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Federal Conservation of the Delaware River

Background

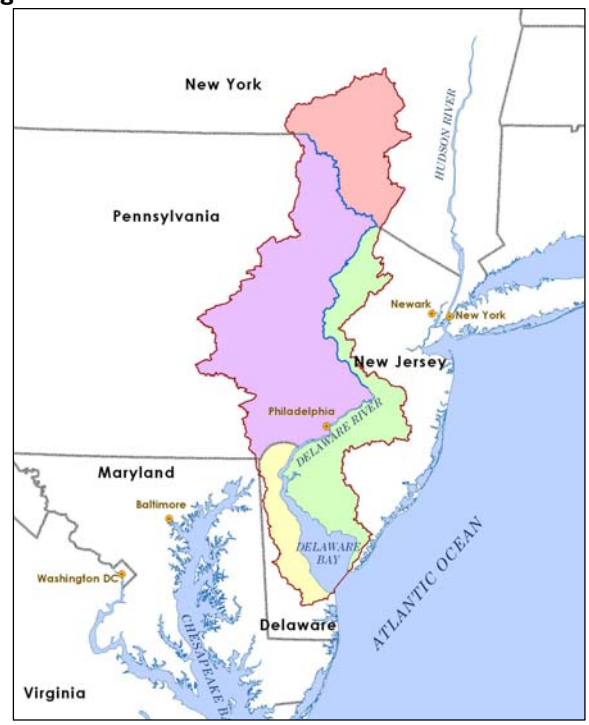
The Delaware River Basin drains the lands surrounding the Delaware River and its tributaries, which stretch from the Catskill Mountains in New York to the Delaware Estuary and eventually flow into the Atlantic Ocean (see **Figure 1**). The river is fed by 216 tributaries and drains 13,539 square miles of land within four states: Delaware, New York, New Jersey, and Pennsylvania. The water resources within the Delaware River Basin are managed in part by the Delaware River Basin Commission (DRBC) under the authority of the Delaware River Basin Compact (P.L. 87-328). The compact was signed by states in the basin and ratified by Congress in 1961.

The Delaware River Basin provides economic, environmental, and recreational assets for an estimated 15 million people on the East Coast who rely on water supplies from the Delaware River for municipal, industrial, and agricultural use. The river is also home to the largest freshwater port in the world, the Delaware River Port Complex. In addition, the basin contains more than 1 million acres of wetlands that serve as valuable habitats for numerous species. Approximately three-fourths of the non-tidal portion of the river (150 miles) is part of the National Wild and Scenic Rivers System, and the Delaware Estuary is identified as a priority estuary for the National Estuary Program under the Water Quality Act of 1987 (P.L. 100-4; 33 U.S.C. §1330).

The Delaware River was one of the first river basins in the nation to adopt comprehensive water quality standards, and experts often cite the river as a success story for its water quality achievements. In recent years, water quality conditions in the Delaware River Basin have continued to improve, including higher levels of dissolved oxygen, lower overall nutrient concentrations, and improved water clarity. Due in part to these improvements, many fish populations have returned or rebounded in the basin. However, the basin still faces challenges along certain stretches of the river. Some area-specific issues include elevated concentrations of toxic substances, high temperatures, and high nutrient concentrations in river waters. In addition, some individual species populations, such as oysters, appear to be declining.

Some stakeholders are concerned that development—such as proposals to develop shale gas in the basin (one-third of the basin covers Marcellus Shale natural gas deposits)—could reverse gains made to date. Some experts contend that more protection and restoration efforts and better coordination among stakeholders are needed for the basin (www. nj.gov/drbc/library/documents/RSMPaug2013final-report.pdf; See P-1-2, ES-4-6). Others may contend that the status quo should be maintained, particularly as the DRBC is reviewing options for potential shale gas development in the basin. (See http://www.state.nj.us/drbc/programs/natural/.)

Figure 1. Delaware River Basin Area



Source: Delaware River Basin Commission.

Federal Role: Delaware River Basin Commission and Other Efforts

The DRBC is a five-member board comprised of the four basin-state governors and a federal representative from the U.S. Army Corps of Engineers (Corps). The DRBC created a comprehensive plan to manage the river to meet the goals specified in the Delaware River Basin Compact, including, among others, to effectively reduce flood damage; conserve and develop ground and surface water supplies; develop recreational facilities; promote related forestry, soil conservation, and watershed projects; protect and aid fisheries; improve navigation; and abate and control stream pollution.

To accomplish these goals, the DRBC has the authority to approve, construct, operate, and regulate projects and facilities that use the basin's water resources. The DRBC also can address issues outside the basin if the issues have a substantial effect on the basin's water supply and water quality and if they conflict with the DRBC's comprehensive plan. (Orders issued by the DRBC to prevent water pollution are enforced by the courts of the signatory members.)

The DRBC is funded by the signatory parties, project review fees, fines, and grants. In 1988, the DRBC agreed that each representing entity would apportion contributions to provide for annual expenses. The apportionments are Delaware, 12.5%; New York, 17.5%; New Jersey, 25%; Pennsylvania, 25%; and the federal government, 20%. The federal share has been paid once by the Corps since 1996 (in 2009), thus making the cumulative federal shortfall from 1996 through FY2014 $11.4 million. Other federal conservation and management activities in the basin are conducted by the Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration, the Corps, the Environmental Protection Agency, and the U.S. Department of Agriculture. The U.S. Geological Survey is actively involved in research and monitoring activities that support the basin. These activities may be significant but are difficult to quantify in monetary terms because many of these programs are conducted at the national level with projects or activities within the basin.

Recent Legislation

In the 114th Congress, no bills that directly address the Delaware River Basin have been introduced. In the 113th Congress, the Delaware River Basin Conservation Act of 2014 (S. 2306) would have established a program to coordinate funding for restoration and protection efforts in the basin. The purposes of this program were to conserve and restore fish and wildlife populations and habitats and to improve and maintain water quality in the basin. The bill also aimed to improve flood damage mitigation, water management, and opportunities for public access and recreation in the area and to encourage environmentally sensitive development. The bill would have emphasized a basin-wide strategy in which the director of FWS would have coordinated with federal and nonfederal entities (including the DRBC) and prioritized projects that were measurable, science-based, and cost-effective. The bill also would have established a competitive grant program. Appropriations of $5.0 million annually from FY2015 to FY2020 would have been authorized in this bill. A similar bill, H.R. 644, was introduced in the 113th Congress. This differed from S. 2306 as it would have directed that all activities in the bill would have to be implemented with existing FWS funds and that the program could not have resulted in a net gain of federal full-time-equivalent employees.

In addition, legislation was enacted in the 113th Congress related to the DRBC. The Water Resources Reform and Development Act of 2014 (WRRDA; P.L. 113-121) authorized the Secretary of the Army to allocate funds to "fulfill the equitable funding requirements of the respective interstate compacts" (including the Delaware River Basin Compact) and, if this is not possible, to submit to Congress the reasons and impacts of the non-allocation. The Corps did not fund the compacts in FY2015 and submitted the required document. This decision by the Corps may be an issue in consideration of the FY2016 Energy and Water Development appropriations.

Issues for Congress

The DRBC has the authority to direct development through the approval, operation, and control of projects in the basin as well as to implement projects that improve plant and wildlife habitats, soil conservation, and watershed management. A potential issue for Congress related to the Delaware River Basin is the federal role in the management and restoration of the basin. Historically, the combined state and federal presence of the DRBC and numerous other local, state, and federal conservation programs in the basin have played a role in the improvement of the environment over time. Some might contend that a different federal role in restoring the basin is needed to address the effects of development on the environment. Additional authority for federal agencies to conduct restoration in the basin could create a parallel and potentially overlapping program. However, if legislation authorized a broad range of activities and did not focus solely on water resources, activities could complement efforts undertaken by the DRBC.

This issue raises a potential question for Congress about balancing ecosystem restoration and economic development. Several other federally supported ecosystem restoration initiatives have created dual objectives of restoring the ecosystem and increasing economic vitality. To promote these objectives, some stakeholders involved in Gulf Coast restoration have suggested focusing restoration efforts on ecosystem properties that also generate economic value, such as improving fisheries and coastal resilience to storm surges.

Another issue involves the chronic lack of appropriations to support the existing federal role in the DRBC. As noted above, in recent years the President has not requested and Congress has not provided funding for the DRBC and two other river basin commissions. Although information is limited on what, if any, effects this shortfall has on the DRBC, some may advocate for the federal share to be fulfilled beginning in FY2016 or in future years.

Congress might address such questions through oversight, directing appropriations toward certain environmental or development priorities or the DRBC, by passing legislation that would enhance restoration efforts, or by maintaining the status quo.

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