

DOCKET NO. D-2001-038 CP-2

DELAWARE RIVER BASIN COMMISSION

Located in the Drainage Area of Special Protection Waters

**Eagle Creek Hydro Power, LLC
Toronto, Cliff Lake, & Swinging Bridge Hydro-Electric Dam System
Orange and Sullivan Counties, New York**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) by Eagle Creek Hydro Power, LLC (Eagle Creek or docket holder) on July 22, 2013 (Application), for renewal of the release of water from the Toronto, Cliff Lake and Swinging Bridge Reservoirs (SBR), collectively the Upper Mongaup Reservoirs, to generate hydro-electricity at the SBR. The Federal Energy Regulatory Commission (FERC) issued License No. P-10482 on April 14, 1992.

The Application was reviewed for continuation of the previously approved hydro-electric turbines at the SBR in the Comprehensive Plan and approval under Section 3.8 of the *Delaware River Basin Compact*. The Orange County Planning Department and Sullivan County Division of Planning and Environmental Management have been notified of pending action. A public hearing on this project was held by the DRBC on March 11, 2014.

A. DESCRIPTION

- 1. Purpose.** The purpose of this docket is to transfer ownership of the 6,750 kilowatt (kW) SBR hydro-electric turbine system from Mirant NY-Gen, LLC, (Mirant) to the docket holder and to approve its continued use along with releases from the Upper Mongaup Reservoirs.
- 2. Location.** The Toronto Reservoir releases water to the Cliff Lake Reservoir via Black Lake Creek. A tunnel diversion then releases water from the Cliff Lake Reservoir to the SBR. The SBR is located at River Mile 261.1 – 11.9 (Delaware River – Mongaup River) in Sullivan and Orange Counties, New York. The Upper Mongaup Reservoirs and hydro-electric turbine at the SBR are located within the drainage area to the Upper Delaware Special Protection Waters (SPW).

3. **Area Served.** Energy produced by the hydro-electric turbine supplies the regional grid where the SBR dam is located. The reservoirs themselves provide recreational uses and water storage to supplement stream flow in the main-stem Delaware River. For the purpose of defining the Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. **Physical Features.**

a. **Reservoir and Dam Descriptions.** The Mongaup Reservoir System was constructed in the 1920s and consists of the Toronto, Cliff Lake, Swinging Bridge, Mongaup Falls, and Rio Reservoirs. The reservoir system has an overall capacity of approximately 15.38 billion gallons, most of which is stored in the Toronto and Swinging Bridge Reservoirs. The reservoir system was designed to incorporate hydro-electric generation and as such turbines were installed in downstream powerhouses of many of the dams. This docket continues approval of releases from the Upper Mongaup Reservoirs for hydro-electric generation at the SBR.

The Toronto Dam is a 1,620 feet long earthen dam with a maximum height of 103 feet. Toronto Reservoir has a surface area of approximately 860 acres and a gross storage capacity of 8.47 billion gallons.

The Cliff Lake Dam consists of two earth embankment dams, a 100 feet long by 26-50 feet high concrete overflow spillway, and a 150 feet long by 36 feet high non-overflow wall. Cliff Lake Reservoir has a surface area of approximately 190 acres and a gross storage capacity of 104 million gallons.

The Swinging Bridge Dam is a 975 feet long earthen dam with a maximum height of 135 feet. SBR has a surface area of approximately 1,000 acres and a gross storage capacity of 5.61 billion gallons.

DRBC Docket No. D-2011-020 CP-1 was approved on May 10, 2012 and describes the Mongaup Falls and Rio Reservoir system (Lower Mongaup Reservoirs) along with the hydro-electric projects located therein.

b. **Swinging Bridge Powerhouse Description.** The Powerhouse is located 972 feet downstream of the dam and is supplied water by a 9.75 feet diameter tunnel and 10 feet diameter penstock pipe.

e. **Cost.** There are no construction costs associated with the existing Upper Mongaup Reservoir system.

f. **Relationship to the Comprehensive Plan.** The Mongaup Reservoir System was included in the Comprehensive Plan in February 1972. Docket No. D-2001-38 CP-1 was approved on May 10, 2007 and continued approval of the reservoirs while adding the hydro-electric projects to the Comprehensive Plan. This docket will continue approval of the Upper Mongaup Reservoir system in the Comprehensive Plan.

B. FINDINGS

The purpose of this docket is to transfer ownership of the 6,750 kW SBR hydro-electric turbine system from Mirant to the docket holder and to approve its continued use along with releases from the Upper Mongaup Reservoirs.

In 1992, the DRBC adopted SPW requirements, as part of the DRBC *Water Quality Regulations (WQR)*, designed to protect existing high water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap has been classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

On July 16, 2008, the DRBC approved amendments to its *WQR* that provide increased protection for waters that the Commission classifies as SPW. The portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area was approved for SPW designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1). and 2). of the Commission's *WQR* states that projects subject to review under Section 3.8 of the Compact that are located in the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan (NPSPCP) that controls the new or increased non-point source loads generated within the portion of the docket holder's service area which is also located within the drainage area of SPW. The service area of the docket holder is located within in the drainage area to the SPW. Since this project does not entail additional construction and expansion of facilities/service area (i.e., there are not any new or increased non-point source loads associated with this approval), the NPSPCP requirement is not applicable at this time. Accordingly, DECISION Condition II.x. has been included in this docket.

DECISION Condition II.d. continues the requirement that the docket holder maintain minimal flow releases from the Toronto, Cliff Lake, and Swinging Bridge Reservoirs of at least 10 cfs, 10 cfs, and 100 cfs, respectively. This requirement remains in place to ensure downstream water flows continue to support aquatic life and aid in the Montague flow target.

DECISION Condition II.t. of Docket No. D-2011-020 CP-1 required the docket holder to submit an Operating Plan to the Executive Director for review and approval for both the Mongaup Falls and Rio Reservoirs/Dams/Hydropower Projects within six (6) months of approval of that docket (by November 10, 2012). The docket holder requested an extension for the submittal of the Operating Plan to February 1, 2014 in order to include all the reservoirs in the Mongaup System. The Operating Plan will be reviewed in accordance with the Commission's *Water Code*.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

The project is designed to produce a discharge meeting the effluent requirements as set forth in the Commission's *Water Quality Regulations (WQR)*.

C. DECISION

I. Effective on the approval date for Docket No. D- D-2001-038 CP-2 below:

a. The Upper Mongaup Reservoirs and hydro-electric facilities described in Docket No. D-2001-38 CP-1 are removed from the Comprehensive Plan to the extent that they are not included in Docket No. D-2001-038 CP-2; and

b. Docket No. D-2001-38 CP-1 is terminated and replaced by Docket No. D-2001-038 CP-2; and

c. The project and the appurtenant facilities described in Section A "Physical Features" of this docket shall be continued in the Comprehensive Plan.

II. The project and appurtenant facilities as described in Section A "Physical Features" of this docket are approved pursuant to Section 3.8 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the FERC and NYSDEC, and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission's.

b. The Upper Mongaup Reservoirs along with their respective dams and powerhouses shall be available at all times for inspection by the DRBC.

c. The facilities shall be operated at all times to comply with the requirements of the Commission's *WQR* and *Water Code*.

d. Minimal flow releases of 10 cfs, 10 cfs, and 100 cfs shall be maintained at the Toronto, Cliff Lake, and Swinging Bridge Reservoirs, respectively.

e. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

f. The docket holder is permitted to provide power to the grid and utilize water storage in each reservoir for recreational use/conservation release as defined in the "Area Served" Section of this docket.

g. The docket holder shall discharge water from the turbines/generators in such a manner as to avoid injury or damage to fish or wildlife and shall avoid any injury to public or private property.

h. The issuance of this docket approval shall not create any private or proprietary rights in the waters of the Basin, and the Commission reserves the right to amend, suspend or rescind the docket for cause, in order to ensure proper control, use and management of the water resources of the Basin.

i. Unless an extension is requested and approved by the Commission in advance, in accordance with paragraph 11 of the Commission's Project Review Fee schedule (Resolution No. 2009-2), the docket holder is responsible for timely submittal of a docket renewal application on the appropriate DRBC application form at least 12 months in advance of the docket expiration date set forth below. The docket holder will be subject to late charges in the event of untimely submittal of its renewal application, whether or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below (or the later date established by an extension that has been timely requested and approved), the terms and conditions of the current docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

j. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

k. Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the Rules of Practice and Procedure. In accordance with Section 15.1(p) of the Delaware River Basin Compact, cases and controversies arising under the Compact are reviewable in the United States district courts.

BY THE COMMISSION

DATE APPROVED: March 12, 2014

EXPIRATION DATE: April 14, 2022