

(THIS LETTER WAS SENT TO GOV. RIDGE, SECR. SEIF, DEP. SECR. TROPEA AND THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE IN THE SENATE AND HOUSE)

Please Note: Our New Fax Number is 717-772-5748

March 28, 2000

«Addressee»

Dear «Salutation»:

While water is one of Pennsylvania's most abundant and valuable resources, we do little to manage our use of it. Pennsylvania currently has no comprehensive water management system. We do not have a solid understanding of the amount of water available, the amount needed to support human and aquatic health, or the amount and location of water available for future uses.

In addition, the entire Commonwealth currently remains in a "drought watch," never having fully recovered from the drought conditions of the last two years. The projected drought across the southern United States and much of the mid-west (affecting states as close as Ohio) can only worsen the situation.

As we enter the new millennium, Pennsylvania is not in a position to effectively manage future development of water resources. As a result, growth and development in the state are and will continue to occur with little regard for water resource availability or impacts.

To redress this shortcoming, the Citizens Advisory Council¹ to the Pennsylvania Department of Environmental Protection has issued a statement calling for Pennsylvania to adopt a comprehensive and integrated system of water resource management. This report is enclosed for your review and information.

Without an integrated approach, severe shortages and over-use may render water resources incapable of meeting essential needs, cause conflicts among users, disrupt or damage economic activities, destroy aquatic organisms and contribute to environmental degradation, pollution and unsanitary conditions. All of these are detrimental to the health, safety and welfare of Pennsylvanians and to Pennsylvania's economy.

Council's water committee has been studying this issue for nearly a year, meeting with various interest groups, affected parties, and experts. The Council reviewed relevant materials from other jurisdictions and organizations before reaching its conclusions. The Council's position builds on the recommendations made by the Governor's 21st Century Environment Commission.

¹ The Council is a legislatively created advisory committee charged with reviewing all environmental issues, legislation, regulations, policies and programs relating to Pennsylvania. Council members are appointed volunteers who serve staggered 3-year terms. Council provides its advice to the Department, the General Assembly, the Governor and the Commonwealth's citizens.

Council's water committee has been studying this issue for nearly a year, meeting with various interest groups, affected parties, and experts. The Council reviewed relevant materials from other jurisdictions and organizations before reaching its conclusions. The Council's position builds on the recommendations made by the Governor's 21st Century Environment Commission.

The Council asks that you consider our findings and recommendations in your deliberations over this critical issue. Please call me at 717-234-5550, or Sue Wilson, Council's Executive Director at 717-787-4527 if you have any questions or if we can provide further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jolene E. Chinchilli". The signature is written in black ink and is positioned above the printed name and title.

Jolene E. Chinchilli
Chairperson

Enclosure

cc: DEP Water Resources Advisory Committee

Citizens Advisory Council
Position Statement on Water Resource Management

Approved March 20, 2000

Introduction

Water, a vital resource essential for human life and health, is one of Pennsylvania's most abundant resources. As noted by the 21st Century Environment Commission, Pennsylvania has historically taken its water supply for granted because of this natural abundance. However, continued growth, sprawling development patterns and rising per capita water use all place increasing pressures on water supplies (both through increased demand and impacts on groundwater recharge) and on water quality. Pennsylvania currently only regulates approximately 10% of the withdrawals from the state's surface waters as it only has authority to regulate surface water withdrawals for public water supplies.

These pressures are not limited to surface waters. About 50 percent of Pennsylvania's drinking water (individual wells and public supplies) come from groundwater sources, most of which do not have adequate protection plans.¹ Yet groundwater withdrawals are regulated only within the jurisdictions of Pennsylvania's two major river basin commissions (DRBC and SRBC). These sources need to be protected, not just for public water supply but also for their role in supplying aquatic systems.

Currently, Pennsylvania has no comprehensive water management system. Instead, Pennsylvania is one of 5 East Coast states (VT, NH, RI, ME and PA)² that still follow the common law doctrine of riparian rights.³ In a riparian rights system, the courts regulate the allocation of surface water (not groundwater or water quality) as a common property for the common good of the people. Unfortunately, common property is subject to the "tragedy of the commons"—if demand approaches capacity, there is an incentive to use as much as possible rather than conserve.

We also have an outdated state water plan,⁴ and therefore do not have a solid understanding of the amount of water available by subbasin, the amount needed by the streams and rivers to support their aquatic

¹ "Report of the 21st Century Environment Commission," 9/15/1998.

² "LWVPA-CEF 1995 Common Ground Project," League of Women Voters (LOWV), 9/14/1995.

³ Although the DRBC and the SRBC comprehensively manage water resources in eastern Pennsylvania, Common Law doctrine defines water rights in the rest of the state. It divides water into at least 4 types: diffuse surface water, surface water in defined streams and water bodies, groundwater in subterranean streams, and percolating groundwater. Three rules that cover different classifications of waters are:

- Riparian Doctrine for the use of water in streams: each riparian landowner (adjacent to a stream) can withdraw unlimited amounts of water for domestic use and reasonable extraordinary use on the property. Use of the water off the riparian property is considered "unreasonable per se."
- The American Rule of withdrawal of groundwater: A landowner can withdraw percolating groundwater for natural and ordinary (any economic) uses on that land regardless of effect on neighbors. There is no security of water rights under such a principle, i.e., "the deepest well and the most powerful pump wins".
- Municipal water supply wells, reasonable vs. unreasonable use: Common law views transfer of ground water as "unreasonable per se." However, recent court decisions have said that municipalities should not be prohibited from withdrawing water from outside their boundaries, but replacement of supplies affected by that withdrawal may be required. (Source: LOWV)

⁴ The State Water Plan consisted of 22 Subbasin Plans which evaluated available resources for current and future demands. The Plan analyzed multipurpose uses and problems including in-stream flow, water quality and water

communities or the amount and location of water available for future land uses. We have not overlain what we do know about our water resources with what we know about current and future need for water; thus Pennsylvania is not in a position to effectively manage either future development or water resources.

Pennsylvania needs to take a comprehensive, holistic approach to water resource management. We need an integrated system of plans, policies, programs, projects and actions which provides for inventorying, evaluation, development, use, conservation and protection of water resources. We need legal and institutional systems to define water rights and resolve quality and quantity conflicts among water uses. Such a system will protect current and future users, aquatic systems and public health and safety.

What are shortcomings of the existing system?

1. **Lack of a comprehensive and consistent approach to water resource management at the state level.** Pennsylvania is party to several interstate river basin commissions.⁵ DRBC and SRBC both have comprehensive water management functions within their jurisdictions; both have planning, management, regulatory and development functions all in one place. The Commonwealth has a number of laws and programs affecting water quality, but only a single narrow, antiquated water quantity law: the 1939 Water Rights Law (see Appendix A):
 - It only authorizes DEP to regulate surface water withdrawals for public water supplies. The state must therefore rely on the river basin commissions to resolve other intrastate water use conflicts.
 - It addresses ground water and surface water withdrawals differently, even though they are hydrologically related and both serve as sources of water supply.
 - It does not define, establish or protect water rights. Common law does not protect existing groundwater uses and most riparian uses from future interference.

Pennsylvania's piecemeal approach has resulted in a hodgepodge of laws and authorities which vary from watershed to watershed. Quality and quantity of both surface and groundwater must be protected.
2. **Piecemeal coordination between agencies in managing water resources.** Lack of consistency and coordination among the river basin commissions and with DEP adds to the inconsistencies identified above (e.g., DRBC coordinates with DEP but has its own water quality regulations; SRBC and ICPRB do not; ORSANCO regulates quality only). In addition, the areas of the state outside of the river basin commissions' jurisdictions are regulated only for water quality and surface water public water supply withdrawals. Only recently has DEP's Office of River Basin Coordination begun working toward symmetry in how basin commissions deal with water; outside of these basins, symmetry will not exist since no commission has jurisdiction.
3. **Incomplete database** of how much water is available in the state's subbasins or a unified reporting system on availability and usage. We have little data on consumptive use, groundwater availability, or the amount of water needed to support aquatic communities in our rivers and streams.
4. **Inadequate planning authority.**
 - The Water Rights Act of '39 doesn't require planning. Plans such as the State Water Plan (carried out under the 1965 Federal Water Resources Planning Act) are outdated.

quantity. Some of the information was used for such things as guiding public water supply decisions and for reviewing permit applications for large withdrawals, but the plans and recommendations were never fully utilized.

⁵ Delaware River Basin Commission (DRBC), Susquehanna River Basin Commission (SRBC), Interstate Commission on the Potomac River Basin (ICPRB), Ohio River Valley Sanitation Commission (ORSANCO).

- Growth and development are occurring in the state with little regard for water resources availability or impacts. Most local subdivision plans don't require demonstration of adequate water for wells for new construction. Even if the State Water Plan was not out of date, there is no adequate mechanism to implement it or other plans that might exist at a regional or county level.
 - Political boundaries differ from watershed boundaries. Coordination and consistency are often problems when many jurisdictions and agencies are involved with water management.
5. **Pennsylvania's current legal and administrative structure for governing water withdrawals cannot be relied upon to produce predictable, consistent, equitable, secure, or timely results.** The primary dispute resolution method is litigation in the courts, which is very costly and time consuming. It does not guarantee or protect water rights; it does not provide for dealing with use conflicts during droughts. It does not address conservation of water during non-drought conditions, and does not adequately provide for increased per capita demand.
 6. **Biological resource impacts have been largely ignored in managing water supplies, as they are not provided for under the Water Rights Act.** In addition to water quality protections, adequate stream flows are needed to protect stream ecology, aquatic organisms and water-related environmental values, which are essential to aquatic health. Adequate stream flows must be maintained when providing for reasonable water withdrawal and non-withdrawal uses.

What is Needed?

1. Data

The data needed to comprehensively manage our water resources are extensive, and will take significant time and effort to gather. The data collection and reporting efforts will have to be prioritized both in terms of geographical needs and information type, but should begin immediately. The data will need to be put in a user-friendly format such as a Geographic Information System. While this effort needs to begin immediately, we should proceed promptly to use existing data to address the clear need to manage our water resources.

Some of the data needed includes:

- *Inventory surface waters; develop a water balance in all subbasins to include minimum stream flows to protect aquatic ecosystems and natural diversity while providing for other water uses.*⁶
- *Inventory groundwater systems, including recharge locations, recharge amounts, discharge amounts and withdrawals.* Collect information on the overlying land uses and their resulting recharge impacts.
- Inventory water usage (both ground and surface), by whom and for what. Also inventory consumptive use and diversions vs. how much is returned to the surface or groundwater source.
- Identify how much water is 'consumed' by poor infrastructure; leaking pipes, etc. waste huge amounts of water.⁷

⁶ Italicized recommendations taken from 21st Century Environment Commission report.

⁷ EPA's "1996 Clean Water Needs Survey-Report to Congress" estimates that Pennsylvania has \$6.3 billion in documented and modeled needs for publicly owned wastewater treatment facilities. This includes \$15 million for infiltration/inflow correction alone; the remainder is for various categories of treatment and sewer needs deemed necessary to protect water quality.

Simon estimates \$3.4 billion is needed to maintain and supply clean water to Commonwealth residents (Simon, Paul; Tapped Out: The Coming World Crisis in Water and What We Can Do About It; 1998.)

- *Develop a prioritized list of sub-basins that experience or will experience shortages.*

2. Planning and water management authority

Both planning and management are needed to minimize the effects of overuse of water and recurring periods of drought. As noted by the Common Ground Project,⁸ "Planning alone will not solve any problems, regulation alone will not improve supplies or foster necessary investment, conservation alone will not solve challenges in heavily used basins, and development of reservoirs and other projects will not avoid water use conflicts or address ecological concerns." All must be integrated to provide a comprehensive water resources management approach.

The costs of not instituting an integrated approach are that severe shortages and overuse may render water resources incapable of meeting essential needs, cause conflicts among users, disrupt or damage economic activities and contribute to environmental degradation, pollution and unsanitary conditions. All of these are detrimental to the health, safety and welfare of Pennsylvanians and to Pennsylvania's economy. Therefore, we recommend that the Commonwealth consider taking the following actions:

- *Pursue authorization and funding for comprehensive water resources planning and establish planning criteria for water basins in full cooperation with all interested partners. Such criteria could include minimum stream flow, sustainable yield, aquatic ecosystem and natural diversity needs, wetlands needs, water quality impact, and emergency water management actions.*⁹ All stakeholders need to commit that decisions will be made when the planning is completed and that those decisions will be integrated into future investment and directive actions by both the private and public sectors.
- *Ensure that water use does not exceed the sustainable yield of Pennsylvania's ground and surface water supply.*
 - Provide for allocations of water resources for all uses in an equitable, secure, predictable, consistent, timely manner, based on reasonable use and availability of water.
 - Integrate natural and jurisdictional systems, i.e., aquifers, watersheds and political boundaries.
 - Provide for long-term adequacy and safety of water supplies for all uses, including in-stream.
 - Provide for conservation and efficient use of water.
 - Provide for flexibility to accommodate changing hydrologic conditions and water use needs, as well as more intense management in special resource areas.
- *Protect our high quality, unpolluted ground and surface waters and diverse aquatic ecosystems and restore degraded systems.*
- *Develop comprehensive watershed management strategies that incorporate water quality and quantity, surface and groundwater, aquatic ecosystem and natural diversity considerations.*
- *Make water resource databases and basin plans available to local governments, developers, regional planners and natural resource managers. Link water resources planning to land use approvals and growth decisions, considering both environmental and economic needs and their relationships.*
- *Undertake an aggressive educational program with local and regional interests to ensure that local watershed plans are consistent with the major basin resource plans.*
- *Implement those portions of basin plans that can be carried out under existing authority and develop legislation and/or administrative proposals where additional implementing authority is needed.*

⁸ "LWVPA-CEF 1995 Common Ground Project," League of Women Voters (LOWV), 9/14/1995.

⁹ Italicized recommendations taken from 21st Century Environment Commission report.

- Provide for innovative approaches such as the authority to treat and reuse wastewater (e.g., Joint Authority's concept of groundwater recharge).
- Investigate the need for construction standards for wells not specifically intended for public water supply, as substandard construction and overuse may pose a threat to aquifers and other properly constructed wells.
- Better integrate and monitor protection of surface and ground water quality and quantity, treating groundwater and surface water, including both quality and quantity, as one total system. "Pollution is, in effect, another form of consumption—only more destructive than the others. Technically, of course, it is not consumption, but when toxic substances make water unfit for human, agricultural or industrial use, the result is the same as consumption—only worse. Polluted water that cannot be used continues to flow, into lakes and rivers, into the ocean, degrading the water that ultimately will have to be used."¹⁰

Council Recommendations for Legislative and Administrative Initiatives

The best way to address most of these needs is to pass comprehensive water resources management legislation based on existing models such as the "ASCE's *Regulated Riparian Model Water Code*" or similar modified versions being used by surrounding states.¹¹ The regulated riparian system is based on the concept of water as a public, rather than common or private property.¹² Water rights are guaranteed for a certain time period through a permit with conditions to ensure reasonable use. The state's authority to regulate water withdrawals and use in order to protect the public health, safety, and welfare supports the permit requirement. Downstream users and the watersheds are protected by the permit conditions. The restriction on transfer of water away from the property of origin is removed, but there are provisions for the preservation of minimum instream flows and compensation to the basin of origin.

Under the ASCE model:

1. Permits are required for most uses of water (most statutes exempt small users); permits expire periodically.
2. Permit holders are required to undertake conservation measures.
3. Comprehensive state water planning is an ongoing process, to identify public needs and planning in advance for emergencies.
4. Water agencies are authorized and required to cooperate and exchange data with other levels of government.
5. Conjunctive management of groundwater and surface water with minimum water levels to be protected for both.
6. Management of quality and quantity is integrated.
7. Special management areas are provided for.

¹⁰ Simon, Paul; Tapped Out: The Coming World Crisis in Water and What We Can Do About It; 1998

¹¹ Seventeen eastern states and Hawaii have adopted some form of a regulated riparian rights system. In most the state is vested with the authority to regulate both the surface and the ground water. South Carolina and Illinois apply a regulated riparian system to ground water only and require permits only in capacity use areas. Four of the six states that border Pennsylvania use a regulated riparian water rights system; Ohio and West Virginia are the exceptions.

¹² Appropriation doctrine (western states) is based on private property concepts (first in time, first in line). Riparian doctrine is based on common property concepts. Regulated riparianism is based on public property concepts—public good cannot be partitioned, is vital to survival and is not subject to personal or corporate control.

This legislation should:

- Ensure that the regulatory authorities of the river basin commissions are consistent with statewide authorities.
- Allow interbasin transfers only if an applicant has demonstrated that he has (1) implemented all possible conservation measures, (2) taken all reasonable steps to improve the operational efficiency of the present system, and (3) that no other alternative supply exists within the immediate area.
- Strongly encourage water conservation. For instance, the Pennsylvania Public Utility Commission should review its rate structure and regulatory policies pertaining to public water supply agencies with the intent to provide a regulatory system that encourages public water supply agencies and its customers to implement conservation measures, even during non-drought situations.
- Protect Pennsylvania's aquatic resources as well as its water supplies. In addition to water quality protections, adequate stream flows are needed to protect stream ecology, aquatic organisms and water-related environmental values, which are essential to aquatic health. Adequate stream flows must be maintained when providing for reasonable water withdrawal and non-withdrawal uses.

While the General Assembly is considering taking action on comprehensive water resources management, DEP should immediately proceed with data collection as identified on page 3. DEP should also promptly begin using existing data to address the clear need to manage our water resources.

Conclusion

Pennsylvania needs to take a comprehensive, holistic approach to water resource management. We need an integrated system of plans, policies, programs, projects and actions which provides for inventorying, evaluation, development, use, conservation and protection of water resources. We need legal and institutional systems to define water rights and resolve quality and quantity conflicts among water uses. Such a system will protect current and future users, aquatic systems and public health and safety.

Appendix A: Sources

In addition to several meetings with various DEP administrators and staff, the Water Committee obtained input from the following:

October 18, 1999 Water Resources Management Panel

- Carol Collier, Executive Director, Delaware River Basin Commission
- Richard Cairo, General Counsel, Susquehanna River Basin Commission
- John Comey, Executive Assistant to the Director, Pa. Emergency Management Agency
- John Hines, DEP Office of River Basin Cooperation

November 15, 1999 presentation by Tim Weston, Esq. of Kirkpatrick and Lockhart, on "The Regulated Riparian Model Water Code."

January 10, 2000 Water Resources Management Panel

- Judy Koch Carlson, Fixed Utility Manager, Pa. Public Utility Commission
- Richard Neubauer, President, Operations and
Bob Manbeck, Director of Governmental Affairs, Pa. American Water Company
- John Schon, President, Pa. Water Environment Association

"APPENDIX B"

WATER RIGHTS LAW
Act of 1939, P.L. 842, No. 365

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Act of 1939, P.L. 842, No. 365

AN ACT

Relating to the acquisition of rights to divert water from rivers, streams, natural lakes, and ponds, or other surface waters within the Commonwealth or partly within and partly without the Commonwealth; defining various words and phrases; vesting in the Water and Power Resources Board certain powers and authorities for the conservation, control and equitable use of the waters within the Commonwealth in the interests of the people of the Commonwealth; making available for public water supply purposes, water rights heretofore or hereafter acquired but not used; providing for hearings by the Water and Power Resources Board and for appeals from its decisions; fixing fees; granting to all public water supply agencies heretofore or hereafter created the right of eminent domain as to waters and the land covered by said waters; repealing all acts or parts of acts inconsistent herewith, including Act No. 109, Pamphlet Laws 152, approved April 13, 1905, Act No. 307, Pamphlet Laws 455, approved June 7, 1907, Act No. 64, Pamphlet Laws 258, approved April 8, 1937.

WHEREAS, An adequate and safe supply of water for the public is a matter of primary concern affecting the life, health and comfort of the people of this Commonwealth; and

WHEREAS, The increase of the population makes it necessary that the available supply of water be conserved, controlled and used equitably for the best interests of all concerned; and

WHEREAS, The use of water for the supply of water to the public is the most essential of all public service, vital to life itself; and

WHEREAS, The public interest requires that public water supplies be developed not only for present needs but also for developing needs for a reasonable time in the future from and after any original appropriation or acquisition of a source of supply; and

WHEREAS, The public interest requires that sources of water supply appropriated or acquired but not used or not reasonably necessary for future needs should be available for appropriation or acquisition by others requiring such sources.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.--Hereafter in this act the following words and phrases shall be understood to have the meanings herein set forth, unless a contrary or different meaning be clearly indicated by the context.

(a) "Board" shall mean the Water and Power Resources Board of the Commonwealth of Pennsylvania, or any other board or commission of the Commonwealth of Pennsylvania hereafter created as successor to, or in substitution for, or vested with the authority now vested in, the Water and Power Resources Board.

(b) "Public water supply agency" shall mean any corporation or any municipal or quasi-municipal corporation, district, or authority, now existing or hereafter incorporated under the laws of the Commonwealth of Pennsylvania and vested with the power,

authority, right, or franchise to supply water to the public in all or part of any municipal or political subdivision of the Commonwealth of Pennsylvania.

(c) "Acquire" shall mean to secure or become vested with rights, either by purchase, lease, gift, devise, adverse possession, prescription, eminent domain, waiver of damages, settlement of damages, appropriation, or otherwise.

(d) "Acquisition" shall mean the act of acquiring or the rights acquired.

(e) "Water rights" shall mean the right to take or divert water from any rivers, streams, natural lakes and ponds, or other surface waters within or partly within and partly without the Commonwealth of Pennsylvania, except water rights heretofore or hereafter acquired under the Act of June 14, 1923, Pamphlet Laws, 704.

Regarding Water Rights Heretofore Acquired

Section 2. Any acquisition of water rights heretofore acquired by any public water supply agency, which acquisition has not been followed by an actual taking from the source acquired either heretofore or within a period of one year after the effective date of this act, is hereby declared null and void and of no effect to the extent required to make water rights from such source available for acquisition under the terms of this act.

Section 3. No acquisition of water rights from a source of supply by any public water supply agency shall be effective to prevent the acquisition of water rights from such source of supply in the future under the terms of this act, unless, within one year after the effective date of this act, the public water supply agency shall have produced to the board the record upon which such acquisition is founded or a statement of the facts relied upon to show that such acquisition has been lawfully accomplished, and shall have filed in the office of the board, duly certified and acknowledged, transcripts of corporate or other action or proceeding, or statement of facts or records relied upon as the basis of a claim of acquisition of water rights, and a sworn statement of an estimate of the amount of water reasonably necessary from said source of water supply for present purposes and future needs, and also such other or additional information as the board may deem necessary: Provided, That prior compliance with the provisions of the Act of 1937, Pamphlet Laws 258, Number 64, by any public water supply agency shall be deemed to be a full meeting of the requirements of this section of this act.

Section 4. It shall be the duty of the board to consider and to pass upon the validity of the claims of public water supply agencies making claim to prior acquisitions of water rights under the provisions of section three of this act, and to notify the claimant of its findings.

It shall also be the duty of the board to prepare and keep up to date a public record of all confirmed water right acquisitions, and of all permits for the acquisition of water rights, classified and indexed as the board may direct, and containing such detailed information as may be available to the board and which it shall determine should be recorded, which said public record shall be known as "Water Acquisition Records."

An actual taking of water from any source and the use thereof to serve the public shall be construed as prima facie evidence

of the validity of the claim of any public water supply agency claiming an acquisition thereof; and the confirmation by the board of any acquisition claimed by any public water supply agency shall constitute a validation of the right of the public water supply agency to such water rights in the source as shall be reasonably necessary for its present purposes and future needs, subject to modification of said rights at a later date or later dates, only under the terms of this act.

Regarding Acquisition of Water Rights Hereafter

Section 5. No public water supply agency shall hereafter acquire any water rights except as provided in this act, and any acquisition of water rights hereafter, except as provided in this act, shall be deemed to be unlawful null and void.

Section 6. Hereafter no acquisition of water rights shall be made or taken by any public water supply agency except as follows:

Any such public water supply agency desiring to acquire new water rights, a new source of water supply, or to acquire an additional quantity of water or water rights from an existing source of water supply, beyond that confirmed by the board under the preceding sections of this act as being reasonably necessary for present purposes and future needs, shall make application to the board for a permit to acquire such designated waters or water rights, setting forth such of the following information as may be applicable:

1. The river or stream from which the supply is proposed to be taken and the necessity for such new water rights, new source, or additional quantity.

2. The amount of water which it is proposed to acquire for present purposes and future needs.

3. The district, municipality or political subdivision, and the population thereof, required the supply, and the necessity for such acquisition.

4. The plan for development or use of the water, including the capacities of any proposed impounding reservoirs.

5. Such other or additional applicable information as the board may require.

Section 7. It shall be the duty of the board upon receipt of an application under section six of the act, to make such investigation as may be necessary, including a search of the water acquisition record, to determine whether the approval of the application will affect water rights theretofore confirmed or approved, or water rights at that time the subject of application to the board, or water rights for the acquisition of which a permit shall theretofore have been issued. In case of apparent conflict of interests, the investigation shall include and consider the extent of the conservation development and use to the best advantage of existing sources of water supply. In case of established conflict of interests, the board, after receipt of an application or at any time or from time to time, shall have the power to issue, modify or impose conditions in permits or confirmed claims for, or to the acquisition of, water rights theretofore or thereupon issued when deemed necessary by the board in the public interest, and it shall be the duty of the board to issue and it shall issue all such permits and modification and conditioning orders as the public interest shall require.

However, if the board finds that the proposed new source or additional supply will not conflict with the rights to such

water or to water rights held by any other public water supply agency which are reasonably necessary for its present purposes or future needs, and that the water or the water rights proposed to be acquired are reasonably necessary for the present purposes and future needs of the public water supply agency making application, that the taking of said water or the exercise of said water rights will not interfere with navigation, jeopardize public safety, or cause substantial injury to the Commonwealth, then, in that case, the board shall approve the application and shall issue a permit therefor.

Section 8. The board shall have the further power to revoke any permit granted under the terms of this act in case the water rights are not acquired within one year after the issuance of said permit, and said acquisition shall be null and void and of no effect, to the extent required to make water and water rights from such source available for acquisition under the terms of this act, if any actual taking of water be not made within the time specified in the permit not exceeding four years after the issuance of said permit. If the project required for the taking of water has been commenced in good faith or if the commencement thereof has been prevented by events beyond the control of the permittee, the board shall have the power, upon application of the permittee, to grant such extensions of said period as the board deems to be necessary to enable the permittee to complete the project required for the taking of water. If an actual taking is not made within the time specified in the permit or in any extension thereof, the water and water rights covered thereby shall become available for acquisition by other public water supply agencies under the terms of this act. (Amended, 1955, Act No. 612, P. L. 1848, Section 1)

Section 9. All public water supply agencies heretofore or hereafter incorporated under the laws of the Commonwealth of Pennsylvania and holding a permit issued by the board under the provisions of this act, shall have the power and may exercise the right of eminent domain as respects the appropriation of the water and the water rights authorized by said permit and land covered by said waters: Provided, however, That such right shall not apply to private spring and private water supplies.

Section 10. Any party or applicant who may be directly or adversely affected by any decision or finding of the board under any of the provisions of this act, shall be entitled, upon application, to be heard in person or by counsel in a public hearing, on reasonable notice, before the board or its duly designated agent. All members of the board and its duly designated agents shall have power to administer oaths to any witness appearing for any party in interest in said hearings. All testimony and argument shall be recorded and transcribed and shall be read and considered by the board before it shall make its decision.

(Repealed insofar as inconsistent, 1970, Act No. 223, P. L. 673, Section 508 and repealed in part Apr. 28, 1978, P.L. , No.53)

Section 11. Fees.--Every statement, record, or application for permit filed under the provisions of this act or heretofore filed under the provisions of the act of April 8, 1937, Pamphlet Laws 258, shall be subject to filing fee of twenty-five dollars for the purpose of reimbursing the Commonwealth in part for the cost of administration of the act. All moneys so collected shall be paid into the State Forests and Waters Fund, by and through

the Department of Revenue.

Compiler's Note: The act of July 1, 1981, P.L.143, No.48, which provided for the fixing of fees charged by administrative agencies also repealed section 11 of this act insofar as it establishes a set fee for any activity inconsistent with the fees set forth in the 1981 act.

Section 12. All acts or parts of acts inconsistent herewith are hereby repealed, and the following acts are hereby expressly repealed:

Act Number 109, Pamphlet Laws 152, approved April 13, 1905, being "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law."

Act Number 307, Pamphlet Laws 455, approved June 7, 1907, being "An act to require all water and water-power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water-power; and to require all existing water and water-power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' and providing the manner in which water and water-power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water-power."

Act Number 64, Pamphlet Laws 258, Approved April 8, 1937, being "An act providing for the appropriation of certain waters of the Commonwealth to the Commonwealth for the benefit of the people thereof; declaring void certain condemnations and appropriations of water by municipalities, corporations, copartnerships or persons; providing for ascertainment of the validity and the filing of the records of certain condemnations and appropriations of water by municipalities, corporations, copartnerships or persons, and appeals therefrom; conferring jurisdiction on the court of common pleas of Dauphin County in relation thereto; providing for future condemnations and appropriations of waters by and allocation of waters to municipalities, corporations, copartnerships or persons, and for compensation for waters hereafter to be taken for public water supply purposes; and conferring powers and imposing duties upon the Water and Power Resources Board."

Section 13. Separability Clause.--If any provision of this act, or the application of any provision to any person or circumstances is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 14. Inconsistency With Other Acts.--In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

Section 15. Effective Date.--This act shall become effective immediately upon its final enactment.

Addressee	Salutation	LABEL
The Honorable Tom Ridge Governor Commonwealth of Pennsylvania 225 Main Capitol Building Harrisburg, PA 17120	Governor Ridge	THE HON TOM RIDGE GOVERNOR COMMONWEALTH OF PA 225 MAIN CAPITOL BLDG HARRISBURG PA 17120
The Honorable James M. Seif Secretary Department of Environmental Protection P.O. Box 2063 Harrisburg, PA 17105-2063	Secretary Seif	THE HON JAMES M SEIF SECRETARY DEPT OF ENVIRON PROTECTION PO BOX 2063 HARRISBURG PA 17105-2063
Lawrence C. Tropea Jr., P.E., DEE Deputy Secretary for Water Management Department of Environmental Protection P.O. Box 2063 Harrisburg, PA 17105-2063	Mr. Tropea	LAWRENCE C TROPEA JR PE DEE DEP SEC FOR WATER MANAGEMENT DEPT OF ENVIRON PROTECTION PO BOX 2063 HARRISBURG PA 17105-2063
The Honorable David G. Argall Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Argall	THE HON DAVID G ARGALL PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Thomas E. Armstrong Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Armstrong	THE HON THOMAS E ARMSTRONG PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Daniel F. Clark Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Clark	THE HON DANIEL F CLARK PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Peter J. Daley II Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Daley	THE HON PETER J DALEY II PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Brett Feese Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Feese	THE HON BRETT FEESE PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Daniel Frankel Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Frankel	THE HON DANIEL FRANKEL PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Robert Freeman Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Freeman	THE HON ROBERT FREEMAN PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Camille George Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative George	THE HON CAMILLE GEORGE PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020

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The Honorable Arthur D. Hershey Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Hershey	THE HON ARTHUR D HERSHEY PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Kenneth M. Jadowiec Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Jadowiec	THE HON KENNETH M JADLOWIEC PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable David K. Levdansky Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Levdansky	THE HON DAVID K LEVDANSKY PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable James Lynch Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Lynch	THE HON JAMES LYNCH PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Jennifer Mann Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Mann	THE HON JENNIFER MANN PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Albert Masland Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Masland	THE HON ALBERT MASLAND PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Eugene F. McGill Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative McGill	THE HON EUGENE F MCGILL PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Charles C. McIlhinney, Jr. Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative McIlhinney	THE HON CHARLES C MCILHINNEY JR PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Ron Miller Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Miller	THE HON RON MILLER PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Chris Ross Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Ross	THE HON CHRIS ROSS PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Carole A. Rubley Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Rubley	THE HON CAROLE A RUBLEY PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Steve Samuelson Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Samuelson	THE HON STEVE SAMUELSON PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020

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The Honorable Samuel H. Smith Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Smith	THE HON SAMUEL H SMITH PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Sara G. Steelman Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Steelman	THE HON SARA G STEELMAN PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Jerry A. Stern Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Stern	THE HON JERRY A STERN PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Dan A. Surra Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Surra	THE HON DAN A SURRA PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable W. Curtis Thomas Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Thomas	THE HON W CURTIS THOMAS PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable Gregory S. Vitali Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020	Representative Vitali	THE HON GREGORY S VITALI PA HOUSE OF REPRESENTATIVES HOUSE PO BOX 202020 HARRISBURG PA 17120-2020
The Honorable David J. Brightbill Senate of Pennsylvania Senate Post Office Box 203048 Harrisburg, PA 17120-3048	Senator Brightbill	THE HON DAVID J BRIGHTBILL SENATE OF PA SENATE PO BOX 203048 HARRISBURG PA 17120-3048
The Honorable Stewart J. Greenleaf Senate of Pennsylvania Senate Post Office Box 203012 Harrisburg, PA 17120-3012	Senator Greenleaf	THE HON STEWART J GREENLEAF SENATE OF PA SENATE PO BOX 203012 HARRISBURG PA 17120-3012
The Honorable Edward W. Helfrick Senate of Pennsylvania Senate Post Office Box 203027 Harrisburg, PA 17120-3027	Senator Helfrick	THE HON EDWARD W HELFRICK SENATE OF PA SENATE PO BOX 203027 HARRISBURG PA 17120-3027
The Honorable Edwin G. Holl Senate of Pennsylvania Senate Post Office Box 203024 Harrisburg, PA 17120-3024	Senator Holl	THE HON EDWIN G HOLL SENATE OF PA SENATE PO BOX 203024 HARRISBURG PA 17120-3024
The Honorable Robert C. Jubelirer Senate of Pennsylvania Senate Post Office Box 203030 Harrisburg, PA 17120-3030	Senator Jubelirer	THE HON ROBERT C JUBELIRER SENATE OF PA SENATE PO BOX 203030 HARRISBURG PA 17120-3030
The Honorable Raphael J. Musto Senate of Pennsylvania Senate Post Office Box 203014 Harrisburg, PA 17120-3014	Senator Musto	THE HON RAPHAEL J MUSTO SENATE OF PA SENATE PO BOX 203014 HARRISBURG PA 17120-3014

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The Honorable James J. Rhoades Senate of Pennsylvania Senate Post Office Box 203029 Harrisburg, PA 17120-3029	Senator Rhoades	THE HON JAMES J RHOADES SENATE OF PA SENATE PO BOX 203029 HARRISBURG PA 17120-3029
The Honorable Patrick J. Stapleton Senate of Pennsylvania Senate Post Office Box 203041 Harrisburg, PA 17120-3041	Senator Stapleton	THE HON PATRICK J STAPLETON SENATE OF PA SENATE PO BOX 203041 HARRISBURG PA 17120-3041
The Honorable J. Barry Stout Senate of Pennsylvania Senate Post Office Box 203046 Harrisburg, PA 17120-3046	Senator Stout	THE HON J BARRY STOUT SENATE OF PA SENATE PO BOX 203046 HARRISBURG PA 17120-3046
The Honorable Mary Jo White Senate of Pennsylvania Senate Post Office Box 203021 Harrisburg, PA 17120-3021	Senator White	THE HON MARY JO WHITE SENATE OF PA SENATE PO BOX 203021 HARRISBURG PA 17120-3021
The Honorable Anthony H. Williams Senate of Pennsylvania Senate Post Office Box 203008 Harrisburg, PA 17120-3008	Senator Williams	THE HON ANTHONY H WILLIAMS SENATE OF PA SENATE PO BOX 203008 HARRISBURG PA 17120-3008

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