

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 2230

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House Environmental Resources and Energy Committee

Room 140, Majority Caucus Room
Main Capitol Building
Harrisburg, Pennsylvania

Wednesday, February 20, 2002 - 10:00 a.m.

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BEFORE:

Honorable Arthur D. Hershey, Majority Chairperson
Honorable Thomas Armstrong
Honorable Ron Miller
Honorable Chris Ross
Honorable Carole Rubley
Honorable Jerry Stern
Honorable Camille George, Minority Chairperson
Honorable David Levdansky
Honorable Jennifer Mann
Honorable Jim Wansacz
Honorable Gayle Wright

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Pennsylvania Bottled Water Association

1 CHAIRPERSON HERSHEY: Good morning. I'd like
2 to welcome everyone to this public hearing being conducted
3 by the Environmental Resources and Energy Committee on
4 House Bill 2230, of which I'm the prime sponsor. I'm
5 Representative Art Hershey, Chairman of the Environmental
6 Resources and Energy Committee.

7 And I'm going to ask the members that are
8 present now to introduce themselves, starting on the left
9 with my Cochair.

10 REPRESENTATIVE GEORGE: I'm Bud George from
11 Clearfield County.

12 REPRESENTATIVE MILLER: Ron Miller, York
13 County.

14 CHAIRPERSON HERSHEY: We will continue.
15 Today, we plan to hear from the Department of Environmental
16 Protection and others concerned with the need to develop an
17 updated inventory of our water supply and uses. House Bill
18 2230 was formulated with the cooperation of the
19 Pennsylvania Department of DEP.

20 Please note that House Bill 2230 does not
21 contain the water well provision originally inserted in the
22 legislation as the House of Representatives has already
23 sent to the Senate in House Bill 1591, a bill specifically
24 focused on water well construction standards and related
25 issues.

1 As usual, I'd ask our guests to attempt to
2 keep their presentation as brief as possible and have time
3 for questions from members of the committee. I'd also ask
4 the members of the committee to limit their questions
5 during the first round of questions and answers so that
6 everyone gets an opportunity.

7 As we have a number of guests who have agreed
8 to testify before the committee, I'd like to proceed
9 directly and begin with our first speaker. Our first
10 speaker is Mr. David Hess, Secretary of Pennsylvania
11 Department of Environmental Protection.

12 Welcome, Mr. Secretary. We look forward to
13 your remarks and to your question and answer time on this
14 important issue. You may proceed.

15 MR. HESS: Thank you, Mr. Chairman. I wanted
16 to thank Chairman Hershey and the members of the committee
17 for the opportunity to be here today to talk about a very
18 important issue, Pennsylvania's water resources. With me
19 today are Christine Martin, our Deputy for Water
20 Management; and also Stu Gansell, our Commonwealth Drought
21 Coordinator.

22 First, I want to congratulate the committee
23 for getting a fast start this year on important
24 environmental legislation. Legislation updating
25 certification of water and wastewater treatment plant

1 operators is already on the Governor's desk this year. And
2 bills to regulate laboratories doing environmental testing
3 are also moving forward.

4 And just last week, you reported out bills
5 that would extend the basic recycling fee and also dedicate
6 funding to the Growing Greener Program. But the issue that
7 you address today is one that has taken up many, many hours
8 of legislative hearing and debate time, more than any other
9 environmental issue that I can think of but without any
10 legislation to show for it.

11 Today, with your help -- this year with your
12 help -- I hope it will be different. Water is a
13 strategically important resource for Pennsylvania. It's
14 fuel for our economy and important to a healthy
15 environment. Neither people nor fish would last very long
16 without enough water.

17 But Pennsylvanians are often surprised to
18 learn that no one has the responsibility to make sure
19 enough water exists to meet our future needs because we
20 have never enacted water resources legislation. The
21 drought emergency declared by Governor Schweiker last week
22 in 24 counties is a vivid reminder of what happens when we
23 don't have enough water.

24 The lack of precipitation over the last year
25 has resulted in a rare winter drought. Record low stream

1 flows and groundwater levels have caused wells to dry up,
2 more than 70 water systems to institute water use
3 restrictions, and the 5th drought emergency in 7 years in
4 Pennsylvania.

5 The Governor has banned nonessential water
6 uses in the drought emergency area and called on counties
7 to form drought task forces so we can better monitor local
8 conditions. Public water suppliers are now required to
9 submit drought contingency plans if they haven't done so
10 already. And we're asking the public to cut down on their
11 water use by 15 percent.

12 This week, DEP has also begun encouraging
13 large water users in business and industry to start to
14 develop drought contingency plans on a voluntary basis. To
15 help them get started, a model drought plan is available on
16 line through DEP's Drought Information Center.

17 Although we hope drought conditions will
18 improve, we are using this time before water use increases
19 in the spring to get prepared if conditions get worse. But
20 the urgency created by droughts only serves to put an
21 exclamation point on the whole discussion of water
22 resources management in Pennsylvania.

23 Last year, long before a drought was declared,
24 we began a conversation in Pennsylvania about water
25 resources. We went out and asked people all over the state

1 what they thought were the most pressing water resource
2 issues facing the Commonwealth. We heard the same issues
3 raised over and over again regardless of where you were in
4 the state.

5 Those issues were developed into a water
6 resources initiative that Governor Schweiker announced in
7 December and that Representative Hershey and Senator
8 Gerlach were kind enough to introduce, along with a
9 bipartisan slate of cosponsors.

10 First, we heard how we need more information
11 about our water, how much we have and how much is being,
12 how it's being used. In the western third of Pennsylvania
13 in particular, we have almost no information at all about
14 water because a fully functioning river basin commission
15 does not cover that area.

16 House Bill 2230 would require DEP to update
17 the state water plan over the next 3 years and do updates
18 every 5 years thereafter. A special water resources
19 advisory committee will be formed to help guide the
20 planning process and assure broad public participation by
21 stakeholders both at the watershed level and statewide.

22 The bill requires users of 10,000 gallons of
23 water a day or more to register and report their use, water
24 use to DEP annually without a charge for the water user.
25 To avoid duplication, DEP will work with existing river

1 basin commissions to share information and avoid double
2 reporting.

3 Second, we heard how we don't know which areas
4 of the Commonwealth are under stress, their groundwater and
5 surface water under stress from overuse. House Bill 2230
6 would use information from the state water plan to identify
7 critical water planning areas, areas where the demand for
8 water now exceeds or will exceed supply.

9 These areas would be designated on a watershed
10 basis through an open public process and cover multiple
11 local governments. Identifying these areas allows time and
12 attention to be focused on those watersheds in Pennsylvania
13 where water supply problems now or will exist.

14 Once established, critical water planning
15 areas would serve as planning boundaries for the
16 preparation of more detailed integrated water resources
17 management plans or water budgets. These plans would be
18 put together with the help of a watershed-wide planning
19 advisory committee and directed by organizations with
20 technical, a technical background to do the water planning
21 and involve stakeholders in the planning process.

22 A water budget would identify both water
23 problems and potential solutions and would be reviewed by
24 DEP through another open and public process before being
25 approved.

1 Third, we heard how people and businesses need
2 to learn how to use the water we have more efficiently.
3 House Bill 2230 establishes Pennsylvania's first water
4 conservation and water use efficiency program. Last
5 December, we held a Water Conservation Congress to get a
6 head start on developing the education outreach and
7 technical assistance programs needed for a real water
8 conservation program. We got some great ideas that are
9 summarized in our Water Resources webpage.

10 Fourth, people at the water forums were
11 shocked to learn that Pennsylvania has no standards for the
12 construction of water wells to prevent groundwater
13 pollution and assure good water supplies. The Senate
14 version of the Governor's water resources initiative,
15 Senate Bill 1230, as the Chairman already noted, contains
16 our suggestions for setting water well construction
17 standards.

18 But because your committee has already acted,
19 had a hearing on this issue, it is not included in the
20 House version. The Governor's proposal would set standards
21 with the help of a special water well technical advisory
22 committee, require drillers to be licensed and pass
23 continuing education requirements, and would transfer the
24 existing licensing program from DCNR to DEP.

25 We look forward to continuing our work with

1 Representative Mary Ann Dailey and Senator Greenleaf, the
2 prime sponsors of separate water well bills, to develop a
3 final proposal that meets everyone's needs.

4 People attending the forums also told us we
5 need to do more to encourage groundwater recharge through
6 better storm water management, an issue that I know
7 Representative Steil and others have been concerned about
8 for some time.

9 To address this point, we released a white
10 paper in October discussing proposed changes in our
11 existing storm water management program that encourage
12 recharge. After reviewing the public comments we received,
13 we expect to have an improved strategy available later this
14 spring that will recommend further changes.

15 As the conversation about water resources
16 unfolded over the last year, we've heard from thousands of
17 people and met with environmental, environmental folks,
18 local government officials, business and agriculture groups
19 to listen to their concerns.

20 In the last 4 weeks alone, I have spoken to
21 over 3,000 people about water resources issues in the
22 sustainable agriculture conferences, watershed groups,
23 planning associations, local and county government groups.
24 The feedback and reactions we have received have been very
25 helpful in refining our thinking.

1 Based on these further discussions, we will be
2 recommending to Chairman Hershey several clarifications to
3 the bill that do not change its basic thrust but will clear
4 up some concerns that folks have. Some of those include
5 making sure the definition of consumptive use and other
6 terms in the legislation are consistent with those commonly
7 used by river basin commissions and others; prohibiting the
8 charging of a fee for water use registration, including a
9 credit for groundwater recharge contributed by farmland and
10 open space in the state water plan; making sure that key
11 stakeholders, environmental groups, local governments,
12 agriculture, business, county conservation districts, water
13 suppliers, and water-using electric generators are included
14 in both statewide and watershed advisory groups established
15 by this legislation; and we would exempt monitoring wells
16 already regulated from duplicate requirements.

17 Attached to my testimony is a detailed,
18 more detailed outline of those changes. And we will be
19 providing the Chairman with actual language that would make
20 those changes for his consideration.

21 Pennsylvania has more than 83,000 miles of
22 stream, nearly 4,000 lakes, 120 miles of coastal waters,
23 and 80 trillion gallons of groundwater. But our use of
24 water has increased dramatically over the last 100 years.
25 Our residential water use has increased from just 5 gallons

1 to over 62 gallons per person per day since 1900.

2 We use about 9.7 billion gallons of water a
3 day, 1 billion gallons alone for groundwater sources. We
4 keep using more and more water without much thought on
5 where it might come from. Over the last 15 years, we've
6 taught people to be better stewards of our environment and
7 our natural resources.

8 Pennsylvania has the largest curbside
9 recycling program in the nation, recycling more than 4
10 million tons of waste a year. Business and industry have
11 taken steps to reduce air emissions, waste, and wastewater
12 by hundreds of millions of tons and billions of gallons.

13 We are reducing the amount of energy we use by
14 millions of kilowatt hours and developing green energy
15 sources like wind power. And our coal-fueled power plants
16 have never been as clean as they are now and are getting
17 cleaner.

18 The Growing Greener Program has empowered
19 communities and watershed organizations to build
20 partnerships to clean up pollution and care about their
21 watersheds in ways that are bringing fish back to streams
22 that haven't seen fish in 100 years.

23 Now we need to take the next step. We need to
24 put in place the last missing piece in protecting
25 Pennsylvania's environment, water resources legislation.

1 The future of Pennsylvania's water resources begins today,
2 and it begins with us. We cannot wait and let this
3 opportunity slip through our fingers.

4 Thank you again for the opportunity to
5 testify. We'd be happy to answer any questions you may
6 have about the legislation or our continuing drought issues
7 in particular. Thank you, Mr. Chairman.

8 CHAIRPERSON HERSHEY: Thank you, Mr.
9 Secretary. Before we go to questions, I'm going to let the
10 rest of the members introduce themselves that came in after
11 we started, starting with my right.

12 REPRESENTATIVE ROSS: I'm Representative Chris
13 Ross from Chester County.

14 REPRESENTATIVE RUBLEY: Carole Rubley also
15 from Chester County.

16 CHAIRPERSON HERSHEY: Thank you. Then to my
17 left.

18 REPRESENTATIVE ARMSTRONG: Representative Tom
19 Armstrong from Lancaster County.

20 REPRESENTATIVE WANSACZ: Representative Jim
21 Wansacz from Lackawanna County.

22 CHAIRPERSON HERSHEY: Thank you. And in the
23 back.

24 REPRESENTATIVE WRIGHT: Representative Gayle
25 Wright from Erie County.

1 REPRESENTATIVE MANN: Jennifer Mann from
2 Lehigh County.

3 CHAIRPERSON HERSHEY: Thank you for coming.
4 And again, thank you, Mr. Secretary, for kicking off this
5 legislative day and also bringing your thoughts and
6 insights. I'm sure there will be a lot of different views
7 expressed today. And that's what we're holding the hearing
8 for. I'm going to start with my Chairman here to the left,
9 Mr. George.

10 REPRESENTATIVE GEORGE: I think he wants to
11 get this over real quick. That's why he turned to me,
12 David. Nice to see you, Mr. Secretary.

13 MR. HESS: Good to see you, Representative
14 George.

15 REPRESENTATIVE GEORGE: If I can get this
16 hearing aid slowed down, Arthur, I'll be all right. Mr.
17 Secretary, Governor Schweiker last week declared a drought.
18 I know you know about that. Would you agree with his
19 actions?

20 MR. HESS: Absolutely. It's something the
21 Department recommended along with the other members of the
22 drought task force.

23 REPRESENTATIVE GEORGE: Now please believe me
24 that I won't be a difficult witness. I just want some
25 answers. And I'm sure my colleague doesn't mind. But you

1 agree that it's an emergency situation. I'm really a bit
2 puzzled in that we have a bill languishing in the Senate,
3 539, that not only does the planning as you insisted but it
4 does permitting and it does what is needed.

5 Now, if you'll also allow my impertinence. As
6 I read your bill, I don't understand why we are now
7 pretending that we have now began, begun to realize the
8 proportion of the situation in that I have in front of
9 me -- and I'll ask one of my staff to give it to you -- but
10 from 1997, we've had the majority of the counties either on
11 watch or warning or watch or warning and all up until today
12 were the greater number of counties.

13 Now I want to know -- thank you, Dan. And I
14 wish you'd give one to my Chairman, please. I think it's
15 important. I want to know why the bill that you propose
16 now is so similar to one that was proposed in '87 when you
17 were the administrative executive director of Senator
18 Fisher's that does no more.

19 Now, we're halfway through. We're over in the
20 Senate. It passed by 199. And I'm saying to you and the
21 public, if it's because Bud George's name was on, take my
22 name off, put your name on because what we're doing here is
23 very important for the people of Pennsylvania. And this
24 shouldn't be political. And you say the word, I'll
25 withdraw my name.

1 I'm not being dramatic. I'm telling you it
2 passed by 198 votes. And when I talked to you, you said,
3 It isn't our bill. Well, what is it we want? There's no
4 such a thing that Arthur and I care a doggone about,
5 whether it's Democrat, Republican. We've got a job to do,
6 and I want to help you to do that job.

7 Now, I notified the Governor. And I said,
8 Look, we have to do something. This isn't just news that's
9 come about. We have the facts and figures. And we've read
10 your bill because we wanted to give you the courtesy, and
11 it is similar to the bill that you probably wrote when you
12 were the executive director for Senator Fisher.

13 Now, the Governor noted there's 70 water
14 systems in Pennsylvania now under mandatory or voluntary
15 restrictions yet your House Bill relies on voluntary
16 conservation measures. Shouldn't we have an apparatus, Mr.
17 Secretary, in place or at least prepared that would
18 establish a permitting system for major water users, sir?

19 MR. HESS: Well, Mr. Chairman, if I can
20 address the general point.

21 CHAIRPERSON HERSHEY: You may.

22 MR. HESS: I'm not aware of any planning
23 legislation or permit program that can make it rain. And
24 that's basically the condition that we're in right now. We
25 have, for the last year, been experiencing less than

1 adequate precipitation. And that's the reason we're in a
2 drought.

3 A planning process and a permit program can't
4 make it rain. But what we can do is put in place
5 mechanisms that will help us deal with critical water areas
6 around the state. I think the other thing -- and I do want
7 to thank you, Mr. George, because you are a cosponsor of
8 Representative Hershey's legislation. I want to thank
9 you --

10 REPRESENTATIVE GEORGE: Mr. Secretary, I don't
11 need this long -- just hold on, Arthur. Give me the
12 respect that's due me. I'll get on anything that will help
13 the people. I'll do anything if it's right. But again, I
14 asked you a question why you won't even give the
15 consideration to 539 that was passed by everybody here; and
16 you're playing games.

17 Now, mandatory controls or permitting in
18 certain instances is going to do a lot more for you than
19 just saying, well, you know, if you come forward and do
20 that. I think people in Pennsylvania recognize what you're
21 saying. I think they recognize we got to do something.

22 I'm simply saying to you, Dave, 1997 -- there
23 it is in front of you -- why don't we do something? Take
24 my name off of it and pass 539. It's only one day away
25 from the Governor's office. Rip out what you don't think

1 is right. Put in what you do think is right. I'll support
2 the Chairman. That's all we need.

3 It isn't so earth-shattering, and it doesn't
4 take all of the hydrology and geology experts. In my area,
5 Dave, some of my people have lowered their pumps as low as
6 they can go because we're as much as 6 feet below what the
7 aquifers used to be.

8 So just tell me why we're playing political
9 games, why you didn't even give us the consideration, not
10 me but the people of Pennsylvania, all these people here,
11 why, please, sir, why you don't utilize legislation that
12 wasn't drawn by me any more than any legislation drawn
13 particularly by an individual? They just use our thoughts.

14 Why is it you don't even want to deal straight
15 with legislation that's appropriate? It can just be a
16 small answer. Is it because of the sponsorship? If it is,
17 then tell me. I'll remove my name. But tell me what's
18 wrong with the bill. That's all. And I'll get Arthur to
19 redraw it. We got to do it now.

20 Listen, Mr. Secretary, we're playing games
21 here. And I don't want to play games. I would sooner be
22 wrong than hurt the people in Pennsylvania. But I'm not
23 wrong on this, and you know it. I'm not going to take any
24 more time up because this isn't why we're here.

25 This isn't why 100 and so people are here.

1 They want to hear something concrete, something that's
2 going to take place, something that's going to apply some
3 on permitting, if you will, something that's going to
4 protect our people.

5 In my area right now, there's a big
6 organization want to draw 185,000 gallons a day for a, I
7 think it's an institution such as a prison or something
8 like that. And at the same time, Dave, there are 3 water
9 companies taking water off that same aquifer. I'm worried
10 about whether we'll lose a school, you know, or churches or
11 a community.

12 And I'm just saying, Arthur. Please, Dave,
13 take a look at 539 and do what's right for the people in
14 Pennsylvania. That bill has been drawn and passed, and
15 it's been passed by very bright people on both sides of the
16 aisle. I won't take up any more time.

17 I think you know that I'm right, and you're
18 not going to admit to that. Thank you for your time.

19 MR. HESS: Mr. George, I would never question
20 your sincerity. You've been a very good advocate for
21 environmental issues over the years. But to the best of my
22 knowledge, I don't yet have a vote in the General Assembly.
23 I would never question the wisdom of the General Assembly
24 and which pieces of legislation they move or not move.

25 I would say, however, in my experience -- and

1 I think many people have been very frustrated over the
2 years about water resources legislation not passing -- the
3 reason it has not passed in my opinion is because
4 essentially the bill has bit off more than they could chew.

5 Pennsylvania is a very diverse state. In
6 Western Pennsylvania, we have no permitting program. We
7 have no, very little information about water resources.
8 There are concerns in Western Pennsylvania. But we just
9 don't have the information that we need to make intelligent
10 judgments about the water use or even identify areas that
11 are now or will be in the future suffering water shortages
12 because of the kinds of conflicts that you pointed out.

13 REPRESENTATIVE GEORGE: Listen --

14 MR. HESS: I think it's not a matter of, it's
15 not a matter of sponsorship. It's a matter of the fact
16 that those approaches have in fact not, not been able to
17 garner legislative support in the past. But I also think
18 more than that.

19 With our conversations with people all across
20 this state, people want to put in a foundation of
21 information on water resources that we can use throughout
22 the state to make judgments about water resources and where
23 the problems are.

24 And you need that foundation before we talk
25 about what kinds of tools that are needed to solve that

1 problem. And I think that's why we and the Governor
2 recommended the approach that we did in this legislation.
3 Obviously, this will be a subject of legislative debate and
4 discussion. And we're very much interested in that
5 discussion and participating.

6 But the fact is, legislation like that has not
7 garnered enough support in the General Assembly to pass for
8 the last 15 years. And there have been several major
9 attempts at doing that. I want to get something through,
10 the Governor wants to get something through on water
11 resources because now is the time to do it.

12 Now is the time to do it because this resource
13 is too strategically important to the people of
14 Pennsylvania and to our environment to let this issue go,
15 go unaddressed further.

16 REPRESENTATIVE GEORGE: Listen, I didn't make
17 an opening statement; and my Chairman didn't offer it to
18 me. And I'm not trying to take up the time. I don't want
19 to hear now is the time. Since 1997, it's been on record
20 that you knew what was going on.

21 You knew what was going on when you served as
22 a very proper and very proficient executive director. You
23 know that your bill is no different than the one that was
24 proposed in the Senate. Our bill does more than that. It
25 places these people on notice. It protects the water

1 supplies.

2 Mr. Secretary, nobody in this room knows more
3 about loss of water than Bud George. I come from coal
4 country. I come from areas either we lose water or we
5 discolor it so bad we can't utilize it. It's our
6 responsibility, you and I, not any other industry. No.
7 Industry can work with anyone. But the truth of the matter
8 is we're not working.

9 I just called DEP this morning about a lady
10 who lost her water up in New Washington Borough in my area.
11 And they're blasting, and they're terrorizing, and they're
12 doing things like this. And you know something, neither
13 Arthur Hershey or I have control of that. You do.

14 So I don't want to hear about we just
15 recognized now is the time. The time was on November the
16 20th when we passed that 539. Thank you for your time.
17 Thank you, Arthur, for your liberalization.

18 CHAIRPERSON HERSHEY: Representative Ross.

19 REPRESENTATIVE ROSS: One of the things that I
20 think has been difficult about this is getting the
21 information we need to be able to get a correct baseline.
22 Is that something that's been of concern to you as well?

23 MR. HESS: It's been a big concern for us and
24 for a lot of other people. We face questions all the time
25 about, from people who want to put in economic development

1 projects, farmers, others about is there enough water in
2 particular areas of the Commonwealth to support those
3 activities. And it is a big question.

4 And unfortunately, we don't have a lot of
5 information that we can share with them. Fortunately, in
6 the eastern and central part of the state, with the river
7 basin commissions, we do have some baseline information.
8 But really we want to, with this proposal, take that one
9 step further and develop the information in a way that
10 allows us to get ahead of the immediate drought, get ahead
11 of the immediate question that we get about adequate water
12 supplies and deal with those issues in a way that's going
13 to address some of those fundamental problems.

14 And that's really what this legislation is all
15 about, getting ahead of the latest drought, getting ahead
16 of some of the basic questions that we get and right now
17 can't answer completely.

18 REPRESENTATIVE ROSS: And if we were to impose
19 restrictions without sufficient background information on
20 where we need them particularly and where we don't, do you
21 foresee potential problems with that kind of approach?

22 MR. HESS: I do for this reason: I think
23 people out there are very logical and very smart. But at
24 the same time, sometimes they need to be shown there's a
25 problem, there's an issue to be dealt with. And I think

1 that's particularly true in large parts of Pennsylvania.

2 I think what our proposal would do is give
3 people the foundation of information they need, identify
4 areas where we know we're going to, where the demand is
5 going to exceed the supply either now or in the future and
6 really challenge folks in that area to deal with that issue
7 collectively with all the stakeholders involved.

8 And that's, that's an approach -- showing
9 people that there may be a problem coming, anticipating
10 what the issues are, and getting them to work
11 together -- that's an approach that's worked very, very
12 well with the Growing Greener Program and looking at
13 things on a watershed basis.

14 And we want to take that one step further and
15 now address those kinds of the water quantity issue with
16 that same kind of approach.

17 REPRESENTATIVE ROSS: So failing to do that,
18 you can imagine a big uprising and the whole process being
19 derailed when we take it down to the grass-roots level.

20 MR. HESS: What we heard at the water forums
21 across the state -- we had 15 of them. I went to 13. We
22 had 1,700 people out there. And I had personally spoken
23 and Christine has spoken to lots of people since then. I
24 don't hear a big clamor for a new bureaucracy, a
25 multimillion dollar program that's going to issue more DEP

1 permits. I just don't see it.

2 What we hear most often is the lack of that
3 fundamental information, the lack of knowledge about our
4 water resources. And in fact, this whole approach of
5 concentrating on areas where there are problems is
6 something that came out of those meetings.

7 It's not similar to other proposals that have
8 been in the hopper before. It came out of that because of,
9 again, a very practical and logical approach that people
10 have out there. Let's concentrate our time and energy on
11 those areas where there are problems and get the
12 stakeholders in those watersheds to address the issue.

13 REPRESENTATIVE ROSS: Thank you, Mr. Chairman.

14 CHAIRPERSON HERSHEY: Thank you. I'm sorry,
15 Chairman Hess. If you could introduce your staff. Maybe
16 you did.

17 MR. HESS: Yes. Christine Martin is our
18 Deputy for our Water Management. She has overall
19 responsibility for water quantity and quality issues. And
20 Stu Gansell is our Commonwealth Drought Coordinator.

21 CHAIRPERSON HERSHEY: Thank you.
22 Representative Miller.

23 REPRESENTATIVE MILLER: Thank you, Mr.
24 Chairman. As a former environmental manager for a small
25 manufacturing firm in the state, I applaud the effort that

1 is supposed to be made in your proposal to avoid double
2 reporting.

3 If there is any way possible to collect all
4 the information that is being requested and then
5 disseminate it from the source that it's collected. And if
6 the major collector of the data is the DEP, certainly if
7 they could disseminate it to the other watershed groups, it
8 certainly would help with collecting of this data and
9 possibly clarify who has to report and how and when.

10 On the storm water management, I applaud the
11 watershed basis of doing, looking at water usages,
12 requirements, supply. One of my concerns has always been
13 that across this state, some of the different regional
14 departments of the DEP do not apply the regulations
15 consistently.

16 There is some interpretation that goes on. So
17 I would very much ask that we come to a standardized system
18 across the state, that there is some way, recognizing that
19 there may be need for deviations based on characteristics
20 of certain areas and the watersheds. But everybody should
21 be working from a standardized plan and then digressing
22 from there based on a given set of criteria that would
23 allow for some variations.

24 My question to you, Mr. Secretary, would be,
25 there are some special agreements and joint ventures across

1 this state that were entered into, some of them many years
2 ago. There was one in York County entered into in 1966
3 between the state and some private businesses and concerns.

4 And they were very good ventures. They
5 established some parks, some lakes. And the intent was to
6 impound flood waters, conserve the water supply, and
7 provide additional recreational areas. There is nothing I
8 read in the proposed bill that would do away with these
9 agreements.

10 My question to you is, Do we need language or
11 would it be proper to insert language into the bill that
12 would preserve those and recognize those agreements?

13 MR. HESS: I think that's a good point. And
14 that's also a point we heard from a number of others. And
15 I appreciate you raising that. In fact, one of the changes
16 that we would be proposing to Chairman Hershey is to
17 clarify the fact that this legislation doesn't give anyone
18 any more or less authority to regulate water withdrawals
19 and that in fact, you know, this bill, as written, doesn't
20 affect those kinds of agreements.

21 So we wanted to make that clear. And we have
22 some ideas on how to do that that we'll forward to the
23 Chairman.

24 REPRESENTATIVE MILLER: Thank you, Mr.
25 Secretary. Thank you, Mr. Chairman.

1 CHAIRPERSON HERSHEY: Thank you.

2 Representative Rubley.

3 REPRESENTATIVE RUBLEY: Thank you, Mr.

4 Chairman. And thank you, Mr. Secretary, for supporting

5 this very important initiative. And I would like to say

6 that I think many of the components are an outgrowth of the

7 21st Century Environment Commission's report that identify

8 this critical need that we have that has become more

9 serious.

10 I wondered if you could expand upon the

11 thinking that you have in terms of the critical water

12 planning areas and the development of an integrated water

13 resources management plan with a watershed-wide planning

14 advisory committee.

15 We still have the power to control land use at

16 the local level. And I'm just wondering if you could

17 explain how you see the dovetailing of the municipal

18 responsibility with this water planning advisory committee

19 which would be on a watershed basis?

20 MR. HESS: I'll let Christine Martin tackle

21 that one if you don't mind. Christine.

22 MS. MARTIN: Sure. Representative Rubley,

23 the, as we go through the updating of the state water plan,

24 as you mentioned, we expect to find these critical water

25 planning areas where water use either currently or will

1 soon be exceeding the supply of water.

2 We think one, one of the cornerstones, I
3 think, of effective water resources planning and watershed
4 management is tying in stakeholders in a specific area to
5 the process. And that's part of the thinking behind an
6 integrated water resources plan, is to give an opportunity
7 for communities on a watershed basis within those critical
8 water planning areas an opportunity to dig a little deeper
9 into their water resources situation within that watershed
10 and then to lay out some recommendations in a plan to deal
11 with their specific issues.

12 You asked specifically about the role of local
13 governments. Part of the watershed planning advisory
14 committee in those critical water planning areas would be a
15 requirement that local governments, a representative from
16 each of the local governments within that watershed, as
17 well as the county planning commission and the county
18 conservation district be on that advisory committee.

19 There is, there is definitely a correlation
20 between land use planning and water resources. And in
21 fact, the Municipalities Planning Code does, does mention
22 that local governments are required to plan for adequate
23 water resources. There's some question as to exactly what
24 that means or how far that goes.

25 As the Secretary mentioned, this legislation

1 would not give any additional authority under the MPC or
2 otherwise for local governments or anyone to regulate water
3 withdrawals. It wouldn't admit any more authority than
4 they have now.

5 But where we see, for instance, water
6 resources assisting in planning efforts is informing land
7 use planning and zoning. And it can be land use planning
8 such as subdivision planning and planning where, where
9 communities as a whole want their growth to occur.

10 But it can also inform storm water ordinances,
11 as Representative Miller mentioned storm water. That's a
12 very important consideration. Municipalities can enact
13 storm water ordinances. And knowing what your water budget
14 is and how it's being used and where you have, where you
15 have runoff and increased discharges could inform storm
16 water planning.

17 It can also assist with, with Act 537 plans,
18 which are sewage facility planning and water infrastructure
19 planning in general. Again, water resources tied to land
20 use is where, where is your growth going to occur, where,
21 where are your critical areas. And it could be as simple
22 as where, where do you need your infrastructure.

23 So I think that's a, you know, a pretty broad
24 answer. But the point behind it is that water resources
25 information can inform a number of decisions on the local

1 level.

2 REPRESENTATIVE RUBLEY: Thank you for that
3 comprehensive answer. And I think we're going to need to
4 continue the education process that certainly has begun
5 with the series of forums you've had around the state. And
6 if I can just make one comment on the issue of storm water.

7 I think this is an area that we've been
8 particularly negligent with, both at the municipal level
9 and state level, not providing funding for counties and
10 municipalities to do storm water management plans. And I
11 hope we will really begin to take this issue seriously
12 because it is directly connected to our water usage and
13 drought situation.

14 CHAIRPERSON HERSHEY: Thank you. Any
15 comments, questions in the back? Would you members
16 introduce yourselves that have come in recently?

17 REPRESENTATIVE STERN: Representative Stern
18 from Blair County and Bedford County.

19 REPRESENTATIVE LEVDANSKY: Representative Dave
20 Levdansky from Allegheny County.

21 REPRESENTATIVE STERN: Yes. Mr. Secretary,
22 I'm concerned about whatever House Bill 2230, DEP's
23 legislation, would do with, concerning agriculture. Can
24 you state specifically some of the overall issues that are
25 in 2230 as far as how the impact on agriculture would be in

1 Pennsylvania?

2 And I know there are concerns with the
3 specific legislation on impact that it would have on the
4 agricultural community. Do you want to just give a couple
5 little highlights as to what the impact would be?

6 MR. HESS: I'd be happy to. Really the only
7 impact on the agriculture community would be the
8 requirement to register water use if they use 10,000
9 gallons or more a day. That's basic information that would
10 be required from all users of water in that category.

11 It's something that we would not charge for.
12 I know that issue has been brought up with the agriculture
13 community. I think the second issue -- and I think
14 Chairman Hershey and others heard this during the hearing
15 on Representative Dailey's water well bill -- the water
16 well piece of the proposal and the legislation that you all
17 have considered as made in the House is very important to
18 farmers; that setting basic well construction standards are
19 particularly important in areas where they depend on wells.

20 And I can tell you that's a big concern the
21 farm community has because I visited the Southwest Farm
22 Bureau meeting, talked to a number of farmers in
23 Zelienople. And we heard story after story of how folks
24 were using a well to water their dairy herd. A development
25 came in next door. The guy who was drilling the well had

1 no idea what they were doing. They didn't properly case
2 the well. There were no standards to follow. And it ended
3 up contaminating the aquifer that he was using for his
4 dairy herd. There are all sorts of conflicts out there.

5 But really the basic impact is really going to
6 be on the registration and providing that, that
7 information. And as I noted, I think one good suggestion
8 that's been made by the, by the ag. community, among
9 others, is to clarify the fact in the planning process that
10 we need to count the contribution that farmland and open
11 space makes to groundwater recharge in particular as we go
12 through this planning process.

13 REPRESENTATIVE STERN: Are you talking about a
14 credit system?

15 MR. HESS: Yes.

16 REPRESENTATIVE STERN: Okay. The other
17 concern, how about, how about the legislation -- or do you
18 think there should be something involved if we end up
19 getting every municipality in Pennsylvania imposing
20 stricter ordinances other than this statewide provision?

21 MR. HESS: We -- again, that issue has come
22 up. And I think we've, we've made a number of changes.
23 But the basic fundamental bill would really not give any
24 local government or any other organization any more
25 authority than they have already to control water

1 withdrawals.

2 So from that standpoint, it would be really no
3 change from the existing situation. We do plan to make a
4 suggestion to Chairman Hershey to clarify that point
5 because that is something that, that has been raised. So
6 we'll essentially put a belt and suspenders on that one and
7 make sure that that is the case.

8 REPRESENTATIVE STERN: I think some of the
9 concern now may be also with some of the fear in the rural
10 communities with overzealous prosecutions or, or
11 enforcement of the Act or going out and becoming a police
12 agency or a DEP police state concerning water usage.

13 And I know that's a concern from, you know,
14 many people that expressed concerns with me over water
15 resources legislation.

16 MR. HESS: Well, because this legislation is
17 not a regulatory program, does not set up a permit program
18 like some other proposals do, that really isn't a concern
19 with this legislation. However, there are other proposals
20 where that would be a concern.

21 REPRESENTATIVE STERN: And I also understand
22 how the regulatory process goes as well. So once we set up
23 the programs and we allow for regulatory provisions to be
24 included, then we sometimes add some things that we're not
25 aware of. Thanks, Mr. Chairman.

1 CHAIRPERSON HERSHEY: You're welcome. And
2 thank you. Thank the committee. Thank you, Mr. Secretary,
3 for coming and bringing your staff. I think it was very,
4 very helpful and a time that committee members could pick
5 your brain a little bit.

6 MR. HESS: Thank you, Mr. Chairman. And as
7 always, we're going to be very pleased to work with you to
8 move this issue along.

9 CHAIRPERSON HERSHEY: Thank you. That
10 concludes that part. We'll start with our second
11 testimony. Citizens for Pennsylvania's Future. I believe
12 we have listed Jan Jarrett, Director. So will you please
13 step forward and introduce yourself?

14 MS. JARRETT: Good morning. I'm Jan Jarrett.
15 I'm Director of Outreach for Citizens for Pennsylvania's
16 Future, otherwise known as PennFuture. And I would like to
17 thank Chairman Hershey and Chairman George for the
18 opportunity to offer PennFuture's comments on the important
19 issue of water resources management.

20 PennFuture's mission is to work for a just
21 society where the environment and the economy thrive. The
22 ability to wisely and fairly manage the Commonwealth's
23 water quantity while protecting water quality is central to
24 both protecting the environment and fostering sustainable
25 economic growth.

1 This hearing is being held at a particularly
2 apt time. As you are well aware, we are in the middle of a
3 severe drought. Right now, we are experiencing an acute
4 water shortage that is resulting in inconvenient and
5 potentially economically disruptive restrictions on our
6 water use.

7 PennFuture commends this committee and the
8 administrations for their efforts to begin to
9 comprehensively address water resources management issues
10 so that acute water shortages, such as occur in droughts,
11 do not become chronic water shortages that threaten our
12 environment and economic growth.

13 PennFuture believes that H.B. 2230, the Water
14 Resources Conservation and Protection Act, provides the
15 basic planning tools that will be necessary for the
16 effective management of our water resources. We fully
17 support the Act's requirement for the Department of
18 Environmental Protection to update the state water plan.

19 We also support the requirement for users of
20 more than 10,000, 10,000 gallons of water a day to register
21 and report their usage to the Department, information DEP
22 will need to develop a sound state water plan. The
23 identification of critical water planning areas is also
24 another element of this legislation that PennFuture
25 supports.

1 The designation will focus local attention on
2 the problem and educate and engage watershed residents,
3 users of large amounts of water, and other interests in
4 activities to address their chronic water problems.

5 While we agree that information and planning
6 are necessary prerequisites to effective management of our
7 water resources, these activities provide only a framework
8 for decision-making about our water resources. Data
9 gathering and planning are important but do not replace the
10 ultimate need for making water allocation decisions and, in
11 some cases, imposing reasonable restrictions on water use.

12 As we learned at the water resource forums
13 held around the state, some areas of the Commonwealth are
14 already struggling with chronic water shortages; and others
15 are sure to face user conflicts in the near future. For
16 example, consumptive uses in the Susquehanna Basin are
17 projected to increase to 60 percent of minimum recorded
18 flow in the lower Susquehanna by 2010.

19 Such demands on our water resources will
20 require some hard choices to be made in order to fairly
21 allocate an increasingly scarce resource and protect
22 aquatic ecosystems.

23 H.B. 2230 represents an important opportunity
24 to lay the groundwork for difficult decisions ahead. The
25 General Assembly should make sure that we do not squander

1 this opportunity to make real progress on this issue which
2 has been resistant to policy advancements for several
3 decades.

4 To do that, this legislation must lay the best
5 foundation possible by making sure all the necessary data
6 is gathered, that all water uses are accounted for and that
7 all water users are included.

8 PennFuture believes the Act needs to be
9 improved in order to accomplish its goals. DEP has kindly
10 shared with us its proposed changes to this bill, and our
11 comments will also address those changes.

12 Under the powers and duties in this Act, in
13 order to more closely tie water resource management with
14 the protection and maintenance of water quality and all
15 water uses, including in-stream uses, PennFuture recommends
16 that the administration and enforcement of the Clean
17 Streams Law and the Federal Water Pollution Control Act be
18 added to the duties of the Department under this Act.

19 This legislation proposes a mediation process
20 for resolving disputes over consumptive uses of water but
21 does not provide any guidance for how those mediation
22 processes will be conducted. First, a mediation process
23 should be available for any conflict over water uses, not
24 just consumptive uses.

25 Second, the Department should issue guidance

1 that addresses exactly what kinds of conflicts are
2 appropriate and eligible for mediation services and outline
3 measures to ensure that parties to these processes will
4 have equal access to expert advice, unbiased information,
5 and legal representation.

6 Under the Statewide Water Resources Advisory
7 Committee, PennFuture recommends that a public health
8 representative be added to the members of the Statewide
9 Water Resources Advisory Committee.

10 Under the registration, reporting, and
11 recordkeeping section, as introduced, H.B. 2230 requires
12 all users of more than 10,000 gallons of water a day to
13 register with the Department and report their annual usage.
14 DEP is proposing to add language to the Act that gives the
15 Department the discretion to exempt certain classes of
16 water users from the requirements of this Act, to reduce
17 the frequency of reporting, and increase the threshold for
18 reporting.

19 PennFuture, along with many conservation and
20 environmental organizations, strongly oppose this change.
21 I've attached a letter that was distributed to you late
22 last year which outlines some of the concerns that we had
23 upon our initially looking at the, hearing about the
24 legislation.

25 We urge the members of this committee to stand

1 firm in requiring all water users of 10,000 gallons a day
2 to register and report. Giving the Department the
3 discretion to exempt classes of users creates a loophole
4 big enough to drain a lake.

5 It will subject the Department to intense
6 pressure from interests that wish to be exempt from this
7 Act. And if interests gain exemptions, it will set a
8 precedent for exempting them from the requirements of any
9 subsequent legislation that addresses water resources
10 management.

11 This provision goes to the heart of the
12 ability of the Commonwealth to, first, develop complete and
13 accurate information; and second, to the ultimate
14 development and implementation of a fair system to allocate
15 water among users. If this proposed change is adopted, we
16 risk losing this opportunity to make real progress towards
17 the ability to fairly and effectively manage our water
18 resources.

19 The administration's proposed deletion of both
20 the definition of diversion and the requirement to register
21 and report diversions would leave a gaping hole in the data
22 needed in many watersheds to effectively develop management
23 plans.

24 By limiting registry and reporting to
25 withdrawal use, many activities that significantly disrupt

1 water flows and availability for downstream users, such as
2 mining activities, will not be accounted for. PennFuture
3 recommends that the definition for diversion and the
4 requirement to register and report diversions be
5 maintained.

6 PennFuture also recommends adding language to
7 the section on registry and reporting to clarify that
8 registration shall not be construed as a determination of
9 water rights.

10 Integrated water resource plans: PennFuture
11 supports the development of integrated water resource plans
12 for critical water planning areas. However, since
13 compliance with these plans, the provisions of these plans
14 is completely voluntary and the plans themselves are not
15 integrated into the state water plan, we question their
16 potential effectiveness for solving local water resource
17 problems.

18 A water user determined to protect or acquire
19 a substantial share of a scarce resource would seem to have
20 little incentive to participate in the development of a
21 voluntary plan or to abide by its provisions. A new
22 entrant into a watershed that did not participate in the
23 development of an integrated water resource plan might also
24 balk at following a voluntary plan it had no hand in
25 creating.

1 Given these foreseeable obstacles, we wonder
2 how many watershed communities will be willing to undertake
3 the extensive and expensive planning effort that would be
4 necessary to create an integrated water resource plan. DEP
5 is proposing language that clarifies that integrated water
6 resource plans are not part of the state water plan, which
7 effectively disintegrates them from other local and
8 regional land use and water resource planning efforts.

9 Instead, we recommend adding language to the
10 Act that seeks to integrate the plans with other planning
11 efforts by encouraging that municipal and county
12 comprehensive plans be consistent with the integrated water
13 resource plans.

14 In addition, because integrated water resource
15 plans will provide a management plan based on sound
16 information and opportunities for public input, local
17 governments should be able to implement these plans by
18 ordinance within the framework of statewide standards
19 established in this legislation.

20 Without such authority, local governments may
21 feel compelled to take other actions to address pressing
22 local water problems. At least 5 local governments have
23 already enacted ordinances that address water resource
24 management.

25 We believe a set of standards authorizing

1 implementation of the integrated water resource plans would
2 be better than a patchwork of ordinances adopted without
3 having to go through the rigorous planning that would go
4 into the integrated water resource plans.

5 The requirements of the plans themselves are
6 appropriately rigorous and extensive, and the development
7 of an integrated water resource plan would be expensive.
8 The Act does provide for 75 percent of the cost to be
9 covered by grants from the Environmental Stewardship Fund.

10 As you well know, the administration has
11 frozen \$50 million in funding from the fund this year and
12 proposes cutting funding for the fund by another \$50
13 million. Unless a dedicated source of funding is
14 identified specifically for the development of these plans,
15 they will compete with other important environmental and
16 conservation projects for a piece of a shrinking pie. We
17 strongly recommend that the Legislature identify a
18 dedicated funding stream specifically for these plans.

19 The water resources technical center: The Act
20 calls for the creation of a water resources technical
21 center to provide technical assistance and education about
22 water conservation to all water users. PennFuture believes
23 that legislation is not necessary for the creation of this
24 center.

25 DEP's Drought Information Center is already a

1 step in the creation of such a center and recommends that
2 DEP expands upon the information and assistance it already
3 provides and formalize it in the immediate creation of a
4 permanent water resources technical center.

5 The anti-degradation program: PennFuture is
6 concerned that there will be attempts to attach amendments
7 to this legislation that would weaken the anti-degradation
8 program or other clean water laws or regulations.
9 PennFuture and many other environmental and conservation
10 organizations will vigorously oppose such amendments. And
11 again, I refer you to the attached letter.

12 This legislation represents an opportunity too
13 important to squander by unnecessarily adding controversial
14 and divisive provisions. If such amendments are added to
15 this legislation, we would regretfully have to oppose it.
16 And there I'm speaking strictly for PennFuture and not for
17 the others on the letter.

18 Finally, PennFuture would like to encourage
19 this committee to continue its leadership in searching for
20 solutions to our water resource management challenges. As
21 we stated at the outset of this testimony, this legislation
22 provides only an information and planning framework for
23 water resource decision-making.

24 We need water resource management legislation
25 that addresses the thorny allocation issues. As a starting

1 point, PennFuture recommends reviewing the concepts put
2 forward in H.B. 539 sponsored by Representative George,
3 which was approved by this committee and passed by the
4 House in November.

5 There are also several models that offer some
6 ideas that have been successfully implemented elsewhere.
7 New Jersey has adopted a statewide water management system,
8 and the American Society of Civil Engineers has developed
9 the Regulated Riparian Model Water Code that could be a
10 source of ideas.

11 Failing to take the next step -- to develop a
12 program to manage our water resources -- only exposes the
13 Commonwealth to spreading chronic water shortages and
14 increasingly bitter user conflicts. We recommend that the
15 Legislature create a Blue Ribbon Panel comprised of a
16 balance of interests to explore the options and make timely
17 recommendations for further legislation.

18 PennFuture stands ready to assist in any way
19 and looks forward to your leadership. Thank you.

20 CHAIRPERSON HERSHEY: Thank you, Jan, for
21 coming and testifying before our committee. I had one
22 question before I pass it on. On page 3, you start out
23 registration, reporting, recordkeeping. You said you
24 recommended language that would exempt certain classes of
25 water users from the requirement here of registering to

1 reduce frequency.

2 Would you just give a couple of examples of
3 who you had in mind?

4 MS. JARRETT: We oppose such an exemption.
5 Just let me be clear. DEP is proposing, in its changes
6 that DEP wants to make in the legislation as it exists,
7 they propose exempting --

8 CHAIRPERSON HERSHEY: I see. This isn't your
9 thoughts. That's DEP thoughts.

10 MS. JARRETT: No. Right.

11 CHAIRPERSON HERSHEY: I'm sorry for not
12 reading that closer. All right. Starting on my left, any
13 comments or questions? Chairman George.

14 REPRESENTATIVE GEORGE: Yes. I think that
15 your presentation is very worthwhile.

16 MS. JARRETT: Thank you.

17 REPRESENTATIVE GEORGE: And I think that
18 basically the majority of people in this House of
19 Representatives feel as you do. We know that water
20 continues to become a scarce item. And we understand the
21 scarcity of it makes it even more costly, where at one time
22 it was our most abundant resource.

23 But ma'am, if we don't put permitting along
24 with all of the so-called planning and there's a shortage,
25 who's going to decide under this bill now who gets the

1 water and who doesn't? That's what concerns me. Can you
2 tell me, please?

3 MS. JARRETT: Well, under this bill, it
4 envisions a mediation process that people would enter into
5 and agree in writing to abide by its, its provisions. But
6 that doesn't mean that people are going to necessarily be
7 required to engage in these mediation processes.

8 Our -- as our testimony points out, we do
9 believe that eventually there's going to need to be some
10 further legislation that will put into place some kind of
11 allocation system which probably includes some permitting.
12 We believe that, though, this particular bill has created
13 some political momentum towards that ultimate need being
14 filled.

15 But we'd hate to see the momentum sort of slow
16 down. Should this planning and data gathering bill pass,
17 we really believe that it's absolutely vital that a process
18 be set up to bring the interests to a table to start to
19 hash out what a future regulatory bill might look like.

20 REPRESENTATIVE GEORGE: Again, there's many in
21 this room that are much more knowledgable in hydrology than
22 I am. But, you know, I look at the Department and I see
23 all the things they allow or disallow. I look at some of
24 the things that civilization has brought on, whether it's a
25 clearing of forestation to allow even the scarcity of

1 precipitation to run down over the hill rather than to sink
2 into the ground and finally find its way to a common
3 aquifer.

4 I look at all these things. And
5 unfortunately, as I said to the Chairman a while ago,
6 everyone here has a vested interest. They represent
7 someone, and that's good. But the average individual that
8 has to entertain the consistently rising cost of water and
9 the concern, especially in the rural area, where there are
10 some water purveyors that as I ask them to extend the line
11 or to help out communities so that they can build up,
12 especially in the rural area where we need every bit of
13 help that we can, it just seems that -- I'm speaking
14 redundant -- it seems that there's a great deal of water
15 supply for some of these makeshift industries that could
16 come in.

17 And I understand that if you have plenty of
18 water and good roads, you can create and entice industry to
19 come into your area. But doesn't these shortages -- and if
20 they're manifested by those of us that let whatever water
21 we have go to waste simply by allowing someone who's going
22 to utilize whatever language is put in politically, isn't
23 that going to bring about additional shortage and
24 additional increase in cost in your opinion?

25 MS. JARRETT: Yeah. I think that failing to

1 make decisions based on sound information about water
2 resource management -- and what we really need is to have a
3 really good understanding of a watershed's water budget.
4 So that in some watersheds, the issues aren't that critical
5 because there's an abundance of water for one reason or
6 another. In other watersheds, that's not the case.

7 And whatever ultimately is developed needs to
8 understand that there are some differences in water supply,
9 differences in water demand and be flexible enough to
10 address those things. But the key issue is we've got to
11 move towards addressing those issues.

12 This is a first step. And we really strongly
13 believe that it gives us some momentum to go towards making
14 some of the harder decisions. But it's a step that we
15 really need to take next. But this, this information and
16 planning that's part of this bill is also an important
17 first step.

18 REPRESENTATIVE GEORGE: I don't disagree. As
19 the Secretary said, I signed on to the gentleman's bill.
20 And I'll work with these people. But, you know, I've been
21 wondering why the gentleman, the Secretary said a moment
22 ago to remind us that now local government won't have the
23 entire say; they won't have the authority to do or undo.
24 In other words, we don't want to give them that. But we
25 gave them that in local sewage matters.

1 Just the other day I worked with one where a
2 lady called me, was turned down by an SEO and was told to
3 call her supervisor. When she called her supervisor, they
4 told her to call DEP in Williamsport. When she called DEP
5 in Williamsport, after about a dozen calls, they called Bud
6 George.

7 Well, you know, if they can't do it, I can't
8 do it. I can scream louder than they do. And maybe that's
9 what we need in legislation. We need people to scream a
10 little bit so that we get the truth in these matters. I
11 liked your presentation. But I hope you agree that we do
12 need, in some cases, permitting.

13 Certainly, we have to know where the water is.
14 But we have to know where it's being wasted and what is
15 happening and whether we'll have a resource available for
16 those not just in the cities and not in the rural areas but
17 all over Pennsylvania where water used to gush out of the
18 ground and doesn't gush.

19 I hope you're in agreement with that. And I
20 thank you very much about your comments about 539. Thank
21 you.

22 MS. JARRETT: You're welcome.

23 CHAIRPERSON HERSHEY: Thank you. No comments
24 there. Okay. Representative Levdansky.

25 REPRESENTATIVE LEVDANSKY: Thank you, Chairman

1 Hershey. Ms. Jarrett, one particular point in your
2 testimony, you talked about the integrated water resources
3 plans. And I mean, you support coming up with them. But
4 you note that utilization of Growing Greener funds may not
5 be the best and most appropriate use to finance the
6 development and implementation of these plans.

7 And you suggest that we identify a dedicated
8 funding stream specifically for these plans.

9 MS. JARRETT: Well, I remind --

10 REPRESENTATIVE LEVDANSKY: Do you have any
11 idea --

12 MS. JARRETT: No, I don't. Goodness no. I am
13 reminded, though -- and Representative Rubley alluded to
14 this earlier. I remember that in the Storm Water
15 Management Act, there was also the promise of funding for
16 the development of those plans. And that funding was
17 never, there was no funding earmarked for the development
18 of those plans.

19 And so it's taken about 30 years for us to
20 start to get those storm water management plans on the
21 ground. And I would hate to see these kinds of plans be
22 stalled for lack of available funding. I -- we do mention
23 that dedicated funding would be needed for these, but I
24 guess our thinking didn't go so far as to figure out where
25 that would come from.

1 REPRESENTATIVE LEVDANSKY: Well, that's the
2 tough part.

3 MS. JARRETT: I know.

4 REPRESENTATIVE LEVDANSKY: Well, just let me
5 just for a moment just throw this out for thought: It
6 strikes me that water is the only natural resource in the
7 Commonwealth, okay, that, that we permit it to be used for
8 free. Other natural resources -- coal, oil, gas, timber,
9 underground resources, above ground resources -- that are
10 on public lands can't be utilized without the user paying a
11 fee.

12 We permit gas drilling, oil drilling, coal
13 extraction, timber extraction on our public lands; but
14 the user has to pay a fee. Water -- correct me if I'm
15 wrong -- might be the only natural resource that's
16 extracted from the public waterways of the Commonwealth
17 without anybody paying a fee.

18 MS. JARRETT: Well, people do pay for water.
19 People on public water supplies get a water bill every
20 month. Industries that are on public water supplies pay
21 for their water. There are lots of folks --

22 REPRESENTATIVE LEVDANSKY: But the public
23 water supply extracts the water from the waters of the
24 Commonwealth for nothing. They essentially process it and
25 filter it. And those costs are borne in, are reflected in

1 the bills that consumers pay. But actually to extract the
2 resource, nobody pays anything for it.

3 MS. JARRETT: I guess that's right.

4 REPRESENTATIVE LEVDANSKY: And there's
5 probably a lot of uses of water greater than 10,000 gallons
6 a day. That seems to be the threshold for registration in
7 this bill. There's a lot of uses of water that aren't
8 typically consumer household, residential uses. Ten
9 thousand gallons a day isn't a resident.

10 MS. JARRETT: We'd hope not.

11 REPRESENTATIVE LEVDANSKY: Maybe we ought to
12 think about establishing a fee, a user fee. Since we're
13 going to require registration on those users of greater
14 than 10,000 gallons a day, maybe those people, you know,
15 that are the greatest users of this public resource ought
16 to pay for the, at least enough funding to provide for the
17 development of the integrated water management programs.

18 MS. JARRETT: Well, that's an idea that's
19 worth exploring. I think that is something that points up
20 the need to do a little bit more thinking about the whole
21 water resources issue and come to grips with some of these
22 issues about how you pay for stuff, what, how, what's the
23 best management scheme that we can put into place to make
24 sure that residences, farms, businesses are going to be
25 able to have their fair share of water without compromising

1 someone else's use.

2 We've got to look at is it now to the point
3 where water is a scarce enough resource where we have to
4 charge a fee for it? I guess I'm not prepared to come down
5 on one side or another of a lot of these issues. And I
6 think that is, that's just one element of a whole host of
7 things that we've got, we've got to consider for the
8 future.

9 REPRESENTATIVE LEVDANSKY: Yeah. I'm just
10 throwing it out. I mean, if we're looking at users of
11 greater than 10,000 gallons a day to be required to
12 register, okay, then maybe we ought to put some sort of
13 registration fee or some licensing fee to help pay for the
14 development of the integrated plans, not getting in the
15 whole allocation --

16 MS. JARRETT: Right.

17 REPRESENTATIVE LEVDANSKY: -- issues. Okay?
18 But why should we take money out of the recycling fund or
19 something else or hazardous sites cleanup fund to, you
20 know, why should we raid those funds in order to pay for,
21 you know, the development of these, of these plans? I
22 don't, I don't know that that's the best use.

23 I think you're right. I think this is, you
24 know, this is an important issue, though. We do a lot of
25 requirements and mandating in laws that we don't always

1 provide the funding. And I think it's really important
2 that if we're going to require the development of these
3 plans, that we figure out a way in the legislation to
4 provide for the financing of it as well. Thank you, Mr.
5 Chairman.

6 CHAIRPERSON HERSHEY: Thank you. Thank you,
7 Ms. Jarrett, for that testimony. And we look forward to
8 working with you. And thanks for coming.

9 MS. JARRETT: Thank you.

10 CHAIRPERSON HERSHEY: And we will welcome now
11 a panel from the Susquehanna River Basin, 2 gentlemen that
12 most of us know, Paul Swartz, Executive Director; Tom
13 Beauduy, Deputy Director. And we look forward to hearing
14 your comments.

15 MR. SWARTZ: Thank you, Mr. Chairman. We
16 appreciate the opportunity to be here this morning. And we
17 commend you for holding this hearing on this very important
18 and timely issue. The Susquehanna River Basin Commission
19 is what is known as a Federal Interstate Compact
20 Commission.

21 We celebrated our 30th birthday last year.
22 And we came into being as a result of legislation that was
23 enacted by this General Assembly as well as the General
24 Assemblies in New York State and Maryland, which states
25 share the Susquehanna River Watershed, as well as

1 legislation enacted by the United States Congress.

2 Our commission, when it was created, was
3 vested with very broad authorities in the areas of water
4 resource planning, management, conservation, utilization,
5 development, and allocation. Those are the 6 primary
6 functions that we have.

7 Now, what makes us unique is that our
8 commission was set up on the basis of natural watershed
9 boundaries as opposed to political boundaries. While 3
10 states share our watershed, as I mentioned, most of the
11 land area of the basin -- roughly 75 percent -- is located
12 within the Commonwealth of Pennsylvania. And about half of
13 the land area in the Commonwealth is in the Susquehanna
14 River Basin.

15 SRBC -- I'll be referring to the Susquehanna
16 River Basin Commission either as SRBC or the Commission.
17 SRBC supports the Commonwealth's legislative initiative to
18 strengthen its role in planning for and conserving our
19 water resources.

20 Planning needs to be done, we believe, on a
21 watershed scale to properly assess the availability of
22 water resources in comparison to various present and future
23 demands on those resources. And as I'm sure you'll hear
24 from practically all the people who testify here today, we
25 feel there is a definite need to update the state water

1 plan. And we are very interested in working with the
2 Commonwealth in partnership to undertake that task.

3 Wise decisions about water resources cannot be
4 made in the absence of good water resource data. And as
5 such, the data in the state water plan are invaluable to
6 all who rely upon them to make decisions that are
7 technically sound and based on good science.

8 Having comprehensive water resource data will
9 be important to all governmental entities that operate in
10 the basin, state, federal, and local, as well as for
11 private sector interests which have a stake in the water
12 resources of the Commonwealth, including the Susquehanna
13 River Basin.

14 Likewise, the recurrence of drought
15 conditions, which you've already heard about from previous
16 witnesses, in recent years underscores the importance of
17 conserving our water resources and the need to strengthen
18 our water conservation efforts.

19 I'm going to skip over the portion of my
20 testimony that talks about the drought conditions because
21 you've already heard about them. I will say that the
22 4-month period from October 2001 of last year through
23 January of this year has been the driest since the early
24 1930s in the lower Susquehanna Basin, resulting in
25 groundwater being at record low levels in many locations

1 and reservoir levels also being well below normal.

2 And this condition is not unique to the
3 Pennsylvania portion of our basin. In Maryland, we are
4 seeing similar hydrologic conditions with all-time record
5 low groundwater levels for this time of year in the
6 Maryland portion of our basin.

7 By the way, the drought situation is not
8 something that we're just dealing with as a phenomenon
9 this year. Roughly half of the years during the decade
10 of the '90s were drought years. So this is a, an ongoing
11 phenomenon that we're dealing with. And our
12 commission -- the drought conditions were severe enough
13 in 2 of those years, 1991 and '99, for our commission
14 to have declared drought emergencies.

15 Now, in the area of conservation, our
16 commission does have water conservation standards as a part
17 of our regulatory requirements for sponsors of water
18 projects. And an example of that would be a requirement
19 for public water suppliers to reduce their unaccounted-for
20 water use to levels less than 20 percent.

21 But having said that, I think we need to
22 acknowledge that we should be doing much more in the area
23 of water conservation. And for that reason, we strongly
24 endorse anything the Commonwealth could do in those areas.
25 And in particular, the establishment of the water resources

1 technical assistance center we feel is an excellent idea.

2 And again, we would be prepared to work in
3 partnership with the Commonwealth to strengthen water
4 conservation programs and activities within the Susquehanna
5 River Basin portion of the state.

6 I spoke earlier of partnerships between SRBC
7 and the Commonwealth with respect to both planning and
8 conservation. Let me add that a solid and successful
9 partnership has existed between us for many years in the
10 management of the water resources of the Susquehanna River
11 Basin.

12 We have several regulations which apply to
13 surface and groundwater withdrawals that exceed 100,000
14 gallons per day, and that's based on a consecutive 30-day
15 average. And we also regulate consumptive water use. You
16 heard Jan Jarrett refer to consumptive water use in her
17 testimony.

18 We define that as water withdrawn from the
19 basin that is used in such a way that the water is not
20 returned to the basin. And our regulatory threshold for
21 that particular requirement is 20,000 gallons per day. And
22 again, that's on a consecutive 30-day average basis.

23 We coordinate with the Commonwealth on each
24 and every decision we make about proposed water projects in
25 the Pennsylvania portion of the Susquehanna Basin. And we

1 believe that our program adds value to the Commonwealth,
2 helping to ensure that environmental impacts and conflicts
3 between users are avoided.

4 The packets that you've been provided contain
5 some additional information about other areas of
6 partnership. So please refer to the information sheets for
7 information about those activities.

8 I just want to say that providing service to
9 Pennsylvania and in fact to all of our member jurisdictions
10 is an important part of our overall mission. And we feel
11 that the proposed water resources legislation will afford
12 us additional opportunities to build on the solid and
13 successful partnership that I mentioned and make it even
14 stronger.

15 Now, prior to today's hearing, we provided the
16 Department of Environmental Protection with comments on
17 House Bill 2230. And I've included a copy of those
18 comments, along with our testimony, in the blue information
19 packet that you have received.

20 We recognize, as you've heard from Secretary
21 Hess, that the Department has suggested several changes to
22 the legislation which are consistent with recommendations
23 that we have made.

24 I want to also mention that I've included in
25 the packet a letter that I sent to Representative Mary Ann

1 Dailey last April concerning the proposed Water Well
2 Construction Act. In that letter, I indicated that the
3 provisions allowing for the adoption of construction
4 standards for wells and the licensing of qualified well
5 drillers should result in better constructed, more reliable
6 wells. We commend the committee for its leadership in
7 moving this legislative initiative forward and are
8 confident that the Senate will follow suit in addressing
9 this issue.

10 Now, at this time, I'm going to ask my
11 colleague, Deputy Director Tom Beauduy, to provide some
12 additional comments on House Bill 2230.

13 MR. BEAUDUY: Thank you, Mr. Chairman, members
14 of the committee. As Paul Swartz just mentioned to you, we
15 provided a set of specific comments to the Department 2
16 months ago when we first received a copy of the draft
17 legislation.

18 We, along with many others, provided comments
19 to them. And the Department, to its credit, has responded
20 positively to much of the input that it's gotten, including
21 the input it received from us. Our understanding of the
22 suggested changes it offered here today are in fact
23 responsive to several of the comments that we included in
24 that package.

25 Rather than offering you a line-by-line

1 analysis and because a number of our concerns have been
2 addressed, I would prefer to offer comments on a few
3 specific issues as you consider the legislation moving
4 forward.

5 The first deals with coordination with the
6 river basin commissions. Given the role that the
7 commissions fill in the management of water resources here
8 in the Commonwealth, and particularly in the Susquehanna
9 and Delaware basins where we exercise regulatory authority,
10 we believe it is important for the legislation to expressly
11 provide for coordination with the commissions.

12 In the current version of the bill, there are
13 several constructive references to that effect; and they
14 should be preserved as you consider amendatory language.
15 We would suggest some additional enhancements to that
16 language as well.

17 First, consideration should be given to river
18 basin participation on the statewide water resource
19 advisory committee. This committee is structured to give
20 advice to the Department on the development of the state
21 water plan. Its membership extends to a broad range of
22 interests, all of which we believe are appropriate.

23 Representation on the advisory committee by
24 the commissions would help to institutionalize the
25 cooperation and coordination we fully intend to extend to

1 the Department as it moves forward with this important
2 planning effort. And furthermore, it gives us a more
3 formal role in the process.

4 We would also suggest that consideration be
5 given to the inclusion of a savings clause or similar
6 provision to preserve the existing authority contained
7 under the river basin compacts previously adopted by this
8 General Assembly.

9 Our management authority is important for the
10 water resources of the Commonwealth and shouldn't be
11 abrogated, even unintentionally, by passage of this
12 legislation. I will add that we appreciate Secretary
13 Hess's response to Representative Miller earlier in the
14 indication that the proposals that have been offered by the
15 Department specify language preserving existing
16 authorities. This is consistent with that request.

17 The second area that I'd like to raise is with
18 regard to the critical water planning areas and the related
19 integrated water resource plans in the legislation. We
20 believe that very careful consideration needs to be given
21 to the relationship between the planning areas, these
22 critical water planning areas and to the integrated water
23 resource plans.

24 Equally important is the relationship of both
25 of these to the state water plan and to the management

1 authority of the river basin commissions to designate
2 protected areas. Under both the Susquehanna and river
3 basin compacts, the commissions are granted authority to
4 designate protected areas where a determination is made
5 that the demands on supply have developed or threaten to
6 develop so as to create water shortages or other adverse
7 impacts.

8 I should add that any such determinations are
9 only made with the consent of the Commonwealth, our member
10 jurisdiction. One example of the use of this authority is
11 DRBC's designation of a groundwater protective area in
12 Southeastern Pennsylvania, which was done, again, with the
13 consent of the Commonwealth.

14 The critical water planning area designation
15 process contemplated under 2230 is both similar and
16 dissimilar to the protected area designation process
17 employed by these 2 commissions. Unlike the commission
18 process, which facilitates expanded management authority in
19 designated protected areas and, I would add, has been in
20 existence for the last 30 years, the critical water
21 planning area process contained in House Bill 2230 is
22 limited in scope strictly to planning.

23 Nonetheless, both designation processes are
24 similar in that they provide a mechanism in officially
25 identifying water-stressed areas. We would therefore

1 suggest that the legislation include language to foster
2 coordination between these designation activities where our
3 jurisdictions overlap.

4 Furthermore, we would suggest that provision
5 should be made for a river basin commission to petition the
6 Department directly under the critical water planning
7 designation process where it has or is proceeding with the
8 establishment or designation of protected areas under its
9 compact authority. This would help to ensure greater
10 consistency between our respective efforts to identify
11 these water-stressed areas.

12 The bill also establishes a process for the
13 development of integrated water resource plans in these
14 designated critical water planning areas. My understanding
15 is that the Department's suggestions offered today include
16 language clarifying that these plans are not part of the
17 state water plan.

18 This as well as the existing planning process
19 that is set forth in Section 7 lead us to question how
20 these plans are intended to dovetail with state and
21 interstate planning efforts or how they are to be
22 implemented.

23 We support the concept of regional water
24 resource planning but don't see the reason to tie it
25 directly to critical water planning areas. Furthermore, we

1 do see value in tying regional planning efforts to the
2 state water plan.

3 We are most willing to work with the
4 committee, the Department, and all the other stakeholders
5 who have an interest in this legislation. You have our
6 commitment to cooperate fully in the development of
7 amendatory language that satisfactorily addresses these
8 issues and others that were raised here today. And I'll
9 turn it back over to Mr. Swartz for the conclusion.

10 MR. SWARTZ: Drought conditions provide the
11 backdrop for today's hearing on water resource management
12 legislation, heightening everyone's attention to the need
13 for proper management of water resources. But it could
14 just as easily be flooding that, that likewise could bring
15 the importance of this issue to mind.

16 But I think it's important to point out that
17 we, as water resource management professionals, spend most
18 of our time between these 2 extremes on the hydrologic
19 cycle. And it's what's important -- what's important is
20 what we do in the, quote/unquote, normal times by way of
21 planning, conserving, and managing our water resources that
22 pays off when these extremes occur.

23 Passage of water resource management
24 legislation in the Commonwealth provides a much greater
25 assurance that that objective can be met. And let me end

1 on somewhat of a philosophical note by sharing 2 of the
2 guiding principles of our commission:

3 One, that the water resources of the
4 Susquehanna River Basin are finite and that planning,
5 conservation, and management are important and necessary to
6 sustain and protect those resources for the future; and 2,
7 that reasonable utilization and development of the basin's
8 water resources are desirable to enable a healthy and
9 vibrant economy so long as those uses do not degrade the
10 environment or interfere with other water users.

11 Because the administration's proposed water
12 resource legislation furthers those important guiding
13 principles, our commission supports it. And frankly, we
14 feel it's long overdue. Let's not wait until the well runs
15 dry before we learn the hard way that our water resources
16 are finite and must be properly planned for and conserved.

17 Thank you again for the opportunity to present
18 this testimony.

19 CHAIRPERSON HERSHEY: Thank you both for your
20 testimony. And, you know, I think some of us don't, this
21 don't get to our attention till the well or the spring does
22 run dry. In our pasture, for years and years and years,
23 the spring has there, with a 4-inch terra-cotta pipe, been
24 running at half strength for years, probably since the farm
25 was developed in the early 1800s.

1 In November, that spring went dry for the
2 first time. And, you know, we take it for granted. But
3 that gets our attention. And I know more so -- Chairman
4 George said it in mining areas where it's disrupted the
5 water supply. He's had several people run out of water
6 over the years. We didn't experience that because we don't
7 have mining or gas drilling.

8 But I had a question just from observation.
9 The Susquehanna River Basin had water regulations on the
10 books for quite a few years. And in the drought of '99, I
11 think, I got a couple calls from golf courses. And they
12 were starting to be enforced.

13 What kind of cooperation did you receive when,
14 when, when you put these things in place?

15 MR. SWARTZ: Mr. Chairman, I'm happy to say
16 that the deadline that was established for golf courses, I
17 believe it was August 25th of last year through a special
18 program that we created called the Compliance Incentive
19 Program. All of the golf courses in the Pennsylvania
20 portion of our basin met that August 25th deadline, are now
21 deemed to be in compliance.

22 CHAIRPERSON HERSHEY: How many was that?

23 MR. SWARTZ: Well, roughly -- we have 250 golf
24 courses in the basin. Roughly three-quarters of them are
25 in the Pennsylvania portion of the basin. That's not to

1 say, Mr. Chairman, that we have yet completed the review of
2 all the applications that were submitted. We have quite a
3 large pile of applications to process.

4 With respect to the golf courses, what had
5 happened was that historically, golf courses had only
6 watered their tees and greens. And therefore, that amount
7 was less than our regulatory threshold of 20,000 gallons
8 per day. But then beginning roughly in the early '90s,
9 they greatly increased their water use by watering not only
10 their tees and greens but also their fairways.

11 So that an average water use for a golf course
12 in our basin is between 200- and 300,000 gallons per day,
13 which put them over the threshold and therefore required
14 them to submit an application. So the good news is that
15 all the applications have been submitted by the deadline.

16 CHAIRPERSON HERSHEY: Thank you. And now
17 Representative Wansacz.

18 REPRESENTATIVE WANSACZ: Thank you, Tom and
19 Paul. You mentioned that you worked for New York and
20 Maryland. I have just a few questions. One, how do these
21 states that participate in the compact handle their water
22 planning and permitting? Do they just plan, or do they
23 have permits for large withdrawals?

24 And how do these states, on water planning and
25 water permitting, work in conjunction with the Basin

1 Commission's activities? Do they make sure that their
2 activities are coordinated and do not overlap?

3 MR. SWARTZ: I'll take the first crack, and
4 maybe Mr. Beauduy has some additional comments he would
5 like to offer. When you add the New York portion and the
6 Pennsylvania portion of our basin, you're looking at 99
7 percent of the total land area of the basin.

8 Both in New York and in Pennsylvania, the
9 reason that we're exercising our regulatory authority is
10 because those states lack the authority to regulate ground
11 water and surface water withdrawals other than public water
12 suppliers. So the reason we're exercising the regulation
13 is because in those states, there is, the laws do not exist
14 for the states themselves to exercise those authorities.

15 With respect to planning, we work with our
16 jurisdictions very closely on particular planning
17 activities. For the Commonwealth, for instance, we're
18 working on everything from source water assessments to
19 assessment of unassessed streams.

20 I have to say that our relationship in that
21 regard in planning, I think, is closer with Pennsylvania
22 than it is with either New York or with Maryland. So I
23 think we have room for improvement, you know, in doing a
24 better job of joint planning efforts with our other member
25 jurisdictions other than Pennsylvania.

1 MR. BEAUDUY: I would add that Maryland only
2 has one percent of the basin, but Maryland does have a
3 water allocation permitting program in that state. And
4 so we coordinate very closely. In fact, even in the
5 Commonwealth, any time we take action -- our commission,
6 for example, meets on a bimonthly basis.

7 We meet tomorrow. We'll be taking action on
8 14 water projects in the basin, and most of those are in
9 Pennsylvania. We coordinate with DEP. We submit our
10 proposed docket decisions on all those withdrawals to the
11 Department and ask their technical staffs to review our
12 suggestions, the conditions that we contain in those
13 dockets, et cetera.

14 So we do coordinate from the standpoint of our
15 regulatory authority. And there are instances where they
16 do overlap. For example, there are certain -- we have an
17 MOU with the -- memorandum of understanding -- with DEP
18 where we coordinate on drinking water approvals, on water
19 approvals related to mining and the like.

20 Where the state -- where any of our member
21 jurisdictions, whether it's Pennsylvania, New York, or
22 Maryland, exercise authority, we coordinate. We don't want
23 to duplicate. And we accept -- we have a procedure,
24 particularly with DEP under that MOU, where we will
25 recognize their approvals on the surface, on the surface

1 water withdrawals for drinking water supplies as being
2 consistent with our regulatory program.

3 REPRESENTATIVE WANSACZ: Thank you. One final
4 question, though. If there wasn't a basin commission which
5 has both the planning and permitting power, who would
6 decide who gets the available water?

7 MR. SWARTZ: The courts. Essentially, if it
8 were not for the commissions in the Delaware and the
9 Susquehanna, if there were water disputes that arose, the
10 only recourse that folks would have would be to, to use the
11 courts to determine who ends up with how much water.

12 For that reason, we think that the role that
13 our commissions play is a very important one in avoiding
14 those types of costly and lengthy proceedings which
15 generally are unsatisfactory in the end in any case.

16 MR. BEAUDUY: Let me just add that we, we tend
17 to not like to think of our decisions as making the
18 decisions about who gets the water. Rather, what we do is
19 for anyone who's proposing to withdraw water, either from
20 surface or groundwater, use it consumptively, we evaluate
21 that request to determine whether it has the potential to
22 impact existing users or the environment and make a
23 determination based on that type of threshold.

24 We don't try to play Solomon with water. We
25 simply evaluate each proposal to withdraw water and its

1 potential impact.

2 REPRESENTATIVE WANSACZ: No further questions.

3 CHAIRPERSON HERSHEY: Representative
4 Levdansky, do you have any questions for this panel?

5 REPRESENTATIVE LEVDANSKY: No.

6 CHAIRPERSON HERSHEY: Representative Rubley.

7 REPRESENTATIVE RUBLEY: Thank you, Mr.

8 Chairman. Mr. Beauduy, in your remarks on page 7, you made
9 the statement that you support the concept of regional
10 water, regional water resource planning but don't see the
11 reason to tie it directly to the critical water planning
12 area process. Could you expand upon that?

13 MR. BEAUDUY: I'd be happy to. Under the
14 legislation, local watershed planning only occurs if there
15 is a designation that the area is in a critical water
16 shortage situation. We don't think regional water planning
17 needs to wait until you get into a critical situation and
18 would promote even regional watershed-based planning
19 without a critical situation.

20 REPRESENTATIVE RUBLEY: So your assumption is
21 that the planning will have taken place ahead of time and
22 that you're not going to wait until the 11th hour?

23 MR. BEAUDUY: Yes. The provision in this
24 bill, which necessitates a designation of a critical water
25 planning area before you go to integrated water resource

1 planning, suggests that that planning is reactive to a
2 stress condition. And we believe that you can undertake
3 planning progressively and avoid those situations from
4 occurring.

5 REPRESENTATIVE RUBLEY: Thank you.

6 CHAIRPERSON HERSHEY: Representative Miller.

7 REPRESENTATIVE MILLER: Mr. Swartz, on page 3
8 of your testimony, the first full paragraph, you refer to
9 unaccounted-for water use in their systems. And I'm
10 unclear to what unaccounted water use would be.

11 MR. SWARTZ: That's essentially water that is
12 lost between the point of taking and the point of
13 distribution. New York City, as an example, loses fully
14 half of the water through leakage of pipes from the time of
15 the point of take-in till the point of distribution.

16 So our standard is that that amount has to be
17 reduced to less than 20 percent by public water suppliers.

18 REPRESENTATIVE MILLER: And that water through
19 leaking pipes is consumptive use?

20 MR. SWARTZ: No, that would not be a
21 consumptive use.

22 REPRESENTATIVE MILLER: So why -- if it's
23 going back into the recharge, do we really care?

24 MR. SWARTZ: Well, for one, it is an expense
25 both to the water purveyor and essentially to the end user.

1 To the extent that it is recharging the aquifer, I guess
2 you could say it's a good thing. But it's an inefficient
3 use of water; and therefore, we feel it's something that
4 would in fact be a wastage and falls under our water
5 conservation requirements.

6 It's a pretty consistent standard type of
7 requirement. I think you'll find a similar requirement
8 placed in the Delaware River Basin and in other areas.

9 MR. BEAUDUY: Let me just add that oftentimes
10 when those withdrawals occur, particularly, say, a surface
11 water withdrawal by a public water supplier, that water is
12 transported some distance away and perhaps even out of that
13 localized watershed.

14 What you have is a situation, say, for New
15 York or a city similar to New York or even one that's only
16 losing 40 percent, that is water that's being taken out of
17 that stream. And during low flow conditions, that's just
18 an additional stress.

19 And if that system could meet a performance
20 standard of 20 percent total loss, that just means that
21 there's that much more water available in the stream.

22 REPRESENTATIVE MILLER: Okay. Thank you.

23 CHAIRPERSON HERSHEY: Thank you,
24 Representative Miller. Chris, do you have any comments?

25 REPRESENTATIVE ROSS: No.

1 CHAIRPERSON HERSHEY: Thank you. I think that
2 concludes our testimony, questions. Thank you very much
3 for coming.

4 MR. BEAUDUY: Thank you.

5 MR. SWARTZ: Thank you.

6 CHAIRPERSON HERSHEY: Look forward to working
7 with you.

8 MR. SWARTZ: Likewise.

9 CHAIRPERSON HERSHEY: And now we'll have a
10 panel of the conservation districts, various agriculture
11 interests. So when the panels come forward, I'd ask them
12 to start by introducing themselves whenever you're ready.
13 Make sure your mikes are on when you introduce yourselves.
14 And then when you're through with your introductions, you
15 may proceed when you're ready.

16 MS. FOX: Susan Fox, Pennsylvania Association
17 of Conservation Districts.

18 MS. SHAMBAUGH: Brenda Shambaugh, Pennsylvania
19 State Grange.

20 MR. WOLFF: George Wolff, Wolff Associates.

21 MR. ADAMS: Bill Adams, Pennsylvania Farm
22 Bureau.

23 CHAIRPERSON HERSHEY: Thank you for coming.
24 And when you're ready, you may, you may proceed.

25 MS. FOX: Thank you, Chairman Hershey, for the

1 opportunity to speak today. I'd like to talk a bit about
2 the history of PACD involvement in water resources
3 legislation. It begins quite a while ago. Sometime in the
4 1970s, the Department of Environmental Resources formed the
5 Water Resources Policy Advisory Committee, which its
6 members called WRPAC.

7 There were about 20 members on the committee
8 representing groups that had an interest in water
9 resources, including PACD. The committee met a number of
10 times to obtain information on water supply and water
11 quality and provided ample opportunity for the discussion
12 of water policy.

13 At about the same time, the Department of
14 Environmental Resources developed a state water plan for
15 water quality in the Commonwealth in response to the
16 Federal Water Pollutant Control Act. Two concerns remained
17 to be dealt with: Water supply and water supply in
18 emergencies such as drought.

19 Following the WRPAC meetings, the Department
20 of Environmental Resources was instrumental in having a
21 water management bill introduced. This was House Bill 1483
22 introduced in the early 1980s. The bill provided for
23 accumulating much needed information on water resources and
24 provided for planning for emergencies.

25 The bill contained language that many felt

1 would not involve the private sector; and thus, it failed.
2 Recognizing the need for water resources planning so that
3 future demands could be met and emergencies could be dealt
4 with, our organization has been working on water resources
5 legislation since H.B. 1483 failed.

6 In 1985, the PACD brought together a working
7 group representing farming, industry, and conservation
8 interests to continue to draft proposed legislation that
9 would establish a comprehensive planning and analysis
10 program for the water resources of the Commonwealth.

11 The primary purpose was to plan for and
12 develop an adequate supply of water in order to minimize
13 *the effects of recurring periods of drought.* The
14 legislation was introduced as Senate Bill 1525 in 1986.
15 The concept of the legislation was that water resources
16 planning should be done on a regional basis by people
17 knowledgable from the region.

18 The legislation also created a state water
19 resources board which would coordinate the planning and
20 emergency management of water resources by adopting a state
21 plan. Many interests were recognized in this legislation,
22 and a number of industry associations incorporated their
23 views and concerns until a consensus was obtained. The
24 bill went through a number of drafts before it reached its
25 final form.

1 As it turned out, Senate Bill 1525 of 1986 was
2 not passed. The bill has been reintroduced many times
3 since 1986 in the form of Senate Bill 476 of 1987, Senate
4 Bill 835 of 1989, Senate Bill 1054 of 1991, and Senate Bill
5 351 of 1993.

6 Today, these same concepts for water resources
7 legislation that were agreed upon in the past are currently
8 embodied in Senate Bill 998 of 2001. The PACD feels that
9 the concept of a bottom-up approach through regional
10 planning on a watershed basis as described in Senate Bill
11 998 is still the best way to develop a comprehensive state
12 water plan. Attached to this testimony is an analysis of
13 Senate Bill 998 which highlights the major provisions of
14 the bill.

15 Our association represents Pennsylvania's 66
16 conservation districts, and we have approximately 550
17 appointed public officials who serve as conservation
18 district directors and over 470 staff who carry out the
19 day-to-day activities of the districts.

20 Conservation districts were established by Act
21 217 of 1945. And we've been in the business of soil and
22 water conservation for over 57 years. Act 217 provides a
23 role for conservation districts in water resources
24 management and water use, among other things.

25 In Section 9, paragraphs 8 and 9 of Act 217,

1 the Act provides the directors of the districts with the
2 power to assist and advise owners and occupiers of land and
3 county and municipal governments in developing and
4 implementing plans for storm water management, floodplain
5 management, water use, water management, and water
6 pollution control. Conservation districts also have the
7 ability to work together on a multicounty level on projects
8 and issues where a watershed covers more than one county.

9 Conservation districts are uniquely positioned
10 for the role of water management. Each local conservation
11 district is composed of directors with diverse backgrounds
12 representing a variety of farming and local public
13 interests. District directors encompass all walks of life
14 from farmers to engineers, from biologists to school
15 teachers, and from county commissioners to township
16 supervisors.

17 Conservation districts represent grass-roots
18 level involvement in local conservation activities in their
19 communities.

20 MR. ADAMS: Good morning, Mr. Chairman,
21 committee members. My name is Bill Adams. I'm Director of
22 Natural Resources for the Pennsylvania Farm Bureau. Farm
23 Bureau appreciates the opportunity to give the farm
24 perspective on an issue of immense importance for
25 agriculture, water management legislation.

1 As many of you know, my comments today will
2 reflect policy as developed by farmers here in
3 Pennsylvania. What I've done in my testimony is outline 9
4 basic elements or concerns farmers have in regard to any
5 piece of water management legislation. What I'd like to do
6 is walk you through them and then, at the end of our panel,
7 entertain any questions you might have in regard to them.

8 Number 1, water management legislation should
9 help foster the upgrading of the state water plan and
10 information on available water resources. Simply put, the
11 state water plan must be updated. It's my understanding
12 it's been since 1976 since the plan has been amended.

13 Two, agriculture should be given priority in
14 water use in emergency water situations. I don't think I
15 have to lecture this committee on the importance of water
16 to agriculture. Unlike many industries, water
17 conservation, water restriction measures could prove
18 catastrophic to agriculture here in Pennsylvania.

19 Number 3, the legislation should prohibit
20 local governmental regulation over water use. Clearly
21 coordinated water use planning cannot be accomplished
22 through action of individual municipalities. Water does
23 not flow at the township borders.

24 Many water users are dependent on water
25 sources that originate in other townships. In order to

1 prevent a proliferation of local ordinances and regulatory
2 confusion, Farm Bureau would suggest provisions to be
3 included in water planning legislation that would prohibit
4 local regulation of water use from occurring.

5 Four, the legislation should provide for
6 reasonable registration and reporting requirements.

7 Pennsylvania Farm Bureau supports water use registration.
8 It is a method to document historical water use. It can be
9 a valuable tool to help solve possibly water use conflicts
10 in an area.

11 I think the concern we have is the attaching
12 of water use fees or increased reporting requirements,
13 paperwork involved. As one person said, paperwork happens.
14 We're concerned that a water use registration program will
15 turn into a paperwork nightmare for many farmers.

16 The Susquehanna River Basin Commission has a
17 water registration program in place right now. It is a
18 user-friendly registration program consisting of roughly 3
19 pages. We would ask you to look at that particular
20 registration program.

21 Number 5, the legislation should establish
22 regional boards as the key agencies in water planning.
23 Water management planning should be based in the regional
24 board approach. Regional water boards should have the sole
25 authority to write water plans for all areas in a

1 designated region with approval by an independent state
2 water board.

3 Six, the primary purpose of any planning to be
4 conducted should be satisfying human water use needs. The
5 legislation should ensure the primary focus of attention
6 for the development and implementation of water planning is
7 the availability for human consumption rather than the
8 complex -- and I might say very complex -- issue of general
9 protection for the environment.

10 Water planning should recognize and give water
11 conservation credits for farmlands. The legislation should
12 ensure that water use conservation credits are recognized
13 and provided to owners of agricultural lands that are
14 consistent with recharge of water resources that these
15 lands provide.

16 Eight, agriculture should have substantial
17 representation on any water planning boards that might be
18 developed. Nine, the legislation should attempt to
19 recognize the administration of water planning that river
20 basin commissions have already performed and should
21 coordinate and specifically delineate the roles that river
22 basin commissions and regional or state water boards will
23 each play.

24 As I said, I would be more than willing at the
25 end of this panel to answer any questions you might have on

1 my statements.

2 MS. SHAMBAUGH: Good morning. I'm Brenda
3 Shambaugh. I'm the legislative director for the
4 Pennsylvania State Grange. The Grange represents about
5 25,000 rural Pennsylvanians in 66 counties. And I too
6 would like to thank you for the opportunity to testify
7 today on House Bill 2230.

8 As many of you know, the Grange is extremely
9 interested in the passage of comprehensive water quantity,
10 legislation. We believe that all Pennsylvania citizens
11 will benefit from a statewide water plan mapping out a more
12 efficient utilization of existing water supplies.

13 As the panelists eloquently stated before me,
14 many groups have been meeting for a number of years to
15 promote a water quantity bill. Ms. Fox gave you the
16 history of that process, and Mr. Adams gave you a synopsis
17 of what we believe should be incorporated into the
18 legislation.

19 My task, therefore, is to describe issues that
20 we strongly believe should not be within the realm of this
21 legislation, whether it be House Bill 2230 or any other
22 vehicle. Most importantly, I need to convey to you that we
23 cannot have a strong water program succeed if permits are
24 required for water use.

25 Permits will deter water users from

1 registering their water usage. Permits and permit fees,
2 therefore, will discourage rather than encourage
3 participation in the program. We all agree that any
4 comprehensive water legislation depends largely on
5 participation and acceptance. We firmly believe that
6 permits will hinder the merits of the bill.

7 The Grange strongly believes that there should
8 not be regulation and/or administration fees. We recommend
9 an amendment specifically prohibiting such fees. If the
10 intent of this legislation is to register all large water
11 users, then we cannot charge fees.

12 Charging fees is an incentive not to register.
13 Many average farmers who do not have large operations will
14 be above the 10,000 gallon threshold. These individuals
15 cannot afford to pay fees to the state to register their
16 water usage. It would be counterproductive to the
17 legislation's purpose.

18 The Grange and other agricultural groups work
19 closely with the river basins. The Susquehanna River Basin
20 has an agricultural advisory committee to discuss many
21 water issues. We would hope that any statewide water
22 legislation would not duplicate the paperwork of these
23 commissions.

24 Obviously, our intent here is not to re-invent
25 the wheel. We need to glean and use any information

1 available from these commissions. For instance, the
2 Susquehanna River Basin Commission already requires large
3 water users in their jurisdiction to report water use. The
4 state could easily use those report forms to satisfy
5 reporting requirements.

6 Why make the farmer complete 2 forms with the
7 same information? By making the reporting process as
8 simple as possible, participation will increase. The state
9 should also look at what the commissions have deemed
10 necessary to report. We certainly do not want to mandate
11 burdensome reporting requirements with information that
12 will never be used.

13 We were pleased to see that there is not a
14 water well section in House Bill 2230. The Grange agrees
15 with the prime sponsor that water well legislation should
16 be a separate initiative and needs to be addressed as such.
17 Likewise, the metering of wells should not be required in
18 this legislation. If well metering is to be discussed at
19 the state level, it should not be done in this venue.

20 Mr. Adams addressed water plans being based on
21 uses that satisfy human needs. Expanding on that, I must
22 stress that water plans should not include nonhuman needs.
23 This legislation should not be a vehicle for those with
24 ulterior motives. We have to make that distinction when
25 crafting the water quantity legislation.

1 Finally, the Grange cautions the committee
2 about giving too much authority to local watershed groups
3 when preparing plans for any watershed in a critical
4 planning area. We believe that the conservation districts
5 should serve as the technical expertise when formulating
6 those plans. The districts have the knowledge and have
7 been assisting farmers for years. They should continue
8 writing those water plans.

9 The Grange thanks you for the opportunity to
10 address these concerns. We applaud your efforts to create
11 a comprehensive water bill that will benefit all
12 Commonwealth citizens. In light of the drought conditions
13 we have experienced in the past few years and our current
14 water crisis, we believe that it is vital for us to become
15 proactive in the passage of a statewide water plan.

16 We will be happy to answer any questions you
17 have when we're finished with the panel.

18 MR. WOLFF: Good morning, ladies and
19 gentlemen. I'm George Wolff. As someone who's had a
20 farming background, I've always had a deep interest in
21 water issues and would like to share with you some of my
22 thoughts today.

23 Incidentally, a few weeks ago, somebody said to
24 me, George, why do you have such an intense feeling about
25 water; and how long have you had it? And I didn't have to

1 think very hard about that because the week between
2 Christmas and New Year in 1947, we had an ice storm that
3 took every electric line and every telephone line down.

4 We were out of electricity for almost a month.
5 And we had 200 steers in the barn, which we had to jury-rig
6 a gas pump to get water to them. I can tell you without
7 any equivocation, we, one, developed a deep respect for
8 ready kilowatt because when he wasn't there, you learned
9 how important he was. But secondly, without any
10 equivocation, we know that a cow will drink twice as much
11 water when you carry it.

12 You've heard from Susan Fox some of the, some
13 of the history of the group and the members attenuated to
14 it. I was president of the Pennsylvania Association of
15 Conservation District Directors when the water group first
16 began deliberating on the subject.

17 We're not attempting to be impertinent by
18 looking at the language that's in Senate Bill 998 rather
19 than House Bill 2230. Both of them address the same
20 subject. And since we've had 15 or more years involved
21 with the essentials in the language that's in Senate Bill
22 998, we wanted to continue to refine that language.

23 Over the years, the water table has been
24 dropping. Some years not much, and other years
25 significantly. I believe that the drop in the water table

1 is one of the reasons that we have headed to so many
2 drought emergencies.

3 When the water table drops, the underground
4 hydraulic load allows springs to go dry; and therefore,
5 little streams go dry. And overall, the water level of our
6 rivers drops. Conservation districts and our agriculture
7 members have tried to, to put in place practices that
8 enhance groundwater recharge. But there are many other
9 steps that should be considered.

10 Our group has been working with the
11 Pennsylvania Chamber of Business and Industry and their
12 professionals on water issues. And while we differ to some
13 extent, our joint meetings have been making both groups
14 aware of each other's concerns and desires.

15 I believe that members at both of those tables
16 agree that, 1, we desperately need to update our state
17 water plan; 2, we need to develop programs to implement the
18 updated plan. We've always envisioned this process to be a
19 2-step program because until you can determine how much
20 water you have and where you have it, it's virtually
21 impossible to discuss the other issues; and it would be
22 fruitless to do that.

23 Three, we need to develop ways to conserve
24 water not only at the spigot but also at the point where it
25 trickles back into the water table. And ladies and

1 gentlemen, we have great opportunities ahead of us. If you
2 look at the storm water management facilities that are out
3 there, they have been, they have been put in place to slow
4 down the storm water release.

5 My feeling is they ought to be turned around
6 backwards. And at the back portion of those things, dig a
7 big hole and put stone in it so that you can get
8 groundwater intrusion from it and hold it there rather, and
9 keep it in the ground rather than to discharge it.

10 We need to keep SRBC and DRBC, who have done a
11 wonderful job of working on water issues, whether drought
12 or flood-related, closely involved. They should have an
13 important presence on the regional water boards as well as
14 the state water board so that their records and
15 intellectual experience can be kept intact and used.

16 Five, we need to support the tremendous
17 intellectual effort that you members of the House committee
18 have contributed with the establishment of the water well
19 legislation which passed and is now in the Senate. The
20 records that will be collected as a result of that
21 legislation on geology, water levels, water availability
22 are very important as we move ahead into coming years.

23 Those records will supplement the historic
24 records that we have from the monitoring wells that USGS
25 has established over the years and really are the benchmark

1 of how you move ahead.

2 Thanks again for allowing us all to be here.
3 We look forward to working with you not only today but in
4 the future to arrive at successful passage of legislation.

5 CHAIRPERSON HERSHEY: Thank you very much for
6 the 4 members coming. Just to -- I have a comment on what
7 Mr. Wolff said. Where I grew up, we had an electric pump
8 hooked to the pump handle, a pitman rod. And when the
9 electric went off, the buoy supplied the horsepower to run
10 the pump.

11 But yeah, they do drink more when the
12 electricity goes off. I enjoyed working with all you
13 groups over the years in my farming career and appreciate
14 your testimony, a lot of good testimony. And we want to
15 keep that important because agriculture provides the food
16 and fiber that we all need to sustain life.

17 Parks, farmland, which we call open space, and
18 forestry is the only way we recharge the groundwater. And
19 the soil conservation district I give a lot of credit for
20 being over 50 years old in Pennsylvania, done a lot of
21 great things. And too often times maybe we don't highlight
22 what they do.

23 But I know in my farming career, the farm was
24 contoured probably 15 or 20 years before my wife and I
25 purchased it. And we see the benefit of that early

1 planning 50 years later. And I'm going to open it up now
2 for questions. Representative Ross.

3 REPRESENTATIVE ROSS: Thank you very much. I
4 appreciated all 4 of your testimony. I think you've raised
5 some very good points. I would like to remind you all,
6 unfortunately, that we don't get to adopt principle
7 statements and we don't get to adopt things that we don't
8 want in bills. We have to actually take a piece of
9 legislation and vote on it.

10 And I also share, or understand your sense of
11 frustration that you've been working on another bill for a
12 long time and you wish that that bill was the one that's
13 before the committee; but it isn't right now. So I'm going
14 to be a little mean.

15 I'm going to hold each of your feet to the
16 fire right now. And I'm going to ask you -- and you don't
17 have to answer if you don't want to. If you want to think
18 about this and supply us with the information. But
19 remember that what we're going to wind up having to do here
20 is decide whether to modify this bill in some way -- and if
21 there are some ways that you want it modified, be as
22 specific as possible -- and to decide whether to vote up or
23 down on it.

24 And so if you wouldn't mind, I'd like each of
25 you to tell me whether you're recommending, based on your

1 sense of your organizations that you're representing here,
2 whether you'd like to see us modify this bill; and if so,
3 in what way specifically, and whether you generally are in
4 favor of passage or wish that we would vote it down. Thank
5 you.

6 MR. WOLFF: I guess, I guess I'd take that
7 question. We feel strongly that we do need to have
8 legislation passed. And yes, we did talk in principles.
9 But my feeling was, or all of our feelings were that today
10 you needed to know where the various groups were. And
11 we've all pledged our support to work with you on details
12 as you get into doing that.

13 When you look at whether we talk about the
14 Senate Bill as we did or this one, the concepts are the
15 same. And it's not up to us to decide which one or any is
16 going to move. Once one of them begins to move, then we'll
17 begin to work with you to put the language it needs to be
18 in place there.

19 REPRESENTATIVE ROSS: I think this one's
20 starting to move. So I'd encourage you to share specific
21 changes as quickly as possible. So do any of the other
22 members have anything more to add to that?

23 MS. SHAMBAUGH: I think I can add one other
24 comment. If this bill starts to move, rest assured that we
25 will have specific amendments to address this specific

1 bill. There's no question about that. I don't have them
2 at the moment, but I'm sure collectively we can provide
3 them in short order.

4 REPRESENTATIVE ROSS: Well, I'm sure the
5 Secretary and I know the Chairman are not casual people.
6 And we put a fair amount of energy into putting this
7 hearing together. So I'd encourage you to do that now.

8 CHAIRPERSON HERSHEY: Representative Miller.

9 REPRESENTATIVE MILLER: Just one brief
10 question. I'm trying to remember who said it. I believe
11 Mrs. Shambaugh. You had said that water well metering
12 should not be required by this legislation. How do we know
13 what the usage is if we don't require metering?

14 MS. SHAMBAUGH: Through the registration
15 process.

16 REPRESENTATIVE MILLER: But how will a person
17 tell me what their usage was if they don't meter their
18 usage?

19 MS. SHAMBAUGH: What I think I was getting at
20 is not that we shouldn't have a registration process over
21 the 10,000 gallons per 30-day average. What I think I was
22 getting at is that the water, the water well bill that
23 passed the House and is over in the Senate should deal with
24 the water well issues.

25 REPRESENTATIVE MILLER: But I'm not sure that

1 that has a metering requirement in it. And to gather data
2 for the groundwater or for the water inventory, surely
3 we're going to have to have some monitoring data, some
4 metering data to know what the usages are. I'm just a
5 little confused by that statement.

6 MR. WOLFF: Representative Miller, I think
7 that the, there are a number of ways to arrive at the same
8 thing, whether you had to meter. Some of them are
9 accurate; some of them aren't all that accurate. One of
10 the things that is accurate is how much water can go
11 through a certain size pipe.

12 And you -- if you keep track of the pump hours
13 and you begin to put those portions of the equation
14 together, you come out just about exactly where you would
15 if you had to have the big expense up front to put a meter
16 in and then read it and keep it calibrated.

17 REPRESENTATIVE MILLER: I understand. Okay.
18 Thank you.

19 CHAIRPERSON HERSHEY: Representative Rubley?

20 REPRESENTATIVE RUBLEY: No questions.

21 CHAIRPERSON HERSHEY: No questions.

22 Representative Stern.

23 REPRESENTATIVE STERN: I guess this would be
24 directed to you, Mr. Adams, with the Farm Bureau. Do you
25 feel that, do you feel that this legislation, House Bill

1 2230, gives agriculture the proper priority as far as water
2 use decisions?

3 Do you feel that agriculture is taken care of
4 in this specific, the bill before us today, not the Senate
5 bill that was in reference early, earlier but today's bill
6 that we're looking at? Do you feel that agriculture is
7 given a priority in this specific legislation as far as
8 water use decisions?

9 MR. ADAMS: Let me give you 2 examples where
10 we have some concern. This piece of legislation would
11 create a statewide water advisory committee composed of 25
12 individuals. Agriculture only has 2 representatives on
13 that particular advisory committee.

14 The bill would call for integrated water
15 resources plans for critical water planning areas, and the
16 Department would be allowed to choose an entity to develop
17 that plan. We have some concern over what that entity
18 would be.

19 That entity also is allowed to develop an
20 advisory committee to help them. And that entity, that
21 advisory committee is dominated by municipal
22 representatives. Those would be some of our, our concerns.

23 REPRESENTATIVE STERN: Okay. You were talking
24 previously about the statewide board. Are you proposing or
25 are you looking at regional boards that would be created

1 rather than a statewide board?

2 MR. ADAMS: Our policy would call for the
3 creation of regional boards who would develop plans and
4 then these plans would be sent to an independent state
5 board for approval.

6 REPRESENTATIVE STERN: Would that be based
7 upon the regional districts and DEP? Or how would you
8 define regional under your proposal?

9 MR. ADAMS: Well, you would look at the
10 various river basins. And I know there are various pieces
11 of legislation out there, and they divide the river basins
12 into these regions and such like that.

13 REPRESENTATIVE STERN: Do you believe that
14 there's a recognition in here of the previous work that
15 have been done by the river basin commissions and that
16 there is a clear distinction between what their authority
17 would be and what the authority at the state level would
18 be?

19 MR. ADAMS: I believe in the various pieces of
20 legislation, there is references to the river basin
21 commissions and a call for some sort of coordination of
22 efforts. We believe that should be embellished a bit to
23 avoid duplication of paperwork and duplication of reporting
24 requirements and such.

25 REPRESENTATIVE STERN: How about reporting

1 requirements, do you feel that currently, as the bill is
2 written, that there is sufficient reporting requirements;
3 or do you feel that the reporting requirements would be
4 burdensome?

5 MR. ADAMS: I think we have some concern about
6 the mentioning of metering in the legislation. There are
7 roughly 40,000 farms in Pennsylvania. To require every
8 farm to have a water meter would compel me to go buy stock
9 in water metering companies.

10 REPRESENTATIVE STERN: One final question.
11 Currently, users of 10,000 gallons per day or more have to
12 register already with the river basin commissions, correct?

13 MR. ADAMS: Yes.

14 REPRESENTATIVE STERN: Under this legislation,
15 there would be a duplication of efforts, if I'm looking at
16 the language properly, that the farmer -- say a farmer
17 would have a large operation -- would have to repeat that
18 effort again with whatever entity that the state would set
19 up; is that correct?

20 MR. ADAMS: We would see that. It's our hope,
21 through amendatory language, that there would be no
22 duplication; there would be some recognition of what the
23 commissions have done so far to avoid all this paperwork.

24 REPRESENTATIVE STERN: Instead of repeating
25 excess paperwork --

1 MR. ADAMS: Yes.

2 REPRESENTATIVE STERN: -- and duplication of
3 efforts, correct?

4 MR. ADAMS: Yes.

5 REPRESENTATIVE STERN: Okay. Thank you, Mr.
6 Chairman.

7 CHAIRPERSON HERSHEY: You're welcome.
8 Representative Levdansky.

9 REPRESENTATIVE LEVDANSKY: Thank you, Mr.
10 Chairman. I have one question for Ms. Shambaugh and then
11 one for Mr. Adams. Ms. Shambaugh, you mentioned in your
12 testimony, you say, "I need to convey to you that we cannot
13 have a strong water program if permits are required for
14 water use. Permits will deter water users from registering
15 their water usage. Permits and fees, therefore, will
16 discourage rather than encourage participation into the
17 program."

18 And then you also go on to state your
19 opposition to any, any sort of fees associated with
20 implementation of plans. I'm just wondering, I mean, how
21 do we pay for the program then if we don't put some sort of
22 user fee or permit fee? Okay? Where do we go then?

23 And I only point to the fact that, you know,
24 right now there are various businesses and industries in
25 the state that discharge different materials into the air

1 and the water. Okay? And they're required to get permits
2 to discharge into the air and the water, and they have to
3 pay fees to the departments.

4 And those fees typically reflect the cost of
5 implementing the air or the water pollution laws in the
6 Commonwealth. I mean, if we don't put a fee on users, on
7 all users, where do we come up with the money to fund the
8 implementation and administration of the program?

9 MS. SHAMBAUGH: That is a problem. There's no
10 question about the fact that if you put together a program,
11 you've got to pay for it. I guess my members are looking
12 at it. And when they looked at the policy issues, they
13 feel as if they're getting feed to death.

14 And so they're looking at the possibility of
15 yet another fee on a very small operation because really
16 and truly, 10,000 gallons on a farm operation is not that
17 large a farm. And so I guess I would have to look back at
18 you and say perhaps we have to look at some kind of state
19 funding to put together the program.

20 REPRESENTATIVE LEVDANSKY: I mean, I only
21 point that out because, I mean, if we do a fee, everybody
22 would be subject to it, not just -- and I understand the
23 importance of farming and agriculture to the state's
24 economy. It's the number one industry in the Commonwealth.

25 But, you know, if we give an exception to

1 farming and agriculture, do we give an exception to the
2 electric generation industry in the state or do we give it
3 to the chemical industry? Or, you know, the steel industry
4 is having really hard times, too. Do we give an exemption
5 to them?

6 You know, everybody can plead their case for
7 not being subject to any registration fees or user fees.

8 MR. ADAMS: If I could make a comment.

9 REPRESENTATIVE LEVDANSKY: Yeah.

10 MR. ADAMS: If it were an ideal world, farmers
11 could pass these fees on to the consumer. I mean, some
12 pieces of legislation have introduced, have suggested a
13 \$500 registration fee. Which maybe to many in this room,
14 \$500 is a drop in a bucket. But for some farmers out
15 there, that's serious money.

16 If we had a system right now where these fees
17 could be passed on. An example would be the automobile
18 industry, safety measures. Do those companies consume the
19 cost of various safety measures? No, they pass it on to
20 the consumers.

21 REPRESENTATIVE LEVDANSKY: Just depends on
22 what the industry and the level of competition. In a
23 perfect marketplace, you can't pass increased costs on in a
24 perfect marketplace, okay, because of the forces of
25 competition. In other oligopolistic industries, you know,

1 maybe they can, to some extent, pass costs on.

2 All I'm saying is if we start this business of
3 giving an exception to one business or industry, you know,
4 based on they plead a good case, then where do we stop, you
5 know?

6 MR. ADAMS: Well, my response obviously is
7 going to disagree with you that Farm Bureau has and will
8 continue to oppose fees for agriculture.

9 REPRESENTATIVE LEVDANSKY: Okay. And just let
10 me pose a question to you then. You have, like, 9 points
11 in your testimony. I think I agree with 8 of them. And
12 one in particular, you talk about water planning should
13 recognize and give water conservation credits to farmlands.

14 And I agree with that, okay, because without
15 agricultural land and open green space, we wouldn't be able
16 to recharge our aquifers, our groundwater, our wells, and
17 our surface waters as well. So that's really important.
18 But then, you know -- and you talk about giving agriculture
19 a preference in any allocation system that eventually down
20 the line is probably going to need to be developed.

21 You talk about giving agriculture special
22 consideration, and I agree with that. Okay? And I agree
23 with that. But then again, you strongly recommend that no
24 fees be imposed upon water users, you know, who may neither
25 register in the administration costs and whatnot, you know.

1 So we're going to give you credits, and we're
2 going to give you allocation preference, and we're going to
3 use state dollars to give you drought relief a couple years
4 ago. Remember, we spent \$90 million in a drop aid program
5 for farmers? Okay? And we have Clean and Green that gives
6 you lower assessment on your properties. And I won't even
7 get into the federal farm programs to --

8 MR. ADAMS: Thank you very much for that.

9 REPRESENTATIVE LEVDANSKY: All I'm saying is
10 we give, give, the public gives, gives, gives, gives to
11 agribusiness. And we ask you to be part of a registration
12 and fee system, and you don't want to be part of it. It
13 seems like to me you want the benefits but you don't want
14 to pony up any of the costs.

15 MR. ADAMS: I would argue that agriculture is
16 one of this country's greatest resource. And I would argue
17 that the American public are willing to give for a steady,
18 healthy food supply.

19 REPRESENTATIVE LEVDANSKY: And in my area, the
20 steel industry is no less important to the infrastructure
21 needs of this nation and to preservation of democracy.
22 Okay? But I don't want -- you know, if we're going to put
23 a fee system in, I'm not going to go try to carve out a
24 special exception to the steel industry in my district.

25 If we're going to have a fee and registration

1 system, it's going to be for everybody.

2 MR. ADAMS: I'm sensing this is the one area
3 we disagree upon.

4 REPRESENTATIVE LEVDANSKY: Yeah. But just
5 don't forget --

6 MR. ADAMS: Eight out of 9 isn't bad.

7 REPRESENTATIVE LEVDANSKY: Just don't forget
8 that we give you a lot. Okay? The citizens of this
9 Commonwealth have provided a lot of tax benefits and
10 programs to aid agribusiness in the state. And I support
11 that. Okay? But just understand that, you know, there
12 comes responsibility on both sides of the coin. Thank you.

13 CHAIRPERSON HERSHEY: Representative
14 Levdansky, you weren't here for Mr. Hess's testimony. But
15 he stated there would be no fees involved here for these
16 groups. Now, a little history on farming. I'm not going
17 to get into too long. Farmers buy retail and sell
18 wholesale and pay the freight both ways.

19 And our federal government is committed to a
20 cheap food supply. We don't have the subsidies that
21 European farmers have. But in a drought, when they have
22 spent thousands and thousands of dollars to put a crop in
23 the ground and nothing grew, we're going to lose farmers
24 faster than development.

25 So I understand some of your concerns. But

1 it's a little broader than what is seen to be presented
2 here. But Mr. Hess did say there was no fees involved.

3 REPRESENTATIVE LEVDANSKY: That's his view on
4 it, Mr. Chairman. Okay? And this bill will be considered
5 by the committee, and it will be amended in this committee.
6 Okay? I mean, we got to make a decision. And a public
7 policy decision at some point in time is whether the
8 Commonwealth taxpayers are going to pay for this program
9 that the bill calls for or whether the users of water are
10 going to use it. Okay?

11 I mean, that's a decision that we're going to
12 get to make on this committee and on the floor of the
13 House.

14 CHAIRPERSON HERSHEY: Thank you. Now
15 Representative Wansacz.

16 REPRESENTATIVE WANSACZ: Thank you. Thank
17 you, Mr. Chairman. The question that I have is kind of a
18 follow-up to Representative Stern's, Stern's questions.
19 You talked about not duplicating any paperwork for these
20 commissions.

21 And you talked about -- I'm sorry. Brenda did
22 in her testimony -- about not mandating any burdensome
23 reporting requirements with the information that will be
24 used. If you can supply this committee -- again, along the
25 lines of what Representative Ross talked about -- some

1 specifics that you disagree with that you believe are going
2 to have mandates that are covering up, I think it will be
3 beneficial for this committee to have that in writing
4 concerning, concerning those groups.

5 MS. SHAMBAUGH: Absolutely.

6 CHAIRPERSON HERSHEY: Any other questions?

7 (No response.) Now I have an announcement to make. Thank
8 you, panel, for your presentation. We have -- we're going
9 to take a short lunch break, probably 15 minutes. I think
10 everyone would need a break.

11 We provided lunch for members, staff,
12 testifiers, and people that came with the testifiers. I'm
13 sorry I couldn't feed everybody. But we do have, we do
14 have a good setup here. And again, I say members, staff,
15 testifiers, and people that came with the testifiers and
16 support groups. Thank you very much.

17 (A lunch recess was taken from 12:19 p.m.
18 until 12:50 p.m.)

19 CHAIRPERSON HERSHEY: I would ask the members
20 at this time to return to their respective chairs. And one
21 thing I wanted to mention now, since staff and testifiers
22 have eaten and members, we're going to let other people
23 partake as long as there's food there.

24 So I don't like to throw food out. And we
25 know what happens when you have brought a bunch in that's

1 not used. So anybody that didn't have some, now they're
2 free to go help themselves because the people that we
3 provided it for I think have eaten. So the rest are
4 welcome. Thank you. And it's time to begin. The Electric
5 Power Association. And would you please introduce yourself
6 and begin?

7 MR. BIDEN: Thank you. Chairman Hershey,
8 distinguished members of the Environmental Resources and
9 Energy Committee. Good afternoon. My name is Doug Biden.
10 I'm president of the Electric Power Generation Association.
11 EPGA is a regional trade association of electric generating
12 companies with headquarters in Harrisburg.

13 Our member companies include Allegheny Energy
14 Supply, Exelon Generation, FirstEnergy Generation, Midwest
15 Generation, Orion Power MidWest, PPL Generation, and
16 Reliant Energy. These companies own and operate more than
17 108,000 megawatts of electric generating capacity in the
18 United States.

19 Approximately half of this capacity is located
20 in the Mid-Atlantic region, one-third of it in the
21 Commonwealth of Pennsylvania. In addition, EPGA members
22 have another 7,000 megawatts under construction or in
23 advance stages of planning and development to meet the
24 regional demand for power.

25 The adequacy, reliability, and affordability

1 of electric power supply depend to a significant degree on
2 the availability of water. Accordingly, EPGA members have
3 a compelling interest in adequate and dependable water
4 supply. As a representative of the Commonwealth's major
5 water users, we appreciate the opportunity to present our
6 views on water resources management and specifically House
7 Bill 2230.

8 Water is used in the production of electricity
9 in many ways. It is used directly as a prime mover to
10 drive the turbines of hydroelectric facilities. It is used
11 for condensing steam at fossil-fueled and nuclear plants.
12 And of course, water is required to make the steam itself
13 to run the turbines at all steam electric plants.

14 It is also used at almost every generating
15 facility for cooling of lubricating oils and other process
16 uses, including injection into some generating units for
17 control of nitrogen oxide emissions. Clearly, water is an
18 essential component in the generation of electricity.

19 In fact, water is so important to electricity
20 production that EPGA's member companies have been
21 instrumental in developing water storage reservoirs. Our
22 members contribute tens of millions of dollars each year to
23 operate and maintain these reservoirs to assure storage is
24 available to augment low stream flows during periods of
25 drought. To a significant degree, our members are already

1 very much engaged in water resource planning.

2 EPGA commends the Pennsylvania Department of
3 Environmental Protection for conducting the public water
4 resource forums last year which opened the dialogue and
5 provided the foundation for House Bill 2230.

6 On balance, we believe that House Bill 2230
7 represents a good-faith effort by the Department to capture
8 the consensus of those forums. We appreciate that this
9 legislation takes a careful planning approach rather than a
10 regulatory approach at this stage to water resources
11 management.

12 It also makes a creative attempt, in our view,
13 to satisfy the concerns of those interests desiring a
14 regional approach to planning versus those seeking a more
15 fragmented approach.

16 EPGA supports most of the provisions of House
17 Bill 2230. Specifically, we support the much needed update
18 of the state water plan; the provisions for public notice
19 and comment, conservation education, technical assistance
20 and advice; the establishment of a statewide water
21 resources advisory committee that includes representation
22 by electric power producers.

23 We support the registration, reporting, and
24 recordkeeping of existing, new, or increased withdrawal,
25 diversion, or consumptive use consistent with maximum

1 reliance on existing reporting procedures and documents
2 provided to the federal river basin commissions. And we
3 support the provisions promoting voluntary water
4 conservation.

5 The remainder of EPGA's comments will focus on
6 the few elements of House Bill 2230 that cause us some
7 concern or that we feel could be improved upon without
8 sacrificing the very worthwhile objectives of this
9 legislation.

10 Definitions: We heard some of this earlier
11 today. We believe the definition of consume or consumptive
12 use requires revision. Both the Delaware River Basin
13 Commission and the Susquehanna River Basin Commission
14 define consumption or consumptive use.

15 And we believe the DEP staff, commission
16 personnel, and water-consuming businesses within the DRBC
17 and the SRBC all have a common understanding of what
18 constitutes consumption. It is fundamentally a quantity
19 concept.

20 The definition of consumptive use contained in
21 House Bill 2230 is inconsistent with current usage and
22 common understanding of this term. It includes, as
23 written, a quality component and is much more stringent in
24 defining the point of water return as at or upstream from
25 the point of withdrawal.

1 We understand the public's and DEP's interest
2 in managing both the quantity and quality of the
3 Commonwealth's water resources. We share that interest.
4 However, we believe it is inappropriate and unnecessary to
5 include a quality component in the definition of
6 consumption.

7 Water quality issues are thoroughly and
8 adequately addressed in the Pennsylvania Clean Streams Law
9 and the Federal Water Pollution Control Act as well as
10 state and federal regulations. Furthermore, many
11 facilities, including our members' generating stations,
12 withdraw water from a river or stream source and return the
13 water to the source at a point near but downstream from the
14 point of taking.

15 The water that is returned to the source with
16 slightly different water quality characteristics is not
17 currently viewed as water that is consumed. Under the
18 definition in House Bill 2230, these uses would now be
19 considered consumptive uses, which we believe is not the
20 Department's intention.

21 To avoid unnecessary confusion that would
22 result from redefining this commonly understood term, we
23 recommend revising the consumptive use definition and make
24 it consistent with the commonly understood meaning of that
25 term. And we have a proposed definition in our comments.

1 I won't take up this committee's time reading that. But
2 it's there for your consideration in our written comments.

3 Metering: EPGA is concerned about the lack of
4 specific discretionary language related to the authority of
5 the DEP to require metering. Section 6(c) states, "The
6 Department may require any person subject to Subsection (a)
7 or (b) to install, use, and maintain metering equipment or
8 methods." While we appreciate the word "may" in there, we
9 believe additional discretionary language would be
10 beneficial here.

11 There is clearly an increasing desire of the
12 state to require metering of new uses in the belief that
13 this is the most accurate way of accounting for water use.
14 Since registration and reporting requirements would be
15 applicable to all existing facilities using 10,000 gallons
16 per day or more, EPGA is concerned about the prospect of
17 having to retrofit metering to existing facilities when
18 alternative methods would be suitable for DEP tracking and
19 planning purposes.

20 Metering is not foolproof. It may be costly
21 to install and retrofit applications and can often involve
22 high maintenance and calibration expenditures. Other
23 methods, such as calculating water consumption from cooling
24 tower design information or calculating water withdrawal
25 volumes by monitoring intake pump operating times, are

1 currently being used to report water use to both DEP and
2 river basin commissions. These methods avoid the needless
3 expense of metering and may be more reliable in some
4 instances than data collected from a metered pipe.

5 EPGA believes it is important for this
6 authorizing legislation to put other methods on an equal
7 footing with metering to recognize that such methods can
8 provide comparable data accuracy at lower cost. We
9 therefore recommend changing Section 6(c) to expressly
10 recognize the appropriateness of these other measuring
11 methods.

12 Delegation of Authority: EPGA supports the
13 language in Section 3 establishing the intent of the
14 Department to cooperate and coordinate with river basin
15 commissions for efficient water resources planning and to
16 avoid duplicative requirements to which water users may be
17 subject.

18 However, we are very concerned about the
19 potential delegation of the Department's authority in
20 Section 3(11) to local agencies. We strongly recommend
21 deleting references to local agencies in Section 3(10) and
22 3(11). In many cases, counties, municipalities, and other
23 local agencies are themselves significant water users and
24 subject to the provisions of this proposed legislation.

25 Thus, delegating the Department's powers and

1 duties under this Act to local agencies could produce a
2 conflict of interest and introduce local politics into the
3 development and enforcement of water resource plans.

4 EPGA's members operate power plants and
5 develop new plants to sell power into the deregulated
6 wholesale power market that includes Pennsylvania and
7 surrounding states. Oftentimes, the economic benefits of
8 building and operating these plants accrue well beyond the
9 borders of host municipalities, counties, or even the
10 state.

11 Surely, local government input should be part
12 of the process. But we respectfully submit that giving
13 local government agencies control over water plans and
14 their enforcement is unwise public policy. We believe that
15 responsibility must reside in an entity possessing a larger
16 welfare perspective.

17 Again, EPGA appreciates the opportunity to
18 present the consensus views of its member companies on this
19 important and necessary legislation. And we look forward
20 to working with the Environmental Resources and Energy
21 Committee and the Department in crafting thoughtful and
22 balanced water resources legislation for the Commonwealth.
23 Thank you for your time and attention.

24 CHAIRPERSON HERSHEY: Thank you, Mr. Biden.
25 Representative Ross, do you have any questions, comments?

1 REPRESENTATIVE ROSS: Just a quick one. Thank
2 you for being quite specific in the areas that you had
3 concerns. That's very helpful to us. I think you might
4 have been here when Secretary Hess was presenting his
5 testimony in the morning, or maybe you had a chance to
6 review that.

7 I know the first issue that you had raised,
8 the definitions of consumptive use, is an area that he's
9 modifying. And I don't know whether you had a chance to
10 see specifically what he was looking at in changes. But if
11 you did, does that meet your needs; or is there still some
12 work yet to be done?

13 MR. BIDEN: I haven't seen it. But from what
14 I've heard, I'm very hopeful that it will meet our needs in
15 that regard.

16 REPRESENTATIVE ROSS: Okay. Well, we maybe
17 can have a little bit of retake on that after you've had a
18 chance to. And I take your point on the metering, which I
19 think picks up some of the earlier comments. And also on
20 the delegating of local agencies, obviously we're trying to
21 get grass-roots support behind the effort.

22 But I'm sympathetic to what you're saying as
23 well. There maybe needs to be some thoughtfulness about
24 how exactly that feedback is going to be derived and also
25 where we're going to go with it eventually. Thank you very

1 much for your comments and your testimony.

2 MR. BIDEN: Thank you.

3 CHAIRPERSON HERSHEY: Representative Miller.

4 REPRESENTATIVE MILLER: Mr. Biden, on the
5 metering subject, if in the final version of this bill,
6 instead of saying to install, use, and maintain metering
7 equipment or methods, it said to install, use, and maintain
8 monitoring equipment or methods, would that be satisfactory
9 in your mind?

10 MR. BIDEN: I'd have to huddle with my members
11 on that, but that sounds to me like it would be.

12 REPRESENTATIVE MILLER: Okay. Thank you.

13 MR. BIDEN: We'd just like the discretionary
14 authority to be spelled out a little more thoroughly in the
15 legislation.

16 REPRESENTATIVE MILLER: You're basically not
17 opposing a method or a means of determining the water
18 usage. It's just the specific mention of metering
19 equipment that bothers you?

20 MR. BIDEN: Absolutely not. And in some
21 instances, metering is the only way you can go with it, the
22 only way really to achieve it. But we have developed some
23 methods that are conservative and actually probably
24 overstate our consumption of water.

25 And we certainly don't want to go to the

1 expense of adding meters when we have a method now that is
2 at least as good as metering.

3 REPRESENTATIVE MILLER: Thank you. Thank you,
4 Mr. Chairman.

5 CHAIRPERSON HERSHEY: Thank you very much.
6 Seeing no other members with questions, thank you, Mr.
7 Biden, for coming and presenting your testimony. And we
8 look forward to seeing the next panel. Thank you very
9 much.

10 MR. BIDEN: Thank you, Mr. Chairman.

11 CHAIRPERSON HERSHEY: Thanks for coming. At
12 this time, I wish to welcome a panel representing the
13 Pennsylvania Environmental Council. These people take
14 their seats. And when they're ready to start, introduce
15 yourselves and then proceed.

16 MR. McELWAINE: Thank you very much, Chairman
17 Hershey, for the opportunity to testify. I'm Andrew
18 McElwaine. I am President of the Pennsylvania
19 Environmental Council. We want to particularly express our
20 appreciation to this committee for again taking up this
21 issue.

22 This committee has been an outstanding leader
23 in a bipartisan way for conservation and environmental
24 protection. And we're delighted to work with you on this
25 issue. I am joined by 2 of my colleagues. Directly to my

1 right is Susan Wilson, the Executive Director of the
2 Pennsylvania Department of Environmental Protection
3 Citizens Advisory Council, which provides the Department
4 with input from citizens organizations.

5 And also to my further right is Mr. Brian
6 Hill, who is our Senior Vice President and is our watershed
7 expert. Brian is both the director of the French Creek
8 Project, the nationally award winning watershed protection
9 program covering 4 counties in Northwestern Pennsylvania,
10 as well as being a city council member and Deputy Mayor of
11 the City of Meadville, Pennsylvania. I'm pleased to have
12 him with us in those many capacities. Brian also chairs
13 the Water Resources Subcommittee of the CAC.

14 Pennsylvania Environmental Council is a
15 31-year-old nonprofit organization that exists to resolve
16 long-standing environmental problems. Our membership
17 includes citizens organizations, some members of the
18 business community, plus a variety of public leaders and
19 decision-makers. And we've always worked on the basis of
20 consensus and resolving problems through good science, good
21 economics, and planning.

22 You members have a very long day today. So I
23 will be very brief and summarize my testimony for you.
24 Primarily, I want to make the point that over the past
25 decade, environmental policy, as it goes forward, has taken

1 into account that our separate regulatory programs for air,
2 soil, and water have succeeded for the last 30 years and
3 must continue but that going forward, we need to have an
4 understanding that all media -- air, soil and water -- are
5 linked and that we need to act on an ecosystem basis and
6 integrate all of our different environmental goals. And
7 several water resource bills before the committee are an
8 important step in that direction.

9 After reviewing these proposals, the Council
10 finds there's much that we agree with in the administration
11 as well as bills considered by the committee such as that
12 by Representative George. Based on our review of the
13 shortcomings of the existing system and the thrust of
14 current proposals, we suggest that final legislation should
15 include the following:

16 Data gathering and collection. We need to
17 inventory surface waters, develop a water balance in all
18 subbasins to include minimum stream flows to protect
19 aquatic ecosystems while providing for other water uses.
20 We need to inventory groundwater systems, including
21 recharge locations, recharge amounts, discharge amounts,
22 and withdrawals.

23 We need to collect information on the
24 overlying land uses and their impact on groundwater
25 recharge. We also need to inventory water use, both ground

1 and surface, by whom and for what, also to inventory
2 consumptive use and diversions compared to how much is
3 returned to surface or groundwater sources.

4 And we need to identify how much water is
5 consumed by poor infrastructure such as failing water
6 and water systems. We need to develop a priority list of
7 subbasins that experience or will experience shortages.

8 The second step is we need planning. And
9 planning should include implementation, not be an exercise
10 in and of itself. One of the challenges we have in
11 Pennsylvania is we have so many different plans and no
12 requirement that those plans be implemented.

13 Down at the most basic level in our
14 Municipalities Planning Code, we're one of the only states
15 of the Union where a municipal comprehensive plan is not,
16 local zoning doesn't have to be consistent with it. It's
17 quite remarkable.

18 We would recommend pursuing funding for
19 comprehensive water resource planning and establish a
20 planning criteria for water basins in full cooperation with
21 all interested partners and stakeholders. The criteria to
22 be used should include minimum stream flow, sustainable
23 yield, aquatic ecosystems, and natural diversity needs,
24 wetland needs, water quality impact, and emergency water
25 management actions.

1 All stakeholders need to commit that decisions
2 will be made when the planning is completed and that those
3 decisions will be integrated into future investment and
4 directive actions by both the private and public sectors.

5 We need to ensure that water use does not
6 exceed the sustainable yield of ground and surface water
7 supply, provide a process for allocation of water resources
8 for all uses in an equitable, secure, predictable,
9 consistent, and timely manner based on reasonable use and
10 availability of water where criteria indicating such need
11 are met.

12 We need to integrate natural and
13 jurisdictional systems such as aquifers, watersheds, and
14 the political boundaries adjunct to them. We need to
15 provide for long-term adequacy and safety of water supplies
16 for all uses, including in-stream flow, provide for
17 conservation and efficient use of water, flexibility to
18 accommodate changing hydrologic conditions and water use
19 needs, as well as more intense management in special
20 resource areas.

21 We need to protect high quality, unpolluted
22 ground and surface waters and diverse aquatic ecosystems
23 and also to seek to restore degraded systems. We strongly
24 recommend linking water resources planning to land use
25 approval and growth decisions, considering both

1 environmental and economic needs and their relationships.

2 We recommend that an aggressive education
3 program with local and regional interests to ensure that
4 local watershed plans are consistent with the major basin
5 resource plans. We recommend that we implement those
6 portions of basin plans that can be carried out under
7 existing authority.

8 And we recommend that we implement, the state
9 implement construction standards for wells not specifically
10 intended for public water supply, as substandard
11 construction and overuse may pose a threat to aquifers and
12 other properly constructed wells.

13 We also recommend the state better integrate
14 and monitor protection of surface and groundwater quality
15 and quantity, treating groundwater and surface water,
16 including both quality and quantity, as one total system,
17 taking a systems approach. Pollution is, in effect, just
18 another form of consumption of water resource.

19 We understand also that the Department of
20 Environmental Protection has advanced a series of
21 amendments to the pending House Bill 2230. On the whole,
22 we have no difficulty with those, with one exception which
23 would give the Department a broad authority to exempt large
24 water users from registration. We do not believe there
25 should be such an exemption.

1 In addition, we believe that the best way to
2 address the broad range of water needs in Pennsylvania
3 would be a water resources management program based on
4 models such as the Regulated Riparian Model Water Code,
5 which Jan Jarrett referred to earlier today, or similar
6 modified versions of that code that are now being used by
7 almost all of our surrounding states.

8 The Regulated Riparian System is based on the
9 concept of water as public rather than common or private
10 property. We would hope that based on this, the final
11 legislation approved by the committee would ensure that the
12 regulatory authorities of the river basin commissions are
13 consistent with and supportive of all statewide authorities
14 in the bill, would allow interbasin transfers only if an
15 applicant has demonstrated that he has implemented all
16 reasonable conservation measures, taken all reasonable
17 steps to improve the operational efficiency of the present
18 system and that no other alternative supply exists within
19 the immediate area.

20 We believe that the state should strongly
21 encourage water conservation. The Public Utility
22 Commission in particular should review its rate structure
23 and regulatory policies pertaining to public water supply
24 agencies with the intent to provide a regulatory system
25 that encourages water supply agencies and their customers

1 to implement conservation even in nondrought situations.

2 We believe we need to protect Pennsylvania's
3 aquatic resources and its water supplies and that adequate
4 stream flows must be maintained when providing for
5 reasonable water withdrawal and nonwithdrawal uses.

6 Finally, a couple of quick points. In past
7 times, the severity of a drought would be mitigated by
8 substantial storage of water in wetlands and by the
9 percolation of storm water through to groundwater. The
10 same benefit also occurs during flood events.

11 But over the last 30 years, we now have far
12 fewer wetlands. And we have so much more land covered by
13 impervious surfaces -- that is, a surface through which no
14 water can pass -- that our rivers and streams have become
15 giant torrents during storm events and small trickles
16 during drought.

17 Surrounding states -- New Jersey and Maryland
18 to name only 2 -- have passed significant land use
19 management legislation that helps protect remaining
20 groundwater recharge areas. And they have passed bond
21 issues and other dedicated funding to support wetlands
22 acquisition and land protection program.

23 We believe Pennsylvania needs to catch up in
24 those areas and that indeed water supplies are very, very
25 dependent on overall land use management programs and

1 policies. We do not believe that municipalities should be
2 the lead government agency allocating water resources, but
3 we do believe they should have additional authority to plan
4 and zone for groundwater protection and storm water
5 management.

6 In addition, the Keystone Program and the
7 Growing Greener Program represent a significant investment
8 in restoring natural stream flows. And we believe those
9 investments should be enhanced and extended and not
10 curtailed or reduced. And the committee's already started
11 to address that, for which we're very grateful.

12 Finally, as others have stated, the Clean
13 Streams Law has been proposed for revision as an amendment
14 to this bill. And we would strongly oppose those
15 amendments. To sum up, some 200 years ago, Benjamin
16 Franklin told us that when the well is dry, we will know
17 the value of water.

18 And we have reached a time when drought
19 watches and warnings appear to be the rule rather than the
20 exception. Acting on Franklin's advice, we believe the
21 Commonwealth must take the worth of water and take the
22 action necessary to ensure the resource is protected and
23 conserved. We encourage the General Assembly to move at
24 the pace that it's currently moving at to address this
25 issue.

1 Now seeing Representative Ross and having
2 heard his previous question, I will now, in 5 little bullet
3 points that I scribbled down quickly before coming up here,
4 tell you specifically what we're looking for. We believe
5 that there should be an authority to permit water
6 withdrawals.

7 However, in Western Pennsylvania, Allegheny
8 County, where I'm from, we're not part of a river basin
9 commission. We don't have the kind of data, we don't have
10 the kind of knowledge and water resources anywhere in the
11 western end of the state that are common in the Delaware
12 River and the Susquehanna River Systems and with their
13 basin commissions.

14 We have a long way to go in Western
15 Pennsylvania in terms of data collection and understanding
16 of our water resources before we can start writing permits.
17 And I think that that's a unique feature of our end of the
18 state. And I would strongly encourage the committee to
19 consider the differences among the different watersheds and
20 subbasins that we have.

21 The other point, obviously, is that whatever
22 is done in the bill has to be consistent with regional
23 basin commission programs and existing permitting
24 authorities. You don't want to create, as several other
25 witnesses have testified, conflicting management systems.

1 We also support the well drilling legislation,
2 H.B. 1591, by Representative Dailey and would encourage its
3 passage either as part of this bill or as a freestanding
4 bill. We believe that funding for integrated water
5 planning should not be drawn from existing environmental
6 programs.

7 We, as I've already mentioned, do not support
8 any broad exemptions for registration, do not support EV
9 waters amendments -- exceptional value streams -- and
10 support full funding of Growing Greener and the Keystone
11 '93 programs. Thank you.

12 CHAIRPERSON HERSHEY: Thank you. You had
13 quite a platter full of information. That's what we're
14 here for. And I'll start with Representative Ross, see if
15 he has any comments or questions.

16 REPRESENTATIVE ROSS: I congratulate you on
17 your thoroughness there. And I note that you not only hit
18 this bill but you covered several other ones, too.

19 MR. McELWAIN: I didn't want to miss the
20 opportunity, Representative.

21 REPRESENTATIVE ROSS: You're an effective
22 lobbyist. The one comment that you did make that I kind of
23 raised an eyebrow on is when you were indicating about land
24 use, that municipalities need authority to plan and zone
25 for storm water management and groundwater recharge areas.

1 And I thought they already did. Is there
2 something specific that you think needs --

3 MR. McELWAIN: Sorry, Representative. I
4 didn't mean to talk over you. Sir, they have the authority
5 to, they require it as part of their planning if they
6 choose to plan -- which as you know, many of our
7 municipalities in the state do not -- if they do, they do
8 have to provide adequate water supplies as part of the
9 planning and zoning.

10 However, I would note, Representative Steil
11 and Representative, or Senator Gerlach have both introduced
12 legislation that would add to those authorities,
13 particularly in the area of groundwater infiltration. And
14 I think both -- I have tremendous respect for both those
15 gentlemen. And I think they're onto something. And I'd
16 recommend the committee take a look at it.

17 REPRESENTATIVE ROSS: I just was aware of
18 people doing it already. And I know it's nice to put it
19 additionally in legislation to reinforce it. But I would
20 argue that they have the power to do it now.

21 MR. McELWAIN: They don't have the power to
22 set groundwater infiltration and to plan for groundwater
23 infiltration, and that is a provision of David Steil's
24 bill.

25 REPRESENTATIVE ROSS: Well, I know some that

1 have done it already. But I won't argue the point with
2 you. Otherwise, that's all I have right now. Thank you.

3 CHAIRPERSON HERSHEY: Very good.

4 Representative Miller.

5 REPRESENTATIVE MILLER: No questions.

6 CHAIRPERSON HERSHEY: No questions. How about
7 from Representative Stern, Levdansky?

8 REPRESENTATIVE LEVDANSKY: Just one
9 observation quick, Mr. Chairman. Andrew, I think you're
10 right. In Western Pennsylvania, we take for granted the
11 fact that with our rivers, the Allegheny, the Youghiogheny,
12 and the Monongahela, we have an abundant source of water.

13 And in the last drought, there was a whole
14 public debate about do we really need to be conserving
15 water in Allegheny County because we've got big rivers and,
16 you know, we can't use all this water. So every gallon we
17 save is just another gallon that goes down the Ohio, down
18 to the Mississippi.

19 But I think you're right. I think we
20 need -- it may be a little bit difficult. But we've got
21 to, I think, educate the users back in Western Pennsylvania
22 as to why we need to be part of this. And they're not
23 going to quite understand the benefits and the wisdom of
24 doing this up front.

25 MR. McELWAIN: You're absolutely right,

1 Representative. And during that, I remember very well all
2 of the screaming and yelling on the AM radio stations about
3 the last drought emergency in Western Pennsylvania. But I
4 would just add, you know, the first time a barge can't get
5 up the river because the water level is too low and we have
6 to start having rolling brownouts in Western Pennsylvania
7 because we can't get coal to the power plant in Cheswick,
8 then we'll suddenly begin to understand that yes, it does
9 affect us.

10 Even though there's water in the river, it
11 may not be enough to do all the things we want to do with
12 the water.

13 REPRESENTATIVE LEVDANSKY: But you're right.
14 We've got a lot of catching up to do. I mean, you have the
15 Susquehanna and the Delaware River Basin Commissions who
16 have done a lot of inventorying and a lot of work out
17 there. And we've got a ways to get caught up in Western
18 Pennsylvania. That will be a challenge for us. Thank you.

19 CHAIRPERSON HERSHEY: You're welcome. Thank
20 you, Mr. McElwaine and your panel. Thank you for your
21 participation. Next, we will hear from Carol Collier,
22 Executive Director of the Delaware River Basin, which is
23 our neighbor. You may proceed whenever you're ready.

24 MS. COLLIER: Thank you, Chairman Hershey and
25 committee members. Thank you for calling this hearing and

1 inviting us to speak. I'm Carol Collier, Executive
2 Director of the Delaware River Basin Commission. And I
3 have with me today Anthony Bonasera, who is a
4 hydrogeologist in our project review branch and is very
5 much involved with our Southeast Pennsylvania Groundwater
6 Protected Area.

7 You should have in your handouts copies of
8 this power point presentation, a letter to Chairman Hershey
9 and the committee with attachments of specific comments,
10 and also an Op-Ed piece that I wrote for the DEP Update a
11 couple weeks ago entitled "H2O or HBO?"

12 First, let me tell you a little bit about the
13 Delaware River Basin Commission. It is a, over a 1,300
14 square mile basin forming the eastern boundary of
15 Pennsylvania. Two-thirds of the basin are found in
16 Pennsylvania. And we've been around for 41 years.

17 Before that time, there were Supreme Court
18 cases with one state suing another over water rights. The
19 Commission was formed to bring states and the federal
20 government to the table to work out issues. And our main
21 thrust is management of water resources on a watershed
22 basis without regard to political boundaries.

23 As we go through the Act, I'd like to say that
24 we are very supportive of the overall intent of the
25 legislation and many of the aspects within the different

1 sections: State water plan, registration/reporting,
2 critical water planning areas, and voluntary water
3 conservation.

4 I would like to specifically address the
5 critical water planning areas because we do already have a
6 similar program under DRBC regulation. And I thought that
7 would be most meaningful to discuss that. But of course,
8 we will talk about anything that you'd like to talk about.

9 Let me go back to something Representative
10 Rubley mentioned in the beginning, and that is the 21st
11 Century Environment Commission. Back in their report, they
12 stated that because responsibility for planning and
13 management of water quantity is inadequate and fragmented,
14 Pennsylvania does not have enough information to assess or
15 mitigate the impact of new development and growth on our
16 water resources. Our most time critical need is to assess
17 our water supply resources and develop and implement
18 management plans for them. And we feel that this
19 legislation fits that bill.

20 DRBC has a Southeast Pennsylvania Groundwater
21 Protected Area, which was formed with the cooperation of
22 Pennsylvania DEP. It was formed because in that area, as
23 many of you from the Southeast Pennsylvania region know, is
24 extreme growth pressure. Yet at the same time, the
25 aquifers in that area are not really high-yielding

1 aquifers.

2 So you have a static water supply and a
3 growing population and growing need. This was established
4 in 1980. And this is a graphic of the watersheds contained
5 in that area. There are actually 76 individual subbasins
6 that are delineated on a geographic scale, not a political
7 scale.

8 In '99, there were amendments to the
9 groundwater protected area, one that established numerical
10 withdrawal limits. These are based on information from
11 USGS and are adopted according to how much water can be
12 withdrawn before affecting stream flow.

13 There's also a 2-tiered approach to
14 withdrawal, potentially stressed and then a maximum
15 withdrawal limit, again based on stream flow impacts. And
16 it also called for integrated resource plans, which is very
17 similar to the integrated water resource plans proposed in
18 the legislation.

19 This is a picture of the subbasins within the
20 southeast area. The darker 3 subbasins are already at or
21 above that stressed level. That stressed level is 75
22 percent of the level designated by a 1-in-25-year flow.
23 Those -- just for folks knowing that area, the darkest area
24 to the far right is Newtown Creek. And coming across is
25 Little Neshaminy Creek. And the one sort of in the middle

1 of the map is the Upper Wissahickon. And then there's one
2 area that's getting darker over in Chester County, and that
3 is the Schuylkill Trout Creek.

4 Now, when we look at water management, there
5 are many issues to be considered. And we've got to look at
6 groundwater and surface water as one system. We have to
7 look at how we deal with storm water. And impacts from
8 this legislation I believe will help communities come
9 together to see how water resources relate to land use.

10 We need to look at conjunctive use, how we use
11 groundwater versus surface water withdrawal, how we can
12 influence expanded water conservation, groundwater
13 infiltration and using storm water as a resource. Now,
14 that's the only water we get. And that is certainly
15 critical right now when all Pennsylvania counties in the
16 Delaware River Basin are in drought emergency.

17 We also need to look at reuse of treated
18 effluent. You know, it's both sources and the discharge of
19 water. What we like about integrated resource plans is
20 this brings it all together and brings municipalities
21 within one watershed together to understand and to help
22 manage their water resources.

23 It's a multimunicipal effort. It has to be
24 because water doesn't respect political boundaries. It
25 only respects natural boundaries. It's proactive, not

1 reactive. So we're trying to avoid those locations that
2 have stressed systems.

3 Let's try and connect land use and empower the
4 local communities so that land management can be partially
5 based on water management. And allowing municipal
6 officials to make informed decisions. Our IRP process was
7 just started in '99. We are just now going over, off with
8 draft guidelines.

9 But even now, people are interested in
10 developing these multimunicipal IRPs. We have an area in
11 Bucks County in the Penn Ridge area, the Douglassville/New
12 Hanover area in Montgomery, and the Northern Federation in
13 Chester County all looking at multimunicipal IRP plans.

14 What we're looking for in these plans is, one,
15 assessing what's there and existing uses. Then on top of
16 that, look at what future water demands and resource
17 requirements there might be, looking at supply side and
18 demand side alternatives, and looking at innovative uses.

19 Do we need to drill more wells for irrigation
20 of a golf course when maybe it's a golf course community
21 and they have a treatment plant where you could reuse that
22 effluent, that type of thing. We look at the capacity, the
23 water capacity of that subbasin to meet future and present
24 demands. We look at conflicts and problems.

25 And when I say we, it's not we the DRBC. It

1 is those municipalities along with county and conservation
2 districts putting these plans together to be submitted to
3 DRBC. We're looking at plans and programs that the
4 municipalities can enforce. We're not saying that they
5 should be the ones with the permitting or withdrawal
6 authority.

7 But 90 percent of water management is land
8 management. So we need to have that education base so
9 people understand water resources and see how land
10 development ordinances and storm water ordinances affect
11 that. We will approve IRPs. One, if all, municipalities
12 within the subbasin cooperate in the effort.

13 And the IRP concepts are actually adopted into
14 their municipal comprehensive plan and implemented through
15 their ordinances. IRPs can be used to solve existing
16 problems. But even more importantly, they're used to avoid
17 problems. So we are encouraging the process not only in
18 the Southeast Groundwater Protected Area but throughout the
19 Delaware Basin.

20 Let me just close with some key points. And
21 the fact that we are in a drought emergency really brings
22 this to the floor. But water planning has been needed and
23 is needed not just in drought conditions. We're looking at
24 updating the state water plan.

25 It is imperative that we identify these

1 critical areas so action can be taken so we can really do
2 what's right in the Commonwealth. We need to know the
3 resource, education base. Most municipal officials, county
4 officials, others don't know how much water is under their
5 feet. And so, you know, proving subdivision, site plans,
6 new uses is not connected with water. And strongly stated,
7 environment, economy, and community all need to improve
8 simultaneously. And if we know our water resources, we can
9 better do that.

10 As far as registration, reporting, and
11 recordkeeping, if you don't measure a resource, you can't
12 manage a resource. We have a conservation program, water
13 conservation program. And we have been tracking how much
14 water has been saved on a per capita basis after the
15 program was initiated. Unfortunately, that graph cuts off
16 in 1996 because that's the last year of data we have from
17 Pennsylvania.

18 Critical water planning area is, of course,
19 the area that we have spent the time on. Most importantly,
20 it brings municipalities together on a watershed basis, it
21 connects land use and water resources, and it allows for
22 informed decision-making at all levels.

23 And finally, water conservation. When we look
24 at water conservation, we can't just think of it as turning
25 the tap off when we brush our teeth. It's what we do with

1 storm water, getting it back in the ground, how we develop
2 the land, parking lots, et cetera, so that we think about
3 the water resource impacts when we have new land use
4 impacts. It's looking at it together so we can have that
5 necessary growth but do it in an environmentally sensitive
6 way.

7 And finally, it has to be considered a
8 lifelong habit, not just when we're in a drought condition
9 but every single year of your life. In summary, we
10 strongly support the water management initiatives embodied
11 in the legislation. And we are here ready to serve and to
12 be a good partner. Thank you.

13 CHAIRPERSON HERSHEY: Thank you, Carol. Thank
14 you for that broad, broad overview. And there's some
15 things that I want to comment on that I really wanted to
16 hear, and that was reuse. When I was a young farmer in the
17 '70s, we had a, a conservation district. And the
18 gentleman's name was Marshall Haas, and he promoted that.

19 But at that time, you couldn't get an
20 audience. He tried to take people to Maryland to see where
21 spray irrigation took place. I always thought that was a
22 great idea. And I think maybe we need more. You were
23 involved in the Conshohocken office for DEP and did a great
24 job. Do we need more incentives on the state level to
25 encourage reuse?

1 I know from the time I was elected, Oxford
2 Borough put a sewer system with a spray irrigation. They
3 just own spray fields.

4 MS. COLLIER: I visited that site.

5 CHAIRPERSON HERSHEY: They don't contract with
6 a golf course, but there's one nearby. And they could, I
7 think they could contract with farmers. Elverson put one
8 in. But I think we need to promote that more and more
9 because we have an area there in West Grove, Star Roses,
10 have 4 wells and can't supply the water for their growth of
11 their roses.

12 So they're applying to do that with the Penn
13 Township sewer system, which is a great use. It goes right
14 back in the ground. And if it's fit to go in a stream,
15 it's fit to go into crops and sod and whatnot. So I don't
16 know if you have any comments on my thoughts.

17 MS. COLLIER: No, I absolutely agree, sir.

18 And one of the things we're looking at is really
19 encouraging people to look at other options before
20 additional wells are drilled. I think that's really
21 important and really encourage that.

22 CHAIRPERSON HERSHEY: Representative Ross, any
23 comments, questions?

24 REPRESENTATIVE ROSS: Just thank you for
25 coming. And if you have any specific issues with the

1 legislation, please share them with us. I appreciate your
2 general supportive stance. It's helpful. Thank you.

3 MS. COLLIER: And there is a comment letter
4 attached to the letter addressed to the Chairman.

5 CHAIRPERSON HERSHEY: Representative Miller.

6 REPRESENTATIVE MILLER: Just one point of
7 clarification. The data that cuts off at 1996, why is
8 that?

9 MS. COLLIER: My understanding is that there
10 just has not been enough staff available to develop that
11 data and develop it into a database. We have worked with
12 Pennsylvania DEP, and we have approved a new water
13 reporting form. And DEP has been very supportive of that.
14 It's -- my understanding is it's a manpower issue.

15 REPRESENTATIVE MILLER: The data is being
16 collected. It's just not being correlated?

17 MS. COLLIER: That's my understanding, but
18 it's probably better to ask DEP.

19 REPRESENTATIVE MILLER: Okay. Thank you.
20 Thank you, Mr. Chairman.

21 CHAIRPERSON HERSHEY: Thank you. All right.
22 Thank you for that broad-based presentation. It was very
23 informative. So our next guest will be the representative
24 of the Pennsylvania Chamber. I understand Mr. Gardner is
25 back. We would ask you to introduce yourself and your

1 staff. And make sure your mikes are on before you proceed.

2 MR. GARDNER: Good afternoon, Mr. Chairman,
3 members of the committee. My name is Jack Gardner. I am
4 Director of Government Affairs for the Pennsylvania Chamber
5 of Business and Industry. With me this morning are 2
6 members of our water task force, one of the cochairs, Jo
7 Mullendore from Allegheny Energy; and Tim Weston from
8 Kirkpatrick and Lockhart, who is essentially the de facto
9 legal counsel for the task force.

10 On behalf of its over 9,000 members, the
11 Pennsylvania Chamber of Business and Industry welcomes this
12 opportunity to provide the House Committee on Environmental
13 Resources and Energy comments on the scope and direction of
14 water resources management legislation in the Commonwealth.

15 The Pennsylvania Chamber of Business and
16 Industry is the largest broad-based business association in
17 Pennsylvania. Our more than 9,000 members employ about 50
18 percent of Pennsylvania's private work force or
19 approximately 1.5 million people. Eighty percent of our
20 members have less than 100 employees.

21 The Chamber is dedicated to advocating
22 reasonable regulations that encourage economic growth while
23 protecting Pennsylvania's environment and natural
24 resources. Over the past decade, the Pennsylvania Chamber
25 has given concerted consideration to the important issues

1 of water resource planning and management in the
2 Commonwealth.

3 There is absolutely no question that water
4 resource issues are important and critical to the future
5 economic as well as environmental well-being of
6 Pennsylvania and its citizens. Water is one of this
7 Commonwealth's greatest assets and is essential to
8 virtually every enterprise and human endeavor.

9 Many of our industries, including agriculture,
10 steel, chemicals, petroleum refining, pharmaceuticals, food
11 processing, and power production, could not exist absent
12 abundant, relatively inexpensive and high quality water
13 supplies.

14 We are a relatively water rich state, but that
15 does not mean we can waste this critical resource. No one
16 of us owns that water, but we share it as citizens of the
17 watersheds and river basins that we inhabit. We, each of
18 us, are trustees of that resource with the obligation to
19 develop and use water wisely.

20 The stewardship of the Commonwealth's water
21 resources, to be effective, requires an integrated approach
22 to water planning and management. Effective planning and
23 management requires that government, working with private
24 enterprise, take an effective role in efforts to plan for,
25 conserve, nurture, and develop Pennsylvania's ground and

1 surface water resources.

2 The objective of that effort must be to
3 balance and serve all of the many legitimate needs and
4 demands placed on those resources. In doing so, we must
5 recognize that government cannot do it all and is incapable
6 of doing it all. A key component of any effective water
7 resources program must be to encourage private actions to
8 conserve and develop water resources.

9 And before you start to panic, I don't intend
10 to read all 17 pages of this testimony. At this time, I
11 will be turning the microphones over to Jo and Tim. Before
12 I do that, though, I would like to emphasize that our
13 testimony and policy statement, which is attached to the
14 testimony, were developed by the Chamber's water task
15 force.

16 They have been working at least since the fall
17 of 2000 on this issue. Members of the task force represent
18 a cross-section of Pennsylvania businesses, including
19 agriculture, mining, power generation, oil, and gas, food
20 processing, pharmaceuticals, public water companies, and
21 other major water users.

22 And at this time, I will turn over the
23 microphone to Jo Mullendore to highlight some key areas of
24 concern.

25 MS. MULLENDORE: Good afternoon, Mr. Chairman

1 and members of the committee. I was the cochair, as Jack
2 said, of the Chamber's water task group. And we have been
3 meeting regularly since the fall of 2000 to try to get the
4 business, agriculture, and other Chamber member interests
5 together.

6 And actually, I'm quite happy to report that
7 we do have consensus within the Chamber on water issues,
8 which is a first. And it means that a lot of groups have
9 come together and worked very hard to try to put their
10 interests, specific interests in perspective, recognizing
11 what the Commonwealth's interests are.

12 We do have a diverse group. They have quite a
13 few employees. And the consensus that we have arrived at
14 is basically that the scope of the water management
15 legislation is absolutely essential. We do want water
16 legislation.

17 We think it is important that the state water
18 plan be updated. And registration and reporting are
19 essential elements of that. Without the recordkeeping and
20 the information, it's very difficult to update the state
21 plan. We feel that it's important to have good,
22 scientific, sound information upon which to base any future
23 plans.

24 We think water conservation, as proposed in
25 House Bill 2230, is a good start. We'll get into some

1 specifics after while. We also would like to commend the
2 Department of Environmental Protection for addressing this
3 issue, for conducting the statewide forums, and for
4 listening to the concerns.

5 We as a group have met and as individuals have
6 met with the DEP on several occasions to discuss our
7 concerns and where we might differ from specific issues
8 that DEP held. So we do have to commend them for listening
9 to us in trying to address a number of the issues.

10 I will admit, you know, we're still a little
11 bit apart. But we're getting much closer on those.
12 Groundwater recharge is also an important part. The scope
13 of the legislation is that, as we said, it needs to be fact
14 based on sound science.

15 We feel that, believe that we do need that
16 comprehensive plan, that it needs to have solid river
17 basin, regional river basin information input into that.
18 The Commonwealth is really divided into various sectors, as
19 we've talked about before.

20 And I know Representative Levdansky's familiar
21 with Western Pennsylvania, which tends to have greater
22 water resources even than maybe the Southeastern
23 Pennsylvania. But each of these needs to be looked at as a
24 region and as a part of the total water resources plan
25 without one being exclusive of the other.

1 Any planning legislation must be clear about
2 the intended use of that state plan and specific regional
3 plans. The regional plans would allow for the opportunity
4 for many local government people to be heard, which
5 otherwise, on a state board, there's no way you could
6 accommodate that many interests and that many people.

7 Nothing set forth in the new act or an updated
8 state water plan should authorize the Department to take
9 any action under any other state laws that would be
10 relative to protecting water rights. Reporting, of course,
11 as I said, is an important part of that plan.

12 The management of water to maintain a
13 sustainable economy in Pennsylvania requires a unified and
14 cohesive approach, and that avoids the fragmentation or
15 Balkanization. One of our major concerns with the
16 legislation is we believe it needs to be specified that
17 local municipalities cannot be identified as a watershed
18 group.

19 We believe that the watersheds probably -- if
20 we were to guess, 5 or 6 watersheds exist within the state
21 rather than several hundred. And if they are on a much
22 smaller basis, I think, as the previous testifier
23 discussed, there were actually water wars; and people could
24 spend their lives in court discussing who had control of
25 what waters. And the control -- the upstream communities

1 could control the downstream communities' water flows, and
2 that would not be healthy for the Commonwealth.

3 And we also think the Commonwealth has made
4 great strides for economic development and making
5 Pennsylvania a more business-friendly state. And we would
6 not like to see us take a step back in terms of the
7 direction the Commonwealth has gone.

8 The lack of a holistic planning vehicle is one
9 of our main concerns with this. And I think with that,
10 I'll turn it over to our broadest attorney here who we
11 enlisted into the support because we, Tim Weston is kind of
12 the water czar in Pennsylvania. So here you go. He has a
13 lot more knowledge of this than some of us individually.

14 MR. WESTON: Mr. Chairman, members of the
15 committee, for a lawyer, I'm going to try to be brief. The
16 Chamber, as indicated in the statement that's before you,
17 has formulated a really fairly comprehensive set of
18 proposals for you. We have a statement. But then behind
19 it, you will see very specific an outline of legislation.

20 And we have gone beyond that in working with
21 several other groups in drafting into actual bill language
22 something which we believe draws the best of this bill and
23 the Department's proposals, some other proposals that have
24 been before the General Assembly, trying to bring them
25 together.

1 What badly is needed in the state is consensus
2 on a piece of legislation that gets the job done. There
3 are a couple of differences between the Chamber's proposal
4 and the Department's proposal. And it will be somewhat
5 surprising to this committee that the Chamber's proposal is
6 actually more comprehensive.

7 Rather than stepping out with what's called a
8 high level state water plan, which doesn't contain a lot of
9 detail, and then only doing regional plans in specific
10 local watersheds, the Chamber's proposal calls for both a
11 state water plan and river basin plans with specific river
12 basin boards or institutions being created to guide the
13 process.

14 You don't wait until you've got a critical
15 area to do water planning and assessment of need versus
16 safe yield. We suggested that you do a complete state
17 water plan and regional water plans with various levels of
18 detail, depending on how severe the problems are, but you
19 don't leave any region behind.

20 And we can't leave to an uncertainty whether
21 there will be institutions that will step to the plate to
22 do the planning. And that is one of the concerns we had
23 with 2230 as it's currently developed, that its
24 institutions yet to be named that would do the regional
25 water plans.

1 If we wait for that, we may never get the job
2 done. And doing this plan is going to be terribly
3 important to the future of Pennsylvania. And building the
4 institutions that can deal with this planning and whatever
5 comes after it is also going to be important.

6 So we've outlined those steps in the Chamber's
7 proposal. We are ready to go beyond that. And we believe
8 that we have put together a proposal that is quite positive
9 in bringing the stakeholders of this state together to get
10 the job done.

11 The key issue, which has been raised already,
12 is going to be funding. It's an issue that is somewhat
13 left open in all of the pieces of legislation. I will
14 answer Representative Levdansky's question. You will find
15 it in our testimony.

16 We have suggested a sliding scale registration
17 fee as a first step to help pay for the program. It won't
18 pay for all of it. But the Chamber members at least see
19 some basis for investing in the water planning process.
20 And the Commonwealth itself must invest in that process as
21 well.

22 When we look back, this is actually not the
23 first water management legislation in the Commonwealth. We
24 had a state water planning piece of legislation passed at
25 the time of Governor Tener at the beginning of the last

1 century. Probably only I have a copy of that bill. We
2 have had it done several times.

3 The question is, Are we ready to roll up our
4 sleeves and get the job done? This legislation can provide
5 a framework. Frankly, we've got some of that framework
6 already in the administrative code. Are we ready to get on
7 with it?

8 MR. GARDNER: I was going to say at this time
9 we're prepared to take questions from the committee.

10 CHAIRPERSON HERSHEY: Very good. Thank you
11 for coming and giving your presentation. I will start on
12 my right with Representative Ross.

13 REPRESENTATIVE ROSS: You've given me plenty
14 of homework to do here. So I'm going to hold off until
15 I've had a chance to read this over a little bit. Thank
16 you for your thoroughness.

17 REPRESENTATIVE LEVDANSKY: Just real quick.
18 You've taken the, you've taken the wind out of my sails. I
19 mean, I can't ask you the question now. I just want to
20 commend you on 2 things, first off for recognizing that
21 that is an issue.

22 And I think your approach seems balanced and
23 fair, that it ought to be an investment by both the user
24 community and by the Commonwealth. I mean, I think that
25 kind of partnership is probably logical and sensible and

1 probably will be effective, too. So I want to commend you
2 for that.

3 The other thing I want to commend you for is
4 the recognition that we need to get moving with this and we
5 need to do it on a statewide basis. And I'm going to, you
6 know, I'm hoping that -- I mean, I can just almost hear
7 some of my business community people back home saying, Why
8 do we need to do this?

9 You know, we're in the Mon Valley. We got
10 more water than -- when everyone else doesn't have water,
11 we have plenty of water. You know, I just want to commend
12 you and just hope that you'll move forward in terms of
13 helping to educate the business community in Southwestern
14 Pennsylvania as to why we need to be part of this.

15 And I just want to commend you for taking, you
16 know, for taking that bold step on both of these fronts.

17 MR. WESTON: I'd just add that since I've
18 worked with a number of people in Southwestern
19 Pennsylvania -- and of course, Jo's company comes from
20 there -- I think there is a growing understanding in the
21 business community across the state of the importance.

22 I've personally worked with a number of
23 companies who come to site facilities in Pennsylvania. And
24 I have told some of the members in individual discussions
25 in the last year about 3 1/2 to \$4 billion worth of

1 investment I've worked on projects where water was a
2 critical issue in the siting.

3 And those companies are here now largely
4 because we have the water resources, but they're watchful
5 of what will be available in the future and how secure it
6 will be. I think that's been a growth of educational
7 understanding over the last 20 or 25 years.

8 And I think, Jo, you can talk for your company
9 because you've certainly seen it.

10 MS. MULLENDORE: Well, I think so. And I
11 think there are quite a few companies in Western
12 Pennsylvania who are willing to come to the table and work
13 with the groups to try to encourage the support of this
14 type of program. And I think people --

15 REPRESENTATIVE LEVDANSKY: That would be
16 helpful.

17 MS. MULLENDORE: Pardon?

18 REPRESENTATIVE LEVDANSKY: That would be very
19 helpful.

20 MS. MULLENDORE: I knew you would come to me,
21 Representative Levdansky.

22 REPRESENTATIVE LEVDANSKY: Thank you.

23 CHAIRPERSON HERSHEY: Thank you.
24 Representative Stern.

25 REPRESENTATIVE STERN: I had brought up

1 questions previously. And I don't know if you want to
2 comment on this, Mr. Weston, or what, since you're the
3 attorney here in the group. One thing when I was looking
4 at the bill, on page 22 -- and we were talking about one
5 thing that stuck out in your testimony on page 15 deals
6 with the civil penalty authority.

7 And according to your testimony, it appears
8 that you appear that the civil penalty provision of this
9 bill is excessive. And there's one thing when I was
10 looking over the bill and I was reading the bill, I had
11 questions whether or not the civil penalties that were
12 found in the bill were actually, as you indicated,
13 commensurate with the offenses which they would address.

14 And if this is water planning legislation and
15 it's really not designed as a command and control
16 environmental regulatory bill, then I see you feel that
17 those fines are excessive as well. Do you want to comment
18 on that?

19 MR. WESTON: Yes. Let me, let me put this a
20 little bit in context. The bill, as it's currently
21 drafted, has, if you go further in the front of the bill, a
22 reference to 2 other statutes which the Chamber believes is
23 not appropriate at this point. And it would tack on
24 enforcement vehicles in this bill to the statutes dealing
25 with the 1939 Water Rights Act and the Water Well Drillers

1 Act.

2 Our, our vision is that if you want to deal
3 with the enforcement in those provisions, in those acts,
4 you should go and amend those acts. With respect to water
5 resource planning legislation, the only mandate that the
6 regulated community would face is registration and
7 reporting.

8 And if you think about a daily civil penalty
9 for having missed filing the report or missed filing your
10 monitoring report that would escalate at \$1,000 a day, a
11 fair number of our -- or I believe in this, it's 2,500 in
12 this bill -- a fair number of people in the regulated
13 community would say, Isn't that nicking them a pretty,
14 pretty hard hit for not filing a report on time?

15 You have to have some enforcement vehicle so
16 that people will come in with their registrations and
17 reports, but you don't need to overdo it in this context.

18 REPRESENTATIVE STERN: Then you picked up on
19 the same thing that I picked up on whenever reading the
20 bill? Okay. I just wanted to confirm that by an attorney.

21 MR. WESTON: And you'll find it also, I think,
22 in our detailed testimony, that if we had read all 17
23 pages, you would still be here at 5:00 probably.

24 REPRESENTATIVE STERN: Very good. Thank you.
25 And I'll try to do my homework as well and read your

1 testimony. Thank you.

2 CHAIRPERSON HERSHEY: Is there any more
3 questions for the panel? They're still doing their
4 homework. Thank you for coming and sharing your testimony,
5 and it will be very helpful as we proceed. Thank you very
6 much.

7 Next, we'll hear from Mr. Elam Herr, who's no
8 stranger to us, Assistant Executive Director of
9 Pennsylvania State Association of Township Supervisors.
10 And you will be welcome to take the chair there and
11 introduce your panel and then proceed. Thank you.

12 MR. HERR: Thank you, Mr. Chairman. I am Elam
13 Herr. I'm with the Township Supervisors Association. With
14 me also at the table today are Rachel Hofstetter with the
15 County Commissioners Association and John Brosious with the
16 Municipal Authorities Association.

17 The 3 organizations have been meeting on the
18 issue of water resources. And most recently, we've sat
19 down to discuss the issue of House Bill 2230. So we have
20 been working as a group from the county commissioners
21 perspective, the townships, and the providers of a lot of
22 our systems when it comes to water, the municipal
23 authorities.

24 We are not going to read through our
25 testimony. If you will look at the last 2 pages, you'll

1 see that there's some talking points. They will highlight
2 what we will discuss today to keep everything on track.
3 You will have sufficient time to look at the testimony
4 where we hit some very specific points of the legislation
5 which we feel needs to be addressed, both pro and con.

6 So at this time, I will turn it over to John,
7 who will discuss the talking points. And then the 3 of us
8 will be available for any questions that you may have.

9 MR. BROSIOUS: Thank you, Elam. I'd like to
10 just quickly run through the talking points that we have
11 put together on behalf of our 3 organizations. And they
12 fall into 3 broad categories: A lack of funding, a
13 workable approach, and necessary DEP resources.

14 The first of these is lack of funding. The
15 Department estimates at least 1.4 million per year for the
16 first 3 years of this program will be required; that is,
17 \$4.2 million over the first 3 years to update the state
18 water plan.

19 Additionally, integrated water resource plans,
20 as delineated in the legislation, will also be funded -- up
21 to 75 percent of their planning costs -- from the state.
22 The funding sources noted in Section 13 are from fines and
23 civil penalties established in this Act, from money in the
24 Environmental Stewardship Fund of Growing Greener, and
25 monies from the Clean Water Fund under the Clean Streams

1 Law.

2 The available funding from any of these
3 sources should not be assumed to be a viable financial
4 source for this particular initiative. Particularly in the
5 case of the latter 2, the funds are already significantly
6 earmarked for other projects. And most recently, the
7 Growing Greener funding has been halted with no guarantee
8 of it being used for its intended purpose for any future
9 dates.

10 Our slogan seems to be in this particular area
11 that dedicated amounts from dedicated accounts are what
12 we're looking for. And I think given the concern all of us
13 and members of the committee had during the last few weeks
14 about the demise of the Growing Greener Program, it is
15 something that all of us would like to see at least funded
16 in very specific accounts so we know how much money and
17 what sources are reliable for that.

18 The second issue, a workable approach. We
19 agree that the Department should be responsible for
20 updating and maintaining a comprehensive water resources
21 information system and that this database should provide a
22 baseline for how we make water resource decisions.

23 However, decisions based on the data with
24 regard to local water resource needs, priorities, and
25 objectives should rest with knowledgeable regional, county,

1 or municipal organizations. The nomination process in
2 Section 7(a) for critical water planning areas seems to
3 diminish the role a local government organization may have
4 in developing this plan.

5 And I want to emphasize that in the
6 legislation, this is indeed a plan. It does not delegate
7 any more powers or responsibilities to local government or
8 anyone else who might put together the critical water
9 resource plan.

10 I would like to say, however, that local
11 governments made up of elected and appointed officials
12 charged with achieving the greater good through sound
13 public policy are best primed to accomplish this.
14 Intergovernmental cooperation is a chief element in the
15 local and regional decision-making process.

16 Most of these governmental organizations
17 already deal with land use, planning, water and sewer
18 issues, and economic development. And I would point to
19 Section 7. The responsibilities for this particular entity
20 include 6 broad categories and 13 very specific
21 subcategories detailing a great amount of data to be
22 garnered at the local level.

23 The final issue is necessary DEP resources.
24 The legislation does not present a plan for the vast
25 responsibilities required of the Department in order to

1 implement and accomplish its mission in the powers and
2 duties under this Act.

3 Additional staffing and administration will be
4 required. Increased budgeting and costs will result in
5 order to acquire, process, manage, and collate data into a
6 manageable database that is accessible to all of us. The
7 amount, the type, variation, and compatibility of all this
8 data is staggering.

9 To further process it into a viable working
10 document or database is a huge undertaking. Much of this
11 information is currently available. And I would just like
12 to go through some of the different organizations that have
13 current, up-to-date information on water in the
14 Commonwealth.

15 They include 3 different bureaus in DEP,
16 DCNR's Bureau of Topographic and Geologic Management, EPA,
17 the Army Corps. of Engineers, United States Geological
18 Survey, Pennsylvania Fish and Boat Commission, PUC, United
19 States Fish and Wildlife Agency, the Delaware River and
20 Susquehanna River Basin Commissions, other river basin
21 commissions, the National Weather Service, county planning
22 agencies, county conservation districts, large public water
23 suppliers, wastewater dischargers, industrial and power
24 users and dischargers, and assumedly many other potential
25 entities not listed.

1 This undertaking will also cost several
2 million dollars. And this is strictly for the internal
3 effort that DEP will have to put forward to take all this
4 data and compile it in a usable format in the next 3 years.
5 While the legislation says that this will occur, it is
6 silent on the internal structure and financing of such an
7 operation.

8 Funding and staffing must be clearly defined
9 in the bill or a fiscal note that states the needs that
10 need to be committed in order to justify this particular
11 data gathering. And finally, as a point of reference,
12 Chester County has spent \$600,000 in just one year to
13 perform similar tasks for one county. That's \$600,000 in
14 one year for one county to look at similar information.

15 And again, I would refer you to the
16 requirements that DEP is faced with in the legislation.
17 Section 3, detailing the DEP powers and duties, lists 15
18 broad categories and 13 detailed subcategories. And the
19 development of the state water plan lists 4 broad
20 categories and 13 detailed subcategories.

21 So I guess the bottom line to us is that while
22 we all feel this is needed and it's critical that we get a
23 hand on the water, water as a resource in Pennsylvania and
24 the need that we all have for it, I think our feeling is
25 that we should be serious about funding this particular

1 effort and that we really need a baseline of data before we
2 jump into some of the more strategic decision-making that's
3 going to be involved.

4 And with that, if there's no other comments
5 from my peers, we'll stand for questions.

6 CHAIRPERSON HERSHEY: Thank you for your
7 concise testimony. Representative Stern.

8 REPRESENTATIVE STERN: Yeah. I have a
9 question to you, Mr. Brosious. It's regarding loss of
10 water resources at the municipal level. Do you have any
11 way of monitoring that loss of water through the municipal
12 water supplies that you cover now under the Pennsylvania
13 Municipal Authorities Association?

14 MR. BROSIOUS: Are you referring to loss
15 through the pipelines?

16 REPRESENTATIVE STERN: Yes.

17 MR. BROSIOUS: We do not have anything in our
18 association that would monitor statewide that particular
19 issue. It is a concern of not only many of the public
20 water suppliers at our authorities and municipalities, also
21 the private water suppliers.

22 There is methodology and equipment that is
23 available to them to try and find out where those
24 particular leaks are. In fact, the Department at one
25 time -- and I believe they still do it -- make available to

1 small water systems equipment and technology to try and
2 find out where those leaks are.

3 In the bigger systems, I would assume, through
4 a system of metering and their own maintenance and
5 operations, they would try and be more on top of that
6 particular issue.

7 REPRESENTATIVE STERN: From inflow to outflow
8 and then what would be metered in between?

9 MR. BROSIOUS: Right.

10 REPRESENTATIVE STERN: Okay. I noticed in
11 your testimony as well, you mention as far as using
12 PennVest monies and giving priorities for grants or loans
13 to, to systems that have excessive water loss rates that
14 exceeds 20 percent and you were questioning that rationale.

15 MR. BROSIOUS: What we find with that
16 particular rationale is it cuts both ways. It seems to
17 penalize those systems that have invested their own funds
18 over the years to have sufficient upkeep and maintenance of
19 their system to prevent that.

20 And it benefits those systems that have
21 potentially kept their rates artificially low for years,
22 not put in the operating and maintenance costs that would
23 be necessary for the upkeep of their system. So that
24 people running good systems are not eligible for the same
25 type of funding that people who might be running a marginal

1 system would be.

2 So it's just a point that we wanted to raise
3 and perhaps equal that playing field a little bit as far as
4 PennVest goes.

5 REPRESENTATIVE STERN: You think it needs to
6 be more balanced in other words and try to make it more
7 equitable and more, regarding some of the systems that have
8 more equity than some of the poorer systems?

9 MR. BROSIIOUS: I think we all realize there
10 are a lot of poor systems that are out there. Some of it
11 through no fault of their own. It's just the economic
12 times they're in. There are others that are poor in the
13 sense that they've been mismanaged and have not had upkeep
14 for years.

15 Should we penalize all of the customers of
16 that system because of that? I'm not really sure. We all
17 know how people howl when their water and sewer rates go
18 up. But I guess our point is that PennVest may have a more
19 equitable way of looking at how funding is provided that
20 also would reward people who are doing a good job and
21 keeping up with their maintenance and upkeep.

22 REPRESENTATIVE STERN: I think we all have the
23 same goal in mind here, and that's water resources
24 management and conservation. And how we get to that point,
25 you know, is something that we have to work together on.

1 And I appreciate your comment. Thank you, Mr. Chairman.

2 CHAIRPERSON HERSHEY: Representative Ross.

3 REPRESENTATIVE ROSS: I appreciate your
4 raising the issue about the funding. And obviously, that's
5 something that we're going to be having to deal with. And
6 I think it's good to focus in specifically on which funds
7 and where they're coming from, that we ought to be quite
8 specific about that, particularly in tight economic times
9 like we're in right now.

10 The other piece that I was somewhat interested
11 in was the fact that, if I'm understanding your testimony,
12 you're concerned that the authority to sort of develop this
13 approach is not being passed down enough to the local
14 level. And I think if I understand the previous panel from
15 the Chamber, they thought it was being passed too much down
16 to the local level, which is why we have such fun with our
17 jobs.

18 So we'll have to work on sorting that one out.
19 But thank you very much for your testimony.

20 MR. BROSIOUS: And I think that's the beauty
21 of testimony from different interest groups.

22 CHAIRPERSON HERSHEY: Anybody on the panel
23 have any comments or questions? (No response.) Hearing
24 none, we thank you for coming. Thank you for your
25 testimony.

1 MR. BROSIOUS: Thank you.

2 CHAIRPERSON HERSHEY: The committee at this
3 time would like to welcome a panel of representatives from
4 the Landscape and Nursery community. When you're ready to
5 go, make sure the mike is on and please introduce yourself.

6 MR. MCKENZIE: Thank you, Mr. Chairman. My
7 name is Jim McKenzie. I'm President of Octoraro Native
8 Plant Nursery located in Southeast Lancaster County. And
9 with me today is Gregg Robertson, President of the
10 Pennsylvania Landscape and Nursery Association; and Michele
11 Corbin, Government Relations Director for the Association.

12 I'd like to thank you for the opportunity
13 today to be here and present our position to you on this
14 critical issue of statewide water resource management. We
15 are here representing PLNA today. It is a statewide trade
16 association representing the horticultural industry.

17 I'd like to point out that most of the
18 membership, over 50 percent, is made up of small businesses
19 that generate less than \$250,000 in revenue. PLNA is also
20 a member of the Pennsylvania Horticultural Trade Alliance,
21 which is a statewide organization with 7 other
22 horticultural industries represented. And they share our
23 concern and our interest on this issue.

24 The green industry is becoming a leader in the
25 agricultural community here in Pennsylvania. The

1 horticultural industry is first in crop sales right now in
2 the state with all, 26 percent of all crop sales resulting
3 from nursery and greenhouse sales.

4 We are now the 4th largest agricultural
5 commodity, and we also are the fastest growing segment of
6 the industry with over 38 percent growth in a recent 5-year
7 span. We also are not subsidized. We are also in
8 Pennsylvania making the scene on a national level as well,
9 competition on a national level.

10 We consistently rank in the top 10 when
11 compared to other states in this industry. We are third in
12 the number of farms producing nursery in greenhouse crops.
13 We are third in the number of horticultural organizations,
14 5th in the number of open space acres, 5th in the number of
15 hired workers, 5th in size of total payroll, 6th in total
16 production under glass, 7th in total sales volume, and 7th
17 in the number of nursery and greenhouse and garden center
18 operations.

19 The green industry is an economic force in
20 Pennsylvania as well. We provide roughly 3.1 billion in
21 sales dollars to the state economy. We employ over 73,000
22 Pennsylvanians. And we also contribute about \$151 million
23 in business-related taxes.

24 It is because of this growing involvement and
25 impact that we have on the state that we are here today to

1 have our interests represented on statewide water
2 resources. And since this hearing is specifically here to
3 address House Bill 2230, we'd like to comment directly upon
4 this legislation.

5 Our first point is that we do support DEP's
6 leadership role in the efforts to update and periodically
7 review the statewide water management plan. We also
8 support the development of the plan on a broad regional
9 basis with regional stakeholder input as outlined in the
10 current proposal.

11 We do believe that the municipal level is too
12 small and too narrow a level for this type of, of planning
13 procedure and that the river basin commission, being a
14 multistate entity, is too broad a category. We also
15 support the concept of the statewide water advisory board;
16 but we advocate for broader representation of industry and
17 user industry and user groups, including horticulture.

18 The requirement, the current requirement for
19 the 10,000 gallon per day registration, we would like
20 clarification of that language to ensure that that reads
21 that it is the average use over a 30-day period, which
22 makes it consistent with the Delaware and Susquehanna River
23 Basin requirements as they're currently written.

24 And we are also seeking consideration for
25 water recharge and conservation methods when dealing with

1 the issue of registration and reporting. We support the
2 section of the water conservation program. This section in
3 particular we feel is going to be something where we can be
4 a real partner with the state in this area where we can
5 benefit not only the industry but the general public.

6 You have, I think, in front of you some
7 examples of some of the pictures that are included with the
8 testimony that demonstrate to you what this industry is
9 already currently doing with many of its operators and that
10 we wish to hope to expand, with the use of drip irrigation
11 technology, technologies that have been developed from
12 other countries, particularly Israel where the water
13 resources are very scarce. And those technologies are
14 coming to this country.

15 These technologies not only exist for us as
16 growers and producers but also are being applied to the
17 landscape now for residential use and commercial use as
18 well. We would also advocate that the costs for
19 compliance, coming into compliance with the reporting
20 requirements of the law, that they be minimized.

21 A specific example of this that we can do is,
22 with a little bit of research, we've found that the cost to
23 monitor or to put a meter on each source would range
24 somewhere between 500 and \$3,000 per source. This is a
25 hard cost that would have to be absorbed.

1 An alternative to this that would still meet
2 the objectives of the plan would be that we could do
3 calculations based on pump size, average amount of usage
4 during the day. And those calculations could be used
5 without necessarily incurring the hard costs of requiring
6 metering.

7 If there is no other comments from my peers up
8 here, we'd be happy to entertain your questions.

9 CHAIRPERSON HERSHEY: Thank you very much. I
10 just might say Mr. McKenzie is practically a neighbor of
11 mine. And Michele Corbin's family from Jefferson County, I
12 was happy to be acquainted with 3 generations of farmers
13 out there and good farmers at that. So thank you for
14 coming. Chris, do you have any questions or comments?

15 REPRESENTATIVE ROSS: Just a quick one.

16 CHAIRPERSON HERSHEY: Representative Ross.

17 REPRESENTATIVE ROSS: I guess it's following
18 up my last comment that you were saying that the
19 municipalities are too narrow and that the watersheds are
20 too broad and you needed something in the middle. Have you
21 got something in the middle that you want to suggest?

22 MR. MCKENZIE: Well, good question. We've
23 seen DEP restructure on a watershed basis. And we feel
24 that more than likely, it's going to be some formation from
25 that. Watersheds can be very small; watersheds can be very

1 large. So I don't think we have a specific proposal.

2 But I think that we support something on a
3 watershed basis level or a multiwatershed basis area in
4 general.

5 REPRESENTATIVE ROSS: So something smaller
6 than the Susquehanna Basin but something larger than an
7 individual first order stream, somewhere in between there
8 in other words?

9 MR. MCKENZIE: That's correct.

10 REPRESENTATIVE ROSS: Okay. Thanks.

11 CHAIRPERSON HERSHEY: Representative Stern.

12 REPRESENTATIVE STERN: Just one brief comment.

13 I notice where you're from, Mr. McKenzie. And I was
14 wondering if, since we're still in February, a little bit
15 of brevity here, what does the groundhog have to say,
16 Octoraro Orphy, regarding water usage?

17 MR. MCKENZIE: I have to claim ignorance here
18 because I was away for Groundhog's Day. And his den is
19 literally only about a half mile away from us. And I'm
20 from originally the Punxsutawney area. So I was kind of
21 more interested in what Punxsutawney Phil had to say about
22 that.

23 REPRESENTATIVE STERN: He seems to get all the
24 credit and the movie rights and everything else. I thought
25 I'd just give you your day in the sun here. So thank you.

1 MR. MCKENZIE: Thank you very much.

2 CHAIRPERSON HERSHEY: Very good. Seeing no
3 other comments or questions, thank you for coming.

4 MR. MCKENZIE: Thank you very much.

5 CHAIRPERSON HERSHEY: It's been a productive
6 day, and we're nearing the end. And we're just a little
7 bit ahead of schedule, which is good. I thank the audience
8 for hanging with us. Next is Bill Morris, President and
9 CEO, the York Water Company. Thank you, Mr. Morris. And
10 you can -- make sure your mike is on -- you can introduce
11 yourself and proceed.

12 MR. MORRIS: Thank you. Good afternoon. I'm
13 Bill Morris. I'm President and CEO of the York Water
14 Company. And I'm testifying today on behalf of the Water
15 Utility Council of the Pennsylvania Section of American
16 Water Works Association, which I chair, and as a director
17 of the Pennsylvania Chapter of the National Association of
18 Water Companies.

19 And we thank the committee for providing us
20 the opportunity to present the views of public water
21 suppliers on this important issue. For those of you not
22 familiar with us, the AWWA represents all classes of water
23 utilities in Pennsylvania, including those owned by
24 investors, authorities, and municipalities.

25 The Water Utility Council of AWWA counts among

1 its 2,400 members representatives from the National
2 Association of Water Companies, the Pennsylvania Municipal
3 Authorities Association, the Pennsylvania Rural Water
4 Association, and the Water Works Operators' Association of
5 Pennsylvania.

6 NAWC is a trade association representing many
7 of Pennsylvania's investor-owned water utilities. And its
8 19 members provide reliable drinking water to more than 3.5
9 million Pennsylvanians every day in 43 of the
10 Commonwealth's 67 counties.

11 With 24 counties currently under a drought
12 emergency, 7 counties under a drought warning, and 31
13 counties remaining under a drought watch, there can be no
14 doubt that the time has come for action by the General
15 Assembly to enact a comprehensive water resource planning
16 initiative.

17 Pennsylvania is a relatively water rich state.
18 So we cannot afford to leave the public and business sector
19 with the impression that our water resources are inadequate
20 to support business and job growth. Properly managed,
21 there are sufficient water supplies to meet the needs of
22 everyone in the Commonwealth.

23 However, if we do not understand and properly
24 plan our uses of water, there could be water shortages in
25 portions of the state. We want to make sure that

1 collectively we use this precious water resource for the
2 benefit of our people, our environment, and our economic
3 well-being.

4 We have reviewed House Bill 2230 as well as
5 other resource bills before the General Assembly and House
6 Bill 1591, the Water Well Construction Act. We recognize
7 and applaud the Schweiker Administration and Chairman
8 Hershey for thinking out of the box when drafting House
9 Bill 2230 as a planning bill rather than one based on
10 regulations.

11 The following are our initial observations and
12 comments on the major provisions of the bill: Public water
13 suppliers are regulated under the Pennsylvania Safe
14 Drinking Water Act and exempt from the water well
15 provisions contained in the Senate version and House Bill
16 1591.

17 However, with respect to action the committee
18 may take regarding standards for water wells in House Bill
19 2230, we support the adoption of provisions that relate to
20 the siting, construction, alteration, and abandonment of
21 water wells. Statewide standards for water wells are a
22 needed tool to help protect the aquifers relied upon by
23 public water suppliers and as sources of supplies from
24 potential contamination when penetrated by other well
25 drillers.

1 We have consistently supported the much needed
2 update of the state water plan, the establishment of a
3 statewide water resource advisory committee, and the
4 registration, reporting, and recordkeeping of existing new
5 or increased withdrawal, diversion, or consumptive use.

6 We are particularly supportive of the
7 inclusion of the threshold for total withdrawal, diversion,
8 or consumptive use to equal or exceed an average of 10,000
9 gallons per day in any 30-day period. We believe that all
10 users, including public water supply, industrial,
11 commercial, institutional, or agricultural, need to
12 register and report their usage of water resources.

13 Only after all users register and report their
14 usage to the Department can we collectively and
15 intelligently plan and regulate such usage to assure that
16 an adequate supply is available for our residents, our
17 commerce, and our wildlife.

18 Although the legislation does not advocate
19 local control of water resources, it doesn't prohibit it
20 either. We believe that some of the provisions in the
21 legislation can be open to alternative interpretation by
22 future administrations.

23 Therefore, we would like to see the inclusion
24 of language that narrows the scope of administrative
25 agreements to the purposes of the Act to avoid confusion or

1 misinterpretation that the Department is seeking the power
2 to grant or delegate regulatory authority over water
3 resources to local agencies.

4 We generally support the identification of
5 critical water planning areas and the preparation of
6 integrated water resources plans for such areas. But like
7 other regulated industries, we do not concur with the
8 Department's proposal regarding the preparation and
9 implementation of an integrated water resource plan.

10 Introducing entities unknown to the regulated
11 community such as watershed organizations, planning
12 agencies, or other appropriate entity through a nomination
13 process to prepare an integrated water resource plan for
14 DEP's approval has, in our view, caused much of the
15 opposition or tepid support for this needed legislation.

16 We firmly believe that the river basin
17 commissions are best suited and technically capable of
18 preparing integrated water resource plans. The river basin
19 commissions are known entities to the regulator, regulated
20 community.

21 Moreover, the Delaware River Basin Commission
22 has in place a similar program that could be extended
23 statewide and adopted by the other basin commissions. By
24 virtue of its compact, the Susquehanna River Basin
25 Commission has the authority to identify and place critical

1 water planning areas under special protection and institute
2 measures designed to head off potential user conflicts.

3 In the western part of the state where we
4 don't have a river basin commission to turn to, the
5 legislation should give the Secretary the authority to
6 establish and appoint watershed boards within any
7 identified critical water areas.

8 These watershed boards should be comprised of
9 individuals who are technically capable of completing an
10 integrated water resource plan and are representative of
11 the critical water area's local interests, public water
12 suppliers, industry, commerce, energy, agriculture,
13 conservation, and environment.

14 While other legislative proposals provide for
15 regional watershed boards, we feel the appointment of
16 site-specific watershed boards within any designated
17 critical water area located outside the basin commission's
18 jurisdiction more accurately reflects the Department's goal
19 to focus attention on such areas without putting in place a
20 large complicated bureaucracy.

21 We believe that such a compromise on the
22 preparation of integrated water resource plans will be
23 viewed favorably by the regulated community, including
24 public water suppliers, and generate the necessary support
25 in the General Assembly for the adoption of the Water

1 Resource Conservation and Protection Act.

2 In addition, the composition of the watershed
3 planning advisory committee in Section 7(d)(1) of House
4 Bill 2230 should be amended to change the "may" provision
5 to "shall" to assure that representatives of public water
6 suppliers, commerce, energy, agriculture, conservation, and
7 environment are included.

8 With regard to voluntary water conservation,
9 we support the establishment of a water resource technical
10 assistance center within the Department. As with the
11 partnership for safe water, AWWA could be of great
12 assistance to the Department with such a center.

13 However, we are concerned with the provision
14 contained in Section 8(b) of House Bill 2230 where PennVest
15 shall give priority to funding projects that address
16 unaccounted-for water loss or that implement water
17 conservation practices by any public water supply agency
18 whose unaccounted-for water loss exceeds 20 percent.

19 We are similarly concerned with Section
20 9(a)(3) of House Bill 2230, which authorizes the Department
21 to provide grants for unaccounted-for water loss reduction.
22 Although we recognize the severity of the unaccounted-for
23 water problem facing some public water suppliers, we should
24 point out the duality of the policy.

25 Why reward these public water suppliers who

1 have an unaccounted-for water problem with priority status
2 in PennVest funding when they clearly have not performed
3 up-to-industry standards or customer accountability? Why
4 should the ratepayers of public water suppliers with
5 acceptable limits of unaccounted-for water loss and good
6 operational practices have inferior access to grants and
7 loans than those who have failed to keep their house in
8 order?

9 This unintended result of this policy is to
10 penalize public water suppliers who are performing
11 up-to-industry standards and hindering their opportunity in
12 this capital-intensive business to get low interest
13 PennVest loans. We believe this policy needs to be
14 reassessed.

15 If there needs to be a higher priority for
16 such situations, we suggest it be limited to these cases
17 where there is a new owner with proven performance
18 elsewhere. In many cases, PennVest funding makes it
19 possible for a public water supplier to regionalize
20 existing water systems, potentially removing unfiltered
21 surface sources of supply which may be causing public
22 health problems. Regionalization actions have long been a
23 standing goal of the Department and Public Utility
24 Commission.

25 Finally, Pennsylvania has recently revised its

1 drought contingency regulations. And now is not the time
2 to re-invent the wheel with regard to drought coordination.
3 Therefore, we believe that these regulations should be
4 incorporated into the state water plan and the integrated
5 water resource plans and continue to serve as criteria used
6 to determine drought contingency planning.

7 We believe that a general drought contingency
8 plan should first be adopted on a statewide basis by the
9 Department and the Pennsylvania Emergency Management
10 Agency. However, it is our opinion that drought criteria,
11 including the public water supplier's plan on file with the
12 Department, could be refined further by an IWRP to fit
13 unique circumstances of a critical water area, taking into
14 account the presence of source water dams, baseline stream
15 flows, precipitation, groundwater levels, populations
16 served, and things of that nature.

17 In addition, in order to achieve the maximum
18 effectiveness, water conservation notices should be issued
19 only where and when needed based on the declaration of
20 drought watches, warnings, or emergencies. Unnecessary
21 water conservation notices are counterproductive to
22 economic growth.

23 Again, I thank the committee for its patience
24 today and hope my testimony has expressed our support for
25 the objectives of House Bill 2230. We remain committed to

1 working with this committee, the General Assembly, DEP,
2 PUC, and others to draft a comprehensive water plan that
3 makes the best use of Pennsylvania's water resources. I'd
4 be happy to answer any questions. Thank you.

5 CHAIRPERSON HERSHEY: Thank you very much, Mr.
6 Morris. And I'll start to my right again with
7 Representative Ross. No questions. Representative Miller.

8 REPRESENTATIVE MILLER: No. Just to say thank
9 you to Mr. Morris and note that we often, in Harrisburg,
10 reward mediocrity with more money to make improvements when
11 they should have been done right in the first place. So
12 we'll take a look at that and see what we can do.

13 MR. MORRIS: Thank you.

14 CHAIRPERSON HERSHEY: Thank you.
15 Representative Rubley.

16 REPRESENTATIVE RUBLEY: Thank you, Mr.
17 Chairman. A quick question. Earlier testifiers had said
18 they didn't see the need for a water resources technical
19 assistance center since we already have the drought
20 emergency center, and you're saying that you support the
21 establishment of a water resources technical assistance
22 center.

23 Do you think it has to be a separate center,
24 or could we incorporate it into the drought emergency or
25 another center?

1 MR. MORRIS: Well, I guess that depends on how
2 it's really set up. It wouldn't hurt to have the
3 additional education ability to get out the message to more
4 and more people. And that's what my understanding of the
5 resource center would be.

6 The drought would only be in effect during a
7 drought emergency is my understanding. And so I think the
8 resource center would meet a year-round ongoing need.

9 REPRESENTATIVE RUBLEY: Certainly, the drought
10 center would have to be expanded to incorporate the
11 technical components that we're looking at. So whether
12 that could happen or whether a separate center needs to be
13 established I guess needs to be discussed. Thank you.

14 CHAIRPERSON HERSHEY: Thank you.
15 Representative Stern waves off. Mr. Morris, thank you very
16 much.

17 MR. MORRIS: Thank you.

18 CHAIRPERSON HERSHEY: It was very informative.
19 I want to thank everyone. That concludes our hearing
20 today. I want to thank everyone that participated. I want
21 to thank my staff for their hard work. I want to thank the
22 members that came. And I was happy to look over the
23 audience a minute ago and still counted about 40 people out
24 there that stayed with us all day.

25 We appreciate the interest. And thank you for

1 the testimony. And we look forward to processing all of
2 this and see where it goes. The meeting stands adjourned.

3 (Whereupon, at 2:37 p.m., the hearing
4 adjourned.)

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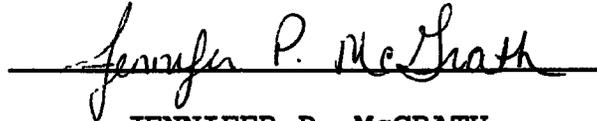
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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me during the hearing of the within cause and that
4 this is a true and correct transcript of the same.

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11 JENNIFER P. McGRATH

12 Registered Professional Reporter

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17 My Commission Expires:

18 April 30, 2005

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20
21
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23 JENNIFER P. McGRATH, RPR
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Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 • Rachel Carson State Office Building

Harrisburg, PA 17105-8459 • 717-787-4527 • Fax 717-772-2291

Please Note: Our New Fax Number is 717-787-2878

Citizens Advisory Council

Position Statement on Water Resource Management

Approved March 20, 2000

Introduction

Water, a vital resource essential for human life and health, is one of Pennsylvania's most abundant resources. As noted by the 21st Century Environment Commission, Pennsylvania has historically taken its water supply for granted because of this natural abundance. However, continued growth, sprawling development patterns and rising per capita water use all place increasing pressures on water supplies (both through increased demand and impacts on groundwater recharge) and on water quality. Pennsylvania currently only regulates approximately 10% of the withdrawals from the state's surface waters as it only has authority to regulate surface water withdrawals for public water supplies.

These pressures are not limited to surface waters. About 50 percent of Pennsylvania's drinking water (individual wells and public supplies) come from groundwater sources, most of which do not have adequate protection plans. Yet groundwater withdrawals are regulated only within the jurisdictions of Pennsylvania's two major river basin commissions (DRBC and SRBC). These sources need to be protected, not just for public water supply but also for their role in supplying aquatic systems.

Currently, Pennsylvania has no comprehensive water management system. Instead, Pennsylvania is one of 5 East Coast states (VT, NH, RI, ME and PA) that still follow the common law doctrine of riparian rights. In a riparian rights system, the courts regulate the allocation of surface water (not groundwater or water quality) as a common property for the common good of the people. Unfortunately, common property is subject to the "tragedy of the commons"—if demand approaches capacity, there is an incentive to use as much as possible rather than conserve.

We also have an outdated state water plan, and therefore do not have a solid understanding of the amount of water available by subbasin, the amount needed by the streams and rivers to support their aquatic communities or the amount and location of



- 3. Incomplete database of how much water is available in the state's subbasins or a unified reporting system on availability and usage. We have little data on consumptive use, groundwater availability, or the amount of water needed to support aquatic communities in our rivers and streams.**
- 4. Inadequate planning authority.**
 - **The Water Rights Act of '39 doesn't require planning. Plans such as the State Water Plan (carried out under the 1965 Federal Water Resources Planning Act) are outdated.**
 - **Growth and development are occurring in the state with little regard for water resources availability or impacts. Most local subdivision plans don't require demonstration of adequate water for wells for new construction. Even if the State Water Plan was not out of date, there is no adequate mechanism to implement it or other plans that might exist at a regional or county level.**
 - **Political boundaries differ from watershed boundaries. Coordination and consistency are often problems when many jurisdictions and agencies are involved with water management.**
- 5. Pennsylvania's current legal and administrative structure for governing water withdrawals cannot be relied upon to produce predictable, consistent, equitable, secure, or timely results. The primary dispute resolution method is litigation in the courts, which is very costly and time consuming. It does not guarantee or protect water rights; it does not provide for dealing with use conflicts during droughts. It does not address conservation of water during non-drought conditions, and does not adequately provide for increased per capita demand.**
- 6. Biological resource impacts have been largely ignored in managing water supplies, as they are not provided for under the Water Rights Act. In addition to water quality protections, adequate stream flows are needed to protect stream ecology, aquatic organisms and water-related environmental values, which are essential to aquatic health. Adequate stream flows must be maintained when providing for reasonable water withdrawal and non-withdrawal uses.**

What is Needed?

1. Data

The data needed to comprehensively manage our water resources are extensive, and will take significant time and effort to gather. The data collection and reporting efforts will have to be prioritized both in terms of geographical needs and information type, but should begin immediately. The data will need to be put in a user-friendly format such as a Geographic Information System. While this effort needs to begin immediately, we should proceed promptly to use existing data to address the clear need to manage our water resources.

Some of the data needed includes:

- Provide for allocations of water resources for all uses in an equitable, secure, predictable, consistent, timely manner, based on reasonable use and availability of water.
 - Integrate natural and jurisdictional systems, i.e., aquifers, watersheds and political boundaries.
 - Provide for long-term adequacy and safety of water supplies for all uses, including in-stream.
 - Provide for conservation and efficient use of water.
 - Provide for flexibility to accommodate changing hydrologic conditions and water use needs, as well as more intense management in special resource areas.
- *Protect our high quality, unpolluted ground and surface waters and diverse aquatic ecosystems and restore degraded systems.*
- *Develop comprehensive watershed management strategies that incorporate water quality and quantity, surface and groundwater, aquatic ecosystem and natural diversity considerations.*
- *Make water resource databases and basin plans available to local governments, developers, regional planners and natural resource managers. Link water resources planning to land use approvals and growth decisions, considering both environmental and economic needs and their relationships.*
- *Undertake an aggressive educational program with local and regional interests to ensure that local watershed plans are consistent with the major basin resource plans.*
- *Implement those portions of basin plans that can be carried out under existing authority and develop legislation and/or administrative proposals where additional implementing authority is needed.*
- Provide for innovative approaches such as the authority to treat and reuse wastewater (e.g., Joint Authority's concept of groundwater recharge).
- Investigate the need for construction standards for wells not specifically intended for public water supply, as substandard construction and overuse may pose a threat to aquifers and other properly constructed wells.
- Better integrate and monitor protection of surface and ground water quality and quantity, treating groundwater and surface water, including both quality and quantity, as one total system. "Pollution is, in effect, another form of consumption—only more destructive than the others. Technically, of course, it is not consumption, but when toxic substances make water unfit for human, agricultural or industrial use, the result is the same as consumption—only worse.

- **Protect Pennsylvania's aquatic resources as well as its water supplies. In addition to water quality protections, adequate stream flows are needed to protect stream ecology, aquatic organisms and water-related environmental values, which are essential to aquatic health. Adequate stream flows must be maintained when providing for reasonable water withdrawal and non-withdrawal uses.**

While the General Assembly is considering taking action on comprehensive water resources management, DEP should immediately proceed with data collection as identified on page 3. DEP should also promptly begin using existing data to address the clear need to manage our water resources.

Conclusion

Pennsylvania needs to take a comprehensive, holistic approach to water resource management. We need an integrated system of plans, policies, programs, projects and actions which provides for inventorying, evaluation, development, use, conservation and protection of water resources. We need legal and institutional systems to define water rights and resolve quality and quantity conflicts among water uses. Such a system will protect current and future users, aquatic systems and public health and safety.

Appendix A: Sources

In addition to several meetings with various DEP administrators and staff, the Water Committee obtained input from the following:

October 18, 1999 Water Resources Management Panel

- **Carol Collier, Executive Director, Delaware River Basin Commission**
- **Richard Cairo, General Counsel, Susquehanna River Basin Commission**
- **John Comey, Executive Assistant to the Director, Pa. Emergency Management Agency**
- **John Hines, DEP Office of River Basin Cooperation**

November 15, 1999 presentation by Tim Weston, Esq. of Kirkpatrick and Lockhart, on "The Regulated Riparian Model Water Code."

January 10, 2000 Water Resources Management Panel

- **Judy Koch Carlson, Fixed Utility Manager, Pa. Public Utility Commission**
- **Richard Neubauer, President, Operations and
Bob Manbeck, Director of Governmental Affairs, Pa. American Water Company**
- **John Schon, President, Pa. Water Environment Association**

Appendix B: 1939 Water Rights Law

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WRITTEN TESTIMONY
SUBMITTED TO THE
HOUSE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
REGARDING HOUSE BILL 2230, PRINTER'S NO. 3163
FEBRUARY 20, 2002

BY
DALE WISSLER, PRESIDENT
CARWASH ASSOCIATION OF PENNSYLVANIA

On behalf of the Carwash Association of Pennsylvania (CAP), thank you for the opportunity to submit comments on Representative Hershey's legislative proposal, House Bill 2230, the Water Resources Conservation and Protection Act.

CAP, a trade association formed in 2000, is currently comprised of over 100 carwash owners and distributors of carwash equipment and supplies across Pennsylvania. CAP and our members have continued to invest ourselves into the stakeholder participant process for the development of sound public policy and new initiatives pertaining to water conservation.

CAP, our other state counterparts and our national association, the International Carwash Association (ICA), serve several functions relating to water usage in the carwash industry, including: 1) gathering information regarding water conservation measures employed by the carwash industry; 2) encouraging carwash owners to implement new and improved water conservation measures in their daily operations; and 3) educating the public about water usage by the carwash industry.

In 1999, the ICA conducted a study and prepared a report entitled "Water Conservation in the Professional Car Wash Industry" as a tool for providing information to the public and the carwash industry about techniques utilized by the industry to conserve and reclaim water in carwashes. This report was based on information from earlier studies, current literature, and input from industry experts including carwash operators, suppliers and manufacturers. A copy of the report is attached to my testimony for your review.

This study showed that professional carwashes consume less than one percent of the water used in a large or medium size municipality. On average, professional carwashes also use 75% less water to clean a vehicle than if an individual washes his vehicle at home. Various functions available at the self-serve carwash use between 1 pint and 4 gallons of water per minute. Foaming brushes use between 1 pint and 1 quart per minute while in operation. The spraywands utilize high-pressure water between 1000-1200 psi and a low flow of less than 4 gallons per minute to accomplish the cleaning of a vehicle.

Professional carwashes conserve water year-round through several techniques to achieve significant water savings. Some of these techniques include:

- o Reducing nozzle size;

- Applying appropriate amount of pressure;
- Checking for and repairing all water leaks as they occur;
- Recycling reverse osmosis (RO) reject water back into the wash cycle;
- Fine tuning all portions of the wash cycle to insure there is no waste of water;
- Increasing cycle speed in the automatic and conveyor washes;
- Utilizing water softeners to avoid the need for increased detergent and to decrease potential for scaling in pipes and spray nozzles; and
- Removing the spot-free portion of the cycle.

In addition to these techniques, water reclamation systems to conserve large amounts of water. Water reclamation systems have been used by the professional carwash industry for decades. According to ICA's report, 52.9% of full-service conveyor carwashes in the nation have a reclamation system. These systems can reduce water usage by as much as 60-90%, depending on the application. It is important to note, however, that these systems are costly for carwash owners to purchase ranging in price from \$20,000-60,000 just for the equipment. Several of these systems are currently being used in the Commonwealth with good results in all different carwash applications. One of the biggest benefits of using a reclamation system is for stormwater discharge and watershed protection programs as well as reducing pollutant loading from the grit and road film washed from the cars.

Although the carwash industry is not a large user of water resources, CAP members continue to be concerned about public misconceptions regarding the amount of water carwash facilities use. The potential impact of those misconceptions on our industry, particularly in times of drought similar to what Pennsylvania is currently experiencing, can be devastating economically and also contrary to sound public policy.

CAP supports the basic concepts of House Bill 2230. However, we do have several concerns regarding specific components. The following highlights the specific sections in House Bill 2230 (in italics) followed by CAP's concerns and questions.

Specific Comments:

Section 3. Powers and duties of department and Environmental Quality Board

Section 3. (3) Maintain a comprehensive water resources information system, including, but not limited to:

- (i) An inventory of all water resources, including consideration for water quantity and quality.***
- (ii) A record of all cumulative water withdrawals, diversions, consumptive uses, discharges and return flows of 10,000 or more gallons of water per day from or to one or more water resources.***

Will the comprehensive water resources information system be based on information already collected by water authorities, sewer authorities and/or the Susquehanna River Basin Commission (SRBC) and the Delaware River Basin Commission (DRBC)? If not, what will be the new paperwork requirements for carwash owners?

Section 3. Powers and duties of department and Environmental Quality Board

Section 3. (4) Require recordkeeping, metering, measuring, monitoring, registration and reporting of such information as necessary to administer and obtain compliance with this act or the Water Rights Act.

Will the Department be providing additional details and forms regarding the information to be submitted so that persons affected by this Act can verify that they are in compliance?

Section 3. Powers and duties of department and Environmental Quality Board

Section 3. (5) Make inspections, investigations and examinations, exercise the right of entry, perform such tests or sampling and require the production of such things as necessary to determine compliance with or enforce this act or the Water Rights Act.

Will these inspections, investigations and examinations be announced or unannounced? CAP requests that the Department notify the person who will be inspected prior to the Department's arrival on-site; an unannounced inspection can be an unnecessary intrusion upon daily business operations.

Section 3. Powers and duties of department and Environmental Quality Board

Section 3. (8) Issues orders, assess civil penalties and initiate those proceedings as may be necessary and appropriate for the enforcement of this act or the Water Rights Act.

No appeals or intermediary process is identified in Section 3 for a registered water user to utilize in questioning the scope and fairness of an order from the Department. CAP elaborates on our concern with this matter in our comments under Section 11(a).

Section 6. Registration, reporting and recordkeeping.

(a) Registrations. Any person whose existing, new or increased withdrawal, diversion or consumptive use from one or more water resources causes a total withdrawal, diversion or consumptive use to equal or exceed an average of 10,000 gallons per day in any 30-day period and all public water supply agencies shall register with the department each source and the amount of each withdrawal, diversion or consumptive use.

The majority of professional carwashes in Pennsylvania will not meet the threshold of 10,000 gallons per day in a 30-day period, however, some larger full-serve carwashes may exceed the 10,000 gallons per day during the busiest months of the year for carwashes – typically January, February and March.

Will these full-serve carwashes that are not using 10,000 gallons per day the rest of the year still be required to register with the Department? CAP requests an exemption from the registration requirement if usage exceeds 10,000 gallons per day during these three months only.

Section 6. Registration, reporting and recordkeeping.

(b) Reporting. Beginning on the first day of January following the effective date of this act, any person whose existing, new or increased withdrawal, diversion, consumptive use, discharge or return to equal or exceed an average of 10,000 gallons per day in any 30-day period, and all public water supply agencies, shall report to the department annually the source and amount of each withdrawal, diversion, consumptive use, discharge or return flow. The information shall be submitted to the department on such forms, in such manner and with such accompanying data as shall be prescribed by the department.

Will the Department be providing additional details and forms regarding the information to be submitted so that persons affected by this Act can verify that they are in compliance?

Section 6. Registration, reporting and recordkeeping.

(c) Measurements, records and reports. The department may require any person subject to subsection (a) or (b) to install, use or maintain metering equipment or methods, to perform measuring, to maintain and retain records of information from metering and measuring activities, to submit reports of metering and measuring results and to provide such other information as may be required to determine compliance with this act or with the terms or conditions of any order issued under this act.

What funds will be made available to pay for the cost of installing any equipment required to comply with this act?

Section 8. Voluntary Water Conservation

(a) Center established. There is hereby established within the department a Water Resources Technical Assistance Center to promote voluntary water conservation and to provide technical assistance on water resources issues.

CAP supports the development of such an assistance center and supports the concept of voluntary water conservation. CAP would like to serve as a resource to the General Assembly and to the Department for information about our industry with the understanding that this information be used only for education purposes about the efficient use of water resources.

Section 9. Grants.

CAP supports the concept of funding assistance focused on water conservation and requests that funds be made available for registered water users to comply with Section 6. CAP also recommends that DEP consider ways to financially assist those water users that may not reach the 10,000 gallons per day in a 30-day period threshold but that are still concerned with reducing water usage.

Section 11. Penalties and Remedies

(a) Duty to comply with orders of the department. It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to section 3. If such person fails to proceed diligently or fails to comply with the order within such time, if any, which may be specified, the person shall be guilty of contempt and shall be punished by the court in an appropriate manner. For this purpose, application may be made by the department to the Commonwealth Court, which court is hereby granted jurisdiction.

Section 11(a) does not provide for an appeals process for the registered water user who believes the scope and fairness of the Department's original order (as referenced in Section 3 (8)) is in question? Section 11(a) sets a precedent of vagueness and unchecked authority to the Department and could be incredibly onerous on registered water users. CAP requests that the General Assembly consider amending both Section 3(8) and Section 11(a) to include an appeals process for the person required to comply with the Department's order. Also, please clarify whether a person found guilty of contempt in this section is guilty of a civil or criminal charge?

Thank you for your consideration of CAP's comments as the development of this legislation progresses. If you have any questions or would like further information regarding CAP's position, please do not hesitate to contact our public affairs consultants, Jay Layman and Beth Zampogna at Capital Associates (717.234.5350).



February 20, 2002

**The Honorable Arthur D. Hershey
Chairman, Committee on Environmental Resources and Energy
Pennsylvania House of Representatives
3157 Limestone Road
Cochranville, PA 19330**

Dear Chairman Hershey:

On behalf of the International Bottled Water Association (IBWA), I urge you and your committee to carefully review the implications of House Bill 2230 before taking action. In its current form, HB 2230 will have serious negative effects on a wide array of industries operating in Pennsylvania, including bottled water companies.

IBWA is the trade association representing the bottled water industry. Founded in 1958, IBWA member companies account for more than 80 percent of all bottled water sales in the U.S. The association membership includes domestic and international bottlers, distributors, and suppliers.

IBWA is dedicated to the responsible management of renewable groundwater resources by using sound science and environmental stewardship. IBWA supports comprehensive water resource management that regulates both the quality and quantity of groundwater, and balances the interests and rights of those using the resource today and in the future. I have attached IBWA's policy paper on Groundwater Resource Management. This document represents the agreed upon parameters IBWA and its members use to evaluate groundwater policy and its implications.

HB 2230 is a step backward in Pennsylvania groundwater resource management practices. This bill will devolve groundwater regulation from a broader, more comprehensive approach to one of localized views and fractured approaches. IBWA acknowledges that local governments should be integrally involved in the regulation of groundwater. However, underground water sources do not respect man-made political boundaries and must therefore be regulated in a regional or basin-wide manner.



Chairman Hershey
February 20, 2002
Page 2

The Pennsylvania Bottled Water Association has also commented on HB 2230. IBWA concurs with those comments and I have attached them for your reference.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. T. Flanagan". The signature is stylized with a large "M", a small "T", and a long horizontal stroke at the end.

M. Troy Flanagan
Director of Government Relations

cc: House Committee on Environmental Resources and Energy

Enclosures

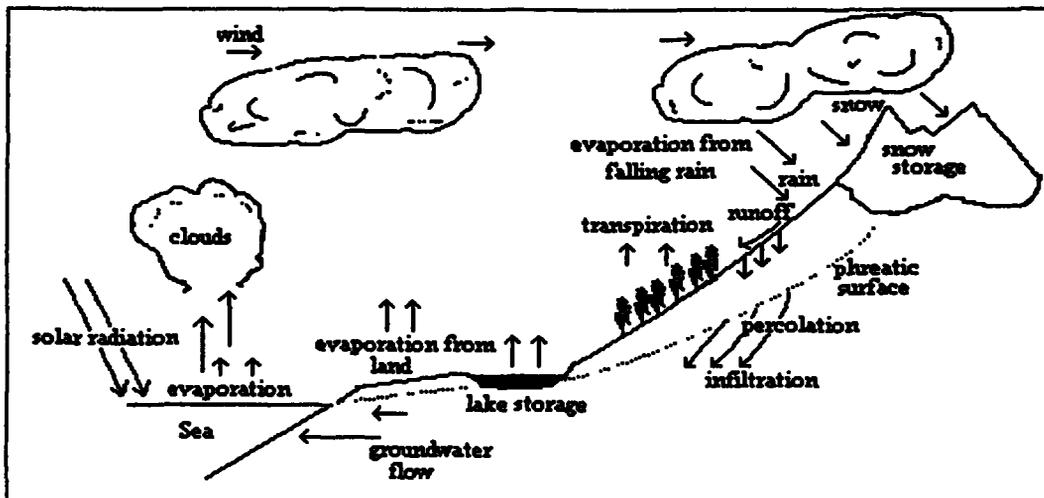
Groundwater Resource Management

IBWA Policy

The International Bottled Water Association (IBWA) is dedicated to the responsible management of renewable groundwater resources. This can be accomplished by using sound science and environmental stewardship, preventing adverse impact on the source, the surrounding environment, or neighbors. IBWA supports comprehensive water resource management that regulates both the quality and quantity of groundwater, and balances the interests and rights of those using this natural resource today and in the future.

Background

The bottled water industry predominantly uses groundwater as its source for water. Groundwater is a renewable natural resource that is replenished through the hydrologic cycle. The hydrologic cycle is illustrated below in Figure 1. As a renewable resource, groundwater has a replenishment cycle. In the case of water resources, the duration of the cycle is influenced by: weather patterns, recharge area and characteristics, geologic settings, and other site specific factors. When developing and using water resources, it is essential that use is balanced with the replenishment cycle, and the requirements of the regional demand for the resource.



(Figure 1)

Comprehensive groundwater resource management is critical to maintaining this renewable natural resource. A science-based, comprehensive stewardship model for resource management will mitigate many of the concerns associated with the rights and interests of this resource. No industry should be identified as a threat to the water resource without the benefit of sound scientific evidence of the impact on the groundwater quality and quantity which therefore diminishes the resource for other users.

The United States population has grown by more than 100 million people since 1960. This growth has placed demands on regional water resources resulting in concerns about water

- **The plan shall be comprehensive and multi-jurisdictional.** Effective management of a groundwater resource must be multi-jurisdictional by its very nature. Watersheds, streams, rivers and aquifers are not contained by local political boundaries (city, municipal, county, etc.). Local control of the management of groundwater resources can not effectively address the impact of withdrawals from an aquifer that flows through many local jurisdictions. In addition, the multi-jurisdictional approach to management of groundwater resources will prevent the fragmentation of permitting authority and overlapping management of the resources.
- **Identify the quality and quantity of the groundwater.** In developing a comprehensive groundwater resource management program, the impact of use on quantity and quality must be fully assessed. Quantitative measures on the impact from various influences on groundwater resources must be developed and incorporated into any groundwater resource management approach. This includes withdrawal reporting and permitting, surface water impacts of groundwater withdrawals, "water budgeting," and well siting. By using quantitative measures, the permitting of water withdrawals can be more equitably managed through comprehensive understanding of the impact of the withdrawal on the total aquifer.
- **Consider all users in an equitable manner.** Requests for water withdrawals must be reviewed under objective criteria that are based on science. Allocation of water resources should not be subject to requirements exceeding those applied to users of similar quantities and quality. All users must be treated in an equitable manner with an emphasis on providing priority use of the groundwater resource for human consumption.
- **Balance the rights of use against future needs for the resource.** By moving to a scientific basis supported by acceptable quantitative measurements, the balance of competing interests may be better evaluated and lead to beneficial conflict resolution that supports the rights equitably for all interested parties. It is essential for each user of groundwater to act as a steward of this renewable water resource in order to maintain both quality and quantity of the source and the system at large.

Conclusion

IBWA's position on various proposals for government regulation will be based on the above set of principles and the equitable treatment of the bottled water industry in the management of groundwater resources. IBWA believes that only through a comprehensive, science-based approach to groundwater resource management can the water needs of the population and the environment be effectively addressed. IBWA supports measures that equitably treat groundwater users of similar quantities and impacts on quality.

**Statement of the
Pennsylvania Bottled Water Association
House Committee on Environmental Resources and Energy
Hearing on House Bill 2230 – Proposed Water Resources
Conservation and Protection Act**

February 20, 2002

The Pennsylvania Bottled Water Association welcomes the opportunity to provide both the Committee on Environmental Resources and Energy the following comments regarding House Bill 2230 and the general scope and direction of water resources management legislation in the Commonwealth.

The Pennsylvania Bottled Water Association is an organization representing some 20 bottling companies involved in the collection, bottling and distribution of water for human consumption. Although considered by some to be part of the beverage industry, in fact the members of the Association provide the primary drinking water used in many homes and businesses around the Commonwealth.

The bottled water industry in Pennsylvania includes not only the bottlers themselves, but also distributors, suppliers and affiliates. Our 20 bottlers produce water under dozens of brands and private labels. We are an innovative, technology-driven industry that employs nearly 1,500 people in Pennsylvania bottling and distribution facilities, supporting a an extensive network of distributors, suppliers and affiliates. Sales of bottled water in Pennsylvania are approximately \$100 million per year, which indicates a strong desire for this product among Pennsylvania consumers.

In recent times, a good deal of public attention has been focused on water withdrawal projects associated with the bottled water industry. Yet, the fact is that bottled water represents a very tiny fraction of water use across the Commonwealth. To place this in perspective, the Pennsylvania Department of Environmental Protection's Division of Water Use Planning indicates that currently industrial, power, commercial, and public water supply use across the Commonwealth totals approximately **27 billion** gallons per day. Of that amount, public water supply use represents only 6% (1,640 million gallons per day). Although consumption of bottled water in Pennsylvania has risen to 120 million gallons per year, withdrawals by all bottled water companies combined represents less than 0.005% (***five thousandths of one percent***) of total withdrawals for all uses in Pennsylvania.

The Association and its members are committed to providing Pennsylvania consumers with high quality bottled water. In order to assure them a safe and plentiful water supply, we are dedicated to the responsible management of these renewable water resources using sound science and environmental stewardship, with no adverse impact on the source, the surrounding environment, or our neighbors.

The Importance of a Uniform and Integrated Water Management Approach

There can be little doubt that Pennsylvania's economic welfare and future, as well as its environmental well-being, depend on water. Water is one of this Commonwealth's greatest assets, and is essential to virtually every enterprise and human endeavor.

The stewardship of those resources, to be effective, requires a uniform and integrated approach to water management. No one action alone will be sufficient. Planning alone will not solve any problems. Regulation alone will not improve supplies or foster necessary investments. Water conservation alone will not resolve challenges in Pennsylvania's heavily-used basins. Developing reservoirs and other water projects alone will not avoid water use conflicts or address the environmental/ecological concerns in water management.

Effective "management" requires that government, *working with private enterprise*, take an active role in all of these areas to plan for, conserve, nurture, and develop Pennsylvania's ground and surface water resources in order to balance and serve all of the many demands placed on those resources.

Because government cannot do it all, a key part of any effective management system must be provisions which encourage private actions to conserve and develop water resources. The system should help in the siting of industrial enterprises where water supplies are sufficient to support anticipated needs. The system should provide adequate security for private rights and water development projects — including springs, reservoirs and wells — through the definition and protection of rights in the water developed by private citizens. The system should encourage economic uses of water, by allowing the market to function in assigning a real economic value to water and allowing transfers of water and water rights from less valuable uses to more valuable uses. Private actions and investments — as much as government actions — are a fundamental part of any viable "water management" system.

There is no doubt that Pennsylvania needs to consider updating its water management laws to address the current and coming challenges of the 21st Century. With the exception of those areas and uses regulated by the modern water management practices of the Delaware and Susquehanna River Basin Commissions, much of our current water management system is mired in outdated common law doctrines (which defy hydrologic fact) and a hodgepodge of *ad hoc* statutory enactments.

For the past 18 plus years, since the completion of the water laws and institutional arrangements study of the State Water Plan, and the recommendations of the Pennsylvania Water Resources Advisory Committee, the General Assembly has grappled (in various sessions) with the nettlesome issues of how best to reform our water management system.

The guideposts for a successful water management system, however, have been set by experience in other states and regions, by the compacts to which this Commonwealth is a party, and by models such as the American Society of Civil Engineers (ASCE) Regulated Riparian Model Water Code. The key principles are:

- Equal and uniform treatment of all users of water without regard to political boundaries.
- Comprehensive water resources planning and management under the direction of a single agency – and avoidance of balkanization, duplication, and overlapping and inconsistent decision-making.
- Recognition that water is a shared resource, which must be used and allocated equitably to concurrently meet sometimes competing needs and uses.
- Management of groundwater and surface water as part of a single hydrologic system (rather than establishment of separate and segregated management systems for groundwater and surface water).
- Allocation of water among users in a manner that fosters efficient and productive use of the total water supply in a sustainable manner.
- Provision of legal security for water rights within a system that makes water rights a matter of legal record entitled to legal protection.
- Coordination of water allocation and water *quantity* management systems with water *quality* regulation and protection.

Those principles are embraced by the International Bottled Water Association's Groundwater Management Policy, a copy of which is attached to this testimony.

On the one hand, we must acknowledge the efforts of the sponsors of the bill before you today to focus legislative attention on the importance of water management for the Commonwealth's future. At the same time, based on our experience and that of experts in the field of water management with whom we work and have consulted, we would respectfully question whether H.B. 2230, as currently crafted, will truly move the Commonwealth ahead in the development of a workable and effective water plan and management system.

We join in the comments made by the Pennsylvania Chamber of Business and Industry regarding general principles and elements that we believe should be reflected in water resource legislation. Some of those elements are reflected in H.B. 2230, while others are found in other proposals now pending before the Legislature, most notably in Senate Bill 998, as proposed by Senators Madigan and Musto. We believe that the best of these bills should be brought together in a consensus piece that reflects a

comprehensive and well-balanced approach to water planning across this Commonwealth.

Balkanization of the Commonwealth's Water Resources

We have serious concerns that the arrangement for water planning envisioned by H.B. 2230 will result in a serious splintering of water planning efforts, with insufficient consideration and balancing of broader basinwide and statewide priorities, objectives and concerns. Under the scheme proposed in HB 2230, the state water plan is not a plan at all, but rather a "high-level" set of policy pronouncements and generalized assessments. The bill fails to establish a basis for developing a strong set of basinwide and state plans, including a full inventory and assessment of the safe yields for each hydrologic unit, and a water budget that compares those supply safe yields with solid data on current and projected demands. Instead, the real water planning function is devolved and delegated to unidentified "entities" to be "nominated" through a poorly-defined process, who will be empowered to develop so-called integrated water resource plans for critical water resource areas. Those areas may comprise just a small watershed or a small group of municipalities.

The concept of uniform treatment of all water users without regard to political boundaries could rapidly devolve into a balkanized array of hundreds of entities pursuing different agendas in the management of a shared resource. Such an arrangement threatens to stimulate and foster a "we-versus-them" approach to the management of shared water resources.

We, unfortunately, have seen some of the prototypes of "integrated water resource plans" – and we are not encouraged. One such plan, developed by a small coalition of municipalities, embraced a bizarre theory of water budgeting that theorized that all water should be allocated based on the amount of land each person owns, and that a person could not withdraw water for even household use unless that person owned multiple acres of land. That "integrated" plan is a poorly-disguised effort to foster an agenda of no-growth, to keep out affordable housing, and to preclude agricultural, industrial or commercial development.

The direction taken in H.B. 2230 is directly contrary to the lessons learned in our history, and reflected in the decisions of both Commonwealth Court and Pennsylvania Supreme Court, which underscore the importance of unified water management as exemplified by the Delaware and Susquehanna River Basin Compacts. Those court decisions held that local regulation of water withdrawals is preempted where those withdrawals are subject to regulation and approval by the Susquehanna or Delaware River Basin Commissions. See *Levin v. Bd. of Supervisors of Benner Township*, 669 A.2d 1063 (Pa. Cmwlth. 1995), *aff'd per curiam*, 689 A.2d 224 (Pa. 1997) ("*Benner*"); *State College Boro. Water Auth. v. Bd. of Supervisors of Halfmoon Township*, 659 A.2d 640 (Pa. Cmwlth. 1995) ("*Halfmoon*"); *North Penn Water Auth. v. Zoning Hearing Bd. of Worcester Township*, 24 D & C 3d 357 (1981), *aff'd*, 454 A.2d 699 (Pa. Cmwlth. 1983) (adopting opinion below), *alloc. den'd*, 198 E.D. Allocatur Docket 1983 (June 13, 1983).

Those cases hold that municipalities may not, under the aegis of the Municipalities Planning Code or other statutes, regulate the terms or conditions of such a DRBC or SRBC-regulated water withdrawal.

In both *Benner* and *Halfmoon*, the Commonwealth Court carefully analyzed the relationship between local and basin commission regulation of water withdrawals, and ultimately found that municipalities could not use their zoning power under the MPC to deny or condition water withdrawals approved by the basin commission. As the Commonwealth Court aptly explained in the *Halfmoon* decision:

[O]ur legislature created the Commission in no small part to combat chaos and fragmentation in the management of the basin's water resources. As the Authority also asserts, the Commission, as the single administrative agency empowered to oversee these resources, must approve of all the projects affecting them, subject to certain exceptions not relevant here. Article 3 of the Compact, § 3.10. Such a grant of authority vests the Commission with control over all the water resources within its jurisdiction, and defeats any notion that local governing bodies, such as the Board in this case, may attach conditions to a project it has approved.

...

Our reading of the Compact as a whole satisfies us the state legislature indicated an intention that local governing bodies should not supplement the Commission's decisions with respect to its authority to manage the basin's water resources. No other conclusion is logical where the Compact evinces a frustration with splintered governmental authority and responsibility, and where the Commission has been given the power to regulate water withdrawal and diversions and to determine what areas should be designated as protected or involved in an emergency situation. See Article 11 of the Compact.

Halfmoon, 659 A.2d. at 644. See also *Benner*, 669 A.2d at 1076 (quoting this passage from *Halfmoon*).

This preemptive effect was further recognized in the amendments adopted in 2000 to the Municipalities Planning Code. Act 68 of 2000 underscores that municipalities may enact zoning to regulate land uses, **"except to the extent that [land use activities are regulated by specific enumerated statutes] or that regulation of other activities are preempted by other Federal or State Laws."** Act of June 23, 2000, No. 2000-68, Section 15 (amending MPC §603(b)), 2000 Pa. Legis. Serv. 223, 241 (Purdons); codified at 53 P.S. §10603(b) (Purdon Supp. 2001) Even more specifically, in a savings clause added to the end of special provisions regulating the extension of water lines in communities, the newly added MPC Section 608.1(f) declares: "Nothing in this section shall be construed to authorize a municipality to regulate the allocation of withdrawal of water resources **by any person**, municipal authority or water company **that is otherwise regulated by the Pennsylvania Public Utility Commission or other Federal or State agencies or statutes."** *Id.* § 17 (adding MPC § 608.1), 2000 Pa. Legis. Serv. at 243; codified at 53 P.S. 10608.1 (Purdon Supp. 2001). These provisions were adopted after the *Benner* and *Halfmoon*

decisions, and reflect the Legislature's understanding and recognition of that preemption.

The practical and policy considerations underlying preemption of local regulation of water withdrawals remain strong – indeed, are probably even stronger today than in decades past. Water does not honor man made political boundaries. Our precious water resources cannot be conserved or managed effectively by over 2600 municipalities each pursuing their own agendas and theories. For river systems such as the Delaware, Susquehanna, or Ohio-Monongahela-Allegheny to be planned and managed by a cacophony of hundreds of municipalities would be disastrous.

For this reason, we believe that any water resources legislation should make clear, as does the MPC, that municipalities are not authorized to allocate water and regulate the terms and conditions of water withdrawals. Such powers, to the extent they exist under existing statute, can and should remain vested solely at the state level and in the compact river basin commissions.

Resources for Planning

While H.B. 2230 places great emphasis on empowering localities to prepare what it calls integrated water resource plans, serious consideration must be given as to whether our Pennsylvania municipalities or related local agencies have the technical and financial resources to prepare such plans. Preparing the type of plans called for by this bill, if done with any scientific care, is an expensive and time-consuming proposition. Assuming that such planning will be accompanied by the gathering of field data on resource availability and use, such plans can readily cost several hundred thousands of dollars each.

H.B. 2230 does not fully address this issue. It indicates that perhaps grants of up to 75% of the cost of preparing plans may be made from "funds available" for such purposes, but that will be a hollow promise unless real dollars (and a lot of them) are appropriated, and real technical expertise is provided to perform the planning effort. With the well known limitations on both Commonwealth and local budgets, we fear that the real impact of this approach will be water planning for the benefit of wealthier communities, to the detriment of their less-well-off neighbors. Communities with sufficient financial resources and a particular agenda – such as to zone out growth or prevent a particular type of development – may have sufficient incentive to use the process provided in this bill to prepare water plans to achieve those ends, while other communities with lesser fiscal resources are left without a viable and comprehensive water planning arrangement. The result will be a fractured approach to management of water resources that may not truly protect many areas. Is this really wise public policy, or what the General Assembly intends?

Fostering Comprehensive Water Planning

We believe that Senate Bill 998 and the elements proposed by the Pennsylvania Chamber come closer to the concept of a comprehensive water resources management approach, focused at the proper statewide and basinwide level. As a beginning point, these proposals reflect, we believe, a better understanding of the challenges facing Pennsylvania, and the potential direction for solutions.

It is noted that many groups have supported such a planning effort; indeed, the concept of preparing a plan is one of the few items that most groups across the Commonwealth agree on. The key question, however, is "planning for what"? Since the call for the first State Water Plan shortly after the turn of the Twentieth Century, Pennsylvania has prepared a series of statewide and regional plans. Volumes have been written, and volumes have been shelved to gather dust.

If this next planning effort is to be effective, the General Assembly must ask - *how do we intend to use this plan*. A commitment needs to exist that this plan will be used to make decisions — including decisions on State project investments, decisions on guiding future development, and permit or other regulatory decisions. Absent such a commitment, the effort will not be worthwhile.

If this effort is to get off in the right direction, it would be helpful to provide in the legislation further guidelines to the agency in the preparation of the plan. In this regard, we commend to you the ASCE Model Water Rights Code for its explanation of experience in other states. The expected content of the plan might include, for example:

- An inventory of surface water resources in each region, including an estimate of their reliable yields for instream and withdrawal uses during periods of drought.
- An inventory of ground water resources in each region, including an identification of the aquifers and ground water basins, and an assessment of their characteristics, recharge capacity, withdrawal limits, relationship to stream base flows, and existing water quality.
- An identification of instream use needs, including flows required to support and sustain navigation, fisheries, wildlife, a viable aquatic environment, important recreational uses, hydroelectric development and production, wastewater assimilative capacity, and the values of streams designated as part of the Commonwealth and Federal wild and scenic rivers systems.
- An assessment and projection of existing and future withdrawal needs for domestic, public water supply, agricultural, energy development and production, commercial, industrial, and other uses.

An analysis of the water quality of each basin, including point and non-point sources of pollution, waste treatment needs, and the impact of water quality on the supply and uses of water resources of each region.

- An assessment of flood damage and stormwater management problems.
- An assessment of navigation needs and the means for restoration, development, and improvement of transportation by water.
- An assessment of water resources required to serve the area with important or unique natural, scenic, environmental, ecological or recreation values of national, state or regional significance, including national and state parks, designated wild, scenic and recreational rivers, national and state wildlife refuges, and the habitat of designated endangered or threatened species.
- An assessment of both structural and non-structural alternatives to address identified problems or needs, improve existing supplies and develop new supplies, including an economic and environmental evaluation and screening of potential federal, state or regional projects.
- An evaluation of water resource management alternatives, and recommended programs, policies, institutional arrangements, projects and other mechanisms to meet the needs of each region and the Commonwealth.

The Planning Process

While there has been a good deal of debate about "top-down" versus "bottom-up" planning approaches, *neither* approach is practical or effective. Local and regional priorities are important in making water management decisions, but water management decisions are not simply a matter of local or regional concern. In short, a **two-way** approach to water planning is essential — an approach in which local and regional priorities are heard, but state and national priorities are also integrally involved. Fostering such an approach requires some institutional creativity and a real commitment at both the regional and state level to communicate (i.e., both express views and listen).

To this end, we believe that the systematic multi-level approach suggested by the Pennsylvania Chamber, and reflected in proposals such as S.B. 998, merits most serious attention. All major stakeholders need to be brought to the table in the planning process. In that regard, we hope that the General Assembly will give serious consideration to including room at the table for members of the bottled water industry. Certainly our members have a wealth of knowledge regarding the practical and scientific issues of conserving and managing this resource, and we stand ready to contribute constructively to the water planning process envisioned by this bill and in the other proposals now pending before this Legislature.

Establishing Water Policies

H.B. 2230 leaves to the State Water Plan the development and adoption of policies which will guide the future management of water resources. The legislation does not, itself, provide much policy guidance, other than to recognize that all waters are part of a single, interconnected hydrologic resource requiring comprehensive planning and management.

Many in the regulated community may well be nervous regarding such a carte blanche delegation of policy-making authority to DEP. Water is so vital to every enterprise that it is essential that there be real accountability, checks and balances when allocating the power to adopt policies governing its management. We join the Chamber of Business and Industry in advocating the creation of a State Water Resources Board, with a well-balanced membership, and empowering that board – not just DEP – to guide and adopt the state water plan and to deliberate on and adopt all major policies regarding water resources.

Avoidance of Duplication

One of PABWA's major concerns is the need to avoid a multiplicity of duplicate regulatory requirements. Two-thirds of the Commonwealth is already subject to comprehensive water resources regulatory programs administered by the Susquehanna and Delaware River Basin Commissions (SRBC and DRBC). There may be valid reasons for the Commonwealth to take a greater role in water planning and management. However, an effort must be made to avoid the creation of yet another layer of permitting requirements at the state level — with an attendant overlap and duplication of the existing SRBC and DRBC reviews. Such duplication will not serve the interests of good water management or make Pennsylvania more competitive.

The General Assembly should be assured that mechanisms will be implemented to avoid such overlap and duplication. Both SRBC and DRBC have the ability to enter into cooperative administrative agreements with state agencies to delegate major portions of their project review functions to state agencies. However, as seen in the area of water quality permitting, these delegation powers and interagency agreements have not been used effectively to reduce duplication of effort. More than a few applicants have experienced months of delay as applications first are scrutinized by DEP and then are reviewed by DRBC.

As drafted, H.B. 2230 would *allow* cooperative agreements to avoid duplication. But the General Assembly can and should speak in even stronger terms to *require* that every possible effort be made to avoid duplication. It might be suggested that before proceeding far in the consideration of this bill, the legislature obtain clear commitments as to the specific arrangements that will be implemented to streamline the process and avoid overlap and duplication.

Conclusion

As your Committee, and the legislature as a whole, consider these issues, there are a number of proposals and models that merit serious attention. Among those are the well-thought through provisions of the ASCE Regulated Riparian Model Rights Code – a model developed after years of consideration and input from stakeholders and water management experts around the country. That model embraces many of the principles discussed in this testimony.

We all agree that water resources management is a crucial challenge. The bottled water industry is built on water, and we truly appreciate the need for wise planning and thoughtful management of that resource. Our business depends on it being available not just for the short term, but for the long run. As you move forward to find common ground on a workable and comprehensive water resources bill, the members of the Pennsylvania Bottled Water Association are prepared and committed to work with you in that effort.

Respectfully Submitted:



Scott W. Hoover, President
Pennsylvania Bottled Water Association

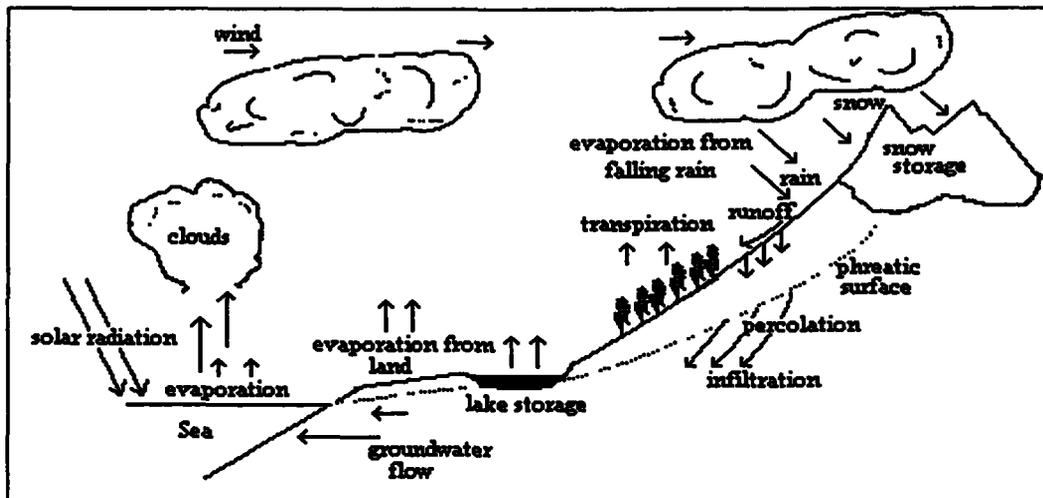
Groundwater Resource Management

IBWA Policy

The International Bottled Water Association (IBWA) is dedicated to the responsible management of renewable groundwater resources. This can be accomplished by using sound science and environmental stewardship, preventing adverse impact on the source, the surrounding environment, or neighbors. IBWA supports comprehensive water resource management that regulates both the quality and quantity of groundwater, and balances the interests and rights of those using this natural resource today and in the future.

Background

The bottled water industry predominantly uses groundwater as its source for water. Groundwater is a renewable natural resource that is replenished through the hydrologic cycle. The hydrologic cycle is illustrated below in Figure 1. As a renewable resource, groundwater has a replenishment cycle. In the case of water resources, the duration of the cycle is influenced by: weather patterns, recharge area and characteristics, geologic settings, and other site specific factors. When developing and using water resources, it is essential that use is balanced with the replenishment cycle, and the requirements of the regional demand for the resource.



(Figure 1)

Comprehensive groundwater resource management is critical to maintaining this renewable natural resource. A science-based, comprehensive stewardship model for resource management will mitigate many of the concerns associated with the rights and interests of this resource. No industry should be identified as a threat to the water resource without the benefit of sound scientific evidence of the impact on the groundwater quality and quantity which therefore diminishes the resource for other users.

The United States population has grown by more than 100 million people since 1960. This growth has placed demands on regional water resources resulting in concerns about water

quality and availability . Such concern has been a major factor in emerging local community expressions of opposition to new withdrawals. Urban sprawl will continue and the water resources will experience increased demands from all sectors. In light of all of these factors, a comprehensive approach to groundwater management is needed.

State regulation of water resources varies from state-to-state. The management and use of water resources are based on water rights as applicable to individual states. State legal systems can be grouped roughly into three areas: *riparian*, *prior appropriation* and "*dual doctrine*."

1. The *riparian* system grants water rights to the owner of a parcel of land touching a watercourse. This system applies in the twenty-nine states east of the Mississippi River and Arkansas.
2. Under the *prior appropriation* doctrine, water rights exist when the water is taken from the source and is used (appropriated) for a beneficial (as defined by law and court decisions) purpose. This system applies to the eight non-coastal states in the West and Alaska. The holder of the oldest appropriated water right receives priority for water delivery over more junior rights. In times of shortage the water is not rationed but provided on the basis of seniority (first in time, first in right).
3. In the "*dual system*" states, the law of appropriation has been superimposed on a pre-existing system of riparian rights and each state reconciles the issues individually. The "*dual system*" is used in 12 states.

Water rights are also governed in a number of states by interstate and/or international treaties and compacts. As an example, the Great Lakes Water Resources Development Act regulates large diversions of water through a cooperative agreement with the five contiguous states and the two Canadian provinces along the Great Lakes. In addition, a number of states that share a common watershed have developed processes (compacts) to jointly address the management of their common water resources.

Guiding Principles of Comprehensive Groundwater Resource Management

IBWA believes that comprehensive groundwater resource management must be supported by a foundation of sound science which determines the limitations of the resource base and provides for projections of use. Such comprehensive resource management planning and policy must also incorporate a capability to resolve conflicting interests based on the principle of equitable partition of the resource.

IBWA offers the following guiding principles as the foundation for executing a comprehensive groundwater resource management policy and plan.

- **Scientific Documentation.** The primary effort of protecting and managing groundwater resources must be based on a solid foundation of appropriate and reasonably applied science. The flux, flow, recharge rate, surface water influence and impact, zone of contribution, and other factors affecting a groundwater resource must be analyzed and considered in the design of a management plan. The entire aquifer must be viewed within the context of science supported by empirical data. Advanced research techniques and the collection of baseline data of groundwater resources characteristics and source use must be utilized to assist in the analysis and design of groundwater management policies.

- **The plan shall be comprehensive and multi-jurisdictional.** Effective management of a groundwater resource must be multi-jurisdictional by its very nature. Watersheds, streams, rivers and aquifers are not contained by local political boundaries (city, municipal, county, etc.). Local control of the management of groundwater resources can not effectively address the impact of withdrawals from an aquifer that flows through many local jurisdictions. In addition, the multi-jurisdictional approach to management of groundwater resources will prevent the fragmentation of permitting authority and overlapping management of the resources.
- **Identify the quality and quantity of the groundwater.** In developing a comprehensive groundwater resource management program, the impact of use on quantity and quality must be fully assessed. Quantitative measures on the impact from various influences on groundwater resources must be developed and incorporated into any groundwater resource management approach. This includes withdrawal reporting and permitting, surface water impacts of groundwater withdrawals, "water budgeting," and well siting. By using quantitative measures, the permitting of water withdrawals can be more equitably managed through comprehensive understanding of the impact of the withdrawal on the total aquifer.
- **Consider all users in an equitable manner.** Requests for water withdrawals must be reviewed under objective criteria that are based on science. Allocation of water resources should not be subject to requirements exceeding those applied to users of similar quantities and quality. All users must be treated in an equitable manner with an emphasis on providing priority use of the groundwater resource for human consumption.
- **Balance the rights of use against future needs for the resource.** By moving to a scientific basis supported by acceptable quantitative measurements, the balance of competing interests may be better evaluated and lead to beneficial conflict resolution that supports the rights equitably for all interested parties. It is essential for each user of groundwater to act as a steward of this renewable water resource in order to maintain both quality and quantity of the source and the system at large.

Conclusion

IBWA's position on various proposals for government regulation will be based on the above set of principles and the equitable treatment of the bottled water industry in the management of groundwater resources. IBWA believes that only through a comprehensive, science-based approach to groundwater resource management can the water needs of the population and the environment be effectively addressed. IBWA supports measures that equitably treat groundwater users of similar quantities and impacts on quality.

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