

A Tocks Island Regional Council?

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A proposal to the
government officials of the
five-county, tri-state
Tocks Island region for their
consideration and action.

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the five-county, tri-state Tocks Island
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Foreword

On October 13, 1962 the Water Resources Association of the Delaware River Basin (WRA/DRB) and the East Stroudsburg State College sponsored a seminar at the College for the government officials and residents of the Tocks Island region that was entitled "The Facts About Tocks Island." This seminar had two major purposes: (1) to bring the people of the Tocks Island region up-to-date on the status of the Tocks Island dam, reservoir and National Recreation Area; (2) and to begin exploring how the Tocks Island project is likely to affect the lives and jobs and businesses of the residents of the Tocks Island region.

From the standpoint of the local government officials attending the seminar, the major problem they felt they would face as a result of the Tocks Island project would be one of effective communications (1) between themselves so that they could deal with mutual problems and (2) between themselves and the many federal, state and interstate agencies involved in developing the Tocks Island project. To deal with this problem, and the many other problems associated with it, it was suggested at the seminar that the local governments of the Tocks Island region consider creating some kind of regional organization.

In December of 1962 the WRA/DRB asked Dr. William Miller, an attorney and law professor with a distinguished career in the field of interstate legal matters who is now the General Counsel for the Delaware River Basin

Commission, to (1) research the statutes of Pennsylvania, New Jersey and New York dealing with inter-local, inter-state organizations and, (2) on the basis of his research and experience, to suggest what he believed would be the most feasible form for a Tocks' Island regional organization. Dr. Miller submitted his findings and recommendations to the membership of the WRA/DRB on May 16, 1963 in the form of a prepared paper. This paper is what is reprinted herein.

To facilitate thoughtful consideration of — and deliberate action on — Dr. Miller's proposal that the local governments in the Tocks Island region create a Tocks Island regional council, the WRA/DRB is: (1) reprinting Dr. Miller's paper and making it available to the government officials in the region and any one else requesting it; (2) directing its staff to discuss the proposal with government officials and interested persons and groups in the region; and (3) prepared, at the request of government officials in the region, to sponsor a conference in the region at which time action on the proposal could be discussed and, perhaps, taken.

To bring the reader up-to-date on the Tocks Island project as this is written (June, 1963) I would like to make just three other points.

First, there seems little doubt that the present Congress will appropriate \$250,000 to the U. S. Army Corps of Engineers in the fiscal year starting in July of 1963 to begin advanced engineering and design studies on the Tocks Island dam and reservoir. If this is the case, it means that land

acquisition for the project will start about 1967. It also means, however, that the Delaware River Basin Commission and the Corps of Engineers will begin contacting local governments in the region within a matter of months.

Second, it is also likely that this Congress will authorize the creation of the Tocks Island National Recreation Area. Even if this does not occur until next year, it is very likely that (1) land acquisition for the recreation area will begin about 1967 and (2) contacts between the National Park Service and local governments will begin no later than late 1964.

Third, the many agencies that will be involved in developing or otherwise dealing with the National Recreation Area have recently formed an inter-agency committee to coordinate their planning and programming. This committee includes state planning agencies, state highway departments, state recreation agencies and all federal and interstate agencies with any responsibility for the project. It is very likely that this committee would meet frequently with any Tocks Island regional organization that the elected officials of the region should choose to create.

We hope you will read and carefully consider Dr. Miller's proposal since, ultimately, the creation of a Tocks Island regional organization of any kind is up to you, the elected official. If you have any questions about Dr. Miller's proposal, please do not hesitate to contact me or the staff of the WRA/DRB.

Charles R. Bensinger, President, WRA/DRB

A Tocks Island Regional Council

By William Miller
General Counsel
Delaware River Basin Commission

Introduction

It is expected that the Tocks Island project will be completed some time before 1975, but it is none too soon to evaluate its implications in local governmental services and finance for the five county, tri-state area which will be most directly affected—Monroe and Pike Counties in Pennsylvania, Warren and Sussex Counties in New Jersey, and Orange County in New York. Much has been said and written with respect to the concept, extraordinary benefits, and schematic design of the Tocks Island Project. This includes a major dam across the Delaware River about two and one-half miles upstream from Shawnee-on-Delaware, which will be three-fifths of a mile long and rise about 160 feet above the river bed, to elevation 456. The dam would feature flood control, water supply, recreation and hydroelectric power developments. At elevation 428, it would provide a lake (reservoir) of 12,100 acres, stretching some 37 miles from Tocks Island to Port Jervis, with 100 miles of shore line. This will inundate Bushkill and part of Dingman's Ferry in Pennsylvania and Flatbrookville in New Jersey. The National Park Service has projected the expansion of the Tocks Island Project into a national recreation area including some 62,370 acres, with facilities for swimming, boating, camping, hiking, picnicking and fishing. Such attractive facilities would certainly justify the expectation of more than 7,000,000 visitors annually.

The impact of this great project on the immediately adjacent counties is suggested by some simple questions which readily come to mind:

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The impact of this great project on the immediately adjacent counties is suggested by some simple questions which readily come to mind:

1) What will be the effect in employment, trade and land values, on the entire economy of the region, of the program of public land acquisition and construction expenditures of \$122 million over the next ten years?

2) How will the comings and goings of some 7,000,000 people annually, over 100,000 a day on some weekends affect the need for lodging and food service establishments, shops of every description, automobile supply and service businesses, to mention the more obvious trade implications; the design and maintenance of streets and roads, traffic control and police and fire protective services, domestic water supplies and sanitary facilities, and assessed valuations taxable, to note the more apparent interest of local governments?

3) What will be the effect of relocating two or three villages on the economy, the county, and neighboring municipalities?

4) What will be the effect of an estimated additional expenditure by visitors and employees in the Tocks Island region of some \$77 million annually?

5) To what extent will the National Park Service provide municipal-type services in the national recreation area itself?

Whatever the question that may be raised, it is almost self-evident that five separate counties, and some 107 separate municipalities within these counties, distributed among three different states, cannot make independent decisions on these matters if they are to serve either their own interest or the interest of the region as a whole.

The need for some form of organization having a region-wide interest and responsibility was suggested in a monograph entitled "The Facts About Tocks Island," prepared in October, 1962, by the Water Resources Association of the Delaware River Basin. At the request of the Association, this paper has been prepared to explore the problem in greater depth and to suggest ways and means of achieving a suitable solution. It should be added that neither the Delaware River Basin Commission nor its staff has participated in this study, and the observations and conclusions presented here are unrelated to the author's official position with the Commission.

I. The Need for Associative Effort

A first principle for any regional approach to the question is to recognize that organization is but a hollow shell unless it is based upon a recognized need. In local government, particularly, people have fixed patterns of action and reaction which tend to be limited to their own municipal boundaries. Experience everywhere, some of it plainly discouraging, has taught the importance of establishing the fullest possible public appreciation of the geographical scope of any community interest before any organizational effort is undertaken. In a word, the key to successful intermunicipal cooperation is to be found in a strong sense of association in a common destiny among the peoples of the municipalities.

The basis of a community of interest in the Tocks Island area is most readily apparent in three tangible aspects of local government: land use, traffic and transportation. Other services are, of course, involved; but the interdependence of the municipalities and counties is sufficiently apparent in any examination of these three.

Land Use Controls

Planning, zoning, and subdivision controls have become familiar tools of local government. There is ample statutory authority for them to be used to regulate, direct, time and stimulate the various uses of land. Few municipalities have been blessed with either the incentive or the foresight to use these tools early enough to make the most of them. In this sense, the Tocks Island region has an unusual opportunity, that is, to make land use decisions not so much on the speculative base of the future, but rather on the known effects of the water resources development which will do much to mold the influences on land use over the next quarter of a century.

Studies of population trends and of revenue cost relationships resulting from different land uses have already pointed to decisions which must be made by local governments within the region. For example, the Regional Plan Asso-

ciation's projection of development trends for the next 25 years entitled "Spread City" has forecast urbanizing pressures moving toward the Tocks Island region as follows:

"The 6½ million (increase in population) will about double the built-up area of the Region, urbanizing in the next 25 years as much land as we have in the last 300. All the land out to Riverhead, Long Island; Danbury, Connecticut; Lake Hopatcong and Lakewood, New Jersey, will be built up by 1985, according to present trends.

"Recent and projected development follows an entirely new pattern which Regional Plan has called 'spread-city.' It is not a true city because it lacks centers, nor a suburb because it is not a satellite of any city, nor is it truly rural because it is loosely covered with houses and urban facilities.

"In the spread-city decreed by present zoning, people will be living and working too far from each other to use public transportation or to walk to most places they want to go, even to a car-pool. This adds to the spread by increasing the roads and highways needed. It also limits everyone to one transportation mode and increases the time and cost of bringing people together . . .

"Costs of spread-city, especially for transportation, will be much higher than costs of making full use of the older cities and building at higher densities with facilities better related. Though we will be able to afford these extra costs, the increase in local taxes due to spread development and due to sharply increasing numbers in schools and colleges will intensify the pressure on the property tax. Municipalities will be more than ever inclined to indulge in 'fiscal zoning', trying to zone out tax users (families with children) and zone in tax providers (industry). Tax considerations, in short, will play an expanding role in land development decisions, weakening the chance of planning for the best possible use of the land, unless the sources of local government revenues are modified."

What we are now calling the "race for open space" must also affect land use decisions within the Tocks Island region. All three states, New Jersey, New York and Pennsylvania, have important programs to encourage the acquisition

of land or of development rights for public purposes, which may extend beyond the boundaries of the national recreational area. A recent study made for the Rural Advisory Council in New Jersey emphasized that the development of land for residential and industrial use placed a disproportionate tax burden on land used for farming, and that agriculture cannot survive in New Jersey unless both land use and tax policies are geared to retain agricultural uses.

The economic forces which influence land use trends operate on municipalities like the waves at sea. No matter how determined to set its own course, each municipal governing body finds itself bobbing up and down on the economic waves and perhaps back and forth with the tides of public opinion as well. Under our present laws and practices, the final decision as to land use policy is vested in the governing body of each local government, but its powers end at its own boundaries. All too often it is under pressure from its own residents to regulate land use more with an eye to the immediate effect on net tax revenues over costs, rather than to the ultimate development of the community on a sound economic base.

In this kind of environment, each separate municipal decision could degenerate into a tug of war with neighboring municipalities seeking to attract so-called "desirable" land uses, and to repel the "undesirable" ones. While planners are not at all agreed on this classification, or on what uses fit into them, governing bodies seem to equate commercial or industrial use with desirable use and housing development with undesirable use. This simple approach can be quite confusing when it becomes apparent that the customers are free to shop around, that the local residents are more anxious to sell their land at the best possible price than to preserve the integrity of the zoning plan, or that many, many years may pass before commerce or industry will show any interest in an area hopefully laid out for them on a zoning map.

Beyond question, if land use controls are to play a significant part in the development of the individual municipalities, they must be conceived and planned in relation to the internal and external influences on the region as a whole. The New Jersey courts have already strongly approved the concept of regionalism in applying land use controls, and it is to be expected that New York and Pennsylvania

courts would do likewise; but before any one municipality can plan in relation to the factors and trends of the region, there must be a regional plan.

Transportation

The movement of people and goods to and from nearby metropolitan areas will be one of the most obvious concerns in government in dealing with the Tocks Island region. It is to be expected that decisions by the National Park Service and by state and federal highway agencies will determine the focus and location of the transportation by bus and private automobile. The area is already served by major highways in being or in the planning stage, but improvements, realignment, and additions will undoubtedly be needed. One of the determining factors in the development of a master plan for any municipality, however, is the highway system which provides the arteries of commerce and transportation. It is not so much the roads themselves as their alignment, their access points, lighting, speed controls, and even landscaping, which are of major concern to the municipalities in the region. For each municipality to attempt to deal with these problems itself could hardly be in its own best interest. Here again, the need for some form of regional planning by a regional association is apparent.

Traffic Control

With the coming of the motor age, every modern municipality is well aware of the importance of a sound traffic control program. The land use and transportation patterns of the area determine the nature and volume of motor vehicle traffic. Local streets and roads carry the traffic directed to them by major transportation arteries. The origin and destination of motor vehicle travel also reflect the influence of land use regulations on the journey to work, the development of commercial centers and the location of public facilities. All the decisions that each municipality must make relating to street design, improvement, traffic control and even policing, can be better made many years in advance of the need, and yet the need is largely outside the control of the individual municipality. It is the movements and activities of the population which must be gauged and this can be done effectively only in a region-wide frame of reference.

II. Form Should Follow Function

The function of a regional organization is dictated by the need; that is, to associate the existing local governments, which already have sufficient powers, to enable them to use their powers toward a common purpose.

Two broad alternatives are apparent: Either a new regional form of local government, formally organized, or an informal association of existing local governments. Both types have been tried in various metropolitan areas, and there is some opinion among qualified observers that nothing short of a new regional government having regional legislative power, would be satisfactory to develop responsible leadership for the entire region. I would suggest that this theory is applicable primarily to metropolitan areas, where it was developed, and where the people do not have a true sense of association extending beyond their own municipal boundaries.

In the Tocks Island region, we have relatively small and somewhat self-conscious counties and municipalities. While the loyalties in this area are deep rooted in the history of each separate municipality, the community of interest which extends beyond municipal boundaries is much more apparent and more readily accepted, especially in the face of the mounting external pressures from spread-city, the national recreation area, and the regional meetings conducted by the U. S. Army Corps of Engineers.

I would submit that the guiding principle of inter-governmental organization in the region should be to use existing political jurisdictions, and maintain the existing political distribution of power, with provision through the new organization to establish a consensus of political leadership. This would mean a loose federation of the existing counties and municipalities, not legally bound to abide by any external decisions, but strongly motivated to follow a common policy.

The question may well be raised, what would be the effect of such an organization in relation to the Delaware River Basin Commission and the National Park Service, to mention only the more obvious agencies having a concern within the region. In brief, the Basin Commission and

the Park Service will create and direct the forces of development which will influence the responsibilities of county and municipal government; a regional organization of the counties and municipalities will prepare them to deal with the impact of those forces on matters which are presently of county and municipal concern, and will remain their responsibility after Tocks Island is in operation.

The Delaware River Basin Commission is charged with the development of a comprehensive plan to govern the water resources of the Basin. It has large responsibilities to assure that the use of those water resources is consistent with the comprehensive plan. The Commission is not only a planning agency but also a regulatory body, and may also be an instrument to construct and operate water resources projects. It may have important relationships with counties and municipalities; it is certainly concerned with the effect of its own comprehensive plan upon problems of local government and would hope to take into consideration all county and municipal planning when it makes its own decisions with respect to the comprehensive plan for the water resources of the basin. Since the Commission operates under a federal-interstate compact its comprehensive plan for the basin is binding upon all units of government within the basin, but this does not lessen the importance of the effect of local governmental decisions relating to matters of local policy and administration. In many ways, an effective regional organization could make communication and cooperation between the basin commission and the local governments of the region so much more efficient and consistent.

The National Park Service, which is also subject to the provisions of the comprehensive plan, would be charged under pending legislation with the preparation of a land and water use management plan for the national recreation area. Under the pending legislation, this plan would be required to include specific provision for public outdoor recreation benefits as a first priority. S. 606. (Sen. Clark, Scott, Case, Wilkins and Javits) and H.R. 2441 (Congressman Walter) would authorize land acquisition by the Secretary of the Army for transfer to the Secretary of the Interior. Section 5 of the bill provides that "The Secretary of the Interior, subject to the provisions of Section 4 hereof, shall adopt and implement, and may from time

to time revise, a land and water use management plan, which shall include specific provision for, in order of priority —

"1) Public outdoor recreation benefits;

"2) Preservation of scenic, scientific, and historic features contributing to public enjoyment;

"3) Such utilization of natural resources as in the judgment of the Secretary of the Interior is consistent with, and does not significantly impair, public recreation and protection of scenic, scientific, and historic features contributing to public enjoyment."

Many questions of local preference and community liaison are bound to develop in the course of the evolution of a sound land and water use management plan. *An effective regional organization could be of great value both to its members and to the National Park Service, in maintaining a sense of common purpose and proper liaison as required.*

III. Legal, Administrative and Financial Provisions

The proposal is to establish a Tocks Island Regional Council—or at least to place this idea before the responsible elected officials of the region. To this end, a summary of present enabling legislation may be helpful.

Fortunately the states of New Jersey, New York and Pennsylvania have foreseen the need for legally constituted regional planning bodies. There is comparable enabling legislation in each state which permits the creation of such bodies. This means that the governments involved need not begin from scratch; they may make arrangements immediately which will facilitate the planned development of the area.

The three statutes are agreed upon three major points:

1) The need for regional planning agencies;

2) Local determination of the details of intergovernmental agreements; and

3) The advisory nature of regional planning bodies.

Although the language is somewhat different, each statute indicates that the effective develop-

ment of the region will promote the health, safety, morals and general welfare of the jurisdictions involved. Each statute specifically recognizes that regions may extend beyond state lines, and governmental units in each state are empowered to enter cooperative planning arrangements with those of a neighboring state.

Secondly, most of the significant details of the planning arrangement are to be determined by the participating units. For example, the participants themselves decide what constitutes "the region." In most cases, of course, "the region" is the area included in the boundaries of the member governments. The method of selecting representatives to the regional planning agency and their terms, what the agency itself shall be empowered to do, how costs shall be apportioned, and other vital considerations are left to negotiation, subject, of course, to general state legislation.

Finally, and most importantly, these intergovernmental planning organizations are seen as advisory only. While the planning body may develop plans, it may not enforce them or carry them out. It can only assist local units and urge that their own development plans take cognizance of the larger plans for the entire region. The entirely advisory nature of the regional planning commission is further indicated by the fact that each statute calls for the members of the commission to be unpaid, although they may be reimbursed for travel and related expenses.

The New York statute prohibits granting to such an intergovernmental agency any powers which the participating local units, as such, do not themselves already possess. Thus the present statutes call for various units of government to cooperate voluntarily so that adjoining and related communities may know what others are doing within their own particular jurisdiction with the powers they all hold in common.

In the same vein, it is significant that only the Pennsylvania statute calls for the Regional Planning Commission to have a staff of its own. The New York legislation clearly anticipates that one governmental unit will provide planning services to another for a charge; it does not specifically empower the intergovernmental agency to retain its own staff. The New Jersey statute, while not as explicit as that of Pennsylvania, does indicate that a regional advisory council may have a staff of its own.

Despite the slight differences in semantics, it

is clear that under existing statutes the local governments in the Tocks Island region could create an advisory intergovernmental and interstate planning agency and could provide this agency with staff support. It would seem appropriate for some "third party", such as the Water Resources Association, to provide the impetus among the jurisdictions directly involved for drawing up an agreement of the type envisaged by the enabling statutes. An important part of the agreement would be adequate provision for a small but strong planning staff. It may well be that federal or state planning funds could be made available under existing law to finance a large part of the cost.

Structure

The structure of the council can be an important bridge between planning and action. It is currently quite popular in planning circles to disparage the possibilities of advisory planning bodies, primarily because they are not part of any regional government which can effectuate the desired plans. In order to minimize this difficulty, the elected officials themselves should be responsible for the government, such as it is, of the regional organization. To this end, it is proposed that the council consist of one representative from each of the 107 municipalities and five counties in the region, to be designated by their respective governing bodies, and that these 112 delegates meet annually for the purpose, among others, of nominating and electing an executive committee consisting of two of the delegates from each county.

This proposal raises some difficulty under the Pennsylvania statute, which requires a majority of the members of the regional agency to hold no other elected or appointed office, other than membership on a local planning board. Unless the Pennsylvania statute were amended, the governing bodies in that state would be obliged to select their delegate from among the members of local planning boards, although it would be preferable to designate a locally elected official.

Powers and Duties

The functions, powers and duties of the regional council are indicated by the need. It would:

1) Provide facilities for planning studies and prepare or facilitate the preparation of a master plan for the region as to matters of common municipal interests;

2) Sponsor research, propose programs, and review solutions with respect to problems which cross municipal or county boundaries;

3) Provide a clearing house for coordination of information and local views with respect to the Tocks Island Project;

4) Formulate and suggest intergovernmental contracts and arrangements to meet the needs of the region;

5) Serve as a liaison between the counties and municipalities of the region and the National Park Service and the Delaware River Basin Commission.

Operation and Finance

The regional agency would function annually through its general conference and during the year through its executive committee. The conference would not only elect the executive committee but also delegate such powers as may be agreed upon to the committee. The executive committee being ex officio will be effective only to the extent that it is furnished with an adequate staff. The staff can be small, so long as it is professionally qualified. It may be independent or may be detailed from one of the participating members. The organization itself would decide what it wishes to spend, how to apportion the cost among its members, and what applications may be made for federal and state planning grants.

This proposal may hardly claim to be the only possible mechanism for promoting regional planning in the area of the Tocks Island project, but it does have certain definite attributes. First, it is in keeping with the statutory powers presently available within the three states. Second, it is administratively feasible, particularly if the power to employ a professional staff is developed. Third, it is capable of producing representative and coordinated regional planning as a guide to effective local policy leadership. Fourth, it is capable of rapid implementation, and time is fleeting.

For further copies of this proposal — or additional information on the Tocks Island project — please write or phone:

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