

A RESOLUTION to extend Revisions 7 and 9 of [Docket D-77-20 CP](#), providing for, respectively, a program to manage releases from New York City’s Neversink, Pepacton and Cannonsville reservoirs for the protection of fisheries, and a program to reduce the volume of spills from these reservoirs during floods.

WHEREAS, by [Resolution No. 2004-3](#) in April of 2004, the Commission established a temporary release program known as “Revision 7” for the Neversink, Pepacton and Cannonsville reservoirs (hereinafter, “the City Delaware Reservoirs”), intended to protect the tailwaters fishery below these reservoirs for the period from May 1, 2004 through May 31, 2007; and

WHEREAS, by [Resolution No. 2006-18](#) in September of 2006, the Commission established a program known as “Revision 9” to take effect from the date of its adoption through May 31, 2007 to reduce the volume of spills from the City Delaware Reservoirs during flood events; and

WHEREAS, Revisions 7 and 9 both were established with the understanding set forth in [Resolution No. 2004-3](#) that the parties to the U.S. Supreme Court Decree of 1954 (“Decree Parties”) would continue discussions to develop and implement by May 31, 2007 a long-term flexible program to manage releases from the City Delaware Reservoirs to better address multiple flow needs downstream; and

WHEREAS, between February 12 and March 1 of 2007, the Commission published in the federal and state registers and on its website notice that it would hold public hearings and accept written comments on a proposal by the Decree Parties for a [Flexible Flow Management Plan \(FFMP\)](#) that would provide a comprehensive framework for addressing multiple flow management objectives, including water supply, drought mitigation, flood mitigation, protection of the tailwaters fishery, a diverse array of habitat needs in the main stem, estuary and bay, recreational goals and salinity repulsion; and

WHEREAS, in response to its notice, the Commission received [written and oral comments](#) from approximately 120 agencies, organizations, elected officials and private citizens, including many substantive recommendations for enhancing the FFMP with respect to its multiple flow objectives; and

WHEREAS, in the course of the Decree Parties’ continued negotiations over details of the FFMP, additional issues requiring negotiation arose, including a request by New Jersey for reexamination of the Commission’s current drought operations plan, in order to better address water supply and flood mitigation needs throughout the basin; and

WHEREAS, the Decree Parties require additional time to review and fully consider the comments submitted by the public, to explore ways to accommodate New Jersey’s request, and to craft a revised Flexible Flow Management Plan that attempts to better respond to competing needs; and

WHEREAS, the Commission's public notice announcing a comment period and hearings on the FFMP also invited the public to comment on alternative reservoir management strategies that might be adopted in the event that consensus on the FFMP were not reached. The notice stated that the alternative options to be considered were extending the current reservoir release program or reinstating a previous reservoir release program, and the notice further advised that either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three City Delaware Reservoirs; and

WHEREAS, notwithstanding the shortcomings of the current fishery protection program known as Revision 7, the Decree Parties and the Commission find that this plan affords greater benefits than previous flow management regimes during the summer months, and wishes to secure these benefits for the approaching season; and

WHEREAS, because the spill mitigation program set forth in Revision 9 was to be in place only from late September of 2006 through May of 2007 before being replaced by a more comprehensive program, Table 1 of Revision 9 does not include summer release rates to accompany the rule curves provided in Figures 1 and 2 of Revision 9; however, the rule curves establish that spill mitigation releases are to be made during the months of July through September when reservoir levels reach or exceed the useable storage levels established by the curves; and

WHEREAS, with the technical and administrative support of the Commission, the Decree Parties continue to evaluate their options for addressing the competing demands on the finite waters of the Delaware and intend to advance a revised FFMP proposal that is responsive to public comment, the evolving needs of the respective parties and the rights and obligations conferred by the Supreme Court Decree of 1954; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The releases program known as Revision 7 of Docket D-77-20 CP, which was established by Resolution No. 2004-3 to provide protection for fisheries below the City Delaware Reservoirs, is hereby extended through September 30, 2007.
2. The releases program known as Revision 9 of Docket D-77-20 CP, which was established by Resolution No. 2006-18 to reduce the volume of spills from the City Delaware Reservoirs during flood events, is hereby extended (as amended by Resolution No. 2007-1) through September 30, 2007.
3. The parties to the Supreme Court Decree of 1954 are hereby authorized and requested to agree prior to July 1, 2007 upon appropriate reservoir spill mitigation release rates for the City Delaware Reservoirs to be implemented for the period from July 1 through September 14 consistent with the spill mitigation rule curves that appear in Figures 1 and 2 of Revision 9, provided that in the absence of public notice and a hearing before the Commission, such release rates shall not exceed the maximum rates of 1000 cubic feet per second (cfs) for Cannonsville, 700 cfs for Pepacton, and 190 cfs for Neversink set forth in Table 1 of Revision 9. [The release](#)

rates agreed upon by the Decree Parties will be posted on the Commission's website as soon as they become available.

4. Public notice, the opportunity for further written comment and a public hearing will be provided prior to Commission action on a revised Flexible Flow Management Plan, when such a plan is submitted by the Decree Parties for the Commission's consideration.

/s/ William A. Gast

William A. Gast, Acting Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

ADOPTED: May 10, 2007