

A RESOLUTION to temporarily amend the *Water Quality Regulations, Water Code* and *Comprehensive Plan* by classifying the Lower Delaware River as Special Protection Waters.

WHEREAS, by Resolution No. 70-3, codified in the Commission's *Water Quality Regulations* at Section 3.10.3.A., the Commission established an antidegradation policy for interstate waters within its jurisdiction, and by Resolutions No. 92-21 and 94-2, it instituted a set of regulations known as the "Special Protection Waters" program to implement this policy in certain portions of the Basin. The program is intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives; and

WHEREAS, in accordance with Section 3.10.3.A.2 of the Commission's *Administrative Manual—Part III, Water Quality Regulations* ("Regulations"), the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River – the reach of the main stem Delaware River extending from River Mile 209.5 (the downstream boundary of the Delaware Water Gap National Recreation Area) to River Mile 133.4 (the Head of Tide) – as Special Protection Waters; and

WHEREAS, to be protected as Special Protection Waters, waters must be classified as either "Outstanding Basin Waters" or "Significant Resource Waters," as defined in Section 3.10.3.A.2.a. of the Regulations; and

WHEREAS, "Outstanding Basin Waters" are defined as interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that the Commission has classified under Section 3.10.3.A.2.g.1 of the Regulations as having exceptionally high scenic, recreational and ecological values that require special protection; and

WHEREAS, "Significant Resource Waters" are defined as interstate waters that the Commission has classified under Section 3.10.3.A.2.g.2 of the Regulations as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection; and

WHEREAS, data and findings documenting the high quality of scenic, recreational, ecological and water supply attributes of the Lower Delaware River are contained in two studies, a management plan for the Lower Delaware that has received a formal expression of Commission support, a federal designation of the Lower Delaware as part of the national Wild & Scenic Rivers System, and the *Water Resources Plan for the Delaware River Basin* as follows:

- *Water Quality.* Four years of data collected between May 2000 and September 2003, as set forth in the report entitled *Lower Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters* (DRBC, August 2004), demonstrate that water quality in the Lower Delaware River is better than the water quality criteria. Numeric values for existing water quality in the Lower

Delaware are presently being determined, following the recent conclusion of a fifth year of monitoring.

- *Scenic, Recreational and Ecological Values.* The report entitled *Lower Delaware National Wild & Scenic River Study Report* (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands, and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities.
- *Lower Delaware River Management Plan.* The *Lower Delaware River Management Plan* (August 1997) (LDRMP) contains goals relating to water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. The LDRMP was developed by the Lower Delaware River Wild and Scenic River Study Task Force and Local Government Committee, with assistance from the National Park Service, Northeast Field Area. The Commission contributed staff and resources to develop the LDRMP, and upon the plan's completion, the Commission approved Resolution No. 98-2 supporting the LDRMP. Goal 1 of the LDRMP calls for maintaining, and where practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries.

The LDRMP sets forth as policies for advancing Goal 1: achieving the highest practical state and federal water quality designation for the river and its tributaries; managing point and nonpoint discharges to minimize adverse impacts on water quality; encouraging the use of Best Management Practices in both agricultural and non-agricultural areas within the river corridor; and discouraging inappropriate development in floodplains, wetlands, steep slopes and buffer strips along the Lower Delaware River and its tributaries.

- *Wild and Scenic Rivers System Designation by Congress.* The President of the United States signed Public Law 106-418 on November 1, 2000, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System. The system was established by Congress in 1968 to preserve the character of rivers with “outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values” and to ensure that designated rivers remain free-flowing (P.L. 106-418, 106<sup>th</sup> Congress).
- *Basin Plan Goals and Objectives.* The *Water Resources Plan for the Delaware River Basin* (DRBC Watershed Advisory Committee, 2004) (“Basin Plan”) contains goals and objectives to ensure adequate supplies of suitable quality water for aquatic ecosystems and wildlife, public water supply, self-supplied domestic water supply, commercial, industrial, agricultural and power uses; and flow-dependent recreation. Among other things, the Basin Plan directs, “[w]here water quality is better than standards for the protection of aquatic life and wildlife, implement anti-degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality”; and

WHEREAS, on the basis of the foregoing studies, findings, plans, and federal designation, the Commission finds that the Lower Delaware River is characterized by exceptionally high scenic, recreational, and ecological values and water supply uses that require special protection; and

WHEREAS, the Lower Delaware River between River Miles 209.5 and 133.4 has exceptionally high scenic, recreational, ecological, and/or water supply uses and thus may be classified as Significant Resource Waters in accordance with Section 3.10.3.A.2 of the Regulations; and

WHEREAS, the Commission wishes to review the numeric values for existing water quality when determined before deciding whether or not to classify certain sections of the Lower Delaware River as Outstanding Basin Waters and whether to make the present Special Protection Waters designation permanent for some or all of the Lower Delaware River; and

WHEREAS, the Commission expects numeric values for existing water quality to be determined no later than July 20, 2005; and

WHEREAS, the Commission intends to review and if appropriate revise the classification of the Lower Delaware River following the determination of numeric values for existing water quality; and

WHEREAS, at the Commission's September 1, 2004 business meeting in West Trenton, New Jersey, the Commission directed staff to prepare an amendment to the *Water Quality Regulations*, *Water Code* and *Comprehensive Plan* to designate the Lower Delaware as Special Protection Waters; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Commission finds that the section of the Delaware River from River Mile 133.4 to River Mile 209.5, known as the "Lower Delaware River", is characterized by exceptionally high scenic, recreational, ecological and/or water supply values/uses within the meaning of Section 3.10.3.A of the *Water Quality Regulations* and requires special protection in accordance with that section.

2. The Commission thus temporarily amends the *Water Quality Regulations* and *Water Code* as follows:

- Subsection 3.10.3.A.2.g.2), listing stream reaches classified as Significant Resource Waters, is amended by the addition of the following:

(b) The Lower Delaware River between River Miles 209.5 (the downstream boundary of the Delaware Water Gap National Recreation Area) and 133.4 (the Head of Tide at Trenton, NJ);

3. All provisions of Section 3.10.3.A.2. shall be in effect for the Lower Delaware River upon the effective date of the amendment approved today except those that depend for implementation upon the use of approved numeric values for existing water quality. Accordingly, the *Water Quality Regulations* and *Water Code* are amended by the addition of the following to Section 3.10.3.A.2.g:

6) For the stream reaches listed in Section 3.10.3.A.2.g.2).(b), all provisions of Section 3.10.3.A.2 shall be in effect except those listed below:

- The requirement at Section 3.10.3A.2.b.2). that “[p]oint and non-point sources from outside the boundaries of stream reaches classified as Significant Resource Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at Boundary and Interstate Special Protection Waters Control Points.”

- The requirement of Section 3.10.3A.2.b., read in combination with Section 3.10.3A.2.d.6), that new and expanding wastewater treatment projects discharging to Special Protection Waters may be subject to additional treatment requirements, above and beyond the effluent criteria defining Best Demonstrable Technology, as necessary to ensure no measurable change in existing water quality in Special Protection Waters.

- The requirement at Section 3.10.3A.2.f. that state environmental agencies “shall assure to the extent possible, that existing water quality in Special Protection Waters is not measurably changed by pollution discharged into the intrastate tributary watersheds within their jurisdiction.”

Sections **3.10.3.A.2.g.2).(b)** and 3.10.3.A.2.g.6). shall expire on September 30, 2005 unless extended by amendment to this rule.\*

4. This Resolution is hereby incorporated in the Commission’s *Comprehensive Plan*.

/s/ Fred Nuffer

Fred Nuffer, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esq., Commission Secretary

Adopted: January 19, 2005

\* Reflects 8/19/05 correction of clerical error to conform to commission’s intent as articulated in the preamble.