

**DELAWARE RIVER BASIN COMMISSION
ADMINISTRATIVE MEMORANDUM**

TO: Memo for the File

FROM: Richard C. Gore, Chief Administrative Officer

DATE: March 2012

SUBJECT: Equitable Apportionment of the Commission
Current Expense Budget (General Fund)

The historical information set forth below concerning equitable apportionment of the Commission's current expense budget among the signatories to the Delaware River Basin Compact is provided to facilitate future discussion.

The Compact

Section 13.3 of the Delaware River Basin Compact (Attachment 1), "Annual Current Expense and Capital Budgets," provides for the annual adoption of a capital budget and a current expense budget but does not prescribe a formula for sharing the cost burden of the current expenses. Section 13.3(b)(2) states in part, "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 unanimous vote of the commission,"

Therein lies the challenge.

Previous Studies and Discussions on Equitable Apportionment

A) PAS Report of 1976

In October of 1976, the Commission retained Public Administrative Service (PAS), an independent nonprofit entity based in Washington, D.C., to study this issue and to report its findings and recommendations to the Commission. Excerpts of the completed study, entitled "The Delaware River Basin Commission: Apportioning the Current Expense Budget" ("PAS Report"), dated February 1977 is included as Attachment 2.

On page 1 of the report summary, PAS defines the problem as follows:

The Delaware River Basin Commission is experiencing a revenue shortfall, traceable initially to a 1974 reduction in New York State's appropriation, followed by below-normal contributions from other member jurisdictions. In the course of the last three years the Commission manpower suffered a reduction of 10 percent. The organization manages to meet the most basic needs of the basin only with

a maximum staff effort and a high level of efficiency. Economy and efficiency measures will doubtless continue. But fiscal disparities and the income shortfall also continue. In brief, the financial stability is threatened; a solution to the problem needs to be found.

Public Administration Service was called upon to study the matter and to make recommendations. It was requested to consider the benefits of the Commission's activities as they related to the balance of federal and state political and financial interests so that the Commission would have a framework within which it could make the political decisions of what would be an equitable sharing of costs.

The body of the report includes the following historical perspective on pages 45-46:

At the first formal meeting of the Commission, held December 13, 1961, all Member Commissioners, except the Governor of Delaware, Alternates, and advisors were present. Among other actions taken at that meeting, the Commission unanimously approved Resolution 61-2, upon motion of Governor Rockefeller (New York), seconded by Governor Meyner (New Jersey). The resolution directed the Alternates to prepare a current expense budget and specified the percentages to be used in apportioning among the signatory parties the amounts required to balance the budget for the fiscal years ending June 30, 1962, and June 30, 1963. Resolution 61-2 declared that such amounts "shall be apportioned among the signatory parties, pursuant to Section 13.3 (b) of the Compact, in the following percentages of the total amount required by the budgets to be adopted: Delaware – 4 per cent; New Jersey – 24 per cent; New York – 24 per cent; Pennsylvania – 24 per cent; United States 24 per cent." What may have been the reason to select these percentages is not disclosed by the minutes of the meeting.

In fiscal year 1973, the formula was amended slightly to increase the Delaware share to 8 per cent and to reduce each of the other shares to 23 per cent. It is important to note that this reallocation of the cost burden was initiated by Delaware. There were no peer pressures or other unusual circumstances contributing to Delaware's unilateral action to assume a greater share of the current expense budget. The 23-23-23-23-8 division continues to be the approved apportionment formula of record.

Apportionments in accordance with the revised formula were honored by the respective legislatures until 1974. In that year, the New York State Legislature reduced the state's share of the current expense budget to 20.7 per cent. In more recent fiscal years and continuing into Fiscal year 1977, the New York share has been continued at less than the 23 percent called for in the apportionment formula. Also in 1974, a severe budgetary crisis in New Jersey obliged that state to reduce its apportioned share, and like New York, it continues to be contributing less than the DRBC budget request. Pennsylvania ordered a modest cut in 1975, and

Delaware took similar action in both 1975 and 1976. Pennsylvania resumes its regular contribution in 1976, and both Delaware and Pennsylvania are expected to meet the DRBC budget request in Fiscal Year 1977. Data depicting the revenue shortfall appear on the following page (Table 4).

Because of the decreasing revenues and kindred problems, the representative of New York at a meeting of the Commission on December 17, 1975, called for a re-evaluation of what the New York apportionment should be. Following discussion, it was agreed that the current apportionment formula should be examined. It was agreed, too, that the methodology for answering this question should be developed by disinterested parties outside the Commission.

For your information, Commission Resolution No. 61-2 is provided as Attachment 3.

PAS provided the Commission with several alternative apportionments, which are set forth in Table 17 on page 61 of the report, reproduced below:

Alternative State and Federal Apportionments
Compared to Current Apportionments^a

	Table 9 ^b Per cent	Table 10 ^b Per cent	Table 13 (1) ^b Per cent	Table 13 (2) ^b Per cent	Current Per cent
New York	9.7	12.9	7.1	10.0	23.0
Pennsylvania	27.8	25.2	29.2	26.6	23.0
New Jersey	13.9	13.5	14.6	14.2	23.0
Delaware	8.6	8.4	9.1	9.2	8.0
United States	40.0	40.0	40.0	40.0	23.0
Total	100.0	100.0	100.0	100.0	100.0

^a Rounded to the nearest one-tenth of one per cent.

^b Factors – Table 9: Area, population, base payment
 Table 10: Area, population, including out-of-basin population, base payment
 Table 13(1): Area, population, base payment, fiscal capacity
 Table 13(2): Area, population, including out-of-basin population, base payment, fiscal capacity.

Disposition of the PAS Report is recorded in the Commission's meeting Minutes of February 23, 1977. The Commissioners on that occasion announced that after discussion and consideration of the PAS findings and recommendations, the majority preferred to retain the budget sharing formula then in place. The Commissioners indicated that they viewed the recent budgetary shortfalls as a function of more stringent budgetary conditions generally among the signatory parties than as a condition necessitating revision of the equitable apportionment formula (see Attachment 4).

B) GAO Report of 1981

In February 1981, the Comptroller General of the United States issued a Report to Congress entitled “Federal-Interstate Compact Commissions: Useful Mechanisms for Planning and Managing River Basin Operations” (hereinafter, “GAO Report”).

The GAO Report describes the major interstate water problems existing within the Delaware and Susquehanna River Basins and discusses how the two existing Federal and Interstate Compact organizations work to solve these problems. The purpose of the review was to evaluate the effectiveness of the Commissions in dealing with water problems and to offer Congress information that could be useful in considering new methods for planning and managing river basin water resources. A summary of the report’s conclusions states,

GAO believes that the commissions are worthwhile and achieve results—such as managing a basinwide drought—attainable only by joint cooperation and action. Their progress has been slow in some areas, but they have been dealing with complex and politically sensitive issues. They can continue to make positive contributions if all members give them adequate encouragement and support.

The following discussion which appears in Chapter 2 of the report focused on the Delaware Basin:

ADEQUATE FUNDING IS KEY TO COMMISSION’S FUTURE

The compact calls for an equitable funding apportionment among the signatory parties. The DRBC members from time to time have revised sharing arrangements. Presently, the Federal Government, New Jersey, Pennsylvania, and New York would each contribute 23 percent of the budget and Delaware the remaining 8 percent. The proposed fiscal year 1981 regular operating budget is about \$1.1 million.

DRBC’s staff depends primarily on State and Federal appropriations to support its operating budget. Staff funding has been uncertain at times, particularly by New York State. The signatory parties have not to date agreed upon utilizing their authority to develop independent funding sources for the commission to carry out all its activities. However, DRBC has authorized the collection of application fees and penalties which are used to supplement signatory party contributions. The commissioners believe the member governments have an obligation to fund the commission, and this enables them to maintain control over the staff.

With the exception of New York State, DRBC members have generally been supportive of the commission’s efforts. New York State officials question the need for this type of commission. They believe it duplicates State efforts, infringes on State rights in intrastate matters, and is dominated by the downstream States that receive most of the benefits. As a result, the New York alternate commissioner said that the State will limit its future funding of the

commission to the amount of benefits the State receives from membership in DRBC.

State officials were generally satisfied with the Federal Government's participation in DRBC and the cooperation of the Federal agencies. The Congress has in the past fully funded the Federal Government's agreed-upon share of the commission's budget ...

C) Tacit Agreement of 1988

Once again in 1988, the Commission's members undertook a discussion of the signatory party contributions to the General Fund Budget. They reached a tacit agreement to modify their contributions over a three-year period, resulting in the current allocation of 12.5% Delaware; 17.5% New York; 25% New Jersey; 25% Pennsylvania; 20% United States. That understanding is summarized in Gerald Hansler's letter to the Commissioners dated August 12, 1988, and corresponding notes from the Minutes of June 28, 1989 and June 19, 1991 (*see* Attachment 5).

The signatory party apportionment of 1988 worked for the most part until 1996, when the Federal Government unilaterally took the position that it would no longer fund the Delaware, Susquehanna and Potomac River Basin Commissions.

For the past 16 years, the Commission's senior management has worked tirelessly to advance federal financial participation in the Commission's General Fund Budget with success in only one year – 2009. During these years, we have maintained the allocation and the understanding reached by the parties in 1988. Senior management has never allocated the federal shortfall or any other signatory shortfall to another member. In the development of the current expense budget, staff has been keenly aware of the inherent inequity in asking for an increase in the signatory party contribution, given the lack of financial participation by the Federal Government.

**Delaware River Basin
Compact**

ATTACHMENT 1

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 containing a statement of the estimated cost 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 in connection with any project. Following 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 existing cost sharing established for each project; and

2) transmit certified copies of such 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 unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(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 budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittances by the signatory parties.

PUBLIC ADMINISTRATION SERVICE

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February 14, 1977

Mr. James F. Wright,
Executive Director
Delaware River Basin Commission
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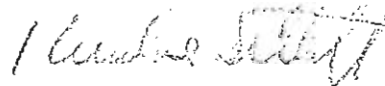
Dear Mr. Wright:

We are please to transmit herewith our report entitled "The Delaware River Basin Commission: Apportioning the Current Expense Budget," which was prepared in accordance with our proposal of September 3, 1976, and your letter of acceptance of October 11, 1976. Two copies of this report have been sent to each of the Commissioners.

Work on this report was performed by Charles A. Byrley, of our staff and Charles F. Schwan, Jr., Special Consultant, under the general oversight and supervision of the undersigned.

We are grateful for this opportunity to have served the Delaware River Basin Commission. The support, assistance, and cooperation of the DRBC staff and of the Commissioners and their staff is sincerely appreciated.

Respectfully submitted,



Theodore Sitkoff
Associate Director

PREFACE

The Delaware River Basin Commission (DRBC), established by federal-interstate compact in 1961, is a joint agency of the United States and the States of Delaware, New Jersey, and New York and the Commonwealth of Pennsylvania. Members are the Governors of the signatory states and one Commissioner appointed by the President of the United States.

The Commission's numerous powers and duties are diverse and substantial--all authorized or mandated by the 1961 compact. In addition to myriad planning and policy roles, DRBC is a manager of the basin's water resources. Its tasks are carried out in concert with the policies and goals of the water resources agencies of the member states and the federal government, as appropriate.

DRBC has no independent source of revenue. Like most interjurisdictional agencies, the Commission looks to its member jurisdictions for financial support of all activities authorized and approved in current expense budgets.

The Delaware River Basin Compact per se does not prescribe a specific plan or formula for sharing the cost burden of the Commission's current expenses. However, the compact does provide that "the amount required to balance the current expense budget . . . shall be apportioned equitably among the signatory parties."

The question of equity--how the signatories should balance their payments with their economic and political interest and at the same time ensure that DRBC objectives can be achieved--has concerned the Commission since 1974 when it began to experience a revenue short-fall. The DRBC budget continues out of kilter because some of the signatories are not contributing to the budget in the amounts specified by the Commission's own apportionment formula.

In its quest for an approach to decide the equity issue and at the same time improve the DRBC financial and budgetary situation, the Commission invited Public Administration Service (PAS) to study the problem and to report its findings, conclusions, and recommendations. Specifically, PAS was called upon to review the present sharing formula, to explore its equity through careful research and evaluation of the problem, and to establish a basic framework of review so that the Commission might determine an equitable cost-allocation arrangement or reaffirm the existing formula for apportionment of costs.

Implicit in DRBC's request for assistance was the need to study the overall functioning of the Commission itself and to learn of other possible factors which may be contributing to the revenue short-fall and the cost-allocation problem.

Expanded review and study was necessary if for no other reason than to provide a framework of understanding within which consideration of a formula could proceed. This conception of the assignment was made specific by requests from many of those interviewed, including Alternates to the Member Commissioners.

Public Administration Service has completed its study and the results are presented in this report. Theodore Sitkoff, PAS Associate Director, supervised the study, and Charles A. Byrley and Charles F. Schwan, Jr., worked together on most of the field work, documentary research, and numerous evaluation tasks. Mr. Schwan, a Special Consultant to PAS on this project, is the principal author of the report.

Public Administration Service is pleased at this opportunity to have served the Delaware River Basin Commission, and extends its sincere thanks to the staff of DRBC and to the Commissioners and staff of the signatory jurisdictions for their invaluable assistance and cooperation throughout the course of this assignment. PAS also acknowledges with genuine appreciation the contributions of numerous other state and federal officials, as well as additional persons outside government. Much time was spent by many persons--mostly in personal interviews--and PAS is grateful for such widespread interest and valuable participation.

SUMMARY OF THE REPORT

The Problem

As emphasized in the Preface, the Delaware River Basin Commission is experiencing a revenue shortfall, traceable initially to a 1974 reduction in New York State's appropriation, followed by below-normal contributions from the other member jurisdictions (see Table 4). In the course of the last three years, Commission manpower has suffered a reduction of 10 per cent. The organization manages to meet the most basic (and changing) needs of the basin only with a maximum staff effort and a high level of efficiency. Economy and efficiency measures will doubtless continue. But fiscal disparities and the income shortfall also continue. In brief, financial stability is threatened; a solution to the problem needs to be found.

The Delaware River Basin Compact per se, as noted at the outset, does not prescribe a specific formula for sharing the burden of current expense budgets among the signatories. It does not mandate equal cost-sharing, nor does it suggest any other equally determined method for allocating the revenue side of the budget. Instead, the Congress of the United States and the legislatures of the four states reasoned that the current expense budgets should be shared "equitably" among the members by unanimous vote of the Commission.

One of the first actions taken by the Commission at its organization meeting in 1961 was to apportion the initial current expense budget as follows: Delaware, 4 per cent; New Jersey, 24 per cent; New York, 24 per cent; Pennsylvania, 24 per cent; United States, 24 per cent. About a decade later, the apportionment was amended to increase the Delaware share to 8 per cent and to reduce the shares of each of the other parties by 1 per cent. In December, 1975, the Commission decided to reexamine the apportionment formula when it was questioned that it continued to be a way of sharing costs "equitably."

Public Administration Service was called upon to study the matter and to make recommendations. It was requested to consider the benefits of Commission activities as they relate to the balance of federal and state political and financial interests so that the Commission would have a framework within which it could make the political decision of what would be an equitable sharing of costs.

The Approach

In the course of its study, representatives of PAS visited each of the capital cities of the signatory parties at least two times. Valuable information was received from the Alternates to the Commissioners, other members of the executive branch, staff representatives of the legislature, and from staff members of the Commission. Other persons were interviewed, including some who at one time were associated with the Commission. Information was received from persons affiliated with other interjurisdictional agencies. Interviews generally lasted for well over an hour, and those interviewed generously shared with PAS this knowledge and understanding.

To complement the oval interviews, PAS reviewed relevant documents, including studies and other materials of the Commission, statutes, budget materials, and other written matter. Supplementary information was obtained from secondary sources.

Findings and Conclusions

The study findings may be summarized as follows:

1. Even greater efforts must be made to separate policy from administration so that the Commission may devote its entire attention to the former.
2. Continued efforts should be made to ensure that Commission activities supplement, not duplicate, activities of signatories, particularly the states.
3. The cost effectiveness of the work of the Commission must be shown in ways meaningful to those who make the budget decisions in the individual jurisdictions.
4. The Commission has a unique role. It is the only agency capable of dealing with matters from a basin-wide approach and on an interjurisdictional level.
5. Satisfactory progress is being made in reorienting Commission policies, programs, and procedures, particularly as exemplified by the new method of formulating the annual work program.

Of the elements that might be included in a revised current expense budget apportionment, the study concluded that consideration might be given to a fixed federal percentage and apportionment among the states on the basis of area within the basin, population in the basin, a uniform base payment, a portion of the population of the service area of the basin, and relative fiscal capacity.

PAS recommends that the framework for equitably sharing the DRBC current expense budget among the signatory parties includes:

1. A federal share of 40 per cent;
2. State shares apportioned according to basin area and population, equally weighted; and
3. State base payments of 40 per cent.

These recommendations would produce results, as follows:

	<u>% Current Expense Budget</u>
New York	9.7
Pennsylvania	27.8
New Jersey	13.9
Delaware	8.6
United States	40.0

PAS believes that substantial consideration should be given to inclusion of two additional factors in apportioning state shares: basin service area population, and fiscal capacity. These inclusions would produce the following results:

	<u>% Current Expense Budget</u>
New York	10.0
Pennsylvania	26.6
New Jersey	14.2
Delaware	9.2
United States	40.0

Inclusion of either one of these factors, but not the other, would yield slightly different results, as shown in Table 17 of the report.

On related matters, PAS suggests that, in consultation with the Commissioner or Alternate, additional ways be found to involve the legislatures of the signatory parties in decision-making, with regard to both program and budget. It suggests that at least one Commission meeting per year be held in the capital (or other) city of each one of the signatory states. It recommends that even closer relations be developed between the Commission and its staff and the staffs of the water resources agencies of the parties.

OTHER FEDERAL-INTERSTATE AND INTERSTATE AGENCIES

The only other federal-interstate agency established by compact is the Susquehanna River Basin Commission. The compact has four member jurisdictions--the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States. Although there are obvious differences between the Delaware and Susquehanna basins, the legal authority conferred on their respective Commissions is practically identical.

The Susquehanna River Basin Compact received its final legislative approval late in 1970. Its Commission, therefore, had the advantage of learning from the Delaware experience. Like the Delaware Commission, however, it was faced almost as soon as it was organized with an emergency situation resulting from a serious natural disaster, in this case a flood.

Also, like the Delaware Commission, its program was pushed in the direction of one element of a comprehensive water resources program, flood protection--not unnaturally. Much of its energy since the flood has been devoted to improving flood forecasting and warning, flood plain mapping (approximately 75 per cent of the basin is mapped), the addition of gauges at key places, etc. An unusual "neighborhood flash flood warning system" has been set up in places where volunteer help is available to provide protection against small, local floods.

Concerning other elements of water resources, a policy position has been taken on low flow requirements, and a water conservation policy position is being developed. A quality monitoring system has been set up at state lines and in specific problem areas within the states. A general study of non-point sources of pollution has been made. Primary reliance is placed on the states for review of proposed projects to determine their possible effects on the basin's water resources.

As in the case of the Delaware Commission, the greatest value to the signatories of the Susquehanna Commission appears to lie in its being able to take a basinwide approach. It can smooth out differences in laws and in points of view among the parties. It can act in some cases when a signatory cannot. It provides an ongoing forum for handling matters with interjurisdictional ramifications sparing the parties from having to do without or setting up ad hoc arrangements.

Title II Commissions

There are two other types of federal-interstate agencies, both set up pursuant to federal law. One is in the economic development field--the Appalachian Regional Commission and the several Title V (Public Works and Economic Development Act of 1965) Regional Economic Development Commissions. In the water resources field, there are six River Basin and Related Land Resources Commissions set up pursuant to Title II of the Water Resources Planning Act. Only the latter agencies need concern us here, as they are water resource-related.

Under the law the "President is authorized to declare the establishment" of a commission upon the request or with the concurrence of at least one-half of the Governors of the states of the area, river basin or group of river basins for which it is proposed that the commission be set up. Federal membership consists of the chairman and one member from each department or agency determined to have a substantial interest in the work of the commission. Each state lying wholly or partially within the geographic jurisdiction of the commission is entitled to be represented by a member. From among their number, the state members elect the vice chairman. As appropriate, interstate and international agencies may be represented on a commission. Action is by consensus, with the opportunity afforded for the setting forth of federal, state and individual member views as necessary.

A river basin commission is charged with serving as the principal agency for coordination of plans for the development of water and related land resources of all public agencies in its area and preparing and keeping up to date a comprehensive, coordinated joint plan for development of such resources. It has no operating, management, regulatory or other function. At the time of completion of its plan, however, a commission is required to submit recommendations for continuing its functions and for implementing the plan, i.e., it could recommend creation of an agency with a broader mandate than its own. Each commission has its own staff and funding.

Interstate Compact Agencies

There are many interstate compacts, and their responsibilities run almost the entire gamut of governmental activity. Subject matters covered include corrections, education, forest fire protection, marine fisheries, nuclear energy, planning, port development, recreation, transportation and water resources. Staff size among compact agencies ranges from no permanent staff personnel to employees numbering in the thousands, budgets from almost nothing to more than those of some states, and powers from purely

recommendatory to major planning, development, and operation.

In the water resources field, one compact agency is concerned with flood control, the largest number with allocation of water from interstate streams (all west of the Mississippi River), and four with water pollution (all east of the Mississippi River). The last are of some interest here.

The Interstate Commission on the Potomac River Basin has authority only to do research, collect data, disseminate information, and encourage jurisdictions in the basin to consider improving their water quality and related land use policies and programs. Despite its being unable to act on its own, the Commission has been able to exercise a measure of influence on the jurisdictions party to the compact and local governments in the area.

The New England Interstate Water Pollution Control Commission has as its missions research, training of sewage plant operators, and water quality enforcement. The last, however, is of limited significance. Only three of the seven member jurisdictions--the six New England states and New York--have conferred on the Commission enforcement authority to be exercised at or near state boundaries. In two cases the boundaries are short and the third is outside the geographical jurisdiction of the Commission. Moreover, the agency has a very limited budget.

The Ohio River Valley Sanitation Commission has meaningful regulatory authority and a substantial budget. Historically, however, the Commission has chosen to exercise its regulatory authority infrequently, preferring to rely on the party states for enforcement. It has concentrated its energies on research, dissemination of information, and bringing to bear its influence on the states to strengthen their laws and enforcement procedures.

The Interstate Sanitation Commission has three member states - Connecticut, New Jersey, and New York. In addition to water pollution, its jurisdiction extends to air pollution, but only with respect to the former does it have regulatory authority. It has a fairly large budget and staff. Although it has gone to court to secure enforcement of its abatement orders only a relatively few times, apparently the number of such instances has been sufficient to earn it respect as an enforcement agency.

Funding Formulas

There are almost as many funding arrangements to support the services performed by these several federal-interstate and interstate agencies as their total number. In one case, the budget of the agency is shared equally by the parties. In another, the state parties to a federal-interstate arrangement make equal contributions to the total states' share. The compact setting up one agency employs a spatial concept (area would not be

accurate). All the other funding arrangements take into account area and population, the latter to the extent of considering only the population of the geographic areas of the respective parties within the total geographic area in which the agency functions. In two instances, a basic contribution is required of each party with the remainder apportioned by other factors, in one case total assessed valuation of real property and total personal income in the other. Four other funding formulas include a base rate or contribution feature. In six cases, there is a federal share. It is 50 per cent of the total in five of these, i.e., equal to the sum of the shares of the states. In the other cases the federal share is equal to the amount of the largest contribution made by a state.

The provisions of the compact specifying how the current expense budget of the Susquehanna River Basin Commission is to be shared are the same as those contained in the comparable provisions of the Delaware River Basin Compact, i.e., "apportioned equitably among the signatory parties by unanimous vote of the commission,..." This language appears to have been interpreted by the Susquehanna River Basin Commission to mean that each party should pay an equal share.

No more specific is the language of Section 207 of Public Law 89-80 which prescribes how the expenses of river basin commissions are to be met.

It reads:

Each commission shall recommend what share of its expenses shall be borne by the Federal Government, but such share shall be subject to approval by the [Water Resources] council. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine...

In all cases, however, the recommendation has been that the federal share be 50 percent of the total expenses. The proportionate state shares of the expenses of the respective commissions are not the same from commission to commission. The state members of three commissions, and it is they who make the determination, have chosen to require that each state participant in these commissions pay a flat base rate with the remaining amount divided according to each state's proportionate share of the total population and area within the total geographical area served by the commission. In the case of one commission, a base rate is assessed which is paid by one state as its share. The other states pay the base rate plus individual state shares determined by a formula that is weighted 10 per cent area and 90 per cent total personal income. The state share of the expenses of the other commission is divided equally.

The expenses of the Interstate Commission on the Potomac River Basin are met by each state's making a basic contribution to which is added sums determined by the proportionate share that each state's population bears to the total population of the basin. By informal understanding, a federal contribution is made that is equal to the largest share paid by any state.

The formula used by the states party to the New England Interstate Water Pollution Control Compact consists of two factors of equal weight--population and value of real property within the geographical limits of the compact jurisdiction. Bureau of Census data on the ratio of assessed valuation to market value is relied upon to obtain comparability of state assessment data.

Simple and straightforward--but perhaps no more or less defensible--is the formula prescribed in the Ohio River Valley Water Sanitation Compact. It calls for proration among the states in equal parts on the basis of area and population.

Among those mentioned, the only other compact to prescribe the formula for dividing expenses requires that the States of New Jersey, New York, and Connecticut share on a 45-45-10 basis. The rationale for this prescription is lost in the mists of time, but apparently the ratio approximates that of the respective lengths of shoreline of the district in which the Interstate Sanitation Commission has jurisdiction.

Presumably, in each case cited the aim was to achieve a division of expenses that could justify its being described as having been "apportioned equitably" among the parties. Obviously there are many ways to accomplish the objective of an equitable apportionment, at least in the opinions of those who made these decisions. It is true that the proportionate service areas or populations in the party states vary from instrumentality to instrumentality. However, there is little or no variation in respective state areas or populations between the New England River Basins Commission and the New England Water Pollution Control Commission. Yet, in the former case, state shares range from about 10.5 to 22.4 per cent of the total state portion, while the range is 5 to 42 per cent in the latter case. In the expenses of the Ohio River Basin Commission, the range in state shares of the total for all states is 5 to 41 per cent, but the states party to the Ohio River Valley Water Sanitation Compact all pay the same. The state shares of the expenses of the other two river basin commissions range from 7.4 to 12.3 per cent and 4.7 to 30.8 per cent. In the case of the Interstate Compact on the Potomac River Basin, the states pay from 9.8 to 31.6 per cent. Data shown on the following page identify the several interstate agencies just referred to and the factors considered in their funding formulas (Table 3).

Table 3
Interjurisdictional Agency Funding Formulas

Agency	Parties	Apportionment based on:
New England Interstate Water Pollution Control Commission	Me., N.H., Vt., Mass., R.I., Conn., N.Y.	1/2 population; 1/2 valuation real property
Ohio River Valley Water Sanitation Commission	Ill., Ind., Ky., N.Y. Ohio, Penna., Tenn., W. Va.	1/2 population; 1/2 area
Interstate Sanitation Commission	N.Y., N.J., Conn.	Length of shoreline within district
Interstate Commission on the Potomac River Basin	Penna., W. Va., Va. Md.; D.C.	Base rate; balance proportional to population; Federal contribution equals largest share of state.
Susquehanna River Basin Commission II River Basin Commission: ^{a/}	U.S., Md., N.Y., Penna.	Equal sharing of cost
New England	Me., N.H., Vt., Mass., R.I., Conn., N.Y.	Base rate; balance calculated on formula that gives 10% weight to area and 90% to personal income; New York pays base rate only.
Great Lakes	Ill., Ind., Mich., Minn., N.Y., Ohio, Penna., Wis.,	Base rate; balance based on area and population
Ohio	Ill., Ind., Ky., Md., N.Y., N.C., Ohio, Penna. Tenn., Va., W. Va.,	Same as Great Lakes
Missouri	Colo., Iowa, Kan., Minn., Mo., Mont., Neb., N.D., S.D., Wyo.	Same as Great Lakes
Upper Mississippi	Ill., Iowa, Minn., Mo., Wis., N.D. (N.D. shares only in funding Souris-Red-Rainy activities)	Equal sharing of costs

^{a/} Federal share of all Title II Commission costs is 50 per cent

FUNDING THE DELAWARE RIVER BASIN COMMISSION

That portion of the compact having to do with the current expense budget is found in Section 13 and is quoted in full, as follows:

(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 in connection with any project. Following 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 existing cost sharing established for each project; and

(2) transmit certified copies of such 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 unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(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 budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittances by the signatory parties.

In determining the respective amounts needed to balance the current expense budget, the operative language is the "amount required . . . shall be apportioned equitably (emphasis supplied) among the signatory parties by unanimous vote of the commission, . . ."

At the first formal meeting of the Commission, held December 13, 1961, all Member Commissioners, except the Governor of Delaware, Alternates, and advisors were present. Among other actions taken at that meeting, the Commission unanimously approved Resolution 61-2, upon motion of Governor Rockefeller (New York), seconded by Governor Meyner (New Jersey). The resolution directed the Alternates to prepare a current expense budget and specified the percentages to be used in apportioning among the signatory

parties the amounts required to balance the budgets for the fiscal years ending June 30, 1962, and June 30, 1963. Resolution 61-2 declared that such amounts "shall be apportioned among the signatory parties, pursuant to Section 13.3 (b) of the Compact, in the following percentages of the total amount required by the budgets to be adopted: Delaware - 4 per cent; New Jersey - 24 per cent; New York - 24 per cent; Pennsylvania - 24 per cent; United States 24 per cent." What may have been the reason to select these percentages is not disclosed by the minutes of the meeting.

In fiscal year 1973, the formula was amended slightly to increase the Delaware share to 8 per cent and to reduce each of the other shares to 23 per cent. It is important to note that this reallocation of the cost burden was initiated by Delaware. There were no peer pressures or other unusual circumstances contributing to Delaware's unilateral action to assume a greater share of the current expense budget. The 23-23-23-23-8 division continues to be the approved apportionment formula of record.

Apportionments in accordance with the revised formula were honored by the respective legislatures until 1974. In that year, the New York State Legislature reduced the state's share of the current expense budget to 20.7 per cent. In more recent fiscal years and continuing into Fiscal Year 1977, the New York share has been continued at less than the 23 per cent called for in the apportionment formula. Also in 1974, a severe budgetary crisis in New Jersey obliged that state to reduce its apportioned share, and like New York, it continues to be contributing less than the DRBC budget request. Pennsylvania ordered a modest cut in 1975, and Delaware took similar action in both 1975 and 1976. Pennsylvania resumed its regular contribution in 1976, and both Delaware and Pennsylvania are expected to meet the DRBC budget request in Fiscal Year 1977. Data depicting the revenue shortfall appear on the following page (Table 4).

Because of the decreasing revenues and kindred problems, the representative of New York at a meeting of the Commission on December 17, 1975, called for a re-evaluation of what the New York apportionment should be. Following discussion, it was agreed that the current apportionment formula should be examined. It was agreed, too, that the methodology for answering this question should be developed by disinterested parties outside the Commission.

Table 4

DELAWARE RIVER BASIN COMMISSION

REVENUES-SIGNATORY PARTIES (FY 1972--FY 1977) BUDGETED VERSUS ACTUAL CURRENT EXPENSE BUDGET (REGULAR BUDGET AND WATER QUALITY BUDGET)

F.Y.	Total Original Budget Request		Original Signatory Contributions Requested					Total Final Contributions	Actual Signatory Contributions Received					Total Short-Fall
	N.J.	N.Y.	N.J.	N.Y.	Del.	Pa.	Feds. \$*		N.J.	N.Y.	Del.	Pa.	Feds. \$*	
1972	1,502,000	348,500	308,500	84,500	84,500	353,500	(179,000)	1,474,621	348,500	308,500	84,500	353,500	(179,000)	(33,379)
1973	1,598,000	353,900	313,900	121,300	121,300	358,900	(216,000)	1,541,400	353,900	313,900	121,300	358,900	(216,000)	(56,600)
1974	1,662,000	439,200	369,200	136,400	136,400	439,200	(242,000)	1,629,246	376,346	307,300	136,400	409,200	(220,000)	(232,754)
1975	1,675,500	387,500	347,500	137,100	137,100	417,000	(209,000)	1,577,551	355,700	282,900	129,300	385,700	(209,000)	(97,348)
1976	1,567,000	352,800	312,800	126,200	126,200	382,800	(177,000)	1,417,080	297,190	252,800	112,600	382,800	(177,000)	(149,910)
1977	1,484,770	335,830	295,830	120,080	120,080	365,830	(179,000)	1,255,802	297,190	101,435	120,080	365,830	(181,000)	(238,928)

() Parenthesis amount is Federal Appropriation.

(T) Amount includes appropriated dollars and EPA Grant.

Note: 1. Signatory Contributions Actually Received are based upon Audit Report data except for FY 1977 (anticipated).
 2. Signatory Contributions Requested are based upon original budget requests.

Prepared by
DRBC staff

12/30/76

POSSIBLE BASES FOR FUTURE FUNDING

An "equitable apportionment" is a matter of judgment--a political decision. What seems equitable to one may seem inequitable to another. No doubt there are some benefits that can be measured and comparisons made with other benefits. However, so much of what is valuable is intangible or, if tangible, does not lend itself to pricing quantification.

As can be seen from the variety of arrangements of other federal-interstate and interstate agencies, reasonable persons may reach quite different conclusions as to what constitutes an equitable sharing of costs. For example, in determining a federal share, what is equitable, 22.4, 24.1, 25 or 50 per cent? Those are the several percentages of cost borne by the Federal government in nine interjurisdictional cost-sharing schemes previously cited.

Admitting that agreement on what is perfect equity is unattainable, what are the factors that can be used singly or in combination to devise a formula that is at least reasonably equitable on its face and has some justification in the presumed value of the benefits made possible or enhanced by the existence of the agency?

A larger number of interstate compact agencies could have been examined, but the sample used seems adequate. Area and population are the favored criteria. In an apparently increasing number of cases, a base rate or contribution is required, presumably to recognize the value of benefits difficult or impossible to measure, or possibly to avoid the too great disparities in contributions that would result if only area and population were used as factors. In a very few cases, there appear to be efforts to relate apportionment of expenses to fiscal capacity, i.e., considering such factors as the value of real property or total personal income. Decisions that must be made include what factors are to be employed and what weight they are to be assigned. Because the Delaware River Basin Compact has the United States as a member, attention must be given to what is an equitable federal share.

State Apportionments

That the United States is a member poses problems in building a formula based in whole or in part on area and population of the basin. As an expedient, it may be profitable to try to devise a formula, or alternative formulas, on a step-by-step basis--first, by considering only the states, second by determining an appropriate federal share; and third,

by combining the results of the first two steps.

Table 5 shows the area and population of the Delaware River Basin within the states party to the compact, and the respective percentages to total basin area and population.

Table 5
Delaware River Basin
Area and Population by State

	<u>Area Sq. Mi.^{5/}</u>	<u>% of Total</u>	<u>Population^{6/}</u>	<u>% of Total</u>
New York	2,362	18.5153	132,218	1.9051
Pennsylvania	6,422	50.3410	4,896,522	70.5529
Jersey	2,969	23.2735	1,438,950	20.7335
Delaware	<u>1,004</u>	<u>7.8702</u>	<u>472,523</u>	<u>6.8085</u>
TOTAL	12,757	100.0	6,940,213	100.0

Table 6 shows what the respective state apportionments of the current expense budget would be if a formula were to be approved that included no factors but area and population and gave them equal weight.

Table 6
State Apportionments Based on the
Average of Area and Population

	<u>Area % of Total</u>	<u>Population % of Total</u>	<u>Average (Apportionment)</u>
New York	18.5153	1.9051	10.2102
Pennsylvania	50.3410	70.5529	60.4470
New Jersey	23.2735	20.7335	22.0035
Delaware	<u>7.8702</u>	<u>6.8085</u>	<u>7.3393</u>
TOTAL	100.0	100.0	100.0

Obviously area outside the basin benefit from there being a Delaware River Basin compact. Equally obvious is the fact that there is no way to make an accurate estimate of the value of these benefits. Services and facilities located in the basin that benefit directly from work of the Commission are themselves of service to public and private entities and individuals of a far wider region than the basin. Service areas of electric utility companies located in the basin encompass territory outside the basin. Recreational opportunities offered by the basin are enjoyed by persons resident outside it. Products of basin industry, agriculture, and fishing are marketed in and out of the basin.

To some extent the difficulties of determining what geographical areas benefit from the resources of the basin and the value of such benefits, or the cost to the basin of providing them, may be overcome by considering the basin as having a service area. The limits of that service area may be impossible to define precisely, but clearly it includes those out-of-basin areas which receive water from the Delaware River. Prominent among such areas are New York City and northern New Jersey.

The compact was developed to deal with the water and related natural resources of the basin in a coordinated way and on a comprehensive scale. Although their interrelationship is undeniable, elements of the comprehensive program are singled out in the compact and the Commission is given certain powers to deal with each. The broadest powers are delegated to the Commission to deal with: (1) water supply, (2) pollution control, (3) flood protection, and (4) hydroelectric power. Appreciably less broad powers are conferred with respect to watershed protection and recreation. Therefore, for purposes of Table 7, below, the elements of the Commission's program are assumed to be five (watershed protection and recreation together constituting one) and each is accorded equal weight. Moreover, because provision of water to New York City and northern New Jersey is unrelated to area, only the population--more accurately, one-fifth of the population--of each is included in its state's respective total.

Table 7
State Apportionments Based on
Area and Population, Including Out-of-Basin Areas

	Area <u>% of Total</u>	Population <u>% of Total</u>	<u>Average</u>
New York	18.5153	19.7241	19.1197
Pennsylvania	50.3410	56.4400	53.3905
New Jersey	23.2735	18.3893	20.8314
Delaware	7.8702	5.4466	6.6584
TOTAL	100.0	100.0	100.0

Although no questions were asked on this subject, everyone interviewed in the course of the study agreed that it was essential that the Commission be continued. Why?

Some saw the existence of the Commission as making it possible to handle problems and to take advantage of opportunities across jurisdictional boundary lines on a regular, systematic basis. What might become a crisis situation can be avoided. Differences of view that might persist or be exacerbated in the absence of the Commission can be reconciled. It is a forum in being, ready at any time to be used by the parties to further their common goals. Others saw its overriding value in its making possible the reconciliation of the political realities of boundary lines and different agencies with the physical reality of there being but one continuous basin. Only through the machinery of the compact can the several parties and their agencies view the basin as a whole. To others, the existence of the Commission represented the taking out of an insurance policy. They harked back to the management of the drought crisis by the Commission. Were there no longer to be a Commission or compact, it would have to be reinvented, at least on an ad hoc basis, to deal with the next major catastrophe. On a somewhat more mundane level, it was pointed out that through the Commission states have an opportunity to influence federal undertakings, or proposed undertakings, which otherwise they would not have or would have to a lesser extent. It even permits federal intra-agency coordination in the basin, machinery for which otherwise is weak at the federal level.

These are some of the examples cited of benefits that are intangible and others that, if tangible, do not lend themselves, or lend themselves easily, to measurement in monetary terms. Apparently in recognition of this, the cost formulas of a number of inter-jurisdictional agencies have been amended recently to require that each party pay a base rate or contribution after which the remainder of the expenses are prorated by formula. Included in this group are four Title II river basin planning commissions and the Interstate Commission on the Potomac River Basin. In addition, the equal sharing concept employed by the Susquehanna River Basin Commission has the same practical effect as levying a base rate for contributions. It simply means that the sum of the equal "base" payments equals the total current expense budget.

A review of the funding of these several agencies indicates that the range of the percentages of the totals of state base payments to total state payments is from about 27.5 to 73.2 per cent, the average about 40 per cent as may be seen in Table 8.

Table 8

Base Payments--Various Interjurisdictional Agencies

	<u>Total State Payments</u>	<u>Total Base Payments</u>	<u>% Base Total</u>
New England River Basins Planning Commission	\$213,060	\$176,300	73.2
Great Lakes River Basin Planning Commission	240,000	80,000	33.3
Ohio River Basin Planning Commission	200,000	55,000	27.5
Missouri River Basin Planning Commission	125,000	50,000	40.0
Interstate Commission on Potomac River Basin	179,800	60,000	33.3
Susquehanna River Basin Commission	---	---	100.0
Average (including Susquehanna)			51.2
Average (excluding Susquehanna)			40.1

It might be noted that two of the Delaware River Basin states--New York and Pennsylvania--are parties to five of the six cost-sharing arrangements. In three of those cases, both are parties to the same arrangement.

The next table (Table 9) illustrates the application of a formula made up of base rate payments equivalent to 40 per cent of the current expense budget and division of the remainder on the basis of respective basin populations and areas equally weighted.

Table 9

State Apportionments Based on
Base Rate and Average of Area and Population

	<u>Base Rate 40%</u>	<u>Average Area and Pop.</u>	<u>Remainder 60%</u>	<u>Apportionment</u>
New York	10.0	10.2102	6.1261	16.1261
Pennsylvania	10.0	60.4470	36.2682	46.2682
New Jersey	10.0	22.0035	13.2021	23.2021
Delaware	10.0	7.3393	4.4036	14.4036
TOTAL	40.0	100.0	60.0	100.0

The next table is similar to Table 9 except that the New York and New Jersey population figures include, respectively, one-fifth of the populations of New York City and northern New Jersey, i.e., the out-of-basin users of Delaware River water.

Table 10
State Apportionments Based on
Base Rate and Average of Area and Population,
Including Out-of-Basin Areas

	Base Rate 40%	Average Area and Pop.	Remainder 60%	Apportionment
New York	10.0	19.1197	11.4718	21.4718
Pennsylvania	10.0	53.3905	32.0343	42.0343
New Jersey	10.0	20.8314	12.4988	22.4988
Delaware	10.0	6.6584	3.9951	13.9951
TOTAL	40.0	100.0	60.0	100.0

A consideration not heretofore taken into account is what was termed earlier "fiscal capacity." The cost-sharing arrangements of two interjurisdictional agencies attempt to take this obviously important factor into consideration. One of the elements of the formula of the New England Interstate Water Pollution Control Commission is the value of real property in the several jurisdictions. The other agency, the New England River Basins Planning Commission, places great weight on personal income of the residents of the respective states after calculation of the base rate.

Personal income, usually measured in per capita terms, has long been a feature of a number of federal grant-in-aid programs. Similarly, programs to relieve unemployment are related to percentages of unemployed in prospective recipient jurisdictions. So far as is known, however, the only federal program that attempts to relate payments to general ability to pay for or finance governmental activities is the Federal Revenue Sharing Program. In addition to taking account of resident personal income, it makes allowances for state and local tax effort.

Table 11 shows one measure of fiscal disparity or fiscal capacity, i.e., ability to pay. It measures the income realized from state and local taxes against total state personal income - the revenue sharing method.^{2/}

Table 11
Fiscal Capacity of Selected States--1975

	<u>State and Local Taxes as % of 1975 Income</u>	<u>Index</u>	<u>50-State Rank</u>
New York	16.17	146	1
Pennsylvania	11.13	100	25
New Jersey	11.18	101	22
Delaware	11.17	101	24
United States (median)	11.10	100	--

It should be noted that, although they are the latest available, the data do not take account of the impact of the new personal income tax in New Jersey, nor of any other tax or income changes in the states, nor of any changes in local tax collections since 1975.

Assuming that fiscal capacity was to be used in the formula, the logical place to apply it would be to the results of the apportionments illustrated by Tables 9 and 10, i.e., apportionments that include a base rate and the average of area and population as factors, including out-of-basin population in one case.

Measurement of fiscal capacity in this instance should be shown on a regional basis. This is done by dividing total regional tax effort (\$31,830.6 million collected in state and local taxes divided by \$233,709 million personal income) by the tax effort of the individual states (the figures shown in the first column of Table 11). The relationship is shown below.

Table 12
Fiscal Capacity of Delaware River Basin States--1975

	<u>Relative Fiscal Capacity</u>
New York	.842288
Pennsylvania	1.223702
New Jersey	1.218229
Delaware	1.219320

Table 13 shows what the apportionments illustrated by Tables 9 and 10 would be if the fiscal capacity factor were applied, i.e., the Table 9 and 10 apportionments were multiplied by the figures shown in Table 12.

Table 13
State Apportionments Including
Fiscal Capacity Factors

	<u>Table 9 Apport.</u>	<u>Mod. by Fisc. Cap.(1)</u>	<u>Table 10 Apport.</u>	<u>Mod. by Fisc. Cap.(2)</u>
New York	16.1261	11.8647	21.4718	16.6060
Pennsylvania	46.2682	48.6682	42.0343	44.4075
New Jersey	23.2021	24.3013	22.4988	23.6675
Delaware	14.4036	15.0984	13.9951	15.3109

Federal Apportionment

Precedent might serve as a guide to determine an equitable federal share of the current expense budget of the Delaware River Basin Commission.

As has been indicated, the United States participates in payment of the expenses of nine interjurisdictional water resources agencies. The federal share of the respective budget totals ranges from 22.4 per cent (Interstate Commission on the Potomac River Basin), 23 per cent (Delaware Commission), 25 per cent (Susquehanna River Basin Commission), to 50 per cent (six Title II river basin commissions). The table below shows two ways to arrive at an "average" federal share.

Table 14
U. S. Share of Total Expenses
Various Interjurisdictional Agencies,

	+DRBC	-DRBC
Potomac	22.4%	22.4%
Delaware	23.0	-
Susquehanna	25.0	25.0
Title II	50.0	50.0
Average	30.1%	32.5%

If it were decided that an average should be used to determine the federal share, that shown in the second column would appear to be the better to use. The first includes the federal contribution to the Delaware River Basin Commission which is the subject of this inquiry. Presumably it should be excluded from consideration for that reason.

One might cite precedent to support the federal share's being the same as the largest share paid by any state. This is the practice followed in the cases of the Potomac and Susquehanna Commissions and the Delaware Commission for that matter.

Another way to determine the federal share might be to follow the precedent of the Title II commissions insofar as planning is concerned, i.e., the United States would pay 50 per cent of the cost of planning, to which would be added an appropriate share of the other expenses of the Commission, the latter possibly equal to the largest share paid by any signatory state. It may be reasonable to submit that the Title II precedent would not be stretched if the United States were to pay 50 per cent of all the expenses of the Commission.

Still another way to determine a reasonable federal share of the current expense budget would be to take what was the original or the current federal share--24 and 23 per cent respectively--and add to it the percentage share of the expenses of the Commission attributable to federal legislation enacted since the Commission came into existence in 1961. The DRBC staff estimates this to be about 20 per cent of the present total of the current expense budget. This would mean that the federal share should be about 44 or 43 per cent of the total.

The range within which to find a possible federal share of the current expense budget is shown in Table 15.

Table 15

Possible Federal Apportionments

	<u>Per cent</u>
Average--from Table 14	32.5
Equal to largest share of state--from Table 9	31.6 ^{a/}
Equal to largest share of state--from Table 10	29.6 ^{a/}
Equal to largest share of state--from Table 13(1)	32.7 ^{a/}
Equal to largest share of state--from Table 13(2)	30.8 ^{a/}
10% planning plus largest share of state--from Table 9	41.6
10% planning plus largest share of state--from Table 10	39.6
10% planning plus largest share of state--from Table 13(1)	42.7
10% planning plus largest share of state--from Table 13(2)	40.8
Title II commissions	50.0
Original federal share plus cost of new federal laws	44.0
Current federal share plus cost of new federal laws	43.0

^{a/}This figure represents the addition of a federal share equal to the largest state share, the total then divided into 100 per cent and the resulting fraction multiplied by the largest share of a state.

An examination of the range of figures in Table 15 indicates that the federal share of the current expense budget of the Delaware River Basin Commission appropriately might be close to 40 percent.

State and Federal Apportionments

Looking at all the possible combinations of factors that might be used to devise a reasonable formula, it would appear that the most equitable would be a combination of a 40 per cent federal share and state shares apportioned as shown in either Table 9, Table 10, Table 13(1), or Table 13(2). Were this done, the results would be as shown in Table 16.

Table 16

Possible State and Federal Apportionments

	Table 9 ^{a/} Per cent	Table 10 ^{a/} Per cent	Table 13(1) ^{a/} Per cent	Table 13(2) ^{a/} Per cent
New York	9.6757	12.8830	7.1188	9.9636
Pennsylvania	27.7610	25.2205	29.2000	26.6445
New Jersey	13.9212	13.4993	14.5807	14.2005
Delaware	8.6422	8.3971	9.0590	9.1865
United States	40.0000	40.0000	40.0000	40.0000
Total	100.0001	99.9999	99.9585	99.9951

^{a/} The respective state shares are those shown in the several tables multiplied in all cases by 60 per cent.

Table 16 illustrates four formulas, any one of which might be the basis on which the current expense budget of the Delaware River Basin Commission is apportioned. It is not suggested that another and perhaps quite different formula would not serve equally as well. Formulas differ because reasonable people are unable to state with conviction what factors should be employed and what weights should be assigned to them. Resort to a slide rule or a laboratory is not to be had. What is required is an exercise in political judgment.

It may be profitable to examine the formulas to determine if they meet the compact standard that "the amount required to balance the current expense budget . . . shall be apportioned equitably among the signatory parties . . ."

Considering first the apportionments of the states, all formulas have as factors area and population. These are factors traditionally used. It is difficult to argue that the area represented by the basin and the people resident in it are not benefited by the activities of the Commission, but in what proportion and to what degree may be matters of dispute. Because there appears to be no way to settle such disputes, the formulas give equal weight to both and assign to them in combination 60 per cent of total weight before modification to reflect fiscal capacity.

Two of the formulas incorporate one-fifth of the population--but not the area--of the places outside the basin to which Delaware River water is diverted (those shown under the columns labeled Table 10 and Table 13(2)). As explained earlier, this represents an attempt to acknowledge the value of basin water to the states thus served. The

proportion of population included represents, in turn, a recognition that only about one-fifth of the total benefits available to basin residents are conferred on these non-basin users.

The compact, in Section 3.5(b), requires the Commission not to "impose or collect any fee, charge or assessment with respect to diversion of water permitted by said [The 1954 Supreme Court] decree; . . ." Similarly, Section 15(b) forbids the Commission "to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the Compact; . . ."

It is submitted that what is suggested as an acknowledgement of the value to New York City and northern New Jersey of the water diverted from the basin is not a "fee, charge or assessment." The difference between the formula's including or excluding one-fifth of the population of these areas may be seen in Table 16 in the case of New York. After all other factors are taken into account, the difference to New York is \$42,672, assuming a current expense budget of \$1,500,000, about what it has been in recent years. If this were to be regarded as a "fee, charge or assessment," it would amount to less than .00000020 cents per gallon (20 one-millionth of a cent) at the present rate of diversion and less than 15 one-millionth of a cent per gallon at the maximum permissible rate of diversion. (For New Jersey, the amount would be even less.) At some point, a difference in degree becomes a difference in kind.

It may be presumed, too, that the original apportionment and its more recent slight amendment were thought to have been equitable when they were adopted and subsequently adhered to. The relationships among the signatory states in area have not changed, have changed little in population, and may or may not have changed in any other factors that may have been in the minds of those who adopted the earlier and the present apportionments. It takes not too much imagination to believe that those who decided for New York and New Jersey were very conscious of the value to their out-of-basin areas of Delaware River water. This could have been what persuaded them to support their respective state's paying shares equal to those of Pennsylvania and the United States.

Finally, the large out-of-basin diversions restrict management of the basin's water resources to benefit the people and area within it. Simply stated, not all the basin's water resources are available for management to the maximum advantage of all persons and areas of the basin, including those of New York and New Jersey.

All the suggested formulas employ a base payment amounting to 40 per cent of the total apportionment. This is virtually the same as the average among the several interjurisdictional agencies which use base payments, as may be seen in Table 8. As noted, the rationale for a base payment is to try to establish a value for benefits that cannot be quantified or can be only with the greatest difficulty. Also, as noted, there appears to be a trend toward incorporating base payments in budget formulas of interjurisdictional agencies.

Two formulas take heed of the fiscal capacities of the signatory states (those shown under the columns labeled Table 13(1) and Table 13(2)). In only two cases do formulas of interjurisdictional agencies include this feature, and neither uses the method of measurement used here. Nevertheless, the consultant believes that increasingly in such formulas there will be recognition of the significance of this factor, and more than likely the method of measurement will be similar to that employed here. It is a fact that certain states--the so called "sun belt," for example--have lesser fiscal pressures than the states of the east and northeast. Almost surely this fact will be recognized in federal legislation--grant-in-aid and other programs--as presently it is recognized in federal revenue sharing. It might be noted that the Bureau of the Census reports in its estimates of population as of July 1, 1976, that for the first time since colonial days slightly over half the national population resides in the south and west.

In the matter of the share of the United States, what is suggested is within the range of federal contributions toward the expenses of similar organizations, and not too far from the average. It is approximately midway in the range of possible federal apportionments considering the precedents that have been established, as may be seen in Table 15. It appears to give due recognition to the expenses of the Commission that may be attributed to federal enactments after the time the Commission came into being.

It may be argued that the equal partnership concept of the compact is destroyed or altered drastically by apportioning to the federal government a larger share of the current expense budget than that apportioned to any state. The State of Delaware has paid a smaller share of Commission expenses from the beginning, but its role and standing were not diminished thereby. Such an argument, in other words, would amount to overreaction. On the other hand, it is a fact that the partnership is not equal. No state may withdraw at will from the compact or unilaterally modify the conditions under which it remains a party (Section 1.4), no state Commissioner may withhold consent from any part or revision of the comprehensive plan thereby rendering null and void that part or revision so far as his state is concerned (Section 15.1(s)), and no state chief executive "may suspend, modify or delete any provision of the comprehensive plan. . ." (Section 15.1(s)). Despite the obvious

inequality of the partners, however, an appropriate federal apportionment was determined by means which took no account of that fact. Moreover, any change in apportionments among the parties now will not affect their legal relationship as the history of the compact and the State of Delaware's contributions attest.

Conclusion

Table 16 provides a framework within which the Delaware River Basin Commission can choose to replace the apportionment formula currently in use should the Commission decide to take this step. For the sake of convenience, Table 17 compares the several possible alternative with the current formula.

Table 17
Alternative State and Federal Apportionments
Compared to Current Apportionments^{a/}

	<u>Table 9^{b/}</u> <u>Per cent</u>	<u>Table 10^{b/}</u> <u>Per cent</u>	<u>Table 13(1)^{b/}</u> <u>Per cent</u>	<u>Table 13(2)^{b/}</u> <u>Per cent</u>	<u>Current</u> <u>Per cent</u>
New York	9.7	12.9	7.1	10.0	23.0
Pennsylvania	27.8	25.2	29.2	26.6	23.0
New Jersey	13.9	13.5	14.6	14.2	23.0
Delaware	8.6	8.4	9.1	9.2	8.0
United States	40.0	40.0	40.0	40.0	23.0
Total	100.0	100.0	100.0	100.0	100.0

^{a/} Rounded to the nearest one-tenth of one per cent.

^{b/} Factors--Table 9: Area, population, base payment
 Table 10: Area, population, including out-of-basin population, base payment
 Table 13(1): Area, population, base payment, fiscal capacity
 Table 13(2): Area, population, including out-of-basin population, base payment, fiscal capacity

Recommendations

Public Administration Service recommends that the states as a unit be considered apart from the federal government in developing a formula to apportion the current expense budget of the Commission among the signatory parties. In developing the method of sharing among the states, it recommends that area and population receive consideration as factors, that they have equal weight, and that this combined weight be about 60 per

cent. PAS recommends that there be a base payment and that it approximate 40 per cent.

PAS believes it to be both defensible and useful to consider inclusion as factors in any formula that might be adopted either or both out-of-basin populations and relative fiscal capacities of the states.

PAS recommends that the federal share of the current expense budget be about 40 per cent of the total.

OTHER POSSIBLE ACTIONS

The first order of business is the devising of a formula satisfactory to the signatory parties, but that is not all that should be done. Implicit in the assignment was that PAS investigate the overall functioning of the Commission if for no other reason than to provide a framework of understanding within which consideration of a formula could proceed. This conception of the assignment was made specific by requests from some of those interviewed, including Alternates to the Commissioners.

The present undertaking was brought about, at least in part, by fiscal crises. It seems reasonable to anticipate that, for the foreseeable future, all the signatories will continue to experience moderate to severe monetary problems. It follows, therefore, that the proposed expenditure of every state and federal dollar will undergo the closest scrutiny. At any time, there are many worthwhile programs for which governmental dollars are not available. At a time of tight budgets, the casualty list grows.

Man is inclined to judge the past and the future by the present. A strong executive at both the federal and state levels is an accepted fact, but it was not always so. Two or three generations ago the relative positions of strength of the executive and the legislature were more nearly even than they have since become. Now the pendulum appears to be swinging back to a position of appreciably greater strength in the legislature. In the last few years, the legislatures of all the signatory parties to the Delaware River Basin Compact have increased the size and raised the competency level of their staffs, and they have taken other steps to enforce their determination that they have "a larger piece of the action." All of this means that the gamut of hard scrutiny of governmental programs and proposals for new or enlarged programs has been lengthened. The executive is no less able to examine, to question, and to evaluate, but the legislature now has increased its ability to do so.

Particularly vulnerable to serious injury are the activities of an interjurisdictional agency. This is true for a number of reasons. It is not a part of the physical scene in many capital cities. The understanding on the part of the executive and, in particular, the legislature that there is an agency, what it is, and what it does is not aided by this physical absence. Many legislators may not have heard of it or, if they have, may not know that it is an agency of their jurisdiction. Even those who know this much may have no more than a vague idea of what the agency does or in what ways and to what extent its services are of value to their jurisdiction. The manner in which its program and budget have been evolved may be resented. The legislature as such has little influence on program content. The legislature perceives its receiving the agency's budget request almost as a fait accompli.

The Commission's Annual Report is a useful and informative document. It is retrospective, however. The budget document is an excellent presentation of what is proposed to be done in the ensuing year--for those who are familiar with budgets and have sufficient time for studying that of the Commission. Many--more likely most--of those on whose understanding and good will the Commission depends will not see or will not have or take the time to study the Commission's budget request. Consideration should be given to supplementing the document with a written description based on the matrix--Signatory Suggestions for Future DRBC Activities--using the matrix itself as an exhibit. If this were done, the supplementary document should be so prepared that it would serve not only to strengthen the budget presentation but would stand on its own.

This litany is perhaps of adequate length to indicate what the problems are and their dimensions. Undoubtedly the situation differs from signatory party to signatory party and from interjurisdictional agency to interjurisdictional agency. Be that as it may, it is suggested that these generalizations are sufficiently accurate to be the starting point for the devising of means of amelioration.

It was stated above that "[A] strong executive . . . is an accepted fact . . ." Realism requires that a strong legislature be accepted as fact. The Commission is a part, an extension, of the executive branch of each one of the signatories. In full recognition of this, more effective means must be found to work with the legislatures. Their understanding of the agency must be increased. They must have an opportunity to influence program content. They must be kept informed. Periodic reports on program and on administration, particularly budgetary, matters might be made. To the degree possible, there should be consultation with appropriate committees in advance of decision-making,

both with respect to program and budget. The prescription for each signatory should be written in consultation with its Alternate.

The disadvantage of the Commission's not being located in Albany, Harrisburg, Dover, and Washington can be overcome to some extent by having one regular meeting per year in each one of the capital cities--or New York City, Philadelphia, and Wilmington if that is preferred by the respective Commissioner or his Alternate. (It is probably unnecessary to include Washington in the circuit.) The agenda for such meetings should be worked out carefully to concentrate on matters of substantive policy, if possible on a matter or matters of particular interest to the host state. Invitations to attend, including an annotated agenda, might be sent to legislators of the host state, staff personnel of key legislative committees, and appropriate executive agency personnel. The Governor should be asked to be present for at least part of the meeting. Future summit meetings could be rotated among the state capitals.

The water resource agencies of the signatories are "clients" of the Commission. At times, however, some of their staff personnel may view the Commission as a rival for appropriated funds. Although there already exists a good committee infrastructure, even closer relations between the Commission and its staff and these agencies and their staffs, again with the concurrence and approval of the Alternate, should be established. Efforts should be made to learn exactly what the Commission can do to further the state agency's aims and to assist it in realizing them. The compact creates the Commission "as an agency and instrumentality" of the signatory parties. It is directed "to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the compact, and . . . to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous." The purpose of the compact is thwarted to the extent that opportunities to cooperate and assist are not realized.

Precisely what should be done must be determined on a case-by-case basis. However, one specific suggestion is that personnel of the signatories share with the staff of the Commission the responsibility of drafting new or revised working agreements between the Commission and the respective signatories. This would serve two purposes, (1) to make the Commission aware of what their professional staffs believe to be important and (2) to increase familiarity of signatory staff personnel with the compact and the Commission's responsibilities. Incidentally, the manner in which the staff met with the respective Alternates and agency personnel to develop the 1976 program of the Commission is perhaps the longest step in this general direction that could be taken.

ATTACHMENT 3

NO. 61-2

A RESOLUTION by the Delaware River Basin Commission to provide for the preparation of the Commission's current expense budget for the fiscal years ending June 30, 1962, and June 30, 1963, and for the apportionment of the requirements thereof among the signatory parties.

BE IT RESOLVED:

1. The Commission alternates, sitting as a committee of the whole, are authorized and directed to prepare and recommend a current expense budget of the Commission for the fiscal years ending June 30, 1962 and June 30, 1963. A public hearing upon the recommended budgets, pursuant to Section 14.4 of the Compact, will be held at the next regular meeting of the Commission or as soon as may be feasible.

2. The amount required to balance the current expense budget of the Commission for its fiscal years ending June 30, 1962 and June 30, 1963 shall be apportioned among the signatory parties, pursuant to Section 13.3 (b) of the Compact, in the following percentages of the total amount required by the budgets to be adopted:

Delaware	4%
New Jersey	24%
New York	24%
Pennsylvania	24%
United States	24%

Adopted: December 13, 1961

David L. Lawrence, Chairman

Walter M. Phillips, Acting Secretary

DELAWARE RIVER BASIN COMMISSION

Meeting of February 23, 1977

Minutes

Page 3

7. Public Administration report on Commission's budget-sharing formula. The Secretary read the following proposed resolution for the minutes:

WHEREAS, in December 1975 the Commission authorized a study of its budget-sharing formula, and a contract with the Public Administration Service of Washington, D.C., was approved for this purpose in September 1976; and

WHEREAS, the Public Administration Service submitted its final report to the Commission in February of this year; now therefore

BE IT RESOLVED:

The report of the Public Administration Service entitled "The Delaware River Basin Commission: Apportioning the Current Expense Budget," dated February 1977, is hereby received and accepted. Distribution of copies of the report is authorized to interested agencies and individuals upon request. Recommendations of the report are under consideration by the Commission, and written comment thereon from interested parties will be welcome.

The Chairman announced that the Commission had discussed the Public Administration Service's report at a recent conference and that a majority of the members of the Commission had expressed their preference for retaining the present budget-sharing formula, and felt that the Commission recent budgetary shortfalls resulted more from stringent budgetary conditions generally among the signatory parties than from an inequitable apportionment formula. The Chairman also reported that several Commission members were concerned about the policy implication of the federal share of the Commission's regular budget, but that the Executive Director had nevertheless been authorized to explore that particular recommendation of the PAS report with appropriate Congressional and executive branch officials in Washington. Mr. Hullar moved the resolution as read by the Secretary. His motion was seconded by Mr. Goddard and approved by unanimous vote the Commission.

ATTACHMENT 5



GERALD M. HANSLER
EXECUTIVE DIRECTOR

DELAWARE RIVER BASIN COMMISSION

P. O. BOX 7360

WEST TRENTON, NEW JERSEY 08628

(609) 883-9500

HEADQUARTERS LOCATION
25 STATE POLICE DRIVE
WEST TRENTON, N. J.

August 12, 1988

<p>To: James R. Grace Donald P. Hodel Daniel M. Barolo Harold Budka R. Wayne Ashbee Michael F. Catania Dirk C. Hofman</p>	<p>John E. McSparran Gerard L. Esposito Colonel G. William Quinby Harvey W. Schultz William J. Marrazzo David J. Goldberg, Esquire</p>
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Gentlemen:

As requested at the August 3, 1988 Commission meeting, below please find a proposed "signatory parties' contribution to the General Fund Budget" for the Fiscal Years 1991 through 1993. This proposal will achieve the phased changes to the contribution rate over three years.

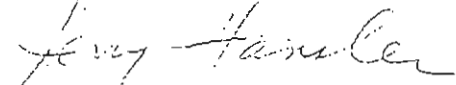
	1990	1991	1992	1993
	%	%	%	%
Delaware	10.61	11.25	11.90	12.50
New Jersey	28.67	26.77	25.88	25.00
New York	14.06	15.20	16.35	17.50
Pennsylvania	32.94	26.78	25.87	25.00
United States	13.72	20.00	20.00	20.00
	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

In addition to the information listed above, I have attached a table which displays the signatory parties' contributions and their percent of the total contributions for Fiscal Year 1980 through Fiscal Year 1993. For the years 1990 to 1993 the percentages listed above were used to derive the dollar estimates.

I hope this information is useful and provides the basis on which the signatory parties can agree to a defined contribution level for the Commission General Fund operations.

Should you have any questions on the above, please feel free to contact me.

Sincerely,


Gerald M. Hansler

Enclosure

cc: Raphael Hurwitz
Barbara Cranford

SIGNATORY PARTIES
CONTRIBUTION TO GENERAL FUND BUDGET
FY1980 TO FY 1993

YEAR	DELAWARE		NEW JERSEY		NEW YORK		PENNSYLVANIA		UNITED STATES		TOTAL	
	AMOUNT	% TOTAL	AMOUNT	% TOTAL	AMOUNT	% TOTAL	AMOUNT	% TOTAL	AMOUNT	% TOTAL	AMOUNT	% TOTAL
1980	\$124,000	9.12%	\$330,100	24.29%	\$270,000	19.87%	\$381,000	28.03%	\$254,000	18.69%	\$1,359,100	100.00%
1981	\$130,500	9.23%	\$346,600	24.52%	\$270,000	19.10%	\$400,200	28.32%	\$266,000	18.82%	\$1,413,300	100.00%
1982	\$138,400	9.55%	\$367,700	25.36%	\$250,000	17.24%	\$424,600	29.29%	\$269,000	18.56%	\$1,449,700	100.00%
1983	\$149,800	10.33%	\$391,784	27.02%	\$180,000	12.41%	\$459,600	31.69%	\$269,000	18.55%	\$1,450,184	100.00%
1984	\$158,800	10.64%	\$398,000	26.66%	\$180,000	12.06%	\$487,200	32.63%	\$269,000	18.02%	\$1,493,000	100.00%
1985	\$166,800	10.42%	\$443,000	27.67%	\$200,000	12.49%	\$511,600	31.96%	\$279,500	17.46%	\$1,600,900	100.00%
1986	\$175,300	10.18%	\$473,000	27.46%	\$263,000	15.27%	\$543,500	31.55%	\$268,000	15.56%	\$1,722,800	100.00%
1987	\$184,000	10.59%	\$497,000	28.61%	\$269,600	15.52%	\$571,000	32.87%	\$215,750	12.42%	\$1,737,350	100.00%
1988	\$203,600	10.61%	\$550,000	28.67%	\$269,600	14.06%	\$631,900	32.94%	\$263,000	13.71%	\$1,918,100	100.00%
1989	\$203,600	10.61%	\$550,000	28.67%	\$269,600	14.06%	\$631,900	32.94%	\$263,000	13.71%	\$1,918,100	100.00%
1990	\$226,900	10.61%	\$613,000	28.67%	\$300,600	14.06%	\$704,200	32.94%	\$293,100	13.71%	\$2,137,800	100.00%
1991	\$253,700	11.25%	\$603,900	26.78%	\$342,800	15.20%	\$603,900	26.78%	\$451,100	20.00%	\$2,255,400	100.00%
1992	\$283,200	11.90%	\$615,700	25.88%	\$389,100	16.35%	\$615,600	25.87%	\$475,900	20.00%	\$2,379,500	100.00%
1993	\$313,800	12.50%	\$627,600	25.00%	\$439,300	17.50%	\$627,600	25.00%	\$502,100	20.00%	\$2,510,400	100.00%

NOTE: Total contribution for FY1991 to FY1993 assumes a 5.5% increase over prior year.

DELAWARE RIVER BASIN COMMISSION

Meeting of June 28, 1989

Minutes

Page 2 – third paragraph

A Resolution to Adopt the Commission's Annual Budgets for the Fiscal Year ending June 30, 1990, and to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets. Mr. Hansler explained that New York's contribution had fallen \$31,000 short of the preliminary figure. Part of that shortfall will be added during the Commission's last FY 1990 quarter, with New York's full share and an additional \$7700 committed for FY 1991. With that, all five parties for the first time, over a three-year period, will be moving to a fixed percentage contribution to the Commission. A resolution to adopt the FY 1990 current expense and capital budgets was moved by Dr. Grace and seconded by Mr. Catania. Upon a roll call vote of the five parties, Resolution No. 89-15 was unanimously adopted.

Meeting of June 19, 1991

Minutes

Pages 3 & 4 – fifth paragraph:

A Resolution to Adopt the Commission's Annual Budget for the Fiscal Year ending June 30, 1992, and to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets. Mr. Mt. Pleasant moved a resolution to adopt a budget reflecting signatory party contributions of \$2,388,100. This version represents a reduction of \$240,000 from the budget which was the subject of a May 22, 1991 public hearing. The resolution was seconded by Mr. Farling. Mr. McSparran acknowledged the budget problems experienced by each of the states but stressed the importance of the Commission's activities and the need for each signatory party to meet its fair share appropriation agreed to several years ago. While Pennsylvania will support it, it means severe belt tightening and cutting of services which threatens the Commission's long-term existence. Mr. Catania assured Mr. McSparran that each of the states will continue its efforts to come up with its agreed upon share. He went on to point out that the numbers approved in the budget today are subject to action by the state legislatures. Today's votes will be based upon the governors' requests to their legislatures. Clearly, final figures will be subject to actual appropriations. Mr. Mt. Pleasant pointed out that, while sympathetic to Pennsylvania's urging, New York has 17 major watersheds, and the state's water program has been cut back by millions of dollars. It is a major accomplishment that the Commission's appropriation has not been cut. Mr. Farling stated that Delaware departments have been cut by 7 percent this year and last but still continues to maintain its contribution to the Commission, illustrating its commitment. Ms. Brooks stated the United States continues to support the Commission's work and hopes that the states work out their fiscal problems and become full contributors again. Resolution No. 91-8 to adopt the budget reflecting party contributions of \$2,388,100 was then adopted by unanimous roll call vote of the Commission.