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THE PROBLEMS OF THE DELAWARE RIVER BASIN

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by

SEP 17 1969

Hon. Ellwood J. Turner
Speaker, Pennsylvania House of Representatives
and
Chairman, Interstate Commission on the Delaware River Basin

185 West State Street
Trenton, N. J.

In the beginning, I think it would be presumptuous for me to appear before a highly qualified group of engineers such as this, to outline the physical facts that surround us in the Delaware River Basin and the problems which those facts present to the five million people who live within the drainage area. You know the setting! You live, as engineers and as Philadelphians, with the critical problems involved in this watershed!

During your periods of professional service you have seen those problems grow steadily in size, in importance, in complexity. You realize, for example, from your knowledge of the 1931 Delaware River Case, that domestic water supplies from this drainage basin continue to demand greater and more dependable water resources; by reason of a particularly disgraceful local situation, you are aware that water pollution-sanitation problems of the Delaware River Basin insistently press for solution; water power is being sought for and developed more and more; navigation demands greater depth and more uniform conditions; fish and other aquatic life are increasingly valued commercially and by the sportsman; recreational areas are needed and must be developed with the increase of leisure time and improvements in transportation.

Those, in brief, are the problems of the Delaware River Basin and they are familiar to you. Individually, and in other combinations with varying degrees of importance, they are also problems in every other drainage basin of the nation, so that of more importance, locally, regionally, and nationally, is the question as to what is being done about solving those problems. How are the many and divergent demands upon interstate streams being met?

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What is happening here and elsewhere in the effort to define the needs and find a way to meet them?

It is that picture which I should like to sketch for you today: the problem of unified water resources control with particular reference to the Delaware River Basin.

One thing is certain: the protection and enjoyment of the natural resources of our major drainage basins cannot be left to the individual states and their local communities. What were once independent problems now affect such a wide variety of interests and communities that complete freedom of action must now give way to some type of cooperation or control.

The present problem must be weighed against the future; specific need against general advantage; the single end against multi-purpose development; local benefit against regional good.

Types of Organization

Three plans have been developed to effect a unified control of the water resources of interstate streams; each has advantages and disadvantages, special promises and special dangers.

I.

The first and simplest of these plans, from the administrative standpoint involves turning over the administration of interstate streams to the Federal government. In 1933, the Federal government first took steps to assume control of interstate river systems. In the Tennessee Valley, and in the Pacific Northwest, at Bonneville and Grand Coulee, ample evidence exists that the present national administration views the control of interstate streams as a Federal function, to be directed by Federal appointees, to be paid for by Federal funds.

Obviously, the stages of development through which these experiments have passed up to this time typify a new sort of planning, a new approach to region-

alism. Just as obviously, and unfortunately, the regionalism concept which lies behind these demonstrations has been horizoned by the power aspect and there are many who believe that these extensions of Federal control have brought us no closer to the development of administrative and financial procedures applicable to regional development generally.

This method of river control, imposed on the states from above, has some benefits and some serious limitations. It is not within the range of this paper to discuss either.

II.

A second plan would place the administration of interstate streams under the authority of autonomous agencies created by interstate compacts. This approach to regionalism, in water resources control, would project certain state powers upward, or vertically, to a new governmental level entrusting the administration and control of the resources of an interstate drainage basin to a super-state authority. Such autonomous administration is not historically characteristic of the compact device, which has not proved to be an effective instrument when the subject matter involves social and economic, as well as physical, planning. The Port of New York Authority and the Colorado River Compact, as popular examples, have been restricted by a lack of adequate authority and opportunity for initiative, flexibility, and experimentation. Such criticism clearly implies, however, that when, under the terms of an interstate compact, two or more states project certain of their powers upward so that they focus at some point above the state level but below the Federal level, the regional organization thus created would not differ essentially from the Federal corporation-authority device. Such a superstructure through which any set of states, with the approval of Congress, would agree to transfer powers of control and administration to a joint agency, would become, in fact, a legal and administrative unit possessed of corporate power

sufficient to place it beyond the bounds of either state or federal domination.

III.

A third plan of regional organization suggests a pooling of the governmental and administrative resources of individual states, complemented by the advice and counsel of Federal agencies under an informal, purely voluntary, functional arrangement. As distinguished from the two types mentioned previously, it attempts to project certain sovereign state powers laterally, at the same governmental level, and vertically to the Federal level.

The field of interstate relations in the United States has been stimulated during the past few years by a nation-wide organization known as the Council of State Governments. A pattern has been cut which, for the first time, affords the states of this Union a means for cooperating with one another through Joint Legislative Commissions on Interstate Cooperation (now established by statute in 42 states of the nation), tied together nationally as the Council of State Governments.

The organization chart which appears to my (left or right) indicates these relationships, which comprise--in themselves--a very interesting story and an important contribution to the field of government.

Incode: Machinery

In February, 1936, the Pennsylvania Commission on Interstate Cooperation called a regional conference, to meet here in Philadelphia, on the water resources problems of the Delaware River Basin. As a result of that conference, it was decided that, from the membership of the Commissions on Interstate Cooperation of Delaware, New Jersey, New York, and Pennsylvania, there should be drawn, in each state, one Senator, one Representative, one administrative official, and one member of each state's Planning Board, who should center their combined energies on the problem of the conservation, development, and

control of the natural resources of the Delaware River Basin. As the Chairman of this agency, I hasten to express the belief that of all boards and commissions to which I have been appointed in a rather full career in the public service, the personnel of Incodel represents as fine a group of men with whom it has been my pleasure to associate. The Vice-Chairman of the Commission is the Honorable Robert C. Hendrickson, President of the New Jersey Senate. The Executive Committee, in addition to officers, includes Richard P. Brown, Secretary of Commerce of Pennsylvania; Dr. Emerson D. Fite, an Assemblyman of New York, and Mr. Charles H. Gant, Secretary of the Wilmington Board of Harbor Commissioners.

Under the name of the Interstate Commission on the Delaware River Basin, shortened and popularized as Incodel, governmental machinery was thereby created within the region to tackle those problems of water resources use and control in this drainage basin which cut across state boundaries.

It may be well to insert at this point that the major problems which have been dealt with by Incodel up to this time, water pollution and water supply, have been subject to study by a host of official and private agencies over the past fifty years. Countless costly surveys and studies of these difficulties have been made. Numerous plans have been drawn up and discarded, or ignored. Practically without exception, the conclusions and recommendations of this research activity have pointed to the interstate character of the problems involved and the need for concurrent or reciprocal legislation in each of the four states. Because of this constant tendency of plans to require legislative and administrative action, the planners, legislators, and administrators who compose the Interstate Commission on the Delaware River Basin are in an admirable position to make effective a practical program.

All of the activities of the Commission are carried on in cooperation

with agencies of the four state governments, with Federal bureaus, and with local governments within the Basin. Through its organization on the subcommittee pattern, the Commission is continuously making use of more than a score of Federal and state agencies engaged in some phase of activity related to water resources use and control in this drainage basin. Through the appointment of advisory members to the Commission, every effort is being made to enlist the services of all of those within the four state region who are qualified to participate in the moulding of a joint program for the betterment of existing conditions.

While it is, in fact, a joint governmental agency of the states of Delaware, New Jersey, New York, and Pennsylvania, financed entirely through appropriations from these states, the Commission neither holds nor seeks administrative powers; it attempts to supplement rather than to supplant in any way, the work of existing water resources agencies.

The sections which follow will illustrate briefly some of the planning activities and a few of the accomplishments of the Interstate Commission on the Delaware River Basin. They are cited as a record of effective cooperation among governmental units of all levels in this region.

Interstate-Regional Planning

The first advisory committee, organized to assist Incodel in developing a broad program of conservation and development of the Basin's resources was composed of the Chairman and Directors of the State Planning Boards in this area and the Executive Officer of the newly-named National Resources Planning Board. Coordinate planning of Federal and state development programs is the objective.

Three parallel activities have been directed by this group during the past three years: (1) The advancement of comprehensive state planning studies for each state located in the Basin; (2) The compilation, mapping, and tabu-

lation of pertinent data concerning existing conditions and trends in the Basin; and (3) The formulation of a program of current activities to be carried forward and stimulated by the Commission while longer-range plans are in course of preparation.

Highlighting these planning activities, during the past year, was the preparation of a program for the states, counties, municipalities, and citizens of the Upper Delaware Valley, looking toward the conservation and protection of natural resources, toward the protection and improvement of recreational facilities and scenic assets, toward protection and improvement of highways, toward more adequate and effective planning and zoning, toward promotion and education.

Field work, undertaken by Incodel with the direction of its Advisory Committee on Planning, has sought to translate those recommendations into action. For this purpose, a council on inter-town cooperation has been organized in the Upper Valley and the logical planning process, "from the bottom up..." is being popularized.

Water Quality

An Advisory Committee on Quality of Water in the Delaware River Basin is comprised of the Chief Engineers of the Health Departments of the states of Delaware, New Jersey, New York, and Pennsylvania. For the first time, these administrative agents, who are the responsible officials in each of the state governments for the correction and control of water pollution, have been meeting together, pooling their knowledge and the resources of their departments in a unified, concerted attack on the problem of water pollution.

A Reciprocal Agreement for the Correction and Control of Pollution in the Waters of the Interstate Delaware River was drafted by the members of this Committee, approved by the Commission, and subsequently ratified, formally, by each of the four State Departments of Health. In substance, the states have

jointly agreed to a code of specifications to be followed by communities and industries of the Basin in respect to the treatment and disposal of wastes.

Companion to the above agreement a construction schedule for municipalities on the interstate stream was devised and agreed upon, setting time limits within which all needed improvements shall have been made.

The provisions of this Reciprocal Agreement were put in the form of a concurrent statute for consideration by the legislatures of Delaware, New Jersey, New York and Pennsylvania during their sessions of the current year. These bills were approved by the legislatures and Governors of New Jersey and New York; in Pennsylvania, to my great disappointment, the Pollution Bill after being passed by the House of Representatives, was "killed" in a Senate Committee a few days preceding adjournment of the legislature.

I take this opportunity to make the observation that in this work, with and among state legislators, administrators, and technicians from Delaware, New Jersey, New York, and Pennsylvania, I have at times found myself (as the Chairman of the organization) in the somewhat embarrassing position of an apologist for the particularly narrow views on this entire subject which seem to represent the official attitude of the Director of the Bureau of Engineering, of the Pennsylvania Department of Health. This is true not only in the case of the Delaware River, but, with equal vengeance, it applies to the Department's policies in the Ohio, Susquehanna, and Potomac Basins.

Mindful of the fact that in 1913 the State Department of Health served notice on Philadelphia that it would have to cease its disgraceful contaminations of the Delaware with comparatively little improvement resulting, in this interval of 26 years; and further mindful of the fact that the 1937 anti-stream pollution law represented a legislative and executive order to an administrative department which, in scope and authority, is all that any sincere and intent group of professional technicians could possibly need to do their job with

fairness and dispatch, I feel justified in saying that the apparent present viewpoint of the State Health Department cannot be tolerated. It represents a short-sighted policy which will certainly lead to more insistent demands for federal control of this problem; it is working a hardship on the department's companion agencies in other states, each of which, without exception is squarely facing this problem of stream pollution.

I hold no brief for those who are rabidly biased in their criticism of the Department's policy: those, for example, who, having strutted and fretted their four years upon the political stage of this state--without accomplishing these particular objectives--now are filled with sound and fury about a "do-nothing" policy; nor do I hold complete sympathy for the views of those who feel that the highest use to which water can be put is for the propagation and protection of fish life. All interests must be served, all interests can be served, if a constructive viewpoint is adopted and a progressive policy administered.

A word about industrial wastes: Incodel has always held and maintained the viewpoint that the first job to be undertaken in the Delaware River Basin is the elimination of domestic pollution. As a public agency, we have felt that there is no justification for attempting to bring about an industrial clean-up until the public's problem has been taken care of. When that time comes, and my guess is that the day is closer at hand than most of us realize, industry must--and industry will--fall in line. Their burden need not be borne all at once but may be distributed over a period of years and should be considered a proper part of the cost of production. All industry should prepare to take its part in this program: the fact that an increasing supply of relatively pure water is needed for industrial purposes will lead them toward our goal in self-protection. In this particular zone of the river, there is much for industries along both sides of the river to gain from the interstate arrangement which will

serve to protect their interests by the maintenance of a flow of water sufficient to counteract the destructive effects of salinity.

In passing from this subject, I should like to note for you, as a hint of progress in this field of water pollution control in the Delaware River Basin, that since 1936, the year when Incodel was brought into existence, there has been approximately ten million dollars worth of construction work done in the Basin toward eliminating pollution from the interstate stream. One-half of this amount, roughly, I am proud to allocate to the communities of Delaware County including the City of Chester, all of which have received indispensable assistance from Mr. Harry Froeburn, District Engineer; the other half has been spent in southeastern New Jersey municipalities which have acted upon the suggestion of and through cooperation with the New Jersey Department of Health under the administrative direction of Dr. J. Lynn Mahaffey, with Mr. H.P. Croft as head of the Bureau of Engineering.

Water Supply

Another advisory committee is considering the extremely vital question of the quantity of the water in the Delaware River and its tributaries. Practical planning for future water supplies for the metropolitan areas of New York City, Northeastern New Jersey, and the Philadelphia region is essential.

In the three metropolitan centers cited above, local sources have become inadequate or unsuitable, and new sources of water supply for domestic purposes have been under consideration for decades.

This need, in New Jersey and Pennsylvania, was not as acute as that in New York City which, in 1931, proceeded with plans it had developed to divert 600 million gallons daily from New York tributaries of the Upper Delaware River. This action brought on the now famed Delaware River Case in which the State of New Jersey sought to enjoin the State of New York and the City of New York

from carrying out their plans. Pennsylvania entered the case as intervenor to protect its own legal rights.

Two years, and hundreds of thousands of dollars, were spent by the disputants before a decision was reached. The decree of the United States Supreme Court in that case set a new precedent for governing interstate streams, based upon the principle of equitable allocation of interstate waters.

New York was permitted to divert 440 million gallons of water a day, providing certain conditions were met. The decree did not determine the quantity of water permissible for future use by the other two states, although it stipulated that the New York diversion did not constitute a prior appropriation or give New York any superiority of right over New Jersey and Pennsylvania in the use of the waters of the Delaware River or its tributaries.

The water supply problems of the Delaware River Basin were not settled by the Supreme Court decision. New York City, Northeastern New Jersey, and the Philadelphia metropolitan area still have imminent water supply problems to meet.

The Incodel Advisory Committee on the Quantity of Water in the Delaware River Basin, composed of the Chief Engineers of the Water policy and control agencies of the four state governments, has as its foremost task the development of an interstate agreement as to the rights and responsibilities of the four interested states in the water resources of the basin, particularly for use as domestic water supplies.

The Supreme Court has said that the Delaware River can be utilized, under reasonable restrictions, for the benefit of all four states. The drafting of these reasonable restrictions is the subject of the negotiations now under way by the members of the Incodel Advisory Committee on Quantity. The Committee is not considering an equitable division of these waters in the sense of attempting to arrive at allocations of fixed quantities to each of the states concerned; it is attempting to arrive at a formula for agreement as to the

conditions under which any state through its subdivisions can take water from this interstate stream for water supply purposes.

It may not be possible to draft an all-inclusive, hard-and-fast rule or formula which will cover all possible situations; it should be possible for the members of the Incodel Advisory Committee on Quantity, representing the responsible water resources agencies of each of the states, to agree upon the general conditions under which diversions of water from the Delaware River Basin may take place and provide perhaps that some continuing coordinating control should be exercised by an interstate body to provide for unforeseen contingencies and to permit flexibility.

Such an agreement on the part of the representatives of the four states of the Delaware River Basin, and such a continuing administrative agency, would make it possible for the states to be protected from blundering into controversy because of suspicions or a lack of coordinating machinery; the neighboring sovereignties would be currently informed of prospective plans of action, without economic loss, and without the tremendous cost of legal controversy.

Information and Research

A fourth major field of operations has been under the leadership of an Advisory Committee on Information and Research, composed of representatives from leading educational institutions within the Basin, and a limited number of technicians from Federal and state agencies.

This Committee originated a program designed to establish Incodel as a clearing house of information and research on the Basin and its problems. A bibliographical classification system covering the literature of the Delaware River Basin has been scientifically prepared, installed, and is currently maintained.

A summary-analysis of all hydrologic research being carried on in the Basin has been completed with the result that a program for future research in this

field, and the agencies to which such research should be entrusted, has been formulated and is being carried out in cooperation with numerous Federal and State agencies with as much dispatch as possible.

Conclusions

The four states of the Delaware River Basin have agreed to act in unison toward a common end. This extension of state powers has not involved the creation of a super-imposed governmental structure; it has not entailed the addition of a new set of governmental officials; new governmental machinery, established by marked increases in legislation, has not been necessary; no new fields of activity have been created.

The impetus, the ground-work of organization, financial and legislative support, technical and advisory services, every feature of the organization and operation of the Interstate Commission on the Delaware River Basin has been a product of joint action by the states, voluntarily working with one another and with such agencies of the Federal government as are involved.

It is obvious that the success or failure of this experiment in voluntary regionalism depends wholly upon effective collaboration between and among the officials and agencies involved. One of the major features of this experiment is to confirm the interest, the devotion, and the competence of state officials to carry forward to a successful conclusion an interstate project for the benefit of the Basin, the region, and the nation.

The weakness of voluntary regionalism lies in the weakness of the states' wills. Each of the state governments participating in this enterprise acts through individuals to whom it gives authority. If any state, or any authorized representative of a state, is not willing to bear a share of the Commission's work, or to agree in the programs which have been cooperatively formulated, the work of all is to that extent crippled.

The Interstate Commission on the Delaware River Basin has attempted to advance this experiment in voluntary regionalism by taking into account the total resources of the area and the manner in which these resources are associated. As a public agency, dependent for continuing existence upon public acceptance as represented by appropriations through the four state legislatures, the Commission has purposely limited its activities to a solution of these specific and intricate problems of land and water use and control which are of regional importance, which are most urgently needed, and which will be immediately useful. The organization and its method imply that negotiations which lead to the formulation of policy will involve compromise on the part of all interested parties. But the Commission has held, and by reason of some success still believes, that with sound facts upon which to base conclusions there should be no insuperable difficulty in arriving at decisions both immediately and prospectively fair to all concerned

Incodel has attempted to secure and apply the best judgment available in the states to the problems involved in the use and development of the water resources of this interstate stream. In no case has that judgment been unduly influenced by political, sectional, or scientific prejudices. While there may be room for differences of opinion on the subject, the cooperating states have felt that joint action through their established officers and agencies was more to be desired than action by an independent superstate agency, whether established by the states themselves or by the Federal government.

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