

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Rulemaking to Implement a Flexible Flow Management Program for the New York City Delaware Basin Reservoirs

Summary

The Delaware River Basin Commission (Commission or DRBC) will hold a public hearing to receive comments on proposed amendments to its Water Code and Comprehensive Plan to implement a Flexible Flow Management Program (FFMP) for the New York City Delaware River Basin reservoirs. The proposed amendments are consistent with provisions of an agreement dated September 26, 2007 among the parties to the 1954 Supreme Court decree in *New Jersey v. New York*—the states of Delaware, New Jersey, and New York, the Commonwealth of Pennsylvania and the City of New York—that 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 Delaware River, the Delaware Estuary and Delaware Bay, recreational uses and salinity repulsion.

Dates

The public hearing will take place on Wednesday, January 16, 2008, from 3 p.m. to 5:30 p.m. and from 7 p.m. to 10 p.m. or until all those who wish to testify have had an opportunity to do so. The hearing will take place at the West Trenton Volunteer Fire Company, 40 West Upper Ferry Road, West Trenton, NJ. Persons wishing to testify are asked to register in advance with the Commission Secretary at (609) 883-9500 ext. 224. Written comments will be accepted through the close of business on Friday, January 18, 2008. Written comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by United States Mail to Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; or by fax to 609-883-9522. In all cases, the commenter's name, affiliation, and address should be provided in the comment document, and FFMP should appear in the subject line. Testimony and written comments submitted to the Commission during its previous hearings or comment period on the FFMP, including comments on the form of the FFMP that was published on the Commission's website in February 2007, will be included in the administrative record for this action and need not be resubmitted.

Four informational meetings on the proposed amendments will be held. The first two meetings took place on Tuesday, December 18, 2007, from 3 p.m. to 5 p.m. and from 6:30 p.m. to 9:30 p.m. at the Best Western Inn at Hunt's Landing, 120 Routes 6 and 209, Matamoras, PA. The second two meetings will take place on Tuesday, January 8, 2008, from 3 p.m. to 5 p.m. and from 6:30 p.m. to 9:30 p.m. at the offices of Wolf, Block, Schorr and Solis-Cohen LLP, 1650 Arch Street, 26th Floor, Philadelphia, PA. Directions to the hearing and meeting locations are available via links on the DRBC website.

Supplementary Information

Background. The Delaware River Basin Commission (Commission or DRBC) was created by the Delaware River Basin Compact (Compact), a statute concurrently enacted in 1961 by the United States and the four basin states—Delaware, New Jersey, New York and Pennsylvania. The Compact empowers the Commission, among other things, “to allocate the waters of the basin to and among the states signatory to the compact and to and among their respective political subdivisions, and to impose conditions, obligations and release requirements related thereto.” This authority is subject, however, to the significant limitation that the Commission may not “impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for the administration thereof” established by the Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954), without the unanimous consent of the decree parties. Compact, § 3.3. The Commission and the decree parties are the same with two exceptions. Although the United States Government is a member of the Commission, it is not a party to the 1954 decree; and although the City of New York is a decree party, it is not a member of the Commission. The Compact provides for the City of New York (City) to serve as an advisor to the State of New York in Commission matters.

The 1954 Supreme Court decree gave the City the right to divert up to 800 million gallons per day (mgd) of water from its three Delaware Basin reservoirs—Cannonsville, Pepacton and Neversink—subject to the condition that it release water from its reservoirs in quantities designed to maintain a minimum basic rate of flow at Montague, New Jersey of 1,750 cubic feet per second (cfs), a condition known as “the Montague flow objective.” The decree further required the City to release annually an excess quantity (“the excess release quantity” or “ERQ”) of up to 70 billion gallons (b.g.) during the seasonal period June 15—March 15. The amount of the ERQ is determined each year based on the City's estimate of the amount by which its available water from all sources will exceed its estimated consumption for that year. (The ERQ is calculated as the lesser of 70 bg or 83% of the amount by which the City's continuous safe yield during the year from all its sources obtainable without pumping exceeds its estimated consumption.) The decree gave New Jersey the right to divert up to 100 mgd from the basin without compensating releases. It assigned to the United States Geological Survey the role of supervising the diversions and releases established by the court, in the person of a Delaware River Master.

Since the Commission's creation, the agency has provided a forum for the decree parties and commissioners to adapt reservoir operations to hydrologic conditions and flow needs not contemplated by the decree. Almost simultaneously with the Commission's creation, a new drought of record from 1961 to 1967 gave rise to conditions in which the diversions and flow objectives established by the decree could not be sustained. To apportion limited water supplies in an equitable fashion, avert severe shortages, and avoid the need to negotiate future reductions during a severe drought, the parties eventually responded by entering into the Good Faith Agreement of 1983. “Good Faith,” a term used to refer collectively to the 1983 agreement and the DRBC instruments adopted to implement it, among other things established a schedule

of graduated reductions in diversions and flow objectives to conserve water when storage in the City's three Delaware Basin reservoirs declines below specified thresholds; it also established a flow objective of 3,000 cfs at Trenton, subject to stepped reductions during periods of drought, to prevent chloride concentrations from rising in the vicinity of key water supply intakes in the Delaware Estuary; and it provided for supplemental releases by New York City and from other Delaware Basin reservoirs during drought emergency operations to augment river flows at Montague and Trenton in order to repel salt, a concept known as the "salt front vernier."

The DRBC with the unanimous consent of the decree parties adopted the Good Faith recommendations for modified diversions and flow targets during drought through Resolutions Nos. 83-13, 84-7 and 88-22 in 1983, 1984 and 1988, respectively, and subsequently incorporated these resolutions into the Commission's Water Code. The DRBC established the conservation releases contained in the Good Faith agreement when it approved Docket D-77-20 CP (Revised) with the unanimous consent of the decree parties in November of 1983. From time to time thereafter, in revisions 2 through 9 of Docket D-77-20 CP, the Commission with the unanimous consent of the decree parties approved temporary revisions to the reservoir releases program for purposes that included, among others, fisheries protection and spill mitigation. Some of these docket revisions also modified on a temporary basis reservoir operating conditions that had been placed in the Water Code. The latest of the operating conditions established by revisions 2 through 9 of Docket D-77-20 CP expired on September 30, 2007.

On September 26, 2007, the decree parties reached unanimous agreement on a Flexible Flow Management Program (FFMP) that would provide a framework for managing diversions and releases from New York City's Delaware Basin reservoirs for multiple 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, recreation and salinity repulsion. On the same day, the Commission unanimously approved Resolution No. 2007-14, authorizing the Commission's executive director to publish proposed regulations for implementing the FFMP, and to conduct notice and comment rulemaking, including public hearings, on such proposed regulations. Today's notice is issued in accordance with that authorization.

Water Code Sections to be Amended. The proposed rulemaking would place reservoir operating rules consistent with the decree parties' September 26, 2007 agreement into a revised Section 2.5.3 of the Water Code newly titled, "Flexible Flow Management Program." Water Code sections 2.5.4 (concerning drought emergency actions by the Commission in accordance with Section 3.3 of the Compact), 2.5.5 (providing for coordinated operation of lower basin and hydroelectric reservoirs during a basinwide drought) and 2.5.6 (relating to coordinated operation of upper and lower basin reservoirs during a lower basin drought) are proposed to be amended for consistency with the new Section 2.5.3. The proposed amendments to Sections 2.5.3 through 2.5.6 collectively would comprise the "FFMP."

Term of Proposed Amendments. The amendments constituting the FFMP are proposed to expire on May 31, 2011, unless the decree parties' agreement of September 26, 2007 is extended prior to that date. Absent further revisions adopted by the DRBC with the unanimous approval of the decree parties, upon expiration of the

amendments comprising the FFMP, the New York City Delaware Basin reservoirs will be operated in accordance with the pre-FFMP Water Code and Docket D-77-20 CP (Revised).

Effect of Proposed Amendments. The proposed amendments would substitute a fixed volume of releases called the "Interim Excess Release Quantity" for the ERQ calculated annually in accordance with a formula established by the decree. They would modify the schematic rule curves diagram that defines basinwide normal, drought watch, drought warning and drought emergency operating conditions by updating labeling of the diagram, adding a discharge mitigation trigger curve, and adding labels for storage levels L1 through L5. The amendments also would increase New Jersey's allowable diversion during drought warning and drought emergency operations by 15 mgd and 20 mgd, respectively, above the levels established by the Good Faith agreement; eliminate the link established by the Good Faith agreement between the Montague flow objective and the location of the salt front during basinwide drought emergency operations ("the Montague vernier"); and establish the rate of releases to be made from each of the City's Delaware Basin reservoirs for habitat protection and discharge mitigation, based upon combined reservoir storage levels and individual reservoir storage levels. Key aspects of each of these proposed amendments are set forth below:

- An Interim Excess Release Quantity (IERQ) in the fixed amount of 15,468 cfs-days for nonleap years and 17,125 cfs-days for leap years is proposed to replace the ERQ calculated annually in accordance with the decree. The IERQ is proposed to be released from the City's Delaware Basin reservoirs during basinwide normal operations in order to: 1) increase the Montague flow objective from 1,750 cfs to 1,850 cfs during the period from June 15 through September 15; and 2) maintain the Trenton flow objective of 3,000 c.f.s for the period from June 15 through March 15. All or a portion of the available IERQ also is proposed to be subject at any time to placement in an "IERQ Extraordinary Needs Bank" to support research, aquatic life, or other activities approved by the DRBC with the unanimous agreement of the decree parties.

- Labels for the rule curves diagram that establishes basinwide operating conditions in accordance with combined storage in the City's three Delaware Basin reservoirs are proposed to be updated to reflect normal, drought watch, drought warning, and drought emergency conditions. Although the term "drought watch" has been used consistently since April 28, 1999 in accordance with a definition established by Docket D-77-20 CP (Revision 4), this term has not previously appeared in the Water Code. The label "drought emergency" is proposed to replace the more ambiguous "drought". No change is proposed to the placement of the three curves established by Docket D-77-20 CP (Revision 4). A fourth curve is proposed to be added, however, to indicate the combined storage level at which L1 discharge mitigation releases are triggered. The rule curves with updated labeling are depicted in Figure 1 of proposed Section 2.5.3 F., Drought Management, of the proposed amendments. Figure 1 is linked to the schedule of diversions and flow objectives set forth in proposed Table 1 of the same section and to provisions set forth in the text of that section. Figure 1 is proposed to be further amended by the addition of labels L1 through L5 for the five storage zones delineated by the curves. The storage zones correspond to minimum releases from each of the City's Delaware Basin reservoirs for purposes of habitat protection and discharge mitiga-

tion in accordance with Tables 3A through 3D of proposed Section 2.5.3 G., the Tailwaters Habitat Protection and Discharge Mitigation Program ("THP-DMP").

- New Jersey's allowable diversion is proposed to be increased from 70 mgd to 85 mgd during drought warning operations and from 65 mgd to 85 mgd during drought emergency operations. The lower diversions during drought warning and drought emergency operations have not been changed since they were established by Good Faith. These amendments are proposed to be included in Table 1 of proposed Section 2.5.3 F., Drought Management.

- The Montague flow objective is proposed to be "detached" from the 7-day average location of the 250 mg/L chloride concentration (the "salt front") in the Delaware Estuary during basinwide drought emergency operations. Current Water Code provisions that link the Trenton flow objective to the salt front location will remain in place. The Montague and Trenton flow objectives are set forth in Tables 1 and 2 of proposed Section 2.5.3 F. Rules establishing the Trenton flow objective for lower basin drought operating conditions are set forth in Section 2.5.6.

- A Tailwaters Habitat Protection and Discharge Mitigation Program (THP-DMP) is proposed, consisting of conservation releases to help maintain minimum flows and adequate temperatures in the tailwaters below the City's Delaware Basin reservoirs to protect the cold water fishery, and discharge mitigation releases designed to help mitigate the effects of flooding immediately below the three reservoirs. Releases are defined for each of the reservoirs individually, based upon total combined storage in accordance with the four rule curves contained in Figure 1 in proposed Section 2.5.3 F.

The proposed amendments would largely eliminate the use of storage "banks" for purposes of habitat protection. Such banks were central to the program established by Docket D-77-20 CP. Instead, conservation releases would be based on reservoir storage levels, resulting in larger releases when reservoir storage is high and smaller releases when storage is at or below normal. Conservation release rates for each storage zone are set forth in new Tables 3A through 3D of Section 2.5.3 G.

Discharge mitigation releases from the City's Delaware Basin reservoirs are proposed to be triggered when total combined storage in the reservoirs is in the uppermost storage zone (L1) of the rule curves diagram (Figure 1). When this condition applies, the individual reservoir storage zones (L1-a, L1-b, and L1-c) defined by Figure 2 in proposed Section 2.5.3 G. are proposed to be used in conjunction with Tables 3A through 3D to establish the applicable release rates. The schedule of releases (either 3A, 3B, 3C or 3D) to be used during a given year depends upon the quantity (not to exceed 35 mgd) that the City makes available for the program from its allowable daily diversion in accordance with proposed Sub-section 2.3.5 G.2. Discharge mitigation releases are limited by potential downstream flood stages in accordance with conditions set forth in proposed Table 4 in Sub-section 2.5.3 G.4.

Temporary Suspension or Modification of FFMP in Case of Emergency. The proposed amendments provide at Section 2.5.3 H. a procedure for temporary suspension or modification of provisions of the FFMP if the executive director after consultation with the decree parties and with their unanimous consent finds that customary notice and comment rulemaking by the Commission is impracticable and contrary to the public interest.

In that event, the proposed amendments provide for the executive director to issue an emergency order, which must be ratified, rejected or modified at the next meeting of the Commission, subject to the unanimous approval of the decree parties. Public notice of such action in advance of the public meeting is required. In the event that a suspension or modification of rules by emergency order were proposed to remain in effect on more than a temporary basis, ratification by the Commission would be temporary, pending completion of notice and comment rulemaking.

Previous Notices. The text of the proposed Water Code amendments that appears below was published on the DRBC website, www.drbc.net, on December 3, 2007. Notices on the proposed FFMP appeared in the *Federal Register* at 72 FR 6509 (February 12, 2007); 72 FR 49268 (August 28, 2007) and 72 FR 57875 (December 3, 2007) and at 37 Pa.B. 785 (February 17, 2007), 37 Pa.B. 3099 (June 25, 2007) and 37 Pa.B. 4871 (September 8, 2007). In response to the February and August notices (and similar notices published in the registers of the other Delaware Basin states), the Commission received written and oral comments from more than 100 agencies, organizations, elected officials and private citizens. The decree parties in revising their agreement considered the broad range of public comments the Commission received. The Commission will consider these comments along with any and all additional comments received during the rule-making process.

Related Documents. All DRBC resolutions and dockets relating to operation of the New York City Delaware Basin reservoirs are available on the Commission's website at www.drbc.net or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360. The DRBC website includes a link to the site of the U.S. Geological Survey, Office of the Delaware River Master, <http://water.usgs.gov/orh/nrwww/odrm/>, which includes the decree parties' agreement of September 26, 2007.

Further Information, Contacts

For further information about the rulemaking process, please contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, DRBC, at 609-883- 9500 ext. 203.

It is proposed to amend Sections 2.5.3 through 2.5.6 of the *Water Code* as set forth below. Material proposed to be added is printed in **bold face** and material proposed to be deleted is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipses of rule text retained without change.

The proposed amendments entail changes to the outline and organization of Section 2.5.3 in order to make DRBC's regulations relating to operation of the New York City Delaware Basin reservoirs more comprehensive, to incorporate into the regulations conditions formerly included only in DRBC dockets, and to follow to the extent possible and appropriate the outline of the Decree Parties' agreement dated September 26, 2007. Accordingly, the portions of current (un-amended) *Water Code* subsections 2.5.3 A. through D. that relate to normal operating conditions are included in proposed subsections 2.5.3 C. through E. (entitled "Diversion," "Flow Objectives" and "Releases," respectively). Provisions of the un-amended *Water Code* sections 2.5.3 A. through E. that relate to operation of the New York City reservoirs during drought are proposed to be placed in amended Sub-section 2.5.3 F., Drought Management (see proposed sub-sections 2.5.3

F.1. through 2.5.3 F.3). The provisions of current sub-section 2.5.3 E., which establish the triggers and duration of certain drought operating conditions, are proposed to be placed in amended Sub-section 2.5.3 F.4. Paragraphs of the current Section 2.5.3 that are proposed to be moved or re-numbered but which otherwise closely track the existing *Water Code* language are presented in normal face type.

Sections 2.5.3 through 2.5.6 of the *Water Code* in their entirety and showing all proposed amendments are posted on the Commission's web site, drbc.net. Graphics on the website are in color.

§ 2.5.3 FLEXIBLE FLOW MANAGEMENT PROGRAM

A. Program Established

1. A Flexible Flow Management Program (FFMP) is hereby established, whereby diversions and releases from the New York City Delaware Basin reservoirs provided for by the Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 (1954) (referenced elsewhere in these Regulations as "the Decree") shall be implemented as herein amended with the following objectives: to provide safe and reliable supplies of water from the Delaware River Basin to the more than 17 million people who depend upon this water source; to provide flows to help control temperatures in the tailwaters to help sustain cold water fisheries; to assist in mitigating the impacts of flooding; and to provide freshwater flows to the main stem and bay to help protect ecological health, withdrawal and non-withdrawal uses and repel salinity.

2. The FFMP shall be comprised of Section 2.5.3 of these regulations and the revisions to other Sections of the *Water Code* adopted simultaneously for consistency with Section 2.5.3.

B. Criteria for Program Modification. Criteria to be considered by the DRBC in evaluating proposed modifications to the FFMP shall include but shall not be limited to the following (without any particular priority):

1. Decree Party equity
2. Net benefits and costs to environmental and economic resources
3. Source and sustainability of water available to support the proposed modification
4. Habitat types—with naturally-occurring habitats receiving consideration over man-made habitats
5. Scientific basis for modification
6. Implications for drought management, water supply and flood mitigation, including but not limited to impacts on: 1) frequency, duration and seasonal timing of the various drought operating conditions; and 2) frequency and duration of changes to levels of storage, diversions, releases and flows
7. Extent to which the diversions and the minimum basic rate of flow at Montague, New Jersey established by the Decree are met
8. Potential impacts on water quality, including effect on water quality standards, national and state pollutant discharge elimination system per-

mits issued in accordance with the Clean Water Act, DRBC dockets, wasteload allocations, assimilative capacity of the Delaware River and ecological health

9. Ease and practicability of operation

10. Consistency with adaptive management principles

11. Applicability and implementation of water conservation practices

12. Impacts on salinity

C. Diversions

1. City of New York

a. In accordance with Paragraphs III.A.3 and III.A.4. of the Decree, and subject to the limitations set forth in these regulations, the City may divert the equivalent of 800 million gallons per day (mgd), to be computed such that "[a]t no time during any twelve-month period, commencing June 1, shall the aggregate total quantity of water diverted [by the City], divided by the number of days elapsed since the preceding May 31, exceed [800 million gallons per day (mgd)]."

b. In accordance with Paragraph III.B. of the Decree, diversions by the City of New York from the Delaware River shall be made under the supervision and direction of the Delaware River Master.

2. State of New Jersey

a. In accordance with Paragraph V.A. of the Decree, and subject to the limitations set forth in these regulations, "[t]he State of New Jersey may divert outside the Delaware River watershed, from the Delaware River or its tributaries in New Jersey, without compensating releases, the equivalent of 100 m.g.d. . . ."

b. In accordance with Paragraph V.B. of the Decree, diversions by New Jersey from the Delaware River shall be made under the supervision of the Delaware River Master.

c. In addition to the limitations on New Jersey's diversion established by these Regulations for periods of drought, the State's diversion shall be subject to the conditions and obligations set forth in Paragraphs V.B.1. through V.B.3. of the Decree, as modified in accordance with Sections 2.5.3 C.2.d. and e. immediately below.

d. Until the State of New Jersey builds and utilizes one or more reservoirs to store waters of the Delaware River or its tributaries for the purpose of diverting the same to another watershed, or purchases or leases reallocated water or new storage from an existing or new storage facility, the State of New Jersey diversion may not exceed 100 mgd as a monthly average, with the diversion on any day not to exceed 120 million gallons.

e. In accordance with Paragraph V.B.2. of the Decree, "[i]f and when the State of New Jersey has built and is utilizing one or more reservoirs to store waters of the Delaware River or its tributaries for the purpose of diversion to another watershed, it may withdraw water from the Delaware River or its tributaries into such impounding reservoirs without limitation except during the months of July, August, September and October of any year,

when not more than 100 m.g.d. as a monthly average and not more than 120 million gallons in any day shall be withdrawn." This restriction may be modified upon unanimous consent of the Decree Parties should the State of New Jersey purchase or lease reallocated water or new storage from an existing or new facility.

f. In accordance with Paragraph V.B.3. of the Decree, "[r]egardless of whether the State of New Jersey builds and utilizes storage reservoirs for diversion, its total diversion for use outside of the Delaware River Basin without compensating releases shall not exceed an average of 100 m.g.d. during any calendar year."

D. Flow Objectives

1. Montague Flow Objective

a. The City of New York shall release water from one or more of the City's Delaware Basin reservoirs in quantities designed to maintain a minimum basic rate of flow (or "flow objective") at the gaging station of the United States Geological Survey (U.S.G.S.) at Montague of 1,750 cubic feet per second (cfs) in accordance with Paragraph III.B.1.(b) of the Decree during basinwide normal operating conditions. Provided, however, that during the period from June 15 through September 15 annually during normal operating conditions, the Montague flow objective shall be elevated to 1,850 cfs, to the extent that this objective is supported by releases from the Interim Excess Release Quantity (IERQ), as defined in Section 2.5.3 E.2. below.

b. In accordance with Paragraphs III.B.1.(b) VII.B.2. and VII of the Decree, releases from the City's Delaware Basin reservoirs to maintain the Montague Flow Objective shall be as directed by the River Master. Such releases shall be referred to as "directed releases."

c. In evaluating alternatives to the Montague Flow Objective, the Commission shall consider the availability of increased storage and the impact of such alternatives on the Trenton Flow Objective.

2. Trenton Flow Objective

a. The minimum basic rate of flow at the gaging station of the U.S.G.S. at Trenton, New Jersey (or "Trenton Flow Objective") when both basinwide¹ and lower basin² operating conditions are normal shall be 3,000 cfs.

b. Reservoir releases required to maintain the Trenton Flow Objective during basinwide normal operating conditions shall be made from the City's Delaware Basin reservoirs in accordance with Sections 2.5.3. E.2. and Section 2.5.6. below, and from Commission storage in the Beltzville and Blue Marsh reservoirs in Pennsylvania.

c. IERQ releases from the City's Delaware Basin reservoirs in accordance with Section 2.5.3 E.2. below to maintain the Trenton Flow Objective during basinwide normal operating conditions shall be in such quantities and at such times as determined by the Delaware River Basin Commission and directed by the Delaware River Master.

¹ The terms "basinwide operations" and "basinwide operating conditions" refer to reservoir operations determined by combined storage levels in the three New York City Delaware Basin reservoirs, as set forth in Figure 1.

² The terms "lower basin operations" and "lower basin operating conditions" refer to operations as set forth in Section 2.5.6. of these regulations.

d. Releases of stored water to maintain the Trenton Flow Objective at times other than during basinwide normal operating conditions shall be in accordance with the priorities established in Sections 2.5.5 and 2.5.6 of these regulations.

E. Releases

1. Tailwater Habitat Protection and Discharge Mitigation Program. In order to protect the ecology of the tailwaters below the City of New York's Delaware Basin reservoirs, including water quality and fishery habitat, as well as to help mitigate the impacts of flooding immediately below these reservoirs and support recreational uses, the City shall release water from the three reservoirs in accordance with the Tailwater Habitat Protection and Discharge Mitigation Program (THP-DMP), set forth in Section 2.5.3 G. of these Regulations.

2. Interim Excess Release Quantity (IERQ)

a. For the period commencing with the effective date of these regulations and ending May 31, 2011 unless extended in accordance with Section 2.5.3 J.2. below, the "excess quantity" (also referred to as the "Excess Release Quantity" or ERQ) defined by Paragraphs III.B.1.(c) and (d) of the Decree shall be used in support of an "Interim Excess Release Quantity" (IERQ), in accordance with this Section 2.5.3 E.2.

b. The quantity of water to be provided annually by the City of New York for the IERQ during the period set forth in the preceding paragraph unless extended in accordance with Section 2.5.3 J.2. below, shall be fixed at 15,468 cfs-days, except that during any leap year the quantity shall be 17,125 cfs-days. For 365 and 366-day years respectively, these sums are equal to 83 percent of the difference between the highest annual consumption reported for the New York City water supply system during water years 2002 through 2006 (or 458,805 mg) and the City's estimate in 2007 of the continuous safe yield of the City water supply system obtainable without pumping (or 1,290 mgd multiplied by either 365 days or in a leap year, 366 days).

c. The IERQ shall be released for purposes of:

i. elevating the Montague Flow Objective from 1,750 cfs to 1,850 cfs annually during basinwide normal operations for the period from June 15 through September 15; and

ii. maintaining the Trenton Flow Objective of 3,000 cfs during basinwide normal operations for the period from June 15 through March 15.

d. The IERQ may be released for the additional purposes of:

i. establishing an Interim Excess Release Quantity Extraordinary Needs Bank in accordance with Section 2.5.3 E.3., below; and

ii. supplementing the quantity of water provided by New York City in a given year for THP-DMP releases in accordance with Section 2.5.3 G., if the quantity of water provided by the City is less than 35 mgd.

e. The City of New York shall release the IERQ during basinwide normal operating conditions at rates designed to maintain a minimum flow at Montague of 1,850 cfs for the period commencing annually on June 15 and continuing through Sep-

tember 15 and a minimum flow at Trenton of 3,000 cfs during basinwide normal operating conditions for the period commencing on June 15 and continuing through March 15. The latter period shall be referred to as the "seasonal period." In releasing the IERQ, the City shall not be required to release water at rates exceeding the capacity of its release works. The City shall in each seasonal period continue its interim excess releases until the aggregate quantity of the releases from the IERQ is equal to the total specified in Section 2.5.3 E.2.b. above.

3. Interim Excess Release Quantity Extraordinary Needs Bank. The Commission, with the unanimous consent of the Decree Parties, may at any time place all or a portion of the available IERQ in an Interim Excess Release Quantity Extraordinary Needs Bank to help support research, aquatic life or any other water use approved by the Commission. Any quantity of water so banked shall be released in accordance with the defined use in a manner approved by the Commission and the Decree Parties, and shall be deducted from the IERQ otherwise available for release.

F. DROUGHT MANAGEMENT

1. Drought Operating Conditions

a. In accordance with Figure 1 and as defined by three drought management curves depicted therein, three drought operating conditions—"drought watch," "drought warning" and "drought emergency"—are established, based upon specified combined storage levels in the City of New York's three Delaware Basin reservoirs—Cannonsville, Pepacton and Neversink. Figure 1 defines five zones of combined reservoir usable storage relative to the normal and drought management storage levels. The storage level corresponding to normal operations is divided into two zones—L1 and L2—and the drought management curves delimit Zones L3 through L5.

b. The three drought operating conditions shall be used in conjunction with other provisions of these Regulations to determine:

- the maximum allowable diversions from the basin by the City of New York and the State of New Jersey;
- the minimum rates of flow to be maintained in the main stem Delaware River at the U.S.G.S. gaging stations at Montague and Trenton; and
- the releases to be made from each of the City's three Delaware Basin reservoirs in accordance with the THP-DMP set forth in Section 2.5.3 G., below.

2. Reduced Diversions and Flow Objectives During Drought Operations

a. Out-of-basin diversions by the City of New York and the State of New Jersey and flow objectives at the Montague and Trenton U.S.G.S. gaging stations shall be reduced incrementally during drought watch, drought warning and drought emergency operations (collectively, "drought operations") in accordance with Table 1 and Section 2.5.3 F.4 below, to conserve water.

b. The Montague flow objective shall vary during basinwide drought emergency operations with the time of year, and the Trenton flow objective shall

vary during basinwide drought emergency and during lower basin drought warning and drought emergency (defined in Section 2.5.6. below) with both the time of year and the location of the "salt front," defined as the upstream location in the Delaware Estuary at which the seven-day average chloride concentration equals 250 mg/l as provided in Table 1. Within the ranges set forth in Table 1, the Montague and Trenton flow objectives shall be adjusted in accordance with the specific values set forth in Table 2.

c. Nothing in these Regulations shall affect the Commission's authority pursuant to Section 3.3(a) of the Compact to take action to address an emergency condition.

3. Computation of Diversions During Drought Operations (*Resolutions Nos. 83-13 and 2007-_____*)

a. Daily Running Average. Diversions by the City of New York and State of New Jersey set forth in Table 1 during drought watch, drought warning, and drought emergency operations shall in each case be computed as a daily running average, commencing on the day such operations become effective.

b. Unused Diversion. If during any drought operating period the allowable diversion is not fully used, the unused portion may not be credited or used during subsequent periods.

c. Resumption of Normal Operations. Upon the resumption of normal operations following any period of drought operations, diversions by the City of New York and the State of New Jersey shall in each case be computed as daily running averages commencing upon the date of return to normal operations.

d. Balancing Adjustment. In order to conserve water, the River Master is requested to utilize a balancing adjustment, based upon procedures agreed upon by the Decree Parties, when calculating the releases to be directed to meet the Montague flow objectives in Tables 1 and 2. Additionally, during drought watch, warning, and emergency, the amount of the conservation releases from the City's Delaware Basin reservoirs that is greater than the basic conservation release rates as set forth in Table 1 of Docket D-77-20 CP (Revised) shall be considered directed releases for the purpose of calculating the balancing adjustment.

4. Triggering Conditions and Duration of Reduced Diversions and Flow Objectives

a. The schedule of diversions and streamflow objectives for drought watch operations as set forth in Table 1 shall go into effect automatically whenever the combined storage in the New York City Delaware Basin Reservoirs declines below the drought watch line defined in Figure 1 and remains below that line for five consecutive days.

b. The schedule of diversions, and streamflow objectives for drought warning operations as set forth in Table 1 shall go into effect automatically whenever the combined storage in the New York City Delaware Basin Reservoirs declines below the drought warning line defined in Figure 1 and remains below that line for five consecutive days.

c. The schedule of diversions, and streamflow objectives for drought emergency operations as set forth in Table 1 shall go into effect automatically whenever the combined storage in the New York City Delaware Basin

Reservoirs declines below the drought emergency line defined in Figure 1 and remains below that line for five consecutive days.

d. When the combined storage in the City's Delaware Basin reservoirs (including the projected water runoff equivalent of actual snow and ice within the watersheds tributary to the reservoirs) reaches a level 15 billion gallons above the drought watch line defined in Figure 1 and remains at or above that level for 5 consecutive days, normal diversions and flow objectives as set forth in Table 1 shall resume.

e. Pursuant to Section 3.3(a) of the Compact, the Parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954), have given their unanimous consent to adoption and implementation by the Commission of the drought operation schedules provided in this section. The Parties have agreed that drought operations will go into effect automatically, and be binding on parties for not less than 180 days following the triggering of drought watch operations, unless terminated automatically by improved storage conditions as provided in the preceding paragraph. During the 180-day period following triggering of drought watch operations, authorized representatives of the City of New York, States of Delaware, New Jersey, and New York, and Commonwealth of Pennsylvania, as parties to the U.S. Supreme Court Decree, shall convene no less frequently than once each month to review current conditions, and

they may extend, modify, or extend as modified the schedules provided in this section. If no unanimous agreement as to a continuing drought operation formula is reached within the 180-day period, all Parties shall be released from the terms of the formula and schedules and may pursue their rights and obligations under the Delaware River Basin Compact and the U.S. Supreme Court Decree.

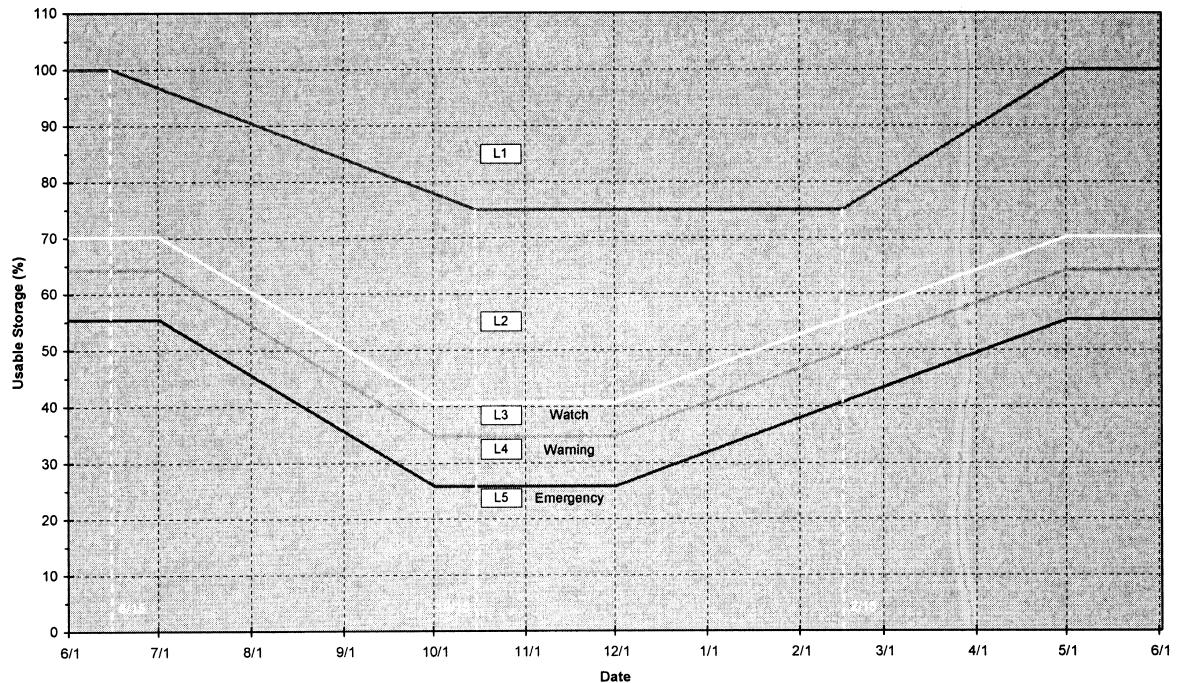
5. THP-DMP Releases During Drought. Provisions relating to THP-DMP releases under normal and drought conditions are set forth in Section 2.5.3 G., below.

6. Drought Emergency Actions. Provisions relating to Drought Emergency actions by the Commission in accordance with Section 3.3 of Article 10 of the Delaware River Basin Compact are set forth in Section 2.5.4 of these regulations.

7. Operation of Lower Basin and Hydroelectric Reservoirs During Basinwide Drought. Provisions relating to coordinated operation of lower basin and hydroelectric reservoirs during basinwide drought are set forth in Section 2.5.5 of these regulations.

8. Lower Basin Drought Operations. Provisions relating to coordinated operation of reservoirs during a lower basin drought are set forth in Section 2.5.6 of these regulations.

**Figure 1
New York City Delaware System Combined Usable Storage
(Cannonsville, Pepacton and Neversink Reservoirs)**



[Figure 1 can be viewed in color on the DRBC web site, drbc.net.]

Table 1
Interstate Operation Schedule For Diversions and Flow Objectives

NYC Storage Condition	NYC Diversion (mgd)	NJ Diversion (mgd)	Montague Flow Objective (cfs)	Trenton Flow Objective (cfs)
Normal (June 15—Sept 15)	800	100	1,850*	3,000
Normal (Sept 16—June 14)	800	100	1,750	3,000
Drought Watch (L3)	680	100	1,660	2,700
Drought Warning (L4)	560	85	1,550	2,700
Drought Emergency (L5)	520	85	1,100—1,500**	2,500—2,900***
Severe Drought	(to be negotiated depending upon conditions)			

* To the extent supported by the IERQ in accordance with Section 2.5.3 E.2. Otherwise, 1,750 c.f.s.

** Varies with time of year, in accordance with Table 2.

*** Varies with time of year and location of salt front, in accordance with Table 2, except that for lower basin drought warning and drought emergency conditions, Section 2.5.6 of these regulations shall control.

Table 2
Interstate Operation Schedule
For Adjusting Montague and Trenton Flow Objectives
During Drought Conditions

7-Day Average Location of "Salt Front"* (RiverMile**)	Trenton				Montague			
	Dec 1-Apr 30	May 1-Aug 31	Sep 1-Nov 30	June 1-June 30	July 1-Nov 31	Dec 1-Dec 31	June 1-May 31	
				1,450	1,500	1,350	1,100	
Upstream of R.M. 92.5	2,700	2,900	2,900					
R.M. 87.0—R.M. 92.5	2,700	2,700	2,700					
R.M. 82.9—R.M. 87.0	2,500	2,500	2,500					
Downstream of R.M. 82.9	2,500	2,500	2,500					

* Defined as the 250 mg/L isochlor in the Delaware Estuary.

** Measured in statute miles along the center of the navigation channel, from the mouth of the Delaware Bay.

G. Tailwaters Habitat Protection and Discharge Mitigation Program (THP-DMP)

1. Program Established. A Tailwaters Habitat Protection and Discharge Mitigation Program (THP-DMP) is hereby established, which consists of conservation releases designed to protect the ecology of the tailwaters below the New York City Delaware Basin reservoirs and discharge mitigation releases, designed to help mitigate the effects of flooding immediately below these reservoirs.

2. Availability of Water to Support THP-DMP Releases. Until the earlier of 2012 or such time as the additional 13 billion gallons (equivalent to approximately 35 mgd) of combined storage proposed to be constructed at the Cannonsville and Pepacton Reservoirs as contemplated by New York State and the City of New York has been built, an unused portion of New York City's allowable diversion of 800 mgd not to exceed 35 mgd shall be made available on an annual basis to support THP-DMP releases in accordance with the following:

a. The City annually shall inform the River Master of a quantity of its allowable diversion not to exceed 35 mgd that it anticipates the City will not use during the ensuing year, which quantity shall be made available to support THP-DMP releases.

b. In any year in which the quantity of water furnished by the City in accordance with the preceding paragraph is less than 35 mgd, the states of Delaware, New Jersey and Pennsylvania may by unanimous agreement make available to support THP-DMP releases a quantity of the IERQ not to exceed the difference between the City's contribution and 35 mgd. The three states shall report such quantity to the River Master.

c. After December 31, 2012, if the additional storage under consideration by New York State and the City of New York has not been constructed, then THP-DMP releases shall be made in accordance with the schedule set forth in Table 3D (0 mgd) below except that the Decree Parties may in the exercise of their discretion agree to make additional water available for the program in accordance with the procedures for revision of the FFMP set forth in paragraph H below. In that event, releases shall be made in accordance with the schedule set forth in Table 3A (35 mgd), 3B (20 mgd), or 3C (10 mgd).

d. Releases made when the combined storage of the City's Delaware Basin Reservoirs is in Zone L1 in Figure 1 shall not be considered part of the

quantity of water the City has made available to support THP-DMP releases pursuant to Section 2.5.3 G.2.b. above.

3. Schedule of Releases. Depending upon the amount of water made available in accordance with the preceding section, 2.5.3 G.2., THP-DMP releases in a given year shall be made in accordance with Table 3A (35 mgd), 3B (20 mgd), 3C (10 mgd) or 3D (0 mgd). The quantity of controlled releases to be made from each of the City's Delaware Basin reservoirs shall be further determined on the basis of the following:

a. *Combined storage levels in accordance with Figure 1.* In Figure 1, the percentage of combined usable storage associated with basinwide normal operations is subdivided into two ranges (or "zones")—L1 and L2. The percentage of combined usable storage associated with drought operations is subdivided into three zones—L3, L4, and L5—in order of diminishing storage, corresponding to drought watch, drought warning and drought emergency operating conditions, respectively.

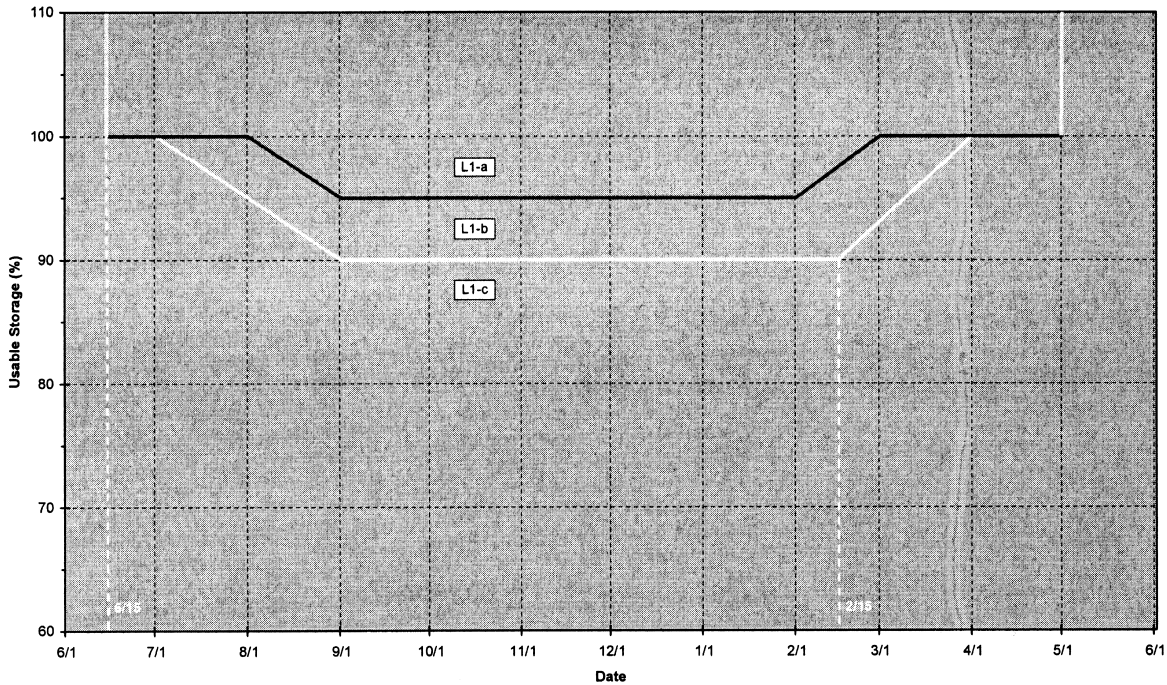
b. *For the highest combined storage range only, individual reservoir storage levels in accordance with Figure 2.* In Figure 2, for purposes of deter-

mining the quantity released from individual reservoirs, Zone L1 (representing maximum combined reservoir storage) is sub-divided into three storage zones—L1-a, L1-b, and L1-c—expressed as percentages of usable storage. When combined storage in the City's three Delaware Basin reservoirs is in Zone L1, the time of year and the percentage of usable storage available in each individual reservoir will determine whether the L1-a, L1-b or L1-c release quantity specified in Table 3 is made from that reservoir.

c. *Dates.* Releases from each of the reservoirs are established for eight date ranges, grouped by season as set forth in Table 3. These are: June 1-15, June 16-30, July 1-August 31 (Summer); September 1-30 and October 1—November 30 (Fall); December 1—March 31 and April 1-30 (Winter); and May 1-31 (Spring).

d. *THP-DMP releases during recovery from drought.* During recovery from drought, THP-DMP releases corresponding to the lowest storage level attained will continue until combined storage in the three New York City Delaware Basin reservoirs reaches 25 billion gallons above the drought watch level and remains at or above that level for 15 consecutive days.

Figure 2
New York City Delaware System Usable Individual Storage
(Cannonsville, Pepacton and Neversink Reservoirs)



[Figure 2 can be viewed in color on the DRBC web site, drbc.net.]

**Table 3A
Schedule of Releases (cfs)
With 35 mgd Available**

Cannonsville Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	1500	1500	*	*	1500	1500	1500	1500
L1-b	250	*	*	*	*	350	275	250
L1-c	110	110	225	275	275	275	140	110
L2	80	80	215	260	260	260	115	80
L3	70	70	100	175	175	175	95	70
L4	55	55	75	130	130	130	55	60
L5	50	50	50	120	120	120	50	50

Pepacton Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	700	700	*	*	700	700	700	700
L1-b	185	*	*	*	*	250	200	185
L1-c	85	85	120	150	150	150	100	85
L2	65	65	110	140	140	140	85	60
L3	55	55	80	100	100	100	55	55
L4	45	45	50	85	85	85	40	40
L5	40	40	40	80	80	80	30	30

Neversink Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	190	190	*	*	190	190	190	190
L1-b	100	*	*	*	*	125	85	95
L1-c	65	65	90	110	110	110	75	60
L2	45	45	85	100	100	100	70	45
L3	40	40	50	75	75	75	40	40
L4	35	35	40	60	60	60	30	30
L5	30	30	30	55	55	55	25	25

* Storage zone does not apply during this period. Releases shall be made in accordance with zone L1-c.

PROPOSED RULEMAKING

**Table 3B
Schedule of Releases (cfs)
With 20 mgd Available**

Cannonsville Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	1500	1500	*	*	1500	1500	1500	1500
L1-b	250	*	*	*	*	350	275	250
L1-c	110	110	225	275	275	275	140	110
L2	72	72	194	234	234	234	104	72
L3	63	63	90	158	158	158	86	63
L4	50	50	68	117	117	117	50	54
L5	45	45	45	108	108	108	45	45

Pepacton Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	700	700	*	*	700	700	700	700
L1-b	185	*	*	*	*	250	200	185
L1-c	85	85	120	150	150	150	100	85
L2	59	59	99	126	126	126	77	54
L3	50	50	72	90	90	90	50	50
L4	41	41	45	77	77	77	36	36
L5	36	36	36	72	72	72	27	27

Neversink Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	190	190	*	*	190	190	190	190
L1-b	100	*	*	*	*	125	85	95
L1-c	65	65	90	110	110	110	75	60
L2	41	41	77	90	90	90	63	41
L3	36	36	45	68	68	68	36	36
L4	32	32	36	54	54	54	27	27
L5	27	27	27	50	50	50	23	23

* Storage zone does not apply during this period. Releases shall be made in accordance with zone L1-c.

**Table 3C
Schedule of Releases (cfs)
With 10 mgd Available**

Cannonsville Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	1500	1500	*	*	1500	1500	1500	1500
L1-b	250	*	*	*	*	350	275	250
L1-c	110	110	225	275	275	275	140	110
L2	65	65	175	212	212	212	94	65
L3	57	57	82	143	143	143	77	57
L4	45	45	61	106	106	106	45	49
L5	41	41	41	98	98	98	41	41

Pepacton Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	700	700	*	*	700	700	700	700
L1-b	185	*	*	*	*	250	200	185
L1-c	85	85	120	150	150	150	100	85
L2	53	53	90	114	114	114	69	49
L3	45	45	65	82	82	82	45	45
L4	37	37	41	69	69	69	33	33
L5	33	33	33	65	65	65	24	24

Neversink Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	190	190	*	*	190	190	190	190
L1-b	100	*	*	*	*	125	85	95
L1-c	65	65	90	110	110	110	75	60
L2	37	37	69	82	82	82	57	37
L3	33	33	41	61	61	61	33	33
L4	29	29	33	49	49	49	24	24
L5	24	24	24	45	45	45	20	20

* Storage zone does not apply during this period. Releases shall be made in accordance with zone L1-c.

**Table 3D
Schedule of Releases (cfs)
With 0 mgd Available**

Cannonsville Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	1500	1500	*	*	1500	1500	1500	1500
L1-b	250	*	*	*	*	350	275	250
L1-c	110	110	225	275	275	275	140	110
L2	58	58	157	190	190	190	84	58
L3	51	51	73	128	128	128	69	51
L4	40	40	55	95	95	95	40	44
L5	37	37	37	88	88	88	37	37

Pepacton Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	700	700	*	*	700	700	700	700
L1-b	185	*	*	*	*	250	200	185
L1-c	85	85	120	150	150	150	100	85
L2	47	47	80	102	102	102	62	44
L3	40	40	58	73	73	73	40	40
L4	33	33	37	62	62	62	29	29
L5	29	29	29	58	58	58	22	22

Neversink Storage Zone	Winter		Spring	Summer			Fall	
	Dec 1 - Mar 31	Apr 1 - Apr 30	May 1 - May 31	Jun 1 - Jun 15	Jun 16 - Jun 30	Jul 1 - Aug 31	Sep 1 - Sep 30	Oct 1 - Nov 30
L1-a	190	190	*	*	190	190	190	190
L1-b	100	*	*	*	*	125	85	95
L1-c	65	65	90	110	110	110	75	60
L2	33	33	62	73	73	73	51	33
L3	29	29	37	55	55	55	29	29
L4	26	26	29	44	44	44	22	22
L5	22	22	22	40	40	40	18	18

* Storage zone does not apply during this period. Releases shall be made in accordance with zone L1-c.

4. Additional Requirements Applicable to Discharge Mitigation Releases. The City of New York shall make discharge mitigation releases from the City's Delaware Basin reservoirs in accordance with the following:

a. For the period June 16 through April 30, if combined usable storage is in Zone L1, then each reservoir shall be considered separately, and for each individual reservoir, the percentage of usable storage available in that reservoir will determine whether the L1-a, L1-b or L1-c release is made from the reservoir, in accordance with Figure 2 and Table 3. During the period October 1 through April 30, fifty (50) percent of the water equivalent of snow pack in the watersheds above the reservoirs shall be included in the determination of combined and individual usable storage.

b. For the period April 1 through April 30, if combined reservoir usable storage including snow

pack is within the L1 zone, the releases from each reservoir shall be in the L1-a or the L1-c quantity, as provided in Table 3.

c. For the period May 1 through June 15, the L1-a and L1-b Zones do not apply. If combined reservoir usable storage is in Zone L1, releases shall be made in the L1-c quantities provided in Table 3.

d. The NYCDEP and NYSDEC release managers may transfer reservoir spills to bottom releases to the extent possible and mutually agreed upon at any of the three reservoirs.

e. The current National Weather Service flood stage for the West Branch Delaware River at Hale Eddy is 11 feet. Accordingly, Zone L1 THP-DMP releases shall not be made from Cannonsville Reservoir when the river stage for the West Branch Delaware River at Hale Eddy is above 9 feet or is forecast to be above 9 feet within 48 hours of a

planned discharge mitigation release. Releases shall be made in accordance with Table 3, except that only the L2 through L5 quantities shall be released. This provision may be modified by unanimous agreement of the Decree Parties in consultation with the DRBC if they conclude that conditions so warrant.

f. The current National Weather Service flood stage for the East Branch Delaware River at Fishs Eddy is 13.0 ft. Accordingly, Zone L1 THP-DMP releases shall not be made from Pepacton Reservoir when the river stage for the East Branch Delaware River at Fishs Eddy is above 11.0 ft. or is forecast to be above 11.0 ft. within 48 hours of a planned discharge mitigation release. Releases shall be made in accordance with Table 3, except that only the L2 through L5 quantities shall be released. This provision may be modified by unanimous agreement of the Decree Parties in consultation with the DRBC if they conclude that conditions so warrant.

g. The current National Weather Service flood stage for the Neversink River at Bridgeville is 13 feet. Accordingly, Zone L1 THP-DMP releases shall not be made from Neversink Reservoir when the river stage for the Neversink River at Bridgeville is above 12 feet or is forecast to be above 12 feet within 48 hours of a planned discharge mitigation release. Releases shall be made in accordance with Table 3, except that only L2 through L5 quantities shall be released. This provision may be modified by unanimous agreement of the Decree Parties in consultation with the DRBC if they conclude that conditions so warrant.

h. Zone L1 THP-DMP releases from any one of the City's reservoirs may be suspended from the respective reservoirs if NYCDEP and NYSDEC in consultation with the National Weather Service determine that ice conditions threaten flood prone areas of the Neversink River below Neversink Reservoir, East Branch Delaware River below Pepacton Reservoir, or West Branch Delaware River below Cannonsville Reservoir. In the event Zone L1 THP-DMP releases from a reservoir are suspended, the quantity of a controlled release from that reservoir shall not exceed the L2 quantity provided in Table 3.

i. Discharge mitigation (Zone L-1) releases shall be designed so that the combined discharge from each reservoir's controlled release works and spillway does not exceed the flow rate provided in Table 4 below. If the combined discharge at any of the three reservoirs exceeds the flow rate provided in Table 4, then controlled releases from such reservoir(s) shall be reduced to the L-2 releases provided in Table 3, or lower.

j. To more naturally effect downward or upward transitions between discharge mitigation release rates identified in Table 3, discharge mitigation release rates may be ramped generally over a period not to exceed three days at Cannonsville and Pepacton Reservoirs or two days at Neversink Reservoir, but in increments of no less than 10 cfs at any reservoir.

Table 4
Maximum Combined Discharge Rates

<i>Reservoir</i>	<i>Maximum Combined Discharge Rate (cfs)</i>
Neversink	3,400
Pepacton	2,400
Cannonsville	4,200

H. FFMP Evaluation, Monitoring and Reporting

1. *THP-DMP.* In accordance with the agreement among the Decree Parties dated September 26, 2007, NYSDEC shall periodically provide the DRBC and the Decree Parties with reports evaluating the effectiveness of the THP-DMP.

2. *Construction of Additional Reservoir Storage.* In accordance with the agreement among the Decree Parties dated September 26, 2007, NYSDEC and the City of New York shall provide the DRBC and the Decree Parties with periodic reports on the status of efforts by New York State to secure the necessary funding and to implement construction of additional storage in the City's Delaware Basin reservoirs.

3. *Evaluation and Revision of the FFMP.*

a. The Commission and Decree Parties may propose modifications to the FFMP based upon periodic evaluation of the scientific basis for its various elements and the effectiveness of the FFMP in achieving the objectives set forth in Section 2.5.3 A., above.

b. Among other things, the Commission, in consultation with the Decree Parties, will consider modifications to the FFMP that may be necessary to avoid taking, harming or adversely affecting Dwarf Wedge Mussels.

I. Temporary Suspension or Modification in Case of Emergency.

1. *Emergency Order by Executive Director.* If the Executive Director after consultation with the Decree Parties and with their unanimous consent finds that customary notice and comment rulemaking by the Commission is impracticable and contrary to the public interest, then the Executive Director shall set forth such finding in an Emergency Order and therein authorize a temporary suspension or modification of these Regulations.

2. *Commission Ratification.* The Commission shall ratify, reject or modify the Emergency Order at the next public meeting of the Commission, subject to the unanimous consent of the Decree Parties. In such circumstances, public notice shall be provided, consisting at a minimum of publication of the Emergency Order on the Commission's website, along with the date, time and location of the Commission's next scheduled hearing, procedures for submitting written comments, and the name and telephone number of a Commission contact person.

3. *Permanent Change.* In the event that a suspension or modification of provisions of this Section 2.5.3 by Emergency Order is proposed to remain in effect permanently, ratification by the Commission shall be temporary, pending completion of a notice and comment rulemaking in accordance with Section 2.5.3 I.2. above.

J. Effective Date; Expiration

1. This Section 2.5.3 and amendments to Sections 2.5.4 through 2.5.6 of the Water Code required to implement the FFMP consistent with this section shall take effect upon completion of DRBC rule-making in accordance with the requirements of the Delaware River Basin Compact and the Commission's customary practice, subject to the unanimous consent of the Decree Parties.

2. The Water Code amendments constituting the FFMP shall expire on May 31, 2011, unless the Agreement of the Decree Parties dated September 26, 2007 is extended by the Parties prior to that date. In the event of expiration, the language of Section 2.5.3 of the Water Code in effect on the date preceding the effective date of these amendments shall be restored, as shall the language of all other sections to the extent they were amended simultaneously and for consistency with Section 2.5.3 in establishing the FFMP. The New York City Delaware Basin reservoirs shall then be operated in accordance with the (restored) Water Code and Docket D-77-20 CP (Revised). A discharge mitigation plan and an amelioration program for the potential effects of the Lake Wallenpaupack drought operating plan will be considered.

3. Unless and until the FFMP expires, Docket D-77-20 CP (Revised) issued on November 30, 1983, shall be suspended. All other revisions to Docket D-77-20 CP have previously been terminated or superseded or have expired in accordance with the provisions of these revisions.

2.5.4 [Drought Emergency Actions] Drought Emergency Declaration (Resolution No. 83-13).

[A. Criteria Defining Conditions (Resolution No. 83-13). For purposes of water management pursuant to Section 3.3 and Article 10 of the Compact, the determination of drought warning and drought conditions shall be based upon the combined storage in the Cannonsville, Pepacton and Neversink Reservoirs, in accordance with Figure 1, entitled "Operation Curves for Cannonsville, Pepacton and Neversink Reservoirs". The division of the drought-warning zone into upper and lower halves shall be defined as a physically equal division, or 20 billions of gallons in each zone. B.] It is the policy of the Commission that a basinwide . . . drought emergency zone as defined in Figure 1 of Section 2.5.3 for five consecutive days. Termination of a declared drought emergency . . . the drought watch[rning] line . . . days. The . . . drought watch[rning] line . . .

§ 2.5.5 Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought (Resolution No. 84-7, as amended by Resolution No. 2002-33).

* * * * *

During basinwide "drought emergency" [conditions] operations as . . . and Mongaup [hydroelectric] reservoirs [,] will be utilized . . . The priority of . . . in Table 1 below. Lake Wallenpaupack also . . . during "drought watch" and "drought warning" . . . in Section 2.5.3 F [A].

TABLE 1. PRIORITY OF USE FOR EXISTING LOWER BASIN RESERVOIRS DURING BASINWIDE DROUGHT EMERGENCY

* * * * *

Lake Wallenpaupack . . . reservoirs [would] will be called . . . releases [would have to be] are directed by the River Master to meet the Montague flow objective. [These] Such releases . . . at Trenton. During basinwide "drought watch," [and] "drought warning" and "drought emergency" operations, as . . . Section 2.5.3 [.A]. of the Water Code, releases . . . with Commission direction. The Lake Wallenpaupack elevation schedules during basinwide normal, drought watch, drought warning, and drought emergency [conditions] operations are set forth in Table 2.

* * * * *

- 1. Utilization of Lake Wallenpaupack during basinwide drought watch and . . .
2. During basinwide drought watch, warning and [drought] emergency operations, Lake Wallenpaupack . . . targets that may be in effect in the . . .
3. During basinwide drought emergency operations, . . . Table 2 for the approaching month.

* * * * *

- 5. Subject to the concurrence . . . for "normal operations [conditions]" shown in Table 2.

TABLE 2. LAKE WALLENPAUPACK ELEVATION SCHEDULES

Table with 4 columns: Day, Normal [Conditions] Operations**, Drought [Warning] Watch [[] and Warning [Watch]], Drought Emergency. Rows for June 1 and July 1.

[Full table is not shown.]

* * * * *

** Lake elevation may be lowered under normal operations in accordance with a discharge mitigation plan approved by the Decree Parties and the Commission for the purposes of reducing the likelihood that uncontrolled spills will occur during flood events and if they should occur, reducing their magnitude.

* * * * *

Temporary storage in Prompton reservoir [would] will be used if available to . . . lower Basin . . . releases [could] also may be used [for] to meet the [a] Montague objective if [there was] a critical need arises to . . . and Blue Marsh reservoirs [was] is above 70% of capacity.

* * * * *

Water [could] may be stored temporarily in flood control storage upon a request by the [issuance of] Commission [requests] for storage and releases [after] following issuance of a Conservation Order by the Commission.

* * * * *

If releases to . . . when releases are *not* required for the Trenton . . . Montague requirement [would] may be adjusted . . . reservoirs. [In so doing, t] The storage saved in . . . drought persist. [or be available, i] If on the other hand, conditions should improve, the stored water would contribute to an earlier return to [a] normal operation [condition at an earlier date, at which time restrictions could be lifted].

* * * * *

When only conservation releases are being made . . . modified [according] in accordance with [to] Table 4 below, beginning with basinwide "drought [warning] watch" conditions, as defined by Figure 1 in Section 2.5.3[A]. If Docket D-77-20 CP (Revised) or a subsequent revision of that docket is in effect, then [Drought] conservation releases will [terminate and] return to normal at the same time as augmented conservation releases are restored at the New York City Delaware reservoirs. If the Tailwaters Habitat Protection and Discharge Mitigation Program (TailPro) is in effect, then conservation releases will return to normal at the same time as TailPro releases are restored to L2 levels or above. Conservation releases for the reservoirs listed in Table 4 also will be modified in accordance with the lower basin drought operating criteria set forth in Section 2.5.6.

* * * * *

Operation of the lower Basin reservoirs [for drought management] in accordance with Table 1 of this section will continue until termination of [the] a drought emergency declaration by the Commission.

§ 2.5.6 Coordinated Operation of Reservoirs During [a] Lower Basin Normal, Drought Warning and Drought Emergency (Resolution No. 88-22 Revised, as Amended by Resolution No. 2002-33).

A. Banking and Use of Excess Release Quantity: New York City Reservoirs (Resolution No. 88-22 Revised). Prior to June 15 of [each] any year in which the Interim Excess Release Quantity established by Section 2.5.3 E.2. of these Regulations is *not* in effect, . . . and the Delaware River Master [will] shall review existing conditions The "excess release bank" shall be used[,] during that water year[,] to provide [lower basin "drought" assistance] releases to the . . . or 3,000 cfs. Such [lower basin "drought" assistance] releases shall be . . . Basin Commission[,] and directed by the Delaware River Master, and subject to the condition that [. The lower basin "drought" assistance releases shall be made provided that] the total combined storage . . . exceeds the basinwide "drought watch [warning]" criteria . . . Section 2.5.3. The total lower basin releases . . . water operations year [under the provision of] in accordance with this [section] Section 2.5.6 A. shall not exceed . . . Delaware [River] Basin reservoirs are made that would have been be credited

B. Operations During Lower Basin "Normal" Conditions (Resolution No. 88-22 Revised). When basinwide conditions are "normal" and lower basin conditions are "normal"

1. *New Jersey Diversion.* Diversions by the State of New Jersey during lower basin "normal" [periods] operating conditions[,] shall be as set forth in Section 2.5.3 C. of these Regulations. [computed as provided in Section V.B. of the amended Decree of the U.S. Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954) and its total diversion without compensating releases shall not exceed 100 million gallons per day (mgd) as a monthly average, with the diversion on any day not to exceed 120 million gallons, and its total diversion without compensating releases shall not exceed an average of 100 mgd during any calendar year.]

2. *Trenton Flow Objective.* In accordance with Section 2.5.3 D.2.a. of these regulations, [T] the minimum basic rate of flow at the U.S.G.S. gaging station at Trenton, New Jersey (or "Trenton Flow Objective") during normal operating conditions [streamflow objective at the U.S.G.S gaging station located at Trenton, NJ,] shall be 3,000 cfs.

3. *Priority of Releases.*

* * * * *

a. Releases from the "excess release bank" in the New York City Delaware Basin reservoirs, if available as provided [under] by Section 2.5.6 A. of [this] these [plan] Regulations, or releases from the Interim Excess Release Quantity (IERQ) established by Section 2.5.3 E.2.

* * * * *

C. *Operations During Lower Basin "Drought Warning" Conditions (Resolution No. 88-22 Revised).* When basinwide conditions are "normal" and

* * * * *

1. *New Jersey Diversion.* The total diversion by the State of New Jersey during lower basin "drought warning" conditions [in the lower basin] shall be computed The total diversion by New Jersey shall not exceed a running average of 85[70] million gallons per day (mgd) with the diversion on any day not to exceed 120 mgd.

* * * * *

2. *Trenton Flow Objective.* During lower basin "drought warning" [periods] conditions, the minimum streamflow objective . . . as set forth in Table 2 of Section 2.5.3, "Interstate Operation Formula for Adjusting Montague and Trenton Flow Objectives During Drought Emergency (L5) Operations" in . . . the Delaware Estuary.

3. *Priority of Releases.*

* * * * *

a. Releases from the New York City Delaware Basin reservoirs, either from the "excess release bank" in accordance with Section 2.5.6 A. or from the IERQ [in the New York City Delaware River Basin Reservoirs, if available, as provided under Section A] in accordance with Section 2.5.3 E.2. if available. Because the "excess release bank" or the IERQ, if in effect, [will] may have been used under lower basin "normal" conditions, [it] either quantity [would] may [only] be available only in the second

* * * * *

c. The Commission may... as [applied] apply to operation during... in accordance with Section 2.5.6 D.3.e. below, except....

* * * * *

D. Operations During Lower Basin "Drought Emergency" Conditions (Resolution No. 88-22 Revised). When basinwide conditions are "normal" and....

* * * * *

1. New Jersey Diversion. The total diversion... drought emergency... running average of 85 [65] mgd, for the continuous period... lower basin "drought emergency," with the diversion on any day not to exceed 120 mgd.

2. Trenton Flow Objective. During lower basin "drought emergency" conditions,....

* * * * *

3. Reservoir Operations[.]

a. If not previously agreed to, ... basin "drought emergency" conditions, ... the Delaware River Basin Commission[,] shall consider... one of the six lower basin "drought emergency" reservoir operations plans set forth in Section 2.5.6 E. below,....

b. The lower basin "drought emergency"....

* * * * *

v. Any water from storage... above basinwide "drought watch[arning]" criteria as set forth....

vi. Any water from storage... above basinwide "drought watch[rning]" criteria... gallons above "drought watch[rning]." Credits will be added to the... as defined in Subsection 2.5.6 D.3.d.ii. below and... Subsection 2.5.6. D.3.d.iii. below.

vii. Up to 30 billion gallons... above basinwide "drought watch[rning]" criteria... set forth in [s]Subsection 2.5.6 D.3.d.

viii. Available storage... in Subsection 2.5.6 D.3.f.

c. The... Commission... [R]reservoirs for future use.

d. New York City Delaware Basin Reservoirs Operations. During a lower basin "drought emergency" condition, ... the basinwide "drought watch[rning]" line... in the lower basin "drought emergency" reservoir operations plan ... as may be [needed] applicable in accordance with Table 1 of Section 2.5.3 to meet the Montague flow objective),... flow objective[s],...

i. Lower basin "drought"... the "drought watch[rning]" criteria set forth in Figure 1 of Section 2.5.3.

ii. The total quantity... above "drought watch[rning]" criteria....

iii. Except as provided in (3) and (4),....

(1) Credits shall... or to reduce the IERQ established by Section 2.5.3 E.2., if in effect.

(2) ... to meet the Montague flow objective[s],....

(3) Should any credits still... as outlined in Subsections 2.5.6 D.3.d.iii.(1) and [D.3.d.iii.](2) immediately above shall be repeated... except as provided in Paragraph 2.5.6. D.3.d.iii.(4), immediately below.

* * * * *

e. Power Reservoir Releases - During lower basin "drought emergency" conditions, ... according to Subsection 2.5.6 D.3.a. through d....

i. Releases from Lake Wallenpaupack... the [following] approaching month [according to] in Table 2 of Section 2.5.5... lake elevation is above the [following] first-of-month "normal elevation" for the approaching month as defined in Table 2....

ii. Releases..., [following] in accordance with an....

* * * * *

f. In selecting the reservoir operations plan....

* * * * *

E. Operations Alternatives for Lower Basin "Drought Emergency" When Basinwide Conditions are "Normal" (Resolution 88-22 Revised). When conditions are "normal" and storage... and storage in the reservoirs remains below these [such] levels, respectively, for three consecutive days, ... condition, in the lower basin and the following [provisions] shall....

1. New Jersey Diversion. The total diversion... lower basin "drought emergency" conditions... of 85 [65] mgd[,] for the... lower basin "drought emergency", with....

2. Trenton Flow Objective. During lower basin "drought emergency" conditions, the minimum basic rate of flow [streamflow objective] at the....

3. Operations Alternatives. The... "drought emergency" operations... "drought emergency"... if the lower basin is in a "drought emergency" condition and... a "drought watch[rning]" condition, ... basinwide "drought emergency" conditions... "drought emergency" operations....

* * * * *

E.3. (continued)

a....

i. Alternative 1

Indications	Operations
.... Basin reservoirs... "drought watch[rning]" line),....	* * *
Under these conditions, ... triggering [a] basinwide "drought emergency" [condition] operations....	2. Make... "drought watch[rning]" without... "drought watch[rning]" with... "drought watch [rning]",....
	* * *

* To be followed... out of [a] drought operations [condition].

* * * * *

*** New York City... the "drought watch[rning]" curve.

* * * * *

**** Use of water... Subsection 2.5.6 D.3.f.

ii. Alternative 2

Indications

Use of Alternative 2 . . . drought watch [rning] and . . . drought watch [rning]). . . above "drought watch [rning]," . . . basin entering "drought watch [rning]," this option . . . "drought watch [rning] [conditions] operations is reduced. . . .

Operations

* * *

* * * * *

*** New York City . . . the "drought watch [rning]" curve. The maximum cumulative amount of these releases is 30 bg.

* * * * *

***** Use of water from Lake Hopatcong . . . Subsection 2.5.3 D.3.f.

* * * * *

E.3.a. . . .

iii. Alternative 3

Indications

This alternative . . . entering the [a] "drought watch [rning]" [condition] level . . . the "drought watch [rning]" line

Operations

* * *

* * * * *

***** Use of water from Lake Hopatcong . . . Subsection 2.5.6 D.3.f.

iv. Alternative 4

Indications

This alternative . . . the "drought watch [rning]" line . . . entering [a] "drought watch [rning]" [condition] operations, thus

Operations

* * *

* * * * *

***** Use of water from Lake Hopatcong . . . Subsection 2.5.6 D.3.f.

* * * * *

v. Alternative 5

Indications

This option . . . above "drought watch [rning]" then . . . entering "drought watch [rning]" later

Operations

* * *

* * * * *

***** Use of water from Lake Hopatcong . . . Subsection 2.5.6 D.3.f.

* * * * *

vi. Alternative 6

Indications

Operations

* * * * *

* * * * *

***** Use of water from Lake Hopatcong . . . Subsection 2.5.6 D.3.f.

* * * * *

4. Reduction of Conservation Releases. In order to conserve storage, . . . duration of [a] lower basin "drought" [condition] operations.

5. Conservation Measures. Upon the declaration by the Commission of a lower

* * * * *

6. Ending "Drought Emergency."

F. Operations During Basinwide Drought Watch, Drought Warning, or Drought Emergency Following Lower Basin Drought Warning or Drought (Resolution 88-22 Revised).

1. Selection of Alternate Plans. If, following the . . . basinwide "drought watch", "drought warning", or "drought emergency" [conditions] operations

* * * * *

2. Combined Drought Operations Plan 1

* * * * *

b. The operation of . . . the [operating] plan for basinwide "drought emergency" [conditions] operations. . . .

c. So long as lower basin "drought warning" or lower basin "drought" [conditions] operations [prevail] are in effect simultaneously with basinwide "drought watch", "drought warning" and "drought emergency" [conditions] operations, the maximum permit [lesser] lower New Jersey diversions and lower Trenton Flow Objectives.

3. Combined Drought Operations Plan 2

a. If during the period May 1 to November 30, [the combined storage in] the New York City Delaware [River] Basin [R]reservoirs [is] are in [the] "drought watch" [n the upper half of the "drought warning" condition] operations as [identified] defined by [in] Figure 1 of . . . New York City Delaware [River] Basin [R]reservoirs, and the streamflow objectives . . . for [lower half] the "drought warning" [zone] level in . . . Delaware [River] Basin reservoirs subsequently [enters] triggers [the lower half of the] "drought warning" [condition] operations [identified] in accordance with Figure 1

b. If during the period . . . the "drought watch" or "drought warning" . . . applicable "drought watch" and "drought warning" [upper and lower half conditions] operations set Any subsequent . . . "drought emergency" [conditions] operations shall be governed

c. So long as . . . "drought emergency" conditions prevail simultaneously with a basinwide "drought watch" or "drought warning" condition,

d. In the event that [**following the triggering of a**] lower basin “drought warning” or lower basin “drought **emergency** [,]” operations have been triggered and [,the] combined storage in the New York City Delaware [**River**] Basin Reservoirs [**is in the**] reaches the “drought **emergency**” level[**s**] identified in F.3.a. [**and**] or b., whichever [**The operation of all basin reservoirs shall be as prescribed in the plans for basinwide d**] Drought **emergency** [**reservoir**] operations **shall be in effect for all basin reservoirs.**

e. The operation of Lake Wallenpaupack . . . “drought **emergency**” conditions. . . .

PAMELA M. BUSH,
Secretary

Fiscal Note: 68-51. 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 (2007) and the Water Code and Water Quality Standards as set forth in 18 Part 410 (2007) are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 07-2404. Filed for public inspection December 28, 2007, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 3, 5, 7 AND 13]

Licenses; Promotion

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (code) (47 P. S. § 2-207(i)), proposes to amend Chapters 3, 5, 7 and 13.

Purpose

The Board has reviewed its regulations and determined that these proposed revisions to Chapters 3, 5, 7 and 13 are necessary to conform to changes in the code (47 P. S. §§ 1-101—10-1001), update obsolete regulations and implement new procedures to improve service to the public.

Summary of the Proposed Amendments

The proposed rulemaking concerns the “Points System,” the enabling legislation for which has expired. Other proposed changes permit the Board to conduct tasting events in its stores. Finally, obsolete and repetitive regulations are updated and consolidated.

- The proposed rulemaking rescinds regulations concerning the “Points System.”
- It consolidates two separate regulations about the appointment of managers for licensed establishments.
- It corrects a regulation relating to license transfers upon death of a licensee.
- It amends regulations on the safekeeping of licenses to parallel recent changes in the code.

- It permits the Board to conduct tasting events in its stores.

Affected Parties:

The proposed rulemaking will affect licensees and customers of the Board’s wine and spirits stores.

Paperwork Requirements:

The proposed rulemaking will not significantly increase paperwork for the agency or the regulated community.

Fiscal Impact:

No fiscal impact is expected.

Effective Date

This proposed rulemaking will become effective upon its publication in final-form in the *Pennsylvania Bulletin*.

Public Comment/Contact Person:

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed amendments in the *Pennsylvania Bulletin*. Comments should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 6, 2007, the agency submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the agency, the General Assembly and the Governor of comments, recommendations or objections raised prior to final-form publication of the regulation.

PATRICK J. STAPLETON, III,
Chairperson

Fiscal Note: 54-64. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

CHAPTER 3. LICENSE APPLICATIONS

Subchapter L. [**POINT SYSTEM FOR CERTAIN LICENSEES**] (Reserved)

§ 3.121. [**Statutory authority and applicability**] (Reserved).

§ 3.122. [**Points assessment**] (Reserved).

(Editor’s Note: As part of this proposed rulemaking, the Board is proposing to rescind the regulations which appear in 40 Pa. Code pages 3-23—3-25, serial pages (312235)—(312237).)

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. [EMPLOYES] EMPLOYEES OF LICENSEES

EMPLOYMENT OF MINORS

§ 5.16. [Appointment of managers] (Reserved).

[(a) The operation of a licensed business requires the full time and attention of a manager. A licensee holding one or more licenses shall appoint an individual as manager for each licensed establishment and the manager shall devote full time and attention to the licensed business. If the licensee is an individual, he may designate himself as manager of one licensed establishment, except in the case of distributors or importing distributors. If a license is held by more than one individual, the manager may be one of the individuals or another person the licensee may designate, except in the case of distributors and importing distributors.]

(b) The manager appointed by a licensee shall be a reputable person. The licensee shall notify the Board in writing of the name and home address of the manager and the date and place of birth. If there is a change of manager, the licensee shall give the Board written notice within 15 days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by a fee of \$60.

(c) When a background investigation shall be conducted to obtain or verify information regarding an individual appointed as manager, an additional fee of \$75, for a total fee of \$135, will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the individual has been disapproved by the Board. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board.

(d) A club manager or steward may be engaged in employment outside his duties as manager or steward except as provided in section 493(11) of the Liquor Code (47 P. S. § 4-493(11)).]

EMPLOYMENT OF OTHERS

§ 5.23. Appointment of managers.

* * * * *

(b) An individual licensee holding multiple licenses may designate himself as manager of only one licensed establishment. If a license is held by more than one individual, the manager may be one of the individuals or another person the licensee may designate.

(c) The manager appointed by a licensee shall be a reputable person. The licensee shall notify the Board in writing of the name and home address of the manager and the date and place of birth. If there is a change of manager, the licensee shall give the Board written notice within 15 days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by the appropriate fee.

(d) When a background investigation is conducted to obtain or verify information regarding an individual appointed as manager, a total fee of \$135 will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the individual has been disapproved by the Board. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior written approval is obtained from the Board. If the designated manager is currently a Board-approved officer, member, partner or shareholder of that licensee, a fee of \$60 will be assessed.

(e) Appointment or approval, or both, by the Board of a manager will not exempt the licensee from the penalties provided by law and this title for violations committed in the licensed establishment or in the course of the operation of the licensed business.

[(c)] (f) The Board may rescind the approval of an appointment of a manager at any time for any cause which it deems sufficient.

[(d)] (g) In the event of the illness or extended vacation of a licensee, the Board may approve the appointment of a manager for a period not to exceed 30 days. In case of emergency, the approval may be extended upon written request of the licensee.

[(e)] (h) The licensee, without Board approval, may designate one of its [employees] employees as the person in charge of the business for a period of time not to exceed 15 calendar days, when the manager is absent from the licensed premises.

[(f) The manager appointed by a licensee shall be a reputable person. The licensee shall submit an application for appointment of a manager to the Board. If the licensee is a club or catering club, notice of the change in manager shall be part of licensee's application for license validation or renewal. For other licensees, if there is a change of manager, the licensee shall give the Board written notice within 15 calendar days of the change together with full information for the new individual who is appointed as manager. Each notice of the appointment of a manager or notice of a change of manager shall be accompanied by a fee of \$60.

(g) When a background investigation is conducted to obtain or verify information regarding an individual appointed as manager, an additional fee of \$75 for a total fee of \$135 will be assessed. An individual may not act in the capacity of manager after the licensee has been notified that the Board has disapproved the individual. The designated manager shall devote full time to the licensed business and may not be employed or engaged in another business unless prior approval is obtained from the Board.

(h)] (i) A club manager or steward may engage in employment outside his duties as manager or steward except as provided in section 493(11) of the Liquor Code (47 P. S. § 4-493(11)).

[(i)] (j) If approved by the Board, management contracts may permit the manager for the licensed premises to be employed by the management company; however, licensee shall have unfettered discretion in all aspects of management of the licensed business, including the employment of the manager and sales of food, alcoholic and

nonalcoholic beverages. Licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager is an agent of the licensee. (Editor's Note: This subsection is being published as it had been presented in the proposed regulations at 37 Pa.B. 3418, 3420 (July 21, 2007). The text has not been finally adopted by the Board.)

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER AND EXCHANGE OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.5. Transfers on death of the licensee.

On the death of the licensee, the license may be transferred immediately to the surviving spouse or to the [administrator or executor of the estate of the licensee,] decedent's estate upon presentation of the transfer form, application, filing fee, and short form certificate from the registrar of wills. If it is desired to transfer the license to a person designated by and acting for the administrator or executor, the transfer application and fee, with written evidence of the designation, shall be submitted by the administrator or executor. The Board [will] shall be notified in writing within 30 days of the death of a licensee.

Subchapter C. SURRENDER OF LICENSES

§ 7.31. Surrender of licenses in certain cases.

* * * * *

(d) A license surrendered to the Board, or a renewal thereof in possession of the Board, will not be held for the benefit of the licensee for a period exceeding 3 years from the date of surrender, [except as provided in section 474 of the Liquor Code (47 P.S. § 4-474)] or with regard to club licenses, for a period exceeding 2 years from the date of surrender, except as set forth in this section. Unless an application for transfer or request for reissue of the license from safekeeping is pending, failure of the licensee to reactivate the license and resume operation of the licensed business or to effect a transfer of the license within the 3-year or 2-year period shall result in revocation of the license. The Board will extend the period for an additional year if, at the end of the 3-year period, the licensed premises are unavailable due to fire, flood or other similar natural disaster. The safekeeping period for licenses other than club licenses may also be extended by the Board for successive 1 year periods upon a licensee's written request and payment of the fee, as provided in section 474.1 of the Liquor Code (47 P.S. § 4-474.1), unless the license or licensee no longer meets the requirements of the Liquor Code or this title.

* * * * *

§ 7.32. Surrender of licenses for cancellation or transfer.

* * * * *

(b) A retail licensee will not be granted a new retail license to cover an establishment for which he already holds a retail license of a different type. [Where] When an application for a new retail license of a different type is approved, the license then in effect in the name of the applicant for that establishment shall be surrendered to the Board for [cancellation prior to issuance of the new license] safekeeping.

(c) Except as provided by section 461(f) of the Liquor Code (47 P.S. § 4-461(f)), when an application for transfer of a retail license of a different type to premises already licensed is approved, the license then in effect in the name of the applicant for that establishment shall be surrendered to the Board before the issuance of the transferred license in the name of the applicant. In this case, the license surrendered to the Board, or a renewal thereof in possession of the Board, will be held available for the benefit of the licensee solely for transfer for up to [2] 3 years from the date of surrender. When a transfer is not effected within the [2] 3-year period, the license will automatically be cancelled with no refund of the license fee, or a portion thereof, unless the safekeeping period has been extended as set forth in section 474.1 of the Liquor Code (47 P.S. § 4-474.1). A transfer application pending at the expiration of the [2] 3-year period may be processed to conclusion.

CHAPTER 13. PROMOTION

Subchapter D. TASTING EVENTS

IN-STORE TASTING EVENTS

§ 13.221. General requirements.

* * * * *

(d) The Board may conduct its own in-store tasting event with or without the participation of a sponsor.

§ 13.227. Participation by Board employees.

(a) Board employees may [not] pour, dispense or serve tastings to the public. [Board employees may not encourage consumer participation in the event].

* * * * *

[Pa.B. Doc. No. 07-2405. Filed for public inspection December 28, 2007, 9:00 a.m.]