

The DRBC: Managing Interstate Water Conflicts Through Sound Science, Adaptation, and Collaboration

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Can New York City's Delaware River Basin reservoirs, which provide over half of its water supply, be managed in a way that protects river flows to Pennsylvania, New Jersey and Delaware, nurtures a world-class trout fishery created by the reservoirs and important to the economy of Upstate New York, and enhances the habitat of an endangered species found in the upper Delaware? The Delaware River Basin Commission ("DRBC") is dedicated to helping the city and the four states bordering the river find a way. The DRBC's forty years of progress working with numerous stakeholders to address the economic, environmental, and recreational uses of the river helps explain why eastern river systems are more effective than those in the west at balancing competing water uses without litigation. The DRBC's approach emphasizes sound science, adaptive management and interjurisdictional cooperation.

When the U.S. Supreme Court settled years of interstate conflict by apportioning the waters of the Delaware River 50 years ago this summer, it did not guarantee a final water resources apportionment. To the contrary, the Court's decree invited each of the parties – New York City and the states of New York, New Jersey, Pennsylvania, and Delaware – to resort to further litigation if circumstances changed. Instead of taking the litigation route, the states and the federal government joined to create the DRBC, a federal and interstate agency that manages the waters of the basin without regard to political boundaries. The DRBC fosters and sustains a climate of federal and state cooperation.

To this day, the *Delaware River Basin Compact*, which created the DRBC, offers New York City water allocation certainty while assuring the downstream states guaranteed minimum water flows. The *Compact* coupled these guarantees with tremendous flexibility for the DRBC

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.

Altering the decree is a serious matter. But when 20 years of data and experience made it clear that the water diversions and releases prescribed by the decree were untenable during a serious drought, the DRBC undertook a series of "Good Faith Negotiations" to address drought releases. The result was a 1984 agreement to ratchet down water diversions to the city and downstream releases when reservoir storage declines. This agreement has carried the basin through multiple droughts, including the record drought of 2001-2002, without the need for mandatory water cutbacks.

Over the past thirty years, instream flow needs have presented the DRBC with another reason to review the original decree. Ecological and recreational needs not foreseen half a century ago are now a vital economic and social concern. Anglers and those employed by the outdoor tourism industry have rightly demanded that their economic interests be taken into account when making resource allocation decisions. Their interests, however, must be balanced by the many other human demands of the river. Also, the federal Endangered Species Act requires that river flows be managed to protect certain species, such as the dwarf wedgemussel recently discovered in the waters of the upper Delaware.

Accordingly, the DRBC has again brought the decree parties to the table in a complex, collaborative effort to protect the tailwater fisheries below the city's Delaware reservoirs. After years of intensive negotiations, a three-year interim program to provide additional water for fisheries protection was approved by the DRBC in April 2004. It establishes minimum flow targets for the first time protecting the tailwaters of all three reservoirs and creates an expanded "bank" of water to provide additional cold water releases to keep streams trout-friendly.

The newly adopted fisheries program is possible in part because PPL, a Pennsylvania-based utility, offered the DRBC additional water from Lake Wallenpaupack – its company-owned reservoir. Only interstate collaboration through the DRBC could bring a Pennsylvania power company to the aid of a New York fisheries program.

These sound and scientific drought and fisheries management programs demonstrate the DRBC's ability to use collaboration and flexibility in responding to evolving water challenges – successes that a static, 50 year-old court decree could not achieve. The DRBC continually develops and assimilates new information and participants; offers leadership to build knowledge and consensus; and finds creative, win-win solutions to water resource problems.

The interstate flow management challenges ahead for the DRBC will not be easy to resolve. This is particularly so, not only because the challenges are great, but because the DRBC faces a serious financial crisis. In 1996, the federal government broke its agreement with its state and local partners, ceasing to pay its fair share payment toward the DRBC's operating expenses. The cumulative federal shortfall is now over \$5 million, more than the agency's annual budget. Meanwhile, New York has not paid nearly \$700,000 of its fair share of the Commission's operating expenses since 1999.

Without a renewed commitment of financial support of all five members, the DRBC may not be there to manage future interstate water allocation conflicts in the Delaware River Basin. The alternative is costly litigation, not to mention lost benefits to the basin from continuing to improve resource management steadily and incrementally, through sound science, adaptation, and collaboration.

Carol R. Collier is the Delaware River Basin Commission's executive director. To learn more about the DRBC, visit its web site at www.drbc.net.