

3/19/03

NO. 2003-4

DOCKET NO. D-77-20 CP (Revision 6)

DELAWARE RIVER BASIN COMMISSION

A RESOLUTION to extend Docket No. D-77-20 CP (Revision 5) (Amended) for one year to continue the experimental augmented conservation release program for the New York City Delaware Basin Reservoirs.

WHEREAS, Docket No. D-77-20 CP (Revision 5) (Amended) specified it would expire on April 30, 2003; and

WHEREAS, the Parties to the 1954 Supreme Court Decree are in the process of negotiating a permanent fisheries release program more responsive to the water conditions downstream of the New York City Delaware Basin Reservoirs; and

WHEREAS, the Parties to the 1954 Supreme Court Decree desire to develop a program for protecting tail water fisheries below the New York City Delaware Basin Reservoirs, based upon sustainable sources of water, including consideration of other down-basin needs; and

WHEREAS, the Delaware River Basin Commission (DRBC), through its Flow Management Technical Advisory Committee (FMTAC) and its Comprehensive Plan update process, is considering several approaches to assess overall needs in the tailwaters below the New York City Delaware Basin Reservoirs and in the main stem and bay; and

WHEREAS, the New York City Department of Environmental Protection (NYCDEP) and the New York State Department of Environmental Conservation (NYSDEC) have funded a modeling analysis of alternatives for a fisheries protection program for the reservoir tailwaters, and based on the results of this analysis, the NYSDEC will submit a formal proposal for an interim fisheries protection program for consideration by the parties to the 1954 Supreme Court Decree and the Commission; and

WHEREAS, the NYCDEP and NYSDEC have agreed to make their best efforts to complete updating the OASIS model, to complete analysis of alternatives for an interim fisheries protection program for the reservoir tailwaters, and to submit, by September 30, 2003, a formal proposal for consideration by the parties to the 1954 Supreme Court Decree and the Commission for interim fisheries protection while discussions continue toward development of a long-term flexible reservoir releases program; and

WHEREAS, agreement on the interim fisheries release program is not expected prior to April 30, 2003, the date upon which the current program will automatically terminate; and

WHEREAS, the State of New York has proposed a revision and extension to Docket No. D -77-20 CP (Revision 5) (Amended) for one calendar year ending April 30, 2004; and

WHEREAS, the requested revision and extension has been agreed to by all parties to the 1954 Supreme Court Decree; now therefore,

BE IT RESOLVED by the undersigned Commissioners and Parties to the Decree:

1. The Parties to the 1954 Supreme Court Decree agree that development of a viable permanent fisheries release program requires consideration of other related issues, including interbasin transfer policy, Good Faith operations, the DRBC Comprehensive Plan currently being developed, New York City participation, and procedures for computing the Excess Release Quantity.
2. The Parties to the 1954 Supreme Court decree commit to continuing discussions with the aid of one or more approaches being considered by the FMTAC and in the Comprehensive Plan update, with the goal of developing a long-term, flexible program to manage releases from the NYC Delaware Basin reservoirs.
3. Docket No. D-77-20 CP (Revision 5) (Amended) is hereby extended for one year to April 30, 2004, with the following modifications.
 - A. A "Habitat Bank" is established, which shall consist of 4,567 cfs-days that shall be contributed for one year only from the Excess Release Quantity (ERQ) as the ERQ is currently computed and such quantity of water as may be transferred from the Thermal Release Bank (TRB) from time to time as may be necessary. The 4,567 cfs-days from the ERQ shall be credited on June 15, 2003, and any water remaining from that quantity shall expire on March 15, 2004. The 9,200 cfs-days TRB shall be credited on May 1, 2003, and shall expire on April 30, 2004. Waters from the ERQ not contributed to the Habitat Bank shall be utilized to provide a proportionally-reduced increase in the Montague flow objective according to the current procedures, or may be banked in accordance with the procedures outlined in the Lower Basin Drought Management Plan.
 - B. Upon entry into "Drought Watch," the remaining TRB shall be reduced by 15 percent.
 - C. Upon entry into "Drought Warning," the remaining TRB shall be suspended until storage in the New York City Delaware River Basin Reservoirs is 25 billions gallons (bg) above the Drought Watch line for 15 consecutive days.
 - D. The Habitat Bank may be used to meet the following targets in the West Branch Delaware River at Hale Eddy:
 - During Normal Conditions - 225 cfs
 - During Watch Conditions - 190 cfs
 - During Warning Conditions - 150 cfs

The Habitat Bank also may be used for augmenting flows in the West Branch, Delaware River at Hale Eddy, and contingent on the prior approval of New York City, the East Branch Delaware River at Harvard and the Neversink River at Bridgeville, during normal, Drought Watch and Drought Warning conditions. In addition, the Habitat Bank may be used as needed for augmenting flows during Drought Warning conditions to maintain summer baseline releases as stipulated in Docket No. D-77-20 CP (Revision 4).

E. Upon entry into Drought Emergency, the Habitat Bank shall be suspended until storage in the New York City Delaware River Basin Reservoirs is 25 bg above the Drought Watch line for 15 consecutive days.

F. Conservation releases from Cannonsville Reservoir shall be:

During Normal Conditions - 45 cfs
During Drought Watch Conditions - 35 cfs
During Drought Warning Conditions - 23 cfs
During Drought Emergency Conditions - 8 - 23 cfs

However, all thermal release charges shall be calculated using the augmented release rates stipulated in Docket No. D-77-20 CP (Revision 4).

G. Comparison of the difference between releases from the Habitat Bank and the conservation releases under D-77-20 CP (Revision 4) shall be made and the difference debited or credited to the habitat bank. However, a negative balance in the Habitat Bank is not allowed.

H. All other conditions shall continue as specified in Docket No. D-77-20 CP (Revision 4).

I. No additional water beyond that specified in this resolution will be made available.

4. These specific conservation releases are not available when coming out of Drought Emergency until storage is 25 bg above the Drought Watch line for 15 consecutive days.

5. By April 30, 2004, NYSDEC shall submit to the Commission and to the Parties to the 1954 Supreme Court decree a report, including an executive summary, describing experience with implementation of this resolution and the progress of any negotiations leading toward further amendments to this resolution. Discussion of such reports shall be included as an agenda item on the annual meeting of the Delaware River Master's Advisory Committee.

6. This resolution shall take effect immediately and shall expire on April 30, 2004, or earlier, when an alternative release program, unanimously approved by the 1954 Supreme Court Decree parties, is implemented.

/s/ John Hines

John Hines, Chairman pro tem

/s/ Pamela M. Bush

Pamela M. Bush, Esq., Commission Secretary

ADOPTED: March 19, 2003