



Delaware River Basin Commission

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LEGAL AUTHORITIES RELATING TO MANAGEMENT OF THE NEW YORK CITY DELAWARE BASIN RESERVOIRS

Talking Points of

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At the Commission Meeting of September 26, 2007

Point 1

In 1954 the United States Supreme Court issued a Decree in the case of New Jersey v. New York. That case involved competing claims of New Jersey, New York State, New York City, Pennsylvania and Delaware to the waters of the Delaware River. The Decree established the right of New York City to divert 800 mgd from the three Delaware River Basin reservoirs that NYC has to date built for water supply purposes.

Point 2

The 1954 Decree also established the right of the lower Basin states to compensating releases from NYC's Delaware River Basin Reservoirs. The compensating releases must be sufficient to maintain a minimum flow of 1750 c.f.s. at the USGS gaging station in Montague, NJ. The NYC Delaware Basin Reservoirs thus serve as an important source of water supply and fresh water flows for the lower Basin states as well as for NYC.

Point 3

The 1954 Decree also required NYC to release an excess release quantity (ERQ) of up to 70bg during the seasonal period June 15 - March 15. The amount of the ERQ is determined each year based on NYC's estimate of the amount by which its available water from all sources in its entire system will exceed its estimated consumption for that year. (The ERQ is the lesser of (1) 70 bg or (2) 83% of the amount by which NYC's continuous safe yield during the year from all its sources obtainable without pumping exceeds its estimated consumption.)

Point 4

NYC has no obligation under the 1954 Decree to release any water beyond that required by Point 2 (Montague flow target) and Point 3 (ERQ). The 1954 Decree makes no provision for spill mitigation releases or for conservation or ecological releases.

PHL:5703191.1/DEL143-156635

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Point 5

The 1961 Compact established the Commission to manage water resources in the Basin. The members of the Commission are the four Basin states and the federal government. There are two differences between the membership of the Commission and the membership of the Decree Parties: NYC is only a decree party; the federal government is only a Commission member.

Point 6

The Compact gives the Commission the power to allocate the waters of the Basin subject to an important limitation. The Compact prohibits the Commission from adversely affecting the releases or diversions provided in the 1954 Decree without the unanimous consent of the Decree Parties. The Commission provides a forum through which the Decree Parties may work cooperatively to develop an effective spill mitigation program and a conservation releases program.

Point 7

The Commission is an administrative agency that takes regulatory actions only after giving public notice and receiving public comment. The Commission's reservoir operations regulations are contained in its Water Code which was adopted after notice and comment rulemaking. The Commission also maintains a Comprehensive Plan for the development and use of the water resources of the Basin. The Commission's regulations and approved projects are included in the Comprehensive Plan. The Commission also issues dockets for projects that have a substantial effect on the water resources of the Basin after a public hearing to determine that the projects do not conflict with the Comprehensive Plan. Thus the Commission's requirements are set forth in a combination of regulations, the Comprehensive Plan and dockets.

Point 8

In 1983 the Decree Parties negotiated the Good Faith Agreement that, among other things, limited releases from the NYC reservoirs during drought warning and drought emergency according to the amount of stored water. The Decree Parties also approved a limited reservoir releases program to help maintain the fisheries. Rather than proceeding solely by seeking Supreme Court approval of their agreement, the Decree Parties asked the Commission to undertake a public process to incorporate the Decree Party agreement in its regulations, dockets and Comprehensive Plan. After notice and public hearing, the Commission approved these changes with the unanimous consent of the Decree Parties in Docket D-77-20-CP (Revised), also known as Rev 1, and incorporated the reservoir operations plan in the Commission's Water Code and Comprehensive Plan.

Point 9

The 1983 docket (Rev 1) was the only docket that modified the release schedules from the NYC Reservoirs on a permanent basis. All subsequent releases programs were adopted on a temporary basis. The current operations that include some spill mitigation and conservation releases are conducted under Revs. 7 and 9 which expire at the end of this month.

Point 10

If no action is taken by the Commission before expiration of Rev. 7 and Rev 9, the 1983 agreement (Rev 1) will go into effect.

Point 11

In light of the agreement of the Decree Parties announced this morning, if and when the Decree Parties adopt or make public the FFMP or some other proposed program, the Commission will publish proposed regulations to implement the program and conduct full notice and comment rulemaking. All members of the public will have the opportunity to submit comments during the rulemaking process.

Point 12

NYC and NY State, in coordination with the River Master appointed under the Decree, implement the reservoir releases program. It is possible that during the period that the DRBC has noticed a program for rulemaking and is soliciting comments, NY may implement the program under consideration on a temporary basis. If the Commission believes that the proposed program promotes better use of water resources than does Rev 1, the Commission may exercise its discretion to take no action to prevent interim implementation while regulatory changes are under consideration.

Point 13

Based on the results of public comment during the rulemaking process, the Commission may modify its proposed regulations and request that the Decree Parties consent to adoption of the final regulations. The Commission hopes to work cooperatively with all Decree Parties to adopt a program that meets the competing demands on the Basin's finite water resources.

I encourage all interested members of the public to fully participate in the administrative process in order to help obtain the best result that balances the competing demands on water resources.