

7/13/04

NO. 2004-9

DOCKET NO. D-77-20 CP (Revision 8)

DELAWARE RIVER BASIN COMMISSION

A RESOLUTION amending Docket No. D-77-20 CP (Revision 7), to allow that portion of the Excess Release Quantity not earmarked for the program for protecting tailwater fisheries below New York City's Delaware Basin Reservoirs, to be used for purposes of aquatic resource research related to the fisheries program, including dwarf wedgemussel studies conducted at the request of the U.S. Fish and Wildlife Service.

WHEREAS, Docket No. D-77-20 CP (Revision 7) provides a program for protecting the tailwater fisheries below New York City's Delaware Basin Reservoirs for the period May 1, 2004 through May 31, 2007; and

WHEREAS, Docket No. D-77-20 CP (Revision 7) requires implementation of "Monitoring Plan for the Delaware River Tailwaters, 2004-2006"; and

WHEREAS, Docket No. D-77-20 CP (Revision 7) requires the Commission and the Decree Parties to review and evaluate available data during the implementation of the program and to consider any modifications that may be necessary to avoid adverse effect to dwarf wedgemussels; and

WHEREAS, regulation of flows in the tailwaters below New York City's Delaware Basin Reservoirs may facilitate implementation of certain aspects of the Monitoring Plan or collection of data related to the dwarf wedgemussels; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. Paragraph 4.A of Docket No. D-77-20 CP (Revision 7) is hereby revised to read as follows (changes denoted by underscore):

"A. A 'Habitat Protection Bank (HPB)' of 20,000 cubic feet per second days (cfs-days) is established, which shall consist of: an Excess Release Quantity Bank (ERQB) of 5,700 cfs-days, provided from the Excess Release Quantity (ERQ); a Thermal Release Bank (TRB) of 9,200 cfs-days; and a Supplemental Release Bank (SRB) of 5,100 cfs-days. Water from the ERQ shall be credited on June 15, and any water remaining from that quantity shall expire on March 15 of the following year. The 9,200 cfs-days TRB and 5,100 cfs-days SRB shall be credited on May 1, and any water remaining in these banks shall expire on April 30 of the following year. In any year during which the Drought Operations Plan for Lake Wallenpaupack is not in effect, the HPB shall be limited to 16,000 cfs-days, consisting of: an ERQB of 3,420 cfs-days from the ERQ; a TRB of 9,200 cfs-days; and an SRB of 3,380 cfs-days. Waters from the ERQ not contributed to the HPB shall be utilized for any of the following purposes or any

combination thereof: (1) to provide a proportionally-reduced increase in the Montague flow objective according to the current procedures, (2) to be banked in accordance with the procedures outlined in the Lower Basin Drought Management Plan, or (3) for the purpose of facilitating aquatic resources research related to the program for protecting tailwater fisheries below the City Delaware Reservoirs, including related dwarf wedgemussel studies conducted at the request of the U. S. Fish and Wildlife Service. In the latter case, Decree Party approval is required for each aquatic resources research project undertaken. In addition, an Amelioration Bank (AB) of 3,000 cfs-days may be available subject to the provisions of Paragraph 6.”

2. In all other respects, Docket No. D-77-20 CP (Revision 7) shall remain in full force and effect.
3. The Decree Parties agree to inform the Commission and the Subcommittee on Ecological Flows promptly when they approve a research project under the above provision.

/s/ Fred Nuffer

Fred Nuffer, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esq., Commission Secretary

ADOPTED: July 13, 2004

Consent to Action by

Delaware River Basin Commission

Consent of the parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954) to the action of the Delaware River Basin Commission approving Resolution No. 2004-9, Docket No. D-77-20 CP (Revision 8) and amending the Comprehensive Plan with respect to uses of the portion of the Excess Release Quantity not dedicated to the fisheries program approved by Resolution No. 2004-3.

Ernst P. Hahn 9/1/04
State of New Jersey Date

Michael A. Principe 9/4/04
City of New York Date

State of Delaware Date

Fred Nuffer 8/3/04
State of New York Date

State of Delaware Date

Colby Luman Nye 8/1/04
Commonwealth of Pennsylvania Date

Consent to Action by

Delaware River Basin Commission

Consent of the parties to the U.S. Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 993 (1954) to the action of the Delaware River Basin Commission approving Resolution No. 2004-9, Docket No. D-77-20 CP (Revision 8) and amending the Comprehensive Plan with respect to used of the portion of the Excess Release Quantity not dedicated to the fisheries program approved by Resolution No. 2004-3.

State of New Jersey Date

City of New York Date

Henry W. Otto 7/13/04
State of Delaware Date

State of New York Date

John H. Tally 8/6/04
State of Delaware Date

Commonwealth of Pennsylvania Date