

DELAWARE RIVER BASIN COMMISSION
SPECIAL MEETING OF NOVEMBER 23, 2016

Public Hearing

Commissioners Lieutenant Colonel Michael A. Bliss, United States, Chair
Participating via Kelly J. Heffner, Pennsylvania, Vice Chair
Teleconference: Daniel M. Kennedy, New Jersey, Second Vice Chair
 Angus Eaton, New York
 Kara S. Coats, Delaware

DRBC Staff Steven J. Tambini, Executive Director
Participants: Kenneth J. Warren, Warren Environmental Counsel, LLP, General Counsel
 Pamela M. Bush, Commission Secretary & Assistant General Counsel
 Thomas J. Fikslin, Director, Science and Water Quality Management
 David Kovach, Manager, Project Review
 Kenneth F. Najjar, Director, Water Resource Management
 Amy L. Shallcross, Manager, Water Resource Operations

The Commission met via teleconference in the Goddard Conference Room of the Delaware River Basin Commission office building in West Trenton, New Jersey on November 23, 2016. Public notice of this special meeting had been provided by means of a web posting on November 21 and by an electronic mailing to DRBC's list serve the following morning. A dozen members of the public attended, taking seats in the Goddard Room.

Mr. Tambini served as the hearing officer and was accompanied by Ms. Bush, the Commission Secretary and Assistant General Counsel. Shortly before 11:00 a.m., Mr. Tambini dialed a conference line on which the Commissioners had already assembled.

At approximately 11:00 a.m., Mr. Tambini introduced the Commission Chair *pro tem*, Lieutenant Colonel Michael A. Bliss, District Commander of the U.S. Army Corps of Engineers, Philadelphia District.

LTC Bliss welcomed everyone and opened the meeting by asking Ms. Bush to take attendance by roll call. Participating were: for Delaware, Kara Coats; for New Jersey, Dan Kennedy; for New York, Angus Eaton; and for Pennsylvania, Kelly Heffner. DRBC General Counsel Ken Warren also participated via phone. Ms. Bush affirmed that all signatory parties were represented.

LTC Bliss explained that the reason for the special meeting was to consider a resolution pursuant to section 10.4 of the *Delaware River Basin Compact* to preserve and protect water supplies during the present dry conditions by means of coordinated actions to manage out-of-basin diversions, regional reservoir releases and Delaware River flow objectives.

Mr. Tambini presented the draft resolution, which had been posted to the DRBC website earlier that morning. He explained that persistent dry conditions for an extended period of time had dictated need for this action. Noting that several hydrologic and drought indicators pointed to stressed conditions throughout the basin, Mr. Tambini said the states of New Jersey and New York and the Commonwealth of Pennsylvania had issued drought watches and warnings for most basin counties. He noted that links to hydrologic data developed by the U.S. Geological Survey and the member states were available on DRBC's website and that visual observation of the non-tidal main stem and major tributaries made clear conditions were stressed.

On November 9, 2016 the Commission conducted a public hearing pursuant to section 10.4 of the Delaware River Basin Compact, at which Amy Shallcross of the DRBC staff gave an in-depth presentation on hydrologic indicators throughout the basin. Ms. Shallcross's presentation was posted to the Commission's website and has remained there. Mr. Tambini explained that since the November 9 hearing, although the basin received a small amount of rain in some areas, the conditions were little improved. He noted that combined storage in New York City's Delaware River Basin reservoirs is currently only 40 percent, and the salt front (defined as the 250 parts per million isochlor) is at River Mile 89, nineteen miles above its normal location for this time of year.

The DRBC manages drought in accordance with operating plans adopted as part of the *Delaware River Basin Water Code*. The rules are complex, and Mr. Tambini said that one of the purposes of the proposed resolution was to cut through some of the complexity. For example, the *Water Code* defines both basin-wide and a lower basin drought and prescribes different actions in response to each of these conditions. Over the past several weeks, indicators have shown that both basin-wide and lower basin drought could occur, but one could be triggered before the other. One of the Commission's objectives is to adopt a single response to the ongoing hydrologic "event", around which all parties can align. The draft resolution establishes the authority under which the Commission intends to proceed and identifies key drought response measures to be employed.

Mr. Tambini described each paragraph of the "Be it resolved" section of the draft resolution. The first paragraph provides that the Commission is making a declaration under section 10.4 of the *Compact* to allow it to implement a coordinated response to conserve water in regional reservoirs. When a declaration pursuant to section 10.4 is made, "no person, firm, corporation or other public or private entity [may] divert water for any purpose, in excess of such quantities as the commission may prescribe by general regulation or authorize by special permit" Compact § 10.4. Accordingly, the paragraph 2 of the "Be it resolved" section makes clear that except as expressly provided in the resolution or in a Conservation Order later issued by the Commission or the Executive Director, all persons and entities entitled to divert water may continue to do so within such legal limits as currently apply to them.

Paragraph 3 of the "Be it resolved" section describes the conditions of a "special permit" that is approved by the resolution pursuant to section 10.4 in order to provide for coordinated operation of regional reservoirs and diversions, and in particular, to conserve regional reservoir storage. The sub-paragraphs of paragraph 3 establish the conditions of the special permit, including the consent of the parties to the U.S. Supreme Court Decree of 1954, required by section 3.3(a) of the Compact; the term of the special permit (unless extended by the Commission with the consent of the Decree Parties, it will terminate on the earlier of March 15, 2017, or the date on which all criteria for termination of basin-wide drought as set forth in the *Water Code* are satisfied); how drought stages

are to be defined for purposes of the special permit (on the basis of combined storage in New York City's three Delaware Basin reservoirs and in accordance with Figure 1, attached to the resolution); a determination that in accordance with these drought stage definitions, the basin is deemed to be in "drought watch"; a schedule of diversions and flow objectives (set forth in Tables 1 and 2, attached to the resolution, and keyed to the drought stages defined by Figure 1), and provision for New Jersey's use of a diversion offset bank created by the Decree Parties; application in all other respects of sections 2.5.1 through 2.5.5 of the Water Code, including for operation of certain lower basin and hydroelectric reservoirs; and provision for ongoing consultation and coordination among the Commissioners, Decree Parties and Delaware River Master, and on the basis of such consultation, for modification or termination of the special permit prior to its expiration.

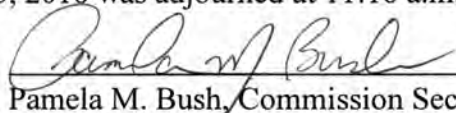
Ms. Bush noted that the Commission had obtained consent via email and phone from all of the Decree Party representatives and awaits formal signature pages for three of them. Mr. Tambini said that a set of Frequently Asked Questions (FAQs) posted on the Commission's website in part explains the differences between the Decree Parties and the DRBC.

Mr. Tambini further noted that pursuant to the resolution if adopted, several reservoirs operated for hydroelectric power generation in the basin could be requested to either store or release water. Releases could also be required from the Merrill Creek Reservoir, a facility in Warren County, New Jersey constructed by a consortium of electric utilities to replace evaporative losses caused by power generation.

In accordance with paragraph 4 of the resolution, the states would continue to be responsible for declarations of county- and/or state-wide drought stages in their respective jurisdictions and for the implementation and enforcement of associated water restrictions in these areas, if any. Paragraph 5 of the resolution calls for maximum water-use efficiency by all users of basin waters to preserve and protect them, not only under stressed conditions but during normal conditions as well. Mr. Tambini noted that staff were recommending the resolution be made effective immediately upon its adoption. He said the DRBC's drought information page had been revised and updated and would continue to be updated to reflect changes in hydrologic conditions as they occur. He recommended that the Commissioners approve the draft resolution.

LTC Bliss requested a motion to approve the resolution presented by Mr. Tambini. Mr. Eaton so moved and Mr. Kennedy provided a second. Hearing no further discussion or questions, LTC Bliss asked Ms. Bush to conduct a roll call vote. The tally was as follows: Kara Coats for Delaware – Yes; Dan Kennedy for New Jersey – Yes; Angus Eaton for New York – Yes; Kelly Heffner for Pennsylvania – Yes; and LTC Bliss for the federal government – Yes. Resolution No. 2016-7 was unanimously approved.

LTC Bliss requested a motion to adjourn the meeting. Mr. Kennedy so moved, Mr. Eaton seconded his motion and the Special Meeting of November 23, 2016 was adjourned at 11:16 a.m.


Pamela M. Bush, Commission Secretary

A copy of the resolution is attached.

A RESOLUTION pursuant to section 10.4 of the Delaware River Basin Compact to preserve and protect water supplies in the Delaware River Basin during persistent dry conditions by providing for coordinated actions to manage out-of-basin diversions, Delaware River flow objectives, and regional reservoir operations.

WHEREAS, the states of New Jersey and New York and the Commonwealth of Pennsylvania have issued drought watches and warnings for most of the counties within the Delaware River Basin and have taken steps to manage water availability, including a call for water conservation by all users; and

WHEREAS, several hydrologic and drought indicators and trends, including reservoir storage volumes, precipitation, streamflows, the location of the salt front in the Delaware River Estuary, and national drought monitors all indicate stressed conditions that could lead to regional and localized drought, adversely affecting water supplies and the attainment of DRBC flow management objectives; and

WHEREAS, the Commission's drought operating plans as set forth in its Water Code complement the states' drought response measures by providing for the conservation of regional reservoir storage through phased reductions in diversions, reservoir releases and flow objectives for purposes of water supply and flow augmentation in the Delaware River and salinity control in the Delaware River Estuary; and

WHEREAS, the DRBC Water Code defines "basinwide" and "lower basin" drought conditions and provides for the implementation of corresponding drought management actions, while simultaneously encouraging the Commission and Decree Parties by unanimous agreement to modify and adjust plans as necessary and appropriate to reflect actual conditions and needs; and

WHEREAS, in anticipation of the need to consider a declaration under section 10.4 of the Delaware River Basin Compact, the Commission on November 9, 2016 held a public hearing to accept input on the persistent dry conditions throughout the basin and how to address them; and

WHEREAS, section 10.4 of the Compact provides that "[i]n the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein," and further provides that "[f]or the duration of such emergency... no person, firm, corporation or other public or private entity shall divert or withdraw water for any purpose, in excess of such quantities as the commission may prescribe by general regulation or authorize by special permit"; and

WHEREAS, the Compact and Water Code empower the Commissioners and Decree Party representatives to jointly select and implement operations plans designed to meet existing conditions; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. **Declaration Under Section 10.4 of the Compact.** To address overall dry conditions throughout the basin, the Commission is taking the procedural step of declaring a "water supply emergency" pursuant to section 10.4 of the Delaware River Basin Compact for the entire Delaware River Basin. This action is not a declaration of a "drought emergency" by DRBC or any other jurisdiction, but it allows the Commission to implement a coordinated response to conserve water in regional

reservoirs. Future conditions will determine if and when there may be a need to declare a “drought emergency.”

2. **Allowable Water Uses.** Except as otherwise provided by this Resolution or in accordance with a Conservation Order issued by the Commission or the Executive Director hereafter, any person, firm, corporation, or public or private entity heretofore entitled to divert or withdraw water may continue to do so within such limits as are otherwise now imposed by law.
3. **Drought Management Special Permit for Major Diversions, Releases and Flow Objectives.** Pursuant to section 10.4 of the Compact, a special permit is hereby approved, the conditions of which are set forth below, to provide for coordinated operation of regional reservoirs and diversions, and in particular, to conserve regional reservoir storage.
 - a. **Decree Party Consent.** Because the diversions, releases and flow objectives established hereby affect the diversions, compensating releases, rights, conditions, obligations, and provisions for administration thereof as provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) (“Decree”), in accordance with section 3.3 of the Compact, the parties to the Decree have signified their consent hereto by the signatures of their authorized representatives on an attached page.
 - b. **Term of Special Permit.** Implementation of the conditions of this special permit shall begin immediately, and unless the Commission with the unanimous consent of the Decree Parties provides otherwise, shall terminate upon: the date of the Commission’s first quarterly business meeting in 2017, currently scheduled for Wednesday, March 15, 2017; or the date when all criteria for termination of basinwide “drought watch” established by section 2.5.3 E.3. of the Water Code are satisfied, whichever occurs earlier.
 - c. **Drought Stages.** For purposes of this special permit, drought stages consisting of “drought watch,” “drought warning” and “drought” shall be determined on the basis of combined storage in the Cannonsville, Pepacton, and Neversink Reservoirs, as set forth in Figure 1 below.
 - d. **Basin Deemed to be in “Drought Watch” Stage.** Based on combined reservoir storage as of this date and in consideration of current hydrologic conditions, the Commission deems the current drought stage for the basin to be “drought watch,” effective immediately.
 - e. **Out-of-Basin Diversions and Delaware River Flow Targets.** The schedule of diversions and flow objectives will be in accordance with the basinwide drought stages depicted in Figure 1 and the corresponding rates set forth in Tables 1 and 2 below.

The difference between the amount of water diverted from the basin by New Jersey and the lower values in the diversion ranges set forth in Table 1 will be drawn from a bank of water provided by the Decree Parties. No offsetting or accounting for offsetting is required for New Jersey’s increased diversions on any day when DRBC determines that no releases are required from lower basin reservoirs to meet the Trenton flow objective. The bank is capped at the current balance of 1.48 BG (2,300 cfs-days) for this special permit.

- f. **Other.** Except as set forth in paragraphs 3.b. through 3.e. above, drought operations shall be in accordance with sections 2.5.1 through 2.5.5 of the Water Code.

- g. **Operation of Lower Basin and Hydroelectric Reservoirs.** Upon implementation of the drought management special permit conditions for major diversions, releases and flow objectives as set forth in paragraphs 3 above, the provisions of section 2.5.5 of the Water Code for “Coordinated Operation of Lower Basin and Hydroelectric Reservoirs During a Basinwide Drought” shall go into effect, provided, however, that for the duration of drought operations under this “special permit,” references to the term “drought warning” in section 2.5.5 shall be deemed to refer to both the “drought watch” and “drought warning” stages defined in Figure 1 below.
- h. **Ongoing Consultation, Coordination and the Potential for Modification.** Consultation among the Commissioners, Decree Parties and Delaware River Master will continue throughout the duration of the current drought event. On the basis of these ongoing consultations and with the unanimous consent of the Decree Parties, the operations prescribed herein may be modified or terminated.
4. **Signatory State Actions.** The signatory states shall be responsible for the declaration of county or statewide drought stages in their respective jurisdictions as they deem necessary, and shall be responsible for the implementation and enforcement of associated water use restrictions in these areas.
5. **Maximized Water Use Efficiency Encouraged.** All residents, businesses and users of waters of the basin are encouraged to maximize water efficiency to preserve and protect the basin’s water supplies as provided for in section 2.1.4 of the Water Code.
6. **Effective Date.** This Resolution shall take effect immediately.

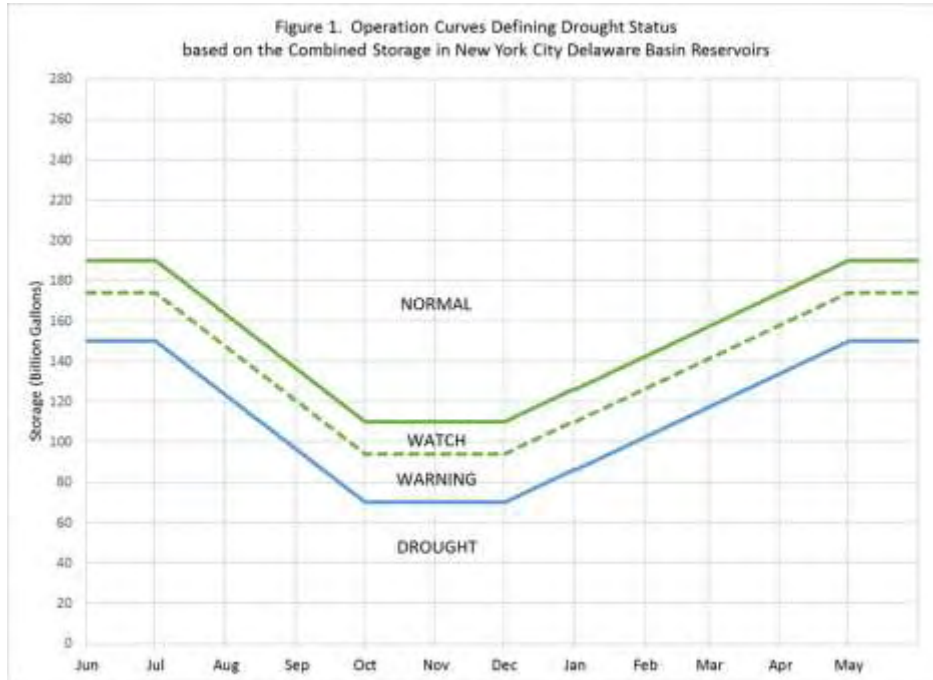
/s/ Michael A. Bliss

LTC Michael A. Bliss, Chairman *pro tem*

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

ADOPTED: November 23, 2016



Basin-wide Storage Condition	NYC Diversion (mgd)	NJ Diversion (mgd)	Montague Flow Objective (cfs)	Trenton Flow Objective (cfs)
Normal	800	100	1,750	3,000
Drought Watch	680	85 -100**	1,650	2,700
Drought Warning	560	70 - 100**	1,550	2,700
Drought	520	65 - 85**	1,100 - 1,650 *	2,500 - 2,900 *

* - Varies with time of year and location of the salt front in accordance with Table 2

** - The NJ Diversion is expressed as a range and it can vary based upon Item 3.3e in this Resolution

7-day average location of Salt Front [2] River Mile (RM) [3]	Montague, NJ			Trenton, NJ [4]		
	Dec.-Apr.	May-Aug.	Sept.-Nov.	Dec.-Apr.	May-Aug.	Sept.-Nov.
Upstream of RM 92.5	1,600	1,650	1,650	2,700	2,900	2,900
Between RM 87.0 and RM 92.5	1,350	1,600	1,500	2,700	2,700	2,700
Between RM 82.9 and RM 87.0	1,350	1,600	1,500	2,500	2,500	2,500
Downstream of RM 82.9	1,100	1,100	1,100	2,500	2,500	2,500

[1] As defined in Figure 1.

[2] Defined as the 250 milligram per liter isochlor in the Delaware Estuary

[3] Measured in statute miles along the navigation channel from the mouth of Delaware Bay

[4] The Trenton Flow objective is achieved if the sum of the flows observed at the USGS Trenton gaging station, releases in excess of conservation release from Blue Marsh Reservoir, and 70 cfs to account for bypass flows via Yardley and the Point Pleasant Pumping Station is greater than the Trenton Flow Objective listed above.

