



## **Delaware Riverkeeper's Testimony, Before the DRBC regarding NYC Reservoir Management Proposal**

### *Testimony*

*Maya K. van Rossum, the Delaware Riverkeeper  
Before the Delaware River Basin Commission  
September 26, 2007*

You've invited the public here today for input on a just revealed agreement by the Decree Parties regarding reservoir management.

It is a bit confusing, why DRBC is asking for public input on this proposal. DRBC cannot act without the agreement of the Decree Parties when it comes to management of the reservoirs. So public comment to the DRBC about a proposal that they cannot change seems a bit confusing and perhaps even disingenuous.

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.

We are presented today with the final product of a Decree Party negotiation, an agreement hatched behind closed doors by unknown individuals who discussed heaven knows what. We don't know what each party argued for, what the goals were, what compromises were made and why. The public cannot be expected to intelligently comment on a deal that was crafted in secret, without knowing the facts, the assumptions, the policies, and the desires that led each of the Decree Parties into the current decision.

It is important to appreciate that to date truly informed public discourse about the operation of the New York City reservoirs has been frustrated by a lack of information - and this has resulted in tremendous frustration in our river communities - including among the fishers, the ecotourist businesses, the water purveyors, riverfront landowners and those of us who care so deeply about the protection and restoration of the river and its ecosystems for the benefit of all.

While we understand that under the law the Decree parties are the drivers and must reach consensus on any decision made to understand, appreciate and give input into a viable flow management plan, we need to shine the light of day on the decisionmaking process that surrounds the Upper Delaware Reservoirs.

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We must recognize and embrace that informed discourse has a positive impact on decisionmaking.

We call on each of the Parties to the Decree to issue independent and separate statements which outline, for that 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. 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. Informed discourse will help redirect the focus to those with the authority in this arena.

One of the fundamental problems that underlie the difficulties of river protection and reservoir management, is that the decisionmakers have not identified, nor agreed upon, priorities for the river - in fact it seems clear that each of the Decree Parties has its own set of priorities from which it is operating.

Over the years 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. As a result the process is being driven by decisionmakers with different priorities and competing goals driving endless debate and flawed decisionmaking.

The reality is that from day one the Delaware River has been over-allocated. 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.

We need to take a step back. We need to set priorities not for the reservoirs but for the river as a whole. We then need to make reservoir management decisions that support and reflect these river priorities, based on the real world of today and not decisions made in 1931 and 1954. And the Decree parties and the Commission need to do more than set up a FFMP that is a shortsighted stopgap to shut everyone up.

We believe that the river priorities which best serve the common good are two fold –

- Protect the ecological and free flowing health of the river including aquatic and riparian ecosystems that are so fundamental to a healthy river.
- Protect the River as a clean and sustainable drinking water supply.

Focused in this way, with these priorities - we ensure that the health, the safety, the economy, and the communities of our region are best protected.

Most recently the entire flexible flow management concept and its goal to protect the fisheries and ecosystems of the river has been threatened with derailment by a call for an arbitrary "void space", a percentage of the reservoirs reserved for capturing rainfall with a promise of flood control.

Making flood control a priority for the reservoirs is wrong - it:

- provides a false sense of security for river communities,
- threatens drinking water supplies,
- threatens downstream fisheries and habitats which are both ecologically and economically important,
- will spur further rampant development and it will require the raising of the dams on the Delaware's headwaters streams –
- increasing the threat of dam breakage,
- threatening new ecosystems and new habitats,
- raising a myriad of environmental and community threats and harms not even mentioned in this process to date.

The raising of the dams on the Delaware's headwaters streams is a concept unacceptable to the Delaware Riverkeeper Network and many in the basin - a concept we will challenge with every tool available to us because it brings with it such tremendous harm and risk. Whether we are discussing voids in the future or voids in the present, creating void spaces in the reservoirs is an artificial solution that should in no way be driving our river or reservoir decisions. Voids will not stop flooding; structures in the floodplain will continue to be flooded and the floodplain will likely expand, regardless of voids in the reservoirs. We cannot afford to divert attention, resources, and precious time chasing ineffective solutions. The most effective way to reduce flood damages is to stop building in the floodplain and restore it to riparian vegetation.

We need to work on developing agreed upon priorities for our river and how to manage the reservoirs in order to best achieve those priorities - we need to manage the reservoirs in a way that best serves the River's ecosystems and communities as a whole. Which brings me to our specific comments on the proposal at hand -- comments we intend to supplement once we have had the opportunity to fully consider what we have heard today and to review the requested statements we are hopeful will be forthcoming from the Decree Parties.

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 cries for self-interested solutions. It seems everyone has caved into New York City's insistence that the dams must be raised to meet these demands-a political decision, not a scientific one and a decision made without public scrutiny. As already stated, but it is worth repeating, we don't agree with raising the dams in the Upper Delaware to provide additional storage and so we can't support any option that requires this.

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. This is the approach we think needs to be implemented in the short and the long term to benefit us all.

Thank you for the time to speak to these very important issues.