

# PROPOSED RULEMAKING

## DELAWARE RIVER BASIN COMMISSION

[25 PA CODE CH. 901]

### Proposed Amendments to the Comprehensive Plan and Water Code Relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During Basinwide Drought

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to Section 2.5.5 of the Water Code, relating to the Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought. The Commission proposes to amend and codify changes to the *Comprehensive Plan and Water Code* effected by Resolution No. 2002-33, approved in November 2002 by the Commission and the parties to the United States Supreme Court Decree in *New Jersey v. New York*, 347 U. S. 995 (1954) (Decree Parties). The amendments are for purposes of clarification and accuracy and to better ensure that the benefits of the changes effected by Resolution No. 2002-33 are achieved without compromising habitat protection goals. Resolution No. 2002-33 in part amended the *Comprehensive Plan and Water Code* relating to the utilization of Lake Wallenpaupack during drought watch, drought warning and drought operations.

The proposed changes are summarized as follows:

First, numbered paragraph 1 of Resolution No. 2002-33 provides that "any and all provisions pertaining to the operation of Lake Wallenpaupack during basinwide drought warning also apply to basinwide drought watch as temporarily defined by the Commission in Docket No. D-77-20 CP." The proposed amendment adds the parenthetical "(Revision 7 and following)" at the end of this sentence to make clear that the most current applicable revision of Docket No. D-77-20 CP is intended to apply.

Second, the inclusion of the term "drought watch" in brackets following every mention of "drought warning" in the November 2002 amendments is proposed to be deleted, because the Resolution makes clear in numbered Paragraph 1 of the Resolution that provisions in Section 2.5.5 of the *Water Code* pertaining to the operation of Lake Wallenpaupack during drought warning also are intended to apply to drought watch as defined by Docket No. D-77-20 CP (Revision 7 and following).

Third, throughout the language added by Resolution No. 2002-33, the terms "drought conditions" and "drought warning conditions" are replaced by "drought operations" and "drought warning operations," respectively, to more accurately reflect the fact that the reservoir management activities described are triggered by a set of reservoir drought operating rules established by the Commission and the Decree Parties, rather than by hydrologic conditions.

Fourth, the November 2002 amendments inserted language at Section 2.5.5 of the Water Code stating that "[d]uring 'drought' and 'drought warning' operations . . . , 'the power companies shall release water only in accordance with Commission direction.'" This statement is proposed to be changed to reflect the drafters' intention that "[d]uring 'drought' and 'drought warning' operations as

defined in Figure 1 of Section 2.5.3.A. of the *Water Code*, releases from Lake Wallenpaupack shall be made only in accordance with Commission direction." In a related amendment, a new sentence is proposed to be added to Section 2.5.5 addressing operation of the Mongaup reservoir system by the Commission, which may take place only under more limited circumstances. The proposed provision reads, "After issuance of a Conservation Order by the Commission, power generation releases from the Mongaup reservoir system shall be made only in accordance with Commission direction." This statement restores the rule governing drought operation of the Mongaup system reservoirs to the rule in effect before the November 2002 amendments.

Fifth, the Commission proposes to add a clause providing that when it directs releases from Lake Wallenpaupack during drought watch (including warning) and drought operations, it must give consideration to any flow and temperature targets established by the Commission and the Decree Parties in the upper Delaware River and in the West Branch Delaware, East Branch Delaware and Neversink rivers for the protection of the cold water fisheries in these streams.

#### Dates

The public hearing will be held during the Commission's regularly scheduled business meeting on January 19, 2005, at 1:30 p.m. Persons wishing to testify at the hearing are asked to register in advance with the Commission (609) 883-9500, Ext. 224. Submission of written comments by January 14, 2005, would be appreciated, but written comments will be accepted through the close of the public hearing on Wednesday, January 19, 2005.

#### Addresses

The proposed resolution, containing the full text of the proposed amendments, is posted on the Commission's website: [www.drbc.net](http://www.drbc.net). The public hearing will be held in the Goddard Room of the Commission's office building at 25 State Police Drive in West Trenton, New Jersey. Written comments should be addressed to the Commission Secretary as follows: by e-mail to [paula.schmitt@drbc.state.nj.us](mailto:paula.schmitt@drbc.state.nj.us); by fax to (609) 883-9522; by United States mail to Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

#### Further Information, Contact

Contact Commission Secretary Pamela Bush, (609) 883-9500, Ext. 203 with questions about the proposed action.

It is proposed to amend Sections 2.5.5 and 2.5.6 of the Commission's *Water Code* (25 Pa. Code § 901.2) (which is incorporated in the Commission's *Comprehensive Plan*). The changes to the *Water Code* effected by Resolution No. 2002-33, incorporating the proposed amendments, are set forth below. It is understood that any and all provisions pertaining to the operation of Lake Wallenpaupack during basinwide drought warning also apply to basinwide drought watch as temporarily defined by the Commission in Docket No. D-77-20 CP (Revision 7 and following).

The following sentence is added at the end of the first paragraph of Section 2.5.5:

Lake Wallenpaupack also may be utilized to complement the drought management operations of

the New York City reservoirs during “drought warning” operations as defined by Figure 1 in Section 2.5.3A.

The last three sentences of the second paragraph of Section 2.5.5 (beginning “Lake Wallenpaupack and the Mongaup reservoirs . . .”) are replaced by the following:

During “drought” and “drought warning” operations, as defined in Figure 1 of Section 2.5.3.A of the *Water Code*, releases from Lake Wallenpaupack shall be made only in accordance with Commission direction. The Lake Wallenpaupack elevation schedules during normal, drought warning, and drought conditions are set forth in Table 2. The lake elevations in Table 2 have been established to preserve the recreation values and other operational benefits of the lake while also providing water storage to be utilized at the direction of the Commission during the Commission’s drought operations as set forth in this section and in Section 2.5.6. The utilization of Lake Wallenpaupack at the direction of the Commission during the Commission’s drought operations shall be conditioned upon the following:

1. Utilization of Lake Wallenpaupack during drought warning operation shall be consistent with PPL’s FERC license and power generation requirements as well as with lake and downstream needs.
2. During drought warning and drought operations, Lake Wallenpaupack will be utilized with consideration given to established flow and temperature targets in the upper Delaware River and in the West Branch Delaware, East Branch Delaware, and Neversink Rivers.
3. During drought operations, PPL may, at the Commission’s direction, operate for power production when the lake elevation is above the following first-of-month “normal elevation” as defined in Table 2.
4. During a declared power emergency, PPL may operate for power production regardless of lake elevation.
5. Subject to the concurrence of the Commission, in response to changing electrical demand patterns, PPL may revise the lake elevations for “normal conditions” shown in Table 2.

C. Table 2 of Section 2.5.5 is revised in its entirety, as follows:

**Table 2. Lake Wallenpaupack Elevation Schedules**

Day	Normal Conditions	Drought Warning [and Watch]	Drought
June 1	1187.0	1187.0	1187.0
July 1	1185.0	1185.0	1185.0
August 1	1183.0 <sup>1</sup>	1183.0 <sup>1</sup>	1183.0 <sup>1</sup>
September 1	1181.0	1180.0	1179.0
October 1	1179.0	1176.0	1175.0
November 1	1181.0	1172.0	1171.0
December 1	1182.0	1167.5	1167.5
January 1	1183.0	1170.1	1170.1
February 1	1181.5	1173.3	1173.3
March 1	1180.0	1175.6	1175.6
April 1	1182.3	1182.3	1182.3
May 1	1185.6	1185.6	1185.6

<sup>1</sup> The existing FERC license for the Lake Wallenpaupack Hydroelectric Project requires that, ex-

cept when flood waters are being stored, the maximum elevation of the lake shall be limited to elevation 1182.0 between August 1 and November 15 of each year (Article 41). In its application to the FERC for a new license, PPL seeks to include the drought condition lake elevation schedules in Table 2 on a permanent basis, including a lake elevation of 1183.0 on August 1. In the interim, until the FERC issues a new license, PPL will request annual approval from the FERC to operate the lake in accordance with Table 2 during the August 1-November 15 period. PPL will notify the Commission of the FERC’s response to each annual request. If in any year FERC does not approve a change to the lake elevation to 1183.0 or does not include it as a term of the new license, then this elevation shall be deemed to be 1182.0 in that year.

The third paragraph of Section 2.5.5 is revised by inserting the following text immediately before the first sentence:

After issuance of a Conservation Order by the Commission, power generation releases from the Mongaup reservoir system shall be made only in accordance with Commission direction.

Subsection C.3.c is added to Section 2.5.6, as follows:

c. The Commission may direct releases from Lake Wallenpaupack subject to the same conditions as applied to operation during lower basin drought in D.3.e, except that utilization of Lake Wallenpaupack during lower basin drought warning shall be consistent with PPL’s FERC license and power generation requirements as well as with lake and downstream needs.

At Subsection D.3.b.iv of Section 2.5.6, the volume of storage assigned to Lake Wallenpaupack is revised to 33.9 bg from 29.81 bg.

A second sentence is added to Subsection D.3.e.i of Section 2.5.6 as follows:

During drought, PPL may, at the Commission’s direction, operate for power production when the lake elevation is above the following first-of-month “normal elevation” as defined in Table 2 and during a power emergency declared by the regional electric system operator (currently P.J.M. Interconnection, L.L.C.) regardless of lake elevation.

PAMELA M. BUSH,  
*Secretary*

**Fiscal Note:** 68-45. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART V. DELAWARE RIVER BASIN COMMISSION  
CHAPTER 901. GENERAL PROVISIONS**

**§ 901.2. Comprehensive Plan and water quality.**

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A [ (2001) ] (2004) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 [ (2001) ] (2004) are hereby incorporated by reference and made a part of this title.

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