

ULSTER COUNTY EXECUTIVE

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February 24, 2023

Mr. Ken Kosinski, P.E.
Director, Bureau of Flood Protection and Dam Safety
New York State Department of Environmental Conservation
625 Broadway, Albany NY 12233

Via email: Kenneth.kosinski@dec.ny.gov
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Dear Director Kosinski:

Thank you for the opportunity to provide formal comments on the proposed revisions to the Ashokan Reservoir Interim Release Protocol (IRP). These revisions, distributed to the Ashokan Release Working Group on October 5, 2022, represent a significant change in management strategy for the Lower Esopus. I appreciated the opportunity to meet in January with NYS Department of Environmental Conservation (DEC) and NYC Department of Environmental Protection (DEP) officials to share my concerns about the proposal and my perspective on opportunities to improve decision-making going forward.

As County Executive, I have a responsibility to the people and communities that I represent. This responsibility includes protecting our natural and scenic environment, which is critical to our economy, health, and quality of life. Healthy ecosystems also mitigate climate change and help improve our resilience to its impacts, including flooding.

As I have shared in conversations with officials, I strongly urge that the proposed revisions to the IRP be withdrawn. The main change being proposed--delegating authority to the County over decision-making related to releases--is unacceptable to the County for reasons detailed below. Instead, we urge that DEC and DEP expedite completion of the SEQR process and develop better data to enable a well-informed multi-objective management strategy for releases to the Lower Esopus. We also make recommendations to improve communication with the Ashokan Release Working Group of stakeholders and elected officials.

Background

Over the last several decades, the City's water quality management goal to reduce turbidity in the reservoir--the drinking water quality for millions of City residents--prompted the reestablishment of the Ashokan Reservoir's ongoing hydrologic connection to the Lower Esopus Creek through the Release Channel. The sole focus on reservoir turbidity in decision-making on releases to the Lower Esopus ignored other values important to communities downstream, including impacts on stream ecology and recreational uses. In response to concerns raised by Ulster County and community stakeholders, DEC developed the Interim Release Protocol, later included in an Order on Consent, that provides a rule set for managing releases and incorporates environmental and community values as well as flood protection. As part of the Order on Consent, DEP was required to examine the impacts of releases on the Lower Esopus in an Environmental Impact Statement (EIS) in order to obtain the necessary State permit for discharges (the CatAlum SPDES permit). The IRP remains in place to govern management of releases while the State Environmental Quality Review (SEQR) process is underway for the final permit.

In February of last year, the DEC released a decision requiring NYC DEP to prepare a supplemental EIS for the CatAlum Permit in order to provide additional information on impacts of the releases to the Lower Esopus, taking into account climate change and potential impacts to Hudson River drinking water supplies, and including an examination of alternatives. This analysis is currently underway.

Decision-Making Authority over Releases Should Not Be Delegated to Ulster County

The proposed IRP revision to shift decision-making to the County over releases is without precedent. It does not mirror any existing regulations in Article X Parts 670, 671 or 672 governing the releases from other reservoirs in the state. All other reservoir release protocols require close communication between the City Reservoir Release Manager and the State Reservoir Release Manager, who have knowledge and expertise to make these decisions, informed by extensive hydrologic and weather forecasting capability and other resources of their respective organizations. We have major concerns about the long-term cost of retaining the necessary decision-making expertise to make these decisions, as well as the liability to the County of calling for releases.

While we would welcome a more collaborative approach to decision-making, the delegation of authority to the County to direct releases (only for the most turbid water) is not acceptable.

Eliminating Operational Releases from the IRP Has No Practical Effect

The other proposed revision to the IRP would eliminate allowance for operational releases, which would be used to mitigate the potential discharge of turbid water from the Reservoir's west basin to the east basin. This option is in practice not utilized because of opposition to it by the County and other stakeholders, and while we welcome eliminating this provision in the final protocol adopted as part of the CatAlum SPDES permit, we see no urgency to amending the IRP for this reason.

Invest in Better Hydrologic Data, Modeling and Mapping for the Lower Esopus

Better data, including flood mitigation studies, are needed to enable more informed decision-making with regard to releases. The proposed revisions to the IRP create a likely scenario in which a large storm event is received by the Ashokan Reservoir that forces a decision to either release turbid water or allow the Ashokan to fill above the CSSO. A flood mitigation analysis, like analyses funded by NYC DEP in the Ashokan Watershed and by the NYS DEC in other parts of the state, would

enhance the understanding of the relationship between storm events, reservoir storage, spill events, and downstream flooding. In addition, a flood mitigation study would enable communities to pursue more detailed mitigation studies of areas that suffer frequent flood damage and map a path forward to reduce damages from flood events.

Expedite Completion of the SEIS

With the DEC decision in February 2022 to require a Supplemental EIS, we have been told the completion of the necessary studies will likely take five years. The CatAlum EIS has already been in process for a full decade and should not be dragged out for another five years. We urge that the review process be prioritized by DEP to undertake the necessary analysis as required by DEC so that the process can be completed in a timely manner.

Opportunity for Multi-Objective Management

Recently, NYC DEP shifted its management strategy for the reservoir system to balance turbidity and disinfection by-products (DBPs). This is a monumental change in management objective for the City of New York and its regulators. It represents a change of course from the turbidity-focused management of the system documented in the Filtration Avoidance Determination, the National Academy reports, the Long-Term Watershed Protection Plan, and the Catskill Turbidity Study. A major implication of this shift is the opportunity it presents for true multi-objective management of releases to the Lower Esopus which again highlights the need for high-quality data and studies to support this decision-making framework, which should be included in the SEIS.

Conclusion

Since the County does support the chief recommendation of the proposed revisions to the IRP, and since the other main recommendation regarding operational releases would have no practical effect, we recommend that NYS DEC and NYC DEP withdraw the proposed IRP revisions and focus instead on the necessary studies and analyses for the Supplemental EIS to complete the SEQR process for the CatAlum SPDES permit in a timely manner. We further urge both Departments to commit to fair and equitable treatment of communities downstream of Ashokan reservoir by undertaking the high-quality flood mitigation analyses that have been performed for reservoir watershed communities, and by achieving a true multi-objective management strategy for reservoir releases that protects the stream ecosystem and community values and mitigates flooding.

We appreciate this opportunity to comment and look forward to continued work together.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jen Metzger". The signature is stylized and fluid.

Jen Metzger

Ulster County Executive