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# DELAWARE RIVER BASIN COMPACT

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## HEARINGS

BEFORE

SUBCOMMITTEE NO. 1

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

**H.J. Res. 225**

A BILL TO GRANT THE CONSENT OF CONGRESS TO THE  
DELAWARE RIVER BASIN COMPACT AND TO ENTER INTO  
SUCH COMPACT ON BEHALF OF THE UNITED STATES,  
AND FOR RELATED PURPOSES


\_\_\_\_\_  
MARCH 8, 1961

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Serial No. 2

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## CONTENTS

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II

	Page
Text of Bill—	
Table of Contents to House Joint Resolution 225.....	1
House Joint Resolution 225.....	4
Statement of—	
Bensinger, Charles, president, Water Resources Association of the Delaware River Basin.....	66
Berger, David, city solicitor, city of Philadelphia, Pa.....	43
Brink, H. I., manager, Sussex Rural Electric Cooperative.....	50, 58
Ford, Arthur C., president, board of water supply, city of New York.....	48
Goddard, Maurice K., secretary of forests and waters, Commonwealth of Pennsylvania (representing Gov. David L. Lawrence).....	35
Hersey, Mrs. Henry J., Jr., member of the Inter-League Council of the Delaware River Basin.....	67
Hopkinson, Edward, Jr., president, Water Research Foundation for the Delaware River Basin, Philadelphia, Pa.....	59
Kerney, James, Jr., consultant, Advisory Committee, Delaware Basin Commission, Philadelphia, Pa.....	65
Lack, Brig. Gen. Norman M., vice president, Water Research Foundation for Delaware.....	40
Meyner, Hon. Robert B., Governor of New Jersey.....	37
Robin, John P., executive vice president, Delaware Basin Commission, Philadelphia, Pa.....	60
Robinson, Charles A., staff engineer and staff counsel, National Rural Electric Cooperative Association.....	50
Walter, Hon. Francis E., chairman, Subcommittee No. 1, House Committee on the Judiciary.....	24
Wilm, Dr. Harold G., conservation commissioner, New York State.....	41
Additional information—	
Agriculture, Department of, communication dated March 22, 1961.....	79
Army, Department of, communication dated April 19, 1961.....	79
Carvel, Elbert N., Governor of Delaware, written statement of.....	41
Claverack Electric Cooperative, J. L. Hubbard, letter, March 7, 1961.....	54
Constitutionality of compact, legal opinion.....	26
Delaware Basin Commission, Philadelphia, Pa., John P. Robin, executive vice president.....	60
Governors' resolution forwarding draft compact to Congress.....	75
Governors' statement approving draft compact.....	75
Guide for Federal representatives on interstate water compact commissions.....	69
Guide to Federal participation in interstate compact negotiation.....	70
League of Women Voters of the United States.....	77
List of Federal authorizations for Delaware survey.....	74
National Rural Electric Cooperative Association, Charles A. Robinson, Jr., staff engineer.....	51
New Jersey Zinc Co. statement on the Delaware River Basin compact.....	74
Reasons for Federal participation in the proposed Delaware River Basin compact.....	73
Rural Electric Cooperative Association, New York State, Gordon M. Margeson, letter, March 8, 1961.....	54
Summary of major provisions of House Joint Resolution 225.....	79
Water Research Foundation for the Delaware River Basin, Philadelphia, Pa., Edward Hopkinson, Jr., president.....	59
Why Federal participation in Delaware Basin compact?.....	71

III

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## DELAWARE RIVER BASIN COMPACT

WEDNESDAY, MARCH 8, 1961

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 1 OF THE  
HOUSE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:05 a.m., in room 327, Old House Office Building, Hon. Francis E. Walter, chairman, presiding.

Present: Mr. Walter (presiding), Mr. Chelf and Mr. Poff.

Also present: Walter Besterman, Cyril Brickfield, and William Crabtree, of the professional staff.

Mr. WALTER. The subcommittee will be in order.

In the first place, I want to apologize for the accommodations. Somehow or other a time was fixed in conflict with the hearing that is taking place in our hearing room. So we will have to get along as best we can.

House Joint Resolution 225 will be inserted at this point in the record. Also, for the purpose of enabling persons to find the various powers and functions of the proposed compact I have a table of contents which will be inserted immediately preceding House Joint Resolution 225.

### TABLE OF CONTENTS TO HOUSE JOINT RESOLUTION 225

Title.

#### PART I.—COMPACT

Preamble.

Article 1—Short title, definitions, purpose and limitations:

Section 1.1—Short title.

Section 1.2—Definitions.

Section 1.3—Purpose and findings.

Section 1.4—Powers of Congress; withdrawal.

Section 1.5—Existing agencies; construction.

Section 1.6—Duration of compact.

Article 2—Organization and area:

Section 2.1—Commission created.

Section 2.2—Commission membership.

Section 2.3—Alternates.

Section 2.4—Compensation.

Section 2.5—Voting power.

Section 2.6—Organization and procedure.

Section 2.7—Jurisdiction of the Commission.

**Article 3—Powers and duties of the Commission :**

- Section 3.1—Purpose and policy.
- Section 3.2—Comprehensive plan, program, and budgets.
- Section 3.3—Allocations, diversions and releases.
- Section 3.4—Supreme Court decree ; waivers.
- Section 3.5—Supreme Court decree ; specific limitations on Commission.
- Section 3.6—General powers.
- Section 3.7—Rates and charges.
- Section 3.8—Referral and review.
- Section 3.9—Coordination and cooperation.
- Section 3.10—Advisory committees.

**Article 4—Water supply :**

- Section 4.1—Generally.
- Section 4.2—Storage and release of waters.
- Section 4.3—Assessable improvements.
- Section 4.4—Coordination.
- Section 4.5—Additional powers.

**Article 5—Pollution control :**

- Section 5.1—General powers.
- Section 5.2—Policy and standards.
- Section 5.3—Cooperative legislation and administration.
- Section 5.4—Enforcement.
- Section 5.5—Further jurisdiction.

**Article 6—Flood protection :**

- Section 6.1—General powers.
- Section 6.2—Flood plain zoning.
- Section 6.3—Flood lands acquisition.
- Section 6.4—Flood and stream stage warnings and posting.

**Article 7—Watershed management :**

- Section 7.1—Watersheds generally.
- Section 7.2—Soil conservation and forestry.
- Section 7.3—Fish and wildlife.
- Section 7.4—Cooperative planning and operation.

**Article 8—Recreation :**

- Section 8.1—Development.
- Section 8.2—Cooperative planning and operation.
- Section 8.3—Operation and maintenance.
- Section 8.4—Concessions.

**Article 9—Hydroelectric power :**

- Section 9.1—Development.
- Section 9.2—Power generation.
- Section 9.3—Transmission.
- Section 9.4—Development contracts.
- Section 9.5—Rates and charges.

**Article 10—Regulation of withdrawals and diversions :**

- Section 10.1—Power of regulation.
- Section 10.2—Determination of protected areas.
- Section 10.3—Withdrawal permits.
- Section 10.4—Emergency.
- Section 10.5—Standards.
- Section 10.6—Judicial review.
- Section 10.7—Maintenance of records.
- Section 10.8—Existing State systems.

**Article 11—Intergovernmental relations :**

- Section 11.1—Federal agencies and projects.
- Section 11.2—State and local agencies and projects.
- Section 11.3—Reserved taxing powers of States.
- Section 11.4—Project costs and evaluation standards.
- Section 11.5—Cooperative service.

**Article 12—Capital financing :**

- Section 12.1—Borrowing power.
- Section 12.2—Funds and expenses.
- Section 12.3—Credit excluded : Officers, State and municipal.
- Section 12.4—Funding and refunding.
- Section 12.5—Bonds ; authorization generally.
- Section 12.6—Bonds ; resolutions and indentures generally.
- Section 12.7—Maximum maturity.
- Section 12.8—Tax exemption.
- Section 12.9—Interest.
- Section 12.10—Place of payment.
- Section 12.11—Execution.
- Section 12.12—Holding own bonds.
- Section 12.13—Sale.
- Section 12.14—Negotiability.
- Section 12.15—Legal investments.
- Section 12.16—Validation proceedings.
- Section 12.17—Recording.
- Section 12.18—Pledged revenues.
- Section 12.19—Remedies.
- Section 12.20—Capital financing by signatory parties ; guarantees.

**Article 13—Plan, program and budgets :**

- Section 13.1—Comprehensive plan.
- Section 13.2—Water resources program.
- Section 13.3—Annual current expense and capital budgets.

**Article 14—General provisions :**

- Section 14.1—Auxiliary powers of Commission ; functions of Commissioners.
- Section 14.2—Regulations ; enforcement.
- Section 14.3—Tax exemption.
- Section 14.4—Meetings ; public hearing ; records, minutes.
- Section 14.5—Officers generally.
- Section 14.6—Oath of office.
- Section 14.7—Bond.
- Section 14.8—Prohibited activities.
- Section 14.9—Purchasing.
- Section 14.10—Insurance.
- Section 14.11—Annual independent audit.
- Section 14.12—Reports.
- Section 14.13—Grants, loans or payments by States or political subdivisions.
- Section 14.14—Condemnation proceedings.
- Section 14.15—Conveyance of lands and relocation of public facilities.
- Section 14.16—Rights-of-way.
- Section 14.17—Penal sanction.
- Section 14.18—Tort liability.
- Section 14.19—Effect on riparian rights.
- Section 14.20—Amendments and supplements.
- Section 14.21—Construction and severability.
- Section 14.22—Effective date ; execution.

**PART II****Article 15—Effectuation :**

- Section 15.1—Repealer.
- Section 15.2—Effectuation by Chief Executive.
- Section 15.3—Effective date.

[H.J. Res. 225, 87th Cong., 1st sess.]

JOINT RESOLUTION To grant the consent of Congress to the Delaware River Basin Compact and to enter into such compact on behalf of the United States, and for related purposes

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of Congress is hereby given to the States of Delaware, New Jersey, and New York, and the Commonwealth of Pennsylvania, for the compact known as the Delaware River Basin compact, and the United States of America hereby enters into such compact, in the form as follows:

Whereas the signatory parties recognize the water and related resources of the Delaware basin as regional assets vested with local, state and national interests, for which they have a joint responsibility; and

Whereas the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin under a comprehensive multi-purpose plan will bring the greatest benefits and produce the most efficient service in the public welfare; and

Whereas such a comprehensive plan administered by a basinwide agency will provide effective flood damage reduction; conservation and development of ground and surface water supply for municipal, industrial and agricultural uses; development of recreational facilities in relation to reservoirs, lakes and streams; propagation of fish and game; promotion of related forestry, soil conservation and watershed projects; protection and aid to fisheries dependent upon water resources; development of hydroelectric power potentialities; improved navigation; control of the movement of salt water; abatement and control of stream pollution; and regulation of stream flows toward the attainment of these goals; and

Whereas decisions of the United States Supreme Court relating to the waters of the basin have confirmed the interstate regional character of the water resources of the Delaware River Basin, and the United States Corps of Engineers has in a prior report on the Delaware River Basin (House Document 179, 73d Cong., 2nd Sess.) officially recognized the need for an interstate agency and the economies that can result from unified development and control of the water resources of the basin; and

Whereas the water resources of the basin are presently subject to the duplicating, overlapping and uncoordinated administration of some 43 state agencies, 14 interstate agencies and 19 federal agencies which exercise a multiplicity of powers and duties resulting in a splintering of authority and responsibilities; and

Whereas the joint advisory body known as the Interstate Commission on the Delaware River Basin (INCODEL), created by the respective commissions or committee on Interstate Cooperation of the States of Delaware, New Jersey, New York and Pennsylvania, has on the basis of its extensive investigations, surveys and studies concluded that regional development of the Delaware River Basin is feasible, advisable and urgently needed; and has recommended that an interstate compact with federal participation be consummated to this end; and

Whereas the Congress of the United States and the executive branch of the government have recognized the national interest in the Delaware River Basin by authorizing and directing the Corps of Engineers, U.S. Department of the Army, to make a comprehensive survey and report on the water and related resources of the Delaware River Basin, enlisting the technical aid and planning participation of many federal, state and municipal agencies dealing with the waters of the basin, and in particular the federal departments of Agriculture, Commerce, Health, Education and Welfare, Interior, and Federal Power Commission; and

Whereas some 22,000,000 people of the United States at present live and work in the region of the Delaware River Basin and its environs, and the government, employment, industry and economic development of the entire region and the health, safety and general welfare of its population are and will continue to be vitally affected by the use, conservation, and management and control of the water and related resources of the Delaware River Basin; and

Whereas demands upon the waters and related resources of the basin are expected to mount rapidly because of the anticipated increase in the population of the region projected to reach 30,000,000 by 1980 and 40,000,000 by 2010, and because of the anticipated increase in industrial growth projected to double by 1980; and

Whereas water resources planning and development is technical, complex and expensive, and has often required fifteen to twenty years from the conception to the completion of a large dam and reservoir; and

Whereas the public interest requires that facilities must be ready and operative when needed, to avoid the catastrophe of unexpected floods or prolonged drought, and for other purposes; and

Whereas the Delaware River Basin Advisory Committee, a temporary body constituted by the governors of the four basin states and the mayors of the cities of New York and Philadelphia, has prepared a draft of an interstate-federal compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof; Now therefore

The states of Delaware, New Jersey and New York and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, having the same effect as this Part, as follows:

## ARTICLE I

## SHORT TITLE, DEFINITIONS, PURPOSE AND LIMITATIONS

Section 1.1 Short Title. This act shall be known and may be cited as the Delaware River Basin Compact.

1.2 Definitions. For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Basin" shall mean the area of drainage into the Delaware River and its tributaries, including Delaware Bay;

(b) "Commission" shall mean the Delaware River Basin Commission created and constituted by this compact;

(c) "Compact" shall mean Part I of this act;

(d) "Cost" shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance and operation of a project;

(e) "Facility" shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the beneficial use of water resources or related land uses including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them;

(f) "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau or division thereof, as the case may be;

(g) "Project" shall mean any work, service or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken within a specified area, for the conservation, utilization, control, development or management of water resources which can be established and utilized independently or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation;

(h) "Signatory party" shall mean a state or commonwealth party to this compact, and the federal government;

(i) "Water resources" shall include water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control.

1.3 Purpose and Findings. The legislative bodies of the respective signatory parties hereby find and declare:

(a) The water resources of the basin are affected with a local, state, regional and national interest and their planning, conservation, utilization, development, management and control, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

(b) The water resources of the basin are subject to the sovereign right and responsibility of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of such powers of sovereignty in the common interests of the people of the region.

(c) The water resources of the basin are functionally inter-related, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision and coordination of efforts and programs of federal, state and local governments and of private enterprise.

(d) The water resources of the Delaware River Basin, if properly planned and utilized, are ample to meet all presently projected demands, including existing and added diversions in future years and ever increasing economies and efficiencies in the use and reuse of water resources can be brought about by comprehensive planning, programing and management.

(e) In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states, to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.

1.4 Powers of Congress; Withdrawal. Nothing in this compact shall be construed to relinquish the functions, powers or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the federal government as a party to this compact or to revise or modify the terms, conditions and provisions under which it may remain a party by amendment, repeal or modification of any federal statute applicable thereto is recognized by the signatory parties.

1.5 Existing Agencies; Construction. It is the purpose of the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the compact, and the commission is authorized and directed to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.

#### 1.6 Duration of Compact.

(a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not later than 20 years nor sooner than 25 years prior to the termination of the initial period or any succeeding period none of the signatory states, by authority of an act of its legislature, notifies the commission of intention to terminate the compact at the end of the then current 100 year period.

(b) In the event that this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred, and its corporate affairs wound up, in such manner as may be provided by act of the Congress.

### ARTICLE 2

#### ORGANIZATION AND AREA

Section 2.1 Commission Created. The Delaware River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

2.2 Commission Membership. The commission shall consist of the Governors of the signatory states, ex officio, and one commissioner to be appointed by the President of the United States to serve during the term of office of the President.

2.3 Alternates. Each member of the commission shall appoint an alternate to act in his place and stead, with authority to attend all meetings of the commission, and with power to vote in the absence of the member. Unless otherwise provided by law of the signatory party for which is appointed, each alternate shall serve during the term of the member appointing him, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alter-

nate, it shall be filled in the same manner as an original appointment for the unexpired term only.

2.4 Compensation. Members of the commission and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

2.5 Voting Power. Each member shall be entitled to one vote on all matters which may come before the commission. No action of the commission shall be taken at any meeting unless a majority of the membership shall vote in favor thereof.

2.6 Organization and Procedure. The commission shall provide for its own organization and procedure, and shall adopt rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation, who may attend all meetings of the commission and its committees.

2.7 Jurisdiction of the Commission. The commission shall have, exercise and discharge its functions, powers and duties within the limits of the basin, except that it may in its discretion act outside the basin whenever such action may be necessary or convenient to effectuate its powers or duties within the basin, or to sell or dispose of water, hydroelectric power or other water resources within or without the basin. The commission shall exercise such power outside the basin only upon the consent of the state in which it proposes to act.

### ARTICLE 3

#### POWERS AND DUTIES OF THE COMMISSION

Section 3.1 Purpose and Policy. The commission shall develop and effectuate plans, policies and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water conservation, control, use and management in the basin. It shall encourage the planning, development and financing of water resources projects according to such plans and policies.

3.2 Comprehensive Plan, Program and Budgets. The commission shall, in accordance with Article 13 of this compact, formulate and adopt:

(a) A comprehensive plan, after consultation with water users and interested public bodies, for the immediate and long range development and uses of the water resources of the basin;

(b) A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and

(c) An annual current expense budget, and an annual capital budget consistent with the water resources program covering the commission's projects and facilities for the budget period.

3.3 Allocations, Diversions and Releases. The commission shall have the power from time to time as need appears, in accordance with the doctrine of equitable apportionment, to allocate the waters of the basin to and among the states signatory to this compact and to and among their respective political subdivisions, and to impose conditions, obligations and release requirements related thereto, subject to the following limitations:

(a) The commission, without the unanimous consent of the parties to the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954), shall not impair, diminish or otherwise adversely affect the diversions (compensating releases, rights, conditions, obligations, and provisions for the administration thereof as provided in said decree; provided, however, that after consultation with the river master under said decree the commission may find and declare a state of emergency resulting from a drought or catastrophe and it may thereupon by unanimous consent of its members authorize and direct an increase or decrease in any allocation or diversion permitted or releases required by the decree, in such manner and for such limited time as may be necessary to meet such an emergency condition.

(b) No allocation of waters hereafter made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto; provided that this paragraph shall not be deemed to limit or restrict the power of the commission to enter into covenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

(c) Any proper party deeming itself aggrieved by action of the commission with respect to an out-of-basin diversion or compensating releases in connection therewith, notwithstanding the powers delegated to the commission by this compact may invoke the original jurisdiction of the United States Supreme Court within one year after such action for an adjudication and determination thereof de novo. Any other action of the commission pursuant to this section shall be subject to judicial review in any court of competent jurisdiction.

3.4 Supreme Court Decree; Waivers. Each of the signatory states and their respective political subdivisions, in consideration of like action by the others, and in recognition of reciprocal benefits, hereby waives and relinquishes any right, privilege or power, it may have to apply for any modification of the terms of the decree of the United States Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954) which would increase or decrease the diversions authorized or increase or decrease the releases required thereunder, except that a proceeding to modify such decree to increase diversions or compensating releases in connection with such increased diversions may be prosecuted by a proper party to effectuate rights, powers, duties and obligations under Section 3.3 of this compact, and except as may be required to effectuate the provisions of paragraphs III B 3 and V B of said decree.

3.5 Supreme Court Decree; Specific Limitations on Commission. Except as specifically provided in Sections 3.3 and 3.4 of this article, nothing in this compact shall be construed in any way to impair, diminish or otherwise adversely affect the rights, powers, privileges, conditions and obligations contained in the decree of the United States Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954). To this end, and without limitation thereto, the commission shall not:

(a) Acquire, construct or operate any project or facility or make any order or take any action which would impede or interfere with the rights, powers, privileges, conditions or obligations contained in said decree;

(b) Impose or collect any fee, charge or assessment with respect to diversions of waters of the basin permitted by said decree;

(c) Exercise any jurisdiction, except upon consent of all the parties to said decree, over the planning, design, construction, operation or control of any projects, structures or facilities constructed or used in connection with withdrawals, diversions and releases of waters of the basin authorized by said decree or of the withdrawal, diversions or releases to be made thereunder; or

(d) Serve as river master under said decree, except upon consent of all the parties thereto.

3.6 General Powers. The commission may:

(a) Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate and maintain any and all projects, facilities, properties, activities and services, determined by the commission to be necessary, convenient or useful for the purposes of this compact;

(b) Establish standards of planning, design and operation of all projects and facilities in the basin which affect its water resources, including without limitation thereto water and waste treatment plants, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, small watershed management programs, and ground water recharging operations;

(c) Conduct and sponsor research on water resources, their planning, use, conservation, management, development, control and protection, and the capacity, adaptability and best utility of each facility thereof, and collect, compile, correlate, analyze, report and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other re-

sources, industrial water technology, ground water movement, relation between water price and water demand, and general hydrological conditions:

(d) Compile and coordinate systematic stream stage and ground water level forecasting data, and publicize such information when and as needed for water uses, flood warning, quality maintenance or other purposes;

(e) Conduct such special ground water investigations, tests, and operations and compile such data relating thereto as may be required to formulate and administer the comprehensive plan;

(f) Prepare, publish and disseminate information and reports with respect to the water problems of the basin and for the presentation of the needs, resources and policies of the basin to executive and legislative branches of the signatory parties;

(g) Negotiate for such loans, grants, services or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact; and to receive and accept such aid upon such terms and conditions, and subject to such provisions for repayment as may be required by federal or state law or as the commission may deem necessary or desirable;

(h) Exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

3.7 Rates and Charges. The commission may from time to time after public notice and hearing fix, alter and revise rates, rentals, charges and tolls and classifications thereof, for the use of facilities which it may own or operate and for products and services rendered thereby, without regulation or control by any department, office or agency of any signatory party.

3.8 Referral and Review. No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan. The commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

3.9 Coordination and Cooperation. The commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may:

(a) Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies;

(b) Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

(c) Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations operating in the basin, and permit the decentralized administration thereof;

(d) Qualify as a sponsoring agency under any federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management or control of water resources.

3.10 Advisory Committees. The commission may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, county and municipal governments, water resources agencies, water-using industries, water-interest groups, labor and agriculture.

## ARTICLE 4

## WATER SUPPLY

Section 4.1 Generally. The commission shall have power to develop, implement and effectuate plans and projects for the use of the waters of the basin for domestic, municipal, agricultural and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire, operate and maintain dams, reservoirs and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances and equipment on the river and its tributaries and at such off-river sites as it may find appropriate, and may regulate and control the use thereof.

## 4.2 Storage and Release of Waters.

(a) The commission shall have power to acquire, operate and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity and other purposes.

(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the commission for the purpose of augmenting such flow, except in cases where such diversion is duly authorized by this compact, or by the commission pursuant thereto, or by the judgment, order or decree of a court of competent jurisdiction.

4.3 Assessable Improvements. The commission may undertake to provide stream regulation in the main stream or any tributary in the basin and may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to judicial review in any court of competent jurisdiction.

4.4 Coordination. Prior to entering upon the execution of any project authorized by this article, the commission shall review and consider all existing rights, plans and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such project, and shall hold a public hearing on each proposed project.

4.5 Additional Powers. In connection with any project authorized by this article, the commission shall have power to provide storage, treatment, pumping and transmission facilities, but nothing herein shall be construed to authorize the commission to engage in the business of distributing water.

## ARTICLE 5

## POLLUTION CONTROL

Section 5.1 General Powers. The commission may undertake investigations and surveys, and acquire, construct, operate and maintain projects and facilities to control potential pollution and abate or dilute existing pollution of the water resources of the basin. It may invoke as complainant the power and jurisdiction of water pollution abatement agencies of the signatory parties.

5.2 Policy and Standards. The commission may assume jurisdiction to control future pollution and abate existing pollution in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires. The standard of such control shall be that pollution by sewage or industrial or other waste originating within a signatory state shall not injuriously affect waters of the basin as contemplated by the comprehensive plan. The commission, after such public hearing may classify the waters of the basin and establish standards of treatment of sewage, industrial or other waste, according to such classes including allowance for the variable factors of surface and ground waters, such as size of the stream, flow, movement, location, character, self-purification, and usage of the waters affected. After such investigation, notice and hearing the commission may adopt and from time to time amend and repeal rules, regulations and standards to control such future pollution and abate existing pollution, and to require such treatment of sewage, industrial or other waste within a time reasonable for the construction

of the necessary works, as may be required to protect the public health or to preserve the waters of the basin for uses in accordance with the comprehensive plan.

5.3 Cooperative Legislation and Administration. Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the basin which flow through, under, into or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such party to place and maintain the waters of said basin in a satisfactory condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits and adaptable to such other uses as may be provided by the comprehensive plan.

5.4 Enforcement. The commission may, after investigation and hearing, issue an order or orders upon any person or public or private corporation, or other entity, to cease the discharge of sewage, industrial or other waste into waters of the basin which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of pollution. Any such order or orders may prescribe the date, including a reasonable time for the construction of any necessary works, on or before which such discharge shall be wholly or partially discontinued, modified or treated, or otherwise conformed to the requirements of such rules and regulations. Such order shall be reviewable in any court of competent jurisdiction. The courts of the signatory parties shall have jurisdiction to enforce against any person, public or private corporation, or other entity, any and all provisions of this Article or of any such order. The commission may bring an action in its own name in any such court of competent jurisdiction to compel compliance with any provision of this Article, or any rule or regulation issued pursuant thereto or of any such order, according to the practice and procedure of the court.

5.5 Further Jurisdiction. Nothing in this compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

## ARTICLE 6

## FLOOD PROTECTION

Section 6.1 General Powers. The commission may plan, design, construct and operate and maintain projects and facilities, as it may deem necessary or desirable for flood damage reduction. It shall have power to operate such facilities and to store and release waters on the Delaware River and its tributaries and elsewhere within the basin, in such manner, at such times, and under such regulations as the commission may deem appropriate to meet flood conditions as they may arise.

## 6.2 Flood Plain Zoning.

(a) The commission shall have power to adopt, and amend and repeal recommended standards, in the manner provided by this section, relating to the nature and extent of the uses of land in areas subject to flooding by waters of the Delaware River and its tributaries. Such standards shall not be deemed to impair or restrict the power of the signatory parties or their political subdivisions to adopt zoning and other land use regulations not inconsistent therewith.

(b) The commission may study and determine the nature and extent of the flood plains of the Delaware River and its tributaries. Upon the basis of such studies, it may establish encroachment lines and delineate the areas subject to flood, including a classification of lands with reference to relative risk of flood and the establishment of standards for flood plain use which will safeguard the public health, safety and property. Prior to the adoption of any standards delineating such area or defining such use, the commission shall hold public hearings, in the manner provided by Article 14, with respect to the substance of such standards. At or before such public hearings the proposed standards shall be available, and all interested persons shall be given an opportunity to be heard thereon at the hearing. Upon the adoption and promulgation of such standards, the commission may enter into agreements to provide technical and financial aid to any municipal corporation for the administration and enforcement of any local land use ordinances or regulations giving effect to such standards.

6.3 Flood Lands Acquisition. The commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of restricting the use of such property so as to minimize the flood hazard, converting property to uses appropriate to flood plain conditions, or preventing unwarranted constrictions that reduce the ability of the river channel to carry flood water. Any such action shall be in accord with the standards adopted and promulgated pursuant to Section 6.2.

6.4 Flood and Stream Stage Warnings and Posting. The commission may cause lands particularly subject to flood to be posted with flood hazard warnings, and may from time to time cause flood advisory notices to be published and circulated as conditions may warrant.

#### ARTICLE 7

##### WATERSHED MANAGEMENT

Section 7.1. Watersheds Generally. The commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard runoff and waterflow and prevent soil erosion.

7.2 Soil Conservation and Forestry. The commission may acquire, sponsor or operate facilities and projects to encourage soil conservation, prevent and control erosion, and to promote land reclamation and sound forestry practices.

7.3 Fish and Wildlife. The commission may acquire, sponsor or operate projects and facilities for the maintenance and improvement of fish and wildlife habitats related to the water resources of the basin.

7.4 Cooperative Planning and Operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this Article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

#### ARTICLE 8

##### RECREATION

Section 8.1 Development. The commission shall provide for the development of water related public sports and recreational facilities. The commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance and administration of such facilities, subject to the provisions of Section 8.2 hereof.

8.2 Cooperative Planning and Operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

8.3 Operation and Maintenance. The commission within limits prescribed by this article, shall:

(a) Encourage activities of other public agencies having water related recreational interests and assist in the coordination thereof;

(b) Recommend standards for the development and administration of water related recreational facilities;

(c) Provide for the administration, operation and maintenance of recreational facilities owned or controlled by the commission and for the letting and supervision of private concessions in accordance with this article.

8.4 Concessions. The commission shall after notice and public hearing provide by regulation for the award of contracts for private concessions in connection with recreational facilities, including any renewal or extension thereof, upon sealed competitive bids after public advertisement therefor.

#### ARTICLE 9

##### HYDROELECTRIC POWER

Section 9.1 Development. The waters of the Delaware River and its tributaries may be impounded and used by or under authority of the commission for the generation of hydroelectric power and hydroelectric energy, in accordance with the comprehensive plan.

9.2 Power Generation. The commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

9.3 Transmission. The commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the commission to engage in the business of direct sale to consumers.

9.4 Development Contracts. The Commission may after public notice and hearing enter into contracts on reasonable terms, consideration and duration under which public utilities or public agencies may develop hydroelectric power and hydroelectric energy through the use of dams, related facilities and appurtenances.

9.5 Rates and Charges. Rates and charges fixed by the commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

#### ARTICLE 10

##### REGULATION OF WITHDRAWALS AND DIVERSIONS

Section 10.1 Power of Regulation. The commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The commission may enter into agreements with the signatory parties relating to the exercises of such power of regulation or control and may delegate to any of them such powers of the commission as it may deem necessary or desirable.

10.2 Determination of Protected Areas. The commission may from time to time after public hearing upon due notice determine and delineate such areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or to impair or conflict with the requirements or effectuation of the comprehensive plan, and any such areas may be designated as "protected areas." The commission, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

10.3 Withdrawal Permits. In any protected areas so determined and delineated, no person, firm, corporation or other entity shall divert or withdraw water for domestic, municipal, agricultural or industrial uses in excess of such quantities as the commission may prescribe by general regulation, except (i) pursuant to a permit granted under this article, or (ii) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

10.4 Emergency. In the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency as determined by the commission no person, firm, corporation or other public or private entity shall divert or withdraw water for any purpose, in excess of such quantities as the commission may prescribe by general regulation or authorize by special permit granted hereunder.

10.5 Standards. Permits shall be granted, modified or denied as the case may be so as to avoid such depletion of the natural stream flows and ground waters in the protected area or in an emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

10.6 Judicial Review. The determinations and delineations of the commission pursuant to Section 10.2 and the granting, modification or denial of permits pursuant to Section 10.3 through 10.5 shall be subject to judicial review in any court of competent jurisdiction.

10.7 Maintenance of Records. Each state shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals and the annual volume thereof as the commission shall prescribe. Such records and supplementary reports shall be furnished to the commission at its request.

10.8 Existing State Systems. Whenever the commission finds it necessary or desirable to exercise the powers conferred by this article any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and regulation exercised by the commission.

#### ARTICLE 11

##### INTERGOVERNMENTAL RELATIONS

Section 11.1 Federal Agencies and Projects. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern federal projects affecting the water resources of the basin, subject in each case to the provisions of Section 1.4 of this compact:

(a) The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan;

(c) Each federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section.

11.2 State and Local Agencies and Projects. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

(a) The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the commission in the comprehensive plan;

(c) Each state and local agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority, except as specifically provided by this section.

11.3 Reserved Taxing Powers of States. Each of the signatory parties reserves the right to levy, assess and collect fees, charges and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdictions of the respective signatory parties.

11.4 Project Costs and Evaluation Standards. The commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

(a) Uniform and consistent procedures for the allocation of project costs among purposes included in multiple-purpose programs;

(b) Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups and private enterprise, and for the supervision of their performance;

(c) Establishment and supervision of a system of accounts for reimbursable purposes and directing the payments and charges to be made from such accounts;

(d) Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political subdivisions, and (ii) of payments in lieu of taxes to any of them.

11.5 Cooperative Services. The commission shall furnish technical services, advice and consultation to authorized agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative services to the commission upon request, within the limits of available appropriations and to cooperate generally with the commission for the purposes of this compact, and the cost of such services may be reimbursable whenever the parties deem appropriate.

#### ARTICLE 12

##### CAPITAL FINANCING

SECTION 12.1 Borrowing Power. The commission may borrow money for any of the purposes of this compact, and may issue its negotiable bonds and other evidences of indebtedness in respect thereto. All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the commission without recourse to taxation. The bonds and other obligations of the commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the commission and the full faith and credit of the commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the commission assumed by it to or for the benefit of the holders thereof.

12.2 Funds and Expenses. The purposes of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the commission or by others for such purposes and for working capital.

12.3 Credit Excluded; Officers, State and Municipal. The commission shall have no power to pledge the credit of any signatory party, or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the commission or be subject to any personal liability or accountability by reason of the issuance thereof.

12.4 Funding and Refunding. Whenever the commission deems it expedient, it may fund and refund its bonds and other obligations whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or cash adjustment required in connection therewith) issued by the commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the commission or which are payable out of the revenues of any facility acquired by the commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the commission without recourse to taxation. The bonds and other obligations of the are applicable to refunding bonds and to the issuance, sale or exchange thereof.

12.5 Bonds; Authorization Generally. Bonds and other indebtedness of the commission shall be authorized by resolution of the commission. The validity of the authorization and issuance of any bonds by the commission shall not be dependent upon nor affected in any way by: (i) the disposition of bond proceeds by the commission or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The commission may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the commission. The commission

may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the commission may determine.

12.6 Bonds; Resolutions and Indentures Generally. The commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denomination, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the commission by this compact as the commission may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the commission; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefore the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

12.7 Maximum Maturity. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

12.8 Tax Exemption. All bonds issued by the commission under the provisions of this compact and the interest thereof shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties, except for transfer, inheritance and estate taxes.

12.9 Interest. Bonds shall bear interest at a rate of not to exceed six percent per annum, payable annually or semi-annually.

12.10 Place of Payment. The commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

12.11 Execution. The commission may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of officers of the commission, and by additional authentication by a trustee or fiscal agent appointed by the commission. If any of the officers whose signatures or counter signatures appear upon the bonds or coupons cease to be officers before the delivery of the bonds or coupons, their signatures or counter signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

12.12 Holding Own Bonds. The commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

12.13 Sale. The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The commission may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the commission calculated upon the entire issue so sold of more than six percent per annum payable semi-annually, according to standard tables of bond values. All bonds issued and sold for cash pursuant to this act shall be sold on sealed proposals to the highest bidder. Prior to such sale,

the commission shall advertise for bids by publication of a notice of sale not less than ten days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bond notices and devoted primarily to financial news. The commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bonds shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

12.14 Negotiability. All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

12.15 Legal Investments. Bonds of the commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

12.16 Validation Proceedings. Prior to the issuance of any bonds, the commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

12.17 Recording. No indenture need be recorded or filed in any public office, other than the office of the commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the commission or to the indenture trustee.

12.18 Pledged Revenues. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

12.19 Remedies. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (a) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the commission or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the rates, rents, tolls, fees, charges and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (b) by action or suit in a court of competent jurisdiction of any signatory party require the commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

12.20 Capital Financing by Signatory Parties; Guarantees.

(a) The signatory parties will provide such capital funds required for projects of the commission as may be authorized by their respective statutes in accordance with a cost-sharing plan prepared pursuant to Article 11 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory party in connection with a specific project or facility.

(b) Bonds of the commission, notwithstanding any other provisions of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guarantee of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

(c) The commission may receive and accept, and the signatory parties may make, loans, grants, appropriations, advances and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the commission.

#### ARTICLE 13

##### PLAN, PROGRAM AND BUDGETS

Section 13.1 Comprehensive Plan. The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long-range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management and control of the water resources of the basin to meet present and future needs; provided that the plan shall include any projects required to conform with any present or future decree or judgment of any court of competent jurisdiction. The commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties and their political subdivisions. The commission shall conduct public hearings with respect to the comprehensive plan prior to the adoption of the plan or any part or revision thereof.

13.2 Water Resources Program. The commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and by other authorized governmental and private agencies, organizations and persons during the ensuing six years or such other reasonably foreseeable period as the commission may determine. The water resources program shall include a systematic presentation of:

- 1) the quantity and quality of water resources needs for such period;
- 2) the existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated;
- 3) a separate statement of the projects proposed to be undertaken by the commission during such period.

##### 13.3 Annual Current Expense and Capital Budgets.

(a) The commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

(b) The commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the commission's estimated expenses for administration, operation, maintenance and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the commission, the executive director of the commission shall:

- 1) certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and
- 2) transmit certified copies of such budget to the principal budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item (1) above and all other revenues available to the commission shall be apportioned equitably among the signatory parties by unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(c) The respective signatory parties covenant and agree to include the amounts so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittances by the signatory parties.

#### ARTICLE 14

##### GENERAL PROVISIONS

##### Section 14.1 Auxiliary Powers of Commission; Functions of Commissioners.

(a) The commission, for the purposes of this compact, may:

- 1) Adopt and use a corporate seal, enter into contracts, sue and be sued in all courts of competent jurisdiction;
- 2) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or part thereof;
- 3) Provide for, acquire and adopt detailed engineering, administrative, financial and operating plans and specifications to effectuate, maintain or develop any facility or project;
- 4) Control and regulate the use of facilities owned or operated by the commission;
- 5) Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful or convenient for such ownership, operation, control, maintenance or conveyance;
- 6) Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

(b) The commissioners, subject to the provisions of this compact, shall:

- 1) Serve as the governing body of the commission, and exercise and discharge its powers and duties except as otherwise provided by or pursuant to this compact;
- 2) Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by compact;
- 3) Provide for the internal organization and administration of the commission;
- 4) Appoint the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;
- 5) Create and abolish offices, employments and positions as it deems necessary for the purposes of the commission, and subject to the provisions of this article, fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees;
- 6) Let and execute contracts to carry out the powers of the commission.

##### 14.2 Regulations: Enforcement. The commission may:

(a) Make and enforce reasonable rules and regulations for the effectuation, application and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with internal management of the commission, shall be adopted only after public hearing and shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; and

(b) Designate any officer, agent or employee of the commission to be an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

14.3 Tax Exemption. The commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the commission shall, as to specific projects, make payments to local

taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the commission for a period of ten years. The nature and amount of such payments shall be reviewed by the commission at the end of ten years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affect taxing district, and the payments may be thereupon terminated or continued in such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

#### 14.4 Meetings; Public Hearings; Records, Minutes.

(a) All meetings of the commission shall be open to the public.

(b) The commission shall conduct at least one public hearing prior to the adoption of the comprehensive plan, water resources program, annual capital and current expense budgets, the letting of any contract for the sale or other disposition by the commission by hydroelectric energy or water resources to any person, corporation or entity, and in all other cases wherein this compact requires a public hearing. Such hearing shall be held upon at least ten days public notice given by posting at the offices of the commission. The commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

(c) The minutes of the commission shall be a public record open to inspection at its offices during regular business hours.

#### 14.5 Officers Generally.

(a) The officers of the commission shall consist of an executive director and such additional officers, deputies and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed by the executive director under such rules of procedure as the commission may determine.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be removed from office by the commission.

14.6 Oath of Office. An oath of office in such form as the commission shall prescribe shall be taken, subscribed and filed with the commission by the executive director and by each officer appointed by him not later than fifteen days after the appointment.

14.7 Bond. Each officer shall give such bond and in such form and amount as the commission may require for which the commission may pay the premium.

#### 14.8 Prohibited Activities.

(a) No commissioner, officer or employee shall:

1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the commission is a party;

2) solicit or accept money or any other thing of value in addition to the compensation or expenses paid him by the commission for services performed within the scope of his official duties;

3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the commission.

(b) Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section is void.

(d) Officers and employees of the commission shall be subject in addition to the provisions of this section to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

14.9 Purchasing. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars and contracts for the purchase of services, supplies, equipment and materials when the expenditure required exceeds two thousand five hundred dollars shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least ten days before

bids are received and in at least two newspapers of general circulation in the basin. The commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the commission determines and resolves that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publication are not required by this section. The commission may suspend and waive the provisions of this section requiring competitive bids whenever:

1) the purchase is to be made from or the contract to be made with the federal or any state government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

2) the public exigency requires the immediate delivery of the articles or performance of the service;

3) only one source of supply is available;

4) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

5) services are to be provided of a specialized or professional nature.

14.10 Insurance. The commission may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the commission.

#### 14.11 Annual Independent Audit.

(a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the commission. The audit shall be made by qualified certified public accountants selected by the commission, who have no personal interest direct or indirect in the financial affairs of the commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the commission shall direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

(c) The financial transactions of the commission shall be subject to audit by the general accounting office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the comptroller general of the United States. The audit shall be conducted at the place or places where the accounts of the commission are kept.

(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall forfeit his office.

14.12 Reports. The commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations and finances. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

#### 14.13 Grants, Loans or Payments by States or Political Subdivisions.

(a) Any or all of the signatory parties or any political subdivision thereof may:

1) Appropriate to the commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

2) Advance to the commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of or construction by the commission of any facility or project;

3) Make payments to the commission for benefits received or to be received from the operation of any of the projects or facilities of the commission.

(b) Any funds which may be loaned to the commission either by a signatory party or a political subdivision thereof shall be repaid by the commission through the issuance of bonds or out of other income of the commission, such repayment to be made within such period and upon such terms as may be agreed upon between the commission and the signatory party or political subdivision making the loan.

#### 14.14 Condemnation Proceedings.

(a) The commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public use, by whomsoever owned or held, other than property of a signatory party and any property held, constructed, operated or maintained in connection with a diversion authorized by a United States Supreme Court decree. Any condemnation of any property or franchises owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, commission or other body as may have regulatory jurisdiction over such public utility.

(b) Such power of condemnation shall be exercised in accordance with the provisions of any federal law applicable to the commission; provided that if there is no such applicable federal law, condemnation proceedings shall be in accordance with the provisions of such general state condemnation law as may be in force in the signatory state in which the property is located.

(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

#### 14.15 Conveyance of Lands and Relocation of Public Facilities.

(a) The respective officers, agencies, departments, commissions or bodies having jurisdiction and control over real and personal property owned by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(b) Each political subdivision of each of the signatory parties is authorized and empowered, notwithstanding any contrary provision of law, to grant and convey to the commission, upon the commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(c) Any highway, public utility or other public facility which will be displaced by reason of a project deemed necessary by the commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such relocation payable by the commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

14.16 Rights of Way. Permission is hereby granted to the commission to locate, construct and maintain any aqueducts, lines, pipes, conduits and auxiliary facilities authorized to be acquired, constructed, owned, operated, or maintained by the commission in, over, under or across any streets and highways now or

hereafter owned, opened or dedicated to or for public use, subject to such reasonable conditions as the highway department of the signatory party may require.

14.17 Penal Sanction. Any person, association or corporation who violates or attempts or conspires to violate any provision of this compact or any rule, regulation or order of the commission duly made, promulgated or issued pursuant to the compact in addition to any other remedy, penalty or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the offense is committed; provided that in the absence of such provision any such person, association or corporation shall be liable to a penalty of not less than \$50 nor more than \$1,000 for each such offense to be fixed by the court which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation, attempt or conspiracy shall constitute a separate offense.

14.18 Tort Liability. The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents and employees of the government of the United States.

14.19 Effect on Riparian Rights. Nothing contained in the compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

14.20 Amendments and Supplements. Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

14.21 Construction and Severability. The provisions of this act and of agreements thereunder shall be severable and if any phase, clause, sentence or provision of this compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency or person is held invalid, the constitutionality of the remainder of this compact or such agreement and the applicability thereof to any other signatory party, agency, person or circumstance shall not be affected thereby. It is legislative intent that the provisions of this compact be reasonably and liberally construed.

14.22 Effective Date: Execution. This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government, the states of Delaware, New Jersey and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in six duplicate original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the commission upon its organization. The signatures shall be affixed and attested under the following form:

IN WITNESS WHEREOF, and in evidence of the adoption and enactment into law of this compact by the Congress and legislatures, respectively, of the signatory parties, the President of the United States and the respective Governors do hereby, in accordance with authority conferred by law, sign this compact in six duplicate original copies, as attested by the respective secretaries of state, and have caused the seals of the United States and of the respective states to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

## PART II

### ARTICLE 15

#### EFFECTUATION

15.1 Reservations. (a) The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

(b) The right is hereby reserved to the Congress or any of its standing committees to require the disclosure and furnishing of such information and data by the Delaware River Basin Compact Commission as is deemed appropriate by the Congress or any such committee.

15.2 Repealer. All acts and parts of acts inconsistent with any provision of this act are to the extent of such inconsistency hereby repealed.

15.3 Effectuation by the President. The President is authorized to take such action as may be necessary and proper, in his discretion, to effectuate the compact and the initial organization and operation of the commission thereunder.

15.4 Effective Date. This act shall take effect immediately.

**OPENING STATEMENT OF HON. FRANCIS E. WALTER, CHAIRMAN,  
SUBCOMMITTEE NO. 1, HOUSE COMMITTEE ON THE JUDICIARY**

Mr. WALTER. The resolution, House Joint Resolution 225, which I had the privilege of introducing—on which the subcommittee is holding hearings this morning—concerns an interstate-Federal compact that will create a regional governmental agency to administer comprehensively the water resources of the Delaware River Basin.

The interstate-Federal compact is the single most important water resources development in the history of the Delaware River Basin. It has the wholehearted approval and support of the Governors of the States of Pennsylvania, New Jersey, New York, and Delaware, as well as the mayors of the cities of Philadelphia and New York.

The urgent needs of the areas serviced by the Delaware River and its tributaries have long been a matter of common knowledge. They extend backward into the 1920's. I myself have been urging since 1933, in the days of the WPA, that steps be undertaken for the development of the great water resources and other potentials of the Delaware Basin.

The demands on the basin not only for water but for dams, reservoirs, pollution control, flood control, watershed management, soil conservation, erosion control, land reclamation, hydroelectric power, recreational facilities, and a whole host of other functions are mounting rapidly. The present population in the basin area of 16 million is expected to increase to 30 million by 1980 and 42 million by the year 2010. Industrial growth is expected to double by 1980. Over the years I have supported and obtained legislation for Federal appropriations to harness the Delaware River's great powers, and develop its enormous potential.

Since 1956 the U.S. Army Corps of Engineers, at the direction of the Congress and at an expenditure of \$2 million of Federal moneys, has been conducting an extensive physical survey of the basin area. The primary purpose of this study is to evolve a comprehensive plan for the development and administration of water resources. Unfortunately the Federal Government cannot do the job alone. To begin with, Federal jurisdiction does not extend to all of the problems and functions connected with the Delaware Basin. At the same time the States which have many functions in this area cannot extend their activities beyond their own jurisdictions.

There are a total of 19 Federal agencies sharing prime responsibilities with water resources in the Delaware River Basin. In addition to this, there are at present 14 interstate agencies and 43 State departments, boards, and commissions having some concern with the water resources of the Delaware. On the local level there are more than 250 public and private water companies. As a result, the Delaware Basin water problems are dealt with by the multiplicity of agencies—Federal, State, and local—with a confused splintering of responsibilities.

Of course, the Delaware River respects only its own natural boundaries and not manmade political boundaries. It is only commonsense to me that there is a need for a single coordinated agency which can cut across manmade boundary lines and which can coordinate the functions of the Federal, State, and local governments and give unified answers to river basin problems.

Today, when the individual States act without knowledge of what the U.S. Government is doing, their projects run into all kinds of trouble. This also is true when the Federal Government acts without the knowledge and cooperation of the States.

The instant resolution has been worked out with painstaking care. It grants the consent of Congress not only to the compacting States to enter into this compact, but also it makes the Federal Government a participating partner in this Federal-interstate compact arrangement. I wish to note this point: That this is not a departure or an innovation in the law relating to interstate compacts in which the Federal Government also participates. The U.S. Supreme Court has uniformly upheld contractual arrangements in the nature of compacts between the Federal Government and one or more States. I cite as examples:

The Potomac River compact (54 Stat. 748), between the States of Maryland, West Virginia, Virginia, Pennsylvania, and the District of Columbia. The Commission is composed of six members, three of whom are Federal representatives appointed by the President. They enjoy full voting rights.

The Ohio River Valley sanitation compact (54 Stat. 752), between the States of New York, Illinois, Kentucky, Indiana, Ohio, Pennsylvania, Tennessee, and West Virginia. That compact has three Commissioners representing the U.S. Government.

The Upper Colorado River Basin compact (63 Stat. 31), between Arizona, Colorado, New Mexico, Utah, and Wyoming, providing not only for a Federal representative but makes him the presiding officer of the Commission, endowed with the same powers and rights as the State representatives.

The Wabash Valley compact (73 Stat. 694), between Illinois and Indiana, providing for a Federal representative appointed by the President.

The Delaware Basin Advisory Committee, in its studies on this problem, had prepared an opinion on the "Constitutionality of the Proposed Delaware River Basin Compact," by Prof. Walter Gelhorn and Mr. Frank P. Grad, both of Columbia University. This document develops all the constitutional issues presented in this problem. While I have never doubted the constitutional power of Congress to participate in Federal interstate compacts, this memorandum of law is nonetheless a very fine one, well documented, and I am sure can be of tremendous assistance to those Members of Congress and others who are not fully knowledgeable or acquainted with the laws relating to interstate compacts. For that reason, and without objection, I will make this opinion a part of the hearings to be inserted immediately after my statement.

I wish to note that on February 17 I invited four Government departments to appear here and testify this morning. Knowing that they have a large concern in the functions to be performed by the

Delaware River compact, it is certainly in the best interests of all that we have the benefit of their views. Specifically the Department of Defense (which, as I pointed out earlier, has been studying the Delaware River problems since 1933), the Department of Justice, the Department of Agriculture, and the Department of the Interior were asked to have representatives here this morning to testify on this bill. I am informed that several of these agencies wanted additional time in which to study this legislation in order that they may fully and comprehensively understand its provisions.

In the meantime, however, Governor Meyner accepted our invitation to testify, as did the Governors of Delaware, New York, and Pennsylvania, through their representatives. We also have the chairman and other members of the Delaware River Basin Advisory Committee, who have literally lived with this problem for the past several years. They are well acquainted with the provisions of the legislation, and can acquaint the members of the subcommittee in minute detail with its provisions as well as their many ramifications. Also they can outline the problems underlying each provision. There are, of course, other witnesses. Therefore, it was decided that we would commence the hearings this morning with the understanding that the Government agencies will submit their views within the reasonably near future.

I will call as our first witness, Dr. Goddard, the secretary of forests and waters, Commonwealth of Pennsylvania, who is representing Governor Lawrence.

(The opinion referred to above follows:)

OPINION ON THE CONSTITUTIONALITY OF THE PROPOSED DELAWARE RIVER BASIN COMPACT

JUNE 1, 1960.

Mr. JOHN P. ROBIN,  
Chairman, Delaware River Basin Advisory Committee,  
Philadelphia, Pa.

DEAR SIR: You have asked us for an opinion on the constitutionality of your draft (draft B, March 1, 1960) of a proposed Federal-State compact, to be known as the Delaware River Basin compact. Under this proposal, the States of Delaware, New Jersey, New York, and Pennsylvania, and the Government of the United States would join together to create the "Delaware River Commission," a regional agency with territorial jurisdiction over the entire area of the Delaware River Basin, including territory of each of the signatory States. This regional agency would have a wide variety of regulatory and administrative powers for the multipurpose development of the water resources of the basin for the benefit of the local, State, and national interests in the region. More specifically, the Delaware River Commission is charged with the duty, and is given correlative power, to plan and execute the development of water resources by acquiring or building, and operating and maintaining dams, reservoirs, and similar facilities to control and develop the water supply; to regulate the flow so as to control water quality and pollution, to control and abate existing pollution by setting and administering standards, rules, and regulations; to plan and carry out projects for flood protection and for the improvement of navigation; to promote sound watershed management, including the operation of projects to encourage soil conservation, propagation of fish and wildlife, erosion control, and land reclamation and forestry practices; to promote, and to operate recreational facilities; to develop and operate facilities for the generating and transmission (but not for direct consumer distribution) of hydroelectric power, and to set rates and charges for such power; and to regulate and control withdrawals and diversions from the waters of the basin.

A wide variety of implementing powers and lesser housekeeping powers would be granted the Commission, including the power to delegate certain of its powers to instrumentalities of the signatory governments, to establish cost

sharing standards and formulas to apportion costs among the different purposes included in multipurpose programs, and for sharing of financial responsibility with the signatory parties, public bodies, groups and private enterprise. The compact contains broad borrowing powers and power to issue bonds, and pledges the full faith and credit of the Commission, but not that of the signatory governments. The signatories agree to provide capital funds for the projects of the Commission, in accordance with the cost-sharing provisions agreed to, but subject to the legislative appropriation of the respective parties, and provides for a method for the approval of the Commission's budget by the chief executives of the signatories. The Commission's powers include the power of eminent domain. The State signatories agree not to undertake any development projects in relation to the Delaware River Basin unless such a project is approved by the Commission and made a part of the Commission's program. The Federal Government agrees to substantially the same terms, except that its agreement is subject to the provision that:

"Nothing in this compact shall be construed to relinquish the functions, powers or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the States and with foreign nations."

The Commission which is to exercise this broad sweep of powers is to consist of five members, one appointed by each of the governors of the signatory States, and one appointed by the President of the United States. No action is to be taken by the Commission except on a majority vote of the total membership—i.e., by a three-fifths vote. The Commission is to be an agency and instrumentality of each of the signatory parties—i.e., it has the character of both a State agency of each of the party States, as well as that of an agency of the Federal Government.

ISSUES PRESENTED

I. Has Congress the power to enact legislation joining the Federal Government as a party to the proposed Delaware River Basin compact?

II. If Congress has the power to enact legislation making the Federal Government a party to such a compact, may Congress delegate to the compact agency the execution of Federal administrative and regulatory duties?

III. If Congress has the power to enact legislation making the Federal Government a party to such a compact, to what extent would the compact bind the United States, particularly in regard to the power of Congress to make laws inconsistent with the obligations previously incurred by the Federal Government under the compact?

OUTLINE OF OPINION

I. Congress has power to enact legislation joining the Federal Government as a party to the proposed Delaware River Basin compact.

A. Congress has power to make laws for the development of the water resources of a navigable river.

B. The enactment of legislation to create a Federal-State compact is a proper method for the exercise of the power.

1. The U.S. Supreme Court has uniformly upheld contractual arrangements in the nature of compacts between the Federal Government and one or more States.

2. The Supreme Court has expressed itself repeatedly in favor of the compact device to solve regional problems, and has recently explicitly recognized compacts as a means of safeguarding the national interest.

3. Federal-State cooperation, through Federal participation in interstate compacts and otherwise is a commonplace occurrence; full Federal participation in a compact is harmonious with the pattern of practical Federal-State cooperation.

II. Congress may delegate to the proposed Delaware River Commission the execution of Federal administrative and regulatory duties.

III. The Delaware River Basin compact will be binding upon the Federal Government to the extent of fiscal obligations undertaken by the Government, but will not restrict the power of Congress to pass laws inconsistent with the compact in relation to such fields as navigation or the regulation of interstate and foreign commerce.

A. Fiscal obligations of the Federal Government remain binding obligations, although they will not be judicially enforceable unless the United States evidences its consent to be sued, by providing an enforcement procedure or otherwise.

B. The compact does not limit congressional power to make laws under the Constitution.

OPINION

I. Congress has power to enact legislation joining the Federal Government as a party to the proposed Delaware River Basin compact.

A. Congress has power to make laws for the development of the water resources of a navigable river.

Congress has power to make laws joining the United States as a party to the contemplated compact with Delaware, New Jersey, New York, and Pennsylvania for the development of the Delaware River Basin. The development of the basins of navigable rivers, including the regulation of the water supply, quality and pollution control, protection of navigation, flood protection, and the development of hydroelectric power, is clearly within the congressional power. Federal control over navigable streams dates back to *Gibbons v. Ogden*, 9 Wheat. 1 (1824). A concise rationale of this power was articulated in *Gilman v. Philadelphia*, 3 Wall. 713, 724 (1866):

"Commerce includes navigation. The power to regulate commerce comprehends the control, for that purpose and to extend necessary, of all navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the Nation, and subject to all requisite legislation by Congress."

The "*Daniel Ball*" v. *United States*, 10 Wall. 557 (1871), decided that the United States has control even if the navigable waterway is within a single State. The power has been judged to extend to wharfage, dock, warehouse, and terminal facilities, *California v. United States*, 320 U.S. 577 (1944).

Federal power over navigable waterways, however, is not limited to navigation: " \* \* \* it cannot properly be said that the constitutional power of the United States over its waters is limited to control for navigation \* \* \*. Flood protection, watershed development, recovery of the costs of improvements through the utilization of power are likewise parts of commerce control \* \* \*. That authority is as broad as the needs of commerce. *United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 426 (1940)."

Nor is the source of the power restricted to the commerce clause. Other relevant bases are the war power, admiralty power, and the power to provide for common defense, *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936); *Oklahoma ex rel Phillips v. Atkinson Co.*, 313 U.S. 508 (1941). The Supreme Court, in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 738 (1950), stated:

"[T]he power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement, is now as clear and ample as its power to accomplish the same results indirectly through resort to stained interpretation of the power over navigation."

Congress' specific right to develop and sell hydroelectric power was recognized in the *Ashwander* case, as well as in *United States ex rel. Chapman v. Federal Power Commission*, 345 U.S. 153 (1952), and in *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913). In *Arizona v. California*, 283 U.S. 423, 456 (1931), Mr. Justice Brandeis wrote:

" \* \* \* The erection and maintenance of such dam and reservoir are clearly within the powers conferred upon Congress \* \* \*. And the fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred, even if those other purposes would not alone have justified an exercise of the congressional power."

As already noted, these "other purposes" would be considered a proper exercise of Federal power today even if standing alone.

The power of Congress over flood control on navigable streams has been explicitly recognized as extending to tributaries and watersheds, and to include the power to control, under a comprehensive plan, the entire basin of the stream (*Oklahoma ex rel. Phillips v. Atkinson Co.*, 313 U.S. 508 (1941)).

B. The enactment of legislation to create a Federal-State compact is a proper method for the exercise of the power.

1. *The U.S. Supreme Court has uniformly upheld contractual arrangements in the nature of compacts between the Federal Government and one or more States.*—With Federal power to regulate beyond doubt, we may inquire whether a Federal-State compact is an appropriate method for the exercise of the power. The often-quoted dictum in *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 421 (1819), is applicable here, too:

" \* \* \* [T]he sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The Constitution does not prohibit the Federal Government from entering into compacts with one or more of the States. Contractual arrangements between the Federal Government and one or more of the States, much in the nature of compacts, have long been upheld by the U.S. Supreme Court. *Seawright v. Stokes*, 3 How. 151 (1845), involved agreements between the Federal Government and the States of Pennsylvania, Ohio, Maryland, and Virginia, relating to the Cumberland Road. The Federal Government had constructed the road, but in spite of its great economic importance to the Nation and the States through which it passed, it had fallen into disrepair from excessive use. By concurrent legislation, the Federal Government agreed to make the necessary repairs and to surrender that portion of the road to each of the States through which it passed. The States, in turn, agreed to keep their respective portions of the road in good repair, collecting the necessary funds out of tolls, but no tolls were to be charged to coaches or wagons carrying Federal mail, troops, or equipment. The specific question before the Court was the validity of a Pennsylvania statute imposing one-half of the usual toll on carriages carrying both mail and passengers. In holding the Pennsylvania statute invalid, the Court rested its decision on the intention of the contracting parties as evidenced by their agreement, embodied in the concurrent legislation. Throughout his opinion, Chief Justice Taney, speaking for the majority, refers to these agreements as compacts. Finding that the original construction of the Cumberland Road was within congressional power, the Chief Justice upheld the agreements in the following significant terms:

" \* \* \* The object of the compacts was to preserve the road for the purposes for which it had been made. The right of the several States to enter into these agreements will hardly be questioned by anyone \* \* \*. Neither do we see any just ground for questioning the power of Congress" (3 How. 151, 166).

It is noteworthy that even the dissent conceded the constitutionality of the "compacts" involved, although in disagreement regarding the intent of the parties. A companion case on substantially similar facts reached the same conclusion concerning the validity of the "compacts" (*Neil, Moore & Co. v. Ohio*, 3 How. 720 (1845)).

Contractual arrangements between the Federal Government and the States were approved also in *Ex parte Karstendick* (93 U.S. 396 (1876)), which involved the question whether a Federal prisoner convicted in one State may be committed to a State institution in another State, there to serve his sentence under more onerous conditions. In upholding the commitment, the Court accepted the validity of contractual arrangements between the Federal Government and the State of Louisiana for the incarceration of Federal prisoners in a Louisiana penal institution.

"It is conceded that Congress has the power to provide that persons convicted of crimes against the United States in one State may be imprisoned in another. Congress can cause a prison to be erected in any place within the jurisdiction of the United States, and direct that all persons sentenced to imprisonment under the laws of the United States shall be confined there; or it may arrange with a single State for the use of its prisons, and require the courts of the United States to execute their sentences of imprisonment in them. All this is left to the discretion of the legislative department, and is beyond the control of the courts" (93 U.S. at p. 400).

In the field of land cessation by States to the Federal Government, the Court has uniformly upheld the conditions imposed by the States, treating the entire arrangement as contractual in nature. In *Collins v. Yosemite Park & Curry*

*Company* (304 U.S. 518 (1937)); California had ceded land in Yosemite Valley to the United States for use as a national park. The land grant to the Federal Government reserved to California, as a condition of the cession, "the right to tax persons and corporations, their franchises, and property on the lands included in said parks; \* \* \*" Appellee corporation had sued to enjoin the appropriate California official from enforcing within the park's limits the State's Alcoholic Beverage Control Act, which imposed a license requirement as well as a tax on sales of liquor. The Court held that the part of the act which imposed a tax was properly enforceable against the corporation, since it was within the powers California had reserved, but that the licensing requirement was unenforceable because it was not within the reservation. In so holding, the Court upheld the validity of the agreement between the Federal Government and the State in the following terms:

"The States of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus in a most effective way, cooperatively adjust problems flowing from our dual system of government. Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification \* \* \*. These arrangements the courts will recognize and respect" (304 U.S. at p. 528).

A similar result was reached in *James v. Dravo Contracting Co.* (302 U.S. 134 (1937)), decided the same term.

Contractual conditions arising from land cession by States to the Federal Government for the purpose of creating new States, under article IV, section 3 of the Constitution, have also been upheld despite the fact that the Constitution does not expressly allow the ceding State to impose such conditions or Congress to accept them. See, e.g., *Pollard v. Hagan* (3 How. 212 (1845)); *McCool v. Smith* (1 Black 459 (1862)). In another land cession case, *Fort Leavenworth Railroad Co. v. Lowe* (114 U.S. 525 (1885)), arising under article I, section 8, clause 17, which provides for the acquisition of land by the Federal Government "for the erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings," the Court upheld contractual conditions relating to the cession of lands by Kansas for the erection of Fort Leavenworth, in spite of the fact that the Constitution provides for "exclusive Legislation" by Congress in the clause referred to. The Court said:

"Though the jurisdiction and authority of the general government are essentially different from those of the State they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution" (114 U.S. 525, 541).

2. *The Supreme Court has expressed itself repeatedly in favor of the compact device to solve regional problems, and has recently explicitly recognized compacts as a means of safeguarding the national interest.*—The proposed Delaware River Basin compact, when enacted by Congress, will share the usual presumption of constitutionality with all other duly enacted acts of Congress. In addition, it will also encounter a sympathetic forum in the Supreme Court, since the court has repeatedly expressed itself in favor of the wider use of the compact device in solving regional problems, particularly in regional problems relating to water resources. In *New York v. New Jersey* (256 U.S. 296 (1921)), involving a dispute concerning the pollution of the waters of New York Bay, the Court suggested to the parties that their controversy might better be solved by agreement than by litigation:

"We cannot withhold the suggestion, inspired by the consideration of this case, that the grave problem of sewage disposal presented by the large and growing populations living on the shores of New York Bay is one more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the States so vitally interested in it than by proceedings in any court however constituted" (256 U.S. 296, 313).

A similar suggestion to the States to take recourse to a compact, rather than to the courts, is found in *Washington v. Oregon* (214 U.S. 205, 218 (1909)), and in *Minnesota v. Wisconsin* (252 U.S. 273, 283 (1920)), both of which involved border disputes. In *Hinderlider v. La Plata River & Cherry Creek Ditch Co.* (304 U.S. 92, 104-106 (1938)), the Court again spoke approvingly of the use of the interstate compact device in a case involving the apportionment of water resources.

The most significant statement for present purposes, however, appears in *West Virginia ex rel. Dyer v. Sims* (341 U.S. 22 (1951)), which involved the construction of the Ohio River Valley water sanitation compact. The main question before the Court was West Virginia's responsibility under the compact, which, in turn, depended on the validity of the compact legislation under the State constitution of West Virginia. In holding the compact valid under West Virginia's constitution, and West Virginia bound by its contractual obligation, Justice Frankfurter, speaking for the majority, remarked that pollution in interstate streams might, on occasion, be an appropriate subject for national legislation, but that the Constitution leaves the States free to settle regional controversies in diverse ways. Pointing to litigation as the most unsatisfactory way of settling regional problems, he continues:

"Indeed, so awkward and unsatisfactory is the available litigious solution for these problems that this Court deemed it appropriate to emphasize the practical constitutional alternative provided by the compact clause. Experience led us to suggest that a problem such as that involved here is 'more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the States so vitally interested in it than by proceedings in any court, however constituted' (*New York v. New Jersey*, *supra*, at 313). The suggestion has had fruitful response. The growing interdependence of regional interests calling for regional adjustments, has brought extensive use of compacts. A compact is more than a supple device for dealing with interests confined within a region. *That it is also a means of safeguarding the national interest is well illustrated in the compact now under review. Not only was congressional consent required, as for all compacts; direct participation by the Federal Government was provided in the President's appointment of three members of the Compact Commission*" (art. IV; sec. 3) [emphasis supplied] (at pp. 27-28).

Although the question of Federal participation in the Ohio River Valley water sanitation compact is far less extensive than in the proposed Delaware River Basin compact, these statements gain in significance when it is recalled that the Court has already recognized the regional nature of the water resources problem in the Delaware River Basin in *New Jersey v. New York* (283 U.S. 336 (1931), decree modified 347 U.S. 995 (1954)). The case involved an attempt by New Jersey to enjoin the State of New York and the city of New York from diverting any water from the Delaware River or its tributaries. In denying the injunction, Mr. Justice Holmes remarked:

"A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such a power to the destruction of the interest of the lower States could not be tolerated. And on the other hand equally little could New Jersey be permitted to require New York to give up its power altogether in order that the river might come down to it undiminished. Both States have real and substantial interests in the river that must be reconciled as best as they may be" (at pp. 342-343).

In the decree, whereby the Court retained continuing jurisdiction, the Court went even further, recognizing the interests of Pennsylvania, as well as the paramount authority of Congress and of the United States in respect to navigation on the river.

If additional support for the constitutionality of Federal participation in a compact is necessary, it may be recalled that the compact clause requires nothing more than congressional consent before allowing States to enter into compacts "with another State or with a foreign power". The Court has held that congressional consent is required only for compacts which might affect the political balance of the Federal system of government. *Virginia v. Tennessee*, 148 U.S. 503, 521 (1893); see also Story, "Commentaries on the Constitution of the United States" (1833), section 1403. If the protection of the political balance of the Federal system is the main purpose of the purpose of the compact clause, and if the protection of this political balance is adequately safeguarded (even as to compacts with foreign powers) merely by congressional consent, then it is protected even more assuredly by a compact where there is not only congressional consent, but actual participation by the Federal Government.

3. *Federal-State cooperation, through Federal participation in interstate compacts and otherwise, is a commonplace occurrence; full Federal participation in a compact is harmonious with the pattern of practical Federal-State coopera-*

*tiqu.*—Federal—State association to achieve interrelated goals may be seen in a number of instance, of which the Ohio River Valley sanitation compact referred to in connection with *Dyer v. Sims, supra*, is only one example. In the upper basin compact for the Colorado River, the United States and the signatory States are equally represented on a regulatory commission; the compact is primarily devoted to power development and irrigation. 63 Stat. 31 (1949). The Federal Government, through the District of Columbia, is also a signatory of the Potomac River compact, but the compact commission's function is merely an advisory one. 54 Stat. 748 (1940). Other instances of Federal participation, largely of a consultative nature, are described in the task force reports of the Commission on Organization of the Executive Branch on "Water Resources and Power", particularly Vawter, "Interstate Compacts—the Federal Interest," 3 Task Force Report on Water Resources and Power, 1683 to 1723, and Page, "Patterns of Federal—Non-Federal Partnership in Water Resource Development," *id.*, pp. 1581–1671 (1955).

There is at least one suggestion that the participation of the Federal Government is essential in a compact involving control of navigation. President Franklin D. Roosevelt vetoed a bill granting congressional consent to the Republican River compact agreement, because in his opinion the compact sought "to withdraw the jurisdiction of the United States over the waters of the Republican Basin for purposes of navigation, and \* \* \* to restrict the authority of the United States to construct irrigation works and to appropriate water for irrigation purposes in the basin." 88 Congressional Record 3286 (1942). But see, *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 18 How. 421, 433 (1855) *infra*, p. 23.

Even a casual perusal of the titles 16 and 33 of the United States Code, dealing with conservation and navigation and navigable waters, show that Congress with increasing frequency enacts laws contemplating cooperation with the States and utilizing State agencies to carry out the law in these fields. While full participation of the Federal Government in a compact may be novel, it is merely the most recent step in a long-established course of practical adjustment of the Federal system to emerging needs. Cf. Clark, "The Rise of a New Federalism" (1938), particularly chapter III, "Agreements and Contracts," pages 46–80.

II. Congress may delegate to the proposed Delaware River Commission the execution of Federal administrative and regulatory duties.

The congressional legislation enacting the proposed Delaware River Basin compact, and creating an agency, the Delaware River Commission, to carry out certain defined powers and duties is no different from other Federal legislation regulating specified areas and creating new agencies to administer the law. The compact designates the Delaware River Commission as an instrumentality of the signatory States, as well as of the Federal Government. There appear to be no constitutional limitations on Congress in the designation of regulatory agencies to carry out the law in an area in which Federal power to act is clear. *McCulloch v. Maryland, supra*, pages 7, 8. And the proposed compact clearly enunciates the policy and standards for the guidance of the Delaware River Commission so as not to exceed the "limits of delegation which there is no constitutional authority to transcend." *Panama Refining Co. v. Ryan*, 293 U.S. 388, 430 (1935); see also *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529–530 (1935).

The fact that four out of the five members of the Delaware River Commission are to be appointed by the signatory States, and only one by national authority does not detract from the Commission's powers as a national instrumentality. The Constitution provides that the President, with the advice and consent of the Senate, "shall appoint Ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Article II, section 2. The quoted provision has never been held to be a limitation on the powers of an appointee, nor has it been held to be a limitation on the manner in which specific officers, other than Members of the Cabinet, Ambassadors, consuls and Supreme Court Judges, are to be appointed. In *Auffmordt v. Hedden*, 137 U.S. 310, 327 (1890), the imposition of certain import duties on the plaintiff was challenged because the "merchant appraiser" who had fixed the value of the dutiable goods had not

been appointed as provided in article II, section 2 of the Constitution. The Court held that the merchant appraiser was not an officer of the United States within the meaning of the Constitution, and hence did not have to be appointed in accordance with its provisions. Nevertheless, the Court refused to concede that the fact that he was not an officer in any way limited his power to act as prescribed by law. The Court also indicated that the term "office" or "officer" embrace ideas of tenure, duration, emolument and duties, continuing and permanent, not occasional and temporary, as well as requiring the giving of bond and the taking of an oath of office.

In other cases, e.g., *United States v. Germaine*, 99 U.S. 508 (1879); *United States v. Hartwell*, 6 Wall, 385 (1868); *United States v. Smith*, 124 U.S. 525, 532 (1888); and *United States v. Mowat*, 124 U.S. 303, 307 (1888), the constitutional provision concerning the appointment of officers was used merely as a test to determine whether some other law applied—in the first three cases cited, the defendants were acquitted of crimes such as embezzlement, because the applicable law was aimed at "officers" and the defendants had not been appointed in the manner provided for officers in the Constitution; and in the last instance, it was held that a claimant was not an "officer" so as to entitle him to certain mileage fees, again because his appointment did not meet the constitutional requirement. Thus it is clear that article II, section 2, has never been used either as a restriction on the manner of appointment, nor as a limitation on the powers of employees whose powers are prescribed by law. While the members of the Delaware River Commission will not be Federal "officers" within the meaning of the Constitution, this will in no way limit their authority to act as prescribed by law.

The case for the exercise of Federal regulatory powers by the Delaware River Commission is strengthened by the designation of the Commission as a Federal instrumentality. But this designation, while useful, is not essential, because many instances of execution of Federal law and policy by State officers may be noted. We have already referred to the use of State prisons for Federal convicts, *supra*, p. 9. 18 U.S.C. 4002; *United States v. Hoffman*, 13 F. 2d 269 (D.C. Ill. 1925), *aff'd* 13 F. 2d 278 (7th Cir. 1925). The Social Security Act furnishes other instances, 42 U.S.C. 302, 421, 503, 602, 703, 713, 1202, 1352 (1957); the Federal control over social security administration is in part maintained by grants in aid for the support of State administrative agencies, conditioned upon their satisfying Federal standards concerning policies and methods. This Federal-State program has been upheld in *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937).

Other examples may be found in the conservation area, 16 U.S.C. A.509a–590g (soil conservation), 590r–590z–11 (water conservation), 757 (use of services and facilities of States in preserving fish and wildlife resources), and 1001–1008 (watershed protection and flood protection); and most recently, by amendment of the Atomic Energy Act in 1959, a major share of the regulation of the nuclear energy field may be assumed by the States under agreement with the Atomic Energy Commission, 42 U.S.C. A.2021; still further examples are referred to in Clark, "The Rise of a New Federalism," particularly chapter IV, "Cooperative Use of Government Personnel," pp. 82–108 (1938).

Thus, as a practical matter, the use of State personnel to carry out Federal law or policy is well-accepted, particularly in the water resources and conservation field. The proposed compact agency, designated both a Federal as well as a State instrumentality, will thus have a full charter of regulatory authority, deriving its power both by delegation from the States and from the Federal Government.

III. The Delaware River Basin compact will be binding upon the Federal Government to the extent of fiscal obligations undertaken by the Government, but will not restrict the power of Congress in such fields as navigation or the regulation of interstate and foreign commerce.

A. Fiscal obligations of the Federal Government remain binding obligations, although they will not be enforceable unless the United States evidences its consent to be sued, by enforcement procedure or otherwise.

In joining the Delaware River Basin compact, the Federal Government would be bound to the extent the provisions of the compact itself purport to bind it, although no part of the obligation of the United States would be judicially enforceable in the absence of its consent to be sued.

"When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference, said the Court in *United*

*States v. Bank of the Metropolis* (15 Pet. 377, 393), except that the United States cannot be sued without its consent" (*Perry v. United States*, 294 U.S. 330, 352 (1935)).

See also, Zimmerman and Wendell "The Interstate Compact Since 1925," page 64 (1950).

Article I, section 10, forbids a signatory State's enacting any "Law impairing the Obligation of Contracts;" and this prohibition, while of little contemporary significance in respect of a State's capacity to legislate concerning the validity of private contracts, has been held to be absolute in respect of the obligation imposed by a compact. See *Green v. Biddle* (8 Wheat. 1, 13 (1823)); *Virginia v. West Virginia* (246 U.S. 565 (1918)); *West Virginia ex rel. Dyer v. Sims* (341 U.S. 22 (1951)); *Pennsylvania v. Wheeling and Belmont Bridge Co.* (13 How. 518, 566 (1852)); *Olin v. Kitzmiller* (259 U.S. 260 (1922)); with which compare, as to the obligation of private contracts, *Home Building and Loan Association v. Blaisdell* (290 U.S. 398 (1934)). No similarly explicit constitutional restraint rests upon the Federal Government. Nevertheless, the Supreme Court has strongly indicated that the Federal Government is, like a State, obligated to respect its own contractual undertakings. In *Lynch v. United States* (292 U.S. 571 (1934)), in a suit against the United States on an insurance policy issued by the Government, the Government defended on the grounds that the law pursuant to which the policy had been issued had since been repealed for reasons of economy and that such repeal constituted a withdrawal of the Government's consent to be sued on the policy. The Court held that the repeal did not merely abrogate consent to be sued, but was, in fact, a repudiation of the underlying obligation. In holding for the plaintiff, Justice Brandeis, speaking for a unanimous Court, indicated that "Rights against the United States arising out of a contract with it are protected by the fifth amendment." Congress had power to authorize the contracts, and "the due process clause prohibits the United States from annulling them, unless, indeed, the action taken falls within the Federal police power or some other paramount power."

Similar expressions can be found in *Perry v. United States* (294 U.S. 330 (1935)), one of the "gold clause" cases. Plaintiff sued on a U.S. Liberty Loan gold bond issued in 1918, which contained a provision to pay in gold coin of the United States "of the present weight and fineness." At the time the bond was issued, a gold dollar contained about 25 grains of gold, and prior to the suit, the dollar had been devalued to contain about 15 grains of the same fineness. The holder on redemption of the bond demanded payment of either \$10,000 in "old" gold dollars, or \$16,931.25 as the equivalent in devaluated dollars. The Government having refused to redeem the bond except by payment of \$10,000 in legal tender, the plaintiff sued for the claimed value of the Government's obligation.

The plaintiff based his suit on the contention that the abrogation of the gold clause was an unconstitutional deprivation of property without due process of law, violating the fifth amendment; the Government contended that the abrogation of the gold clause was a proper exercise of national fiscal powers and that the Government could not restrict the exercise of its "sovereign power." Finding that the plaintiff had failed to prove actual damages, the Court gave judgment for the United States. This might have ended the matter, and Justice Stone, in his concurring opinion, indicated that it should have. The majority of the Court, through Chief Justice Hughes, took the occasion, however, to stress that a sovereign power is capable of entering into obligations which remain "binding on the conscience of the sovereign" (at p. 354) and went so far as to state that the attempt to override the obligation of the Government bonds was unconstitutional as "beyond the congressional power." Thus, by a parity of reasoning, the Federal Government's fiscal undertakings under the Delaware River Basin compact would be obligations with strong moral and political claims on all future Congresses, even though, to be sure, they may be judicially unenforceable because the United States may refuse to be sued in the courts, even by one of the States (*Kansas v. United States*, 204 U.S. 331 (1907)).

B. The compact does not limit congressional power to make laws under the Constitution.

There appear to be no instances in which the Federal Government was charged with having "contracted away" powers other than fiscal powers; in cases involving contracts by State governments, the Supreme Court has consistently held State governments bound by contracts involving some limitations on their fiscal powers (*Hetcher v. Peck*, 6 Cranch 87 (1810); *New Jersey v. Wilson*, 7 Cranch 164 (1812); *Riqua Branch of Bank of Ohio v. Knoop*, 16 How. 369 (1854); *Von Hoffman v. City of Quincy*, 4 Wall. 535 (1867)). In cases involving the States'

"police power," however, the results indicate that a State cannot contract away substantive powers to regulate public health, safety, and morals (*Stone v. Mississippi*, 101 U.S. 814 (1880); *Boston Beer Co. v. Massachusetts*, 97 U.S. 25 (1878); *Northwestern Fertilizing Co. v. Hyde Park*, 97 U.S. 659 (1878); *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746 (1884)); or to surrender the power of eminent domain (*Georgia v. Chattahoochee*, 264 U.S. 472 (1924); *West River Bridge Co. v. Dix*, 6 How. 507 (1848); *Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20 (1917)).

The question whether a compact between Virginia and Kentucky, consented to by act of Congress, could operate as a restriction upon Congress in providing for the building of a bridge across a navigable river was raised in *Pennsylvania v. The Wheeling and Belmont Bridge Co.* (18 How. 421 U.S. (1856)). In holding that the consent of Congress did not restrict congressional power to legislate inconsistently concerning navigation and the regulation of interstate commerce, the Court said:

"The question here is whether or not the compact can operate as a restriction upon the power of Congress under the Constitution to regulate commerce among the several States? Clearly not. Otherwise Congress and two States would possess the power to modify and alter the Constitution itself" (at p. 433).

Thus, we conclude that the Delaware River Basin compact could not diminish the Federal Government's paramount powers over the regulation of navigation or interstate commerce. Since the compact itself excludes these powers and duties of Congress from its scope, as it properly should, the absence of a binding commitment in this area is not likely to be regarded as a practical obstacle, and it certainly is not a constitutional one.

#### CONCLUSION

There is clear congressional power to make laws for the development of the Delaware River Basin, and the creation of a Federal-State compact is a proper method for the exercise of the power. It is clear, also, that Congress may delegate Federal administrative and regulatory duties to the proposed compact agency. It is, accordingly, our opinion that there are no constitutional objections to the proposed Delaware River Basin compact.

Respectfully submitted.

WALTER GELLHORN,  
Betts Professor of Law, Columbia Law School.  
FRANK P. GRAD,  
Associate Director, Legislative Drafting Research Fund,  
Columbia University.

Prof. Noel T. Dowling, Harlan Fiske Stone professor emeritus of constitutional law, Columbia Law School, has been consulted in the preparation of this memorandum and has examined the same; he has authorized the writers to state that he concurs in the opinions herein expressed.

#### STATEMENT OF MAURICE K. GODDARD, SECRETARY OF FORESTS AND WATERS, COMMONWEALTH OF PENNSYLVANIA (REPRESENTING GOV. DAVID L. LAWRENCE)

Mr. GODDARD. I am Maurice K. Goddard, secretary of the department of forests and waters, and it is my pleasure today to represent Gov. David L. Lawrence of our Commonwealth.

First of all, may I thank you and the subcommittee for scheduling these early hearings on House Joint Resolution 225.

There is scarcely any need to tell you that this resolution has our full and unqualified support. As a resident of the Delaware Basin, Mr. Chairman, and as a representative of an area vitally dependent on the waters of the Delaware for its growth and progress, you are quite aware of the importance of this legislation.

We are not, of course, talking about just the river here today. We are considering a step affecting people—many people—and their future health and welfare.

The Delaware is tiny as rivers go. It is only a little over 300 miles long. Yet 22 million people—or about 13 percent of the national population—depend upon it for everything from drinking water and recreation to navigation and industrial production.

The Delaware is a little giant. The jobs it makes possible generate 17 percent of the national personal income. The industrial complex based upon it constitutes one of the world's greatest concentrations of industrial might.

Yet, if predictions are accurate—and they have usually been conservative—in 5 short decades both the population and the industrial output of the Delaware River's service area will double. They will double, that is, if the water is there to support them. They will double if the flood protection necessary to save lives and protect heavy capital investment is available. They will double if the energy supplies are there to meet power requirements. They will double if the recreational amenities are present that will help maintain the basin as a desirable place in which to live and work.

At the direction of Congress, the U.S. Army Corps of Engineers has now completed a plan which would enable us to meet these needs.

We now need a political instrument which can take the plan off paper and make it a reality.

We have come to realize in Pennsylvania that city or regional planning alone is not sufficient to meet the demands of future growth. We know, from experience, that the best area planning must be backed up by sound river basin planning, for the river is the lifeline of a region.

But a river basin rarely belongs to one State. Comprehensive development seldom can be carried out by the State or Federal Government alone. Instead, it involves several States and the joint efforts of government at all levels, city, State, and Federal.

We are asking the subcommittee's support today for a measure that would make such cooperation in the Delaware Basin feasible and coherent.

The compact authorized by House Joint Resolution 225 would permit the States of New York, New Jersey, Delaware, and Pennsylvania to join with the Federal Government as equal partners in tailoring the future of the Nation's most populated and productive region.

Such a proposal is in accord with President Kennedy's brilliant message to Congress on natural resources in which he expressed the aim of his administration to develop comprehensive river basin plans by 1970 and to form planning commissions on which the State and Federal Governments would sit as equal partners.

It is also in accord with the observation made back in 1953 by a Presidential Advisory Committee on Water Resources that, and I quote:

The greatest single weakness in the Federal Government's activities in the field of water resources development is the lack of cooperation and coordination of the Federal agencies with each other and with the State and local agencies.

The interstate-Federal compact to be authorized by House Resolution 225 would meet this weakness.

It recognizes that the States will be active participants in the development of the Delaware, building dams and other facilities, that, for the sake of efficiency should be coordinated, in construction and operation, with those to be built by the Federal Government.

Pennsylvania will carry out its part of the bargain. At this moment, before the Delaware plan has been sent to Congress, the Commonwealth is already buying land for the Tohickon Reservoir, recommended for local construction under the Army's plan. We will continue to move ahead in this fashion as funds are available.

We will do so because we believe firmly in a coordinated river basin approach to water resource problems. We also hope to join with our sister States soon in developing the Susquehanna and Allegheny Rivers with plans like those now completed for the Delaware.

In pooling our energies and our capabilities with the Federal Government, we recognize the proper spheres of responsibility for each in solving a common problem.

Surely, this is the highest aim of good government, for the citizen cares not who does the job so long as it gets done and done well. It is our intention in Pennsylvania to see that the job gets done, and, in league with others, done well.

Thank you, Mr. Chairman.

Mr. WALTER. Thank you, Dr. Goddard, and may I say that those of us who know you and the work you have done feel that with your guidance, the development of this compact will be treated properly.

Mr. GODDARD. Thank you very much, sir.

Mr. WALTER. Are there any questions?

Thank you, Dr. Goddard.

I see Governor Meyner of New Jersey has arrived.

#### STATEMENT OF GOV. ROBERT B. MEYNER, GOVERNOR OF NEW JERSEY

Mr. MEYNER. Mr. Chairman, I am sorry for being late, but we encountered some foul weather, and we had to go from VFR to IFR, but I do have a short statement here. Here is a copy of it.

I think the chairman and myself are familiar with the territory concerned.

Mr. WALTER. We have lived on either side of the river for upward of 40 years.

Mr. MEYNER. We have a common boundary.

The Delaware River is the main artery of a major region of this Nation. Its basin contains some 22 million people, a wealth of industry, a potential for growth and development which challenges the imagination. The river and its tributaries are at once the hope and fear of this important area. Properly harnessed, the Delaware can meet the great and growing needs of homes and industries; it can provide power, recreational facilities, water for homes, for industry, for agriculture. Untamed, it can be vicious.

The water resources of the basin cannot be developed in separate geographical pieces. The river and its tributaries, together with the related underground waters, form a single, unified system. From the springs in the Catskills, the Poconos, and the Kittatinny Mountains, this system runs to the harbors, the bay, and the sea through

the lands of four States. Acting alone, none of these States can effectively develop or control this powerful natural resource. On the other hand, the people in the basin States are not disposed to turn the problem over entirely to the Federal Government. Full development and control must be undertaken on a regional basis, with proper recognition of the basin's significance in the development of the national economy.

With this in mind, I joined 6 years ago with the Governors of Pennsylvania, New York, and Delaware, and the mayors of Philadelphia and New York City, to create an advisory committee for the Delaware River Basin. In the intervening years, the committee has worked to create a means for effective administration of a region-wide water development and control program.

During these 6 years, we saw two extreme examples of the need to control the basin waters. In 1955, a severe flood took more than 100 lives in the basin area and caused millions of dollars of property damage. Just 2 years after experiencing the havoc of too much water, we came to know the calamity of too little. The 1957 drought cost us dearly.

Congress has recognized the need for action. In 1955, it directed a \$2 million, multiple-purpose survey of the water needs and the means of water control in the Delaware Basin area. That survey, by the U.S. Army Corps of Engineers, is now complete. As you know, it calls for a comprehensive plan of basin development by the States and the Federal Government.

Last month the Senate Select Committee on National Water Resources recommended that the Federal Government and the States cooperate in preparing comprehensive development and management plans for all major river basins in the Nation. As a result of the work of our advisory committee, and the studies made by Syracuse University and the Water Research Foundation, the Delaware Basin States now have such a plan. This plan is contained in the proposed compact before you today.

Under this compact the powers of the four States and the Federal Government would be brought together in a coordinated program for the regional development and management of the basin waters. Total development of the water resources of a multistate region does not lend itself to the usual pattern of separate State or Federal solutions. This compact offers a novel plan to meet a challenging problem; a means to accommodate the interests of the various agencies of the Federal Government and of the States to bring about unified direction of an enterprise in which all have a distinct and important stake. Part of the vitality of our democracy is its versatility, its ability to adapt to new situations, new needs. We think this compact exemplifies that vitality.

Adoption of this compact will open the way for total use of the basin's water resources. It would enable us to bank water at floodtime for withdrawal in time of drought; to regulate streamflow; to manage our watersheds, to provide recreational facilities, to control pollution, to fight salt water intrusion, to open avenues for new commerce, to provide water for homes, water for farms and industry, and power to stimulate the economy of the entire region.

The recent message of the President of the United States outlined a program of natural resource development. The President said:

We cannot delude ourselves—we must understand our resource problems and we must face up to them.

Only through the fullest participation of State and local governments and private industry can it be done wisely and effectively.

I agree wholeheartedly. We in the Delaware Basin States are prepared to put the President's recommendations to work. Our river has been surveyed by the Army Engineers. We have a blueprint for thorough development. We propose in this compact to create the machinery to put the plan into action.

We have gone far with the development of the water resources within the State of New Jersey. We have bought water source land; we are building reservoirs; we are surveying our underground water resources. We mean to make the most and the best use of what nature has given us within our borders. But this is not enough. Now, with the other States which share it, we must look to the Delaware. On its integrated development depend the wellbeing of our people, the prosperity of our economy and the welfare of the generations that will succeed us.

I urge you to give the compact your approval.

Mr. WALTER. Governor, we are indebted to you. You mentioned the Advisory Committee for the Delaware River Basin. You have pioneered in the study and you have furnished the guideposts which culminated in this proposal.

Isn't it a fact that the State of New Jersey is already engaged in works along the Delaware River?

Mr. MEYNER. Yes. As a matter of fact, right now we are trying to utilize the Raritan to the full, and we have several dam developments which if we are to develop them to their full potential will call for bringing some of the water from the Delaware. We will not have enough water out of our own rivers, and we will have to take it from another basin, and we can only do it cooperatively. New York has developed its water out of the upper regions of the Delaware, but, of course, the determination of the Supreme Court allowing New York to do this will not be affected, as the compact points out.

This is an integrated development. It holds the prospect of taking into consideration all of the aims rather than just water pollution on the one hand or flood control on the other and water supply on the other. It is an integrated approach, which I think is deserving of consideration, and it also takes into consideration as a partner the Federal Government.

Mr. WALTER. Yes, that has, I think, a very distinct advantage. Otherwise when a compact comes to us, we examine only the four corners, and then either approve it or disapprove it. There is no alternative. That is all we can do, and if we disapprove the result is indeterminable delay. The compact must go back to the States to try to meet the objections of Congress. If the States don't agree with us, they try to prevail upon us to adopt their viewpoints. So time is being consumed, valuable time.

This type of compact is not novel now. I must take exception to your fine statement. This is not novel at all because we have a great example of a Federal-State compact right here in the District with

the compact between the United States and Virginia and Maryland for the control of the Potomac River. And there are other similar situations.

Mr. MEYNER. Maybe I can amend my statement to say it is novel for our four States.

Mr. WALTER. All right, Bob.

Are there any questions?

Mr. CHELF. You and Mr. Goddard have sold me. I am with you.

Mr. MEYNER. Thank you very much. I hope I can be as persuasive in other quarters.

Mr. WALTER. The next witness is Brig. Gen. Norman M. Lack, vice president, Water Research Foundation for Delaware.

General, will you identify yourself for the record, please?

**STATEMENT OF BRIG. GEN. NORMAN M. LACK, VICE PRESIDENT,  
WATER RESEARCH FOUNDATION FOR DELAWARE ON BEHALF  
OF ELBERT N. CARVEL, GOVERNOR OF DELAWARE**

General LACK. I am Norman Lack, from the State of Delaware, and I am representing Governor Carvel in handing you a statement to the committee expressing his hope and urging that this legislation in the Congress will be passed. He is wholeheartedly behind it and very sorry that he couldn't be here today to present it. I will not read it. I only want to add this; that we in Delaware not only urge the adoption of this compact, but we urge it desperately. We will need twice as much water as we have now in the next 50 years. This is not based alone on population projections, but simply by the fact that we are running out of water, and what most people don't realize is that we are the only member of this compact who does not live on sweet water. All of our water is brackish and salty.

Furthermore, almost three quarters of our little State is an island entirely surrounded by salt water, and we need a great deal of help. We realize we are a small State, and we hope and pray this compact will pass so that we will be on equal partnership with our three big neighbors up the State and the Federal Government.

Mr. WALTER. General, where does the water for Wilmington come from?

General LACK. The source of supply for Wilmington comes from the Brandywine, of which the watershed is seven-eighths in the State of Pennsylvania. Wilmington is the only city or town or village in the State of Delaware that gets its water from surface water with the exception of a small amount in the Newark area. All of the rest of the communities get their water from underground wells.

Some of our southern communities have had to move their wells inland because the water became brackish. The Federal Government—we have a star boarder in Delaware whose name is the Federal Government, who built the Chesapeake and Delaware channel right across our State. This channel at the present time is only 27 feet deep. You have made plans to deepen it to 38 feet. In doing so, you may cut more aquifers which supply water to our downstate area. We are truly in need of a compact with equal participation and voice with our upriver neighbors.

Mr. WALTER. What is the population of Wilmington?

General LACK. A little less than 100,000, but the community around Wilmington is about 250,000, of which possibly 180,000 receive water from the Brandywine, however the rest of our 460,000 people are entirely dependent on underground water.

Mr. WALTER. Thank you very much, sir.

Mr. CHELF. No questions.

Mr. WALTER. Thank you.

(The statement follows:)

**STATEMENT OF ELBERT N. CARVEL, GOVERNOR OF DELAWARE**

Congressmen Francis Walter and Harris McDowell have introduced the compact into the House, and the Senators from the four basin States have introduced it in the Senate. The compact is now under consideration or in the process of being introduced in each of the State legislatures.

I am hopeful that this measure will be enacted into law by the Congress and the four States during this year so that the vitally important job of water development in the Delaware Basin may not be delayed.

My State of Delaware is almost totally dependent upon the Delaware River and its tributaries. We are one of the fastest growing States in the Nation, and all surveys agree that new water supplies must be made available soon, if our population and industrial growth is to continue.

Though surrounded by salt or brackish water, nature has endowed my State with only limited supplies of fresh water available from within our own borders.

For the future, we want tools for those parts of the Delaware River system that lie upstream in our neighboring States for the sources of augmented supply so essential to our future growth. It is for this reason that the proposed Delaware Basin compact is so important, for the compact will establish the governmental machinery by which my State may cooperate on a day-to-day basis with our neighboring States and the Federal Government.

Rather than remaining the reluctant downstream user of what is left over, my State, through the compact, will achieve an equal voice along with other parties to the compact. We will be able to participate in future water policy decisions that so vitally affect our welfare.

The machinery for such participation does not exist now. It is greatly needed. That is why I support this compact, and that is why I urge the Congress to support it.

Mr. WALTER. The next witness is Harold Wilm.

**STATEMENT OF DR. HAROLD G. WILM, CONSERVATION  
COMMISSIONER OF NEW YORK STATE**

Dr. WILM. Thank you, Mr. Chairman, for the opportunity of appearing before your committee.

Mr. WALTER. Thank you for coming.

Dr. WILM. I am appearing not only in my capacity as conservation commissioner, but also on behalf of Gov. Nelson Rockefeller, of the State of New York.

I start out by saying the witnesses preceding me have presented a graphic and pictorial set of reasons for the need for this Federal interstate compact for the Delaware River Basin. Of course, we in New York wholeheartedly endorse it, and most thoroughly wish for its approval.

I have a statement. I have filed several copies with your committee. I would like to read it. It is very short.

The Interstate-Federal compact for the Delaware River Basin under consideration by your committee has been drafted at the direction of and by representatives of the Governors of Delaware, New

Jersey, New York, and Pennsylvania and the mayors of New York and Philadelphia—the Delaware River Basin Advisory Committee. The directive, of October 1959, instructed the committee “to prepare a proposed draft of legislation for the creation of a basin agency by interstate-Federal compact.” And then at a meeting in Philadelphia on February 1, 1961, all four Governors and the mayors of the two cities who participated in this activity, Philadelphia and New York City, unanimously recommended that the proposed compact be enacted into law by the five governments involved, the four States and the Federal Government.

The present proposal is the culmination of the work of several decades and follows many unsuccessful attempts to allocate the waters of the Delaware River and to provide for a means of developing the natural resources of the Delaware Basin. The interstate-Federal compact now proposed will provide an agency to develop the resources of the Delaware on a comprehensive, multipurpose basis, including the functions of development of water supply facilities, pollution control, flood protection, watershed management, recreation, development of hydroelectric power and regulation of withdrawals and diversions.

As was brought out very graphically by the preceding witnesses, the development of our natural resources can no longer be delayed. This is particularly true of the resources of the Delaware Basin which lies in one of the most densely populated sections of the United States and in one of the most highly industrialized areas.

This will be the first time in the history of our country that any governmental agency for the development of a river basin is to be imposed in an area where the economy has reached a significantly mature stage. It is partly because of this unique aspect that we feel the present need can best be met by the joint exercise of Federal, State, and local interest and responsibility. We feel further that this joint exercise of interest and responsibility can best be accomplished by means of a river basin agency, established by interstate-Federal compact, charged with integrating all governmental programs concerned with the development of the water resources of this river basin. It provides an opportunity for Federal, State, and local governments to cooperate in what promises to be a major accomplishment in natural resources development.

Mr. WALTER. To what extent is the city of New York dependent on the Delaware for its water supply?

Dr. WILM. I don't like to reach into the testimony of Mr. Arthur Ford, who is with the Board of Water Supply of the City of New York, but I may say under the Supreme Court decree they may withdraw as much as 800 million gallons per day from the Delaware Basin for use by the city of New York.

The compact provides for the continued use of the waters of the Delaware River for water supply to the city of New York. This is, of course, a major concern of our State. It also makes possible the development of urgently needed recreation areas in a section of the country in which one-fifth of the population of the United States lives and works.

New York State is willing and ready to cooperate with other States and with the Federal Government to effectuate a program that is in the best interests of the people in the service area of the Delaware River and that will be to the benefit of the country as a whole.

I might remark that in New York State legislation to effectuate the compact has been introduced by Senator Elisha T. Barrett and by Assemblyman Edwyn Mason, with a view toward enactment before the close of the session this month. For this reason and the very powerful reasons already given by the preceding witnesses, we in New York State also strongly urge the approval of the Congress of this interstate compact for the Delaware River Basin.

Mr. WALTER. Thank you very much.

Are there any questions?

The next witness is Mr. David Berger.

#### STATEMENT OF DAVID BERGER, CITY SOLICITOR, CITY OF PHILADELPHIA

Mr. BERGER. Thank you, Mr. Chairman.

Mayor Dilworth had hoped to be here to testify before your distinguished committee, but it was absolutely impossible for him to come here this morning, so I appear as his representative to testify on his behalf and on behalf of the city of Philadelphia and the millions who live and work there.

As you know, Philadelphia is wholly dependent upon the waters of the Delaware River for municipal supply, for industrial uses, and as the avenue for its port. Needless to say, this dependency coupled with the rapid expansion of Philadelphia, both physical and industrial, mandate comprehensive regulation and development of the Delaware River if Philadelphia is to survive as a great metropolis.

We support the draft of the compact because the expected growth of population and industry throughout the Delaware Basin require comprehensive water resources planning, management and development.

Although Philadelphia itself encompasses but a small area some 129 square miles, its water supply emanates from the upland drainage area of the basin watershed, which is an area of close to 10,000 square miles. Most important is the fact that others utilize the streamflow, be it for fishing, recreation, hydroelectric power, refrigeration, and other vastly diversified industrial uses and for municipal supply before it reaches us. Our concern in Philadelphia is that the waters of the Delaware arrive at our doors in sufficient quantity and satisfactory quality.

Mr. WALTER. I notice you shudder when the New York representative mentioned 800 million gallons of water.

Mr. BERGER. Well, I shudder not because I was frightened by the numbers, but because we spent many hours debating the issue of how to handle that particular problem, and I think that the compact itself reaches a very satisfactory solution, Mr. Chairman, proposed compact, I should say.

We, of course, are not alone in this desire. The other communities within the basin, especially those in areas of metropolitan expansion, have the same concern.

The proper approach to water resources involves a number of functions, which must be performed harmoniously. The first is quality control. In the past, this has been handled on an intrastate basis with, however, a modicum of advice and assistance from the Interstate Commission on the Delaware Basin and from the Federal Government. But the time has now come when full responsibility for the Delaware River must be centralized in one interstate body, as provided in the draft of the compact. No longer can we be satisfied with disjointed and haphazard efforts mildly beneficial to one segment of the basin and yet, perhaps, harmful to the majority of the basin.

The second function is that of quantity control. This involves the storage of water in reservoirs, the beneficial utilization of floodwaters which otherwise would be wasted to the sea, and the releasing of sufficient waters during the dry periods when flows of the streams in the Delaware Basin become insufficient to meet our divers needs.

Indeed, all water resources planning must be couched in terms of flows which occur in prolonged periods of dry weather. For it is then that pollution is most damaging because it is at these times that there is less water to dilute and carry away waste.

Thus, quality and quantity must be planned and managed together with the view of guaranteeing good water in adequate amounts at all times, including periods of drought.

This does not mean, however, that other activities need not be in harmony with quality and quantity control. Indeed, no aspect of water resources development is beneficial in and of itself. Only the coordinated whole is truly beneficial to society. The protection of fish and wildlife, the fostering of water based recreation, the reduction of flood damage, and watershed management are but a few examples of the activities which must be coordinated.

The most significant feature of the proposed compact is its provision for an interstate-Federal commission. The reservoirs, expertise, and meaningful function of the four States together with those of the Federal Government make possible, in a unique merger, the orderly direction and planning and control of the water resources of the Delaware Basin. This does not mean that the Commission would supplant existing governmental and private operations in the basin. Nor does it mean that any infringement on private riparian rights will occur. Rather, its impact and modus operandi are that all future developments of the basin, by whatever agency or at whatever governmental level, shall be in accordance with the comprehensive plan and operated in harmony with all water uses.

The alternatives to this unique merger are, on the one hand, nothing less than the continuation of the haphazard, discordant development of the basin by individual States. But one need only view our water problems during the past decade to conclude that this method is not only destructive in itself, it hopelessly fails in our objective, which is, of course, the obtaining of the optimum benefits from the Delaware River and its tributaries.

We recognize recourse can be had to the Federal Government, calling on it to assume sole jurisdiction over all aspects of water resources and their development within the basin. Indeed, the latter is the only meaningful alternative to what we now propose in the compact.

The choice it seems to us is clear. The vesting of responsibility on a regional basis and providing for a small commission, comprising the four Governors and one appointee of the President of the United States, is the only device which can achieve the goal—proper and comprehensive water resources development in the Delaware Basin—and still foster local responsibility by those who are immediately concerned.

There is one special feature about the compact which particularly warrants its adoption. The four States have in the past engaged in many battles over the waters of the Delaware River. New York has planned and has actually put into operation vast projects whose purpose is to draw potable water from the tributaries of the Delaware and place it at the disposal of its inhabitants. New Jersey to some extent has the same problems New York has. However, to a greater extent, New Jersey, lying within the proper confines of the basin, is in the same position as Pennsylvania, and particularly Philadelphia. Its desire is not only directed toward human consumption but also toward the divers needs of any port area upon its waters. Delaware, as has been pointed out, has an additional interest in the river, for its oyster industry is dependent upon the flow of the waters of the river to keep back the salinity of the ocean. Recently the Supreme Court of the United States was once again faced with this problem.

When we sat down to draft the compact, these past litigations were, of necessity, recognized. But the compact itself, if adopted by the four States and the Federal Government, effectively prevents not only costly and time-consuming litigation in favor of comprehensive planning by an interstate-Federal commission, it fosters quick action by the States and the Federal Government. In essence, it is a peace treaty whose adoption will mark a giant step forward in the solution of this serious problem for the benefit of all the signatories.

Mayor Dilworth has asked me especially to assure you that in closing, I need not add any further recommendations to the compact. My position is clear. However, my deep appreciation is extended to Chairman Walter and the other Congressmen of this committee who have taken a decided interest in sponsoring the compact bill, making the Federal Government a partner with the States in the important task of water resource planning, management, and development in the Delaware River Basin.

Mr. WALTER. Thank you very much for your splendid presentation, Mr. Berger. Do you have any questions, Mr. Poff?

Mr. POFF. What attorneys participated in the drafting of the compact?

Mr. BERGER. Mr. Miller, who is here in the room, acted as the chief draftsman, William Miller. He has acted as counsel for the Delaware Basin Advisory Committee. This is Mr. Miller over here on the sofa.

Mr. POFF. Is Mr. Miller scheduled to testify?

Mr. BERGER. I do not know, sir.

In addition, there were counsel to the various signatories to the report. Now, I am the city solicitor of Philadelphia, and counsel for the corporate body of Philadelphia, and I appeared as one of those who participated in the actual drafting and solving of the legal problems inherent in this compact.

I will be very happy to answer any specific questions you may have, but I think that in determination of the official position, if I may put it that way, that Mr. Miller would be better qualified to answer questions relating to the technical aspects of the compact, but if there is anything you would like to hear from me, why I would be happy to answer.

Mr. POFF. Mr. Chairman, if it wouldn't be inappropriate, may I direct a question to the witness, and if he needs assistance from Mr. Miller or others in the room, may he be allowed to get that assistance?

Mr. CHELF. Yes, if there is no objection.

Mr. POFF. As the witness knows, Congress reserves its constitutional power to modify the terms of the compact, and if necessary to withdraw from the compact, and the right of withdrawal upon the part of the Federal Government as one signatory party differs materially from the right of the other signatory parties to withdraw. As a matter of fact, I believe they must signify their intention to withdraw within a period of not more than 25 years and not less than 20 prior to the termination of the 100-year compact life.

Now, what I would like to know is what the effect would be upon the other signatory parties, first of all, if the Federal Government, acting through the Congress, exercised its right to withdraw, and secondly, what would be the effect on the other signatory parties if the Federal Government, acting through the Congress, adopted modifications of the compact?

Mr. BERGER. Well, now, I will answer without asking Mr. Miller, so he won't be committed by what I say. I will give you my opinion. I believe that this compact will continue in effect; that is, that the modification by the Federal Government or withdrawal by the Federal Government from the compact itself in neither event would of itself cause a dissolution of the compact, and therefore the agencies involved would continue as full-fledged partners in the compact.

Mr. POFF. Of course, withdrawal on the part of any signatory party would affect the allocation of benefits and the allocation of financing obligations, would it not?

Mr. BERGER. Very definitely, and I may be incorrect on this, and if I am I would ask leave to have Mr. Miller correct me, but I believe that the question of what the legal consequences would be is one which would have to be determined at the precise time of withdrawal. For example, if there are certain financial responsibilities of a signatory to this compact and those financial responsibilities are in being prior to the time of withdrawal, I would assume that they would continue to exist, but that after an effective withdrawal the particular party which withdrew would not be subject to any further liability except those that might be inherent in the preexisting ones.

Mr. POFF. I wonder if Mr. Miller concurs?

Mr. MILLER. I concur fully with what Mr. Berger says.

Mr. POFF. One further question. Assuming that the Federal Government exercised its right to modify the compact, would it be necessary for the other signatory parties acting through their respective legislatures to adopt the modifications?

Mr. BERGER. No, again, I give you my personal opinion. If Mr. Miller disagrees, I hope he will so state. I believe actually, Mr. Congressman Poff, that the Federal Government, regardless of what we

say in the compact, has the power, I personally believe this is the constitutional power, and therefore nothing which we would say here or provide in this compact could possibly derogate the constitutional powers of the Congress of the United States of America, and so I feel that the Congress could go to the extreme of withdrawing or could pass legislation changing or modifying the compact in every area where, by the Constitution of the United States, the power of the Congress is supreme.

Mr. POFF. And is it your legal view that if the Congress should adopt such modifying legislation it would ipso facto result in a modification insofar as the other signatory parties are concerned?

Mr. BERGER. The other signatory parties would be in the position of now having a compact subject to the modification by Congress, and I think what you have brought out indicates that there is a risk and that the signatory parties here recognize this risk and are entering into the compact, subject to the continuing superior power of Congress in areas where the Constitution has vested the Congress with that power.

Mr. POFF. Does Mr. Miller concur in that conclusion?

Mr. BERGER. I don't know whether he does or not.

Mr. MILLER. I do fully. In fact, the compact in section 1.4 so states.

Mr. POFF. Now, Mr. Chairman, I have several other lines of questioning which I would like to pursue, and they concern principally the anticipated revenue-producing projects and the methods of financing the projects under the supervision of the Commission. I don't know whether you are prepared to answer questions along those two lines or whether you would rather I defer those questions to other witnesses.

Mr. BERGER. Would you indulge me for just a moment, Mr. Congressman?

Mr. Congressman, I with all modesty would like to say this: I feel there are others in this room who are better qualified than I to answer questions relating to physical problems. However, as I say, I want no show of anything but the most extreme courtesy on my part. I appreciate being here, and I feel that if there is a legal question I would feel qualified to answer it for myself and the city of Philadelphia, but I do honestly believe Mr. Robin would be better qualified to answer such questions as those you mention, which would relate to the physical operation of the Commission and its signatory parties.

Mr. POFF. I will defer that line of questioning until he testifies. However, may I say, Mr. Chairman, that I think all concerned should understand that the questions we ask do not necessarily reflect our personal sentiment. It is necessary for this committee to establish a record in order that we may be able to defend the legislation first before the full committee and then on the floor of the House during general debate. It is our purpose to ask the questions of those witnesses who can make the most responsive replies.

Mr. BERGER. I believe Mr. Robin would be better qualified to answer questions which are not legal in nature.

Mr. WALTER. Thank you.

Mr. BERGER. Thank you for your courtesy, Mr. Chairman.

Mr. WALTER. Our next witness is Commissioner Arthur Ford, chairman of the New York Water Supply, representing Mayor Wagner.

**STATEMENT OF ARTHUR C. FORD, PRESIDENT, BOARD OF WATER SUPPLY, CITY OF NEW YORK**

Mr. FORD. Mr. Chairman, I am Arthur C. Ford, the president of the Board of Water Supply, of the city of New York.

I have been asked to appear here on behalf of the Honorable Robert F. Wagner, the mayor of the city of New York. I would like to say to you that only a week ago the mayor had said that he expected to be here, but it was since discovered that the mayor had to be in Washington again tomorrow, coming down the night before, and that would have made him be away from the city 2 days back to back, and I don't know whether the mayor would consider that prudent at this particular time, to leave New York 2 days in a row.

Mr. WALTER. Unguarded.

Mr. FORD. So I thank you so much for your courtesy.

Mr. Chairman, I thank you and the members of this subcommittee for the invitation extended to me to present my views with regard to House Joint Resolution 225, which would grant the consent of Congress to the Delaware River Basin compact and authority to enter into such compact on behalf of the United States. We are most grateful for the opportunity to place our comments upon the record.

The Delaware River Basin compact, when enacted, will achieve the following principal results. It will settle existing disputes between the States of Delaware, New Jersey, New York, and Pennsylvania, and it will establish a Federal-State partnership for the purpose of developing the Delaware River in an orderly manner and in accordance with a comprehensive plan.

The rights of the four States in the waters of the Delaware have been the subject of dispute for many years. New York City turned to the Delaware Basin for water in the early thirties when it became apparent that its Croton and Catskill systems, were no longer adequate. In 1931, and again in 1954, the Supreme Court of the United States rendered judgments in disputes as to the right of the city of New York to use the Delaware for municipal water supply purposes.

Under the latest decision of the Supreme Court, New York is permitted to divert 800 million gallons daily from the Delaware River. It is also required to release waters in accordance with the so-called Montague formula for the benefit of the downstream communities in times of low flow on the river.

New York City has already invested approximately \$600 million in its Delaware system. It will be required to expend about \$50 million more before all of the Delaware works are completed. Even at this date, though partially completed, the system so created has proved its worth. The city has obtained water of the highest quality for its 8 million inhabitants and the downstream communities have secured the benefits of augmented riverflows in times of need. I have in mind particularly the year 1957 when drought of unprecedented severity occurred in the Delaware River area. During the summer of 1957 the flow in the river, measured at Montague was increased through release from New York reservoirs by more than 100 percent on the average.

The decrees of the Supreme Court do not permanently settle the controversy regarding New York's future diversions. The Court

reserved jurisdiction to modify and change the decree on petition of any party to the action.

Mr. WALTER. I think at this point it is important to point out to those members of this subcommittee and of the entire Congress that this situation is constantly changing with the result that we will be in the courts ad infinitum if we don't devise some way of dealing with the problem. Do you agree with that?

Mr. FORD. That is the way we feel about it, sir.

Thus, New York was not assumed of the continuance of its right to divert 800 million gallons per day. Similarly, downstream was not assured of the continuance of the releases required to be made under the Montague formula. The Court decision works two ways, that not only can there be a petition to change the diversions, but there can also be a petition to change the releases required.

I am happy to be able to state that the compact removes the uncertainties and risks which existed under the Supreme Court decree. The compact affirms and protects New York City's right to divert 800 million gallons per day. It also affirms and protects the right of the downstream States to enjoy the releases required under the Montague formula. The removal of the threat to change the diversions allowed to New York, and the releases benefiting the downstream States, is of great advantage to all of the States and to their inhabitants. It enables the various jurisdictions to formulate their future plans in light of existing conditions. Furthermore, it furnishes the only true basis for interstate cooperation for the further development of the Delaware River.

It is important to understand that the compact envisages the comprehensive development of the river. In addition to providing water for people and industry the compact agency would have authority to plan and build for flood control, to supply the needs of irrigation, to create and promote expanded recreational facilities, to control pollution, to conserve natural resources, and to improve the conditions essential to fish and wildlife.

The enactment of the Delaware River Basin compact would represent a giant step forward in the area of Federal-State relations. There are numerous State and Federal agencies each having its particular interest in the development of water resources in the Delaware River Basin. What is being proposed in this compact is that the experience, know-how and objectives of these State and Federal agencies be harmonized and coordinated under a single governmental agency.

This presents an opportunity to effectuate the objectives espoused by President Kennedy in his recent message to Congress on natural resources. The President recommended the creation of planning commissions in cooperation with the States charged with the responsibility of preparing comprehensive basic development plans for the important river basins of this country. It is clear to me that the Delaware River Basin compact would accomplish this purpose. It presents an opportunity through cooperative Federal-State action to develop for the greatest possible economic use the precious asset which the States and the country have in this important natural resource—the Delaware River.

I think it appropriate to mention that the compact specifically reserves the right of Congress to withdraw the Federal Government as

a party. In my opinion the States and the Federal Government can and should function harmoniously under a Federal-State compact. This advance to a new frontier in Federal-State cooperation should be undertaken.

Mr. Chairman, I thank your committee for your courtesy and I appreciate very much being here.

Mr. WALTER. Well, we are indebted to you for a very fine statement.

Are there any questions?

Mr. CHELF. I have no questions.

Mr. WALTER. Now, Mr. Robinson.

**STATEMENT OF CHARLES A. ROBINSON, JR., STAFF ENGINEER AND STAFF COUNSEL, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, ACCOMPANIED BY H. I. BRINK, MANAGER, SUSSEX RURAL ELECTRIC COOPERATIVE, SUSSEX, N.J.**

Mr. ROBINSON. Mr. Chairman, I am the staff engineer and staff counsel of the National Rural Electric Cooperative Association which is the national service organization representing rural electric systems throughout the United States.

I am accompanied by Mr. H. I. Brink, manager of one of our member systems in New Jersey, close to the Delaware River, and a member of our national board of directors.

Each of us has a short prepared statement that I ask be included in the record, and we be allowed to highlight them orally.

Mr. WALTER. Without objection, the statements will be admitted and considered a part of the record.

(The statements follow:)

**STATEMENT OF H. I. BRINK, MANAGER, SUSSEX RURAL ELECTRIC COOPERATIVE, SUSSEX, N.J., IN OPPOSITION TO ARTICLE 9 OF THE PROPOSED DELAWARE RIVER BASIN COMPACT, MARCH 8, 1961**

Mr. Chairman and gentlemen of the subcommittee, my name is H. I. Brink. I am manager of the Sussex Rural Electric Cooperative at Sussex, N.J., and I am a member of the board of directors of the National Rural Electric Cooperative Association.

Our system serves approximately 2,800 member families in and around Sussex County, N.J., an area completely rural until very recently, but which is now enjoying rapid growth by virtue of its close proximity to New York City. By 1970 we expect to be serving about 5,000 members.

All of the power which we distribute to our members, we purchase from the New Jersey Power & Light Co., a subsidiary of General Public Utilities Corp. Last year we paid the company 13.3 mills per kilowatt-hour for wholesale electricity. That is almost twice the 7-mill national average cost of wholesale power purchased by rural electric systems.

It has been our hope that we might get relief from this difficult wholesale power supply situation when Government hydroelectric dams are developed on the Delaware River. One of the sites which we understand will be developed early in the program is Tocks Island. The Corps of Engineers' preliminary study shows feasibility for the installation of 46,000 kilowatts of hydro capacity at Tocks Island. Tocks Island is 20 miles from our system. Its power should wholesale at approximately 7 mills per kilowatt-hour.

However, the way in which article 9 of the proposed compact is written does not give us much hope. We have based our hopes for low-cost hydropower from the Delaware on the usual concept of Government power marketing with preference to rural electric cooperatives. The language of article 9 seems to favor the New Jersey Power & Light Co. and to leave us out of the picture. We do not have the physical or financial resources to engage the company in a long battle to decide who will get the benefit of Delaware River hydropower.

We urge you to replace the language of article 9 of the proposed compact with language that conforms to the time-proven concept of preference for electric cooperatives in the sale of Government power.

**STATEMENT OF NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION IN OPPOSITION TO ARTICLE 9 OF A PROPOSED INTERSTATE COMPACT TO GOVERN THE CONTROL OF THE WATERS OF THE DELAWARE RIVER, MARCH 8, 1961**

Mr. Chairman and gentlemen of the subcommittee, my name is Charles A. Robinson, Jr. I am the staff engineer and staff counsel of the National Rural Electric Cooperative Association which is the national service organization representing rural electric systems throughout the United States. NRECA is a voluntary membership organization to which over 92 percent of all REA borrowers belong.

Approximately 475 rural electric systems throughout the United States purchase wholesale power generated at Federal multiple-purpose dams in various sections of the country. During the fiscal year ending June 30, 1959, these rural electric systems purchased over 10 billion kilowatt-hours of wholesale energy from Federal Government dams for which they paid some \$50 million to the U.S. Treasury. The loads of our systems are doubling each 5 to 7 years. Our members will continue to need large amounts of additional energy at rates they can afford to pay. Their interest in multiple-purpose water resource development including hydroelectric power is, therefore, immediate and urgent.

As we understand it, the compact proposed by House Joint Resolution 192 would create a Delaware River Basin Commission, to be comprised of the Governors of the four States involved plus one Commissioner representing the President of the United States. And, the powers proposed to be conferred upon the Commission are very broad.

For example, section 3.8 of the proposed compact provides:

"No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation, or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of sections 3.3 and 3.5 \* \* \*."

And, section 3.6 of the proposed compact provides that the Commission may:

"Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate, and maintain any and all projects, facilities, properties, activities, and services, determined by the Commission to be necessary, convenient, or useful for the purposes of this compact."

It appears to us, therefore, that save for exceptions not related directly to hydroelectric power development, the Commission established by the proposed compact is given absolute control over development of the Delaware River Basin.

We are, therefore, vitally concerned with article 9 of the proposed compact which governs the generation and marketing of hydroelectricity developed on the Delaware; especially in view of the fact that the Federal Government, from which our people already purchase much power, will be an active party in exercising the powers conferred upon the Commission.

The Federal Government has developed, over the half century during which it has been marketing electric power, several cardinal principles designed to insure that the benefit of the low-cost electricity marketed from Federal projects serves the public interest.

These principles include—

1. Preference on the availability of Federal power is afforded to rural electric systems, municipal electric systems, and other nonprofit distributors of electricity.

2. The Government agency marketing Federal power constructs such transmission lines as are necessary to assure that the traditional preference to nonprofit distributors is actual rather than illusory, and to prevent monopolization of such power by the investor-owned segment of the industry.

These are two doctrines basic in Federal policy governing the development and marketing of hydroelectric power. Time and time again their efficacy in preventing monopolization by investor-owned electric systems of power generated at Federal dams has been proved. They are indispensable if the relatively small rural electric cooperatives and municipal electric systems are to derive any benefit whatever from such projects.

Article 9 of the proposed compact ignores both of these time-proven principles. Section 9.3, for instance, provides that "The Commission may provide the facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power \*\*\*"

The traditional preference for nonprofit electric distribution systems is conspicuous by its absence.

Moreover, this portion of the proposed compact states in effect that the Commission itself may market power developed at its projects only where existing investor-owned utility companies will not assume that responsibility. Certainly, no rural electric cooperative in the area covered by the compact is in a position to take over this responsibility although several such systems badly need the low-cost power that will be made available. Section 9.3 of the proposed compact would, therefore, effectively exclude these rural electric systems from participating in the hydroelectric benefits of Delaware River development. It would, in fact, practically guarantee that nonprofit rural electric systems would receive absolutely none of the benefits so derived.

For these reasons we urge that sections 9.2, 9.3, and 9.4 of the proposed compact be stricken and replaced with the following language:

"Electric power and energy generated at projects constructed by or pursuant to authority granted by the Commission shall be transmitted and sold in such manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. Preference in the granting by the Commission of authority to build such projects and in the sale of power and energy generated at projects constructed by the Commission shall be given to public bodies and cooperatives. The Commission is empowered to construct or acquire, by purchase or other agreement, such transmission lines and related facilities as may be necessary to make the power and energy generated at said projects available in wholesale quantities for sale to public bodies, cooperatives, and investor-owned companies."

We urge you gentlemen of the subcommittee to carefully consider our suggestions and to realize that article 9 of the proposed compact, as now written, constitutes a complete repudiation and abandonment of existing Federal policy governing hydroelectric power marketing. We urge you to consider the amendment to article 9 which we have suggested in light of the fact that the United States will be an active participant in exercising the powers of the proposed Commission. We think it only reasonable, in view of the circumstances, that those provisions of the proposed compact governing the marketing of hydroelectric power be conformed to existing Federal law and policy in this regard.

Mr. ROBINSON. Mr. Chairman, our interest in the proposed compact goes to article 9, which provides for the generation and marketing of hydroelectric power generated at dams constructed by or pursuant to authority granted by the proposed Commission.

Our interest in it arises from the fact that approximately 475 rural electric systems throughout the United States purchase wholesale power generated at Federal multiple-purpose dams in various parts of the country built by the Government, and because several cooperatives that are members of our association in the Delaware Basin have hopes of purchasing some power that may be developed on the Delaware River.

We believe that under article 9 of the proposed compact as now written we will not have the opportunity of purchasing any power.

Article 9 as it is written is completely different in language and in substance from any other law governing the marketing of power from a river under Federal control.

It has been traditional Federal policy, and it has been part of every law passed by Congress governing the marketing of power generated at a river under Federal control that rural electric systems and other nonprofit distributors of electricity are granted a preference in purchasing such power, and in every case the Government has provided for at least construction by the power marketing agency of sufficient transmission to assure that this power can be delivered to load centers and to prevent monopolization of it by any one entity.

The rural electric systems throughout the country are generally small. They serve perhaps from 2,500 to 10,000 people.

Mr. WALTER. Show me where in article 9 it is impossible for any cooperative to purchase power?

Mr. ROBINSON. That is what I am leading up to, Mr. Chairman. I am not saying it is legally impossible. I am saying it is practically impossible.

Mr. WALTER. Show me where.

Mr. ROBINSON. That is what I am trying to do, sir.

Mr. WALTER. Show me where in 9?

Mr. ROBINSON. The fact that neither no preference is granted in there in marketing power in section 9 to electric cooperatives, and there is no assurance that transmission will be provided by the Commission for the delivery of the power generated at its projects.

Our cooperatives are small. Mr. Brink's cooperative serves about 3,000 people. It purchases all of its power at the present time from the New Jersey Power & Light Co. It pays 13.3 mills per kilowatt-hour for this power, which is twice the average paid by such systems throughout the United States.

It was our hope that in developing the Delaware River power would be made available on a preferential basis to rural electric systems and municipalities the same as it has been done in almost every other river basin where the Federal Government has participated in development.

Mr. WALTER. For example?

Mr. ROBINSON. The Columbia, the Missouri, the Tennessee, the Roanoke in Virginia, to name a few, and the Rio Grande in Texas. These are major rivers. In every case the electric cooperatives, municipalities, and other nonprofit groups are granted a preference in the marketing of power.

Also, the marketing agency, the Government agency which develops the power, provides basic transmission necessary to get the power away from the project. This is not assured in section 9 as it is now written.

If the language remains as it is, it appears to us almost certain that the major vesting utilities serving the area, that is, the New Jersey Power & Light Co., will be in a position to take all of the power away from the project, for the simple reason that Mr. Brink's cooperative does not have the financial resources.

Mr. WALTER. Show me the language you are complaining about?

Mr. ROBINSON. I am complaining about all the sections, 9.2, 9.3, 9.4. "The Commission may develop and operate—"

Mr. WALTER. Why would the New Jersey Power & Light have a preference over the Pennsylvania Power & Light? Show me where that is?

Mr. ROBINSON. They would not, of course. They would have a preference over Mr. Brink's cooperative for the simple reason that he does not have the financial or physical resources to engage in a long battle with the company for this power.

All we are asking, sir, is that the language governing the marketing of power from this project and the substance of this language be made to conform with the same language and the same substance of all prior Federal legislation on the same subject.

Mr. WALTER. You are asking for an advantage for the cooperative over existing facilities, is that correct?

Mr. ROBINSON. That is correct, sir, and there is language which we believe will accomplish that purpose contained toward the end of our statement.

Mr. WALTER. Have we got that?

Mr. ROBINSON. Yes, sir, I passed out copies of the statement. It is in my statement. It appears on page 4.

We are asking that sections 9.2, 9.3 and 9.4 of the proposed compact be stricken and replaced with the following language:

Electric power and energy generated at projects constructed by or pursuant to authority granted by the Commission shall be transmitted and sold in such manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. Preference in the granting by the commission of authority to build such projects and in the sale of power and energy generated at projects constructed by the Commission shall be given to public bodies and cooperatives. The Commission is empowered to construct or acquire, by purchase or other agreement, such transmission lines and related facilities as may be necessary to make the power and energy generated at said projects available in wholesale quantities for sale to public bodies, cooperatives, and investor owned companies.

This language, Mr. Chairman, is taken from the Flood Control Act of 1934, section 5.

May I at this point, Mr. Chairman, ask that a telegram from Mr. J. L. Hubbard, manager of the Claverack Electric Cooperative, of Towanda, Pa., also in opposition to section 9 of the proposed compact be included in the record.

(The telegram follows:)

TOWANDA, PA., March 7, 1961.

CHARLES A. ROBINSON,  
National Rural Electric Cooperative Association,  
Washington, D.C.:

Pennsylvania electric cooperatives are opposed to compact for development Delaware River Basin, particularly article 9. Hydropower preference must be included for nonprofit cooperatives and municipalities.

J. L. HUBBARD,  
Manager, Claverack Electric Cooperative.

BATH, N.Y., March 8, 1961.

CHARLES ROBINSON,  
National REA Cooperative Association,  
Washington, D.C.:

Understand House Joint Resolution 192 regarding Delaware River Basin compact is now in committee. The New York State REA Cooperative Association is opposed to article 9 of this compact as it is now written. Request that you do everything possible to have the preference provision included in this compact for the marketing of power to cooperatives, municipalities, and public agencies.

GORDON M. MARGESON,  
Secretary, New York State Rural Electric Cooperatives Association.

Mr. ROBINSON. In conclusion, Mr. Chairman, again may I assert that all we are asking is that the language in this compact, to which Congress has been asked to give its consent, and in which the Federal Government will have an active part as a member of the Delaware Basin Commission, be made to conform with every piece of legislation that has ever been passed by Congress covering the marketing of power.

Mr. WALTER. Is this an area in which there were no facilities for the marketing of the power or only very limited facilities?

Mr. ROBINSON. Well, I don't think that is quite true, Mr. Chairman.

Mr. WALTER. Maybe it isn't. I don't know.

Mr. ROBINSON. So that our people will be able to get a reasonable part of this power.

Mr. WALTER. Why wouldn't they if they came in and bid with the Pennsylvania Power & Light and New Jersey Power & Light for the power? Why wouldn't they be in the same position?

Mr. ROBINSON. Because, sir, they are small distribution systems. The New Jersey Power & Light Co. is a subsidiary of the General Public Utilities Co., so is the Pennsylvania Electric Co., and so are other companies serving in the area. This is a large, multimillion-dollar investor-owned system.

We have no quarrel with this basically, but Mr. Brink's cooperative, for instance, is a small unit serving a rural area. It is only 20 miles from one of these projects. It will serve 5,000 people perhaps by 1970. Now it serves 2,800. It is not in a position to build the heavy transmission facilities necessary to take this power from the project. It does not have the resources, practically speaking, to engage in a battle with the Pennsylvania Electric Co. or the New Jersey Power & Light Co. to get this power away from the project and that is the reason.

Mr. WALTER. So they say to the Government, you give us this and don't give it to Pennsylvania Electric Co. or the New Jersey Power & Light or if they have it then build?

Mr. ROBINSON. No, sir; we don't say that at all. Mr. Brink probably only would use 10 percent of the power that is going to be generated at a project, for instance, which is 20 miles from his area. All of the remaining bloc of that power would probably go to the New Jersey Power & Light Co. We have no objection to that. All we want is sufficient practical protection so that we are able to purchase a reasonable part of this project's power.

Mr. BRICKFIELD. May I ask a question, Mr. Chairman?

Mr. WALTER. Yes.

Mr. BRICKFIELD. Mr. Robinson, your suggestion here for an amendment to article 9, as I read it, and we have just received this, would not change the substance of article 9. Now, under this article as written, the new Commission would be bound to hold hearings and to establish a uniform standard so that everybody received a fair break in the competition for electric power. Certainly "sound business principles" could dictate a reasonable profit.

Mr. ROBINSON. Yes, sir.

Mr. BRICKFIELD. As I understand the term "preference clause" power is sold at cost. Your argument presupposes that this power may be sold by the new Delaware Commission at some sort of a profit and not at cost. Yet your suggested amendment, in giving a wide

discretion to sound business principles, certainly envisions, as does article 9, the possibility of selling electricity at a reasonable profit.

Mr. ROBINSON. As I understand the way the situation would operate, sir, the Delaware River Basin Commission might build one of these hydroelectric projects. It might say it has so many kilowatts for sale, 46,000 perhaps in the case of the Tocks Island project, and the New Jersey Power & Light Co. perhaps and the Pennsylvania Electric Co. and others, including Mr. Brink's cooperative, would want to buy a portion of this power.

Mr. Brink serves, as I say, 2,800 people. He might want to buy 5,000 kilowatts of the 46,000 kilowatts that are available. The rest of it would go probably to the other two companies in the area, or whatever companies may be serving the area.

The only thing we are asking is that the language be amended to grant us the usual traditional preference in the availability of this power, and we would pay the same rate for it as anybody else would, we would use it the same as anybody else would, but we are not in a financial position to engage in a long fight with the company as to who will get it, and that is the reason that every piece of Federal legislation governing the marketing of power has had this preference in it.

Mr. BRICKFIELD. But your suggested amendment, as I see it, does not change the powers of the Commission under article 9 in any respect.

Mr. ROBINSON. Yes, sir. It grants us a preference in the purchase of power.

Mr. WALTER. Where does it say that? I am looking at page 4. Where is it? Point it out to us.

Mr. ROBINSON. It is in the single-spaced material, in the middle of that paragraph, Mr. Chairman.

Mr. WALTER. Which one?

Mr. ROBINSON. It says:

\* \* \* Preference in the granting by the Commission of authority to build such projects and in the sale of power and energy generated at projects constructed by the Commission shall be given to public bodies and cooperatives. \* \* \*

Mr. WALTER. Yes, isn't that governed by the preceding sentence, which says all this shall be done.

Mr. BRICKFIELD. "Consistent with sound business principles."

Mr. WALTER. How do you read the two together?

Mr. ROBINSON. Well, I see no conflict between granting a preference to a particular entity, or particular type of entity, on the availability of this power, and sale of it consistent with sound business principles. It is being done throughout the United States under the Flood Control Act of 1944. There has never been any conflict, under that statute, from which this was taken. It simply gives a preference to nonprofit groups in the obtaining of power from the project. It does not mean we will pay any less for it or pay any more for it. All it says is that, if they have 46,000 kilowatts for sale, they will allow you to buy the original portion of it before they sell the rest of it to companies.

Mr. CHELF. Mr. Chairman, may I ask counsel a question?

Mr. WALTER. Yes.

Mr. CHELF. Under section 9, "Hydroelectric power," 9.2, it says:

Power generation. The Commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

Now:

9.3 Transmission. The Commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the Commission to engage in the business of direct sale to consumers.

Now, "9.4 Development contracts."

Mr. WALTER. Wait a minute; stop at that. This certainly seems ample protection to the consumer.

Mr. CHELF. That is what I was saying. Now, is that or is that not ample protection to these gentlemen here? I want to know.

Mr. BRICKFIELD. I think it may well be ample protection. It should be remembered that the Federal Government is a full participant in this new Commission—

Mr. WALTER. Surely.

Mr. BRICKFIELD. The Federal representative has a duty to carry out the policy of the Federal Government. And if the policy is as this gentleman has enunciated it, the Federal representative would be duty bound to make sure that, if preferences are to be given, that they are secured for people such as Mr. Brink represents.

In addition, I might say that, as I understand the preference clause—and I am not too familiar with it—preference clauses were adopted in order to supply electricity in those vast undeveloped areas, like out West, where there is no electricity and where they need electricity. And so the Government adopted a policy that, where a Federal project is concerned, electricity shall be sold at cost in order to get electricity into the areas.

That is not the situation here in the Delaware River Basin. This is an old populated area. It is highly electrified, in a manner of speaking, generally. And I do not think that the purpose of the preference clause has the same significance here in the Delaware River Basin as it would have, say, out in the Colorado River Basin.

Mr. WALTER. That is the reason why this language is presented.

Mr. ROBINSON. May I reply to that, Mr. Chairman?

Mr. WALTER. Yes.

Now, will you move along, please?

Mr. ROBINSON. Yes, sir.

Mr. WALTER. There are some people from out of town here.

Mr. ROBINSON. Sir, I have only one more remark to make, and that is in reply to your counsel.

The preference clause governs the disposition of power from the Niagara project. One-half of the power generated at Niagara must be sold in conformance with the substance of the language which we have put in here. It governs the marketing of power from the John H. Kerr project in Virginia. These are both heavily electrified areas. It is an antimonopoly clause. It is not just to provide for service to sparsely populated areas. It is to protect cooperatives and municipalities. And that is its basic purpose.

And I say it already governs the Niagara project. And if, as you say, the Federal—

Mr. BRICKFIELD. This is an antimonopoly clause aimed at a governmental agency; is that it?

Mr. ROBINSON. All I can say, Mr. Chairman—

Mr. WALTER. Is that not precisely what you are advocating, an antimonopoly clause provision against the governmental agency?

Mr. ROBINSON. No; it is to prevent one segment of the industry from taking power from another segment. That is what it is.

And if, as the counsel says, the Federal member of this Commission will assure the exercise and the implementation of Federal policy in this regard, I can think of no better way to do it than to put it in the authorizing legislation.

That is all I have to say, Mr. Chairman.

Mr. WALTER. Any questions?

Mr. CHELF. No; thank you.

Mr. WALTER. Thank you very much.

Mr. ROBINSON. Would you indulge Mr. Brink for a few moments, sir?

Mr. WALTER. Yes.

All right, Mr. Brink.

#### STATEMENT OF H. I. BRINK, MANAGER, SUSSEX RURAL ELECTRIC COOPERATIVE, SUSSEX, N.J.

Mr. BRINK. Mr. Chairman and gentlemen of the subcommittee, my name is H. I. Brink, I am manager of the Sussex Rural Electric Cooperative at Sussex, N.J., and I am a member of the board of directors of the National Rural Electric Cooperative Association.

Our system serves approximately 2,800 member families in and around Sussex County, N.J., an area completely rural until very recently, but which is now enjoying rapid growth by virtue of its close proximity to New York City. By 1970 we expect to be serving about 5,000 members.

All of the power which we distribute to our members, we purchase from the New Jersey Power & Light Co., a subsidiary of General Public Utilities Corp. Last year we paid the company 13.3 mills per kilowatt-hour for wholesale electricity. That is almost twice the 7.0 mill national average cost of wholesale power purchased by rural electric systems.

Mr. WALTER. Do the people in the area served by your company pay more for their electric power than is paid by people in other sections of the State?

Mr. BRINK. That is true.

Mr. WALTER. Do they pay more?

Mr. BRINK. Our rates are a little higher, due to the fact we have very few consumers per mile.

Mr. WALTER. That is the reason?

Mr. BRINK. That is the reason, yes, sir.

Mr. WALTER. All right.

Mr. BRINK. That is not used for the wholesale power. This is resale that you are asking about.

It has been our hope that we might get relief from this difficult wholesale power supply situation when Government hydroelectric dams are developed on the Delaware River. One of the sites which we understand will be developed early in the program is Tocks Island. The Corps of Engineers' preliminary study shows feasibility for the installation of 46,000 kilowatts of hydro capacity at Tocks Island. Tocks Island is 20 miles from our system. Its power should wholesale at approximately 7 mills per kilowatt-hour.

However, the way in which article 9 of the proposed compact is written does not give us much hope. We have based our hopes for low cost hydroelectric power from the Delaware on the usual concept of Government power marketing with preference to rural electric cooperatives. The language of article 9 seems to favor the New Jersey Power & Light Co. and to leave us out of the picture.

Mr. WALTER. What language favors the New Jersey Power & Light Co.?

Mr. BRINK. Well, I believe that is the one we just went through by Mr. Robinson.

Mr. WALTER. What line was pointed out to the committee?

Mr. BRINK. I will have to refer back to you, Mr. Robinson.

We do not have the physical or financial resources to engage the company in a long battle to decide who will get the benefit of Delaware River hydropower.

We urge you to replace the language of article 9 of the proposed compact with language that conforms to the time-proven concept of preference for electric cooperatives in the sale of Government power.

Mr. WALTER. Are there any questions?

Mr. CHELF. No, sir.

Mr. WALTER. Questions?

Thank you very much, Mr. Brink.

Mr. BRINK. Thank you very much, Mr. Chairman.

Mr. WALTER. Mr. Hopkinson.

#### STATEMENT OF EDWARD HOPKINSON, JR., PRESIDENT, WATER RESEARCH FOUNDATION FOR THE DELAWARE RIVER BASIN, PHILADELPHIA, PA.

Mr. HOPKINSON. Mr. Chairman, members of the committee, my name is Edward Hopkinson, Jr., and I reside in Chestnut Hill, Montgomery County, Pa. I am a partner in the investment banking firm of Drexel & Co., with offices in Philadelphia and New York.

I have taken an active interest in water supply and pollution control of the Delaware River for many years, serving as chairman of the Philadelphia City Planning Commission from 1942 until December 31, 1955, and as a member of the Pennsylvania State Planning Board since 1948. I also served as a financial consultant to Incodel in the preparation of its governmental proposal which fell through in 1953 because one house of the Pennsylvania Legislature failed to adopt it.

I am appearing here as president of Water Research Foundation for the Delaware River Basin, a nonprofit corporation created under the laws of Pennsylvania for the purpose of operating under private auspices in connection with the present governmental efforts to replan

and develop the water resources of the Delaware River Basin. The officers and directors are citizens of the four interested States.

The Water Research Foundation received a grant of \$131,000 from the Ford Foundation for research in the governmental aspects of river basin development. This project was undertaken and completed by Syracuse University. As a result, the directors of Water Research Foundation recommended to the Governors of New York, Pennsylvania, New Jersey, and Delaware, and to the mayors of New York City and Philadelphia, appointment of a committee to draft an interstate-Federal compact. As a result of the work of that committee so appointed, you now have before you a compact which has received the unanimous approval and endorsement of the four Governors and two mayors.

At a meeting of the directors of the Water Research Foundation held on March 3, the proposed interstate-Federal compact for the Delaware River Basin was unanimously approved and I was authorized to appear at this hearing and so state for the record.

Mr. WALTER. Mr. Hopkinson, the people of our entire community are indebted to you and your associates for the devoted attention you paid to a very, very serious problem.

Mr. HOPKINSON. Thank you very much, Mr. Chairman.

Senator Clark was good enough to say something to the same effect in the hearings on water resources in Philadelphia about a year ago.

Mr. WALTER. Well, I did not know about that.

Are there any questions?

Mr. CHELF. No questions.

Mr. POFF. No, sir.

Mr. WALTER. Thank you very much.

Mr. HOPKINSON. Thank you, sir.

Mr. WALTER. Now, Mr. Robin, John P. Robin.

**STATEMENT OF JOHN P. ROBIN, EXECUTIVE VICE PRESIDENT,  
DELAWARE BASIN COMMISSION, PHILADELPHIA, PA.**

Mr. ROBIN. Mr. Chairman and gentlemen, I am John P. Robin. I am chairman of the Pennsylvania State Planning Board, and I am the chairman of the Delaware River Basin Advisory Committee, which was a group assigned by the Governors of our four States and the mayors of our two great cities to draft a compact which is the subject of this hearing.

I did not prepare a statement because I thought that many of the general things which would be said would have been already said, as they have been so well today.

I thought perhaps that you would like to have for the record the resolution adopted by the four Governors and the two mayors and, if it is agreeable to you, Mr. Chairman, I will now give it to you.

Mr. WALTER. Thank you very much.

Mr. ROBIN. Substantially, gentlemen, I am here to answer any question that may have been coming to your mind during our hearings.

Perhaps I can explain the philosophical basis for some of the things in this compact, since we had 40 meetings and this represents our seventh draft. I said that it is lucky sometimes to be seventh, and we hope that this is the lucky number before us. I just hope that it does not take 7 years to pass it.

Mr. WALTER. Well, much depends on you.

Now, we are concerned about the financial phase. To what extent would the United States be committed, assuming that the compact is agreed to, to an arrangement that the Commission would make for financing a particular project?

Mr. ROBIN. Let me explain the—

Mr. WALTER. Would it be bound completely?

Mr. ROBIN. Only on specific projects.

Perhaps, Mr. Chairman, if we turn to 13.3 of the compact.

Mr. WALTER. 13.3?

Mr. ROBIN. Yes.

You will find the language which is directed toward the budgeting process.

The Commission will have, actually, two types of expense. One is its annual operating cost, the money it takes to employ a deputy director, to rent space, to have counsel to be in being as a planning agency, basically, and an operating one.

Under the provisions of the compact, that expense would be shared by the four States and the Federal Government in such ratio as their representatives may unanimously agree to each year when they adopt a budget. That expense, in all, would not be a great amount in dollars compared to the number of people contributing to the support of the agency, because it is the annual job of operating. No one can say now, in advance, of what a budget for an agency like this should be; but seeing that this would be divided between the Federal Government and the four States, it could not be a great amount in either case.

Now, as to the important amounts; that is, the money it would take to build a Tocks Island reservoir, somewhere near where we are talking in terms of \$40 million or \$50 million, each of those projects will be separately adopted by the Commission, and recommended with the financing plan to the States and to the Federal Government.

Mr. WALTER. Now, that is not the point. The adoption; what we are thinking, or at least what I am thinking about is this. Is the U.S. Government committed, would it be committed if it becomes a party to this agreement, to paying whatever share the Commission felt it should pay for a particular project?

Mr. ROBIN. No.

Mr. WALTER. In other words, could this Commission sit down and say: The Tocks Island project—this is purely hypothetical. The Tocks Island project will cost \$50 million; we think the United States ought to pay \$40 million and each of the States the balance, and so on?

Mr. ROBIN. No. My—

Mr. WALTER. And then would the United States be bound because it had become a party to this compact?

Mr. ROBIN. The answer to that, sir, I am sure, is unequivocally "No."

The dam or any other project would be presented to the Congress and to the four legislatures or such legislatures as might be affected, with a proposal from the Commission as to what each of their shares should be. But that proposal would be in no sense binding.

Mr. WALTER. In other words, the only thing that is binding by becoming a party to this agreement is to support the usual—

Mr. ROBIN. The annual operating expenses.

Mr. WALTER. The annual operating expenses?

Mr. ROBIN. That is right. And that only by unanimous vote.

Mr. WALTER. Yes.

Mr. ROBIN. So that the Federal representative on the Commission would be in the position, although he might be outnumbered 4 to 1 by the States, his vote is just as strong in this matter as any of the four States. And every capital project stands on its own bottom and would be developed according to the formula proposed by the respective States and the Federal Government.

Therefore, the Federal obligation is not enlarged above whatever existing law now provides, except as Congress might change the law to refer to a specific project.

Mr. WALTER. Of course, anything we would do would not be binding on the next Congress, anyway.

Mr. ROBIN. Except, of course—

Mr. WALTER. I mean on a project.

Mr. ROBIN. Yes; except where I would think, there was a contractual obligation to contribute to a capital program and bonds were issued or something of that sort, sir.

But there would be no obligation, as we understand it—I think we understand it thoroughly in this respect—to increase the amount of Federal contribution, and in each case the Federal Government and the respective States will make their own judgment; and if they vote no, then that project is not built.

Mr. WALTER. Mr. Poff has some questions.

Mr. POFF. Well, first of all, I would like to know what revenue projects are contemplated.

Mr. ROBIN. In my opinion, sir, there could not be many. You could have the conceivable revenue projects based upon water supply. The Commission could build reservoirs or water supplies, customers could buy that water, and, therefore, you could balance that project on the expected return.

Hydroelectric power could be a project which had revenue from the sale of power, of course, to be self-liquidating.

And it is barely conceivable—I do not personally consider it likely—that projects for recreation could be, in part or in whole, self-liquidating. I do not think that is the case, though.

People do think in some industries that does apply.

Normally, however, as I see it—and in this I think the members of the Commission and principals do—the Commission would be looking at a multipurpose project. Let us say flood control; it includes hydropower, it includes water low flow augmentation, recreation. A formula would be developed, just as it would be today in the case of Congress authorizing a dam, that so much of this is a Federal responsibility—flood control, for instance, which you have accepted. So much is non-Federal and should be allocated between the States or other parties in that proportion.

And that money then would be put into the project by each government according to its own tax formulas.

Pennsylvania could, let us say, contribute from general taxation, and another State, which might have a specific water program, could contribute from whatever taxes or charges it has levied for a water program. The Congress would follow whatever Federal policy exists at the time.

Mr. POFF. All right, then, is it intended that, ultimately, the functioning of the Commission will be self-supporting, without revenues from the signatory parties?

Mr. ROBIN. I do not think so, because I think flood control, for instance, is not considered a self-supporting matter. The Federal Government contributed many millions, hundreds of millions—billions of dollars to that project.

Mr. POFF. Now, the plan presupposes that the Commission will have the authority to float bond issues. My first question is: How would the Commission build up its collateral base on which to issue the bonds?

Mr. ROBIN. Well, let me give you a proposal on that.

Suppose we had a project, the Commission had a project which was intrastate, in which no Federal interests necessarily developed. It is quite conceivable it could negotiate with the State or States affected, or within municipalities or whatever beneficiary it might be; and they would say they will agree to pay so much a year for the use of that project. We do this quite normally in Pennsylvania, what we call our general State authority, for instance.

Then, based upon that obligation to pay, it is conceivable that a self-liquidating bond, which would be marketable, could be provided.

But I do not think this is the normal contemplation of what you would expect there. What you really have here, the capital projects normally will be apportioned between the Federal Government and the States and other parties, as they may be, in such relation as established practice at that time dictates.

Mr. POFF. Well, now, that leads me to the next obvious question: Is it intended that the assets of the individual project will be pledged as collateral for the individual bond issue on that project, or, in the alternative, will all of the assets of all of the projects of the Commission be pledged as collateral for an individual bond issue?

Mr. ROBIN. I would think, sir, I would want to check the capital provisions once more carefully; but my impression would be that that would be optional with the Commission. If it developed excess revenues, it could pledge those revenues to other projects.

Mr. POFF. Well, is it not true that the compact as it is written now gives you the power to do it in the alternative?

Mr. ROBIN. Yes; that is my opinion.

Mr. POFF. Am I not correct in saying that the New York Port Authority has the power to pledge all of its assets to an individual project on which a bond issue has been floated?

Mr. BRICKFIELD. Yes.

Mr. ROBIN. I would think that that could be.

Mr. POFF. Well, is it not a fact that you can do it in the alternative under the provisions of the compact?

Mr. ROBIN. Yes, sir; that is my belief.

Mr. POFF. You mentioned hydroelectric power as an income-producing project. Now, I believe you meant to say that it would be a self-liquidating project.

Mr. ROBIN. Well, I think there will be two possibilities. It will be self-liquidating or, if a preference clause did not apply and the power did not have to be sold at cost, the Commission could actually make a profit on the sale and use those funds for other good public purposes.

Mr. POFF. Well, then you assume that it is possible for the Commission to market the power at a price which will show a profit?

Mr. ROBIN. That is, I would say that is legally possible, unless the Federal representative or Federal policy or the Commission's own policy would dictate sale at cost.

Mr. POFF. Well, now, what is—pardon me.

Mr. WALTER. Well, that, the Public Service Commission is expected to determine the cost.

Mr. ROBIN. Exactly. So I mean all these things, Mr. Congressman, are in the future decisions of this body.

I think it is important to emphasize that what we are trying to draw here is a constitution of a sort which does give power to this body which we create. And we depend upon the judgment of the Governors and of the President's representative in these many years to do the right thing.

Mr. POFF. Well, now, am I correct in assuming that the Commission would have the power to fix rates? I believe I am correct. And, if so, in what measure, if any, does that trespass upon the power of the Interstate Commerce Commission and other local regulating bodies?

Mr. ROBIN. I think if we look at 9.5, we see:

Rates and charges fixed by the Commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

And I think there is also in the program a reference to local regulatory bodies.

Bill, where is that, please?

Mr. MILLER. It is not in this particular place; that is under another subject.

Mr. ROBIN. Yes; I mean on any subject.

Mr. MILLER. Not on financing.

Mr. WALTER. But as a matter of law, anything you said here with respect to rates and charges could in no wise affect existing legislation.

Mr. ROBIN. That is quite right, sir.

Another thing that I think it is important to emphasize is that hydropower or these other possibilities of self-liquidating projects are not great in this area, relative to the total gains we are seeking or seeking to achieve. I think I am informed that the total capacity of the Delaware and its tributaries, if every possible hydropower advantage were developed, could not supply more than 5 percent of the presently used energy in this district.

And as your counsel said here earlier, this is a different river valley, with much different circumstances than we have found in many of the western reserves.

Mr. POFF. Well, Mr. Chairman, on page 19 of the bill, section 3.7, it would seem that the Commission will have the power from time to

time after public notice and hearing, to fix, alter, and revise rates, rentals, charges and tolls, and classifications; and nowhere in that paragraph do I see anything which reserves any authority to the local regulatory bodies or to the Interstate Commerce Commission.

Mr. ROBIN. You are right.

Mr. POFF. Now, one further question, Mr. Chairman.

What is the potential of the hydroelectric production in the Delaware River Basin?

Mr. ROBIN. As I said, my impression is that it is relatively small in reference to the energy that is developed in the basin for its domestic and industrial-commercial uses. The figure that comes to my mind is 5 percent.

I would think that the Corps of Engineers, in developing their comprehensive plan, will be able to give Congress a full answer. And I would not know at this time what that would be.

Mr. POFF. On any project which should be developed by the commission, the commission will have the authority to construct transmission lines and to wheel the power—

Mr. ROBIN. That is right.

Mr. POFF (continuing). To all wholesale distribution points?

Mr. ROBIN. That is what article 9 appears to say.

Mr. POFF. That is all, Mr. Chairman.

Mr. WALTER. Thank you very much.

Mr. ROBIN. Thank you.

Mr. WALTER. Mr. Kerney.

**STATEMENT OF JAMES KERNEY, JR., CONSULTANT, ADVISORY COMMITTEE, DELAWARE BASIN COMMISSION, PHILADELPHIA, PA.**

Mr. KERNEY. My name is James Kerney, Jr. I am a resident of Lawrence Township in Mercer County, N.J. I am a vice chairman of the Interstate Commission on the Delaware Basin, known as "Incodel."

This commission was created by parallel State legislation in 1936. It represents the executives and legislatures of New York, New Jersey, Pennsylvania, and Delaware, through their committees on interstate cooperation. For 25 years Incodel has participated in planning for the water resources of the Delaware River Basin. At a meeting last Thursday, March 2, Incodel gave its unqualified endorsement to the proposed compact for the Delaware River Basin as embodied in House Joint Resolution 225.

And I am delighted to pass that information on to you, Mr. Chairman, and to the distinguished members of your committee.

Mr. WALTER. Thank you very much.

Any questions?

Mr. POFF. Mr. Chairman, I neglected to ask of the former witness a question I am sure this witness can answer. The commission would not be able to pledge the credit of the signatory parties as sovereignties to a bond issue?

Mr. KERNEY. Of neither the States nor the Federal Government.

Mr. WALTER. All right, sir. Thank you very much.

Mr. Bensinger.

**STATEMENT OF CHARLES BENSINGER, PRESIDENT, WATER RESOURCES ASSOCIATION OF THE DELAWARE RIVER BASIN**

Mr. BENSINGER. Mr. Chairman, gentlemen, I am Charles Bensinger, and I am an attorney in Stroudsburg, Pa., which is in Monroe County. I appear here as president of the Water Resources Association of the Delaware River Basin.

This association is a nonprofit, nonpolitical federation of organizations and individuals in the Delaware River Basin. It was established in 1959 in the belief that citizens' interests, understanding, and participation are essential for the orderly development of the water resources of the basin.

The association has two broad basic projects—to awaken public interest in the field that there are serious water problems facing the Delaware River Basin, and to provide the citizens of the basin with a means to intelligently appraise proposals for development and utilization of the water resources of the Delaware.

Basically, our association is comprised at the present time of membership from 150 organizations such as chambers of commerce, garden clubs, labor unions, organizations of that kind. We currently represent, through these associations, 50,000 individuals in the service area. We also have as nonvoting members over 300 individuals.

Last year, before we had a compact, our members overwhelmingly approved the principle of an interstate Federal compact. Last week, the association began polling its members on the proposed compact which this committee has before it. So far, our receipt, which have, of course, been only meager, have been unanimously in favor of the adoption of this compact.

I thank you on behalf of the association.

Mr. WALTER. In the entire area there is an awareness of this very critical situation?

Mr. BENSINGER. Yes, sir.

Mr. WALTER. Have you any questions?

Mr. POFF. Sir, the Supreme Court decree I believe establishes a river master. Now, as I read the bill, the river master would be continued?

Mr. BENSINGER. That is my understanding; yes, sir.

Mr. POFF. Now, is it further your understanding that the river master would continue to function as he is functioning today in connection with the allocation of waters?

Mr. BENSINGER. That is my understanding; yes.

Mr. POFF. Well, would he have the power of decision superior to that of the commission?

Mr. BENSINGER. I think he—to answer your question slightly obliquely, but Mr. Miller is actually the attorney involved in the contract, and perhaps can do it more specifically than I, and I do not want to waste your time on it; except to say, as you know, this compact specifically accepts all of the aspects of the U.S. Supreme Court decision, and that, as I understand it, Mr. Miller was one of the promulgators of that decision; and consequently, so far as this compact is concerned, it completely leaves the river master as set up under the Supreme Court decision in its present status.

Mr. MILLER. That is right.

Mr. WALTER. Yes, but is it not contemplated that ultimately there may be a modification, through agreement—

Mr. BENSINGER. Through agreement.

Mr. WALTER (continuing). Presented to the Supreme Court?

Mr. BENSINGER. Yes.

Mr. WALTER. So that the order may be modified.

Mr. BENSINGER. Yes. I guess, actually, we would not have the power to do it anyway without the Supreme Court's approval.

Mr. WALTER. Thank you, Mr. Bensinger.

Mr. BENSINGER. Yes, sir.

Mr. WALTER. Mrs. Henry J. Hersey, Jr., and another woman are present.

**STATEMENT OF MRS. HENRY J. HERSEY, JR., MEMBER OF THE INTERLEAGUE COUNCIL OF THE DELAWARE RIVER BASIN**

Mrs. HERSEY. I am Mrs. Henry J. Hersey, Jr., member of the Interleague Council of the Delaware River Basin, an organization comprised of Leagues of Women Voters of the four basin States of Delaware, New Jersey, New York, and Pennsylvania. The interleague council favors the adoption of the Delaware River Basin compact introduced by the Honorable Francis E. Walter of Pennsylvania.

Recognizing water problems as a major domestic issue, the members of this organization have spent 4 years carefully studying structure of present Federal governmental agencies concerned with water, Federal water programs, water commission studies, organization of Congress for considering water legislation, role of the Bureau of the Budget, as well as basic reading on the general scope of the water supply problem as a national issue. In the third year the attention of our members was focused on the river basin or region to discover how the Federal programs worked within the area, how well they were coordinated with the programs of interstate, State, and local agencies, and with private developments. We gave special attention to possible administrative setup.

To provide membership with this needed information about the Delaware River Basin, the interleague council prepared the booklet "Man and the River," the story of the Delaware River Basin. Chapter VI of that booklet describes States, interstate and Federal agencies and laws. Among the four States and major cities of the basin there is a total of some 60 departments, boards, commissions, or authorities that have some planning or operating responsibilities in the water resources field. There are 19 Federal agencies concerned with water resources working on programs in the four Delaware Basin states. The compact would provide the central authority to plan and coordinate activities, but look to existing agencies to continue their work where feasible and efficient and not in conflict with the general interests of the basin.

After careful review and consideration of the provisions of the interstate-Federal compact for the development and control of the Delaware River Basin, the interleague council decided that such a compact would be beneficial to the area and to the national interest: (1) It will provide an orderly and equitable means of development of the region; (2) It will meet its wide variety of needs; (3) It will re-

solve conflicts of interest for an area of great population and industrial density; (4) It will establish common measurements of costs.

It would provide a means of harmonizing the programs of Federal, State, and interstate agencies; adequate and equitable financing would be made possible and large projects for water supply could be developed more economically for multipurpose requirements. It would establish a framework for complete and effective planning and provisions for the execution of such plans. It would eliminate delays and uncertainties and expedite the orderly development of the region's comprehensive plan as the needs become apparent. It would help to preserve the present economic and social stability of one of the Nation's most productive regions, having 1 percent of the land area of the United States, 13 percent of the population, employing 14 percent of the labor force of the United States, and producing 17 percent of the national personal income, or \$52 billion. It would be the means of guaranteeing that the projecting population growth of 44 million people could continue to maintain their present high rate of productivity in a desirable environment.

The continued ability of this region to expand this productivity will, to a large extent, depend upon the effective control and use of water resources.

We, the Interleague Council of the Delaware River Basin, wish to thank you for this opportunity of stating our reasons for the support of this splendid legislation.

I would like to refer you to Mrs. Wood, of the National League of Women Voters.

Mr. POFF. Mrs. Hersey, just for the record, I do not believe I heard you say; where do you make your home?

Mrs. HERSEY. I am from Chatham, N.J., a little town in Morris County.

Mr. POFF. Thank you, madam.

Mrs. HERSEY. Thank you.

Mr. WALTER. Are you not going to leave copies of that very splendid booklet, "Man of the River"?

Mrs. HERSEY. Yes, indeed.

Mr. WALTER. This is a magnificent job. I have had a copy of it and, frankly, I use it to answer correspondence.

Mrs. HERSEY. Well, thank you very much.

Mr. WALTER. It is really a magnificent job.

Mrs. HERSEY. I will take this message back to the Inter-League Council. They will be delighted to hear it.

Mr. WALTER. You have made a great contribution to this. Thank you very much.

We have a number of Government witnesses, Defense Department, et cetera, and we will have to arrange for them at a later date. We will do it just as quickly as we possibly can. I promised the Secretary of the Interior that we would give him 3 weeks in which to look over the situation. Meantime if any Government reports come in they will be made a part of this hearing.

So we will stand in recess.

(The reports referred to follow:)

EXECUTIVE OFFICE OF THE PRESIDENT, BUREAU OF THE BUDGET  
Washington, D.C.

GUIDE FOR FEDERAL REPRESENTATIVES ON INTERSTATE WATER COMPACT  
COMMISSIONS

Many problems arise in connection with administration of interstate water compacts which affect important Federal interests. This guide has been developed to assure that these problems receive adequate consideration within the executive branch. It is intended primarily to provide a uniform basis for coordinating the activities of Federal representatives serving on approved interstate water compact commissions.

DUTIES OF THE FEDERAL REPRESENTATIVE

The Federal representative has the duty of assuring that the complete range of Federal or National interests is considered in compact commission discussions and actions. As the President's representative on the commission, he should avoid identifying himself with any agency, program, local faction, or sectional interest. The Federal representative should maintain a completely neutral position in all matters of purely State concern.

RELATIONSHIPS WITH FEDERAL AGENCIES

The following departments and agencies will normally have an interest in interstate compact activities where water is concerned:

1. Department of Agriculture.
2. Department of the Army.
3. Department of Commerce.
4. Department of Health, Education, and Welfare.
5. Department of the Interior.
6. Department of Justice.
7. Department of Labor.
8. Federal Power Commission.

The Federal representative is encouraged to consult these agencies for information and to ascertain and keep abreast of their views on compact matters, either through their Washington offices or through their designated field officials.

Technical staff from these agencies may be detailed to work with the Federal representative on specific assignments for reasonable periods of time.

POLICY GUIDANCE

Advice on major policy matters should be requested from the Director of the Bureau of the Budget. Coordination, as necessary, with appropriate Federal agencies will be undertaken by the Bureau.

LEGAL ADVICE

The Federal representative shall refer all major legal questions that may arise relating to the position or action of the United States to the Director of the Bureau of the Budget for transmission to the Attorney General for decision.

REPORTING

The Federal representative should submit annually a brief report, in duplicate, to the Director of the Bureau of the Budget. The report should be submitted within 30 days after the end of the calendar year, except where the compact or bylaws specify a date for the annual report of the commission, in which case the report should be made within 30 days after the commission's report.

The report should include observations on matters affecting a Federal interest that have developed or are expected to develop and should be accompanied by copies of the annual commission report. Minutes of meetings should also be furnished where appropriate. Supplemental reports on significant developments may also be submitted separately from time to time.

In the event compact amendments requiring congressional approval are contemplated, three copies of the draft amendments should be transmitted to the Director of the Bureau of the Budget as soon as they are available.

#### ADMINISTRATIVE SERVICES AND TRAVEL EXPENSES

If the representative is a Federal employee, administrative services, such as office space, secretarial assistance, communications, etc., and travel expenses will be furnished by his agency. If he is not a Federal employee, the Bureau of the Budget will arrange for these administrative services and travel expenses with a designated Federal agency. The provision of these services by one of the agencies is a matter of convenience to the Federal representative and has no special significance insofar as his responsibilities are concerned.

#### CHANGE OF EMPLOYMENT STATUS

A Federal representative who is also a Federal employee shall notify the Director of the Bureau of the Budget of any significant changes in his employment status.

(Transmitted by letter from Director, Bureau of the Budget, January 3, 1956)

#### EXECUTIVE OFFICE OF THE PRESIDENT

#### BUREAU OF THE BUDGET

Washington, D.C.

#### GUIDE TO FEDERAL PARTICIPATION IN INTERSTATE COMPACT NEGOTIATION

#### BACKGROUND

Many problems arise in connection with the development, control, and use of interstate streams which are of primary concern to the various States sharing the stream. The device of entering into an interstate compact, either to settle or to help cope with such problems, is sound and to be encouraged by the Federal Government, so long as national interests are protected.

In the conduct of negotiations, the Federal representative should maintain a completely neutral position in all matters purely of State concern. Sections which affect matters of Federal interest should not encroach upon the flexibility of the Federal Government position. He should strive to make sure that the timing of the final stages of clearing the firm draft of the compact is handled in a manner which does not generate excessive pressure on the President and the Federal agencies concerned. This requires anticipating well in advance what schedule of ratification will be sought by the compacting States.

#### ROLE OF THE FEDERAL REPRESENTATIVE

1. The Federal representative on the compact commission has the duty of assuring that the complete range of Federal or National interests is considered in the negotiations. As the President's representative on the commission, he should avoid identifying himself with any agency, program, local faction, or sectional interest.

2. The Federal representative is responsible to the President through all stages of the compact's negotiation and final clearance. He will report to the President through the Director of the Bureau of the Budget. The Director of the Bureau of the Budget will, in addition to briefing the Federal representative, assist him by—

- (a) arranging for such meetings with Federal agencies in Washington as may be needed;
- (b) coordinating agency views and performing necessary clearances at the Washington level;
- (c) ascertaining the position of the President on compact matters; and
- (d) arranging for administrative services.

3. The Federal representative is to keep the Director of the Bureau of the Budget fully informed, especially as to emerging issues or alternatives touching on matters of legitimate Federal interest, including any provisions in the com-

act establishing a permanent administrative body under the compact with a Federal participant or representative and any provisions of a legitimate character which would have the effect of binding the Federal Government.

4. The Federal representative should time the submission of his reports, analyses, recommendations, and drafts for clearance in a manner which avoids a last minute rush just prior to State legislative sessions that might result in ratification.

#### RELATIONSHIPS WITH FEDERAL AGENCIES

1. The following departments and agencies will normally have an interest in interstate compact negotiations where water is concerned:

1. Department of Agriculture.
2. Department of the Army.
3. Department of Commerce.
4. Department of Health, Education, and Welfare.
5. Department of the Interior.
6. Department of Justice.
7. Department of Labor.
8. Federal Power Commission.

All of these agencies may be called upon for information and advice, either through their Washington offices or through their designated field officials.

2. One of the above agencies will probably be called upon to furnish the Federal representative with all necessary administrative services, such as office space, field and secretarial assistance, travel, communications, etc., at a location near or within the river basin subject to compact negotiations. The provision of these services by one of the agencies concerned is a matter of convenience to the Federal representative and has no special significance insofar as his line of responsibility is concerned.

3. Technical staff from the above agencies can be detailed to work with the Federal representative on specific assignments for reasonable periods of time. The Federal representative may retain independent counsel and technical consultants, who shall be paid on a w.a.e. basis.

#### REPORTING AND PROCEDURAL REQUIREMENTS

1. The Federal representative shall submit quarterly status reports to the President through the Director of the Bureau of the Budget, including copies of official minutes and compact drafts.

2. The Federal representative should identify and report on emerging issues affecting the Federal Government, giving State views, and his own analysis or recommendations, either in his quarterly status report or as the need arises.

3. The Federal representative shall refer all legal questions that may arise relating to the position or action of the United States to the Director of the Bureau of the Budget for transmission to the Attorney General for decision.

4. In the final clearance stage the Federal representative shall—

- (a) submit to the Director of the Bureau of the Budget the compact commission's firm draft, for coordination and clearance;
- (b) take up with the commission all proposed Federal modifications stemming from step (a);
- (c) report to the Director of the Bureau of the Budget on outcome of step (b);
- (d) submit immediately to the Director of the Bureau of the Budget the compact as finally agreed to by the compact commission and prior to his signature as the Federal representative;
- (e) upon receipt of the views of the President, take appropriate action as to signature of compact as the Federal representative; and
- (f) transmit signed compact and draft of compact approval legislation to the President through the Director of the Bureau of the Budget, accompanied by final report.

#### WHY FEDERAL PARTICIPATION IN DELAWARE BASIN COMPACT?

The idea that the Federal Government should become a participating party, along with the States, in the proposed Delaware compact commission, constitutes a relatively new and pioneering concept in Federal-State relations. Though this concept may be new, it is consciously designed to meet needs

and solve problems that are old and much discussed. Some of the needs and problems that the Delaware compact is designed to meet are illustrated in the following quotations:

(1) "Because many of the important possibilities of stabilizing or further developing the opportunities for optimum use of water, mineral, and land resources transcend the boundaries and the legal jurisdiction of the States, it is inevitable that there be Federal participation with the people of the States and localities and their governments. Interstate compacts should lessen the degree of Federal concern, but partnership with the Federal Government in preparation and fulfillment of regional water and related land programs, in greater or lesser degree, must everywhere be expected \* \* \*. The legal jurisdiction of the United States over navigation and certain other water uses, \* \* \* make this necessary. Quite apart from these reasons, there is usually no other constant source of governmental leadership transcending State boundaries which can help the people of a multistate region review the full scope of their water resources problems and possibilities or find the funds that in many cases are necessary for the expensive multipurpose tasks that must be undertaken" (report of President's [Truman] Water Resources Policy Commission, 1950).

(2) "We should organize more efficient means of regional river basin planning and management in those parts of our country which need such improvement. \* \* \* We must also see that improved Federal organization accompanies increased local and State participation. States and communities cannot cooperate effectively with the agencies of the Federal Government where sharp differences of opinion exist and where machinery for resolving these differences is cumbersome or absent" (message to the Congress from President Truman, Jan. 19, 1953).

(3) "Our task force makes a listing of 25 principal Federal agencies having functions relating to water and its use or control according to their field of interest. The list amply illustrates the diffusion of authority among the agencies on water development and the need for clarification and coordination.

"Conflicts also arise between States over proposed projects in the same river basin, which of course may involve the Federal Government. The major Federal agencies are separately engaged in many river drainage basins. There is constant conflict and rivalries between them. One result is that local interests play one Federal agency against another to secure the greatest benefits" (report to the Congress by the [Hoover] Commission on Organization of the Executive Branch of the Government, June 1955).

(4) "The committee recommends—

(a) That future multipurpose basinwide development of water resources should be on a partnership basis between the Federal Government and the States.

(b) That the States in general assume more leadership and responsibility in this field.

(c) That direction and control be provided by balanced division of authority between the Federal Government and the States concerned" (report of the President's [Eisenhower] Commission on Intergovernmental Relations, June 1955).

(5) "No large-scale basin development program involving more than one State has gone ahead without Federal leadership and participation" (chairman of the Interstate Commission on the Delaware River Basin, Sept. 21, 1955).

(6) "The greatest single weakness in the Federal Government's activities in the field of water resources development is the lack of cooperation and coordination of the Federal agencies with each other and with the States and local interests. This has been occasioned by the fact that the Federal interest in water resources development has been expressed in different laws empowering different agencies to pursue particular programs for different purposes. There has been inadequate coordination of the program of one agency with that of another, and inadequate consultation with and consideration of the interests of the States, local communities, and individuals most vitally affected" (report of Presidential [Eisenhower] Advisory Committee on Water Resources Policy, December 1955).

#### REASONS FOR FEDERAL PARTICIPATION IN THE PROPOSED DELAWARE RIVER BASIN COMPACT

The Delaware Basin is to be distinguished from Western rivers and from large drainage areas such as the Mississippi complex and the St. Lawrence in that the Delaware above its tidal estuary functions so much as a source of water supply and so little as an artery of navigation and as a source of electric power or a means to irrigation. It is a source of water for half of New York City's requirements, for all of Philadelphia's needs, and for many other sizable cities and communities representing a population of many millions of people. It is a source of fresh water for an enormous industrial complex involving basic steel, petroleum, chemical, paper, and food processing. Since water supply for municipal use and for industrial withdrawal has been traditionally a State and local responsibility, the role of these levels of government in the Delaware is proportionately more significant than for other rivers.

A counterpart of water supply is the maintenance of water quality. This too has been traditionally a State responsibility, but has been considerably aided in recent decades by various Federal measures.

The water resources of the Delaware Basin are not, however, exclusively the province of State and local activity. There are flood control problems, soil conservation needs, fish and wildlife problems, forestry considerations, ground water difficulties, some hydropower potential, large recreational possibilities, and other facets of the river where the Federal Government interest is large or paramount.

The respective roles of the States and Federal Government are probably more balanced and more intertwined as to the water resources of the Delaware Basin than as to those of any other basin in the United States. The task is to find a mechanism to create simplified procedures for achieving orderly development and integrated operations toward common goals.

Both the States of the Delaware Basin and the Federal Government lack streamlined executive organization for dealing with water. The proposed compact is an attempt to establish a more adequate executive mechanism for water resources management and development for the natural unit of a river basin which is presently in real need of achieving order in executive processes for water.

The draft of compact offers the following advantages over the present situation:

1. A decisionmaking process stemming through one person of high executive rank from each of the five sovereign governmental jurisdictions now dealing with the water resources of the Delaware Basin.

2. The five persons in turn employ a single executive director to administer the new basin agency.

3. High policy is reserved to the participating governments through control of operating and capital funds, by reservation of taxing powers, by high level representation on the commission, and, in the last analysis, by the right of the Federal Government to withdraw or modify its terms of participation.

4. Access to the technical knowledge, skills, and accumulated wisdom of existing agencies is preserved by a mandate to use existing State and Federal agencies for the performance of all functions where feasible.

5. Continuing planning and integration of operations are the principal functions of the new commission. For this the following attributes are deemed essential:

(a) A continuing center of information on all current and contemplated actions related to the water resources in the basin. This will serve as a clearinghouse as well as a basis for comprehensive planning.

(b) The maintenance of a comprehensive plan incorporating the programs of all agencies active in the basin, reconciling them toward common objectives and adjusting the plan to changing conditions and requirements.

(c) Authority to require conformance of all programs and developments with the plan.

(d) The location of these executive functions at a single place in the basin to be served.

The nature of the compact indicates what is meant by Federal participation. It is nothing basically new or foreign to our concepts of government in the United States. The Federal Government is the basin's government on certain matters, as are the State governments as well; but none of them should be lords and masters, aloof from local activities and having all decisions stemming from Washington, Harrisburg, Albany, Dover, and Trenton. Water requires a regional approach; it requires participation by each of the governments concerned; it requires unity of agencies expressed through one representative of each government.

#### NEW JERSEY ZINC CO. STATEMENT ON THE DELAWARE RIVER BASIN COMPACT

The New Jersey Zinc Co. owns and operates extensive facilities within the Delaware River Basin for the mining of zinc, for the smelting of zinc and the manufacture of a variety of zinc-bearing products, and for the manufacture of titanium dioxide pigments. All of these operations are located on streams or rivers within the basin and are dependent upon the use of water from the streams and rivers and upon the use of the same streams and rivers as an integral part of the mining and manufacturing processes for disposition of waste waters and other products.

The New Jersey Zinc Co. submits, therefore, that it has more than an ordinary or academic interest in the proposals to enact the Delaware River Basin compact.

The company suggests that the rapidity with which the proponents of Pennsylvania Senate bill No. 350 are seeking to finalize it in its present form is not in the best interest of achieving legislation which will be to the greatest benefit of the people and the industries in the Commonwealth of Pennsylvania or in the other States proposed as parties to the compact.

The company submits that there has not been ample time for it, or others with major industrial interests within the basin, to analyze the proposed legislation to assess its implications on the industrial economy and to conceive and recommend any constructive amendments that may become apparent.

Because of the complexity of the matter the company subscribes to the desirability of close cooperation and coordination among the States and the Federal Government in planning for and development of the water resources of the Delaware River Basin. But it has considerable reservation as to the necessity for Pennsylvania, or any other State, to give up its sovereignty and control over its water and its rights in the manner which is proposed in senate bill No. 350.

The company submits that from a very preliminary study of the proposed bill in the limited time that has been available it is to be concluded that the possible consequences of this legislation can be far reaching in scope and of major importance to the citizens and industries of Pennsylvania.

The company feels, therefore, that, at the very least, sufficient time should be set aside to permit intelligent study and assessment of the direct and indirect effects and to permit the citizens and industries of Pennsylvania to have a thorough understanding of the compact to which it is proposed to commit them for a long period of time. If this legislation is good for the people of Pennsylvania, then the granting of reasonable time to permit it to be thoroughly examined and understood can do no harm. If it is not good for the people of Pennsylvania, then reasonable time for examination and understanding will have been in the best interests of all.

The New Jersey Zinc Co. therefore respectfully urges this body to adopt a course that will enable interested parties to analyze the proposed legislation in all of its aspects and afford them an opportunity to make constructive comments in an atmosphere less hurried than has been evident up to this point. If necessary, further hearings are suggested after a suitable time for study and analysis.

In any event, this company requests permission to file with this body a supplemental statement which will be based on its continuing study of the proposed compact and will be obliged if this body will advise it of the time available for such filing in order that it may receive due consideration prior to further steps in the processing of Senate bill No. 350.

#### LIST OF FEDERAL AUTHORIZATIONS FOR DELAWARE SURVEY

Where the Army has reported on a river basin such as the Delaware, they then can make a further report pursuant to a Public Works Committee resolution. There are seven separate committee resolutions on which they are relying for the report.

Citing committee resolutions as authority to authorize funds is a little unusual, and goes back to the March 4, 1913, law (37 Stat. 826; 33 U.S.C. 542).

The resolutions which authorized the Army to go ahead with the spending of the money authorized and appropriated are:

	<i>Date</i>
Senate Public Works Committee resolution.....	Apr. 13, 1950
Do.....	Sept. 14, 1955
Do.....	Nov. 14, 1955
Do.....	Feb. 20, 1956
House Public Works Commission resolutions (two of them on same day).....	June 13, 1956
Senate Public Works Committee resolution.....	Apr. 28, 1958

The Army gets a lump sum from which they spend the money appropriated in Public Works Appropriations Acts. They are:

Fiscal year—	
1960.....	Public Law 86-254.
1959.....	Public Law 85-863.
1957.....	Public Law 641, 84th Cong.
1958.....	Public Law 85-167.
1956.....	Public Law 163, 84th Cong.

#### GOVERNORS' RESOLUTION FORWARDING DRAFT COMPACT TO CONGRESS

Whereas the comprehensive development of the water resources of the Delaware River Basin is an important need that can best be met by the joint exercise of Federal, State, and local interest and responsibility; and

Whereas such joint exercise of responsibility can best be provided by means of a river basin agency charged with integrating governmental programs concerned with the development and control of water resources of the basin; and

Whereas the draft legislation to create such a river basin agency by means of interstate-Federal compact, prepared at our direction by the Delaware River Basin Advisory Committee, is the product of extensive and practical deliberation by many engineering, legal, and technical experts: Now, therefore, be it

*Resolved*, That the draft of interstate-Federal compact prepared by the Delaware River Basin Advisory Committee at our request be forwarded to the President of the United States, the Congress of the United States, and the legislatures of our respective States with our unanimous recommendation that it be enacted into law by the five governments.

(NOTE.—This resolution was adopted by Govs. Elbert N. Carvel of Delaware, Robert B. Meyner of New Jersey, Nelson A. Rockefeller of New York, and David L. Lawrence of Pennsylvania, and Mayors Robert F. Wagner of New York City, and Richardson Dilworth of Philadelphia at a meeting in Philadelphia on February 1, 1961.)

#### GOVERNORS' STATEMENT APPROVING DRAFT COMPACT

An entirely new instrument of government, establishing a four-State partnership with the Federal Government in the development of the Delaware River Basin's water resources, was proposed today by the Governors of New York, Pennsylvania, New Jersey, and Delaware.

Mayor Robert F. Wagner of New York and Mayor Richardson Dilworth of Philadelphia joined Govs. Nelson Rockefeller, David L. Lawrence, Robert B. Meyner's representative, and Elbert N. Carvel in urging prompt State and Federal action to create the new agency.

The Delaware River Basin supplies water for domestic and industrial use to more than 16 million people in the 4 States.

The four Governors and two mayors met in Philadelphia to receive formally and to announce support for a proposed interstate-Federal compact drafted at their direction by the Delaware River Basin Advisory Committee, whose chairman is John P. Robin, of Pennsylvania. Other members of the committee, which worked for more than a year and prepared seven preliminary drafts of the compact are: Delaware, Gen. Norman M. Mack; New York, Commissioner Harold G. Wilm; New Jersey, Commissioner Salvatore A. Bontempo; New York City, Commissioner Arthur C. Ford; Philadelphia, William L. Rafsky, development coordinator.

The compact, which must be approved by the legislatures of the affected States and by Congress, will create a five-member commission in which each State will be represented by its Governor and the Federal Government by an appointee of the President.

The commission will become the principal planning body for water resources development in the Delaware River Basin, and will be concerned with flood control, water supply, the control of pollution, the production of electric power where economically feasible, and expanded opportunities for recreation and fish and wildlife habitat.

It will not be granted authority over navigation, which remains the sole prerogative of the Federal Government.

The Corps of Engineers is now completing a multipurpose study of the Delaware which is expected to become a principal guideline for the commission's work.

The compact, when adopted, will provide a basis for settling, without recourse to lengthy and involved litigation, disputes of long standing in which downstream States have contested the rights of New York City and northern New Jersey to divert water from the Delaware to other river valleys. The compact provides for recognition of the present decisions of the U.S. Supreme Court as to diversions and compensating releases. Future applications for diversions and releases will be decided by the commission, which must apply the rules of equitable reapportionment. The right is retained in the States to resort to the U.S. Supreme Court when denied requests for water by action of the commission.

The term of the compact is 100 years, with provision for subsequent renewals.

The commission will establish a common direction and purpose for 19 Federal agencies and at least 60 State agencies now working in some phase of public activity which affects the water resources of the basin.

The compact does not contemplate that the commission will supersede existing operating agencies which are performing necessary functions with proper effectiveness, such as the Corps of Engineers in the construction of dams and reservoirs. It will have broad powers, however, to act where effective action is needed, and may, for example, set standards for the control of pollution which might be stronger than any of the States have themselves enacted.

Incodel, the existing agency for interstate cooperation in the basin, would be replaced by the commission established in the compact, which has been endorsed by the officers of Incodel.

The proposed compact agency would be financed by appropriations, grants, and loans from Federal and State Governments. It may also issue revenue bonds, but is not empowered to pledge the credit of any other agency of government. It will have no taxing powers, but may impose charges for products and services.

The Governors, who met in the board room of the Philadelphia Savings Fund Society, said that they would each submit enabling legislation adopting the compact to their respective legislatures during the current sessions, and urge its adoption. They also plan to urge acceptance of the proposal by Congress and the President.

The compact's legal draftsmanship was directed by William Miller, of Princeton, N.J., as consultant to the advisory committee. Walter M. Phillips, of Philadelphia, is executive secretary of the committee.

STATEMENT TO THE HOUSE JUDICIARY SUBCOMMITTEE BY THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES IN SUPPORT OF REGIONAL MACHINERY TO COORDINATE WATER RESOURCE DEVELOPMENT

The League of Women Voters of the United States wishes to express strong support for regional mechanisms which will provide coordinated planning and administration of water resource development among Federal, State, and other agencies. We are glad of the opportunity to do this in connection with action of the leagues of the Delaware River Basin and service area in support of the Delaware River Basin compact, House Joint Resolution 225.

The League of Women Voters, which currently has 127,000 members in 1,097 local leagues in all 50 States and the District of Columbia, has been engaged for 5 years in the study of water resources. Members have concentrated on problems of coordinated administration, equitable financing, and regional or river basin planning.

Our members began with a study of the Federal programs for water resources development; they went on to more detailed consideration of their own regions or river basins. They studied regional water needs and the operation of the Federal programs to see how well they were coordinated with those of the State and other governmental or private agencies and to see if under the present setup the region appeared likely to meet its long-range water needs efficiently and economically.

Our members have come to substantially unanimous agreement that overall planning for water resource development in the United States should be implemented through comprehensive regional planning. To accomplish this, mechanisms are needed for each major drainage area which will coordinate the planning, development, and water management of all the Federal, State, and other governmental or private agencies involved. These mechanisms will vary from region to region, depending on the historical background and peculiarities of the region as well as on the political situation.

The league believes that none of the coordinating devices now in use for regional planning is entirely satisfactory and that it is desirable to try new forms as well as to strengthen the ones now in use. Members also believe that in order to encourage State and local participation in and support of the necessary planning and development, each region should choose the kind of mechanism which best fits its needs.

League members recognize that the Federal Government must play an important role in financing water resource development because of the magnitude of many of the programs, the largest capital required, and the fact that river basins do not correspond to State boundaries. However, the league believes that the State and local governments and private users which benefit from the development should share the cost in relation to benefits received and ability to pay. This is one way to insure that projects are undertaken on the basis of real need and are carried out efficiently. This requires local participation at all stages of planning and administration.

Along with leagues across the country, the local leagues in the Delaware River Basin and service area took part in the general study described above and in reaching the consensus on which the league position on water resources (below) is based. During the course of this work they carefully studied water needs and development in the Delaware River Basin and service area and the proposed Delaware River Basin compact. As Mrs. Hersey, testifying for the Inter-League Council on the Delaware River Basin, which represents all the leagues in the four basin States, has told this committee, these leagues have come to the conclusion that this compact offers the Delaware Basin the opportunity to obtain the much needed coordination—together with local participation—which will make possible the optimum use of their joint water resource.

The national board files this statement for the League of Women Voters of the United States to reinforce, with countrywide findings, the conclusions of the Delaware Basin leagues which have led to their support of the Delaware River Basin compact.

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES—STATEMENT OF POSITION ON WATER RESOURCES

In order to meet the present and future water needs of the people of the United States, the League of Women Voters believes:

(a) Overall long-range planning and development of water resources require—

(1) Better coordination and organization at the Federal level.  
(2) Elimination of inconsistencies and conflicts in basic policy among Federal agencies.

(3) Federal procedures which provide the Executive and Congress with adequate data and a framework within which alternatives may be weighed and intelligent decisions made.

(b) Comprehensive planning, development, and water management on a regional basis is essential to the optimum development of the Nation's water resources.

(1) Such development should meet the particular needs of the region but not be in conflict with the national interest.

(2) Machinery is needed, appropriate to each region, which will provide coordinated planning and administration among Federal, State, and other agencies.

(3) Procedures should be established which provide information and an opportunity for citizen participation in policy decisions affecting the directions which water-resource development will take.

(c) The Federal Government has a necessary role in financing water-resources development, but State governments, local governments, and private users should share such costs, as far as possible, based on the benefits received and the ability to pay.

#### ELABORATION OF POSITION

##### *Coordination and planning at the Federal level*

In order to meet the present and future water needs of the people of the United States, the League of Women Voters believes that overall long-range planning and development of water resources is necessary. This requires better coordination among the various Federal agencies concerned with water.

The League of Women Voters hopes that as Congress and the Executive become increasingly aware of the variety and complexity of water problems the inconsistencies and conflicts between the basic policies of the Federal agencies will be recognized as a major obstacle to comprehensive planning and administration, and that they will move to resolve such conflicts. The League of Women Voters will support such moves.

The League believes that decisions among programs should be made in the light of present and future water needs and the economic well-being of the country. The Executive and Congress have a solid basis for making such choices in the national interest if they have available up-to-date and complete data and the organizational framework within which it is possible to use such information. Such procedures would facilitate the judicious weighing of competing demands for water uses; for example, those between different regions or those between domestic consumers, industry, irrigation, and recreation.

##### *Coordination and planning at the regional level*

The league believes that overall planning for the country must be, to a large extent, implemented through comprehensive regional planning. Any Federal project within a region should meet a real need in that area. It should also be an integral part of the comprehensive regional plan and not in conflict with the national interest.

The league believes that coordinating mechanisms are desirable for major drainage areas. These will vary from region to region, depending on the historical background and peculiarities of the region as well as on political realities. Such mechanisms should coordinate the planning, development, and water management activities of all Federal, State, local governmental, and private agencies in the region.

Under any comprehensive plan for a region there are many political decisions involving choices between development for recreation versus industry, urban water supply versus agricultural uses, etc. The league believes the public needs background information in order to consider the relative merits of alternatives. The public also needs an opportunity such as that provided by well-publicized public hearings for expression of opinion at an early stage before any agency has crystallized engineering plans.

##### *Equitable financing*

The league believes that the role of the Federal Government in the financing of water resource development is an important one because of the magnitude of many of the programs, the large capital investment required, and the fact that interstate problems are often involved. However, the league believes that the State and local governments and private users which benefit from water resource development should share the cost in relation to benefits received and ability to pay. The league believes this is one way of insuring that programs are undertaken on the basis of real need and are carried out efficiently.

The league believes that the use of incentive payments by the Federal Government to stimulate local expenditures for essential water programs is an effective kind of cost sharing. The present pollution control program as in operation since 1955 is an illustration of this type of cost sharing.

There was no consensus in regard to uniform standards for project evaluation. While a number of leagues agreed that these were desirable, others were unable to reach a decision. Similarly, there was no agreement on the need for consistent formulas for cost sharing to be used by all agencies in carrying out the same type of water project; for example, flood control, whether done by the Soil Conservation Service, Corps of Engineers, or Bureau of Reclamation.

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., March 22, 1961.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives.

DEAR CONGRESSMAN CELLER: This will acknowledge your letter of March 10, 1961, to Secretary Freeman in regard to House Joint Resolution 225, a bill to grant the consent of Congress to the Delaware River Basin Compact, and to enter into such compact on behalf of the United States, and for related purposes.

We appreciate having the record of the hearing of March 8, 1961, held open to receive the views of this Department at a later date. Since House Joint Resolution 225 is of concern to many other Departments and agencies, consideration by them and the Bureau of the Budget, as well as by this Department is to be expected. Under these circumstances, the time required to develop a position in the matter may not be entirely within our control.

We will be glad, however, to forward our comments as soon as possible as you request.

Sincerely yours,

CHARLES S. MURPHY.

DEPARTMENT OF THE ARMY,  
OFFICE OF THE ASSISTANT SECRETARY,  
Washington, D.C., April 19, 1961.

HON. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter to the Secretary of Defense dated March 10, 1961, with regard to our report on House Joint Resolution 225, 87th Congress, a resolution to grant the consent of Congress to the Delaware River Basin Compact and to enter into such compact on behalf of the United States, and for related purposes.

In formulating our comments on this legislation, we find it necessary to carry on discussion with other Federal agencies which are involved in water resource development in the Delaware River Basin. You may be sure that we appreciate your interest in this matter and that we will do everything possible to expedite our report on this bill.

Sincerely yours,

W. F. SCHAUB,  
Assistant Secretary of the Army (Financial Management).

#### SUMMARY OF MAJOR PROVISIONS OF DELAWARE BASIN COMPACT

##### PARTIES TO THE COMPACT

Signatory parties are the Federal Government, the States of Delaware, New Jersey, and New York and the Commonwealth of Pennsylvania. The Federal Government is a full party to the compact as distinguished from a solely interstate compact where the Federal Government merely gives consent (par. before art. 1).

##### PRINCIPAL PURPOSE OF THE COMPACT

To create a regional Federal-interstate administrative agency which shall act for and be responsible to the five signatory parties in the planning, development, and control of the water resources of the Delaware River Basin (sec. 1.3(e)).

## TERRITORIAL JURISDICTION OF THE COMPACT AGENCY

The agency is to discharge its responsibilities within the limits of the 12,750 square mile land area drained by the Delaware River and its tributaries (sec. 1.2(a)).

## GOVERNING BODY

Governed by a five-member commission composed of the Governors of the four States and one person appointed by the President of the United States. Each member appoints an alternate with full power to act in the absence of the member. Each member has one vote (sec. 2.2, 2.4, 2.5).

## LIFE OF COMPACT

The duration of the compact and all of its provisions is limited to 100 years, but the compact automatically renews itself for additional periods of 100 years unless not later than 20 years nor sooner than 25 years prior to the termination of the initial period or any succeeding period one or more of the signatory States, by authority of an act of its legislature, gives notice of intention to terminate at the end of that 100-year period (sec. 1.6).

## POWERS OF CONGRESS

The compact reaffirms the right of Congress to withdraw the Federal Government from the compact at any time. Nor is compact to be construed in any way as derogating Congress constitutional power over navigation, commerce, etc (sec. 1.4).

## PRINCIPAL DUTIES AND POWERS OF THE COMMISSION

A. Formulate, adopt, and keep current, a comprehensive plan for the development of the water resources of the basin and insure that all new projects or facilities having a substantial effect upon the waters of the basin are carried out in conformance with the comprehensive plan (sec. 3.2).

B. By working with and through existing Federal, State, and local agencies (sec. 11.1) or directly when necessary—plan, construct, operate and maintain dams, reservoirs and other facilities and conduct other programs, (sec. 3.6) for the purposes of—

- (1) Flood damage reduction (art. 6).
- (2) Water quality improvement (sec. 3.2(b)).
- (3) Municipal, industrial, and agricultural water supply (sec. 4.1).
- (4) Recreation and fish and wildlife improvement (art. 8; art. 7).
- (5) Hydroelectric power generation (art. 9).
- (6) Soil conservation, forestation and watershed management (art. 7).

C. Make future allocations of the waters of the basin among the four States and their political subdivisions in accordance with the Supreme Court doctrine of equitable apportionment which takes into account alternative sources, relative needs, and changing uses (sec. 3.3). (No allocation by the Commission is perpetual, nor may it be deemed to constitute a prior appropriation of the water of the basin (sec. 3.3(b)). The compact does not change present law relating to riparian rights (sec. 14.19). Also, no action may be taken by any signatory State or by the Commission without unanimous consent of the parties to the U.S. Supreme Court decree in *New Jersey v. New York* (347 U.S. 995 (1954)), or by unanimous action of the Commission in an emergency, that would in any way interfere with the diversions and compensating releases authorized by the Court in its 1954 decree.) (Sec. 3.3(a)).

D. Regulate the volume of withdrawals or diversions in areas where serious water shortages threaten to develop, or in areas where an actual emergency shortage has developed (sec. 10.4).

## FINANCING

A. Current expense budget to be apportioned among the signatory parties by unanimous vote of Commission members, and each signatory party reserves its usual budget review over the amount so apportioned (sec. 13.3(b)).

B. May receive appropriations, grants or loans from Federal or State Government (sec. 14.1(a)(2)).

C. May borrow money and issue revenue bonds, but cannot pledge credit of signatory parties (sec. 12.5; 12.3; 12.1; 12.20(c)).

D. The Commission may make reasonable charges for products and services. (sec. 3.7). It may levy special assessments upon water users who receive specific benefits from stream flow regulation provided by the Commission (sec. 4.3).

E. Capital budgets to be negotiated by the Commission at such times as capital improvements are undertaken, and the sharing of capital costs among the signatory parties will be proportionate to the distribution of benefits from the proposed improvement. The Commission will prepare standard formulas for this purpose (sec. 13.3(a); 12.20; 11.4).

## JUDICIAL REVIEW

Any party aggrieved by action of the Commission relating to out-of-basin diversions, and compensating releases made in connection therewith, may invoke the original jurisdiction of the U.S. Supreme Court for a determination de novo upon application within 1 year. Other acts of the Commission will be subject to review, as to reasonableness, by any court of competent jurisdiction (sec. 3.3(c)).

## CONGRESSIONAL RESERVATIONS

Congress reserves the right to alter, amend, or repeal its act of consent (sec. 15.1). It may also withdraw Federal participation at any time (sec. 1.4). Congress may require full disclosure of the new Commission activities, including correspondence, books of account, etc. (sec. 15.1). The new Commission must furnish annual reports (sec. 14.12). Also submit future amendments for congressional approval (sec. 14.20).

Mrs. WOOD. Chairman Walter.

Mr. WALTER. Yes.

Mrs. WOOD. I am Mrs. William Wood, from the National League of Women Voters.

Mr. WALTER. Oh, yes.

Mrs. WOOD. I realize that you are pressed for time, and I would just like to have the privilege of having our prepared statement inserted in the record and to say that, as a member of the national board of the League of Women Voters, we appeared this morning before this committee really in support of the work which the Delaware Basin leagues have done. And our testimony points this out. And I just wanted to get it in before you recessed.

Mr. WALTER. Thank you. I apologize to you for not recognizing you for a statement, but your name does not appear on the list that was handed to me by the counsel.

So the committee will now stand in recess; meet at the call of the Chair.

(Thereupon, at 12:05 p.m., the committee adjourned at the call of the Chair.)