

**REGULATORY PROCESS AND POWERS  
POTOMAC RIVER BASIN  
-WATER RELATED PROGRAMS-**

DISCUSSION DOCUMENT FOR  
THE POTOMAC REGIONAL WATER RESOURCES COMMITTEE  
- MAY 16, 2008 -

**INTRODUCTION:** The Potomac Regional Water Resources Committee created for the Pennsylvania Act 220 State Water Planning process has held brief discussions of possible use of regulatory powers by some undefined and un-designated body as a means of providing for enhanced management of the water resources of some or all of the Potomac River Basin in Pennsylvania. This document is an attempt to frame several key issues and lead to additional discussion by the Committee.

**WATER RESOURCES PLANNING AND MANAGEMENT IN PENNSYLVANIA:** Act 220 enacted in 2002 does not create any new water resources regulatory programs, but rather moves the Commonwealth and its six regional river basins or watersheds into a new era of management and planning with the development and frequent updating of a state water plan. This effort should evolve over time and may result in recommended changes to various laws of the Commonwealth. However, as this discussion document is written, no specific changes are proposed related to local or regional water management functions.

**Management actions are vested at several levels of government as follows:**

**LOCAL GOVERNMENT:** The local government level - commonly the individual municipality - is vested with land use decision-making authority pursuant to the Pennsylvania Municipalities Planning Code, and the various local government codes. The local governments do not exercise direct control over water withdrawal or water rights actions. Section 3136 of Act 220 seemingly prohibits local governments from allocating water resources. The local governments do exercise zoning authority (where they have adopted this authority) and as part of the zoning, *may consider* water supply plans for the area of interest.

**COUNTY GOVERNMENTS:** County level governments are purely advisory and coordinative with respect to most water management functions. One area where they may have some useful power is in the area of stormwater management and planning.

**STATE GOVERNMENT REGULATORY PROGRAMS:** The Commonwealth, primarily acting through the Department of Environmental Protection and Article 1, Section 27 of the Pennsylvania Constitution, utilizes many water resources programs that manage the waters of the Commonwealth, albeit, change is sought in many respects

through the provisions of Act 220. Principal regulatory programs include:

\* Water allocation of surface waters withdrawn by public water supply agencies under authority of the Water Rights Act of 1939. Pennsylvania is a “riparian doctrine” state and as such owners of land through which water flows or abutting flowing water have a right to a “reasonable use” of that water providing that they do not damage downstream users. Public water suppliers need an authorization to move water into distribution systems by removal from a given surface water body. Similar requirements do not exist for groundwater withdrawals.

\* The Pennsylvania Safe Drinking Water Act (35 P. S. 721.4) and regulations at Title 25, Chapter 109, and federal law provide for permitting of public water suppliers and bottled water providers. This is largely a “quality” and public health and safety program, although comprehensive reviews may require quantity to be considered. The reviews and considerations/authorizations may change under an integrated water resources management concept that is under consideration in Pennsylvania.

\* Encroachments into waters of the Commonwealth, including wetlands, and dam safety issues are managed under regulations at Title 25, Chapter 105 established by the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597). Some functions are delegated to county conservation districts.

\* Soil Erosion and Sediment Control is provided for under regulations at Title 25, Chapter 102 issued under sections 5 and 402 of The Clean Streams Law (35 P. S. § § 691.5 and 691.402). Some functions are delegated to county conservation districts.

\* Water quality is regulated in several program activities pursuant to regulations at Title 25, Chapters, 71, 72, 73, 91, 92, 93, 94, 95, and 96 that have the Pennsylvania Clean Streams Law as a base. These regulations address topics as follows:

- Chapter 71 - Administration of Sewage Facilities Planning Program
- Chapter 72 - Administration of Sewage Facilities Permitting Program
- Chapter 73 - Standards for Onlot Sewage Treatment Facilities
- Chapter 91 - General Provisions
- Chapter 92 - National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance
- Chapter 93 - Water Quality Standards
- Chapter 94 - Municipal Wasteload Management
- Chapter 95 - Wastewater Treatment Requirements
- Chapter 96 - Water Quality Standards Implementation

\* Floodplain Management under regulations at Title 25, Chapter 106 are authorized by section 302 of the Flood Plain Management Act (32 P. S. § 679.302); and sections 5 and 402 of The Clean Streams Law (32 P. S. § § 691.5 and 691.402). This is a significant

public safety and general welfare issue and has significant impact at local levels to avoid construction in flood prone areas.

\* Stormwater Management under regulations at Title 25, Chapter 111 are authorized by section 17 of the Stormwater Management Act (32 P. S. § 680.17). At the local level, this Chapter provides some limited funding to counties to assist or reimburse them for costs in preparing or revising watershed stormwater plans. Furthermore, it funds municipalities for reimbursement for the preparation, administration, enforcement, implementation and revisions of ordinances and regulations as required by official watershed stormwater management plans and the act.

INTERSTATE AGENCY: The Interstate Commission on the Potomac River Basin (ICPRB) is an interstate compact agency of the states of Pennsylvania, Maryland, Virginia and West Virginia and the District of Columbia, created in 1940 by compact with the mission to enhance, protect, and conserve the water and associated land resources of the Potomac River basin and its tributaries through regional and interstate cooperation. The ICPRB is non-regulatory, but pursuant to Article III of the Compact may accept delegations of authority from its member signatory bodies (See COMPACT, attached hereto). This has been done with the creation of the Section for Cooperative Water Supply Operations on the Potomac (this section does not include Pennsylvania as a member) that is tasked to manage and direct the water withdrawals of suppliers for Metropolitan Washington during drought periods as part of a cooperative management approach.

The ICPRB is largely an advisory body, with distinct powers under the Compact, and with several key roles and distinct functions as a regional entity. These include:

#### ICPRB Powers

- A. Collect, analyze, interpret, coordinate, tabulate, summarize, and distribute technical and other data and conduct studies, sponsor research, and prepare reports on pollution and other water problems.
- B. Cooperate with, assist, and provide liaison for and among public and non-public agencies and organizations and sponsor cooperative action in formulating and coordinating plans, programs, and other activities relating to stream pollution and utilization, conservation, and development of water and associated land resources.
- C. Disseminate to the public information relating to stream pollution problems and to the utilization, conservation, and development of the water and associated land resources.
- D. Cooperate with the legislative and administrative agencies of the signatory bodies for the purpose of promoting uniform laws, rules, or regulations for abating and controlling pollution of streams and associated land resources.

## Summary of ICPRB Roles and Functions

1. Interstate and basin-wide coordination.
2. Stimulation of federal and state action.
3. Basin-wide water quality monitoring evaluation, and conduct of other water related studies.
4. Meaningful liaison with citizen and government groups.
5. Dissemination of information about the Potomac basin.
6. Provision of unique services and technical support to the Compact members.

The ICPRB Compact as amended in 1970 states “*the regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of Federal, State, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district...*”

**POTENTIAL MANAGEMENT POWERS OF INTERSTATE COMMISSIONS:** The Delaware River Basin Commission (DRBC) and Susquehanna River Basin Commission (SRBC) are frequently looked upon as ideal role models for interstate water resources management. And they are because of the powers accorded them in the Compacts creating them. However, they have power and duties in the Commonwealth only because Pennsylvania does not exercise specific duties and functions because of a lack of specific statutory authority - as an example - groundwater management in the Southeastern Groundwater Protected Area of the DRBC.

The DRBC and the SRBC regulatory powers are codified in the Code of Federal Regulations at 18 CFR 401 and 18 CFR 801 respectively. Among the specific projects regulated are the following:

Withdrawal of surface water (DRBC)

Withdrawal of groundwater (DRBC)

Stream encroachment (DRBC)

Disposal of wastes (DRBC)

Impoundment (DRBC)

(For certain projects the DRBC will pursue a change of the Basin Comprehensive Plan and may require the applicant to prepare and implement a water conservation plan, including but not limited to Source Metering, Service metering, leak detection and repair, water conservation performance standards, retail pricing.)

Consumptive use of water (SRBC)

Withdrawals (SRBC)

Diversions (SRBC)

Interbasin transfers of water (SRBC)

Both DRBC and SRBC have administrative agreements with the Commonwealth of Pennsylvania to define and to limit the projects and applications that are subject to Commission or Department reviews to avoid duplication of review actions.

**CONCLUSION:** As the Potomac Regional Water Resources Committee continues to discuss and grapple with water issues in the Potomac basin portion of Pennsylvania, the above discussed roles and functions should help to highlight those additional water management tools that may be considered as needed, and desired, for implementation in the future. This discussion may help to frame how these various tools might fit into the full matrix of water management responsibilities of government at several levels.

The brief discussion of the roles played by the Delaware and Susquehanna River Basin Commissions in regulating/managing waters should be a starting point for considering what these agencies do for Pennsylvania that is not done by a state agency. The Potomac Water Resources Committee should consider the various water resources challenges for the basin and assess the benefits of a body or government agency being created to perform these functions. It should be noted that when the DRBC or SRBC issue a project decision, that action is taken by Pennsylvania representatives in conjunction with other jurisdictions that are members of the DRBC and/or SRBC.

**ATTACHMENT**

**Compact creating the  
Interstate Commission on the Potomac River Basin**

*This document is an electronic version of the language the U. S. Congress used in adopting the 1970 amendment for the Compact creating the Interstate Commission on the Potomac River Basin. Any discrepancy or difference in language is not intended. If there is a discrepancy the language in the official records of the United States Congress will prevail.*

**Public Law 91-407  
91<sup>st</sup> Congress, S. J. Res.67  
September 25, 1970**

**Joint Resolution**

**84 STAT. 856**

***Granting the consent of the Congress to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia, as signatory bodies, for certain amendments to the compact creating the Potomac Valley Conservancy District and establishing the Interstate Commission on the Potomac River Basin.***

Whereas, by Public Resolution Numbered 93, Seventy-sixth Congress, third session, approved July 11, 1940 (54 Stat. 748), Congress granted consent to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia, hereinafter designated signatory bodies, to enter into a compact for the creation of a Potomac Valley Conservancy District and the establishment of the Interstate Commission on the Potomac River Basin; and

**33 USC 567b**

Whereas, all signatory bodies have entered into said compact; and

Whereas, all the said signatory bodies have adopted identical proposed amendments to said compact, for which they seek the consent of Congress, by virtue of which amendments said compact will read as follows:

**“COMPACT**

“Whereas, it is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate stream; and

“Whereas, the Congress of the United States has given its consent to the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac river and the main and tributary streams therein, for ‘the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes’; and

“Whereas, the regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of Federal, State, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district:

“Now, therefore, the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley Conservancy District, hereinafter designated the Conservancy District, comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the Interstate Commission on the Potomac River Basin, hereinafter designated the Commission, under the articles of organization as set forth below.

#### **“Article I**

“The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Said Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the performance of their duties.

“(A). The Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

“(B). The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be

employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more offices for the transaction of its business and may meet at any time or place within the area of the signatory bodies.

“(C). The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the Commission.

“(D). A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the Commission who shall represent at least a majority of the signatory bodies: *Provided, however,* That no action of the Commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

## “Article II

“The Commission shall have the power:

“(A). To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the Conservancy District.

“(B). To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and Federal, local governmental and non-governmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said Conservancy District.

“(C). To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the Conservancy District and on the aims, views, purposes and recommendations of the Commission in relation thereto.

“(D). To cooperate with, assist, and provide liaison for and among, public and non-public agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream



pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

“(E). In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

“(F) (1). To make, and, if needful from time to time, revise and recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also for cleanliness of the various streams in the Conservancy District.

“(2). To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the District in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the Commission with its recommendations thereon.

“The Commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the Commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the Commission.

“It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

“It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational

purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

### “Article III

“For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the Commission may establish Sections of the Commission consisting of the Commissioners from such affected signatory bodies: *Provided, however,* That no signatory body may be excluded from any Section in which it wishes to participate. The Commissioners appointed by the President of the United States may participate in any Section. The Commission shall designate, and from time to time may change, the geographical area with respect to which each Section shall function. Each Section shall, to such extent as the Commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the Commission, and **in addition may exercise such other powers and perform such functions as may be vested in such Section by the laws of any signatory body or by the laws of the United States.** [*Emphasis Added*] The exercise or performance by a Section of any power or function vested in the Commission may be financed by the Commission, but the exercise or performance of powers or functions vested solely in a Section shall be financed through funds provided in advance by the bodies, including the United States, participating in such Section.

### “Article IV

“The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

“The pro rata contributions shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

#### **“Article V**

“Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

“1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District and in planning for the utilization, conservation and development of the water and associated land resources thereof.

“2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

“3. The appropriation of biennial sums on the proportionate basis as set forth in Article IV.

#### **“Article VI**

“This compact shall become effective immediately after it shall have been ratified by the majority of the legislature of the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and by the Commissioner of the District of Columbia, and approval by the Congress of the United States: *Provided, however,* That this compact shall not be effective as to any signatory body until ratified thereby.

#### **“Article VII**

“Any signatory body may, by legislative act, after one year's notice to the Commission, withdraw from this compact.”

Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of the Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia to adopt the aforementioned amendments and enter into the amended compact hereinbefore recited and every part and article thereof: *Provided,* That nothing contained in such amended compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact:

*And provided further*, That the consent herein given does not extend to section (F) (2) of article II of the amended compact.

Sec. 2. The Commissioner of the District of Columbia is authorized to enter into, on behalf of the District of Columbia, the amended compact hereinbefore recited.

Sec. 3. The right to alter, amend, or repeal this joint resolution is hereby expressly reserved.

Approved September 25, 1970

LEGISLATIVE HISTORY:

HOUSE REPORT            No. 91-1405 accompanying H. J. Res. 1179 (Comm. on Public Works)

SENATE REPORT         No. 91-1114 (Comm. on the Judiciary)

CONGRESSIONAL RECORD, Vol. 116 (1970):

Aug. 14, considered and passed Senate.

Sept. 14, considered and passed House, in lieu of H. J. Res. 1179.