DELAWARE RIVER BASIN COMPACT

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

Serial No. 2

Printed for the use of the Committee on the Judiciary

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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.

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RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Senate and House of Representatives of Delaware, New Jersey, 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 River Basin as a natural asset 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 basin-wide 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 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 73d. Cong., 2nd Sess.) officially recognized the need for an interstate agency and the need for legislation to 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 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 (IVODELB), 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, practicable and urgent and has recommended that an interstate compact be entered into with federal participation; 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 United States 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 projected to reach 30,000,000 by 1960 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 comprehensive, and often is required ten 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 available 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 and agree to substitute this compact therefor; 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 Act, as follows:

ARTICLE 1

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 concurrent 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 indebtedness, 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 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 and private facilities, including 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 use of any of them.

(f) "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 and identified by the commission, or any separate facility undertaken or to be undertaken within any 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 shall be considered as a separate entity for purposes of evaluation.

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

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.
Section 2.1 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 within 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 public bodies 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. The commission may, in its discretion, undertake the commission during such period; and
(c) An annual current expense budget, and an annual capital budget consistent with the 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 equitable apportionment, to allocate the waters of the basin to and among the respective political divisions of the basin contained in this compact and to and among their respective political units. The commission may, in its discretion, undertake the commission during such period; and
(c) An annual current expense budget, and an annual capital budget consistent with the 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 respective political divisions of the basin contained in this compact and to and among their respective political units. The commission may, in its discretion, undertake the commission during such period; and
(c) An annual current expense budget, and an annual capital budget consistent with the resources program covering the commission's projects and facilities for the budget period.
(b) No allocation of waters hereafter made pursuant to this section shall constitute a prior appropriation of the waters of the basin and confer any superiority of right in respect to the use of those waters, nor shall 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 or any adjudication and determination thereof. No other action of the commission pursuant to Section 3.3 of this compact 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. 95 (1954) which would increase or decrease the releases 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 necessary 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. 95 (1954). To this end, and without limitation thereto, the commission shall not:

(a) Acquire, construct or operate any project or facility or make 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 platting, 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 withdrawals, 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, 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 resources, industrial water technology, ground water movement, relation between water price and water demand, and general hydrological conditions;

(d) 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 the policies of this compact and the receipt 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;

(e) Conduct such special ground water investigations, tests, and operations and disseminate such data from the services thereof 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 the policies of this compact and the receipt 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) Acquire any and all properties or rights to such properties as the commission may deem necessary for the benefit or development of the water resources of the basin.

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 state or federal 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 an approved project, or may disapprove an approved project whenever it finds and determines that the project would substantially impair or conflict with such plan. The commission shall provide for regulation of the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section.

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, and 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, on behalf of any other party or parties to this compact.

(c) Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan, shall be determined by the commission; such plans and specifications may establish, in the discretion of the commission, the manner in which any such project or facility may be constructed and operated.

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

3.10 Additional Powers. 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 of powers and facilities, 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 other sites as may be found 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 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 so such assessment shall exceed the actual benefit to any water user. Such assessments shall follow the procedures provided herein 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 coordinate 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
POULATION 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 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.

5.3 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 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 plan and maintain the resources 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 uses, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to discharges of solids or sludge deposits and adaptable to such other uses as may be provided by the comprehensive plan.

5.4 Enforcement. After investigating 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 the 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. Such order or orders may prescribe the date, including a reasonable time for the construction of any necessary works, or on 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 states shall have jurisdiction to control the pollution of waters within its jurisdiction.

5.5 Further Jurisdiction. Nothing in this compact shall be construed to nullify, impair or restrict the power 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 the power to construct, operate, maintain and control 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, amend and repeal recommended standards, in the manner provided by this section, relating to the nature and extent of land in areas subject to flood damage by 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 shall cause to be made a study and determine 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 damage, and shall establish standards for the design of structures, safeguards, and public health, safety and property. Prior to the adoption of any standards delineating such areas 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 to the administration of the use of any local land use ordinances or regulations giving effect to such standards.
6.2 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 constriction that will reduce the ability of the river channel to convey flood water. Any such action shall be in accord with the standards adopted and promulgated pursuant to Section 6.2.

6.3 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 water flow 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 facilities and projects 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 as provided 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 as provided 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 cooperate 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 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 contracts or 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 hearings 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, industrial uses or 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 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 thereunder.

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 water and to use the protected area or area in areas delineated by these articles so as not to 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 Sections 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 volumes of water 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 either in the event of withdrawal from the basin 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 nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan;
(c) Each state agency or 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 Resolved 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 Uniform and Consistent Procedures. For the purposes of implementing and carrying out the provisions of this compact, the commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocation 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 the signatory parties, public bodies, groups and private enterprise; and for the supervision of their performance;
(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) Determining the basis and apportioning amounts (1) of reimbursable revenue to be paid to signatory parties or their political subdivisions, and (2) of payments in lieu of taxes to any of them.
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, rate, denomination, terms, conditions, and other provisions of the bonds 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 with respect 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 replacement of the facilities and the amounts which may be expended therefor, 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; the modification of the provisions of the indenture and of the bonds. Proceeds, the body of the bonds and their appurtenant coupons. Each tender 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 the date on the face thereof of the provisions thereof authorizing the body of the bonds and their appurtenant coupons. Each tender 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.

12.8 Tax Exemption. All bonds issued by the commission under the provisions of this compact, and the interest thereon, shall be free from all taxes and from all taxation by or under authority of any of the signatory states, 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 semi-annually or 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 been officers on the date of the delivery of the bonds or 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, and shall insert in such notice provisions of such nature and form as 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 advertisement for sale of such bonds.

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 states. 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 states.

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 or other agreement shall be effective as from 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 Revenue. Bond redemption and sinking fund 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 or resolution, no other trust or fund for the security and payment of such bonds shall be created therefrom for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes.

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 on the commission or its officers, directors, employees or agents 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 or disbursement of any revenues or interest thereon; (b) by action or suit in a court of competent jurisdiction of any state in which the commission is authorized to issue bonds; (c) by 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.
(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 the approval of their respective signatory parties, and in accordance with the regulations 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 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 such 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 undertake by the commission or any other governmental unit or public agency, organization or 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 existing and proposed 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 consistent with a statement of the estimated costs 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, for any project, together with 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 the agreements for cost sharing published for each project;
2) transmit certified copies of the current expense 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 an unanimous vote of the commission.

(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 signatory parties. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may reallocate 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) 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 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, operating, planning, specifications and specifications to design, 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 all appurtenant property 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) establish and abolish offices, positions and grades 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 and deeds of conveyance and other documents to carry out the powers and duties 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 procedures for any purpose, including the adoption of such rules and regulations, and for any project. Following the use, maintenance and administration of projects and facilities it may own or operate, any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with internal management of the commission, adopted after the date hereof 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 by the affected taxing districts to which said property shall have been transferred or continued, such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdictions 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 expense budgets, the letting of any contract, and the publication of any 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 for distribution of notice 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. Such officers or their successors 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 addition to 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 made with due regard to the merit and fitness of the persons employed.

(c) The commission shall be subject to the provisions of any agreement arising out of the issuance of bonds by the commission.

14.12 Reports. The commission shall make and publish an annual report of its operations and income and expense budgets, the description and utilization 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 for 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.

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, even if the loss is not in fact sustained, such insurance 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) An annual independent 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. 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, files and accounts and all other papers, things or property of the respective parties, and all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the commission and they shall be afforded full facilities for verifying transactions with the balances or statements 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 after a hearing before the commission which 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 and reports and face 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 to 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 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, whether 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.

14.15 Conveyance of Lands and Relocation of Public Facilities. (a) The signatory parties, 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 or on behalf of the commission's recovery in the event of 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.

14.16 Rights of Way. Permission is hereby granted to the commission to locate, construct, use and operate 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 any provision of this compact or any rule, or attempts or conspires to violate any provision of this compact 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 states.

14.18 Tort Liability. The commission shall be responsible for claims arising out of the negligent acts or omissions of 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 imposed by the court of competent jurisdiction, and in a summary proceeding where available in the state in which the offense is committed: provided that in the absence of parties within which the offense is committed: provided that the existence of such parties is established, association or corporation shall be exposed to a penalty of not less than $50 nor more than $1,000 for each such offense.

14.19 Effect on Federal Law. Amendments and supplements to this compact shall become effective on or after the date of the enactment of this act by the Congress of the United States and of any other signatory party or political subdivision thereof according to 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 of this act into law by the Congress and legislatures, respectively, of the signatory parties, the President of the United States and the respective Governors of the respective states, to which this act has been transmitted and authorized by the Congress or its standing committees to receive the disclosure and furnishing of such documents and data by the Delaware River Basin Compact Commission as is deemed appropriate by the Congress or such committees.

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 documents and data by the Delaware River Basin Compact Commission as is deemed appropriate by the Congress or such committees.

15.2 Repeller. 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, 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 but simply a reaffirmation of the constitutional 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. 749), 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 BASIN COMPACT

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,

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, 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 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, 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 compact agreement, 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 terms, except that its agreement is subject to the provision that:

The Commission which is to exercise this broad sweep of powers is to consist of five members, one appointed by each 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 exercise of the power to regulate commerce, under Article I, Section VIII, of the Constitution.

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 expressly 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 on the Government of Pennsylvania to the extent of fiscal obligations undertaken by the signatory States. The Delaware River Basin compact in relation to such fields as navigation or the regulation of interstate commerce.
The U.S. Supreme Court has uniformly upheld contractual arrangements in the nature of compacts between the Federal Government and one or more States for Federal power to regulate beyond doubt, 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.

The 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 consistent with the letter and spirit of the Constitution, are constitutional.

This 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, 328 U.S. 569 (1946). 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 admiralty power, admiralty power, and the power to provide for common defense. Ashworn v. Tennessee Valley Authority, 297 U.S. 288 (1936); Oklahoma ex rel Phillips v. Atkinson Co., 315 U.S. 506 (1941). The Supreme Court, in United States v. Gerlach Live Stock Co., 339 U.S. 725, 735 (1950), stated: ["The power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other important improvements, is now as clear and ample as its power to accomplish the same result, indirectly through resort to the interpretation of the power over navigation.

Congress's specific right to develop and sell hydroelectric power was recognized in the Ashworn case, as well as in United States ex rel. Chapman v. Federal Power Corp., 265 U.S. 135 (1924), and in United States v. Okla. Gas Co., 226 U.S. 53 (1912). In Arizona v. California, 283 U.S. 423, 456 (1931), Mr. Justice Brandeis wrote: ["The erection and maintenance of such dams and reservoirs are clearly within the power vested upon Congress. And the fact that purposes other than navigation will also be served could not impair 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 still standing alone. The power of Congress over flood control on navigable streams has been explicitly recognized as extending to tributaries and tributaries, and to include the power to make a comprehensive plan, the entire basin of the stream (Oklahoma ex rel. Phillips v. Atkinson Co., 315 U.S. 506 (1941)).

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

1. The Federal Government 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. Federal control 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 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)."

The power of Congress to provide that persons convicted of crimes against the United States in one State may be imprisoned in another, Congress may not be exercised in any place within the jurisdiction of the United States, and that all persons imprisoned for offenses 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 accept the final determination of the State courts. 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 held that conditions imposed by the States, may be included in a State compact as a proper means of the exercise of the power.
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 was whether, and to what extent,ample is made of 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, writing for a unanimous Court, remarked that precipitation in interstate streams might, in turn, depend on the compact legislation, 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 continued:

"In such a forum as ours, so tardy 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 more satisfactorily adjusted by our dual system of Federal and State judiciary, by conference and mutual compact, than by litigation among 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 suggestions have 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 contained 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; see 3).

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 conduct of regional building and development projects is already a contractual condition of the construction of the Delaware River Basin compact as a problem in the Delaware River Basin in New York v. New York (253 U.S. 336 (1911), decree modified 347 U.S. 995 (1954))). The case involved an attempt by New Jersey to enter 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 power of the whole of the river. But clearly the exercise of such a power to the destruction of the interests 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 states which might be directly affected by the unaltered 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 devotes a good deal of it, 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 States, as in the Erie railroad case (252 U.S. 273, 278 (1919)), and in Minnesota v. Wisconsin (325 U.S. 178 (1945)), both of which involved border disputes. In Hinderlider v. La Plata River & Cherry Creek Ditch Co. (254 U.S. 62, 104-106 (1920)), the Court again spoke approvingly of the use of the interstate compact device in a case involving the apportionment of water resources.
DELAWARE RIVER BASIN COMPACT

HISTORY—Federal-State association to achieve interrelated goals may be seen in a number of instance, of which the Ohio River Valley caution referred to in connection with Dyer v. Sims, supra, is only one example. In the upper basin of 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 has met only once.


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 River for purposes of navigation, and * * * to restrict the authority of the United States to construct irrigation and to appropriate water for irrigation purposes in the basin.” 38 Congressional Record 2286 (1942). But see, Pennsylvania v. Wheeling and Belmont Bridge Co., 13 How. 421, 433 (1855) infra, p. 29.

Even a casual perusal of the titles 16 and 32 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, e.g., agencies to carry out national policies.

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 Federal and State authority. Cf. evolution of 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 laws in an area in which Federal and State authority exist. See, e.g., McCullough 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 R. R. Co. v. Ryan, 293 U.S. 388, 430 (1935); see also Schecter Poultry Corp. v. United States, 295 U.S. 465, 529–530 (1935).

The fact that four out of the five members of Delaware 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. 7 U.S.C. 3, 530 (1935); see also Schecter Poultry Corp. v. United States, 295 U.S. 465, 529–530 (1935).

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States v. Bank of the Metropolis (15 Pet. 377, 388), 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 (Green v. Biddle (8 Wheat. 1 (1823)); Farnsworth 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, 596 (1852)); Ott v. Kittzmeiler (259 U.S. 290 (1922)); with which compare, as to the location of the said contracts, Home Building and Loan Association v. Blaisdell (290 U.S. 398 (1934)). No similar explicit constitutional restraint rests upon the Federal Government. Nevertheless, the Supreme Court has strongly indicated that the Federal Government is, like a State, obliged to respect its own undertakings. In Lynch v.zen (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 each 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 an unanimous Court, indicated that "Rights against the United States arising out 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 is in some other wise unconstitutional." 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 same fineness and the same weight and fineness. The bond, 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 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 state that a sovereign power is capable of entering into obligations which remain "binding on the conscience of the sovereign" (at p. 364) and went so far as to state that the attempt to override the obligation of the Government bonds was unconstitutional, and hence unenforceable. Thus, is the exercise of 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 to have impliedly and by contracts involving some limitations on their fiscal powers (Fletcher v. Peck & Orlando (1810); New Jersey v. Wilson, 7 Cranch 104 (1812); Aigue Branch of Bank of Ohio v. Knoop, 16 How. 809 (1854) ; Von Hoffman v. City of Quincy, 4 Wall. 350 (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, 91 U.S. 641 (1876); Boston Beer Co. v. Massachusetts, 97 U.S. 25 (1876)); Northwestern Fertilizing Co. v. Hyde Park, 97 U.S. 650 (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 Valley Power Co., 294 U.S. 472 (1924); West River Bridge Co. v. Diez, 6 How. 507 (1848); Pennsylvania Hospital v. Philadelphia, 245 U.S. 15 (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 over 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 great function of a Federal agency is the very need 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,
Betty Professor of Law, Columbia Law School,
FRANK P. GRAN,
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 writer 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 directly 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."
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 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 5 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 5 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 for homes, 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 States 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. Menzer. 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 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 borderer 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?
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, mandates 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 requires 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 are 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 vested 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 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. 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 who is 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. Glass. 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 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 withdraw 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 any 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 inconsistent with 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 Congress 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 questions as those he mentions, 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 think 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 importance 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
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. 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.

(Statements follow.)

Mr. Walter. Well, we are indebted to you for a very fine statement. Are there any 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.

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 the beneficial effects 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 Company, a subsidiary of General Public Utilities Corporation. Last year we paid the company $3.5 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 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 capacity at Tocks Island. Tocks Island is 20 miles from our system. Its power should be 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 Company 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 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 doctines basic in Federal policy governing the development and marketing of Federal hydroelectric power. Time and again, they are necessary to prevent monopolization of Federal power 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.

We have a short prepared statement that I ask be included in the record, and we be allowed to highlight them orally.

(Statements follow.)
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 will 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 on 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 power plants, 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 of them at the lowest possible rates consistent with sound business principles. Preference in the granting of 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:)


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 102 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. MANGERON,
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.

Mr. Walter. You are asking for an advantage for the cooperative.

Mr. Robinson. Correct.

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?

Mr. Robinson. Because, sir, they are small distribution systems.

Mr. Walter. Why wouldn't they be in the same position?

Mr. Robinson. Mr. Walter. May I ask a question, Mr. Chairman?

Mr. Robinson. 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. 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.
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 it 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?

Mr. Brink. Thank you very much, Mr. Brink.

Mr. Walter. 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. Chief. No questions.

Mr. Poff. None.

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 RIVER 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 conception 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 projects 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 it is legally possible, unless the Federal or any other Federal law 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 regulatory 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 and 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 26 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 sovereign-ties 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 BENINGER, PRESIDENT, WATER RESOURCES ASSOCIATION OF THE DELAWARE RIVER BASIN

Mr. Beninger. Mr. Chairman, gentlemen, I am Charles Beninger, 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. Beninger. Yes, sir.

Mr. Walter. Have you any questions?

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

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

Mr. Pooff. 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. Beninger. That is my understanding; yes.

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

Mr. Beninger. 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.
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 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. Meanwhile if any Government reports come in they will be made a part of this hearing.

So we will stand in recess.
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 beyond 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, 1965)

**Executive Office of the President**

**Bureau of the Budget**

**Washington, D.C.**

**Guide to Federal Participation in Interstate Compact Negotiations**

**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 streams. 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 stage 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 are considered in the negotiations. As the President's representative on the commission, he should be identified with any agency, program, 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 compact 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.
   5. Department of the Interior.
   6. Department of Justice.
   7. Department of Labor.

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 beyond as his line of responsibility is concerned.

3. Technical staff from the above agencies can be detailed to the Federal representative on specific assignments for reasonable periods of time.

4. 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 are a fact of life and 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, ... must 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 resource problems and possibilities or find the funds that in many cases are expensive"

(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 and companies 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 implies 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 rivalry 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 1956).

(4) "The committee recommends:

(a) That the Federal Government and the States should be on a partnership basis between the Delaware River 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, Sept. 21, 1955).

(6) "The greatest single weakness in the Federal Government's activities in the field of water resource development is the lack of cooperation and coordination with the Federal Government 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 President's [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 irrigate land. It is a source of water for drinking, chemical processing, and food processing; for municipal and industrial withdrawal has been traditionally a State and local responsibility, the role of these levels of government in the Delaware is proportionally more significant than for other rivers.

A consistent source of 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, ground water difficulties, some hydropower potential, large recreational possibilities, and other facets of the river where 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 for a timely and coordinated agencies 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 attempts to establish a more adequate Federal resource management and development for the natural unit of a river basin which is presently in 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 policy is reserved to the participating governments through coordination 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 programs related to the water resources in the Delaware that 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 development with the plan.
(d) The location of these executive functions at a single place in the basin to be served.
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:

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<tr>
<th>Date</th>
<th>Senate Public Works Committee resolution</th>
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<tr>
<td>Apr. 13, 1950</td>
<td>Do...........................................</td>
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<tr>
<td>Sept. 14, 1955</td>
<td>Do...........................................</td>
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<tr>
<td>Feb. 20, 1966</td>
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The Army gets a lump sum from which they spend the money appropriated in Public Works Appropriations Acts. They are:

Fiscal year              |      |
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<td>1960</td>
<td>Public Law 86-254.</td>
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<td>1959</td>
<td>Public Law 85-883.</td>
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<td>1957</td>
<td>Public Law 641, 84th Cong.</td>
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<td>1958</td>
<td>Public Law 163, 84th Cong.</td>
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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 in 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.

(Noté.—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.


The Delaware River Basin continuing 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's 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, Commissioners Harold D. Wilcox; New Jersey, Commissioners Salvatore A. Buttenuto; Pennsylvania, Commissioner Arthur C. Ford; Philadelphia, William L. Rasky, 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. It will take the place of the Delaware River Basin Commission, 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 given 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 for review of decisions 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 working in some phase of public activity with effects on 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 agencies are known as the Inter-League Council on 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 States and local governments in the four basin leagues, said that they would each submit enabling legislation adopting the compact.

The national board files this statement for the League of Women Voters of the United States to report to the Inter-League Council on the Delaware River Basin, which represents all the States and local governments in the four basin leagues, and in reaching the conclusion that this compact offers the Delaware Basin the opportunity to obtain the much-needed coordination—totally with local participation.

The League of Women Voters of the United States believes:

(1) Overall long-range planning and development of water resources require—

(a) Better coordination and organization at the Federal level.

(b) Elimination of inconsistencies and conflicts in basic policy among Federal agencies.

(c) Federal procedures which provide the Executive and Congress with adequate data and a framework within which alternatives may be weighed and intelligent decisions made.

(d) 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 in conflict with the national interest.
DELARWEE RIVER BASIN COMPACT

(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 the government 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 mechanisms 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 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 governmental and private users which benefit from water resource development should share the cost in relation to benefits received and ability to pay. The league also 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 1965 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


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 the 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


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 13, 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. Schauer,
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)).
GOVERNING BODY

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)).

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 agency may renew 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 COMMISSION

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).

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(a)).

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. 22.5; 12.2; 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 incorporation (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.)