

## **River Basin Commissions: An Alternative to Interstate Water Wars**

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Much public attention has recently been focused on water supply-related tensions between Georgia, Alabama, and Florida during the historic drought now gripping the Southeast.

I believe the experience of the Delaware River Basin, which drains portions of Delaware, New Jersey, New York, and Pennsylvania, clearly demonstrates a much better way to address interstate water issues before they reach a crisis. However, this has not always been the case.

Prior to the 1960s, the Delaware Valley was an arena of interstate conflict over water rights. Plans by New York City (NYC) to expand its reservoir system by exporting water out of the basin to the nation's largest city met with opposition among the three downstream states during the first half of the twentieth century. Efforts to resolve that interstate water dispute through discussions and negotiations were unsuccessful, so the states sued each other. The U.S. Supreme Court issued a 1954 decree in the case of New Jersey v. New York that established NYC's right to divert water from its three Delaware Basin reservoirs along with the right of the three lower basin states to compensating releases from those water supply reservoirs sufficient to maintain a minimum flow target about 80 miles downstream from where the main stem river begins.

When the Supreme Court settled that interstate conflict over 50 years ago, it did not guarantee a final resolution. To the contrary, the decree invited each of the parties – NYC and the four basin states – to resort to further litigation if circumstances changed. Instead of taking the litigious route, the four states and federal government in 1961 created the Delaware River Basin Commission (DRBC) to manage the shared waters without regard to political boundaries. This marked the first time that the federal government and a group of states joined together as

equal partners in a river basin planning, development, and regulatory agency. Its five members include a federal representative selected by the president and the four basin state governors who directly, or through their appointed alternates, work together to foster and sustain a climate of federal and state cooperation.

The compact creating the DRBC does not interfere with NYC's water allocation rights or the downstream states guaranteed minimum water flows under the decree, but it couples these guarantees with tremendous flexibility for the commission to address changing needs. The DRBC was given broad authority to plan, regulate and coordinate management of the basin's waters, including the authority to modify the terms of the 1954 decree upon unanimous consent of the five decree parties.

An early use of this adaptive management approach was demonstrated after the multi-year drought of the 1960s, when it was realized that there was not enough water to meet all of the decree's requirements. Instead of going back to the court, the DRBC undertook a series of "Good Faith Negotiations" to address drought releases. The result was an agreement in the early 1980s to ratchet down water diversions to NYC and downstream releases when reservoir storage declines, essentially "equalizing the hurt." In addition, another minimum flow target was established at the head of tide to prevent chloride concentrations from negatively impacting water supply intakes for Philadelphia and other estuary communities. This agreement, along with an ambitious water conservation program, has carried the basin through multiple droughts and conserved billions of gallons of regional storage without the DRBC imposing mandatory water restrictions on industries and power generators.

Instream flow needs have presented the DRBC with another reason to review the original decree. Ecological and recreational issues unforeseen half a century ago are now a vital

economic and social concern. Also, as is the case in the Southeast, federal law requires that river flows be managed to protect endangered species, like the dwarf wedgemussel found in the upper Delaware. Most recently, three serious floods between September 2004 and June 2006 have added yet another important management issue for consideration: the use of water supply reservoirs for flood mitigation.

Accordingly, the decree parties and DRBC have been engaged in a complex, collaborative effort to balance the multiple, competing uses of NYC's water supply reservoirs while recognizing the rights established by the 1954 decree. That effort has resulted in a "Flexible Flow Management Program" unanimously agreed to by the decree parties in September 2007 and now the focus of a DRBC public rulemaking process which would allow for commission implementation.

The DRBC continually develops and assimilates new information and participants; offers leadership to build knowledge and consensus; and seeks creative, win-win solutions to water resource challenges. Indeed, its use of science, adaptation, and collaboration has realized accomplishments that a static, 50 year-old court decree could not achieve.

River basin commissions like the DRBC are a sound and proven alternative to costly water wars. Our national water policies need to recognize their value as effective tools to address the many difficult water resource management issues facing the U.S.

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