

NABOP-F/4 (Washington Suburban Sanitary Commission) 76-328
NABOP-F/4 (Washington Suburban Sanitary Commission) 76-804
NABOP-F/4 (Fairfax County Water Authority) 76-1126

Honorable James A. Joseph
Under Secretary of the Interior
Washington, D. C. 20240

Memorandum of Intent

Dear Mr. Joseph:

This memorandum clarifies the intent of the parties with respect to implementation of the Low Flow Allocation Agreement in response to the concerns expressed by the United States Fish and Wildlife Service and the Department of the Interior with respect to the captioned permit applications. The problem at issue is to assure that there will be enough water remaining in the Potomac River after withdrawals by the proposed intake structures to avert severe and irreparable damage and disruption to the Potomac River ecosystem, and to recognize the need to avoid damage to properties of the National Park Service.

This will be addressed as follows:

1. Until any of the proposed intakes has begun to withdraw water, there will be no change in the current water withdrawal situation. Thus, there is no need for an "environmental flow-by" amount until at least one such intake has become operational, there being no such amount in effect now.

2. The Low Flow Allocation Agreement of January 11, 1978, provides that in calculating the amount of water available for allocation, an amount shall be set aside for the maintenance for environmental conditions. Specifically, Article 2.C. states in part:

"In calculating the amount of water available for allocation, the Aqueduct will determine, in consultation with the parties and based upon then current conditions and information, any amount needed for flow in the Potomac River downstream from the Little Falls dam for the purpose of maintaining environmental conditions ("environmental flow-by"), and shall balance such need against essential human, industrial and domestic requirements for water. The Aqueduct's determination shall be based upon the data and shall give substantial weight to conclusions for environmental flow-by submitted by the State."

3. In calculating the total daily withdrawal to determine whether the Restriction and Emergency Stages are to be put into effect pursuant to Article 2.B. of the LFAA, the Washington Aqueduct will include along with the amount of water withdrawn from the subject portion of the river that amount designated as the environmental flow-by. Thus, when the Washington Aqueduct determines that the amount withdrawn, combined with the environmental flow-by amount, is equal to or greater than eighty (80) percent of the total daily flow, the Restriction Stage will be put into effect and allocation will begin. During the Restriction or Emergency Stages, the Washington Aqueduct will (subject to the availability of funds) reduce withdrawal from the Great Falls intake and increase withdrawal from the Little Falls intake consistent with maintaining favorable environmental conditions between Great Falls and Little Falls.

4. A joint study proposed by the State of Maryland and conducted in cooperation with the Department of the Interior, the Army Corps of Engineers, the Environmental Protection Agency, and the Commonwealth of Virginia ("the joint study") is currently underway for the purpose of determining an environmental flow-by amount for the aforesaid provision of the Low Flow Allocation Agreement. When the results of that study are complete, it will constitute the data and conclusions to which reference is made in the aforesaid provision of the Agreement. The study will automatically, therefore, become the basis for execution of that provision of the Agreement.

5. Should the joint study, for any reason, not be completed by the time any intake becomes operational, the Washington Aqueduct, as initial administrative authority under the Low Flow Allocation Agreement, will utilize such environmental flow-by amount as shall be set by the Secretary of the Army in consultation with the Secretary of the Interior. The Secretary of the Army shall also solicit the views of the signatories to the Agreement.

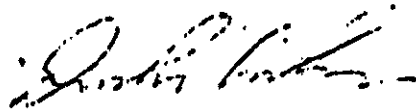
6. It is expected that the joint study will determine, among other things, (a) an environmental flow-by amount, and (b) a schedule of the ecological consequences of each level of flow below the environmental flow-by amount. In administering the above-quoted provision of the Low Flow Allocation Agreement, the Washington Aqueduct will not invade such an amount absent essential need. In determining such need, the Washington Aqueduct shall assure itself that the localities and jurisdictions affected have made maximum use of other sources of water and imposed maximum conservation measures. The decisions of the Washington Aqueduct will be appealable to the Moderator under Article 1 of the Agreement. Any objection of the Department of the Interior or other Federal agency to any such decision of the Washington Aqueduct will be raised by appeal to the Moderator by the Department of the Army.

7. In recognition of the need of the C & O Canal National Historic Park for minimal amounts of water to maintain the integrity of structures, the National Park Service will not be obligated to consider a complete cutoff of its intakes until such time as the Washington Aqueduct determines it necessary to invade the environmental flow-by amount. Whenever the Restriction Stage is in effect and following a request by the Washington Aqueduct, the National Park Service will consider means of reducing the demand for water withdrawal by the C & O Canal National Historic Park from the subject portion of the river consistent with the preservation of the Park's resources.

8. Nothing in this memorandum shall be construed as purporting (a) to diminish the rights of the Secretary of the Interior to meet his statutory responsibilities to protect the National Park along the river, or (b) to alter Article 3.C of the Low Flow Allocation Agreement.

The signatories to the Low Flow Allocation Agreement have been consulted with respect to this interpretation and application of the Agreement, and they concur in it. Reference to this memorandum shall be placed in any of the captioned permits granted and in any future permits for withdrawal structures from the affected portion of the Potomac River.

Sincerely,



DRAKE WILSON
Brigadier General, USA
Acting Director of Civil Works