

# Integrating Legal Requirements and Legal Structures Into The Basin-Wide Plan

Kenneth J. Warren  
General Counsel, Delaware  
River Basin Commission  
June 10, 2003

# Reasons Basin-Wide Plan Should Contain References to Laws and Legal Structures

- Existing laws affect expectations of stakeholders
- Legal principles may further or limit goals of Plan
- Federal statutes and regulations may shape actions necessary to implement Plan
- Laws establish standards which, if met, may protect the regulated community from additional requirements

- Any needed changes in statutes require legislative involvement
- State agencies may not have sufficient legal authority or legislative mandate to implement regional goals
- Delaware River Basin Compact creates opportunities for coordinated and integrated action not available in other basins without a regional compact

# Examples of Federal Statutes Establishing Standards or Procedures

- Endangered Species Act
- Clean Water Act
- Safe Drinking Water Act
- Comprehensive Environmental Response, Compensation and Liability Act
- NEPA (procedures only)

# Examples of How Statutes May Affect Basin-Plan

- ESA: Avoiding jeopardy or adverse modification to critical habitat
- CWA: Water Quality Standards
- SDWA: Drinking Water Standards
- CERCLA: Remediation of contaminated sites

# Commission's Regulations

- Water Quality Standards for Main Stem
- Waste load allocations
- Dockets for surface water and groundwater withdrawals
- SE Pennsylvania Groundwater Protected area
- Special Protection Waters – Anti-Degradation

# State Regulations

- May be more stringent than Commission's regulations
- May apply to intra-state waterways not regulated by Commission
- May regulate activities not regulated by Commission

# Supreme Court Decree Affects Interstate Allocation

- Supreme Court Decree in New Jersey v. New York establishes Basin-specific requirements
- New York City has right to transfer water from reservoirs that it constructed in the Basin
- Decree limits inter-basin transfers from New York City reservoirs and sets minimum flow targets in River
- In considering goals for flow in drought conditions, fisheries protection (particularly in tail waters of reservoirs) and habitat conservation, the Decree is important



# General Areas of Commission Authority

- Water Supply (Flow Management)
- Pollution Control
- Flood Protection
- Watershed Management (soil conservation, fish and wildlife habitats)
- Recreation
- Hydroelectric Power
- Withdrawals and Diversions

# Role of Commission Under Federal-Interstate Compact

- Regional problems managed regionally
- Opportunity to coordinate state agencies
- Opportunity to coordinate federal government agencies
- Forum and mechanism for resolving water allocation and related disputes
- Ability to develop and enforce a comprehensive regional plan

- Ability to consider all facets of water management in an integrated manner
  - Surface and groundwater
  - Water quantity and quality
  - Land-water and air-water relationships
- Utilize physical boundaries such as watersheds rather than political boundaries
- Ability to examine cumulative impacts within a watershed

# How Can The Basin Plan Best Employ The Unique Legal Structures of the Commission?

- Regulations

- Where states or the federal government wish to exercise sovereignty, Commission can help coordinate
- Where interstate waters are at issue, or sovereigns elect not to regulate, Commission may be best regulatory structure

- Planning

- The Commission's Comprehensive Plan can integrate issues such as water quality and quantity and groundwater and surface water that federal and most state programs view separately
- Individual projects having a substantial effect on the water resources of the Basin may not substantially impair or conflict with the Comprehensive Plan

- Stakeholder and Public Processes

- Commission has experience in convening multistakeholder groups
- Commission meetings afford public opportunity to make direct presentations to decisionmakers