



**Interstate Council  
on Water Policy**

## **Interstate Water Solutions for the New Millennium**

### **SCOPE OF WORK INTERSTATE COUNCIL ON WATER POLICY**

March 2004

## **Introduction**

For decades, water managers and policy-makers alike have espoused the value of managing water for multiple purposes on a watershed basis. Despite the fact that the comprehensive watershed approach has become the standard management philosophy, there has been little effort devoted to understanding its practical implementation challenges. In particular, watersheds span political boundaries and can be defined at various geographic scales. In addition, water management issues frequently span scientific disciplines and management missions of multiple government agencies. In short, there are numerous institutional barriers to managing water as we so fervently proclaim it should be managed.

Yet, there is much to be learned from history and contemporary experience. In particular, interstate water conflicts and management challenges have given rise over time to a wide variety of institutional arrangements, ranging from those that are temporary and ad-hoc to those that are formally structured and statutorily-grounded. In addition, there is enormous variety in geographic scale, types of water issues addressed, and range of parties or agencies involved in these interstate arrangements. The purpose of the Interstate Council on Water Policy's (ICWP) Interstate Water Management Project is to document and evaluate these interstate water management approaches, with the goal of recommending options for the future.

## **Project Vision**

Identify and evaluate approaches for strengthening interstate water management and planning, including options relying on existing federal law and policy, and those that require changes to federal law or policy.

## **Background on ICWP and Its Focus on Interstate Issues**

ICWP, a 45-year old national organization of state and regional water resource management agencies, provides a means for its members to exchange information, ideas, and experience and to work with federal agencies that share water management responsibilities. In particular, ICWP focuses on water quality and water quantity issues, and on the dynamic interface between state and federal roles.

ICWP is committed to seeking more comprehensive and coordinated approaches to water management that integrate quality and quantity concerns, ground and surface water resources and economic and environmental values. Within this context, the relationship between local, state, and federal policies, programs and regulatory issues is of particular interest.

ICWP was founded in 1959 to provide a voice for the states in national water policy. In the late 1960s, ICWP successfully fought for the Water Resources Planning Act, which provided the basis for improved state water planning programs. During the 1970s, ICWP served as the Standing State Advisory Committee to the U.S. Water Resources Council. In the late 1980s, ICWP was influential in the development of the 1986 Water Resources Development Act that redefined cost-sharing for federal water projects.

In the 1990's, ICWP continued its leadership by spearheading the development of a National Water Policy Charter and promoting a national dialogue on water policy. The national interest is well served by the watershed focus on water management being fostered throughout the United States. A missing element seems

to be the lack of a clear identification of approaches to be employed to address those watershed issues and water resources management challenges created on waterways that cross or form state boundaries.

Recently, ICWP has sharpened its focus on water policy issues related to interstate water resources organizations. ICWP's membership includes a number of interstate governmental organizations, including the Delaware River Basin Commission, the Great Lakes Commission, the Interstate Commission on the Potomac River Basin, the Interstate Environmental Commission (NY-NJ-CT), the New England Interstate Water Pollution Control Commission, Ohio River Basin Commission, the Ohio River Valley Water Sanitation Commission, the Susquehanna River Basin Commission, the Upper Mississippi River Basin Association, the Missouri River Basin Association and others. A number of ICWP's state agency members also participate in interstate organizations in various capacities.

The Interstate Council on Water Policy and the Great Lakes Commission contacted river basin organizations in 1997 to determine the interests of river basin organizations in national water policy issues. The results of the initial survey led to an increased focus within ICWP on issues of interest to interstate water organizations and an increase in participation by the interstate organizations within ICWP. ICWP in September 1999 formally approved the structure for its Interstate Governmental Water Resources Standing Committee. Dr. Jeffrey Featherstone, then Deputy Executive Director for the Delaware River Basin Commission, served as the Committee's first chairman. Joseph Hoffman, Executive Director of the Interstate Commission on the Potomac River Basin, is currently the chairman of ICWP and John Hines, Executive Director of the Pennsylvania Department of Environmental Protection's Water Planning Office, is the chairman of the Interstate Committee.

Also at the 1999 Annual Meeting in Pittsburgh, nine interstate water organizations and ICWP, formally entered signed onto an Interstate Partnership Declaration. A tenth interstate organization signed onto the Interstate Partnership Declaration in March 2000. It is ICWP's intent that this partnership declaration be a living document that helps to guide the nation's future water resource policy. A copy of the Declaration of Partnership is provided with this report.

In 2002, ICWP published its Interstate River Basin Organization Survey, the goal of which was to increase the understanding of interstate organizational interests, authorities and capacities of the organizations to respond to growing national water policy concerns and to improve the communications among the organizations. The results clearly show that there is a national interest among the interstates to carry out water management on a watershed basis. The report also shows the involvement nationwide in interstate water management organizations. Included in the survey results is the finding that 37 states and the District of Columbia are involved in interstate water organizations.

### **Recent Administration Actions Focused on the Watershed Management Approach**

In a December 3, 2002 memorandum, EPA Assistant Administrator for Water G. Tracy Mehan III, outlined the Bush Administration's "Renewed Commitment to Watershed Management." The memo describes this watershed or "place-based" approach as one of the most important environmental guiding principles for EPA Administrator Christine Whitman and the administration. The agency followed up its work on watershed issues with a new pollutant trading policy issued on January 13, 2003. This new policy clearly recognizes the need to involve interstate water resource organizations in implementation of this new policy.

According to the January 13, 2003 EPA policy, "the purpose of this policy is to encourage states, interstate agencies and tribes to develop and implement water quality trading programs for nutrients, sediments and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. More specifically, the policy is intended to encourage voluntary trading programs that facilitate implementation of TMDLs, reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. A number of states are in various stages of developing trading programs. This policy provides guidance for states, interstate agencies and tribes to assist them in developing and implementing such programs."

The U.S. Army Corps of Engineers in September 2002 issued its Draft Civil Works Program Strategic Plan for Fiscal Year 2003-Fiscal Year 2008. Stressed in the draft is the growing importance of the comprehensive watershed approach to managing the nation's water resources. In discussing the Corps vision of the watershed approach as a means to achieve integrated water resources management, the draft states "the foundation principles inherent to Corps planning - cost efficiency, environmental protection, and public participation - are consistent with a watershed approach." (p. 42 of Draft Strategic Plan).

Also articulated in the draft strategic plan is the Corps vision of the federal role in water resources management described as follows: to set and maintain standards, to allocate resources, to develop plans, and manage resources for long-lasting positive impacts. The draft further states that "the federal government is uniquely positioned to foster a dialogue about what should be done to manage water in support of state and local governments, but the complexity of contemporary water management requires a commitment on the part of those involved in water resources management across all levels of government to find consensus regarding the development, management and stewardship of America's water resources."

Five emerging water resources challenges were outlined by the Corps in its draft strategic plan including balancing objectives; restoring the environment; aging infrastructure; responding to terrorist threats and disasters; and minimizing institutional inhibitors to effective water resources management. ICWP's proposal is designed to address all these challenges, and in particular will closely examine the institutional challenges.

Further, the U.S. Commission on Ocean Policy has initiated a large-scale effort to forge a national policy for marine and freshwater resources. A thorough examination of the merits of a regional (i.e. watershed-based) approach to developing and administering such a policy has been a focal point of deliberations.

## Project Outline and Goals

From its inception, one of the fundamental goals of ICWP has been the enhancement of state-federal-local coordination. It is within this spirit that ICWP launched the Interstate River Basin Organization Survey and now proposes this project. As the administration moves forward with these new watershed management initiatives, the questions posed in the proposed ICWP interstate project will play a critical role in the implementation of these new strategies.

In order to guide federal policy and initiatives in regional and interstate water management, the ICWP Interstate Water Management Project will evaluate large scale water management and recommend a prudent course for tackling issues spanning multiple jurisdictions.

The Project will address:

### 1. Institutional Mechanisms

What are the various institutional mechanisms for addressing interstate water management that have existed in the past and are currently being employed in the United States and what are their respective strengths and weaknesses?

Describe historical and contemporary interstate institutional mechanisms, including

- o *P.L. 89-80 Title II River Basin Commissions*
- o *Interstate Compact Commissions*
- o *Federal-State Compact Commissions*
- o *Court decree arrangements*
- o *Associations and informal agreements*

### 2. Federal Role in Interstate Water Matters

What is the current and historic role of the federal government in interstate water issues and institutions?

Describe current federal approaches for addressing interstate water issues, including both statutory and administrative provisions. Examples include, but are not limited to:

- o *P.L. 89-80, Water Resources Planning Act of 1965, establishing the federal Water Resources Council and River Basin Commissions*

- o *Clean Water Act, including but not limited to Section 103 (interstate cooperation and uniform laws), Section 106 (grants for interstate programs), and EPA implementation guidance for Sections 303 (water quality standards and implementation plans) and Section 305 (reports on water quality)*
- o *Safe Drinking Water Act, including but not limited to Sections 1423, 1428 and 1453 (sole source aquifer and source water protection)*
- o *Corps of Engineers authorities, including specific provisions for watershed and river basin planning in Section 729 of WRDA 1986 and Section 202 of WRDA 2000, as well as cost-sharing policies for water resource projects and studies.*
- o *USDA conservation programs authorized in the 1954 Watershed Protection and Flood Prevention Act and the 1985 and 2002 Farm Bills.*

3. The Geographic Scale and Extent of Interstate Water Issues

How are interstate water issues and the institutions designed to address them affected by such factors as geographic scale, variety of functions and management issues, number of involved agencies and extent of legal authority? Further, which water resource issues are scale-dependent (presumption that those of a very small scale nature can be reconciled in an intrastate or focused interstate manner)?

Evaluate the effects of the following on interstate water management institutional mechanisms and management approaches:

- o *Geographic size of basin or watershed (Example: Large basins, such as Missouri River, Great Lakes, or Upper Mississippi River, vs. smaller watersheds, such as Delaware River)*
- o *Number of states involved (Examples: bi-state, such as Illinois River between Oklahoma and Arkansas, vs. multi-state, such as the Platte, the Appalachicola-Chattahoochee-Flint, or Ohio River) Methods for incorporating tribal representation*
- o *Type and number of water issues addressed, including surface water supply, groundwater*

*supply, flooding and floodplain management, surface water quality, groundwater quality, fish and wildlife, land use, drinking water, recreation, etc.*

- o *Relevance of water law allocations, whether riparian doctrine or a prior appropriation doctrine.*

4. Interstate Water Issues, Scenarios and Emerging Management Principles

How has regional water management been conducted across the nation on the myriad of water issues confronting managers and crossing jurisdictions?

Examine Contemporary Regional Water Management and Issues:

*Issues Identified for Potential Case Studies (in alphabetical order)*

- o *Ground Water Quality Protection*
- o *Ground Water Supply Management*
- o *Regional Water Management*
- o *Surface Water Ecology Protection*
- o *Surface Water Flood Management*
- o *Surface Water Quality Management*
- o *Surface Water Supply Operations*

*Areas Identified for Potential Case Studies (in alphabetical order)*

- o *Colorado River Basin*
- o *Columbia River Basin*
- o *Delaware River Basin*
- o *Delmarva Peninsula*
- o *Great Lakes*
- o *High Plains Aquifer*
- o *Klamath River Basin*
- o *Ohio River Basin*
- o *Susquehanna River Basin*
- o *Upper Mississippi River Basin*

5. Recommendations in Interstate Water Management for the Future

A. Federal Roles, Institutional Arrangements and Interstate Waters

What is the appropriate future role of the federal government in interstate water issues and its relationship to existing or future institutions?

*Is there a way to reduce institutional inconsistencies, but allow local flexibility? To what degree is regulatory/technical consistency needed along shared waters. Should the federal government reclaim a significant position in developing and implementing interstate water management policy? How does one engage Non-Governmental stakeholders in interstate water matters?*

**B. Common Themes and Guiding Principles for Effective Interstate Water Management**

What common elements for effective regional water management have been seen across the country and to what degree can those elements be incorporated into future interstate situations?

*How does site-specific information become incorporated within the management decision process? How does management occur across programs as well as geographic jurisdictions? Are there principles in water management which bely geographic setting and can be used to effectively address the water challenges of the future?*

## **Project Deliverables**

Exploration of the above topics will take the form of research papers, technical and policy roundtables, and a synthesis report. The latter will provide the basis for information/outreach efforts (e.g. meetings, conferences, policy seminars) through which report findings and recommendations can be presented to policy makers and opinion leaders.

Quarterly progress reports will be provided.

## **The Project Approach**

Why is all this important? Because by realizing what has worked and what has been successful, the nation can move forward effectively to manage water on a larger, more comprehensive basis than the status quo of programmatic and geographic jurisdiction.

## **Funding and Administration**

- o *Obtain grants from federal agencies, private foundations and others*
- o *Outsource Report Development to Regional Water Policy Institutes*
- o *Steering Committee is ICWP Interstate Committee (Listed below)*
- o *Coordination, Financial, Contracting and Logistic Support by ICWP (Carmen Group)*
- o *Technical Study Oversight by ICWP Interstate Committee (To be determined)*

## **Schedule**

- o *Scoping by Interstate Committee by January 2003 (Completed)*
- o *Application to Federal Agencies for Grants by December 31, 2003*
- o *Contract with Institutes by February 2004*
- o *Initial Fact Finding at March 2004 Roundtable*
- o *Draft Report at Annual Meeting - Sept/Oct 2004*
- o *Final Report by December 31, 2004*

## **Project Steering Committee**

**Joseph Hoffman**, Executive Director, Interstate Commission on the Potomac River Basin

**Tom Stiles**, Chief Watershed Planning, Kansas Department of Health and Environment

**John Hines**, Pennsylvania Department of Environmental Protection

**Boris Rukovets**, Assistant Executive Director/Assistant Chief Engineer, Interstate Environmental Commission

**Sue Lowry**, Interstate Streams Administrator, State of Wyoming

**Bob Tudor**, Deputy Executive Director, Delaware River Basin Commission

**Alan Vicory**, Executive Director, Ohio River Valley Water Sanitation Commission (ORSANCO)

**Paul Swartz**, Executive Director, Susquehanna River Basin Commission

**Larry Feazell**, Executive Director, Ohio River Basin Commission

**Holly Stoerker**, Executive Director, Upper Mississippi River Basin Association

**Michael Donahue**, Executive Director, Great Lakes Commission

**Susan Gilson**, Executive Director, ICWP