

**Roundtable Issues Forum
Clifty Inn at Clifty Falls State Park
Madison, Indiana
Wednesday, October 13, 2010
1:15 – 3:15 PM**

Executive Summary

I. Institutions and Collaborations for Rivers and Water Resources Management

Dr. Larry DeBuhr, the Executive Director of the Rivers Institute at Hanover College provided the group with a comprehensive review of their organization and the collaborations they have with multiple entities within the basin. There are several areas where collaboration between the Rivers Institute and ORSANCO could be of mutual benefit.

II. Assessing the Needs for Additional Authority to Incorporate Water Resources Management

Commissioner Flannery, Chair of the Ad Hoc Water Resources Committee lead the group in a discussion that focused on several key points:

- Defining ORSANCO's role in water resource management; what would we do and for whom?
- Options for authorization to expand the Commissions scope beyond water quality and water pollution control into water resource management
 - Using Memoranda of Understanding – Can they provide regulatory authority?
 - State-specific contracts – Can a singular contract with one state authorize the Commission to function outside of its existing authorities?
 - Development of a proposal to take to the states to gauge their reaction on expansion of authorities.
 - Existing Compact authorities – What can be done within existing authorities?
 - Compact modification – Do we have the desire to open the Compact? What and how would such authorizing language be structured? What are the risks? Is this the right time?
 - Drawing from other Compacts – What can we learn and use from other authorizing language?

Summary of Discussions

Chairman Paul Tomes of Ohio opened the Roundtable Issues Forum thanking all for attending and participating in the discussions to follow. Chairman Tomes ask Executive Director Vicory to introduce the first speaker, Dr. Larry DeBuhr, Executive Director of the Rivers Institute at Hanover College. Dr. DeBuhr overviewed the Institute's mission, program and accomplishments and identified areas where the Institute collaborates with other research

organizations with potential for collaborating with Commission programs. Dr. DeBuhr's presentation is posted on our website for viewing and download.

Chairman Tomes next introduced Commissioner Flannery, Chair of the Commission's Ad Hoc Water Resources Committee who reported on the Committee's activities and discussions to date regarding the Commission's potential role in water resource management and the mechanisms available to confer such authority to the Commission.

Commissioner Flannery provided a brief, historical perspective to assure that everyone understood how the Commission had arrived at its present position on this issue. Included in his comments were references to the Commission's Visioning Session, the meeting and discussions with the Ohio River Basin Commission (which has been renamed as the Ohio River Basin Water Resource Association) and the development of a subsequent agreement to facilitate cooperation and coordination between both entities.

Mr. Flannery commented on the creation of the Ohio River Basin Congressional Caucus and how it was created not only to deal with basin water quality issues but for others to use for dealing with many additional basin needs, issues and funding initiatives. He also identified the Ohio River Basin Alliance and commented on the Commission's involvement with this initiative, i.e., attending all of their coordinating meetings as well as participating on the steering committee.

Commissioner Flannery's historical perspective concluded with the Commission's action in June of 2010 to create a new standing committee of the Commission called the Water Resource Committee.

Commissioner Flannery then turned his attention toward the issue of Compact authority and water resource management. With the exception of addressing water quantity in relation to managing water quality, the Compact, as written, doesn't let us go beyond water quality issues without raising questions regarding legal authority to do so. The Resource Document (attached) identified that other, more recent Compacts, circa 1970s, provide authorization for water resource management or both water quantity and water quality, and that ORSANCO may be a victim of timing relative to the need to extend its authority to water management, given the age of our Compact.

Other Compacts were reviewed to identify and study passages that articulate water resource authority and transferability for incorporation into the Ohio Valley Compact. Mr. Flannery, on behalf of the Ad Hoc Committee on Water Resources, was interested in the reaction the Roundtable participants may have to the issues and suggestions presented in the Resource Document, as the Committee is seeking some direction on what to tell or advise the Commission's legal counsel if amendments to the Compact is determined to be a desired objective.

Mr. Flannery provided a brief review of the topics under consideration as contained on the Roundtable Resource Document; Study of Issues. He specifically pointed out that what is not on list as presented is a provision for command and control of all water withdrawals.

Commissioner Duritsa commented that more comprehensive water resource management is needed for western PA. There is not a sufficient awareness of ORSANCO and its potential use for such management. Commissioner Duritsa supports the Commission entering into water resource management, citing that similar authority is needed in western PA to that which exists in eastern PA, such as resides with the Susquehanna River Basin Commission.

Commissioner Phillips stated that many NGOs are currently frustrated with the status of water resource management authorities in western Pennsylvania and they are looking for quicker turn around on this issue to protect the resource that is under potential threat from shale gas development.

Ms. Gilinsky advised that it would be a big step for the Commission to assume authority and responsibility for water withdrawal permitting, and that it must move cautiously.

Commissioner Duritsa stated if that's what is needed, then the Commission should move forward. Full support should come from states where ORSANCO would provide management services within that state and not from other non-involved states. Ms. Gilinsky agreed with Commissioner Duritsa's comment. Executive Director Vicory commented that the language indicates such in the Resource Document, and that the Commission can only do what it has the authority to as conferred upon by states.

Commissioner Potesta asked if Pennsylvania currently has a water withdrawal permitting process. Commissioner Duritsa stated that it has a withdrawal registration program, not permitting.

Commissioner Potesta suggested that ORSANCO could serve as a moderator to make sure there is an even playing ground. He identified that some states currently have a water withdrawal permitting program, such as Virginia. Should ORSANCO do permitting or reporting, etc. on behalf of other states that already have such programs?

Ms. Gilinsky asked that if given such authority, would ORSANCO would participate in water withdrawal hearings.

Chairman Tomes commented that the Compact states that border the Great Lakes may already have experience in this issue through their experience in working with the Great Lakes Compact authority.

Mr. Elmaraghy stated that the Great Lakes Compact process may not be best template to use. The states involved are still trying to figure out the authorities and processes envisioned by the Great Lakes Compact. ORSANCO has a role to play in controlling withdrawals, but states could contract to ORSANCO for intra-state work.

Commissioner Bruny stated that ORSANCO works hard to achieve consistency among state programs, yet with this issue and state contracting, it could result in ORSANCO not promoting consistency.

Commissioner Duritsa observed that the Compact gives broad authorities to the Commission for water quality management, but the states have substantially remanded the Commission's activities to the mainstem. He asked why the same broad authorities couldn't be extended to the Commission relative to its role in water resource management. The Commission should have foresight to adopt those broader authorities now, rather than later.

Legal Counsel Ross Wales cautioned the Commission should not enter into program if only the needs of western Pennsylvania are going to be served or just because they want us to. The most difficult aspect in achieving the goal of expanding the Commission's authority is political...trying to convince every state that hasn't paid enough attention to ORSANCO's existence over the past 62 years that they should now support a change to a Compact that they know little about.

Commissioner Flannery stated that, practically speaking, the hurdles for changing the Compact are formidable, and that it couldn't be accomplished sooner than 3 – 5 years. But, two things that we could do are 1) agree that many of the activities listed in the Resource Document could be done with current Compact authority, and 2) come up with separate piece of paper for each Governor to sign. Can commissioners sign on behalf of any state legislature? Many states don't even have programs to regulate withdrawals. Perhaps the Commission should focus on addressing "low hanging fruit" issues which are within the Commission's current authority, then proceed by giving the Water Resource Committee appropriate Commission level guidance.

Ms. Gilinsky asked if ORSANCO could do work for Pennsylvania with existing authority? Mr. Wales stated that the Commission can't get into issues that have nothing to do with sanitation and water quality. But, sanitation and quality can be affected by many things that we do not have direct authority to address.

Commissioner Potesta stated that for Pennsylvania to give ORSANCO appropriate authority, it would have to run it through their legislature.

Mr. Wales commented that Pennsylvania could legislate authority to extend to ORSANCO, but ORSANCO may not be able to engage since it would be exceeding its Compact authority. States may find it in their interest to be able to agree to a modification of ORSANCO's Compact to do something that they couldn't get their own legislature to do with the current political atmosphere within their own state.

Commissioner Bruny stated that if there is truly broad based support for this initiative, then we should move forward; but absent such, it is not a good time for adding more regulation.

Commissioner Easterly said the reason for the Great Lakes Compact's move to protect the resource, other than through WRDA, is that there is a poor sustained yield due to small watershed. There may be the same interest for protecting the Ohio River, but it has a more sustainable yield; the watershed to resource ratio is greater for the Ohio River than for the Great Lakes. If water is to leave the basin, 8 states would want a say and appropriate compensation. Further, he voiced the concern that if someone else provides water resource/allocation services to Pennsylvania, then ORSANCO would have a harder time gaining support to provide similar

services to Pennsylvania. Mr. Easterly supported making changes as appropriate to the Compact to allow for control of diversions outside of the basin, but make sure it protects states like Indiana that approach water resource management differently inside and outside of the Great Lakes Compact drainage.

Mr. Elmaraghy asked if that authority could be extended through MOUs as opposed to modification to the Compact.

Commissioner Duritsa questioned the value to the Commission and its efforts in assuming the Ohio River Basin Water Resource Association as he wasn't clear on their mission or accomplishments.

Commissioner Flannery questioned whether minimal changes, a word or two here and there, that provides authority without specifics, could provide the authority the Commission seeks? He further stated he was in agreement with Commissioner Bruny that the timing was bad to attempt to implement new command and control authority with fees. Such would never get it through the state legislatures. Again, he stated, two or three words could be doable and may be the only way to get it through. Even so, it would take extremely effective lobbying to accomplish.

Mr. Elmaraghy asked if it was possible to make a provision that would allow ORSANCO to contract with states as needed through an MOU.

Mr. Vicory asked is the time not right to move forward on the issue given that 5 Compact states have recently agreed to a water resources Compact (Great Lakes) and that there is a similar need to protect resource for the Ohio River. A mechanism is needed to address the water resources today and in the future. If the Great Lakes drainage in the states is being protected, wouldn't they want the rest of water resources to be protected?

Commissioner Duritsa stated that there may be a different and more urgent driver in Pennsylvania; concern that if ORSANCO doesn't step in then someone will take their water and a mechanism is needed now to protect against such.

Mr. Vicory stated that you probably won't see a similar "no export" provision in Ohio Valley as found in the Great Lakes as it is not our culture. Our Compact speaks to the interstate nature of water quality. Whatever is done in water resource management would be limited in scope to its aspects of interstate water management. To the extent intrastate water management doesn't affect interstate water management, there would be no need to address.

Commissioner Duritsa suggested that all 8 states would have to agree with need for authority for inter-basin transfers. He suggested that the effort should go farther, to provide broader authority if you ever would or need to use it.

Ms. Gilinsky spoke to the issue of broad authority for water resource management that ORANCO may already have due to the interconnect between water quality and water quantity through flow augmentation.

Commissioner Bruny asked the group if we truly have the appetite for opening the Compact. If not, the Commission should be satisfied with the low hanging fruit option available through existing authorities and working through MOUs. The Commission would need a full commitment if they want to approach eight state legislatures to open and amend the Compact. Commissioner Morgan stated given the state of the economy and the current political environment, if you open Compact, it may well be the end of the Compact.

Mr. Sovic commented that he has never understood why ORSANCO didn't have authority for water quantity along with water quality since they are so intertwined and doesn't understand why they have not yet been joined. Out of basin transfers will occur and some form of management structure will be needed. There will be a need for an organization to regulate such activities into the future. He identified the current Marcellus Shale gas development water withdrawals as becoming an increasing concern to water quantity issues. Through this issue, New York, Pennsylvania, West Virginia, Ohio and Kentucky are already involved. The need exists to address this issue sooner than later. In his view, the time is right and should try to forge ahead with attaining appropriate authority.

Mr. Vicory stated that if ORSANCO doesn't do it, someone else will, and suggested starting with an MOU which then sets the precedent for additional, more formal authority in the future. Commissioner Flannery expressed uncertainty if a MOU can provide regulatory authority.

Mr. Sovic stated the need exists for the Commission to take the steps to get authority to engage into the water quantity issue.

Commissioner Duritsa suggested a proposal should be drafted to take to the states that articulates what we want to do and why, and see what they say ORSANCO needs to do to test waters first and ascertain what they will agree too? We need something to start with.

Commissioner Servatius wondered if a better established connection between water quality and quantity could be made and thus, the authority may already be in Compact? If so, there may be no need to open Compact, just educate all on the connection between the two, and then further identify the needs for ORSANCO to engage in Ohio River resource management.

Mr. Wales suggested that to address Commissioner Duritsa's comment, the Water Resources committee or Ad Hoc Task Force needs to identify what the Commission's role will be in water resource management, which, in turn leads to what would need to be put in the Compact. That's the process that needs to be kick-started before anything can go before states. State legislators will weigh in on this on their own, so that's who we need to talk to. Regarding losing the Compact, Mr. Wales that's not an issue unless the entire Compact is up for review. The concept of a change to the Compact without the approval of all signatory states has never happened constitutionally. An inquiry to the Supreme Court would likely be necessary. But, if we change the Compact by having all the states agree, and receive approval from the US Congress, then we haven't lost anybody.

Commissioner Flannery stated that the Water Resources Committee can proceed on its own path, and the Commission can work with recommendations and ideas brought forth through this

discussion. He would work with legal counsel on the Resource Document list to identify linkages back to existing authorities in Compact. If a minimalist approach to the revision to the Compact were pursued, what would such an amendment look like? That would be the vehicle to take back to the governors and legislative leaders. He doesn't anticipate that any governor would agree to such an amendment immediately.

Commissioner Flannery stated he would work with counsel and the Water Resources committee on existing authorities.

Commissioner Tomes brought the session to a close stating that it had been an excellent exchange and Commissioner Flannery had identified an excellent charge; that is to come back to the Commission concerning modifications to Compact given the thought contributed in this Roundtable.