence to the extent necessary to satisfy the above audit objectives. We believe that the evidence obtained provides a reasonable basis to support our results, findings, and conclusions.

Objectives

The Fiscal Code outlined our Delaware River Basin Commission (DRBC) performance audit objectives as follows:

- The cost of salaries, benefits, and other compensation provided to the officers and employees of the DRBC. [See Finding 1]
- The cost of expense reimbursements provided to the officers and employees of the DRBC. [See Finding 1]
- Other fixed and variable costs of the DRBC. [See Finding 1]
- The potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services or personnel with commonwealth and local agencies. [See Finding 2]
- Contributions to the DRBC by the commonwealth or any person within this commonwealth, whether via appropriations, fees, penalties or otherwise, in comparison to other signatory parties. [See Finding 3]

[62] 72 P.S. § 1715-F(2). Article XVII-F pertains to the 2017-2018 Budget Implementation. Further, pursuant to Section 410 (entitled Audits of interstate commissions) of The Fiscal Code, for purposes of Section 14.11 of the "Delaware River Basin Compact", the Auditor General "shall be deemed to be a duly authorized officer on behalf of the commonwealth as a signatory party for the exclusive purpose of examining and auditing all of the books, documents, records, files and accounts and all other papers, things or property of" the DRBC. The designation shall be in addition to any other duly authorized officer of the commonwealth under the Compact. *See* 72 P.S. § 410(b) and 32 P.S. § 815.101 (DRBC Compact).

- The impact of the fees and penalties of the DRBC on public and private entities within the commonwealth. [See Finding 3]

Scope

This audit was for the period of July 1, 2016 through June 30, 2017.

Methodology

All of the items selected for testing in the audit were based on our professional judgement. Consequently, the results of our testing cannot be projected to, and are not representative of, the corresponding populations.

To address our audit objectives, we performed the following procedures:

- Interviewed and corresponded with DRBC management responsible for overseeing the DRBC in order to gain an understanding of the DRBC's operations, revenues, and expenses; and to determine the potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services or personnel with commonwealth and local agencies.

- Interviewed and corresponded with Pennsylvania Department of Environmental Protection (DEP) management regarding our audit objective to determine the potential for improved efficiencies and overall cost reductions, including an analysis of duplication of commonwealth efforts and the ability to share equipment, services or personnel with commonwealth.

- Reviewed the Administrative Agreements between the DRBC and its signatory states which includes Delaware, New Jersey, New York, and Pennsylvania, the DRBC Compact, DRBC *Administrative Manual, Rules of Practice and Procedure*, the DRBC *Administrative Manual, By-Laws, Management and Personnel*, the DRBC Resolutions, Pennsylvania Department of General Services' *Procurement Handbook*, the Commonwealth of Pennsylvania Governor's Office Executive Order 2015-01 related to the Governor's Gift Ban and Governor's Code of Conduct, and other applicable state laws and regulations, to determine legislative and regulatory requirements related to the audit objectives.

- Reviewed the DRBC's "letter of agreement" with the individual serving as General Counsel for payment and travel and meeting related expenses reimbursement terms.

- Reviewed the "tacit agreement" reached by Commission members in 1988 to determine the annual contribution amount each signatory party agreed to pay to the DRBC.

- Obtained from DRBC management a schedule of payments made by each signatory party in order to determine the amount of payments made to the DRBC by each signatory party during the FYE June 30, 2013 through June 30, 2017. We verified that the payments made by each signatory party agreed to the DRBC's audited financial statements for the FYE June 30, 2013 through June 30, 2017.

- Reviewed correspondence from the DRBC to the federal government requesting full payment of agreed upon annual contribution amounts.

- Reviewed the DRBC's audited financial statements for the FYE June 30, 2017, and determined the amount of revenue and expenses reported in the DRBC's governmental and proprietary funds. The DRBC's financial statements received an unmodified audit opinion indicating that they present fairly the financial position of the DRBC.

- Obtained a data file of all general ledger transactions for revenue and expenses reported in the DRBC audited financial statements for the governmental and proprietary funds for the FYE June 30, 2017, and determined the total amount of the following:

  - Revenue from signatory parties, fees, penalties, and water supply charges.
  - Expenses paid for salaries, overtime, benefits, other compensation, and travel expense reimbursements to DRBC staff and to the individual that serves as the DRBC General Counsel.
  - Commission meetings and other DRBC costs.

- Obtained a data file of payroll transactions for the FYE June 30, 2017, and determined the total amount of salaries and overtime paid to the two DRBC officers and all other DRBC employees.

- Obtained from DRBC management the fringe benefit rates for DRBC staff in order to calculate the amount of fringe benefits paid to DRBC officers and employees.

- Obtained support documents (e.g. credit card statements, purchase requisitions, and vendor receipts) for the $4,190 travel expenses reimbursed to DRBC officers during the FYE June 30, 2017, to determine the amounts spent on lodging, food, and other items and for the reasonableness of the amounts expended and that no alcohol was purchased in compliance with DRBC policy.

- Obtained credit card statements for the purchases made for the $27,403 in Commission meeting expenses and additional support documents (e.g. purchase requisitions and vendor receipts) for $8,915 of the total $27,403 to determine the amounts spent on lodging, food, and other items; for the reasonableness of amounts expended; and to determine whether any alcohol was purchased.

- Obtained from DRBC management a breakdown of fixed versus variable costs for the expenses reported in the DRBC's governmental and proprietary funds not related to salaries, benefits, and expense reimbursements of the DRBC for the FYE June 30, 2017.

- Obtained data of all organizations, by signatory state, holding dockets with the DRBC during the FYE June 30, 2017, to determine the number of organizations and the number of dockets each organization held in order to make a comparison by signatory state.

- Obtained data files for all fees, penalties, and settlements in lieu of penalties (settlements) collected by the DRBC to docket holders during the FYE June 30, 2017, in order to determine the total amount of fees and settlements collected from each signatory party state.

- Contacted 11 representatives from a cross-section of the 699 Pennsylvania organizations, including both public entities and private businesses, holding dockets with the DRBC and that were charged a variety of fees and penalties in order to conduct a survey to determine the impact fees and penalties charged by the DRBC had on the organizations. We received responses from 8 of the 11 representatives contacted.

Data Reliability

In performing this audit, we obtained data files from the DRBC's Finance and Administration management, which included general ledger revenue and expense transactions, payroll transactions, fees and settlement transactions, and a list of organizations that are docket holders that were charged fees and settlements by the DRBC.

To assess the completeness and accuracy of the general ledger transactions, payroll transaction data, and fees and settlement transactions, we confirmed that the amounts reported as revenue and expenses for the FYE June 30, 2017, agreed to the amounts reported in the DRBC annual audited financial statements. Based on that procedure, we found no limitations with using the data for our intended purposes. Therefore, we concluded the data to be sufficiently reliable regarding completeness and accuracy for the purposes of our audit.

We did not perform procedures to validate the completeness and accuracy of the listing of docket holders within each signatory party state; however, this is the best data available. As such, we deemed this information to be of undetermined reliability. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

Appendix B — Delaware River Basin Commission Fees and Penalties Schedules

The following table is an excerpt from the Delaware River Basin Commission's (DRBC) Resolution No. 2009-2, which amended the Commission's Fee Schedule for the review and renewal of project approvals under Section 3.8 and Article 10 of the *Delaware River Basin Compact* adopted on May 6, 2009. The table illustrates the fees in effect during the first six months of our audit period (July 1, 2016 through December 31, 2016) that organizations were required to submit for project applications.

Project Category	Fee
Privately sponsored project costing $250,000 or less*	$1,000
Publicly sponsored project costing $250,000 or less	$500
Public or private project costing $250,001 to $10,000,000	0.4 percent of project cost
Public or private project costing over $10,000,000	0.4 percent of project cost up to first $10,000,000 plus 0.12 percent of project cost above $10,000,000, not to exceed $75,000
Any project resulting in an out-of-basin diversion	Double the fee calculated in accordance with the above

* Project cost in all cases is to be calculated in accordance with paragraph 10 below.

Following Commission action on a project, each project revision or modification that the Executive Director deems substantial shall require an additional fee calculated in accordance with paragraph 3 above, based on the increase in project costs over the cost of the approved project, and subject to Paragraph 8 below. A substantial project revision not involving an increase in costs shall require a fee as determined by the Executive Director based upon estimated Commission costs associated with the review. Docket renewals that do not involve substantial revisions or modifications shall require a fee of $1,000 for a privately sponsored project and a fee of $500 for a publicly sponsored project.

A request for an emergency certificate under Section 2.3.9B of the Commission's *Rules of Practice and Procedure* to waive or amend a docket condition shall require a minimum fee of $5,000. Additional sums may be charged in accordance with paragraph 8 below.

A fee of $1,000 shall be charged for the transfer of a docket upon a change of ownership as defined in Resolution No. 87-15.

The next three tables are excerpts from the DRBC's Resolution No. 2016-9, which amended the *Administrative Manual – Rules of Practice and Procedure* (18 CFR Part 401) to adopt a new project review fee structure and the *Administrative Manual – Basin Regulations – Water Supply Charges* (18 CFR part 420) to provide for automatic inflation adjustments adopted on December 14, 2016.[63] These tables illustrate the three types of regulatory program fees in effect during the last six months of our audit period (January 1, 2017 through June 30, 2017): Docket Application Filing Fee, Additional Fees, and Annual Monitoring and Coordination Fee.

E. **Fee schedules.** The fees described in this section shall be as follows.

DOCKET APPLICATION FILING FEE

Project Type	Docket Application Fee	Fee Maximum
Water Withdrawal	$400 per million gallons/month of allocation[1], not to exceed $15,000[1]. Fee is doubled for any portion to be exported from the basin.	Greater of: $15,000[1] or Alternative Review Fee
Wastewater Discharge	Private projects: $1,000[1] Public projects: $500[1]	Alternative Review Fee
Other	0.4% of project cost up to $10,000,000 plus 0.12% of project cost above $10,000,000 (if applicable), not to exceed $75,000[1]	Greater of: $75,000[1] or Alternative Review Fee

[1] Subject to annual adjustment in accordance with paragraph C. of this section.

[63] http://www/state.nj.us/drbc/library/documents/Res2016-09_Fee-Rule.pdf (accessed April 26, 2018).

ADDITIONAL FEES

Proposed Action	Fee	Fee Maximum
Emergency Approval Under 18 CFR 401.40	$5,000	Alternative Review Fee
Late Filed Renewal Surcharge	$2,000	--
Modification of a DRBC Approval	At Executive Director's discretion, Docket Application Fee for the appropriate project type.	Alternative Review Fee
Name change	$1,000[1]	--
Change of Ownership	$1,500[1]	--

[1] Subject to annual adjustment in accordance with paragraph C. of this section.

ANNUAL MONITORING AND COORDINATION FEE

	Annual Fee	Allocation
Water Withdrawal	$300[1]	< 4.99 mgm
	$450[1]	5.00 to 49.99 mgm
	$650[1]	50.00 to 499.99 mgm
	$825[1]	500.00 to 9,999.99 mgm
	$1,000[1]	> or = to 10,000 mgm
	Annual Fee	**Discharge Design Capacity**
Wastewater Discharge	$300[1]	< 0.05 mgd
	$610[1]	0.05 to 0.9 mgd
	$820[1]	1 to 10 mgd
	$1,000[1]	>10 mgd

[1] Subject to annual adjustment in accordance with paragraph C. of this section.

The following table is an excerpt from the DRBC's Resolution No. 2009-13, which established guidance to aid the DRBC and the regulated community in determining the appropriate financial penalty or settlement in lieu of penalty for proven or suspected violations, respectively, of the *Delaware River Basin Compact* or rules, regulation or orders adopted on December 9, 2009.

DRBC CIVIL PENALTY MATRIX
Penalties per Day per Violation*

In accordance with the Section 2.7.8 of the *Rules of Practice and Procedure*, the Commission may enter into a settlement with a suspected violator in lieu of seeking a judge-imposed penalty. The Penalty Matrix is intended to guide the DRBC staff in recommending a settlement amount to the Commissioners and if necessary, a penalty amount to the court.

	Minor: $50-$250	Moderate: $251-$750**	Severe: $751-$1,000**
Previous Violations	No previous violations	One previous violation	Multiple previous violations
Intent	Non-willful, non-negligent	Non-willful, negligent	Willful
Adverse Environmental Impacts	No adverse environmental impacts	Limited adverse environmental impacts	Major adverse environmental impacts
Cooperation	Excellent cooperation/quick response	General cooperation and some delay in compliance	Little or no cooperation/slow response
Economic Benefit	No economic benefit	Minor economic benefit	Substantial economic benefit relative to cost of compliance

* §14.17 of the *Compact* provides that "… in the event of a continuing offense each day of such violation, attempt, or conspiracy shall constitute a separate offense." Section 14.17 provides that violators "shall be liable to a penalty of not less than $50 nor more than $1,000 to be fixed by the court."

** Satisfying any single criterion in either the "Moderate" or "Severe" category places a violation in the higher category.

Appendix C | Distribution List

This report was distributed to the following officials:

The Honorable Governor Philip D. Murphy
Chair
Delaware River Basin Commission

The Honorable Governor Andrew M. Cuomo
Vice Chair
Delaware River Basin Commission

The Honorable Governor John Carney
Second Vice Chair
Delaware River Basin Commission

The Honorable Major General Jeffrey L. Milhorn
Commissioner
Delaware River Basin Commission

The Honorable Governor Tom Wolf
Commissioner
Delaware River Basin Commission

The Honorable Steven J. Tambini, P.E.
Executive Director
Delaware River Basin Commission

The Honorable Catherine R. McCabe
1st Alternate, New Jersey
Delaware River Basin Commission

The Honorable Basil Seggos
1st Alternate, New York
Delaware River Basin Commission

The Honorable Shawn M. Garvin
1st Alternate, Delaware
Delaware River Basin Commission

The Honorable Lieutenant Colonel Kristen N. Dahle
Alternate
Delaware River Basin Commission

The Honorable Patrick McDonnell
1st Alternate, Pennsylvania
Delaware River Basin Commission

The Honorable Tim Schaeffer
2nd Alternate, Pennsylvania
Delaware River Basin Commission

The Honorable Jennifer Orr
3rd Alternate, Pennsylvania
Delaware River Basin Commission

The Honorable Randy Albright
Secretary of the Budget
Office of the Budget

The Honorable Joseph M. Torsella
State Treasurer
Pennsylvania Treasury Department

The Honorable Josh Shapiro
Attorney General
Office of the Attorney General

The Honorable Sharon P. Minnich
Secretary of Administration
Office of Administration

The Honorable John Maher
Majority Chair
House Environmental Resources and Energy Committee

A Performance Audit

Delaware River Basin Commission

The Honorable Mike Carroll
Democratic Chair
House Environmental Resources and
Energy Committee

The Honorable Gene Yaw
Majority Chair
Senate Environmental Resources and
Energy Committee

The Honorable John Yudichak
Democratic Chair
Senate Environmental Resources and
Energy Committee

Mr. Brian Lyman, CPA
Director
Bureau of Audits
Office of Comptroller Operations

Ms. Mary Spila
Collections/Cataloging
State Library of Pennsylvania

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