

THE PROPOSED POTOMAC RIVER BASIN COMPACT

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



HD 21,1970

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1970

MEMBERS OF COUNCIL

C. W. CLEATON, *Chairman*
J. C. HUTCHESON, *Vice-Chairman*
RUSSELL M. CARNEAL
*JOHN H. DANIEL
**CHARLES R. FENWICK
ROBERT C. FITZGERALD
***TOM FROST
J. D. HAGOOD
EDWARD E. LANE
GARNETT S. MOORE
LEWIS A. MCMURRAN, JR.
SAM E. POPE
ARTHUR H. RICHARDSON
WILLIAM F. STONE
JAMES M. THOMSON
EDWARD E. WILLEY

STAFF

G. M. LAPSLEY
WILDMAN S. KINCHELOE, JR.
FRANK R. DUNHAM
MARY SPAIN
JOHN A. BANKS, JR.
SALLY WARTHEN
DAVID T. WALKER
KATHERINE GOOLSBY

* Mr. Daniel resigned, August 1, 1969.
** Senator Fenwick, deceased, February 22, 1969.
*** Mr. Frost, deceased, September 18, 1969.

TABLE OF CONTENTS

	Page
I. Introduction	v
II. Findings and Recommendations	vi
<i>Appendix I</i> - Proposed Potomac River Basin Compact	A- 1
<i>Appendix II</i> - Study Directive - 1968 House Joint Resolution No. 102	A- 66
<i>Appendix III</i> - Committee Report	A- 68
<i>Appendix IV</i> - Dissenting Committee Statement	A-102

THE PROPOSED POTOMAC RIVER BASIN COMPACT

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia

January 13, 1970

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

Over fourteen thousand square miles of land in Virginia, Maryland, West Virginia, Pennsylvania and the District of Columbia comprise the Potomac River Basin. This figure will remain constant. Approximately three million people depend upon the waters of the Basin. This statistic alters every day. Between 1930 and 1960, the population served by the Basin's water resources more than doubled. The Department of Commerce has predicted that this figure will reach five million by 1985 and more than seven million by 2010.

Projected increases in the demands for water, existing and potential pollution problems and growing concern with the preservation of water-related resources such as recreation lands and wildlife are factors creating an insistent demand for proper planning and management of the water resources of the Basin. The fact that the flow of water in the Potomac River and its tributaries is subject to major fluctuation from drought to flood, when coupled with the obviously growing demands which will be placed upon the Basin's resources, makes it imperative that a vehicle be developed which will permit the proper management and utilization of the Basin's resources throughout the jurisdictions concerned.

The proposed Potomac River Basin Compact, which is printed as Appendix I to this Report, represents the first major attempt by all affected jurisdictions to create an interstate-federal administrative body with powers and responsibilities sufficient to assure sound water resource planning and management for the entire Basin area. At its 1968 Regular Session, the General Assembly adopted House Joint Resolution No. 102, which is printed as Appendix II to this Report, and assigned the Virginia Advisory Legislative Council the specific task

“to make a study of the proposed Potomac River Basin Compact and report on the advisability of the Commonwealth of Virginia adopting and becoming a party to such Compact.” House Joint Resolution No. 102.

Pursuant to this directive, the Council appointed Russell M. Carneal, member of the Council and of the House of Delegates from Williamsburg, to serve as the Chairman of a special Committee to study the proposed Compact and submit an initial report and recommendations to the Council for its consideration. The following individuals were appointed to serve with Mr. Carneal on the Committee: Leslie D. Campbell, Jr., member of the State Senate, Ashland; John A. K. Donovan, member of the Interstate Commission on the Potomac River Basin and former member of the State Senate, Falls Church; Walther B. Fidler, member of the House of Delegates, Warsaw; Milton Hickman, Chairman of the Marine Re-

sources Commission, Painter; J. Clifford Hutt, member of the Marine Resources Commission, Montross; R. C. Insley, Poquoson; Francis C. Lee, former member of the Potomac River Basin Advisory Committee and member of the Subcommittee on Compact Drafting, Richmond; O. A. Spady, Battery Park; and Hiram Zigler, Virginia Farm Bureau Federation, Richmond. Mr. Fidler was elected Vice-Chairman, and the Division of Statutory Research and Drafting, represented by Mary Spain, served as Secretary.

Shortly after its formation in 1968, the Committee reviewed the preliminary September 1967 draft of the proposed Compact. During 1968, this preliminary draft was reviewed by interested agencies and parties and revised. After the release of the final October 1968 draft of the Compact, the Committee reviewed that draft and scheduled four public hearings which it held immediately after the conclusion of the 1969 Special Session of the General Assembly. These hearings were held throughout the Basin area in Virginia as follows: April 28 - Falls Church; April 29 - Montross; May 8 - Harrisonburg; and May 9 - Winchester.

The Committee consulted with Roy L. Orndorff, Acting Executive Secretary of the Potomac River Basin Advisory Committee, and Julian M. Alexander, Commissioner of Water Resources of Virginia, who both accompanied the Committee on its tour of public hearings.

The Committee submitted an initial report and recommendations to the Council in December. Their report was not unanimous and reflected substantial disagreement as to the proper course of action for the Council to take in submitting this Report.

A bare majority of the Committee favored the Council recommending the proposed Compact as drafted to the General Assembly so that swift action on the Compact might be achieved. A substantial minority of the Committee recommended that the Council forward the Compact to the General Assembly with specific suggestions for amendments that would limit the scope of the proposed Compact, remove certain provisions giving powers to the proposed interstate-federal Commission created by the Compact and revamp the membership provisions to a degree. The recommendations and discussion of the Compact from the report of the Committee majority are carried in Appendix III. The dissenting Committee members' statement appears in Appendix IV.

The Council has reviewed the Compact, the Committee report and the dissenting statement and submits the following report, findings and recommendations.

II. FINDINGS AND RECOMMENDATIONS

- A. The General Assembly should review the proposed Potomac River Basin Compact and take action on the Compact at the 1970 Regular Session.
- B. The General Assembly should review suggestions to amend the proposed Compact on their merits as they are presented.

One matter upon which the Council and the Committee are in unanimous agreement is the pressing and immediate need to develop a proper mechanism by which the jurisdictions in the Potomac Basin can achieve proper use and management of the River's water resources before pollution and waste deplete these resources to a point beyond repair.

Thus we believe it is appropriate and highly desirable for the General Assembly to review and act on the proposed Compact at this next Regular Session.

The extent, if any, to which the Compact should be amended before it is adopted is a question which we believe the General Assembly must ultimately decide. We are offering no specific recommendations for amendment in this Report. The dissenting Committee members' statement in Appendix IV lists several specific suggestions for amendment. The majority Committee report in Appendix

III carries an extensive discussion of the criticisms of the Compact put before the Committee and potential amendments implied in such criticisms. The question of amendment is uniquely a legislative matter, and we believe that the question can best be answered through the legislative process.

We forward the proposed Compact to you for your consideration with the hope and expectation that your actions will result in progress toward establishment of a proper mechanism to solve the urgent problems of the Basin area and to preserve the limited and precious resources flowing from the Potomac.

Respectfully submitted,
C. W. CLEATON, *Chairman*
J. C. HUTCHESON, *Vice-Chairman*
RUSSELL M. CARNEAL
ROBERT C. FITZGERALD
J. D. HAGOOD
EDWARD E. LANE
GARNETT S. MOORE
LEWIS A. MCMURRAN, JR.
SAM E. POPE
ARTHUR H. RICHARDSON
WILLIAM F. STONE
JAMES M. THOMSON
EDWARD E. WILLEY

APPENDIX I
THE PROPOSED POTOMAC RIVER BASIN COMPACT
TABLE OF CONTENTS

	PAGE
PREAMBLE	
ARTICLE 1-SHORT TITLE, DEFINITIONS, PURPOSES AND LIMITATIONS ...	1
Sec. 1.01-Short Title	1
Sec. 1.02-Definitions	1
Sec. 1.03-Findings	3
Sec. 1.04-Purposes	4
Sec. 1.05-Powers of the United States	4
Sec. 1.06-Duration of Compact	5
ARTICLE 2-COMMISSION—ORGANIZATION AND TERRITORIAL JURISDICTION	6
Sec. 2.01-Commission Created	6
Sec. 2.02-Commission Membership	6
Sec. 2.03-Alternates	6
Sec. 2.04-Compensation	6
Sec. 2.05-Voting Power	7
Sec. 2.06-Advisors	7
Sec. 2.07-Organization, Internal Procedures and Delegation of Powers	7
Sec. 2.08-Territorial Jurisdiction of the Commission	8
ARTICLE 3-POWERS AND DUTIES OF THE COMMISSION	9
Sec. 3.01-Policy	9
Sec. 3.02-Comprehensive Water Resources Plan	10
Sec. 3.03-Water Resources Program	10
Sec. 3.04-Budgets	11
Sec. 3.05-General Powers	11
Sec. 3.06-Interbasin Agreements	13
Sec. 3.07-Coordination and Cooperation	13

	PAGE
Sec. 3.08-Review and Approval of Projects of Others	14
Sec. 3.09-Effect on the Chesapeake Bay	15
Sec. 3.10-Advisory Committees	15
Sec. 3.11-Proposing Amendments	16
ARTICLE 4-WATER SUPPLY	17
Sec. 4.01-Development, Storage and Release of Waters	17
Sec. 4.02-Unauthorized Diminution of Augumented Flows Prohibited	17
Sec. 4.03-Additional Powers.....	17
ARTICLE 5-WATER QUALITY MANAGEMENT AND CONTROL	18
Sec. 5.01-Intent and Policy	18
Sec. 5.02-Standards for Controlling Water Quality	18
Sec. 5.03-Scope	19
Sec. 5.04-Cooperative Administration and Enforcement	19
Sec. 5.05-Projects and Facilities	19
Sec. 5.06-Pollution Damage	20
ARTICLE 6-FLOOD PROTECTION	22
Sec. 6.01-Flood Control Authority	22
ARTICLE 7-WATERSHED MANAGEMENT	24
Sec. 7.01-Management Practices	23
Sec. 7.02-Watershed Defined	23
ARTICLE 8-RECREATION	24
Sec. 8.01-Planning	24
Sec. 8.02-Cooperation	24

Sec. 8.03-Construction, Operation, Maintenance and Administration	24
Sec. 8.04-Uniformity of Fishing and Boating Laws on Certain Waters	25
Sec. 8.05-Restrictions on Commission Construction and Operation	25
Sec. 8.06-Definition	25
ARTICLE 9-OTHER PUBLIC VALUES	26
Sec. 9.01-Purpose and Findings	26
Sec. 9.02-Compatibility of Water Resources Related Projects	26
Sec. 9.03-Planning Coordination	26
Sec. 9.04-Comprehensive Amenities Plan and River Zones	26
Sec. 9.05-Amenities Plan Effectuation— Acquisition and Administration	28
Sec. 9.06-Land Use Plans and Controls— River Zone Protection	28
Sec. 9.07-Recommendations for Land Preservation	29
ARTICLE 10-HYDROELECTRIC POWER	31
Sec. 10.01-General	31
Sec. 10.02-Development	31
Sec. 10.03-Transmission	31
ARTICLE 11-WATER SHORTAGES AND EMERGENCIES	32
Sec. 11.01-Areas of Potential Water Shortage	32
Sec. 11.02-Protected Areas	32
Sec. 11.03-Emergency Areas	32
Sec. 11.04-Protected Area and Emergency Area Controls	32
Sec. 11.05-Standards	33
Sec. 11.06-Termination	33

	PAGE
Sec. 11.07-Maintenance of Records	33
Sec. 11.08-Existing Authorizations	34
ARTICLE 12-INTERGOVERNMENTAL RELATIONS	35
Sec. 12.01-Federal, State and Local Projects	35
Sec. 12.02-Cooperative Services	35
Sec. 12.03-Agreements with Other Governmental Agencies	35
Sec. 12.04-Local Governmental Cooperation	36
Sec. 12.05-Potomac River Fisheries Commission	36
ARTICLE 13-BOND FINANCING	37
Sec. 13.01-Borrowing Power	37
Sec. 13.02-Funds and Expenses	37
Sec. 13.03-Credit Excluded ; Officers, State, and Municipal	37
Sec. 13.04-Funding and Refunding	38
Sec. 13.05-Bonds: Authorization Generally	38
Sec. 13.06-Bonds, Resolution and Indentures Generally	39
Sec. 13.07-Maximum Maturity	40
Sec. 13.08-Tax Exemption	40
Sec. 13.09-Interest	40
Sec. 13.10-Place of Payment	40
Sec. 13.11-Execution	40
Sec. 13.12-Holding Own Bonds	41
Sec. 13.13-Sale	41
Sec. 13.14-Negotiability	41
Sec. 13.15-Bonds Eligible for Investment and Deposit	41
Sec. 13.16-Validation Proceedings	42
Sec. 13.17-Recording	42
Sec. 13.18-Pledged Revenues	42
Sec. 13.19-Remedies	43
Sec. 13.20-Sales and Guarantees by Signatories and other Governmental Agencies	43

ARTICLE 14-BUDGETS, FINANCING AND PROPERTY	44
Sec. 14.01-Annual Capital and Current Expense Budgets	44
Sec. 14.02-Project Costs and Evaluation Standards	45
Sec. 14.03-Cost Sharing	46
Sec. 14.04-Project Cost Assessments	47
Sec. 14.05-Governmental Appropriations, Loans and Grants	47
Sec. 14.06-Acquisition of Property from Signatories	47
Sec. 14.07-Acquisition of Property from Political Subdivisions	48
Sec. 14.08-Rights-of-Way	48
Sec. 14.09-Power to Acquire Property by Condemnation	48
Sec. 14.10-Tax Exemption and Payment in Lieu of Taxes	50
Sec. 14.11-Riparian and Other Vested Rights	50
 ARTICLE 15-GENERAL PROVISIONS	 51
Sec. 15.01-Commission Meetings, Minutes, Copies of Documents and Fees Therefor	51
Sec. 15.02-Contracting and Purchasing	52
Sec. 15.03-Insurance	54
Sec. 15.04-Employee Benefits	54
Sec. 15.05-Prohibited Activities	55
Sec. 15.06-Annual Independent Audit	56
Sec. 15.07-Reports	56
Sec. 15.08-Notice	57
Sec. 15.09-Hearings	58
Sec. 15.10-Oaths and Subpoenas	59
Sec. 15.11-Judicial Review of Commission Orders and Actions	60
Sec. 15.12-Enforcement by the Commission	61
Sec. 15.13-Penal Sanctions	62
Sec: 15.14-Tort Liability	63

Sec. 15.15-Transfer of Employees and Property, Abolition of Interstate Commission on the Potomac River Basin, Repeal of Potomac River Sanitation Com- pact, and Payment of Certain Expenses	63
Sec. 15.16-Jurisdiction of Signatories Reserved	64
Sec. 15.17-Complementary Legislation by Signatories	64
Sec. 15.18-Amendments and Supplements	64
Sec. 15.19-Construction	65
Sec. 15.20-Severability	65
Sec. 15.21-Effective Date; Execution	65

Preamble

WHEREAS, the Potomac River Basin has experienced many years of drought which severely damaged the productivity of agriculture and drastically reduced the flow of the river which threatened the water supplies throughout the basin and particularly in the Washington metropolitan area at the time of greatest demand; and

WHEREAS, the flow of the Potomac River and its tributaries is subject to dramatic fluctuation and variation, so much so that melting snows and spring rains have produced costly and damaging floods even in years of minimal summer flows; and

WHEREAS, the population of the Potomac River Basin and the industrial and commercial development therein have greatly expanded during the last decade, and are continuing to expand, increasing the demands for water supply and the potential for loss through floods; and

WHEREAS, federal, state and local agencies and organizations have made numerous surveys and reports concerning the water and related resources of the Potomac River Basin which revealed the urgent need for measures to assure an adequate water supply and flood protection, to reduce sedimentation and otherwise improve the quality of the waters, to provide water related recreational facilities, to enhance the preservation and propagation of fish and wildlife, and to promote related forestry, agriculture, soil conservation and watershed projects; and

WHEREAS, the President of the United States asked the Secretary of the Interior to work with the affected states and local governments, the District of Columbia, and interested federal agencies to prepare a program for his consideration which would include provisions for cleaning up the river, pro-

tecting its natural beauty and providing adequate recreational facilities, to which end the Secretary established the Federal Interdepartmental Task Force on the Potomac; and

WHEREAS, the Governors of the States of Maryland, Pennsylvania, Virginia and West Virginia and the Commissioners of the District of Columbia established the Potomac River Basin Advisory Committee composed of their representatives; and

WHEREAS, it has become apparent to all parties that, although many state and federal agencies have an interest in or responsibility for one or more aspects of the water resources of the Potomac River Basin, none has the legal authority to provide the broad, continuous guidance for development and management on a regional basis necessary for the most effective utilization of these resources; and

WHEREAS, the wisest and most efficient uses of the available resources of the Potomac River and its tributaries may be determined only through the continuing process of fully coordinated and comprehensive planning which is responsive to all of the interests and jurisdictions of the basin; and

WHEREAS, the effectuation of plans so conceived for the conservation, utilization, development and management of these water resources for maximum public and private benefit may best be realized under the guidance of a single basin agency; and

WHEREAS, the Potomac River Basin Advisory Committee prepared a draft of an interstate-federal compact calling for the creation of a basin agency to discharge the joint responsibilities of the United States, the States in the Potomac River Basin and the District of Columbia with respect to the conservation, utilization, development and management of the water and related resources of the Potomac River Basin, which draft has been reviewed by the agencies of the governments involved and by the public and has been revised in the light of comments therefrom;

NOW, THEREFORE, the parties signatory hereto do mutually agree and covenant with each other as follows:

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND LIMITATIONS

Sec. 1.01—Short Title.

This compact shall be known and may be cited as the Potomac River Basin Compact.

Sec. 1.02—Definitions.

For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

- (a) *Basin* shall mean the area of drainage into the Potomac River and its tributaries and branches, unto its confluence with the Chesapeake Bay at an established line marking Chesapeake Bay waters between the mean low water mark at Point Lookout, Maryland, and Smith's Point, Virginia, as the latter shall be defined from time to time by boundary compact between Maryland and Virginia;
- (b) *Commission* shall mean the Potomac River Basin Commission created and constituted by this compact, and *commissioner* shall mean a member of the Commission;
- (c) *Diversion* shall mean the transfer of water into or out of the basin;
- (d) *Facility* shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights-of-way, water, water rights, plants, structures, machinery and equipment acquired, constructed, operated or maintained for the use of water resources or related land uses including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful or convenient for the collection, storage, withdrawal, diversion, release, treatment, transmission, sale or exchange of water; or for navigation thereon; or for the development and use of hydro-

electric energy and power; or for public recreational facilities; or for the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of them;

- (e) *Federal Government* shall mean the government of the United States of America and any appropriate department, agency, Commission, bureau, division, branch, or other unit thereof, as the case may be, but shall not include the District of Columbia;
- (f) *Governor* shall include the commissioner of the District of Columbia, or his successor as chief executive of the District of Columbia;
- (g) *Governmental Agencies* shall mean the governments of the United States and the signatory states, their political subdivisions, and every department, agency, commission, bureau, division, branch and other unit or instrumentality thereof;
- (h) *Person* shall mean an individual, partnership, corporation, joint stock company, firm, society, association or other unincorporated organization, receiver, trustee, and any officer, agent or employee of any of the foregoing acting in his capacity as such, but shall not include governmental agencies or their officers and employees;
- (i) *Project* shall mean any work, service or activity which is separately planned, financed, or identified by the Commission, or any separate facility, or any addition thereto, undertaken or to be undertaken within a specified area, for the conservation, utilization, development or management of water resources and which can be considered as a separate entity for purposes of evaluation;
- (j) *State* shall include the District of Columbia;
- (k) *Signatories* shall mean the States, District of Columbia and the United States which have signed this compact and are parties hereto;

- (l) *Water Resources* shall include all waters and related natural resources within the basin;
- (m) *Withdrawal* shall mean any appropriation of water including, but not limited to, a taking or removal of water from any source within the basin regardless of its use or destination;
- (n) *Words* importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular;
- (o) *Writing* shall include printing, typewriting, and every other method and manner in which visual symbols may be permanently produced or reproduced.

Sec. 1.03—Findings.

The legislative bodies of the respective signatories hereby find and declare:

- (a) The water resources of the basin are affected with local, state, regional and national interests and their planning, conservation, utilization, development and management, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.
- (b) The water resources of the basin are subject to the sovereign rights and responsibilities of the signatories, and the coordinated, cooperative or joint exercise of such rights and responsibilities is in the common interests of the people of the signatories.
- (c) The water resources of the basin are functionally interrelated, and the uses of these resources are interdependent. A single governmental agency is therefore essential for effective economical direction, supervision and coordination of efforts and programs of federal, state and local governments, of other public bodies and of private enterprise, as they may relate to water resources.
- (d) The satisfaction of present and future demand requires increasing economies and efficiencies in the use

of water resources, and these can be brought about only by comprehensive planning, programming and management under the direction of a single governmental agency.

Sec. 1.04—Purposes.

The purposes of the signatories in enacting this compact are:

- (a) To help meet the essential requirements of the present and future population of the basin; to promote intergovernmental cooperation; to assure and protect desirable developments within the basin; to encourage cooperative and coordinated water resources planning and action by the signatories and their agencies; and to establish a joint agency of the signatories to provide for the planning, conservation, utilization, development and management of the water resources of the basin.
- (b) To preserve and utilize the functions, powers and duties of existing offices and agencies of government to the greatest extent consistent with the other purposes of this compact.

Sec. 1.05—Powers of the United States.

- (a) Nothing contained in this compact shall impair, affect, or extend the constitutional authority of the United States.
- (b) The signatories hereby recognize the power and right of the Congress at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its consent, withdraw the United States as a party, or revise the terms and conditions under which the United States may remain a party to this compact.
- (c) Nothing contained in this compact shall restrict the executive powers of the President in the event of a national emergency.

Sec. 1.06—Duration of Compact.

- (a) The duration of this compact shall be for an initial period of one hundred (100) years from its effective date, and it shall be continued for additional periods of one hundred (100) years unless, not less than seven (7) years nor more than twelve (12) years prior to the termination of the initial period or any succeeding period, one or more of the signatory states, by authority of an act of its legislature, notifies the Commission of intention to terminate the compact at the end of the then current one hundred (100) year period.
- (b) In the event that this compact should be terminated by operation of paragraph (a) above, the Commission shall be dissolved, its assets and liabilities transferred, and its corporate affairs wound up in accordance with unanimous agreement of the signatories-or, failing unanimous agreement, in such manner as may be provided by act of the Congress.

ARTICLE 2

COMMISSION — ORGANIZATION AND TERRITORIAL JURISDICTION

Sec. 2.01—Commission Created.

The Potomac River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of each of the respective signatories, with all powers and duties herein set forth.

Sec. 2.02—Commission Membership.

The members of the Commission shall be the governor of each signatory state, or his designee or appointee to serve at his pleasure, and one member to be appointed by the President of the United States to serve at the pleasure of the President. A governor who intends to act as the member from his state at a meeting shall give notice of his intention to the other governors.

Sec. 2.03—Alternates.

Each governor of a signatory state and the President of the United States shall appoint or designate an alternate for the commissioner from his jurisdiction who shall serve at his pleasure unless the law of the signatory otherwise provides for the appointment and tenure of such alternate. Each alternate shall have authority to attend all meetings of the Commission and in the absence of the commissioner for whom appointed shall act in his place and stead and be deemed a commissioner for the purposes of this compact.

Sec. 2.04—Compensation.

Commissioners and alternates shall serve without compensation from the Commission but may be reimbursed by it for necessary expenses incurred in and incident to the performance of their duties. Nothing herein contained shall be construed to prohibit any commissioner or alternate from receiving such compensation, reimbursement, or other remuneration as the signatory he represents may provide.

Sec. 2.05—Voting Powers.

Each commissioner shall be entitled to one vote on all matters which may come before the Commission. Except as hereinafter provided, no action of the Commission may be taken unless four of the six members vote in favor thereof.

Sec. 2.06—Advisors.

The Commission shall provide by its rules for the designation by each commissioner in his discretion of advisors to serve without compensation from the Commission, who may attend meetings of the Commission and its committees.

Sec. 2.07—Organization, Internal Procedures and Delegation of Powers.

The commissioners shall serve as the governing body of the Commission and, except as hereinafter provided, shall exercise and discharge all powers, functions and responsibilities of the Commission conferred by this compact. The commissioners shall provide for the organization and internal procedures of the Commission, and to this end shall adopt suitable bylaws. The commissioners shall annually elect a chairman and vice-chairman. The Commission may maintain one or more offices for the transaction of its business and shall hold an annual meeting within the basin. The commissioners may, without regard to the civil service or other laws of any signatory relative to public officers and employees, create and abolish offices, employments and positions as they deem necessary for the purposes of the Commission, fix and provide for the duties, conditions of employment, qualifications, appointment, removal, term, tenure, compensation, pension and retirement rights, and other rights and benefits, of the Commission's officers and employees, and shall appoint the principal officers of the Commission and allocate among them administrative functions, powers and duties. The commissioners may delegate to the officers and employees of the Commission such powers, functions and responsibilities under this compact as they deem suitable, except that they may not delegate the power to adopt a comprehensive plan or any part or revision thereof, the annual water resources programs or the annual capital and current expense budgets, or the power to adopt regulations. The Commission

shall determine which of its officers and employees shall give bond or other security for the faithful performance of their duties and the amount or amounts thereof, and may pay the premiums therefor.

Sec. 2.08—Territorial Jurisdiction of the Commission.

The Commission shall have, exercise and discharge its functions, powers and duties within the limits of the basin except that it may, in its discretion, act outside the basin whenever such action may be necessary or convenient to effectuate its powers or duties within the basin. Any exercise by the Commission of its powers outside the basin which affects persons or property outside the basin but within a signatory state shall be only with the consent of the commissioner from such state.

ARTICLE 3

POWERS AND DUTIES OF THE COMMISSION

Sec. 3.01—Policy.

- (a) The Commission shall adopt and promote coordinated policies for water resources conservation, use and management in the basin, and shall adopt a comprehensive water resources plan to effectuate such policies. It shall encourage the planning, development and financing of water resources projects according to such policies and plan, and shall exercise such powers vested in it as it deems necessary or desirable to carry out such plan.
- (b) In administering the provisions of this compact, the Commission shall consider the needs of the basin for industrial and agricultural development and for gainful employment and maintenance of a high quality environment.
- (c) Insofar as other offices and agencies of government possess functions, powers and duties relating to water resources the Commission shall utilize such offices and agencies to the greatest extent consistent with the purposes of this compact; provided, that whenever the Commission finds that any such office or agency fails, refuses or is unable to take action, the Commission after hearing upon due notice given, shall itself perform such functions or take such actions by exercise of the powers conferred by this compact until the Commission subsequently finds that an office or agency of the signatory will take or continue the necessary action.
- (d) Planning and regulatory powers of the Commission, and the exercise thereof, are limited, and shall affect planning and zoning by state, regional, or local governments and agencies only to the extent that state, regional or local planning and zoning substantially conflict with the Commission's planning and regulation of water resources and other public values, as provided in this compact.

Sec. 3.02—Comprehensive Water Resources Plan.

The Commission shall develop and adopt, and from time to time review and revise, a comprehensive water resources plan for the immediate and long-range development, conservation, utilization and management of the water resources of the basin, and may adopt such plan or any revision thereof in such part or parts as it may deem appropriate. The plan may include, but need not be limited to, determinations of immediate and long-range needs and objectives, water quality standards, and any public or private projects and facilities which are required, in the judgment of the Commission, for the optimum development, conservation, utilization and management of the water resources of the basin.

In developing, reviewing and revising the comprehensive water resources plan, or parts thereof, the Commission shall give consideration to relevant portions of federal, state, regional and local plans, whether prepared by signatories or their agencies, by local or regional planning commissions, by local governmental units or organizations thereof, by soil and water conservation districts, by regional resource use associations, or by other governmental agencies or organizations. Such consideration shall be required only with respect to such plans as are presented to the Commission in the manner the Commission may provide.

Sec. 3.03—Water Resources Program.

Within two (2) years after the election of its first chairman, and annually thereafter the Commission shall formulate and adopt a water resources program based upon the comprehensive water resources plan or such part or parts thereof as may have been adopted, which shall include a systematic presentation of the quality and quantity of water resources needs of the basin during such reasonably foreseeable period as the Commission may determine, and of all existing and proposed public and private projects and facilities required to satisfy such needs, together with a separate statement of the projects proposed to be undertaken by the Commission and by persons and governmental agencies during such period. If the Commission determines that it should contribute to the payment of the cost of any project proposed to be undertaken by any person or gov-

ernmental agency, it shall identify such project and the total amount of the Commission's proposed contribution.

Sec. 3.04—Budgets.

The Commission shall annually adopt a capital budget and a current expense budget, as provided in Article 14.

Sec. 3.05—General Powers.

The Commission may :

- (a) Adopt and use a corporate seal, enter into contracts, and in its own name sue, and except as otherwise provided in this compact, be sued ;
- (b) Collect, compile, analyze, interpret, coordinate, tabulate, summarize, and distribute technical and other data relative to, and conduct studies, sponsor research and prepare reports on, water resources and existing or potential water resources problems of the basin ;
- (c) Prepare, publish and disseminate information and reports in relation to the water resources of the basin, and on the views, policies and recommendations of the Commission in relation thereto ;
- (d) Establish standards to guide the construction, operation and management of projects and facilities to the extent that such projects and facilities affect the water resources of the basin ;
- (e) Subject to any limitations and restrictions provided elsewhere in this compact, plan, design, acquire, construct, reconstruct; complete, own, improve, extend, develop, operate, maintain, and regulate any and all projects, facilities, properties, activities and services, determined by the Commission to be necessary, convenient or useful for the purposes of this compact ;
- (f) Negotiate for such loans, grants, services, or other aids as may be available from public or private sources to finance or assist in effectuating any of the purposes of this compact ; and receive and accept the same upon such terms and conditions, and subject to such

provisions for repayment, as may be required by federal or state law or by the Commission or as the Commission may deem acceptable;

- (g) Regulate and control diversions and allocate, and change the allocations of, the waters of the basin to and among the states signatory to this compact and impose related conditions, obligations and release requirements. Except as otherwise provided in subsection (h) of this Sec. 3.05, appropriation or use of water pursuant to action of the Commission hereunder shall not constitute a prior appropriation of any waters of the basin, nor shall any action of the Commission hereunder confer any superiority of right in respect to the appropriation or use of water or be deemed to constitute a permanent apportionment of the waters of the basin among the parties hereto;
- (h) Enter into agreements with respect to water supply, which agreements shall be subordinate to the authority of the Commission under Article 11 and shall not extend beyond the life of this compact;
- (i) Restrict or prohibit authorized withdrawals and diversions of surface and ground waters in accordance with Article 11;
- (j) Institute an action or actions in its own name to compel compliance with any and all of the provisions of this compact or any of the rules and regulations of the Commission adopted pursuant thereto;
- (k) Acquire, hold, administer, maintain and dispose of real and personal property and any interest therein as it may deem necessary or convenient for carrying out its functions under this compact; and every acquisition shall be deemed to be for a public use insofar as such determination is constitutionally permissible. Acquisition may be by eminent domain, which power is hereby conferred upon the Commission, but subject to the limitations and restrictions provided elsewhere in this compact;
- (l) Sell or dispose of any of its products or services and make charges in connection with the use of any of its

facilities, without regulation or control by any other governmental agency of any signatory;

- (m) Conduct such investigations and inspections as it may deem appropriate to carry out its functions under this compact;
- (n) Adopt, amend and repeal such rules and regulations, and prescribe the effective dates therefor, as it may deem necessary or desirable for the effectuation and enforcement of the compact or to carry out its responsibilities under the compact. Such rules and regulations, except those relating solely to the internal management of the Commission, shall be adopted, amended and repealed only after notice and public hearing, but shall not become effective in any signatory prior to filing therein as prescribed in Sec. 15.01(c);
- (o) Exercise such other powers as are granted by this compact, and have and exercise all other powers necessary or convenient to carry out powers granted by this compact or which may be reasonably implied thereby.

Sec. 3.06—Interbasin Agreements.

Notwithstanding the jurisdictional limitations of Sec. 2.08, whenever the Commission deems it to be advisable it may enter into interbasin agreements with other river basin or other governmental agencies not inconsistent with any of the purposes of this compact.

Sec. 3.07—Coordination and Cooperation.

The Commission shall promote and aid the coordination of the activities and programs of persons and governmental agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the Commission may:

- (a) Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies and persons;

- (b) Employ any other governmental agency in the design, construction, operation and maintenance of facilities, and the installation and management of river control systems, or for any other purpose;
- (c) Develop and adopt plans or specifications for particular water resources projects and facilities which, so far as is consistent with the comprehensive water resources plan, incorporate any separate plans of other persons and governmental agencies operating in the basin;
- (d) Serve as a sponsoring or reviewing agency under any legislation heretofore or hereafter enacted by the signatories to provide financial or other assistance for the planning, conservation, utilization, development or management of water resources.

Sec. 3.08—Review and Approval of Projects of Others.

- (a) Except as hereinafter excluded or exempted, none of the following projects affecting the water resources of the basin shall be undertaken by any person or governmental agency prior to submission of the project proposal to, and its approval by, the Commission as hereinafter provided:
 - (1) Projects on or crossing the boundary between any two or more signatory states;
 - (2) Projects involving the diversion of water;
 - (3) Projects which have been included by the Commission as a part of the comprehensive water resources plan or which, alone or in conjunction with other projects, the Commission deems would have a substantial effect upon such plan;
 - (4) Projects completely within the boundaries of any signatory state which are of a class determined by Commission regulations as having a substantial effect on water resources within another signatory state;
 - (5) Projects for the modification or alteration of facilities whose initial construction required, or would have required, Commission approval pursuant to this section.

- (b) The Commission may by regulation determine the classes of such projects for which Commission approval is not required, the types of such projects for which proposals must be submitted directly to the Commission for review, and the types for which proposals may be submitted to the Commission through the appropriate offices or agencies of a signatory. The Commission after consultation with the appropriate offices or agencies of the signatories, shall establish the procedure of submission, timely review and consideration of projects.
- (c) The Commission shall approve a project unless it determines that the project, alone or in conjunction with other projects, is not in the public interest in the conservation, development, utilization or management of the water resources of the basin as provided for in this compact, or is in substantial conflict with the comprehensive water resources plan, in either case it may require modification thereof and approve as modified, or may disapprove the project.
- (d) Proposals for federal projects which come within one or more of the classes enumerated in subsection (a) of this Sec. 3.08 and which require Congressional authorization shall be submitted to the Commission for review and recommendation for a period of not less than ninety (90) days; and the recommendations and views of the Commission thereon shall be included in any report thereon submitted by the sponsoring federal agency to the Congress.

Sec. 3.09—Effect on the Chesapeake Bay.

With respect to any action taken by it under this compact, the Commission shall consider the actual or potential effect of such action upon the receiving waters of the Chesapeake Bay.

Sec. 3.10—Advisory Committees.

The Commission may constitute, and prescribe the functions of, such number of advisory committees consisting of such number of members who shall serve for such periods of time as

it may determine, which committees may be comprised of representatives of the public and of federal, state, county and municipal governments, organizations of local governments, intergovernmental agencies, water resources agencies, water-using industries, water-interest groups, labor, agriculture and other interests, and may be basin-wide, regional or local, as the Commission may determine.

Sec. 3.11—Proposing Amendments.

The commissioners may from time to time recommend to the legislatures of the signatories amendments to the compact and shall, not less often than once every ten (10) years during the duration of this compact, report to such legislatures their views concerning the desirability of amending this compact.

ARTICLE 4

WATER SUPPLY

Sec. 4.01—Development, Storage and Release of Waters.

The Commission may acquire, construct, operate and maintain projects and facilities and such related structures, appurtenances and equipment as it deems appropriate, for the development, storage and release of water and for the regulation of flows and supplies of surface and ground waters of the basin, for domestic, municipal, agricultural and industrial water supply, the protection of public health, water quality control, economic development, improvement of fisheries and wildlife, recreation, flood control and flood damage reduction, prevention of undue salinity, and for other purposes relating to the control and use of the water resources of the basin.

Sec. 4.02—Unauthorized Diminution of Augmented Flows Prohibited.

No person or governmental agency shall diminish any augmented flow during any period in which releases from storage are being made under the direction of the Commission, except where diversion or withdrawal is authorized by this compact or by the Commission.

Sec. 4.03—Additional Powers.

In connection with any project authorized by this article, the Commission shall have power to provide storage, treatment, pumping, and transmission facilities, but nothing herein shall be construed to authorize the Commission to engage in the retail business of distributing water.

ARTICLE 5

WATER QUALITY MANAGEMENT AND CONTROL

Sec. 5.01—Intent and Policy.

- (a) The legislative intent in enacting this article is to give specific emphasis to the primary responsibility of the signatory states for water quality management and control.
- (b) In order to conserve, protect, and improve the quality of the waters of the basin, it shall be the policy of the Commission to encourage and coordinate the efforts of the signatories to prevent, reduce, control, and eliminate pollution so as to achieve and maintain water quality consistent with the uses established in the comprehensive water resources plan.

Sec. 5.02—Standards for Controlling Water Quality.

- (a) The Commission may recommend to the signatories their establishment, modification, or amendment of standards of quality for any waters of the basin.
- (b) The Commission may, after public hearing, adopt and from time to time change, criteria of water quality for each classification of water use established in the comprehensive water resources plan, standards of water quality applicable to particular waters of the basin, standards for preventing, controlling and abating pollution, and definitions of *pollution* and identification of *pollutants*.

Upon the effective date of this compact, the criteria and standards in force in the signatory states shall be deemed to have been adopted by the Commission and shall be the criteria and standards of the Commission until changed as set forth in the preceding sentence, provided, that until the Commission gives notice that it is prepared to exercise the functions vested in it by the preceding sentence any changes made by a signatory state in its criteria or standards

shall be effective as amended criteria or standards of the Commission.

Sec. 5.03—Scope.

Criteria for water quality and the various standards referred to in this article may relate, but shall not be limited, to bacterial, viral, chemical, radio-active, organic, thermal, gaseous, liquid, solids or soils pollution or enrichment of the waters of the basin from treated or untreated domestic and industrial wastes, or from aerial contaminants or agricultural, construction and navigational activities, or from the exploitation of natural resources or the deposit of solid wastes, refuse or materials of any kind in or near the waters, or from the failure to prevent or control the discharge, or entry by other means, of oils, chemicals or other materials which might adversely affect the quality or the uses of the waters of the basin as set by the various standards and plans referred to herein.

Sec. 5.04—Cooperative Administration and Enforcement.

- (a) The Commission shall encourage cooperative and uniform implementation and enforcement programs and policies by the water quality control agencies of the signatories to achieve compliance with the water quality standards adopted by the Commission.
- (b) Every officer and agency of each signatory having enforcement responsibilities with respect to water resources shall enforce the Commission's standards and its rules and regulations relative thereto.
- (c) The Commission as complainant may enforce against any polluter its own standards to control future pollution and abate existing pollution in any waters of the basin.

Sec. 5.05—Projects and Facilities.

The Commission may acquire, construct, operate, and maintain projects and facilities and such related structures, appurtenances and equipment as it may deem appropriate for the management and control of the quality of any waters in the basin.

Sec. 5.06—Pollution Damage.

- (a) Any person or governmental agency responsible for any change in, or for the entry of any pollutant into, any waters of the basin to such extent or in such quantities, alone or in combination with changes or pollutants from other sources, as to cause or contribute to the degradation of the quality of any waters of the basin below the standards of water quality adopted therefor by the Commission shall be civilly liable for any damage suffered by the Commission or by any other governmental agency by reason of such degradation, whether such damage be in the nature of actual damage sustained through loss of fish and wild-life or injury to property, or reasonable cost of necessary remedial measures undertaken by the Commission or other governmental agency for the amelioration of the effects of the change or the pollutants, or to prevent the change or the entry of such pollutants into the waters.
- (b) The Commission may ascertain the extent of any such damage suffered by it and make claim upon each person or governmental agency responsible therefor. Upon the request of any other governmental agency which has suffered any such damage the Commission may, in collaboration with such agency, ascertain the extent of such damage and make claim on behalf of the agency upon each person or governmental agency responsible therefor. In the event the damages so ascertained and claimed by the Commission are not paid by the person or governmental agency responsible, the Commission may institute an action to recover the same.
- (c) Except in case of emergency remedial measures, there shall be no civil liability pursuant to this section for the cost of remedial measures unless such measures have been ordered or approved by the Commission after hearing following notice to those persons and governmental agencies from whom damages are to be claimed.

- (d) Subject to its deduction of all costs and expenses incurred in connection therewith, the Commission shall pay promptly to each governmental agency so entitled all monies collected by the Commission pursuant to this section on behalf of such governmental agency as the loss or damage sustained or the cost of remedial measures undertaken by such governmental agency in counteracting or preventing such change or in mitigating the effects of such change, or in handling, treating, removing, or preventing the entry of, such pollutants, or of otherwise rendering any such pollutants suitable for introduction into, or retention in, the waters of the basin.
- (e) The provisions of this section shall not supersede any other provision in this compact or contained in any other law, but shall be in addition thereto.

ARTICLE 6

FLOOD PROTECTION

Sec. 6.01—Flood Control Authority.

- (a) In addition to authority granted elsewhere in this compact, the Commission may plan, design, construct, operate and maintain projects and facilities it deems necessary or desirable for flood damage reduction, or may recommend to any governmental agency that it undertake flood damage reduction activities.
- (b) Except as otherwise provided by the Commission, all plans, programs and operating procedures, and all changes therein, of every person or governmental agency, relating to existing or future projects, facilities or structures and which in the judgment of the Commission may have any effect upon, or be affected by, floods or flooding shall, prior to any implementation or effectuation thereof, be submitted to the Commission for review and comment, and no action may be taken with respect to the implementation or effectuation of any such plans, programs, operating procedures or changes therein until the Commission has had an opportunity to comment thereon. The provisions of this subsection are not in lieu of, but are in addition to, any provisions or requirements contained elsewhere in this compact.
- (c) As part of the comprehensive water resources plan the Commission shall delineate flood plains and classify them in terms of the frequency of flooding in such manner as the Commission shall determine.

ARTICLE 7

WATERSHED MANAGEMENT

Sec. 7.01—Management Practices.

In discharging its functions and duties under Sec. 3.01 the Commission shall promote sound practices of watershed management throughout the basin, including, but not limited to, soil conservation, the control of surface runoff and prevention of erosion, the improvement of the quality and yield of water, land reclamation and sound land and forest management, and the maintenance and improvement of fish and wildlife habitat. To this end the Commission may acquire, provide, sponsor, maintain and operate projects and facilities necessary or suitable therefor, and so far as practicable sponsor, aid and promote the basic policies of the soil and water conservation districts of the basin. Any Commission project or facility for the maintenance or improvement of a fish or wildlife habitat or involving the introduction of species new to such habitat shall be subject to approval of the applicable fish or wildlife management agency of the signatory state in which the same is located.

Sec. 7.02—Watershed Defined.

As used in this article *watershed* shall mean a region or area of drainage into a particular watercourse or body of water, and includes the basin as well as an area of drainage into a minor tributary and a combination of such areas draining into a larger tributary.

ARTICLE 8

RECREATION

- (a) The Commission may include water resources related public recreational projects and facilities in its comprehensive water resources plan and in its amenities plan.
- (b) The Commission shall cooperate with the appropriate persons and governmental agencies in planning and effectuating coordinated programs for the construction, operation, maintenance and administration of water resources related public recreational projects, facilities and activities.

Sec. 8.02—Cooperation.

- (a) The Commission shall encourage activities of persons and governmental agencies having water resources related recreational interests and assist in the coordination thereof.
- (b) The Commission may provide technical assistance and make recommendations to persons and governmental agencies for the development, operation, maintenance and administration of water resources related recreational programs, projects, facilities and activities.

Sec. 8.03—Construction, Operation, Maintenance and Administration.

The Commission, alone or in cooperation with one or more persons or governmental agencies, may construct, operate, maintain and administer water resources related public recreational projects and facilities and may contribute to the costs of construction, operation, maintenance and administration thereof undertaken by others than the Commission. The Commission may, by lease or any other form of contract or agreement, undertake to operate, maintain or administer any water resources related public recreational project or facility and with respect thereto may exercise any power, not inconsistent with

such lease, contract or agreement, which it might exercise with respect to any project or facility owned by it. In the operation, maintenance and administration of any water resources related public recreational project or facility, whether or not owned by it, the Commission may act through public or private lessees or concessionaires.

Sec. 8.04—Uniformity of Fishing and Boating Laws on Certain Waters.

Whenever two or more signatory states have a common boundary in or contiguous to any body of water or portion thereof within the basin, unless prohibited by the law of such signatory state, the Commission, board, or other agency from each such signatory state, having jurisdiction over the regulation of fishing, or boating, or health and safety aspects of recreational activities, in or upon such waters, may agree upon, and by rules or regulations provide for, uniform enforcement relating to the aforesaid activities with respect to any such waters mutually designated or agreed upon. Infractions of laws, and rules and regulations on such bodies of water shall be prosecuted in the appropriate court within the territorial jurisdiction where the offense occurred. If the offense occurs on or so near the boundary between two signatory states that it cannot be readily determined in which state the offense occurred, it shall be presumed that such offense occurred within the jurisdiction of the court where the enforcement action was instituted by the enforcement officer.

Sec. 8.05—Restrictions on Commission Construction and Operation.

In order to assure utilization of the functions, powers and responsibilities of existing state agencies, the Commission shall not engage in the operation of any recreational facilities, nor construct any project or facility solely for recreational purposes, unless the commissioner from the signatory state in which the project or facility is located has approved the same.

Sec. 8.06—Definition

For purposes of this article *public recreational project or facility* shall mean a recreational project or facility open to the general public either free or on a fee basis.

ARTICLE 9

OTHER PUBLIC VALUES

Sec. 9.01—Purpose and Findings.

Comprehensive planning is essential to assure orderly development, safeguard the intrinsic natural values of the Potomac Basin and preserve the beauty and environmental amenities of the region. This need is greatest in those localities most subject to the pressures of urbanization, expanding population and industrial development. Accordingly the legislative bodies of the respective signatories declare that, in addition to water resources management, the purposes of this compact are to preserve and promote the aesthetic and other values inherent in the historic, scenic and environmental amenities of the Potomac River Basin for the enjoyment and enrichment of future generations and relate such values to the economic health of the basin and the promotion of the orderly development of the basin.

Sec. 9.02—Compatibility of Water Resources Related Projects.

The signatories agree that in the consideration, authorization, construction, maintenance and operation of their water resources related projects in the basin, they will consider the compatibility of such projects with the values hereinabove stated.

Sec. 9.03—Planning Coordination.

The Commission may recommend standards and act as a coordinator for planning, zoning, and other action which will promote balanced development and may act as an agency for the intergovernmental coordination and effectuation of local, regional, state and interstate planning.

Sec. 9.04—Comprehensive Amenities Plan and River Zones.

Complementary to the comprehensive water resources plan provided for by Sec. 3.02, the Commission shall develop and adopt, and from time to time review and revise, a comprehensive amenities plan and programs for the development and

preservation of the aesthetic, scenic and historic values along the Potomac and its tributaries, and may adopt such plan or any revision thereof in such part or parts as it may deem appropriate.

In developing, reviewing and revising the comprehensive amenities plan, or parts thereof, the Commission shall give consideration to relevant portions of federal, state, regional and local plans, whether prepared by signatories or their agencies, by local or regional planning commissions, by local governmental units or organizations thereof, by soil and water conservation districts, by regional resource use associations, or by other governmental agencies or organizations. Such consideration shall be required only with respect to such plans as are presented to the Commission in the manner the Commission may provide.

The plan shall include public and private areas, waters, land, land uses, structures, projects and facilities which are necessary, in the judgement of the Commission for the optimum development, conservation, utilization and preservation of such values. Any such plan shall also provide for:

- (a) river zones and their accessibility;
- (b) instituting land use plans and controls within river zones;
- (c) acquiring or otherwise preserving existing and potential parks and parkways, scenic areas, open spaces, recreation areas, historic areas, trail corridors, wetlands or natural areas within river zones.

A *river zone*, as used in this article, means such portion of the Potomac River or a tributary, including the islands, and an area along the shores, of such length and extending inland such distance, as the Commission may determine.

The Commission may, from time to time after public hearing which whenever practicable shall be in the general vicinity of the river zone involved, establish, modify or abolish so many river zones of such sizes as it may determine to be necessary for the protection of fish and wildlife habitat, and aesthetic, scenic and historic values; provided, that no river zone or portion thereof may be established within any signatory state

without prior consultation with county and other concerned local public bodies and the affirmative vote of the commissioner from such signatory, but no river zone may extend inland more than one mile except with the concurrence of the governing body of the locality in which such zone is located.

The Commission may establish river zones on the Potomac River including its North Branch, but may not establish river zones on any tributary or portion thereof unless the same has been designated for the establishment of river zones pursuant to the laws of the signatory state within which such tributary or portion thereof is situate.

Sec. 9.05—Amenities Plan Effectuation—Acquisition and Administration.

In effectuating the amenities plan or portions thereof adopted pursuant to Sec. 9.04, the Commission may acquire the fee or any lesser interest, development right, easement, covenant, contractual or other right in real or personal property, through purchase, gift, grant, bequest, devise, lease, condemnation, transfer from any governmental agency, exchange or otherwise; provided, however, that the Commission's power to acquire such fees or lesser interests in such lands or other property by condemnation for scenic, open space or historic purposes may not be exercised when and so long as the signatory or signatories or political subdivisions wherein such lands or other property are situate shall have in force, applicable to such lands or other property, laws or regulations which the Commission deems adequate protection for preserving such lands or other property, or such protection is provided by other means deemed adequate by the Commission. The Commission may administer or provide for administration by an appropriate person or governmental agency of any land or other property acquired pursuant to this section.

Sec. 9.06—Land Use Plans and Controls—River Zone Protection.

- (a) In effectuating the plan or portions thereof adopted pursuant to Sec. 9.04, the Commission shall assist local agencies in developing coordinated comprehensive

land use plans for the preservation, reservation, enhancement, and orderly development of the scenic, historic, recreational, open space and natural resources of the river zones and propose state and local land use controls for their effectuation. The Commission may accept state and local comprehensive land use plans, and state and local zoning and other land use controls which effectuate such accepted plans.

- (b) Except pursuant to the provisions of state or local zoning or other land use controls which have been accepted by the Commission, land within any river zone established by the Commission may not be used for any purpose other than that for which it was actually and lawfully being used when the river zone was established or the amenities plan or portion thereof relating thereto was adopted by the Commission pursuant to Sec. 9.04, whichever shall be later; provided, that until such state or local zoning or other land use controls have been accepted by the Commission, the Commission may authorize changes from existing uses of land if it finds that such changed uses will be compatible with its amenities plan adopted pursuant to Sec. 9.04. The Commission shall not accept any zoning or other land use controls unless they provide that, insofar as the Commission may prescribe, any change in, or special exceptions or variances thereafter made or authorized relating to the use to which any land may be put, shall not become effective with respect to land within a river zone until accepted by the Commission as compatible with its comprehensive amenities plan. The Commission shall by regulation provide for the effectuation of the provision of this subsection (b).

Sec. 9.07—Recommendations for Land Preservation.

The Commission may from time to time designate park, recreation, scenic and historic areas and the boundaries thereof within the basin and recommend to agencies of the signatories and to local governmental units programs for the preservation and

enhancement of such areas. With respect to such areas the Commission may also recommend minimum standards of regulation of land and water use and such other protective measures as the Commission may deem desirable, and may prepare and recommend to the signatories and to local governmental units model laws, ordinances and regulations which would assist, promote, develop and protect those areas.

ARTICLE 10

HYDROELECTRIC POWER

Sec. 10.01—General.

In the exercise of its general powers as described in Sec. 3.05, it is not intended that the Commission shall engage in the construction and operation of hydroelectric generating or transmission facilities as a primary undertaking. However, hydroelectric generating components and appurtenances may be installed in any project of the Commission either by the Commission, or by others under such terms and conditions as may be agreed upon with the Commission, whenever the Commission deems their inclusion either desirable or necessary in view of the prevailing or anticipated economic, operational or regional circumstances. Such facilities may be operated by the Commission or may be operated by others under its authority and direction.

Sec. 10.02—Development.

Nothing in the preceding section shall be construed to bar the development and operation of facilities for the generation of hydroelectric power and energy from the waters of the basin by others than the Commission, subject to all other provisions of this compact.

Sec. 10.03—Transmission.

The Commission may provide means for the transmission of hydroelectric power and energy produced by a Commission facility, where such means are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power. Nothing herein shall be construed to authorize the Commission to engage in the business of direct sale to retail customers.

ARTICLE 11

WATER SHORTAGES AND EMERGENCIES

Sec. 11.01—Areas of Potential Water Shortage.

The Commission shall conduct continuing studies of the relationship of demand to available supply of water, and whenever it determines that the demands upon supply in any part or parts of the basin have developed or threaten to develop to such a degree as to create a potential water shortage or impair or conflict with the requirements or effectuation of the comprehensive water resources plan it shall delineate each area involved as an *area of potential water shortage*. Thereupon it shall be the duty of the Commission to publicize each such delineation and to reexamine the comprehensive water resources plan in the light thereof.

Sec. 11.02—Protected Areas.

Whenever, after public hearing, the Commission finds that control of water withdrawal, diversion or use is required in an area of potential water shortage, which has been delineated under Sec. 11.01, it may designate such area as a *protected area*.

Sec. 11.03—Emergency Areas.

Whenever the Commission finds that a drought or other condition has caused or may cause an actual and immediate shortage of the available supply of water within the basin, or within any part thereof, it may delineate the area of such shortage and designate the area delineated as an *emergency area*, which delineation and designation shall not extend beyond thirty (30) days except to the extent that, after public hearing, such delineation and designation are confirmed by the Commission.

Sec. 11.04—Protected Area and Emergency Area Controls.

Upon the designation of a *protected* or *emergency* area by the Commission, and until such designation is changed or termi-

nated, no person or governmental agency shall divert, withdraw or use water from the sources supplying such protected or emergency area for any purpose in excess of such quantities, at such times, and from such sources as the Commission may prescribe by regulation or authorize by special permit; except that the foregoing shall not apply within a protected area to a diversion, withdrawal or use of water authorized, prior to the adoption of this compact and not thereafter revoked, changed, or abandoned, under the law of any signatory.

Sec. 11.05—Standards.

Regulations shall be adopted, and permits shall be granted, modified or denied, as the case may be, to avoid such depletion of the surface and ground waters in a protected or in an emergency area as will adversely affect the comprehensive water resources plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water.

Sec. 11.06—Termination.

From time to time the Commission shall review its actions taken pursuant to Sec. 11.01. If conditions then so warrant, the Commission may alter the areas so delineated, and after public hearing may then, in the absence of a negative vote by the Commissioner or commissioners from the affected state or states, enlarge or diminish areas designated under Sec. 11.02 as *protected areas*. After the conditions requiring control no longer exist, the Commission shall terminate the designation of any such area as a *protected area*.

The Commission shall review at least monthly any action taken pursuant to Sec. 11.03, and when it determines that the drought or the condition which caused or could have caused an actual and immediate shortage of available water no longer prevails, the Commission shall terminate the designation of the area as an *emergency area*.

Sec. 11.07—Maintenance of Records.

Each signatory shall provide for the maintenance and preservation of such records of authorized diversions and withdraw-

als, and the quantities thereof, as the Commission shall prescribe. Such records, and related reports, shall be furnished to the Commission at its request.

Sec. 11.08—Existing Authorizations.

Permits authorized or issued and every other authorization to store, use, withdraw or divert water under the laws of any of the signatories in every emergency area, shall be suspended to the extent of any conflict with the control and regulation exercised by the Commission, pursuant to this article.

ARTICLE 12

INTERGOVERNMENTAL RELATIONS

Sec. 12.01—Federal, State and Local Projects.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the signatories, the following rules shall apply to all governmental agencies:

- (a) The planning and design of all projects and facilities related to powers of the Commission under this compact shall be undertaken in consultation with the Commission;
- (b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the Commission in its comprehensive plans, or has been otherwise approved by the Commission;
- (c) All plans shall be made, and if need be modified, so as to conform with any comprehensive plan or such parts or revisions thereof as have been adopted by the Commission;
- (d) All projects and facilities shall be constructed, operated and managed in a manner which does not substantially conflict with the Commission's comprehensive plans or with any applicable standard, rule or regulation adopted by the Commission.

Sec. 12.02—Cooperative Services

Every governmental agency is authorized to provide technical and administrative services to the Commission upon request, within the limits of available appropriations, and to cooperate generally with the Commission for the purposes of this compact. The costs of any such services may be reimbursable.

Sec. 12.03—Agreements with Other Governmental Agencies.

In order to enable the Commission to cooperate most effectively with other agencies of the signatories and to utilize to the full-

est extent other offices and agencies of government for the purposes of this compact, the Commission, with the approval of the commissioner from the affected signatory, is authorized to enter into agreements with federal, state and local agencies relating to the purposes of this compact for the exercise of the duties and functions of the Commission.

Sec. 12.04—Local Governmental Cooperation.

Subject to the constitutions and laws of the signatories, governmental agencies and organizations of local governments of one or more signatories are authorized to contract with the Commission, each other and persons to acquire, construct, operate, manage, finance, and pay the costs of, any project or facility and to make any plans, necessary or convenient in the opinion of the Commission to carry out the Commission's comprehensive water resources plan or its comprehensive amenities plan, or for the acquisition, development and operation of park, recreation, scenic and historic areas, or for the collection and disposal of solid wastes, or to control, abate and prevent air pollution.

Sec. 12.05—Potomac River Fisheries Commission.

Nothing in this compact shall be construed to diminish or supersede the powers and functions of the Potomac River Fisheries Commission as provided by the Potomac River Compact of 1958 (Chapter 28, Acts of Virginia Assembly, Special Session 1959; 1959 Laws of Maryland, Chapter 269; PL 85-783, 76 Stat. 797) and revisions thereof. The Commission shall consult and cooperate with the Potomac River Fisheries Commission with respect to the conservation and improvement of the fishery resources of the tidewater portion of the Potomac River under the jurisdiction of the Fisheries Commission, and shall consider all recommendations received from the Fisheries Commission in connection with any comprehensive plan of the Commission for the basin and its approval of projects pursuant to its powers in Article 3 hereof.

ARTICLE 13

BOND FINANCING

Sec. 13.01—Borrowing Power.

The Commission may borrow money for any of the purposes of this compact and may issue its negotiable bonds and other evidences of indebtedness in respect thereto.

All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Commission. The bonds and other obligations of the Commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Commission, and the full faith and credit of the Commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Commission assumed by it to or for the benefits of the holders thereof.

Sec. 13.02—Funds and Expenses.

The purposes of this compact shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant, and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement, or reconstruction of any facility or any part thereof; and reimbursement of advances by the Commission or by others for such purposes and for working capital.

Sec. 13.03—Credit Excluded; Officers, State and Municipal.

The Commission shall have no power to pledge the credit of any signatory or other governmental agency, or to impose any obligation for payment of the bonds upon any signatory or other governmental agency, but may pledge the contracts of

any signatory or other governmental agency; provided, however, that nothing herein shall preclude any signatory or other governmental agency from underwriting the bonds or other obligations of the Commission in whole or in part as to principal and interest. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the Commission or be subject to any personal liability or accountability by reason of the issuance thereof.

Sec. 13.04—Funding and Refunding.

Whenever the Commission deems it expedient, it may fund and refund its bonds and other obligations, whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including payment of any premium, duplicate interest, or cash adjustment required in connection therewith) issued by the Commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Commission or which are payable out of the revenues of any facility acquired by the Commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Commission. All provisions of this compact applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale, or exchange thereof.

Sec. 13.05—Bonds: Authorization Generally.

Bonds and other indebtedness of the Commission shall be authorized by resolution of the Commission. The validity of the authorization and issuance of any bonds by the Commission shall not be dependent upon or affected in any way by: (a) the disposition of bond proceeds by the Commission or by contract, commitment or action taken with respect to such proceeds; or (b) the failure to complete any part of the project for which bonds are authorized to be issued. The Commission may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such terms and provisions as the Commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be is-

sued by the Commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Commission. The Commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Commission may determine.

Sec. 13.06—Bonds, Resolutions and Indentures Generally.

The Commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange, and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this compact, other than any restriction on the regulatory powers vested in the Commission by this compact, as the Commission may deem necessary or desirable for the issue, payment, security, protection, or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents, and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing application, and disposition of such revenues, of the proceeds of the bonds, and of any other monies or contracts of the Commission; the operation, maintenance, repair, and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease, or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of

this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

Sec. 13.07—Maximum Maturity.

No bond or its term shall mature in more than fifty (50) years from its own date, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

Sec. 13.08—Tax Exemption.

All bonds and all other evidences of debt issued by the Commission under the provisions of this compact and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any of the signatories, except for transfer, inheritance, and estate taxes.

Sec. 13.09—Interest.

Bonds shall bear interest at a rate of not to exceed six percent per annum, payable annually or semi-annually.

Sec. 13.10—Place of Payment.

The Commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

Sec. 13.11—Execution.

The Commission may provide for the execution and authentication of bonds by the manual, lithographed, or printed facsimile signature of the officers of the Commission, and by additional authentication by a trustee or fiscal agent appointed by the Commission; provided, however, that one of such signatures shall be manual. If any of the officers whose signatures

or counter-signatures appear upon the bonds or coupons ceases to be an officer before the delivery of the bonds or coupons, his signature or counter-signature is nevertheless valid and of the same force and effect as if the officer had remained in office until the delivery of the bonds and coupons.

Sec. 13.12—Holding Own Bonds.

The Commission shall have power, out of any funds available therefor, to purchase its bonds and may hold, cancel, or resell such bonds.

Sec. 13.13—Sale.

The Commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Commission may sell bonds at less than their par or face value, but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Commission calculated upon the entire issue so sold of more than six percent per annum payable semi-annually, according to standard tables of bond values. All bonds issued and sold pursuant to this compact may be sold in such manner, either at public or private sale, as the Commission shall determine. In the event the Commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, with or without an additional amount of cash.

Sec. 13.14—Negotiability.

All bonds issued under the provisions of this compact are negotiable instruments.

Sec. 13.15—Bonds Eligible for Investment and Deposit.

Bonds issued under the provisions of this compact are hereby made securities in which all public officers and governmental agencies of the signatories and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance

business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by an officer of any governmental agency for any purpose for which the deposit of bonds or other obligations of such signatory is now or may hereafter be authorized by law.

Sec. 13.16—Validation Proceedings.

Prior to the issuance of any bonds, the Commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatories. Such proceedings shall be instituted and prosecuted in rem, and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatories.

Sec. 13.17—Recording.

No indenture need be recorded or filed in any public office, other than the office of the Commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Commission or to the indenture trustee.

Sec. 13.18—Pledged Revenues.

Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees, and charges and other revenues and any accrued interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with any accrued interest thereon, shall constitute a trust fund for the security and payment of such bonds, and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including

administration, operation, maintenance, improvements, or extensions of the facilities or other purposes, shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

Sec. 13.19—Remedies.

The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (a) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Commission or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the rates, rents, tolls, fees, charges, and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (b) by action or suit in a court of competent jurisdiction of any signatory require the Commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies, however, does not exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

Sec. 13.20—Sales and Guarantees by Signatories and Other Governmental Agencies.

The Commission may deliver to any signatory or other governmental agency the bonds of the Commission which may be sold on behalf of the Commission with or without the guarantee of such signatory or other governmental agency subject to, and in accordance with, the constitution and laws governing such signatory or other governmental agency. Any signatory or other governmental agency owning bonds of the Commission may sell such bonds with or without the guarantee of such signatory or other governmental agency subject to, and in accordance with, the constitution and laws governing such signatory or other governmental agency.

ARTICLE 14

BUDGETS, FINANCING AND PROPERTY

Sec. 14.01—Annual Capital and Current Expense Budgets.

- (a) *Capital Budget.* The Commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue, or toward payment of the cost of which it proposes to contribute, during the budget period containing a statement of the estimated cost of each project, the method of financing thereof and, when applicable, the amounts of current annual shares of the cost which any person or governmental agency has contracted to pay. The portions of the capital budget not balanced by shares of the costs undertaken by any person or governmental agency shall be financed in such manner as the entire Commission, by unanimous vote, shall determine.
- (b) *Current Expense Budget.* 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 allocations. The total of such expenses shall be balanced by the Commission's estimated revenues from all sources, including the cost allocations which any person or governmental agency has contracted to pay in connection with any project, and an equitable apportionment, by unanimous vote of the entire Commission, among the signatories of the remaining revenues required. Following the adoption of the annual current expense budget by the Commission, the executive director of the Commission shall:
- (1) Certify to the respective signatories, and submit to persons and other governmental agencies statements of, the amounts due from them in ac-

cordance with existing cost sharing established for each project; and

- (2) Transmit certified copies of such budget to the principal budget officers of the respective signatories at such time and in such manner as may be required under their respective budgetary procedures.
- (c) *Payments of Budget Apportionments.* The respective signatories covenant and agree to include the amounts allocated and apportioned for the support of the current expense budget of the Commission in their respective budgets next to be adopted, subject to such review as may be required by their respective budgetary procedures. Such amounts shall be due and payable to the Commission in not more than four (4) installments which shall be not less often than quarterly during its fiscal year.
- (d) *Payment of Cost Shares.* Every statement rendered to a person or governmental agency other than a signatory, for his or its annual share in the costs of any project shall be payable in full within thirty (30) days of the date of receipt of the statement unless the Commission shall otherwise provide.
- (e) *Interim Financing.* Pending remittances by the signatories, and payments by persons and other governmental agencies, the Commission may borrow from its working capital or other sources to finance its current expense budget.

Sec. 14.02—Project Costs and Evaluation Standards.

The Commission may:

- (a) Establish standards and procedures for the evaluation, determination of benefits, and allocation of costs of projects affecting the water resources of the basin;
- (b) Develop equitable cost sharing and reimbursement formulas for the signatories;
- (c) Develop procedures for the allocation of project costs

among purposes included in multiple-purpose programs;

- (d) Develop contracts and arrangements for sharing financial responsibility among and with persons and governmental agencies and for the supervision of their performance;
- (e) Establish and supervise a system of accounts for reimbursable purposes and direct the payments and charges to be made from and to such accounts;
- (f) Determine the bases and apportion the amounts of reimbursable revenues to be paid persons and governmental agencies;

and may from time to time modify or amend any of the foregoing.

Sec. 14.03—Cost Sharing.

- (a) The signatories will provide such capital funds required for projects of the Commission as may be authorized by their respective laws in accordance with a cost-sharing plan prepared pursuant to Sec. 14.02 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any signatory other than such obligations as may be assumed by a signatory in connection with a specific project or facility.
- (b) Whenever the Commission finds that a person or governmental agency has undertaken or will undertake a project which will benefit any other person or governmental agency, the Commission may develop a cost-sharing formula and contract to receive agreed shares of the cost of such project from those to be benefitted and to pay the same in the manner agreed upon. Every governmental agency is hereby authorized to contract with, and make payments to, the Commission pursuant to this subsection. Without regard to benefit received, the Commission may contribute to the payment of the cost of any such project, but the Commission may contract to pay such

contribution only in such amount as may have been included in an annual capital budget adopted by the Commission.

Sec. 14.04—Project Cost Assessments.

In accordance with provisions of applicable state laws, the Commission may defray all or part of the costs of its water management and flow regulation projects, or such projects of others to the extent of the Commission's financial obligation therefor, by making on an equitable basis special assessments upon properties specially benefitted thereby, or upon persons and governmental agencies specially benefitted thereby. Any such assessment shall be imposed and collected in accordance with the procedure prescribed by law for local improvement assessments and shall be subject to judicial review in any court of competent jurisdiction in the signatory state where such assessment was made.

Sec. 14.05—Governmental Appropriations, Loans and Grants.

Every governmental agency may make to the Commission, and the Commission may receive and accept, loans, grants, appropriations, advances and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the Commission, and payments for benefits received or to be received from the operation of any project or facility; but, except to such extent as may be provided in Sec. 14.04, nothing in this compact shall be deemed to impose upon any local governmental unit or agency any mandatory obligation to provide any capital funds to the Commission other than funds which such local governmental unit or agency may agree or contract to pay.

Sec. 14.06—Acquisition of Property from Signatories.

The respective officers, agencies, departments, commissions or bodies of each signatory having jurisdiction and control over real and personal property owned by such signatory are authorized and empowered, upon the Commission's request and in accordance with the legal requirements of the signatory, to transfer and convey to the Commission any such property

or any interest therein, including lands lying under water, as may be necessary or convenient to the effectuation of the authorized purposes of the Commission.

Sec. 14.07—Acquisition of Property from Political Subdivisions.

Each political subdivision and other public body of each of the signatories is authorized and empowered, notwithstanding any contrary provision of law, to grant and convey to the Commission, upon the Commission's request, any real or personal property or any interest therein owned by such political subdivision or other public body, including lands lying under water and lands already devoted to public use, which may be necessary or convenient to the effectuation of the authorized purposes of this Commission.

Sec. 14.08—Rights-of-Way.

Permission is hereby granted to the Commission to locate, construct and maintain any aqueducts, lines, pipes, conduits and auxiliary facilities authorized to be acquired, constructed, owned, operated or maintained by the Commission in, over, under or across any streets and highways now or hereafter owned, opened or dedicated to or for public use, subject to such reasonable conditions as the agency having jurisdiction over such street or highway may require.

Sec. 14.09—Power to Acquire Property by Condemnation.

- (a) The power of eminent domain granted by Sec. 3.05 (k) includes, but is not limited to, the power to condemn for the purposes of this compact any property already devoted to a public use, other than property of a signatory. The necessity to acquire any property for a project or facility as determined by the Commission shall not be a justiciable issue in any proceedings instituted to acquire such property unless constitutionally required to be judicially determined in such proceedings. Any condemnation of any property or franchises owned or used by a publicly or privately owned public utility and being utilized in

providing a public service shall be subject to the consent of such board, commission, or other body of a signatory as may have regulatory jurisdiction over said public utility, unless the affected public utility facility is to be relocated or unless such acquisition will not affect the operation of the utility.

- (b) Whenever any signatory or political subdivision of a signatory or public utility owns any land or any easement, right-of-way or other interest in land which is devoted to a public use, and which the Commission deems necessary to acquire, the Commission may acquire by gift, purchase, or by exercise of the power of eminent domain other land or easement, right-of-way or interest in land and convey the same to such signatory, political subdivision or public utility for use by it in exchange for the land, easement, right-of-way, or other interest in land theretofore owned by it but needed by the Commission for purposes of this compact.
- (c) Proceedings for condemnation by the Commission shall be instituted and conducted in the name of the Commission as petitioner without naming the individuals who may be such commissioners. The power of condemnation shall be exercised in accordance with the provisions of the state condemnation law in force in the signatory state in which the property is located. If there is no applicable state condemnation law, the power of condemnation shall be exercised in accordance with the provisions of federal condemnation law.
- (d) The purchase price or amount awarded as compensation in any condemnation proceeding shall be paid by the Commission, and none of the signatories shall be liable for the payment thereof.
- (e) In addition to the exercise of the power of eminent domain by the Commission as hereinabove provided, the appropriate officials, agencies, and political subdivisions lying within the basin, of each signatory, having the power of eminent domain are hereby au-

thorized, whenever requested by the Commission, to acquire by purchase, condemnation, or any other means, such land or other property as may be requested by the Commission, and upon acquisition shall convey or transfer said land or other property to the Commission. Unless otherwise agreed upon between the parties, the Commission shall reimburse the signatory, its agency or political subdivision for the cost of property and such acquisition costs as may be incurred.

Sec. 14.10—Tax Exemption and Payment in Lieu of Taxes.

The Commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any governmental agencies. Nevertheless, it is the intention of this compact that, so far as possible, local taxing authorities shall not be adversely affected by the Commission's acquisition of taxable property, and in lieu of property taxes the Commission shall, as to specific projects, make payments to local taxing authorities in annual amounts which shall equal the annual average of the taxes lawfully assessed upon the property for five (5) years next preceding the tax year of its acquisition by the Commission. The nature and amount of such payments shall be reviewed by the Commission from time to time not more often than once in two (2) years, upon reasonable notice and opportunity to be heard to the affected taxing authority, and the payments may be terminated or continued in such reasonable amounts as the Commission may determine to be necessary or desirable after taking into account the hardships incurred and the benefits received by the taxing authority which are attributable to the project.

Sec. 14.11—Riparian and Other Vested Rights.

Nothing in this compact shall be construed to authorize a taking without just compensation of any riparian or other vested right as the same may then be recognized by applicable law.

ARTICLE 15

GENERAL PROVISIONS

Sec. 15.01—Commission Meetings, Minutes, Copies of Documents and Fees Therefor.

- (a) *Meetings.* The Commission may meet in public or executive sessions as it may determine, but all official actions of the Commission shall be taken in public session.
- (b) *Minutes.* The minutes of the Commission shall be a public record open to inspection at its offices during regular business hours. It shall not be necessary to physically incorporate in the minutes any maps, drawings or other pictorial matters nor the full text of regulations, plans, budget, programs or other documents relating to actions taken by the Commission; but every such pictorial matter and every full text or other document shall be incorporated by reference in said minutes, shall be preserved in the office with the minutes, and shall be deemed a part of said minutes.
- (c) *Filing With Signatories.* One copy of each comprehensive plan, of each part of revision thereof, and of every regulation, standard or rule adopted by the Commission other than those dealing solely with the internal management of the Commission, shall be filed with the chief executive or with such other officer of each signatory as the chief executive thereof may determine by a written notice filed with the Commission.
- (d) *Availability of Copies.* The Commission shall supply, upon request accompanied by any fee prescribed by the Commission, a copy of any document or pictorial or other matter which is deemed a part of the Commission's minutes. The Commission shall provide for the dissemination throughout the basin of copies of its comprehensive plans and of parts and

revisions thereof, and for their availability to the public.

- (e) *Fee For Documents.* The Commission may require payment of a reasonable fee or price for copies of any documents or data supplied by the Commission. Such fee shall not exceed the costs of printing or reproduction and distribution unless the Commission shall determine that other costs, specified by it, shall be included in the fee.
- (f) *Communications.* Wherever in this compact provisions are made for communications from the Commission to governmental agencies, such communications shall be addressed to the principal executive or administrative officer thereof, as the case may be.

Sec. 15.02—Contracting and Purchasing.

- (a) Every contract in excess of ten thousand dollars (\$10,000.00) for the construction, reconstruction or improvement of any facility and every contract in excess of five thousand dollars (\$5,000.00) for the purchase of services, supplies, equipment and materials shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published at least ten (10) days before bids are to be received, in a manner reasonably likely to attract prospective bidders. The notice shall state the place where bidders may examine the specifications and other contract documents, and the time and place when bids will be opened.
- (b) Each bidder on a contract for construction, reconstruction or improvement of a facility shall accompany his bid with a corporate surety bond, or a certified check payable to the Commission, for a reasonable sum to be fixed by the Commission, as a guarantee that, if the contract is awarded to him, he will enter into a contract with the Commission in accordance with the terms of his bid.
- (c) In its discretion the Commission may accept or reject any or all bids and may readvertise, but nothing in

this compact shall prohibit the Commission from negotiating a lower price with the lowest responsible bidder. If all bids are rejected, the Commission may procure the work, services, supplies, equipment or materials in such manner as the Commission, pursuant to rules or regulations theretofore adopted by it, may determine; provided, that it may not pay more than the amount bid by the lowest responsible bidder whose bid was rejected.

- (d) Prior to entering into any contract in excess of five thousand dollars (\$5,000.00) the contractor shall provide a bond with corporate surety, payable to the Commission in such form and penal sum as the Commission may determine, conditioned upon the faithful performance of the contract in strict conformity with its terms, and the Commission may require such bonds for contracts of five thousand dollars (\$5,000.00) or less.
- (e) The Commission shall adopt rules and regulations to provide for contracting and purchasing when sealed bids, notice and publication are not required by this section and may adopt such additional rules and regulations as it deems appropriate to effectuate this section.
- (f) The Commission may suspend and waive the provisions of this section requiring competitive bids whenever:
 - (1) the purchase is to be made from or the contract is to be made with a signatory or other governmental agency or pursuant to any open end, general schedule or requirements purchase contract or any of them;
 - (2) the public exigency requires the immediate delivery of the articles of performance of the work or service;
 - (3) only one source of supply is available;
 - (4) standardization of equipment or interchangeability of parts is in the public interest; or

(5) services are to be provided of a specialized or professional nature.

(g) Whenever requested by the Commission, open end, general schedule and requirements purchase contracts of the signatories, their agencies, and their political subdivisions within the basin, shall provide that the Commission may purchase thereunder; and the signatories hereby authorize their respective central purchasing agencies to make purchases for the Commission when so requested by the Commission.

Sec. 15.03—Insurance.

The Commission may purchase, and pay the premiums for, insurance against loss of or damage to any of its properties and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Commission may determine, subject to the requirements of any agreement or indenture arising out of the issuance of bonds by the Commission. The Commission shall obtain insurance against liability for injury to persons and damage to property in such amounts as the Commission shall determine.

Sec. 15.04—Employees Benefits.

The Commission shall have authority to elect to be covered by the provisions of any law of any signatory relating to employee benefits, in order that its employees may be eligible for such benefits, and upon such election the Commission shall be deemed an *employer* within the meaning of such laws of each signatory, and the Commission shall have authority to elect to be removed from any such coverage; provided, that such election shall relate only to those laws under which benefits may be paid to employees of nongovernmental employers, and that all provisions of such laws relating to nongovernmental employers shall apply to the Commission. The Commission is authorized to agree with any agency of any signatory which administers a retirement system for all, or any class of, employees of such signatory, whereby all or classes of officers and employees of the Commission may be included within such retirement system, and every agency of each signatory which administers

a retirement system is authorized to so agree with the Commission; provided, that any such agreement may provide that the Commission or its officers and employees to be included in such retirement system, or both, shall contribute to said system such amounts as will defray on an actuarially sound basis all benefits payable to officers and employees of the Commission, but excluding the costs of operation.

Sec. 15.05—Prohibited Activities.

- (a) No commissioner, officer or employee shall:
- (1) Be a contractor or subcontractor with the Commission or its agents, or have a material financial interest, direct or indirect, in any contract, subcontract, or job of work, or materials, or the profits or contract price thereof, or any services to be furnished or performed for the Commission for pay under any contract or subcontract, unless pursuant to an award or contract let after competitive bidding; provided, however, the foregoing shall not apply to the purchase from or sale to the Commission of any real property if the purchase or sale and the terms thereof are approved in advance by unanimous vote of the entire Commission, nor shall the foregoing apply to any transaction where the amount or value does not exceed a maximum to be fixed from time to time by the Commission by regulation.
 - (2) Solicit or accept money or other thing of value in addition to the compensation, expenses or other remuneration paid him by the Commission or pursuant to Sec. 2.04 of this compact for services performed within the scope of his official duties.
 - (3) Offer or accept money or any other thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.
- (b) The Commission may, by regulation, specify particular interest or classes of interest which shall not be

deemed direct or indirect material financial interests within the meaning of this section.

- (c) Whenever a violation or apparent violation of this section becomes known to any commissioner, officer or employee, he shall forthwith bring the matter to the attention of the Commission. Any contract or agreement which the Commission finds was made in violation of this section shall be either ratified or declared void. In such latter event the consideration to be paid or transferred by the Commission under such agreement shall not be paid or transferred by the Commission, or, if paid or transferred, may be recovered, with interest, by the Commission.

Sec. 15.06—Annual Independent Audit.

- (a) As soon as practicable after the close of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by one or more certified public accountants selected by the Commission, who have no personal interest, direct or indirect, in the financial affairs of the Commission or of any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.
- (b) Without regard to the close of the fiscal year, each signatory shall be entitled to examine and audit all of the books, documents, records, files, accounts and property of the Commission, and shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

Sec. 15.07—Reports

The Commission shall make an annual report to the signatories on its programs, operations, and finances. Copies shall be furn-

ished to water resources agencies of the signatories and shall be made available to the public, upon request, at the Commission's offices.

Sec. 15.08—Notice.

- (a) Unless otherwise specified in this compact, whenever notice is required by any section in this compact, such notice shall be given by publication once a week for two successive weeks in a newspaper having general circulation in the area, or portion or portions, of the basin to be affected by the proposed action of the Commission. If the purpose of such notice is to give notice of a proposed public hearing, the notice shall identify the subject or subjects to be considered and specify the time, not less than ten (10) days after final publication, and place of hearing at which interested persons may appear and present their views. In addition to newspaper publication, notice of the proposed action of the Commission, or of public hearing, shall be posted in a conspicuous place at the offices of the Commission.
- (b) The Commission may mail a copy of the notice to each person and governmental agency which the Commission believes may be affected by the proposed action of the Commission or by the action it may take after such public hearing, and may also mail a copy of the notice to any other person or governmental agency who shall request such notice. The Commission may provide for other means of giving notice to the end that all persons and governmental agencies having an interest in the subject may reasonably be apprised thereof. Any failure of the Commission to give notice as provided in this paragraph (b) shall not affect the validity of any action taken by the Commission.
- (c) The notice need not contain the entire text, plan, or detail of the proposed action of the Commission or of the subject matter of the hearing, but shall reasonably identify the same and state the place at which the same may be examined. Whenever copies of such

text, plans, or details may be provided by the Commission, the notice shall so state and shall give the post office address to which requests for such data may be sent and the price, if any, charged by the Commission therefor.

Sec. 15.09—Hearings.

- (a) The Commission shall, after notice and at such place or places as it may determine, conduct at least one public hearing prior to the adoption of any comprehensive plan, of any major part or revision thereof, of water resources programs, and of annual capital and current expense budgets, and in all other cases wherein this compact requires a public hearing; and the Commission may conduct hearings, which need not be public hearings, with respect to any other action or activity of the Commission. Whenever the Commission proposes to act with respect to the revision, or the adoption or revision of a part, of a comprehensive plan which it deems to be minor in nature, it shall give notice that it proposes to act without public hearing, in which event any person or governmental agency claiming to have an interest in the subject matter of such proposed action shall be entitled to submit data or views to the Commission prior to its action according to such rules as the Commission may adopt or to petition for a public hearing which petition shall be granted upon a showing of legitimate interest; and the Commission may provide for a public hearing.
- (b) Commission hearings may be conducted by such commissioner, officer or employee as the Commission may direct.
- (c) The Commission shall adopt rules and regulations governing hearings, including rules of practice and procedure and circumstances in which hearings shall be afforded, and may prescribe the form and content of pleadings and other documents that may be filed with the Commission.

Sec. 15.10—Oaths and Subpoenas.

(a) *Oaths.* Any commissioner, and counsel and hearing examiner authorized by the Commission, may administer oaths and affirmations, examine witnesses and receive evidence at any hearing by the Commission. Any willful false swearing or affirming before the Commission or any authorized employee of the Commission as to any material fact shall be deemed perjury under the laws of the United States.

(b) *Subpoenas.* Any commissioner, and counsel and hearing examiner authorized by the Commission, may issue subpoenas in the name of the Commission to compel witnesses to appear and testify and/or to produce books, records, papers, documents or other tangible forms of evidence, relating to any matter within the authority of the Commission.

In any proceeding before it the Commission may issue such subpoenas upon the timely request of any party; provided, however, that the party so requesting the subpoena shall pay all expenses of service together with all fees and travel expenses to which the witness may be entitled and, prior to issuance of the subpoena, shall deposit with the Commission an amount estimated by the Commission to be sufficient to cover such costs. Subpoenas may be served at any place within any signatory state by a United States marshal, by any officer of a signatory authorized to serve process of a court, or by any employee of the Commission designated for such purpose, and the person serving the subpoena shall make proof of service thereof promptly to the Commission, but failure to make proof of service does not affect the validity of the service. Each witness so subpoenaed shall be entitled to the same fees as are paid witnesses before a United States Court, but such fees need not be tendered in advance of his appearing and testifying and/or producing books, records, papers, documents or other tangible forms of evidence. If any witness shall neglect or refuse to obey such subpoena, or shall refuse to be sworn or to testify, the Commission may

report that fact to the United States District Court for the district within which the witness was required to appear or to testify, and the court may order such person to comply with such subpoena or to testify and may enforce its orders in any manner provided by law for the enforcement of subpoenas and orders of said court.

Sec. 15.11—Judicial Review of Commission Orders and Actions.

- (a) Upon the petition of any person or governmental agency aggrieved, any final order, decision or action of the Commission made or taken after hearing, or with respect to which a hearing is required, any final decision of the Commission approving or refusing to approve a project pursuant to Sec. 3.08, and any other order, decision or action which this compact provides shall be subject to judicial review, may be reviewed in any court of competent jurisdiction. The petition for review shall be filed in the court within the time limited by this compact or, if not so limited, by law of the signatory, or as may be fixed by rule of the court. Upon the filing of the petition the Clerk of Court or comparable official shall forthwith, by mail, serve a copy thereof upon the Commission which shall thereupon file in the court a certified list of the materials comprising the record of the proceedings and hold for the court all such materials and transmit the original or certified copies of the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the review.
- (b) The filing of a petition for review shall not operate as a stay of the operation of such order or decision unless so ordered by the Commission or by the court for good cause shown. For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status quo or rights of any of the parties, or others, pending conclusion of the review proceedings.

- (c) The court shall hear and decide the review on the record of proceedings before the Commission, and may affirm the decision of the Commission or remand the case for further proceedings; or it may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the findings, conclusions or decisions, are (1) in violation of constitutional or statutory provisions, or (2) in excess of the authority of the Commission, or (3) made upon unlawful procedure, or (4) affected by other error of law, or (5) unsupported by substantial evidence on the record considered as a whole, or (6) arbitrary, capricious, or an abuse of discretion. The court may appoint a special master to take evidence and make recommendations to the court with respect to any question raised in a petition for review if the court is of the opinion that the question can not be adequately determined from the record of the proceedings before the Commission and that the interest of justice so requires.
- (d) Judicial Review of any final action taken by any governmental agency in the exercise of powers, duties or authorities of the Commission under the provisions of Sec. 12.03 shall be pursuant to the laws and procedures of such signatory relating to judicial review of the actions of such governmental agency. If no provision for judicial review exists within the signatory then recourse may be had in the United States District courts within the signatory involved, in accordance with subsections (a), (b) and (c) of this Sec. 15.11.

Sec. 15.12—Enforcement by the Commission.

The Commission may enforce or require compliance with any provision of this compact, or any rule, regulation, decision or order of the Commission made pursuant thereto, or restrain any violation of any such provision, rule, regulation, decision or order, by injunction or any other appropriate action brought in the name of the Commission in a court of equity or of gen-

eral jurisdiction, as the case may be, in any of the signatories, and jurisdiction thereof is hereby conferred.

Sec. 15.13—Penal Sanctions.

- (a) Any person violating any provision of this compact or regulation of the Commission, other than one of a procedural nature or relating solely to the internal management of the Commission, shall be guilty of a petty offense and, upon conviction, shall be punished by a fine not exceeding five hundred dollars (\$500.00) for each offense, unless a greater penalty is specifically provided elsewhere in this compact. Each day during which a violation occurs shall be deemed a separate and additional violation. Prosecutions for violations of any provision of this compact or of any regulation of the Commission shall be in any court having jurisdiction to try misdemeanor cases in the signatory state in which the violation is committed. Any violation of any provision of this compact or of any regulation of the Commission shall be deemed an offense against the signatory state in which the offense is committed. All law enforcement officers, and other persons possessing the power to arrest under the laws of a signatory, are authorized and directed to enforce the regulations of the Commission. Any fine imposed for violations shall be collected as fines are collected in the signatory state within which the offense was committed. Unless otherwise required by the law of the signatory, all fines collected shall be paid to the Commission by the officer whose duty it is to collect such fines.
- (b) Notwithstanding any criminal liability, any person violating any provision of this compact or any regulation of the Commission, shall be civilly liable to the Commission for any actual damage sustained by the Commission by reason of such violation.
- (c) The penal sanctions herein provided shall not be applicable to any failure or refusal to pay any charge or assessment imposed by the Commission.

Sec. 15.14—Tort Liability.

The Commission shall be liable for the negligence or warranty of its officers, agents, and employees only to the extent of the limits of the insurance coverage required by Sec. 15.03, and to that extent the defense of governmental immunity shall not be a bar to action or recovery.

Sec. 15.15—Transfer of Employees and Property, Abolition of Interstate Commission on the Potomac River Basin, Repeal of Potomac River Sanitation Compact, and Payment of Certain Expenses.

- (a) Effective upon the election of the first chairman of the Potomac River Commission created by Article 2 of this compact, all money, property and other assets of the Interstate Commission on the Potomac River Basin created by the Potomac River Sanitation Compact (approved by Congress, July 11, 1940) are hereby transferred to, and all of its liabilities are hereby imposed upon, the said Potomac River Basin Commission, and all employees of said Interstate Commission are hereby transferred at their then current salaries to said Potomac River Basin Commission subject to the authority vested in it by said Article 2; and all programs and activities of said Interstate Commission then in effect shall thereupon be programs and activities of the Potomac River Basin Commission until changed or terminated by it. Effective six months after the election of the first chairman of the Potomac River Basin Commission, the Interstate Commission on the Potomac River Basin shall thereupon be abolished and the Potomac River Sanitation Compact repealed. During said six-month period the Interstate Commission shall have a final examination and audit made of its accounts and shall make a final report of its operations and transactions.
- (b) From the money transferred by subsection (a) of this Sec. 15.15 the Potomac River Basin Commission shall pay the expense of the audit and report required by subsection (a) and the actual expenses incurred by

any commissioner or officer of the Interstate Commission incident to his performance of any function in connection with the transfer of assets, liabilities and personnel to the Potomac River Commission or the winding up of the affairs of said Interstate Commission, or which may be requested of him by said Potomac River Basin Commission.

- (c) Except as provided in Subsection (b) of this Sec. 15.15, the money transferred by subsection (a) of this Sec. 15.15 shall be used only for payment of the salaries and related expenses of employees transferred to, and for the discharge of liabilities imposed upon, the Commission by subsection (a) until other funds are available to the Commission for payment of salaries.

Sec. 15.16—Jurisdiction of Signatories Reserved.

Nothing in this compact shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, and every such power and authority shall continue to exist and be exercised except as specifically limited by this compact and except to the extent that the exercise of a power by a signatory conflicts with an exercise by the Commission of a power vested in it. Nothing contained in this compact, however, shall be construed as granting to the Commission the power to regulate the taking of fish and wildlife.

Sec. 15.17—Complementary Legislation by Signatories.

Each of the signatories agrees that it will enact such additional legislation as may be required to enable its officers and governmental agencies to accomplish effectively the purposes of this compact.

Sec. 15.18—Amendments and Supplements.

Amendments and supplements to this compact may be adopted by legislative action of any of the signatories concurred in by all of the others.

Sec. 15.19—Construction.

The enactment of this compact by the Congress of the United States shall not be construed as indicating an intent on the part of the Congress to occupy the field in which any part of this compact operates to the exclusion of individual state laws on the same subject matter. It is the intent of the Congress and of the legislatures of the other signatories that no provision of this compact shall be construed as invalidating any provision of law of any signatory unless such provision is inconsistent with any of the purposes of this compact or of any provision thereof; and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce legislation or regulations relating to any subject matter of this compact which are within its jurisdiction and not inconsistent with any purpose or provision of this compact.

Sec. 15.20—Severability.

If any word, phrase, clause, sentence or provision of this compact or the application thereof to any person or circumstance is held invalid, the remainder of the compact and the application of the word, phrase, clause, sentence or provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Sec. 15.21—Effective Date; Execution.

This compact shall become binding and effective thirty (30) days after its enactment by the legislatures of Maryland, Pennsylvania, Virginia and West Virginia, and by the Congress on behalf of the United States and the District of Columbia. The compact shall be signed and sealed in seven (7) identical original copies by the respective chief executives of the signatories. One such copy shall be filed with the Secretary of State of the signatories or in accordance with the laws of the signatory in which the filing is made, and one copy shall be filed and retained in the archives of the Commission upon its organization.

APPENDIX II

HOUSE JOINT RESOLUTION NO. 102

Directing the Virginia Advisory Legislative Council to study and report on the proposed Potomac River Basin Compact.

Whereas, the Potomac River Basin has experienced many years of drought which severely damaged the productivity of agriculture and drastically reduced the flow of the river which threatened the water supplies throughout the basin and particularly in the Washington Metropolitan Area at the time of greatest demand; and

Whereas, the population of the Potomac River Basin and the industrial and commercial development therein have greatly expanded during the last decade, and are continuing to expand, increasing the demands for water supply and the potential for loss through floods; and

Whereas, at the direction of the Congress of the United States, the Corps of Engineers of the Department of the Army in cooperation with the Department of Agriculture, the Department of Health, Education and Welfare, the Department of the Interior, the Department of Commerce, and other Federal agencies as well as agencies of the District of Columbia and the States of the Potomac River Basin and numerous local agencies and organizations, has made a comprehensive survey and report concerning the water and related resources of the Potomac River Basin which revealed the urgent need for measures to control the flow of the Potomac River and its tributaries in order to assure an adequate water supply and flood protection, to reduce sedimentation and otherwise improve the quality of the waters, to provide water related recreational facilities, to enhance the preservation and propagation of fish and wildlife, and to promote related forestry, agriculture, soil conservation and watershed projects; and

Whereas, many State and federal agencies have an interest in or responsibility for one or more aspects of the water resources of the Potomac River Basin, but none has the legal authority to provide the broad, permanent guidance and control or the development of regional scope found necessary for the most effective utilization of these resources; and

Whereas, in 1965, the Governors of the Basin states - Maryland, Virginia, West Virginia, Pennsylvania and the Commissioners of the District of Columbia, created the Potomac River Basin Advisory Committee to recommend to the Governors and the Commissioners of the District of Columbia an appropriate permanent regional organization to provide the guidance and control which is needed to preserve and develop the Potomac River Basin to its optimum use; and

Whereas, the Potomac River Basin Advisory Committee prepared a draft of an interstate-federal compact calling for the creation of a basin agency to discharge the joint responsibilities of the United States, the States in the Potomac River Basin and the District of Columbia with respect to the conservation, utilization, development, management and control of the water and related resources of the Potomac River Basin; and

Whereas, the Commonwealth of Virginia should not adopt and become a party to the proposed compact until it has been carefully studied and reviewed; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, that the Virginia Advisory Legislative Council is hereby directed to make a study of the proposed Potomac River Basin Compact and report on the advisability of the Commonwealth of Virginia adopting and becoming a party to such Compact.

The Council shall conclude its study and make its report to the Governor and the General Assembly not later than July one, nineteen hundred sixty-nine.

APPENDIX III

COMMITTEE REPORT

This Appendix carries the Committee Report with the exception of introductory material. The contents presented are as follows:

	<i>Page</i>
I. RECOMMENDATIONS	68
II. REASONS FOR RECOMMENDATIONS	
(A) Adoption of the Compact as Drafted	68
(B) Advisory Committees	70
III. THE PROPOSED COMPACT: CONTENT AND CRITICISMS	
(A) The Content of the Proposed Compact	70
(B) Criticisms of the Compact	
(1) Are the representation provisions fair and adequate and should the federal government have a participatory role in the Compact?	73
(2) Do the provisions for the duration of the Compact and procedures for withdrawal from and amendment to the Compact unnecessarily restrict the signatories?	74
(3) Are the powers of the Commission unnecessarily broad, particularly with respect to matters, other than water supply and purity, such as recreation and environmental amenities?	75
(4) Does the Compact give the Commission zoning powers?	77
(5) Should the Commission have eminent domain powers?	77
(6) What are the Commission's powers with regard to funding and taxation?	78
IV. CONCLUSION	79

I. RECOMMENDATIONS

First, the Council should recommend that Virginia become a party to the proposed Potomac River Basin Compact and that the 1970 General Assembly adopt the Compact, as drafted and submitted by the Potomac River Basin Advisory Committee October 1968, in order that Virginia may become a party with Maryland, West Virginia, Pennsylvania, the District of Columbia and the federal government in establishing an effective mechanism for planning and managing the water resources of the Potomac River Basin as soon as practicable.

Second, the Council should recommend that the General Assembly include, within the enabling legislation it enacts at the time of adopting the Compact, specific provisions to establish an advisory body or bodies which will assist and consult with the Virginia voting member of the Commission that is created by the Compact to exercise administrative and management functions in the Basin as specified by the Compact and which will represent Virginia interests in the Basin area and expertise in water resource management during the course of the Commission's work.

II. REASONS FOR RECOMMENDATIONS

A. Adoption of the Compact as Drafted

The need for action to preserve the water resources of the Potomac River Basin has been evident for many years.

In 1940 Virginia became a party to the Compact which created the Interstate Commission on the Potomac River Basin (INCOPOT) with the states of Maryland, West Virginia and Pennsylvania and the District of Columbia. This Compact recognized that

“abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states wholly or in part within the area drained by any such interstate stream.”

INCOPOT is a study and advisory group created to assist the several states in controlling pollution problems. In 1968 the General Assembly adopted amendments to the INCOPOT Compact to expand the powers of that Commission to include establishment of water quality standards and mechanisms for submission by the states of water quality standards to the Commission for its review insofar as interstate waters are affected.

In the meantime, in 1956 a study was initiated by the U.S. Army Corps of Engineers to survey the Potomac River Basin and prepare a plan for development of water and related land resources in the Basin. The prospect of extensive federal action to control the water resources of the Potomac Basin stimulated activity on the part of the states concerned.

Governor Harrison in 1962 appointed the Virginia Potomac Committee to review the impact of the Potomac Basin Development Plan prepared by the Corps of Engineers. That Committee reported in 1964 and gave top priority to its recommendation that an interstate-federal authority or commission be created to assure State and local participation in the development and administration of any Potomac River Basin plan.

Subsequent to this report, the Governors of the states concerned and the District of Columbia created the Potomac River Basin Advisory Committee. This Committee was composed of three representatives from each jurisdiction—Virginia, Maryland, West Virginia, Pennsylvania and the District. The Advisory Committee was charged with the responsibility for recommending the best type of inter-governmental vehicle to provide the type of administrative and planning activity needed to deal with the problems of the Potomac Basin.

The Advisory Committee prepared and recommends the Potomac River Basin Compact which appears in Appendix II of this Report. The drafting of the proposed Compact took place over the period of three years.

It is our conclusion that the basic proposition espoused in the Compact is sound. The earlier Virginia Potomac Committee, the Advisory Committee and this Committee have all reached the conclusion that an interstate-federal authority or commission represents the best possible arrangement to assure careful planning for the proper use of the Potomac's resources and preservation of the interests of all the states and localities directly involved in the Potomac Basin.

We are acutely aware of the amount of preparation and work which went into the drafting of the proposed Compact. The study and work leading up to it can be said to cover the 30 years since INCOPOT. We also recognize that the time required to obtain agreement on the part of six governmental entities will of necessity be rather long. Ordinarily, it is said that it takes ten years to achieve the adoption of an interstate compact such as that proposed in this case.

The time is at hand, however, for action to preserve the resources of the Potomac. This time factor dictates exceeding care in tampering with the terms of the Compact as it has been prepared by representatives of the states and the District of Columbia and reviewed by various federal agencies and other interested parties. We are aware that, late in the course of Committee deliberations, possible amendments to the Compacts were discussed by representatives of comparable study groups from Maryland and West Virginia and such discussions are still in progress. It is, of course, impossible to tell at this time what any other state will finally enact as the terms of the Compact and what, if any, amendments to the Compact will be enacted by any other state.

It is our position that the proposal of amendments to the Compact should be made only if it is clear that the value of the amendment will outweigh the harm done through loss of time in establishing the proper vehicle for administering the water resources of the Potomac Basin. After careful consideration of the criticisms which were garnered at the public hearings and throughout our deliberations, it is our conclusion that none of the criticisms are so substantial as to merit our proposing amendments to the Compact and prolonging the adoption process. Our recommendation to adopt the Compact as drafted is based on the conviction that, although Virginia may prefer in certain instances different wording in the Compact, it constitutes as it is now drafted a promising and workable document.

Virginia has the opportunity to be the first state to act on the Compact, and by adopting it as drafted, we can give needed impetus to action favorable to the Compact. We emphasize that such action does not in any way foreclose our giving proper consideration to any amendment which might be proposed by any other state. The Compact cannot take effect until adopted in identical form by all parties. In fact, it is our belief that positive action now will place Virginia in a sound position to act on amendments that might be suggested. Once the basic legislative decision is made to take action to preserve the Potomac's resources and the Compact is endorsed, we will be in a position to view such amendments, which it can be anticipated will be designed to limit the impact of the Compact and restrict its effect, without having to deal simultaneously with all aspects of this far-seeing document at one time. The basic controversy and commitment will be behind us and legislative amendments can be handled in a manner appropriate to reasoned negotiation with the other party jurisdictions. To enact a truncated version now would mean that the Legislature would risk having an ineffective Compact or would have to reopen this basic controversy in a future session or sessions in the likely event that other party jurisdictions desire a stronger version. To take no action at this time would mean a valuable opportunity lost to start reaching agreement among the parties.

In sum, we believe that the Compact will establish the proper agency for protection and development of the Basin's resources in Virginia's and other juris-

dictions' best interests and that it is vital to expedite its implementation. Revision and redrafting now can only delay this chance to achieve Basin-wide management of these precious resources in time to be of real use. Adoption of the Compact now will place Virginia in the best position to reach agreement with and negotiate with other party jurisdictions if such action becomes necessary.

Part III of this Report consists of a brief explanation of the content of the Compact and an analysis of the more important criticisms which have been put forward.

B. Advisory Committees

While the bulk of the criticisms of the Compact will be dealt with in Part III, one matter of concern involves the second specific recommendation we have proposed concerning the advisory committee or committees to be established to assist the Virginia voting member of the Commission.

A frequently stated criticism of the Compact is that the makeup of the proposed Commission, which will consist of one voting member from each signatory (Virginia, Maryland, West Virginia, Pennsylvania, the District of Columbia and the federal government), does not guarantee that the area population in the Basin will be effectively represented. While we believe that the Commission itself must and should represent the six sovereign parties as equals and that Basin interests will be effectively represented in and the main focus of Commission deliberations, we also share the feeling of Virginia Basin residents that they have a direct, immediate interest which should have a special voice in Virginia's approach to formulating Basin policy.

The appropriate solution to this problem is the enactment of special provisions in Virginia's enabling legislation to establish an appropriate advisory committee or committees with which the Virginia voting member shall consult. These bodies can be constituted to give full representation to Virginia Basin interests and residents and be assured access to the Virginia voting member. This device can also be utilized to bring together expert assistance for the Virginia voting member.

The special Virginia advisory groups would be in addition to the advisory committees which the Compact authorizes the overall Commission to appoint in § 3.10 to assist the Commission itself. The individual Commissioners under § 2.06 are to be allowed advisors with access to Commission meetings and it would be logical for the Virginia Commissioner to draw on the Virginia advisory groups to name his advisors under this section.

We would not go so far, however, as to recommend that the advisory bodies have control over the Virginia Commissioner in the way in which he votes on the Commission. We envision a full-time expert to represent the entire State and its interest in the Basin and believe he should have the authority to match his responsibilities. The advisory committees can inform, consult, assist and guide him, but he should have the final responsibility.

III. THE PROPOSED COMPACT: CONTENT AND CRITICISMS

A. The Content of the Proposed Compact

The Compact constitutes a contract among Virginia, Maryland, West Virginia, Pennsylvania, the District of Columbia and the federal government to establish a Commission with certain powers and duties relevant to resources of the Potomac Basin. Each signatory must adopt the identical Compact and agree to all its terms before it can become effective.

When all the signatories have adopted and approved the Compact, they will have entered into an agreement which by its terms will last initially one hundred years. Any signatory may terminate the Compact by giving notice of such intent

prior to the end of a term. § 1.06. The right of the United States to withdraw as a party is reserved. § 1.05. Amendments to the Compact may be adopted only by the unanimous action of the signatories. § 15.18.

The key reason for entering into the Compact is stated in § 1.03, the section on legislative findings:

“The satisfaction of present and future demand requires increasing economies and efficiencies in the use of water resources, and these can be brought about only by comprehensive planning, programming and management under the direction of a single governmental agency.” § 1.03 (d).

In § 1.04, the Compact recites dual purposes for its enactment. These are basically (1) to establish a joint agency of the signatories and, through achievement of effective intergovernmental cooperation and water resource planning and action, to use and manage those resources in a manner to meet the requirements of the present and future Basin population, and (2) simultaneously to preserve and utilize existing governmental agencies so far as consistently possible.

The intergovernmental agency created by the Compact to exercise basic planning and management functions is a six-member Commission to be composed of the Governor of each state, the Commissioner of the District of Columbia and an appointee of the President of the United States. §§ 2.01 and 2.02. Each Governor and the District Commissioner may appoint a designee to serve in his place. § 2.02. Six alternate members are also to be appointed. § 2.03. Each signatory's Commissioner has one vote on all Commission business. § 2.05. The compensation of Commissioners and alternates is left to state law, but there is provision for reimbursing expenses. § 2.04. The Commission may employ officers and agents to carry out the functions of the Commission, but there are specific limits on the type of authority which the Commission can delegate to its employees. The Commission itself must act on all basic matters such as the comprehensive plans, annual water resources programs, budgetary matters and regulations. § 2.07.

Any Commission action requires four votes and the six possible votes (§ 2.05), and there are other more stringent special vote requirements throughout the Compact which will be mentioned as appropriate below.

The territorial jurisdiction of the Commission is limited to the Basin unless action outside the Basin area is “necessary or convenient to effectuate its powers or duties within the basin.” In the case of activity beyond the Basin, the Commissioner from the jurisdiction must approve the action. § 2.08.

The first duty of the Commission is to adopt a comprehensive water resources plan “for the immediate and longrange development, conservation, utilization and management of the water resources of the basin”. § 3.02. Based on the comprehensive water resources plan, the Commission is to develop annual water resources programs which are specific descriptions of the “quality and quantity of water resources needs” in the Basin and catalogs of public and private projects and facilities designed to meet such needs. § 3.03.

The comprehensive water resources plan and annual water resources programs serve as the basic planning and management devices. In developing the plan, consideration must be given the plans of all governmental agencies from federal to local levels submitted to the Commission for review. The Commission would, in conjunction with the programs, describe all relevant proposed projects and identify all those to which the Commission contributes financially with amounts of contributions. § 3.03.

The Commission must approve in advance projects with multi-jurisdictional effect: those crossing the boundary between signatories; those involving water diversion; those included in or substantially affecting the comprehensive plan;

those within one signatory but substantially affecting another's water resources; and those altering facilities which would initially require approval. This approval must be granted unless the Commission finds the project not in the public interest in the use and management of Basin water resources or in substantial conflict with the comprehensive plan. § 3.08.

Water supply protection, including special provisions on water shortages and emergencies, water quality controls, flood protection, watershed management and water-related public recreation planning are specifically dealt with in Articles 4, 11, 5, 6, 7 and 8, respectively, and constitute major categories of Commission concern. The role of the Commission vis-a-vis these problems varies from the job of consultant and advisor to active administrator and participant. For example, in the case of pollution control, the Commission is deemed to have adopted existing signatory standards when the Compact takes effect and it need never go further. It may, however, after public hearing, adopt certain water quality standards to prevent, control and abate pollution which it may then enforce in the courts. It may also construct or operate a facility to abate or control pollution should the need arise.

The Commission is to develop a comprehensive amenities plan for the Basin area designed to develop and preserve aesthetic, scenic and historic values and may establish river zones within the Basin area to complement the amenities plan. Art. 9. The Commission may construct or operate hydroelectric generating or transmission facilities so long as it does not become involved in retail sales. Art. 10.

Provision is made for the Commission to be able to enter into contracts, sue and be sued, negotiate for loans and grants, acquire, plan, own, operate, maintain projects and facilities, property and services, issue revenue bonds, and condemn property. See, Arts. 3, 13 and 14.

The description of the Compact thus far, though too brief and oversimplified, serves to show that the Compact's draftsmen have attempted, we believe successfully, to envision a means to deal with the important, existing, foreseeable and even unforeseeable Basin problems. The scope of the Compact is broad, as it must be if it is to last and prove effective.

Breadth of scope should not, however, be taken to connote unbridled power or unchecked activity. The Compact is replete with safeguards and limits on the powers and activities of the Commission. We cite only a few instances here of the types of internal reservations and protections the Compact includes.

First, with respect to the adoption of the comprehensive water resources plan, as with any other action of the Commission, four of the six members must agree. All other governmental agencies have the right to submit plans for consideration by the proposed Commission which it must review in developing its plans. § 3.02. It is likely that the proposed comprehensive water resources plan will be based in large measure on work which has already been done. Public hearing must be afforded prior to adoption. § 15.09. Judicial review is available in the competent courts of each signatory. § 15.11.

The same checks apply to the comprehensive amenities plan. With respect to river zones, the Commission may establish river zones other than on the Potomac or its North Branch only with the approval of the legislature of the signatory state affected. River zones on the Potomac or North Branch may not be established without prior consultation with the localities affected and the affirmative vote of the Commissioner from any signatory in which the zone is to be located. No river zone may extend more than one mile inland except with the actual concurrence of the locality affected. § 9.04.

Recreation projects can only be undertaken if the Commissioner of the affected signatory votes favorably. § 8.05.

The annual capital budget of the Commission must be adopted by unanimous

vote of the signatories insofar as the budget is not balanced by contributions from individuals and governmental agencies. The current expense budget of the Commission must be adopted unanimously insofar as estimated revenues do not balance expenses. § 14.01.

These examples illustrate the types of procedural safeguards which have been woven into the Compact. They temper the broad scope of this agreement.

Taken altogether, the Compact represents a well-balanced document with the means to accomplish Basin-wide, sound water resource management and protection for the interests of all concerned.

B. Criticisms of the Compact

(1) Are the representation provisions fair and adequate and should the federal government have a participatory role in the Compact?

The provisions that each signatory, including the federal government, shall have one representative and one vote (§§ 2.02 and 2.05) have been subject to several criticisms.

(a) It is said that the fact that the Governor or his designee is the State's only representative and exercises its sole vote means the Virginia Basin area and population are not given a proper voice on the Commission or with respect to Virginia's policy on Basin decisions.

Our recommendation to provide in the enabling legislation for the appointment of an advisory committee or committees to consult and work with the Virginia representative offers a practical method to assure representation of Virginia's Basin area in the formulation of State policy on Basin concerns. This arrangement should serve to satisfy Virginia's particular needs without involving amendment to the Compact itself. Such arrangements would not necessarily be appropriate to other signatories such as Pennsylvania which has only four percent of its total territory in the Basin or the District of Columbia which lies entirely within the Basin.

Any amendment to provide for representation on the basis of Basin interests would, also, contradict the premise of the Compact that the Basin's resources are the concern of each state as a whole because the preservation of these resources requires interstate action and may involve factors beyond the Basin.

(b) A second criticism of the representation provision is that too much power is concentrated in the hands of only six men, even assuming that each signatory should have an equal number of votes. A revision to provide for representation from each state by the Governor and two individuals elected by the legislature and from the District and federal governments of three appointees each and for three votes per signatory, would perhaps dilute power to a degree but would definitely mean a more unwieldy and less expert agency.

The function of the Commission is to give expert leadership in the Basin and to assist in coordinating the activities of existing agencies and groups. The Commissioners would, we hope, be designees appointed to serve on a full-time basis for their ability to deal with Basin problems in a highly professional and expert manner. Much of their work will be advisory rather than regulatory, and their effectiveness might well be diminished if they are part-time functionaries or amateurs with respect to Basin problems.

(c) A third question which has been raised is whether the representation provision gives the federal government undue representation by virtue of the two out of six votes accorded the federal government and the District of Columbia. This question has two parts: whether the federal government and District are, in fact, separate entities for Compact purposes; and whether the federal government should be a member of the Compact at all, i.e. should this agreement be an interstate-federal rather than interstate Compact.

The District is the one jurisdiction lying entirely within the Basin, and effective management of Basin resources must take into account the need for water in the District and the tremendous impact of this densely populated area on the Basin as, for example, in the handling of pollution problems. The District is presently represented on INCOBOT in recognition of the fact that it is an entity like any of the other member states and performs to a large extent the functions of a state government within its boundaries. The interests of the District must be recognized and are so different in character from the interests of the federal or national government that participation by the federal government cannot be said to assure adequate recognition of the District's specific jurisdiction. Whether or not the federal level of government is given a direct voice on the Commission, it appears necessary to follow the INCOBOT example and recognize the role of the District in Basin affairs.

The design of the Compact as an interstate-federal and not a pure interstate agreement recognizes the fact that the federal government, through a number of agencies, has been active in formulating plans affecting the Basin for a number of years. The Federal Interdepartmental Task Force on the Potomac involved the Departments of the Interior, Army, Health, Education and Welfare, and Agriculture. An Interior Department proposal on the Potomac as a National River has been introduced in Congress. Two federal studies now in progress under direction of the Corps of Engineers are the Northeast Water Study and North Atlantic Water Resources Study, both of which could have impact on the Potomac. The real question is not whether the federal government has the jurisdiction and inclination to act in the Basin but whether it will act alone or in concert with the states and localities of the Basin. The Compact cannot and should not attempt to preclude federal interest in the Basin, but it should afford the best means to coordinate federal action with that of the states for a complete approach to Basin resource planning and management. The unique function of the Basin as the scene of the National Capitol lends impetus to the selection of the interstate-federal approach already utilized with success in the Delaware Basin Compact.

(d) A final set of criticisms concerns the balance of power among the states and District on the Commission. It is said that the one vote per signatory formula means that Virginia is under-represented in terms of its Basin area population or Basin land area vis-a-vis that of the other participants or in terms of the proportion of Basin population or land area vis-a-vis Virginia's total population or land area in comparison with the other signatories. The number of criticisms under this category indicates the variety of representation formulas which could be used. For example, it would be possible to take the land area in the Basin and assign Virginia thirty-nine votes since 39% of the Basin is in Virginia, and assign the District of Columbia one-half vote, since only .5% of the Basin is in the District. On the other hand, 100% of the District is within the Basin and only 14% of Virginia is within the Basin and the votes might be weighted one hundred to fourteen on that formula. The possible weightings and arrangements for representation are innumerable, but one fact remains plain. Each signatory is a separate governmental entity and each must agree to the Compact to guarantee an effective Basin-wide unit of management. Most compacts take this approach of one vote per signatory because of recognition that a compact affords a system of joint action among equals. Moreover, the impact of the Basin is felt throughout each of the signatories and not only within the confines of the Basin area so that each signatory has, in effect, a state-wide interest in its sound management.

- (2) *Do the provisions for the duration of the Compact and procedures for withdrawal from and amendment to the Compact unnecessarily restrict the signatories?*

The initial term of the Compact is one hundred years and there is provision for continuation for additional one-hundred-year terms absent timely notice by a state of its intention to terminate the Compact. § 1.06. Authority of the Congress,

by statute, to withdraw the United States is noted in § 1.05. Amendments require the signatories' unanimous action (§ 15.18), and Commissioners may at any time recommend amendments to their legislatures and must report on the desirability of amendment at least every ten years (§ 3.11).

The provision for a one-hundred-year term has been called unnecessarily long. If any term is to be provided, however, we believe that the period fixed is reasonable. The purpose of setting out a term relates most directly to the issuance of revenue bonds and the giving of assurance to bondholders that the Compact will not terminate abruptly. The maximum maturity period for bonds issued by the Commission is fifty years. § 13.07. The time which will probably elapse before any project or facility can be planned and agreed upon, if one should prove to be desirable, could well be more than ten or twenty years. Allowing for series of bonds, the times involved could approximate the term being discussed. Thus to give some assurance to bond-holders, a one-hundred-year term is not unreasonable.

Moreover, the Compact can be terminated at any time by unanimous action of the parties. The provision for a fixed term is a limit on unilateral action only. Many compacts carry no term. This is true, for example, of the Potomac River Compact of 1958, the Ohio River Valley Water Sanitation Compact of 1948 and the Breaks Interstate Park Compact of 1954 of which Virginia is a party, as well as numerous other compacts. While compacts may carry a provision for withdrawal by any party after notice to the others (e.g., the Atlantic States Marine Fisheries Compact of 1942 to which Virginia is a party), such compacts usually look toward development of coordinated state action and are more advisory in nature. In this case, we are hoping to create an effective and operative joint agency which can assist in preserving Basin resources, and it is appropriate that the Compact be a more durable instrument.

With respect to the amendment of the Compact, we find that it is sensible and the common practice to require unanimous action for amendment. This is essentially a protective provision for each signatory which assures a voice to each party before there is any change in the basic agreement.

- (3) *Are the powers of the Commission unnecessarily broad, particularly with respect to matters, other than water supply and purity, such as recreation and environmental amenities?*

Much of the opposition to the Compact which the Committee heard involved the basic proposition that the scope of the Compact is too broad or that it should deal with water supply and pollution and not get into other fields.

First, it should be reiterated that the scope of the Compact is broad and touches water supply, water quality (pollution problems), flood protection, watershed management, recreation and historic, scenic and environmental amenities. But the powers given to the Commission with respect to these various categories differ in degree and in the methods in which they can be used. For instance, the powers with respect to water shortages and water supply are important and vital. The Commission may designate an area as an "emergency area" for thirty days if it is in danger of an "actual and immediate" water shortage before holding a public hearing and control all private and governmental water diversions from that area for the thirty-day emergency period. §§ 11.03 and 11.04. With respect to water resource related recreation projects, however, the Commission cannot exercise any of its powers under these provisions to operate or construct such projects without the consent of the Commissioner of the signatory where the project would be located. § 8.05. Thus it is a serious and misleading over-simplification to say that the Compact is too broad without examining closely the checks on the Commissioner's powers in each field of operation.

Second, the provisions of Article 9 concerning the comprehensive amenities plan have received more direct criticism, perhaps, than any other segment of the Compact on the basis that these provisions are unnecessary for effective water

management. Again, the criticism frequently overlooks the checks built into Article 9. In developing the comprehensive amenities plan, the Commission is required to consider all related state, regional and local plans presented to it. § 9.04. Public hearings must be held. § 15.09. The Commission may not condemn property for purposes of the plan whenever state and local regulations are adequate to preserve the lands. § 9.05. Judicial review is afforded parties aggrieved by adoption or revision of the comprehensive amenities plan. § 15.11. The specific provisions of the Article relating to the river zone concept and the limits on its applicability will be discussed separately in item (4) below.

Third and most important, it is our belief, taking into consideration the refinements discussed above, that the scope of the Compact is of proper dimensions to reach the water resource problems facing the Basin and the states concerned. Effective water supply and quality management and planning involve many factors. Conservation, siltation, flood protection, and pollution are matters which relate directly to water uses and require consideration of how to prevent soil erosion, to promote sound forest management, to provide for treatment of waste products from agricultural, industrial, construction and residential areas, and to maintain a balance of related projects and programs in the Basin Area. These types of programs or plans cannot always be seen as a direct water use project as can a project for the construction of a dam. Nevertheless, most persons will concede that effective water resource management must be able to operate with regard to such erosion and conservation considerations.

The more vehement objections are directed at the coverage given to recreation and environmental amenities. These areas will, we believe, prove to be a minor part of the Commission's work—partly because they are the areas where the Commission is given less power and partly because they are relatively new fields of concern. The Basin's water resources can, however, serve to promote more than the very basic water needs of the area's spiralling population. The Basin can, if preserved for such purpose, afford needed recreation and scenic enjoyment for its residents. Certainly, this aspect of Basin development was at the heart of the President's February 8, 1965 directive to the Federal Interdepartmental Task Force to prepare a plan that would make the Potomac a "model of conservation." In the Task Force's 1965 Interim Report to the President, the Chairman stressed the urgency of the problems involved:

"There are many problems in the Basin that urgently need decision and action. Time is running out. Four years of drought has underscored water supply problems. Pressures to rezone land that should be saved for open spaces and parks are compounding. In many areas present development and use deny the public access to public recreation areas and this denial is increasing. Sedimentation and erosion are wasting land resources and spoiling the river and its beautiful estuary. Pollution spoils everything."

The excerpt illustrates the concern which has already been expressed widely at the federal level for the recreational and scenic aspects of Basin management. We do not believe this concern at the federal level is unwarranted and we do not believe that this aspect of Basin water resource management should be left to federal activity alone. While it can be argued that the states can handle these matters and projects on an individual basis, we find that the same reasons for joint action on water supply problems have applicability in these areas. For one jurisdiction to develop a park and scenic preserve only to have the jurisdiction across the river install a sewage treatment facility on its banks would be a misuse of resources and an unnecessary conflict. Planning can avoid such occurrences and should be used to do so.

In sum, we find the scope of the Compact must be broad to provide a mechanism which will work and last. It would, we feel, be short-sighted to preclude joint

action on the recreational and environmental applications of water resource planning and to rely on either jurisdictions individually or the federal government alone to handle the impact of an increasing urban population on the Basin's resources.

(4) *Does the Compact give the Commission zoning powers?*

The answer to this question is that the Commission has certain powers which relate to land use planning but does not have zoning authority in the traditional sense of the word. The checks on Commission activity in this field are very strong.

In the environmental amenities portion of the Compact, it is provided that that Commission is to develop a comprehensive amenities plan which shall provide for:

- “(a) river zones and their accessibility;
 - “(b) instituting land use plans and controls within river zones;
 - “(c) acquiring or otherwise preserving existing and potential parks and parkways, scenic areas, open spaces, recreation areas, historic areas, trail corridors, wetlands or natural areas within river zones.”
- § 9.04.

The purpose of establishing a river zone is to afford “protection of fish and wild-life habitat, and aesthetic, scenic and historic values.” § 9.04.

There are several checks in addition to the usual review of other agency plans, public hearing, and judicial review, regarding river zones: there must always be prior consultation with the locality affected and an affirmative vote by the Commissioner of the signatory affected; if the zone extends more than one mile inland, the locality must concur in its establishment; and other than on the main stem or North Branch of the Potomac, the affected signatory's legislature must first designate the area as a potential river zone before the Commission can act. § 9.04. It could be that these conditions would never be met and no zone ever be established.

If, however, as appears a possibility it proves desirable to protect a certain segment of the river and two zones are established facing each other across the river with the necessary consents given, then § 9.06 provides that the Commission will have certain powers applicable to the established river zone. First, if local zoning and land use plans have already been accepted as compatible with the comprehensive amenities plan by the Commission, then those local plans and ordinances control. Second, if no local zoning is in effect or has been accepted and a river zone is established, the uses in existence are frozen and cannot be changed unless (a) local or state zoning plans are adopted and accepted which provide that future special exceptions and variances are to be acceptable under the comprehensive plan, or (b) so long as there are no accepted local or state plans, the Commission then acts to permit special exceptions and variances it finds compatible with the plan. The scheme of these provisions is to encourage zoning and planning action on the local level which will complement the amenities plan. Whether or not, these provisions are said to involve zoning or planning, we find that they are very tightly drawn to preserve the authority of the signatories and localities.

One further item should be noted which indicates that the Commission's role may well prove to be largely advisory in this area. In two provisions, §§ 9.06 (a) and 9.07, the Compact directs the Commission to give planning assistance: in the former, the Commission is directed to assist localities in drawing “coordinated comprehensive land use plans”; and in the latter the Commission is authorized to “designate park, recreation, scenic and historic areas” and recommend programs for preservation and enhancement of the areas. These are advisory activities.

(5) *Should the Commission have eminent domain powers?*

The basic provisions which authorize the Commission to condemn property are found in § 3.05 (k) which is a general authorization to acquire property by

eminent domain for the purposes of the Compact subject to limitations elsewhere contained therein and in § 14.09 which is the detailed eminent domain provision. Another provision which is pertinent is § 9.05 which prohibits use of condemnation powers by the Commission for amenities purposes if local regulation is found adequate by the Commission to protect the property in question.

The basic provision is § 14.09 and a brief summary of it is in order. The power of eminent domain granted extends to property devoted to a public use (other than that belonging to a signatory). Provision is made for approval by the supervisory body of a utility (e.g., the State Corporation Commission) before its property can be condemned unless relocation is provided for it or the taking does not affect its operation. Provision is made whereby the Commission can condemn property for purposes of exchanging property with signatories, political subdivisions and utilities. The Section states the issue of necessity is not to be justiciable unless constitutionally required to be so and that state condemnation law will control condemnation proceedings.

This is a broad grant of power checked basically by the reference to state law as controlling the proceedings and by the availability of funds for condemnation purposes. We note that the Delaware Basin Commission has yet to undertake a project on its own in its eight years of operation and that it is most likely that this power will be used only rarely. Nevertheless, the absence of such power would mean that this joint governmental agency would be significantly less equipped to meet Basin planning and management needs than any of the signatory bodies. It appears to us that it is necessary to provide for the unusual and rare case when a project must be undertaken, such as a needed reservoir, and no single jurisdiction can manage to develop it or acquire the land for it. In examining this aspect of the Compact, we are faced with the same risk as in other phases—whether we are willing to create an effective agency or whether we wish to continue to work on a cooperative and necessarily piecemeal basis.

Further refinement of the eminent domain provisions can be undertaken only at the cost of further delay. We believe that the basic reference to controlling state law and the ability to provide fair and adequate state laws on condemnation provide good safeguards and will be of sufficient protection to our citizens without circumscribing the basic authority granted by the Compact. We believe it would be wrong to excise these provisions and rely entirely on the purchase power and governmental cooperation if an independent, long-lived agency is desired.

(6) *What are the Commission's powers with regard to funding and taxation?*

The current expenses of the Commission are to be budgeted annually, offset by revenues and the remainder balanced by allocation of such excess costs among the parties as all Commissioners unanimously agree. Capital project expenses are to be similarly handled. § 14.01.

The Commission may accept appropriations, loans, grants and property. §§ 14.05, 14.06 and 14.07.

It may pledge its full faith and credit in issuing bonds payable out of its own property and revenues. It cannot pledge the credit of any other governmental body. Article 13.

The most controversial provision is that contained in § 14.04 which authorizes the Commission to make special assessments on property, persons and governmental agencies benefitted by water management and flow regulation projects, on an equitable basis, for a share in the costs of the Commission for such projects. This provision contains the important proviso that the law on local improvement assessments of the signatory wherein the assessment is made will control, along with other applicable state law, and that such assessments are subject to local judicial review. This power should not be termed a taxing power, but it will undoubtedly be strictly construed because of the close relation between the law of assessment and taxation. Its use is predicated on the receipt of value by the person

assessed, and the careful references in § 14.04 to state law and judicial review appear to us of sufficient clarity and forcefulness to guard against its abuse.

IV. CONCLUSION

We have attempted to discuss the major issues raised before the Committee and during our study which must be understood to determine the wisdom of adopting the Compact. Many features of the document which are non-controversial deserve more attention and will prove to be of real value. The document itself should be carefully studied.

Much of the material above is directed to the contents of the Compact and may not emphasize sharply enough the need for timely action to preserve these vital resources. We believe the Compact is soundly drawn and needed now. We urge its adoption.

APPENDIX IV

STATEMENT OF DISSENTING COMMITTEE MEMBERS

The undersigned, members of the Potomac River Basin Compact Committee, respectfully file this dissenting opinion to the action taken by the Committee in endorsing the proposed Compact on July 19, 1969, and set forth their reasons as follows:

I.

We recognize the acute need for immediate approval of a Compact to insure clean and unpolluted water in the Potomac and its tributaries, and urge legislative action by the General Assembly at its next Session. However, we believe the proposed Compact grants the Commission power and authority beyond that necessary to accomplish this purpose. Virginia should and will be the first state to consider ratification of the Compact and we should approve a Compact acceptable to the citizens of Virginia in the basin and one which can be reasonably expected to be ratified by the other signatories. The proposed Compact does not and will not meet either of these requirements. We, therefore, recommend a re-draft of the Compact embodying the following principles:

1. The proposed Compact should be limited to the establishment of a Commission for the control of pollution of the Potomac and its tributaries and the allocation of water therein to the different jurisdictions along the river basin.
2. The Commission should not be empowered with eminent domain authority.
3. The Commission should not have the power to zone property within the basin.
4. Hydroelectric generating or transmission facilities and water supply projects and facilities for public water should be provided by the jurisdictions within the basin, subject to the approval of the Commission. Therefore, the Commission does not need bonding authority.
5. All signatories should have the right to withdraw from the Compact if such right is granted to any signatory (U. S. Government). Such a provision with certain limitations (two actions by the legislative body of a signatory within a five (5) year period) may enhance ratification by the signatories.
6. While not a requirement, it would be desirable to have representation on the Commission bear a relationship to the population and land area affected by the Compact.

We believe the proposed Compact should be amended in accordance with the foregoing principles. The Commission would then have ample authority to deal with water pollution and allocation of water for public purposes within the basin without becoming another layer of government, far removed from the citizens within the basin. Senator Campbell has indicated a willingness and is working on a re-draft of the Compact to conform with the above principles.

