

...STATEMENT SUPPLEMENTING COMPARISON  
OF RECIPROCAL LEGISLATION ON WATER  
SUPPLY DIVERSION PROJECTS

Interstate commission on the  
Delaware River basin

1944

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TABULATED COMPARISON  
AND  
EXPLANATORY STATEMENT  
REGARDING  
DIVERSION ACTS OF NEW YORK, NEW JERSEY  
AND PENNSYLVANIA

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THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

AN EXPLANATORY STATEMENT

SUPPLEMENTING A COMPARISON OF THE RECIPROCAL LEGISLATION

REGARDING WATER SUPPLY DIVERSION PROJECTS

November, 1944

Separately appended hereto is a tabulated comparison of the New York, Pennsylvania and New Jersey acts containing the conditions which were formulated by Incodel for the control of water supply projects involving a diversion of the flows of the Delaware River or its tributaries.

The New York and Pennsylvania acts were ratified in 1943; the New Jersey law in 1944. The terms of each are to be put into operation on the first day of January succeeding certification by the respective Secretaries of State that each of the acts "contain substantially the same provisions as to water supply diversion projects to be constructed in the Delaware River Basin." (See Sections 18 in Pennsylvania and New Jersey Acts and §5 in New York Act.)

In going through the Legislature certain changes to the standard bill as originally drafted by Incodel were made in each state. In order that states may operate under its terms, it now becomes necessary to determine whether each of the acts still contain substantially the same provisions.

The purpose of the appended comparison is to present a basis upon which an appraisal of this question may be initiated.

In this comparison the terms of the Pennsylvania act have been reproduced in their entirety in the central column. Notations as to similarity or differences in the New York and New Jersey acts are shown in adjoining columns.

This supplemental report has been prepared by the Incodel office to explain the reason for and the effect of differences in the phraseology in

the three acts, as shown on the tabulated comparison, as far as these facts are known.

#### TITLE

Titles to the acts were drafted locally to conform with the requirements and policies of the respective states.

It should be noted that the New York Act amends an existing conservation law by the insertion of a new article, Article X. For this reason references in the body of the New York law refer to "this article" instead of to "this act" as in the Pennsylvania and New Jersey laws.

#### SECTION I OF THE NEW YORK ACT

Amending the conservation law made it necessary to include Section I of the New York Act. There is no corresponding section in the laws of the other two states.

#### PREAMBLE

The five "Whereas" clauses in the Pennsylvania and New Jersey laws are identical except for appropriate references regarding the two other states participating in the reciprocal legislation.

New York did not use a preamble. It does, however, incorporate appropriate "whereas" language in its §501. Legislative Intent.

#### SECTION I (OR §501). LEGISLATIVE INTENT.

This section in all three acts is identical except that the New York Act includes therein some of the language used by the other two states in the Whereas clauses.

SECTION 2 (OR §502). DEFINITIONS

All definitions in the three acts except "Mean-annual-yield" and "Diversion Project" are identical.

"Mean-annual-yield" -- A sentence was added to the definition of "mean-annual-yield" in the New Jersey act reading: "In the determination of 'mean-annual-yield' as above defined, use of new and additional stream flow records as they become available is not precluded."

This was done to clearly specify that new records could be used. It is believed that there is no implication to the contrary in the New York and Pennsylvania acts and that the sentence is not necessary.

"Diversion Project" -- The New York Act uses slightly different wording in defining "Diversion Project". All three acts, however, say the same thing.

SECTION 3 (OR §503) -- GENERAL PROVISIONS FOR DIVERSIONS.

The wording of this section in the New York and New Jersey acts is identical except that New Jersey, in the last line, uses the word "provision" in place of the words "provisions, conditions, limitations, rules, formulae and standards" used in the New York act.

Pennsylvania made two changes.

First: It used the words Diversion Project, previously defined, instead of spelling out phrases referring to diversions from the channel and tributaries of the Delaware River. It will be noted that the definition of "Diversion Project" does not include a partial diversion from the channel of the Delaware River while reference to such a diversion is included in the New York and New Jersey language of Section 3. This however is believed to be immaterial because Section 7 (or 507) of all three acts specifies that there are no provisions in any of the acts which apply to partial diversions from the channel of the Delaware River.

Second: The second change in Section 3 of the Pennsylvania act is the omission of the requirement placed upon the administrative agency in the other two states to determine that a prospective project "is such as to promote the greatest economy in the use and conservation of the waters of the Delaware River Basin consistent with reasonableness and practicability."

This requirement was eliminated from the Pennsylvania act because it was claimed that such general standard is indefinite, subject to possible conflicting determinations and unnecessary.

SECTION 4. (or §504). PROVISIONS FOR COMPLETE DIVERSIONS FROM TRIBUTARIES OF THE DELAWARE RIVER

While worded differently the requirements of this section are the same in all three acts. In each case the natural flow, all or any part, can be withheld and diverted if the flow exceeds its 4,000 c.f.s. control rate. Also, in each case, the same requirement applies for the maintenance of a flow in the tributary immediately below the point of development if the natural flow of the tributary is below a fixed rate of control.

SECTION 5 (or §505). PROVISIONS FOR PARTIAL DIVERSIONS FROM TRIBUTARIES OF THE DELAWARE RIVER.

Similar to Section 4, the requirements of Section 5 (or §505) are the same in all three acts, although the wording of the three acts is different in certain respects.

SECTION 6 (or §506). PROVISIONS FOR COMPLETE DIVERSIONS FROM THE CHANNEL OF THE DELAWARE RIVER.

This section is identical in all three acts except that the prefacing clause in the New York is worded differently than the corresponding clause in the other two acts. The requirements of the section are the same in all three acts.

SECTIONS 7 AND 8

Sections 7 and 8 in all three acts are identical.

SECTION 9. ACT (OR ARTICLE) TO BE ENFORCED.

Aside from appropriate references to the states and their agencies Section 9 sets forth the same requirement in all three acts with one exception. The New York Act contains a provision intended to make clear the effect of any future action of the Legislature amending the section or exempting a diversion.

It is believed that the result of any possible amendatory action in Pennsylvania and New Jersey would be the same as in New York even though it is not specifically stated in this section.

SECTION 10 (or §510). POWERS AND DUTIES OF THE COMMISSION IN RELATION TO THE DELAWARE RIVER BASIN.

Except for appropriate references to the states and their agencies, Section 10 is identical in all three acts.

SECTION 11 (or §511). PROCEDURE FOR OBTAINING THE APPROVAL OF THE COMMISSION (OR BOARD).

Except for appropriate references to the states and their agencies Section 11 sets forth the same requirements in all three acts, although the wording is slightly different in a few minor respects.

SECTION 12 (or §512). APPROVAL BY THE UNITED STATES SUPREME COURT.

Sections 12 in the Pennsylvania and New Jersey acts are identical. Each requires the approval of a proposed project by the United States Supreme Court "in those cases in which said court retains or assumes jurisdiction in the matter."

The New York act does not contain this qualifying provision. It requires the approval of the Supreme Court of all projects. If the Court

refuses jurisdiction the action of New York's administrative agency would be of no effect.

The New York act also includes a stipulation concerning the cost of proceedings.

SECTION 13 (or §513). DIVERSION PROJECTS IN OTHER STATES

Section 13 refers to certain procedures which must be followed by the state under consideration in regard to projects in the other states.

Aside from two instances of an apparently immaterial manner of wording in the New York and Pennsylvania Acts, the requirements are the same in all three states except that New Jersey has omitted the last sentence of the section stating:

"Hereafter, when application is made to the Supreme Court of the United States for approval of such project, the Attorney General may by stipulation or otherwise consent to an entry of an order by that court approving of such diversion."

SECTION 14 ( or §514). ENFORCEMENT

This section is the same in all three acts except that the acts in New York and Pennsylvania give the administrative agency power of enforcement while the New Jersey act provides that such power rests with the State of New Jersey.

SECTION 15 (or §2 IN NEW YORK ACT). EXISTING RIGHTS PRESERVED

Section 15 of the Pennsylvania and New York acts, although worded somewhat differently, contains practically the same requirements. The New York act however includes a sentence stipulating that: "All incomplete proceedings shall continue, but in proper cases, as far as possible, shall

be made to conform to the provisions of this act." This was included to make it possible for the City of New York to proceed, according to its own choice, either under the Supreme Court rule or the Incodel reciprocal legislation. The sentence was omitted from the Pennsylvania act because there are no incomplete proceedings in that State.

The New Jersey act makes specific reference to a right to divert water through the Delaware and Raritan Canal which is claimed to be vested in that State. Otherwise the New Jersey act corresponds to those in Pennsylvania and New York.

SECTION 16 (§3 IN NEW YORK ACT). CONSTITUTIONAL CONSTRUCTION AND SEVERABILITY.

The wording of this section is identical in all three acts.

SECTION 17 (§4 IN NEW YORK ACT) REPEALS.

The wording of this section is identical in all three acts.

SECTION 18 (§5 IN NEW YORK ACT) EFFECTIVE DATE.

The Pennsylvania act allots two sections -- Section 18 and Section 19 -- to the requirements concerning certification as to the substantial similarity of acts in the other two states and concerning the effective date of its act. This is covered in one section in the New York and New Jersey laws. Except for this difference and for appropriate reference to the states and their agencies, the provisions of the sections covering certification and effective date appear to be the same although the wording referring to the date when the acts shall be put into operation varies slightly.

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or Interstate Commission on the Delaware River Basin.

le An Explanatory statement supplementing a comparison of the reciprocal legislation regarding water supply diversion projects.

er [Philadelphia, Pa.? : The Commission, 1944]

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