

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE

PROPOSED

Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

The Delaware River Basin Commission (DRBC or "Commission") is a federal-interstate compact agency charged with managing the water resources of the basin without regard to political boundaries. Its commissioners are the governors of the four basin states - Delaware, New Jersey, New York, and Pennsylvania - and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of 29 **Delaware Code** Chapter 101. This notice is published by the Commission for informational purposes.

Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

Summary: The Delaware River Basin Commission (Commission) will hold a public hearing and accept written comment on a proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs ("City Delaware Reservoirs") for multiple objectives, including, among others, (a) water supply and drought mitigation; (b) management of the reservoir tailwater fisheries and other habitat needs, and (c) spill mitigation. The current reservoir releases program, which was established by Resolution No. 2004-3 in April of 2004, will expire on May 31, 2007. The current spill mitigation program, established by Resolution No. 2006-18, also will expire on May 31, 2007. The Commission also will accept comment on alternative reservoir management strategies that may be adopted in the event that consensus on the proposed FFMP is not reached. The alternative reservoir releases options to be considered are (1) extending the current reservoir releases program or (2) reinstating a previous drought operating plan. Either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs. The releases program adopted in the event consensus is not reached on the FFMP would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission following a notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Background. The flow management objectives considered by the Supreme Court Decree of 1954 - water supply and drought - were far narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others, water supply, drought mitigation, flood mitigation, and habitat protection in the tailwaters fishery, the mainstem and the estuary. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the U.S. Government and the four basin states - Delaware, New Jersey, New York and Pennsylvania - the Delaware River Basin Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history. In 1983, in accordance with an agreement among the parties known as the "Good Faith Agreement," a reservoir release regime was established on a permanent basis to supplement the provisions of the decree for the limited purpose of protecting and enhancing the tailwaters fishery. Since the adoption of this regime in the form of a docket (similar to a permit) issued to the New York State Department of Environmental Conservation - Docket D-77-20 CP (Revised) - the "fishery management program" as the plan is sometimes called, has been modified repeatedly by the Commission with the unanimous consent of the decree parties. Resolution No. 2004-3, approving Docket D-77-20 CP (Revision

7), established the three-year interim program that is set to expire on May 31, 2007. A series of temporary spill mitigation programs also have been established, the latest in the form of Docket D-77-20 CP (Revision 9), approved by DRBC Resolution No. 2006-18 in September 2006.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including water supply, drought mitigation, protection of the tailwaters fishery, a diverse array of habitat protection needs in the mainstem, estuary and bay, flood mitigation, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation, and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" to be used for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or "ramping") from higher to lower releases and vice versa than the current regime. The FFMP would include a spill mitigation component similar to but potentially more aggressive than the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for spill mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If consensus among the decree parties and DRBC commissioners cannot be reached on details of the FFMP in time to approve and initiate implementation of the plan by June 1, 2007, the parties intend to continue to work at refining and improving the FFMP until such a consensus can be reached. The Commission will conduct a separate notice and comment rulemaking process on the proposed program at that time. Under such circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, the releases program will be considered in combination with a spill mitigation plan.

The proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007.

Dates: Two public hearings on the proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, March 27, 2007 at the Lake Wallenpaupack Environmental Learning Center in Hawley, Pa. Written comments will be accepted through April 6, 2007. To allow sufficient time for consideration by the Commission, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the proposal. The first will take place during the morning conference session of the Commission's regularly scheduled meeting on Wednesday, February 28, 2007 at the DRBC office building in West Trenton, N.J. The second will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will take place at 10:00 a.m. on Tuesday, March 6, 2007 at the Commission's office building in West Trenton, N.J. The third informational meeting will take place at 1:00 p.m. on Tuesday, March 27, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Lake Wallenpaupack Environmental Learning Center in Hawley, Pa.

Addresses. Directions to the Commission's office building, located at 25 State Police Drive in West Trenton, N.J., are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for directions to the DRBC, as they do not provide accurate directions to this location. Directions to the Lake Wallenpaupack Environmental Learning Center are available at <http://www.pplweb.com/>

lake+wallenpaupack/ contacts+and+directions/get+directions.htm and also will be posted on the DRBC website, www.drbc.net, by February 20, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by U.S. Mail to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, N.J. 08628-0360; and by fax to Attn: Commission Secretary at 609-883-9522. In all cases, the subject line, "Comment on Flexible Flow Management Plan for City Delaware Reservoirs" should be included.

Further Information, Contacts: The text of the proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007 and will remain posted through May 10, 2007. Please contact Pamela M. Bush, Esquire, Commission Secretary and Asst. General Counsel at 609-883-9500 ext. 203 with questions about the proposed rule change or the rulemaking process.

Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel
February 12, 2007

10 DE Reg. 1356 (03/01/07) (Prop.)