

No. 193

AN ACT

To promote interstate cooperation for the use, conservation, protection and equitable diversion of the water resources in the Delaware River Basin, between and among the States of Pennsylvania, New York and New Jersey, for the purpose of meeting prospective needs for domestic and municipal water supply; regulating and limiting the use of the waters of the Delaware River and its tributaries; and prescribing rules and standards requiring permits from, and providing for hearings by the Water and Power Resources Board, and for appeals from its decision; vesting power in the Water and Power Resources Board to vary or modify the rules and standards under certain conditions; and to adopt rules and regulations; and further defining its powers and duties; requiring notice to the States of New York and New Jersey of all applications for water diversion; providing for the filing of stipulations by the Attorney General with the United States Supreme Court, and obtaining its approval of water diversions.

Whereas, The States of New York, New Jersey, Pennsylvania and Delaware have each created, and now maintain a Commission or Committee on Interstate Cooperation, for the purpose of establishing and maintaining governmental machinery to facilitate communication, negotiation, understanding and cooperation between said states respectively and other states of the Union, both regionally and nationally, with power to establish such committees, subcommittees and advisory boards as are deemed advisable to conduct conferences and to formulate proposals concerning subjects of intergovernmental cooperation in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict, and

Whereas, Said Commissions or Committees on Interstate Cooperation of said states have organized and established, and are now maintaining as an instrument of governmental machinery, a joint advisory board known as "The Interstate Commission on the Delaware River Basin," as a regional commission, composed of standing subcommittees of said Commissions or Committees on Interstate Cooperation respectively, for the purpose of entering upon a program to study, among other subjects, the water supply and the conservation and protection of the water resources of the Delaware River Basin, and

Whereas, The Commissions or Committees on Interstate Cooperation among the said states favor the enactment of uniform laws, and the adoption of uniform rules to regulate the use and diversion of the waters of the Delaware River and its tributaries, for the purpose of meeting present and prospective needs for domestic

and municipal water supply purposes in said states respectively, and

Whereas, The said Commission on the Delaware River Basin, through its Technical Advisory Committee on Quantity of Water, consisting of representatives of the Water and Power Resources Board of the Department of Forests and Waters of the Commonwealth of Pennsylvania, and of similar agencies of New Jersey and New York, has made a study for the purposes above recited of the said Delaware River and its tributaries in said Delaware River Basin, and

Whereas, The said Commission on the Delaware River Basin has formulated and approved proposals for interstate cooperation in the use, conservation, protection and equitable diversion of the water resources of the Delaware River Basin.—

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Legislative Intent.—It is hereby declared to be the intent and purpose of this act to regulate the diversion and use of the waters of the Delaware River and its tributaries, for the purpose of meeting present and prospective needs for domestic and municipal water supply, and the provisions of this act shall apply to the Commonwealth or any agency thereof, any municipality or civil division of the Commonwealth, any district or similar agency or authority, persons, partnerships, corporations or associations.

Section 2. Definitions.—The following words, phrases or abbreviations, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

“Board” means the Water, Power and Resources Board of the Department of Forests and Waters of the Commonwealth of Pennsylvania, or its duly constituted successor.

“Person” includes the Commonwealth or any agency thereof, any municipality or civil division of the Commonwealth, any district or similar agency or authority, persons, partnerships, corporations or associations.

“c.f.s.” is the abbreviation for cubic feet per second.

“c.s.m.” is the abbreviation for cubic feet per second per square mile of contributing drainage area.

“Delaware River” means that reach of the Delaware River which extends from the confluence of the West Branch and the East Branch of the Delaware River near Hancock, New York, to the point where it passes the boundary line between the States of Delaware and Pennsylvania.

“Delaware River Basin” means the total area drained by the Delaware River and its tributaries.

Delaware River Basin (New York, New Jersey, Pennsylvania and Delaware).
Regulation of the diversion and use of its waters.

Definitions.

“Waters of the Delaware River” or “Waters of the Delaware River Basin” means the surface waters originating within the Delaware River Basin.

“Channel” or “Channel of the Delaware River” means the bed of the Delaware River, and the lands on and over which the waters of said river flow.

“Upper Basin” means that part of the Delaware River Basin from which the surface waters flow and enter the channel of the Delaware River at and above its confluence with the Neversink River. The Upper Basin shall be understood to include the area drained by the Neversink River.

“Lower Basin” means that part of the Delaware River Basin which is not embraced within the Upper Basin.

“Tributary” or “Tributary of the Delaware River” means any watercourse, the waters of which naturally flow into the channel of the Delaware River.

“Complete Diversion” means the taking or removal of waters of the Delaware River Basin to a point outside of the Delaware River Basin.

“Partial Diversion” means the taking or removal of waters from any point in the Delaware River above Trenton Falls or from any tributary of the section of the Delaware River above Trenton Falls, which water is returned to the channel of the Delaware River under the following conditions:

- A. If taken from a tributary, such water is returned, but not in such a manner as to be available in the channel at the confluence of such tributary and the Delaware River.
- B. If taken from the Delaware River, such water is returned, but not above a point twelve miles below the point of taking, as measured along the center line of the channel, provided that if the water is returned within twelve miles of the point of the original taking, said taking shall not be considered a partial diversion.

“Divert” means to effect a complete diversion or a partial diversion.

“Development” means the construction of any works for the taking of water or the storage of water for diversion.

“Develop” means to make available by development.

“Point of Development” means the place on the Delaware River, or upon a tributary at which the lowermost structure, dam, intake or other works, is maintained for the purpose of making water available for diversion.

“Domestic and Municipal Water Supply” means the use of water by or for water works serving the public.

“Natural Flow” means the rate of flow of a river, stream or tributary as it would occur if it were not affected materially by artificial works or developments.

“Actual Flow of the Delaware River” means the existing flow of the Delaware River, uncorrected for the effects of any developments or works of man, excepting for the effect of any by-passing of the flow of the stream around the point of development.

“Control Rates” means certain rates of natural flow of a stream at the point of development, used in fixing the rate of flow to be maintained below the point. Such rates are correlated with certain rates of natural flow at the stream gaging station, cooperatively operated by the United States Geological Survey at Trenton, New Jersey, and they are to be obtained as follows: From the record of flow of the Delaware River at Trenton, gage for the years between October 1, 1928 and September 30, 1941, both inclusive, corrected for diversion around that station, and for artificial regulation, using for this purpose the corrections reported by the United States Geological Survey, it has been determined that the natural daily flows of the river at that point exceed 4000 c.f.s. for seventy-six (76) per cent of the time, exceed 3400 c.f.s. for eighty-two (82) per cent of the time and exceed 2500 c.f.s. for ninety (90) per cent of the time. From the measured or computed rates of natural flow of the stream under consideration at the proposed point of development and for the years between October 1, 1928 and September 30, 1941, both inclusive, rates of flow are determined which will be exceeded by the natural flow for the same percentages of time, seventy-six (76) per cent, eighty-two (82) per cent, and ninety (90) per cent, as have been determined for Trenton gage, as shown. These rates of flow are termed the 4000 c.f.s., 3400 c.f.s. and 2500 c.f.s. control rates for that point of development. In arriving at the rates of natural flow of the stream as above set forth, measured rates of flow shall be used as far as they may be available. Otherwise, the rates shall be derived from the records of the nearest and most suitable gaging stations, using accepted hydrological methods for making the computations.

“Mean annual yield” means the average daily rate of natural runoff of the stream under consideration at its point of development for the period between October 1, 1928 and September 30, 1941, both inclusive. In determining the mean annual yield as above set forth, measured rates of flow shall be used as far as they may be available. Otherwise, such yield shall be derived from the records of the nearest most suitable gaging stations using accepted hydrological methods for making the computations.

“Diversion Project” means any project for development or use of the waters of the Delaware River for domestic and municipal water supply, involving a com-

plete diversion of water from the channel of the Delaware River, or a complete diversion of water from a tributary of the Delaware River, or a partial diversion of water from a tributary of the Delaware River all as set forth in this act.

General provisions for diversions.

Consents and approvals.

Diversions from tributaries.

Section 3. General Provisions for Diversions.—It shall be unlawful to divert water under a Diversion Project without the previous consent and approval of the Water and Power Resources Board. Such consent and approval shall be given only if, in addition to the determinations which the Board is required to make, under any other statutory provision it shall also determine that such Diversion Project fully complies with the provisions of this act.

Section 4. Provisions for Complete Diversions from Tributaries of the Delaware River.—Complete diversions of water from the tributaries of the Delaware River for domestic and municipal supply purposes shall be subject to the following provisions:

A. Whenever the natural flow of the tributary under development at its point of development exceeds its 4000 c.f.s. control rate no release of water from storage to maintain the flow of the tributary need be made as far as this act is concerned.

B. Whenever the natural flow of the tributary under development at its point of development falls below its 4000 c.f.s. control rate the flow of the tributary immediately below the point of development shall be maintained as follows:

1. Whenever the natural flow of the tributary falls below its 2500 c.f.s. control rate, the rate of flow required to be maintained shall be fifty (50) per cent of the mean annual yield of the stream if in the Upper Basin and forty (40) per cent of the mean annual yield of the stream if in the Lower Basin.

2. Whenever the natural flow of the tributary is between its 2500 c.f.s. control rate and its 4000 c.f.s. control rate, the rate of flow required to be maintained shall be twenty-five (25) per cent of the mean annual yield of the stream if in the Upper Basin and twenty (20) per cent of the mean annual yield of the stream if in the Lower Basin.

Partial diversions from tributaries.

Section 5. Provisions for Partial Diversions from Tributaries of the Delaware River.—Partial diversions of water from tributaries of the Delaware River for domestic and municipal supply purposes shall be subject to the following provisions:

A. Whenever the natural flow of the tributary under development at its point of development exceeds its 3400 c.f.s. control rate no release of water

from storage to maintain the flow of the tributary need be made as far as this act is concerned.

B. Whenever the natural flow of the tributary under development at its point of development falls below its 3400 c.f.s. control rate, the flow of the tributary immediately below its point of development shall be maintained at a rate at least equal to said natural flow during the time it is below the 3400 c.f.s. control rate.

Section 6. Provisions for Complete Diversions from the Channel of the Delaware River.—Complete diversions of water from the channel of the Delaware River for domestic and municipal water supply purposes shall be subject to the following provisions:

Complete diversions from the channel.

A. Whenever the actual flow of the Delaware River at the point of development exceeds a rate of 0.59 c.s.m. equivalent of 4000 c.f.s. at Trenton, if in the Upper Basin, or exceeds a rate of 0.50 c.s.m. equivalent to 3400 c.f.s. at Trenton, if in the Lower Basin, all or any part of such actual flow in excess of the rates hereinabove specified may be withdrawn from the river and be diverted.

B. Whenever the actual flow of the Delaware River at the point of development falls below a rate of 0.59 c.s.m., if in the Upper Basin, or falls below a rate of 0.50 c.s.m., if in the Lower Basin, no part of such actual flow may be withdrawn from the river. In addition to this restriction, during the time that the actual flow of the Delaware River is below the rates hereinabove specified, water shall be released from storage and be delivered into the Delaware River in such a manner as to be available immediately below the point of development. The amount of water to be so released shall be determined by the following formula:

$$R = \frac{C}{S} (YK) \text{ in which formula}$$

“R” represents the amount of water to be so released in cubic feet per second.

“C” represents the average daily amount of the proposed diversion in c.f.s.

“S” represents the safe yield which has been determined to be representative of tributary streams located in the various parts of the Delaware River Basin before providing for compensating releases. Values of “S” shall be as follows:—

In the Upper Basin	1.8 c.s.m.
In the Lower Basin	
In Pennsylvania	1.6 c.s.m.
In New Jersey	1.2 c.s.m.

“Y” represents the mean annual yield of the stream upon which storage is provided for the purpose of making the prescribed release of water.

“K” represents 40 per cent whenever the aforesaid actual flow of the Delaware River at the point of development is less than 0.37 c.s.m. and twenty (20) per cent whenever the aforesaid actual flow is between 0.37 c.s.m. and 0.59 c.s.m., if in the Upper Basin or between 0.37 c.s.m. and 0.50 c.s.m., if in the Lower Basin.

Partial diversions from the channel.

Section 7. Provisions for Partial Diversions from the Channel of the Delaware River.—The provisions of this act do not apply to partial diversions from the channel of the Delaware River, but the Board shall nevertheless make determination of the fact that such proposed diversion is a partial diversion as herein defined.

Complete and partial diversions from tributaries or channel.

Section 8. Provisions for Complete and Partial Diversions from the Tributaries or the Channel of the Delaware River.—Whenever a project involving both complete and partial diversions from either the tributaries of the Delaware River or the channel of the Delaware River is undertaken, the provisions for complete and partial diversions as herein prescribed shall apply to each kind of diversion and to the respective quantities involved in each of such diversions.

Water and Power Resources Board.

Section 9. Act to Be Enforced by the Water and Power Resources Board.—The Board is hereby designated as the agency of the Commonwealth to administer and enforce compliance with the provisions of this act, and the rules and regulations adopted under its authority.

Powers and duties of Board.

Section 10. Powers and Duties of the Board in Relation to the Delaware River Basin.—The Board shall have power and authority to—

1. Adopt such rules and regulations for the efficient administration of this act as it shall find to be necessary.

2. Study, consider and determine upon a public policy with regard to the conservation and protection of the water resources of the Delaware River Basin, and the equitable and reasonable diversion of water from the Delaware River and its tributaries.

3. Request the Interstate Commission on the Delaware River Basin to cooperate and assist the Board in such surveys and investigations of the water resources of the basin as the Board may undertake.

4. Request the Interstate Commission on the Delaware River Basin to investigate, report on, and recommend the equipment necessary adequately to

measure all quantities and rates of stream flow necessary for the proper enforcement of this act; to cooperate and assist the Board in the observation of the operation of all developments, and to recommend procedures necessary to secure compliance with this act and its purposes; to report and to recommend to the Board whether the quantity of water proposed for diversion and use by a project in New York, New Jersey or Pennsylvania, is fair and equitable; to report and to recommend to the Board the manner in which water may be diverted from the channel of the Delaware River and its tributaries; and specific rules and regulations based on the principle of equitable apportionment and reasonable diversion in compliance with this article.

5. Supply information and data on water diversions from the Delaware River or its tributaries to the State of New Jersey and the State of New York.

6. Continue as a commission or by representation to confer with the Interstate Commission on the Delaware River Basin, and representatives of the State of New Jersey and the State of New York, with regard to all of the above matters and the general problem of the regulation and diversion of the waters of the Delaware River Basin for water supply and municipal purposes.

Section 11. Procedure for Obtaining the Approval of the Board.—The procedure for obtaining the consent and approval of the Board for any diversion project shall be that set forth in any present or future statute authorizing such diversions by any person as above defined, and all applicable terms and provisions of all such statutory provisions shall remain in full force and effect in such cases, but in addition thereto before approving an application the Board must have made the additional determinations specified in section three. Upon receipt of an application for approval of a diversion project as above defined, or before making decision with regard to such diversion project in a case wherein the Board adopts such project, the Board shall send written notice to the corresponding agency of the State of New York and the State of New Jersey outlining the proposed diversion project, stating when and where the hearing thereon will be held and requesting such agencies to submit to the board a statement of its position in regard thereto. At the hearing on such project representatives of such state agencies of New York and New Jersey may appear and present oral and written testimony.

Procedure for obtaining approval and consents for any diversion project.

Section 12. Approval by the United States Supreme Court.—Whenever, acting under the provisions of this act, the Board, after having duly considered the views

Jurisdiction of United States Supreme Court.

of the other states, shall give its final approval to any diversion project, application shall forthwith be made to the Supreme Court of the United States for approval of such project. The decision and approval of the Board shall be of no force or effect unless and until the project has been approved by the Supreme Court of the United States in those cases in which the said Court retains or assumes jurisdiction in the matter.

Diversion
projects in
New Jersey and
New York.

Section 13. Diversion Projects in Other States.—Whenever the Board shall receive written notice similar to that provided for in section eleven from either the State* of New Jersey or the State of New York, of an application for approval of a diversion project, or the proposed adoption of such a project in either or both of these states, the Board shall study the matter, communicate and confer with the proper authorities of the other states, attend hearings and generally take all proper steps to protect the interests of this State. As promptly as possible, and not later than six months after the receipt of such notice, the Board shall submit a statement of its findings with regard thereto to the interested state or states. If the Board shall find that the project is fair and equitable to the Commonwealth of Pennsylvania, and in accordance with the provisions of this act, it shall prepare a statement to that effect and submit it to the Attorney General and the Governor for approval. On receipt of such approval the agencies of the other two states shall be so advised. Thereafter, when application is made to the Supreme Court of the United States for approval of such project, the Attorney General may, by stipulation or otherwise, consent to an entry of an order by that Court approving of such diversion.

Enforcement.

Section 14. Enforcement.—The Board shall have the power to bring such actions, suits or proceedings as in its judgment may be necessary or proper to enable the Board to perform any of the duties imposed on it by any of the provisions of this act, or to prevent the violation by any person or corporation, public or private of any of the provisions thereof.

Prior lawful
diversion rights
not impaired
by this act.

Section 15. Existing Rights Preserved.—The passage of this act shall not impair or affect any lawful rights existing at the time this act takes effect to make complete or partial diversions. Any person in this Commonwealth now legally diverting, or having legal authority to divert water for domestic and municipal water supply from the Delaware River or its tributaries, may apply to the Board for modification of the restrictions under which such diversion is made or is to be made. The Board may modify such restrictions subject to and in accordance with the provisions of this act, to such extent as may be necessary or appropriate for the pur-

* "States" in original.

pose of any diversion project hereunder. In acting on such cases the Board shall follow the procedure set forth in this act in so far as it may be made to apply.

Section 16. Constitutional Construction and Severability.—The provisions of this act shall be severable, and if any phrase, clause, sentence or provision of this act is declared unconstitutional, or the applicability thereof to any person is held invalid, the constitutionality of the remainder of this act, and the applicability thereof to other persons and circumstances, shall not be affected thereby. It is hereby declared as the legislative intent that the act be construed liberally.

Provisions of act to be severable.

Section 17. Repeals.—All acts or parts of acts inconsistent with this act are hereby repealed.

Inconsistent acts repealed.

Section 18. Adoption of Similar Acts by New Jersey and New York.—On approval of the enactment of this act by the Governor, the Secretary of the Commonwealth shall certify copies thereof to the Secretaries of State of New Jersey and New York, with a request that similar acts enacted by those states be certified to him. On receipt of certified copies of such acts, he shall determine whether, in his judgment, said acts contain substantially the same provisions as to water supply diversion projects to be constructed in the Delaware River Basin as those herein contained. Should he so find with regard to enactments by both the State of New Jersey and State of New York, he shall so certify to the Governor, the Water and Power Resources Board, and the Secretaries of State of New Jersey and New York. The provisions of this act shall not be put into operation until the first day of January next succeeding such certification.

Duty imposed upon Secretary of the Commonwealth.

Section 19. Effective Date.—The provisions of this act shall become effective immediately upon its final enactment.

Act effective immediately.

APPROVED—The 21st day of May, A. D. 1943.

EDWARD MARTIN

No. 194

AN ACT

To add Clause XLVII to section one thousand five hundred two of the act, approved the twenty-fourth day of June, one thousand nine hundred thirty-one (Pamphlet Laws, one thousand two hundred six), entitled "An act concerning townships of the first class; amending, revising, consolidating, and changing the law relating thereto," authorizing the townships of the first class to make appropriations to Veterans' Home Associations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

"The First Class Township Law."

Section 1. Section one thousand five hundred two of the act, approved the twenty-fourth day of June, one