DRBC Flexible Flow Management Plan – Management of NYC Reservoirs

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Members of the Commission
Delaware River Basin Commission
West Trenton, NJ

You have invited us here today to comment on a proposal that was hatched behind closed doors by unknown individuals who discussed heaven knows what.

What was the discussion? What was New York's position, the City's position, Pennsylvania's, New Jersey's or Delaware's? What is behind each of these positions? What were the questions asked and answers provided? What were the assumptions and what data were used? What secret agendas were in play? New dams? New water allocations? What? The public has a wealth of questions and a paucity of information.

The DRBC has before it today a decision on how to receive public comment prior to amending Commission regulations in conformance with an agreement among the Consent Parties. We know that the Delaware River Basin Compact prevents DRBC from acting independently to contravene the wishes of the Decree Parties. It seems useless for any of us to make comment to this Commission when it is not the entity that developed the "interim New York City Delaware River Basin reservoir operations plan" as stated in the public notice.

But since the Governors of the states who have been meeting privately under the Supreme Court Consent Decree of 1954 also constitute four out of the five Members of this Commission, we can speak, indirectly, to the Decree Parties by way of their representatives, you, on this Commission. Today we speak to the Parties about the particulars of reservoir operations and about open discourse and we speak to the Commission about how the public hearing process will proceed.

First and foremost, we need to shine the light of day on the decisionmaking process that involves critical decisions regarding the operation of Upper Delaware Reservoirs. It is time to open the doors and let the public in on the Decree party meetings. All of the Decree parties have enacted sunshine laws that they are now themselves ignoring. Why the secrecy? We understand that under the law the decree parties are the drivers and must reach consensus on any decision made with regards to reservoir management. But to make sure the best decision is reached, to make sure the decision can be supported - or at least understood - by the community, and to make sure the decision is fully informed by the best science and the best facts, the decree parties need to start to hold their discussions in public as well as make public the assumptions and the data they relied upon to come to any agreements made.

Delaware Riverkeeper Network
300 Pond Street, Second Floor
Bristol, PA 19007
tel: (215) 369-1188
fax: (215) 369-1181
drkn@delawareriverkeeper.org
www.delawareriverkeeper.org

Over the years, truly informed public discourse about the operation of the New York City Delaware reservoirs has been frustrated, not only by confusion about the powers of the DRBC, but, more importantly, by lack of information about the basis for decisions made by each of the Parties.

Frustration has been felt by people who make their living by the River -- through fisheries, recreation, tourism. Frustration and anger is felt by those who live along the River. And frustration is deeply felt by those concerned with protecting water supply and those devoted to the River's survival as a healthy ecosystem.

We are presented with the final product of a Decree Party negotiation, but we don't see what several aims were pursued or why compromises were made. But the more the public knows about the facts, the simulations, the policies, and the desires that led each of the Decree Parties into the current decision, the better and more useful comment they can offer and truly useful political action they can undertake toward the management of the Delaware River.

We call on each of the Parties to the Decree to issue independent and separate statements which outline, for that individual sovereign State or City:

- What its aims and goals are in this negotiation
- Whether these aims and goals are met or not met by the current FFMP
- What specific facts, data and/or simulations, among the many dealt with, that were ultimately relied upon by each Party in this negotiation
- Where is all this going in terms of the future and what facts and data need to be developed

We do not believe that these disclosures should put any Party at a disadvantage, since we believe that these things are well known among the Parties, but deserve to be well known by the public. The Governors and the Mayor owe their constituents a report on the basis for their actions for the public benefit.

We urge this Commission to join us in this request. The Commission should not continue to be the scapegoat or whipping boy for the Decree Parties. The Decree parties need to step out from behind the curtain and stop hiding behind the Commission.

One of the fundamental problems that underlie the difficulties of river and reservoir management is that the decisionmakers, whoever they are, have not identified, nor agreed upon, priorities for the river. And we as a community need to participate in setting those priorities so the management policies can then be developed and carried out reflect the common good of the entire basin community. The flexible flow management plan has been pushed and pulled as new issues have been thrown into the pot - we have lost sight of the purpose of the FFMP in relation to all the uses of the river. Will its implementation manage reservoir diversions and releases in a way that benefits the river's ecosystem, as well as sustaining water resources?

We believe that the entire concept that flows from the reservoirs should protect our river and its communities is threatened with derailment by a call for an arbitrary "void space", i.e. leaving a percentage of the reservoirs empty in order to fill them up with rainfall for flood control. Making flood control a priority for the reservoirs is wrong - it only provides a false sense of security for river communities while threatening drinking water supplies, downstream fisheries, aquatic and terrestrial habitats, drought protection, salinity protection, canoeing and boating, and other critical ecological and economic factors of importance.

Instituting reservoir voids for flood control, according to the Commission's proposed FFMP, will require the raising of the dams on the Delaware's headwaters streams. Some stray screams have even called for extending this approach to a main stem dam. Did we learn nothing in the past four decades? The Delaware River is the largest free flowing river east of the Mississippi and the river communities, indeed, the United States Congress and the President, have memorialized the outstanding values of this wild and scenic resource. Dams raise a myriad of environmental threats and harms and human threats not even mentioned in this process. The raising of the dams on the Delaware's headwaters streams is a concept unacceptable to the Delaware Riverkeeper Network and most people in the basin - a concept we will challenge with every tool available to us because it brings with it such tremendous harm and risk.

One of the major reasons this process is flawed is because it hasn't established goals, objectives and priorities. Until now all decisions and debate have been focused on the uses of the reservoirs not the needs of the river. To date the reservoirs have been managed to:

- Meet water supply needs for the states and New York City,
- For low flow augmentation and waste assimilation,
- To support Delaware River tailwater fisheries,
- To support recreation,
- To manage the salt line for water supply purposes as well as ecological impacts,
- In a limited way, to protect the ecological needs of the river.

There has never been a clear decision or articulation of which of these elements take precedence. Is it the fishery? Do you plan to sacrifice flows for the fishery for the promise of flood control for a relatively few folks who live in the river's floodplains? What are the priorities here? We don't know.

We presume that this is a process driven by decisionmakers with different priorities and competing goals, each of which is driving endless debate and flawed decisionmaking. One of our biggest concerns is that you all don't even acknowledge this - that no one is on the same page when they come to the decisionmaking table.

The reality is that from day one the Delaware River has been over-allocated. New York City has been allocated 800 million gallons per day, most of the upper river before it leaves the state, and this is clearly unsustainable. The drought of the 1960s proved that what the Supreme Court mandated the river to do when it gave away the lion's share of our river to New York City is impossible. The drought changed the safe yield. On the plus side, water conservation and other actions have reduced water demands. And what about global climate change and sea level rise? Has anyone factored that into the discussions? Or is the FFMP only a shortsighted stopgap to shut everyone up? We need to take a step back and revisit our choices and identify our priorities based on the real world of today and not decisions made in 1931 and 1954.

The priorities for our watershed should be driven by the needs of the river, not the lust for control of the reservoirs by special interests and greed for water of New York City beyond their real time needs. The reservoirs, as a manmade imposition on the system must be operated so as to best serve a healthy, free flowing Delaware River. A healthy free flowing Delaware River must be the priority. When we have that then we can sustain our drinking water needs, our ecosystem needs and best serve the community as a whole rather than special interests.

Rather than confronting head on how to provide ecological flows through a flow management plan, the Decree parties have instead caved in to New York City and pandered to the rhetoric by proposing that the spillways be raised and more storage be provided and that this is the only way the reservoirs can provide ecological flows as well as flood control. This is a cop out.

Using the New York City reservoirs to provide protection from flooding is not a watershed-based solution. Requiring void spaces in the reservoirs to accommodate flood protection requires a reduction in the amount of water that is stored for drinking water to serve communities that have built up in reliance on this drinking water source. Were the NY City reservoirs proposed for construction today the Delaware Riverkeeper Network would be at the front of the line to oppose such a proposal.

But that is not where we stand today. The reservoirs were constructed and whole communities have been built and grown in reliance on this clean water supply - not just a few homes, a few residents, a few citizens but millions (7 million people in New York City and regions outside of the Delaware River Watershed rely on the Delaware River water). Asking that this water be released in order to provide a limited level of flood control benefit in a limited number of circumstances to a very limited number of people in our watershed community does a disservice to us all. In addition, it is a clear, albeit veiled, attempt to create a situation where the size of the reservoirs, the height of their dams, and the volume of their storage will be forced to increase in the future in order to serve these competing community demands.

Touting a void space as a solution for future flood damage reduction will give downstream communities a false sense of security - the level of rampant floodplain development that is already taking place will expand and intensify; stormwater runoff will continue to increase; more people and structures will be in harm's way, crowding out the natural vegetated floodplain. A void space will not control the rain falling below the dams and up the tributaries and therefore can have no effect on the flooding caused by such storm events. A void space cannot and will not prevent future floods in the Delaware River's floodplain. The River's floodplains will continue to flood (and may increase), and as long as there are homes, businesses, and other structures there, there will be disaster from catastrophic floods.

Investing time, energy and funding in studying and implementing reservoir voids brings with it immense opportunity costs, diverting needed energy and resources from real solutions. We need to be investing our limited time, money and resources in solutions that we know will work and that will benefit our whole watershed community ecologically and economically.

As for the specifics of the proposals presented today, we make the following general comments and look forward to making more specific ones through the DRBC's public hearing process, helped by the requested statements from the parties.

While the FFMP process began in a solid basis of science, with the Subcommittee on Ecological Flows model and process, in recent years it seems discussions have been driven more by politics, self-interest and rhetoric than the science and what's best for the river. The notice for today and the discussions of the recent past all focus on

raising the dams' spillways to provide additional storage in the reservoirs as the solution for the future. It seems there is a commitment to this new storage so it can then be used as the magic bullet to placate all of the competing calls for self-interested solutions. And to put in place a release plan before the flows model is complete is backwards. The current approach intended to implement an option today and study its effects later is not sound decisionmaking driven by sound science - it uses our river and communities as a laboratory.

We don't agree with raising the dams in the Upper Delaware to provide additional storage. We do think the concept of mimicking natural flows to the greatest extent possible through an adaptive flow management strategy makes the most sense and has the greatest potential for achieving the priority goals of water supply and ecosystem protection.

In that the FFMP relies on increasing dam spillway height the parties have convinced DRBC to dodge the issue of how to provide ecological flows while also meeting water supply needs. Providing storage in the reservoirs simply lets New York off the hook and makes a show of placating certain elements in the community. This is not right and does not solve the problems.

Yours sincerely,

Maya K. van Rossum
the Delaware Riverkeeper
Director

Tracy Carluccio
Deputy Director
Delaware Riverkeeper Network

Mary Ellen Noble
Associate
Delaware Riverkeeper Network