

OPENING REMARKS BY E.J.TURNER ON THE DELAWARE  
RIVER BASIN WATER POLLUTION AND WATER-SUPPLY  
ANALYSIS OF ACT TO PROMOTE PROTECTION OF  
WATER RESOURCES IN DELAWARE RIVER BASIN

Interstate commission on the Delaware  
River basin  
1942

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July 23, 1942

THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

Opening Remarks by Hon. Ellwood J. Turner,  
Member, Pennsylvania General Assembly and  
Chairman, The Interstate Commission on the  
Delaware River Basin, at a dinner meeting  
of the conference held at Hotel Bethlehem,  
Bethlehem, Pennsylvania, on Thursday,  
July 23, 1942.

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This afternoon we spoke of two problems in the Delaware River Basin,  
water pollution and water supply.

We discussed, also, at some length, two legislative measures drafted  
by the Interstate Commission on the Delaware River Basin designed to  
establish interstate principles, rules, and regulations, as a solution to  
these problems.

Tonight, very briefly, I should like to point out and to emphasize the  
alternative with which we in the Delaware River Basin are faced.

The Why

At the risk of being elementary: all of you know that we have approxi-  
mately 175,000 independent units of government in this country, segregated  
under three broad levels--federal, state, and local. As some of you, perhaps  
do not know, the problem of the inter-relationship of these levels and their  
component parts has commanded the close attention of political scientists,  
public administration experts, and government officials, particularly during  
the last decade.

I say particularly during the last decade advisedly, for since 1929--  
with increasing acceleration--there has been an unmistakable trend toward  
transferring powers of authority and administration from what we think of  
as the "bottom" of our governmental structure, to the "top". In other words,  
since 1929, largely for emergency reasons, the function of local government

have tended in many cases to be absorbed by the states and many functions of the state governments have passed on to Washington.

Where functions have not been completely absorbed by another and higher level of government, there have been other evidences of centralization at work; the legal devices of federal and state aid, more than anything else, have provided the means whereby the theoretical "giver" gains a varying measure of supervision and control over the "receiver".

The developing force, which has tended to gravitate the administration and control of public affairs to a central point has been followed, of necessity, by a break-down of the larger areas into a district or regional pattern. Characteristically, these administrative areas next below Washington are formed by the grouping of several states, and at the state level by the grouping of several counties.

#### Cosgo

Some years ago, in 1935, the states of this Union--after a century and a half of lethargy--decided to do something about this trend. Largely through the intelligence and foresightedness of a single individual whom many of you know, Henry W. Toll of Colorado, a nation-wide organization of the state governments was established, known as the Council of State Governments. The pattern of organization required the creation, by law, in each state of a Joint Legislative Commission on Interstate Cooperation generally composed of five State Senators, five State Representatives or Assemblymen, and five administrative officials of each state government.

These Commissions, which have now been established in most of the 48 states, were created for the purpose of harmonizing the policies of state governments--and a similar harmonizing of state and federal policies.



3.

Incode1, as an organization, falls into this category. As a creature of the Joint Legislative Commission on Interstate Cooperation of Delaware, New Jersey, New York, and Pennsylvania, it is attempting to accomplish-- by the voluntary cooperative action of state legislators, administrators, and technicians,--what could not be done by the states individually, and what many of us feel should not be entrusted to the federal government.

#### Types of Organization

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

##### I.

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

Obviously, the stages of development through which these experiments have passed up to this time typify a new sort of planning, a new approach to regionalism. Just as obviously, and unfortunately, the regionalism concept which lies behind these demonstrations has been horizoned by the power aspect and there are many who believe that these extensions of Federal control have brought us no closer to the development of administrative and financial procedures applicable to regional development generally.

This method of river control, imposed on the states from above, has some benefits and some serious limitations. I am sorry that I haven't the time to review them with you.

## II.

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

The four states of the Delaware River Basin have agreed to act in unison toward a common end. This extension of state powers has not involved

the creation of a super-imposed governmental structure; it has not entailed the addition of a new set of governmental officials; new governmental machinery, established by marked increases in legislation, has not been necessary; no new fields of activity have been created.

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

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

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

The Interstate Commission on the Delaware River Basin has attempted to advance this experiment in voluntary regionalism by taking into account the total resources of the area and the manner in which these resources are associated. As a public agency, dependent for continuing existence upon public acceptance as represented by appropriation through the four state legislatures, the Commission has purposely limited its activities to a solution of these specific and intricate problems of land and water use and

control which are of regional importance, which are most urgently needed, and which will be immediately useful. The organization and its method imply that negotiations which will be led to the formulation of policy will involve compromise on the part of all interested parties. But the Commission has held, and by reason of some success still believes, that with sound facts upon which to base conclusions, there should be no insuperable difficulty in arriving at decisions both immediately and prospectively fair to all concerned.

Incode1 has attempted to secure and apply the best judgment available in the states to the problems involved in the use and development of the water resources of this interstate stream. In no case has that judgment been unduly influenced by political, sectional, or scientific prejudices. While there may be room for differences of opinion on the subject, the cooperating states have felt that joint action through their established offices and agencies was more to be desired than action by an independent superstate agency, whether established by the states themselves or by the Federal government.

#### Conclusion

For a moment, in conclusion, I should like to direct your attention, specifically, to the possibilities and implications of federal control.

That is an attractive terminology: it suggests a directness and facility of action which implies immediate correction of long-standing difficulties.

But I should like to suggest that there is no virtue inherent in a federal agency that does not reside in a state agency or a local agency.

"Federal" is, after all, only a word,--an adjective, and the substitution of federal control for state or local control--on matters which are wholly state or local in character--is no self-contained short-cut to progress.

Results are going to come from the personal interest, competence, and incentive of individual administrators, and the federal government has no priority right to, or allocation of, these attributes.

No federal agency, simply because it is a federal agency, is free from the pressures of prejudiced special interests.

Briefly speaking, the advantages of centralization of power are many, and they are easy to see.

For that reason, we of the Interstate Commission on the Delaware River Basin have felt it to be the part of good citizenship to explore the possibilities of using existing agencies of state and local governments, allied together in a new approach to old problems.

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THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

An Analysis of  
An Act to Promote Interstate Cooperation  
For the Conservation and Protection of  
Water Resources in the Delaware River Basin

by

F. A. Pitkin,  
Director, Pennsylvania State Planning Board;  
Member, Interstate Commission on the Delaware River Basin.

I. The Delaware River Basin

The Delaware River rises on the western slopes of the Catskill Mountains in the State of New York, and flows southward to the sea as a boundary water, first dividing New York and Pennsylvania, then New Jersey and Pennsylvania, finally New Jersey and Delaware.

The drainage basin formed by this major stream and its tributaries covers an area of more than twelve thousand square miles; it contains a population of approximately five million people; it lies within less than two-hours driving distance of more than fifteen million people.

The courts have decreed interstate ownership of this waterway. Experience has dictated the need for interstate control of its abundant resources.

II. IncodeI

The Interstate Commission on the Delaware River Basin was organized in 1936 by the Joint Legislative Commissions on Interstate Cooperation of Delaware, New Jersey, New York, and Pennsylvania. It is a part of the governmental machinery of the cooperating states, financed entirely from appropriations by those states. It is engaged in the formulation and execution of a coordinated, unified plan looking toward the wise use, development, and control of the natural resources of the Delaware River Basin as a whole.

### III. Water Pollution

As its first objective, the Commission centered a major portion of its time and resources during the first two years of its operation, in devising an interstate plan for the correction and control of water pollution in the Delaware River Basin. Adapting itself to the function of supplementing the activities of existing state departments and agencies which now have control over water pollution, the Commission established an Advisory Committee on the Quality of Water in the Delaware River Basin composed of the Chief Engineers of the Health Departments of the States of Delaware, New Jersey, New York, and Pennsylvania. For the first time, these administrative agents, who are the responsible officials in each of the state governments for the correction and control of water pollution, met together and have continued meeting together, pooling their knowledge and the resources of their departments in a unified, concerted attack on water pollution.

#### Classification of Zones

The key problem in planning for pollution abatement and control is to determine upon those reasonable standards of water quality for each section of a stream which express the best balance between the stream's use as a natural sanitation system and its use for other purposes, aesthetic and economic. In the Delaware River Basin, human use of land and water varies as widely within the watershed as does the quality and quantity of water.

To conserve and protect the land and water resources of the Upper Basin for their proper use as sources of public water supplies, after treatment or purification, and for recreational facilities; to preserve and improve public health, to protect and attract industry, to conserve fish and other aquatic life, to aid navigation in the Lower Basin, demands a restoration and maintenance of the purity of waters of the Delaware River and its tributaries through



the adoption of standards of water quality based upon the natural condition of the water in relation to its present and potential use.

Practical application of this principle was made in the Delaware River Basin by means of the following geographical-areal divisions which serve as the basis for the interstate plan of pollution abatement and control:

**ZONE 1:** Zone 1 is that part of the Delaware River and its West Branch extending from the New York-Pennsylvania boundary line to the head of tidewater at Trenton, New Jersey, and Morrisville, Pennsylvania.

The drainage basin contributory to this zone, excepting part of the Lehigh River Basin, is relatively sparsely inhabited and contains few sewered communities and relatively few industrial establishments producing waste water. The streams draining this area being, in general, relatively clean and of high elevation. are well adapted as sources of public water supplies, after treatment or purification.

The principal uses of the waters of the Delaware River in Zone 1 are expected to be for water supply after such treatment or purification as may be necessary, and for recreation, bathing, maintenance of fish and aquatic life, agriculture, and for other related purposes.

**ZONE 2:** Zone 2 is that part of the Delaware River extending from the head of tidewater at Trenton, New Jersey and Morrisville, Pennsylvania, to a line drawn perpendicular to the channel of the Delaware River from the mouth of Pennypack Creek in Philadelphia, Pennsylvania, to the corresponding point on the New Jersey shore.

The drainage basin contributory to this zone is somewhat more densely populated than that of Zone 1, and it contains more sewered communities and industrial establishments.

The principal uses of the waters of the Delaware River in Zone 2 are expected to be for water supply, after treatment or purification, and for recreation, navigation, maintenance of fish and aquatic life, agricultural, industrial, and other purposes.

**ZONE 3:** Zone 3 is that part of the Delaware River extending from the aforesaid line connecting the mouth of Pennypack Creek in Philadelphia and the corresponding point in New Jersey to the Pennsylvania-Delaware boundary line.

The drainage basin contributory to this zone contains populous metropolitan areas including Philadelphia, Pennsylvania, and Camden, New Jersey.

The principal uses of the waters of the Delaware River in Zone 3 are expected to be for navigation, industrial water supply, and other purposes.

The water in this zone, however, should be of such sanitary quality that it will not be unfit for use as sources of water supply, will not be harmful to fish life, and will not adversely affect the quality of the waters of the tidal tributaries.

**ZONE 4:** Zone 4 is that part of the Delaware River extending from the Pennsylvania-Delaware boundary line to the Atlantic Ocean.

The principal uses of the waters of the Delaware River in Zone 4 are expected to be for navigation, industrial water supplies, commercial fishing, shellfish culture, recreation, and other purposes.

#### Minimum Requirements

Thus recognizing that no single standard of sewage and waste treatment, and of quality of receiving waters, is practical for all parts of the river, the preparation of "minimum requirements" for the attainment of correction and control of pollution, appropriate to the varied uses of the stream, was next undertaken. The states agreed to prohibit the discharge of any sewage, industrial waste, or other artificial polluting matter, into the Delaware River unless it shall have been so treated as to produce an effluent which would meet these minimum requirements; similarly, the states agreed that the quality of the intrastate tributaries, at their confluence with the Delaware, shall be at least equal to the quality of the waters of the interstate stream.

#### Interstate Administrative Agreement

Thus, after eighteen months of periodic conference and negotiation on the part of the Chief Engineers of the State Departments of Health, a unified plan establishing basic standards of cleanliness for the Delaware River and its tributaries, at their points of confluence, was drafted as a Reciprocal



Agreement among the responsible administrative departments of Delaware, New Jersey, New York, and Pennsylvania. The terms of this Agreement were ratified and made effective by the Pennsylvania State Sanitary Water Board in June, 1938.

#### IV. The Uniform Act

Continuing to follow the recommendations of its Quality of Water Committee, an investigation covering the means of administering this agreement was undertaken by Incodel. A special panel of attorneys was appointed to "brief" the existing sanitation laws of the four states. Duane Minard, one of the outstanding authorities in the nation on the legal aspects of interstate water resources control, was appointed to serve Incodel in a legal consulting capacity by the National Resources Committee.

After some months of research, and conference, the terms of the "Reciprocal Agreement" were incorporated in "A Uniform Act to Promote Interstate Cooperation for the Conservation and Protection of Water Resources in the Delaware River Basin."

Preliminary drafts of this concurrent legislation were circulated among the lawyers who were serving Incodel. Copies were furnished to all Commissioners and the members of advisory groups for their comments and criticisms. The Pennsylvania Department of Justice and the Legislative Reference Bureau; the Attorney General of New Jersey; the New York Bill Drafting Bureau; and the Counsel to the Delaware legislature, also reviewed this legislation in advance, recommending modifications to comply with state form and legal custom.

In the light of this all-inclusive review, the act was redrafted in final form and--with the unanimous endorsement of the "Quality" Committee--it was submitted to the four state legislatures for adoption.

I have gone to some lengths to relate the care which the Commission took to make certain that it would be sponsoring legislation which was carefully conceived and patiently drafted. I venture to say that no legislation introduced in any one of our four state legislatures has been based upon a longer, more intense period of study than has this statute.

The uniform act was introduced in the legislatures of Delaware, New Jersey, New York, and Pennsylvania during the 1939 sessions. It was adopted by the legislatures and approved by the Governors of Delaware, New Jersey, and New York; it failed of passage in Pennsylvania during the 1939 session; it was reintroduced in the 1941 session, passed the House of Representatives, but was allowed to die in a Senate Committee during the closing weeks of the session.

#### V. Special Facts

I should like to make special mention of two facts in connection with this bill:

- (1) Maintenance of the standards of water quality established in the Act to Promote Interstate Cooperation for the Conservation and Protection of Water Resources in the Delaware River Basin fall within the present discretionary powers of the State Sanitary Water Board of the Department of Health.  
No new or additional authority is granted to any state or interstate agency under the terms of this bill.

The chief purpose of the bill is to give legislative standing and effect to uniform standards and regulations already agreed upon by the administrative departments of Pennsylvania, Delaware, New Jersey and New York, as a demonstration of the capacity of these states to work together in a solution to mutual problems. The responsibility for the administration of the standards of water quality established in the Act rests with the Sanitary Water Board of the Commonwealth of Pennsylvania and its companion agencies in Delaware, New Jersey, and New York.

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The Interstate Commission on the Delaware River Basin neither holds nor seeks administrative authority. It is attempting to supplement rather than to supplant the existing agencies of the state governments now in control of the various phases of water resources control. It has extended state powers by making it possible for each state to have a part in a joint plan and program for the river. Incodel operates through existing state departments, boards, and commissions in a field where no one of them can act effectively but where all, acting together, may attain reasonable and practicable results.

- (2) A word about industrial wastes: Incodel has always held and maintained the viewpoint that the first job to be undertaken in the Delaware River Basin is the elimination of domestic pollution.

As a public agency, we have felt that there is no justification for attempting to bring about an industrial clean-up until the public's problem has been taken care of. When that time comes, industry must--and industry will--fall in line. Their burden need not be borne all at once but may be distributed over a period of years and should be considered a proper part of the cost of production. All industry should prepare to take its part in this program: the fact that an increasing supply of relatively pure water is needed for industrial purposes will lead them toward this goal in self-protection. In Zone 3 of the basin, where the great Philadelphia-Camden industrial belt is located, there is much for industry along both sides of the river to gain from the interstate arrangement which will serve to protect its interests by the maintenance of a flow of water sufficient to counteract the destructive effects of salinity.



The Commonwealth of Pennsylvania stands to gain much by adopting this legislation and thus indicating its cooperative spirit to the States of Delaware, New Jersey, and New York. The pollution offenses committed by Pennsylvania are substantially greater than those contributed by other states particularly because of the heavy load of raw domestic waste discharged daily into the stream by the City of Philadelphia.

#### VI. The Lehigh River Sub-Basin

Now, briefly, may I illustrate and localize the application of the proposed Incodel Pollution Act to the Lehigh River sub-basin.

What would the administration of the terms of this Act mean to you--to your city, your borough, your industrial-manufacturing plant?

How would it affect you?

Would it cost you money?

Would it improve the quality of the water of the Lehigh River and its tributaries for water supply purposes and for such recreational uses as fishing, boating, and bathing?

Before answering such questions I should first emphasize an almost obvious point: the interest of the Interstate Commission on the Delaware River Basin, in this field of our work, lies in the quality of the water of the interstate Delaware River. Tributaries of the main stream, lying wholly within one state, are of concern to us only at their points of confluence with the interstate river.

If, at this point of meeting, the quality of the water of the intrastate tributary is such as to lower the standard of purity or cleanliness in the Delaware River, the problem becomes, immediately, interstate in character.

As all of you know, the Lehigh River and its tributaries lie wholly within the state of Pennsylvania. Throughout its length of 104 miles, the



Lehigh River is seriously affected, in quality, by the geologic formations through which it passes.

The anthracite deposits in the Luzerne, Carbon, and Schuylkill County section of the basin and the slate and limestone formations in the Piedmont Plateau area have always, and will ever continue, to affect the quality of the Lehigh River and its tributaries.

That basic factor is recognized by all authorities.

As a second source of polluting materials, all of us should recognize the valid use of river systems as natural depositories for domestic wastes. This use of natural water courses for the reception and disposal of domestic wastes is as necessary and legitimate as is its use for any other purpose, subject to such limitations as would render the streams unfit as sources of public water supplies, after treatment or purification, as would endanger the public health, inhibit the growth of fish and other aquatic life, obstruct navigation, or present recreational use.

Specifically, you have--in the Lehigh River Basin--31 municipalities: 18, with a combined population of only slightly more than 30 thousand, have no sewer system and they are hardly large enough to require such a system; seven municipalities (Fountain Hill, Slatington, Lehigh, East Mauch Chunk, Weatherly, Beaver Meadows, and White Haven), with populations ranging roughly from 1,500 to 7,000 have sewer systems but no treatment plants and in most cases these systems do not collect enough domestic wastes to warrant the construction of sewage treatment plants; six municipalities, including the tri-cities of Bethlehem, Easton and Allentown, have both sewer systems and treatment plants, not all of them designed and operated to accomplish their best possible purposes and not all of them providing the degree of sewage treatment that should be attained, as you already know from orders issued by the State Sanitary Water Board.

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A third source of water pollution, in the Lehigh River Basin, as everywhere is the waste originating from industrial manufacturing processes. Such wastes, in their characteristics and effects, vary as widely as does your diversified industrial pattern. Most of the major industries in the metropolitan center of the Lehigh River Basin are connected with municipal sewer systems. Their effluents thus receive treatment through the cities' facilities.

With this brief and general summary in mind, what would the administration of the terms of the Incodel Pollution Act mean, as applied to the three major sources of water pollution in the Lehigh River Basin?

The 1937 Purity of Waters Act (also called the Anti-Stream Pollution Act) as passed by the legislature and approved by the Governor, is recognized as one of the most mandatory statutes on this subject that exists among the 48 states. This Act, however, specifically exempts from its provisions, acid mine drainage and silt from coal mines until such time as, in the opinion of the Sanitary Water Board, practical means for the removal of polluting properties of such drainage shall become known.

This same Act declares the discharge of sewage or industrial waste or any noxious or deleterious substances into the waters of the Commonwealth to be against public policy and to be a public nuisance. The procedure for enforcing this policy and the penalties provided for violations are explicitly detailed.

The difficulties of administering such a statute which attempts to legislate water pollution out of existence in a heavily populated industrial state of the size of Pennsylvania, and which makes no attempt to classify or reconcile the extremely variable characteristics and uses of the streams of the Commonwealth, among and within themselves, are obvious.

Such laws are almost certain to be unenforceable and disappointing.

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Under the terms of the Incodel Pollution Act--as applicable to the Delaware River Basin--its provisions supersede the 1937 Act where such provisions are inconsistent.

As a result, we submit that the proposed Incodel Pollution Act is less drastic, more reasonable, and more enforceable than the existing law.

It is less drastic because, in its recognition of the fact that no single, standard of sewage and waste treatment is practical for all parts of the Delaware River, based upon the uses to which the stream is and will be put, it makes inoperative, in this watershed, that declaration of legislative policy in the 1937 Act which states that the discharge of any sewage or industrial wastes, into the streams of the Commonwealth, if inimical to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, is against public policy and constitutes a public nuisance.

It is more reasonable, because the provisions of the proposed Act, as explained above, are based upon the results of careful consideration of the actual areas in which they are to apply.

It is more enforceable because it authorizes and directs the Pennsylvania Department of Health, through the State Sanitary Water Board to determine, adopt, and enforce such reasonable modifications, changes, or alterations in the zones or in the standards of water quality in the main stream and its tributaries as may be required by unpredictable circumstances. Such flexibility, under which the requirements may be raised or lowered as the need arises, offers continuing opportunity to reach the goal toward which we are all striving--the restoration and maintenance of such a quality of water in the Delaware River Basin as will reasonably express the best balance of usage, for all purposes.

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Conclusion

Without giving you a categorical answer to all of the questions anticipated, I have tried to illustrate--in the time at my disposal--the provisions, the purposes, the practical considerations, and the possible results of legislative ratification of the Incodel Pollution Act.

We are convinced, after some years of close study, that a water pollution abatement program in the Delaware River Basin, as required under the terms of the legislation recommended by Incodel, would result in a reasonable, practicable, and economically sound effort to achieve results immediately and prospectively fair to all concerned.

We seek your personal interest in, and support of, An Act To Promote Interstate Cooperation For The Conservation And Protection Of Water Resources In The Delaware River Basin, to be introduced during the 1943 session of the Pennsylvania Legislature.

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