

Proposed Interim Fishery Plan (Docket 77-20CP (Revision 7))
Proposal by the New York State Department of Environmental Conservation
DRBC/Decree Party Response to Comments During Public Hearing and Comment Period ending March 19, 2004

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4/16/04

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Comment ID	Comment	Response
	General Support or Non-Support for the Plan	
2, 3, 6, 7, 11, 13, 18	The interim plan is a positive first step in arriving at a permanent fishery program.	The Decree Parties believe that the interim plan is a positive step towards a long term program.
6, 13, 18	The current interim proposal does not represent the long term solution to flow management and would not be supported as such	The Decree Parties plan to begin study of long term alternatives upon approval of this interim plan, and to incorporate the findings of studies coordinated by the Subcommittee on Ecological Flows, the Fishery Monitoring Plan required by this proposal, and other studies in arriving at a long term plan.
4, 5, 7, 8, 12	The interim plan is not supported and will harm the fishery unless flaws are corrected.	The Decree Parties are not aware of any scientific evidence which demonstrates that the interim plan will harm the fishery. It has been proposed by the NYSDEC as a temporary plan to improve the fishery.
8	This proposal will cause problems with erratic flows and lack of temperature control under the existing program to become even worse.	The interim plan establishes minimum flow targets in the tailwaters to provide some additional protection during periods when minimal or no releases are required to meet the Montague flow target. The plan includes the flexibility to use more water for thermal protection than the existing 9200 cfs-day thermal bank if necessary. The plan makes water available for thermal releases during drought. This was not previously available.
8, 12	The plan will discourage fishing and damage the local economy.	The intent of the interim plan is to provide improved fishery protection during the most critical conditions and to significantly improve the fishery in the East Branch and the Neversink.
14	Please consider the health and sustainability of the river, not just mere recreational values and financial impact on the area supported by fishermen, but primarily as a legacy to the future of our environment and our heirs.	The Decree Parties consider sustainability to be a top priority given the many uses for the limited storage in the upper Delaware Basin. Sustainability of water supplies for multiple purposes will be the key issue examined by the Decree Parties in developing a long term fishery program.
	Administration of the Interim Plan	
1	The draft document does not identify the agency that will do the administration and management of the release program.	The administration of the program will be conducted by the NYSDEC and NYCDEP and coordinated with the Delaware River Master. During drought watch, warning, and drought operations, the DRBC will direct releases from Lake Wallenpaupack in coordination with the Delaware River Master and PPL.
11, 18	It is hoped that NYSDEC staff will be adequate both during weekdays and weekends to monitor water conditions and direct HPB releases when they are most needed. Guidelines for bank use should be available.	The NYCDEP Grahamsville operations center is staffed 24 hours a day, seven days per week. The staff is available on weekends to make changes in releases if requested to do so by the NYSDEC, and NYSDEC has made such requests in the past. Guidelines for bank use have been established and all release actions and bank debiting and crediting are recorded. A meeting between the NYSDEC, NYCDEP, Office of the Delaware River Master, and DRBC was held on March 24, 2004 to discuss and confirm the procedures.

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13	Better implementation of releases to meet the target in the winter when gages are frozen is needed.	A procedure is now used which estimates flow using a drainage area prorating method based on observed inflow to the NYC reservoirs. This permits flow estimates when gages are ice affected.
13	Because the proposal will result in lower West Branch releases in the summer months (above the 225 minimum) it is critical that the thermal bank be used more aggressively and effectively during these periods than in the past.	The NYSDEC, NYCDEP, and Delaware River Master will continue to coordinate procedures for releases and bank debiting and crediting in accordance with the interim plan.
Document Clarity		
1, 9	Column headings are missing from the table on page 7.	This table has been eliminated.
1	There are two locations for a Delaware signature.	Two signatures from the State of Delaware are required, one from the DNREC and one from the Delaware Geological Survey representing the Governor as Party to the 1954 Supreme Court Decree.
2	What does “in-effect” mean relative to the PPL plan references in provisions 3 A, 3 L 5, and 3 L 6?	Relative to the PPL drought operating plan, “in-effect” means that the minimum operating levels approved by Resolution 2002-33 are available to be implemented by the DRBC and PPL. This condition will exist with the approval of the Interim Fishery Plan. “Not in-effect” means that the approval given by Resolution 2002-33 for the use of those minimum elevations has been rescinded by the DRBC.
Threshold Table and Flexibility		
1, 2, 11, 13, 17, 18, 20	Paragraph 3.I – This limitation may be better located at the end of paragraph 3. Provision 3.I is too limiting and rules out short term, stop gap agreements that have avoided fish kills in the past.	While short term banking agreements which have resulted in no net loss of storage have been employed in the past, this proposal has been designed with flexibility in order to eliminate such short term, stop gap agreements.
2, 6, 13, 16, 18	Provision 3J should be eliminated. (Thresholds)	This provision has been eliminated from the proposed plan.
3	There should be provisions to adjust the fishery release program and the PPL plan as new, credible scientific data becomes available.	With the unanimous consent of the decree parties, operations may be changed in response to better scientific information. The DRBC created the Subcommittee on Ecological Flows to help develop such information.
Adequacy of Habitat and Thermal Banks		
2, 20	The Plan should create a single 20,000 cfs-day habitat bank and allow it to be used without restriction as to temperature and flow.	This is in fact how the proposal was modeled. Specific components of the bank continue to be labeled due to the need to identify the party or parties whose water rights are represented by those components. For example, the Excess Release Quantity represents a water right of the portion of the Delaware River Basin downstream of Montague, NJ.
11, 13	The 20,000 cfs-day bank is still insufficient to accomplish the habitat and thermal protection it is intended to in the system.	It is acknowledged that a larger bank would be required to meet all protection criteria during all years.
8	The proposed habitat and thermal banks are inadequate to maintain the requirements that were accidentally met during the last 30 years.	The purpose of the interim plan is to improve the ability to protect the fishery during the most critical periods. For example, the ability to make thermal releases during drought operations did not previously exist.

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8	The proposal and the information presented at the hearing gives the erroneous impression that there is enough water to sustain the existing trout fishery and that the plan would improve the fishery.	Based on the findings of NYSDEC Report 83-5, the Decree Parties and the DRBC believe that the proposed program will improve the East Branch and Neversink fisheries, and will increase the water available to protect the West Branch and Upper Main Stem fishery during critical conditions. It is acknowledged that there is insufficient storage to maintain protection under all conditions.
18	In the future, available habitat bank should also vary with probability of refill of NYC reservoirs.	Habitat bank availability based on probability is not part of the current proposal, but could be considered in the future.
	Amelioration Bank	
6, 9, 13, 11, 18	The 3000 cfs-day Amelioration bank should be used unconditionally for managing flows on the West Branch during August and September and should be available every year, even in normal operations.	The NYSDEC believes that the best way to use the Amelioration Bank is to make it available during drought conditions for use on any of the tailwater reaches. In this way, the bank can be used where it is most needed for either thermal or habitat protection. The Amelioration Bank is designed to address impacts from PPL's revised drought operating plan, which does not affect normal operations. Because the Amelioration Bank is associated with the PPL drought operating plan, it is only available during times when the PPL plan is actually in operation, i.e. drought watch, drought warning, and drought.
18	Limiting the use of the Amelioration Bank to 1000 cfs during drought watch and warning is too restrictive. There may be cases when more flexibility is needed.	The portion of the Amelioration Bank available during drought watch and warning has been increased to 2000 cfs-days. The remaining quantity of 1000 cfs-days has been reserved for use during drought emergencies.
6	DRBC should explain the types of hydrological conditions that will tend to produce Hale Eddy flows at the lower end of the flow duration curve.	These conditions would most likely occur during drought conditions when banks are reduced or suspended, and directed releases for Montague are small or not required. The conditions would also occur during normal conditions when rainfall or hydropower generation is over-forecast.
6	DRBC should model the possibility of requiring minimum releases of 160, 200, 300, and 400 cubic feet per second (at Hale Eddy) to see under what conditions the Amelioration Bank would be sufficient for such releases.	Modeling was done for minimum target rates at Hale Eddy of 300, 400, and 500 cfs and the results were included in the presentation at the March 2 public hearing and are available on the DRBC web site. The results indicate that the Amelioration Bank would be sufficient to meet a target at Hale Eddy of 300 cfs for the period June – September during about 75 % of the years. This is assuming that the Bank was directed only at the West Branch during the summer period. The proposal does not exclusively reserve the Amelioration Bank for use on the West Branch in order to maintain flexibility.

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	Criterion for Resuming Normal Fishery Releases	
2,3,9,11, 13, 18	The criterion for returning to normal fishery program flow targets should be the same as that for resuming normal diversions (15 bg for 5 days and not 25 bg for 15 days).	The existing criteria are consistent with the DRBC Water Code, Section 2.5.2, which establishes priorities for water use during drought emergencies. That policy establishes water supply for human life, health, and safety as the first priority in allocating waters of the basin. This interim proposal does make water available for thermal and habitat protection during drought emergency. Such water has not been previously available
18	When would flow targeting be restored if NYC reservoir capacity drops below 25%?	The interim plan has been modified to include the provision that tailwater flow targeting will be restored when total storage in the three NYC Delaware Basin reservoirs recovers to 5 billion gallons above the drought watch line for one day.
	Adequacy of Minimum Releases and Targets	
2	A minimum release should be guaranteed when flows drop below some minimum level, such as 160 cfs at Cannonsville, if flows at Hale Eddy drop below 400 cfs, or if there is risk of high water temperature.	The use of a higher guaranteed minimum release would use storage more quickly and potentially increase the rate of bank depletion, leaving less water available for thermal or habitat protection during critical conditions.
11, 18	Habitat targets should be lowered on the East Branch and Neversink during August so that the target on the West Branch could be increased. Alternately, a minimum release of 160 cfs during the month of August could be put in place instead of a flow target.	The NYSDEC has discussed this option and does not favor reducing the East Branch and Neversink targets recommended in NYSDEC Report 83-5. To have any significant biological value, habitat flows must be consistently maintained. Reducing the low flow protection for the Neversink and East Branch during the month of August would almost surely negate any benefits that may have been gained during the other eleven months. The use of a minimum release of 160 cfs would eliminate crediting for the Cannonsville release and may result in less available bank when it may be most needed.
4, 8	The means of providing for fishery needs is not “flows” and “flow targets”, but providing cold water releases which cost no more and require no more water than presently provided and assuring high quality to sustain a good fishery. The proposed fishery plan relies on inaccurate and unsubstantiated assumptions.	NYSDEC Staff Report 83-5, which is the basis for much of the interim proposal, provides findings which illustrate that providing for coldwater fishery needs is a combination of both coldwater releases for water temperature control and flow targets to provide sufficient wetted habitat for trout. The interim proposal attempts to provide for both.
5	A target of 225 cfs at Hale Eddy will ensure warm water by the time the water reaches Hancock. The flow targets below the three reservoirs will allow cutbacks in releases and allow temperatures to increase due to warm water runoff.	The interim plan provides for thermal releases during times when the flow targets and the directed release for Montague are insufficient to provide thermal protection.

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5	The plan will require additional water to be released for thermal control than under the existing plan, due to lower minimum releases when the flow targets are met by runoff.	The interim plan will credit the Habitat Protection Bank in cases where the amount of water released is less than that which would be released under the existing fisheries program. The plan is flexible to allow for this credited water to be used for thermal protection if necessary.
5, 8, 15, 10	The minimum release from Cannonsville Reservoir during May 15 to September 15 should be 600 cfs and 300 cfs the rest of the year. Similar optimum releases should be established for Pepacton and Neversink releases.	Modeling of the interim proposal has shown that significant additional increases in the Habitat Protection Bank would be needed to meet such a requirement, which would result in releasing more water than necessary for the Montague flow target on frequent occasions. Such a reallocation of storage and the associated increase in drought operations are not acceptable to the Decree Parties in the absence of any scientific study which demonstrates that such minimum releases are necessary to sustain the fishery.
7	Cannonsville releases should average 600 cfs with a range of 400 to 800 cfs. The 225 cfs target is inadequate.	
12	The proposed flows (West Branch) are not even equal to the historic average at Hale Eddy since 1912.	Protection against extremely low flows is sought for the West Branch. Both the existing fishery program and the proposed plan offer more protection against flows below 225 cfs than previously available. It is acknowledged that average flows on the West Branch will be 50 to 100 cfs less under the proposal during the late summer and fall months.
8	Erratic and unnecessarily low summer flows, not low winter flows, are the most limiting to trout populations.	It is true that the ability to provide thermal relief is critical in the summer months. The purpose of the proposed winter minimum flows is to protect physical habitat.
8	Proposed increased flows in the East Branch and the Neversink will have little or no direct impact on the West Branch/Main stem fishery.	This is correct. The proposal attempts to achieve improved conditions on the East Branch and Neversink while improving the critical conditions on the West Branch and upper main stem.
10	Data from June and July of 2002 shows that water temperatures at Callicoon varied between 75 and 85 degrees F. These temperatures threaten wild trout and the supporting ecosystem and resulted from flows in excess of the NYSDEC proposed minimum of 225 cfs at Hale Eddy and within the PPL target flows between 600 and 900 cfs at Callicoon.	The existing thermal bank of 9200 cfs-days is not adequate to maintain the 75 degree maximum temperature criterion to Callicoon. The purpose of the proposal is to provide increased flexibility in the banking system to improve temperature control. It is acknowledged that the banks are not sufficient to control temperature to 75F maximum and 72F as a daily average at Callicoon.
10	During the 25-year period from 1976 to 2001, there were only 238 days, when flows were equal to or less than 225 cfs. 97 of those days occurred during 1981 and 1985 when there were two recorded fish kills. The proposal puts into place the necessary low flows that will cause fish kills. Either moving the location of the temperature trigger to Callicoon, or lowering the temperature trigger at Hankins by 10 degrees F would ameliorate this problem.	The proposal does not put in place a fixed flow at Hale Eddy of 225 cfs. Large coldwater releases will still be made from Cannonsville reservoir. The increased size of the Habitat Bank and greater flexibility in the use of the bank for thermal releases offer a means of improving thermal control. Insufficient storage is available to maintain the existing temperature criteria at Callicoon.

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10	Only releases from the West Branch reservoir have the potential to add cold water to the Upper Delaware. Even if all of the water in the banks were released to the West Branch, the needs of the ecosystem would not be addressed. While the two OASIS runs presented by the DRBC show a median average flow of 1200 cfs at Callicoon in August, PPL's relicensing proposal shows an average flow of 600 to 900 cfs at Callicoon. The 300 to 600 cfs difference will exhaust the banks within 33 days.	The OASIS runs presented by the DRBC at the March 2 public hearing represent the best available representation of the existing fishery plan without the new PPL drought plan in effect (existing) and the proposed fishery plan with the new PPL plan in effect (proposed). The difference in the median Callicoon flow for the two runs is approximately 100 cfs on the August flow duration curve. The comparison shows that the median August flow under the proposal would drop from 1080 cfs to 980 cfs – a drop of approximately nine percent.
10	There is no reason to alter the release regimen from the average of 650 cfs from Cannonsville during the past 25 years because it has created a significant wild trout fishery and spawned locally significant business activity, and harm is the likely result of the change. Doing so will consume a relatively small quantity of water (17% of the volume of Cannonsville assuming no rain falls in the watershed during July and August).	While the flow regime during the past 25 years may have averaged 650 cfs at Hale Eddy, the flow regime has been subject to severe reductions in flows when Montague releases are not required or when operations are in watch, warning or drought. This plan is aimed at providing relief for these critical conditions while significantly improving the flow regime of the East Branch and Neversink.
16	It makes sense to increase the minimum release at Cannonsville to 60 cfs (from 45 cfs) over the summer. This provides a small amount of thermal protection and gives more habitat to the uppermost portion of the West Branch tailwater.	The proposal has been revised to increase the minimum release from Cannonsville Reservoir from 45 cfs to 60 cfs during the period June 1 through August 31. This change will reduce available credits to the habitat bank by up to 15 cfs-days for each day during this three month period.
19	In Table 2, the conservation release from Cannonsville should be increased to at least 100 cfs during normal hydrologic conditions and adjusted proportionately downward during other conditions. In Table 1, the Hale Eddy target should be increased to 300 cfs during normal hydrologic conditions and adjusted proportionately downward during other conditions. These adjustments would ensure additional protection of the West Branch riffle habitat, particularly in the 4.0+ mile segment between Cannonsville Reservoir and Oquaga Creek near Deposit.	The NYSDEC has revised the proposal to include a 60 cfs minimum release from Cannonsville Reservoir during the period from June 1 through August 31. OASIS modeling of the 300 cfs target during normal conditions resulted in increased drought frequency (reduced basin operations) and reduced diversion capability to NYC and New Jersey. The Subcommittee on Ecological Flows (SEF) is assisting in a study by the U.S. Geological Survey to further assess flow vs. habitat relationships in the tailwater reaches and upper main stem. The study is intended to build from and update the work presented in NYSDEC report 83-5.
	Water Temperature	
7	In paragraph 3A, maximum temperature should be 70 degrees rather than 75 degrees F. Language should be added such that temperatures never are allowed to exceed 70 degrees F. from Cannonsville Dam downstream to Lordville.	Available storage is insufficient to control the existing temperature criteria of 72 degrees F average and 75 degrees F maximum all the way to Hankins. In fact, practice has shown that control can only be achieved to Lordville, and during some cases, only to Hancock. Accordingly, control to 70 degrees is not possible. The purpose of this proposal is to provide flexibility needed to increase thermal protection, but storage necessary to control to existing temperature standards to Callicoon is not available.

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7	Temperature gages below Kellam's Bridge and on the East Branch above the confluence of the Beaverkill are placed at locations that do not provide representative measurements and should be either moved or supplemental gages added.	The temperatures obtained by the USGS gage at Kellams have been evaluated several times, and no evidence has been obtained that indicates a systematic bias in the gage. The NYSDEC is not aware of any evidence presented that the Harvard gage is inaccurate.
Ramping		
2, 6, 9, 7, 11, 13, 18, 8, 20	A ramping protocol should be included in the interim plan. They should approximate natural rising and falling limbs of the hydrograph.	The NYCDEP and NYSDEC have agreed to follow a ramping protocol that reduces flow by 100 cfs each hour when large changes in releases are made. Rates of decline that approximate the natural falling limb of the hydrograph would require additional storage to implement and would ultimately increase the number of days in reduced phases of operation. Use of more natural ramping rates would require adopting a moving average accounting system for the Montague flow target that has so far not been acceptable to the Decree Party representatives.
Spill Reduction		
2, 3, 7, 8, 9, 18, 17, 20	Warm water spills should be prevented using a spill reduction program during warm weather months, particularly for Cannonsville Reservoir.	Part 671 of the NYSDEC regulations provides for cold water releases when Cannonsville Reservoir is spilling. Releases up to the spill rate or the maximum release valve capacity are required. Due to the uncertainty of hydrologic forecasting; the Decree Parties do not believe it prudent to risk loss of future water supply by using spill reduction measures prior to reservoir spills.
Limiting Cannonsville Drawdown		
2, 7, 8, 18	A protocol for releasing from Pepacton when Cannonsville storage drops below a specified level should be included in the plan.	The New York City Delaware Basin reservoirs are operated based on their probability of refill as well as water quality criteria. If limits were to be placed on the drawdown of Cannonsville Reservoir, and there was a switch to increased use of Pepacton releases when such limits were reached, there would be a risk of spilling Cannonsville and not refilling Pepacton Reservoir, resulting in a loss of potential water supply and inefficient operation of the system.
PPL Component of Plan		
3	By approving the fishery proposal for a three-year interim period, the PPL plan should not be fixed for the entire term of the FERC license.	DRBC Resolution 2002-33 conditionally approved the PPL operating plan, provided there was unanimous approval by the Decree Parties on a fisheries program that ameliorated any adverse impacts of the PPL plan. Upon approval of this proposal, this condition of Resolution 2002-33 will be satisfied. During drought watch, drought warning, and drought operations, the DRBC will direct releases from Lake Wallenpaupack in cooperation with PPL in a manner consistent with the habitat requirements of the interim proposal.

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5, 8, 3	The PPL plan will result in releases from Cannonsville at times which only maintain the arbitrary and inadequate habitat and thermal requirements. There is concern that the PPL plan will cause some adverse impacts to the West Branch and Main Stem Delaware, especially during August, September, and October.	Modeling of the PPL plan shows that there are years when bank requirements are higher and other years when they are lower than under the existing fishery program. The 3000 cfs-day Amelioration Bank has been established under the interim plan to help offset cases when bank use may be increased by the new PPL plan.
10	There is no upper limit to the amount of water PPL can release.	During normal operations, releases from Lake Wallenpaupack very rarely exceed an average daily rate of 800 cfs and are typically in the range of 300 to 600 cfs, depending on generating needs. During watch, warning and drought operations, the DRBC, River Master and PPL will cooperate to give tailwater habitat releases priority over PPL releases in meeting the Montague flow objective. This will limit bank debiting. This will not interfere with Lake Wallenpaupack releases that may be needed to sustain fisheries on the Lackawaxen River.
7	The proposal should include provisions for mandatory releases from Cannonsville to protect the river during high releases from Lake Wallenpaupack.	The minimum releases and targets as well as thermal releases under this plan are required regardless of the Lake Wallenpaupack releases.
Callicoon Flow Target		
3	A minimum flow target should be established at Callicoon.	As criteria are established for such a flow target based on ecological or endangered species findings, a policy for a flow target at Callicoon could be considered by the Decree Parties.
Equal Treatment of Fishery with Other Needs		
4, 8	The tailwaters are not treated as equally important with all other parts of the Delaware River system. This is not consistent with the Equitable Apportionment which is apparently the backbone of the Compact.	Section 3.3 of the DRBC Compact establishes that adjustments to the formula of the 1954 Supreme Court Decree may only be made with the unanimous consent of the Decree Parties. During the past 25 years, the DRBC has facilitated negotiations by the Decree Parties to significantly improve, on an experimental basis, the tailwater flow regime that resulted from the Decree. The proposal represents an effort by the Decree Parties and the DRBC to further improve tailwater conditions.
7	When suitable storage exists, both up to and immediately following drought emergency declarations, the cold water ecosystem and associated economic base must be considered a priority second only to drinking water requirements.	The 1954 Supreme Court Decree did not separate drinking water from general public water supply needs in allocating diversions to NYC and New Jersey, and ignored tailwater fishery needs. This proposal raises the status of fishery protection to an unprecedented level in Delaware River flow management.

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	Monitoring and Studies	
18	The work of the Subcommittee on Ecological Flows is to ensure that enough flow relationships are developed over the next three years to allow a long term solution to be negotiated by the Decree Parties.	The Subcommittee of Ecological Flows has made progress in organizing and funding a study to develop habitat vs. flow relationships, and has been successful in getting funding dedicated for additional studies.
13	There has been a lack of data collection and analysis to help understand the effects of different flow patterns that regularly occur in the river.	The creation of the Subcommittee on Ecological Flows and the monitoring plan which accompanies this proposal are intended to address this shortcoming.
16	The limitations of Paragraph 6, under which there will be no habitat releases made in the Neversink or East Branch is a disappointing concept, since these are the tailwaters in most desperate need of extra water. If forced into this concept, a phrase should be added at the end which indicates "..., and the monitoring plan described in Paragraph 4 may be modified."	Such a modification to the monitoring has been addressed in the Monitoring Plan.
7	The plan should include measurable goals such as fish per mile of various sizes, and measurements of insect biomass. Periodic reports should be issued to assess changes in the fishery. There should be a provision to modify or terminate the plan if the fishery suffers significant harm.	Measurable goals are proposed to compare available pre-experiment data on trout from the three tailwaters with similar post-experiment data. Parameters evaluated will include numbers and weight of trout per acre, distribution of size classes, age groups and (where appropriate) hatchery cohorts, growth rates and condition factors. Reports will be made annually. The Decree Parties will consider modifying or terminating the program if scientific evidence shows that the fishery is harmed.
20	The Commission and NYSDEC should consider coordinating the efforts for USGS, U. of Maryland, and U.S. Fish and Wildlife, to ensure that appropriate data are gathered during the implementation of the interim plan.	In 2003, the DRBC established the Subcommittee on Ecological Flows (SEF) for the purpose of coordinating the development of ecological flow relationships. The committee, presently chaired by The Nature Conservancy, and comprised of experts in stream ecology, is in the process of coordinating and planning in-stream studies and has secured funding for these studies. The coordination efforts of SEF have included the USGS, U. of Maryland, and the U.S. Fish and Wildlife Service.
9	The proposed monitoring plan for the interim fishery program, the proposed USGS study to reevaluate flow and fishery habitat, and current and planned studies to evaluate effects of flow alterations on the dwarf wedgemussel will provide critical knowledge for flow management.	The Decree Parties and DRBC fully support this comment and are committed to improving the information available for future decision-making in flow management.

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20	The Neversink population of wedgemussels should be monitored for any effects by the increased Neversink release.	The DRBC has offered to engage in an informal consultation process with the U.S. Fish and Wildlife Service to determine the requirements of the species and a meeting took place on 4/13/04. Temperature and flow will be monitored on the Neversink as part of the interim fishery program. This data will be useful in evaluating the changes to the flow regime as the fishery program is implemented. The Neversink Chapter of The Nature Conservancy will continue to conduct monitoring at a location where the species is established. The Nature Conservancy believes that the dwarf wedgemussel colonies are far enough downstream not to be affected by the increased flows at Bridgeville.
18, 19	NYSDEC report 83-5 is not adequate for future management due to the many advances that have occurred in instream flow science since the time of publication. The target flows proposed in this report represented just one of many potential scenarios.	It is acknowledged that there have been many advances in instream flow science. The Subcommittee of Ecological Flows has planned a study to extend and update the work of NYSDEC Report 83-5 as a potential basis for future adjustments to the fishery releases program.
9	A temperature model should be developed to maximize the understanding of the flow management needs of the system.	Discussions are underway with the National Weather Service Mid Atlantic River Forecast Center to undertake improved methods for forecasting flow and thermal release requirements. The NYSDEC, NYCDEP, and Nature Conservancy have committed funding for this work. As funding permits, the need for predictive water temperature modeling is acknowledged.
9, 8, 13	There should be an opportunity for interested organizations and communities to become more fully involved in discussions related to alternative analysis in the future for long term tailwater fishery management.	The individual Decree Parties are each open to inputs on flow management, but decisions are made by unanimous consent of the five parties. The Subcommittee on Ecological Flows has provided an opportunity for scientific development of flow relationships as a basis for flow management decisions. The Committee welcomes constructive inputs from all interested parties.
11	An open-minded adaptive management approach is encouraged with continued modeling by DRBC, NYCDEP and NYSDEC of alternate flow scenarios as more is learned about habitat and resource needs and the ability of the experimental release program to meet these needs.	As studies provide improved information about habitat and resource needs, the Decree Parties will consider this information. Changes in the release schedules may only be made if unanimously supported by the Decree Parties.
11	NYSDEC and the DRBC Subcommittee on Ecological Flows should consider a wide range of organisms, river uses, and cumulative impacts when evaluating the benefits of various flows.	The NYSDEC and Subcommittee on Ecological Flows agree that a wide range of organisms and multiple river uses should be considered in evaluating the benefits of various flows.

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13	Because the proposal will result in lower West Branch releases in the summer months (above the 225 minimum), it is critical that the thermal bank be used more aggressively and effectively during these periods than in the past.	This is acknowledged and will be addressed under the established protocols used by the NYSDEC for making thermal releases.
Water Quality Restrictions		
18, 20	Provision 3 K (2) is unnecessarily restrictive. It may be useful to alter this provision to only apply in cases where Cannonsville water quality exceeds some minimum threshold.	This provision allows NYC to divert the highest quality water at those times when Cannonsville Reservoir water quality meets the trigger levels in 3.L(1) but is still inferior to Neversink water quality. This is consistent with the standard practice the City has used over the years in order to optimize the quality of the drinking water it delivers to over 9 million people.
19	The water quality of the diversion from Rondout Reservoir, not solely the Cannonsville Reservoir diversion, should be used as the threshold for any adjustments to the proposed release schedule. Any adjustments should consider all three reservoirs, not solely Neversink Reservoir.	The water quality criterion contained in the proposal address the decrease in available NYC diversion quantity from Neversink Reservoir that has shown to be an effect of this program by OASIS modeling. Neversink Reservoir has the best quality water of the entire NYC water supply system. In order to protect the water quality of terminal reservoirs and ultimately of water entering the distribution system, the City uses the water quality parameters in 3K(1) as a selection criteria in determining reservoir diversion rates.
20, 18	The Commission and NYC should partner with stakeholders to evaluate ways to improve water quality in the NYC reservoirs.	Over the last 10 years, New York City has implemented an extensive protection program with numerous stakeholders within the NYC water supply watershed area. This program has resulted in measurable improvements in the Cannonsville Reservoir's water quality. These water quality improvements will help to reduce the number of times when the Cannonsville Diversion will exceed the criteria specified in provision 3.L.
Duration of Plan		
5	If this flow target scheme is approved by the DRBC for the next 3-5 years, with studies done on the tributaries and not the main stem, DRBC will make them permanent.	The Parties to the 1954 Supreme Court Decree expect to continue to negotiate a long term fishery management program based on many considerations, including new ecological information as it becomes available through the efforts of the Subcommittee on Ecological Flows. The interim plan is not intended as a permanent program by the Decree Parties or the DRBC.
Boating Issues		
17	The proposed program may impact boating recreation by releasing less water to the West Branch and upper main stem Delaware River.	Modeling indicates that the number of good canoeing days on the main stem may be slightly reduced under the interim plan. The model comparison shows that the median August flow at Callicoon under the proposal would drop from approximately 1080 cfs to 980 cfs – a drop of 9 percent.

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17	PPL releases may be made too late in the day to support reasonable boating flows.	Releases from the NYC reservoirs are designed based on the daily average flow rate from Lake Wallenpaupack, and not based on the rate during the actual release, which does not cover a 24 hour period. However, it is acknowledged that due to the nature of power generation operations at the PPL and Rio facilities, flows below the mouth of the Lackawaxen are highly variable and can result in boating conditions which quickly change. This is true under the existing program and will continue under the interim plan.
	Rules and Policy - Legal Issues	
10	Under Part 671 of the State's Environmental Regulations, 325 cfs is the minimum release from Cannonsville from June 25 through August 15, (Part 671.3(a)(1)). New York State regulations also require Cannonsville to release water equivalent to the amount of any overflow (Part 671.3(b)(2)). The proposal violates these provisions.	The proposal represents an agreement by the Decree parties to change the Decree formula under the authority of Section 3.3 of the DRBC Compact. This would add the interim proposal to the DRBC Comprehensive Plan. If the NYSDEC finds that the implementation of the proposal results in an infraction of 6NYCRR Part 671, the Department will consider amending the subject regulation to conform with the proposal.
10	The proposal violates the DRBC non-degradation policy and threatens endangered species. DRBC non-degradation policy is to take no action that would have an adverse measurable change on existing water quality. The DRBC proposal violates this policy.	There is no scientific evidence which demonstrates that this proposal will adversely impact water quality.
10	The proposal would continue to release water from Cannonsville in flooding and drying spurts in cycles that counter balance PPL's releases. This will have an adverse effect on the ecosystem by increasing BOD and causing harm to the endangered species and their habitat. The Endangered Species Act requires that these potential impacts be studied prior to the decision to implement the plan.	The requirements of the dwarf wedgemussel have not yet been established. It is understood that this is a top priority need and studies are planned to address this. Policy to establish recommended protective target flows will be considered by the Decree Parties based on study results.
10	Continued release of historic quantities from Cannonsville is the only way for the DRBC to meet its self-imposed non-degradation regulations and its obligation to protect endangered species.	No scientific evidence has been presented that this proposal will either degrade existing water quality or threaten endangered species for which protective criteria have not been established.

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20	The dwarf wedgemussel is known to occur in the vicinity of Callicoon and Hankins, New York, and Equinunk, Pennsylvania. Habitat is generally low gradient run/pool in and around broken islands. The population was discovered in the summer of 2000 and a quantitative survey was conducted in the summer of 2002. A population of 4000 was estimated the fifth-largest known remaining population of dwarf wedgemussels. Studies in 2004 will determine the minimum flow requirements to sustain the species in the Upper Delaware. The effects of the proposed plan on the species are uncertain.	The Decree Parties and DRBC staff appreciate the provision of this information and the informational meeting held on November 21, 2003 which the DRBC staff attended. The Decree Parties and DRBC staff wish to cooperate with the U.S. Fish and Wildlife Service in seeking, through the Subcommittee on Ecological Flows, to establish flow relationships for the Dwarf Wedgemussel. Any protective flow regime that is identified will be considered as the Decree Parties assess potential long term flow management in the upper Delaware and tributaries. The available storage to support such a flow regime, or the need for additional storage, would be a major consideration in this assessment.
20	Dwarf Wedgemussel habitat would be among the first to de-water if minimum river flow were reduced below current operational standards. The lower flows at Callicoon during August thru October could adversely affect the species populations at Callicoon. There is concern that the proposed banks could run out during this time period.	There is insufficient information to draw the conclusion that the proposed fishery program will harm the Dwarf Wedgemussel. The DRBC and the Decree Parties believe that the proposed change in the flow regime is minor compared to the fluctuations in flows to which the species has been exposed for many years. The DRBC, through the Subcommittee on Ecological flows, is attempting to assist in the coordination of efforts to develop the flow relationship for the species, as well as other species requirements. The DRBC has offered to informally consult with the U.S. Fish and Wildlife Service under the Endangered Species Act and met with the service on 4/13/04 to begin this consultation.
11, 20	DRBC needs to consult with the U.S. Fish and Wildlife Service regarding Endangered Species Act issues potentially involved in this proposal. The DRBC may need to provide enough flexibility in flows to allow for mitigating any adverse impacts identified to the dwarf wedgemussel.	This comment is acknowledged and supported by the Decree Parties and the DRBC. As protective needs for the dwarf wedgemussel are established, it may be necessary for the Decree Parties and DRBC to consider adjustment of the fishery management program.
10	Placing the Upper Delaware in harms way is a default on the legal obligations of the DRBC.	The NYSDEC is proposing the interim measures to improve the fishery – not to place it in jeopardy.

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	NYC Aqueduct Leaks	
3,7	As part of the long-term solution to the flows issue, it is recommended that the NYC aqueduct leaks be repaired. The plan does not address at all the 30 to 100 mgd leaks in the NYC aqueduct system, nor does it address the fact that NYC uses more water per capita than any other city in the world. NYC should be required to fix the leaks and conduct a public awareness campaign.	<p>The only leakage of any consequence in the NYC Aqueduct system occurs in the Delaware aqueduct between Rondout reservoir and West Branch reservoir. The average leakage rate has been determined to be 15 mgd. An extensive engineering study has been underway for several years to determine the best method to deal with the leakage problem without compromising the structural integrity of the aqueduct.</p> <p>New York City's current per capita consumption of water (136 gpcd) is approximately 10 percent lower than the region as a whole. According to USGS public water supply data for the year 2000, the non-weighted average per capita water consumption rate in the four Delaware Basin states was 152 gpcd. In other areas of the United States, the worst cases occur mostly in the southwest. For example, last year per capita consumption in Phoenix, AZ was 226 gpcd. Even in the moist southeast, the metropolitan Atlanta, GA per capita water consumption rate is currently 158 gpcd, well in excess of NYC's rate.</p>
3	As part of the long term solution to the flows issue, it is recommended that NYC rely more on filtered Hudson River water, that Cannonsville Reservoir be raised to hold more water dedicated to releases, and that perhaps the 1954 Supreme Court Decree be revisited to reflect flows based on ecological needs.	These suggestions are applicable to long term flow management considerations, but are outside of the scope of the interim proposal being considered.
	Inadequacy of Existing Fishery Program	
8	Under the existing program, releases have been needlessly erratic, have interrupted insect hatching, stressed trout, ruined fishing, and negatively impacted the local economy sometimes for weeks at a time.	The interim plan has been proposed as a means of offering the fishery additional protection during times of critical stress. The Decree Parties and the DRBC staff believe that the priority must be given to protecting the fishery during critical periods. Sufficient storage is not available for providing optimum fishing conditions at all times.
8	Fluctuating releases have led to water temperatures in excess of the target maximums of 75 degrees max. and 72 degrees average. This exceeds the 68 degree F. temperature above which trout become stressed.	Storage does not exist to meet the existing NYSDEC Part 671 temperature limits at Callicoon of 72F average and 75F maximum. Practice has shown that control to these limits can be achieved to Lordville with occasional retreat to Hancock. Given the multiple demands on existing storage, the Decree Parties cannot provide additional storage for additional temperature control beyond what is offered by this interim proposal.

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8	Thermal releases have been poorly timed and often not made when desperately needed.	The purpose of the interim proposal is to improve the ability to make thermal releases by adding to and increasing the flexibility of the habitat bank. The NYSDEC is working with the Corps of Engineers and National Weather Service to establish improved flow and thermal release forecasting in the upper Delaware and tailwaters.
	Miscellaneous	
17	Water should also be released from the reservoirs during times of high flood potential, such as during hurricane season.	The management of the reservoirs for flood control is a separate issue from fishery management and not part of the interim proposal. The NYC reservoirs, due to the design of their outlet works, cannot be lowered quickly enough for a flood storage release program to have any meaningful benefit, unless there is snowpack in place sufficient to fill the reservoirs. The NYCDEP is willing to consider a program for lowering Pepacton Reservoir when sufficient snowpack exists, provided downstream residents also undertake measures to reduce flood damage potential.
3	Thank you for holding the hearing in Hawley, making it easier for local interests to attend.	The Decree Parties and DRBC appreciate the efforts of all individuals and organizations that have commented and worked to strengthen the interim proposal.