

AMENDMENT

Effective May 8th, 2023

2023 Amendment of the 2017 Agreement for a Flexible Flow Management Program

This Amendment modifies the Agreement for a Flexible Flow Management Program dated October 21, 2017 and modification dated July 16, 2018 (FFMP2017), as provided in Paragraph III, and has been consented to by and among the State of Delaware (DE), the State of New Jersey (NJ), the State of New York (NY), the Commonwealth of Pennsylvania (PA), and the City of New York (NYC or City), (hereafter Decree Parties) who are Parties to the Amended Decree (Decree) of the U.S. Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954).

RECITALS

1. WHEREAS, FFMP2017 was unanimously consented to by the Decree Parties and became effective on October 21, 2017 and was modified on July 16, 2018;
2. WHEREAS, FFMP2017 Recital 11 provides that the Decree Parties will continue to seek public input as they implement FFMP2017 and negotiate successor agreements;
3. WHEREAS, FFMP2017 Paragraph III provides that FFMP2017 may remain in effect until May 31, 2028, but also provides for an interim review by the Decree Parties prior to May 31, 2023;
4. WHEREAS, FFMP2017 Paragraph III also provides that based on the progress in negotiations made by May 31, 2023, and on the results of the studies described in FFMP2017 Paragraph IV, the Decree Parties shall decide by unanimous consent to either: (a.) continue FFMP2017 until May 31, 2028, (b.) modify FFMP2017, or (c.) continue FFMP2017 for a shorter term to allow for negotiations of an alternative course of action;
5. WHEREAS, FFMP2017 Paragraphs IV.3, IV.4 and IV.5 identified required studies and evaluations to be conducted throughout the term of FFMP2017;
6. WHEREAS, FFMP2017 Paragraphs IV.2 and IV.6 identified considerations to be included throughout the term of FFMP2017. Of particular note in these paragraphs are impacts related to a) climate change, b) sea level rise and c) water quality.
7. WHEREAS, progress has been made on studies identified in Paragraph IV.3 through IV.5 including a general statement of study, specific work scopes for multiple studies and completed tasks on multiple studies. Delays have occurred during the time period due to the complicated nature of the study topics and due to the unanticipated events related to resources as well as the Coronavirus Disease 2019 (COVID-19) pandemic. Nonetheless, the current FFMP2017 has been working well and the Decree Parties remain committed to moving forward with the FFMP2017 studies.

AMENDMENT AND UNANIMOUS CONSENT

Accordingly, the Decree Parties HEREBY AGREE AND CONSENT to the following 2023 amendment to FFMP2017:

1. Except as modified by this amendment, FFMP2017 (as FFMP2017 was modified by unanimous consent of the Decree Parties effective July 16, 2018) shall continue, including its Appendix A. FFMP2017 shall remain in effect until May 31, 2028, unless modified or terminated earlier pursuant to Paragraph VII and VIII of FFMP2017.
2. Paragraph IV.3 through IV.5 of FFMP2017. The Decree Parties shall continue the studies identified in Paragraph IV.3 through IV.5 of FFMP2017. The three studies identified in Paragraph IV.3.a. and b., the study identified in IV.4 and the study identified in IV.5 shall be completed with a target date before May 31, 2026 pending available resources.
3. A new study that synthesizes the information provided in the studies identified in Paragraphs IV.3 through IV.5 of FFMP2017 shall be initiated after completion of studies identified in Paragraph 2 above with a target completion date of November 30, 2027. The scope of work for the synthesis study will be prepared in advance of the completion of the studies identified in Paragraph 2 above and the development of the scope of work for the synthesis study shall start once this 2023 amendment to FFMP2017 is effective.
4. The studies identified in Paragraphs IV.3 and IV.5 of FFMP2017 and the new study identified in Paragraph 3 above shall consider, where relevant, information, analysis, and data from external entities to the Decree Parties.
5. Additional modifications to FFMP2017 may be negotiated, with unanimous consent of the Decree Parties, once all studies identified in FFMP2017 and Paragraph 3 above, including relevant factors to be considered in Sections IV.2 and IV.6. of FFMP2017, are completed. Modifications to FFMP2017 may include, but are not limited to, New Jersey's diversion, the method of calculating the Excess Release Quantity, and detachment of releases from the New York City Delaware Reservoirs from the position of the salt front. Changes or modifications to FFMP2017 recommended by any individual study will not be considered until all identified studies are finalized and accepted by the Decree Parties. This 2023 amendment to FFMP2017 supersedes the timelines in FFMP2017 Paragraph IV.3.b.
6. This 2023 amendment to FFMP2017 shall become effective upon unanimous signed consent by all of the Decree Parties (Effective Date).

The 2023 amendment to FFMP2017 is Hereby Unanimously Consented to:

David R. Stursch 5/8/23
State of Delaware Date

Patricia J. Sturges 5/8/23
State of New Jersey Date

Cheryl R. Sturges 5/8/23
State of New York Date

Patricia J. Sturges 5/8/23
Commonwealth of Pennsylvania Date

Patricia J. Sturges 5/8/23
City of New York Date