



# Upper Delaware Council

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January 7, 2016

Governor Tom Wolf  
Room 225  
Main Capitol Bldg.  
Harrisburg, PA 17120

Governor Andrew Cuomo  
Executive Chamber  
State Capitol  
Albany, NY 12224

Governor Chris Christie  
Office of the Governor  
P.O. Box 001  
Trenton, NJ 08625

Governor Jack Markell  
Tatnall Building 2<sup>nd</sup> Floor  
150 Martin Luther King, Jr. Blvd. South  
Dover, DE 19901

Mayor Bill de Blasio  
City Hall  
New York, NY 10007

Dear 1954 U.S. Supreme Court Decree Party Principals:

The Upper Delaware Council urges the Decree Parties to resume good faith negotiations based on a thorough evaluation of the interim Flexible Flows Management Program (FFMP), with the goal of approving a multi-year agreement that aims to satisfy required objectives while protecting the Delaware River resource.

Public input must be part of this process so that you, as the decision-makers, are fully cognizant of the needs, impacts, and reasonable proposals for improvements that exist throughout the watershed as a whole.

Given the May 31, 2016 expiration date of the current FFMP, time is of the essence to avoid entering a fifth year of renewing virtually the same agreement because the Decree Parties are unable to work together to reach unanimity due to various contrasting positions.

The Upper Delaware Council, Inc. (UDC) attended the Dec. 3, 2015 meeting of the Delaware River Basin Commission's Regulated Flows Advisory Committee (RFAC), which graciously agreed to meet in Hawley, PA to facilitate hearing from the upper portion of the basin.

We were proud of the 100-plus audience turnout, the informative presentations made by Upper Delaware interests, and the passion of those offering public comments. One common theme was to express disappointment over the absence of any Decree Party Principals at the meeting to whom this constructive feedback could be directed. While it was duly acknowledged that Principal attendance is not required at meetings of RFAC, which has its own membership and governing structure, this overwhelming sentiment emphasized that there is a public clamor for an audience with the Decree Parties.

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***Working together to conserve the Upper Delaware Scenic and Recreational River***

*Town of Hancock - Town of Fremont - Town of Delaware - Town of Cochection - Town of Tusten - Town of Highland  
Town of Lumberland - Town of Deerpark - Damascus Township - Berlin Township - Lackawaxen Township - Shohola Township - Westfall Township  
State of New York - Commonwealth of Pennsylvania - Delaware River Basin Commission - In partnership with the National Park Service*

The Upper Delaware Council strongly encourages setting up a meeting of the Decree Party Principals that would: 1) offer an interactive format to assist with the public understanding of the negotiation process and to assure that the valuable feedback of the watershed stakeholder community is directly conveyed; 2) be convened well in advance of the current FFMP deadline to allow for adequate consideration time; and 3) extend invitations to the Delaware River Basin Congressional Task Force to recognize the front-line leaders who are our federal representatives.

### *Upper Delaware Council Positions*

The UDC non-profit organization's voting members are eight New York towns and five Pennsylvania townships which border along the Upper Delaware River, the State of New York, and the Commonwealth of Pennsylvania. The Delaware River Basin Commission is a non-voting member, while the National Park Service is the UDC's federal partner through a Cooperative Agreement to oversee the coordinated implementation of the *Final River Management Plan for the Upper Delaware Scenic and Recreational River* (adopted in 1986).

A primary goal of the River Management Plan is to “*protect and enhance the Upper Delaware River's outstanding values: its free-flowing nature, excellent water quality, and aquatic ecosystem.*”

The Council has consistently advocated for a more equitable, balanced regime of Delaware River flows and releases to protect the local fishery and river recreation industry that are so vital to the region's economy.

We oppose significant fluctuations in releases from the upstream New York City reservoirs that threaten to degrade the fishery habitat or negatively impact recreational uses in the protected river corridor.

The UDC regards the current Flexible Flows Management Program as a work in progress. Continued improvements are needed in release protocols to address the multiple interests that must be balanced throughout the Delaware River Basin.

To that end, we offer the following recommendations:

1. Make more water available to increase minimum conservation release levels.
2. Base availability on New York City estimated **actual** consumption, rather than on a worst case, maximum legal New York City diversion.
3. Water releases from Lake Wallenpaupack should not be counted towards the Montague flow target under certain circumstances to help maintain adequate flow and temperature conditions in the Delaware River above the confluence with the Lackawaxen River.
4. There should be a targeted flow and temperature river gage at Callicoon, or further up-river on the Main Stem of the Delaware River, to help ensure habitat protection for the Upper Delaware Scenic and Recreational River, and
5. New York City should continue to repair the leaks in their aqueduct system since that wasted water could be better used to help supplement flows in the Delaware River.

The River Management Plan's Water Resource Management section specifically charges the UDC to "*advocate flow release schedules from tributary reservoirs adequate to protect or improve water quality and aquatic ecosystems, in order to conserve and enhance the values that qualified the Upper Delaware as a Scenic and Recreational River.*"

During the summer months in the region, the water temperature on the Upper Delaware sometimes reaches dangerous highs. Often referred to as thermal events, these periods can not only have devastating effects on the aquatic ecosystem but also devastating effects on the local economy, with the only relief available coming from the Pepacton and Cannonsville Reservoirs.

At times of thermal stress and when extreme, prolonged heat is forecasted, the UDC has reached out to the Decree Parties and our New York State and Pennsylvania representatives requesting consideration of increased reservoir releases to provide thermal relief.

The problem is that there has not been a reliable procedure in place to address thermal events consistently and in a timely manner. This is not a sustainable or efficient approach.

The UDC urges incorporating a protocol into the next Flexible Flow Management Program that will proactively and systematically address inevitable future thermal events on the Upper Delaware.

There is no denying that this is an extremely complicated system with many variables and competing interests. The UDC respectfully requests that **all** decisions regarding Delaware River flows fully consider the impacts to the aquatic ecosystem and local economy that is so dependent on the sustained health of the Delaware River.

As changes to the next FFMP are contemplated, the Upper Delaware Council hopes that the Decree Parties will commit to re-opening internal discussions, being responsive to the scientific research of expert advisors, and providing the requested opportunity for public discourse.

Sincerely,



Fred Peckham,  
UDC Chairperson

Cc: Kelly Heffner, Commonwealth of Pennsylvania Decree Party Principal Designee  
Mark Klotz, State of New York Decree Party Principal Designee  
Daniel Kennedy, State of New Jersey Decree Party Principal Designee  
Dr. David Wunsch, State of Delaware Decree Party Principal Designee  
Paul Rush, New York City Decree Party Principal Designee  
Emily Lloyd, New York City Department of Environmental Protection Commissioner  
Steven Tambini, Delaware River Basin Commission Executive Director and UDC Representative  
Hernan Quinodoz, DRBC Staff Liaison to the Regulated Flow Advisory Committee (for circulation)  
Hoss Liaghat, RFAC Chairman, PA Department of Environmental Protection  
Marie Owens, Deputy Delaware River Master, USGS  
Michael Caldwell, National Park Service Northeast Regional Director and UDC Representative  
Kristina Heister, NPS Upper Delaware Scenic and Recreational River Superintendent and UDC Alternate  
US Senator Charles Schumer (NY)  
US Senator Kirsten Gillibrand (NY)  
US Senator Pat Toomey (PA)  
US Senator Robert Casey, Jr. (PA)  
US Congressman Chris Gibson (NY)

US Congressman Sean Patrick Maloney (NY)  
US Congressman Tom Marino (PA)  
NYS Senator John Bonacic  
PA Senator Lisa Baker  
PA Representative Mike Peifer  
PA Representative Sandra Major  
NYS Assemblywoman Aileen Gunther  
NYS Assemblywoman Cliff Crouch